The Scientific Demands of Legislation
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Abstract. As the characteristic of legislation, science not only has logical self-consistency, but also has system standardization. The principle of scientific legislation has evolved from the legislative stand of the ruling party to the legal principle of legislative law. To strengthen the scientific nature of legislation, it is necessary to make an overall effort on the systematic knowledge. Therefore, in the legislative concept we should break the omnipotent legislative concept of legislation and re-examine the legislative idea that "it is appropriate to be coarse rather than detailed" and changing the concept of legislation that relies heavily on economic legislation. In the legislative norm, we should reasonably divide the legislative jurisdiction, scientifically design the legislative procedure and reasonably stipulate the rights and obligations, the power and the responsibility. In the legislative technology, we should pay more attention to the scientization of the legislative language.

The Context of Understanding of Scientific Definitions

The word "science" originated from the Latin word scientia which has the meaning of universal knowledge and generally belongs to the category of philosophy. In the 14th century, English vocabulary science was introduced which is meaning the same knowledge. After the scientific revolution took place in the European continent in the 17th century, science evolved into a category with mathematics and experiment as the main content, which mainly indicated the meaning of "natural science". [1]Since modern times, people's understanding of the meaning of science is more extensive. Kant believes that every kind of knowledge can be called science as long as its task is to establish a complete knowledge system according to certain principles. Kant's definition is very enlightening, because it contains several main components of science: first, science is related to knowledge so it called knowledge is proved to be true statement; second, science is knowledge system that means science is a certain result achieved by adopting a certain method or procedure; third, the system must be rational and argumentative.

"Ci Hai" in China defines science as "the knowledge system of reflecting the essence and law of various phenomena in the real world by using categories, theorems, laws and other thinking forms" [2]which indicates the connotation of science. It shows that science is the reflection of objective reality by subjective cognition (by category, theorem, law and other thinking modes) that means subjective cognition accords with objective reality. Science can be divided into natural science and social science according to the difference of research object, research purpose, research method and research function. In terms of history, natural science is earlier than social science. The development of natural science provides the support of power, technology and methodology for human beings to understand and study social phenomena. Social science is a science with social phenomena as its object of study. Its task is to study and expound various social phenomena and their development rules. Usually the so-called legal science is a kind of discipline classification in the sense of social science.
If Legislation is Scientific

The definition of science indicates that there is room for application of science in both natural and social sciences. However, whether science can be regarded as the nature of legislation, there are different voices in the field of theory. There is a view that if legislation is measured by the standards of the natural sciences, it means that science contains the attributes of some absolute truth and is absolutely correct, and that the reliability of science is periodic and relative. There is a danger of rigidities following an object as a standard unchangeably that has only relative reliability. [3]In fact, the scientific standards followed in the field of legislation should be in the sense of social science rather than natural science. On the one hand, the science in legislation is the unity of truth and value unlike natural science which does not reject value judgment. On the other hand, science which is manifested in legislation belongs to social ideology and is the unity of class nature and social nature. Unlike natural science which can span different classes and social stages, it is widely accepted. At the same time, science in legislation has a national character and different ethnic and cultural differences will have different degrees of influence on the research of social sciences unlike the natural sciences which can be recognized across national and national boundaries. As far as the essence of legislation is concerned, legislation is the reflection of the will of the people. The will of the legislator can not be produced out of nothing but is determined by the objective economic basis of a country. Thus, the legislator must make his own subjective accord with the objective reality and try to explore and follow the objective law of the legislation. In this sense, the legislation itself contains the scientific requirements.

In the field of legislation in China, the scientific nature of legislation is embodied in the principles of scientific legislation. The so-called scientific legislation means that the legislative subject can realize the organic unity of the subject of legislation on the basis of fully understanding and respecting the objective law and based on the reality of our country and the objective demand of the legislation. The report of the 18th National Congress of the Party in 2012 identified scientific legislation as one of the basic principles for the construction of the rule of law and the fourth Plenary session of the 18th CPC Central Committee in 2014 stressed the need to promote scientific legislation in depth.

The ruling party's proposal to reflect on the legal level is the relevant content of the legislative law revision in 2015. Article 6 of the newly amended legislation law stipulates: "legislation should proceed from reality and adapt to the requirements of economic and social development and comprehensively deepen reform. The rights and obligations of citizens, legal persons and other organizations and the rights and responsibilities of state organs are stipulated scientifically and reasonably. Legal norms should be clear, specific, targeted and enforceable". This article supplements and perfects the specific contents of the principles of scientific legislation and makes clear provisions on the scientific nature of the legislation. It can be seen that the scientific nature of legislation is not only logical in knowledge, but also normative in system.

How to Strengthen the Scientific Nature of Legislation

The fundamental approach of practical scientific legislation is to strengthen the scientific nature of legislation which is also a proposition that the legal profession and legal scholars need to ponder and discuss. We believe that it is necessary to consider the path to the realization of the scientific nature of legislation from the systematic view of knowledge.

Scientific idea of legislative concept

It is obvious that legislation is influenced by ideas. In the process of legislation, any legislator will consciously or unconsciously be controlled by certain concepts which may be rational, scientific, or irrational or false. Not all of the resulting legislative results can stand the test of social practice. Now our country has entered a legislative era with laws to be followed but there are still many misunderstandings in the concept of legislation. It is urgent for us to clarify and reflect on the theory to realize the scientization of the legislative concept and only the change of the concept can
promote the healthy operation of the legislative activity. In particular, the scientization of the legislative concept should pay attention to the following problems:

First of all, we should break down the legislative concept of omnipotent legislation. Not all affairs should be adjusted by legislation and the object of legislation should be selected scientifically. This requires the scientific division of the law, morality, discipline, customs and other social norms and other social norms to further play the role of citizen conventions, rural regulations, trade regulations and other social norms of the positive role. In the field of legal adjustment we should legislate some key areas to realize the necessary depth and reasonable way of legislative intervention.

Secondly, we should examine the legislative concept of "should be coarse rather than detailed". Since the reform and opening up, the focus of national work has shifted to socialist economic construction. The legislative work at that time could not meet the needs of the development and changes of the economic situation. Therefore, the legislative concept of "it is appropriate to be coarse rather than careful" has been established and gradually become the guiding ideology of our legislative work. In the specific historical conditions, this concept has pushed our legislative work into the fast lane. According to the statistics of some scholars, the national legislation of our country has entered a period of rapid development since 1979 and the number of legislation is on the whole rising. From 1979 to 2013, the total number of legislations by the NPC and its standing Committee was 437, 5.33 times which is the total number of national legislations before reform and opening up. However, in the face of a large number of laws and regulations people do not know what to do and it is very difficult to carry out the laws and regulations that have been formulated. For example, some laws and regulations are too principled and general so they should be interpreted concretely. The contents of some laws and regulations are too empty and lack of the essential requirement of maneuverability. The idea of "should be coarse rather than detailed" is to blame. This concept enhances the operation space for the fuzziness of legislation and affects the uniform application of the legal system and undermines the authority of the law. The newly revised legislative law stipulates that "legal norms should be clear, specific, targeted and enforceable. In fact, it reflects the change of legislative concept that is we should not pursue the quantity and scale of legislation unilaterally under the guidance of "rough" concept, but should attach importance to the improvement of legislative quality and the improvement of legislative benefit under the concept of "fine".

Finally, we should change the concept of legislation based on economic legislation. In the past 30 years of reform and opening up, in order to consolidate the achievements of China's economic restructuring, China has enacted and improved a large number of economic laws and regulations and has timely adjusted various conflicts of interest that have arisen in different stages of the development of the market economy. It has effectively safeguarded the legitimate rights and interests of countries, collectives, enterprises and individuals in the transition of the economic system and has fundamentally guaranteed the smooth progress of the cause of reform and opening up. Correspondingly, the amount of legislation related to social services and livelihood protection is relatively small. Take local legislation in Shanghai as an example, in the 148 local laws and regulations in force in Shanghai, only 18 are related to social services and people's livelihood security, accounting for about 12 percent of the total. While the economic legislation is dominant, other legislations have to be relegated to the secondary position. "In this way of thinking, the true character and rich diversity of the legislation have disappeared and become the shadow of economic development". In fact, China's social reform has entered a critical period and deep water areas. There are many contradictions and risks and various social interests are complicated. Legislators should actively respond to the demands of multiple stakeholders and pay attention to the people's livelihood and strengthen the construction of legislation in the field of social services.

The scientization of legislative norms

The scientization of legislative norms is the premise and foundation of scientific legislation which mainly involves the rational division of legislative authority, the scientific design of
First of all, the reasonable division of legislative jurisdiction. The division of legislative jurisdiction mainly solves the problem of the scope and boundary of the legislative power which can be exercised by the main body of legislation. The demands of the pluralistic interests of the society lead to the different demands of the social subjects on the legislation. Whether or not these legislative demands can be satisfied and how to satisfy them actually depends on the division of legislative jurisdiction. Therefore, we should optimize the allocation of legislative jurisdiction to ensure that the legislative power is clear, specific and reasonable, otherwise, there will be disorderly legislation such as unauthorized legislation, ultra vires legislation and repeated legislation and so on.

Secondly, the scientific design of legislative procedure. Modern legislation pays more attention to the design and application of legislative procedure and no procedure is no legislation. Scientific legislative procedure design is conducive to standardize public power, protect democratic rights, improve legislative efficiency and achieve legislative justice. Of course, the design of the legislative process itself is also a process that needs to be explored and interests to play, especially in a country such as ours where the concept of procedure is lacking and there are many contradictions in the process of designing and running the legislative procedure. Take the local legislative process as an example, the main problems are as follows: first, most local laws and regulations are brought forward by the standing Committee of the Local people's Congress, the special committees and the government and the majority of the cases are put forward by the government which is not conducive to the full expression of public opinion. Second, the local people's Congress standing Committee has too little time to review the laws and regulations during the deliberation of the draft law which is not conducive to the accurate and comprehensive expression of its deliberative opinions. Third, the voting and publication process generally adopts the overall voting method. That is the voting of the whole bill by the voting participants or not which can not truly and fully reflect the will of the participants, especially when there are major differences in individual articles and the drawbacks of the overall vote is exposed. How to perfect the legislative procedure, the key point should be based on the fundamental reality of legislation and attach importance to the feasibility and operability of the program design, rather than copy the western legislative work experience. This is the essence of the scientific design legislative process.

Finally, the reasonable provisions of rights, obligations and power and responsibility. The reasonable stipulation of the rights and obligations of citizens, legal persons and other organizations as well as the power and responsibilities of state organs which is not only a basic requirement for legislators, but also a problem that needs to be solved in scientific legislation. Two issues are explained separately as following:

First, the reasonable provisions of rights and obligations. The core of the reasonable stipulation of rights and obligations lies in how to construct the value model of socialist legal rights and obligations and how legislation can reasonably define the rights and obligations of citizens, legal persons and other organizations. We believe that we should grasp several principles: first, pay attention to the equal relationship of rights and obligations in quantity so that the exercise of rights and obligations can maintain a dynamic balance in quantity; Second, we should give full play to the incentive function of the right norm to the obligation and the guarantee function of the obligation norm to the realization of the right. The purpose of the two functions is to realize the common legal mission: to guarantee the freedom and maintain the order; Third, pay attention to the reasonable setting of the relief of rights and the provisions of legal sanctions. The provisions of rights should not only be rules on paper, but also be translated into practical interests. Similarly, the provisions of obligations should not only be declared on the basis of law and more should reflect the real coercive force, in view of the rights cannot be realized and obligations are not fulfilled, the law should design the corresponding prevention and supervision mechanism.

Second, the reasonable regulation of power and responsibility. Power and responsibility are the special forms of rights and obligations in the field of public law. How to reasonably define the
power and responsibility of state organs is the key to correctly understand the essence and function of power and responsibility. In essence, power is the qualification of compulsory management of society by public organizations whose function lies in management and domination, while responsibility is the legal guarantee of the publicity of power and its function lies in restriction and guarantee. When responsibility is reflected in the function of restricting power, the object of legal responsibility is power and its existence fully guarantees the public welfare and order of the exercise of power. However, the meaning of the words of responsibility is not limited to this and responsibility means not only the adverse legal consequences, but also the duty we are supposed to do. For state organs, power itself means obligations as well as the functional responsibilities. When the organ of power performs its duty, the object of responsibility is no longer power but society so the function of responsibility is no longer to restrict but to serve. That is state organs have the responsibility to serve the needs of society. Legislation should not be limited to the administrative functions of state organs, but should also take into account the service duties of state organs. As have discussed above, the reasonable regulation of state power and responsibility in legislation should not only embody the unity of power and responsibility, but also pay attention to the dual character of power and responsibility.

The scientization of legislative technology

Legislative technology is a general name of the methods and techniques that legislators follow in their legislative activities to realize the scientization of legislation. The legislative technology and legislative activities are closely linked and the level of legislative technology directly determines the quality of legislation. Legislative technology is of great significance for improving the scientific degree of legislation, enabling legislation to adjust social relations and science correctly and effectively reflecting the wishes of legislators and rulers. In recent years, the research results of the legislative technology have gradually increased and scholars on how to improve the level of legislative technology published a lot of foresight. We believe that the realization of scientific legislation technology, we should pay attention to ensure the scientific language of legislation.

Legislative language is a special language used to express legislative intent and set legal norms. Language and character are the most basic elements of written law. With the aid of language and characters, the legislators' thoughts, legislative intent, legislative contents and legislative policies can be expressed completely and effectively disseminated and accurately understood and applied to the judiciary, law enforcement and law-abiding. The characteristics of legislative language lie in that it is more accurate, concise, popular, normative, rigorous and solemn. As for how to realize the scientization of legislative language, in fact, the characteristics of legislative language have already provided scientific evaluation standard. Accuracy is easy to express legislative tenor. Concision and popularity are easy to understand the content of legislation. Standard and rigorousness are convenient to reduce the ambiguity of the text. Solemnness is convenient to reflect the legislative authority. The above standards can be used as the scientific direction of legislative language.

But even so, the limitation of language in communication and understanding still brings trouble to the science of legislation. On the one hand, the linguistic understanding between human beings is actually a complicated interactive process of sending out and receiving information. So language understanding is possible only in the community of languages which requires that language communicators have enough common ideas, otherwise, they will not be able to correctly understand the message they are trying to convey. On the other hand, language has something to do with time, environment and experience. When it is expressed by language, historical, social, environmental, religious, and very subjective perceptions and experiences emerge and these views vary from person to person. Many words are associated with personal experience, opinion, evaluation and communication which means that the same word has different meanings for different people and therefore, language comprehension is limited. For legislators, how to solve the problem of text understanding is very important and the legal norms must be expressed in a way that the average person can obtain a minimum understanding. This is different from the communication between
legislators through professional legal terms in the language community. In the final analysis, it is a problem of dividing the language of written law and the language of jurists. The scientific legislation should find a reasonable way out for that.

References