

A Jurisprudential Study from Modern Civil Law to Modern Civil Law

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Abstract: *At the present stage, social development is accelerating, the level of market economy is constantly improving, and civil law is an effective means to maintain market order. It is also changing gradually in market changes and people's transactions, showing a development trend from modern civil law to modern civil law. This paper studies the jurisprudence of civil law, analyzes the jurisprudence of civil law, and explores the status of modern civil law and modern civil law, so as to better understand civil law.*

Keywords: *Neoteric Civil Law, Modern Civil Law, Legal Principle*

1. Introduction

Jurisprudential civil law plays an important role in civil and commercial activities between equal subjects, which is of great significance to the development of national economy and the people's livelihood order. Whether it is neoteric civil law or modern civil law, its role in regulating social economy and national development is significant. Jurisprudence is fundamental in civil law. Studying the jurisprudence of civil law can better understand neoteric civil law and modern civil law.[1]

2. Overview of legal principles of civil law

Jurisprudence is very important in the civil law system. From the perspective of the relationship between civil law jurisprudence and empirical law, jurisprudence generally has three existing states:

First, legal civilization. Second, the legal basis. Third, above the law.

In terms of its detailed content, the civil law contains the basic principle of equality before the law, legislative intent and reasoning. In the early Roman times, the jurisprudence of civil law was the origin of civil law. In modern times, it is still an important source of civil law in most countries of the international community. For example, in the Swiss civil code, it is pointed out that a judge can directly take the law as the reference basis for judgment in the case of loopholes in the law. In China's modern times and the modern development period, the jurisprudence in the civil law is also in the development trend of continuous improvement, which provides many guarantees for people's behavior.

3. Study on the jurisprudence of neoteric civil law

3.1. Overview of neoteric civil law

Neoteric civil law originated in Europe in the 17th century. At that time, European countries codified civil codes and established the principles, concepts and systems of civil law. The analysis of modern civil law can be carried out from the following points:

First, it embodies the spirit of contract and the principle of equality. People are equal and free.

Second, equality of personality. In modern civil law, all civil status is equal, and the division of rank is appropriately weakened.

Third, the principle of absolute protection. Citizens' ownership is inviolable and protected by law.

Fourth, the responsibility should be borne by oneself. Neoteric civil law emphasizes freedom, equality and independence, which are also the legal principles of neoteric civil law. Based on this, people can create wealth. In the process of creating wealth, if independent natural persons cause damage to other

people, they need to bear the corresponding consequences and responsibilities.

Neoteric civil law has restricted and regulated the economic behavior of merchants to ensure the stability of market order.

3.2. Deficiency of modern civil law

The neoteric civil law was originally designed to serve the development of capitalism, and its legal principle is also consistent with the development of capitalism.[2] In the monopoly period, the neoteric civil law also reflected its shortcomings. The specific problems are as follows:

First, formalism. In the neoteric civil law, the judge's judgment is mainly based on the contract agreement, and does not have the discretion. For example, he does not care about the situation and fault of the contract subject, which makes the civil law prominent as a tool and can not effectively meet people's demands. The civil law is just like the discretion tool of the cold storage, lacking in humanized temperature.

Second, the abstraction of personality equality. Personality equality is to protect the interests of all citizens from the perspective of equality and weaken the hierarchy. However, in the concrete implementation, the equality of civil law is also a formality, the vulnerable groups in society are still discriminated against, and the equality of personality has become empty talk.

Third, the protection of negative freedom. Neoteric civil law separated the life of citizens and national politics, allowing citizens to enjoy excessive freedom. However, for the vulnerable groups, these brought more negative effects, making the bourgeoisie squeeze the vulnerable groups and intensifying social contradictions.

4. Study on the jurisprudence of modern civil law

4.1. Overview of modern civil law

The modern civil law began to appear after the 20th century. It is based on the neoteric civil law and comprehensively considers the reality of social development. It adjusts and modifies the civil law. Specifically, the liberalization of the market environment generated under the modern civil law was serious, which led to the intensification of social contradictions and a relatively large negative impact. Therefore, in the adjustment of modern civil law, government intervention has been added to avoid being completely dominated by the market. The government has played a leading role, built a corresponding poverty alleviation system, and provided certain social assistance to the poor groups, in order to guaranteed the basic right of survival of all citizens in Party building. Secondly, the modern civil law has further refined the principle of contract, so that the judge's judgment basis is more clear and specific, and the phenomenon of "one size fits all" judgment based on the jurisprudence of modern civil law is avoided. In this way, when judging, the judge needs to analyze the specific problems and deal with the incidents that cause danger and injury differently. In addition, modern civil law has truly realized the equality of personality in the law. In modern civil law, equality has become a mere formality. This situation has been improved in modern civil law and equality has become a reality. Modern civil law has truly realized the equality of all before the law by thoroughly breaking the phenomenon of hierarchical differentiation.[3]

4.2. The deficiency of modern civil law

In fact, modern civil law is an upgraded version of modern civil law, which has improved many problems in modern civil law and effectively guaranteed the fundamental interests of the broad masses of people. However, in actual operation, there are also some prominent problems, the main problems are as follows:

First, add moral principles. In modern civil law, justice is the basic content of the principle of morality. However, modern society presents the characteristics of multiple values. Especially in the western world, the science, rationality and morality of modern society have impacted on traditional religion and ethics to a certain extent. Under this background, it is difficult to unify the connotation of morality.

Second, the purpose of substantive justice. If there is no effective restriction mechanism, we can not ensure fairness and justice by simply taking substantive justice as the behavior guide.

Third, break the situation of private law autonomy. In the modern civil law, ethics, public policy and

other contents are introduced into the legal theory, the public-private boundary is broken, and the uncertainty of the law is increased, which has a certain role in promoting the handling of the issue of private law autonomy. Therefore, we need to formulate more supporting systems for modern civil law, improve the legal system itself, and give full play to the legitimate role of the legal theory of civil law. Only in this way can we better protect the legitimate rights and interests of all citizens, avoid the intensification of social conflicts, and give full play to the binding and normative role of the law.

4.3. Problems faced by modern civil law

To sum up, the modern civil law has to a large extent effectively made up for and improved the shortcomings of the neoteric civil law, making it more suitable for the needs of the development of the capitalist economy. However, there are also some problems in the modern civil law that need to be improved:

First, in order to avoid inequality in practice, modern civil law introduces moral principles from outside the civil law, which actually refers to justice. Modern society itself is a society with diversified values. Especially in western countries, whether some values are reasonable or not is not necessarily defined. Under the guidance of interests, instrumental rationality has an important impact on the rationality of values. Modern society is based on scientific rationality and contains the pluralistic characteristics of interests. These completely overthrow the religious belief and moral ethics that had the ultimate value in the past. In this way, no moral principle can become the ultimate value with absolute superiority.

Second, modern civil law takes substantive justice as the purpose value. Based on such value guidance, formalism can be broken through. However, it is not enough to only guide the purpose value. It lacks perfect democratic participation and decision-making mechanism. Opportunists will take advantage of the opportunity to act arbitrarily in the name of substantive justice. The civil law is originally a judgment rule of the market economy. Its position is neutral and the rules are also general. However, it is mixed with too much purpose value. If there is no perfect restriction mechanism to control, it will lead to more political purposes and conflict among interest groups.[4]

Third, modern civil law breaks through the situation of private law autonomy to a certain extent, introduces public policy and social ethics, breaks the boundary between private law and public law, and also breaks the boundary between law, public policy and social ethics, which will ultimately affect the certainty of law. Based on this, people began to introduce public opinion and public emotion into the law. At the same time, a large number of welfare legislation and related policies and safeguards have also begun to be applied. However, the reality is that excessive intervention in private law autonomy provides effective conditions for equality in private law autonomy.[5]

5. The extension of the modern content of the jurisprudence

5.1. Expand from fairness to efficiency and harmony

In the traditional sense, justice is regarded as the basic value orientation of laws and regulations. In the process of continuous economic and social development, the jurisprudence in the sense of justice focuses on the value realization of the fair level of legal norms, so as to help the development of economics, especially after realizing the importance of economic efficiency.[5] Practice has proved that the lack of efficient gray scale makes it difficult to make expectations at all levels to meet expectations. Therefore, in order to introduce economic efficiency factors in the normative field, it is necessary to carry out economic analysis in the process of relevant legal system planning and implementation, so that when there is a conflict of fairness and efficiency, its choice can be determined on the whole. For example, the efficiency and justice of resource allocation, consumer protection and environmental protection and efficiency, and the regulation and efficiency of market structure (exclusive or dominant enterprises) or their market behavior.

Secondly, after the establishment of the market economy and private property system, it has experienced a period of operation, followed by the concentration of property and economic forces. Therefore, the first thing is the relationship between people, such as labor disputes, conflicts between large and small enterprises, conflicts of interest between major and minority shareholders, conflicts of interest between enterprises and consumers, and secondly, the relationship between people and the environment, which easily leads to the conflict between economic and social development and

environmental protection.[6] The reduced efficiency of resource use leads to the uneven distribution of property, and the social vulnerable groups are easy to be threatened. So, in the laws and regulations and the efficiency of market economy, pay more attention to the national harmony and stability and sustainable social development, the survival of human dignity and development possibilities and socialist value factors, to promote the distribution fair, reduce differential treatment problem, care for vulnerable groups, have a positive role, through effective adjustment and regulation, correct the financial distribution of market economy environment, to ensure the harmonious and stable development of the market.[7]

5.2. Focus on harmony and legal fairness, economic and efficiency correspondence

Mainland the civil law contains the legal factors of the civil law is not legal as its origin, but the basic thought in the basic law of article 1 of the legislative purpose: " in order to protect the legitimate rights and interests of civil subject, adjust the civil relations, maintain social and economic order, adapt to the development of socialism with Chinese characteristics, carry forward the socialist core values, according to the constitution, formulate this law." Among them, protecting the legitimate rights and interests of civil subjects and maintaining social and economic order can be classified as " law ", fairness", "efficiency and" value "of the market economy, adapt to the development requirements of socialism with Chinese characteristics, and promote the" socialist core values "can be classified as" social values ". [8]Because when its appropriate implementation, will present the result of "harmony", so might as well to "harmony" summarizes the ultimate value of socialism, briefly "social harmony" and law "fair", economic "efficiency" corresponding, enrich the value of modern legal content, as the goal, gradually embodied in practice for the current empirical value and content.

6. Conclusion

This paper studies the legal principles of neoteric civil law and modern civil law, and concludes that the civil law as a whole is developed and perfected, and the civil law is a concentrated reflection of the people's life. By the 20th century, neoteric civil law has been unable to meet the needs of the people's life. Therefore, the birth of modern civil law has made up for the modern civil law and protected fairness and justice, but it is also in the development stage, and there are still some problems to be solved. We need to do a good job in the optimization of modern civil law in combination with the reality of life.

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