

從一事不再理原則談案件的 單一性與同一性

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關鍵詞：一事不再理、單一刑法權理論、案件同一性、再審、法安定性

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摘 要

由於我國刑事訴訟法制並未明文一事不再理之內涵，因此造成以單一刑罰權事實（同一案件）作為一事不再理適用對象之見解，支配我國實務已逾一個世紀。在過去糾問模式之訴訟架構中，或以法院有義務依職權調查發現實體犯罪真實作為傳統實務之正當化基礎，不過在改良式當事人進行主義之結構中，因法院依職權調查之義務已受到實質限縮，因此傳統之實務見解與現行刑事訴訟法制已出現格格不入之齟齬。既然一事不再理原則應以同一罪名為判斷依據，原確定判決之既判力自不應再及於原判決所不可能審理之罪名與犯罪事實，從而同一案件中未經審理之罪名與犯罪事實，即存在另行追訴審理之空間。本文認為，只有在單一刑罰權規範目的被滿足之條件下，法院才能獲致單一刑罰權之法律效果，也只有已經整體評價複數犯罪事實並獲得單一刑罰權法律效果之確定判決，才足已發生後訴訟程序不得再行追究單一刑罰權事實一部或全部之一事不再理效力。這樣的處理模式除可使得法院判決之結果符合實體刑法之規定外，也符合保護被害人權益之程序目的。或謂裁判之安定性恐將因此有所犧牲，在維護訴訟結果具體妥當性之目的下，亦即在更大公益目的之追求下，有限度地限制裁判安定性，並不違反比例原則之內在限制。

From Double Jeopardy to the Same Offense Rule

Chang, Ming-Woei

Abstract

Since there is no double jeopardy clause in the ROC Criminal Procedure Code, the single punishment theory dominates the ROC criminal justice system for more than six decades. Maybe the theory work well under the inquisitorial practice, but it would face troubles resulting from accusatorial reforms in the criminal justice system. While the ROC government ratified the International Covenant on Civil and Political Rights, Paragraph 7 of Article 14 of the convention also becomes effective in domestic criminal cases. The traditional theory thus faces challenges to change. This study suggests to abandon the traditional theory and tries to establishes new standards according to the substantial criminal law. Without completely applying the substantial criminal law, the single punishment theory would not apply. This suggestion would resolve what has confused the practice and protect rights of victims. Although there might be criticism concerning the perspective of stability of law, this suggestion focusing the adequacy of law still meets public interest for the most.