

Limitation and Predicament of the Theory of Legal Goods: Understanding the Historical Factors that Inducing Failure of Transformation into the Theory of Legislation

Tzung-Min Huang *

Abstract

This article is a preparative study of another topic (how to apply the framework of proportionality thinking to criminal legislation activities) to explain why the theory of legal goods cannot be successfully transformed into a kind of legislative theory to support the necessity of abandoning existing law theory and to open up a new thinking framework aimed at criminal legislation. Faced with the weakness of law theory, it is generally blamed on the lack of concept definition. This article will point out that the failure of law theory actually comes from the fact that it has been fixed in a certain mode of thinking during the course of theoretical development. The limitation of ability was later expected to play more than originally intended.

After Welzel's clarification on the "legal goods" and the "normative itself", the problem consciousness of the legal goods theory has been transformed into a broader "object of criminal protection", which has led to a dispute between non-price and non-price in the law of non-price. On the other hand, "the concept of legal interests in criminal policy" has become the new popular research orientation of legal theory. However, the theory of legal interests influenced by Feuerbach and set in the form of "range of penalty measures" (method-based) has been adopted. The use of the information is deemed to be a prerequisite, restricting the legislator's imagination of the solution to the problem, and is inconsistent with the need for thinking in the legislative phase to solve the problem (goal-based). It is doomed to be difficult to successfully transform into a theory of legislation.

* Assistant Professor, Department of Law, Chinese Culture University.

E-mail: hzm6@ulive.pccu.edu.tw

Regardless of whether or not they initially had expectations of legal theory, they were actually due to the misunderstanding of “theory of liberalization of legal principles.” In the face of the new legislative trend under today’s “penalty tactics”, there is no way to correspond to the method of legal interests. Therefore, it is necessary to address the need for comprehensive thinking at the legislative stage, and to design a more appropriate discussion framework for funding.

Keywords: legal goods, legislative theory, Feuerbach, penal activism, history of criminal law theory