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On the Concretization of the Theory of Criminal Constitution

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Abstract: Whereas the theory of criminal constitution is still in the stage of contestation, the reality is that academic circles, practitioners and teachers are all in their own way, and the beginnings of criminal law can not be found in the exact way to learn.The author hopes to provide some learning reference for beginners by sorting out the current mainstream theory of crime constitution, and turn the main direction of learning to the common among theories - constitutive elements, rather than focusing on the theory of crime constitution itself, so as to avoid the beginners falling into the dead corner of theoretical logic.

Keywords: Theory of Crime Constitution, Criminal law, Generality.

1. Introduction

With the full deepening of the rule of law, various doctrines and theories have come to the forefront in recent years in law circles, especially criminal law. Even Japanese scholars have lamented that in the realm of jurisprudence, the scene of doctrine everywhere is probably not to be found except in criminal law. Although the phenomenon of the explosion of many theories is exceptionally beneficial to the criminal law academia, it has inadvertently increased the threshold for learning criminal law, and it is difficult for a beginner to learn systematically, facing such complex theoretical controversies. Take the crime constitution theory mentioned in this paper as an example. In the process of crime constitution studies, from the two-element theory, three-element theory, and four-element theory, and then to today's hierarchical crime constitution theory research, a series of theoretical theories emerged, such as the two-class theory and the three-class theory, which are easy for students to fall into the theoretical illusion that various theories are intertwined in the initial stage. Therefore, through this article, we aim to draw on cutting-edge theories based on personal learning experience, sorting out the mainstream views in crime composition theory, discovering the commonalities of these views, and helping beginners to establish a commonality-based, specificity-supported learning mindset.

2. Mainstream Theories of Crime Constitution

2.1. The Four-Element of Crime Constitution Theory

It is generally believed that in 1982, the official publication of the Criminal Law, which was primarily edited by the older generation of renowned Chinese criminal law scholars, Prof. Mingxuan Gao and Prof. Kechang Ma, and written by several heavyweight criminal law scholars, marked the establishment of the four-element criminal constitution theory as the dominant position in Chinese criminal law theory and practice. During his graduate studies at the Remin University of China, Prof. Mingxuan Gao and Prof. Kechang Ma studied under jurists from the Soviet Union, such as Bystrova, Damascene, Nikolaev, and Kolkin. Thus, they systematically learned the four-element theory of criminal constitution, common to socialist countries. This laid the academic foundation for Professor Gao 's introduction of the four-element constitution theory in China. Later, after a rigorously logical argument for the theory, other criminal researchers, including Professor Mingxuan Gao, promoted the theory in China through lectures and books. Because it is easier to learn than the hierarchical theory of crime composition, it soon gained wide recognition in practical and theoretical circles. It thus established its dominant position in the field of crime constitution.

For the critique of the four elements criminal constitute theory, there is always a case where a thirteen-year-old boy named Goudan raped a girl named Xiaofang. His grandfather was on the lookout. Generally speaking, in the traditional constitution of the crime, according to the logical deduction of the four elements, he directly denied the existence of the crime because he did not meet the constitution of the age of responsibility. Because the perpetrator did not constitute a crime, it is impossible to find that his grandfather's helping behavior constituted a crime. However, through the stratification theory of crime constitution, from the analysis of the objective properties of the behavior, his behavior has the constitution characteristics stipulated in the crime of rape, so it meets the desirability of the constituent elements, which signifies that his behavior ascends the first step of the crime ladder. As an accomplice, his grandfather can also ascend the ladder of the desirability of the constituent elements. The final result is that he denied crime since the incomplete process of derivation because he does not meet the age of responsibility. However, we can punish his grandfather for this helping behavior. Therefore, the four-element theory faces a massive problem dealing with the accomplice in such cases. Although such cases are still individual cases, we must admit that it is impossible to deal with such cases well in this parallel theory of crime composition.

Professor Xingliang Chen argues that the absence of a hierarchical

reasoning process in the four elements criminal constitute theory leads to the inability to ensure the accuracy of conviction. The reason is that the relationship between the four elements is a kind of coexistence, i. e., utterly different from the hierarchical composition theory of ranking. Professor Xingliang Chen, in discussing this viewpoint, took

the Supreme Court's bulletin case Jinlong Zhao and others chased victims with knives and caused them to swim and drown in the water when escaping as an example and believed that the judge, in determining the constitution of the crime, presumed the subjective intention of Jinlong Zhao and others to chase victims to have the act of injury, and then determined the constitution of the crime. There is a subjective imputation of guilt. The case of him and the others was found to be guilty of subjective imputation. In contrast, Professor Xingliang Chen believes that it is because the logical sequence from objective to subjective is not strictly followed that leads to subjective imputation, according to the hierarchical reasoning should first determine whether the act of chasing with a knife belongs to the act of injury, if this act does not belong to the act of injury, naturally the subsequent deduction need not be carried out, denying the establishment of the crime of Jinlong Zhao and others. The two constitutive theories lead to different results, and this situation illustrates the limitations of the four-element theory.

2.2. Two-Class Theory of Crime Constitution

In his textbook Criminal Law, Professor Mingkai Zhang proposes the two-class theory. However, he admits that the so-called two-class system can be called the three-class system from the perspective of the relativity of the concept of crime and the economy of the criminal and logical system. Nevertheless, at the same time, Prof. Zhang believes that the constituent elements of the fulfillment of the legal elements in the three-class system should be the types of violation defined by Beling, and there is a logical problem in discussing illegality after the type of violation. At the same time, what is discussed in illegality is only the cause of illegality, which cannot be logically justified. Therefore, to improve the logical error of placing the constituent elements and illegality on two different levels in the three-level system, Professor Zhang has placed the constituent elements and illegality on the same level in his book Criminal Law, but the order should not be reversed.

Although the two-class theory proposed by Professor Mingkai Zhang has, to a certain extent, improved the logical errors of the three-class theory, there is no noticeable difference in substance. In particular, Professor Zhang's book has been emphasizing that in the stage of wrongfulness, the constituent elements and illegality cannot be reversed, which is essentially ranked according to the fulfillment of the legal element, illegality, and culpability, revealing itself to be the three-class theory, which Professor Zhang has not denied.

We believe that the two-class theory is difficult to ensure the sequence of issues in the first stage of the wrongful judgment of the fulfillment of the legal element and illegality because the two placed in the same order will undoubtedly encounter the same criticism of the four-element theory. The judges are difficult to self-prove because they are in strict accordance with the logical sequence from objective to subjective perspectives in applying the law. At the same time, if this flat constitution at the stage of wrongfulness can be fixed by the regulation of the doctrine's proponents, then there is no doubt that the order of the four elements, object-objective aspect-subject-subjective aspect, is also unquestionable.

2.3. The Three-Class Theory of Crime Constitution

In the history of German criminal law, the classical criminal theory system

is known as the Lester-Beling system. Among them, Lester's greatest contribution to the criminal theory system is establishing a system of ranking between delinquency and culpability, thus providing the basic logical framework for establishing the criminal theory system.

In 1906, Beling published his book Theory of Crime, which elaborated the theory of constituent elements and laid the foundation for the final formation of the three-class criminal theory system after going through Meyer-Metzger's neoclassical criminal theory system, then Wilzel's neoclassical cum criminal theory system and Roxane's rational criminal theory system.

Eventually, a three-class theory of crime constitution from the constituent elements of the fulfillment of the legal element, illegality, and culpability was formed in Germany. The Japanese scholar Kiichiro Ono published the book The Theory of the Elements of Crime in 1953, which formed the final shape of the three-class crime theory in Japan. Since then, Germany-Japan-based civil law countries have determined the three-class theory of crime. China studied Japanese law at the end of the Qin Dynasty. The idea of legal codification with Jiaben Shen and others mostly came from Japan. However, for historical reasons, after the founding of New China in 1949, we began to study the criminal law theory from the former Soviet Union, so the three-class theory of crime in China does not have a history of development.

In 2003, Professor Xingliang Chen's book Normative Criminal Law proposed the construction of a three-class crime constitution of the body of crime - culpability - quantity of crime, in which the body of crime is equivalent to the objective elements of crime composition, culpability. The body of the crime is equivalent to the objective elements of the crime constitution, the responsibility is equivalent to the subjective elements of the crime constitution, and the two are the ontological elements of the crime. The quantity of crime is the condition of crime establishment that indicates the quantitative based on the crime body and culpability. It demonstrated the specific and improved research done by Professor Chen for introducing the three-class theory in China. However, his 2010 book Doctrinal Criminal Law did not mention the above theory. It was replaced by the three-class crime theory system of fulfilling the legal element, illegality, and culpability. Professor Genlin Liang commented that this shift is a signal of the conversion of Professor Chen to the German-Japanese three-class constitution theory and doctrinal criminal law.

According to the widely held view in German and Japanese criminal law, conformity to the constituent elements is the starting point of the crime judgment process. It is the factual basis for presuming whether an act is illegal or culpable. In other words, when an act meets the constituent elements of a crime in criminal law and has constituent element conformity, it is, in principle, possible to affirm that the act is unlawful and culpable. In this sense, the constituent elements have the so-called presumption function. However, the so-called causes of exclusion of illegality, such as self-defense, emergency avoidance, and proper conduct, as well as the causes of exclusion of liability, such as lack of knowledge of

illegality and lack of possibility of expectation, are placed in the judgment of illegality and culpability, which means that the issue of relativity of the so-called crime concept is recognized.

The original purpose of establishing a hierarchical theory of crime is to put the general formal judgment at the stage of conformity to the constituent elements in accordance with the law of recognition from the easy and then to the difficult to prevent the arbitrariness and recklessness of the judge in conviction and to reflect the purpose of the principle of legality. The judgment of the conformity of the constituent elements undertakes the majority of the tasks of crime judgment, so much so that some Japanese scholars believe that after the judgment of the conformity of the constituent elements is completed, the screening of criminal acts is mostly completed. Japanese scholar Kiyoshiro Ono insists that the constituent elements are the types of illegal and culpable acts and that if the act meets the constituent elements, it can be said in principle that the act is illegal and culpable. This view has become a common saying in Japan.

In Japanese criminal law, the doctrine of co-perpetrator has been recognized in judicial practice since long ago and has been widely used in subsequent judgments. It is believed that even if a conspirator does not commit the specific act himself/herself if the other conspirators commit the act, it constitutes joint criminality. This understanding is quite divergent from the original doctrine. According to the doctrine of systemic consciousness, only a person who commits an act is a joint criminal, and a person who merely conspires without participating in the commission of the act is not a joint criminal in any case. For a long time, before and after the war, most Japanese scholars believed that the doctrinal understanding was correct and that the jurisprudence "confused the legislative theory with the interpretive theory." If we insist on the doctrine and claim that the courts have been "adjudicating in vain" for decades, this approach is not conducive to solving specific problems. Reflecting on this issue, the reality of a particular scale of group crime, the organization and the planner often do not personally involve implementing the crime. It is not a deterrent for these leaders to just be accused of being an accomplice or having a problem with conspiring as a principal. Therefore, other scholars hold that the impasse of this problem is the drawback of overemphasizing the systemic theory.

2.4. Summary

The theories mentioned above about the constitution of crime are only the most widely discussed mainstream views, and they are growing and innovating with the development of time. The theory itself is the first phase of the stage in the study of criminal law, so it is vital to grasp the appropriate learning ideas. As Prof. Xingliang Chen often emphasizes, criminal law theory is constantly changing. It can be spread through education because it has jurisprudence, and shared content will not be altered. As Prof. Luo Xiang also said, "We cannot think that the four elements represent backwardness and barbarism, nor can we think that the three classes represent civilization and progress, let alone attach marginal values to the theory we value." This suggests that when we first learn criminal law, we should not overemphasize the progressive nature of t theory itself, nor should we presume to seek an unchanging theory from the past.

3. The Purpose of Crime Constitution Theory

In general, the theory of crime constitution is to solve specific problems, so it has a particular instrumental value. At the same time, the theory of crime constitution often reflects some of the turnovers in the theory of crime, from crime focusing on the subjective evil of the perpetrator to emphasizing the objective behavior, reflecting the progress and improvement of the theory of criminal law, which is the embodiment of its independent value. Based on this argument, we believe that in the study of the theory of crime constitution should master the purpose of its own and know what its essence is.

3.1. The Birth of Crime Constitution

The theory of constituent elements of crime refers to a theory that attaches importance to the concept of unique constituent elements in the general theory of criminal law and attempts to construct a system of crime theory by doing so. This theory may vary from one scholar to another. However, it is consistent in the theory of criminal elements considering its theoretical skills centered on the concept of special and specific criminal elements and constructing a general criminal system based on it.

The development of the doctrine of constituent elements has undergone a satisfying evolutionary process, of which Feuerbach is certainly an inescapable figure. However, before Beling, the history of the doctrine of constituent elements was only a preface, and the real history of the doctrine of constituent elements commenced with Beling. It can be concluded that it was Beling who set the tone for the doctrine of constituent elements. In modern times, the dogmatic of criminal law has been marked by constituent elements. This contribution should be attributed to the famous German jurist Beling. It was Beling who published his book Theory of Crime in 1906, which elaborated the theory of constituent elements and laid the foundation for the final formation of the three-class crime theory system. After Beling, the Soviet Russian scholar Terra established the four-element system of crime constitution.

Since then, the debate between the stratified and the flat theories of crime composition has started. Due to historical reasons in China, the four-element theory is still in use after the country's founding. In contrast, the stratified constitution theory has gradually entered the vision of Chinese criminal law scholars since the end of the last century. The discussion reached a climax in the early decade of the 21st century. Regarding the theoretical world, everyone generally accepts the stratification theory of crime constitution, while the practical world always insists on the four elements. This seemingly contradictory conflict often erupted in some specific cases. Although the controversy of the case varies, we think they are all based on the motive of trying to prove the superiority of the theory, which is a kind of proof to prove the superiority of the theory of the situation. For example, in the case of Yongbo Gu's illegal detention, the court's reasons for reversing the sentence of "illegal detention" included: 1) no purpose to extort property, 2) no purpose to take hostages, 3) no use of violence, coercion or other methods to kidnap another person. Therefore, it did not constitute the crime of kidnapping. Prof. Xingliang Chen believes that this is a "problem of thinking economy "caused by the four-element theory because according to the stratified analysis of the

constitution of the crime, the existence of the act of kidnapping is first examined, and the crime of kidnapping can be denied after denying the existence of the act of kidnapping. We cannot accept this view, the so-called thinking economy, in this case, seems to be analyzed only by the number of reasons listed, but this is arbitrary. Then what is the basis for the cost of thinking in these two ways: "whether there was a kidnapping" or "determining whether there was a kidnapping by judging the subjective purpose"? In short, all the arguments in these specific cases seem valid. However, they are problematic because, except for some of the complicity issues, as long as the objective to subjective reasoning model is adhered to, the four-element, the two-class, and the three-class theories all point to the same result since the theory of objective imputation by Prof. Kexin Luo is a common theory and is not controversial.

3.2. The Purpose of Crime Constitution

The theory of crime constitution is a product of the principle of legality, which is the embodiment of the rule of law in criminal law, and the requirement of protecting legal interests and safeguarding civil liberties, so the crime constitution is of great significance to the rule of law, protecting legal interests and safeguarding civil liberties.

3.3. The Function of Crime Composition

In order to solve the problem of the rationality of the theory of crime constitution, Professor Guangquan Zhou pointed out: "In commenting on the question of whether the four-element theory must be combined with certain criteria, otherwise the conclusion of the evaluation will lack persuasive power. In my opinion, the evaluation criteria are the function of the crime theory system."

3.3.1. Guidance function

The guiding function of the theory of crime has two implications: firstly, the theory of establishment of crime provides a primary method and a simple and practical tool for determining crime, and judges can more easily conclude whether the defendant is guilty or not based on the theory. Secondly, for a few complex cases, it seems extremely necessary to repeatedly test the behavior according to the system of crime theory.

3.3.2. Restriction function

The theory of establishing crime as a system of knowledge can limit judges' thinking and prevent them from uncommitted considering many extra-case factors or those circumstances that have no impact on conviction, avoiding confusion and misplaced roles.

3.3.3. Inspection function

People cannot supervise the judicial conduct of judges at all times. If post supervision is to be effective, proper methods of supervision are required. The doctrine of establishing crime is a tool that can be used to test the accuracy of criminal decisions after the trial.

3.3.4. Warning and demonstration function

Criminal judgments often take into account both general and special prevention purposes of criminal law, so the results of the decisions themselves have a certain educational effect, and society will pay great attention to some criminal cases. The constitution of crime can clearly deduce the logic of the evidence of the crime, such as the confirmation of certain acts of self-defense, which is a direct presentation of the role of demonstration. Confirming certain special economic crimes is also a direct presentation of the role of warning.

In addition, Professor Hilgendorf summarized nine functions of the crime constitution: institutional function, synthesis function, scientific construction function, inspiration function, teaching function, law application function, the rule of law state transparency function, criticism function, and evaluation function. In summary, the elaboration of the functional system of criminology has been very comprehensive, and these concepts have essential reference functions for an overall understanding of the constitutive elements of crime system.

4. The Public Factors of Crime Constitution Theory

Although theories of criminal law are constantly innovating, criminal law itself can be disseminated through education because it has a commonality that has remained unchanged for ages. Specifically, in the theory of constituent elements, commonality refers to the elements of a crime. For this reason, we believe that the choice of the previous theories of criminal composition need not be overly entangled in the beginning because the essence of all theories of criminal composition is a collection of constituent elements. The constituent elements are the legal elements of the specific crime, which is also the axiomatic formula of each theory.

4.1. Object Aspect

The object generally refers to the legal interest violated by the criminal act, and the legal interest here means the basic needs protected by criminal law to meet the ordinary life of citizens, such as life, property, public order, etc. According to the principle of legality, the legal interests protected by criminal law must be expressly provided by criminal law. If there is no provision cannot be considered a criminal act. Simultaneously, the objects in criminal law are also the basis for the classification of the chapters of the sub-rules in the national criminal law, such as crimes against national security, crimes against public security, etc.

4.2. Subject Aspect

The subject of the crime, which refers to the object of committing criminal acts, generally includes units and natural persons. The determination of the subject is an important embodiment of the principle of legality, and the difficulty of this element generally lies in the crimes constituted by special identity.

4.3. Behavior

The crime must also be an act that violates a legal interest. In Chinese criminal law theory, it is called a harmful act, and the specific concept is a conscious physical act committed by the perpetrator with a legal benefit infringement. The concept excludes non-conscious behavioral states such as sleepwalking and mental illness; naturally, acts committed in these states do not constitute crimes. Modern criminal law theory holds that conduct is the basis of punishment, and no conduct means no crime, so criminal conduct should be the starting condition of crime. The behaviors, such as taking a knife to stab or holding a gun to kill, are very obvious, so the study of criminal law is mainly some difficult issues, such as Jinlong Zhao's chasing case. The recognition of his behaviors, like taking the knife to chase, is whether the act of intentional injury, whether as a way to constitute a criminal act or not, etc.

These issues must be combined with the actual situation to do a specific analysis rather than just the apparent behaviors in the general crime.

4.4. Object Behavior

The object of conduct, also called the object of the crime, is generally the objectively existing phenomena such as objects, persons, organizations, and institutions that realize the role of the act. The object of the act is often closely related to the object of the crime. For example, the object of the crime of intentional homicide is a person, and the object is the legal interest of human life. However, the object of conduct is not a necessary element of the crime, because some crimes do not have a specific object of conduct, such as the crime of gambling.

4.5. Harmful Consequences

The general theory of criminal law considers that the result is the infringement of legal interests or the invasive danger. It is characterized by causality, infringement and danger, reality, statutory nature, diversity, and so forth.

4.6. Causal Relation

Causal relation refers to the relationship between the act and the result of causing and being caused. Causation is an essential element in determining guilt and innocence. Although there is no explicit provision in the law, the logical basis for the existence of this element of a crime is the significant embodiment of the principle of legality in criminal law.

4.7. Impediment of Illegality

By and large, the ground for the elimination of crime is an element that denies that an act constitutes a crime. Specifically, they include self-defense, the act of rescue, ordinance behaviors, etc. Although these acts usually meet the characterization of crime, they are not considered crimes because they are not legally invasive.

4.8. Responsibility

When the actor cannot perform the act responsibly, the law cannot be imposed on him or her. The ability of the perpetrator required to carry out the responsibility accusation is the liability capacity, expressed explicitly in the ability to identify, generally reflected in the age and mental condition of the perpetrators. According to China's criminal law, they are divided into people without criminal responsibility, people with limited criminal responsibility, and people with full criminal responsibility.

4.9. Subjective Attitude

The subjective state of mind of crime specifically includes intentional and negligent. According to the different cognitive factors and will factors, the crime is further divided into intentional crime and negligence crime. Among them is the subjective state of mind knowing that the behavior will occur as the result of social harm, and hope or let the results occur as an intentional crime. Another mindset that did not foresee their behavior may result in social harm due to negligence and carelessness and were gullible to avoid such results occurring is the crime of negligence. Therefore, intentional crime is the general state of mind of criminal behavior, while negligent crime is the particular state of mind of criminal behavior.

4.10.Other Elements

In addition to the above elements, there are some crime amount identity elements in China's criminal law, such as the large and massive amount of property crimes and the severe and flagrant circumstances of other crimes. These elements are explicitly stated in the specific crime, which requires a mastery of the criminal law's provisions and illustrates that the study of law without the provisions is blind.

5. Conclusion

The purpose of this article is to discuss with beginners in criminal law how to find an effective way of learning when faced with various theories of the criminal constitution. The criminal constitution theories listed in this paper contain the commonality of the elements of each composition. As the progress of the criminal law theory is constantly arranged scientifically, from subjective imputation to objective imputation, they are all a direct manifestation of the progress of criminal law and indeed contain a deep theoretical background. For the study of jurisprudence now, whether we begin to learn the four elements or stratification theory, focusing on learning the principles behind this theory is vital.

As mentioned earlier, there are many theories and doctrines in criminal law, and the theory of criminal constitution is only a tiny corner of the world. Nevertheless, according to the ideas in this paper, we can also learn that the generation of doctrines also exists with individual differences. We do not comment on this phenomenon, only argue that this analysis has a solid individualistic color, like many other doctrines in criminal law. This is also the individual confusion from this paper. We found the law and other humanities and social sciences challenging to verify but also hard to falsify. It cannot be the same as the natural sciences. The phenomenon and the principle justify their mutual correctness. Legal issues can often only be deduced through the principle of inference results, and the principle of generation may often be based on another principle. The feeling of plausibility often confused some law students. Therefore, we believe that the study of criminal law should not be superstitious about authority and should hold an objective and impartial view among various doctrines to help the study more.

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