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Abstract: Different from the traditional methods, criminal mediation in public prosecution cases is a novel way to deal with crimes, and has been tried out in the judicial practice of some cities and districts in China. Through field investigation, observation, experiment and other empirical methods, this article aims to discuss the justifications of criminal mediation, analyze its application, positive functions and existing problems, and explore its feasible models in our country.

There have been some popular theoretical hypotheses on the contents of criminal mediation, the case scope of its application, the composition of its facilitator and participants, the proper ways of enforcing the criminal mediation, the amount of time and work needed for resolution, the determinant factors for success, its matching systems and effects, and so on. According to our empirical study, some of them are proved to be correct, some are partially correct and others are totally wrong.

Our empirical study has also tested the functions of criminal mediation and supported its justifications with hard data. More importantly, it objectively discloses the status quo of criminal mediation in China from a comprehensive perspective. In different parts of China, the applications of criminal mediation vary sharply, and the requirements for applying mediation are not standard and written into law. The facilitator's professional capacity and skills need to be improved and the participants are not diverse in most districts. The way of fulfilling obligation by the offender is mainly economic compensation, but to similar cases the amounts often have large discrepancy. The proceeding of the criminal cases after successful mediation may jump back to the former stage, but relevant matching systems are lacking.

To fully exert the functions of criminal mediation, there are still many systems and work mechanisms to be improved. This study has provided the cognitive base and premise for exploring the feasible model of criminal mediation in China.

Key Words: criminal mediation, public prosecution, empirical study, investigation, experiment

Abstract: Criminal law hermeneutics, being a core branch subject of criminal jurisprudence in broad sense, has its own separated subject characters, which include three internal basic elements and three external conditions. The former refer to the power, conduct and conclusion of criminal law interpretation. As to the three external conditions, firstly, criminal law hermeneutics can not be covered by criminal jurisprudence in narrow sense, that is, these two are different from each other. Secondly, criminal jurisprudence in broad sense has already made clear the independence of criminal law hermeneutic. Lastly, the emergence and development of criminal law hermeneutics follows the general rule of an independent legal subject.

The independence of criminal law hermeneutics can promote the application function of the subject of criminal law, can rectify the tendency that researchers are keen to build the grand conceptualization frame of law, but ignore the effectiveness of the application of criminal law, and can highlight the practical attribute of its value judgment. Criminal law hermeneutics system is the organic unified system based on a certain principles and rules, including the basic theory, ontology, the application theory and the practice of criminal law hermeneutics.

Advocating the independent character of criminal law hermeneutics is neither a grandstanding academic, nor an academic bias. It is urged by the integration of the theory value and application value of criminal jurisprudence, the pursuit of combining the justice of criminal legislation with the specific facts of concrete cases, and the realization of the ultimate goals of criminal law, i.e. justice, stability and harmony. Such urgencies opens up the living space and application field which the criminal law hermeneutics as a subject needs. At the same time, the power, conduct and conclusion of criminal law interpretation, as the basic elements of criminal law hermeneutics, demonstrate the self-consistent of the subject. Concerning, advocating and promoting the subject independence of criminal law hermeneutics should be regarded as positive academic pursuit, and scholars should take this as their responsibility.

Key Words: criminal jurisprudence, criminal law hermeneutics, subject independence, criminal law hermeneutics system

Abstract: Corporate criminal liability has always been full of contradictions and controversies since its coming into existence. Rationalism and utilitarianism, among others, are the two fundamental elements related to corporate criminal liability. Nowadays, corporate criminal liability has shown a clear tendency to expand around the world, no matter on the level of law or concept, meanwhile its serious adverse consequence of punishing innocent has also been fully confirmed by practice. Therefore reasonable choice of corporate criminal liability at present is to seek an available explanation based on reality.

No matter from the view of the legislative state at present or from the view of its concrete factual construction, corporate crime is in form the crime whose subject is corporation, but substantially is natural person's individual crime, mainly joint crime. Corporation is one kind of means and tools for natural persons to get their interest, and is the aggregation of individual interest and the bearer of benefit attribution. The conduct of corporation is in fact the individual conduct of natural person which is attributed to corporation, so corporation as a legal person is only the fiction of law.

Accordingly, corporate crime and corporate criminal liability are also legal fictions, under whose names the individual crime and individual criminal liability are ascribed to corporation. The function of corporate crime and corporate criminal liability amounts to additional property penalties and qualification penalties on individual. Only when we persist in the personal responsibility principle, can criminal law prevent corporate malfeasance efficiently and avoid punishing the innocent.

This article also considers the concrete strategies to prevent corporate misconduct by criminal law and to file up the holes of traditional criminal law from the point view of individual criminal liability. Although there are several factors for the corporate criminal liability to come into existence, the substantiation of fictional subject may be the only reasonable cause for corporate criminal liability to continue to exist.

Key Words: corporate criminal liability, agent act, essence of corporation, legal fiction

Abstract: There are two fundamental values that are regarded significant in constructing trial instance. One is the legitimacy of judgment, and the other is the finality of judgment. These two values are respected not only in continental countries, but also in Anglo-American countries. The identity of the two legal systems is that the first instance procedure is constructed to pursue the value of legitimacy, which is regarded as the basis of the value of finality. In doing so, the two legal systems entitle parties with series of rights, so that a judgment may obtain legitimacy not only from finding the truth, but also from protecting common values as well as procedural justice.

There are also differences between the two systems. Firstly, the first instance judgment is the final judgment in Anglo-American countries to obtain finality, but parties are entitled with broad opportunities to appellate review, while in the continental system, the third instance judgment is final. Secondly, the appellate procedure of the Anglo-American system is with a supervising style, which means that the appellate court only review the form of the first instance trial process, and leave the fact finding completely to first instance judges. However, the appellate procedure of the continental countries is a hybrid of supervising and retrial. That is, the second instance procedure is usually a retrial procedure, and the third instance procedure is a supervising one.

Following the model of continental countries, the second instance is the final judgment in China. Chinese first instance is to absorb dissatisfaction and obtain legitimacy, but due to the inadequacy of parties' rights, the legitimacy of a criminal judgment may come only from finding the truth, but not from protecting human rights and other important values. More over, the second instance does not function well in pursuing the value of legitimacy either. Consequently, even though the value of finality is emphasized on, it is a mansion based on unstable bases. In practice, although the finality of a criminal judgment is no longer a problem, the legitimacy problem is still salient. Consequently, to improve China's criminal trial instance system, we should pay more attention to the legitimacy of the first instance, and make the effective judgments truly final.

Key Words: legitimacy of judgment, finality of judgment, appeal, retrial

Abstract: § 67 of the Constitution of PRC empowers the Standing Committee of the National People's Congress (SCNPC) to exercise the functions and powers "to interpret the Constitution and supervise its enforcement", and "to annul those administrative rules and regulations, decisions or orders of the State Council that contravene the Constitution or the law".

In 2004, the SCNPC announced the formation of a new Legislation Review and Filing Office to assist its Legislative Affairs Commission in reviewing regulations that may conflict with the Constitution. But the SCNPC may react to citizens' proposals "when necessary", and is not required to inform citizens whether or not it will act on a proposal. So how to awaken the constitutional review in the constitutional text is still an urgent task for Chinese lawyers.

Generally speaking, one of the most important functions of constitutional review is to enforce the constitutional value in the whole legal system. But only an unconstitutional judgment can not promote the legal system into constitutional order. Given the special characters of constitutional cases, constitutional adjudicators frequently adopt different modalities of unconstitutional decisions in the procedure of constitutional review to keep balance with the political branch. It is necessary to compare the different constitutional decision modalities in the countries with mature constitutional review system to provide several strategies and projects for our future constitutional review system. In different constitutional review systems, the modalities of unconstitutional decision can be classified into three types: unconstitutional and void decision, mere declaration of unconstitutionality decision, and admonitory decision. Such different modalities which combine legal technique and political wisdom can be the reference to catalyze the effective constitutional review in China.

The National People's Congress system can provide exercising space for the above mentioned legal technique. At the beginning of the constitutional decision in practice, the SCNPC can adopt quasi admonitory decision as a preparatory step, considering the traditional opinions of rejecting criticism base on unconstitutional reason.

Key Words: unconstitutional decision, unconstitutional and void decision, mere declaration of unconstitutionality decision, admonitory decision

Abstract: The concept of service government has gradually been universal after the high-tide of the western countries' Reinventing Government Movements since 1980. Under the guidance of service idea, administrative organ and other subjects who undertake the administrative tasks determine the forms and types of procedure with discretion in order to accomplish the administrative tasks better.

On the one hand, the exercises of procedure discretion make a fuzzy bound between different administrative functions, and also destroy the application premises of the strict principle of legal reservation. In modern administration, intervention administration and supply administration often cooperate with each other perfectly to accomplish the hard administrative tasks flexibly. So it is unadvisable to defend the traditional absolute differentiation between intervention administration and supply administration and to apply the strict principle of legal reservation.

On the other hand, the exercises of procedure discretion generate a new phenomenon that several administrative actions achieve one administrative target, which disclose the deficiency of the single administrative action form as the main analytical mean in administrative law. Hence the traditional theory of administrative law, which stereotypes administrative action and then judges its legality according to its constitutive requirements, will obstruct the dynamic administrative process artificially, and will obstruct the court to consider the whole and compound administrative actions comprehensively.

To analyze this new type of administrative activity, we should not only abide by the law, but also pay attention to the guidance of the administrative purpose, which requires us to consider the whole administrative process with several administrative actions as dynamic administrative legal relationship, and to explore the compound legal status of administrative organs and other subjects who undertake the administrative tasks and administrative counterparts in interactive and pluralistic relationship. The legality of each administrative action should also be judged in dynamic administrative legal relationship.

Key Words: procedure discretion, service idea, purpose reservation, compound administrative legal relationship

Abstract: Due to the highly specialized social division and the unparalleled development of commodity economy in modern society, the security of transaction becomes one of the top goals of value in law. The principle of reliance and the rules under its direction create the only way to realize the value of the security of transaction pursued by modern law. It is the guiding ideology and basic point of legal activities, and is the supreme guide line in civil law and the entire private law, so it is the basic principle of private law system.

As to its functional attribution, the principle of reliance is the criterion of legislation, since its significance is to guide the legislators and executors on how to reasonably protect the interests of reliance rather than guide the parties on how to trust others. The promissory estoppel in common law, along with the diversified rules of the prima facie liabilities in continental legal system, and the liabilities for culpa in contrabendo, construct a huge and harmonious system of rules based on the principle of reliance. The majority of legal developments of the twentieth century can be described as the recognition of the rights and obligations engendered on the basis of reliance. The principle of reliance is the footstone and guide line of the institutional legal system and has already infiltrated through the system, no matter whether it is specialized by the positive law or not.

Although the principle of good faith is defined as the king clause in private law by several scholars, and although it has been specialized by the positive law, the principle of reliance is in the dominant status in modern private law. Whenever value conflicts take place between the principle of reliance and other principles, the former has always priority over the latter for its high value. More over, the principle of reliance can be applied in the areas of contract liability, acquisition of ownership by time, legal easement, compensation for divorce, employer's liability, and so on. It is along with the arising of liberalism and as its balance and correction that the principle of reliance acquired an important position.

Key Words: the principle of reliance, the principle of good faith, the security of transact

Abstract：Among various doctrines on the legal basis of good faith (bona fide) acquisition，one theory argues that possession has the effect of public credibility, and such theory has great influence on Chinese jurisprudence. On the Basis of examining such theory and others theories, this article analyzes the three elements which provide the "public credibility of possession" theory

with logical backbone, that is, the experience that the possessor is in most cases exactly the owner, the idea which views possession as a notification method of ownership of movables, and the idea which thinks the rule that "possessor is presumed to be legal owner" can protect a third party's trust in transferor's possession.

So far as these elements are concerned，this article proposes some criticisms by theoretical analysis and experience test. First of all, the rule that "possessor is presumed to be legal owner" is not designed to protect the trust of a third party in good faith. Secondly, the idea which views possession as a notification method of "static" ownership of movables is not in accordance with the principle of public notification in property law. Thirdly, it is also an experience that possession and ownership are often not simultaneously belonging to the same person, so the opposite experience cannot be depended on. Fourthly, the idea which treats possession as the appearance of ownership of movables is contradictory to the adage of Roman law which is stated as "ownership and possession have nothing in common". On the other hand, in practice, the "milling machine" case (a famous German case) not only makes it clear that there exists contradiction between § 933 and § 934 of German Civil Code, but also indicates that the "public credibility of possession" theory has been in trouble in dealing with practical problems, and that "delivery" plays an important role in good faith acquisition system.

Through analyzing the public notification function of delivery, that is, to protect a third party's passive trust and the transferee's positive trust, this article draws some conclusions. The essence of good faith acquisition is to assure a dealer in good faith to realize his intention of bargain in a normal trading environment in society. The legal basis of good faith acquisition is the legal validity of delivery, the ethics foundation of it is good faith doctrine implied in the requirement of good faith, and the value of safe and convenient trading reflects the economic rationality and the spirit of the times embodied in good faith acquisition system.

Key Words：good faith acquisition of movables, possession, effect of public credibility, delivery, public notificati

Abstract: The difference between the tort liability under Chinese civil law and the damage compensation for tort under German civil law doesn't lie in the different protection levels. The concept of "damage compensation" is in the broad sense under German law and in the narrow

sense under Chinese law. The eight methods of tort liabilities listed by § 134 of the General Principles of the Civil Law of China are either the concrete contents of restoration or the compensation in value, which belong to the broad sense of damage compensation. The difference between the tort liability under Chinese law and the damage compensation for tort under German law is also not the difference of "double tasks" and "single task". The General Principles of the Civil Law of China provides not only the establishment requirements for various kinds of torts, but also the concrete methods of tort liabilities, while German Civil Code, in addition to establish whether the damage compensation is tenable, also faces the problems of ascertaining the methods and scope of compensation.

However, it is entirely different between the General Principle of the Civil Law of China and the German Civil Code on how to ascertain the methods of tort liabilities or damage compensation. The former rests only on enumeration, and provides neither the internal logical interrelations of various methods nor the general principle of their applications, so it can only list the methods of tort liabilities according to different kinds of torts, which is in the same way as those specific provisions under the Criminal Law of China. German Civil Code adopts the separation model, first dealing with the problem of whether claim for tort damages is tenable through prescribing the establishment requirements of different kinds of torts under § 823ff., and then solving the problems of how to compensate through prescribing the contents and scope of damages under § 249ff.

According to the experience of German law, there exist certain logical interrelations between different methods of tort liabilities and there are some rules of their applications. In order to deal with the methods and scope of tort liabilities systematically, the Chinese civil law should on the one hand ascertain the priority order between the restoration and compensation in value, and on the other hand establish the principle of overall compensation, so that the scope of tort liabilities lies only on the extent of damage.

Key Words: damage compensation, method of tort liability, separation model, restoration, compensation in value

Abstract: Chinese lien system is established by current laws such as Maritime Law, Guarantee Law, Contract Law, Property Law, and so on. But different laws have different

requisitions for the acquisition of lien, which leads to the difficulties in the application of law, especially § 315 of the Contract Law.

From the view of the interest structure of the parties to the freight contract, the consignee should not be deemed to be obligated to pay the freight or other expenses, let alone a third party who has nothing to do with the fright contract at all. Imposing carrier's lien on the goods of a third party who is not the consignor would destroy the balance of the interest between the creditor and the obligor which justifies the lien generally. The carrier does not intend to acquire any right on the goods when entering into the freight contract, and usually pays no attention to the ownership of the goods, so it is obvious that the carrier cannot acquire lien on goods of a third party according to his good faith. Freight can not necessarily add to the intrinsic value of the goods, so the beneficiary is normally the consignor himself, and carrier's lien on the goods of a third party cannot be justified by the doctrine of "benefit lies, burden lies". If carrier's lien on goods can be established regardless of the ownership or disposing right on goods, there will exist conflict between the provisions of the Maritime Law and the Contract Law.

For these reasons, it is unable to conclude that a carrier can claim the lien on a third party's cargo according to § 315 of the Contract Law. Only when the precise meaning of this article is determined by legal interpretation and stable judicial applications, will § 315 of the Contract Law not cause any conflict of interest and violation of the system.

Key Words: freight contact, carrier's lien, a third party, interest balance, system violation

Abstract: Fair and reasonable compensation standard is one of the core elements for the justification of expropriation, and the actual implementation of compensation standards in China is directly determined by local legislations. Based on the statistical analysis of 83 local legislative texts related to compensation standards, this article tries to draw a complete and accurate picture of the status quo of China's compensation standard for expropriation.

The data shows that a comparatively high percentage of local legislations hold ambiguous attitude toward specific compensation criteria or authorize lower rank regulations to provide it,

and thus the municipal and county governments become the actual decision-makers of specific criteria for compensation. Meanwhile, there are a certain percentage of local legislations which are greatly effected by the national policy instead of the Land Management Law of China. Though the national policy of regional integrated price of land has significant impact on local legislations about compensation model, multiples of annual production criteria is still adopted by most of the local legislations. In addition, the average compensating multiple for land and settling subsidy provided by local governments is not high, only half of the ceiling multiple settled by the Land Management Law. More over, the Property Law of China clearly distinguishes the compensation for ownership and the compensation for the right of beneficial use of land, but none of local legislations, including those enacted after the Property Law, provides separate compensation for rural collective land ownership and the right of beneficial use of land.

To solve the aforementioned problems, the Real Estate Expropriation Law should be drafted as soon as possible, and it should establish the fair principle of compensation for expropriation based on market value, clearly stipulate the scope of compensation, restrict legislative power about compensation standard, and set a specific formula for calculating compensation after considering the comprehensive factors relating to land value, etc. In order to avoid the adverse effects of excessively strong executive power and to ensure good operation of the Real Estate Expropriation Law, an operation mechanism of checks and balances of legislative, judicial and executive power should be established.

Key Words: compensation for expropriation, standard, multiples of annual production，regional integrated price of land, just compensation

Abstract: The relationship between royalty and law is one of the important contents of state political relationship in both antiquity and modern times. In the political normality of China's feudal autocratic monarch system, law is governed by royalty while royalty is limited by law, and royalty is protected by law while law is respected by royalty, they check and harmonize with each other. There exist a fairly perfect system to limit royalty and strict legislative and judicial procedure in China's traditional society.

To the relationship between royalty and legislation, emperors of feudal dynasties played a decisive role in three crucial sectors of legislation, that is, the decision of compilation, the order of revision and the promulgation of law. In this mean, the state that "law deriving from emperor" is proper. But from the view of the process of compilation, legal system, frame, concrete clauses, and the final legal version are the collective wisdom of the legislative ministers, and the emperor only approves, agrees and puts it into action. In this mean, the state that "law deriving from emperor" is not proper, at least, it is not in line with history. The author maintains that this ancient legislative way could be prescribed as "common legislative system by emperor and ministers".

As to the relationship between feudal royal power and judicature, most of the earlier emperors of each dynasty can abide by law and establish royal authority through law. When royal power conflicted with law, emperors can accept the ministers' expostulations and abide by law. This is due to the lesson from the former dynasty, the edification of Confucian and the limitation of legal provisions and systems. To the emperors themselves, as for the relationship between power and law, their earlier stage was also better than later stage. It is nearly a law in China's feudal time that earlier emperors abide by law but later emperors ruin law.

Key words: royal power, "Kai Huang Lv" of Sui dynasty, "law deriving from emperor", "common legislative system by emperor and ministers"

Abstract: The civil law of SGN (Shanxi-Gansu-Ningxia Border Region) made in the war is an important part of the legal system of SGN. It is urgent to be explored and studied because of its rich contents and distinctive features, and also because of the complete historical data about it.

The guiding ideology of the civil law of SGN included several points, that is, to seek truth from facts and insist the mass route, to carry out the route, guide line and policy of our party so as to safeguard people's interest, to care for the interest of all the classes and circles, and to suit for the reality of SGN.

The source of the civil law of SGN included our party's policy, the ordinance of SNG government (including regulation, creed, decision, guiding ideology), part of the law of Nan Jing government, and the good customs of SNG, etc. Besides, the civil law of SNG also took the forms

of order, indication, answer, and so on. Order was mainly one kind of archives used by SNG government to issue some legal documents or to put out dealing methods for some concrete problems. The high court of SGN also used order to issue legal documents. Several indications given by the high court of SNG for judicial problems may also concern to civil law, so indication may also become the legal basis of concrete cases. As a source of civil law, answer referred mainly to the answers of the high court of SNG.

The source of the civil law of SGN can also be divided into three categories, that is, civil statute, civil custom, and part of the ordinances of Nan Jing government. The civil statutes of SNG concerned mainly to guiding civil law systems, land law, the law of marriage and succession, the law of obligation, and the law of abating rent and interest, etc. Part of the ordinances of Nan Jing government could be directly applied according to the civil statutes of SGN, and they were also invoked by the courts of SGN as the basis of judgment in concrete cases. The SNG government made a difference between good customs and benighted ones, and propelled civil custom law by reforming the judicial system of SNG, such as the trial mode of "Ma Xiwu".

Keywords: Shanxi-Gansu-Ningxia Border Region, civil law, statute, custom law