A Book Review of *Ground and Limit of Victim as a Part in Action: Research on Victim’s Right of Action in Public Prosecution*

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**Abstract:** Under the frame of the principle of state prosecution, the crime is deemed to be a kind of illegal act provided with social harmfulness and so the state is maintained the only victim of crime. The victim’s right of prosecuting autocephaly the crime is deprived in the case of public prosecution, and the state prosecution agency replaces the victim to be the public power of seeking the justice of criminal law. Compare brilliantly with the problem of the accused’s right protection highly praised by the jurists in the past, more and more jurists begin to pay close attention to the victims’ problem of their procedural right. Among the researching of the victim’s problems, the most challenging one is the victim’s status in the criminal proceedings. The book *The Ground and Limit of the Victim as a Part in Action: Research on the Victim’s Right of Action in Public Prosecution* written by HAN Liu leads the theory of the right of action into the problem of the victim’s status in litigation, demonstrates the independence of the victim’s right of action relative to the right of prosecution. The book discusses the basic principle of the victim’s right of action and the research belongs to typical research of speculative and philosophic theory. Based on normative quotation, clearheaded logic and fluent reasoning, the whole book forms a complete system. And being an outstanding example of discussing justice for victim, the book provides a novel and original theory to explain and solve the problem of the victim’s status of the part in criminal prosecution procedure.

1. **Introduction**

In recent years, in pace with the continuing significant transition, the criminal justice system is changing slowly but deeply. Compare brilliantly with the problem of the accused’s right protection highly praised by the jurists in the past, more and more jurists begin to pay close attention to the victims’ problem of their procedural right. Particularly, because of the rise of the moment of the victim-offender reconciliation, the omission of the plea bargain system and the defect and deficiency of the problem of the accused’s right protection in the practice of the criminal justice system, the jurists become more and more interested in the victims’ problem.

The research of the problem of the victims’ right protection can be launched in different dimensions. From the perspective of the private prosecution brought by the victim, it is a problem of the system of private prosecution comparing with the public prosecution. From the perspective of ensuring the victim obtaining civil compensation, it is a problem of the relation among the tort, the crime and the accused of the civil compensation and the criminal proceedings. From the perspective of the victim-offender reconciliation and the plea bargain system, it is a problem of the relation of the adversarial judicature and the cooperative justice. As it should be, among the researching of the victim’s problems, the most challenging one is the victim’s status in the criminal proceedings. Because, under the frame of the principle of state prosecution, the crime is deemed to be a kind of illegal act provided with social harmfulness and so the state is maintained the only victim of crime. As the integral part of the system of the state recourse, the criminal investigation and the public prosecution are belong to the state’s legal response to the crime.[1] And as one of the specific
executive powers, the criminal investigation power may infringe upon human rights when it is exercised. As the most serious tort, the nature of the private infringement of the crime is ignored, the victim’s right of prosecuting autocephaly the crime is deprived in the case of public prosecution, and the state prosecution agency replaces the victim to be the public power of seeking the justice of criminal law. As it were, to research the victim’s problems innovatively in prosecution procedure, the researchers will face a series of strict of conventional principles, theories and doctrine.

The Ground and Limit of the Victim as a Part in Action: Research on the Victim’s Right of Action in Public Prosecution, written by HAN Liu and published by the press of Peking University in 2010, initatively research the victim’s right of action in public prosecution. In this book, the author leads the theory of the right of action into the problem of the victim’s status in litigation, demonstrates the independence of the victim’s right of action relative to the right of prosecution. At the same time, the author compares the victim’s right of action with the civil plaintiff’s and the accused’s right of action and demonstrates the particularity of the victim’s right of action.

2. The Written Cause of the Book

A famous legal proverb in the west says that criminal justice is justice for criminal which means that the conflict of interest between every individual citizen and the nation embodies most sharply in criminal justice and the criminal suspect and the accused who are in natural weak positions can be violated easily by the nation’s power, so judicial justice should embody the security of the fundamental rights of the criminal suspect and the accused. This kind of judicial philosophy affects profoundly and moulds modern criminal justice system, and modern criminal law is praised as the Constitution of the offending people's Congress and equally, modern criminal procedure law is praised as the Charter of the accused. But in England, people say that the victim should be the core of modern criminal justice system. That is justice for all. So, the criminal justice is justice for criminal or for all? Why modern criminal justice system believing in justice for all should put the victim but not the criminal suspect at the core of this system?

In fact, sympathizing with the victim has its source in people’s sense of justice and also in people’s natural fears to the crime. Historically, people’s fear of “leviathan” (sovereign power, public power) which runs amuck breeds the idea of modern criminal justice. Laying the foundation on the principle of a legally prescribed punishment for a specified crime, the principle of presumption of innocence and evidence refereeing, modern criminal justice restricts the reason, the procedure and the mode of the nation’s power of punishment in nature. Justice for criminal is considered the most important standard of justice, but the victim’s subjective absence reflects structural characteristics of modern criminal justice system dominated by the nation, human right protection being its pursuance of the value has nothing to do with the victim. In substantive criminal law, the nation “run the contradiction off”, drove away the victim from the place relative to the crime and regarded its self as the primary victim. In criminal process law, the principle of state recourse prosecution made the victim initiator of the criminal case but most of the time they were the outsider. In the criminal evidence law, the victim was only a witness. So the victim became a two-fold loser, to the crime and to the nation.

After hundreds of years’ development, the idea of human right protection deeply rooted in the hearts of the people and more and more complete legal system prevents the legal state from acting willfully. On the other hand, the crime is not controlled effectively along with development of the rule of law. Just the opposite, during the criminal prosecution, the nation bears more and more venture of losing the case made by more and more legal barriers which stimulates the crime’s fluke mind of escaping the punishment. When the people discontent with the nation’s weakness because of their beset by the threat of crime and to reduce the crime again becomes the first option to realize social justice, justice for all begins to return to justice for victim. The victim abandoned in the dark see the first light of morning again. The book The Ground and Limit of the Victim as a Part in Action:
Research on the Victim’s Right of Action in Public Prosecution is an outstanding example of discussing justice for victim.

3. The Discourse Logic of the Book

Now, two trains of thought lie in the research of the victim. One is traditional victimology which researches victimization, type and characteristics of victims, compensation of the victim and victim prevention. The other is criminal procedure protection of the victim which researches the victim’s status in litigation and litigious right, and the relationship between the victim and other litigation roles. HAN Liu, the author of the book spreads his research along with the second train of thought. And the author pays close attention to how the right of the victim guaranteed in criminal proceeding and how to seek the balance between the protection of the victims’ and the accused’s right.

The author’s train of thought to solve the problems above is as the follows. With an eye to substance meaning and procedural meaning, the book tries to clarify the counterpart and relationship of the victim in different criminal litigious stage, separate two groups of contradictory relations which are the contradictory relation of the victim and the crime, and the victim in criminal proceeding and the accused, reveal the essence of the criminal litigation procedure to be conviction of the accused and sentencing of the offender, and so the pivot of the just balance should swing between the victim and his counterpart along with different the stage of criminal proceeding.

In this book, the victim’s right of action provides a new theoretical tool for researching the problem of the victim’s criminal procedure protection, changes the angle of observing and researching criminal proceeding, and contributes to get rid of the bondages of defendant centralism and probes to establish another criminal justice system to equally protect the victim and the accused.

Firstly, the theory of the right of action provides a substantial theoretical basis for the ground of the victim as a party. The right of action grows out of profit of actions and safeguarded by the judicial power of the state. Though the independence of the victim’s interest was formerly known, it was not ascended to a high degree of the right of action under the principle of the supremacy of national interests. Without the right of action, why can the victim attend the action? When the victim’s right of action is established, the structure of the criminal action will change—the three-legged structure based on the three sides of the accusing party, the defense and the referee will evolve into the four-legged structure based on the three sides of the accusing party, the defense, the referee and the victim.

Secondly, the research of criminal procedure return to the settlement of criminal dispute when the emergence of the victim’s right of action is regarded as the starting point of criminal procedure but not the start-up of the right of state recourse. And then, as the procedure of the settlement of criminal dispute, criminal procedure can be anew divided into three stages of before the action, before and after the conviction.

Thirdly, the theory of the right of action develops newly in the practice of the protection of the victim. The victim-offender mediation has expanded the limit of the victim’s right of procedure selection and the victim gains the chance of negotiations with the perpetrator. The dispute settlement made by the two sides is the result of civil entity disposition and criminal entity disposition made by the victim and the perpetrator. This kind of right of action contains the right to dispose of the entity breaks through traditional theory of right of action.

4. The Writing Style of the Book

The writing style of the book deserves to be praised highly. The author accomplished this academic writing which accords academic standard and has its own characteristic based on his solid basic skills of law and excellent ability of mastering words. And also based on normative quotation, clearheaded logic and fluent reasoning, the whole book forms a complete system. What is especially worthy of affirmation is that many theories of civil procedure are used for reference in this book, such
as the theory of the right of action, the theory of the litigant and the theory of the third party. The research method of interdiscipline enhances persuasiveness and scientificalness of reasoning. Furthermore, the author is adept in terminology and summarizing model because of his accurately grasping related notions and problems which enhances intuitiveness and vitality of discussing.

5. The Innovative Viewpoints of the Book

The book discusses the basic principle of the victim’s right of action and the research belongs to typical research of speculative and philosophic theory. The innovative viewpoints of the book are as the following. Firstly, the author reveals the limitations of the theory of civil litigants when it used to explain the problem of criminal litigants which impel us to think profoundly if the victim should be the criminal litigant. And so the theory of the right of action can be introduced to the research of criminal procedure. Secondly, the author argues the dual nature of the crime which is private infringement and social harmfulness through introspecting the nationalist concept of crime and the principle of state recourse prosecution. Thirdly, the author puts forward criminal procedure four-angle structure based on the theory of subject of action, pushes forward the nondeterminacy of the interests of the victim and develops the traditional criminal procedure four-angle structure based on the function of action. Fourthly, the author explains anew the interest relationship between the victim and the accused, sums up three models of antinomy, accordance and sharing and analyses the reasonable restraint of the principle of balance of accusation and defense and the special safeguard of the accused. Fifthly, the author presents the theory of three stage of criminal procedure which means the whole criminal procedure is divided into three stage of before the action, before and after the conviction, reveals the essence of conviction and measurement of penalty is to convict and sentence to the accused and argues the necessity of separating conviction procedure from sentencing procedure.

6. Conclusion

The book reveals the legitimacy of the victim being a criminal litigant comes from his right of action through importing the theory of right of action in the science of criminal procedural law research and will provide a novel and original theory to explain and solve the problem of the victim’s status of the part in criminal prosecution procedure. Many innovative ideas in this book such as the application of the right of action in criminal procedure, the particularity of the criminal litigant theory, the four-angle structure of criminal procedure, can open up a new road of correlation researches.

References


