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A Construction of Butterfly Pedigree of Sports Law

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Abstract

This paper ventures to start from the two dimensions of sport's specific property and law's basic property, and then construct the butterfly pedigree of Sports Law. It tries to clarify the various relationships of Sports Law, and judge the rationality of the viewpoints of various theoretic schools in this circle. And it also tries to tamp a foundation for concepts of Sports Law and provide a comparatively complete theoretic framework for analysis of the history and temporary development.

Key words: Sports law; Butterfly pedigree; Construction

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INTRODUCTION

Some scholars hold that Sports Law does not exist, and there are other scholars who believe that it is an independent department law. However, after a long period of probing and exploration in the academic circle, a consensus has not yet been universally reached in terms of practical and theoretic issues of Sports Law. Therefore, on the basis of analysis of the various viewpoints by different schools, this paper ventures to construct a butterfly pedigree of Sports Law, hoping that it could break up the diaphragm between relations theories and eliminate differences between the scholars, thus forming a comparatively systemic theory about pedigree of

Sports Law and provide reference to perfection of it and protection of citizens' sports rights.

1. SIGNIFICANCE OF CONSTRUCTION OF THE BUTTERFLY PEDIGREE OF SPORTS LAW

1.1 Legal Significance

Pedigree is integration and categorization of fragmented and disordered entities according to certain theoretic logics. It is an important method for us to grasp history knowledge and deduce new knowledge vertically, and also an important way of teasing out the inner relationships of various elements horizontally; it is even a crucial constituent part of the legal system. Pedigree mostly focuses on explanation of prospects and exploration of new possibilities (Xu, 2010). In this era of globalization of sports, a clear understanding of the pedigree of Sports Law will contribute greatly for us to be in line with international standards and find out our shortcomings, and try to achieve "Give protection where it is required" based on realistic conditions. It will then help us to tamp a foundation for the concepts of Sports Law and build a good sport legal system, thus making legislation, enforcement and abiding of Sports Law cooperate with each other efficiently.

1.2 Academic Significance

Some scholars propose that, the development of a discipline is inseparable from construction of theoretic schools and theoretic schools promote the development of disciplines, this is an inevitable course development of disciplines must follow. Some scholars propose that, the founding process of China's theoretic schools is just a typical case of academic innovation. And some other scholars propose that the Pedigree Theory is the basis of construction of Sports Law Pedigree. The above opinions

show that, summarizing and research into the various viewpoints of different theoretic schools could better advance the perfection of academics and development of disciplines, and also it is beneficial to the inheritance and innovation of theoretic knowledge. Therefore, the author tries to tease out and analyze the various viewpoints of the schools, both domestic and foreign and then construct a butterfly pedigree of Sports Law, with the hope of clearly explaining it and clarifying the various relationships, helping those who are confused systemically know Sports Law and providing theoretic basis for the implement of it.

1.3 Protective Significance

Sports rights are the core of Sports Law and it is a universal consensus to protect citizens' sports rights. *Sports Rights, Universal Declaration of Human Rights, International Charter for sports education and sports activities, European Mass Sports Charter, Outline for National Body-building Plan, the Constitution, Children' Rights Convention*, etc. these various international legal documents and national constitutions and laws all have corresponding law entries for it. Then, why do we need to protect sports right, and what kinds of sports rights, to what extent, how to protect. These are different in different periods of time, different societies and different nations in terms of ways of deed of saying, and difference of focus and dealing is even greater. Therefore, clarifying the rights of pedigree of sports rights will help us keep pace with the times and find our shortcomings and better protect citizens' sports rights based on realistic conditions.

2. CONSTRUCTION OF THE BUTTERFLY PEDIGREE OF SPORTS LAW

Currently, there are a lot of titles for Sports Law, the research contents become constantly abstract and the boundaries constantly are expanded (Sheng, 2007). But we also need to notice these: the sources of law are undefined, general ways of analysis are over dependent, too much attention to elements of law makes the definition of extension out of control etc.. (Yang, 1995) The author thinks that it is right whether from the perspective of sports or law when we define or clarify Sports Law. However, analysis of any law should not be constraint only to Concept Law's logic demonstration of self-sufficiency, we should conduct from various perspectives like philosophy, ethnics, politics, economics, sociology, law etc. and only this way could we have a more complete and accurate definitions¹. Meanwhile, the author thinks that, Sports Law is a concept about sports, it includes two key words: sports and law, the core of Sports Law is law and main body is sports. Therefore, to have an in-depth understanding of Sports Law, we should conduct research

¹ The State Education Commission of the People's Republic of China to eighth (1990, March 12). The school sports work regulations.

on the essential property of sports and basic property of law, namely the two dimensions of "sports" and "law", and furthermore construct the pedigree.

2.1 Dimension of "Sports"

Some scholars divide the Sports Law of our country into the pedigree construction of two levels and ten department regulations (Yu, Zhang, & Chen, 1999) and some scholars propose that we could divide it into fundamental theories, entity laws and procedural laws, the entity laws including constitution, civil and commercial laws, criminal and administrative laws, etc.. (Zhou, 2007, p.11) Also, some scholars propose the pedigree framework of hard and soft laws from the perspective of the strong and the weak. Some scholars divide it into national and inherent laws from the perspective of main body of the construction. There are those who propose to divide it into promotive and regulatory laws from the perspective of purpose, those who propose to divide it into social and school laws, athletic and military laws from the perspective of fields of sports, those who propose to divide it into capital guarantee and facility guarantee laws from the perspective of conditions of implementation, those who propose to divide it into coach and referee laws, athlete and teacher laws, student and citizen laws, etc..

2.2 Dimension of "Law"

Marxism holds that, "Law is not inherent, and neither does it permanently exists, it is a social phenomenon when the human society develops to a certain historical state." All the time, the academic circle universally believes that there are three main sources of law, namely, customs, morals and social conventions. But there are also scholars who analyze Sports Law from the levels of law. For example, Article 21, Section 2 of the Constitution states that "The state should develop the sports cause and launch mass sports activities, invigorate people's health", Article 46, Section 2 states that "The state should guarantee that teenagers and children should have a all-round development in morality, intelligence and body constitution" And some other scholars propose to divide it into international sports law, foreign sports law and domestic sports law according to state, for example, Olympic Charter, International Convention of Anti-doping. Furthermore, some scholars tried to divide it into written and unwritten laws from the perspective of form of law, some scholars categorize it into public and private ones from the perspective of its characteristics and others divide it into natural law and entity law from the perspective of philosophy.

In the light of the viewpoints and concepts of various theoretic schools of both foreign and domestic, and based on predecessors' research foundations and existing summary and analysis, the author ventures to comprehensively construct the "butterfly" pedigree of Sports Law from the two perspective of "specific

property of sports” and “basic property of law”, these include department of sports, main body of the creation, enforcement, purpose, condition, target, and sources, phases, nationalities, forms, characteristics, philosophy of law, totaling 12 multi-phases (see Figure 1).

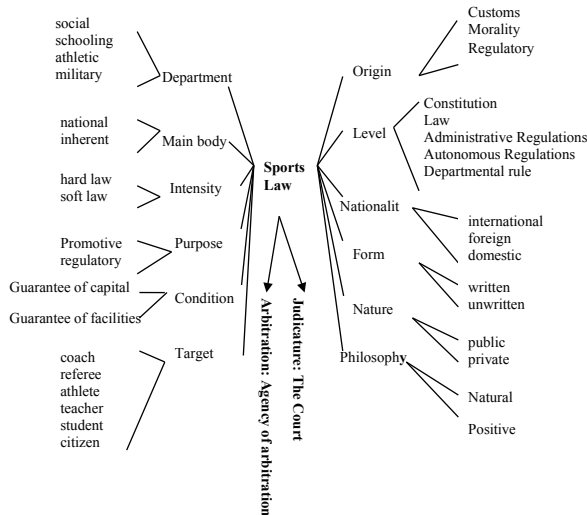


Figure1
Butterfly Pedigree

3. ANALYSIS OF THE BUTTERFLY PEDIGREE OF SPORTS LAW

This pedigree chart is like a butterfly, and a lot of mysteries are hidden in it. Looking from an overall perspective, “body” shows the main mechanism of Sports Law’s implementation, “left wing” shows the property logic of Sports Law and “right wing” shows the ownership logic of Sports Law. Furthermore, this “butterfly pedigree” contains properties, historical sequences and horizontal-vertical relationships of Sports Law.

3.1 “Body” Shows the Main Mechanism of Sports Law’s Implementation

We could see from the pedigree that, currently there are two ways of the mechanism, namely sports arbitration and judicial proceedings, specifically, five ways are included: compromise, mediation, negotiation, arbitration and action. Sports arbitration has the characteristics of fairness, betimes, economics, maintenance of secrecy, effectiveness, etc. and is popular in the sports circles of a lot of countries. And setting up of arbitration agencies is mainly in accordance with Sports Law, in some countries, the agency and system of arbitration is classified into professional and amateur, and sometimes according to forms of the sports activities, for example, the arbitration agencies for baseball, basketball and football. In a word, a comparatively complete system of arbitration has already been formed abroad, and most of the sports cases are dealt through arbitration, those who are not satisfactory could conduct prosecutions. Domestically, there is no

specialized legislation for sports disputes and only one piece of symbolic entry, Article 33 of PRC Sports Law states that, agencies of sports arbitration are responsible for the mediation and arbitration in terms of disputes occurred in athletic sports activities, and the setting up and range of arbitration will be notified separately by the State Council (Huang, 2006). And this infers that there is still a gap between our mechanism and those of foreign countries’. We mainly rely on judicial proceedings, and this involvement of judicature could make the inherent property and technicality of sports activities neglected, especially in fields of school sports, social sports, etc. deficiency of agencies for resolution of sports disputes impedes development of the sports cause and the process of legalization, which needs further perfection and supplement.

3.2 “Left Wing” Shows the Property Logic of Sports Law

“Left wing” is analysis of the pedigree construction from the perspective of sports noumenon, it is actually several subdivide sports laws, like main body of the creation, intensity, purpose, condition, target etc. they are all sub-branches of Sports Law and particular laws in the field of sports, they form a kind of subordinate relationship together with Sports Law and this make it clear for us the specific position Sports Law is in the sports family.

3.3 “Right Wing” Shows the Ownership Logic of Sports Law

“Right wing” is analysis of the categorization of Sports Law from the perspective of “basic property of law”; it makes the ownership logic of Sports Law explicit from various angles, like origin, level, nationality, form, nature, philosophy of laws, etc.. They form a kind of subordinate relationship together with Sports Law and this makes it clear for us the “residence” of it. Here we locate Sports Law from the category dimension of it, and the pedigree becomes easy to understand when it is accurately located.

3.4 Butterfly Pedigree Provides Basis for Judgment of Rationality of the Various Theories of Sports Law

Currently, schools of Sports Law are divided into three, namely Conservatives, Centrists, Liberals. Conservatives hold that there is no Sports Law (Woodhouse, 1996), centrists advocate the use of sports and law, and liberals propose that Sports Law is an independent department law (see Table 1). The focus of the three theoretical schools’ ideas is: First, whether Sports Law exists or not; Second, whether there is legal basis for Sports Law or not, or whether Sports Law is only the direct application of law in the field of sports. So, does Sports Law exist on earth? First we need to know the status of Sports Law both in China and abroad: Until the completion of this article, search results from CNKI alone of relevant journal articles is up to more than 15,860 ones; Sports

Law books like *European Sports Law* and other domestic and international ones total 21; and more than 80 Sports Law cases are collected, for example, a shooting team member Chen's wrongful shooting; also the International Association of Sports Law, Asian Academy of Sports Law, China Academy of Sports Law and the same are set up specially; Wuhan University, South China Normal University, etc. also opened Sports Law courses specially; Law Journal and other periodical agencies also opened

special sections for Sports Law. Moreover, we could know from the left and right wings of the pedigree that Sports Law already has certain theoretic basis and unique system. The above information fully shows: Sports Law already has a theoretical basis and a unique system of its own. Conservatives' point of view (there is no Sports Law) and centrists' view (law's direct application in sports) cannot be weighed, Sports Law is an independent department law.

Table 1
Comparison of Viewpoints of the Various Theoretic Schools

Theoretic schools	Foreign representatives	Domestic representatives	Main viewpoints
Conservatives	Woodhouse	Tang Weidong, Gao Sheng	Sports Law does not exist
Centrists	John Wei-start	Jurisprudential circle	Sports Law is the application of law in the field of sports
Liberals	Sym-Lowell	Tang Yong etc.	Sports Law is an independent law

3.5 Butterfly Pedigree Tamps a Foundation for Concepts of Sports Law

Some scholars believe that Sports Law is a generic term including legal regulations which the nation applies to regulate sports and regulations which people taking part in sports activities apply to adjust the sports relationships between them. Some scholars believe that it is a sum of behavioral regulations which is formulated or identified by certain national organizations according to procedures to adjust certain sports social relationships; its aim is protection of civil sports rights, maintenance of normal sports order and development of the sports cause. Some scholars believe that it is regulatory sports relationships with various subjects, contents and properties involved. And there are other scholars who believe that Sports Law regulates various social relationships in the field of sports. We could see from Figure 3 that the above definitions of Sports Law all reveal the scholars' unique perspectives and standpoints, but there are several aspects which worth discussion: First, main body of the creation is not clear, second, the purpose of creation is separated from the inherent norms and principles, third, the relationships regulated are general, there are not specific categories,

forth, the targets regulated are not clear, that is to say, the subject and object are boundless. The school of natural law believes that there is one natural law in the world which embodies reason, human nature, fairness and justice. It has been in existence before emergence of the human society, and it is permanent and ubiquitous, it is above positive law and is the guiding principle of positive law. Positive law is legal norms which are created by a certain monarch, state or institute, it reflects will of the ruling class, the monarch or a group, but it just partially reflects the spirit of law, and sometimes it is even opposite to the spirit. Marxism holds that, law is objective spiritual relationships and an inner mechanism. It is independent of man's will and law entries are the object and realistic reflections of law. We could infer from this pedigree and Table 2 that the Sports Law is a sum of behavioral regulations which are created or identified by the nation, social organizations, sports organizations, the court according to certain procedures to adjust certain sports social relationships between people taking part in or related to sports activities, aiming at development of the sports cause, protection of sports rights, regulation of sports activities.

Table 2
Comparison of the Various Concepts

Representatives	Main body of the creation	Purpose	Relationships regulated	Target
Casini	Parliament or court	Management	Field of sports	The world
Mark James	Sports organizations	Resolution of disputes	Sports relationships	The world
Franck Latty	Sports organizations	Regulation	Inner behaviors of sports	People taking part in sports
Guo Shuli	State and people taking part in sports	Control of sports	Sports relationships	Sportsmen
Zhang Houfu	Certain organs of state	Development of the sports cause	Sports social relationships	Citizens
Zhou Qingshan	State and people taking part in sports	Control and adjustment	Sports relationships	Sportsmen

3.6 Butterfly Pedigree Guides the Perfection of Sports Law

In reality, how the implementation of Sports Law is, which direction it goes, which course it takes when advancing, how mechanisms of perfection should be set up, etc.. All these questions we could resort to this complete butterfly pedigree. We could first draw a status draft of one certain area or category, and then designate the boundaries of Sports Law's development; next, we could come up with a course map of the development of Sports Law based on the inner rules of it. Moreover, in resolution of sports disputes, we could systematically understand Sports Law with the help of this butterfly pedigree, and this could ensure the fairness, justice and betimes of judgment, also unpurposeful omission, not to the point, saying to oneself, involvement in mirror details, all these phenomena could be avoided.

CONCLUSION

From the butterfly pedigree, we could see that, Sports Law is an independent department law, it is a sum of behavioral regulations which are created or identified by the nation, social organizations, sports organizations, the court according to certain procedures to adjust certain sports social relationships between people taking part in or related to sports activities, aiming at development of the sports cause, protection of sports rights, regulation of sports activities and resolution of sports disputes. This pedigree of sports has crucial significance both legally and academically in terms of judgment of rationality of the various theories, removal of divergence between people for consensus, getting the gist of the meaning and nature of Sports Law, implementing and perfecting Sports Law purposefully, advancing development of the sports cause and process of legalization.

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