

Study on the Modest and Restrained Nature of Administrative Behavior

—Speaking from the Dali City Government Remediation "Marriage problems" Act

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Abstract: In the current administrative law theory, the characteristics of administrative behavior are often analyzed from the civil behavior to analyze the characteristics of the administrative behavior, which emphasizes that the administrative behavior has the unilateral will, the imperative, the validity of the first qualitative, Mandatory, intervening, ex officio or even expansive, while ignoring the characteristics of administrative behavior hidden in the administrative act that is modest. The modest and restrained nature of the administrative act is not the moral self-discipline of the main body of administrative law-enforcement, nor is it the externalization and legalization of the restrained character of modest legislators, but rather the inherent character of the administrative act.

1. Introduction

In September 2016, the Beijing news reported that a nude wedding was taking place in a scenic spot in yunnan province. Two men, who were naked and were tied to a tree by relatives and friends, smashed eggs and splashed ink on the trees. Recently, in view of the uncivilized marital behavior, yunnan Dali wenming office has published a detailed list of prohibited lists, including naked bodies, obscene costumes, throwing eggs and so on. It is understood that this is not the first time that Dali has been in a civilized and uncivilized marriage. Some netizens questioned whether the Chinese government has too much control over the folklore. On the previous day, the city of Dali wenming responded to the Beijing news reporter's response that in addition to violating relevant laws and regulations, there has been no punishment for uncivilized and marital behavior. The statement, issued by the state office of the state of yunnan Dali, called for a ban on marriage in urban roads and public places. Vulgar and obscene song and dance performances, funny farce and naked body, obscene costumes, throwing eggs, throwing debris, trampling on grass and water pollution are prohibited. For the field staff dissuade still uncivilized marriage, finally a bad impact those responsible, "notice" that will be used by the public security, traffic police, urban management and law enforcement departments in strict accordance with the law of the People's Republic of China on public security administration punishment law and other relevant provisions, depending on the circumstances shall be investigated for legal liability of those responsible. Seeing this report, the author thought: is it necessary for the government to set a standard for marriage? Is the government "too broad" to interfere with folk customs? If the act of marriage violates the current law, it can be fully pursued by relevant legal procedures. How to grasp the uncivilized marriage? Where are the boundaries of government action? In fact, it involves the "advance" and "withdrawal" of the government's administrative actions. The author is willing to make some discussions on this issue, so as to seek advice from colleagues in the academic community.

2. The definition of modest administrative behavior

The academic circles are generally accustomed to discussing the autonomy of private law, the passiveness and neutrality of the judiciary. For the public law, apart from scholars who put forward the modesty of the criminal law, the most prominent representative of public law, administrative law, mostly emphasizes its initiative Sexuality, Intervention, Emphasize the expansibility of

administrative behavior, seldom discuss and emphasize the restraint of administrative law and administrative behavior. In fact, in a society ruled by law, modesty is also a very important and valuable quality inherent in administrative law and administrative practice. The meaning of modestness means "astringency", "restraining" and "restricting", and its meaning corresponds to "expansibility", "expansibility" and "intervention". In my opinion, the modest and restrained nature of administrative behavior means that administrative bodies strive to achieve the administrative goal with the least expenditure or less or even without administrative action, and obtain the greatest social benefits so as to safeguard the order of the rule of law. It should be pointed out that the modesty of administrative actions is not a well-designed object of an independent personality, nor is it the externalization and legalization of the restrained character of modest legislators, but rather the inherent character of administrative acts. Because constitutional practice tells us that institutions and order are more than products of rational design but spontaneous products of social life and experience. Similarly, the law of administrative law as a kind of exercise of public power, its production and development is also a spontaneous process.

3. The basis for restraining administrative behavior

3.1 The basis of legal philosophy

According to the traditional method of division, administrative law is an out-of-date public law, the so-called law in order to safeguard the public interest and adjust the administrative subject and the administrative counterpart. According to the traditional way of thinking of the division of public interests and individual interests, administrative law is regarded as a legal norm aimed at protecting the public interest. Therefore, administrative law is public law, an order for the sovereign to maintain social order, and is elaborately designed and promulgated The command. The logical premise of this definition is that the lawful modesty depends on the legislator's subjective design and wisdom. In my opinion, whether administrative law belongs to public law or private law should be analyzed concretely. Administrative law is mainly divided into four parts: administrative organization law, administrative act law, administrative supervision law and administrative remedy law, and the part of the rule that constitutes "an order obligating a specific government official or organization to do" , The administrative supervision law and the administrative remedy law can be classified as the public law category, and the administrative act law should be classified into the category of private law because of its proper behavior rules. The significance of this division is that it implies that administrative actions are not what the rulers want at their will. As the rules of behavior of private law, modesty of administrative acts evolves gradually from the action of people and the evolution of society. The recognition of the private law attribute of administrative act is the affirmation of the act of administrative act that is the order formed spontaneously by people in their actions The choice and affirmation of the rules admit that the administrative act must give more consideration to other rules of conduct in the nature of private law.

3.2 Determined by the "limited government"

"Limited government" means that the power of the government is limited, and administrative organs exercise the administrative power to have boundaries and restrictions, which must be controlled within the scope of the constitution and the law. Under the omnipotent government system, the power of the government and the unlimited expansion of functions, too much engaged in can be borne by the society and the market transaction, or the power of the government's reach into private life, make social or individual lose the ability of self service and self management, make the market lose the ability of self adjusting, the government management not only can't really solve social failure and market failure, but also can lead to government failure. The unlimited expansion of government will result in the bloated and redundant government agencies, which will directly produce the inefficient phenomena of procrastination and evasion. On the other hand, it will increase the financial burden and seriously affect normal social and economic activities. Different from all-round government, limited government emphasized the government's macroeconomic regulation and

control and the social self-management, respect the objective laws of market development, not too much direct intervention, only when necessary to guide, in the field of market failure and society cannot adjust themselves play a role. It's decided the government must always keep the rational and restrained, trying to contain their expansion of executive power in the impulse, which objectively also determines the administrative behavior has the character of the tolerance.

3.3 Decision of the principle of human rights protection

So-called human rights refers to the right, as a man should have is a man to satisfy their survival and development needs and shall enjoy the rights of, it in essence belongs to the rights, moral rights. Protecting human rights is a fundamental principle of the constitution. According to the principle of human rights, in between the state and the individual, the country is not the goal, individual is the destination, people through the establishment of a social contract is to make everyone really live in freedom, happiness, full development. Therefore, under the value orientation of human rights protection, the state should maintain due respect, modesty and tolerance to individuals. Such modesty is not only a requirement for the value of human rights, but also a cautious expression of the state's own mistakes and responsibility for its own mistakes. In the field of administrative law, the administrative subject to administrative action is to achieve national and social public interests, administrative subject to achieve the ultimate goal of the state and public interests is to protect the interests of the administrative relative person. And citizens, legal persons and other organizations as the administrative relative person, because of their special interests involved in the process of enjoy and achieve the social and public interests, national interests, to be incorporated in the administrative field, become the social public affairs. Only in this way can we reflect the long-term interests and fundamental interests of the people. Can say, it is the constitutional principle of human rights, derived from the principle of administrative law in the protection of the rights and interests of the other party, and the protection of the rights and interests of the other party in the administrative law principles and inevitably requires the government administrative behavior have tolerance sex in character.

3.4 Determined by the nature of the administrative act

Theoretically, the administrative organ is the service organ, the administrative organ is the public servant in essence, the civil servant is the public servant. Administrative organ is the mutual interests of the whole society member representatives and supporter of every social member individual interests, the interests of the relationship between the public and is representative and the representative, the relationship between the public interests and personal interests. The public interest represented by the administrative organs is not a special interest for its own or its staff to enjoy, but is to be distributed to the public to enjoy the benefits, which are used to safeguard the interests of the individual. The executive action of administrative action decides that it should be modest and compared with the legislative act, and the administrative action has the distinct function of enforcing the law. Administrative action in the rule of law system, actively to the legal norms and change of common informal social life, realize the law because of the social public interest, standardize and guide the administrative relative person's behavior, to establish and consolidate the administrative rule of law and order. Execution requirements of administrative behavior of administrative subject must be very strictly according to the corresponding administrative legal norms to deal with the social public affairs, and not simply the exercise of administrative power, from the implementation of administrative subject unilateral functional perspective of will. The subordinate law of administrative action decides that the administrative act should be the act of enforcing the law, thus it must belong to the law. Executive action is law enforcement and is an act that provides services to the public by enforcing the law.

3.5 Determined by the proportion principle of administrative law

Core of modern administrative law is how to keep the exercise of administrative power in moderation, and within the limits of necessity, that is how to ensure that the administrative discretion is not abuse, not for the purpose and by hook or by crook, not take "kill, kill" administrative behavior. The civil law countries mainly use the principle of proportionality to control the abuse of

administrative power effectively. The principle of proportionality, also known as the principle of equilibrium or balance, refers to the proportion between the purpose of administrative ACTS made by the administrative subject and the means to achieve the goal. The principle of proportionality requires administrative actions to comply with administrative objectives and to minimize administrative measures. Under the principle of proportionality, all administrative ACTS of unscrupulous means are strictly prohibited. Otto Maier used the principle of proportionality as the "crown principle" in administrative law. In other words, the proportion principle is a powerful standardize law enforcement, in large part smooth, restrain the administrative behavior impulse, expansion, from the aspect of system and the idea of maximizing the austerity of administrative act sexual culture. Anyway, even if is the period of social transformation, the power of the government also should be moderate, especially has significant influence on national economy and the people's livelihood, the citizens' basic rights and interests of administrative measures, individual legislation has been actually conforms to the proportionality thought some institutional factors, such as, "the law on administrative punishments" the provisions of article 4 paragraph 2.

4. The administrative behavior modest requirements

4.1 The administrative legislation

Administrative legislation should try its best to adopt a cautious approach. It demands that it should not violate the essence of basic human rights and seek a balance between the conflicting interests of law so that basic human rights can be realized under the best conditions. Administrative legislation will set a clear protective barrier for the individual rights of citizens, especially the basic freedoms. Administrative power can not cross this barrier at will. This must define the scope of government functions clearly from the legislation. At present, the transformation of government functions committed by the state is the process of redrawing the power of government. This is a decentralized process. The transition from a management-oriented government to a service-oriented government means that the government should give up some power, many of which involve the management of social organizations. The power will gradually spread from the government to society. The basic principle is that, as stipulated in the Law on Administrative Licensing, affairs that can be managed by individuals, industries or other social organizations themselves and those that can be self-regulated by the market economy, the government will no longer to intervene in specific management, but the use of laws and policies of macro-control leverage, the government in the future to retain the main service-oriented functions. Under the guidance of the planned economic system and national totalitarianism, the state power controls the various aspects of social life, and the individual's right space and the social space for autonomy have been severely affected. The government functions that need to be transformed are not limited to the economic field. Squeezing, the entire nation lives like a huge machine, braked by a button of government power, both personal and social, has become a component that has no intrinsic vitality on this huge machine.

4.2 The administrative law enforcement

Administrative law enforcement mainly requires a balanced government intervention. Equilibrium intervention has a strong theory of inclusive and explain the tension, which scientifically revealed the government and the market should have a positive interaction. By analyzing the legal needs and supply of equilibrium intervention, the idea of equilibrium intervention can be reflected in the system design of administrative law. On the one hand, the legislative definition of the scope, methods and mechanisms for the government to intervene in the market is the key to forming a benign and interactive relationship between the government and the market. On the other hand, the government intervention in enforcing the law to control and strengthen the applicability of the law of balanced intervention will be conducive to the administrative body uphold the modest administrative behavior. In France, the principle of equilibrium arises as a means of controlling administrative discretion. It is the product of the French administrative court to strengthen the supervision of specific administrative acts. After World War II, the power of the French Administrative Court was rapidly strengthened and

gradually gained the legal status independent from the administrative organs. By the 1970s, it had effectively supervised and restricted administrative power. Balanced intervention requires administrative actions to be reasonable and modest, requiring that the facts be consistent with the application of the law. The fundamental requirement is "reasonable and balanced" with the aim of preventing abuse of administrative discretion and safeguarding the balance between administrative organs and relatives, public interests and personal interests.

4.3 Administrative procedures

Administrative procedure refers to the procedure that the administrative body conducts administrative activities and corresponds to the substantive content of the administrative acts, specifically the ways, steps and orders followed by the administrative organs in exercising administrative power, implementing administrative management and providing public services, Time limit and other rules formed by the system, that is, the main administrative and administrative counterparts in the implementation of administrative activities in space and time forms of expression. It is a procedure to be followed when the main body of the administrative law relationship carries out the administrative act, and is a system that ensures that the administrative act operates legally, correctly and justly, improves administrative efficiency, protects the legitimate rights and interests of the administrative counterpart, and enhances the relative trust in the government. It can be said that the modest and restrained nature of administrative behavior intrinsically and instinctively calls for administrative procedures. Administrative procedures are an eager response and highly compatible with the moderation of administrative actions. They buffer and suppress the impulse and expansion of administrative acts to a maximum extent. Do whatever they want, with the government to ensure that the administration according to law, protect the rights and interests of citizens.

References

- [1] Chen Xingliang, "Value Structure of Criminal Law," China University of Political Science and Law Press 1998 edition.
- [2] Hayek, "Law, Legislation and Freedom: Volume 1", Encyclopedia of China Publishing House 2000 edition.
- [3] Qu Xuewu, "Proper Interpretation of Criminal Modesty Principle and its application", Guangming Daily November 4, 2003.
- [4] Di Ji, Qian Kexin "Constitution", the Commercial Press 1962 edition.
- [5] Goodnow, "Politics and Administration", Huaxia Press, 1987 edition.
- [6] Chen Xinmin, "General Law of Administrative Law", Taiwan Sanmin bookstore 1997 edition.
- Wang Guiyuan, On the Principle of Equilibrium in French Administrative Law, Law Research, March 1994.
- [8] Jiang Mingan, "Administrative Law and Administrative Procedure Law", Peking University Press, 2007 edition.