

Another Justice: Litigation Masters in Chinese Legal Story

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Abstract : Ronald Dworkin offered a legal theory of 'chain enterprise' that all the judges in legal history altogether create a 'law' aiming a specific purpose. Those judges are like co-writers of a chain-story who not only create freely but also are constrained by the story made by the judges before them. The law created by Chinese traditional judges is another case, they, compared with the judges mentioned by Ronald Dworkin, have relatively narrower space of making a legal sentence according to their own discretions because the statutes in Chinese traditional law at the very beginning have been designed as panel code that leaves small room to judge's discretion. Furthermore, because law is a representative of the authority of the government, i.e. the emperor, any misjudges and misuses deviated from the law will be considered as a challenge to the supreme power. However, different from judges as the defenders of law, Chinese litigation masters who want to win legal cases have to be offenders challenging the verdict that does not favor his or his client's interest. Besides, litigation master as an illegal or non-authorized profession does not belong to any legal system, therefore, they are relatively freer to 'create' the law. According to Stanley Fish's articles that question Ronald Dworkin and Owen Fiss' ideas about law, he construes that, since law is made of language, law is open to interpretations that cannot be constrained by any rules or any particular legal purposes. Stanley Fish's idea can also be applied on the analysis about the stories of Chinese litigation masters in traditional Chinese literature. These Chinese litigation masters' legal opinions in the so-called chain enterprise are like an unexpected episode that tries to revise the fixed story told by law. Although they are not welcome to the officials and also to the society, their existence is still a phenomenon representing another version of justice different from the official's and can be seen as a de-structural power to the government. Hence, in this present paper the language and strategy applied by Chinese litigation masters in Chinese legal stories will be analysed to see how they refute made legal judgments and challenge the official standard of justice.

Keywords : Chinese legal stories, interdisciplinary, litigation master, post-structuralism

Conference Title : ICSRD 2020 : International Conference on Scientific Research and Development

Conference Location : Chicago, United States

Conference Dates : December 12-13, 2020