

Study on the Civil Liability of Official Crimes in Ancient China

Reading Wang Mingyang's "Civil Servants' Civil Liability to Administrative Counterparties in Chinese Law"

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ABSTRACT

There are many studies on whether there are officials in ancient Chinese law that need to bear civil liability to victims because of official crimes. Whether it is the provisions in the law, the way of assuming the responsibility for public crimes, or the way of compensation in practice, scholars have all argued. However, traditional Chinese legal history research papers are often difficult to combine "law" and "history" because of the obscure use of documents. Articles are often proofs that textbooks are a list of models, even irrespective of the proof. "Civil Servants' Civil Liability to Administrative Counterparties in Chinese Law", as a professional work on administrative law, is worthy of profound study by scholars of legal history. It's most appropriate to quote Professor Liu Guang'an's evaluation here — "This article has truly achieved the modernization of ancient Chinese and the expression of the Westernization of traditional laws." Mr. Wang's doctoral dissertation took a different approach and adopted another set of methods for writing, providing a perspective different from traditional writing methods for the writing of legal history professional articles. It is not only a change in writing technology, but also a diversified method of learning theoretical knowledge.

Keywords: Civil liability, Becoming wealthy from fault, Compensation for damages.

1. INTRODUCTION

Mr. Wang Mingyang was originally an expert in administrative law. He has authored "Administrative Law of France", "Administrative Law of United States", "Administrative Law of United Kingdom", "Comparative Administrative Law", etc. The article "Civil Servants' Civil Responsibilities to Administrative Counterparts in Chinese Law" is the dissertation of Mr. Wang Mingyang who obtained a PhD in Administrative Law in France in 1953. After returning to China in 1958, Mr. Wang Mingyang taught twice at China University of Political Science and Law. As a doctoral dissertation, it is included in "Mr. Wang Mingyang's Complete Works — Compilation of Academic Theses and Vocabulary Entries", published by Peking University Press in 2016, with both the inscription and postscript by Mr. Ying

Songnian and the preface with the memory of Mr. Wang Mingyang's daughter.

The most special feature of this article summarized from the professional perspective of Chinese legal history is reflected in the following four aspects: writing logic, questioning method, writing role language, use of historical materials, and research significance. The following discussion focuses on the following four aspects.

2. WRITING LOGIC

At the beginning of the article, the author divides the legal system of Chinese civil law into three periods: the period of ancient law; the period of Dali court's case law; and the period of "Civil Code". He explains the background of the argument clearly, and then focuses on the three classification periods. The writing logic is deduced completely in accordance with the deductive method of syllogism,

and is deduced step by step on the premise that civil servants have civil liability.

According to the modern legal system, the author expresses the constituent elements of civil legal liability as four aspects: existence of damage, ruleability, fault characteristics of behavior, and causality. This contains a strict logical connection: to determine whether any specific behavior of a civil servant constitutes a responsible behavior, it is necessary to use the concept of constitutive elements to analyze whether the behavior of the civil servant is illegal, whether it causes damage or harm to the administrative counterpart, whether there is a causal relationship between behavior and damage, and whether there is subjective fault of civil servants. "After determining the basis of civil servants' civil liability, it is logical to study the characteristics of damage, because the purpose of civil liability is to compensate for the damage."¹ [1] The author uses this as the structure of the full text to run through it. This writing logic can be seen in the following way: ("Figure 1")

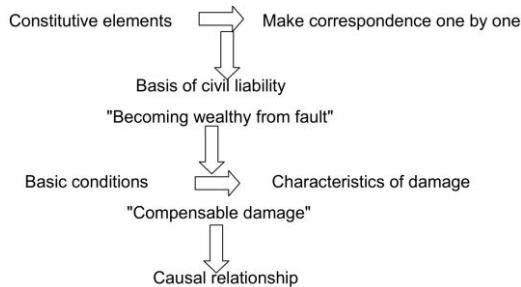


Figure 1 "Getting rich by fault".

This interlocking writing style allows readers to follow the author's perspective and experience the author's views. However, in the writing of traditional legal history papers, a hierarchical listing method is often adopted, and the views are not closely connected and lack logic. It may be precisely because the author has a background in Western legal education, trained in the professionalization of French law, and follows a certain mode of thinking in writing.

3. QUESTIONING METHOD

In the first part of the thesis, the author starts by asking "What are the responsibilities of civil

servants in ancient Chinese law?"¹² and further asks "Chinese ancient codes can be called criminal codes. People will ask whether there are other forms of liability besides criminal liability. Whether the civil liability in ancient Chinese law is possible. "Then he answers the above questions one by one and conducts a rigorous argument. Apart from criminal responsibility, there is no "political responsibility", and "criminal responsibility and disciplinary responsibility are mixed." "Why did the ancient law mix criminal responsibility and disciplinary responsibility? The reason may be that there was no distinction between administrative power and judicial power in the ancient system."] Each question of the author immediately follows the previous question and answers directly. The question is to expand the following discussion in a comprehensive way, and the latter discussion is also a one-by-one corroboration of the previous answer to the question. Back to the core question, "Since all codes are called 'criminal codes', is there still civil liability in ancient Chinese law? If it does not exist, it would be impossible to talk about the civil liability of civil servants." This is the key question of whether the thesis's argument is established or not. Unlike many scholars who directly state their opinions in their articles and rarely think about problem awareness, Mr. Wang Mingyang follows the usual path of people thinking about problems step by step, and directly responds later, "The answer is yes, there was civil liability in ancient China." He goes on to explain that the reason for everyone's doubts is that "a common mistake should be prevented from the beginning, that is, that civil liability is the following two systems: atonement and fine. These two systems occupy an important position in ancient Chinese law and are similar in form to civil liability. In fact, there is a fundamental difference between them." The author not only answers from legal principles, why there is civil liability, but also explains everyone's confusion from the actual situation of traditional Chinese law.

Questions as the above run through the whole article, such as "What is the basis of civil servants' civil liability in ancient Chinese law?" What is compensable damage? What is the link between the damage received by the counterparty and the tort of civil servants? ", and every subsequent chapter is answering the previous questions. Such questions are closely related to the topic and strung up the

1. Wang Mingyang, Mr. Wang Mingyang's Complete Works — Compilation of Academic Theses and Vocabulary Entries [M]. Beijing: Peking University Press, 2006, p109.

2. Wang Mingyang, Mr. Wang Mingyang's Complete Works — Compilation of Academic Theses and Vocabulary Entries [M]. Beijing: Peking University Press, 2006, p75.

logical sequence of the full text, which also allows the reader to think continuously.

4. WRITING ROLE LANGUAGE

The most important feature of this article should be the use of modern legal concepts to explain the ancient Chinese traditional legal system, and the professional legal terminology that is used well in the expression of words makes the ancient legal system be well expressed in modern legal terminology.

In explaining why the ancient Chinese law does not recognize prudential damage and mixed damage, the author makes a wonderful argument from three levels: politics, law, and society.

First, the author explains from the perspective of politics. "The ancient Chinese believed that the guarantee of the national order should not depend on the law, but should rely on morality." Then, the author uses Confucius's remarks as an argument for this point. Next, based on his in-depth knowledge of Chinese and Western legal culture, the author makes a very clever comparison between Chinese traditional law and Western law: "Roman law and modern law take the protection of individual rights as their basis, while ancient Chinese law is based on personal obligations that people must abide by. When damage occurs, Western law, from the perspective of the victim, focuses on the infringed rights and demands compensation; Chinese law, from the perspective of criminals, focuses on the obligations violated and requires suppression. Civil liability is replaced by criminal liability. This is the reason why mental damage and mixed damage cannot be compensated in ancient Chinese law." These explain that ancient Chinese law is based on punishment, while Roman law and modern law are based on compensation. The author explains why such a system is formed from the root and the form of law. It is to explore the culture through the system, and then analyze the system formation from the culture. It not only compares Chinese and foreign legal systems through analysis of legal culture, but also conducts in-depth research on ancient Chinese civil law. In this way can it clearly explain the problem, and it is also a close demonstration of one's own arguments.

Second, the author explains from the perspective of law: "the ancient Chinese believed that the social order should be consistent with the natural order." "When mental damage and mixed damage are sanctioned through penalties, the

natural order will be completely restored and reconstructed, and there is no longer a problem of damage compensation. The issue of compensation for damages will only be raised when property damage occurs and the penalty is insufficient to restore and rebuild natural order." In this part, the author delves into the spirit of Chinese law and reveals the reasons for the emergence of the system.

Third, the author explains from the perspective of society. "The Chinese despise commercial profit-seeking behavior", "When the perpetrator who caused mental damage receives criminal sanctions, justice has been achieved, and people can ignore monetary compensation." The author explains the deep-seated reasons from traditional habits and cultural values.

5. USE OF HISTORICAL MATERIALS

In the writing materials, Mr. Wang Mingyang mainly selects the "Code of Qing Dynasty" and "Tang Code" as the texts for analysis, and compares with other legal documents such as "Yuan Decrees and Regulations", and also used the case collection "Criminal Case Collection". These are some common basic historical materials, but the author's familiar use of this also reflects the author's comprehensive understanding of the traditional Chinese legal system.

The author uses the "Picture of Six Brides" of the "Code of Qing Dynasty" to determine the criminal liability, and based on this, explains under which circumstances there is civil liability. Using the "Picture of Six Brides", the first advantage is easy to recognize, because everyone is relatively familiar with the pictures, it has a certain generality, and it is easy to understand; the second is that the figure is a national written law, and its authority adds to the persuasiveness of the argument.

The following is the author's division of civil liability in the "Picture of Six Brides". ("Table 1"³)

3. This table is summarized by the author based on the text of Mr. Wang Mingyang.

Table 1. Division of civil liability in the "Picture of Six Brides"

Accusation	Object of crime
Embezzlement	Country
Theft by ordinary people	Common counterpart
Larceny	Common counterpart
Bending the law	Administrative counterpart (obtaining benefits through illegal actions)
Not bending the law	Administrative counterpart (obtaining benefits in the process of legally performing official duties)
Corruption	Administrative counterpart (for gaining benefits at the cost of the counterpart)

When the author describes civil legal liabilities, it almost covers all dynasties as a general rule. However, due to the particularity of multi-ethnic countries, the Yuan Dynasty is an exception. Therefore, "the rule of civil servants to compensate for stolen property belongs to the Mongols themselves. This rule can't be found in the Ming Dynasty's code "Law of Ming Dynasty" in the dynasties after the Yuan Dynasty. The spirit of the Chinese is too mild to accept such rules. This rule was re-regulated in the Qing dynasty, a dynasty established by the Manchus after the Ming dynasty, in the 'Code of the Qing Dynasty'." The following Mr. Wang Mingyang compares "Yuan Decrees and Regulations" and "Code of the Qing Dynasty": First, the compensation for stolen property in the "Yuan Decrees and Regulations" is limited to the theft cases in the city, and the "Code of the Qing Dynasty" is not limited to this; Second, the time of compensation for stolen property stipulated in the "Yuan Decrees and Regulations" is when the thief has not been caught for one year, while the time of compensation stipulated in the "Code of the Qing Dynasty" is when the thief is caught and while the stolen property cannot be recovered; Third, the "Code of the Qing Dynasty" stipulates that the compensation for stolen property shall be carried out in accordance with the legal proportion, while the "Yuan Decrees and Regulations" does not have this aspect. Such a systematic comparison of a certain crime in the traditional code, and a legal comparison of the two ethnic minority dynasties, provides a reference paradigm for people's research.

6. RESEARCH ON THE CIVIL LAW SYSTEM

Most of the research on traditional civil law focuses on the civil lawsuits in the marriage field and family homes, and there is very little discussion on the system. Limited by the limitations of written laws and regulations, everyone believes that traditional civil law lacks an independent status, and it is difficult to define a complete civil legal system, and there is no way to conduct in-depth research. However, the author provides people with another research method from a different perspective. Instead of directly defining or labeling features, the author demonstrates the traditional civil law itself through gradual demonstrations. This article discusses the civil liability of civil servants. The basic situation of the traditional civil legal system is also presented in the whole argumentation process.

Moreover, the author has given the traditional Chinese law "no distinction between civil and penalties" to refute through literature and rigorous argumentation. Of course, the author does not directly raise the refutation. Mr. Wang Mingyang presents his refutation through the discussion of the independence of civil legal liability in ancient China. The author uses multiple provisions in the "Code of the Qing Dynasty" to prove that "Although ancient Chinese codes almost always associate civil liability with criminal liability, civil liability is not part of criminal liability, nor is it an additional penalty for criminal liability. Ancient law clearly recognized the independence of civil liability."

First, "In the case of pardon, criminal liability is exempted, but civil liability continues to be effective"⁴; second, there is the privilege of atonement for young and old; third, criminals who surrender can be exempted from criminal punishment, but not from civil liability⁵; fourth, people can still see the independence of civil

4. Wang Mingyang, Mr. Wang Mingyang's Complete Works — Compilation of Academic Theses and Vocabulary Entries [M]. Beijing: Peking University Press, 2006, p83.

5. This article stipulates that anyone who surrenders without committing a crime shall be exempted from the crime; If there is stolen goods, although the crime is exempt, the stolen goods will still be charged. See "Compilation and Compilation of Laws and Regulations of the Qing Dynasty" (Volume 5), p.12, for the provisions on "criminal surrender".

liability in the provision where a criminal is charged with multiple crimes at the same time.⁶

7. CONCLUSION

The author has proved the independence of the recognition of civil liability in the code with multiple articles, that is, from the system to the culture, the spirit of the traditional law is deeply explored, which has far-reaching significance. The consideration of traditional laws in the Western context has also justified the criticism of ancient Chinese "civil and criminal punishment" by Western scholars. Interpreting traditional systems in modern legal terms provides a path for people to explore traditional legal systems today.

AUTHORS' CONTRIBUTIONS

This paper is independently completed by Shanshan Huang.

REFERENCES

- [1] Wang Mingyang, Mr. Wang Mingyang's Complete Works — Compilation of Academic Theses and Vocabulary Entries [M]. Beijing: Peking University Press, 2006. (in Chinese)

6. The clause is: All two crimes or more shall be issued, and the serious one shall be regarded as the one need to be punished. Other sins need to be suspended and judged from one by one. If one crime is committed first, it has already been determined, and the rest of the crime is committed later, and if the later crime is not as heavy as the former one, it will not be discussed. If it is heavier than the former one, it will be discussed, and the former crimes will also be counted into the later crimes. Those who should be admitted, compensated, tattooed, or dismissed from office shall comply with this law. See "Compilation and Compilation of Laws of the Qing Dynasty" (Volume 5), p.18, for the article on "if two crimes are both promulgated, then punish the heavier one".