

Methods on the Construction of Traffic Law Discipline

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Abstract

The research method is one of the key elements of discipline construction. Traffic Law can become an independent discipline system because of the determination of the method. The value analysis method which purport is fairness and justice, the specification analysis methods which's clue is rights and obligations, the social analysis methods and the comprehensive study are the basic four methods for building traffic Law.

Key words: Traffic law; Method determined; Discipline construction

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INTRODUCTION

Become an independent discipline system, in addition to the research object and content, the traffic law also needs their own research methods. "The discipline development is mainly the development of ideas and methods, and the key is the method". Therefore, to demonstrate and establish the method of traffic law in practice and to enrich and perfect the traffic law methodology system in the structure of theory is another way to complete the construction of traffic law.

For sociology, "whether to ensure his object of study, or in the process of demonstration, the concept made outside science or not made to meet the needs of science

must be absolutely forbidden. The method of the traffic law discipline should also be determined as such. Speaking from the macro view, law research methods develop from value determined, empirical analysis, sociology explores, and then respectively form three law schools, namely for naturalists, analysis school and social law school. Specifically, naturalists regard natural law as the basic criterion for judging the actual law; analysis of law emphasizes the science of the law itself; social law argues the coordination of law and society relationship.

And so on, it is difficult for the research methods of traffic laws to break free from the research methods of law based on the three aspects above mentioned. Basically, the methods of traffic law should be based on traffic career, traffic problems and the legal construction of traffic laws, linking theory with practice, guided by Marxist dialectical materialism and the methods in the basic law theory. According to the combination of theory and practice, analyze the appearance of traffic rules and traffic laws, exploring the reasons behind the appearance, putting forward methods and construct laws to prevent the appearance getting worse and so on. The followings are some specific research methods:

1. THE METHOD OF VALUE ANALYSIS THAT IT IS BASED ON FAIRNESS AND JUSTICE

From the angle of jurisprudence, value "is an inner and subjective concept, which suggested the standards of the moral, ethical, aesthetics and personal preference." The use of value is focusing on three levels as following: Firstly, what values can protect and add in the process of bringing into playing social function; secondly, the evaluation criterions of value are contained in the law; thirdly, the value factors of the law itself. The value analysis, quoting Weber as "depending on explanation, makes the possible spirit of object become the manifestation pattern of people's 'emotion'

, 'desire', or 'the concept of ought to'. Be similar to other branches of jurisprudence, the traffic laws, of which the value of existence is to hammer at the realization of equity, the insurance of security, the defense of free, the maintenance of good custom, and the improvement of the living environment, etc.. For example, the "hit white bump" have been argued hotly by society involves the relations between traffic order and personal safety. For another example, obviously, the speed of the roading and construction is inferior to the motor vehicle in possession. The motor vehicles stop disorderly everywhere on the sidewalk, even the fire engine access of community, and green grass is all motor vehicles, which caused the contradiction of the vehicle and pedestrian, the owner competing for the passage and the living environment. At the same time, the value issue of the traffic legislation and enforcement also needs to be solved urgently. Besides, in addition that traffic laws can protect and increase the value, we should pay attention to the value form of traffic itself. Differing with the terminal value, the formal value is mainly aimed at traffic law in a form which shall have the qualities which are worth affirming. Hereto, American jurist Fuller believed that the law should have eight principles of universality, openness, retroactivity, definition, consistency, stability and the sanctioned behavior consistent with the law and so on. It also is one of the values of traffic law should have. In brief, as for the new traffic law subject, the introduction of value analysis method can frame the footstone of subject construction, and eliminate the visible and invisible barriers spans in the way.

2. THE NORMATIVE ANALYSIS METHOD OF RIGHTS AND OBLIGATIONS

As the core concept of the law, rights and obligations run through every link of the logical contact of law phenomenon, every department of law and the whole process of law operation. "So to speak, the gist of law lies in distributing rights and obligations according to what principle and what way; the gist of the law relation lies in analyzing the condition of rights and obligations realization and existence included in social relationship which is adjusted by law." In sum, all the law questions lie in rights and obligations. In legislative stage, rights and obligations become the dominant factor of normal construction of the traffic law. In the stage of law enforcement and judicial, the subject divides rights and obligations according to the existing standard. In the stage of keeping law, out of defending ones' own rights, citizens perform unwilling obligations. So to speak, mastering the tool of rights and obligations means to have the scalper which can explore the interest dispute behind complicated social phenomenon.

Different from the value analysis method, the specification analysis method is an exploration that emphasizes particularly on legal principle itself, "lies in the contrast and comparison of the relationship between the legal norms and its possible efficacy and find that

why the law can restrict people's behavior and get further progress to solve the general mechanism problem of the law. As a new departmental law, Traffic Law may also have some common faults like other departmental laws during its initial stage, such as some leaks caused by the imprecisely clauses, contradictions and ambiguity between norms, cases that waiting for judgment without available laws to consult, and so on. However, it's difficult to discover and solve these problems only relying on value analysis method. Specification analysis method regards the law as an individual system and applies itself to maintain the logic coherence inside the law system, and then it can solve problems in the rule itself as well as the problems between rules.

Of course, taking specification analysis method doesn't mean ignoring the estimate between good and bad of the law, whose judging method is just different from the value analysis method. This method "estimates good and bad by technical factor of positive law rather than certain transcendental value setting". "Its estimate of good and bad is mainly by means of a strict logical system. The law principle that accord with this logical system is effective in practices, because it's effective, so that it is good; on the contrary, the law principle that doesn't accord with this logic system is not effective in practice, because it's not effective, so that it is bad. This method especially emphasizes on the logical consistency of law principle. At this point, specification analysis method conforms to the value analysis method, somehow.

3. THE SOCIAL ANALYSIS METHODS

Different from the value analysis and specification analysis, the social analysis methods concentrate on the actual problems, with priority to the actual problems in the dynamic process of law, which is the actual operating of investigation and detection, the actual force, effect, performance of law. From the perspective of Methodology, studying law with the social analysis method means applying the Sociological Methods such as functionalism, structuralism, quantitative analysis, statistical analysis, comparative analysis, system theory, conflict theory. The social analysis methods pay attention to the effect and performance of law, and emphasize on the social end which the law promotes. It also focuses on the actual operating of law instead of terms and cases in the value call and legal norms.

In terms of system theory, if we adopt the systematology method to study traffic law, we must combine the comparative traffic law. When we analyze a traffic phenomenon or traffic laws, we should consider horizontal-vertical and macro-micro levels, but not only take it as a fragmented phenomenon. Most of achievements in the current traffic law studies are the analysis which takes traffic law as it stands or the explanation to some specific situation under the circumstances of traffic laws. If we analyze some kind of phenomenon from the macro prospective, we then

need to find out the reasons from the beginning source, and to study it with a combination of internal structure and external reasons. We then may find that traffic laws can only be one of multiple choices to solve such cases of the phenomenon. Take school bus security as an example. “Gansu school bus event”, occurred last year, is the direct cause of the discussion of school bus security. Our country has issued “School Bus Security Regulations” from legal regulations as a response to a series of school bus events. However, what needs us to think or study is that depending on one rule only cannot stop tragedy happening, but needs the great cooperation of families, schools, government, and society. The mechanism, operating approach, and the measures which is made to prevent the mechanism from being used to another side, is just the results after the study of school bus security system in China.

Statistical analysis is an activity applying Statistical Method and analyzing objected-related knowledge to analyze both on quantified and natural dimension. This method illustrates the development of objects by systematical data to know the nature in the development of volume. Among the researches on the Traffic Law, the results are of more quantify and less quality and therefore it lacks persuasion. As is well-known, Traffic Accident has become the NO.1 harm in the world, and the death toll of traffic accidents in China cannot be ignored. All the traffic accidents are always causal connected. The traffic accidents slightly similar seemingly have the same or different reasons. Therefore, take statistics and analyze the periodical traffic accidents so that reasons of the current situation and measures to prevent its occurrence can be concluded. Take “drunk driving” for example. Law-executors analyze the customized problems, the reasons for “drunk driving” and means to prevent this from happening, from variable angles, such as occasion of drunk driving (investigating from road or accident), the driver being local or not, the type of the vehicle (large, small or farm-oriented), the nature of the vehicle (public, private or have license plate or not), the place of the unlawful acts, etc. Because Statistical analysis is based on occurred conceptual numbers, the grasp and apply of numbers must be from first-hand information, so that statistical results and improving measures are distortion less and pertinent. As a result, while using this method, “firstly seriously collect and sort out the numbers, distinguish true and false and rank the numbers, then compare and analyze and explain them, and finally draw the conclusion.”

In other words, from the sociological angle, present incidents in social life are not from the social current situation, but from former incidents and historical events. Sociological explanation links present with past. It is a good footnote to sociological method.

4. THE COMPREHENSIVE STUDY METHOD—INTERSECTING

When value-analysis, criterion-analysis and social analysis went to the end, the comprehensive study method of the

science of law emerges. Compare with other methods, it weights more on sociological, economical, psychological, historical and cultural factors and the effects of value-judging on law-making and performance. Quoting Edgar Bodenheimer as saying, “As our knowledge constantly improves, we must try to form a comprehensive law. This comprehensive law utilizing all the past contribution, even if we may eventually find all of our legal system of the picture is still incomplete.” Even though comprehensive law advances by heavy steps on the road to schools of law, and there’s no future, however, it is worth use for reference and applying. Comprehensive law lays emphasis on comprehensive study of multi-disciplinary, thus it is to the benefit of unveiling the nature of things and explaining its phenomenon. Hereon, from the angles of history and culture, we analyze the effects of comprehensive study method on traffic-law constructions.

“Knowing past knowing future, knowing lose knowing existence.” History is the record of the past, the reflection of the present and the forecast of the future. During the process of the existence, development and disappearance of things, history-investigated method makes for knowing the problems of the object of study appeared in the development process, taking the experience and lessons, and thereby provides correct analysis and guidance for practical problems.” Historical studies are mainly longitudinal studies and cross-sectional studies. Longitudinal studies lie on ancient and modern, and cross-sectional studies lie on a dynasty, a nation, or inter-regions.” *Ancient Chinese land transportation* is a typical work on longitudinal studies. It shows the performance in different historical periods of Administrative Apparatus of China Traffic, Traffic laws and decrees, traffic tools, traffic corvee and the conditions of traffic laborers through ancient, Zhou, Qin, Han, Tang, Song, Yuan, Ming, Qing dynasties. Less comprehensive and specific than cross-sectional studies, longitudinal studies have particular emphasis. Quoting Lin Yiye as saying, “during Zhou, Qin, Han, Tang dynasties, there were many distributional conditions of highroads, which were backbones of roads of Central Plains in past dynasties. During Han and Tang dynasties, recorded mainly the effects of posts and military blockhouses. In Southern and Northern dynasties when the Northern barbarian tribes intrude China and the Five Dynasties, there was a number of posts and strongholds, but was less recorded. During Song and Yuan dynasties, there were more post laws, and in Yuan and Qing dynasties, national conflict became acute, therefore, it mainly recorded riots and revolts. In Qing dynasty, it recorded transportation revolution.” Cross-sectional studies emphasize on contrasts between domestic regions and cross-countries comparative studies, in order to explain unbalancedness of district development and learned the experience and practice from advanced areas. For China, which is at the primary stage of law construction, comparing crosswise with other countries

on trafficking legal construction, it can know short slab and shortage and promotes the measures perfect in this field. When compared with crosswise, the contents should be cotemporary and in the same stage, and it should be against immobilization which takes a certain pattern as measuring scale plate, neither stands still and refuse to make progress, nor underestimates its own capabilities. Generally speaking, longitudinal studies make clear history revolution and purport, and supply point cut for future innovation, what is called, "adhering to past practices can make innovations"; cross-sectional studies make clear the position and current situation of traffic industry at present, provide reference for improvement, what is called, "comparison makes clear disparity."

Another is the cultural analysis approach. "Culture is a physical or mental habit which includes a set of tools and a set of customs." In term of the original, "culture is basically a 'instrumental display', it's born to directly or indirectly meet people's needs and the way it uses as much over all the direct adaption to the environment." So, according to people's different needs, culture consists of three parts: physical culture, spiritual culture and system culture. Comparing with this, traffic culture also can be grouped by physical traffic culture, spiritual traffic culture and traffic system culture. Since the primitive society when human used the body to carry heavy stuff, people haven't stopped the construction on physical traffic culture. The construction on Chi Dao of Qin dynasty, the Chao-zhou Bridge of Sui dynasty, the Lugou Bridge of Jin dynasty, the posts in the period of Tang and Song dynasties and so on all demonstrate the great achievements of ancient people on the construction of physical traffic culture, along with which the traffic system culture came naturally. *The Rites of Zhou-ZhouGuan Neologism* has set the duties of the job called "Xiaguan Si Ma", which it is mainly in charge of military, public security and defense. In traffic, it's responsible for maintaining of the smoothness of posts and military decrees. One of the responsibilities of the later imperial censor (the great minister of public works) is to manage the bridges. Obviously, the studies on spiritual traffic culture are not so much as that the physical and system culture. After all, the spirit is the reflection of the material. In the ancient times when traffic wasn't very developed, there are no objects that can be considered in the spiritual traffic culture due to single travel mode and path choice of humanity. The coming of the motor age has sparked the transportation revolution, as what mentioned above, the traffic security issues have been brought into the schedule. Traffic spiritual culture has gradually stepped in people's research field.

So to speak, traffic problems are increasingly becoming one of the urgent problems of city manager's desk. The phenomenon of traffic jams, increased accidents, environmental degradation, parking difficulties has become a common failing of our cities, especially large and medium-sized cities. Observed

from a cultural point of view, the solution should be present in the material, institutional and spiritual culture. The transport material culture primarily develops from a technical point of view, such as urban infrastructure improvements including, newly increased roads or reorganization and expansion of urban roads; developing public transit, and setup of special transit lane; building subways or establishing urban sub-centers to relieve the jams. Institutional measures are quite abundant. For private cars and taxies, according to odd and even numbers to be on the road; establishing school bus safety regulations, etc.. At the present stage, although the technological means of relieving traffic problems are fairly advanced and traffic management systems are also abundant, traffic problems don't reduce as the above increase progressively, instead, they rise. In terms of the traffic culture, lame phenomenon still exists. "Traffic is not only a technical problem, but a human and cultural problem, thus, in addition to play the potential of existing traffic space as far as possible, and more important is how to grab from transportation planning, technical designing, management system and service mechanism and foster the public with good civilized travel habits, so that the city itself becomes more unimpeded and harmonious and highly-developed civil traffic system that human created will not distort and alienate the Contemporaries' vital movement and people will gain free and poetic existence in cities." Therefore, strengthen traffic culture study, improve traffic consciousness of the public and enrich human connotation of traffic implements. At this stage, the study of traffic culture just limits on the shallow theoretical generalization, such as the analysis on the essence, feature, concept of traffic culture; however, numerous and complicated traffic urgently need researching and projecting, which also highlights necessity and urgency of strengthening traffic culture.

In general, the construction of Traffic Law Discipline should not only lay particular emphasis on the help from the value analysis method of Abstract ethics equity, the normative analysis method of Conservation of rights and obligations and the social analysis method focusing on the relationship between the law and surrounding situations, but also the assistance of historical, cultural study method and other comprehensive study method.

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