

# ***From Crime to Governance: An Analysis of the Governance Path of the Misdemeanor Era***

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**Abstract:** In the context of the “misdemeanor era,” promoting the governance of misdemeanors should focus on governance from the governance end, breaking away from the simple thinking of “only discussing crimes” and “post-punishment.” The so-called “governance” refers to the full-process prevention and control of misdemeanors through the construction of a multi-subject co-governance system, and the improvement of the execution connection. This is also the objective requirement of the new era’s source governance. However, there are still certain difficulties in the promotion of misdemeanor governance, mainly manifested in the imperfect mechanism for establishing offenses, insufficient use of non-custodial punishment methods, and the continued existence of overly strict criminal ancillary consequences, indicating problems of excessive emphasis on punishment and insufficient governance thinking. In response to these issues, it is necessary at this stage to construct a funnel-shaped mechanism for establishing offenses, improve the governance system of “light crimes, light penalties,” change overly strict criminal ancillary consequences to enhance the modernization level of misdemeanor governance, and establish a more reasonable plea governance system.

**Keywords:** Misdemeanor governance, Misdemeanor era, Governance thinking

## **1. Introduction**

In the past decade, the proportion of misdemeanors in China has remained at around 80% annually, which objectively indicates that the “misdemeanor era” has arrived. In the context of the new era, it is particularly necessary to promote the quality and efficiency of misdemeanor governance. The focus of misdemeanor governance lies in the word “governance,” which requires us to break away from the traditional “crime-oriented thinking” and respond to the “misdemeanor era” with a more macroscopic “governance-oriented thinking.”

## **2. The Arrival of the “Misdemeanor Era”**

### **2.1. Analysis of the Concept of Misdemeanors**

Regarding the concept of “misdemeanors,” it is necessary to define a reasonable logical scope. In theory, Chinese scholars have conducted in-depth research on “crime stratification” and other related topics. Chen Xingliang considers the perspectives of pure misdemeanors and impure misdemeanors,

proposing the strict delineation of these two different types of misdemeanors [1]. He Ronggong includes “misdemeanors” in the category of new normative phenomena, discussing them on the basis of a crime-illegality binary system [2]. Liu Chuangao focuses on the standards of declaratory punishment, statutory punishment, and the substantive standards of crime danger to clarify the concept of “misdemeanors” [3]. Lu Jianping incorporates minor offenses into the structure of crime, further defining the scope of misdemeanors [4]. However, there is still controversy among scholars regarding whether 3 years or 5 years should be used as the standard for distinguishing misdemeanors from felonies.

From the perspective of China’s long-standing practices, it is more reasonable to use 3 years as the dividing standard from the viewpoint of impure misdemeanors, where the same offense encompasses both felonies and misdemeanors. Using “criminal conduct” rather than “criminal title” as a measure often provides greater comparability and is more consistent with the viewpoint of empirical criminal law [5]. Therefore, the author believes that the portion of statutory imprisonment below 3 years should be recognized as misdemeanors.

## 2.2. Basic Trends of Criminal Structure Misdemeanorization

During the early stages of reform and opening-up, Chinese society underwent drastic transformations, characterized by increased population mobility, accelerated urbanization, and intensified economic activities, all of which contributed to a rise in the crime rate. As the rule of law continued to improve, the number of serious and major criminal cases tended to decrease, while the number of minor offenses showed an upward trend. Since the beginning of the 21st century, the connotation of “public security” has been redefined, and the deepening development in various fields has led to the emergence of new types of illegal activities. The proliferation of the internet has indirectly led to the increasing prevalence of cybercrimes. The concept of a “risk society” has become more widely accepted, and misdemeanor governance has also become an important component of building a rule-of-law China.

Since the promulgation of the Criminal Law in 1979, with the continuous improvement of the legal system, the proportion of severe penalties has also decreased. The share of eight major categories of criminal cases has shown a downward trend. Taking intentional homicide, robbery, and rape as examples, compared to 2020, from 2023, prosecutions for crimes related to organized crime and gang activities have decreased by 70.5%, while crimes such as homicide, robbery, and kidnapping have decreased by 6.6%. Cases of group fighting, affray, and disturbing public order have decreased by 20.9%, and drug-related crimes have decreased by 18%.

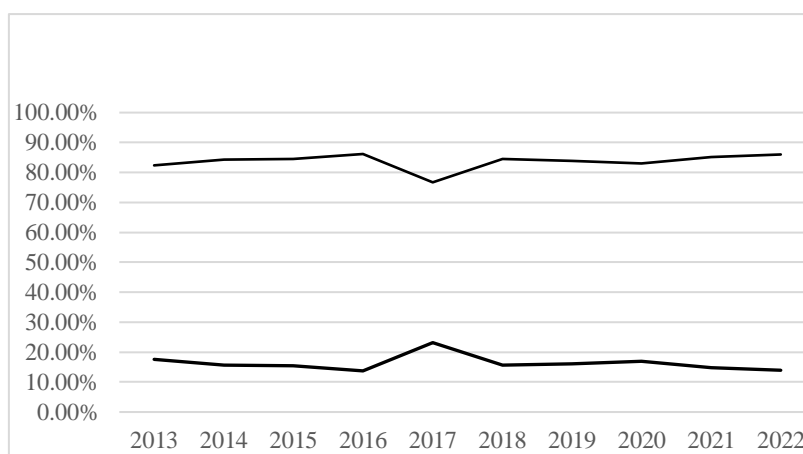


Figure 1: Proportion of Juvenile Crimes and Felonies from 2013 to 2022

If misdemeanors and felonies are distinguished based on a three-year sentence as the boundary, it can be observed that over the past decade, the proportion of misdemeanors to felonies in China has shown a trend of 8:2. According to regular projections, the proportion of misdemeanors is expected to further expand. It can be said that China has entered the “misdemeanor era.”

### **3. From “Punishment” to “Governance”: The Basic Logic of Crime Governance in the Misdemeanor Era**

#### **3.1. The Inherent Logic Transition from “Punishment” to “Governance”**

The focal point of misdemeanor governance lies in the word “governance,” representing an inherent logic transition in China’s legal society from the previous emphasis on “punishment” to the current focus on misdemeanor governance.

“Punishment” refers to merely discussing crimes and imposing severe punishment afterwards. With the changing landscape of crime structure in China, solely relying on harsh post-crime punishment is no longer adequate to meet the needs of the times. The expansion of misdemeanor legislation illustrates China’s pursuit of a legal system that is “strict but not severe.” However, excessive emphasis on punishment may lead to the phenomenon of “both strict and severe” criminal consequences.

The concept of misdemeanor governance emerged as a result. Unlike punishment, governance entails systematic regulation from a macroscopic perspective, achieved through coordinated social governance to comprehensively manage misdemeanors. It shifts the focus from merely discussing “how to punish crimes” to discussing “how to prevent crimes.” From a governance perspective, we not only emphasize the regulation of crime but also strengthen both the front-end governance and the back-end management of crime. This involves eliminating the root causes of crime while actively reforming criminals. In an era where misdemeanor cases account for eighty percent of all crimes, higher-level governance represents the best response to the misdemeanor era.

#### **3.2. The Manifestation of Misdemeanor Governance**

##### **3.2.1. From Discussion of the “Active Criminal Law Perspective” to the Shift in Governance Thinking**

The substantial change in crime structure is a significant feature of the misdemeanor era. The fluctuating proportions of serious and minor crimes highlight the increasing significance of the “active criminal law perspective.” This perspective aims to partially bridge the gap in the binary system of illegality and crime by strengthening front-end intervention through criminal law and expanding the scope of criminality, thereby avoiding excessive punishment for minor offenses and achieving “appropriate punishment” [6].

Undoubtedly, the active criminal law perspective meets the objective needs of the misdemeanor era. However, concerning the expansion of misdemeanor legislation, we should adopt a stance of “preparedness without deployment” rather than assuming that “having it means using it.” The former does not undermine the modesty of criminal law, while the latter is the main cause of the disorderly expansion of criminal law. From this perspective, the addition of misdemeanor charges is a proactive response to the risk society. However, how to effectively utilize these charges requires a shift in governance thinking. It calls for us to step out of the framework of criminal law, adopt a governance mindset, and effectively utilize various front-end mechanisms for misdemeanor governance, thus restoring criminal law to its proper position.

### **3.2.2. Promoting the Source Governance of Misdemeanors**

Source governance is the embodiment of the “Fengqiao Experience” in the new era, which involves using various governance measures to address the sources of cases, prevent potential disputes, resolve existing conflicts, reduce the number of cases entering the litigation stage, or effectively divert cases in litigation.

Source governance and misdemeanor governance are essentially similar, both converging under the concept of “governance,” emphasizing the systematic and source-based construction of the legal system. Source governance in the field of misdemeanors in China mainly manifests in the realm of light punishment and reconciliation. Article 288 of the Criminal Procedure Law stipulates that for specific crimes such as infringement of citizens’ personal rights, democratic rights, or property rights, the system of light punishment and reconciliation can be applied, and the procuratorate can make decisions on lenient treatment or non-prosecution accordingly. This provision reflects the concept of “light crime, light punishment” in misdemeanor governance and is also an embodiment of intensive judicial resources and rapid dispute resolution in source governance.

Source governance of misdemeanors should exert efforts both before and during litigation, emphasizing judicial governance and social forces. In the pre-litigation stage, the focus is on conflict resolution and the establishment of risk prevention mechanisms, with the participation of social forces to mitigate crime risks. The litigation stage focuses on improving the “establishment of offenses mechanism” for misdemeanors, insisting on both screening and diversion, thus playing a role in addressing the root causes of social governance.

## **4. Governance Dilemma of the “Era of Minor Crimes”**

### **4.1. Functional Deficiency in the Mechanism of Decriminalization**

In recent years, the lowering of the threshold for criminal acts and the continuous expansion of the criminal sphere indicate that China’s criminal law stance is shifting from passive restraint to active expansion. Against the backdrop of the expanding path for minor offenses to be criminalized, failure to correspondingly improve the pathways for decriminalization will inevitably result in overly harsh application of penalties.

Firstly, the current decriminalization mechanism in China is flawed. According to judicial practice in China, decriminalization is mainly achieved through Article 13 of the Criminal Law, specifically the provisions regarding justifiable defense and emergency avoidance [7]. However, justifiable defense and emergency avoidance have not been integrated into criminal discourse, indicating that China has not yet established a complementary decriminalization mechanism at the procedural level that aligns with the governance system for minor crimes. Secondly, China prioritizes formal judgment over substantive judgment. Take the crime of issuing false invoices as an example; the evaluation of behavior should not only consider whether it disrupts the state’s tax regulatory order but, more importantly, whether it infringes upon the state’s tax security interests, i.e., whether it results in the loss of state tax revenue. However, in judicial practice, there is no distinction made between formal and substantive issuance of false invoices, with the focus placed on whether relevant legal provisions have been violated rather than whether the interests protected by criminal law have been infringed upon.

### **4.2. Deviations in the Practice of “Light Crimes, Light Sentences”**

In the past decade, while the proportion of minor crimes has been increasing, the non-imprisonment rate has not correspondingly increased; instead, there has been a downward trend. This indicates that the principle of proportionality between offense and punishment has not been fully applied, and some

minor offenses may be punished with imprisonment. To promote judicial governance in the era of minor crimes, it is necessary to effectively utilize various forms of punishment, using imprisonment for serious crimes and non-imprisonment penalties for minor offenses. At the same time, the scope of fines should be expanded to reduce the impact on the normal rehabilitation of criminals and their family life.

Table 1: Proportion of juvenile crimes and felonies and proportion of prison sentences and non-prison sentences from 2013 to 2022

A given year	Proportion of misdemeanors	Percentage of felony cases	Incarceration rate	Non-custodial sentence rate
2013	82.28%	17.65%	64.14%	35.86%
2014	84.37%	15.57%	64.22%	35.78%
2015	84.56%	15.36%	66.19%	33.81%
2016	86.17%	13.74%	65.59%	34.41%
2017	76.71%	23.17%	68.54%	31.46%
2018	84.56%	15.63%	69.55%	30.45%
2019	83.83%	16.08%	73.04%	26.08%
2020	82.96%	16.94%	72.89%	27.11%
2021	85.06%	14.89%	73.01%	26.99%
2022	85.93%	14.04%	71.10%	28.90%

Source: National Court Judicial Statistics Bulletin

From the above table, it can be seen that the probation rate and fine rate in China are still in a relatively low range, which is not conducive to the establishment of a system of punishment proportional to the offense [8]. In recent years, China has proposed to implement a judicial policy of “combining severity with leniency,” which requires increasing the application rate of non-imprisonment penalties such as probation. In the governance of the era of minor crimes, judicial authorities should make good use of various non-custodial measures to improve the governance system of “light crimes, light sentences.”

#### 4.3. Objective Existence of “Severe and Harsh” Criminal Consequences

The advent of the era of minor crimes renders overly severe criminal consequences no longer applicable to current governance of minor offenses. China’s regulations on criminal consequences are present in various levels of laws, manifested as various restrictions and unfair treatments imposed on criminals after serving their sentences. The risks of criminal consequences arise from administrative penalties resulting in restrictions on rights, credit penalties leading to decreased credibility, and the formation of negative impressions from criminal records, as stipulated in Article 37.1 of the Criminal Law, which grants other laws and administrative regulations the authority to impose restrictions or bans on certain professions. This objectively results in the unpredictability of criminal consequences [9], as it is difficult to establish causality between local laws and regulations prohibiting certain professions and criminal behavior. At the same time, some provisions fail to set strict standards for the types of crimes subject to professional bans, leading to a lack of legitimate basis for criminal consequences [10]. The provision of Article 37.1 of the Criminal Law undoubtedly delegates the function of punishment to other laws and administrative regulations, and this abstract provision may lead to an expansion of administrative power, essentially allowing the unlimited expansion of criminal consequences.

## **5. Optimization of the Path for Governance of Minor Offenses**

### **5.1. Improvement of the “Funnel-Shaped” Decriminalization Mechanism**

The volume and breadth of cases in the governance of minor offenses often involve distinguishing between criminal and non-criminal acts, aiming to prevent excessive intervention of criminal law in social life while upholding the perceived justice of the people. However, the substantive pathway for decriminalization not only faces theoretical and practical challenges but is also constrained by the overall strategy of current crime governance. Therefore, relying on the substantive pathway for decriminalization to achieve leniency in crime and punishment is not realistic.

Relevant authorities should selectively decriminalize minor offenses in the stages of investigation, prosecution, and trial. Firstly, in the investigation stage, for cases with minor criminal circumstances, investigative agencies should be granted certain decriminalization powers. Investigative agencies can consider factors such as the attitude of the offender, timely confession and repentance, and active implementation of remedial measures to decide whether to decriminalize. Secondly, in the prosecution stage, it is advocated to expand the scope of conditional non-prosecution to include adults. For criminal cases involving minor offenses, procuratorial agencies should initiate supervision and inspection procedures, establish specific educational and correctional measures, and make decisions on whether to prosecute based on the results of supervision and inspection. Finally, in the trial stage, since the procedure for acquitting a defendant is often complex and time-consuming, a speedy decriminalization procedure should be established for minor offenses to streamline the trial process.

### **5.2. Establishing a System of “Light Crimes, Light Sentences”**

The arrival of the era of minor crimes is an indisputable fact, and the changing structure of crime calls for the people’s courts to examine cases with the concept of “light crimes” in mind, avoiding unnecessary use of imprisonment. In light of minor offense cases, the rate of applying non-custodial penalties should be further increased. “In the era where minor offenses prevail, the legal sanctions for crimes are correspondingly reduced, and the social tolerance increases. This is the social condition for crime governance in the era of minor offenses” [11]. The premise of establishing a system of “light crimes, light sentences” lies in the perfection of the penal system.

Regarding the current penal system, some scholars believe that corresponding light penalties should be added to match the objective requirements of governing minor offenses. However, the biggest problem currently is not the lack of penalty methods but rather the inadequate utilization of existing non-custodial measures. Therefore, the most crucial aspect of constructing a system of “light crimes, light sentences” should be to standardize the application mode of non-custodial measures, especially by improving the institutional design of community corrections and fines, enhancing the coordination and functionality of the penal sanction system [12].

Community corrections play an important role in the governance system of minor offenses for two reasons: first, it mitigates the risk of recidivism through the inherent forces of the community, and second, it provides feasible options for “light crimes, light sentences.” However, Chinese law only considers community corrections as an ancillary measure to non-custodial penalties, which to some extent leads to a lack of emphasis on community corrections. It is also necessary for China to further clarify the rules and methods of community corrections. Only when the types of community corrections become more diverse can judicial authorities adopt the most appropriate community correction methods based on specific circumstances.

### **5.3. Changing Overly Harsh Criminal Consequences**

In the era of minor crimes, it is necessary to incorporate standardized criminal consequences into the



realm of criminal justice, intervene with social autonomous forces to improve the social credit system, alleviate group opposition to accept reintegrating criminals into society, and establish a reasonable system for eliminating minor criminal records. By forming a synergy at the levels of the state, society, and individuals, trust mechanisms among social entities can be enhanced to achieve effective crime governance.

Specifically, changing overly harsh criminal consequences can be achieved through the following methods: 1) Strengthen the correlation between prerequisites and criminal consequences. 2) Reduce clauses related to lifelong bans or restrictions. Lifelong criminal consequences associated with individuals should be cautiously applied based on the social harm of the crime and the attitude towards confession and repentance. 3) Exercise caution in imposing professional bans and disqualification for crimes of negligence or minor offenses. For crimes with minimal social harm, such as those targeting social governance goals, supplementary consequences such as disqualification and professional bans should be cautiously applied to assist individuals in better integrating into society. 4) Exclude the restriction of rights for individuals who bear criminal responsibility due to excessive defense or emergency avoidance. 5) Prohibit provisions applying criminal consequences to minors. In handling criminal consequences, basic principles such as the principle of correlation and proportionality should be applied. There should be a greater exploration of the social dangerousness of criminals to construct a better system of criminal consequences centered on this core.

## 6. Conclusion

The shift from “crime control” to “crime governance” reflects the law of legal construction in the context of the era of minor crimes. In the current situation where the ratio of minor to major crimes is “eight-two,” merely employing a “crime control mindset” for backend crime suppression no longer meets the demands of the times. Moreover, it may inappropriately exacerbate social repercussions. Therefore, it is imperative to adopt a governance mindset and construct a more rational system for governing minor crimes.

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