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Clarification of the Natural Interpretation in Criminal Law—On the Discretion of Criminal Justice

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Abstract: *In the field of criminal justice in China, there has been ongoing debate over the application of natural interpretation and discretion. This paper first discusses the debate surrounding natural interpretation from the perspective of criminal law, clarifying the nature of natural interpretation as a reason for interpretation rather than a method of interpretation. It elaborates on the three bases of natural interpretation: the progressive nature of logical relationships, the sameness of the nature of things, and the necessity of legal application. Secondly, using the case of Wang Chengxue as an example, the paper clarifies the misuse of natural interpretation in judicial practice. Regarding the discussion of criminal discretionary power, the paper first explains the concept and nature of criminal discretionary power from a theoretical perspective. Then, taking the Deng Yujiao case as an example, it clarifies the improper application of criminal discretionary power in China's judicial practice. Finally, based on the discussions of natural interpretation and criminal discretionary power, the paper compares and analyzes the two, aiming to provide some references for China's judicial practice.*

Keywords: *Natural Interpretation, Criminal Discretionary Power, Criminal Law, Proportionality of Crime, Responsibility and Punishment*

1. Introduction

Due to the limitations inherent to codified law and the complexity and uncertainty of cases in our country, to achieve individual justice, advance procedural justice, compensate for the lag in legal provisions, and maintain the dignity of judicial organs, natural interpretation and criminal discretionary power inevitably play a crucial role in the field of criminal justice in China. Both can influence the final judgment and sentencing, making it essential to correctly understand, differentiate, and apply natural interpretation and criminal discretionary power. This article is based on this premise, aiming to provide a reference approach for the work of criminal justice practice.

2. The Nature and Basis of Natural Interpretation and Criminal Discretionary Power

2.1. The Nature and Basis of Natural Interpretation

Montesquieu said, "The freedom of the citizens primarily relies on good criminal law"; Locke stated, "There must be a long-term effective rule to serve as a guideline for life" [1,2]. This shows that criminal law needs to regulate human behavior through clear provisions, constantly acting as society's minimum rule. People can understand which behaviors are not permitted or acceptable by law, and what kind of punishment will follow those legally unacceptable actions. However, the "Criminal Law of the People's Republic of China" (hereinafter referred to as the "Criminal Law"), as codified law, inevitably has certain lag and defects. The purpose of interpreting criminal law is to make the provisions within criminal law more standardized and rational, bringing them as close as possible to a degree of clarity that leaves no room for interpretation [3,4].

In the historical judicial practice of our country, the Tang Code once stipulated that "for judgments of crimes without a specific clause, if one deserves to be convicted, then heavier cases should be referenced to clarify lighter ones; if one should not be convicted, then lighter cases should be referenced to clarify heavier ones." The rule of natural interpretation reflected here still holds applicability in today's legal academia: to reference lighter cases to clarify heavier ones and vice versa [5,6]. The so-called "reference lighter cases to clarify heavier ones" is a standard for judging conviction. It means that, at the time of conviction, according to the principle of legality in sentencing, lighter criminal acts are referenced to judge whether a similar act causing more significant damage or worse

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social impact constitutes a criminal act. For example, Article 329 of our Criminal Law explicitly stipulates the "crime of snatching state archives," but does not specify the "crime of robbing state archives." Analyzing this, robbery not only includes the subjective act of "snatching" but also involves violence, making its social harm greater. Therefore, according to the principle of natural interpretation "reference lighter cases to clarify heavier ones," robbing state archives can naturally be recognized as the "crime of snatching state archives." The so-called "reference heavier cases to clarify lighter ones" is a standard for determining non-conviction. It means that, at the time of determining non-conviction, by referencing heavier acts, it is judged whether a lighter act of the same nature constitutes a criminal act. If the heavier acts do not constitute a crime, then the lighter act of the same nature naturally does not constitute a crime either. For instance, Article 389 of our Criminal Law clearly states, "Giving property to a state functionary due to being extorted, without obtaining improper benefits, is not considered bribery." According to the principle of natural interpretation "reference heavier cases to clarify lighter ones," giving property to non-state functionaries due to extortion, without obtaining improper benefits, naturally does not constitute bribery. Another example is Article 65 of our Criminal Law, which stipulates that individuals under eighteen years of age are not considered repeat offenders. If a minor under eighteen is not considered a repeat offender for multiple instances of murder, then according to the principle of natural interpretation "reference heavier cases to clarify lighter ones," a minor under eighteen being criminally punished multiple times for theft also naturally does not constitute a repeat offender.

In the field of criminal law in China, there is some controversy regarding the nature and basis of natural interpretation.

Professor Zhang Mingkai believes that natural interpretation is a "natural explanation" made when there is no explicit provision in the law, based on the principle of legality, taking into account logical naturalness, factual naturalness, and legal naturalness. It falls within the category of reasons for interpretation [7]. Professor Chen Xingliang considers that natural interpretation is a method of interpreting legal texts through natural reasoning when the criminal law does not have an explicit stipulation, but its meaning is already included within the legal provisions [8]. Professor Li Xiang views natural interpretation as a method of criminal law interpretation that, in the absence of 'explicit' stipulations in criminal law norms, uses the unity of factual and logical naturalness as the basis for interpretation [9].

2.1.1. The Nature of Natural Interpretation

Summarizing the above perspectives, it can be observed that there are two viewpoints regarding the nature of natural interpretation in the academic community: the first viewpoint considers natural interpretation as a reason for interpretation, while the second views it as a method of interpretation. The essence of this debate revolves around the difference between "ought" and "is."

Scholars who view natural interpretation as a reason for interpretation believe that "criminal judges fundamentally do not have the right to interpret the law, because they are not legislators." Here, "interpreting the law" is seen as treating "interpretation" as a method, and judges do not have the power to use this "method of interpretation" [10]. If natural interpretation is regarded as a method of interpretation, rather than a reason for interpretation, following this logic, it suggests that the conclusions drawn from natural interpretation can be directly applied to sentencing and conviction. In the absence of explicit legal provisions, this clearly contradicts the principle of legality in sentencing.

However, the author believes that it is more appropriate to view natural interpretation as a method of interpretation. If natural interpretation is considered a reason for interpretation, taking Article 329 of the "Criminal Law," which stipulates the "crime of snatching state archives," as an example, the conclusion derived from natural interpretation would "ought" to treat robbing state archives as the "crime of snatching state archives." This is an interpretation of the legal text on the "ought" level, but natural interpretation cannot provide a definitive conclusion on whether the interpretation's conclusion complies with other provisions of criminal law [11]. This is not only of little help to the application of law in judicial practice but also invisibly "increases the burden" on judicial practice and could lead to more arbitrary applications of "natural interpretation" in academia. Conversely, if natural interpretation is regarded as a method of interpretation and included within the scope of logical interpretation, placing it on the same level as expansive interpretation, restrictive interpretation, natural interpretation, opposing interpretation, corrective interpretation, and comparative interpretation, it could better solve some practical problems. Moreover, viewing natural interpretation as a method of interpretation does not occur in the absence of "explicit stipulations" in criminal law, but rather on the premise that the criminal law does not "explicitly" state, yet its meaning is implied within the legal text, which does not

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contradict the principle of legality.

2.1.2. The Basis of Natural Interpretation

Summarizing the viewpoints from the academic community, it can be seen that most scholars believe the basis of natural interpretation primarily includes the following three aspects:

The first is the progressive nature of logical relationships. Based on the restraint characteristic of criminal law, to prevent and suppress the misuse of natural interpretation, I believe that it only conforms to the progressive nature of logical relationships when there exists an inclusive or subordinate relationship between the legal text and the concept being interpreted [12,13]. For example, Article 350 of the Criminal Law stipulates: "...illegally manufacturing, buying, selling, transporting acetic anhydride, ... or other materials and preparations used for producing drugs, ... shall be ... punished ...". The common ingredient for producing methamphetamine, "ephedrine," is not explicitly specified in this article, but still belongs to "other materials and preparations used for producing drugs." The legal text and the concept of "ephedrine" being interpreted have an inclusive relationship, thus natural interpretation can be applied. Similarly, "robbery" compared to "snatching" constitutes a logical progression. Analogous to the concept hierarchy of "kingdom, phylum, class, order, family, genus, species," "snatching" can be likened to "genus," whereas "robbery" can be likened to "species," having an inclusive and subordinate relationship in concept, and thus natural interpretation can also be applied.

The second is the sameness of the nature of things, meaning that there is a similarity in the nature of things between what is stipulated in the legal text and the concept being interpreted. This sameness provides the space for the application of natural interpretation, which is widely recognized in the academic community. For example, family cars and electric tricycles both fall under the category of "motor vehicles." In the provision of "dangerous driving" under Article 133 of China's Criminal Law, their nature is similar. However, aircraft do not belong to "motor vehicles," and clearly, someone operating a drone while under the influence of alcohol would not fall under the scope adjusted by this article because "drones" are not considered "motor vehicles" and therefore, natural interpretation cannot be applied.

The third is the necessity of legal application. Most scholars believe that the basis for applying natural interpretation includes only logical naturalness and factual naturalness. The necessity of legal application inevitably involves subjective value judgments and cannot serve as a basis for the application of natural interpretation [12-14]. However, I argue that the purpose of enacting the Criminal Law is to punish crimes and protect the people. It should serve as the premise and foundation for the application of natural interpretation. Only if it meets the necessity and legitimacy of legal application, and aligns with the legislative intent, can the legislative intent be reflected through the interpretation of the law, thereby protecting legal rights [15]. For example, compared to simple kidnapping, the crime of "murder after kidnapping" infringes on legal rights to a more severe degree and requires more adjustment by criminal law. Therefore, applying natural interpretation to protect the infringed legal rights aligns with the purpose of the legislation.

Only when all three of the above conditions are met, can natural interpretation be applied.

2.2. The Concept and Nature of Criminal Discretionary Power

The broad concept of discretionary power refers to the right of the authority holder to freely exercise their rights within the scope permitted by law. Discretionary power is manifested in various stages, including the case-filing stage by public security organs, the examination stage by prosecutorial organs, during civil or criminal judicial adjudication, and in the execution of power by administrative organs. This article focuses solely on the exploration of criminal discretionary power.

Montesquieu once mentioned in "Persian Letters": "Punishments should be proportionate to the seriousness of the crime" [12]. On the one hand, this requires that criminal law's sentencing provisions should be as clear as possible; on the other hand, it also reflects the role of discretionary power in judicial practice. For example, a criminal suspect accused of intentional homicide should receive a lighter sentence if they confess voluntarily, compared to those who do not confess. This aligns more closely with the public's basic sense of justice and maintains the dignity and credibility of judicial decisions. Depending on the authority in question, criminal discretionary power can be divided into the discretionary powers of public security organs, prosecutorial offices, and courts.

According to the provisions of the "Criminal Procedure Law of the People's Republic of China" (hereinafter referred to as the "Criminal Procedure Law"): "...when it is believed that there is no

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criminal fact or the criminal fact is significantly minor, and there is no need to pursue criminal responsibility, the case shall not be filed..." This indicates that public security organs possess criminal discretionary power. The criminal discretionary power of public security organs is mainly reflected in two aspects: First, deciding whether to file a case. However, this discretionary power is not absolute and strictly speaking, it is subject to the supervision of the prosecutorial organs, not possessing absoluteness. Second, during the investigation process, public security organs also have a certain degree of discretionary power, which is based on fairness and justice and aimed at obtaining legal evidence, representing a broad sense of discretionary power.

Whether the prosecutorial organs possess criminal discretionary power is related to the system of prosecution. Internationally, there are two systems of prosecution: the mandatory prosecution system and the discretionary prosecution system [9]. The mandatory prosecution system inherits the retributive thought of the classical school of criminal jurisprudence, considering criminal law as retribution for criminal actions, adhering to the principles of guilt necessitating punishment and proportionality of crime and punishment, and using the degree of infringement on legal rights as the standard for sentencing. Its purpose is to protect citizens' freedom and punish crimes. Under the mandatory prosecution system, the prosecutorial offices do not have the discretionary power to decide whether to prosecute; the discretionary prosecution system inherits the thoughts of the positivist school of criminal jurisprudence, denies retributive theory, considers the degree of subjective malice as the standard for sentencing, and views penalties as a means to maintain social order and prevent crimes, granting prosecutorial offices significant discretionary power. I believe that the prosecution system in our country essentially integrates the principles of mandatory prosecution and discretionary prosecution, primarily following mandatory prosecution with discretionary prosecution as a supplement to cover the loopholes of mandatory prosecution. Our country's prosecutorial organs have criminal discretionary power, but not as extensive as those in common law countries like the UK and the US, which enjoy a high degree of discretionary power. Instead, it is a criminal discretionary power restricted and supervised by law. According to the Criminal Procedure Law of our country, prosecutorial organs can decide not to prosecute if, after supplementary investigation, the case still lacks sufficient evidence or does not meet the conditions for prosecution. For minor offenses, where the criminal law stipulates no need for sentencing or exemption from punishment, a decision not to prosecute can also be made.

It is undisputed that criminal judges possess criminal discretionary power. The so-called criminal discretionary power of judges refers to the power of judges, for the purpose of justice, to make different rulings on criminal cases lawfully and reasonably within the scope allowed by law, when the law does not provide explicit provisions or when it is impossible to make a judgment based on existing provisions, adhering to the basic principles of legality in sentencing and the proportionality of crime, responsibility, and punishment [16-18].

3. Clarification of the Abuse of Natural Interpretation and Discretionary Power in Practice

3.1. Natural Interpretation

When applying natural interpretation, it is important to distinguish between natural interpretation and extensive interpretation. Professor Chen Xingliang believes that natural interpretation should embody both the "natural" and "logical" aspects, which should be unified and indispensable[8]. The term "natural" refers to making reasoned inferences based on clear facts of the case and solid and sufficient evidence, while "logical" indicates the logical relationship between the concepts and facts to which natural interpretation applies, including the relationship of species and progression. The logical relationship of species refers to the concept applied in natural interpretation encompassing the facts being interpreted. For example, "apple" naturally belongs to "fruit," and "white" naturally belongs to "color." The logical progression relationship entails that the concept applied in natural interpretation and the interpreted facts should exhibit a degree of escalation or attenuation. For instance, "robbery" not only infringes upon others' property but also violates their personal rights. In comparison, "theft," which solely infringes upon others' property interests, is relatively less severe. However, it's essential to differentiate logical progression relationships from the expansion of material attributes. For instance, interpreting possession of a "cannon" as possession of a firearm, thereby establishing the crime of illegal possession of firearms and ammunition, clearly falls under Extensive Interpretation or even analogical interpretation. This clearly violates the principles of proportionality between crimes and punishments and legality in criminal law.

For example, in the case of Wang Chengxue and others suspected of corruption, [For details, please

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see Wang Chengxue and Qin Ximei's Corruption First Instance Criminal Judgment, (2016) Henan 1324 Xingchu No. 526.] The court of first instance held that "the management and flow of the compensation funds in this case were transferred to the township government finance offices through the county treasury payment and settlement center, and then distributed by village cadres according to standards. The funds were placed under government financial management. In accordance with Article 91 of the Criminal Law, To put it lightly, the compensation belongs to public property.[19]

According to Article 91 of the Criminal Law of China:

"The public property referred to in this Law refers to the following properties:

(1) State-owned property;

(2) Property owned collectively by the masses;

(3) Property donated by the society for poverty alleviation and other public welfare undertakings or special funds.

Private property managed, used, or transported by state organs, state-owned companies, enterprises, collective enterprises, and people's organizations shall be treated as public property."

The application of "lightening the heavy to show the light" in the initial court's judgment in Wang Chengxue's alleged embezzlement case may seem natural and smooth, but upon careful comparison of the legal provisions and the facts of the case, it can be found that the use of "lightening the heavy to show the light" here is clearly redundant. The property involved in this case is already explicitly stipulated in Article 91 of China's Criminal Law, which states, "Private property in the management, use, or transportation of state organs, state-owned companies, enterprises, collective enterprises, and people's organizations shall be considered public property." The application of natural interpretation in this instance should be based on textual interpretation rather than natural interpretation.[20]

In judicial practice in China, there are many instances of the misuse of natural interpretation, such as the misuse of legal provisions already clearly defined, as seen in the case of Wang Chengxue, and the misalignment of comparative reasons, among other situations. [For example, see the Criminal Judgment of Wang Liuzhong for theft, (2016) Su 0211 Xingchu No. 236.]

3.2. Discretionary Power

When exercising discretionary power, it is important to correctly understand and recognize that the discretionary powers of public security units to decide whether to file a case and of procuratorates to decide whether to prosecute are both procedural discretionary powers in criminal matters. Some scholars believe that the logical process of exercising procedural discretionary powers in criminal matters entails cases already identified as criminal but with minor offenses, which are exempted from or have reduced penalties through discretionary decisions. This logic evidently contradicts the principle of legality in criminal law. Moreover, according to this logic, it could be reasonably argued that public security unit and procuratorates have the power to determine guilt and sentencing, which clearly constitutes an overstepping of boundaries, contradicting the provision in China's Criminal Procedure Law that "no one shall be determined guilty without a judgment by the people's court." In the author's opinion, the correct logical process should be: due to the minor nature of the circumstances and the low social harm, the act does not constitute a crime, hence the public security unit or procuratorate makes a decision not to file or prosecute according to law. This does not imply that the public security unit or procuratorate has the power to determine guilt; rather, they exercise procedural powers based on facts, making decisions not to file or prosecute, which means that their decision not to file or prosecute does not imply innocence, and victims can still bring lawsuits to court, unaffected by the decisions of the public security organ or procuratorate not to file or prosecute.[21]

Different from the procedural discretionary powers of public security organs and procuratorates, judges' discretionary powers are substantive. Judges exercise discretionary powers mainly in the sentencing process. Therefore, to correctly apply discretionary powers in criminal matters, it is necessary to clarify the sentencing process. Firstly, the starting point of sentencing should be determined within the statutory range based on the general consummation of the basic facts of the crime, then the baseline punishment is determined by adding penalties based on other criminal facts influencing the crime. After fully considering statutory circumstances, discretionary circumstances, etc., the penalty and preventive punishment are determined successively, and finally, the declared punishment is determined[22]. In the process of determining the starting point of sentencing and the

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baseline punishment, the discretionary power of judges should be limited to avoid non-standard sentencing processes leading to "imbalance in sentencing" or even violating the principle of legality in punishment, promoting the standardization of sentencing. In the process of determining the penalty and preventive punishment, the discretionary power of judges should be fully exercised to avoid mechanical and rigid sentencing processes that may result in judgments contradicting the principle of proportionality between crimes and punishments.

Firstly, the determination of the penalty for culpability inherits the retributive justice idea from the classical school of criminal law. It involves factual assessment based on the degree of the suspect's objective illegal behavior and value judgment based on the degree of subjective culpability, namely the possibility of non-exculpation. The penalty is determined by combining value judgment with factual assessment. After the determination of the culpability penalty, the preventive penalty is decided. The preventive penalty inherits the concept of crime prevention from the empirical school of law, aiming at preventing crime and upholding social justice. It involves making value judgments on the suspect's likelihood of re-offense based on objective facts such as the committed crime, the suspect's willingness to repent, the presence of any confession, and whether the suspect is likely to re-offend or be a repeat offender. It can be seen that the process of determining culpability and preventive penalties both requires judges to exercise their discretionary power in accordance with the principles of legality in punishment and proportionality between crimes and punishments, drawing on past experiences to make decisions that are reasonable, fair, and legal.

Taking the 2009 "Deng Yujiao Case" as an example, the court, in determining guilt and sentencing, considered factors such as the illegality of Deng Guida and Huang Dezhi's prior behavior, Deng Yujiao's partial criminal responsibility due to diminished capacity, and the mitigating circumstances of excessive self-defense and confession, ultimately exercising its discretionary power to rule that Deng Yujiao was guilty of intentional injury but exempt from criminal punishment according to law[23].

4. Distinguishing between Natural Interpretation and Discretion in Criminal Justice

4.1. Differentiation

Distinguishing in nature: discretionary power is a form of authority that is not only evident in the criminal judicial adjudication stage but also in the initial filing stage by public security organs and the inspection stage by procuratorates. It operates not only within the scope of criminal law but also extends across multiple domains such as civil law and administrative law. In contrast, natural interpretation itself lacks subject restrictions because it does not belong to the category of power; rather, it serves as a mode of interpretation. However, it typically manifests during the judicial adjudication stage and is less frequently involved in the initial filing and inspection stages compared to discretionary power.

4.2. Connection

There exists a certain connection between natural interpretation and discretionary power. Due to the lag in statutory law and the uncertainty and complexity of cases in China, achieving fairness and justice necessitates not only the interpretation of criminal law but also the correct exercise of criminal discretionary power by public security organs, procuratorates, and courts. Natural interpretation can assist the subject of rights in correctly understanding and applying legal provisions, thereby providing guidance and limitations for the exercise of discretionary power. In other words, judicial authorities can reasonably and lawfully exercise discretionary power based on their understanding and interpretation of the law, grounded in the pursuit of justice. Various interpretive reasons, including Natural Interpretation, can serve as tools to aid judicial authorities in exercising discretionary power.

Simultaneously, the exercise of discretionary power can be evaluated for its rationality and legality based on the principles of natural interpretation. Natural interpretation can aid in factual judgments regarding liability and punishment, thereby facilitating a more effective exercise of criminal discretionary power in judicial practice.

5. Summary

Both natural interpretation and discretionary power possess dual characteristics. Their correct

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application can drive sentencing standardization reforms, uphold fairness and justice, and promote the development of the rule of law. However, their misuse or mechanical application can undermine judicial fairness and the authority of the law. Therefore, in the process of law enforcement and adjudication, one should avoid perfunctory or mechanical application of natural interpretation or the exercise of criminal discretionary power. Instead, a cautious and comprehensive analysis and judgment should be conducted based on specific circumstances to ensure their rationality and legality in judicial practice, thus ensuring fair judicial decisions and the sound development of the rule of law.

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