

Research on the re-typing of public property in the sense of criminal law

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Keywords: Criminal law; Public property; Retyping; Research

Abstract: With the development of modern countries, private life and public life are increasingly integrated, and the status of public property has become increasingly prominent. Especially for socialist China, as a country in transition from planned economy to market economy, the role of public property in national governance is extremely important. What is not commensurate with this position is that the "absence of rule of law" in the operation of public property in China is serious, and the characteristic of "administrative leadership" is particularly obvious in practice. Although the academic circles have paid attention to this from all aspects, there is still no basic and systematic research. In view of this, the basic theory of the rule of law of public property in China needs to be constructed urgently. At this stage, in terms of public property acquisition, the key is to deepen the construction of market mechanism and ensure "fair transaction"; In the use of public property, the core is to ensure the realization of the legal use of public property, comprehensively strengthen the budget control of financial public property, and lead the comprehensive reform of administrative law with the concept of payment administration.

1. Introduction

In recent years, there have been many incidents involving "state ownership" and "collective ownership" in practice, all of which point to the control and utilization of "public property" in the Constitution, such as the ebony case, the gold nugget case, the problem of taking water from the river, whether Chinese herbal medicines in grassland and even mountains can be picked freely, the profit limit of state-owned enterprises, and so on[1]. Only relying on the "state ownership" and "collective ownership" stipulated in the Property Law, these problems can not be completely and reasonably solved. Judging from the text of the Constitution, the "socialist public property" in the current Constitution includes "state and collective property" (Article 12, paragraph 2, of the Constitution)[2]. Therefore, the issues of "state ownership" and "collective ownership", which have attracted much attention in the academic circles at present, should be included in the category of "socialist public property" in Article 12 of the Constitution[3]. The legal framework of public property includes three basic aspects: first, the subject of public property is defined as state and collective; Second, the connotation of public property must take "socialism" as its logical premise, that is, socialism constitutes the purpose and logical starting point of "public property"; Third, the state has an active duty to establish a constitutional system and organizational framework to realize the functions of public property[4].

The legislative purpose of this article is to explain the charges of public property involved in the sub provisions of the criminal law. However, this article does not clearly define the concept of public property. Applying the above legal theory to practice, we can find that there are many deficiencies and disadvantages of the rule of law in the operation of "acquisition" and "utilization" of public property in China[5]. It only stipulates the scope of public property, which can not play a due normative and guiding role for the crimes involving public property in the sub provisions of the criminal law, and also makes the criminal objects of relevant crimes controversial. Starting from solving the dilemma faced by Article 91 of the criminal law, this paper attempts to classify the public property in the sense of criminal law with the method of re typing, clarify the criminal objects of relevant crimes in the sub provisions of the criminal law, and prevent the unwarranted loss of state property[6]. At this stage, the key to the success of public property is to take tax legality as the core, implement the "legalism", promote the "balance of legal rights" with the

innovation of procedural legal system, deepen the construction of market mechanism and ensure "fair transaction"; In the aspect of public property utilization, the core is to ensure the realization of the legal use of public property, comprehensively strengthen the budget control of financial public property, and lead the comprehensive reform of administrative law with the concept of payment administration[7].

2. Analysis of the concept of public property in the sense of criminal law

2.1. Public property division in criminal law

Basic concept of public property in the sense of criminal law and its definition. Public property right refers to the government's power to acquire, use and dispose of property based on its public nature, including non-consideration payments such as taxation, punishment and nationalization of private property, consideration payments such as land and housing collection, fees and issuance of public bonds, and the power to control these properties. The form refers to that situation where the government does not need to pay the full consideration, that is, to fulfill specific obligations as to acquire and control private property, and to apply the principles of property right restriction, proportion balance and human rights protection. The latter refers to the situation where the government needs to pay specific consideration, that is, to fulfill specific obligations as to obtain and control private property, and to apply the principles of benefit burden, fair compensation and intergenerational equity. Both the concept of public property right and the traditional concept of property right are based on property, but there are obvious differences and matching between them. The heterogeneity between public ownership and private property rights can be said that the property "right" is the core of private ownership in modern times, and the emergence of this private ownership is "developed from the disintegration of the naturally formed community" and "expressed as the result of the general will". On the one hand, it shows that private ownership is completely independent of the community, on the other hand, it shows an illusion, as if private ownership itself is based only on individual will, that is, on arbitrary domination of things ". Therefore, private property rights and public ownership have different social functions from the beginning. They are heterogeneous and have different social goals[8]. They are the products of different production relations. The latter is based on the criticism of the former, aiming at correcting many drawbacks in the private ownership model. No matter under the ideal type of public ownership or private ownership, there are a series of matching systems, which cannot be confused.

2.2. The dilemma of public property in the sense of criminal law

In China, public property is an extremely important material basis to support socialist construction, and has a sacred and inviolable status. However, for a long time, there has been a serious "dislocation" phenomenon in the legalization of public property in China. Whether in legislative practice or academic research, most of them pay more attention to the management and protection of public property and ignore the regulation of public property acquisition behavior, resulting in many violations of private property rights and competing with the people in the practice of public property acquisition. Public governance and the rule of law have always been the inherent requirements of the country's public welfare. In socialist China with public ownership as the main body, public property is also an important guarantee for economic development and national prosperity. However, in the current practice of public property acquisition in China, there are still problems of illegal determinism, the principle of fairness and distributive justice, which not only leads to the low level of legalization of public property acquisition in China, but also hinders the construction of the rule of Finance and taxation and even the rule of law in China to a certain extent. As a socialist country that has implemented the planned economic system, all kinds of public property widely exist in China's economic and social life. Public property is always an extremely important category, and the whole process of its acquisition and utilization is closely related to the interests of citizens in public governance. However, because its operation is absolutely dominated by administrative power, the implementation of the rule of law in this field is difficult, so all kinds

of extortion and abuse often occur. In this regard, although the legal theory has been concerned, it is still very scattered and scattered in the research of various departments. So far, there is no systematic theory of the rule of law for public property. Figure 1 shows the concept and dilemma of public property in the sense of criminal law.

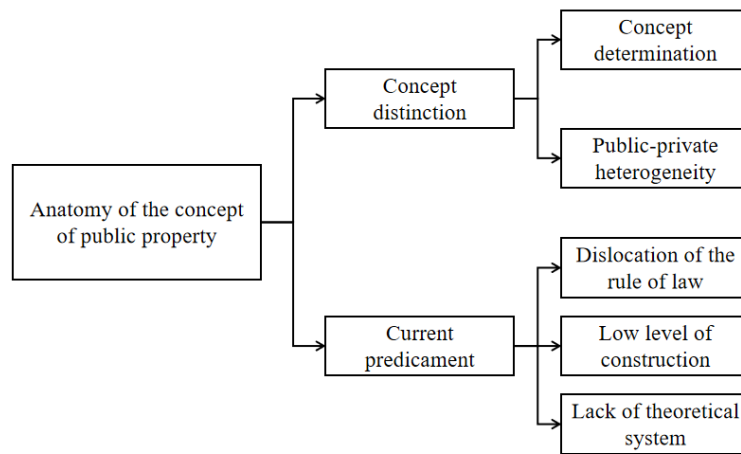


Figure 1 Concept and dilemma of public property in the sense of criminal law.

3. The way out of the dilemma of public property in the sense of criminal law

3.1. Retyping of public property

Theoretical reconstruction of the concept of public property. The theory of public property is of great significance to the definition of public property. Following the research path of "the purpose of object and subject", we can gradually clarify the distinction between public property and private property by analyzing the differences between the concepts of public property, public property and public property. The difference in understanding of the concepts related to public property is fundamentally due to the different understanding of objects. Public property for public use is public property provided or managed by public subjects for direct use by the public in order to promote and protect public welfare. The typical form of public use of public property is public use of public property. The extension of public interest includes and is far greater than public welfare, and is not limited to the scope of direct public benefit[9]. "Public welfare" can more accurately reflect the essence of "public use". In modern society, public use of public property has become an indispensable part of people's daily life, such as bridges, highways, public transport, sewers, schools, libraries, parks and so on. If these people do not provide the corresponding material conditions with public property, citizens may face serious difficulties even for the most basic survival and development. Public and public property rights, public identification of public property and its just judgment. That is, whether public property has legitimacy and legitimacy, whether private property rights are infringed in the process of using rights, and whether it is controlled according to legal requirements and rationality principles. For the former, to examine whether the infringement of private property rights is justified, it should be noted that the closer the connection between property and the public, the more social obligations it undertakes; For the latter, it needs to be realized through the budget law and tax law norms that conform to the principle of justice.

3.2. Legislative and judicial advice

Through the legalization restriction of public finance and government financial behavior, in order to better integrate the modern property rights subordinate to private people, and through the establishment of the concept of public property rights and the reasonable restriction on the legitimacy of public property rights, we can realize the more strict protection of public property at the level of acquisition and distribution. The theory of public property rights is not to weaken the protection of private property, but to strengthen the protection of private property; It is not to

weaken the protection of taxpayers' rights, but to deepen the protection of taxpayers' rights. The public property law based on the concept of public property rights is the legalization and operation rules of public property transformed from private property. It is the basic rule of law for national financial governance and the establishment of modern financial system. Secondly, for the crime of dereliction of duty in the provisions of criminal law, it is necessary to consider it on the basis of the reclassification of public property in the sense of criminal law. For example, the loss of prohibited goods controlled by public organizations can not be evaluated in the scope of loss results in the crime of dereliction of duty[10]. As the interests of the state and the people can only be legitimate interests, not illegal interests, so in the interpretation of the public property in the crime, the prohibited goods can not be evaluated, because even the prohibited goods controlled by public organizations can not become their legal property, but are responsible for the custody and storage due to their duties, so as not to make the prohibited goods circulate in the world. For the loss of intangible public property, the calculation methods involving the loss of public property are "direct loss" and "indirect loss". The judgment of "direct loss" and "indirect loss" is mainly based on the causal relationship between behavior and result. Among all types of public property, intangible property is the most difficult to control. Unless there is a strong causal relationship between criminal behavior and criminal consequences, it should not be evaluated in the scope of "indirect loss". Figure 2 shows the way out of the dilemma of public property in the sense of criminal law.

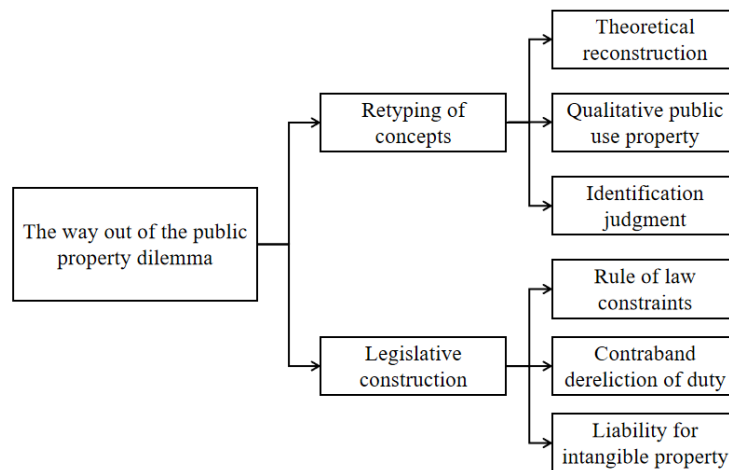


Figure 2 Way out of the dilemma of public property in the sense of criminal law.

4. Conclusions

In the process of our country's modernization of national governance and legal system, as the material foundation and important pillar, the legalization of public property operation is undoubtedly the core link. However, at this stage, whether in practice or in theory, the rule of law system of public property in the sense of criminal law is far from being formed, the systematic rule of law theory of public property needs to be constructed urgently, and the classification of public property is lacking. Through refining and analyzing the public property in China, we should adhere to legalism in the construction of legalization of public property in China. The absence of the basic theory of public property rule by law is rooted in the lack of thorough understanding of the concept. By categorizing public property and classifying it according to its attributes, it is helpful to clarify the criminal targets of relevant crimes in the specific provisions of the Criminal Law, and play the role of normative guidance in the true sense. Secondly, it will help to protect the public property in China, so as to avoid the unwarranted loss of public property.

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