

From the Reform of German Criminal Law to Analyze the Theoretical Basis of the Sex Crime

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Abstract

The purpose of this paper is to analyze the theoretical basis of sex crimes, and take the opportunity of the discussion before and after the reform of the criminal law in Germany in 2016. This paper points out that after the criminal law reform, which makes coercion means no longer a necessary condition for sexual crimes, the concept of sexual autonomy will become the key of the interpretation for sex crime in the future. The following thesis will also in the paper be substantiated. First, the legitimacy why sexual autonomy can be independent from the general free sphere to be regulated comes from the particularity and reality of the subject concept itself. It can't be justified by the abstract form of freedom; such a concept of subject is also unacceptable. Human, as subject, is a unity of form and substance. The individual person must realize his freedom or free life in reality. In assessing his or her self-determination, the specific conditions and the particular situation in which the decision is made should be considered together. Self-determination is a normative construct that assesses and distributes jurisdiction in criminal law. A concrete concept of self-determination must therefore be assumed in order to fulfill this dogmatic function. Second, the particularity of individual self-determination in sexual interaction is that sexual elements link the sexual ethics in the external social context with the personality and self-identity of the inner individual. Such traits lead to the requirement that the law (especially the criminal law as a typical *jus cogen* law) must be particularly cautious when legislating the rules of interpersonal sex interaction. On the one hand, it must consider the uniqueness of sexual interaction, raise the normative threshold of self-

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determination, and on the other hand it must be careful not to over-enhance the risk of certain sexual ethics.

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