

論行為規範及制裁規範 與犯罪評價之論理關係（上）

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摘要

無論係成立犯罪所不可或缺的「不法」與「有責性」，或決定刑罰發動依據的罪數評價、及刑罰效果的刑罰裁量，皆不斷地在進行價值判斷，因此評價者所秉持的立場將會影響刑法當中各種評價的結果。然而，同樣的價值立場在面對刑法當中各式各樣的爭議問題時，可能面臨因立場與論理的極限而有所妥協，導致在刑法理論體系中的立場前後不一致，這種情形對於刑法研究者而言，雖然係刑法理論的本質與特色所使然，但如何建構一個具有價值取向一致性的刑法理論體系，且能圓滿地解決刑法當中各種爭議問題，不啻為刑法研究者所追求的終極目標。因此，本文基於行為規範與制裁規範的規範概念，與刑法理論中的行為無價值論與結果無價值論的評價立場相結合，如何闡述這種具有評價立場的行為規範及制裁規範與刑法理論體系的對應關係，嘗試地提出具有評價立場一致性的刑法理論體系。

A Discussion on Ethical Relations of Behavioral Norm and Sanction Norm With Crime Evaluation

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Abstract

Whether or not, the essential factor of Crime "illegal" and "criminal accountability," or the penalty based on the evaluation to the number of crimes, the effect of punishment and of the penalty discretionary penalty, are constantly making valuable judgments. Therefore, the position of the evaluator will determine the results of various evaluations in the criminal law. However, when the same position faces the issues in the criminal law, it may compromise, leading to the contradiction of criminal law theory, so how to avoid this situation is the goal to the researchers who are into the criminal law. Therefore, this study is based on the behavioral norm and sanction norm, and to combine the theory of the nature of the crime to state how the corresponding relation works in the behavioral norm and sanction norm with crime Evaluation, as well as to further propose an evaluation system of criminal law theory equipping the consistency stance.