

A Review of the "Social Embeddedness" of Commercial Law: From Legal Formalism to Sociological Interpretation

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Abstract: This article aims to review the research related to the "social embeddedness" of commercial law to sort out the development context from legal formalism to sociological interpretation. This paper expounds the manifestations and limitations of legal formalism in the field of commercial law, and deeply explores the connotation, theoretical basis, specific manifestations and research significance of the social embeddedness of commercial law from the perspective of sociological interpretation. Revealing that commercial law does not exist in isolation but is deeply embedded in diverse social factors such as social structure, culture and economy, it provides a comprehensive theoretical reference for further understanding the essence, development and practical application of commercial law.

Keywords: Commercial Law; Social Embeddedness; Legal Formalism; Sociological Interpretation

1. Introduction

Commercial law, as a legal norm system regulating business activities, plays a crucial role in maintaining market order, ensuring transaction security, and promoting economic development [1]. With the advent of the era of globalization and digitalization, business activities have become increasingly complex and diverse, and commercial legal issues have also shown unprecedented complexity and diversity. The traditional legal research paradigm has gradually revealed its limitations in addressing these new challenges, prompting scholars to examine commercial law from a fresh perspective.

The theory of social embeddedness originated in the field of sociology. It was first proposed by Polanyi [2] and gradually refined through the development of scholars such as Granovetter [3]. This theory emphasizes that economic behavior does not exist in isolation but is deeply

embedded in social relationship networks and social structures. In recent years, the theory of social embeddedness has been introduced into the field of legal research, providing a brand-new perspective for understanding the essence and development of commercial law. The shift from legal formalism to sociological interpretation reflects a profound transformation in commercial law research, from focusing on legal rules themselves to paying attention to the interaction between law and the social environment.

Legal formalism has long held a dominant position in the field of commercial law. It regards law as an independent and autonomous system of rules, emphasizing the logic and certainty of law [4]. However, as business practices develop, the limitations of legal formalism have become increasingly prominent. Business activities are carried out in a specific social, economic and cultural environment and are influenced and restricted by various social factors. The formation, development and implementation of commercial legal systems are all inseparable from the soil of the social environment. Therefore, studying commercial law from the perspective of social embeddedness has important theoretical and practical significance.

2. The Manifestations and Limitations of Legal Formalism in the Field of Commercial Law

2.1 The Manifestation of Legal Formalism in the Field of Commercial Law

Legal formalism originated in Europe in the 19th century, emphasizing the independence and autonomy of law and regarding it as a self-sufficient system of rules [5]. In the field of commercial law, legal formalism is manifested as regarding commercial legal rules as a closed, self-referential system. Legal rules are regarded as having clear meanings and fixed scopes of application. The main task of judges and legal

practitioners is to interpret and apply legal provisions based on their literal meanings, without considering the influence of external social factors.

In the contract legal system, legal formalism emphasizes the formal requirements of a contract and the authenticity of the parties' expressions of intent [6]. As long as a contract conforms to the legal form and the parties' expressions of intent are consistent, it is regarded as valid, without delving into the economic substance and social relations behind the contract. For instance, in a traditional sales contract, as long as both parties reach a written sales agreement and it meets the formal requirements stipulated by law, such as signing and stamping, the contract is recognized as valid, regardless of whether the transaction price is reasonable or the transaction purpose is legitimate.

In the field of commercial organization law, legal formalism emphasizes the compliance of the legal form and internal governance structure of commercial organizations [7]. Business organizations such as companies and partnerships must be established and operated in accordance with the procedures and requirements stipulated by law; otherwise, they will face negative legal evaluations. For instance, the establishment of a company must meet certain capital requirements, requirements for the number of shareholders, etc., and the setting of the company's decision-making and executive bodies must also conform to the legal model.

2.2 Limitations of Legal Formalism

Although legal formalism provides a stable and predictable rule system for commercial law, its limitations have become increasingly prominent with the globalization and complexity of business activities. First of all, legal formalism neglects the social background and dynamics of business activities. Business activities are carried out in a specific social, economic and cultural environment and are influenced by various social factors, such as social norms, cultural traditions, economic policies, etc [8]. Legal formalism overly emphasizes the independence of the law and is unable to adapt to the rapid changes and diversity of business activities. For instance, in the field of Internet finance, new business models and transaction methods are constantly emerging, such as crowdfunding and P2P lending. These new business activities pose

challenges to traditional commercial legal rules. Legal formalism is difficult to adjust and improve legal rules in a timely manner in response to these new social demands, resulting in a disconnection between law and business practice.

Secondly, legal formalism may lead to unfair results in the application of the law. In complex business transactions, merely interpreting and applying legal provisions based on their literal meanings may overlook the actual intentions of the parties involved and the economic essence of the transaction, thereby leading to unfair legal outcomes.

3. Theoretical Basis of the Social Embeddedness of Commercial Law from the Perspective of Sociological Interpretation

3.1 Theoretical Contributions of the Social Law School

The school of social law emphasizes the relationship between law and society, holding that law is a phenomenon of society and is influenced and restricted by social factors. The representative figures of this school, such as Ehrlich and Pound, put forward the theory of "living" and the theory of social interests. Ehrlich believed that law not only exists in the regulations formulated by the state, but also in various norms and orders in social life, that is, the "living law". The "ways of life" such as industry practices and business ethics in business activities have a significant impact on the formation and development of commercial law. Pound, on the other hand, emphasized the social control function of law, arguing that the purpose of law is to balance various social interests and maintain social order. As a legal norm regulating business activities, commercial law is also bound to reflect and coordinate various interest relations in the business field and is influenced by the social interest structure.

3.2 Theoretical Implications of New Institutional Economics

New institutional economics regards institutions as endogenous variables of economic activities and emphasizes their significant impact on economic performance. In the field of commercial law, the theories of new institutional economics enlighten us that a commercial legal system is an institutional arrangement for commercial activities, which emerges and

develops to reduce transaction costs, ensure transaction security, and enhance the efficiency of resource allocation. The formation and transformation of commercial legal systems are influenced by various factors such as the social and economic environment, technological progress, and cultural traditions. For instance, with the development of e-commerce, the traditional commercial legal system is confronted with new challenges and needs to be constantly adjusted and improved to adapt to new business models and transaction methods. This indicates that the commercial legal system does not exist independently but is embedded within the social and economic system, interacting and influencing the social and economic environment.

3.3 Application of Social Network Theory

Social network theory holds that society is composed of various relationship networks, and the behaviors of individuals and organizations are influenced by the structure of the social networks they are in. In the business field, there exist complex social network relationships among enterprises and between enterprises and consumers, such as supply chain relationships, strategic alliance relationships, and customer relationships. The commercial legal system plays an important regulatory and regulating role in these social network relationships. At the same time, social network relationships can also affect the implementation and effectiveness of commercial legal systems. For instance, in a tight business network, industry practices and business ethics may be more binding than formal legal rules. Enterprises are more inclined to resolve disputes through informal means rather than resorting to the law. This reflects the close interweaving between commercial law and social networks.

4. Concrete Manifestations of the Social Embeddedness of Commercial Law

4.1 Commercial Law and Social Culture

Social culture is an important aspect of the social embeddedness of commercial law. Different social and cultural backgrounds have given birth to different commercial legal systems and business practices. For instance, in Western culture, individualism and freedom of contract are emphasized. The commercial legal system focuses on protecting individuals' property rights

and freedom of contract. The rule design of contract law centers on the autonomy of individual will. In Eastern culture, collectivism and harmonious relationships are more emphasized. In business activities, human feelings and face are valued. The resolution of commercial disputes often tends to be through non-litigation means such as mediation. In addition, religious beliefs can also have an impact on the commercial legal system. For instance, Islamic law has strict regulations on commercial activities, prohibiting interest transactions and speculative behaviors, which are reflected in the commercial legal systems of some Islamic countries or regions.

4.2 Commercial Law and Socio-economic Structure

The socio-economic structure is the foundation of the social embeddedness of commercial law. Different levels of economic development and industrial structures determine the demands and priorities of the commercial legal system. In countries with developed market economies, commercial legal systems are more complete and complex, covering multiple fields such as company law, securities law, and bankruptcy law, to adapt to highly market-oriented and internationalized business activities. In regions with relatively backward economic development, the commercial legal system may be relatively simple, mainly focusing on the maintenance of basic transaction rules and market order. In addition, changes in the industrial structure will also drive the transformation of the commercial legal system. For instance, with the development of the information technology industry, the legal system for e-commerce emerged to regulate the new e-commerce transaction models.

4.3 Commercial Law and Political System

Political systems have a significant influence on the formulation and implementation of commercial legal systems. Under different political systems, there are differences in the value orientation and legislative models of commercial legal systems. In democratic and law-based countries, the formulation of commercial legal systems usually follows democratic legislative procedures, emphasizing the protection of the legitimate rights and interests of market entities and maintaining a fair competitive market environment. In autocratic and centralized countries, the commercial legal

system may serve the political goals of the government more and interfere more with market entities. In addition, political stability or not will also affect the implementation effect of the commercial legal system. In politically unstable regions, the commercial legal system may be difficult to be effectively implemented, and the legitimate rights and interests of market entities cannot be guaranteed, thereby affecting the normal conduct of business activities.

4.4 Commercial Law and Industry Organizations

Industry organizations play a significant role in the social embeddedness of commercial law. Industry organizations, by formulating industry norms and self-regulatory rules, restrain and manage the behaviors of member enterprises, making up for the deficiencies of national legal norms. Industry norms and self-regulatory rules are often closer to the actual situation of the industry and have strong pertinence and operability. For instance, the securities trading rules and the code of conduct for practitioners formulated by the Securities Association of China have played a significant role in regulating the order of the securities market and protecting the legitimate rights and interests of investors. Meanwhile, industry organizations can also serve as a bridge and link between the government and enterprises, participating in the formulation and revision of commercial legal systems, reflecting industry demands, and promoting the scientific and rational development of commercial legal systems.

5. The Significance of Research on the Social Embeddedness of Commercial Law

5.1 Theoretical Significance

The research shift from legal formalism to sociological interpretation has enriched the theoretical system of commercial law. The sociological interpretive perspective emphasizes the interaction and mutual influence between commercial law and the social environment, breaking the limitation of legal formalism that regards law as an isolated rule system, and providing a more comprehensive and in-depth theoretical perspective for understanding the essence, development laws and functions of commercial law. Meanwhile, the research on the social embeddedness of commercial law has also promoted the cross-integration of law with other

disciplines, such as sociology, economics, and political science, and has driven the development of interdisciplinary research.

5.2 Practical Significance

In terms of business practice, the research on the social embeddedness of commercial law has significant guiding significance. First of all, it helps legislators formulate a more scientific and reasonable commercial legal system. By understanding the close connection between commercial law and the social environment, legislators can fully consider the impact of factors such as social culture, economic structure, and political system on the commercial legal system, making the laws they formulate more in line with the actual situation and enhancing the operability and effectiveness of the laws. Secondly, it is conducive to the correct understanding and application of commercial laws by judicial personnel and law enforcers. In the judicial and law enforcement process, taking into account the social factors behind commercial activities can prevent the mechanical application of legal provisions and achieve the unity of legal and social effects. Finally, for market entities, understanding the social embeddeability of commercial law can help them better abide by legal rules, avoid legal risks, and at the same time actively participate in industry self-discipline and social governance, promoting the healthy development of business activities.

6. Conclusion

The development process from legal formalism to sociological interpretation indicates that commercial law has significant "social embeddedness". Commercial law does not exist in isolation but is deeply embedded in diverse social factors such as social structure, culture, economy and politics. The sociological interpretive perspective provides a brand-new theoretical framework for understanding commercial law, revealing the interaction and mutual influence mechanism between commercial law and the social environment. The research on the social embeddedness of commercial law not only enriches the connotation of commercial law theoretically, but also provides important guidance for the formulation and implementation of commercial legal systems and the behaviors of market entities. Future research can further delve into

the specific mechanisms and influencing factors of the social embeddedness of commercial law, as well as how to better achieve the coordinated development of the commercial legal system and the social environment, in order to promote the prosperity of business activities and social progress.

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