

Chinese Reflection on the Socialization Theory of Civil Litigation

Guangyu Zhao

China Academy of Information and Communications Technology, Beijing, China

Abstract

Franz Klein, an Austrian civil procedure law scholar, was the first to propose the topic of socialization in civil litigation. He constructed the socialization theory of civil litigation procedures from multiple aspects, including the ideology rooted in civil litigation procedures, the functions of socialized civil litigation, and the procedural values reflected. Emphasize the support of social ideology for civil litigation procedures, the public nature of civil litigation procedures and the agency of judge powers, the effectiveness, fairness, and stability values of civil litigation procedures, and oppose strict differentiation between substantive truth and procedural truth. The socialization theory of civil litigation procedure is not necessarily related to authoritarianism or party theory, but rather constructs the basic theory of civil litigation procedure based on social ideology and national conditions, emphasizing the public nature of civil litigation procedure, thus having strong flexibility. This article will explore the precision and openness of China's civil litigation procedures based on its national conditions.

Keywords

Socialization, precision, openness.

1. The theoretical framework and development of socialization in Western civil litigation

The earliest proposer of the socialization of civil litigation was Franz Klein, an Austrian civil procedure law scholar. In 1891, he published the book "Profuture, Betrachtungen ü ber Problem der Civilproce ß reform in Ö sterreich: Reflections on the Reform of the Austrian Civil Procedure System", which constructed the socialization theory of civil litigation from multiple aspects such as the ideology rooted in civil litigation procedures, the functions of socialized civil litigation, and the procedural values embodied. Influenced by him, the Austrian Civil Procedure Code was the first to complete the socialization reform in 1895. By the first half of the 20th century, various European countries had successively completed the socialization reform of civil litigation procedures. The socialization theory of civil litigation procedures also influenced Japan and China at that time. Japan's 1926 Civil Procedure Law and China's Qing Dynasty Civil Procedure (Draft), which was formulated by Shen Jiaben in the late Qing Dynasty, were both influenced by this theory. In the 1960s, with the vigorous development of the movement towards justice, the theory of socialization of civil litigation also underwent further development. With the Italian jurist Capilletti's proposal of new interpretations from the perspectives of national guarantee of judicial effectiveness, promotion of judicial accessibility, and equality of litigation weapons.[see "Italian" Mono Capilletti: "Judicial Procedure in the Perspective of Comparative Law", translated by Xu Xin et al., Tsinghua University Press, 2005 edition, p. 364]This has once again sparked a new civil litigation procedure reform movement. Taking Germany as an example, from the introduction of the obligation of parties and courts to promote litigation cooperation in the German civil litigation procedure in 1976, to the revised German Civil Procedure Law in 2001 emphasizing the exercise of the power of judges to clarify and strengthen their control and guidance of the litigation process, all are manifestations of the

socialization of civil litigation procedures. From a theoretical perspective, the socialization theory of civil litigation procedures mainly includes the following aspects:

1.1. Emphasizing the support of social ideology for civil litigation procedures

The biggest characteristic of the socialization theory of civil litigation is to use social ideology as the theoretical basis for the development of civil litigation procedures. Before Klein proposed the socialization theory, the field of civil law was greatly influenced by the ideas of Pendleton jurists, who emphasized the independent status of law from society and politics, and advocated that only scientific basic knowledge should be provided for legislative activities.[See Zhu Xiaozhe:"Yelin's Ideological Transformation and the Rise of Modern Civil Law Socialization", Zhejiang Academic Journal, Issue 5, 2008.] Influenced by this ideology, research on civil procedure law at that time also rarely considered social factors and social public welfare issues. Since the mid-19th century, with the development of economies and cultures in various countries, social development has also begun to show characteristics of diversification and complexity. Traditional theories of civil litigation procedures are clearly unable to meet the needs of society, and Klein's socialization theory was proposed to solve this problem. Klein's theory reveals the relationship between ideology and litigation system. He believes that the medieval European system of secret evidence review corresponds to the ideology of religious monarchy; The modern liberal litigation view corresponds to the ideology of capitalist free competition and deregulation; In the stage of monopoly capitalism, the state strengthened its intervention in the social sphere, and the ideology of laissez faire was gradually abandoned, replaced by the rise of social welfare ideology, which also became the ideological pivot for the socialization of civil litigation.[See Adrian A.S. Zuckerman, Editor in Chief: "Civil Justice in Crisis", translated by Fu Yulin et al., China University of Political Science and Law Press, 2005 edition, No.Pages 216-217]

1.2. Emphasize the public nature of civil litigation procedures and the agency of judges' powers

On the ideological basis of the welfare state, the socialization theory of civil litigation in the West regards civil litigation procedures as a public affairs and social welfare system that maintains order, and proposes that "civil litigation is not formulated for individuals for their own interests and the need to realize their rights, but serves as a legal infrastructure for the whole society. Dispute resolution and fulfilling legal welfare responsibilities are also the goals of civil litigation." [See Alan Uzelac, Goals of Civil Justice and Civil Procedure in the Contemporary World, Springer International Publishing, 2014, p.56.] Based on this, judges should actively intervene in the civil litigation process and constrain the behavior of the parties, while promoting cooperation among the parties. As a result, the principle of parties involved has been restricted, while the principle of authority has been strengthened. Judges have also been empowered to represent the state in constraining the litigation behavior of parties, in order to achieve the goal of rational allocation of litigation resources and ease the tension between parties and social interests.

1.3. Emphasize the value of efficiency, fairness, and stability in civil litigation procedures

As mentioned earlier, the socialization theory of civil litigation has also been influenced by the Justice Movement, which has led to the Western countries positioning civil litigation procedures as public welfare products and viewing them as a "social assistance link".[see Ottma Yaoernich's "Civil Procedure Law" (27th edition), translated by Zhou Cui, Law Press, 1999 edition, page 5] The court has the nature of a "national welfare institution", and the purpose of the civil litigation system has been revised to provide a channel for all citizens to approach justice. Corresponding to this concept is the procedural value advocated by the socialization

theory of civil litigation, which highlights the following points: firstly, the efficiency of the procedure. The law needs to allocate litigation resources reasonably according to the different disputes, eliminate obstacles for parties to approach the judiciary, and avoid wasting resources due to litigation delays and abuse of litigation rights; The second is procedural fairness, where the core significance of fairness lies in changing the previous practice of providing assistance through costs or human resources to protect the weaker party in disputes, and instead achieving fairness by ensuring substantive equality of status between the parties. This realization of equality also corresponds to the strengthening of the judge's litigation command power mentioned earlier; The third is program stability, and the requirements for program stability are no different from traditional adversarial thinking. The author has also conducted a systematic review in the previous text and will not elaborate on it here.

1.4. Oppose strict differentiation between entity truth and program truth, emphasize the socialization of discovering truth

Regarding the issue of discovering reality, Klein put forward the viewpoint of opposing the division between substantive reality and procedural reality. He believes that "the exercise of litigation rights by civil litigants and the fact finding activities of the court will inevitably gather the facts of the case to some extent and use them as the basis for the judgment... It is only an illusion to expect to establish substantive reality in a relatively short period of time through relatively few litigation activities." [See Alan Uzelac, *Goals of Civil Justice and Civil Procedure in the Contemporary World*, Springer International Publishing, 2014, p.46]

On this basis, the socialization theory of civil litigation procedure proposes the role of judges in discovering truth, which mainly includes the power of judges to order parties to present evidence within the scope of litigation materials, the power to question (interrogate) parties and their agents, the power to punish parties and agents for disobeying procedural management, and the power to build a cooperative relationship between judges and parties in the cross examination procedure. Due to the encouragement of judges to discover truth, socialization theory advocates for the corresponding improvement of the standard of proof in civil litigation procedures. At the same time, it advocates emphasizing the true obligations of the parties and avoiding the use of normative mechanisms for allocating the burden of proof as much as possible. Even if it is necessary to allocate the burden of proof, substantive equality between the parties should be fully considered.

In summary, from the above analysis, it can be seen that the socialization theory of civil litigation procedures can be divided into two levels:

One is to emphasize the relationship between social ideology and civil litigation procedures at the logical level. Based on this, it can be seen that the civil litigation procedure in the West has gone through a transformation from pure party oriented ideology to the emphasis on the judge's power to command and control the litigation during the period of monopoly capitalism, and finally, influenced by the trend of approaching justice, emphasized the welfare nature of the civil litigation procedure. It can be said that the entire development of Western civil litigation procedures is in line with Western social ideology.

For this aspect, the author believes that the thinking logic of the socialization theory of civil litigation procedure can be applied to the analysis of China's civil litigation procedure justice theory and civil litigation judicial practice. In this article, the author also adopts a similar analysis method to construct the new development of civil litigation procedure justice;

The second difference is that the socialization theory of civil litigation procedures does not deny the subject status of the parties, but rather emphasizes the reasonable use of the judge's procedural command and control power in the operation of civil litigation procedures, which is different from traditional party theory in terms of content. At the same time, based on the influence of the approach to justice ideology, there is a greater emphasis on the procedural

benefits of rational allocation of judicial resources and continuous and orderly procedural processes, as well as the procedural fairness of maintaining substantive equality between the disputing parties in the procedure. At the level of discovering the truth, emphasis is placed on the judge's authority to ascertain the truth and the resulting improvement in the standard of proof, the regulation of the parties' obligation to truthfully verify, and the institutional mechanism to avoid the allocation of burden of proof as much as possible.

Regarding this aspect, the author believes that although these theories have received ideological support and practical development in the West, whether these contents are applicable to China needs to return to the logic of the previous level and be examined from the perspective of China's social structure and ideology.

2. Reflections on China's National Conditions under Change

From the above analysis, it can be seen that the socialization theory of civil litigation procedures is not necessarily related to authoritarianism or party theory. Instead, it emphasizes the public nature of civil litigation procedures and constructs the basic theory of civil litigation procedures based on social ideology and national conditions, thus possessing strong flexibility. Therefore, in the process of the development of Western society from the stage of state monopoly capitalism to the direction of welfare society, with the exposure of pure adversarial issues, there has naturally been an emphasis on the procedural command power of judges and the cooperation between judges and parties.

The author believes that the theoretical support for civil litigation procedures should not only include ideological content, especially in China, which has a population of 1.3 billion, faces the background of time and space compression, and has an unbalanced development situation. It should not be supported solely by a single form of consciousness. This is also the reason why this article sorts out the changes in Chinese society from five aspects in Chapter 4. China's civil litigation procedures not only need to be in line with China's ideology, but also need to effectively respond to the demands for justice from various fields, families, and members of society. At the same time, the reality of Chinese society is also the basis for us to evaluate and choose the framework of the socialization theory of Western civil litigation procedures, and to construct a civil litigation procedure justice theory that meets the actual needs of Chinese society.

2.1. The ideological basis of socialization theory in Chinese civil litigation procedures

There are significant differences between the ideology of Chinese society and that of the West. The ideology of Chinese society is based on Marxism, and the materialistic nature of Marxism makes atheists the absolute majority at all levels of society in China, from the ruling party to the government to the people. In the West, religious beliefs constitute an important part of ideology. Taking the religious composition of the 115th Congress of the United States as an example: 90.7% of the 115th Congress members are Christians, which is a statistical data that has remained almost unchanged for a century and a half. Among other non-Christian members, religious beliefs have shown diversity, including Judaism, Hinduism, Islam, Buddhism, and other religions. Among the 535 members representing the American people in both houses of Congress, only one has no religious beliefs, and ten members refuse to disclose their religious beliefs. [See Zhang Rongmin: "Religious Structure of the US Congress", published in "Blog China".<http://net.blogchina.com/blog/article/748521010>] Similar data is also available in Europe. Therefore, from an ideological perspective, the justice theories in Europe and America often bear the imprint of natural law ideas associated with religious beliefs. The theoretical frameworks of due process, party centeredness, and the subject status of parties in civil litigation also present to some extent the shadow of religious thinking such as "heaven endows

human rights" or "heaven endows rights" in the West. In China, which is mainly based on Marxist beliefs, under the influence of materialism, civil litigation procedures once followed the principle of "seeking truth from facts and correcting mistakes" while ignoring the stability value of the procedure and the theory of *res judicata*, which also has profound ideological roots.

The above differences have also raised a new question, that is, in China, where Marxist beliefs are the ideological foundation, does the construction of a civil litigation procedure centered on the subject status of the parties have an ideological foundation? I believe the answer is affirmative. According to Marxist materialist conception of history, history is created by the masses rather than by gods or heroic figures. The development of history itself is a unity of contingency and inevitability, and heroic figures determine the contingency of historical development, but this contingency is subject to the historical inevitability created by the masses.[See Li Mingxian: "The Necessity and Contingency of Historical Development - Reflections on Reading Letters on Historical Materialism", *Journal of Nanjing Political University*, 1990, Issue 3.] It is precisely on the philosophical basis of historical materialism that the CPC, as the ruling party of China, has formulated the mass line from the masses to the masses, and China has also determined the people centered national ideological foundation. In civil litigation procedures, the important identity of the parties is the people. Therefore, the construction of a procedural guarantee system based on the subject status of the parties in China has sufficient ideological support. However, the ideological foundation of China is not derived from the Western emphasis on "heaven" or the bestowal of a certain deity, but is determined by the status of the people as historical creators and representatives of advanced productive forces.

2.2. The coupling of China's national conditions and the socialization theory of civil litigation procedures

Firstly, the fairness value advocated by the socialization theory of civil litigation procedures is in line with the emphasis on distribution fairness in the current development of China's social distribution system. As mentioned by the author in the previous text, the first issue that needs to be addressed in civil litigation procedures is the distribution principles and methods of judicial resources in different cases. From this perspective, the entire civil litigation system is intricately linked to the social distribution system. For example, the filing system reflects whether judicial resources can be used to resolve specific disputes; Whether judges can investigate evidence based on their authority reflects the principle of allocating judicial resources in specific cases; The construction of small claims procedures, family litigation procedures, and public interest litigation procedures reflects the allocation of judicial resources in different types of cases.

In the context of China's strong emphasis on fairness in social distribution, the allocation of judicial resources should also emphasize fairness. This fairness is not only to enable the people to have equal rights to seek judicial solutions when encountering civil disputes, but also to achieve the substantive equality of the parties in the procedural process emphasized by the socialization theory of civil litigation procedures at the content level. The best way to achieve this equality is to promote consensus among the parties through the reasonable allocation of their behavioral responsibilities advocated in the theory of procedural safeguards.

Thus, a logical coupling relationship has been formed between the distribution system in Chinese society, the socialization theory of civil litigation, and the procedural guarantee theory centered on the subject status of the parties involved;

Secondly, under the background of time and space compression, the changes in China's social structure require the socialization of civil litigation procedures. Through the author's analysis of the changes in China's social structure in Chapter 4 of this article, it can be seen that with the diversification and complexity of China's social interest pattern, the fragility of family structure,

and the uneven development of society, the content of civil disputes has developed towards diversification and complexity. In such a national context, pure authoritarianism or party centeredness is clearly unable to meet the needs of a rapidly changing society. The socialization theory of civil litigation procedure echoes the reality of China's social reform from a more realistic perspective, such as emphasizing the public nature of the civil litigation system, and even positioning the civil litigation procedure as a national welfare system to respond to the main social contradictions of China's unbalanced development. Because in an unbalanced and insufficient society, what is most needed is a system with public and welfare nature to regulate social contradictions, especially to ensure that the disadvantaged party in society can not receive substantive and fair treatment; For example, the socialization theory of civil litigation weakens the distinction between legal truth and procedural truth, and constructs a view of procedural truth from the perspective of achieving substantive equality, which helps to clarify the intertwined and chaotic state of theories such as party theory, debate principle, burden of proof, and judicial syllogism in China's civil litigation system.

3. New requirements for socialization of civil litigation

Based on the above comparison and explanation, the author believes that at the current stage in China, the establishment of the subject status of the parties should be developed from three aspects of procedural justice theory:

3.1. Constructing a basic procedural guarantee system guided by precision to prevent surprise attacks and ensure procedural stability

By granting binding dispute management powers to the parties involved to restrict judges from acting recklessly. Clarify the relationship between judicial power and the litigation rights of the parties involved. And as the foundation of the subject status of the parties involved, if it cannot be firmly implemented, all subsequent theoretical constructions may face the fate of being marginalized.

3.2. Change the mindset of retrospective procedural safeguards based on judgment results

As the Japanese scholar Masanori Inoue once said, "Procedure is the continuous process of dispute resolution." [Masanori Inoue, "On Civil Procedure," published by Keiko in 1993, p. 35.] From this perspective, the resolution of disputes is achieved through the process of procedural safeguards. Given this, the content of procedural safeguards should also focus on the dynamic mechanism of mutual influence and restraint among parties as equal subjects in litigation, in order to achieve a reasonable allocation of responsibility for their actions between the two parties and promote the formation of consensus among the parties' actions.

From the perspective of implementing this theoretical change, it is necessary to construct an inclusive civil litigation procedure as proposed by the author in the previous text. By setting up corresponding procedures for different types of disputes, different interaction mechanisms between parties in different types of disputes can be accommodated. By introducing dispute resolution subjects that can promote interaction between parties to reach consensus, social co governance and diverse dispute resolution assistance factors can be accommodated. By absorbing the dispute resolution experience of frontline judicial workers in different regions and fields, China's "unbalanced" national development status can be accommodated. Only by transforming the above inclusive mechanisms into a practical system of procedural safeguards can disputes be ultimately resolved in the process of procedural safeguards.

3.3. Enhancing the openness of procedural justice theory to provide guidance for non litigation dispute resolution mechanisms

Due to the fact that the procedural safeguards mechanism mentioned earlier can be implemented not only through civil litigation procedures, but also through non litigation dispute resolution mechanisms, especially under the premise of emphasizing the subject status of the parties, resolving disputes through judicial procedures is only an option for the parties to resolve disputes, rather than the entirety. It can even be said that "resolving disputes through litigation is often not the end point, but only an intermediate step... Litigation only provides an opportunity for dispute resolution, and whether mediation or judgment is a link in the dispute resolution process."Therefore, establishing an open theory of procedural justice is not only a response to non litigation dispute resolution mechanisms gaining a status comparable to litigation worldwide through the application of justice, but also a necessary way to enrich the theory of procedural justice in civil litigation.

4. Conclusion

The socialization theory emphasizes the support of social ideology for civil litigation procedures, the public nature of civil litigation procedures, the agency of judge powers, and the value of efficiency, fairness, and stability in civil litigation procedures. It opposes strict differentiation between substantive truth and procedural truth, and emphasizes the socialization of discovering truth. The civil litigation procedure in China not only needs to be in line with China's ideology, but also needs to effectively respond to the needs of justice in various fields, families, and members of society. At the same time, the reality of Chinese society is also the basis for us to evaluate and choose the content of the socialization theory of Western civil litigation procedure, and to construct a civil litigation procedure justice theory that meets the actual needs of Chinese society. The civil litigation procedure needs to construct a basic procedural guarantee system guided by precision to prevent surprise attacks and ensure procedural stability, change the thinking mode of retrospective procedural guarantee based on judgment results, and enhance the openness of procedural justice theory to provide guidance for non litigation dispute resolution mechanisms.

References

- [1] Mono Capilletti: "Judicial Procedure in the Perspective of Comparative Law", translated by Xu Xin et al., Tsinghua University Press, 2005 edition, p. 364
- [2] Zhu Xiaozhe: "Yelin's Ideological Transformation and the Rise of Modern Civil Law Socialization", Zhejiang Academic Journal, Issue 5, 2008.
- [3] Adrian A.S. Zuckerman, Editor in Chief: "Civil Justice in Crisis", translated by Fu Yulin et al., China University of Political Science and Law Press, 2005 edition, No.Pages 216-217
- [4] Alan Uzelac, Goals of Civil Justice and Civil Procedure in the Contemporary World, Springer International Publishing, 2014, p.56.
- [5] Ottma Yaoernich's "Civil Procedure Law" (27th edition), translated by Zhou Cui, Law Press, 1999 edition, page 5
- [6] Alan Uzelac, Goals of Civil Justice and Civil Procedure in the Contemporary World, Springer International Publishing, 2014, p.46
- [7] Li Mingxian: "The Necessity and Contingency of Historical Development - Reflections on Reading Letters on Historical Materialism", Journal of Nanjing Political University, 1990, Issue 3.
- [8] Masanori Inoue, "On Civil Procedure," published by Keiko in 1993, p. 35.