

Comment on the Epoch Attribute and Development Trend of Tort Law

Junqi Qin

School of Law, Shandong University of Finance and Economics, Jinan 262400, China

Keywords: tort law, epoch attribute, development trend, human-oriented values

Abstract. The principle of self-abidance is the logical starting point of tort law, Remedy for damage and guarantee freedom of action are two value goals of tort law, and also reflect the idea of human-oriented values. Based on the analysis of the continuous evolution of the doctrine of liability fixation and the scope of protection of the tort law, characteristics of the current information society, and the influence of the development trend of tort law, this paper argues that tort law is a reflection of social economy, science and technology, culture and ethical concepts, Not only meet the requirements and characteristics of the times, reflecting the benign interaction with the economy and society, but also in the deep level reflects the respect for human rights, is a deepening process. Therefore, the construction of Chinese tort law should be consistent with the current requirements of the information society, reflecting the human-oriented values concept of law, this development trend is also the era requirement in building of legal state.

1. Introduction

After the implementation of the Tort Liability Law of PRC, the legislature and the Supreme People's court has not issued a formal judicial interpretation, the application of the theory and practice problems need to be further deepened research. In terms of the application of tort law and future development trend, scholars have discussed the specific institutional aspects such as liability insurance, medical tort and environmental infringement. In the general provisions of the civil law draft will be passed, tort liability law as an independent chapter in China's Civil Code will be a trend, and its status will be significantly increased. Therefore, it is necessary to analyze the essential characteristics of the tort law and the characteristics of the times, combined with the new needs of the information society on the development of the law, to further analyze its future development trend, to discuss the human-oriented values, the core concept of tort law appropriate to social development and productivity development, hope to promoting the application and development of tort law.

2. Epoch attribute of tort law

Study the relationship between law and economy, it has been found that the reality of the economy seems to always be much more active than the law, the driving force of its continuous development are constantly emerging many "creative destruction" that existing legal governance fields and economic fields, So it is more like a catch-up relationship or "spiral relationship".[1] In other words, the social economy is always full of development and creativity, legal development must also be adapted to it, and play a role in promoting economic and social development, at the same time reflects the characteristics and requirements of the times, In the development of tort law is particularly evident. This point is particularly evident in the development of tort law.

2.1 The early development characteristics of tort law

Roman law is the source of modern western tort law. In the specific political and social conditions, the Romans developed a "civil society" type characterized by commodity economy and the equality of citizens, formed an ideology of the distinction between public law and private law, and therefrom created the tort law (private law), which is based on the protection of private interests, centered on private rights, and the adjustment of the relationship of equality. Adapted to the development of civil society at that time, and had a significant impact on the civil law system of later generations.

However, the other areas of human society, including ancient China, with typical agricultural civilization as the social basis, the Concept and form of the law are based on criminal law priority and mixing civil law, private rights concept and equality consciousness has not been started, which brought significant differences in tort law.

2.2. The modern development characteristics of tort law

The emergence of the tort law in the modern sense is mainly related to the technological progress caused by the industrial revolution. It is the product of the modern individual rationalist movement, the modern industrial revolution and the free competition capitalist economy, and with the obvious characteristics of the times.

2.2.1. The epoch attribute of the imputation in civil law system

From the point of view of the doctrine of liability fixation, the initial tort law takes the result liability and does not take into account the subjective elements of the perpetrators, without exception, the injuring party must fill the loss of the aggrieved party. The result liability is only a matter from the victim to consider the issue, will eventually lead to the behavior freedom of the society vanished, and the development of the society needs each citizen to make positive behavior. In order to meet the development of free competition capitalism economy, the modern tort law emphasizes the principle of fault liability as one of the basic principles of civil law, which established the specific rules system, such as the constitution elements, limiting compensation and defense system. The principle of fault liability has been rapid development generally be recognized in the 19th century, this concentrated embodied in 1382st clause and 1383st clause in French civil code, 823st clause and 826st clause in German civil code; German civil code. It has produced important influences on the legislation for other countries and even for the world. The principle of fault liability fits with the economic liberalism at that time, so that the actor will not take responsibility easily, and get the freedom of behavior, so as to stimulate people's creativity and become the great power to promote the development of social economy. The transition from the result liability to fault liability is the requirement of the times and represents a kind of progress.

In the twentieth Century, free capitalism developed to monopoly, human society in the enjoyment of a high degree of material civilization, but also suffered from a variety of threats, such as industrial disasters, traffic accidents, environmental pollution, damage caused by defective products, etc. The industry itself has a great potential risk, often leading to non-human control of personal and property damage, and the injuring party usually do not have the mistake, therefore insist on the principle of fault liability is tantamount to denying the victim's claim for damages. Under such circumstances, more stringent legal countermeasures are needed to provide protection and relief to the victims. Therefore, the principle of non-fault liability came into being, the basis of the legal thought is that for their own interests to open and control the source of danger, should be responsible for the damage; and the victims are not due to the fault of others suffered misfortune, which should get the social compensation as much as possible. This principle echoes the economic and social conditions of the people's security needs, reflects the people-oriented era requirements.

2.2.2. The epoch attribute of the imputation in common law system

The tort law in common law system has gone through the development process from absolute liability principle to fault liability principle and strict liability principle. The "Donoghue v. Stevenson case" in 1932 formally established the British tort law "negligence" type of infringement, while in United States is the symbol of the "Brown v. Kendall case", "No fault without liability" becomes the basic maxim of the tort law. [2] The negligence is the inevitable result of historical choice and logical development. In the stage of free capitalist period, Britain needs to encourage individuals to maximize the initiative, to take risks, investment and innovation enterprise, it objectively demands that the law establish the basic principles of civil law embodies the economic liberalism as soon as possible, in order to guarantee the further development of capitalist economy. On the other hand, the industrial revolution made accidents increase obviously, if consciously limit compensation for damage through the negligent liability principle, it can reduce the economic costs as much as possible, so promote the industrial development of the country. It can be concluded that the principle of negligence according with these characteristics.

In late nineteenth Century, due to the degree of industrialization is greatly improved, the industrial accidents and traffic accidents occurred frequently, according to the principle of negligence, many victims of the accident cannot be compensated, so resulting in a lot of social problems, it need to be amended. It is generally accepted that “*Ryland’s v. Fletcher case*”[3] of Britain in 1868 established the initial rule of strict liability in modern times, that is to say, The subjective elements of tort are not included the defendant to be negligent, or the defendant's lack of attention, or the defendant has improper purposes. In this way, the compensation and prevention function of tort law is realized. It can be argued that strict liability is the requirement of social development to the law, which in turn promotes the development of social economy.

2.2.3. Summary

It can be seen that the law has never been a constant truth, and it is changing with the change of human social life. In the industrial society, which is full of unexpected risks, it is expected that the tort law will be able to shift from concern to freedom of action to security protection, in this way, gradually formed the dual system in the principle of liability fixation. On the principle of fault liability, it takes the free will of the actor as the starting point, and makes the morality imputable of the actor as the basis of responsibility, so as to realize the reconciliation between personal freedom and social security. On principle of non-fault liability or strict liability, it is based on the concept of distributive justice, the damage associated with dangerous consequences, the unfortunate damage caused by abnormal risk is reasonably distributed, balancing the interests of both sides. It can be concluded from the development process of the imputation principle in two law systems, that the tort law is constantly being adjusted with economic and social progress. Tort law is the requirement of the development of productive forces, also providing protection for it. In fact, the developmental process of tort law is the process of deepening the respect and protection of human rights, and it is also the typical embodiment of human-oriented values.

3. The development trend of tort law in contemporary times

3.1. The development and characteristics of tort law in contemporary times

3.1.1. Socialization of damage compensation

The imputation principle of the traditional tort law is based on the economic development of the industrial society. Along with the time to enter the postindustrial society or risk society, the quantity and the loss of accident increasing greatly, tort law becomes weakness during in dealing with so much serious damage compensation, so it is requires that the tort law will no longer be seen as a purely private disputes, but also to treat it as a social problem, to solve the problem by way of socialization. In other words, it is required that the tort law is no longer limited to seek solutions itself, but also to adopt other appropriate legal means to deal with the risks reasonably, in order to solve the problems in the development process. At the same time, the liability insurance system and the social security system be established and developed along with increase of the industrial accident, they can compensate for the lack of traditional tort law, and socialization of damage compensation appeared.

By the end of the twentieth century, with the rapid development of the US insurance industry, “insurance companies almost outside the court, based on practical experience and insurance companies to guide the rules to solve all off the case” [4] The legislator or the court in the decision of who should bear the tort liability, not consider the behavior of the perpetrators is imputable in moral, but whether the loss can be dispersed to the public, shared by everyone. This solution is to consider the issue from both the victim and the offender's point of view, reflected the development from “individual standard” to “social standard”, In fact, it is a more comprehensive respect and protection of human rights.

3.1.2. The integration and development of public law and private law

Since the modern times science and technology development has experienced an accelerating process, put the world into a fast-changing age. With the development of the economic and the progress of civilization recently, it affects all aspects of social life including tort law.

In the present era, the traditional civil society foundation has been farther and farther, the distinction between public law and private law is increasingly blurred which the kind of "Main Body's

Role” as the starting point. On the contrary the concept of the social system function law is beginning, requests to form the synthetic protection mode to adapt with it. The civil society concept has a characteristic of strengthening social cooperation and social integration. In this way, the tort law is bound to break through the private absoluteness of private law relations, and even break through the upper structure of the traditional public-private dualistic model. For example, to a large extent, American tort law has become an important tool to deal with increasing social risks; in the field of modern consumer protection law, many countries take a perspective of social protection of the rights and interests of consumers to make the regulation requirements. Thus, we must realize that the traditional equality, freedom, responsibility and other highly subjective value system is facing the adjustment of the times. In the field of tort law appeared control or regulatory requirements that reflect the social justice or market safety, which led to the increasingly prominent role of tort law. Of course, its core value is still the respect and protection of human rights.

3.2. The development trend of tort law in China

3.2.1. New features of current information society

Since the beginning of the 21st century, the rise and vigorous rapid development of Internet information technology and new energy system has been rapidly forming a new social foundation and its exclusive characteristics, such as the hi-tech revolution, the development of the Internet, the change of production business model and the innovation of financial instruments, also called “the third industrial revolution” or “new industrial revolution.”[5] The direct consequence is the rapid evolution of the social basis, which brings about the change of the economic mode and the way of life itself, which is reflected in the “increasingly sophisticated social function differentiation and the social coupling”, compensation and prevention function of the traditional tort law has been difficult to meet the basic needs of dealing with accident problems, so it requires to reform the tort law.

This change is particularly evident in our country, is now the world's attention to China's speed, quickly into the information society, and will soon lead into the 5G era. In the hi-tech or information society, the rapid development of society now has changed quite significantly from what it used to be. You will find the blowing a variety of fresh lifestyles, which led to significant changes in the relationship between people in social life. Openness and freedom is the spirit of the Internet, which will inevitably affect the development of the tort law. For example, in order to meet the people's growing critical demand for high quality life, it has brought a lot of new problems of tort law, such as “energy and environmental protection”, “food safety and health rights”, “unmanned technology and traffic safety” and “information dissemination and network rights”. The new types of infringement has been produced continuously, and to deal with and solve these problems, the pure private of tortious debt and the principle of relativity of validity in traditional civil law have been unable to fully meet the requirements, and need for continuous change. Tort liability law will be an independent chapter in China's Civil Code, actually reflects the requirements of the times. The value criterion for judgment of the tort law is still the protection of the rights of the people.

3.2.2. Comprehensive protection of rights and interests

From the development process of China's tort law, in order to effectively cope with the new needs of social development, tort law has been actively self-adjustment, such as the field of application is constantly expanding, the protection of personality rights continue to strengthen, the rise of corporate responsibility, this trend has not changed. When the development of tort law in western countries enters into the stage of socialization of damage compensation, liability insurance and social security system will undoubtedly impact the traditional tort law. In the academic community, there has even been a crisis of tort law, or the assertion that it is declining.[6] In China, although the insurance industry is booming, but the social security system is not perfect, so the tort liability law not only not to decline and be “marginalized”, it is still an important way to provide relief to the victims, in the protection of human rights will play an increasingly important role.

China's “Tort Liability Law” article II of the objects of protection is the 18 kinds of absolute rights and “and other civil rights and interests”, it is a very important legal regulation. According to the general view of the academy, the scope of rights protected by the modern tort law is becoming more and broader, all kinds of interests outside the range of rights are integrated into the tort law in different

ways. For example, the so-called “virginity right”, “sexual life right” and other new extraordinary and special rights, whether to protect the controversial, but now, there have been successful cases in practice.[7] This is not only a good reference for the subsequent cases, but also reflects the deepening of our understanding of civil rights and interests.

“In the second half of the twentieth Century, the new interests almost invariably forced the law, and demanded confirmation in the form of legal rights, and the corresponding laws were increasingly recognizing their existence and raising unprecedented rights to legal protection status.”[8] It can be argued that the civil rights and interests of people do not need to be listed in the law, in fact it is impossible, and the new types of rights and interests will continue to emerge with the development of society. Through participation in litigation, generalizing and advocating a certain interest, can promote the awakening of more people's civil rights. What the judge needs to consider is whether such “right” or interest should be protected by law, and whether it is necessary and possible to remedy. In the future, whether the interests claimed by the parties to be protected, is the best test to the wisdom and expertise of the judge, the court could indeed be a test ground for new types of rights. Its core gist is to deepen understanding of the core concept of people-oriented, this is very important for the construction of the rule of law and the establishment of a humanistic legal concept.

4. Summary

Justice Cardoso said: “the law, like travel, must be prepared for tomorrow. It must have the principle of growth.” On the one hand, the law itself changes with the development of the times; on the other hand, the way people participate in the law is changing. Combined with the experience and enlightenment from developed countries in Europe and America, it can be seen that whether to adapt and promote social development, whether to maintain vitality and enhance the protection of human rights is the basic measure of tort law. After the history entered the modern society, more and more countries pay more attention to the protection of human rights, and tort law has been a major development, become one of the most important part of the civil law system.

The legal concept of human-oriented values, not only to strengthen the protection of specific personality rights such as mental damage compensation and right of privacy, but the full respect for human rights and protection, is the further implementation of equal rights, is the ultimate concern of the “human”. The issue of human rights has always been the focus of attention of western countries, and in the absence of a private tradition of China, it is particularly important to understand this. Advancing with the times is the character of the law. In the tide of the Internet + sweeping the people's life and work in all aspects, we must recognize that the true nature and development trends of tort law is the fundamental protection of human rights and interests. This is the requirement of building a country under the rule of law, is the direction of the tort law, but also the requirements of the times.

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