

## Discussion on Muslim law Cultural Change

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**Abstract:** In the dual role of external coercion and internal evolution, a diverse blend of Hui law culture was ultimately formed, and Hui culture change process shows a good interaction between heterogeneous law culture. Hui law culture change and its causes have important reference value for the construction of contemporary Chinese law culture.

Hui law culture never occupied the mainstream status in the development of Chinese traditional law culture dominated by Confucianism, Buddhism, and Taoism, but because of the particularity of minority nationalities, it earns attention in different historical times construction of legal system. Hui law culture change has rich content and the characteristics of multiple blend, which are still reflected in Hui method of cognition, emotion, attitude and behavior resulting in particularity in method model. Hui law culture is of pluralism in the process of formation development with the collision of different law cultures, and positive interaction between Chinese law culture and law culture change cause has important significance in studying modern transformation of traditional Chinese law culture, and solving contemporary law culture conflict and interaction.

### I. THE CONCEPT OF HUI LAW CULTURE

For the family of Chinese nation, the five thousand years history forms Chinese traditional law culture, but it is undeniable that "in civilized society, and development of the law, national law has played an important role, while people's legal status and legal fate often vary owing to different nationality. But the population law is the auxiliary form of country law." [1] In the law culture of diversified unities of the Chinese nation, ethnic minority forms the habits and customs for a long time; to some extent it still plays a role of a code of conduct, at the same time, laws in view of the rule and policy for minorities constitute an important part of national legal system, thus deducing interaction between mainstream law culture and ethnic culture in different dynasties. The changes of Hui law culture confirms that ethnic law culture is not only a national law's auxiliary form, but the embodiment of the national legal system environment in different periods. So, what is Hui law culture? Scholars gave more incisive definition of traditional law culture of Hui nationality, "in the process of Hui nationality history, various factors combined idea of the whole ethnic group of the ideology about law, ethical behavior and social organization structure and so on with the code of conduct as the hub." [2] The author thinks that, for a country, the category and definition of law culture can be researched from different angles, but only check the problem of ethnic law culture with consciousness and non-ideological part is too single. Hui nationality in history has never made the central government, and is impossible to form legal system of national level. In the process of formation of Hui nationality, they revered by islamic sharia law, achieved islamic culture and Chinese traditional law culture interaction, and formed blending innovation the inherent concept into their nation law practical activities, thus formed national characteristic common law, law consciousness, psychology and law thought. In the definition of Hui law culture, we should not only consider the particularity of its own, more from diversified legal point of view, mine the status and value in the mainstream of law culture.

## II. HUI LAW CULTURE CHANGE

Since Tang Dynasty Yonghui second year (AD 651), Islam has been introduced into China. In Tang and Song dynasty, only Muslim businessmen came China for trade. In Yuan dynasty, Muslims were called "Huihui". In Ming dynasty, Chinese Muslims ethnic group was formed, known as Hui. The formation and development history of Hui nationality is not long. From Muslim groups formation to development of Hui community, from beginning to end, it got attention of central power and different legal system and national policy were made. In the process of Hui law culture change, there are passive and active innovations, and finally it has law culture from one to multiple qualities.

### A. The evolution during Tang and Song dynasty period

In this period, Hui had not yet formed a national community. In Tang and Song dynasties, Muslim was known as "Fan", mainly are Tajik, Persian, and central Asian businessmen living in China. To facilitate the management of foreign businessmen, Tang dynasty set "Fan corner" in where Muslims live, and "Fan manager" manage daily affairs, and "Fan manager" was knowledgeable and respected Muslim. Arab traveler Suleiman came to Guangzhou for business in Tang Xuanzong five years (851 years), after returning home, he wrote the book "Brigade". The book said "Chinese commercial port was for Arab traders, which was called Yue Kangfu (Guangzhou). There were a Muslim teacher, and a church... many Muslim merchants gathered around Kang Fu. The emperor of China appointed a Muslim judge, and in accordance with Muslim style, governed Hui. The judge every week spent a few days to pray, together with Hui people, read holy commandment training. Speak, work, and pray for Muslim Sudan wishes. The judge was upright, and listened to the fair. Everything was in accordance with Koran, rule and Muslim habits." [3] Song dynasty changed on the basis of "common law" autonomy. "Ping Zhou Talk" volume 2 chronicled: "Fan person was guilty, Guangzhou checked, and sent to Fan corner.... sin over Tu, Guangzhou determine." [4] It is visible that "fan corner" internal residents crime takes the seriousness of their crimes as punishment standard, under "Tu" sin, "Fan manager" decides, and sin over "Tu", local officials decide. In Yuan dynasty, a large number central Asia turkic people of Arab, Persian and Islam were taken to China as artisans and soldiers by Mongol army, the number of Muslim constantly expanded, and established mosque centered rural mainland taught. The Muslim groups in the Yuan dynasty were officially documented as "Huihui", and "Huihui" people were then called Semu and was formally incorporated into national census register, which achieved the change of identity from "Fan" to a part of Chinese family. Yuan dynasty has special management authorities for Islamic affairs, referred to as "Huihui Hade company", whose main responsibility was in charge of Islamic affairs, according to Islamic law, judged Muslim trial of civil lawsuit between the parties. Yuanzhi six year (1346 years), Arab traveler Ibn Battuta traveled in China said: "China's every city has a Muslim sheikh Islamic for main transaction, and a judge to handle litigation between them." [5]

Under the "common law" tone, law culture characteristics of Muslim groups during Tang and Song dynasty and Yuan period were: the core of Islamic sharia law culture was idea law culture. In Tang and Song dynasty Yuan period, all previous dynasties rulers Muslim community management modes were basically consistent, namely centralized management, regional autonomy. Tang and Song dynasties imposed "Fan" centralized management. In Yuan dynasty, Muslim alongside mosques custom had been formed, and set specialized agencies and unified management for Muslim religious affairs and visits. For Muslim concentrated area, from "Fan corner" to "Huihui Hade Office", it is actually a certain degree of autonomy, "Fan manager" appointed by Chinese government or "Hade" management Muslim's internal affairs were responsible for handling Muslim concentrated area of litigation and educational administration, based on sharia law. Islamic sharia law culture gained wide spread and identity in a relatively closed Muslim groups during this period, and became a keynote law culture. From surface structure of law culture: law system, and law phenomenon, the common law had not yet formed, with the habits (customs) existing only in accordance with Islamic law norms. Islamic sharia laws mainly include religion, criminal norms

and civil norms. The norms were diminishing, the application scope of all application gradually evolved from Islamic sharia law was limited in the civil code. From the law culture deep structure of law thoughts and law consciousness, Islamic sharia law, with Koran and rule as the main body, is a set of religious teachings, ethics, legal system, which integrate religious law, "its one distinctive feature is to transform the interpersonal relationship and the relationship between people and society to the relationship between individual and god, make a corresponding provisions, accordingly follow the rules as a first belief of all individual religious obligation to god." "Muslims actually use teaching form and rule to realize Islamic faith." [6] As a result, the daily life of Muslim groups are bound by doctrine and teaching methods, abide by the laws and rules are supreme Islamic sharia law.

#### B. The evolution of Ming and Qing dynasties

It is generally believed that Ming dynasty was a period of the formation of Hui community. Ming dynasty adopted a policy of national assimilation. "Ming law" regulated that "Mongol and Semu people must marry Chinese, and are not allowed to marry its own people, violators on pain of eighty rods, men and women be slaves into the office." [7], in addition, "Hu suits, Hu language, and Hu surname are all banned" [8]. Mosque and Muslim formed teaching group got development, and teach group manager is only in charge of academic affairs and no longer deals with cases, law-related cases belong to the disposal of magistrates, and litigation between Muslims is no more in accordance with "common law". Qing dynasty's policy was first loose and then tight. In the early stage of Qing dynasty, rulers implement relatively loose policy Hui and other ethnic minorities, and then adopted a policy of harsh repression because of Hui people's uprising. In Qing statutes, Hui nationality has been designed the column for Hui gang stealing, gang rob behavior, gang fights and made strict rules punishment regulations for Hui cracking sent and site selection, send, criminal escape, then crime punishment of Hui nationality case. Qing government made harsh punishment on Hui offenders. In late Qing dynasty, Hui sect had Islam and parties, and the rulers limited protestant, and in the management of teaching workshop, practiced a system of country conventions. By choosing manager and older, constrain Hui. All in all, at this stage, the state power strengthened the management of Hui nationality, made assimilation policy and tended to be more strict on legal system, and made restrictions on national development.

Ming and Qing dynasties were an important period of formation and development of Hui community, also an important period of formation and development of law culture of Hui nationality whose characters display in: idea law culture varied from one unit to multiple units, namely multiple law culture primarily directed by sharia law culture with the blend and collision of sharia law culture and Confucianism, Buddhism, Taoism support Chinese traditional culture. During Ming and Qing dynasties, as national political power of Hui nationality management increasingly strengthened, the phenomenon of Muslim community self-government in the past changed, the legal relationship between Muslim groups must be carried out and adjusted by a unified national legal system, leading to very sharp conflict between Islamic law which is a faith of Muslim at this stage for a long time and national law. At the same time, the policy of national assimilation of Ming dynasty resulted in a large number of Muslim intermarry with Han nationality. Chinese gradually instead of Arabic became the main language of Hui nationality, and the traditional Islamic culture of family education can not meet the development of Islam in China. And in late Ming dynasty, a group of Muslim scholars carried out "Confucian interpretation of Islam" Chinese translation activities, by explaining Islamic classics by Confucianism, Islam was endowed with new moral in accordance with China's national conditions and development. It should be said that this phase formation of Hui law culture had the features of multivariate law culture blend. From law system, the surface structure of law phenomenon, Hui nationality customary law had been formed, and mainly civil and commercial law played a role. Because Chinese traditional society has been a heavy punishment, light people public law culture and no suit idea, dealing with civil and commercial legal relations rely mostly on their families and other civil power, as for Hui nationality was using teach workshop, Islam party hierarch and other folk religious authority, which is based on localization common law formed in Islamic sharia law in civil and commercial matters (into the

Confucian law culture). From law thoughts and law consciousness, law culture deep structures, Chinese translation experts find what in common from the source between Confucian culture and Islamic sharia law culture, which made clear about the consistency, loyal, abide by the law and Islamic law, and promoted Hui Muslim legal identity of national laws.

#### C. The evolution of modern times

During the period of republic of China, Sun Zhongshan proposed: "countries lie in the people, integrate Han, Man, Mongol, Hui, Tibetan for a country, namely Han, Man, Mongol, Hui, Tibetan, all families are the unification of nationality." Under the influence of unification, the provisional constitution of The Republic of China regulates: "the people of The Republic of China are equal, without distinction of race, class, religion", and "people have freedom of religious belief", from the beginning legally confirmed the national equality and freedom of citizens. From northern government to Nanjing national government, policy of Hui nationality is basically with legal recognition on maintenance, and military use control. After the founding of new China, ten Muslim ethnic groups including Hui were officially recognized as nations. The more local Muslim groups have established in 1955 Xinjiang Uygur autonomous region, Ningxia Hui autonomous region was built in 1958, in addition to the above two Muslim autonomous regions as national autonomous regions, a number of autonomous prefectures and autonomous counties have also been established. The rights and interests of the religious beliefs of minorities including Hui minority are under the protection of the law, and the constitution prescribes: "citizens have freedom of religious belief"; "all ethnic groups have the freedom to use and develop their own language, and have to keep or reform their own customs and habits of liberty"; "People's congresses in national autonomous areas shall have the right, in accordance with local national political, economic and cultural characteristics, to formulate autonomous decree or special decree." Also national autonomous areas can develop the right of autonomous decree and special decree, "regional national autonomy law" regulates: "regional national autonomy is under the leadership of national unity, regional autonomy is practiced in all of the ethnic minority areas, the organs of self-government are established, and exercise autonomy." This is the continuation of customary law and law culture of Hui nationality, status in the legal system in China, and lay constitutional and legal basis for relative independence of source of law in national regions.

During this period, traditional law culture of Hui nationality has been challenged by modern rule of law, its diverse cultural elements further increase, and the source of Hui law culture ---- the freedom of religious belief, and manifestation of Hui law culture---- language and customs freedom got legal protection, at the same time accept the influence of the modern law concept, democratic freedom rights, and law culture pluralism blend characteristics are more prominent. Specific displays are in: one is Hui nationality customary law still plays a role, especially in Hui populated countryside areas, and customary law got better retention and continuation. After reform and opening up, once as a feudal culture, Hui law culture got attention. As part of its institutional aspects of customary law in populated areas, Hui nationality legal system construction got application. Second, under the influence of modern law concept, the tradition of Hui Muslim law idea changed, they can actively advocate equal rights, and apply the law to solve problem more, soften some of the old behaviors.

### III. THE CAUSE OF HUI LAW CULTURE CHANGE

Through the analysis of historical changes of Hui law culture, we can find that the formation of Hui law culture is the combination of internal cause and external cause:

#### A. External force made Hui law culture adapt to national legal environment

Since Western Zhou dynasty, China had established national ideals of political unification. Book of Songs "all the land under the sun is the king's soil" is the classic concept. The treatment of minority policy by central government was more gentle under the control, even in Tang and Song dynasty Yuan period of Hui community formation, because Muslim groups staying identity was self management also was under the major premise of autonomy with central government designated living scope, and appointed chief executive control. As for Ming dynasty, as the main Muslim

groups change of identity and the formation of Hui community, central government continue to strengthen the control of Hui nationality, which embodied in legal policy constant strengthen, to the late Qing dynasty, reached the limitation on national development and the case of heavy penalties limit. Since the modern times, the influence of modern civilization law on Hui law culture formed the impact, especially in improving national legal system construction environment, ethnic law culture influence was more and more small, like the sand of the sea. Thus, Hui is formed and developed under the concept of political unification of the country, its destine was to connect with foreign Islamic theocracy, Hui law and national law had different characteristics, and its law culture was under the influence of national legal background, and the mainstream culture. Different periods legal environment determines the morphology of Hui law culture of the era. Actually Hui law culture change is in adapt to the national legal system, and it is the culture process of integrated embodiment on the basis of this national unique cultural tradition, national psychology, values, way of thinking. Therefore, under the action of external force in national legal system environment changes, the changes of Hui law culture reflect the cultural sharia law culture as the theme, one unit change process to multi-units with sharia law culture, Chinese traditional law culture, modern law blends.

#### B. Internal evolution and interactive diversify foreign law culture blend

"From the perspective of culturology, any kind of foreign culture exists and develops in a country (region) or a nation, first faces with the country (region) or nation mainstream culture violent collisions, the results are two kinds: one kind is that foreign culture is melt by mainstream culture, and becomes the particles and factors in mainstream culture, the foreign culture losing its status as an independent existence; second, foreign culture gains independent living space, but its concept architecture and culture performance tends to incline to the mainstream culture, which is the result of mainstream culture reengineering." [9] Hui law culture is formed in the integration process of conflict of Islam law culture and Chinese traditional law culture. The main reason causing the two kinds of conflict is that two kinds law culture modes and value form are very different. In the process of Hui nationality formation, with step by step strengthen management of Ming and Qing dynasties rulers on Muslim, Hui Muslim stick to religious beliefs and must face another problem - how to coordinate sharia law and Chinese traditional law and the relationship between the behavior standards; In addition, Muslim and Han intermarriage, Chinese process also brought Muslims conceptual change, and even led to some people given up the faith of Islam, and Islam was facing survival crisis. In response to these changes and strive for the survival space of our nation, Hui nationality from system to internal culture experienced major change. From solidified religion, and belief of Hui nationality, and the unity of law consciousness, Chinese traditional law culture is difficult to digest and apply directly for Hui. Hui scholar and late Ming dynasty and early Qing "Confucianism interpretation of Hui" Chinese translation activities solved the theoretical problems of heterogeneous culture blend innovation, and Islam education and party Canon carried out innovated law culture from practical level, thus formed Hui law culture. At the same time, the prevalence of oratory education and Islam party system made the cultural blend and got further development in practice.

On the one hand, "Confucian interpretation of Muslim" Chinese translation activities promote the multiple law culture blend from theoretical level. Late Ming dynasty, in the process of Chinese interpretation of Islam basic doctrines, Muslim scholar representatives like Wang Daiyu, Wu Zuqi, Ma Zhu, Liu Zhi, and Ma Dexin, through reviewing similarity and complementary of Islamic philosophy idea and the doctrine of certain categories of Chinese traditional Confucianism, Buddhism, Taoism, absorb and combine Chinese traditional culture as a combination of Confucianism, Buddhism, Taoism mainly new Confucianism, therefore it was also called "Confucianism interpretation of Muslim" activity. Chinese translation scholars on classical interpretation of Islam from the angle of law culture, mainly did the following work: one is to avoid conflict, Hui follows Islamic law in specification including civil law and criminal law, due to this period no longer have method (legal) state's sovereignty, the criminal law in sharia law has no outlet in front of public law developed country legal system, and there is a big difference between the

formulation and implementation of legal norms and central government. So Chinese translation scholars during the compilation of teaching academic writings, deliberate choose rather than full translation to avoid teaching content conflict. Second is to find common ground, Chinese traditional law culture has typical characteristics of unity, Germany moralized, and rites. Islamic law with Koran as the source, is the integration of a set of system of religious, moral, legal obligations. Chinese translation scholars tried to find the common features of them, and thought "back with Confucianism, same teach and reason." [10] Liu Zhi combines Islam's five repair (read, ritual, lent, course, prey) with Confucian culture five Canon (commander and soldier, father and son, couples, brothers, friends, called five relations), and put forward "five work completed, and heaven", "five code completion, and humanitarian". [11] Third is key point. Sharia law emphasize "everything has no Lord, but the god", Allah has the final jurisdiction, and the command is the supreme law of the Lord. Chinese translation scholars intended in adding secular loyal to the monarch, abide by the content of secular law, Wang Daiyu advocated: "there are three big businesses in life, follow Lord, follow the king, and follow the family. If one violates the three, he is cheating, injustice, unfilial." [12] "Follow the lord, praise the lord, prey the lord, thank lord but cannot be loyal to king, praise saint, filial piety, others, the former things will not work." [13] "king is the shadow of the Lord. Loyal to the monarch, namely loyal to the Lord," [14] Thus determine to conform to religion, follow the rule, and there is no conflict between secular laws. Chinese translation activities show that Muslim scholars pay attention to strengthen the interaction with Chinese traditional mainstream culture, which is the civilization integration achievement of communication between different cultural systems, and has played an important role in "doubt dispels and preaching" for Chinese Muslims, which not only ensures Hui Muslim community after losing the mother tongue, can still get religious law education, standardize Muslim way of life, sustain the existence of the nation, and bridge conflict of sharia law and Chinese traditional legal norms, provide guidelines for leisure abide by national law, and provide a theoretical basis for multiple blend of Hui law culture.

On the other hand, oratory education and Islam party system promoted multivariate law culture blend from the aspect of practice. Oratory education began in Ming dynasty, which was a mosque education form combining the school and Muslim church, the main purpose and function of oratory education is for traditional Islamic education of Hui nationality, and is a kind of religious culture of Chinese Islamic education system. Oratory is generally divided into primary, secondary, and university. Primary school is the basis for Muslim children to carry out the religious education; middle school is mainly for adult Muslims to popularize knowledge of Islam; oratory university is dedicated to scholar and a certain teachers, generally located in large and medium-sized mosque. With vigorous development of education, not only a large number of Muslim scholars are created, also Chinese translation scholars theoretical achievements got continue and spread based on basic tenets of Islam, and diverse blend of law cultures in Muslim masses.

With Sufi doctrine introduced into China in the end of Ming and beginning of Qing dynasty, etiquette system, canon, organization changes caused the church and party differentiation. In fact, "Islam party system is the product of Hui predominantly agricultural feudal economy development to a certain stage." "It is a more concentrated expand educational administration, a leader and landlord system, which is more suitable for land concentration and big landlords need system." [15] It is important to note that orders are formulated by orders of canon for implementation constraints of congregations, many orders leader carry congregation's warning about keeping the content of the law, for example, "Bijiachang ZuMaZongsheng belonging to Hufuye school official way is divided into three classes at different levels according to congregation, but abide by the law and the five skills, learning together to meet the requirements listed in the Canon, filial piety, all levels of congregations together. Darah in Ganarenye school claims "not amass wealth, abide by government decree, discipline, do not involve state." [16]

#### **IV. THE REVELATION OF HUI LAW CULTURE CHANGE**

There are different types of culture in the world and continuous interaction, mutual influence co-exist, at the same time, ongoing communication, culture collision, osmosis, blending interaction

happen between different types of law. Hui law culture change showed a fact: rooted in heterogeneous culture, Hui nationality earned survival and development in China's specific social and historical conditions, and the key lies in continuous adjustment between heterogeneous culture and the native culture, law culture is the same. Multiple blend Hui law culture has conflicts content with the modern rule of law in the present stage, duty standard and right standard fundamentally difference, and in a small number of people's minds, Muslim law is higher than national law, etc., but there are complementary factors on the function, such as confirm ethical and moral through the form of religion, advocating comply with national law, etc. The interaction between Hui law culture and modern law depends on law culture blend innovation and more adaptable to the spread of law culture of modern law.

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