

Abstract of Doctoral Thesis

Title: Franz von Liszt's "Wissenschaftsanschauung"

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The purpose of this study is to appreciate Franz von Liszt's view of the jurisprudence as science ("Wissenschaftsanschauung" of Franz von Liszt) and to reconsider historical significance of his basic ideas of the criminal jurisprudence. To achieve this purpose, it is necessary to consider his thought on the role or mission of criminal jurisprudence in society.

Under the perception mentioned above, in Chapter I of this thesis, in an effort to bring light on his academic view, this study proposes a hypothesis about the Liszt's basic orientation to positive philosophy, objective idea (*Zweckgedanke*), evolutionary idea of development (*Entwicklungsgedanke*) underlying the basics of his criminal jurisprudence, and the conception of "the holistic criminal jurisprudence (*die gesamte Strafrechtswissenschaft*)" which could be an attempt to build his new criminal jurisprudence.

In Chapter II, this thesis considers the Program of Marburg (*das Marburg Programm*) which declares the orientation of Liszt's criminal jurisprudence programmatically. At this moment, the epistemic basics for considering Liszt's academic view is confirmed when the two axes-objective idea and idea of development supporting this Program get established as a guidance ideology, and their implications of Liszt's jurisprudence, i.e. It means changing the purpose that can be changed depending on circumstances and justifying this as development, are demonstrated.

Specially, the idea of development between these guidance ideologies is treated as the theoretical grounds when a proper principle of legislation is drawn, and even when a standard of judgment over the natural appearance of appropriate society is set up. In Chapter III, addressed is the demonstration about how such an idea of development comes to form a pivotal nucleus of his

academic view.

In addition, in Chapter IV, this study draws a conclusion that unlimited modification of objective in the criminal jurisprudence (*die inhaltliche Offenheit des Zwecks in Strafrechtswissenschaft*) is justified by demonstrating that under the idea of development argued by Liszt and his view of the jurisprudence as science based on this, whatever objective is regarded as an element of development and therefore even an objective against another becomes compatible after all under the name of development.

In Chapter V, this study clears up the point that Liszt applied the objective idea and an idea of development to the theory of benefit and protection of the law (*Rechtsgutslehre*) as well. In other words, in this Chapter, it is demonstrated that Liszt, in an effort to make his attempt of content-openness of an objective successful in criminal jurisprudence, drew the pre-positive element, which comes to be necessary when confirming real contents of a crime, like the benefits of human life and human existence that base legal norms, into legal benefits (*Rechtsgut*), and that the pre-positive element was used as an unrestricted concept in converting it into a legal norm as necessary (A concept of limitation of legal reasoning which is becoming abstract : *der Grenzbegriff der abstrahierenden juristischen Logik*).

In conclusion (in last Chapter), this study defines Liszt's view of the jurisprudence as the establishment of objective-open criminal jurisdiction, or criminal jurisprudence corresponds to the current days, and presents a short view about re-evaluation of his criminal jurisprudence in the historical context.