



A Review of the History of Chinese Administrative Law Thought

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Abstract

Over the past 40 years, jurists have been focusing on the research and development of administrative procedures and the legal rights and interests of the people, and have always adhered to the lofty position of maintaining the legal rights and interests of the people in the process of administrative reform and opening-up, and have been committed to solving the problems of the rule of law. The ideological history of Chinese administrative law shows four theoretical characteristics, namely, people-oriented, innovative, fair and practical.

Keywords

History of administrative law thought; Affinity to the people; Innovativeness; Impartiality; Practicalness

1. Introduction

The development of the history of administrative law thought in China is reflected in the research work of administrative law scholars. In many fields such as basic theories of administrative law, administrative litigation, administrative reconsideration, and administrative procedures, administrative law scholars have been committed to solving practical problems in China, daring to take responsibility and innovate, and have created a relatively complete and coordinated administrative law theory system, thereby continuously promoting the construction of administrative rule of law in China and providing a steady stream of intellectual support and theoretical guidance for the development of administrative law theory and practice in China. Administrative law scholars teach in law schools, undertake the task of training Chinese administrative law postgraduates, and train a group of young administrative law teachers and practitioners. The teaching experience of administrative law scholars enables them to be closely connected with the people in terms of thoughts and feelings, and can deeply feel the real needs of the people in social life, and establish a basic position and guiding ideology for in-depth theoretical research on administrative law - safeguarding the legitimate rights and interests of citizens. On the one hand, administrative law scholars have written books and conducted research on important topics such as administrative behavior law, administrative procedure law, administrative organization law, administrative litigation law, and administrative reconsideration law; on the other hand, they have participated extensively in legislative work, organizing or participating in the research, drafting, and consulting and argumentation of laws such as the State Compensation Law, the Administrative Penalty Law, the Legislative Law, the Administrative Licensing Law, and the Administrative Enforcement Law. Administrative law scholars have worked hard to promote the construction of a government under the rule of law, and have made outstanding contributions in promoting the concept of administrative rule of law, building a theoretical system of administrative rule of law, improving the administrative legal system, deepening the reform of the administrative litigation system, building an administrative law discipline system, a curriculum system, and a discourse system, cultivating administrative rule of law talents, and conducting foreign administrative law exchanges.

2. Review of the History of Administrative Law Thought

Through detailed analysis and systematic research on the history of administrative law thought in China, we have discovered the theoretical characteristics contained therein, including the people-oriented nature of the “service administration” concept, the innovative development of administrative law in the transition period, the fairness of procedural justice thinking, and the practicality of substantially resolving administrative disputes.

2.1 The concept of “service administration”—people-oriented

The concept of “service administration” closely fits the ruling ideology and administrative concept of “serving the people” under the leadership of the Communist Party of China, that is, it is people-oriented. Since China officially joined the WTO in 2001, the Chinese government has also faced two major challenges in the market economy system. One is the disorder of free competition caused by insufficient government supervision, and the other is the shrinkage of the market economy caused by excessive government intervention in market behavior. In short, the world risks in the 21st century are everywhere. In his book *Risk Society: A New Path to Modernity*, German thinker Ulrich Beck pointed out that “risk is no longer confined to a specific region or group, but is showing a global trend.” “The distribution pattern of risk is included in globalization, and the process of risk diffusion has shown a boomerang effect with social significance: even the rich and powerful cannot escape the harm of risk.” (Ulrich, 2018). As President Xi Jinping said at the 2018 BRICS Business Forum, “The world today is facing a major change that has not been seen in a century. For the vast majority of emerging market countries and developing countries, this world is full of opportunities as well as challenges.” (Xi, 2018). With the global outbreak of the COVID-19 pandemic in 2020, the major changes are accelerating. At present, the epidemic prevention and control effects outside the region are not ideal. As a member of the community with a shared future for mankind, China’s political and economic development will inevitably be affected. Therefore, under the perspective of market economy and normalized epidemic prevention and control, one of the core meanings of “service administration” is to provide sufficient and appropriate administrative power for the development of China’s market economy and the improvement of the business environment.

In order to achieve the above goals, the Party and the government have provided strong impetus from the formulation of laws and regulations and the introduction of national policies. For example, the Regulations on Optimizing the Business Environment, which came into effect on January 1, 2020, focused on the prominent shortcomings of China’s business environment and the pain points, difficulties and bottlenecks that market entities strongly reflected, and made corresponding provisions from the perspective of improving the system and mechanism, namely, clarifying the principles and directions for optimizing the business environment, strengthening the protection of market entities, optimizing the market environment, improving the capacity and level of government services, standardizing and innovating supervision and law enforcement, and strengthening legal protection. In July 2020, the General Office of the State Council promulgated the Implementation Opinions of the General Office of the State Council on Further Optimizing the Business Environment and Better Serving Market Entities (Guobanfa [2020] No. 24), pointing out that it is necessary to strengthen services for market entities and accelerate the creation of a market-oriented, law-based and internationalized business environment.

The concept of “service administration” has completely surpassed the high-power administrative model of “intervention administration” that adheres to the supremacy of administrative power, and focuses on the effectiveness assessment of the exercise of administrative power. How to get rid of the inertial influence of management thinking under the high-power administrative model and rise to the institutional level to promote the transformation of the entire government’s administrative concept is self-evident at a time when China’s economy has shifted from a high-speed growth stage to a high-quality development stage. The “service-oriented government” advocated by the “service administration” concept requires leading cadres to adhere to the principle of rights in dealing with the relationship between rights and power, carry out public administrative services in accordance with laws and regulations, and solve various problems related to the legitimate rights and interests of the people in a problem-oriented manner.

2.2 The development of administrative law in the transition period: innovation

My country’s administrative legal system has developed along with the development of the market economy, which is in an important period of transformation. In order to ensure and improve the government’s governance effectiveness in the fields of market supervision, social governance, and service provision, administrative law must provide applicable innovative thinking and paths to solve the problems reflected in governance practice.

First, take the administrative litigation system as an example. my country's administrative litigation trial system adopts the model of establishing administrative trial courts in ordinary courts, which not only ensures the uniformity of judicial adjudication of administrative cases, but also helps to highlight the particularity of administrative trials. Administrative public interest litigation is a special type of administrative litigation. Administrative law scholars actively explore the research work of administrative public interest litigation system in the fields of cultural relics and cultural heritage protection, hero and martyr protection, military rights protection, national defense facilities and military land protection, military security, etc. in addition to the fields of ecological environment and resource protection, food and drug safety, state-owned property protection, and state-owned land use rights transfer by procuratorial organs. Through the formulation of policies and the release of typical cases, the administrative public interest litigation system is promoted to be optimized, national interests and social public interests are more effectively safeguarded, and the efficient operation of administrative procuratorial work is realized.

Second, take the administrative penalty system as an example. Since the publication of the draft revision of the Administrative Penalty Law in 2020, the second revision process has begun. The academic community and practical departments have actively contributed suggestions and carried out field research activities, and put forward targeted revision opinions based on the weak links in administrative penalty practice. After three deliberations by the Standing Committee of the National People's Congress, the draft revision of the Administrative Penalty Law was passed, providing a legal basis for responding to the rule of law needs of administrative organs to exercise administrative penalty power in accordance with the law in the new era. During the revision process, the state has launched and deployed a pilot project for the reform of the comprehensive administrative law enforcement system, that is, to promote the establishment of a comprehensive administrative law enforcement system in the fields of urban management, market supervision, ecological environment, cultural market, transportation, emergency management, agriculture, etc. in the pilot areas, relatively concentrate administrative penalty power, integrate the law enforcement functions of the above departments, and establish a comprehensive administrative law enforcement bureau. Taking Zhejiang Province as an example, in 2020, the Zhejiang Provincial Committee of the Communist Party of China issued the "Plan for the Construction of a Rule of Law Zhejiang (2021-2025)", pointing out that building a rule of law Zhejiang is the specific practice and pioneering exploration of building a socialist rule of law country in Zhejiang. We must bravely take the lead in learning and practicing Xi Jinping's rule of law thinking and unswervingly follow the path of socialist rule of law with Chinese characteristics. As Professor Zhang Wenxian pointed out, "The creation of Xi Jinping's thoughts on the rule of law has distinct practical logic, scientific theoretical logic and profound historical logic. Careful study, scientific grasp and profound understanding of these three logics and their internal connections will surely deepen the understanding and grasp of the era background, basic spirit, core essence and practical requirements of Xi Jinping's thoughts on the rule of law, and will surely enhance the political, theoretical and emotional identification with Xi Jinping's thoughts on the rule of law, and will surely strengthen the conviction, ideological determination and driving force for progress in the new era of comprehensively governing the country according to law, building a rule of law China and promoting the modernization of national governance." (Zhang, 2021). To create a model city for the construction of the rule of law and to promote the goal of modernizing urban governance at a higher level, we will use digital reform as a guide to build an administrative law enforcement system with clear responsibilities, a streamlined team, efficient coordination, a sound mechanism, standardized behavior and effective supervision.

Precisely because China is in an important period of strategic opportunity today, faced with multiple risks and challenges at home and abroad, the long-term development of Chinese administrative law also faces major problems, such as urban management, investment promotion, housing price control, Internet platform supervision, and protection of the rights and interests of employees in new business formats. Administrative law scholars must use innovative thinking to solve practical problems and submit an answer that satisfies the people.

2.3 Procedural Justice Thinking—Fairness

Chinese administrative law scholars proposed the academic view of formulating administrative procedure law in the 1990s. They have been deeply engaged in the research field of administrative procedure legislation for decades, and their academic research results are all shining with the thinking of procedural justice.

Looking back at the history of administrative procedure legislation in China since the reform and opening up in 1978, we can find that China's administrative procedure legislation has a distinct path feature: we have taken a path from regulating various types of administrative actions separately to formulating a unified administrative procedure code to regulate all administrative actions. Professor Ying Songnian believes that administrative procedure law is a

law that regulates administrative procedures (Ying, 2008). Administrative procedures that meet objective requirements must be standardized and fixed by law, that is, to unify scientificity and legality so that administrative actions are fair and effective. This is the basis for the emergence of administrative procedure law. Just as the promulgation of the “Hunan Province Administrative Procedure Regulations” in 2008 (Ying, 2008) indicated that China is exploring a path for administrative procedure legislation from local legislation to central legislation. Since 2011, Shantou City, Guangdong Province, Liaoning Province, Shandong Province, Xi’an City, Shaanxi Province, Haikou City, Hainan Province, Jiangsu Province, Ningxia Hui Autonomous Region, Lanzhou City, Gansu Province and Zhejiang Province have successively formulated local government regulations related to administrative procedures. Taking Zhejiang Province as an example, in 2016, the Zhejiang Provincial Government reviewed and approved the “Zhejiang Provincial Administrative Procedure Measures”, which mainly stipulates the procedures for the formulation of government regulations and administrative normative documents, the procedures for major administrative decision-making, the procedures for general administrative law enforcement, and the procedures for special administrative law enforcement. On the one hand, it regulates, guarantees and supervises the administrative organs to exercise administrative powers in accordance with the law and protects the legitimate rights and interests of citizens, legal persons and other organizations; on the other hand, it improves administrative efficiency and promotes the construction of a law-based government. In his representative paper “The Significance of Legal Procedures - Another Reflection on China’s Legal System Construction”, Professor Ji Weidong expounded the basic characteristics of modern legal procedures from four aspects: the restriction of intention, the guarantee of rational choice, the effect of “self-entrapment” and reflective integration, and proposed that “fair procedures are one of the basic levers for promoting modern social changes. In the process of social evolution, complex value issues can be resolved with the help of procedures, and substantive norms can also be formed through fair procedures.” The significance of procedural justice lies in ensuring the high-quality realization of public participation in social governance, law drafting, policy formulation and other fields, rather than regarding procedural justice as merely an appendage of substantive justice. It should have an independent status (Ji, 1993).

At the beginning of the 2020s, the COVID-19 pandemic has divided world history into the “pre-pandemic era” and the “post-pandemic era”, and has profoundly affected the development of international politics, economy, law, medicine, science and technology, humanities, history and other fields. Procedural justice can be reflected in governance practice as unblocking and regulating the channels for expressing public demands, coordinating interests, and protecting rights and interests, and improving the mechanism for adopting opinions and suggestions. For example, today’s legislative practice has basically abandoned the operation of “closed-door legislation” and paid more attention to listening to and adopting legislative opinions and suggestions from departments and industries that are closely related to legislative texts, so as to truly achieve a two-way rush between the legislature and the public, which not only ensures the high quality and comprehensiveness of legislative texts, but also avoids the “Waterloo” of legislative texts in terms of effectiveness after they are announced and implemented. For example, in October 2021, the People’s Procuratorate of a district in Hangzhou held a case hearing and invited provincial people’s congress representatives, university professors, lawyers, vice chairmen of the Disabled Persons’ Federation and community workers to participate in the hearing as hearing officers. Under the chairmanship of the chief procurator, the four-year-long administrative dispute over work-related injuries involving Lou Moumou was finally resolved smoothly.

The discussion on the issue of “procedural justice” is deeply rooted in the actual situation of China’s rule of law construction. With the gradual awakening of citizens’ awareness of rights, academic research on procedural justice has flourished, and as a legal principle, it has been increasingly valued by legislators and law enforcers. When legal rules are insufficient to resolve legal disputes, judicial organs have also begun to use the principle of procedural justice to fill legal loopholes, reason for judgments, and achieve reconstruction and re-creation of judgment rules.

2.4 Substantial resolution of administrative disputes—practicality

The view of making administrative reconsideration the main channel for substantially resolving administrative disputes highlights the importance of resolving cases and ending conflicts at the stage of administrative reconsideration, giving full play to the professional and administrative advantages of administrative reconsideration. Therefore, from a practical perspective, the historical mission of administrative reconsideration to substantially resolve administrative disputes can be accomplished from the following aspects.

Given that administrative reconsideration work is highly professional, in order to ensure the legality and rationality of administrative reconsideration decisions, we should take government think tanks as reference objects, establish an

expert database for administrative reconsideration cases with the participation of experts and scholars, and provide advisory opinions for major, difficult and complex administrative disputes. Administrative reconsideration agencies can increase the construction of information platforms, and vigorously promote online reconsideration models without reducing the rights of administrative reconsideration applicants, respondents and third parties to reconsideration. Administrative reconsideration, as an administrative dispute resolution mechanism, is imperative to strengthen information construction, establish regional or national administrative reconsideration work platforms, and provide convenience for administrative counterparts to participate in administrative reconsideration activities. On the one hand, we can explore the establishment of an administrative reconsideration officer system, issue the Administrative Reconsideration Officer Law, and strengthen the construction of a guarantee mechanism for administrative reconsideration staff to perform their duties in accordance with the law; on the other hand, we must improve the degree of specialization and professionalism, hone case handling capabilities through administrative reconsideration skills competitions, select case handling role models, and enhance the sense of achievement in work.

Practicality is different from pragmatism. It focuses more on improving and optimizing the overall functions of the legal system by solving specific problems. Both legislative theory and interpretive theory should face the challenges posed by the practice of the rule of law. It takes the combination of theory and practice as its basic standpoint and promotes the effective “two-way progress” of legal theory and the practice of the rule of law.

As Professor Su Li once said, “China’s path to the rule of law must focus on utilizing China’s local resources.” Analyzing the history of Chinese administrative law thought is also a summary and reflection on the development of Chinese administrative law over the past 40 years (Su, 1996). This can help us explore the local resources of China’s administrative rule of law, in order to open up a new starting point and continue to develop the cause of administrative rule of law with Chinese characteristics on the path of socialist rule of law with Chinese characteristics.

3. Conclusion

The theoretical characteristics of the history of Chinese administrative law thought, such as people-oriented, innovative, fair, and practical, have always exuded a unique academic charm in the development of administrative law over the past 40 years. Administrative law scholars have long adhered to the people’s standpoint and are full of patriotism; they have kept pace with the times and are innovative; they have adhered to procedural rule of law and demonstrated fair thinking; they have adhered to seeking truth from facts and embodied a practical style. Therefore, when conducting academic research, scholars must connect the international and domestic aspects, have a broad international perspective, and have an academic awareness based on China’s actual problems, adhere to problem orientation, and contribute to the creation of academic discourse with Chinese characteristics.

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