

An Analysis of the Mechanism of Civil Servant's Illegal Administration: Based on the Methodology of State Space Model

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Abstract

The principal-agent relationships exist between the administrative institutions and the civil servants as well as the administrative leaders and the civil servants when the administrative power is exercised. Given the condition that the assigned civil servants are fully equipped with the corresponding professional qualification, this paper analyses the constraints from the clients and agents in those two relationships inside the administration institution, then drawing the conclusion that the illegal administration of civil servants is largely influenced by their leaders' judgment of the essence of the legislation. We, therefore, should increase the civil servants' salary, improve the assessment and promotion system, strengthen the legal awareness and ability of administrative leaders and intensify the external administrative supervision and the right restriction.

The illegal administration of civil servants refers to the violation of law and damage to the interests of the law-protected social relations when they are in the exercise of their power and in the performance of their duty. This would disrupt normal social order, pose a threat to the authority of the law, damage the public interests and government's image as well as set a bad example for our people. Prevention on the occurrence of illegal administration is the continuing concern of the academic circle and related departments. The existing research is of great significance to the prevention of the violation of illegal administration since it mainly focuses on the formation, classification of responsibility and the construction of legal liability system of illegal administration. However, these studies seldom explore the

mechanism of civil servants' illegal administration from theoretical analysis, thus the countermeasure is weak. This paper attempts to apply the methodology of state space model into analyzing the mechanism of civil servants' illegal administration in the exercise of administrative power so as to improve the responsible institution and reduce the occurrence of illegal administration.

Key words: Illegal administration; Principal-agent relationship; State space model; Incentive institution; Mechanism; External supervision

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INTRODUCTION

The illegal administration of civil servants refers to the violation of law and damage to the interests of the law-protected social relations when they are in the exercise of their power and in the performance of their duty.¹ This would disrupt normal social order, pose a threat to the authority of the law, damage the public

¹ According to *the Civil Servant Law* (2005), the civil servant refers to the employees who perform their duties according to the law and are thus incorporated into the national administrative staffing. In addition, their salary and welfare are afforded by the national finance. These employees are public servants and are thus incorporated into the national administrative staffing in CPC (Communist Party of China), NPC (the National People's Congress), CPPCC (Chinese People's Political Consultative Conference), administrative institution, court, procuratorate, democratic parties institution, NGO (Non-Governmental Organization). To make it easier, civil servants referred in this paper is the non-leader employees who are incorporated into the administrative staffing and administrative leader is the one who has the power in decision-making.

interests and government's image as well as set a bad example for our people. Prevention on the occurrence of illegal administration is the continuing concern of the academic circle and related departments. The existing research is of great significance to the prevention of the violation of illegal administration since it mainly focuses on the formation, classification of responsibility and the construction of legal liability system of illegal administration. However, these studies seldom explore the mechanism of civil servants' illegal administration from theoretical analysis, thus the countermeasure is weak. This paper attempts to apply the methodology of state space model into analyzing the mechanism of civil servants' illegal administration in the exercise of administrative power so as to improve the responsibility institution and reduce the occurrence of illegal administration.

1. THE PRINCIPAL-AGENT RELATIONSHIP IN EXERCISING ADMINISTRATION RIGHT

In the economic sense, any transaction that involves asymmetric information belongs to the principal-agent relationship, of which the agent has absolutely advantage in information controlling while the client does not. Under this relationship, the two parties have a game relationship due to the inequilibrium information. The client wants to act for sake of his or her own interest. Meanwhile, the client cannot directly observe what behavior the agent has chosen but he can observe the behavior of the agent and the incomplete information resulted from the external stochastic factors. What the client is faced with is that how to design an incentive contract to allow the client to reward or punish the agent according to his observation of information's complete degree so as to ensure the maximum benefit of the client.

The principal-agent relationship not only exists in the economic field, but also in all the cooperative activities as well as the management and administrative authority in any institution. The exercise of administrative power is a cooperative activity which also includes the principal-agent relationship. The function of administrative power is composed of the whole process of its production, exercise and result. According to the principle of popular sovereignty, the power of our nation is granted by our people. In terms of the production of administrative power, which is a vital part of our nation's power, it is thus also granted by our people. In China, the administration right is authorized to the administration institution by the supreme organization of our nation by means of legislation. The authorized administrative institution then subdivides the administrative rights to its subordinated organs according to *Administrative Organization Law* and *Civil Service Law*. In this way, the civil servant obtains

his or her specific administrative right. Therefore, the principal-agent relationship comes into being between the administrative institution and civil servant through certain legal norms. On the one hand, the authority, duty as well as the administrative priority of administrative institution is performed by the civil servants; on the other hand, the civil servants should administrate in the name of this institution. The institution, in turn, assumes the legal responsibility for civil servant's behavior. When it comes to the way the civil servant exercising his or her power, there is an asymmetric information line between them. The administrative institution is in disadvantage in information collection, so it is the client. The civil servant is in advantage, so he or she is the agent. This paper will refer to it as the first principal-agent relationship.

According to Article 54 of the *Civil Servant Law*, civil servant shall carry out the decision and order from the leader except for the wrong decision and illegal order. Hence, the law endows the right of order and command to the administrative leader. Administrative power is exercised by the civil servant and the leader's leadership. Compared with the civil servant who is in charge of implementation, the administrative leader is in disadvantage in information. Therefore, the administrative leader and the civil servant form a second principal-agent relationship.

2. THEORETICAL BASIS FOR STATE SPACE MODEL

The methodology of state space model provides a profound theoretical framework for the principal-agent relationship in the administrative process. It was first used by Wilson and it is a model which includes the expected utility function of the principal, the participation constraint and incentive compatible constraint function of the agent. It is showed as follows:

The expected utility function of the principal:

$$(P) \int v(\pi(\alpha, \theta) - s(x(\alpha, \theta))) g(\theta) d(\theta) .$$

The participation constraint of the agent:

$$(IR) \int u(s(x(\alpha, \theta))) g(\theta) d(\theta) - c(\alpha) \geq \bar{u} .$$

The incentive compatible constraint of the agent

$$(IC) \int u(s(x(\alpha, \theta))) g(\theta) d(\theta) - c(\alpha) \geq \int u(s(x(\alpha', \theta))) g(\theta) d(\theta) - c(\alpha') , \forall \alpha' \in A .$$

A-The combination of all the actions the agent can choose

α - One specific act of the agent, $\alpha \in A$

α' -The act of agent $\alpha' \neq \alpha$

θ -Stochastic variable free from the control of principal or agent

\bar{u} -The maximum expected utility of the agent refusing participation (also called reservation utility)

$u(\cdot)$ -The expected return function of the agent choosing one act

- $u(\cdot)$ -The expected utility function of the principal
- $c(\cdot)$ -The anticipate cost function of the agent choosing one act
- $s(x)$ -An incentive contract determined by X and designed by the principal
- $x(\alpha, \theta)$ -An observable result determined both by α and θ
- $\pi(\alpha, \theta)$ -The production function determined both by α and θ , and the direct ownership belongs to the principal
- $g(\theta)$ -The density function of Stochastic variable

In this model, when the principal gives his offer, the agent has the right to accept or refuse. In order to satisfy the participation constraint of the agent (IR), the principal must meet the demands of the agent. Otherwise, the agent would refuse his offer. An example can be listed that if the judge and the lawyer undertake the same workload, the judge would resign his job and choose to be a lawyer when the salary of the former is lower than that of the latter. In addition, the principal should also fit in the incentive compatible constraint of the agent (IC), or else the agent's action cannot guarantee to represent the principal's interest. Only when IR and IC are both met with can the principal maximize his or her own expected utility function (P). The mathematical expression is:

$$\frac{m}{\alpha s(x)} \int v(\pi(\alpha, \theta) - s(x(\alpha, \theta))) g(\theta) d(\theta) ,$$

$$s. t. (IR) \int u(s(x(\alpha, \theta))) g(\theta) d(\theta) - c(\alpha) \geq \bar{u},$$

$$(IC) \int u(s(x(\alpha, \theta))) g(\theta) d(\theta) - c(\alpha)$$

$$\geq \int u(s(x(\alpha', \theta))) g(\theta) d(\theta) - c(\alpha'), \forall \alpha' \in A .$$

Theoretically, the principal can design a set of effective incentive contracts to fit in the two condition of (IR) and (IC), including increasing the agent's expected return of choosing one specific act (α), decreasing the agent's expected return of choosing act (α'), or increasing the expected cost of choosing act (α'), reducing the expected cost of choosing one specific act (α). In this way, the agent will consciously choose one specific act (α) according to the principal's interests. On the contrary, the agent would choose the act that is more beneficial to himself or herself instead of the principal.

As is mentioned above, the civil servant has power, duty and administrative priority in the first principal-agent relationship and the administrative institution has the right to administrate and manage the civil servant. In order to make sure that the civil servant carries out the administrative and management activity according to the will of the related institution and reach certain goals, the administrative institution often adopts incentives, such as personal assessment, rewards or punishment and promotion opportunity. The corresponding institutional norms are the so-called incentive mechanisms, or incentive contracts in economic sense.

3. THE MECHANISM BEHIND CIVIL SERVANT'S ILLEGAL ADMINISTRATION

At present, what incentive mechanism has been designed by administrative institution as a principal for civil servant? Does it meet with the two conditions of (IR) and (IC)? Why the civil servant's illegal administration still happens? This paper will examine the incentive mechanism of civil servant, analyze the function of the incentive mechanism in practice and explain the mechanism behind civil servant's illegal administration.

3.1 The Existing Incentive Mechanism and Its Function

Since the implementation of civil servant system, China has made great breakthroughs in the incentive mechanism and thus formed a relatively complete incentive mechanism system. Generally speaking, it entails four parts, the salary, the performance assessment, promotion opportunity and reward or punishment. The four incentive mechanisms and its functions will be elaborated as following.

3.1.1 The Salary Incentive Mechanism

The salary of civil servant refers to the remuneration from the public service work. According to Article 74 of the *Civil Servant Act*, the salary of civil servant consists of two parts: Basic salary and allowance. As an incentive mechanism, the salary of civil servant should first meet the participation constraint of civil servant. That is to say, the salary should be a little bit higher or equal to that of the staff in an enterprise. The corresponding work of civil servant in government is equal to the manager in a company. After an empirical data analysis on comparing the salary of civil servants in the middle three provinces with that of the employees, some scholars points out that the salary of clerk and section-level civil servant is equal to that of general manager in a company, the remuneration of civil servants in the deputy county, prefectural county or county is commensurate with that of the department manager in an enterprise. This situation is basically in line with abroad where the general salary level of the civil servants is higher than those of the private sector. Apart from it, it is clear that the job of civil servant is very popular since enormous people take the examination of civil servant recruitment. Therefore, the salary of civil servant in our nation meets the basic demand of participation constraint.

This paper will further explore whether the salary of civil servant can fit in the condition of incentive compatible constraint, in other words, whether the salary can work as an incentive mechanism when the salary of a civil servant meets the demand for participation constraint.

The basic salary of civil servant is unified by our government and it entails two parts, the job salary and the salary according to different levels. Generally speaking,

there is not too much difference between them. The existing basic salary of civil servant accounts for 20% to 40% of the whole salary while the allowance takes up 60% to 80%. It is therefore noted that the allowance occupies a major proportion in civil servant salary. The realization of civil servant's salary incentive mechanism function depends on the larger proportion of allowance.

The allowance of civil servant refers to the additional regional allowance, remote area allowance, post allowance, housing and medical care allowance. At present, the allowance of civil servant mainly comes from the extra-budget revenue from different department, including the profits paid by the subordinate enterprises, the administration fees and the law enforcement economy. Compared with the manager in state-owned enterprises, the administrative institution has more administration power in affecting the extra-budget revenue. Therefore, the allowance in the administrative institution which has the practical power in setting up the allowance level is much higher than that of the institution which doesn't have the power. The phenomenon "the power of department is used to maximize the benefit of the individuals in this department" is very common. Hence, it is easy to be noted that the civil servant in the same level is paid different salaries and the civil servants in the same city are paid different salaries. The empirical study shows that the difference in allowance leads to the difference in salary, which bypasses the difference in duty and work risks. If the salary cannot embody the value of labor and work risks, the civil servant's incentive and work passion will be damped down, even leading to reverse incentive, triggering financial fraud, corruption and illegal administration.

3.1.2 The Performance Assessment Incentive Mechanism

The performance assessment of civil servant is the appraisal and evaluation on the virtue, ability, diligence, achievement and integrity according to *Civil Servant Law*. It serves as an important basis for the administration of government personnel and for the civil servant's salary, promotion, reward or punishment, training and dismissal. Based on *Civil Servant Law* and *Rules on Civil Servant Performance Assessment* (try-out), all departments have carried out the performance assessment on a regular basis through making corresponding detailed implementation rules and finding assessment methods according to their practical situation. In general, the performance assessment of civil servant entails four aspects: Evaluation, management, incentive and supervision, of which the incentive is the most important. In practice, however, due to the unscientific design of existing assessment standard, the incentive mechanism of this kind loses its function and, on the contrary, produces reverse incentive. Specifically speaking, the existing performance assessment mechanism has two major drawbacks: (a) The assessment standard is too general and lack of scientific

rationality. The standard of assessment of the job description should be made clear. Nonetheless, the reality is that most administrative institutions don't make it clear, and even few institutions make it, it is not specific, concrete enough. The responsibility is too blurred to reflect the job boundary. In essence, it is a very difficult thing to design a scientific and reasonable assessment standard for the blurred job boundary. The five aspects of virtue, ability, diligence, achievement and integrity are the basic assessment, which seems to be holistic but is hard to make it practical. If the performance assessment cannot reflect the actual performance of the civil servant, it would be meaningless. Though some administrative institutions have made the implementation details on performance assessment, the design of those details is too general to make the practical standard clear. The existing standard is lack of scientific rationality. (b) The reverse incentives are influenced greatly by the human factors. The leader's personal will and human relations lead to the non-objectiveness of the assessment result because of the unspecific and unclear standard. This makes the performance assessment mechanism lose its function of incentive, and enables some civil servant attaches more importance to cater to the leader and colleagues instead of working hard.

3.1.3 The Promotion Opportunity Incentive Mechanism

The promotion of civil servant includes the promotion of duty and the promotion of rank, which means to higher the rank and enlarger the power. This will not only increase the salary and bring in economic return, but also enhance a sense of job satisfaction, which is the best way to inspire the civil servant.

In order to ensure the fairness of the promotion and make the most of the incentive function, *Civil Servant Law* has made clear principles and procedures on the promotion of civil servant. Compared with traditional way of cadre promotion, the system of civil servant promotion is more solid, but there are some shortcomings:

(a) The procedure of promotion is manipulated by people, of which the will of the leader plays a dominating role. Although the *Civil Servant Law* has stipulated the specific procedure of the promotion, it is easy to be manipulated by the leader so as to make fully use of this legal procedure. The nomination of candidates is the key process of appointing the cadres. However, the main leaders and cadres negotiate firstly, and then decide the nomination of candidates. At last, it comes to the process of democratic recommendation. When the candidates are presupposed by the leaders, they usually lobby, canvass and promise to the people before the democratic recommendation, which will definitely exert a good impact on the voting result. In order to make the presupposed candidate enter the process of democratic recommendation, the leader always sets his tone, or let the host of meeting give verbal suggestion

in the recommendation meeting. During the process of the cadres inspection, the personnel department always inspect and evaluate according to the leader's intension so as to provide favorable condition to allow the candidate to pass the inspection due to the inaccurate and unspecific assessment standard. In the end, the will of the leader would be transformed into collective will through the process of collective voting. Since the promotion procedure is manipulated by people, it goes against its original meanings and becomes only a white elephant.

Even empirical studies show that the will of the leaders plays a decisive role in the process of promoting the civil servant. Through analyzing the resumes of 40 top leaders in CPC and government, some scholars have found that the working experience of secretary or head of the office in CPC administration is most apt to get job promotion, which is mainly dependent on the will of the leaders.

(b) The coexistence of the threshold on registration and the unclear standard. Opening selection changes the traditional appointment pattern. Up till now, it is a common mechanism for the promotion of civil servant that adds new and young blood to the administrative institutions and gains worldwide recognition from the public since it can encourage fair competition and prevent corruption. However, since the *Civil Servant Law* doesn't make clear distinction on the open selection post, and the qualification of the candidates, the executor of the system and the candidates have much marginal space to operate. In reality, some administrative institutions even set up special threshold or tailored criterion for the presupposed candidates so as to push aside the excellent talents in the open selection procedure. Under the circumstance of unclear standard for promotion, it is usually the leader's will which promotes the cadres.

Overall, the existing promotion mechanism is greatly influenced by the personal will be of the leader. The function of incentive is limited.

3.1.4 The Reward and Punishment Incentive Mechanism

Our national administrative institution reward the prominent hard-working civil servant who makes great contribution to his or her work and punish the illegal administration civil servant who violets the law according to the law of our country so as to erect the authority of the system and ensure the code of the conduct of civil servant.²

(a) The reward of civil servant is rather subjective and arbitrary. In terms of the real condition of civil servant's reward or punishment, it is relatively general and abstract. In terms of the procedure, the reward proposal should

be firstly agreed by the public in the administration institution area, then permitted by the party committee or government above the county level, eventually audited and passed by the related department. During the process, to what extent can be the role of public play is not clearly defined. As is mentioned above, the result of performance assessment is the main basis for rewarding the civil servant. Nonetheless, it is unable to reflect comprehensively the working performance of the civil servant. So, during the actual operation, the rewarding of civil servant is very arbitrary and bad phenomenon, like excessive rewarding and bad intension of seeking loopholes, may occur.

(b) The implementation of the reward or punishment mechanism mainly depends on the internal administration system. In order to make it easier, this paper makes a clear distinction on the discipline of action that violets the law or discipline and the discipline of illegal administration.

The article 66 in *Chinese Administrative Procedure Law* stipulates that, in the process of people's court handling administrative case, they shall send the related material into supervisory institutions, related administrative institutions or the higher administrative institutions once they find the head officer or director leader violets the law or discipline; they shall also send the related material into police station or procuratorial institution if they find the head officer or director leader commits crime. In reality, however, it is extremely hard for the judge to convict the civil servant or head officer of the illegal administration. The main reason is that there is little clue for the crime or illegal administration. Even plaintiff can reflect the related problems, there is no evidence to investigate the problems since the duty of investigation and verification lie in the discipline inspection authorities. So the court seldom sends the civil servant who severely commits the crime or illegally administrates into the related institution.

According to the 24th article of the *Inspection Law of Administration of the People's Republic of China* and the 34th article in the *Punishment Ordinance for Civil Servants Working in Administrative Organs*, the punishment of the illegal acts of civil servants shall be decided by the appointing institution or the administrative supervision institution.

According to Article 16 in *State Compensation Law*, the civil servant is allowed to be free of responsibility within certain range. In reality, the people who negatively claims for their loss since the inter-relationship among the compensation authority, civil servant and administrative leader as well as the lack of the supervision institution on claiming for the compensation. This is called as "dormancy provision" by academic circle. Some investigations show that, during the past 20 years of *State Compensation Law's* implementation, the compensation fees in 26 provinces only accounts for 3% of the total amount of financial appropriation. In some regions, zero compensation occurs.

² Public functionaries discipline in this paper refers to the disciplinary act to the non-leader civil servants who violates the law or discipline or commits severe crime while exercising their function. They are required to face the legal consequence of administrative responsibility, civil liability and criminal responsibility.

It is concluded that the civil servant seldom bears the civil liability because of the violation of law or discipline. The function and influence of *State Compensation Law* are limited.

According to the *Law of Criminal Procedure of People's Republic of China* (this law would be shortened for the *Law of Criminal Procedure* in the following), it is the People's Procuratorate who exercises the right of investigation when the civil servant illegally administrates. But the illegal administration is hard to detect. Without the report or accusation from some stakeholders, the People's Procuratorate usually needs the administrative institution to report the case to them, or the discipline inspection institution, other supervision institution on administration or trial authorities handover the case to them so as to places the case of illegal administration on file.

Therefore, the possible punishments resulted from the civil servant who violets the law and discipline can be classified into three categories:

- (a) The civil servant is considered to violate the law and discipline and shall be given due punishment or transferred into the People's Procuratorate to carry out further investigation by his or her appointed institution, superior institution or government in the same level.
- (b) The civil servant is considered to violate the law and discipline and shall be given due punishment or transferred into the People's Procuratorate to carry out further investigation by the supervision institution.
- (c) Judicial institution has the right to give disciplinary proposal, or transfer the case into the People's Procuratorate to carry out further investigation.

The first category belongs to the self-inspection of administration system. In the third category, the judicial institution doesn't have the right to directly punish the administrative officer and this institution seldom hands over the administrative officer to the other institution. Thus this paper excludes this situation.

In the second category, the supervision institution seems to exercise the dependent right of administrative inspection. According to the *Inspection Law of Administration*, however, the supervision institution shall be responsible for the government at same-level or higher supervision institution and report work to them, it has no right to inspect the same-level stuff. So the second category and the first category both belong to the self-inspection essentially. According to *The Inspection Law of Administration of the People's Republic of China* and *The Punishment Ordinance for Civil Servants Working in Administrative Organs*, it is the internal stuff in administrative system who decides the punishment and degree of the punishment to the civil servant who violets the law and discipline. From the stipulation of

related jurisdiction on supervision and procedures, the leader in administrative institution has the right to make administrative punishment.

In most cases, the leader will take everything into consideration, such as the severe outcome, social impact, the hidden reason and intention of the civil servant, interpersonal relationship as well as the possible negative impact on civil servant's loyalty, before he makes the administrative punishment.

Assuming that the civil servant is equipped with corresponding professional capability (excluding one extreme condition that the personal disagreements may exist among civil servants), perhaps the illegal administration is under the arrangement of the leader, or for sake of one civil servant's personal benefit to give illegal permission in the exchange of taking bribery. In the former condition, the leader will naturally protect his subordinates to maintain his authority; In the latter condition, the leader will try his best to minimize the side-effect of his subordinates to safeguard the passion of his team according the prevailing rule of absolute purity. Thus, it can be sensed that once the civil servant violets the law or regulation, it is usually the administrative institution who holds the internal responsibility to minimize the bad effect on society and public opinion. The administrative leader will choose to make decision based on the principle of peaceful resolution.

As the illegal administration of civil servant causes a certain crime, the administrative leader will follow the principle mentioned above. Therefore, except for the fact that the victim or stakeholder insists to report or sue the civil servant, administrative institution and supervision institution may not choose to transfer the case. Therefore, the crime of civil servant may not be held responsible.

In summary, the implementation of existing reward or punishment mechanism of civil servant mainly depends on the internal implementation of administration institution or the case-setting and investigation from the Procuratorate. Without a sound external supervision system, the disciplinary to illegal administrative civil servant depends mostly on the upper administrative leader.

3.2 The Function of Incentive Mechanism in Practice

In the first principal-agent relationship, the civil servant occupies an advantage in information collection. The administrative institution can hardly observe the whole process of civil servant's administration, but the result of it, for example, the increase or decrease of the number of illegal administration case. Furthermore, this result is not only caused by civil servant. If it is caused by the combination of the internal factor of civil servant and the external factor, then the external factor observed by the administrative institution is extremely hard to measure.

It has been described in the former chapter that the standard in the performance assessment is too general and unscientific to reflect the reality since it is easily influenced by the human factor. Therefore, the salary, promotion and reward or punishment mechanism can hardly bring out its due function, thus the incentive mechanism of first principal-agent relationship cannot bring out its full potentials, which would lead to reverse incentive.

It is worth noting that the administrative leader is the important evaluator in any of the incentive mechanism mentioned above. It is also mentioned that the performance assessment standard of civil servant is so general that creates favorable condition for the administrative leader to maximize his own benefits. In the second principal-agent relationship, the administrative leader is not necessarily able to observe the behavior of the civil servant, but he can observe whether the result of the behavior is in consistent with his intended purpose. Meanwhile, the administrative leader will naturally use the incentive mechanism for his own benefit, in other words, the control and domination over public power will be transformed into private power. The administrative leader provides the civil servant with corresponding incentive according to his own observation. He will assess his preferred civil servant as good worker to promote this person; on the contrary, he can also assess the disobedient civil servant as bad worker to marginalize and suppress this person.

Therefore, in practice, the existing function of incentive mechanism is dominated mostly by administrative leader, which will become an effective incentive mechanism for the civil servant.

3.3 The Mechanism of Civil Servant's Illegal Administration

The first and second principal-agent relationships co-exist in the same administrative institution. When the leader's target and the method of achieving the target are in consistent with the original intention of the law, the second principal-agent relationship is conducive to the realization of the target of the first principal-agent relationship, which is good for the effective administration. Otherwise, the second principal-agent relationship would be in conflict with the first principal-agent relationship. Hence, the civil servant would choose the more favorable condition for these two incentive mechanism. The following paper will apply the method of State Space Model into the real practice of civil servant's rational choice in these two principal-agent relationships.

3.4 The Rational Choice of Civil Servant

In the first principal-agent relationship, this paper assumes the chosen action of civil servant that is in consistence with law as α , the chosen action of civil servant that is in consistence with the administrative leader's expectation as

α_1 ($\alpha_1 \in A$ and $\alpha_1 \neq \alpha$ one specific chosen act). First of all, we analyze the participation constraint of civil servant:

$$\int u(s(x(\alpha, \theta)))g(\theta)d(\theta) - c(\alpha) \geq \bar{u}. \quad (1)$$

Without the second principal-agent relationship, Expression (1) represents the participation constraint of the legal administration of agent.

$$\int u(s(x(\alpha, \theta)))g(\theta)d(\theta)$$

represents the monetization and non-monetization returns of civil servant through legal administration, including salary, honor, promotion opportunity. $c(\alpha)$ represents the personal cost of legal administration, entailing engaged effort, physical and mental pressure. The left side of inequality stands for the net income of the chosen act of civil servant. $-u$ stands for the possible maximum net income that civil servant may gain through the work.

As the second principal-agent relationship exists in the administrative institution as well, the participation constraint may diverge into two different conditions: the participation constraint of legal administration and the participation constraint of administration behavior that is in consistence with the administrative leader's expectation, the mathematic expressions are:

Administrating according to the law

$$(IR) \int u(s(x(\alpha, \theta)))g(\theta)d(\theta) - c(\alpha) - c'(\alpha) \geq \bar{u}. \quad (2)$$

Administrating according to the leader's will

$$(IR) \int u(s(x(\alpha_1, \theta)))g(\theta)d(\theta) - c(\alpha_1) + u_1 \geq \bar{u}. \quad (3)$$

The left side of the sign \geq represents the net income of the agent when he or she chooses the act α . $c'(\alpha)$ in Expression (2) represents the additional cost caused by disobeying the leader's will, such as the loss of opportunity. When the leader's will is in consistence with the law, $c'(\alpha)=0$. Otherwise, $c'(\alpha)>0$ in Expression (3) means the additional benefit gained from obeying the leader's will, such as promotion, or job adjustment to core position, $u_1 \geq 0$. When the two principal-agent relations exist in the same administrative institution, Expression (1) is no longer the participation constraint of the agent, either Expression (2) or Expression (3) should be verified as correct. Or else no one would be willing to work in administrative institution.

Since the second principal-agent relationship is developed from the command-obey relationship between leader and civil servant and it maybe not known for the policy-maker of this institution, the mechanism only fits the Expression (1) of participation constraint in the first principal-agent relationship. As is mentioned above, the incentive mechanism of the behavior chosen by civil servant in the first principal-agent relationship, such as the reward or punishment, promotion opportunity, is determined by the administrative leader. If the leader judges that $x(\alpha_1, \theta)$ is equal to $x(\alpha, \theta)$, assuming that the behavior chosen by civil servant α_1 is equal to the personal cost α :

$$\int u(s(x(\alpha, \theta))g(\theta)d(\theta) - c(\alpha) = \int u(s(x(\alpha 1, \theta))g(\theta)d(\theta) - c(\alpha 1) . \quad (4)$$

In the second principal-agent relationship, the Expression (4) is linked with Expression (3). It is thus concluded that:

$$\int u(s(x(\alpha 1, \theta))g(\theta)d(\theta) - c(\alpha 1) + u1 = \int u(s(x(\alpha, \theta))g(\theta)d(\theta) - c(\alpha) + u1 .$$

Because $u1 \geq 0$, then:

$$\int u(s(x(\alpha 1, \theta))g(\theta)d(\theta) - c(\alpha 1) + u1 \geq \int u(s(x(\alpha, \theta))g(\theta)d(\theta) - c(\alpha) . \quad (5)$$

According to Expression (5), the legal administration of civil servant does not necessarily meet the incentive compatible constraint in the second principal-agent relationship, in other words, as $\alpha' = \alpha 1$,

$$\int u(s(x(\alpha, \theta))g(\theta)d(\theta) - c(\alpha) \\ \leq \int u(s(x(\alpha', \theta))g(\theta)d(\theta) - c(\alpha'), \forall \alpha' \in A$$

3.5 The Maximized Utility of the Agent

It has been concluded from above that the incentive mechanism in the first principal-agent relationship fails to function because it can hardly meet the demand of the incentive compatible constraint of civil servant. It is thus replaced by effective incentive mechanism of administrative leader in the second principal-agent relationship. It is of little meaning to talk about the maximized utility of the administration institution in the first principal-agent relationship. Hence, we'll talk about the maximized utility of administrative leader in the second principal-agent relationship.

Firstly, if the will of administrative leader is in conflict with the law, we need to consider whether the action of civil servant that violets the law requires the cost, which includes the cost that allures the specific action of the civil servant and the possible punishment of the leader.

The existing incentive mechanism dominated by the exerts a great impact on its function and becomes the administrative leader's effective incentive to the civil servant. To some extent, the administrative leader can privatize the public power and take advantage of the government resource to reward the civil servant. Under this circumstance, the incentive cost of administrative leader is zero.

According to Article 35 and Article 36 in *Punishment Ordinance for Civil Servants Working in Administrative Organs*, it is decided by the government or national congress at the same level to give the discipline of dismissal and it is decided by the government at the same level and superior government to give administrative discipline other than dismissal. Article 37 in *Punishment Ordinance for Civil Servants Working in Administrative Organs* stipulates that it is decided by the government to give discipline to official cadres in regional national government. It can thus be seen that the internal system of administration institution dominates the power of the

discipline to the administrative leader who violets the law and discipline.

If the administrative leader orders the civil servant to act $\alpha 1$ and this has caused some damage, the compensation institution is negative in claiming for compensation since the close relationship among the compensation institution, civil servant and administrative leader. As a matter of fact, when it comes to some higher-leveled administrative leader, it has gone beyond the boundary of this institution. Therefore, it is unlikely for the administrative leader to order the civil servant to act $\alpha 1$ and bear civil liability.

As is mentioned above, without the report or accusation from the stakeholder, the People's Procuratorate needs the administration institution take the initiative to report the case or the handover of the case from the discipline supervision institution, other administrative supervision institution or judicial organ if the administrative leader is found to commit severe crime through exercising his or her power.

According to *The Constitution* and *The Organization Law of Local Government*, the authority institution has the extensive right of supervision over administrative institution. However, because of the unstandardized relationship between the Party and the authority institution, the authority institution is always under the control of administrative institution, which is hard to realize the true supervision. In most cases, the authority institution barely takes related legal measure, or adopts disciplinary legal supervision over the government.

To sum up, the chances of administrative leader getting severe punishment are slim when the leader commands the subordinate to go against the will of the law since the possible punishment decision is made by the internal administrative institution.

Therefore, we can see that the personal cost of administrative leader ordering the civil servant to implement $\alpha 1$ is very low. As the condition of participation

constraint of the civil servant is met with, the expected utility function of the principal transforms from

$$(P) \int v(\pi(\alpha, \theta) - s(x(\alpha, \theta)))g(\theta)d(\theta)$$

to
$$\int v'(\pi'(\alpha, \theta))g(\theta)d(\theta).$$

In the above equation, $v'(\cdot)$ is the expected utility function of the administrative leader, and $\pi'(\alpha, \theta)$ is the production function determined by one specific chosen act α and stochastic variable θ . Although the administrative leader as principal is unable to observe the chosen act of civil servant, the leader can observe the production π' (α, θ) that can maximize the expected utility function. The leader can thus require the civil servant to regard the specific production function π' (α, θ) as the purpose of administration and give the civil servant due reward according to the degree of achievement.

As a result, win-win strategy is realized since both the administrative leader and the subordinates to maximize their own benefit and the highest authority of leadership is ensured in the internal part of administration institution, which gives rise to a new rule of absolutely obeying the leadership. This not only fits in the internal part of administration institution at one specific parallel level, but also at any vertical level of the administration institution.

CONCLUSION

Through the analysis of the constraints of the two principal-agent relationships in the internal part of administrative institution, it is concluded that the existing exercise of administrative power belongs to the second principal-agent-relationship and the occurrence of illegal acts is largely dependent on the leader's judgment on the intension of legislation.

However, it is a rather complex mechanism to change the status quos of the administration power function in the second principal-agent relationship and reduce the frequency of illegal administration. Firstly, we need to further increase the salary of civil servant and improve the performance assessment and promotion system. Secondly, we need to improve the awareness and ability of administrating according to the law. Last but not least, we need to intensify the external supervision. The ongoing reform of supervision institution may be the best way to intensify the external supervision. According to the Decision on the Pilot Reform of National Supervision System in Beijing, Shanxi and Zhejiang Provinces in the 25th meeting of the 12th NPC Standing Committee, the future trend of supervision committee will make full use of the supervision resources and get rid of the same supervision pattern. The supervision committee will belong directly to the core power of our nation and are

endowed with the supervision function of investigation and disposal so as to effectively limit power and give due punishment to illegal administration of civil servant or administrative leader.

REFERENCES

- Ba, B. (2005). *The study of local national people's congress's supervision on government*. Zhengzhou University.
- Hu, J. M. (2005). *Research public power—legislative power, administrative power and judicial power* (p.264). Hangzhou: Zhejiang University press.
- Jensen, M. C., & Meckling, W. H. (1976). Theory of the firm: Managerial behavior, agency cost and ownership structure. *Journal of Financial Economics*, 3(4), 309.
- Jiang, M. G., & Bi, Y. Y. (2014). *Legislative tutorial of CPC member* (p.159). Beijing: China Legal Publishing House.
- Jiang, X. P., & Ma, K. L. (2005). The analysis of predicaments and corresponding strategy of civil servant's performance measurement. *Social Science Research*, (1), 2.
- Qu, S. Q., & Li, S. S. (2017). The administrative recoument in state compensation. *Journal of Zhejiang Party School of C.P.C*, (1), 122-123.
- Shen, X. P. (2010). On the analysis of the "hidden rules" in recruiting and appointing talents. *HONGQI WENZHAI*, (21), 37.
- State Compensation: The Claim for Compensation Can Be Negotiated But the Responsibility Can Never Be Shirked. (2011, January 11). *The Beijing News*. Retrieved from <http://news.sina.com.cn/pl/2011-01-22/092021857548.shtml>
- Xin, J. L., Du, Z. F., & Xie, B. C. (2015). The empirical study on civil service payment structure change—Based on the data system. *Finance & Economics*, (5), 147-181.
- Xu, J. M., Gao, Q. W., Liu, Y., & Lu, T. (2009). *Law of administration* (pp.62-63). Chengdu: Sichuan University Press.
- Ye, C. T. (2013). Discussion of the problems and causes of local people's congress supervising the government's work. *Journal of Fujian Institution of Socialism*, (1), 91.
- Yu, P. (2016). Analyzing the age, education background and career path of county cadres in CPC and government—Based on the resume analysis of 40 top leaders in CPC and government. *Leadership Science*, (08), 44.
- Zhang, W. Y. (2012). *Game theory and information economics* (pp.239-241). Shanghai: Shanghai Sumerian Press.
- Zhang, G. K. (2012). On the influence of allowance and pay gap to the civil servants' pay equity—The analysis with civil servants and enterprises' salary data in three central provinces. *Economic Management*, (7), 182.
- Zhang, H. (2013). *On the institution study of controlling corruption crimes* (p.13). Beijing: China Changan Press.
- Zhou, X. W. (2003). The exploration of reasons and predicament of civil servant's performance measurement. *Theoretical Investigation*, (3), 22.