

Questions and Responses to the Legitimacy of Criminal Reconciliation: The Approach is Based on the Valueless Behavior

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Abstract: The process of promoting the construction of the rule of law in China, there have been emerging legislation, there are also behind the abolition of legislation, criminal reconciliation system through legislation also formally entered the investigation stage in China. But at the same time, the controversy about this system has never stopped, and the important status of money, a sensitive thing in criminal reconciliation, makes the public full of doubts and incomprehensibilities about this system. From loss reduced the things appear in the beginning, some scholars begin to looking for reliable for its legitimacy basis to prove the existence of this system is reasonable, until the system has the breakthrough on the legislation, but not for the public's confusion a systemic response and cracking. valueless behavior theory in considering the twin issues of legal interest undermines the effectiveness of criminal punishment as a deterrent, rendering it less impactful compared to alternative approaches. Consequently, within the framework of such punitive measures, accommodating a criminal reconciliation system becomes challenging.

Keywords: criminal reconciliation, Forfeit money and commutation, Worthless behavior, Issues of legitimacy

1. Introduction

The practice originated in approximately 2007, when the People's Court of Wuhua District in Kunming presided over a case involving intentional injury resulting in the death of a college student. Through court mediation, the three defendants voluntarily agreed to compensate the victim's family with an amount of 81,600 yuan. In response to the family's request for commutation or probation for the defendants, the court considered their willingness to provide compensation and imposed lenient punishments accordingly. Compared to fifteen years ago, there has been a notable increase in criminal reconciliation within the legal framework; however, it appears that this new system has not received widespread public approval but rather disapproval.

The doubts expressed by the general public regarding the criminal reconciliation system have created a significant contradiction as this system transitions from being merely an experimental practice to becoming an established mechanism. How can monetary compensation reduce severe punishment? Some legal scholars argue that utilizing this system may offer certain benefits by

addressing challenges related to victim compensation which are difficult to resolve under existing criminal law; nevertheless, it seems that these arguments have yet to gain public support.

2. The application of conduct valueless

The contradiction of contemporary criminal law theory is based on the debate between the valueless behavior and the valueless result. The author chooses the valueless behavior theory as the tone to demonstrate the unjustifiability of criminal reconciliation. The so-called "loss of money for commutation", as the name implies, is to compensate property to reduce the penalty. How to reduce the penalty by losing money? Is there any justification for it? First of all, we will discuss what crime is and what punishment is. This paper will discuss it from the perspective of the valueless dualism of behavior, and explain the reasons for choosing the valueless theory of behavior in the last part of this section.

2.1. "Crime view" of valueless behavior

Behavior valueless holds that "the task of criminal law is to maintain the existence of basic social norms, rather than completely realize higher justice [1]. The reason why this paper takes the valueless behavior as the basic point of view is that China is in the flood of "great changes unseen in a century", and solving outstanding social contradictions is the top priority. Only by insisting on the valueless behavior and agreeing that the norm of criminal law is the norm of behavior, can the people clearly understand that the behavior violating the norm of criminal law is the behavior that destroys the legitimacy expectation of the norm. Is an act that will be opposed by the society. In other words, the criminal law should ultimately protect the interests, but to achieve this goal, we must consider whether we lack a bridge to this goal, if there is no reasonable channel to achieve the goal of the criminal law, we must first build a "foundation". Establishing norms, cultivating the national consciousness of norms, and punishing the acts against norms are the basic steps to finally realize the goal of legal interests protection. [2] Based on the basic position that behavior is valueless, crime is the behavior that violates the norms of behavior, and then infringes on the legal interests. The provisions of the specific provisions of the criminal law fully reveal the objective harmfulness of the behavior. All the criminal behaviors in accordance with the provisions of the specific provisions of the criminal law are selected by the legislators from all kinds of harmful behaviors, which can not be tolerated by the state and must be punished by penalty. [3] Such a serious act, if the application of criminal reconciliation can reduce the sanctions against it, obviously biased.

2.2. "Penalty theory" of worthless behavior

According to the dualism theory of valueless behavior, the purpose of penalty is to show the inviolability of legal order through definite and proper punishment, so that the public can have a sense of trust in legal order, so as to maintain the validity of behavioral norms and realize the general prevention of norms. This is the positive general precaution theory or the general precaution theory of norms. This theory of the purpose of punishment is markedly different from the traditional, negative theory of general precaution [4], that is, punishment is a refutation of the destroyer of norms. To restrict punishment to the perspective of retribution and utility seems to limit the complexity of punishment too much, and it is too shallow to taste, which also gives the so-called legitimate basis for commutation of penalty of losing money to take advantage of. "Punishment imposed in order to eliminate the harmfulness of damage and prevent further damage.

Punishment imposed in order to compensate the victim for the damage in some way (even with emotional compensation).

Punishment is used to isolate the offender so that the imbalance does not continue to develop.

Use punishment to instill fear in those who make and execute the punishment.

It builds memory, both for those who are punished and for those who witness it.

So long as the powerful race persists in the natural state of revenge and claims it as his prerogative, punishment must be reconciled with this natural state of revenge." [5]

Punishing facts is not a single concept, but a combination of meanings. Nietzsche's analysis fully demonstrates the content and task of punishment, which means that punishment has profound significance for the norm, for the public and even for the individual. The refutation of penalty against the violator of norms is the price that all the public should pay for the violator of norms, and such a price is necessary to eliminate the violation. From this standpoint, the significance of looking at penalty is to rescue penalty from the perspective of retribution and utility, so as to turn retribution and utility into the inseparable effects of penalty, and give penalty a normative position, hoping that penalty can train the public's sense of identity for norms. If the system of criminal reconciliation is viewed from such a standpoint, it is contrary to the ultimate purpose of the penalty norm: Penalty is the display of the effect of the norm, which is used to stabilize the damaged norm, so that the norm can be used as the standard of normal social interaction and the model of behavior. However, the emergence of the criminal reconciliation system makes the effect of the penalty, which is not easy to create a sense of security and trust for the public due to the effectiveness of the norm, collapse in an instant. Punishment relies on positive preventive measures such as physical punishment and property punishment to train the public's loyalty to the norm. It is precisely because everyone is equal before the penalty, every criminal will be punished in the same scale as the degree of harm caused by the crime, which makes the vast majority of the public abide by the norm in an orderly manner. The goal that the state tries to achieve through this punishment within the norm is to standardize and induce more people. The goal that the country tries to achieve through this kind of punishment is to standardize and induce more people, so as to achieve the governmentalization of the country. Therefore, the country must pay attention to the equivalence of crime and punishment to prevent large-scale or comprehensive unrest, and the equivalence of crime and punishment is broken by losing money to reduce the punishment that should have been received because of losing money. Money is different for different individuals, for some people spending money is indeed "suffering punishment", but for some people spending money may not be regarded as punishment. In this way, the protective effect of punishment expected by the state on norms fails, and it is difficult to effectively refute the criminal when the norm is destroyed, thus weakening the effect of punishment on norms and reducing the public recognition expected by criminal law. In addition, if a law is unpopular with the people and makes them dissatisfied, it is invalid. "When the people are satisfied with the law, they will voluntarily assist in its implementation, while when they are dissatisfied, they will naturally refuse to implement it; It would be better if they did not actively obstruct the enforcement of the law. This greatly increases the uncertainty of punishment, which increases the frequency of crime in the first place. [6]

Punishment is a seemingly fair and reasonable face, covering up the class will reflected behind it. First of all, the relationship between penalty and criminal is a kind of creditor's right and debt, forcing criminal to bear the debt repayment responsibility in the sense of criminal law is criminal responsibility. The state has formulated the norms, and every citizen enjoys the stability brought by the norms. The criminal has also enjoyed many benefits brought by the norms. He is not grateful for this, but takes the initiative to violate the norms and attack the state and society. When the criminal infringes on the individual, the criminal is the debtor, he owes the debt to the victim, and the state has the obligation to protect the individual, at this time, the creditor's rights have been transferred, and the state has become a true proposition to punish the crime of the individual. In addition, punishment has an inseparable relationship with social governance. It can be said that punishment is a part of social governance. According to Machiavelli, "the order to govern is unilaterally issued by the

sovereign, who is the sole exercise of the power to govern. The power to punish is part of the sovereign's power to govern society." Such a statement is a good explanation of why the state enjoys the power to punish, but why the power to punish cannot be delegated to the individual. "Some people are exempted from punishment because of leniency on the part of the victim for minor crimes, which is consistent with kindness and humanity, but contrary to the public welfare. The individual victimized citizen may forgive the offender's compensation, but may he, by his forgiveness, likewise remove the necessary discipline? The right to punish a criminal does not belong to any one person, but to all citizens, or to the sovereign. A man waives his share, but he cannot abolish the rights of another." [7] The state needs to carry out social governance in order to give citizens a stable social environment, and it is self-evident that the state's control of penalty power is an inseparable effect of social governance. As a result, punishment has become part of the overall defense of society. On this basis, it is unrealistic to decentralize the power of punishment to individuals. When individuals can decide the severity of criminal punishment, the national governance system will suffer impact, criminal law will no longer be open and transparent, and penalty may also move towards the trap of uncertain punishment. The psychological compulsory effect of criminal law on the public will be greatly reduced, and the country's expectation of criminal law will be disappointed. At the same time, even a person with a sense of justice can not maintain justice for the person who infringes on him, which is a paradox based on human nature defects. However, when the criminal reconciliation is on the stage of history, the victim is generous to reconcile with him. In this middle, money plays a mediating role, what is the benefit of such a social strategy? The establishment of penalty itself is that legislators abstract all kinds of harmful behaviors into one of the most basic units "crime", and consider the specific situation of the perpetrator, the pattern of the crime and other factors to carry out the most appropriate punishment, that is, the penalty itself is the most appropriate state power set up, balanced with the crime of punishment, Intervening in criminal reconciliation will break the principle of the equilibrium between crime and punishment, which is contrary to the original intention of the politics of punishment and the science of punishment strategy.

With the application of criminal reconciliation, the issue of the validity of norms has not been paid attention to in time. The reason why legislators set up penalties in the field of criminal law, which is different from other branches of law, is that the provisions of criminal law are criminal acts that are intolerable to the state and must be punished to ensure that the norms are respected and continue to be effective. Taking the case of Socrates as an example, a variety of historical evidence shows that this formal judgment was actually made by the Athenian society to ensure the inviolability of the norm. The value of Socrates case to the criminal theory lies in the fact that he used his life to guarantee the operation of the norm and abide by the social effect of his behavior as a legal citizen. So that the dignity of law and order in Athenian society would not be washed away. The question of the validity of norms needs to be paid attention to. Socrates used his own death to prove the validity of Athenian social norms, and now punishment is the only means of preserving the validity of norms. The function of preservation is to achieve the purpose of general prevention. When criminal reconciliation is used in judicial practice, the validity of norms will be questioned and destroyed, and the degree of punishment that should be imposed will be reduced after the criminal reconciliation procedure. This is not the statutory and discretionary sentencing circumstances stipulated in the criminal code, but the factors affecting the sentencing beyond this. What makes it more difficult for the public to accept is that the biggest variable affecting this factor is money, which will undoubtedly shake the norm. In itself, whoever destroys the norm will deny his own form of existence in the society. However, losing money makes the effect that should have been changed, and the validity of the norm becomes ambiguous. Such a system may be questioning and dispelling the existing public ethics and values. Over time, it will form a reactionary effect, and the consequences may be unpredictable.

2.3. Worthless behavior and worthless result

The school of criminal law and theoretical development go hand in hand. "According to the relation of the opposite schools, there is something that absorbs the blood of both the old school and the new school in the late stage, and the result valuology basically inherits the criminal law theory of the old school in the early stage." [8] In short, the dualism of modern behavior valueism evaluates both the violation of norms and the infringement of legal interests, while the effect valueism only regards the occurrence of the result and the influence of the behavior on the outside world as the essence of the crime, that is, the former considers both the violation of the law and the infringement of legal interests, while the latter only considers the infringement of legal interests. The reason why this paper takes the behavior valueless as the approach is to consider the limitation of the non-value of the result. "The result valueless theory ignores that the violation of norms means that the behavior is valueless, and the illegal is determined only by the occurrence of the result, which can only be criticized for the unlimited expansion of the concept of illegal." [9] In the field of penalty, a major problem of whether to carry out criminal reconciliation is that for minor crimes, criminal reconciliation can be considered so as to reduce the sentence of the offender. However, such judgment only considers the elements of "minor crimes", and the crimes with little damage to legal interests and relatively light punishment are minor crimes. This is from the perspective of result value theory, and criminal reconciliation can be carried out for such crimes. However, considering that only the combination of behavior non-price and result non-price can form a complete concept of lawfulness, it is not appropriate to make criminal reconciliation for all kinds of serious violations of the code of conduct caused by the major legal interest infringement.

At present, the dispute about the criminal reconciliation system has not reached a unity. This article tries to put forward the irrationality of the criminal reconciliation system from the concept of crime and penalty related issues from the point of entry of the basic criminal law theory of behavior valuelessness. Under the pretext of the hand of norms, this paper discusses the function and significance of penalty and how the effectiveness of penalty can be protected in the theory of norm violation, discusses why the criminal reconciliation system will be questioned and so on.

It is worth mentioning that this paper may still be relatively superficial in the interrogation and discussion of the criminal reconciliation system, and the discussion of each part can be said to be superficial but not in-depth. The author looks forward to the emergence of more profound research at each level, so as to solve the problem that the criminal reconciliation system enters into legislation but goes against the voice of the people in a real sense.

3. Conclusion

Based on the behavior of the basic theory of criminal law, no value from the problem of the concept of crime which is closely linked with the criminal reconciliation system, for retribution doctrine and utilitarian values of penalty according to these two related problems under the traditional concept of punishment, criminal reconciliation system is difficult to be hold, again under the guise of specification, Standing in the norms in violation of the theory, this paper discusses the function and meaning, the effectiveness of the penalty how secure why the aspects fully discusses the criminal reconciliation system will be questioned and hostile questioning the author of this system.

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