

Abstract of Doctoral Thesis

Titel: The Theory of Legal Structure of Crime of China -its Evolution and Issues-

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The objective of this research is to acquire implications for the solutions of various problems concerning the theory of legal structure of crime of China by studying the constitution of the general provisions of criminal law and the structure of crime since the era of Republic of China.

Recently, in China, a lively debate with respect to the criminal theory has erupted between the scholars in favor of "the four-element crime constitution theory" and those in favor of "the staged criminal theory system", with a focus on "constitutive element", "illegality", "responsibility" and other concepts. However, in fact, the controversy has never stopped, because the contents of these concepts, respectively claimed by the two parties are different. In order to solve this problem, it is necessary to reconfirm these concepts along the historical course of the naissance of these concepts in China. Therefore, in the first part of this thesis, after studying the four-element crime constitution theory, which is the popular theory in modern China, this part has made clear that this theory has various problems. Then, after studying the legislative history of each criminal code in the era of Republic of China and the representative theories with respect to the criminal theory in that era.

The second part has introduced the legislative history of the criminal code and the theory in the early stage of the People's Republic of China. In addition, after studying the theory of legal structure of crime of the Soviet Union, which has deeply influenced the traditional crime system, and exploring the theory in the terminal stage of Czarist Russia and its origin, this part has made clear that the four-element crime constitution theory ascends to the Berner's concept in Germany.

The third part has introduced the legislative history of the current criminal code. After that, this part has studied the theories with regard to "the staged criminal theory system", which is representative in modern China, and the theory of accomplice related to it. This part has made clear that (1) to clarify why systematic criminal theory exists is important, (2) the possibility of the communication between various theories should be ensured, and (3) combining "problematic thinking" and "systematic thinking", a criminal theory in line with China's national conditions and practices should be proposed.