

*Original Paper*

## Study on the Essence of the Legal Relationship Between Universities and College Students

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### **Abstract**

*The legal relationship between universities and college students has been an important issue of concern in academic and judicial practice in recent years. The author believes that the essence of the relationship between universities and college students is a special legal relationship of rights and powers, which is different from strict administrative legal relationships, civil legal relationships, and is not a simple dual legal relationship. Universities should respect the status of college students as the subject of rights and safeguard their rights.*

### **Keywords**

*student rights, school power, legal relationships*

### **1. Introduction**

The relationship between higher education institutions and college students has undergone a process of development and change in China. During the planned economy period, as an extension of the national education administrative agency, higher education institutions had a purely internal administrative relationship with students, without the need to define their respective rights and obligations by law. With the operation of the market economy system and the awakening of human subjectivity, higher education has also opened the curtain of institutional reform, which has continued to this day. The relationship between universities and college students is inevitably adjusted by legal norms, becoming a legal relationship. The legalization of the relationship between both is the inevitable result of higher education adapting to the socialist market economy system and getting rid of the influence of planned economy on higher education. Universities run and manage according to law, which is also the inevitable requirement of the power operation mechanism and rights protection mechanism of the rule

of law strategy within universities. The nature of the legal relationship between universities and students as educators is a prerequisite for determining the scope of school responsibility and the principle of attribution. What is the legal relationship between higher education institutions and students, and what is the content of the legal relationship between the two? It is becoming an urgent problem to be solved.

## **2. Analysis of the Main Viewpoints in the Academic Community on the Legal Relationship between Universities and College Students**

The essence of the legal relationship between universities and college students has always been controversial, but it can be divided into the following three perspectives.

The first view of civil legal relationship holds that the educational relationship established between universities and college students is only a civil legal relationship. The school, as an independent legal entity, enjoys the right of independent education in accordance with the law; Students have the right to independently decide to apply to schools and receive education in accordance with the law. The behavior of both the school and students is bound by the agreement of their respective interests and intentions in accordance with legal norms, namely the contract. Both parties shall enjoy the rights and fulfill their obligations as stipulated in the contract. However, civil legal relationships are social relationships that occur between equal civil subjects based on the principles of equality and compensation. When analyzing the legal relationship between universities and college students, we will find that universities and college students are not in a completely equal position in the process of educational activities. In order to better carry out educational activities, schools are often in a dominant position, while college students are more obedient; The fundamental purpose of educational activities is not to adjust the property and personal relationship between universities and college students. In educational activities, the property and personal relationship between schools and students may be involved, but this relationship also needs to distinguish different situations: if it is necessary for educational activities themselves, it still belongs to educational social relations; If it is relatively independent, it fully belongs to civil activities. Since the social relationship between universities and college students is not a civil relationship, the legal relationship between the two does not belong to a civil legal relationship.

The second view of administrative legal relationship defines the legal relationship between schools and students as administrative legal relationship, and believes that the administrative legal status of authorized schools is reflected in two aspects: firstly, schools, as administrative subjects, exercise the powers granted by laws and regulations, and have the same administrative subject status as educational administrative agencies; The second is that the school exercises the powers granted by laws and regulations in its own name and assumes legal responsibility for its own actions in exercising its powers. In fact, this is a revision of the special power relationship theory that has had a profound impact on the academic community in China. This theory holds that the relationship between schools,

as public institutions, and students is the utilization of institutions, which belongs to a special power relationship in public law. In special power relationships, students do not enjoy their fundamental rights as citizens, regardless of whether the relationship is forcibly formed (such as students receiving compulsory education) or freely chosen by the parties involved (such as students receiving higher education). Schools have the right, without individual legal basis, to formulate rules for the use of cultural relics (school rules and discipline), and issue various special restrictive measures or disciplinary measures to students based on this, limiting or depriving students of their various rights. The behavior of schools excludes the constraints of rule of law and human rights protection principles, and students are only users of the school and must obey the school's general orders. Special power relations also exclude judicial review. If students are dissatisfied with the school's punishment or believe that the school has violated their rights, they are not allowed to bring a lawsuit to the court. However, with the opening of the door to judicial review for students, it has become possible to file lawsuits in schools, and the theory of special power has also been revised, thus forming an administrative legal viewpoint in China. However, schools are not administrative institutions, and the relationship between schools and students is not entirely an administrative management relationship. Moreover, this statement cannot explain the equal legal relationship between schools and students. College students pay a certain amount of tuition fees, and higher education institutions provide corresponding services, which constitutes a higher education service relationship. If the school's management negligence causes accidents that cause personal or property losses to students, it should be classified as civil liability for damages. This legal relationship that focuses on the educational protection and regulatory responsibilities of schools, as well as the personal and property rights of students, belongs to an equal rights legal relationship. Moreover, with the rise and development of private universities, private law contract theory has gained widespread recognition in explaining the relationship between private schools and students, and some scholars even believe that it should be introduced into the interpretation of public schools. All of this has shaken the foundation of the theory. The third viewpoint is the dual legal relationship. Some scholars have conducted a comprehensive analysis of the relationship between schools and students in the process of student management, and believe that the legal relationship between schools and students is a dual relationship, with some being civil legal relationships and some being administrative legal relationships. The dual legal perspective is a synthesis of two perspectives: civil contractual relationship and administrative legal relationship. It neither fully agrees with nor completely excludes the first two perspectives. This inevitably brings the advantages and disadvantages of the first two perspectives into one's own perspective. It is almost impossible to define and list which school behaviors belong to civil contractual relationships and which behaviors belong to administrative legal relationships, let alone have practical significance and operational feasibility. Although it cannot be denied that the dual legal viewpoint is more in line with the appearance of the relationship between schools and students under the current education system in China, this viewpoint does not fundamentally analyze the nature and characteristics of the relationship

between schools and students, but rather draws a comprehensive conclusion on the performance of some relationships.

### **3. Analysis of the Essence of the Legal Relationship between Universities and Students**

From the current legal provisions and the current situation of higher education in China, there are two types of relationships between higher education institutions and students: one is the quasi administrative legal relationship or special administrative legal relationship between management and being managed, and the other is the service relationship of higher education. Here, although higher education institutions are not administrative agencies, they have unilateral educational management and reward and punishment rights over students, and the status of both parties in legal relations is unequal. On the other hand, college students pay a certain amount of tuition fees, and higher education institutions provide corresponding services, which in turn constitutes a higher education service relationship. From this perspective, the relationship between higher education institutions and students is a special legal relationship. Strictly speaking, this relationship can be further divided into two subspecies: the right led right power relationship and the power led power right relationship. The first subspecies is a rights power relationship dominated by rights. The rights of college students are mainly manifested as the right to education, which is recognized and protected by the Constitution of our country and is also widely recognized as a human right in modern society. Essentially, it also belongs to the category of private rights. However, the right to education has its particularity, first and foremost being strict access and the maintenance of qualifications. Admittance is mainly reflected in obtaining academic qualifications through specific exams and moral character assessments. Qualification maintenance refers to the requirement that students must comply with the school's requirements for professional learning, moral conduct, and daily conduct during the semester, and comply with the school's management rules and regulations. Otherwise, the school may impose disciplinary measures on them until their enrollment is terminated. Secondly, it is up to the school to evaluate and recognize the educational outcomes of students on behalf of the country, including whether graduation is granted and whether degrees are awarded. These aspects are the limitations and constraints on the right of college students to education. The reality is that the realization of students' rights requires schools to respond, and the legal relationship arising from the exercise of power (authority) by schools in accordance with the law. It manifests as the right and obligation relationship between students exercising their rights and schools fulfilling their obligations, but in reality, it is a relationship formed by the interaction between rights and power. The second subspecies is a power relationship dominated by power. Article 28 of the Education Law stipulates that schools and other educational institutions exercise a series of management powers, including the right to enroll students as stipulated in the third item, the right to manage student status, reward, and punish students as stipulated in the fourth item, and the right to issue academic certificates as stipulated in the fifth item. It manifests as the school exercising power, and students respond by transferring corresponding rights to the school or limiting

their own corresponding rights. On the surface, this relationship may appear to be the exercise of power by schools and the fulfillment of obligations by students, but in reality, it is also a relationship formed by the interaction between power and right. University administrators conduct teaching, living, and management within the school, formulate school rules and discipline, and punish students who violate discipline. This is a legal act that can have a unilateral, decisive, and mandatory direct impact on the rights of the managed person.

Both right-power relationship and power-right relationship is belong to public law relationships, but the subjects of these two public law relationships realize different corresponding interests. In the relationship between rights and power, the rights subject can usually only make a request to the power subject to achieve the corresponding interests and content. The latter can only respond to this request after making a legitimate and reasonable judgment, and may not accept the request. The rights subject cannot enforce the power subject to achieve its interests and property content; In the power right relationship, the way in which the power subject realizes the interests corresponding to their own power is much more direct and powerful. (Hu, 2005) Japanese jurist Minobe Tatsukichi referred to this superior power characterized by unilateral expression of intent by state organs and subsequent enforcement as the public power of state behavior, It is believed that "in public law relations, the will of the state has the power to determine the agency; and this behavior, when cancelled or confirmed as invalid by a legitimate authority, is presumed to be "legitimate", and the people of the other party cannot deny its effectiveness." (Han, 2006) However, the power of universities is linked to their specific subjects and cannot be freely transferred or transferred like most rights. This is a special restriction. It can be seen that the legal relationship between universities and college students is a special legal relationship, which involves the relationship between the rights of college students and the power of universities.

#### **4. Enlightenment from the Nature of the Legal Relationship between Universities and College Students**

After examining the practical content of the legal relationship between universities and college students and obtaining some new and more specific understanding, looking back, some of the main aspects of the traditional theory of educational legal relationship that deviate from the reality of social legal life become more prominent, mainly manifested in a one-sided emphasis on the power of universities as the dominant aspect, while neglecting the power of college students as the dominant aspect. In fact, whether in the power to power relationship dominated by the rights of college students or in the power to power relationship dominated by the power of universities, the rights of college students play an indispensable role as an important pole in the legal relationship between universities and college students. Therefore, universities should respect the status of college students as the subject of rights and protect their rights. The following aspects can be derived from the nature of the legal relationship between universities and college students.

Respect the status of college students as the subject of their rights. The content of the legal relationship between universities and college students is the unity of rights and powers. From the perspective of departmental law, the content of the legal relationship between universities and students can also be determined more specifically. From the specific composition of its relationship, its content is neither rights nor power, or both, and rights and rights must be in a certain legal relationship. Therefore, as a whole, the legal relationship between universities and college students is the unity of rights and powers. The legal relationship between universities and students can be summarized from the perspectives of rights, powers, and rights. The disregard for the status of students as the subject of their rights, which is caused by the theory of administrative legal relations, goes against it. If students are not treated as individuals with independent personality and do not respect their most basic rights, it is not conducive to the full realization of students' right to education. If educational administrative agencies, schools, and teachers do not take legal actions within their legal authority and procedures, governing education according to law can only be empty talk. In view of this, we should start with the system and reform the existing phenomenon of schools neglecting students' rights. Establish the subject status of students' rights and establish a school system that respects students' rights and interests. The management concept of universities should shift from "management" as the purpose to "service" as the purpose, advocate and strengthen the service function of schools, establish a "people-oriented" management concept, and establish a people-oriented management model.

Clearly distinguish the scope and boundaries between the rights of college students and the power of universities. The legal relationship between universities and college students should be defined as the relationship between rights and obligations and the relationship between rights and obligations. Although the technical issue involved here is only how to appropriately express the confirmed legal relationship content, it is still worth paying attention to, because a reasonable understanding cannot be widely accepted by people without proper expression. In the past, the legal relationship between universities and students was expressed as a right and obligation relationship between subjects, and its one-sidedness and detachment from reality were so severe that it was almost impossible to logically explain the actual legal relationship. According to the new understanding of the legal relationship between universities and students, the legal relationship between universities and students can be expressed as a right power relationship, which means various relationships within the unity of rights and powers, including the relationship between rights and powers. However, in any case, the power right relationship between universities and students cannot be expressed as a right obligation relationship. The relationship between rights and powers contained in it can be converted into two types of relationships: rights and obligations, and power and obligations. For example, students have the right to participate in educational and teaching activities, and universities have the obligation to provide educational and teaching equipment that meets health and safety standards and organize various educational and teaching activities. Similarly, universities have the power to manage their schools according to their own regulations, and students should comply with the management system

of their respective universities. This helps to clarify the boundary between the two, define clearly the obligations of universities and college students, the power of universities and the rights of college students, and eliminate the phenomenon of emphasizing only the power and obligations of universities and neglecting the rights and obligations of college students in the past, so as to enable universities to better exercise their management power and college students to better enjoy their right to education.

Establish a rights-based concept of the rule of law. The subject of the abstract level legal relationship between universities and college students that was originally studied should be changed from the original subject of rights and obligations to the subject of power and rights. This proposition aims to indicate that the subject of rights is the subject of individual interests, namely college students, and belongs to social individuals; The power subject is the public interest subject and the owner of public property, namely the university. As the management counterpart of the school, students are important stakeholders. In the creation of educational management rules and the implementation of management behaviors in universities, universities should take protecting the rights of managed students as the starting point. While requiring students to fulfill their obligations, they should first ensure the realization of students' legal rights. When university education administrators set various obligations for students through management rules, they should first consider whether the rights that students should enjoy are effectively guaranteed. If the creation of school rules only tends to make simple and compulsory provisions for students, such rules will inevitably be difficult to be widely accepted by students and internalized into their conscious behavior, and it will be difficult to motivate students to abide by and maintain the rules. Therefore, when creating and implementing educational management rules, universities must fully consider the characteristics of students as the subject of rights, and should encourage students to participate in the formulation of regulations. Before formulating and implementing relevant regulations, students and the school must have a common and clear goal, and the normative documents formulated should be fair and transparent, with the direct participation of all management counterparts. At the same time, strengthen the legality and standardization of educational management behavior, and effectively safeguard students' legal rights.

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