

On the Value of Criminal Jurisprudence of Personality

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Abstract

Personalization of criminal law is a criminal legal system which is constructed by taking personality traits of the perpetrator as organic component of criminal motivation and criminal behavior, being a call in the crisis of contemporary criminal law and an inevitable presentation of trend evolution of criminal law. The establishment of criminal law in personality on the basis of criminal personality theory represents progress of rationality of human criminal law, and it is also a joint strategy that crime science is combined with personality psychology and criminal psychology to face criminal phenomenon. The theory of personality psychology and personality test paradigm play the role of theoretical cornerstone in establishment and development of criminal law system in personality, while the personalization of criminal law which is characterized with modern jurisprudential philosophy, personality theory and technical advancement shows its value in the whole process of conviction, sentencing and execution transformation in criminal justice, and various representative personality test paradigms and technologies will play important roles in the process of personalization of criminal law.

Key words: Criminal law in personality; Criminal personality; Value of criminal law

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INTRODUCTION

Since the end of 19th century, the crime rate around the world has been staying at a high level, which gradually reveals drawback of dominant behavioral criminal law; facing with the worldwide crime trend, no matter in Eastern or Western societies, the existing criminal law system seems powerless and falls in increasingly severe crisis. Now, guided by criminal law practice and jurisprudential thoughts, and inspired by modern psychology (especially personality theory), criminal jurists with advanced philosophy has pioneered thinking about behavioral consequence (direct perniciousness) of perpetrator's crime and behavioral immanent cause and motivation of perpetrator's crime. For example, German scholars have proposed theories such as "Finale Handlungslehre", "Theory of Personality Liability", etc., and among them, the weighted one is "New Society Defending Movement". After the Second World War, Tatstrafrecht and Taterstrafrecht have had a trend of integration, and a successful representative for which is that Otsuka Hitoshi, a Japanese criminal jurist, has definitely proposed the science of criminal law in personality: The personality trait of perpetrator in legal relationship is introduced into theory of crime and theory of penalty.

1. OVERVIEW OF PERSONALIZATION OF CRIMINAL LAW

1.1 On Personalization of Criminal Law

Personalization of criminal law is a criminal legal system which is constructed by taking personality trait of perpetrator as organic component of criminal motivation and criminal behavior, namely a criminal law system (including conviction, sentencing and execution mechanism) integrated with objective perniciousness and subjective criminal personality, with objective behavior as premise and subjective nature of criminal personality as supplement. Personalization of criminal law is not only a rational choice to get rid of the current crisis of criminal law, but also an inevitable consequence of evolution of thoughts of criminal law.

1.2 Background of Personalization of Criminal Law

1.2.1 Realistic Background of Personalization of Criminal Law

The rise of crime rate accelerates the generation of new criminal law philosophy and criminal law mechanism. Since the end of 19th century, the crime rate has been staying at a high level, which gradually reveals drawback of dominant behavioral criminal law; facing with the worldwide crime trend, no matter in Eastern or Western societies, the existing criminal law system seems powerless and falls in severe crisis.

1.2.2 The Expanding Crime Circle Leads to Expansion of Criminal Law

One of the important means to handle crime by many countries in the world is increasing accusations. Depending on statistics, every five criminal behaviors will result in increase of one accusation. For example, the number of accusations stipulated in the criminal code in the 19th century of France is 150, and it increased to 12,500 in the 20th century, which has increased by 83 times. In 1996, there were more than 7,540 criminal accusations in UK, including thousands of accusations of traffic. Japanese criminal code had more than 200 stipulated accusations, and now it has more ten thousand accusations according to statistics; the number of Chinese stipulated accusation is still increasing, it increases from 200 in 1979 to about 500 now.

1.2.3 Penalty Cannot Control Crime, and Crime Trend Has Swept the Globe.

According to statistics, the actual crime rate in the whole world is averagely 500-600 per one hundred thousand. The world is facing with the crisis in criminal law. The expanding crime circle and constantly expansion of criminal law give rise to continuous increase of jail population; the jail is overcrowded, with low efficiency; aiming to reduce the crime rate, the government adopts actions on legislation and justice, but it does not achieve the desired effect. The crime trend has swept the globe. Penalty cannot control crime; after adopting so many actions, it has not achieved any achievement.

In the conflict between crime trend and powerless criminal law, reform of punishment system is necessary. Under the effect of “New Society Defending Movement” combined with criminal psychology and personality psychology, personality is introduced into the science of criminal law; it is hoped that the existing criminal law system can be amended by the criminal personality so as to actually shrink the criminal net of justice and to improve efficiency of criminal law.

1.3 Theoretical Background of Personalization of Criminal Law

Ancient society was actually a consequential society, in which conviction was based on the consequence caused by the personal behavior. Till modern classical school, namely behavioral school, the conviction was based on behavior; it should be mentioned that the criminal law philosophy—“no criminal behavior, then no crime, finally no liability” —has great historical contribution. Till the last half of 19th century, with the change of the society, there is something new in crime: the crime rate increases, the number of re-crime people increases, and then people begin to study the cause of crime so as to generate the New School. New School does not focus on behavior; it mainly studies the perpetrator to see whether this person is dangerous. Then the conviction and judgment are made by taking this as the criteria, which are more advanced. It is just like many criminal law actions (such as “probation, releasing on parole and criminal law individualization”) gradually

proposed by the criminal law system, which focuses on the perpetrator and the cause of crime and got rid of the criminal law system of Old School. Theories of the New School are also characterized with progress; but the criminal law of New School has a significant question that it convicts the perpetrator according to his/her risk level to person and society and defines liability of this perpetrator, while the determination on criminal personality is not settled, which causes severe trampling on human rights and leads to serious consequence. In the beginning of the 20th century, especially after the Second World War, since the behavioral criminal law concept and the perpetrator criminal law concept have their own advantages and disadvantages, the criminal law scholars have integrated the two schools and proposed some new criminal law theories, such as “Finale Handlungslehre”, “Theory of Personality Liability”, etc. proposed by German scholars; as the theories are integration of two schools, they cannot be purely classified into behavioral criminal law concept or perpetrator criminal law concept. The “New Society Defending Movement” is actually the latest result which is further developed based on the perpetrator criminal law concept and integrated with some theories of behavioral criminal law concept. After the Second World War, Otsuka Hitoshi, a Japanese criminal jurist, has definitely proposed the science of criminal law in personality, maintaining that the crime of continental law system is composed of three elements: the behavior of deserved constitutional elements is dominated by the personality; illegitimacy shall be blamed on person; and imputability is caused by personality so personality shall be considered in penalty. The appearance of the theoretical points of science of criminal law in personality represents the achievement of the latest research. On the basis of the theory of Otsuka Hitoshi, the science of criminal law in personality is further developed and promoted to become a really scientific criminal law theory.

2. CRIMINAL AND CRIMINAL PERSONALITY

The study of the science of law shall be based on the legal personality, and the science of criminal law shall be based on the perpetrator. According to the existing criminal law theories, the person who commits a criminal behavior is the perpetrator. According to the personality theory, the personality (“summation of overall spirits and features of one person, being a unique body-mind organization system”) of one person represents essence of the person; and the study on the criminal must study the nature and status of the personality of the perpetrator.

From the perspective of personality psychology, the criminal, as an extremely special group exceeding the bounds, must have a personality different from the group abiding by the law. The studies of criminology and criminal psychology verify that the reason for the perpetrator’s crime is the result (Luo Dahua, “Comprehensive Dynamic Factors of Crime”) of the combined action of internal

factors (physiological, psychological and behavioral factors) and external factors (social, natural and circumstantial factors). Some scholars have conducted empirical study on criminal personality, and the results show that: 60% of the criminals are characterized with personality disorder (severe personality defect); western scholars hold the opinion that about 30%-60% of criminals are characterized with anti-society personality disorder; and Chinese scholars think that no less than 20% of criminals are characterized with anti-society personality disorder. Many judicial practices have evidenced that the criminal personality directly decides the occurrence of the criminal behavior, namely that: the criminal personality is a specific body-mind organization of the criminal with a relatively stable anti-society behavioral trend, an internal-external united system of anti-society behavior and negative physiological features, and a potential power driving the criminal behavior.

The criminal has the personality specialties which are different from normal citizens. Psychologists have concluded multiple typical personality disorders; and investigation of crime has revealed the following disorders that are relatively close with the illegal or criminal phenomenon: paranoid personality disorder (characterized with paranoid and suspiciousness), schizotypal personality disorder (characterized with peculiar concept, appearance and behavior and unconcerned affection), anti-society (immoral) personality disorder (characterized with bad behavior or moral, and irresponsibility to society, and the highest percentage of criminal), borderline (explosive, emotional, impulsive, eccentric) personality disorder, histrionic (dramatic) personality disorder, and dual or multiple personality disorder.

3. VALUE REPRESENTATION OF PERSONALIZATION OF CRIMINAL LAW

The establishment of personalization of criminal law and criminal law in personality has important values: in one aspect, the personalization of criminal law is beneficial for guaranteeing human rights. The personalization of criminal law requires the playing of the protective function of the criminal law and focuses on ensuring individual right of citizens, being a theory of criminal law adaptive to the culture of criminal law as governing the country by law. In the other aspect, it reduces tags of criminals and criminality of the jail environment, which is helpful in reducing re-crime rate and recidivism rate. Meanwhile, the personalization of criminal law will direct the criminal litigation procedures to be more humanized so as to realize the perfect mechanism of “taking the criminal law as the system, and taking the criminal litigation for use”. The value of the personalization of criminal law is specifically represented in criminal law, criminal procedure law, jail law and other criminal laws.

The idea of constructing personalization of criminal law through theories of criminal law in personality introduces the criminal personality (criminal personality)

into all systems of conviction, sentencing and execution, which is all-through in the criminal law, criminal procedure law, jail law and other criminal laws. In the process of conviction, the binary conviction mechanism is defined, namely that the penalty punishes the criminal having criminal personality and implementing constitutive requirement behavior conforming to specification of criminal law, rather than the behavior or the perpetrator. The person who has criminal personality (personality evaluation conducted by specialized criminal personality evaluation authority) without behavior meeting the criminal constructive requirement cannot be convicted, and shall accept professional corrective therapy from psychologists; the perpetrator who has behavior meeting the criminal constitutive requirements but has no expressive criminal personality shall be decriminalized and non-penalized (such as being given corresponding measure of security or compulsory education disciplinary sanction).

3.1 Criminal Personality and Conviction

Led by the theory of personalization of criminal law, a binary conviction mechanism is formed with criminal behavior and criminal personality as core factors, thinking highly of both fact judgment factor and value judgment factor, being an innovative exploration in realization of the target that “person is the objective itself, rather than the means” in criminal science. Without doubt, prudence of this realistic thought does not affect its concept and advancement of theory.

3.2 Criminal Personality and Measurement of Penalty

Since there is disadvantage and deficiency in retribution penalty of Old School, intention penalty and combined penalty theory of New School and its balance in crime and punishment, and individualized measurement of penalty, the criminal law in personality directs the concept and principle on measurement of penalty of educational penalty. The corresponding principle on measurement of penalty is that the penalty means can be only adaptive to the criminal who has criminal personality and implements behaviors matching the criminal constitutive requirement. The measurement on the criminal shall take objective behavior and personality state of the criminal into consideration, namely that the criminal personality shall be taken into the measurement standard of penalty and shall acquire the status equal to the criminal behavior: in the measurement of penalty, the personality (dangerousness) of the criminal shall be evaluated, and both the evaluation result and criminal behavior are taken as the criteria for measurement of penalty; the affirmation on the criminal behavior shall be performed by the judge, and the evaluation of the criminal personality shall be performed by criminal personality evaluation committee which has professional knowledge in psychiatry, legal psychology and physiology; after being affirmed as constituting a crime, the criminal shall be punished by the judge within the scope of legal punishment (strictly conforming to *nullum crimen sine lege*) according to specific criminal personality (subjective malignancy, correction

possibility and social regression) and behavior. In addition, the measurement of penalty under the criminal law in personality also includes individualization and punishment reduction. The penalty individualization is embodied as: the criminal implementing the same behavior and having different criminal personality shall be executed with different punishments based on the difficulty degree in correction; and the habitual criminal and recidivist with criminal personality which is difficult to correct shall be executed with relatively irregularly scheduled penalty. This is good for correction on the criminal personality and preventing it from harming the society. The punishment reduction is embodied as that the court can select the following punishment categories: custodial penalty and fine punishment, as well as warning (the slightest punishment), probation (the criminal receives supervision and instruction from social workers or court designated personnel within a term), and community service (being forced to do public benefit activities in the community within a period under the instruction of social workers). Correspondingly, the personality of criminal law also lays value of emphasis on criminal motivation and criminal personality in measurement of penalty. Thus, the penalty makes the criminal feels a certain degree of retribution, and does not violate basic requirement of civilized society; and the correction to the criminal personality is performed more effectively in this situation so that the criminal can return to the society more adaptively, and the purpose of effectively protecting the society can be achieved.

3.3 Criminal Personality and Execution

Led by the idea of personality correction, some western countries have built a criminal personality investigation system and a personality correction system. At present, it is recognized by the international society to use different treatment strategies to correct personality of the criminal. Currently, the criminal correction system of the western countries has two basic modes: return-to-society mode and rehabilitation mode. The former one is carried out through planned training (living skill and normal employ ability skill) for the criminal to return to society, mainly including before-acquittal training, acquittal after labor, acquittal after education, going home and having holiday, and social support system; and the latter one, based on the difference between the criminal and common legal citizen, takes the criminal as the patient with its anti-society personality as the pathogenesis. The correction of the criminal is the correction of its crime personality.

Chinese criminal correction has always adopted the mode of reforming through labor, and adhered the policy that combining punishment with education. Under long-time influence from ideology, historic culture and relevant scientific development, the actual execution work focuses too much on ideological and political education of the criminal in the form, but neglects correction to the negative personality. In the aspect of judicial psychology, the correction to the criminal psychology is mainly implemented through two aspects (levels) – criminal psychological counseling and

criminal personality correction.

The criminal psychological counseling in jail has developed since 1990s, which has positively promoted adaption of criminals to the jail and promoted reformation of criminal psychology and behavior of criminals through interview counseling, telephone counseling, letter counseling, propaganda counseling, network counseling, team or situation counseling, and other methods. Among them, “China Offenders Psychological Appraise (COPA)” is the typical representative in this exploration, its effect in psychological test and psychological correction is under testing in the counseling and correction practices of Chinese jail system.

The criminal personality correction is an action for collapsing the criminal personality and reconstructing positive personality structure by using knowledge and technology of criminal psychology and adopting systematic psychological and personality correction technology. Combined with different from applied theoretical system of criminal psychology, the method for criminal personality correction can be divided into behavioral correction method, psychoanalysis, humanism therapy, cognitive therapy, return-to-society correction method, etc..

Correspondingly, strict imprisoning and execution in community environment shall take criminal personality of the criminal as the core; especially for the criminal with higher dangerousness, the jail system is in sore need of taking different types of criminal personality into consideration during classification so as to specially perform personality correction; a psychotherapy institution taking clinic judicial psychologist as principal shall be established for the jail; meanwhile, behavioral reformation and psychotherapy shall be combined to reach the purpose of systematically returning to the society. Thus, the purpose of realizing penalty individualization and penalty humanism shall be achieved truly.

CONCLUSION

The criminal law in personality, taking personalization of criminal law as theory, has a rational conception of advancement; its core concept is that the criminal personality has important value in conviction, measurement of penalty and execution reformation. But the key to realize it is scientific grasp of personality psychology and criminal psychology upon criminal personality. Scientific and effective measurement theory and technology of criminal personality, such as psychoanalysis, behaviorism, cognitive school and trait theory, and other normal form of personality, is the value of criminal law in guaranteeing realization order of criminal law and freedom, justice and utility, and it is an important footstone of scientific development and smooth implementation of personalization of criminal law.

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