

# A Review on the Study of Dispute Resolution in Chinese Traditional Society

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**Abstract**—Dispute resolution is an important means of dealing with social relations. The ultimate goal is to deal with social contradictions and maintain social stability. The study of traditional Chinese social dispute resolution provides a reference for modern society to deal with contradictions and disputes and promote the modernization of social governance. At the same time, it is also the focus of research of legal academic world. Through the research on the settlement of traditional Chinese social disputes, this paper tries to clarify the development and content of dispute resolution and the scope of content, focus on the classification of dispute resolution methods, and basically restore the characteristics of Chinese traditional social dispute resolution. The discussion of its classification method shows its ideological origin, mutual relationship, processing object and characteristic law.

**Keywords**—dispute resolution; litigation; Chinese traditional society

## I. INTRODUCTION

The so-called Chinese traditional society refers to the society during the period of the entire feudal dynasty from ancient China to the Qing Dynasty. This period just formed China's unique Chinese legal system. The way of dispute resolution in the legal system for thousands of years is unique in the world, and the way of dispute resolution is also the biggest feature of the Chinese legal system.

## II. OVERVIEW

All along, the ancient dispute resolution is the focus of academic research in the history of law, and it is a research topic that has emerged along with the discipline of legal history. The research, content and scope of dispute resolution in ancient China have become more and more extensive and profound.

Studying dispute resolution from the perspective of legal history is a comprehensive understanding of dispute resolution and also helps modern dispute resolution. Because many of China's current dispute resolution methods have been inherited since ancient times (especially the dispute resolution methods of ethnic minorities), we can find prototypes from traditional dispute resolution methods. Understanding the solution to disputes is a topic that cannot be avoided when studying traditional laws. As I said at the beginning, the way of dispute resolution is also the biggest feature of the Chinese legal system.

From a macro perspective, scholars' research on traditional social dispute resolution is mainly divided into two directions: horizontal and longitudinal. The horizontal direction is from all aspects of dispute resolution, including the parties involved in dispute resolution, different types of dispute resolution, adjustment norms for dispute resolution, etc.; longitudinal direction refers to the study of dispute resolution in various dynasties from the Western Zhou Dynasty to the Qing Dynasty. Since the Chinese civilization has always come down in one continuous line, the dispute resolution is different in each dynasty, but the change is not very large. This article focuses on the horizontal research.

## III. LONGITUDINAL STUDY ON DISPUTE RESOLUTION IN CHINESE TRADITIONAL SOCIETY

The studies involve various dynasties from the Zhou Dynasty, but most of them are concentrated in Tang, Song, Yuan, Ming and Qing.

*Dispute Resolution Mechanism of multiple justices in the Tang Dynasty*<sup>1</sup> written by Ma Chenguang divides the dispute settlement in the Tang Dynasty into: official mediation (the official mediation can be divided into two categories from the mediation subject. One is the mediation dispute presided over by the judicial organ or judicial bureaucrats, which is generally referred to as adjustment within litigation; the other is the mediation with the township officers or other grassroots public officials with administrative judicial status as the main body), religious trials, and guild rulings. After that, the author analyzes the causes of the formation of multiple justice situations in the Tang Dynasty.

Shu Qin's *Resolution Mechanism of Civil Disputes in the Yuan Dynasty*<sup>2</sup> mainly divided the civil disputes in the Yuan Dynasty into mediation mechanisms and official judgments, and further analyzed their respective causes, operational procedures and so on.

In the study of disputes in traditional Chinese society, scholars made the most research on dispute resolution in the Qing Dynasty. The article is endless, involving all aspects of dispute resolution in the Qing Dynasty, and there are many

<sup>1</sup> Ma Chenguang. "Multi-judicial Dispute Resolution Mechanism in the Tang Dynasty", Judicial Forum, 2010.01.

<sup>2</sup> Shu Qin. "The Solution Mechanism of Civil Disputes in the Yuan Dynasty", Southwest University of Political Science & Law.

monographs, such as Huang Zongzhi's *Expression and Practice of Civil Law: Law, Society and Culture in the Qing Dynasty*. The book uses the lawsuit files of Baxian in Sichuan, Baodi County in Beijing, Hsinchu and Danshui County in Taiwan, as well as some information about the village's neighboring mediation. Using these archival materials to present dispute resolution in the Qing Dynasty is a very unique way of writing, with both objective historical facts and authors' collation and analysis. The book describes the informal system of dispute resolution in the Qing Dynasty — civil mediation, and formal system — law of the Qing Dynasty and state and county trials, and also introduces the most special third field between civil mediation and official trials. Later, it also explained in detail the type of civil mediation system, the scale of litigation, fees, and so on.

There is also a "Civil Trial and Civil Contract in the Ming and Qing Dynasties" by the famous Japanese scholar Shigeru Shiga. Shigeru Shiga analyzes the litigation system of the Qing Dynasty from the perspective of origin. He believes that the civil law source of litigation system in the Qing Dynasty is mainly emotion, reason and law. He also inspected the law practitioner and litigation system in the Ming and Qing Dynasties and the nature and depreciation of the "covenant" in the legal order of the Ming and Qing Dynasties — the civil law order of trying a case and people following in the Qing Dynasty.

The well-known legal historian, Qu Tongzu specially writes the settlement of disputes in the Qing Dynasty in a chapter of "Local Government of the Qing Dynasty". Of course, it is about the official dispute resolution method. First, it introduces the judicial power of the county magistrate of Shaozhou, then analyzes the role of the county magistrate in civil and criminal cases, and finally discusses the trial and judgment of the case.

Scholars prefer to study dispute resolution in the Qing Dynasty. First, because the Qing Dynasty was the last feudal dynasty in China, in the late Qing Dynasty, all aspects of conflicts and conflicts reached the extreme, which was a good entry point for us to grasp the Chinese legal system. Second, the historical data of the Qing Dynasty is relatively complete, so it is more convenient to study. Therefore, there has been the scene where people together study the laws of the Qing Dynasty.

#### IV. A HORIZONTAL STUDY OF DISPUTE RESOLUTION IN CHINESE TRADITIONAL SOCIETY

For the study of traditional Chinese social dispute resolution, scholars are like a hundred flowers in bloom, and all aspects of the dispute resolution have been carefully studied. I select some representative achievements to classify and elaborate.

##### A. Research on Dispute Resolution Methods of Different Types

It is generally believed that the dispute resolution methods of traditional Chinese society can be summarized as follows: the first is litigation, including civil litigation and

criminal litigation; the second is mediation; the third includes means of negotiation, tolerance, retaliation, and so on.

##### 1) Litigation

a) *Method*: The most common types of litigation are: appeal, overstepping indictment, grievance, and capital appeal. Scholars sometimes generalize it as a direct complaint. These means we all know in traditional drama, film and television and literary works. They are generally extreme means for the people who can't get relief in the normal way of litigation. In ancient China, the direct appeal system was a legal system for redressing an injustice. People make direct complaints and report to the highest authority, expecting a fair ruling.

Grievance: "History of the Qing Dynasty: penal Law" records, "the complainer who comes to the hall when beating a drum, or goes to the suburbs by carriage to welcome the emperor, is called "grievance". "Grievance" means that a person with grievance directly complains to the emperor by drumming, welcoming the car, etc., without the transfer of the middle government office.

Capital appeal: "capital appeal", as the name suggests, is appealing to the capital, which means the party or the relatives appeal to the departments of the capital. "Capital appeal" as a terminology appeared in the Jiaqing period of the Qing Dynasty. It should be said that the capital appeal in Qing Dynasty includes a broad and narrow sense. In the narrow sense, the capital appeal refers to the system that when the parties and their relatives outside the capital are dissatisfied with the results of the local trial, and they leap level to report to the capital departments. In the broad sense, capital appeal also includes the grievance of directly complaining to the emperor. In general, the capital appeal in the Qing Dynasty includes the system of grievance.

Appeal: In the Western Zhou Dynasty, a relatively complete appeal and review system has been formed. When the court decides on the case, if the party refuses to accept the judgment, he may request an appeal and review within the prescribed time limit. In the Qin and Han Dynasties, the appeal system had a special name — "Qiju". In the Qin Dynasty, after the trial of the case, a judgment was made and read. This is "Duju". After the reading, if the party refuses to accept, he may request a retrial, which is called "Qiju" in Qin law. There was Qiju method in Han, Jin, and Tang dynasties. In the Southern Song Dynasty, "Qiju" was officially abolished. In the dynasties after that, although it is sometimes not called "Qiju", due to the development of legal institution and the trial class system, all dynasties will have the regulation of gradual appeal and ban on overstepping indictment, in order to maintain the judicial order.

Overstepping indictment: it refers to the judicial proceeding violating the normal proceeding to appeal by skipping the level. In order to maintain the stability and authority of the judicial process, the rulers of ancient Chinese often have provisions prohibiting the prosecution.

As a very specific legal system in ancient China, the direct complaint is rarely researched abroad. Among them, in the American scholar Ou Zhongtan's article "Going to the

Capital by All Means: The Capital Appeal in Qing Dynasty", the author, from the perspective of a foreign scholar, compares and analyzes the filing and trial of lawsuit in the judicial system and capital appeal in the Qing Dynasty and reasons behind and foreign related systems. He thinks the appeals of the Qing Dynasty were mostly caused by the bureaucrats failing to meet the people's demands for justice. As for the domestic research status, there are many litigation books, legal history textbooks and papers. Most of the textbooks mentioned the direct appeal system at that time only when stating the litigation system of two dynasties, which are the period from Three Kingdoms to the Southern and Northern Dynasties, and the Tang Dynasty. For example, in the book "The History of Chinese Legal System" edited by Zeng Xianyi, it was mentioned only during the period from Three Kingdoms to the Southern and Northern Dynasties, that a direct appeal system was established to make up for the deficiencies of the absolute prohibition of the overstepping indictment, and when introducing the litigation system of the Tang Dynasty, it only simply enumerate the circumstances that allow direct appeal, the three ways of direct appeal, and the related restrictions. In the "Qiao Wei Anthology", the introduction of the direct appeal system of the Tang Dynasty is more detailed, and the introduction of other dynasties is relatively brief. In terms of domestic papers, there are only a few papers devoted to the study of the ancient direct appeal system in China, but they simply use a few hundred words to briefly summarize the general situation of the ancient direct appeal system, such as Li Yuhua's "The Ancient Direct Appeal System in China and Its impact on today's society" etc. Or they would select the direct appeal system or a certain phenomenon in the direct appeal of a certain dynasty, such as Gong Fuwen's "Direct Appeal System in the Tang Dynasty" and Zhang Quanmin's "Analysis of the Self-mutilation in the Ancient Chinese Direct Appeal". In addition, the direct appeals are generally introduced in the appeal system or the system of reasoning, such as Feng Yun's "Remarks on the system of trial of unjust cases in Chinese Feudal Society" and Hu Ming's "The Evolution and Modern Influence of China's Ancient Appeal System". There are papers on the research on the related issues of capital appeal system of the Qing Dynasty. Wang Maojuan of Shandong University gave a detailed introduction to the direct appeal system in his "Study on China's Direct Appeal System". Firstly, the direct appeal and related concepts were analyzed, and then it studies that the direct appeal system originated from "Zhou Li", formed during the Qin, Han, Wei, Jin and Southern and Northern Dynasties, highly developed during the period of the Sui, Tang and Five Dynasties, improved and declined gradually in the Yuan, Ming and Qing Dynasties.

*b) Civil litigation:* Qu Tongzu wrote in the "Local Government of the Qing Dynasty"<sup>3</sup> that there are six to nine days a month for special handling of civil suits, of course, except the busy season from April 1 to July 31 (during this time, the disputes over household marriage, soil and all

kinds of minor matters will not be accepted). The county magistrate must accept the people's complaints in person during the specific days of each month. His first step was to decide whether the appeal should be accepted or rejected through questioning. Then he needs to write a "check" at the end of the indictment, and announce the acceptance, or explain the reasons for the rejection.<sup>4</sup> The law stipulates that civil cases under the jurisdiction of the state and county must be completed within 20 days. However, because the delay in trials causes no criminal responsibility, many state magistrates ignore this deadline, and such complaints to county magistrates are common.

Huang Zongzhi summed up the Qing government's expression of civil litigation in the book "The Expression and Practice of Civil Law: Law, Society and Culture in the Qing Dynasty"<sup>5</sup>: 1. There are not many civil litigation; 2. The good people generally won't appeal, and most of those who appeal are instigated by unscrupulous law practitioner; 3. When the county magistrates handled civil litigation cases, they adopted the method of mediation, without deciding according to the law. According to the litigation file, he concluded that the actual situation of the operation of the legal system at that time was: civil lawsuits accounted for about one-third of the total number of cases handled by the county's government office; the litigants were mostly ordinary people, and it was a last resort to defend their legitimate interests; when dealing with disputes, the court will either let the community outside the court and the relatives mediate the case, or let the judge hear the case and act in accordance with the law.

In the Yuan Dynasty, when the rulers faced a plethora of civil lawsuits, social phenomena such as marriages and fields and many emerging civil legal relationships and civil disputes, they showed a positive attitude and used a combination of mediation and official judgment to solve disputes, which reflects distinct characteristics of the times and national characteristics. It is mainly manifested in several aspects: First, subject to the influence of traditional concept: the "harmony" spirit and the "no litigation" ideal, rulers of the Yuan dynasty use a large number of mediation methods, the government's decision pays attention to the pursuit of "order", while ignores the people's rights and interests. Second, rulers in the Yuan dynasty were influenced by Confucian ethics and morality in the process of continuous Chinesization. Especially for the Han people, the characteristics of feudal traditions such as stressing human relations, regularity, and supremacy of power are reflected in the handling of disputes. Third, the government has actively adjusted civil disputes. Compared with other dynasties, the Yuan government actively participated in civil legislation and civil justice. Specifically, in the process of handling civil disputes, it began to change the attitude of disregard and regulate various emerging civil legal relations. Fourth, the

<sup>4</sup> Zhai Tongzu. "Local Government of the Qing Dynasty", Law Press, First Edition, June 2003, p. 197.

<sup>5</sup> Huang Zongzhi. "The Expression and Practice of Civil Law: Law, Society and Culture in the Qing Dynasty", Shanghai Bookstore Publishing House, first edition, 2001, 8, p. 5-6 pages.

<sup>3</sup> Zhai Tongzu. "Local Government of the Qing Dynasty", Law Press, First Edition, June 2003, p. 196.



rulers of the Yuan Dynasty ruled on civil disputes according to custom. For civil disputes, "ruling according to custom" means that in the process of handling civil disputes, different ethnic and religious groups apply different laws. For example, the Hui people use the law of Hui; the Han people use the law of Han, Mongolians using Mongolian laws and habits.

*c) Criminal lawsuit:* In the Qing Dynasty, general criminal cases include homicide cases, robber cases, theft cases, rape cases, and kidnapping cases. People can accuse to government office at any time, which is different from civil action. Even in the days when they are allowed to hear civil cases, they can accuse criminal cases to government office. Usually the people strike a gong at the door to ask for hearing.

For criminal proceedings, it is necessary for us to understand the two important principles of ancient Chinese criminal law: "People shouldn't harm the monarch and his relatives, or they will be punished" and "determining the guilty according to the relation". "People shouldn't harm the monarch and his relatives, or they will be punished" is from the Gongyang Zhuan of "Spring and Autumn", which mean people shouldn't harm the monarch and his relatives, or they will be punished. All the felonious clauses in the criminal law of the past dynasties are the embodiment of this principle. For example, the "Ten evils" in the "Northern Qi Law" include rebellion, insurgency, big rebellion, and great disrespect. "Determining the guilty according to the relation" officially appeared in "Jinlu", which refers that accusation and the degree of guilty are determined by the differences between relation, distances, and status of relatives marked by the five mourning apparels of Zhan'ai, Qi'ai, Dagong, Xiaogong, and Saima. Since then, this principle has been implemented in Chinese criminal law and justice.<sup>6</sup> The two principles are specifically manifested in criminal proceedings as: severely punishing personal injuries to relatives such as fathers, husbands, and brothers; severely punishing violations of the dignity and authority of respected relatives; severely punishing disrespectful or negligent attitudes toward respected relatives, etc.

2) *Mediation:* In the study of traditional social dispute resolution, scholars have made the most research on mediation. This is because mediation is the most important means of traditional social dispute resolution. The social relationship concentrated in the mediation structure constitutes all participants in the ancient legal relationship of China. Therefore, the articles studying traditional social dispute resolution cannot avoid the mediation.

"Mediation" refers to what we consider to be "conciliation" in the ordinary sense, but this concept is an official language of ancient China which is an intrinsic term in traditional Chinese society, mainly because the system of mediation was not based on the will of parties at the time, with certain mandatory components. This feature is actually shared by both official and civilian mediation. The system of

mediation in the period of slavery society has express term. Confucius said: "the system of the Shang Dynasty inherited that of the Xia Dynasty, so the changes can be known." The inheritance of rituals and the harmonious ideas contained therein provide conditions for the mediation system. In the official system of the Zhou Dynasty, there is the "position of mediator" to mediate the difficulty of the people, which means there are officials who are responsible for mediation. During the Spring and Autumn Period and the Warring States Period, there were officials specializing in the case of revenge, who are called "mediators." In the Han Dynasty, a more stringent judicial mediation system has been established.

The mediation is divided into official mediation and civil mediation. The official mediation can be divided into two categories from the main body of mediation. One is the mediation activities conducted by the judicial or judicial bureaucrats, which is generally called the mediation within litigation; the other is the mediation with the main body of township officers, public officials with the nature of administrative judicial status township. Subject to the status of mediators, such mediation has an official or semi-official nature. Civil mediation can be described as diverse in form, with strong adaptability and low cost and no legal procedures, and is therefore widely welcomed by the public. The patriarchs and parents of the ancient family played a leading role to a considerable extent, and the mediation was naturally carried out by them. There is also a kind of retired returning officials or prestigious and learned people. Because of their special status or personal prestige, the people find them for mediation when they have disputes instead of going to the government.

In the Qing Dynasty, the official mediation methods were as follows: the state and county officials combine direct mediation and judgement; "official approval and people mediation" (the "people" here mainly refers to the directors, gentry, house chiefs, middlemen, supervisors, etc.) work together to mediate disputes that are difficult to resolve.

In the Qing Dynasty, civil mediation sometimes became the preferred method for people to resolve disputes. Huang Zongzhi believes that the civil mediation system is most concerned with maintaining a harmonious relationship between the people and the neighbors in a community that is closely organized. Its main method is to compromise, which generally considers the outlook of right and wrong in law and community. When confronted with disputes that do not involve legal and ethical standards, such as quarrels for the sake of family and neighborhood, the mediator's main goal is to settle the dispute through compromise.<sup>7</sup> Li Qin of East China University of Political Science and Law introduced the main reason for the existence of the civil mediation in the Qing Dynasty and the specific operation of mediation in the "Research on the Civil Dispute Resolution Mechanism of the Qing Dynasty". "Study on the Civil Mediation of Civil Disputes in the Qing Dynasty" of Hu Qian in China

<sup>6</sup> Fan Zhongxin. "The Basic Spirit of Chinese Legal Tradition", Shandong People's Publishing House, first edition, 2001, 1, p. 103.

<sup>7</sup> Huang Zongzhi. "The Expression and Practice of Civil Law: Law, Society and Culture in the Qing Dynasty", Shanghai Bookstore Publishing House, first edition, 2001, 8, p. 60.

University of Political Science and Law, fully and completely elaborates the historical development, social foundation, cultural foundation, the type of mediation, the main reasons for the success or failure of mediation, and analysis of the effectiveness of mediation in the Qing Dynasty in five chapters and fifteen sections, so that readers have a deep and all-round understanding of the civil mediation in the Qing Dynasty.

In the book, Huang Zongzhi divides the civil mediation system into two types: Baodi-Baxian and Danshui-Hsinchu. He finds that the two types are completely different. In the former type, firstly, the parties involved file a lawsuit and make defendant, and then is the official arraignment with the parties present. The system is simple and efficient; the latter type of case will be delayed because the parties may make use of the loopholes in the legal system, and the case may be delayed for more than ten years. Furthermore, the author analyzes that the composition of the litigant has undergone structural changes, leading to this result. The book also uses statistical methods to derive objective results.

Representative achievements involving civil mediation include: Mr. Zhang Jinfa's "The Tradition and Modern Transformation of Chinese Law"<sup>8</sup>, "The Evolution of Chinese Legal Civilization"<sup>9</sup>, and "The History of China's Civil Litigation System", etc.. In these works, the civil mediation is elaborated in the study of settlement of traditional Chinese civil disputes and civil mediation. Zhang Jinfa believes that the form of mediation in traditional society is generally divided into two categories: state and county government mediation and civil mediation that is mainly divided into clan mediation and township mediation, while clan mediation is the most important link in folk mediation. On the basis of summing up historical experience, the rulers of the Qing Dynasty knew that using civil forces to mediate litigation would help to eliminate the intimidation of government office, the extortion of government runners, the threat of the instruments of torture, the cumbersome procedures and the troubles of the writ. However, the purpose of mediation is to appease the matter and reconcile the people, so they always ignore the merits and demerits, and fail to find out the facts of civil disputes. They use the power to suppress one party and harming the legitimate interests of the parties. Therefore, the result of mediation often reflects the will of the state and clan, which is contrary to the will of the parties. Zheng Qin also talked about the civil mediation in the book "Study on the Judicial Trial System in the Qing Dynasty" and "The Study of the Legal System of the Qing Dynasty"<sup>10</sup>. Zheng Qin referred to the civil mediation as "village mediation", including neighborhoods, Baojia, and kinship mediation, and believed that compared with litigation cases, most civil disputes have been settled in the township before filing a lawsuit. It is

mediation without litigation proceedings. There are various forms of civil mediation, and there are no legal procedures. They vary according to the customs and customs of the localities and differ depending on the status of the mediator. Some are in the public hall, while some in the village. Zhang Zhaokai's "History of the Ancient Chinese Judicial System" specifically includes "the mediation system of the Ming and Qing Dynasties". The author believes that mediation has become a common means of resolving disputes in the Ming and Qing Dynasties. In the Qing Dynasty, mediation was divided into Xiangbao mediation, patriarchs, relatives and friends, neighbors, and gentlemen mediation. According to the laws of the Qing Dynasty, Xiangbao has the right to mediate disputes concerning family relations and real estate; the disputes within the ethnic group are generally determined by the patriarch and the patriarch's mediation is somewhat mandatory; the mediation of relatives, neighbors, and gentlemen, or based on family friendship, or prestige, has a certain role in solving civil disputes. As a method of litigation diversion, mediation not only plays a role in stabilizing society but also achieve the function to reduce the burden on the government, which plays an important role in maintaining the political power of traditional society. Wang Rigen's "Order of the Civil Society of the Ming and Qing Dynasties"<sup>11</sup>, specifically study the relationship between the halls, clubs, and businesses with civil society order. The research shows that these industry organizations play an irreplaceable role in solving the disputes within industry and maintaining a certain level of competitive order. Liang Zhiping's "The Customary Law of the Qing Dynasty: Society and State"<sup>12</sup>, analyze the folk customs of the Qing Dynasty and the social order of the civil society in the Qing Dynasty, and believed that the customary law plays an important role in adjusting civil society and solving civil disputes. The analysis of the formation of social order involves the investigation of civil mediation. To study the solution to the traditional social grassroots disputes by using archival materials and civil contract documents has recently attracted the attention of researchers. Among it, using Huizhou documents to solve the social disputes in Huizhou during the Ming and Qing Dynasties can be said to be representative of this research method. In the research results, Han Xiutao's "The Civil Disputes and The Solution in Huizhou in the Ming and Qing Dynasties" are more representative<sup>13</sup>. From the perspective of the folk, the family's approach, and the consideration of the government, the book analyze solution to the civil disputes in Huizhou in the Ming and Qing Dynasties, which shows the solution to the social disputes in Huizhou during the Ming and Qing Dynasties.<sup>14</sup>

<sup>11</sup> Wang Rigen. "The Order of Civil Society in the Ming and Qing Dynasties", Yuelu Press, 2005.

<sup>12</sup> Liang Zhiping. "The Customary Law of the Qing Dynasty: Society and the State", China University of Political Science and Law Press, 1999.

<sup>13</sup> Han Xiutao. "The Civil Disputes in Huizhou in the Ming and Qing Dynasties and Their Resolution", Anhui University Press, 2004.

<sup>14</sup> Hu Qian. "Study on the Civil Mediation of Civil Disputes in the Qing Dynasty", China University of Political Science and Law, p. 188.

<sup>8</sup> Zheng Qin. "Study on the Judicial Trial System of the Qing Dynasty", Hunan Education Publishing House, 1988.

<sup>9</sup> Zheng Qin. "Research on the Legal System of the Qing Dynasty", China University of Political Science and Law Press, 2000.

<sup>10</sup> Zhang Zhaokai. "The History of Ancient Chinese Judicial System", Yuelu Press, 2005.

Many scholars have studied and put forward their own views on the relationship between civil mediation and civil litigation. Basically, they all believe that there is a division of labor and cooperation between civil mediation and civil litigation in civil dispute resolution. Civil mediation is an important supplement to civil litigation. On the premise of the state's permission, the settlement of disputes shall be handed over to local self-governing organizations or clan organizations. If the mediation is invalid, it can still be heard. In recent years, the research results of Japanese and American scholars on the civil mediation and civil litigation in the Qing Dynasty have drawn people's attention. Japanese scholars represented by Shiga Shigeru and Terada Hiroaki, believe that there is no qualitative difference between the civil mediation and the civil trial in the Qing Dynasty through the analysis of the historical materials. The civil trial is identical in nature to the civil mediation, which is also called "educational mediation". "At least in terms of the nature of dispute handling, there is no fundamental difference between civil mediation and the judgment of the government, or the problem of the relationship between the two cannot be considered from this aspect." "The trial of the government and the mediation of the people do not mean the difference between the state and the society is opposite. The difference between the two is only the level of judgment on 'reason' and the degree of authority enjoyed by the person making the judgment, and the influence of such judgment." Huang Zongzhi believes that civil litigation and civil mediation are completely different in nature. The former is strictly in accordance with the law while the latter is arbitrary. The solution of civil disputes is basically based on the interaction and interplay between government trials and civil mediation. In response to the different views of Japanese and American scholars and the controversy caused by some scholars, some scholars believe that Japanese and American scholars "for the relationship between official trials and civil mediation, Shiga Shigeru not only emphasizes the parallel development of the two, but also strives to depict the complex interactions of infiltrate and cooperation between each other and clearly reveals the essential difference between the two, so he distinguishes them by 'educational mediation' and 'arbitrary mediation'... and Huang Zongzhi pushes the difference between the two to extreme. The national courts strictly follow the national laws and regulations, with judging the right and wrong as direction while civil mediation is based on the common sense and the human condition, for the purpose of compromising and appeasing the matter."<sup>15</sup>

However, the state does not leave civil mediation alone, and still rules the civil mediation through the law. Hu Xingdong's "Study on the Regulations on the Resolution of Civil Dispute Resolution Mechanisms in the National Law of the Yuan, Ming and Qing Dynasties"<sup>16</sup> explains in detail the

regulations on the qualifications of the subject who resolve the civil dispute, the ability scope to resolve disputes, the effectiveness of settlement, and the legal liability of the main body in the national law of the Yuan, Ming and Qing Dynasties. It shows that while the state is constructing a diversified dispute resolution mechanism, especially when constructing a dispute resolution mechanism at the civil level, according regulation should be formulated for these dispute resolution mechanisms. Only after the corresponding regulation are implemented can the country's diversified dispute resolution mechanism move toward a unified unity. Only under a unified dispute resolution mechanism can the state's order and value orientation is obtained.<sup>17</sup>

3) *Negotiation, tolerance, and retaliation*: In traditional society, the cases generally involve no large material benefits. If the dispute is not big and the two sides have a clear understanding, the disputes are often discussed through mutual consultation to seek the solution to the conflict. This is also a process of mutual compromise. Tolerance may arise unilaterally from the injured party, or occur simultaneously in two sides. The preferred way to resolve conflicts between neighbors, friends and couples is tolerance. When choosing tolerance, we tend to attribute it to the low consciousness of rights. This interpretation of cultural determinism ignores the social environment out of the formal system.<sup>18</sup> Retaliation is a solution to express the discontent emotion through aggressive behavior. For disputes involving non-essential litigation, the intensity of retaliation is relatively weak, mainly manifested as: direct refusal, ridicule, and harassment, destruction of property or violence. The aggrieved party hopes to balance this with the infringing party in order to achieve a psychological balance.

#### B. Research on the Traditional Ideas of Dispute Resolution

The traditional Chinese society's ideological expression of dispute resolution can be described as "detesting litigation", while the value orientation of traditional law and the ultimate goal of politics is "no litigation".

The academic circles believe that Confucius is the first to advocate "no litigation." *The Analects of Confucius: Yanyuan*<sup>19</sup> records: "When it comes to judging the dispute, my ability is the same as that of others, but I am striving to avoid the dispute." The literal meaning of no litigation is that there is no or no need for litigation, and it is extended to a society that does not require law or never use laws because

<sup>15</sup> Yi Ping. "The Controversy of Japanese and American Scholars on the Civil Judicial System of the Qing Dynasty", Peking University Law Journal, No. 3, 1999, p. 113.

<sup>16</sup> Hu Xingdong. "Study on the Folk Solving Dispute Mechanism Regulated by the State Law in the Periods of the Yuan, Ming and Qing", Journal of Yunan University Law Edition, No. 4, 2007, p. 49.

<sup>17</sup> Hu Xingdong. "Study on the Folk Solving Dispute Mechanism Regulated by the State Law in the Periods of the Yuan, Ming and Qing", Journal of Yunan University Law Edition, No. 4, 2007.

<sup>18</sup> Wang Jin. "Research on Non-essential Litigation in Ancient China", Zhengzhou University, p. 22.

<sup>19</sup> Zhang Zhongqiu. A Comparative Study of Chinese and Western Legal Culture, China University of Political Science and Law Press, 2006, 9 first edition, p. 354.



there is no dispute or crime.<sup>20</sup> Zhang Zhongqiu traces the roots of non-litigation thoughts, sums up the origin of non-litigation thoughts from Confucianism, Taoism and Legalism, and draws several conclusions: First, from the natural cultural thinking of law to the non-litigation value orientation of legal culture, it is logically the result of the combination of the traditional Chinese agricultural economy with the social structure and the actual political needs. Second, the traditional Chinese thinking about nature, society, life, politics, and law is: politics/law — life/society — nature/universe, which means "shaping" (theoretical deducting), nature from the political law and the reality of life society. Thus he believes that the traditional Chinese thinkers made a mistake: "they attached the simple concept of nature to a society and history that is fundamentally different from nature, from natural law to humanity, to establish the political philosophy of 'heaven-human induction' and 'unity of heaven and man'; then based on such a philosophical basis, they proposed the value goal of non-litigation, and designed various modes to achieve this goal."<sup>21</sup>

As for the value orientation of negating litigation in Chinese traditional culture, it is widely recognized by the legal historiography that it can be summarized as "detesting litigation" or "disdaining litigation", and some scholars distinguish the two. Many domestic works have discussed this, such as: Liang Zhiping's "Seeking Harmony of Natural Order — Research on Chinese Traditional Legal Culture", Fan Zhongxin's "Basic Spirit of Chinese Legal Tradition", Hu Xuzhan's "Explanatory Legal History — Taking the Study of Chinese Traditional Legal Culture as focus", Zheng Qin's "The Judicial Trial System of the Qing Dynasty", Zhu Yong's "The Qing Clan System", Xia Yong's "Towards the Age of Rights", Ma Zuowu's "Ancient Chinese Legal Culture", and Zhang Zhongqiu's "Comparative Study of Chinese and Western Legal Culture". Other academic papers on detesting litigation are numerous. In the contemporary works studying ancient litigation, the term "appease litigation" is also used at this level, such as Gong Rufu's "An Analysis of the litigiousity atmosphere and the Mechanism for appeasing litigation in Ancient China" and Ma Zuowu's "Discussion on the Ancient methods of appeasing litigation".<sup>22</sup>

These writings have basically the same attitude towards the traditional Chinese culture. The basic content is: the ancient Chinese people are not willing to go to court and believe that the lawsuit is ominous; the government's negative attitude towards litigation and the darkness of the judiciary also depreciated lawsuit; Confucianism also strongly suppressed against the disputes over interests.

<sup>20</sup> Zhang Zhongqiu. *A Comparative Study of Chinese and Western Legal Culture*, China University of Political Science and Law Press, 2006, 9 first edition, p. 361.

<sup>21</sup> Zhang Zhongqiu. *A Comparative Study of Chinese and Western Legal Culture*, China University of Political Science and Law Press, 2006, 9 first edition, p. 373.

<sup>22</sup> Fan Zhongxin. "The Basic Spirit of Chinese Legal Tradition", Shandong People's Publishing House, first edition, 2001, 1, p. 243, p. 246.

However, the specific analysis of "detesting litigation" is not the same: Fan Zhongxin believes that the Chinese "disdain litigation", essentially because they fear litigation, which is actually "fear litigation". Xu Zhongming believes that the Chinese concept of "no litigation" mainly reflects the legal pursuit and ideal of the big cultural tradition represented by the official and the scholarly class; the concept of "detesting litigation" and "fear of litigation" mainly reflects the litigation awareness of the small tradition of the public.<sup>23</sup> In the article "The Strange Circle of Traditional Litigation Concepts — the Internal Logic of "No Litigation", "Appeasing Litigation", and "Detesting Litigation", Zhang Wenxiang and Saqi Ronggui believe that "no litigation" is a value concept, which belongs to the ideal category. The "appeasing litigation" is the use, reinforcement and alienation of non-litigation by the rulers of the past. The "detesting litigation" is the realistic result of the interaction of various factors.

### C. Adjustment Norms for Dispute Resolution

In the ancient Chinese code of "with criminal law as the principal thing and coexistence of various laws and regulations", there were very few pure civil clauses, which was not enough to solve various civil disputes. Therefore, in the litigation and mediation, not only are the national legal norms applied, but the habits, the rationality, the family law, and the township rules are taken as basis.

1) *Law*: In addition to the basic code, there have been numerous legal forms in the history of China that have appeared in Ling, Ke, Bi, Ge, Shi, Dian, Jiu, Li, command, story, etc., regulating and standardizing all aspects of social relations. It is mainly the laws of various dynasties, such as "Tang Law", "Dianzhang in Yuan Dynasty", "Da Qing Law", etc. In this respect, scholars are scattered in the study of the specific systems of various dynasties.

2) *Custom*: When traditional society solves disputes, custom is the basis of authority. In the Western Zhou Dynasty, ritual is the general term for customary law. In a relatively long period of time after that, China is still a country with semi-customary and semi-statutory law. The habits of ancient China have many forms of expression, ranging from the village regulation and agreement with territorial nature to the folk customs with race customs, and national customs.<sup>24</sup>

3) *Reason*: Reason is an important part of the traditional Chinese legal source. It is not only one of the legal sources of judicial trial, but also the value basis of law application, of which the core is "to the public" and "to the right". For law situation in the Qing Dynasty, He Qinhua pointed out that in the Qing Dynasty, those areas that were not considered by laws, cases, customary laws and

<sup>23</sup> Xu Zhongming: "The Concept of Litigation of Chinese from the Novels of Ming and Qing Dynasties", *Journal of Sun Yat-Sen University (Social Science Edition)*, No. 4, 1996.

<sup>24</sup> Wang Jin. "Research on Non-essential Litigation in Ancient China", Zhengzhou University, p. 23.

jurisprudence must be regulated by reason.<sup>25</sup> Shiga Shigeru said when local officials handle civil disputes; most of them make a comprehensive adjustment of the relationship between the parties based on the reason, rather than using the law to make unilateral judgment by treating the facts as a criminal case.<sup>26</sup>

4) *The patriarchal clan system and regulation*: Family regulations are the most commonly used basis in mediation. Scholars' famous research on the patriarchal clan rules includes Shiga Shigeru's "Principles of Family Law", and Zhu Yong's "The Study of the Clan Law of the Qing Dynasty"<sup>27</sup>, and Fei Chengkang's "The Family Law of China". These works expounded the role of clan, family organization and family law of the Qing Dynasty in solving social disputes and maintaining social order, and analyzed the clan reconciliation. For example, Zhu Yong believes that: "The clan law has restrictive provisions on the behaviors of the tribes. If a clansman commits a crime, the case must first be handled by the clan institution according to the clan law. In this way, a large part of civil disputes and minor criminal cases are resolved within the clan. ... The role played by clan organizations in handling disputes and cases can be seen."<sup>28</sup> Chinese society has paid attention to the important role of kinship in the maintenance of social organization and social order since entering the class society. The state recognizes the autonomic right of the family parents and patriarchs to rule the family, allowing them to perform certain functions of the grassroots administrative organization. The family law rules formulated by the family as the core are an important part of the traditional laws of feudal society. Therefore, in the Qing Dynasty, social family organizations played an important role in resolving many disputes that occurred among the people. Many clan laws and regulations in the Qing Dynasty stipulated that if there were disputes over the financial institutions and the land in the tribes, for the people who want to be involved in a lawsuit, household discipline must first clearly explain to the leader of household, or report to ancestors in case that the reason is not clear, and discuss the dispute in public to appease it.

## V. CONCLUSION

The paper systematically sorts out the research results of famous scholars on dispute resolution, expounds the methods of traditional Chinese dispute resolution, traces the ideological origin of traditional dispute resolution methods, and summarizes the development and changes of different dispute resolution methods. It makes people have a holistic

impression on China's traditional dispute resolution. Due to the limitations of the author's knowledge level, there is no much research on the significance of traditional Chinese dispute resolution methods for social governance, and the important reference value for improving modern social governance also needs further exploration.

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