



中国新刑法学

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前 言

1997年3月14日第八届全国人民代表大会第五次会议通过了修订后的《中华人民共和国刑法》。新刑法明确规定了罪刑法定、适用刑法平等、罪刑相适应三个刑法的基本原则,突出了对社会主义市场经济秩序的保护。为适应与犯罪行为作斗争的现实需要,新刑法对一些常见、多发性犯罪作了更加明确的具体规定,针对新出现的一些犯罪行为增设了若干新罪名。新刑法改变了原刑法中一些比较笼统、原则的规定,使一些重要的法定程序和具体制度更加科学和完善。新刑法既是我国刑事立法和刑事司法经验的结晶,又充分体现了鲜明的时代特点,是一部崭新的具有中国特色的社会主义刑法典。学好、用好新刑法,对于进一步坚持和实行依法治国,建设社会主义法制国家,具有十分重要的意义。

1997年3月16日我们在北京召开了全国有关政法院校、科研单位的教授、专家和政法实际部门领导及其所属刑法修改小组成员会议,明确了撰写《中国新刑法学》一书的指导思想,确定本书以法学教材为基本框架,兼顾教学、科研和司法实践的需要,使之成为具有较强的理论性、科学性和实践性的书。经过大家反复讨论,从多视角进行比较研究,最后拟定了总体结构和编写大纲,并对各单位承担的编写任务进行了分工。

1997年5月16日至5月23日在北京召开了第一次统稿会议,经编委会的教授、专家对书稿初审后印出征求意见稿,送政法系统各院、部、委领导和教授、专家广泛征求意见。同年6月23日至7月11日在北京又召开了第二次统稿会议,将各单位修改后的书稿,按照科学、客观、公正的原则进行了调整、修改和充实,使本书基本上体现了立法原意,而又有自己的特点。本书在体例上,与修订后的刑法体系保持一致,分为刑法总论和刑法分论两编;在写法上同以往的刑法学教材和论著相比较有所创新:对有些犯罪构成要素和其他一些定罪量刑因素的排列,作了合理的调整;以新刑法规定的犯罪、刑事责任及其实现方法为主线,重点论述刑法的基本原理、原则、犯罪构成的规格、标准,以及具体的认定和处罚,使本书更具有科学性和应用性。诚望本书出版后,能成为广大读者的良师益友。

在编写过程中,各部、委、院领导及参加编写的同志,献计献策,努力把最新研究成果奉献出来,使本书的内容更加充实。本书是理论与实践相结合的产物,是各

部、委、院等实际部门和理论部门通力合作的成果。但由于时间仓促,书中观点和论述方法难免有不妥之处,敬请广大读者不吝指教。

在本书编写过程中,武汉大学马克昌教授、中国人民大学王作富教授、中国政法大学曹子丹教授提出了不少宝贵意见,中国人民公安大学出版社对本书的出版予以大力支持,在此一并致谢!

《中国新刑法学》编委会

1997年8月于北京

Preface

The revised version of the Criminal Law of the People's Republic of China was approved by the 5th session of the 8th National People's Congress on March 14, 1997. This new Criminal Law has explicitly stipulated three principles, guilt and punishment determined by law; equality in the application of the Criminal Law, and penal discretion fitting the crime. It highlights the protection for the order of the socialist market economy and to fulfill the current need of striking on crimes, it provides clear regulations on some common and frequently occurring crimes and has increased new accusations to some newly emerged crimes. The new Criminal Law has changed some regulations which were generally stated in the original one and made some important legal procedures and systems more scientific and perfect. This new Criminal Law is a brand-new socialist penal code with Chinese characteristics, as it is not only essence of the experiences of our country's criminal law legislation and jurisdiction, but also reflects the apparent character of this era. A good study and application of this Criminal Law will bring great significance to running the country and building a socialist country in law.

On March 16, 1997, we held a meeting in Beijing with the attendance of the experts and professors from the country's relevant universities, institutes and research organizations of political science and law, the leaders from practical juridical departments and the members of the affiliated Criminal Law revising group. The guiding ideology in writing the book *New Theory of Chinese Criminal Law* was defined then and it was determined that this book would be in the basic frame of law teaching material and give consideration to the needs of educational purpose, scientific research and juridical practices, thus, the book will be relatively theoretic scientific and practical. After repeated discussions and comparison research from different angles, the complete structure and writing program were finally accomplished and the writing work was assigned to all the parties involved.

From May 16 to May 23, 1997, the first meeting on drafting checking was held in Beijing. After primary examination by the experts and professors of the editorial board, the first draft was printed and distributed to the leaders, experts and professors of all the councils, ministries and commissions in political and law

system to collect back suggestions . From June 23 to July 11 in the same year , the second meeting was also held in Beijing and during which the revised manuscripts of all the writing parties were adjusted , revised and substantiated according to the principle of science , objectivity and justice and so the book basically reflects the original purpose of legislation and meanwhile carries its own character also. In layout , the book is divided in two parts , General Exposition and Separate Exposition , in Consistent to the revised Criminal Law system ; the book also brings forth new ideas in composition as compared with the former criminal law teaching material and books , it has made some more reasonable adjustments in the display of the elements forming the crimes and penal discretion ; and following as a main line the crimes , criminal responsibilities and their ways of realization which have been stipulated in the revised New Criminal Law , the book lays emphasis in expounding the basic ideology and principles of criminal law , specifications and standards of crime components , and the relevant convictions and punishments as well. These have made the book itself both scientific and practical. We hope it will become a good teacher and helpful friend of the readers after its publication.

In the composition of the book , the leaders of all the ministries , councils and commissions and all the writers gave many useful propositions and made every effort to bring forth newest research achievements to enrich the content of the book. This book is the fruit of theory integrating with practice and cooperation between the theoretical circles and the practical ministry , commission and council departments . However , as the time given was so short , the views and method of exposition may carry some improper points and corrections from the readers will be greatly appreciated.

We would hereby give our thanks to Prof. Ma Kechang from Wuhan University , Prof. Wang Zuofu from China People's University and Prof . Cao Zidan from China University of Political Science and law , who had given us lots of precious suggestions during the composing of this book , and thanks will be also given to the Publishing Housing of China People's Public Security University which gave its great support in the publication of this book.

The Editorial Board of New Theory of Chinese Criminal Law

August, 1997, in Beijing

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