

Rethinking modesty in criminal law

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Abstract: The goal of the modesty principle is to maintain the advantages of the law and defend human rights. In criminal law, the modesty principle permeates every step of the criminal legislative and criminal judicial processes. The criminal law's purview has been expanding to better protect legal benefits with the passage of time and the soaring development of society. Many behaviors have been added to the purview of criminal punishment, branding those that were not crimes with the mark of crimes. It is undeniable that the development of the criminal law field has contributed significantly to the punishment of serious crimes and the defense of legal interests. However, it is important to consider the fact that this development has also resulted in corresponding criminal liability for minor offenses, which is discussed from the perspective of modesty in criminal law.

1. Introduction

Criminal law must adhere to the concept of modesty, which states that it should only be used as a last option and only in cases when other laws are unable to control criminal activity and secure the interests of the law. In order to combat crime and better protect the interests of the law, the criminal law has expanded the range of punishment, expanded the field of adjustment, and actively created many additional crimes. As a result, a phenomenon known as the criminalization of minor offenses has emerged, which is thought to be in opposition to the criminal law's modesty principle.

2. Knowledge of the legal doctrine of moderation in criminal law

2.1. What does modesty mean in the law?

The criminal law, the toughest of all laws, deprives criminals of their freedom, rights, and interests every time it is activated. Chinese law is inspired by the old concept of heavy-handedness, which imposes severe punishments on illegal activities. To better defend the interests of the law and protect human rights, the application of criminal law must be cautious and modest. The criminal law is not omnipotent; rather, it must be activated to punish a crime and to protect the interests of the law. This is known as the traditional sense of criminal law modesty. It refers to the criminal law punishing criminal behavior when other laws and regulations are not in place. The modesty of criminal law has taken on additional significance with the passage of time: (1) The modesty principle refers to limiting the scope of control of the criminal law, with the minimum penalty to obtain the maximum protection of social benefits; (2) The criminal law is the last safeguard to protect the social benefits of the law and punish the illegal and criminal behaviors, and the criminal

law can only be applied when the other sanction is insufficient to prevent; (3) The modesty of the criminal law is not only embodied in the launch of the modesty of punishment, or the modesty of the degree of punishment, which is particularly demonstrated by the rejection of the idea of harsh punishment and the prioritization of the use of misdemeanors when they effectively punish crimes and safeguard legal interests^[1].

2.2 Law enforcement and modesty

Although there is a gap between the law and social evolution, which necessitates the law's continual improvement, this does not mean that every unlawful and criminal behavior must be categorized for the purposes of criminal law regulation and protection of the law's interests. The scholarly community has differing opinions on the phenomena of criminal legislation protecting the interests of the law.

2.2.1 Favorable perception of the legislation

The active criminal law perspective supports the use of active criminal legislation to combat crime and protect legal interests against the backdrop of rapid social development. It holds that the complexity, punishability, and new types of illegal and criminal activities arising from modern scientific and technological societies, as well as the active creation of new crimes and the continuous expansion of the scope of criminal law control, not only ensure the relative security of the rule of law but also ensure the relative security of the general public.^[2] The premise that criminal law upholds the law forms the foundation of the positive criminal law perspective. The goal of criminal law is to protect legal interests, according to the positive view of criminal law. This perspective holds that this goal is fundamental and necessary, and that by actively creating new crimes and broadening the scope of criminal law penalties, we can protect legal interests as well as the stability and interests of society.

2.2.2 Disapproval of criminal justice

It is easy to classify minor infractions as crimes, which will also bring acts that were previously covered by other laws into the criminal sphere, which will put more pressure on the criminal law, according to the negative view of criminal law. It also contends that the positive view of criminal law is in conflict with the principle of modesty in criminal law, that the arbitrary expansion of the scope of criminal law is not conducive to the protection of human rights, that it will also bring acts that were previously covered by other laws into the criminal.

3. Reevaluating decency in criminal law

3.1 Modesty in the legal profession

The ability of the criminal law to successfully defend its advantages and inhibit bad behavior is evident. It can be adjusted to include some prohibited behaviors and new sorts of regions. For instance, since drunk driving has been classified as a dangerous driving offense, the phenomenon has been brought under control nationwide and the rate of illegal behavior has significantly decreased, safeguarding the benefits of the law, obstructing drunk driving's illegal behavior, and serving as a deterrent through punishment. However, if we don't use the modesty of punishment and merely use a wide criterion to determine whether the crime was done or not, it will also cause a lot of irrationality. The definition of dangerous driving says that a driver is considered to be driving while intoxicated if their blood alcohol level is greater than 80 mg/100 ml. As we all know, each person's level of intoxication differs greatly due to a variety of physiological and environmental factors. Because people in northeastern China drink alcohol year-round to stay warm, a blood

alcohol content of more than 80 mg/100 ml is considered excessive and will raise a blood alcohol content of less than 80 mg/100 ml to levels above 80 mg/100 ml. A person with a blood volume of less than 80 mg/100 ml will experience this and become inebriated and disoriented, whereas a person with a blood volume of considerably more than 80 mg/100 ml will remain sober. It is clear that this conviction threshold can deter drunk driving, but it also demonstrates the absurdity of the law, since it is simple for those who consume large amounts of alcohol to engage in risky behavior without having it classified as a crime.^[3] The criteria for intoxicated driving is similarly ridiculous, despite the fact that it helps deter this type of behavior.

3.2 The Judiciary's Modesty

Take the dangerous offense of drunk driving as an example. In real life, there is a situation where a late-night drinker calls his wife to come pick him up to go home because he is not fit to drive after drinking. However, when he arrived at A's door, A's wife had always driven the car away from the parking spot because she is not a skilled driver.

I see that it is late at night and that no cars are passing, so I get in my car, drive a short distance, and pull into a parking spot. However, I was recently stopped by the traffic police, found guilty, and given a punishment for reckless driving. Although it technically falls under the category of drunk driving, a person who parks their automobiles in a parking lot late at night without endangering anybody else should not be found guilty of reckless driving and penalized accordingly. A's behavior is considerably insignificant and innocuous and is not regarded as criminal^[4], thus the crime should not be adjudicated and punished. A's actions are substantially less detrimental and are not regarded as criminal. At this stage, using administrative sanctions rather than criminal sanctions may be more beneficial. There are countless examples of this kind in daily life, but it does not mean that everyone should be punished for committing a crime. Instead, the criminal law's modesty principle should apply to both legislation and the administration of justice.

3.3 Reevaluating the modesty rule

3.3.1 Striking a balance between decency and the law

In order to prosecute and punish actions that gravely damage society and crimes in new areas, modesty should be sought in the realm of law and legislative activity in a balanced state. Due to the complexity of society, the threshold of incrimination should be raised appropriately for minor offenses, and multiple incrimination standards should be established by various circumstances in order to avoid the "one-size-fits-all" uniform standard being out of step with reality and to criminalize and punish behaviors that do not pose a risk of harm or an adverse outcome, such as the offense of drunken driving, which is the best example of a dangerous dri. Criminal law is not omnipotent; when minor offenses are punished with criminal penalties, the offender will suffer major repercussions that will hinder his ability to get better. The criminal law should maintain its modesty and complementary nature when other laws can adequately punish the offender for their illegal behavior and stop any harmful behavior. When the harm is not severe and the circumstances of the crime are inconsequential, the proviso of Article 37 of the Criminal Law that "the circumstances of the crime are so minor that it does not need to be sentenced to imprisonment" shall be applied to excuse the offender from punishment should be followed. (c) Crimes aren't taken into account as having been committed. When designing criminal legislation to satisfy the demands of a changing society, a balance between humility and principle must be achieved.

3.3.2 Finding a balance between justice and humility

The fact that the principles of proportionality and moderation must be applied in criminal justice does not entail that criminal penalties must be applied whenever criminal standards are met; instead,

an overreliance on criminal penalties to punish harmful and illegal behavior will typically jeopardize citizens' freedoms and undermine the goal of criminal law, which is to protect human rights. The law stipulates many statutory conditions that may or should exempt a person from punishment in certain types of criminal offenses, and court authorities shall ask for the exemption from punishment in light of the circumstances of the offense. On the other hand, judicial organs should be good, dare to apply discretionary exemptions from punishment, to avoid mechanical criminal penalties, and should give full play to the modesty of the criminal law, to protect human rights, even if the perpetrator of the crime does not have any legal exemptions from punishment, but the existence of the penalty does not deserve to be punished. Theft of goods, quantity, amount, and other factors affecting the penalty, as well as whether or not a single penalty will be in conflict with human feelings, ethics, etc., should all be taken into consideration when determining the appropriate punishment, reflecting the complementary nature of the criminal law, safeguard, and moderation. As an example, in the case of multiple thefts, even though the perpetrator satisfies the criteria for "multiple thefts," the punishment should not be meted out uniformly.

3.3.3 Application of the modesty principle

In order to fully exploit the complementary nature of the criminal law and to only use it when other laws are unable to protect the interests of the law, adherence to the principle of modesty requires that the threshold for the entry of minor crimes be raised in the legislative sphere. In the legal system, the less responsible parties can actively apply to have the penalty waived, to fully protect human rights, to help play up the modesty of the criminal code, to give offenders a chance to change for the better, and to make better use of the criminal justice system's resources.^[5] Because of this, the Supreme People's Court of China published "Guiding Opinions on Sentencing for Common Crimes (II) (for Trial Implementation)" in 2017. It states that "for a defendant who is driving a motor vehicle while intoxicated, comprehensive consideration should be given to the defendant's level of intoxication, the type of motor vehicle, the road on which the vehicle is traveling, the speed at which the vehicle is being driven, whether the vehicle is moving or not, and whether offender might not be held accountable for the offense if the circumstances were not severe enough to warrant a penalty. The defendant shall not be found guilty and punished in certain cases when the harm inflicted is not severe.

4. Come to a decision

In contrast, based on the goal of criminal law to protect human rights, the principle of modesty in criminal law is applied within reasonable bounds and seeks to achieve equilibrium with the principle of modesty in the field of criminal legislation and the administration of criminal justice, to facilitate better protection of the rights and benefits of the law.

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