# On Historical Analysis Methods in Legal Research

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**Abstract:** In legal research,the historical analysis method is a long-standing research method,with the responsibility of exploring the historical changes and evolution of legal systems,legal ideas,and legal concepts.It not only sorts out the development and evolution of macro systems and ideas,but also pays attention to the development and internal logic of individual systems and concepts,in order to enhance the depth and breadth of legal research.Scholars such as Montesquieu,Savigny,and Maine are outstanding representatives who have skillfully applied this method.On the basic path of historical analysis methods,it is necessary to have a complete and accurate grasp of relevant historical data,and adopt"credible history"as the basis for argument in a neutral manner;Seeking the best perspective to think about historical issues,clearly demonstrating the evolution of systems,ideas,and concepts;Develop credible,scientific,and reasonable research conclusions to achieve the research goal of learning from the past and responding to reality.In the specific application of historical analysis methods,there are different objects such as the study of the history of legal system,the study of the history of legal thought,and the study of the history of legal history of ideas,which are intended to reveal why contemporary law is so and which direction it will develop through combing and theoretically proving the context of historical systems,ideas,and concepts,and based on the connection between historical culture and modern society,This differs greatly from the emphasis on description and induction in legal history.

**Key words:** Legal research; Historical analysis methods; Analysis of the History of Legal System; Analysis of the History of Legal Thought; An Analysis of the History of history of ideas of Law

The research of law must pay attention to the"legal degree",which means that the description of legal theory,the deconstruction of legal systems,and the proof of legal facts must be carried out according to the academic tradition and research format of law,otherwise its research results will be difficult to be recognized by the academic community.Among various legal research methods,historical analysis method is a long-standing research method.Law was born in the process of history,and any legal rule is the ultimate institutional achievement established by human society through continuous trial and error.Legal theory is also constantly established,denied,revised,and reshaped in history.Therefore,the analysis of legal issues and legal issues will inevitably involve the pursuit of historical dimensions.In fact,emphasizing the application of historical analysis methods in legal research is not only necessary to enhance the depth and thickness of legal theory,but also a prerequisite for clarifying the institutional evolution,legal ideological changes,and the evolution of legal concepts.However,in many domestic legal textbooks,although there is also a lack of content statements on historical analysis methods,most of them are vague or even unclear,obscuring the significance and function of this important research method.Therefore,the author takes the liberty to analyze this issue.The purpose is not only to confirm the indispensability of historical analysis methods in legal research,but more importantly,to find the correct way and method of historical analysis in legal research.

## 1 Historical Analysis Methods and Their Significance

The historical analysis method,also known as the historical method,refers to the borrowing of historical research methods to study legal science.According to scholars'definitions,this method focuses on the origin,development,and institutional changes of law,as well as the evolution of principles and principles.In this sense,the object of historical analysis includes both institutional analysis and the process of the development and evolution of principles,which are extremely fundamental and important for legal research.Marx once pointed out that"extremely similar events that occur in different historical environments result in completely different outcomes.If we study each of these evolutions separately and then compare them,we will easily find the key to understanding this phenomenon".This demonstrates the importance of historical analysis methods in revealing the laws of historical development. And this method is also applicable to the analysis of law,because strictly speaking,"law is a condensed history,and law is developed based on human historical facts.Therefore,conducting a historical examination of law and linking it with historical reality to study law and legal phenomena is a scientific method.As is well known,the emergence and development of any legal phenomenon have its historical roots and its own laws.Therefore,in order to study legal phenomena and discover their operating laws,it is necessary to examine them historically.Its significance is to reasonably clarify the context of legal development,so as to sort out relevant historical materials in the sense of"literature";Secondly,it is more important to identify the development laws and directions of the legal system,in order to facilitate the reform and improvement of domestic laws.

After the Enlightenment,historical analysis methods shone brightly in the field of legal research.Montesquieu's"On the Spirit of Law"is a famous work that uses historical methods to analyze the evolution and development laws of law,which clarifies that the spirit of law is not groundless,but has its own inherent laws

of generation.Therefore,Montesquieu is"regarded as a pioneer of historical law and modern sociology".on the whole,His summary of historical experience is:Various laws should be in line with the nature and principles of the established or intended political system...The law should also take into account the material conditions of the country,the cold,hot or mild climate,the quality and geographical location of the land,as well as the lifestyle of farmers,hunters,or herders.The law should also take into account the degree of freedom that the basic political system can withstand,as well as the religious beliefs,preferences,wealth,and population of the residents The quantity,as well as their trade,customs,and habits.Finally,various laws should also be interrelated,taking into account their own origins,the goals of legislators,and the order of the various things that these laws rely on to establish.It is necessary to examine the law from all these aspects In summary,law is a product constrained by various factors,and the spirit of law exists in the possible relationships between law and various things. With the help of complex historical materials and institutional literature,Montesquieu,on the one hand,extracted legal principles based on summarizing experience,For example,he said,"The fact shows that relying solely on authority always seems so clumsy,to the extent that it has been recognized that prosperity can only be achieved through benevolent governance Cruel punishment can provoke resistance more than long-term punishment.Long term punishment can only dishearten one's heart and not make one feel righteous...In short,history has fully proven that the effectiveness of criminal law has always been nothing but destruction.On the other hand,Montesquieu also focused on commenting on historical examples to refine legal principles.For example,he pointed out that"in Rome,a father can force his daughter to divorce,even though the marriage was consented to by him.However,divorce is actually handled by a third party,which goes against human nature...Only those who are troubled by their own marriage and find that the time has arrived when ending the marriage is beneficial for both parties should have the right to decide on divorce",which is the legitimate legal principle of divorce;King Gondbauer of Burgundy stipulated that if a thief's wife and son did not report it,they would be reduced to slavery.This law also goes against human nature.How can a wife report her husband,and how can a son report him.

Where's the father?Isn't it necessary for the law to make such provisions to punish one crime and commit another,larger crime This is the legal principle of concealing oneself in person.Of course,Montesquieu's most important summary of human society's experience is that"since ancient times,experience has shown that all those who possess power tend to abuse it and never give up until the limit is reached.Therefore,in order to prevent the abuse of power,it is necessary to coordinate things and use power to stop power. The legal principle of power control refers to the rational division of labor and effective restraint of state power,which is derived from the historical experience of power tendency towards abuse and has become the basic principle pursued by modern rule of law countries.Prevent arbitrary and abusive power.The historical legal school represented by Savigny also came to the famous conclusion that"law is the embodiment of national spirit"through the method of historical analysis.In the discourse on the contemporary mission of legislation and law,Savini pointed out:In the most ancient era of human history,it can be seen that law has its own definite characteristics,which are unique to a certain ethnic group,just like its language,behavior,and basic social organizational system. Moreover,these phenomena do not exist in isolation,but rather are the fundamental and inseparable endowments and orientations unique to a unique ethnic group,presenting us with a unique and unique landscape Appearance.What connects them together is the common belief of this nation,which excludes all chance and any intention it originates from,and the common consciousness of its inherent inevitability Here,Savini confirmed through an analysis of legal history that every ethnic group has a corresponding legal system;And this system is not isolated from society,but is reflected as a part of the overall national spirit;And because each ethnic group has different living environments,beliefs,and consciousness,the laws of one ethnic group are inevitably unique and distinct from those of other ethnic groups.In this sense,without understanding the spirit of this nation,it is impossible to understand its laws;Similarly,if jurists are not familiar with the unique spiritual consciousness of their own ethnic group,it is impossible to compile a code suitable for that particular ethnic group.In Savigny's view,it was not possible for Germany at that time to compile a code like the French Civil Code because German jurists needed a process of tracing and refining the spirit of the German nation.Only when we achieve the perfection of our knowledge,especially by cultivating our sense of history and politics,can we make honest judgments about the problems we face through the study of forgetting to eat and sleep.It can be seen that historical analysis is not an archaeology or a description,and the purpose of historical investigation is still to evaluate and make decisions on practical problems.The famous British jurist Maine,who also belongs to the school of historical law,concluded through his examination of ancient law that"all movements in progressive society are,up to this point,a movement from identity to contract",becoming one of the significant achievements of historical analysis methods in the history of law.

In short,valuing the reference of historical experience is a reflection of the solid foundation of all disciplines and a prerequisite for their development.As Schumpeter said,"Why should we study the history of any science?...The gains we expect from there can be divided into three categories:benefits in teaching methods,acquisition of new ideas,and understanding of human thinking methods.Law is no exception,of course.In law,there is not only a specialized discipline that studies the history of legal systems and legal ideologies,but also the use of historical analysis to study specific systems,ideas,theories,and concepts.It is also the basic method and academic tradition of legal research. Posner even believed that:"Law is the discipline with the most historical orientation among all disciplines.More frankly,it is the discipline most backward looking and most'dependent on the past'.It respects traditions,precedents,pedigrees,rituals,customs,ancient practices,ancient texts,ancient terms,maturity,wisdom,seniority,gerontocracy,and the interpretation that is regarded as the way to rediscover history.It doubts innovation,rupture,'paradigm shift',and youth Their vitality and impatience Whether this is indeed the case,of course,is not without doubt.However,focusing on historical traditions and learning from historical experience will inevitably increase the theoretical depth and academic thickness of legal research.Proper application will provide more information for current institutional innovation and theoretical expansion. Therefore,the correct application of historical analysis methods can not only systematically sort out historical systems,theories,concepts,etc.,but also learn from the past and present,providing assistance for the development of modern legal systems and the deepening of

legal theory.

## 2 The Basic Path of Historical Analysis Methods

### 2.1 Fully and accurately grasp relevant historical information

For historical analysis methods,the primary prerequisite is to possess historical materials and extract and analyze problems based on them.Historical analysis is not theoretical deduction. For the latter,researchers can fully conceive a certain system and create a certain theory based on their own concepts and ideas,but historical analysis cannot.In historical research,although there is no objection to"using history to lead theory",it is not allowed to"use theory to lead history",which means establishing a basic argument first,and then cutting historical materials to conform to one's own theoretical derivation format.For example,historical materials that are advantageous to one's own argument are cited,while historical materials that contradict one's own argument are ignored.This research attitude is not a scientific one.Because of this,whether engaged in the study of the history of institutions,the history of ideas or the history of history of ideas,we must first possess the historical materials related to this subject.If we omit the main evidence materials,then such a historical analysis must be of no value.As Pound criticized 18th century jurists,they"went too far because they believed that legal systems that were the result of long-term historical development or the process of using or studying old historical materials could be thoroughly reconstructed according to abstract principles of rights.Perhaps this includes the fictionalization of the"natural state"by Enlightenment thinkers. Indeed,from the perspective of historical positivism,it is doubtable whether there has ever been such a natural state,and the natural state envisaged by Hobbes,Locke and Rousseau,the three contract theorists,is so different,which further confirms that people's doubts about their anti historicism are not empty words.In historical research,it is also necessary to advocate for researchers to adopt a relatively neutral attitude,adopt an empirical attitude,and realistically deconstruct historical materials.Ideology cannot be used as a standard to cater to the value preferences of rulers.Napoleon's response to the regular meeting of the State Council on December 20,1812 can be seen as an example of this famous politician's aversion to"ideology"and his advocacy for"historical positivity",His words say:All the misfortunes that our beautiful France has suffered are due to the'morphology of consciousness',all due to the misty metaphysics that cleverly seeks to identify the first cause and base national legislation on it,rather than making the law conform to the human heart and historical lessons we understand.These fallacies only lead to bloody rule,and in fact,it is already so.Who used sweet words to deceive people Imposing sovereignty on them that they are unable to exercise?Who does not establish the law on the principles of divine justice,the nature of things,and the fairness of civil law,but simply on the will of a parliament composed of individuals who are ignorant of civil law,administrative,political,or military laws,thereby destroying the sanctity of the law and the reverence for the law?When someone hears the call to rebuild a country,they can only follow various principles that always conflict with each other.The advantages and disadvantages of different legislative systems must be searched in history Specifically,although ideology can enhance people's enthusiasm,it may ignore the experiences and lessons provided by ancestors;In legislation,relying solely on consciousness and will will will only lead to laws being divorced from reality and contrary to people's hearts.Guan Ou,a scholar from Taiwan,China,also mentioned that there are three possible shortcomings of the historical research method:first,it is difficult to be completely accurate because of the legal historical data used by the historical method;Secondly,the application of legal historical materials often results in different choices due to individual biases of researchers,making it difficult to obtain correct results;Thirdly,researchers often tend to respect historical facts and overlook the current environment,leading to the conservatism of the law.The first two points are related to historical materials and cannot be"completely accurate"or because the collected information is incomplete,especially due to the omission of the most important materials;Or,without selection,use non"reliable historical"data as evidence.However,choosing historical data due to personal bias,as mentioned earlier,violates the basic ethics of scientific research and is a highly undesirable research attitude.

### 2.2 Finding the best perspective to think about historical issues

After collecting and possessing data,from which perspective should we conduct research?This cannot but mention the perspective of research.As is well known,historical data is vast,such as a microscopic and specific system,such as when imprisonment began and how it changed.It is necessary to collect complete data from various countries and eras,and the amount of data must be described with a large number of words.So,how to choose a research perspective in the vast amount of data depends on the wisdom and ability of researchers.Scholars say,"If a political scientist is ignorant of social knowledge,he cannot organize and analyze various empirical evidence.However,even if he already possesses.

Given language,history,and background knowledge,success requires a combination of rigor and coordination in research Although this is an argument based on political science,it can also be applied to legal research without exception.In this regard,users of historical analysis methods in legal research must possess basic social knowledge,possess the ability to classify and classify,maintain a rigorous and serious attitude,and master the ability to coordinate materials and viewpoints.As Savini pointed out,"Jurists must possess two indispensable qualities,namely historical literacy,in order to firmly grasp the characteristics of each era and legal form;and a systematic perspective,in the close connection and cooperation with the whole of things,that is,only in its true and natural relationship,to examine every concept and rule.With historical literacy and a systematic perspective,one can accurately choose the best perspective to observe problems and draw scientific and credible conclusions through systematic observation.

Regarding the issue of perspective,we can choose the famous British scholar Oakeshott's"Harvard Lectures"as an example,which is a reflection on the evolution of political and ideological history in Europe since modern times.We know that the history of modern political thought in Europe has a long span,extensive literature,numerous figures,and diverse genres,with numerous research works.However,in such a thin booklet,Oakeshott uses a unique perspective-deepening moral concepts-to clearly outline the changes in political thought history from the Middle Ages to modern

Europe over the past 500 years and its impact on political rule. In Oakeshott's view,there were three main moral forms in modern Europe,and their alternating processes profoundly influenced the politics of modern Europe:the first was the"community morality"left over from the Middle Ages,which emphasized that human society was a community of shared destiny,where people not only cooperated with each other but also helped each other. In such a social community,"the activities of universal concern not only include living,farming,and product distribution,but also include constraining various rights,responsibilities,and activities. The relationship and loyalty between people,rights and obligations all depend on individual identity,and it is difficult for individuals to break free from the network of blood relationships.The second type is"individualistic morality",which emphasizes the individual's independence and independent choice.People are no longer dependent on their families,estates,communities,or guilds,but can decide their behavior choices based on their own will.This kind of morality originated in the 12th century and formed in the 16th century,but the true mainstream morality was during the Enlightenment period.Since then,people have become'individuals facing the country',possessing independent personalities and enjoying legal rights.The third is collectivism morality.Oakeshott pointed out that when the system of freedom was officially established in the law,many people were not thrilled by it.On the contrary,They did their best to avoid:Due to circumstances or temperament,some people are not fully prepared for their own choices.Faced with numerous choices,they do not have the ability to rely on their own power to make choices,and naturally view them as a burden.At the same time,beliefs,professions,and identity concepts established based on old community moral standards are gradually disintegrating,and new moral concepts have not yet been accepted.Therefore,moral beliefs become apparent It feels uncertain,lacking some certainty.In short,'I don't want to enjoy personal freedom'These people expect the state to uphold justice and solve the problems of the people,thus transforming morality into collectivism morality that advocates social orientation and safeguards collective interests.The legal socialization movement that began in the late 19th century is closely related to this moral concept.From the above introduction,it is not difficult to see that the study of political thought is not based on characters or schools of thought,but rather on the changes in moral concepts as the context for dividing political thought stages,indicating the author's superb argumentation skills and unique observation perspective.

### 2.3 Develop credible,scientific,and reasonable research conclusions

History for the sake of history is more the work of archaeologists.From the perspective of historical analysis methods in legal research,it is to deconstruct and extend relevant conclusions with the help of the information of institutional history,history of ideas,and history of ideas:or summarize the laws of the evolution of legal systems;Or analyze the development of legal thought;Or trace the evolution of legal concepts.In fact,even the textual research of legal history materials has the necessity of extension and development.As scholars have said,"The choice of themes and textual research on facts are certainly important and indispensable in historical research,but the results of pure textual research must be developed in order to become a complete historical work and achieve the purpose of historical research."Social research,including legal research,is different from pure historical research in its purpose,Their purpose is to collect a certain type of identical social facts(including historical facts)from different time and space,extract their characteristics,and establish general principles or laws.Therefore,based on"historical data"and relying on"historical perspective"(i.e.observation perspective),the basic thrust of historical analysis methods is to form"historical knowledge"(i.e.summary of universality and regularity).Maine's"Ancient Law"can be considered a classic work in this field.On the basis of examining the history of the Aryan nation,Maine found that patriarchy or patriarchy was the origin of the national social order. This led to the point that in the early stages of human society,as social units,it was not individuals,but members of many groups combined by real or imagined blood relationships.Individuals do not set any rights or obligations for themselves.The rules that the perpetrator should abide by first come from the place where he was born,and secondly from the mandatory orders given to him by the head of household as a member.Under this system,there is little room for contractual activity.The modern contract society is a product of the development of ancient law from the"Di Meishi Di"era to the"customary law"era,ultimately reaching the"Code of Laws"era.Maine pointed out:In the process of the development of the movement,its characteristic is the gradual elimination of family dependence and the growth of individual obligations that arise from it.The'individual'continuously replaces the'family'and becomes the unit considered by civil law...It is not difficult to see that the relationship used to gradually replace the various forms of mutual relationship derived from the'family'rights and obligations is the'contract'...In this new social order These relationships arise from the free agreement of the'individual'At this point,Maine reached the classic conclusion in the history of law,"All movements in progressive society,ending here,are a movement from identity to contract."The so-called"identity"(also known as"identity")here refers to a predetermined and fixed subordinate relationship of an individual to a patriarchal family. No one can create rights and obligations for themselves based on their own will and efforts to break free from the constraints of family and group.And"contract"refers to the rights,obligations,and social status that individuals can create for themselves through freely concluded agreements.Therefore,in the argument of'from identity to contract',the most important point is to point out a fundamental change in an individual's personality state,that is,the transition from being dependent on a'family','society',or'state'to an independent,free,and self-determination individual.The process of'from identity to contract'is actually a continuous process of people moving towards freedom and independence.So,what is the significance of this statement?In short,it reveals the laws of the evolution of human legal civilization and indicates the direction of legal development in human society.As British scholar Aaron wrote in his introduction for the publication of the Book of Ancient Law,"his conclusion is sufficient to express a principle that is not disputed by contemporary historical jurists-the principle of individual self-determination,which separates individuals from the web of family and group constraints;or,in the simplest terms,the movement from the collective to the individual.In other words,"identity"represents the lack of personality or incomplete personality,and an individual can only rely on their family or col lective;And"contract"represents an independent legal entity with free will and the ability to make decisions for oneself,which is the

internal mainline of legal development since the Enlightenment. Some people think that there are also many provisions on identity in modern law,such as"parents""children""suspect"and"consumers ",so they marvel at"the resurrection of identity"or"the regeneration of identity",but this is really a hypocrisy.This'identity'is not the same'identity':under the same identity,people's rights and obligations are completely equal;The reason why the law wants to preserve identity is because identity is an objective natural and social existence,and it stipulates special rights and obligations for special subjects,which is a necessary thing in law itself.Just as teachers,as a special group,inevitably differ from the general subjects in society in terms of enjoying their rights and fulfilling their obligations.So,when evaluating Maine's theory,Pound pointed out that Maine's"summary of the progressive process from identity to contract is actually a specific political interpretation based on the legal system.This summary was widely accepted in British and American legal thought and dominated until the end of the 19th century.Even today,it remains an undeniable force in the US Constitution.In my opinion,even if placed above today's legal theory,it is still an unpublished theory in the history of law. Without breaking free from the constraints of identity,one can never stand on their own and be free;In today's society where people are all regarded as legal entities with power and ability,independent individuals who can plan and choose for themselves are inevitably active in social life.This is precisely where the civilization of modern law lies and the root of progress.

## 3 The specific application of historical analysis methods

### 3.1 Research on the History of Legal System

Human beings have thousands of years of legal system history. Studying the core content and development of legal systems in different countries,ethnic groups,regions,and periods not only accumulates the historical literacy of researchers,but also helps to broaden research horizons,especially in identifying the deep-seated evolutionary motivations and laws of law from legal history,which can provide valuable experience and lessons for the current legal system,It can also provide guidance for the future development direction of the law.Respecting history is the key to continuing culture.In the West,with the birth of the School of Historical Law,historical research on legal systems has become popular and achieved remarkable results.When Pound talked about this period of history,he told us:"The 19th century was the century dominated by historical views."Precedents,works,and regulations were all based on"the history of law",and"as a part of history,they consciously or unconsciously included an interpretation of history."Therefore,overall,"in the 19th century,people's ideas about history and historical interpretation influenced all laws and all literature.In China,traditionally,emphasis has also been placed on summarizing the experience of the legal system history,especially in the"official history".Starting from Ban Gu's"Han Shu·Criminal Law Chronicles",most of them have the content of"Criminal Law Chronicles",tracing the legal source,summarizing the legal content,and commenting on the gains and losses of law,which has become the basic historical material for us to understand and understand the legal evolution of different dynasties.Using the basic methods and paths of historical analysis to scientifically summarize and extract the spirit and concepts inherent in the code of law is an important task before us.

The significance of studying institutional history can also be illustrated by the importance of Schumpeter's teaching content on"economic history".Schumpeter talked about,Professors or students who attempt to conduct theoretical research solely based on recent works will soon find themselves creating unnecessary trouble.Unless recent works themselves reflect the most basic historical aspect,no matter how correct,innovative,rigorous,or elegant they may be,they cannot prevent students from developing a sense of lack of direction and meaning,at least among most students There will be this feeling.This is because no matter which academic field,the problems and methods used at any time contain the achievements of past work under completely different conditions,and still carry the traces left by the time.It can be seen that without historical analysis,it is difficult to know where the origin of the system lies,and the development and evolution within it cannot be grasped.It is worth noting that Schumpeter's remarks are not only applicable to the teaching and research of economic history,because in his view,"all science that studies written law,customary law,legal procedures,and legal technology...is related to the history of economic analysis",because"most economists were once legal experts...they analyzed economic phenomena with a legal mind".Therefore,possessing a sense of history or historical consciousness is a basic literacy for legal researchers,and it is also a sign of truly possessing legal knowledge and knowledge,Because an undeniable fact is:"If we don't look at the historical context of a regulation,we may not fully grasp the significance of this regulation.More importantly,the basic attitude and spirit of the legal system.If students ignore their history,they will also completely fail to understand."Students are like this,and law teachers and researchers are like this?Of course,in the study of institutional history,it is still necessary to emphasize the combination of history and theory.The method of historical analysis is not a purely legal history research method,that is,it is not only inductive and descriptive,but also needs to deduce relevant conclusions from the historical materials of the legal system.Of course,it is also necessary to remember Maine's warning in this regard:"Evaluating people in other eras with the moral concepts of our own time is just as wrong as assuming that every wheel and screw in the modern social machine has its counterpart in a more primitive society."In other words,we need to hold a"respect"and"understanding"attitu de towards past legal systems and texts,We cannot measure ancient law based on today's standards of rule of law,nor can we measure the gains and losses of past systems based on today's concepts. This is a problem in the historical context.As for the categories of institutional history research,there are both studies on the history of Chinese legal systems and studies on the history of foreign legal systems;It is possible to conduct a macro examination and description of the overall legal history,as well as a thematic analysis of the legal history of a certain era;It is possible to conduct historical analysis on a certain legal department,such as studying the history of civil law and criminal law,or to conduct specialized research on a specific system,such as analyzing the root cause of the crime of"banditry"in Chinese history.Not only that,many scholars also use comparative methods in historical analysis to clarify the similarities and differences of legal systems in different periods of history,such as Xue Yunsheng's"Tang Ming Law Collection",which is a representative work in this field.

### 3.2 Research on the History of Legal Thought

If the study of the history of legal systems is based on the examination of institutional forms and analysis of institutional changes in legal texts(such as codes of law and precedents),then the study of the history of legal thought is based on the theoretical level of law,summarizing and commenting on the legal theories of thinkers of previous dynasties.In terms of the development of human society and the progress of the legal system,the significance and role of legal thought are self-evident.Its influence is profound and long-lasting,and its wisdom is constant and fresh.For example,the"theory of innate human rights",which was born during the Enlightenment period,regards human rights as inherent rights of those born,unrestri cted,inviolable,and inalienable.Therefore,it has become a capital for people to pursue a better life,promoting civilization and humanity in society.Its revolutionary,progressive,and important nature cannot be described too much.As for the specific legal system,"discussing the connection between law and history would not be complete without involving another ideological faction that has had a profound impact on history and law.As far as the development and evolution of western legal system is concerned,there would be no development and progress of Roman law without the spread of Stoic school's concept of natural law;Without the reverence of Enlightenment thinkers for the ideas of freedom,reason,and equality,there would be no masterpieces in legal history such as the Declaration of Independence,the United States Constitution,the Declaration of Human and Civil Rights,and the French Civil Code;Without the dissemination of the concept of social fairness and justice and socialist ideology,a new legal category-social law-would not have emerged outside of public and private law;Similarly,the idea of no human dignity has once again been raised and paid attention to,and the Universal Declaration of Human Rights,International Covenant on Economic,Social and Cultural Rights,and International Covenant on Civil and Political Rights will not be introduced.The human rights movement that affected the world after World War II will also lose its intellectual momentum!Because the significance of ideas and theories is so significant,So Cardozo reminds us,"There is nothing that can replace the rigorous,precise,and profound legal research results accumulated and developed by the wise ancestors of the past.These research results are the raw materials for our casting artifacts.Without these foundations,no philosophy can achieve success,just like a sculptor without clay in hand,aesthetic theory alone cannot sculpt works Especially for legal research,the fundamental purpose is to explore legal principles,which are legal theories and academic viewpoints extracted by thinkers including jurists.

In the process of studying the history of legal thought,the following methodological issues must still be clarified:

One is to understand the background and emphasize the context.The theory of any thinker is not born in a vacuum,it is influenced by the times and is a product of the environment. Scholars remind us that,If the proposal of a theory is to illustrate the problems raised in a particular historical context,it is important to follow historical clues to understand this background.If a theory must adapt to future changes in the background,then it is necessary to make judgments about the way the theory changes. By deeply understanding how past theories have adapted to background changes,it can provide a reliable basis for the future development of the theory Foundation In essence,the proposal of a new ideological viewpoint should consider the contemporary era and environment;Similarly,the development and changes of a thought must also seek reasonable answers in the changing times. Sharp minded jurists not only stand at the forefront of the times to design the future development direction of law,but also propose repair plans when the legal system is struggling.In short,true legal thought is a legal thought that combines with the background of the times,and only such ideas can lead the trend of the times and promote social reform.Therefore,clarifying the characteristics of the era background in which thinkers are located is a fundamental prerequisite for understanding why they proposed such ideas and exploring the significance of these ideas.The difference in national philosophy between Hobbes and Locke is a testament to the problem.Let's start with Hobbes.As American scholar Nash Henchke pointed out,"We must go back to Hobbes'personal experiences,which led to his ideas.At that time,Britain was in a civil war,and people risked their lives at all times.Therefore,the fear of death became the core of Hobbes'ideas,and this fear was closely related to human instincts for survival and comfort.So,Hobbes'ideal country in his mind is a"Leviathan"with enormous energy that can ensure social peace and order.On the contrary,in Locke's era,the"Glorious Revolution"has ended,the feudal aristocracy has withdrawn from the political arena,and the concept of freedom permeates the society.Because of this,Locke envisions a country where people enjoy full rights and freedom,while the government can only be a limited government.Of course,it should also be noted that from the perspective of ideological background,it includes the political,economic,and social situation of the author's era,as we often say"national conditions",but also the development background of other disciplines.Oakeshott reminds us:"If history is not just a description of the process of events,but also involves human reflection,then it is inevitable to accept other special background content to extend the original background;in order to understand the relevant content of this field and other fields,people also need to apply some concepts and reasoning drawn from other disciplines."Law cannot be independent of other disciplines,The knowledge of politics,ethics,religious studies and other disciplines will blend with the law discipline,so when we understand the legal thoughts of jurists,we also need to pay attention to the possible impact of related disciplines on their thoughts.

The second is to be faithful to the original work and scientifically deconstruct it.For the deconstruction of the thoughts of jurists,it is necessary to be faithful to the content and viewpoints of the original work,and to respect the author's ideas and logic.The study of the history of thought is not an individual creation,it must be based on the original works of thinkers,just as judges interpret legal texts.Overall,this requires researchers to have a comprehensive understanding of the author's overall theory and not to make arbitrary choices or take meanings out of context.The theories of thinkers also undergo changes before and after,and researchers must pay high attention to them,analyze where differences occur,and why these changes arise.Of course,equally important is that the study of the history of legal thought is not a simple restatement of the theories of thinkers.It requires analysis,understanding,interpretation ,organization of the theories of thinkers,induction of their reasoning logic and methods,evaluation of their theoretical gains and losses,and their position in the history of legal thought.Only in this way can this research provide readers with a guiding"thought map". For example,Montesquieu himself did not clearly explain what

exactly the"natural law"in Montesquieu's mind contained,while the British scholar Shackleton,based on all Montesquieu's works,summarized it as peace,food,attracting the opposite sex,social life,belief in God,birth at a certain age,mental maturity at a certain age,freedom and independence from birth,reason,equality The fear of death and self-protection can make people clearly understand Montessori's concept of natural law.Of course,the above is only for the study of individual jurists and thinkers'legal thoughts.If it is a study of a certain era,school,or as in the"History of Chinese Legal Thought"or"History of Western Legal Thought",the situation will be more complex,especially requiring the legal literacy and deconstruction ability of researchers.Professor Zhang Wenxian specifically pointed out that:The concepts,categories,theoretical viewpoints,theories,and schools of law are products of history,with their emergence and evolution process.To accurately and deeply grasp them,and enrich and develop them on this basis,it is necessary to apply historical theories and methods to examine how they were proposed,what important and critical statements have been made by previous scholars,and what main stages have they gone through in the evolution process,What forms of expression have you had before Only through such a comprehensive and comprehensive examination can the overall context of the formation,development,and evolution of legal thought be clearly outlined.

The third is vertical and horizontal analysis,and reasonable positioning.The study of the history of legal thought requires not only revealing the different characteristics of legal thought in different periods from a vertical dimension,but also comparing legal thoughts between thinkers and thinkers or between different countries during the same period from a horizontal dimension. For example,during the Spring and Autumn and Warring States periods in China,a hundred schools of thought argued,and various schools of thought such as Confucianism,Mohism,Taoism,and Legalism emerged,proposing different legal ideas with distinct school characteristics.However,the Qin Dynasty took Legalism as its standard and excluded others;Since Dong Zhongshu in the Han Dynasty,Confucianism has become the orthodox legal ideology in China.Naturally,the ideological"unification"ultim ately suffocates the vitality of legal research.The evolution of western legal thought,according to the analysis of Oakeshott mentioned earlier,has experienced the evolution of community morality,individualism morality and collectivism morality,which has contributed to the birth of different forms of legal systems. Horizontal comparison is also very important,as it is conducive to discovering the similarities and differences in concepts and value orientations between different thinkers and legal schools,in order to demonstrate the diversity of thinking and theory.For example,both Hobbes and Locke advocate the construction of the state as a public institution through social contracts.In other words,the state is an"artificial product",but upon closer examination,the social contracts referred to by the two thinkers are not equal:firstly,the number of contracts is different.Hobbes'social contract is a contract,that is,an agreement reached between members of society to transfer rights,but Locke's social contract is two contracts,that is,in addition to Hobbes'contract,it also includes a contract between people as a whole and the state.Secondly,the content of the contract is different.In Hobbes'social contract,people relinquish all natural rights,but Locke believed that people only relinquish some natural rights,such as the rights to life,freedom,and property,which are still preserved by people.Thirdly,the effectiveness of contracts varies. Hobbes believed that once a contract is signed,it is permanently valid and the signatory cannot withdraw,while Locke advocated that when tyranny occurs,people not only have the right to disobey,but also have the right to resist or even revolution.Through this comparative analysis,we can roughly understand the different theoretical interests of the two thinkers.It should be noted that horizontal comparisons should emphasize"comparability",as there is no common ground between the two,and comparisons are meaningless.For example,the common comparison between Plato and Confucius,and the comparison between Aristotle and Mencius are just like this.As for positioning,it is necessary for researchers to objectively and objectively evaluate the significance and status of legal thoughts of jurists in the overall context of the history of thought,neither infinitely elevating nor arbitrarily belittling them.

### 3.3 Research on the history of ideas of Law

In modern Chinese,"concept"refers to the summarized image left by ideological consciousness and objective things in the human brain;However,in philosophy of science,"the terms that express impressions and the data labels that exist in the mind are so-called concepts....The labels related to concepts enable us to communicate with each other,and enable us to reach consensus on the meaning of labels.The process of reaching consensus is called conceptualization,and the result of reaching consensus is a concept". Here,concepts are the precursor of concepts,or rather the materials and materials from which concepts can be formed.But considering that the concept and the concept itself are intertwined,we also include the legal concept in the legal concept here.It is particularly worth pointing out that in legal research,the study of history of ideas or concept history is extremely necessary.

Firstly,the development and level of law,as well as the evolution and civilization of law,are inseparable from the transformation of ideas and the refinement of concepts.A historical analysis of them is the key to clarifying the progress and evolution of law.Taking the concept of natural law as an example,since Stoic School systematically expounded its concept,it has been playing an important role in promoting the evolution of law.Roman law is fair and humane because of it,and the laws and codes of the 18th century are rational and scientific because of it.After the 19th century,although this concept was no longer popular because of criticism from the positivist school,the revival of natural law after World War II just shows the permanent vitality of this concept.For example,Weideshi,a German scholar,pointed out that"historically,the argument of natural law first had practical significance in the era of changes in world outlook and political system.This also explains the reason for the revival of natural law in the Federal Republic of Germany after 1945.The Basic Law attempts to make a statement in paragraph 2 of Article 79(prohibiting changes in the principles of Articles 1 and 20 of the Basic Law)of Article 1(human dignity and inalienable human rights)In the form of an'eternal clause',China has demonstrated the constitutional legislators'concept of natural law('empirical natural law')."This is illustrated by taking Germany as an example.From the perspective of the world legal trend,as Friedman said,"The ancient legal concept has not completely disappeared.In fact,it can be said that the ancient concept of natural law is more prosperous than ever,especially the concept of'human rights'or people's freedom.At least these concepts can be found in the constitutions of modern countries."It can be seen that an

important legal concept,It will not lose its meaning due to the age,it will radiate new vitality in the continuous interpretation of thinkers;The analysis and interpretation of these important concepts is the key to understanding the development and evolution of law.

Secondly,through the study of the history of ideas,we can have a clear grasp of the origin and development of a legal concept,especially by tracing its etymology,evolution and current situation,we can not only know where the concept originated,what its original meaning was,but also know what stage of development it has experienced in history,and what is the consensus of today's academia.It can also be illustrated by the concept of"natural law". Regardless of the theological natural law,that is,in terms of secular natural law,we can find three different definitions of natural law in the historical period:first,natural law"referring to nature",for example,the Taoist school in ancient China emphasized"Tao follows nature",and the Confucian school advocated hierarchical order because of"things are different and things are different";The Stoic school of late ancient Greece also advocated to draw up legal rules for human beings based on natural rules;The second is the natural law"appealing to humanity",that is,starting from Grotius,the description of natural law by the classical natural law school no longer depends on God and God's will,but directly seeks human nature and instinct;The third is the natural law of"human nature sublimation",that is,the natural law view of the new natural law school.For example,Maritain talks about natural law from the perspective of"personality",Fuller studies natural law from the perspective of"moral obligation",which is fundamentally different from the classical natural law school,that is,the ontology of law is no longer studied from the perspective of"natural person",but from the perspective of"moral person".Through such concept combing and historical analysis,we can identify what natural law refers to in different times,and not lose the theoretical definition because of the common name of"natural law".

Finally,because the research focusing on the history of ideas can quickly accumulate expertise in a certain area.For example,if we focus on the study of the history of ideas of"unjust enrichment",we can carry out a historical,comprehensive and comparative study of the origin of the unjust enrichment system,the scientific interpretations of it by jurists in previous dynasties,and the current specific provisions in national laws.This will undoubtedly outline the overall context of the meaning,theory,and system of unjust enrichment for readers,and also help researchers accumulate knowledge.Constitutionalism and Decentralization by William Wile,an English scholar,is a research work on the history of ideas that the author is extremely fond of.As shown in the title,the theme of the book is to study the theory of decentralization in Western political and legal thought.The author believes that"the exercise of power is the key to realizing the social value of Western institutional theorists;their concern is to ensure that the exercise of government power is controlled,so that the exercise of government power does not destroy the value that government power intentionally promotes,The'decentralization theory'is by no means a simple and unambiguous set of concepts.On the contrary,it represents a field of political thought in which there has been an unusual confusion in terms of definition and terminology.For this reason,the author has worked hard to start with the ancient mixed government,and then analyzes the two paradigms of contemporary social decentralization theory-"balanced regime"and"separation of power"-the debate and its development context in the ideological history,and then studies the significance and function of decentralization theory for guiding the construction of the rule of law system in combination with the practice of decentralization and rule of law in Britain,the United States and France.The particularly important inspiration for the author is that decentralization is not only about class decentralization,but also about functional decentralization.A balanced system of government is where different classes share the power of the state based on their resources and status,but the separation of powers is when the system is determined and different organs enjoy different state powers.More specifically,"decentral ization"is a transition from"class decentralization"to"functional decentralization"in the context of historical development.The concept of"class division of power"emphasizes that different classes and social strata should have a certain proportion in the state power,in order to prevent a certain class(class)from monopolizing national power;"Functional decentralization"is an internal division of power based on a democratic system,which emphasizes that different institutions should assume different national functions. In the past,we regarded the theory of"division of power"as a raging beast that must be eliminated,which precisely confused the two different concepts of"class division of power"and"functional division of power".Fortunately,in contemporary China,there is already a clear understanding in theory that within the institutional framework of state functions,power should be divided into different roles,and power must be divided into different roles. Establish a reasonable mechanism for scientific division of power and scientific operation based on China's national conditions. Among domestic scholars,Professor Fang Xinjun's analysis of the concept of"rights"is also a good model for analyzing the history of legal history of ideas.Rights are the core category in law,but there are divergent opinions in the academic community on where the concept of"rights"originated.For example,"developed private rights"was once regarded as the most dazzling halo of Roman law,representing the most essential difference between it and ancient oriental law(that is,as the characteristic scholars of ancient Chinese law defined it as"obligation based").However,Pound pointed out that"in Roman law,there is no clear classification or concept of rights".In Pound's view,the Latin word"jus",which is now translated as"one right",has four different meanings in Roman law,namely authority,power,freedom,and status,which is not what we call"right"today.Another scholar argued that in the West,"there was no right in ancient and medieval society...At that time,the terms used to judge moral issues were mainly(morally)correct or wrong,which were in line with or required by natural law,and which should or should be done,rather than using terms such as whether a person had rights or what rights he had.".Of course,the above statements are only"assertions"rather than"arguments",and Professor Fang Xinjun has conducted a detailed longitudinal analysis on this topic,titled"The History of the Concept of Rights".The author believes that the concept of rights is a product of the development of human society to a specific historical stage,and its emergence is closely related to the rise of individualistic concepts.The key reason why there was no general concept of rights in ancient Greek and Roman societies is that they were a holistic society.The individualistic concepts contained in Stoic philosophy and Christian theory are not yet sufficient to lead to the emergence of the concept of rights,as the aforementioned individualism is a form of born individualism.The 12th century saw the emergence of the concept of power,while this century also saw the emergence of secular

individualism.The debate over the issue of"apostolic poverty"that emerged in the Christian world in the 14th century was the trigger for the formal emergence of the concept of rights.In this century,a dual understanding of the subjective and objective meaning of the Latin word ius emerged.Four centuries later,Kant's philosophical theory provided a perfect explanation for the above understanding. When secular individualism and its twin brother libertarianism become the theoretical basis of the concept of rights,that is when the concept of modern rights is born.The significance of tracing back to the source in this analysis for legal research is self-evident. It must be noted that although the above research on the history of legal system,the history of legal thought and the history of legal history of ideas can also belong to the study of legal history in a broad sense,it is different from the research task of legal history.The historical analysis method focuses on combing and theoretically proving the context of systems,ideas and concepts,and is based on the link between historical traditions and modern society,with the intention to trace the origin of such a historical analysis,Revealing why contemporary law is and in which direction it will develop is different from the focus of legal history on description and induction.

## 4 Conclusion

We have outlined the application of historical analysis methods in legal research from the perspectives of the connotation and significance of historical analysis methods,as well as the specific paths and applications of historical analysis methods. Overall,history is the past,with both experience and lessons learned,and these past histories are extremely important historical materials and backgrounds for legal research.Whether it is the legal system,legal ideology,or legal concepts,they do not come from nowhere,but gradually develop through the accumulation of history. Therefore,in order to conduct legal research,it is necessary to focus on historical analysis methods,enhance the scientific nature of legal research,and enhance the depth and thickness of legal theory.To this end,it is necessary to have a complete and accurate grasp of relevant historical materials,and adopt"credible history"as the basis for argument in a neutral manner;Seeking the best perspective to think about historical issues,clearly demonstrating the evolution of systems,ideas,and concepts;Develop credible,scientific and reasonable research conclusions to achieve the research goal of learning from the past and responding to reality.For different objects such as the history of legal system,the history of legal thought and the history of legal history of ideas,different historical analysis methods should be adopted for different objects,and the system should be thoroughly expounded to seek enlightenment for contemporary law;Accurately interpreting ideas to form more scientific legal theories;Sort out the concepts in detail and clarify their evolution and changes.It must be stated that the author is not a historical theorist,and the above interpretation is just a bit of my experience in the process of long-term research.Please forgive me for what makes me laugh!

notes:

① But in fact,the moral concepts of ancient Greece and Rome can also be classified as"community morality".

② There are three main manifestations of legal socialization:firstly,in terms of legal concepts,the shift from individual centered(rights based)to social centered.The law no longer fully focuses on individual rights and freedoms,and no longer sets the legal subject as a"completely rational person". Instead,it emphasizes social fairness and ensures social security and stability through the redistribution of benefits;Secondly,in terms of legal content,the public law strategy of implementing private law has been adopted.The content that originally belonged to the traditional field of private law has gradually added the mandatory factors of the state,and private law behaviors operating on the basis of autonomy of will are increasingly restricted by the law,becoming less absolute and autonomous;In order to strengthen the control and intervention of private law,a mixed legal field of public and private law has emerged,which to some extent reduces the scope of private law adjustment and expands the power field of public law;Third,in terms of legal system,in response to the construction of the welfare state,new legal systems such as social insurance,social security and social assistance have sprung up.

③ For legal ideas and legal theories,they are not used differently here,as they can be unified under the category of"legal scholarship".As defined in the Oxford Dictionary of Law in the term"legal scholarship""systematic research,ideas,and writings related to any department or branch of legal science."See David M.Walker,Oxford Dictionary of Law,translated by Li Shuangyuan et al.,Law Press,2003 edition,p.683.

④ Maine clearly pointed out that this belief of"living according to nature"promoted the progress of Roman law:the concept of simplicity and generalization was often associated with the concept of"nature";Therefore,simple symmetry and ease of understanding are considered as the characteristics of a good legal system.In the past,complex language,red tape,and unnecessary difficulties were completely eliminated.The existence of Roman law depends on Justinian's strong will and unusual opportunities,but the basic pattern of the system was planned long before the emperor's reform.See[English]Mein:"Ancient Law",translated by Shen Jingyi,Commercial Press 1959 edition,page 33.

⑤ [UK]Robert Shackleton:Commentary on Montesquieu,translated by Shen Yongxing,Xu Minglong and Liu Mingchen,People's Publishing House,2018 edition,pages 250~251. Of course,this is only the content of"Table 1"."Table 2",as the author puts it,is a"trivial discipline"and"in terms of importance,it is far inferior to Table 1",so we have not included it either.

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