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Allocation of the Proof Responsibility in Administrative Acts: Analysis Based on Law and Economics

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Abstract: An administrative act needs to have a clear basis. The adequacy of the basis is an important factor in determining the legality of an administrative act. The purpose of creating the proof responsibility in administrative acts is to facilitate administrative acts, in order to achieve the substantive administrative rule of law. In reality, administrative subjects, due to various considerations, entrust a portion of the proving task to the administrative counterpart. This setting meets the requirements of optimizing the allocation of social resources in some cases, but there are also many problems. On the one hand, the setting of elements such as the matters to be proven and the subject of proof lacks value coordination, which increases the burden on the relative party and violates the principle of consistency between the utility function of legal producers and consumers. On the other hand, applying the self certification of the relative party indiscriminately to all categories of matters violates the transaction cost analysis theory of the law. Guided by the methodology of economic analysis of law, exploring the allocation of burden of proof in administrative acts, and conducting cost-benefit analysis for different modes of burden allocation, are of great significance for determining appropriate rules of proof in practice.

Key Words: Proof responsibility; administrative act; Law and Economics; Coase theorem; legal market

1. Introduction

The burden of proof in the context of administrative rule of law has dual meanings. The first layer, which is commonly discussed in practice, is the burden of proof in administrative remedies. Its purpose is to trace the adequacy of the basis for previous administrative acts that are currently in dispute, and to achieve a review of whether the burden of proof in previous actions has been fully fulfilled. The second meaning exists in the "previous administrative act" mentioned here, which refers to the allocation of proof responsibility in the process of

completing specific administrative acts, hereinafter referred to as "administrative proof responsibility".

At present, in China's practice, the administrative proof responsibility is more allocated to the counterpart, causing them to bear a certain institutional burden in administrative acts (especially administrative acts based on application). It may hinder the counterpart from exercising legal rights through administrative licensing, administrative applications, and other ways. Therefore, if the administrative proof responsibility can be reasonably allocated, especially by reducing the self-certification matters of the counterpart within a reasonable range, it will be possible to better protect the rights and interests of the counterpart, and integrate administrative management into the track of the rule of law. Sorting out the concentrated contradictions in China's current administrative proof regulations by comparing such system in mainstream countries around the world, is the primary task of rationalizing the allocation of proof responsibility.

1.1 Current Administrative Proof System in Major Countries

For administrative proof, the current legal norms in most countries cover two levels: the burden of proof in administrative litigation, and the burden of proof in administrative acts. In the context of administrative law codification, the burden of proof in administrative acts is often stipulated in the Administrative Procedure Code. In addition, whether it is the burden of proof in procedure or litigation, countries generally adopt a consistent legislative approach to how this responsibility is divided between different subjects.

As shown in Table 1, the two typical representative countries of Common Law System are slightly different in the provisions of administrative proof responsibility. Based on the Principle of Natural Justice, Britain requires administrative organs to conduct public inquiries during administrative acts. In subsequent administrative litigation, the submission of proof materials by the counterpart is also used as a supplement [1,2]. While, based on the theoretical starting point of not distinguishing public law from private law, the United States believes that the legal status of counterpart and administrative organ is basically equal in most cases. Therefore, it stipulates that the submission of proof materials by the counterparts is the main requirement. Correspondingly, its administrative litigation system stipulates that "anyone who claims a certain fact bears the burden of proof for that fact [3]."

Most Civil Law countries, represented by France and Germany, have established the obligation for administrative agencies to collect relevant information and fulfill the proof

responsibility in administrative acts [4,5]. In addition, Germany even stipulates the proof responsibility as the absolute obligation of administrative agencies [6,7].

Table 1 Comparison of the Proof Responsibility between Four Major Countries

Proof Responsibility Content of Comparison Country		The United Kingdom	The United States	France	Germany
Proof Responsibility in Administrative Act	Bearing Mode	Public inquiries conducted by administrative organs.	Supporting materials submitted mainly by the counterparts.	Data collected by administrative subjects; The counterpart shall submit only the information necessary for making the decision.	Administrative subjects bear the burden of proof, and they also have the responsibility of actively investigating the facts of the case and collecting evidence.
	Normative Basis	Principle of natural justice; Case law; Crow Proceeding Act of 1971.	Federal Administrative Procedure Act	Code on the Relationship between the Public and Administrative Organs	Federal German Administrative Procedure Law

1.2 The Emergence and Characteristics of China's Administrative Proof System

The administrative proof system in China clearly covers two parts: proof in administrative act and proof in administrative litigation. The latter is based on the basic principle of "inversion of the burden of proof". It protects the rights and interests of the counterpart in the litigation process. As for the focus of this article -- the proof responsibility in administrative act, China's development path is from "national proof" to "folk proof", and then to the "revival of national proof" [8].

As shown in Figure 1, China's ancient state proof originated from the activities of the Western Zhou Dynasty mainly in land management. There was the germination of the state proof system--supervision of land transactions by the state through notarization. The state has set up a special official certification institution, with Situ, Sima and Sikong as officials. The transaction of lands between slave owners should follow the procedure of reporting to officials, so it can be legally traded under the notarization and supervision of the state. In the Han Dynasty, folk proof rose and became a common phenomenon. Civil witnesses, for example, local famous people or family relatives should participate in commercial transactions such as testamentary succession and real estate transactions. After reaching an agreement on a transaction, it is usual to invite above mentioned reputable persons to sign the document. During the Ming and Qing Dynasties, the state restricted the commodity economy, and the state proof and folk proof gradually degenerated. However, the official laws still adhered to the state proof principle of "printing deeds as evidence" in land transactions [9].

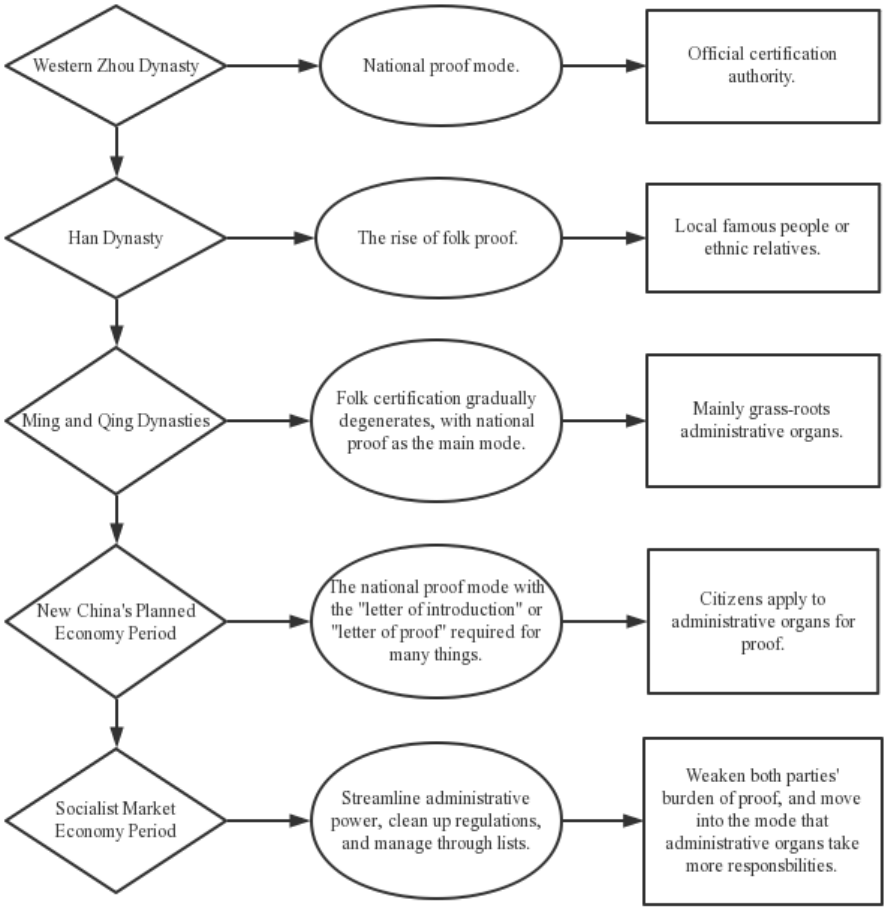

Figure 1 Mode and Content of Administrative Proof in Chinese Dynasties

After the founding of New China, the administrative proof system has gradually changed from the highly centralized national proof mode in the period of planned economy, to the stage of weakening the burden of proof of both parties under the socialist market economy system. In 2018, the general office of the State Council issued the No. 47 Document, requiring governments at all levels to centrally clean up proof matters, and cancel "strange, circular, and duplicate proofs". In recent years, new proof items have been more concentrated in the fields of optimizing business environments, and preventing and controlling sudden health incidents, reflecting the phased needs of social development.

1.3 Problems of China's Administrative Proof Responsibility Allocation Mode

In Chinese practice, there are situations where administrative agencies require the counterparts to provide documents such as birth certificates, proof of no criminal record, or qualification certificates for tax reduction, in order to authenticate their identity, and promote the completion of subsequent actions. From the perspective of jurisprudence, the first two kinds of proofs are the legal confirmations made by the previous administrative agencies towards the facts, and the legal effect of the confirmed facts will not be changed due to the loss of the confirmation document itself. In other words, if the subsequent administrative act requires prior administrative confirmation materials as the basis, the counterpart should not be required to bear the adverse consequences of not being able to submit such proof materials. The last kind of proof is the counterpart's self-confirmation of the objective state, which needs to be proved by the administrative counterpart in the form of text, pictures and even audio and video, which objectively increases their burden.

For a long time, China's provisions on the allocation of the proof responsibility in administrative acts have been scattered in various normative documents. Under the Chinese legislative system, there are a total of 43,308 current effective legislative documents that involve proof matters. Among them, there are 547 laws, 1,566 administrative regulations, and 33,859 departmental regulations. The remaining norms, in order of quantity, are industry regulations, judicial interpretations, group regulations, party regulations, military regulations, and supervisory regulations. There are over ten categories of publishing entities for all specifications [10]. The relevant proofing matters cover various fields such as food inspection and quarantine, trade import and export, specific job qualifications, Internet certification, etc., involving complex subjects and diverse interests. These subjects, based on differences in

identity attributes, assign the obligation to submit relevant materials required for work to administrative counterparts for their own convenience when formulating rules.

The ongoing "proof reduction" work has greatly improved the rationality of the existing proofing matters. However, in essence, it only solves the problem of "the realization of justice", rather than "how to define justice". In other words, the abolition of proof matters only reduces the "behavior burden" of the counterpart in the external form, but ignores the internal discussion of whom the "responsibility burden" should belong to.

2. Literature Review

2.1. Research Status of "Administrative Burden of Proof"

The burden of proof in the context of litigation law can be interpreted into two meanings according to different stages of judicial trail. First, in the early stage of litigation, the parties perform the burden of proof to support their claims. Second, in the later stage of litigation, when the authenticity of important facts cannot be confirmed, the existence of this responsibility will help the judge to make a positive or negative judgment on the request put forward by the parties [11]. This responsibility is related to the right to win the lawsuit. The parties can give up providing evidence and bear the adverse judgment. Scholars have studied the administrative burden of proof for a long time, and most of them focus on the burden of proof in administrative litigation. The issues of concern include the burden of proof in administrative litigation [12,13], the standard of evidence [14,15], the effectiveness of proof [16]. It also contains the discussion of the burden of proof in specific litigation, such as the allocation of burden of proof in tax litigation [17], as well as in public health litigation [18]. Besides, there are analyses of the differences in the specific proofing matters and degree of proof provided by both parties in administrative litigation [19]. In recent years, discussions on this responsibility have mainly focused on how to allocate the burden of proof in administrative public interest litigation [20].

Compared with the burden of proof in litigation, the proof responsibility in administrative act is the core system of administrative procedure [21]. Its application stage has moved forward, which is a kind of bilateral responsibility in the process of administrative act. Under normal circumstances, the administrative subject cannot give up the proof responsibility stipulated by law in the administrative procedure. The administrative counterpart can waive to prove, but this often leads to adverse consequences, for example, the suspension or termination of administrative acts [22]. Scholars often explore the proof responsibility in administrative acts

from the perspective of administrative procedural law. For example, the counterpart's self-evidence principle stipulated in the Federal Administrative Procedure Law of the United States, the way of proof mainly based on administrative organs' investigation in the Federal German Administrative Procedure Law [7,23], and France's proof mode based on the investigation of administrative agencies and supplemented by the materials provided by counterparts [24,25]. Besides, there are also dialectical views on the current provisions on evidence collection in administrative procedures. For example, based on the enactment of the Patriot Act in the United States, Charles Lorry proposed strengthening the power of administrative agencies to obtain evidence, and legalizing the methods of obtaining evidence [26].

However, most of the existing studies on the burden of proof only analyze the reasons for the differences in various countries' provisions. The discussion on the proof responsibility in administrative procedures did not pay much attention to the causes behind the current system, nor did it analyze how to rationalize the distribution of this responsibility.

2.2. The Legal Market Theory and Its Relationship with Proof Responsibility

In macroeconomics, as long as there is social division of labor and commodity exchange, there is a "market" in the theoretical sense. At the level of "legal market", if the social demand for legislation and the response from power organs are regarded as a pair of supply-and-demand relations, the law will be a product [27]. However, compared with the products under the traditional transaction mode, law is more similar to public goods, which has a clear non-competitive and non-exclusive nature from the date of emergence [28].

From the structural attribute of the market, the legal market does not have complete competitive characteristics, and can even be defined as an oligopoly market to a great extent. It means that the identity of the supplier is relatively single, and there is no possibility of creating legal choices for the demander through competition [29]. Therefore, as the subject of demand, although individuals can get the institutional response of the legislative subject, they actually do not enjoy the right of objection. They can only accept the content of the corresponding norms and adjust their behavior accordingly [30]. It can be seen that the balance of legal supply and demand should be an ideal state. There is only relative balance in the real legal market, which is mainly reflected in the following two aspects: first, this balance is concentrated on the macro institutional level, that is, the path choice of legislators meets the needs of citizens. However, for the system realization mode from the micro perspective, the equilibrium mode has not been fully constructed. Second, law is the code of conduct of citizens,

and its content should comply with social development. With the changes of the main social contradictions, the people's demand for law has been updated accordingly. Therefore, this equilibrium state has timeliness. The maintenance of equilibrium requires legislators to constantly adjust the content and form of legal products [31].

The allocation of proof responsibility is related to the rights of both parties of administrative act, and also involves the problem of behavior cost, so the economic analysis of law has strong applicability here. Especially when coordinating the unbalanced or even unequal state of legal supply and legal consumption in the act of proof, the deduction of the basic content of legal market theory is necessary.

3. Allocation of Proof Responsibility Under Coase Theorem

As one of the founders of legal economics, Ronald H. Coase elaborated on the relationship between transaction costs and resource allocation in the article Social Cost Issues. He believed that any arrangement of rights has economic costs, and discussed the importance of property rights systems [32]. After being summarized by researchers such as Stigler, the theory "Coase Theorem" has been formed. Coase Theorem can provide logic for the allocation of proof responsibility in public administration, focusing on the issue of legal jurisdiction under positive transaction costs.

3.1. Coase Theorem I and the Allocation of Proof Responsibility in Ideal States

"If the market transaction cost is zero, regardless of the initial arrangement of rights, the negotiation between the parties will lead to those arrangements that maximize wealth."--Coase Theorem I aims to emphasize that in a world of zero transaction cost, no matter how to choose laws and regulations and how to allocate resources for the first time, as long as the transaction is free, it will always produce the result of efficient resource allocation. The theorem takes zero transaction cost as the basic assumption, and its essence is the mathematical deduction of the optimal allocation of resources derived from the assumption [33]. The purpose of analyzing this hypothetical model under the premise of idealization, is to provide theoretical groundwork for the answers to relevant problems in a positive transaction cost society.

If this theory is transferred to the public administration stage, neither the administrative subject nor the counterpart will incur any costs in the process of producing, collecting, and submitting proof materials. Therefore, the allocation mode of proof responsibility at this time may tend to the following two relatively absolute dimensions: First, the "Minimalist Mode I"

that does not distinguish between the responsible parties. Second, the "Minimalist Mode II" externalized by the expression of "who claims, who provides evidence".

As shown in Figure 2, the closed oval area represents the legal scope of the proof responsibility in administrative acts. If the time, money and other costs spent in performing the responsibility are ignored, the parties basically don't care who bears such responsibility. Their focus is only on how to efficiently complete the proof. In Minimalist Mode I, the proof responsibility is constantly borne by the administrative subject or by the counterpart. In Minimalist Mode II, the proof responsibility is determined based on the principle of "who claims, who provides evidence". Since the aforementioned mode is constructed under the assumption of "zero transaction cost", theoretically, there will be no conflict between the two parties due to the allocation of proof responsibility. The only exception may only occur when one party is unable to provide proof due to objective reasons, and the proof responsibility shall be transferred to the other party.

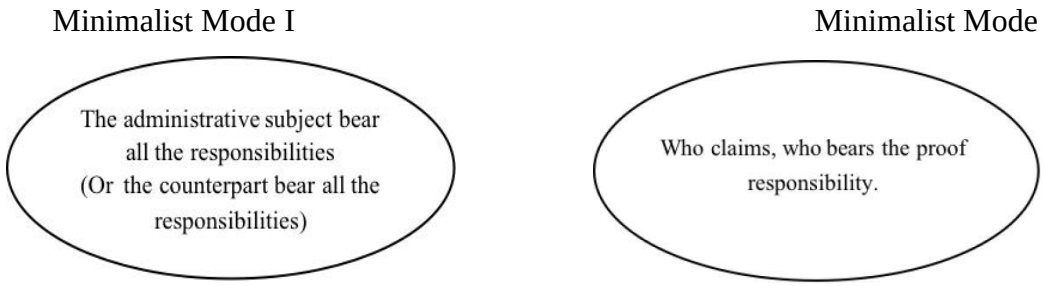

Figure 2 Prediction of Proof Responsibility Allocation Mode under Coase Theorem I

However, in fact, the focus of Coase Economics is not on the legal irrelevance theory of zero transaction costs (Coase Theorem I), but on the theory of defining rights in law (Coase Theorem II) [33]. That is to say, Coase Theorem I is logically an unrealistic foundation for Coase Theorem II [34]. Therefore, the significance of proposing the aforementioned two modes mainly lies in providing a theoretical basis for the subsequent model prediction under the Coase Theorem II.

3.2. Coase Theorem II and the Allocation of Proof Responsibility in Three Deductive States

Coase Theorem II is based on the empirical and theoretical summary of the real world: due to the existence of transaction costs, the initial definition of different rights will lead to different efficiency in resource allocation. The arrangement of property rights system will also in turn affect transaction costs. Thus, in order to improve the efficiency of resource allocation

and optimize the allocation results, the initial arrangement of property rights in the legal system is important.

In practical institutional arrangements, based on different considerations of interests, the following allocation modes of proof responsibility will emerge:

3.2.1. The "Counterpart's Self-proving Mode" with a focus on departmental interests

In practice, administrative agencies often require counterparts to provide proof materials to assist in the implementation of specific administrative acts, considering the convenience of their work. If other external influencing factors are not considered, the initial institutional arrangement is likely to lean towards an absolute "Counterpart's Self-proving Mode", as shown in Figure 3. Under this mode, the proof responsibility is placed on the counterpart, regardless of what the matter to be proved is, how difficult it is to prove, and who is more reasonable to prove it.

The problem of this mode is more obvious. It ignores the essential characteristics of the matter to be proved, and indiscriminately requires all of such matters to be proved by the counterpart. It is inconsistent with the basic principles of economics. At the same time, it will also impose an additional proof responsibility on the counterpart, which objectively violates the purpose of "controlling power" or "balancing power and right" in administrative rule of law.

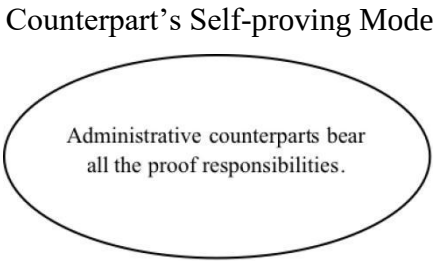

Figure 3 Prediction of Proof Responsibility Allocation Mode under Coase Theorem II (1)

3.2.2. The "Ideal Proof Mode" without regard to institutional costs

Currently, theory and practice are concerned about the burden of the counterpart in the collection and submission of proof materials, so the "Counterpart's Self-proving Mode" is facing an obvious need for change. At this point, in order to coordinate the rights and obligations of counterparts and administrative subjects, the system design will be more inclined to protect the counterpart who is in a relatively weak position. Considering the fact that administrative agencies have more convenient access to various materials in their work, the model assigns most of the proof responsibility to the administrative subject, while the remaining proof responsibility is distributed according to the principle of "whoever is

convenient bears it". For example, when the counterpart claims to have suffered losses due to administrative acts, they will prove the scope and extent of the losses themselves.

Therefore, the "ideal" mentioned here is nearly the "ought-to-be-state of law". It focuses on providing protection for the rights of the counterparts in administrative relations. However, based on the position of protecting the counterpart, this model ignores the will of administrative subjects and the reality of balancing interests when formulating systems. Thus, the operation of this model will easily lack the cooperation of the administrative agencies who are the practical basis for the implementation of the system.

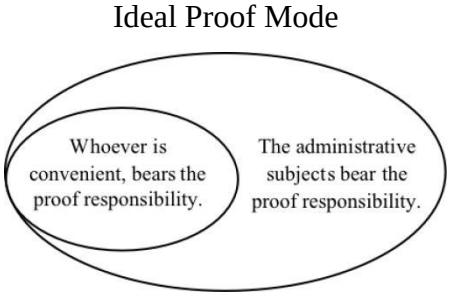

Figure 3 Prediction of Proof Responsibility Allocation Mode under Coase Theorem II (2)

3.2.2. The "Actual Proof Mode" combining various costs

Objectively, developing norms and making laws incur costs. In addition to spending on human and financial resources, coordinating the interests of different groups also requires standard setters to invest time and energy. Coase Theorem II contains a layer of reasoning logic, that is, the cost of institutional development will have a significant impact on the final actual institutional content. So, whether to consider the above costs will directly determine the form of proof mode.

Compared to the three models mentioned above, the changes in the "Actual Proof Mode" shown in Figure 4 mainly lie in two aspects. Firstly, it clarifies that the proof responsibility can be waived in special circumstances. The "special circumstances" here should include: force majeure, unexpected events in the context of tort liability law, and situations where there is no legal basis for collecting behavior in the context of risk regulation, etc. Secondly, the scope of proof responsibility between administrative subject and counterpart has been clearly defined. In reality, in order to balance the interests of all parties, regulation makers need to assist in the introduction of proof systems through hearings or internal work meetings. Therefore, under the Actual Proof Mode, more proof responsibilities will be allocated to the administrative counterparts. This is also the mainstream proof model currently adopted by administrative agencies in China.

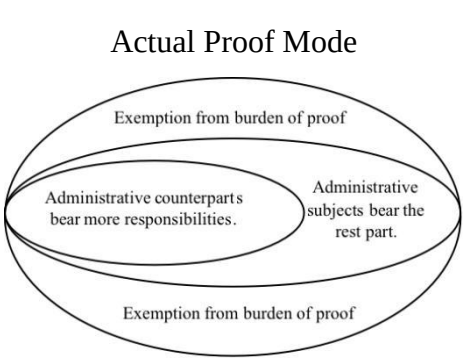

Figure 4 Prediction of Proof Responsibility Allocation Mode under Coase Theorem II (3)

Further academic interpretation of Coase Theorem states that since the production of the system itself is not without cost, the choice of what system to produce and how to produce the system will lead to different economic efficiency. Based on this background, under the Actual Proof Mode, the work cost of the administrative subject can be saved to some extent, but the counterpart still bears a certain institutional burden.

In summary, Coase Theorem, as one of the fundamental theories of law and economics, analyzes the two-way interaction between law and economics in terms of theoretical connotation and institutional setting. It makes the principle of establishing the proof responsibility clear. Of course, this theory highlights the following issues: First, has the current proof system reached the optimal state of cost-benefit analysis? Second, are there any shortcomings in the current research? Should a typological analysis of the proof responsibility be introduced? Third, how to define and maintain a balance between fairness and efficiency? On the basis of answering these questions, this article will further draw on the analysis methods of law and economics to construct a proof responsibility system that conforms to economic laws and legal spirit.

4. The Final Mode Selection of Proof Responsibility Allocation

4.1. A Plan to Eliminate the Negative Externality of the Current Proof System

Analyzing the allocation of proof responsibility in administrative acts from a cross perspective of law and economics, attention should be paid to the externality that may arise from various modes. It is also important to explore the differences in the paths to eliminate such negative externalities under different theories. At the level of institutional economics, there are significant differences in the choice of solutions among schools of thought in the face of negative externalities caused by market failures. Taking the welfare economic school represented by Pigou as an example, it advocates for the internalization of external costs by the

state or law, that is, the transformation of possible negative externalities through the introduction of regulations and policies afterwards. Specifically, through the implementation of taxation, subsidies, or licensing systems, market order can be reconstructed. On the contrary, the new institutional economic school represented by Coase focuses on "comparing the total social products generated by these different arrangements" [35]. Therefore, the core content of Coase Theorem tells us that the internalization of externalities tends to be achieved through property rights systems, which implies negotiation. From a legal perspective, if Pigou's theory belongs to a post remedial arrangement at the institutional level, then Coase's theory is more of a pre-emptive allocation of rights. For the path selection of internalization of externalities (especially negative externalities), both theoretical models have corresponding practical cases.

In theory, when public decision-makers face multiple resource allocation plans, they should consider the expected social benefits and costs, and then reasonably choose a plan that can generate more social output (or lower allocation costs) than other rights arrangements [33]. In addition, the selection of the plan is also related to the attributes of the corresponding market or the goods to be traded in the market. For public goods such as electricity and ecology, it is not easy to define rights in advance. So in reality, Pigou tax plans are often used. While, for the proof responsibility allocation in administrative acts, ex post facto adjustment cannot fully complement the legitimacy of previous administrative acts. Therefore, the principles and methods of neoclassical institutional economics represented by Coase should be adopted. Economist Huang Shao'an once pointed out that all institutions in the context of institutional economics are systems related to property rights [36]. In the process of making administrative acts, factual basis is the prerequisite. The role of proving is to provide these factual basis. Therefore, it is more reasonable and feasible to regulate the proof responsibility through a pre-emptive allocation system. This paper will use Coase Theorem as the main guiding principle to categorize the allocation mode of proof responsibility in administrative acts.

4.2. Construction of Proof Responsibility Allocation Mode Based on Legal Cost-benefit Theory

4.2.1. The connotation of legal cost-benefit theory

The determination of legal cost-benefit theory mainly stems from the cost-benefit analysis method in economics, which evaluates the advisability of public decision-making by balancing benefits and costs. The legal world determines the boundaries of human behavior and relationships based on rights and obligations. Various rights and obligations are "endogenous

variables" that affect people's social activities, and respectively constitute the cost factor and benefit factor of legal behaviors. Specifically, legislative costs, judicial costs, administrative enforcement costs, compliance costs, and relief costs constitute the most basic cost elements. The benefits of legal creation, legal application, and legal compliance become the core connotations of the benefits section [34]. Next, this article will further interpret the connotation of legal cost-benefit theory, and explore its inspiration for the transformation of proof mode.

4.2.1.1. Principle of consistency of utility functions between legal producers and consumers

Under traditional market theory, the supply and demand relationship reflects the market transaction willingness of both buyers and sellers, and also reflects the trade-off and game between costs and benefits among economic activity participants. The legal market is similar but not entirely the same. Although there is willingness from both or more parties, the result of resource allocation is not directly reflected in the increase or decrease in the number of laws, but rather in the pursuit of social value balance through the revision of legislation. The main reason is: as a public good, law can be enjoyed by many people at the same time, but its supply cost and enjoyment effect do not change with the size of the number of people enjoying it. Ultimately, it is presented as a utility function. By generalizing the economic connotation of this function, the supply-demand relationship in the legal market can be summarized into four types: the supplier fully represents the interests of the demander, the supplier does not fully represent the interests of the demander, the supplier cannot represent the interests of the demander, and the interests of the demander do not need to be represented by the supplier [37]. Due to the lagging nature of legal norms, the situation where "the supplier fully represents the interests of the demander" objectively does not exist. Therefore, strictly speaking, the expression "the utility function of legal producers and consumers is basically consistent" should be used here.

Seeing from the review of current norms regarding administrative proof, the nature of such norms are mainly administrative legislation. The subject enjoying administrative legislative power, the subject authorized to formulate regulations, and the subject authorized to formulate rules for administrative management matters are all legal producers here. In reality, some administrative activities do require the counterpart to perform the burden of proof. While, the legislative subject ignores the role of proof and unilaterally requires the counterpart to bear the proof burden of all matters, has violated the principle of the consistency of utility function. For example, in the tax reduction and exemption provisions that have been applied for a long

time, it is required that "when taxpayers who have difficulties in paying taxes due to serious natural disasters apply for vehicle and vessel tax reduction and exemption, they need to provide relevant supporting materials for taxpayers' difficulties in paying due to the disaster", which actually constitutes an additional burden on the counterpart, greatly reducing the social effect of preferential policies. Finally, the situation that the supplier can not represent the interests of the demander is formed, and the actual income is far lower than expected, resulting in ineffective early-stage cost investment.

The State Administration of Taxation issued The Decision on Canceling a Series of Tax Certificates in 2019, which clearly proposed to cancel ten certifications originally needed providing by taxpayer, and five certifications that obtained by the taxpayer from a third party. It is clearly that the current reform has paid attention to the disadvantages of the "actual mode". With the support of data technology, this reform stipulates the subject of the proof burden in a more reasonable way.

4.2.1.2. The principle of a reasonable balance between fairness and efficiency

From the perspective of intension, fairness focuses on pursuing a balance of interests to achieve social justice, while efficiency emphasizes the optimization of the cost-benefit ratio. Therefore, there is inevitably an inherent tension between the two in the pursuit of value [38]. In the development of legal and economic theory, American judge Richard Allen Posner once proposed that "the second meaning of justice--perhaps the most common meaning--is efficiency" [39], revealing the inherent relationship between these two values from a legal perspective.

For the relationship between fairness and efficiency in market transactions, the neoclassical school of economics emphasizes that only exchange in a market equilibrium state conforms to the principle of equivalent exchange. At this point, the behavior and activities of producers and demanders are fair and efficient. As a new institutional economics that analyzes problems within the framework of neoclassical economics and continuously develops its theories, it abandons both the complete market hypothesis and the rational pursuit of utility maximization. It provides a more practical explanation for the relationship between resource allocation fairness and efficiency: a fair system can reduce transaction costs and improve economic efficiency. The level of national development largely depends on the fairness of the system, and the degree of efficiency loss caused by it. Therefore, the concept of "fairness is prior with attention to efficiency" should be upheld [40].

Based on a cyclical perspective, the operation of society can be divided into three stages: starting point, process, and outcome. Correspondingly, a complete sense of fairness and efficiency should cover the entire stage of behavior from beginning to end. During the implementation of administrative acts, the current "Actual Proof Mode" imposes heavier obligations on the relatively disadvantaged counterparts. While, the administrative subjects who enjoy the right of priority bear relatively less burden of proof. This reflects the following problems. On the one hand, in order to avoid bearing legal responsibility due to insufficient evidence of administrative acts, many regulations include a large number of matters in the scope that need to be proven. There are some obvious "fait accomplis" among them. On the other hand, some regulations do not comprehensively consider the interests of all parties. This kind of regulation not only increase the burden of proof on the counterpart, but may also impose differential requirements on the proof materials that need to be submitted in administrative acts. Therefore, the long-term work of clearing up proof items is actually a correction of the current situation of fairness and efficiency under the "Actual Proof Mode".

4.2.2. Type-based allocation mode of proof responsibility

In the legal market, the different valuations of rights by the parties form the basis for the exchange of rights. The legal system has the role of regulating transaction costs. Thus, one of the important meanings of the existence of rules is to save transaction costs, which is the core of the theory of legal transaction cost analysis [34]. Drawing on the qualitative definition of "beneficial products" in economics, it is clear that the main objection at present is not to pricing per se, but rather to what pricing appears to mean under a given existing wealth distribution state. Therefore, discussing instructions as a market alternative mechanism means that we can consider the structure of different instructions and their costs and benefits, in order to determine a relatively suitable resource allocation mode [41]. Similarly, when evaluating the allocation system of administrative proof responsibility, the core task should be to analyze the feelings of the counterpart and the social effects of system implementation. The following factors should be fully considered when designing the system.

4.2.2.1. Adjust the allocation mode based on the matters to be proven

Firstly, the purpose and original intention of establishing the proof responsibility is to assist in the completion of service-oriented administrative acts, rather than expanding departmental interests or reducing departmental responsibilities. Therefore, the principle of reasonableness and convenience should be adhered to, and matters that are unnecessary or

inappropriate as the object of proof should be canceled. For example, when handling matters involving the identity of natural persons, such as entry and exit certificates and marriage registration, registered residence proof is no longer required.

Secondly, classify the proven matters based on standards such as identity, behavior, and fact, and allocate the proof responsibility on this basis. Specifically, it means dividing which matters are suitable for self-proven by the counterpart and which are suitable for proven by administrative agencies.

Finally, the reform of the allocation mode of proof responsibility should be comprehensively viewed. Taking the application for teacher qualification as an example, the applicant needs to provide supporting materials on whether there is a criminal record in accordance with The Provisions of Teacher Qualification Ordinance. However, whether it is the previous mode of self certification or the inter departmental verification mode under the background of "certificate reduction" nowadays, in fact, it depends on the public security organ's recording about citizens' information. Although the current system has been reformed by the standards of rationality and convenience, and the requirement of "self proof" is not allowed to use during the criminal procedure. However, regarding to the criminal records verification of citizens with residence permits, there are still requirement for them to apply to the public security organs of their domicile and registered residence respectively. Of course, to break through the localization restriction of personal information, we need to rely on the construction of a unified database of the public security department in practice. The rationalization of the allocation of proof burden is also a manifestation of the improvement of administrative efficiency and the smooth cooperation between administrative subjects. Therefore, a certain transition time should be allowed.

4.2.2.2. Build an improved "Actual Proof Mode" based on the current status of the rule of law

Coase believes that the right should be transferred to those who can use it most productively. Besides, there also should be someone who can motivate those subjects to use the right effectively. The cost of right transfer should be relatively low by making the legal requirements of right transfer less onerous [42]. Therefore, it is suggested to create a more practical and operational allocation mode of burden of proof. In this process, we should pay attention to the following aspects.

First of all, when stipulating the burden of proof, we should not only clarify the content of the responsibility, but also cover the implementation procedures. For the content of the

responsibility, the legislative subject should take the "Actual Proof Mode" as the framework and adopt enumerated legislation to stipulate the matters that should be proved by the administrative subject and the counterpart respectively. Specifically, the matters for the administrative subject to bear the burden of proof are mainly its own behavior, and the counterpart's identity information that has been stored by administrative subject. For how to determine the matters proved by the counterpart, the judgment standard "whether it is easy to prove" should be used. Therefore, the content of the behavior implemented by counterpart itself can be taken as the object of proof. For example, when going through the admission procedures of public schools at the stage of compulsory education, some schools require parents to provide their children's birth certificate. Although the certificate was previously obtained by the counterpart, the obligation to keep the supporting documents cannot be entrusted to the counterpart. Referring to the Notice of the Ministry of Education on Canceling A Batch of Certification Matters, the criminal record certificate of the applicant for teacher qualification has been changed from "self-proving by the counterpart" to "verification by government departments". It can be seen that under the current technical conditions, the identity information such as birth, death and criminal record can be quickly verified through data sharing among administrative departments. Therefore, such matters should be included in the scope of administrative subject certification. For the case of whether the administrative counterpart has previously performed a specific act, the counterpart itself can provide corresponding proof. For the latter implementation procedure, it is suggested to specify the form of proof and the standard of proof. On one hand, compared with the previous requirement that certificates must be provided in written form, network information verification methods can be gradually explored in the information society to reduce the burden of certification subjects. On the other hand, we should clarify the standard of proof, and suggest that the elimination of reasonable doubt should be taken as the most basic standard, and the standard of reasonable proof should be applied in exceptional cases [43].

Secondly, when formulating or modifying the content of norms, it is necessary to pay attention to the cost of system creation, that is, the cost of legislation. Specifically, the legislative cost mainly includes the expenses paid for various activities such as investigation and research, data collection, opinion solicitation, voting, legal text production and so on. It should be noted here that the indirect losses caused by the absence and lack of supporting laws can also be included in the legislative cost in a broad sense [34]. Therefore, in the legislative work involving administrative proof, it should comprehensively consider and weigh the

interests and demands of all parties, and form a good consultation and dialogue mechanism between the administrative subjects and the counterparts. On this basis, we should follow the basic principle of public interest priority, fully consider the interests of the counterpart and the convenience of responsibility, and formulate proof rules containing the spirit of justice and reflecting the will of the majority. In addition, we should also pay attention to the implementation of legal norms, especially to the areas where norms are insufficient, so as to make up it timely and reduce the indirect loss of the legal market caused by the absence of norms.

Third, in the reform of proof burden allocation, it is necessary to introduce new regulatory ideas and tools appropriately, and coordinate the connection and application between the old and new systems. Taking the current arrangement of "approval before verification" in the production license of industrial products as an example, this regulatory tool has the characteristics of "negative license", which objectively weakens the proof burden of both parties during administrative acts. What's more, this regulation greatly reduces various costs arising from investigation and evidence collection. However, the purpose of adjusting certification matters or testing regulatory tools is to reduce unnecessary administrative power and stimulate the vitality of market subjects [44]. Therefore, when coordinating the old and new systems, we should take whether it is conducive to the optimal allocation of resources as the guiding principle, so as to form a scientific and benign relationship between legal supply and demand.

5. Conclusion

The function of law is, on the one hand, to pursue fairness and justice, and on the other hand, to handle conflicts between different values. To further enhance the rationality of rules in the context of "reduce licenses, facilitate people", it is necessary to further enhance the rationality of rules, and introduce the theory of maximizing utility in economics to reform the allocation mode of proof responsibility in administrative acts. Constructing an improved "Actual Proof Mode" under the guidance of Coase Theorem, will be a feasible path for deepening the reduction of proof items in the future.

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