



# The Choice of Paths to the Transformation of the Administrative Law Enforcement Ways From the Perspective of Consultation Administration

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## Abstract

The transformation of administrative law enforcement ways is an effective way to meet the requirement of practice and get out of the predicament of law enforcement. With the rise of consultation administration, administrative law enforcement agencies should follow the idea of service and responsibility, actively expand and introduce new ways of administration, such as administrative admonishment meetings and administrative agreement. The compatibility between new administration ways and the traditional ones, the legitimacy and the consideration of their optimality are the choices of path to the transformation of administrative law enforcement ways.

**Key words:** Administrative law enforcement ways; Consultation administration; Administrative admonishment meetings; Administrative agreement

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## INTRODUCTION

Administrative law enforcement is an important link in the system of administrative rule of law, and it holds a decisive position in the construction of a government ruled by law and a society under the rule of law. Administrative law enforcement has multiple functions, just as Prof. Jiang

(2005, pp.15-29) put it: Law enforcement makes the law transform from texts into people’s actual code of conduct; law enforcement changes the power from “oughtness” into “isness” ; law enforcement turns order from static design into dynamic construction. The way of administrative law enforcement is directly related to the realization of the purpose of administrative law enforcement. In reality, there exists campaign-style law enforcement, law enforcement through violence and violent resistance against law which are constantly questioning the current law enforcement system and ways of law enforcement. In the practice of administrative law enforcement in our country, for one thing, there has been a lack of variety and innovation in its way. Administrative law enforcement agencies are content with completing the “required task” and lack the motivation for innovation. For another thing, new ways of administrative law enforcement are often faced with the plight of legitimacy and called into question. Against the background of building a law-based government, traditional administrative law enforcement methods tend to fall short of expectations, and new law enforcement ways remain to be further systematized and standardized. Therefore, it is imperative and necessary to study the transformation of administrative law enforcement ways from the perspective of theories and systems of establishment.

## 1. THE DRIVING FORCE OF THE TRANSFORMATION OF ADMINISTRATIVE LAW ENFORCEMENT WAYS

### 1.1 The Rise of Consultation Administration

With the sharp rise of the new public management movement and the development of the waves of democratization, citizens’ awareness of democracy

gradually awakens. Their awareness of political participation is also constantly strengthened. Democracy, equality and cooperation have become the important characteristics of modern administration. Administrative organs have begun to try various ways of administration to achieve the aim of it. The functions of government have gradually shifted from “paddling” to “steering”. The subject of public governance also tends to be diversified. More emphasis is put on cooperative governance. Lots of private bodies have entered the field of public administration to better fulfill the task of modern administration through the cooperation between the public and the private as well as the franchise. In the field of administrative law enforcement, those changes urge the administrative law enforcement agencies to actively transform and internalize the ideas of “democracy, consultation and cooperation” into the connotation and inevitable demand of administrative law enforcement. Administrative organs could integrate multiple subjects like industry association and enterprises into the administrative law enforcement so that they could jointly achieve the aim of law enforcement through the cooperation between the government and society.

The ways of administrative law enforcement should also change in order to conform to the trend of the democratization of administrative law enforcement and to fully reflect the content of democracy and consultation administration. Countries like Britain and the USA lay stress on the use of soft administrative methods to highlight its people-oriented feature. Consultation administration pays attention to public participation, which could effectively improve the situation of information asymmetry and enhance the reasonableness of administrative decision-making. The design of the procedure of participation could establish a consensus platform for administrative organs and the relative person of administration to fully embody the guarantee of democracy, improve the law enforcement efficiency and achieve the optimal results of law enforcement. The emergence of consultation administration requires the law enforcement methods to shift gradually from forcible ones to consensus and from the one-side administration to two-side administration.

### **1.2 Respond to the Demand of Practice**

“Law itself is not sufficient to achieve the desired effect”. Administrative law enforcement is the important means to realize the objective of modern administration. Whether the administrative law enforcement ways are reasonable and proper directly concerns whether the aim of administrative law enforcement could be achieved and thus affects the realization of purpose of administration. With the social transformation, administrative law enforcement organs are confronted with complex and varied social practice, so traditional ways of administrative law enforcement are trapped in various

plights. It is the same in the field of administrative law enforcement. Traditional law enforcement ways cannot describe and deal with the actually complicated operating state of administrative law enforcement. In the process of traditional law enforcement, the relationship between administrative organs and the relative persons is simplified as: “order-obey”. The positions of the two parties are unbalanced. Administrative organs are in a strong position, while relative persons of the administration are put at a disadvantage. Due to the lack of equal dialogue and consultation, there easily arise mutual incomprehension, misunderstanding and distrust. Coercive and rigid law enforcement methods could lead to negative mentality of the relative person. Besides, there exists tension between administrative power and civil right, which can easily trigger conflict and confrontation. In a word, traditional ways of administrative law enforcement are a double-edged sword. On the one hand, traditional and forcible measures like administrative coercion and administrative penalty are of great significance to enhance the efficiency of administration and maintain the order of administration, which helps to achieve the objective of administration. On the other hand, traditional ways of administrative law enforcement are one-sided, neglecting the protection of the right of the relative persons and doing great harm to their rights and interest. The transformation of administrative law enforcement measures is in response to the practical demand. The combination of traditional law enforcement ways and modern measures is conducive to lifting administrative law enforcement out of the plight and solving the related problems.

## **2. THE CHOICE OF PATHS TO THE TRANSFORMATION OF ADMINISTRATIVE LAW ENFORCEMENT WAYS**

Seeing from the worldwide scope, with the changes in public administration, power administration is extending to the non-power administration. In the USA, non-power administrative activities are increasing day by day, which are called the “lifeline of administrative activities”. In our country, the ways of administrative law enforcement have presented the feature of diversification. In the traditional administrative law enforcement relationship, administrative organs and the relative persons of administration are in the state of confrontation. The two parties lack team spirit and they fight against each other, which often results in disputes and conflicts. Modern society lays emphasis on the consensus, cooperation and communication between the two. “Public rights do not always exist as the “opponent” of the rights of

social members. Where public rights are developed, public power usually exists as “a friendly cooperator” (Xia, 1995, p.684). New ways of law enforcement correspond to traditional law enforcement methods including administrative coercion and administrative penalty, namely, “in the process of administrative law enforcement, measures like admonishment meetings, persuasion and induction are adopted to obtain the understanding, recognition, support and cooperation of the relative persons of administration, thus achieving the purpose of administrative law enforcement (Zhang, 2001). New ways of law enforcement attaches importance to participation and cooperation. Participation means that relative persons of administration do not exist just as the objects of administration. Instead, they participate in administrative law enforcement through a series of procedure and system design. Besides, they express their propositions and opinions through hearing, making a statement and defending himself. Cooperation is reflected in the fact that law enforcement is not a one-sided activity of administrative law enforcement organs but the public-private cooperation through administrative rewards and administrative contracts. It is to complete the task of administrative law enforcement with the help of social forces.

New ways of law enforcement mainly include the following two types.

### **2.1 Administrative Admonishment Meetings**

As a new way of law enforcement, administrative admonishment meeting has been very popular in terms of the enforcement of law on environmental protection and on tax in recent years. It has successfully integrated the ideas of democratic consultation and cooperation, possessing the functions of communication, warning, admonition and prevention. Administrative admonishment meetings help to strengthen the target’s awareness of legal liability and to urge the relative person of administration to fulfill obligations in time and according to the law. Different from administrative guidance and administrative inspection, administrative admonishment meeting is a totally new type of administrative act. The targets of administrative admonishment meetings are diversified, for heads of government, heads of enterprises and ordinary citizens could all be its targets. Holding admonishment meetings could effectively reduce the conflict and confrontation between the two subjects, enhance mutual understanding and communication and thus further reduce the cost of law enforcement and improve the government’s law enforcement efficiency and effectiveness. Administrative admonishment meeting is a non-coercion administrative act, and it is supposed to be a preparatory procedure applied prior to administrative penalty and administrative enforcement. This act has no justiciability, so administrative review and administrative procedure

cannot be filed against administrative admonishment meeting. Administrative admonishment meeting is just means to achieve the aim of administrative law enforcement, so we cannot completely count on it to realize the objective. If meetings fail to achieve the desired results, coercive measures including administrative penalty and administrative coercion shall be taken immediately. As far as I am concerned, the application scope, procedure and responsibility of administrative admonishment meetings should be normalized to bring the system of administrative admonishment meeting under the rule of law to give full play to its role.

### **2.2 Administrative Agreement**

Administrative agreement is also known as administrative contract, which aims at promoting the efficiency of administration through the operation of marketization mechanism. In the West, privatization of public administration has a wide range and is at a high level. Public services including prison management could be obtained through administrative agreement. Our country also has begun to apply administrative agreement on administration including administrative law enforcement. In 2014, *Administrative Procedure Law* was amended and it integrated administrative agreement into the case scope of administrative procedure. Since then, administrative agreement was written into the legal text as a legal concept. In order to achieve the aim of law enforcement, administrative law enforcement organs could sign an administrative agreement with citizens, legal person and other organizations in the way of government purchase of services. Administrative agreement integrates the spirit of contract into the process of administrative power operation, which could reduce the arbitrariness of law enforcement, lower the cost of law enforcement and enhance the efficiency of administration. New ways of law enforcement including “subcontracting the responsibility of city management and the patrol service of public security” could effectively make up for the shortage of grass-roots law enforcement forces and fully mobilize social forces to actively participate in urban governance and the maintenance of public security. The application of administrative agreement in law enforcement conforms to the new ideas of public administration, namely, “small government, great society”, which helps to give play to the role of citizens, market and society, provide more high-quality service and achieve the aim of good governance of the government.

The following points should be paid attention to when implementing administrative agreement: Firstly, administrative agreement does not apply to all matters of public administration, such as the classified issues. Secondly, cost-benefit analysis should be carried out. How to use minimum manpower, material and financial

resources to maximize the benefit of law enforcement is an issue administrative law enforcement should take into consideration. If the benefit that law enforcement agencies obtain through subcontracting matters of public service in the way of administrative agreement is less than the cost, then it is inadvisable to subcontract them. Before entrusting, there should be an assessment. If it is more suitable for administrative organs to carry out the law enforcement activities, then they should be entrusted. Thirdly, administrative organs undertake the responsibility for supervision over the administrative agreement. Administrative agreement is aimed at “helping” instead of “replacing” administrative organs to achieve the goal of administration. Administrative law enforcement organs still have to take active actions, perform duties, and at the same time, conduct effective supervision over citizens, legal persons and other organizations who are entrusted with the related responsibilities.

### **3. IDEAS THE TRANSFORMATION OF ADMINISTRATIVE LAW ENFORCEMENT WAYS SHOULD FOLLOW**

Thoughts and ideas are the guide of behaviors. Law enforcement ideas that administrative law enforcement agencies hold will be reflected in the law enforcement behaviors and law enforcement ways. Innovative law enforcement ideas are the premise and foundation of innovative law enforcement ways. Modern law enforcement should follow the following ideas.

#### **3.1 The Idea of Service Administration**

Service administration requires the government to regard the provision of high-quality public service for citizens as its important pursuit. Just as a scholar put it: “Realizing public benefits in a systematized way and providing the best public service will be the basic and direct task of administrative law.” (Lu, 2010). The aim of administrative law enforcement is not just confined to keeping public order, and providing good services is also one of its objectives. Administrative law enforcement personnel should follow the idea of service administration, form the idea that “law enforcement is service”, actively innovate law enforcement ways, provide good public services for citizens and guarantee the freedom of citizens. Taking city management for example, in an economically underdeveloped small town, there exists a conflict between city order, cleanness and petty dealers’ right to live, who set up stalls on the street. The “one size fits all” ban on roadside stalls simply depending on the constraining force of law is the mechanical application of legal provision, which is difficult to truly realize the purpose of law enforcement. Government should be guided by the idea of service administration. After conducting a full investigation, it should determine a

specific area and specific time for dealers to set up stalls, which could thoroughly solve the problem of disorderly setting up of stalls. Of course, service administration does not mean the abandonment of traditional high-power law enforcement means. For relative persons of administration who disregard the dissuasion, compulsory methods could still be adopted to keep the normal social order.

#### **3.2 The idea of Responsibility**

With power comes the responsibility. Responsible government is one of the connotations of government under the rule of law. Law enforcement personnel, as the executor of administrative power, should regard responsible administration as the fundamental philosophy of law enforcement. With the construction of a country under the rule of law, administrative personnel’s sense of responsibility in our country has greatly increased. A few law enforcement personnel still have a strong bureaucracy and power-oriented awareness. In the process of law enforcement, they negatively act, conduct nonfeasance as well as arbitrary behaviors, and choose to act. The innovation of law enforcement ways requires administrative law enforcement organs to foster the concept of responsibility, clarify the responsibilities of law enforcement posts and strictly carry out the responsibility system. Administrative law enforcement organs and their personnel should undertake the corresponding legal liability for the person and property loss caused to citizens, legal person and other organizations due to the law enforcement acts. If there is a lack of constraint of the responsibility mechanism, law enforcement personnel inevitably have the urge to break the boundary of power. Thus law-enforcement power should be locked in the cage of system through establishing the responsibility mechanism, which is an important guarantee of the innovation of law enforcement ways.

### **4. THE APPLICATION OF THE TRANSFORMATION OF LAW ENFORCEMENT WAYS**

#### **4.1 The Compatibility Between New Ways of Law Enforcement and the Traditional Ones**

New law enforcement ways and means to inject new blood into traditional law enforcement measures, reconstruct the relationship between government and citizens and could better achieve the purpose of administration through communication, consultation and dialogue. Any system design is not perfect. New ways of law enforcement have advantages of consensus and cooperation, but in the meanwhile, they also have limitations in terms of the scope of application. Administrative guidance, administrative agreement, administrative reward and administrative admonishment meeting all have their specific field and scope of

application. Administrative law enforcement needs to be driven by multiple forces. New law enforcement ways and the traditional ones are not and should not be an either-or thing. Instead, they are compatible and aim to jointly achieve the purpose of administrative law enforcement. The application of new law enforcement ways does not mean abandoning the traditional ways. In the process of administrative law enforcement, different law enforcement ways should be chosen according to the specific types and specific situations of law enforcement. As for the relationship between the two, new ways of law enforcement including administrative admonishment meeting and administrative reward should be a preparatory procedure for traditional ways of law enforcement; traditional law enforcement ways like administrative coercion could provide the last ditch and guarantee for the realization of the purpose of administrative law enforcement. Administrative law enforcement should suit its measures to local conditions and different times, coupling harness with softness.

#### **4.2 Following the Principle of Legality**

Administration according to law is the most fundamental way of the operation of modern administrative power. Any transformation and innovation should proceed on the track of rule of law and should not break this bottom line. The transformation of administrative law enforcement ways should also follow the principle of legality. It does not require all administrative law enforcement to have expressly stated provisions. In the absence of expressly stated legal provisions, law enforcement should in conformity with the principle of legality and the spirit of law the legality of some new law enforcement ways remains to be discussed. In 2012, Nanning launched a campaign of “everyone takes photos of thieves, let’s maintain public security hand in hand.” The public then questioned “all the people take photos of thieves, then there will be no thieves in the world”? (Xie, 2012) Ordinary citizens do not have the statutory law enforcement power, and the photos taken by them cannot be used as proof of administrative penalty. Such kind of innovation in the way of law enforcement could easily produce risks and does harm to government credibility. Another case is point is that “campaign-style law enforcement” possesses the characteristics of sudden attack and temporariness, which could result in the inconsistent law enforcement ways. Sometimes they are strict, but sometimes loose. That is against the principle of legality and equality. Before transforming the way of law enforcement, administrative law enforcement agencies should demonstrate its feasibility and make assessment. If, compared with the previous law enforcement means, the new way deprives the right of the relative person or imposes more obligations on the relative person, then the innovation is not appropriate.

#### **4.3 The Consideration of Optimality**

In traditional order administration, the most important aim of the government is to keep administrative order, while in modern welfare administration, the government undertakes the responsibility for providing public service to the public. The construction of a service-oriented government demands the transformation of administrative law enforcement ways. In terms of administrative law enforcement ways, the legality should be considered, and so should the optimality. Legality is the minimum requirement of administrative law enforcement, while the consideration of optimality is a higher requirement and expectation of it. Just as a scholar put it: “The consideration of legality and optimality as well as their interaction makes up the whole scene of a government under the rule of law.” (Zhu & Tang, 2013, p.4). Modern government has more public administration functions, the legislative body cannot make specific legislation on all matters, so administrative organs have a wide discretion. Against the same illegal act, administrative law enforcement organs may have multiple law enforcement ways for them to choose. Administrative law enforcement cannot only satisfy the basic requirements of right applicable law and due procedure. Instead, one or several law enforcement measures should be chosen according to the goal of law enforcement. Administrative law enforcement organs should apply the principle of proportionality, avoid a mechanical understanding and application of law, organize the optimal personnel apply the optimal procedure and choose the optimal way of law enforcement according to specific problems and specific situations, in order to achieve the optimal effect of public governance.

#### **4.4 Reforming the System of Administrative Law Enforcement**

The transformation of ways of administrative law enforcement is a systematic project related to many factors including the idea, the system and the relative person of administrative law enforcement. Among them, administrative law enforcement system is the fundamental factor influencing and restricting the transformation of administrative law enforcement ways. If the system of administrative law enforcement is unsmooth, then however the way of administrative law enforcement is changed, it cannot lift law enforcement out of the plight. Seeing from the worldwide scope, the development trend of administrative law enforcement system is comprehensive law enforcement, moving from separation towards concentration and comprehensiveness. The drastic comprehensive law enforcement conducted in the field of city management culture in our country has broken the constraints of the fragmented and segmentary to some degree, which helps to integrate law enforcement resources, form joint forces and enhance the efficiency and effectiveness of law enforcement. The future reform

of administrative law enforcement system should focus on solving the problems of duplicate law enforcement and the intersection of law enforcement caused by separating law enforcement. According to the principle of professionalism and scientificity, law enforcement power should be integrated and centralized to lay a foundation for the transformation of law enforcement ways.

In conclusion, the transformation of administrative law enforcement ways could neither simply depend on traditional law enforcement measures like administrative penalty and administrative coercion, nor just rely on new law enforcement means. The integration of traditional ways and new methods, the combination of coercion and consensus, the coupling of hardness with softness should be the orientation of the reform of administrative law enforcement.

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