

■ 吴伟民 著

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# 信仰

——一个法神学的命题  
Faith A Proposition of Legal Theology

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香港·中国法制出版社

# 信仰

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# 法的灵魂

## The Soul of Law

——自序

Preface

法学是知识,是人类知识海洋当中的一朵学问的浪花而已。

Law is an area of knowledge, a mere drop from the ocean of human knowledge.

哲学已经不是单薄的知识,而是一种高高在上的理念;哲学的境界已经远远高于人类所有的单项学科。

Philosophy is not just simple knowledge, but ideas in a superior position. It transcends every discipline of human knowledge.

然而,哲学关注的依旧还局限在人类生存的空间。

However, the study of philosophy is still limited to the space where human beings are living.

神学不然，神学已将人类生存的地球视作一粒尘埃——神学关注人类的远古和未来，关注人类的地狱和天堂。

But not theology. Theology regards planet Earth where human beings are living as a dust □ it deals with issues such as history and future of mankind, human beings' hell and heaven.

研究法学，无疑需要走出法学——立在喜马拉雅山的哲学高空；

To study law, we need to go beyond the limits of law - standing on the top of the philosophy mountain;

认知人类，无疑需要跳出人类——登上珠穆朗玛峰的神学之巅。

To study human beings, we must rise above the limits of mankind □ mounting the summit of theology.

法律利用外在惩罚的恐惧，制约人们言论行动；宗教则通过内心信仰的良知，引导人们弃恶从善。前者迫于无奈，后者出于自觉。

Law uses people's fear of outside punishment to restrict their words and deeds; religions use conscience and faith within to guide people to do good and to avoid evil. The former is an external force and the latter is a force of inner consciousness.

为什么有的人一生不知道法律条文，而一生都在积德行善呢？因为他们有信仰，有着善良之心；

Why have some people who are completely ignorant of law been doing good deeds their whole life? Because they have faith and a good heart;

为什么有的人精熟法律，反而走上坑蒙拐骗、贪财害命的邪路呢？因为他们没有信仰，无惧来生报应，无视天堂地狱。

Why have some people who are proficient in law turned to the evil

way of killing, stealing and swindling? Because they do not have faith or fear of retribution of afterlife, and neither do they believe in heaven and hell.

法律本身不能创造利益,不能创造正义,不能创造善。法律只是——通过实证的程序让弱者得到正义,通过理性的表述让弱者感觉到善。

Laws in themselves can not create interest, justice or goodness. They can only give justice to the weak through evidence-based procedures and make the weak feel good through words of reason.

然而,实证也常常破坏正义,理性也每每毁灭善良。

However, evidence does not always lead to justice, and neither does reason always result in goodness.

法律只是借助证据证实是非曲直。一旦举证不能,法官就会依赖现有证据,作出可能颠倒黑白的判决。

Laws only prove right and wrong on the basis of evidence. If the person making a claim is unable to provide evidence to support it, the judge will make a judgment based on the available evidence, which may mix up right and wrong.

虔诚的信仰者不需要所谓的证据,也不局限所谓的当事人;他们以慈悲为怀,以善良为本,无条件地帮助那些需要帮助的人,无论他们是什么人,无论他们在什么地方。

Devout believers do not need the so-called evidence and neither is their goodness confined to the so-called “parties involved”; they unconditionally help those who need help with compassion and in good faith, no matter who they are, no matter where they are.

法律总是刺激人们去争取自己的权利，宗教始终引导人们去关注他人的生活。

Laws always stimulate people to fight for their rights, while religions have always been guiding people to help others.

无论哪一个民族，其最早的祖先都信仰自然神灵，祈求神灵保佑风调雨顺，丰衣足食。然而，这种原始信仰最为致命的地方——在于其缺失惩恶扬善的教义和戒律。

The earliest ancestors of every nation, no matter what nation it is, believed in nature gods. They prayed to the gods to bless them with good weather, food and clothes. However, these primitive beliefs have a fatal flaw – lack of teachings and precepts that praise good and punish evil.

原始信仰更多的时候是通过杀戮生灵、祭奠神灵。

Primitive beliefs often pay homage to their gods through sacrifice of lives.

虽然多神信仰也包含一定的善，但其主要不是善，而是对于自然的畏惧；其主要是面对自然行善，而不是对生灵行善；其希望自然万物对人行善，而不是人类彼此之间相互行善。

Although polytheism also preaches goodness, it is not primarily about the good, but the fear of nature; its goal is to do good for the benefit of the nature, rather than for the benefit of creatures; polytheism worships gods in the hope that the nature will be kind to human beings, but they do not care whether people are kind to each other.

只有宗教的慈悲戒律，才是善的源泉，才是道德的基石；也才能成为法律的精髓，才能激发法治的精神！

Only precepts and compassion of religion are the source of goodness and the cornerstone of morality, and thus become the essence of the law and promote the notion of the rule of law!

## — 冬 夜 —

## Winter Nights

俄罗斯原本是一个信仰多神的民族 - 国家。

Russia originally was a country practicing polytheistic beliefs.

俄国接受基督教(其称东正教)源于公元 980 年,当时的基辅罗斯公国大公迎娶拜占庭帝国皇帝瓦西里二世的妹妹安娜为妻。

Christianity (called Orthodox Christianity) was adopted in Russia in AD 980, when the Grand Duke, Kievan Rus, married Anne, sister of the Byzantine Emperor Basil II.

安娜随身带来了众多基督神甫们为大公举行隆重的洗礼仪式,要求大公并要求大公国人改信仰多神教为信仰耶稣基督。

Anna had brought a number of priests to hold a grand ceremony to celebrate the baptism of the Grand Duke, and asked the people of the Grand Duke, who at that time believed in polytheistic religions, to convert to Christianity.

大公爱妻心诚,言听计从。在接受洗礼之后,当即号召公国民众放弃多神崇拜,推倒一切自然神的偶像,信奉基督教;并建立基督教堂,命令全国民众到第聂伯河里受洗。

The Grand Duke loved his wife very much and listened to every word his wife said. After his baptism, he immediately called on his people to give up their polytheistic religions and knock down statues of natural gods and convert to Christianity; he built Christian churches and commanded people across the country to baptism in the Dnieper River.

此后,基督教的博爱精神,基督教的原罪理念,基督教的救赎意识,虽然都在俄国得到传播;但是,更多的是传播在俄国的天空



中,而没有传播在俄国的大地上。

Though the Christian concepts of fraternity, original sin and salvation have been spread in Russia since then, Christian influence was only felt by the royalty of the Russia at that time, rather than the grassroots.

从基督教十戒律法中延伸出来的平等与博爱的道德文化与法律精神,始终没有在俄国深入人心!

The moral culture and the spirit of law in respect of equality and fraternity extending from the 10 commandments in Christianity have not been deeply rooted in Russia!

信仰,从来就不能依靠政治权力予以推崇或者予以镇压。

Political power can never succeed in promotion or suppress people's faith.

正因为如此,后来的俄国彼得大帝为了树立自己帝王的权威,轻而易举就凌驾于上帝之上。

For this reason, Peter the Great later easily prevailed over people's faith in God and established his own authority..

他虽然为俄罗斯带来了巨大的物质文明,却没有给俄罗斯人留下多少宗教、法治遗产,尽管彼得大帝颁布了多如牛毛的法律法令。

Although he brought tremendous material wealth to Russia and introduced a plethora of laws and decrees, he did not leave much heritage relating to religions and the notion of the rule of law.

再后来的斯大林更是十分恼怒地把上帝踩在脚下。

More recently, Russian's faith in God was trampled under foot by Stalin.

他虽然领导苏联红军击垮了不可一世的法西斯,却无视宪法

和法律,对国家精英大开杀戒;甚至采取暴力进攻波兰,意图波兰成为社会主义国家。

Although he led the Soviet Red Army crushed the mighty fascists, he ignored the Constitution and laws and slaughtered elites of Russia. In addition, he launched a violent attack on Poland, attempting to force Poland to become a socialist country.

斯大林既成为了苏联的一个传世英雄,也成为苏联的一个千古罪人!

Stalin is not only recognized one of the greatest heroes of the Soviet Union but also one of the greatest sinners!

及至 20 世纪末,虽然苏联从戈尔巴乔夫总统开始倡导民族的东正教信仰,但是,依旧不能有效推行民主与法治。

Despite the avocation of the Soviet President, Mikhail Gorbachev, of the Orthodox faith in Russia in the 20th century, the notions of democracy and the rule of law were still not effectively promoted.

国际社会在一些重大敏感事件上,基本听不到这个国家议会的声音,也基本看不到这个国家法院的裁决。如果人们寻求权威的信息和动态,只能注意这个国家总统的口气和脸色。

The voice of the parliament of this country was barely heard in the international community on major sensitive subjects, and few rulings declared by the courts of this country were related to these issues. If people wanted to seek information of authorities, they could only pay attention to the tone and facial expression of the president of this country.

21 世纪初,俄罗斯总统普金任满两届 8 年总统之后,成为国家总理;随后倡导修改宪法。继续成为这个国家的总统。并且新的宪法规定每届总统的任期由 4 年改为 6 年。

In the early 2000s, after eight-year presidency (1st and 2nd terms), Vladimir Putin served as Prime Minister of Russia and advocated

amendment of the Constitution. Later, he was again elected President after a change in the Constitution extending each presidential term from four years to six years.

一个国家的法律之所以不能遏制这个国家的政治权力，反而被这个国家的政治权力所控制，足以说明这个国家的政治权力是至高无上的，因为这个国家的上空没有神灵，这个民族的心头缺失信仰。

When the laws of a country are controlled by its political power rather than the opposite, it can be said the political power in this country is paramount, because there are no gods and lack of faith in the country.

法治存在的意义——就是限制政府的公权力，保护民众的私权利。

The meaning of existence of laws is to limit the government's public power and to protect the private rights of citizens.

法律绝不是统治者的工具。

Law is by no means a tool of rulers.

民主与法治在这个国家呈现出来的奇妙现象，与俄罗斯民族半路出家、被逼迫信仰基督教的文化传统存在血脉渊源。

The interesting existence of democracy and the rule of law in Russia is deeply related to its history of forced conversion to Christianity.

如果法官不敢管束公权力，甚至扛着公权力的大旗对付社会的底层民众，这样的法官是没有存在的价值的。他们的存在不是在创造正义，而是在腐蚀正义！

If judges do not dare restrain public power and go so far as to suppress the underprivileged people of society under the banner of public power. Existence of such judges is of no value. Their existence does not create justice but corrode justice.

法治应当超越政治。每一个法律人,更是应该超越自己所学到的那点微不足道的法律案例和法律条文,寻求法的灵魂,追寻社会更高境界的和平与正义。

The rule of law should transcend politics. Every legal practitioner should not merely rely on legal cases and legal provisions they have learned. They shall search for the soul of law and pursue higher goals of peace and social justice.

俄罗斯的法治,如同高加索山脉,在云雾当中时隐时现。归根结底,还是缺失博大精深的宗教信仰的支撑。

The rule of law in Russia is like the Caucasus Mountains, which is always in the clouds. Ultimately, it lacks the support of profound religious beliefs.

慈悲、善良与博爱——无疑是宗教向往的最高境界,无疑是法治追寻的太阳升起的地方!

Compassion, kindness and love are undoubtedly the highest level of religious yearning and the direction where the sun in the realm of the rule of law rises!

## 二 太阳神

### Amaterasu

所有民族都有自己的原始信仰,也就是信仰原始的神灵,即信仰天神、地神、山神、海神、风神、雨神、火神等,这是由于原始时期人们对于自然现象的一种神秘的解释和本能的敬畏。

All ethnic groups have their primitive beliefs, in other words, beliefs in primitive gods, i.e., gods of sky, land, mountains, sea, wind, rain, fire, etc. This is because of the instinctive awe of people in the

primitive times for mysterious natural phenomena and their interpretation of mysteries.

日本民族对于自然神有着独到理解和特殊崇拜。他们把地上的人和天上的神紧密地联系到了一起,形成了神道信仰。

Japanese have a unique understanding of and a special way of worshipping the gods of the nature. They closely connected people on earth and the gods in the heaven tightly together and developed the Shinto faith.

日本的神道教没有自己的教义,只是认为日本岛是太阳神赐予日本人的礼物,日本天皇则是太阳神的直系血亲。

The Japanese religion of Shinto does not have its own doctrines. It simply believes that the Japanese island is a gift given by the sun god, Amaterasu, to the Japanese people and the emperors of Japan are the direct lineal descendants of Amaterasu.

神道教——不要求人们做什么,不做什么;也不反对人们做什么,不做什么。神道教的影响力——在于日本人对太阳神的感激和报恩。

Shinto does not tell people to do something or not to do something; nor does it preach against any behaviors or non-behavior. Shinto's influence lies with the gratitude of the Japanese people to Amaterasu.

正因为如此,日本国旗是太阳旗,日本天皇至高无上——日本宪法就是这样规定的。

Because of this, the national flag of Japan is the Rising Sun Flag and the Emperor of Japan has supreme power in the country as stipulated by Japan's Constitution.

虽然日本的神道教缺失教义和经书,但却极大地提升了日本人的民族优越感和自尊心。在日本人看来——天上只有一个太阳,

日本是太阳升起的地方。

Despite lack of teachings and scriptures, Shinto greatly enhanced the ethnocentrism and self-esteem of Japanese. In their view, there is only one sun in the sky and Japan is the place where the sun rises.

明治天皇可以依靠自己天生的威望,兵不血刃,取得维新的巨大成功。

Emperor Meiji, with the help of the power given to him by birth, achieved a great success in his restoration without firing a shot.

极强的民族心也使得日本一度胆大包天,竟然敢于向俄国开战,向中国开战,向美国开战,向太平洋众多国家开战。

Its ethnocentrism makes Japan audacious and it went so far as to start wars with Russia, China, the United States and many countries in the Pacific war.

当然,日本还是因为具有强烈的民族心,竟然在二战失败后的一片废墟的国土上——飞跃而起,重建了一个令世界震惊的新的日本强国!

Of course, also because of their national pride, they introduced the Peace Constitution in the ruins of the country after defeat in World War II, the first chapter of which still assured the position of the emperor as a solace. As shocking as it is to the world, it then embarked on the adventure of developing its empire into a new powerhouse.

二战后,日本颁布了《和平宪法》。其第一章第一条规定:“天皇是日本国的象征,是日本国民整体的象征,其地位以主权所在的全体日本国民的意志为依据。”

After World War II, Japan enacted the Peace Constitution. The first article of its first chapter provides that “The Emperor shall be the

symbol of the State and of the unity of the People, deriving his position from the will of the people with whom resides sovereign power.”

神道教,始终支持着日本人的民族自尊心和优越感。

Shinto has always supported the national pride and superiority of Japanese.

远东国际法庭为什么不对主导太平洋战争的裕仁天皇提起刑事公诉? 国际法为什么在这里停止了正义的前行?

Why did the International Military Tribunal for the Far East not file a criminal indictment against Emperor Hirohito who played a major role in the Pacific War? Why did international law stop in its journey of justice?

呜呼,国际社会为了避免日本失去天皇(神灵)之后、必将引发的更大的动乱和灾难,从而选择了超越法律的大善。

Alas, the international community was afraid that loss of the Emperor of Japan (the god) will lead to greater chaos and disaster and thus chose the greater good above the law.

日本的当代首相通过民选产生;但是,却像走马灯一样更迭不休。只有一种情况例外,即首相如果参拜供奉神灵的靖国神社,就可以获得民众较高的支持率。小泉纯一郎是这样,安倍晋三也是这样。这不是首相的个人魅力,而是日本神道、日本天皇的魅力。

Japan's prime ministers are democratically elected; however, the prime ministers change frequently like a revolving door with one exception. Any prime minister who visited the Yasukuni Shrine always received a high support rate. For example, Junichiro Koizumi. So did Shinzo Abe. It is not because of the prime minister's personal charm, but the influence of Shinto and Emperor.

青豆是一个美丽的职业杀手，是著名日本小说家村上春树——在《1Q84》里面的一个怪异的女性形象。青豆在执行谋杀任务时，就会在心中默默祈祷：天上的主啊！愿人都尊称你的名为圣，愿你的王国降临。请饶恕我们的许多罪过，请赐福我们微小的每一步。阿门！

Aomame, a beautiful assassin, is the peculiar heroine in the novel, 1Q84, by the famous Japanese novelist Haruki Murakami. When carrying out her assignment, Aomame repeats to herself a prayer: O Lord in Heaven, May Thy name be praised in utmost purity for ever and ever, and may Thy kingdom come to us. Please forgive our many sins, and bestow Thy blessings upon our humble pathways. Amen.

青豆认为日本法律在许多时候不能惩恶扬善。她决定成为正义的化身。

Aomame believed Japanese law does not always give justice and so she decided to become justice itself.

是的，日本的法治缺失宗教信仰惩恶扬善的戒律和教义，新加坡的法治也是这样，这些国家唯独依靠的是法律本身的威慑力。然而，法律的力量远远小于宗教信仰的影响力。

Yes, the rule of law in Japan lacks religious precepts and doctrines of good and evil. So does the rule of law in Singapore. The only thing these countries can rely on is the deterrence of law itself. However, the power of law is far less than the religious influence.

新加坡只好保留鲜血淋漓的鞭刑。

Thus, the barbarous form of punishment, caning, is still in force in Singapore.

超越法学的是神学，超越法律的是宗教。

Theology is beyond jurisprudence and religion is beyond law.



## 三 飞虫的生命

## Lives of Insects

神学是法学之母。

Religion is the mother of law.

印度的种姓制度反映出来的不平等的法律问题，并不是只有印度存在。只不过是印度以印度教的形式将这种不平等的制度固定了下来，得到了印度民众普遍的接受（除锡克教的教徒外）。

The legal issue of inequality reflected in India's caste system does not only exist in India. However, it is different in India because it has been deeply rooted in India in the form of Hinduism and widely accepted by the people of India (except followers of Sikhism).

印度在刑法上虽然没有废除死刑，但是，由于这是一个有着“戒杀”信仰的国家。在判决死刑、执行死刑中，印度的法律控制是极其严格的；甚至可以说，印度国家的死刑已经名存实亡。

Although the death penalty is still not abolished in the criminal law of India, because it is a country believing that killing is a sin, the death penalty is for the most serious of all crimes in India. It even can be said that the death penalty exists in name only in India.

佛教特别主张——节欲。

Buddhism especially advocates abstinence

法律总是呼唤人们争取权利，甚至激发人们无穷无尽的物质欲望；宗教则超越法律，引导人们放弃权利，回归自然。

Law always calls people to fight for their rights, and even inspire their bottomless material desires; religion is above the law, and guide people to give up the right and return to the nature.

地球上的资源是有限的，人类不能不顾及其它生命体对资源