

The Nature and Mission of Practical Jurisprudence--And the Function of Jurisprudence in the Social Transition

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Abstract

Jurisprudence, as the general theoretical foundation of jurisprudence, is the high condensation of all jurisprudence disciplines, and it is in a relatively high order position in the jurisprudence system. The role of jurisprudence, both in its own value and in the guidance of judicial practice, cannot be ignored. But in recent years, with the rise of sectoral law, the role of traditional jurisprudence in practice has been questioned. In law practice, people often think that the learning between sectoral law and sectoral law is the problem to be overcome, but they do not know that jurisprudence is actually the necessary theoretical support in judicial practice. In this paper, through an in-depth study of the practical function of jurisprudence, we draw attention to the practical function of jurisprudence in constructing social order and reflection and criticism, and then discuss the construction of the practical system of jurisprudence in China.

Keywords

Jurisprudence; Legal Practice; Jurisprudential Thinking.

1. Analysis of the Value of Jurisprudence for Public Use and the Current State of Development of Practice

1.1. Analysis of the Application Value of Jurisprudence

Jurisprudence is the study of law as a subject, mainly studying some general legal phenomena, jurisprudence is not only the study of certain departments or certain personnel, but also the in-depth study of the whole legal system, the study of the meaning, laws and values of law. Jurisprudence is not an independent one, but has a very close relationship with sectoral law. If there is no sectoral law, the existence of jurisprudence will become meaningless, so jurisprudence and sectoral law are interacting without one another. Research shows that jurisprudence can bring diverse ideas to the sector, and jurisprudence has to be dissected before it is applied. Rights are an important weapon for people in the law. In short, the law is a strong guarantee of people's rights, but many people do not have a deep understanding of their rights, and do not even realize the importance of protecting their rights. After jurisprudence dissects the sector, people will be able to have a deep understanding of the nature of power and the transformation of the form of existence and form, and will also be able to better protect the rights of citizens, by criminal law and civil law, etc. The rights of citizens can be better protected by criminal law and civil law, so that our citizens can better protect their rights. [Gao Zhenqiang, "On the Logical Connotation and Extent of the Spirit of the Rule of Law," Guizhou Social Science, No. 5, 2009].

Jurisprudence is the in-depth study of the "reason" in law. Jurisprudence conducts corresponding research on the essence of law, and secondly, it also explores the origin of law, and after sufficient research, the staff can conclude the value of law, that is, the meaning of law. In the study of law and the origin of law, the support of sectoral laws is needed, as well as the participation of judges and workers related to law, each law has its corresponding jurisprudential issues, many of these laws are not perfect when they are made, and even do not

fit people's lives, some laws gradually become inapplicable with the passage of time and social changes. [Jiang Bixin. Attributes, connotations and promotion of the spirit of the rule of law [J]. Jurist, 2014(4):1-10.] This requires judges and law-related workers to conduct an in-depth study to accurately grasp the origin as well as the content of law, so as to pursue the justice and faith of law.

1.2. Analysis of the Current Situation of the Development of Jurisprudence's Practical Function

First of all, from the perspective of jurisprudence practice, the lack of integration between theory and practice is an important dilemma in the development of jurisprudence practice function.

The development of jurisprudence's practical function is an important dilemma. The triadic theory of continental law is an important guiding thinking of judges' practice, which is the most important part of jurisprudence.

It is an important distinction in the thinking of those within the legal profession and those outside the community. The trinitarian formula is expressed as $T \rightarrow R$ (if the elements of T are present, the legal effects of R apply); $S = T$ (the facts of a particular case meet the elements of T); and $S \rightarrow R$ (the legal effects of R are concluded to apply). The nature of jurisprudence determines the difference between the practical function of jurisprudence and the practical function of other departments of jurisprudence. At the same time, jurisprudence is easily reduced to a closed-door hollow. The interrelationship between jurisprudence and other departments of jurisprudence requires jurisprudence to be close to other departments of jurisprudence, but in practice, jurisprudence has become increasingly closed and separated from other departments of jurisprudence. [Han Siyang, "How long will jurisprudence be detached from other jurisprudence", Journal of Southwest University of Political Science and Law, 2010].

At the same time, jurisprudence as a practical science, the emergence of departmental jurisprudence is the shortcoming of the development of traditional jurisprudence, but also can not be said to be an opportunity, departmental jurisprudence shows the characteristics of close to practice is more distinct, and at the same time should also be able to recognize that the task of supporting the jurisprudence of departmental law is also done by jurisprudence. The reason why it is an opportunity is that the emergence of sectoral jurisprudence provides a new platform for traditional jurisprudence research, and it is possible to discover the problems and jurisprudential needs in the operation of other sectors of law that are closer to social life through the study of sectoral jurisprudence, which cannot be self-sufficient in sectoral jurisprudence, and it is necessary to have a clear understanding of them. [Wang Shilong. Research on the practical function of jurisprudence [J]. Employee Law World, 2017(10):16.]

Furthermore, the research results of jurisprudence are increasingly able to influence practice. In recent years, the trend of jurisprudence scholars is young, and large academic conferences on jurisprudence are frequently held, with lively discussions and collisions among scholars, and valuable research results are emerging. At the same time, the exchange between jurisprudence and departmental law disciplines has increased, and there is a trend of mutual reference with political science, sociology, anthropology and other humanities disciplines. This fully illustrates the vigorous vitality of the ancient discipline of jurisprudence along with the needs of the times. Jurisprudence has always been oriented to the study of Chinese problems, and research results on judicial reform, human rights protection, rule of law and fairness, etc., which are closely related to the current reform, have been highly valued by the judicial and practical circles, and the research results of jurisprudence have been absorbed and adopted in large numbers, and their influence on practice is increasing. For example, He Weifang's proposal on the current administrative shortcomings of the judiciary and Ji Weidong's proposal on the lack of

institutionalization of legal procedures in the judicial field have been highly valued by those in power, and this is also reflected in the spirit of the Third Plenary Session of the 18th Central Committee, which has greatly promoted the development of reform.

2. Practical Functions of Jurisprudence

2.1. Legislative Function

The first jurisprudence provides political guidance and political wisdom for legislators. As early as in the 1980s, some scholars in the jurisprudence field began to set aside the relationship between jurisprudence and political science, thinking that there was nothing between them. In reality, however, this is not the case. It is because of the role of jurisprudence that legislators can have correct guiding ideology and legislative principles, and legislators can truly consider legislative issues from the national perspective that is beneficial to national interests. At the same time, because jurisprudence attaches great importance to legal techniques, this has made legal standardization largely universal.

Thus, the role of jurisprudence is not only to provide political guidance for legislators' legislation, but also to lay the foundation for the realization of a society based on the rule of law in the country.

As Professor Qiang Shigong believes, "In the jurisprudence of the legislator, law is not a simple tool to protect rights, but a political art, an art of state governance" [Qiang Shigong. *Toward the Jurisprudence of the Legislator: Reflections on Contemporary Jurisprudence under Legal Transplantation in Beijing* [J]. *China Social Science*, 2005,(1):109-122.] In addition, Prof. Li Long believes that jurisprudence is "the science of governance", "the science of strength", "the science of justice" and "the science of rights". In addition, Professor Li Long believes that jurisprudence has the character of "the science of governance", "the science of strengthening the country", "the science of justice" and "the science of rights". [Li Long, Wang Xigen. *Jurisprudence* [M]. 10th ed. Wuhan: Wuhan University Press, 2011:1-3.] The "jurisprudence" referred to by Professor Li Long is not a "concrete jurisprudence" but an "abstract jurisprudence". The "jurisprudence" referred to by Professor Li Long is not "figurative jurisprudence" but "abstract jurisprudence", that is, jurisprudence. It can be seen that contemporary jurisprudence not only provides guidance for legislators to make scientific and balanced good laws, but also provides the possibility for the country to realize the road to a strong society under the rule of law.

2.2. Law Enforcement Function

Jurisprudence is the theoretical basis for law enforcers. Since the 18th Party Congress, the central government has advocated building a service-oriented government, streamlining government agencies, simplifying and decentralizing government, and allowing the market to play a decisive role in resource allocation. In other words, in the highly developed market economy, the government should appropriately reduce its intervention in market players and leave enough space for the market to operate smoothly and orderly.

The key to the market economy is the rule of law economy, as the main body of law enforcement administrative organs, only a clear understanding of the relationship between the principles of law, the value of law and legal rank, in order to accurately control the market economy, improve efficiency, and develop rules and regulations in line with the laws of market economic development. First of all, in terms of legal rank, the administrative organs must make laws and regulations to the law, not to violate the requirements of the higher law. In practice, due to the lack of basic knowledge of jurisprudence of local administrative organs, they do not know the relationship between the legal order, thus causing the regulations beyond the authority and contrary to the higher law, therefore, mastering the knowledge of jurisprudence is not only a

requirement for the legality of the legislation of administrative organs, but also a good strategy to limit the power of administrative organs. Secondly, when enforcing the law, the administrative organs should not only achieve legal administration but also take into account the principle of reasonableness, which is both the requirement of the basic principles of administrative law and the embodiment of legal values. It can be seen that jurisprudence has made outstanding contributions to the transformation of government functions [Ronald Dworkin. Legal Empire [M]. Translated by Li Changqing. Beijing:China Encyclopedia Press, 1996. 83.].

2.3. Judicial Function

Jurisprudence is the indispensable rational thinking of judges jurisprudence in English, where juris is the prefix indicating the law, the core component of the word prudence, that is, rationality. Jurisprudence is throughout the whole process of judicial trial practice, the judge judged the case indispensable rational thinking.

Some people think that judges only need to be familiar with the law and do not need to use jurisprudence in the process of judicial trial, but in fact, on the contrary, jurisprudence plays a role in the whole process of trial and decision. In the process of trial, the judge analyzes the legal facts and uses legal logic to draw legal conclusions is in the process of jurisprudential thinking. In this continuous reasoning process, the judge uses jurisprudence to analyze, compare, and finally determine what law applies, and if the previous reasoning process produces an error, then the subsequent law must also be applied incorrectly.

In addition, the law has a lag, when the conflict between the provisions of the law or the temporary absence of legal provisions will require the judge to consult the wisdom of jurisprudence - the application of legal principles. Legal principles have a high degree of generality, flexibility and adaptability, which can guide judges to meet the specific situation in the trial of specific cases and achieve individual justice; the reasons for the judgment of the case is an explanation of why the corresponding law is applied to the whole case and why it is this result instead of the other result, which is also a reflection of the application of jurisprudence in trial practice. "Jurisprudence is a general part of the judgment, i.e., it is also the silent opening statement of any judgment according to law." The system of writing reasons for judgments in judicial practice helps prevent judges from arbitrarily deciding cases and helps promote judicial justice.

It is clear from the above that a good judge must be a judge who has a deep understanding of jurisprudence. "The opinion of any judge is itself a fragment of the philosophy of law." However, in reality, some judges do not have a high level of case adjudication, and one of the important reasons is that they seldom study jurisprudence. A deep understanding of jurisprudence can also enhance judges' comprehension of law and justice, and improve their professionalism, instead of just being a mechanical judge.

2.4. Legal Culture Function

The main reason is that China has been under the influence of feudal dictatorship for more than 2,000 years, the confinement of imperial thinking, and the idea that power is greater than law, which makes it difficult to implement legal culture. Some scholars have explained the Chinese legal culture as follows: "The ruler is above the law, and he is not equal to his subjects; the law can be changed by the ruler at any time, and the official does not follow the law, but the mind of the king." It is believed that the law is only a tool, no matter how clever it is, it depends on people to apply it. Without the right people, even if there are good laws, they will be abused; on the contrary, if there is a wise and upright person in power, even if there are no detailed laws, the country can be ruled and the people can be safe. Throughout Chinese history, this has been true, and that is why many people tend to favor the rule of man. [Zhang Weiren. The origin,

development and characteristics of Chinese legal culture (below) [J]. Chinese and foreign jurisprudence, 2011(1).]

Nowadays, the construction of the rule of law society in China is inseparable from the legal culture as the underlying support, and the construction of a strong cultural country is inseparable from the construction of legal culture. The competition of culture between countries is actually a kind of legal culture comparison, and only by forming socialist legal culture with Chinese characteristics can we stand invincible in the competition. [Ji Weidong, Shu Guoying, Xu Aiguo, Sang Benqian, Chen Jinghui, Nie Xin, Ma Jianyin. What kind of jurisprudence China needs [J]. China Law Review, 2016(03):1-2.]]Jurisprudence is a high summary of all jurisprudence disciplines, which studies the commonality of law, including various different contents such as the nature of law, the relationship between law and people, the relationship between law and economy, the relationship between law and society, the relationship between law and politics, and legal sanctions. It can be seen that the construction of Chinese legal culture cannot be separated from the development of jurisprudence.

2.5. Law-abiding Function

Jurisprudence is the cornerstone for establishing law-abiding consciousness. At present, Chinese society is in the midst of changes, the concept of rule of law is gradually penetrating into people's hearts, and the construction of a society under the rule of law has gradually brought out the conflicts of various interests. Thus, legal norms have to play their role to establish a good order of rule of law. At this time, the research content of jurisprudence has laid the foundation for building a perfect rule of law system. From multiple levels, such as the function of law, the role of law, the operation of law, and the relationship between law and society, the basic research of jurisprudence theory influences the formation of people's awareness of the rule of law. In the context of the universal legal literacy, jurisprudence has a heavy responsibility and a long way to go, as it plays the role of "enlightener" for the construction of socialist rule of law with Chinese characteristics. From the initial formation of legal consciousness, people gradually realize the importance of law and the inseparability of law and society. With the development of jurisprudence, people's awareness of the rule of law has been transformed from the initial sense of obedience to the present sense of value, and they have learned to make value judgments on facts, which is a great leap forward in establishing the concept of rule of law. For example, people used to think that lawyers must be in trouble, lawyers can only solve some disputes in litigation, but in today's commercial activities, commercial subjects have a certain sense of risk before the commercial behavior, and will make value judgments on the risks and related legal issues before signing commercial contracts, and then consult lawyers in order to maximize the avoidance of risks.

Third, how to build the thinking of jurisprudence practice. First of all, we should pay attention to positive law and sectoral law. A good jurist often has a deep study of a certain departmental law; a good departmental jurist is often a (departmental) jurist at the same time. To build the thinking of jurisprudence practice, one should gradually cultivate a favorite departmental law, often think about the specific problems in it, turn to the law articles of interest, and be good at rising to the level of departmental jurisprudence to think about the problems in the process of departmental law study.

Second, we should pay attention to the reading and analysis of legal cases. These cases can be classical cases in history, including virtual classical cases in jurisprudence, as well as departmental law cases which are part of the current legal system, including guiding cases selected by official institutions, typical cases and major (influential) cases selected by various social groups or media, even including various cases included in the online Chinese Judicial Documents. The analysis of cases in jurisprudence is different from the analysis of cases in sectoral law, as it can certainly participate in the evaluation of the appropriateness of individual

cases from the perspective of legal methodology, but it does not aim at the ultimate goal of pursuing the correct interpretation of the law and the correct judgment of individual cases, but is devoted to deeper thinking, understanding and revealing the general principles of law through the exploration of these controversial cases or specific legal issues. The aim is to explore these controversial cases or specific legal issues in order to deeply consider, understand and reveal the general principles of law.

Furthermore, we should pay attention to Chinese social practice and rule of law practice to develop Chinese jurisprudential knowledge. On the one hand, as one scholar said, we need to "fully utilize our philosophical, cultural, and linguistic rights in the face of the strong discourse of Western jurisprudence, and pay attention to incorporating past Chinese thoughts and practices into the jurisprudential discourse, using the jurisprudential discourse to restate and transform Chinese thoughts and practices, so as to dilute the exotic tone that pervades some axiological common sense and gradually form the basic core of Chinese political and legal theory. On the other hand, it is necessary to understand the particularities of Chinese society and rule of law practice, but also to be good at discovering and summarizing general laws and Chinese jurisprudence from the particularities, strengthening argumentation and reasoning, and enhancing the inherent normativity and persuasiveness of theories. We should strive to combine the jurisprudential knowledge from the West with the special rule of law practice at present, and make a harmonizing and even integrating work, so as to contribute Chinese theory and wisdom to the world. [Zhang Zhuoming, China Social Science Journal, October 17, 2018, p. 005.]

In short, to develop practical thinking in jurisprudence, one needs to be sensitive to "concrete and vivid legal practice" and be able to use jurisprudence to analyze and think deeply. This thinking ability forms part of the jurisprudential background and is a prerequisite for becoming a legal (academic) scholar.

3. Conclusion

In recent years, more and more legal scholars have realized the importance of jurisprudence and gradually started to pay attention to the study of jurisprudence, and various large-scale academic conferences on jurisprudence have been held frequently, with heated discussions and collisions of ideas among legal scholars and numerous research results on jurisprudence. However, the practical application of jurisprudence is still a far cry from other departments of law. In the present time, the use of traditional jurisprudence in practice should not be reduced, and its development should not be stopped or even regressed. Through the brief analysis of jurisprudence in this paper, it is hoped that jurisprudence, which is sensitive to reality and more relevant to it, will be more widely used in practice in the future.

In the future, we hope that jurisprudence will be more widely used in practice, and we hope to make good use of jurisprudential thinking to solve problems in the future study of jurisprudence.

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