

# Принцип последней инстанции: границы и основа уголовного права. Обзор II Центрально-китайского форума по уголовному правосудию и III Симпозиума на тему «Теория и практика уголовного права Китая» The principle of last resort: the boundary and basis of the criminal law. The Summary of the Second Central Chinese Criminal Justice Forum and the Third Symposium on “Chinese Criminal Law Theory and Practice”

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In order to promote the study of Chinese criminal law theory and practice and to reform the methods of criminal law research and reconstruct the theories, on June 1, 2019, the second Central Plains Criminal Justice Forum and the Third Symposium on “Chinese Criminal Law Theory and Practice” was successfully held in Henan University. This forum was sponsored by Henan University Law School and Intellectual Property Institute and other units. Nearly 100 experts and scholars from universities and practice departments both at home and abroad participated in this forum. In the one-day discussion, all the experts focused on the principle of last resort and discussed the boundary and basis of the criminal law from many perspectives of Chinese criminal law theory and practice. The main contents are summarized as follows:

First, the boundary and the adjustment object of the criminal law.

Chen Zhonglin, a vice president of China Criminal Law Society, also the professor of Chongqing University Law School, pointed out that no matter in the enactment or the application of the criminal law, the state should not violate the specific requirements of the principle of last resort. That is, the state should not use penalties to regulate the acts which will not pose a fundamental threat to the normal use of other legal systems and the acts which can be deterred effectively by other laws. Even when the criminal law must be applied, the state can only choose the method which will inflict the violation less than any other methods to the basic human rights of citizens.

Professor Mei Chuanqiang, a vice president of China Criminal Law Society, also the dean of the Law School of Southwest University of Political Science and Law, pointed out further that the principle of last resort can guide criminal legislation and justice and clarify the boundary of the criminal law. The criminal law should be the last line of defense to regulate social relations and it should only be used

when other laws such as administrative law are unable to adjust.

Professor Mei Xianghua of Nanjing Tech University Law School pointed out that the adjustment object of the criminal law is the conflicting relationship between the basic human rights of every citizen and the basic human rights of all citizens. The state's purpose of using the penalty and sacrifice the basic human rights of the offender is to protect the basic human rights of the majority of the society.

Professor Wang Junxiang, a vice dean of the Law School of Henan University of Science and Technology, pointed out that the criminal penalty cannot make members of society feel threatened. The feeling of threat is the view on value and the view on benefit formed in the development of human society. Therefore, the intervention of the criminal law should be legitimate and should also be restricted by due procedure.

Second, the changes of times and the boundary of the criminal law.

With the changes of the times and the development of society, some new trends and characteristics of the criminal law's adjustment range have also appeared. Victor E. Polushin, a Vice-President of Primorsky Krai Branch Of the Russian criminal law society, pointed out that for the limits of entrepreneurs' self-employment activities, the effectiveness of the criminal law in this area should be accurate, verified, purposeful and fully consistent with the principle of “no damage”. If the criminal law excessively interferes with the entrepreneurs' life, it will increase the administrative pressure of the enterprises and connive corruption. At present, the Russian criminal law has changed apparently in the field of crime adjustment in the economic area, and it has shown a tendency to reduce the regulations of the criminal law in the field of corporate activities.

Professor Liu Shuang, from Henan University Law School, pointed out that although the expansion

of the crime circle is reasonable and necessary, it is essentially a manifestation of the idea which regards the criminal law as an instrument and also an evidence of the generalization of the function of criminal law, which implies the danger of infringing upon the civil liberties. Therefore, while we insist on expanding the criminal circle, it should be moderate and prudent to avoid excessive criminalization.

Professor Gao Yandong, from Zhejiang University Guanghua Law School, pointed out that “from the risk criminal law to the criminal law of values” should be the direction of the criminal law’s development. For the scope of interference, modern criminal law should interfere with those dangerous and reversed values and expand the scope of criminal law’s intervention; for the interpretation of articles, the adjudication norms should be interpreted as value norms, and the scope of application of the provisions should be expanded; for legal nature, the criminal law should be understood as the bottom line of human society’s values and at the same time. We should enhance the status of the criminal law in the legal system.

In response to the current hotspot “legal matters about artificial intelligence”, Wei Dong, a professor of Sichuan University Law School, pointed out that the criminal law should abandon the theory that the robots with strong intelligence are the subject of crime. Associate Professor Liao Yu, from Southwest Minzu University Law School, is also agrees with this point, and believes that it is the natural person who designs and uses artificial intelligence to bear the criminal responsibility.



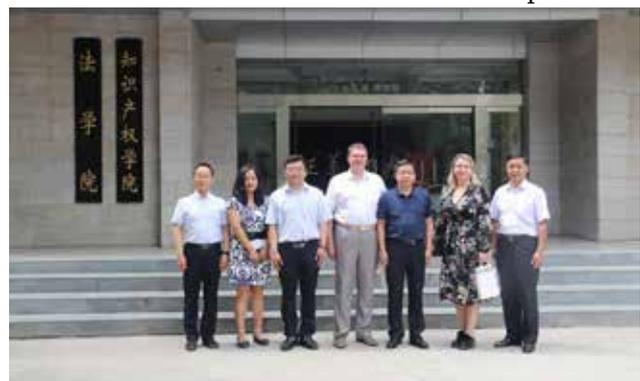
Third, Issues about the boundary in the application of the criminal law. In addition to the macroscopic theoretical construction, the participants also conducted in-depth exchanges around the boundary of the criminal law in the application of specific crimes. Associate Professor Xiong Qi of Wuhan University Law School considers that the extortionary acts which resort to legal means should not be regarded as crime of extortion if it is not repeated time after time, whether it is a harsh transaction or a threatening report; only when threatening report have been repeated many times and are sufficient to form an exploitative relationship, can it be considered as crime of



extortion. Associate Professor Dong Wenzhao, from South China University of Technology Law School, believes that in the crimes of illegal fund-raising, the relationship between the participants of fund-raising and the victims should be accurately handled. If the fund raiser actually a professional and malicious speculator with the capability of risk identification and tolerance, therefore the fund raiser should be regarded as a venture capitalist who had already accepted the risk and the “criminal partner” of the fund raiser, then he can not be the victims protected



by the criminal law. Associate Professor Chen Xiaoyu of Southwest University of Political Science and Law pointed out that the basic principles of the criminal law to regulate speeches are the principle of interest measurement, the principle of proportionality and the principle of classified governance. It is necessary to achieve the dynamic balance among freedom of speech and other rights and public power. When the criminal law is used to regulate speech, it is advisable to choose a mechanism of due process as a path to limit excessive interference in freedom of speech. In





In addition, there are many experts and scholars who have heated discussions on the criminal law boundary

issues of crimes such as crime of telecommunication fraud, crime of illegal business operations, crime of picking quarrels and provoking troubles and crime of credit card fraud.

This symposium has discussed fully about the boundary of the criminal law. It is rich in the content, compact in the agenda, active in the atmosphere, and exhaustive in communication. It has a high degree of consensus and heated discussions. It has built a platform for communication between the theory and practice of the criminal law in China. Besides, it has also brought extensive influences in the academic area.