

Human Nature, Ethical Reasoning and Legal Principle: The Past and Present of the Immunity of Mutual Concealment among Relatives

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Abstract

According to the principle of legal equality, the law shall not only be free from differential treatments, but also actively encourage people to report or testify criminal offences. However, contradictorily, it seemed to be against the Human Nature to ask people turning in the criminals who are related to them. Seeking a proper solution to these interest conflicts has always been an appealing and worth pondering issue. From Han to the late Qing, the legal immunity of mutual concealment among relatives was hardly touched throughout dynasties, and kept remaining in the subsequent criminal laws of the Republic. Similarly, most of the countries in the modern world have also established comparable legislative policies as well. There shall be a pervasive interpretation to these legal phenomena.

This article shall trace the origins and foundations of such legal immunity in the Chinese legal history, figuring out how did it survived for more than two thousand years and remain effective in Taiwan today; and why did PRC once abandon it after 1949 but reopen the discussion nowadays? Additionally, in the perspective of comparative law, what are the social meanings and merits of such immunity in Western and Chinese

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legal culture? How do we explain the related amendments and ethical transitions across Taiwan Strait in recent years? To answer all these questions, I shall reconstruct several historical facts to restore the evolving process of the norms. Furthermore, I shall also interpret the theoretical basis, historiographical meaning and epoch significance underneath those historical facts.

Keywords: immunity of mutual concealment among relatives, right to refuse testimony, criminal code of the late Qing, criminal code of ROC, Qing Li Fa