



The Relationship Between Criminal Procedural Law of Evidence and the Constituent Elements of Criminal Law

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Abstract. Evidence is the factual basis for identifying a certain act as a criminal offense. From the current academic perspective and tendency, there is a significant disconnection between evidence and crime. Even in studies specifically focused on conviction, most tend to deliberately avoid the arduous task of factual determination and instead concentrate on legal application. However, conviction involves both factual evaluation and legal assessment, and the two aspects are complementary and cannot be neglected. No evidence can override facts and generate the function of legal application. Starting from issues related to factual determination and utilizing the theory of criminal constitutive elements as an analytical tool, deconstructing and analyzing China's theory of criminal evidence, and extending relevant theories of conviction to the scope of "criminal integration" theory, can provide useful references and insights for judicial practice.

Keywords: Criminal procedural law, evidence law, constituent elements

1 Introduction

Domestic scholars hold various opinions regarding the burden of proof. For instance, Professor Sun Changyong proposes that the burden of proof neither belongs to rights nor obligations but rather represents the allocation of legal realization[1]. Therefore, it does not involve the transfer or reversal of burden. Professor Sun also points out three main obstacles to the burden of the proof system in China: first, the principle of separation between investigation and trial has not been fully implemented; second, the presumption of innocence is difficult to comprehensively apply; and third, objective conditions for defendants to fulfill the burden of proof are lacking. China's theory of criminal constitutive elements is closed, meaning that as long as the four constituent elements are met, a crime can be established[2] [5]. If the prosecution were to bear the entire burden of proof, it would be overly burdensome and impractical. Therefore, Professor Sun suggests that even defendants should bear the burden of proof when circumstances require it. If the evidence presented by the defendant raises doubts about their guilt, the prosecution should subsequently bear the burden of proof. According to Judge Deng Xiuming of the Sichuan Provincial High Court, the current legal environment in China has not reached a level where a burden of proof system can be established. Therefore, for the time being, the defendant's criminal burden of proof can be appropriately

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increased to achieve the desired objectives [4]. Considering that there is a certain regularity in the items that defendants can prove and that defendants generally tend to provide evidence of their innocence, it is helpful to improve the efficiency of litigation activities by having the defendant bear the burden of proof in specific areas[6].

2 The Debate on the Relationship Between Criminal Constitutive Elements and Evidence Law

2.1 The Fundamental Connection Between the Two

The primary aim of criminal prosecution in English law is to establish and confirm the link between the defendant's actions and the specific details of the criminal offense [5]. In the context of criminal prosecution within China, the process of identifying cases relies on the assessment of essential elements, all geared towards verifying that certain facts align with the essential components outlined in the Criminal Law that define the respective criminal offenses. This is how the core of criminal proceedings takes shape. When examined from the perspective of evidence law, various aspects of the proof process in criminal proceedings fundamentally revolve around establishing the presence of these essential elements [1].

To put it simply, the fundamental approach to proving guilt in criminal proceedings is to evaluate and confirm the existence of the criminal elements. These elements, on one hand, define the framework of what constitutes "substantive formation," thereby specifying the scope of what needs to be proven. On the other hand, the hierarchical arrangement of these criminal elements dictates the sequence in which the burden of proof is discharged. Throughout the course of criminal proceedings, the transfer and progression of the burden of proof adhere to the logical structure of this hierarchical system.

Moreover, the system of criminal elements significantly influences the allocation of the burden of proof, setting boundaries that limit the extent of proof requirements. In summary, the process of establishing guilt in criminal proceedings remains rational only when it returns to the fundamental concept of criminal elements. Consequently, the constituent elements of crimes, as stipulated in criminal law, serve as the substantive legal foundation for addressing the burden of proof in criminal proceedings [2].

2.2 Elements of Criminal Offense and the Objects of Proof

2.2.1 Constituent Elements of Criminal Offense and Proof of Case Facts.

2.2.1.1 Proof of substantive facts.

As previously mentioned, the primary aim of criminal prosecution is to demonstrate that the actions of the accused indeed constitute a criminal violation[6]. But what exactly are these criminal facts? They are the specific details and occurrences that satisfy the essential elements of the offense. Even if these criminal facts are eventually verified, they may not initially manifest themselves in a straightforward manner and often

come with numerous uncertainties that must be progressively clarified during the course of the criminal prosecution process[5]. It is only when a comprehensive understanding of these criminal facts is attained that the prosecution can formally press charges against the defendant.

The prosecution process can be likened to a gradual construction of a "proof of facts," which serves as a guiding framework for the judge to follow, leading to a rational and well-informed judgment. This constitutes the entirety of the process for shaping the substance in the legal proceedings. Consequently, in criminal cases, it is imperative to adhere to the established essential elements of the offense; without them, the substance cannot take shape[1]. In simpler terms, it is the clearly defined parameters set by these essential elements of the offense that define the boundaries within which the evidence relevant to the case can be presented[7].

During the initial stages of a criminal case in English law, the precise elements of the offense may not be clearly delineated. However, the presence and understanding of these constituent elements are crucial for the establishment of a criminal case. To illustrate, the process through which a defendant is determined guilty and subsequently subjected to the appropriate punishment during a trial fundamentally involves a judge confirming that the defendant's actions align with the established criminal facts. Subsequently, substantive law is applied to administer the appropriate punishment, rather than the judge making arbitrary decisions. These criminal facts serve as a foundational premise, albeit a relatively minor one, whereas the broader premise is the classification of the defendant under substantive law. In simpler terms, if the criminal facts can be regulated by substantive law, then the associated charges should not necessitate extensive proof[8]. Professor Zhang Mingkai has pointed out that the constituent elements themselves are abstract concepts and not specific objective facts. It is only when specific facts align with these constituent elements that the necessary conformity is achieved[3] 103.

2.2.1.2 Proof of procedural facts.

In China's traditional litigation concept, procedural facts are not considered part of the objects of proof because not all cases are accompanied by procedural facts, and most procedural facts do not need to be specifically proven. I believe this understanding crudely severs the interdependent relationship between procedure and substance. In criminal litigation activities, the principle of procedural justice is the most fundamental and important principle. It is on this principle that procedural facts and substantive facts intertwine and depend on each other[9]. This deep interrelationship indicates that procedural facts have the conditions to be proven as objects. Professor Chen Pusong has proposed that in order to uphold procedural justice, litigation activities should be conducted in accordance with established and unified procedures. If behavior violates the criteria in criminal procedural law and causes the strict adherence to procedural rules to be compromised, even if it does not necessarily have a significant impact on specific criminal regulations, it will render the prosecution activity a formality without sufficient procedural conditions and fail to form a substantive judgment [4]. Judicial practice has repeatedly shown that the proof of procedural facts often encounters twists and turns, and one important reason is that the standards of proof are not fixed and vary

depending on the subject of responsibility. This means that when judicial authorities need to prove procedural facts, it is advisable to use a standard that favors the accused, as the judicial authorities have an obligation to ensure that the litigation process is lawful. When they actively establish procedural facts, there needs to be concrete evidence as a basis, such as sufficient evidence to prove a suspect's significant criminal suspicion during their arrest. However, at this stage, it cannot be demanded that the "facts are clear and the evidence is sufficient," and specific details need to be clarified in subsequent trials [11].

2.3 Criminal Offense and Standards of Proof

2.3.1 The "Beyond Reasonable Doubt" Standard in the Anglo-American Legal System.

From the perspective of international recognition, the "beyond reasonable doubt" standard was first officially applied in the *Stat-ev. Wilson* case in 1793[12]. In that case, the judge used the phrase "following humanitarian rules" to indicate that the jury's attitude should lean towards a presumption of innocence if there is a "reasonable doubt" regarding the defendant's criminal behavior[6]. However, some argue that the Irish Rebellion case in 1798 was the first application of the "beyond reasonable doubt" theory, where the defense lawyer attempted to increase the burden of proof for the prosecution using the concept of "beyond reasonable doubt." What does "beyond reasonable doubt" mean? The key to understanding this concept lies in understanding the concept of "reasonable doubt." In the United States, there are generally three perspectives on defining "reasonable doubt." [10] The first is a negative argument against the unreasonableness of doubt, leading to the deduction of the elements that constitute reasonable doubt. For example, in the *People v. Savulj* case in the United States, the judge derived the concept of reasonable doubt through the aforementioned logical process: doubts arising from sensory sympathy, prejudice, or fantasy are considered unreasonable, while doubts that arise through rational judgment are considered reasonable. The second perspective directly argues the reasonableness of doubt and directly derives the concept of reasonable doubt. Similarly, in the aforementioned case, the judge instructed the prosecution to only exclude reasonable doubt. The third perspective considers the above two derivation methods.

For example, in the *State v [8]. Wilson* case, the judge reminded the jury to be cautious that reasonable doubt cannot be absurd doubt but should be doubt derived from rational consideration and judgment of the evidence, it should be "objectively existing and substantial," rather than "merely possible or speculative" doubt.

After thoroughly examining and assessing all the evidence related to the case, the jury faces a challenge in forming a subjective conviction of guilt solely based on a vague sense of "it appears plausible." In the United Kingdom, the formal application of the "beyond reasonable doubt" principle has faced criticism within the legal realm because of the inherent difficulty in elucidating to the jury the intricacies of eradicating reasonable doubt, especially when individuals have already grappled with comprehending specific issues. While this principle may seem beneficial on the surface, it falls short of being completely dependable.

In the current landscape of judicial proceedings in the UK that invoke the concept of "beyond a reasonable doubt," the crux lies in ensuring that the jury comprehends the essence and prerequisites of this principle. Achieving this objective necessitates the judge to provide appropriate guidance and instructions to the jury.

Although the criminal offense system did not originally incorporate a presumptive function, it has gradually evolved as human legal experience has grown. Notably, when a particular criminal act aligns with the elements of the offense, it typically embodies unlawfulness and culpability. This implies a presumption exists between the criminal offense and unlawfulness and culpability. As long as the prosecution can furnish evidence substantiating that the defendant's actions meet the elements of the offense, it indirectly establishes the presence of unlawfulness and culpability.

The criminal offense system in the Anglo-American legal tradition also tends to adopt this perspective. In essence, when the prosecution is capable of presenting evidence demonstrating that the defendant's conduct aligns with the elements of the offense, it is generally undeniable that the defendant should be held accountable for their actions.

Drawing from the principles of criminal offense and the standards of proof in the Anglo-American legal system, the various elements of an offense can be reciprocally presumed. When the prosecution successfully provides evidence establishing that the defendant's behavior satisfies the elements of the offense, it simultaneously implies that the defendant has committed the criminal offense. Moreover, since the burden of proving the elements of the offense falls on the prosecution, if they can substantiate that the defendant's actions meet these elements, the onus shifts to the defendant to counter any grounds for criminal liability. Consequently, in this logical progression, the prosecution's evidence cannot eliminate all possibilities but must surpass the threshold of "beyond a reasonable doubt."

3 Conclusion

Based on a comprehensive analysis of the entire text, the author contends that relying solely on the elements of a crime is insufficient for making substantive judgments. This deficiency arises from the presence of other significant factors that exert influence over criminal proceedings. Despite the ongoing evolution and refinement of crime theories, discussions concerning the constitutive system persist unabated. The author asserts that unwavering adherence to "substantialism" will inevitably yield one-sided consequences. The existing four-element system complicates the differentiation of essential elements, unlawfulness components, and preclusion elements within the constitutive framework, posing a formidable challenge in reaching reasoned conclusions.

Moreover, the four-element system lacks procedural utility, hindering the full realization of the evidentiary role of criminal proceedings. Additionally, a noteworthy flaw in China's crime constitutive system is the absence of presumptions, which compounds the difficulty of establishing the burden of proof in criminal proceedings without adequate guidance. This deficiency primarily stems from the absence of a hierarchical structure within the crime constitutive system. There is a conspicuous lack of logical

and progressive relationships among the elements, devoid of any distinction in terms of priority or significance. This lacuna creates a murky realm between foundational facts and inferred facts.

Given that this constitutes a significant drawback in China's prevailing crime constitutive system, it should serve as the primary focal point for future research in this domain.

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