

Studies Of Criminal Law In China
At The Turn Of The Century

世纪之交的中国 刑法学研究

谢望原 / 著



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序

高继旺

刑法学既是一门古老的社会科学，又是一门随时代进步内容不断发展更新的部门法学。我国当代刑法学者对刑法的研究，也已由 20 世纪 90 年代以前主要是研究中国刑法问题发展到了今天全方位地研究中国刑法、外国刑法、国际刑法以及中国区际刑法的新阶段。事实上，在经济日益全球化的今天，建立在经济基础之上的国家法律制度无疑也会受到诸多国际因素的影响。因此，在进一步深入研究中国刑法的同时，广泛开展外国刑法、国际刑法以及国内不同法域的区域刑法研究，对于建立完备而科学的中国刑事法律体系就具有特别重要的现实意义。谢望原博士的论文集：《世纪之交的中国刑法学研究》，就是一部涵盖中国刑法、外国刑法、中国区际刑法等内容的具有一定学术水平且对完善我国刑事法制具有重要价值的刑法学论著。

《世纪之交的中国刑法学研究》收集了作者 10 余年来的重要著译论文。全书分为四编，共 38 篇论文。通览全书，可以看出作者对学术研究的认真与执著；作者勤于思考、敢于创新的精神，文章中亦随处可见；在一系列学术问题上，作者大胆地提出了自己的独到见解。例如在中国刑法学方面：《世纪之交的中国刑法学研究》一文在对我国当前刑法学研究现状进行肯定评价之后，又对我国刑法学研究中的浮躁之风提出了中肯

批评；《犯罪模式论：反思与构想》一文对传统犯罪构成理论进行了深刻反思，并提出了作者的宏微犯罪模式论的构想；《论我国刑罚机能》一文客观地剖析了有关学者关于刑罚功能的理论见解，并提出了作者关于刑罚5机能的独到见解；《域外刑事管辖权及其实现》一文则准确界定了域外刑事管辖权的定义及其实现的基本途径；等等。又如在国外刑法学方面：《论欧陆法学家关于刑罚本质的认识》一文公正评价了欧陆法学家关于刑罚本质的认识，为我们正确认识我国刑罚本质提供了借鉴；《西欧探寻短期监禁刑替代措施的历程》一文分析总结了欧盟成员国刑罚改革的历史与现状，为我国刑罚改革提供了一个参照系；《葡萄牙刑罚制度要论》一文，在国内首次全面探讨了葡萄牙的刑罚制度及其最新动态，填补了我国对葡萄牙刑法研究不足的空白；而《福利国家刑法规范的制定：德国的经济犯罪》则从刑法社会学的角度系统研究了欧洲当代发达资本主义国家反经济犯罪刑法规范的立法过程，译介此文，为我国制定反经济犯罪刑法规范提供了参考文献；等等。再如在区际刑法学方面：《论“澳门刑法典”之特色》一文恰当地对现行澳门刑法典进行了评析，并指出了澳门刑法典中诸多值得中国大陆刑法立法借鉴之处；《台、港、澳与大陆刑法目的之比较》一文对我国四个不同法域的刑法目的进行了透彻解析，肯定了澳门刑法典关于刑法目的立法化的更为科学做法；《论海峡两岸互涉刑事案件的管辖障碍与解决原则》则为海峡两岸之间解决互涉的刑事案件管辖问题提供了相互协作的理论框架；等等。

此外，值得一提的是，《世纪之交的中国刑法学研究》还收录了作者6篇非刑法学方面的论文，其内容涉及民法、宪法、时政等问题。这表明作者不仅对刑法情有独钟，而且对其他法律问题也有浓厚兴趣。其实，对于一位真正的学者来

说，除了深入研究本专业，对相应学科作适当研究不仅是有益的，而且是应当的。因为，对相应学科作必要研究是使本专业研究更上一层楼所必需的。

谢望原博士是1997年底到中国人民大学法学院从事刑法学博士后研究的。在博士后研究期间，他独立完成了170余万字的研究成果。作为他博士后研究工作的指导教师，对他的健康成长我感到由衷欣慰，希望他继续勤奋用功，取得更加丰硕的科研成果。

2000年8月26日

Preface

Gao MingXuan

Feb. 26 2000

Criminal Law Science not only boasts of a long history in social science, it stands also as a specialized jurisprudence constantly developing with the steps of the times. The focus in the study of our country's modern criminal law has been shifted from studying China Criminal Law as it was before the 1990s to the comprehensive study of the China Criminal Law, Foreign Criminal Law, International Criminal Law and China Interregional Criminal Law. In Fact, with the increasingly globalization of modern economy, a country's legal system which is based on the economy will undoubtedly be influenced by kinds of international factors. Therefore, while we are carrying out a depth study of China Criminal Law, we should conduct an all around study on the Foreign Criminal Law, International Criminal Law and China Interregional Criminal Law which will be of great significance for China to set up an integrated and scientific criminal legal system. Dr. Xie Wangyuan's Thesis Collection—Studies of Criminal Law in China at the Turn of the Century is a highly academic work which covers the study of China Criminal Law, Foreign Criminal Law, China Interregional Criminal Law and so on. It is of great value

to the implementation of our country's criminal legal system.

Studies of Criminal Law in China at the Turn of the Century has collected Dr. Xie's major articles and translations in the past ten years. The book is divided into four chapters with thirty - eight articles. The writer's consistency and persistence in academic study and his diligence and creativeness are revealed throughout the book. The writer boldly raises his original views on a series of academic problems. For example, in the respect of the Chinese Criminal Law: the article "The Study of Criminal Law in China at the Turn of the Century" acknowledges the positive side of the present study in China and it also raises exigent criticisms on the impulsive tendencies in the criminal law study of the country. The article "The Mode of Crime: Review and Expectation" reviews the old theory of the constitution of criminal offenses and proposes the writer's perception of the micro - macro modes of criminal offenses. The article "The Functions of Our Country's Criminal Punishment" objectively analyzes other scholars' theoretical understanding of the functions of our country's criminal punishment and it puts forward the writer's original views on this topic. The article "Extraterritorial Criminal Jurisdiction and Its Realization" delivers an accurate definition of the extraterritorial criminal jurisdiction and the methods of realizing it. In the article "English and American Criminal Law Researchers' Perception of the Nature of Criminal Punishment", the author objectively evaluates the English and American criminal law researchers' perception of the nature of criminal punishment. His analysis is an important reference for us to have a correct understanding of the nature of criminal punishment. The article

“How do the European Countries Probe for the Substitution Measures for the Short - term Imprisonment” analyzes and summarizes the history and present situation of criminal punishment reform conducted by the European League Member Countries. It sets up a reference for our country’s reform in criminal punishment. “Studies on the Portuguese Criminal Punishment System” has studied the Portuguese criminal punishment system and its present development for the first time in China, which fills up the blank of the research in this field in China. “The Making Criminal Law Norms in Welfare States: Economic Crime in Germany” has, from the view of criminal law sociology, systematically studied the legislative course of criminal rules in countering economic crimes in today’s European developed countries. The translation provides references for our country to set up criminal legal systems in countering economic crimes. the article of “On the Characteristics of the Macao Criminal Code” properly analyses today’s Macao criminal law, and points out a lot of parts in the Macao criminal law that are of valuable reference for the criminal legislation of in Mainland China. The article “A Comparative Study of the Aims of the Criminal Punishment in Taiwan, Hong Kong, Macao and Mainland China” thoroughly analyses the aims of criminal punishment in our country’s four different criminal jurisdiction regions. It affirms the more scientific practice of the legislation of the aim of criminal punishment in Macao’s criminal law. In “The Jurisdiction Barriers and Solutions for the Criminal Cases Concerning Both Sides Across the Straits”, the author provides the theoretical structure of both sides’ cooperation in solving jurisdictional problems in the criminal cases concerning both sides across the straits.

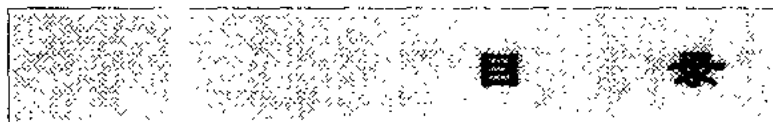
Besides, it is worth mentioning that Studies of Criminal Law in China at the Turn of the Century also collects six non - criminal jurisprudence essays of the writer, the content of which covers civil law, constitution, current political events and so on. It indicates the writer has outstanding achievements not only in the research of criminal jurisprudence, but also in other legal problems. Actually, as a genuine scholar, apart from studying hard on one's major, it is beneficial and necessary to study on relevant subjects because relevant study will largely facilitate one's major research.

Dr. Xie WangYuan was enrolled for postdoctoral research in China Renmin University by the end of 1997. During his postdoctoral research, he has independently accomplished research works amounting to more than 1.7 million Chinese characters. As the tutor of his postdoctoral research, I am pleased to see his success in studying criminal law. And I wish him study harder and have more fruitful researches in the future.

Professor of Law, China Renmin University

Chairman of the Society of Chinese Criminal Law Science

☆世纪之交的中国刑法学研究☆



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