

Inquiry Into the Subjectivity of Major Environmental Pollution Crimes: From the Perspective of Weak Anthropocentrism

XIAO Zhifeng^[a]; LUO Qiong^{[b],*}

^[a]L.L.D., Associate Professor, School of Law, Yangtze University, Jingzhou, China.

^[b]L.L.M., Yangtze University School Office, Jingzhou, China.

*Corresponding author.

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Abstract

Now, scholars have done some research on the subjectivity of major environmental pollution crimes, and have raised some different points. It can be said that different people have different points. This paper views from the perspective of weak anthropocentrism, starts with the organization and introduction of the key theories on the subjectivity of contemporary major environmental pollution crimes and the subjective attitude of the major environmental pollution crimes in practice, and then delves into a comparative study of a variety of key theories on the subjectivity of crimes of major environmental pollution, emphasizes the distinction between the intentional and negligent nature of the subjectivity of crimes of major environmental pollution and the problem of strict liability of the subjectivity of crimes of major environmental pollution. Through research, it is argued that it is better to punish and prevent crimes of major environmental pollution if crimes of major environmental pollution incidents are separated, according to subjectivity, into crimes of intentional environmental pollution and crimes of negligent environmental pollution incidents, and the liability principle of crimes of major negligent environmental pollution incidents should be based on the relative strict liability.

Key words: Environmental pollution; Crimes; Subjectivity; Inquiry

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1. BRIEF INTRODUCTION OF THE SUBJECTIVITY OF THE CRIMES OF MAJOR ENVIRONMENTAL POLLUTION

Prior to the publication of *The Amendment to the Criminal Law of the People's Republic of China (Eight)*, scholars from the theoretical and practical point of view have studied 97 *Criminal Code's* clause #338. Specifically, key points have been made in regards to the subjectivity of the crime, and different scholars have different points. Even though *The Amendment to the Criminal Law of the People's Republic of China (Eight)* has been implemented on May 1st, 2011, and the revised provision stopped including the word "incidents," it is not clear what subjective situations entail. Whether the revised provisions can overcome the theoretical shortcomings of the unrevised provisions and the shortcomings of the punishment and prevention of these crimes in practice are yet to be seen. If it has not been solved or solved well, then this amendment of the provisions is to be improved. Thus, it is necessary to analyze the theoretical and practical key points of this pre-revised provision, and from this survey the revised provision considering the situation, and decide whether it is necessary to suggest further revision considering the situation, so that this problem can be completely analyzed.

1.1 Brief Introduction of the Key Points on the Subjectivity of the Crimes of Major Environmental Pollution

In regards to the subjectivity of the crimes of major environmental pollution incidents, *Criminal Code* clause #338 does not stipulate clearly such that the academia is divided on the subjective fault of this crime: view one believes that,

the subjective nature of crimes of major environmental pollution incidents are intentional, meaning that the agent clearly knows

that his action violates national environmental protection laws and regulations yet still performs the action, such that negligence cannot be considered as crimes of major environmental pollution incidents. (Wang, 2003, p.1705)

View two believes that, “the subjective aspect of the crimes of major environmental pollution incidents is negligence” (Ma, 2003, p.608); view three believes that crimes of major environmental pollution incidents can arise from indirect intention or negligence (Y. Z. Chen & L. Chen, 1998). View four believes that, the subjectivity of the crimes of major environmental pollution incidents is based on the criminal liability principle of fault (that is, including intentional and negligent), and strict criminal liability is supplemented as special cases. The agent, whether intentionally or negligently, violates relevant national regulations of major environmental pollution behaviors, is liable for crimes of major environmental pollution incidents; if the act of pollution causes major pollution incidents, even if the agent was not intentional or negligent, still counts as crimes of major environmental pollution incidents, except in cases like war and natural disasters where the major environmental pollution caused could be exempted from liability (D. Chen & B. Chen, 2007).

1.2 Subjective Attitude of Crimes of Major Environmental Pollution in Practice

To understand the subjectivity of the crimes clearly one must first be clear on the possible subjective attitudes that exist in the practices of crimes of major environmental pollution. Through practice we find that there are three main kinds of subjectivity of crimes: a) Intentional. Crimes of environmental pollution are mostly caused by polluters or pollution enterprises driven by financial or other gains and they intentionally pollute, they usually try to avoid having pollutions happen, but cases of intentional anti-social vengeance or intentional negligence should not be dismissed. b) Negligence with undue assumption. That is, one has already foreseen the possible dangerous results that could occur because of discharging toxic and dangerous substances into the environment, but because one is overconfident in the environment’s own self-purification ability or the low toxicity of the discharged substance, one continues with the discharge into the environment, and the result being the exceeding of the environmental capacity and the causation of major environmental pollution incidents. c) Careless negligence. That is, the causation of major environmental pollution incidents stems from an inability to foresee the nature of the self’s act or the dangerous results that the act could bring, ultimately being careless and not performing the duty of care to its fullest extent. For example, in the manufacturing enterprise, personnel in a particular post should notice whether they have dumped toxic and dangerous substances, but because of negligence failed to notice and as such caused major environmental pollution incidents.

2. REVIEW OF THE THEORIES OF THE SUBJECTIVITY OF THE CRIMES OF MAJOR ENVIRONMENTAL POLLUTION

2.1 The Distinction Between the Intention and Negligence of the Subjectivity of the Crimes of Major Environmental Pollution

The subjective attitude of major crimes of environmental pollution in practice shows that the subjectivity of crimes of environmental pollution should include intention and negligence. In regards to the four aforementioned academic views about the distinction between intention and fault, the author believes that: a) view one only considers intention as the subject aspect of the crimes of major environmental pollution incidents, and that negligence is not enough to constitute the crime, but that there are no other charges to evaluate the crimes of major environmental pollution caused by negligent attitudes, this in reality gives a free pass to many major negligent environmental pollution criminals in practice and is detrimental to the punishment and prevention of environmental pollution crimes. Moreover, crimes of liability accident in the criminal law are all caused by negligent attitudes, logically crimes of major environmental pollution incidents are also negligent crimes, but view one excludes negligent attitude, and is quite different from the attitude of crimes of liability accident of the other chapters of the criminal law. b) View two only considers negligence as the subjectivity of the crime, while it aligns with the ought mentality of the crimes of liability accident, it believes that intention does not count as the crime. It does not bring up any other charges to evaluate it, and so falls short in: if the agent can be criminally punished if he commits crimes of major environmental pollution incidents due to negligence, but if there is no appropriate charge for an agent who pollutes the environment intentionally, then the conclusion is quite absurd. c) view three believes that crimes of major environmental pollution incidents include intentional and negligent attitudes, even though there are no blind spots for agents in terms of subjective attitudes and is beneficial to the punishment and prevention of the crime, it is awkward to place intentional attitude in crimes of liability accident. Moreover, negligent crimes require the appearance of harmful consequences; if intentional attitude is without distinction grouped with it, then it is too easy for one to be charged as intentionally polluting the environment and detrimental to the control of environmental pollution because intentional environment polluters will be required to have harmful consequences to be charged of the crime. d) while view four puts both intentional and negligent scenarios in the crimes of major environmental pollution incidents, overcoming the shortcoming of view three, but it does not reconcile the paradox of intention and negligence. Also, view four

believes that as long as pollution has been made, whether it was intentional or accidental, the crime is constituted. This is diametrically-opposed to the criminal law theory of negligent crimes requiring criminal results for them to be in effect.

According to the subjective attitude of crimes of major environmental pollution in practice, its subjective aspect should include intention and negligence. Yet prior to the revision the word “incident” of crimes of major environmental pollution incidents shows that the crime’s subjective attitude can only be negligence, but after revision which while deleted the word “incident” and can include intentional attitude, is still plagued with a series of problems. For example, regulating crimes of intentional and negligent attitudes together, both requiring results of “severely polluting environment” for the charge to come into effect, neither conviction nor statutory punishment distinguish the vicious subjectivity of intentional crime being more serious than negligent crime, is actually a subtle indulgence of intentional crimes. Thus, author posits (hereafter referred to as view five) that crimes of environmental pollution should be separated into intentional and negligent attitudes, namely, “crime of intentional environmental pollution” and “crime of major environmental pollution incident,” with the former crime’s subjectivity consisting of “polluting behavior + intentional attitude,” considered as offense of act; the latter crime’s subjectivity consisting of “polluting behavior + harmful consequences (including dangerous state) + negligent attitude,” considered as potential damage offense. The reasons for this are as follows: view five solved all of the aforementioned problems. Not only does it adopt view three and four’s practice of allowing both intentional and negligent major environmental pollution behaviors as crimes, but it also avoids view three and four’s practice of treating and regulating both attitudes as if they are the same, and that it is more logically sound to forego intentional attitude from the constitution of crimes of major environmental pollution incidents and invent another charge. This avoids the problem of crimes of major environmental pollution incidents wanting to cover everything but the inability to solve its inherent problems which makes them unclear and flawed. Clarifying the conviction regulations such that the subjective crimes are clear and detailed is beneficial to the affirmation of related crimes and the prevention of environmental crimes. At the same time, view five stipulates the subjective and objective aspects of crimes of major environmental pollution incidents as “polluting behavior + harmful consequences (including dangerous states) + negligent attitude,” and believes that dangerous states which are capable of causing major environmental pollution are a type of harmful consequence. This stipulation will change the crime’s traditional consequential offense to potential damage offense, lowering the conditions

for incrimination, moving up punishable scenarios, adhering more to the requirements of this specific area of environmental protection and the value system of weak anthropocentrism, playing an effective preventive role, and not violating the theory of criminal negligence requiring the existence of harmful consequences in the criminal law.

2.2 Strict Liability Problem of the Subjectivity of the Crimes of Major Environmental Pollution

One of the reasons for exercising strict liability is that the harmfulness to the public of the crimes of many violations of administrative statute are great, but it is difficult to prove that the accused was intentional or negligent (Jones, 1991, p.77). In the four main views regarding the subjectivity of the crimes of major environmental pollution, view four brings up strict liability, and the author not only agrees but also believes that crimes of major environmental pollution incidents should use strict criminal liability but it should be a kind of relative strict liability, that is, it should not just exonerate war and natural disasters but also agents if they can prove their negligence. Furthermore, view five has already maintained that intentional crimes should be established as crimes of intentional environmental pollution, that is, to exclude intentional crimes from crimes of major environmental pollution incidents, but the negligent attitudes of crimes of major environmental pollution incidents all require the happening of harmful consequences (including dangerous states). Thus, distinction of general and special situation should not be made by basing on results, and strict liability should not be used as a supplement for special cases, but rather that it should be the crime’s general liability principle. Also, when harmful consequences (including dangerous states) happen because of environmental pollution, unless the agent can prove that there was no negligence, he is to be automatically considered as negligent and guilty of the crimes of major environmental pollution without needing an investigation. Relative strict criminal liability should be the general liability principle of the crimes of major environmental pollution incidents because this kind of regulation is more beneficial to managing crimes of environmental pollution, prevention of the worsening of environmental problems, and more adherent to the value system of weak anthropocentrism.

(a) Practically, because environmental crimes are more complicated than human property crimes, usually involving academic knowledge of disciplines like natural sciences and production processes, we can only see the superficial environmental pollution behaviors or pollution results but not whether or not the agent has committed subjective crimes or what the subjective crime is, and the accuser usually has difficulty in identifying evidence and proving it. If the charge cannot stick because of an inability to identify subjective fault and consequently

a lack of subjective fault, and only takes civil or administrative liability actions with these severe pollution behaviors, then this is extremely detrimental to the prevention of the worsening of environmental problems. In regards to relative strict liability not requiring the proof of subjective fault of the agent but just the occurrence of harmful consequences (including dangerous states) for the charge to stick, it fits the principle of the matching of the crime and the charge.

(b) Strict liability heightens the polluter's self-supervision and sense of responsibility. Everyone knows that environmental pollution can produce severe social harm that is hard to recover from for years, if not decades. Even if the environment can recover from the pollution, the cost will be quite expensive. Thus, environmental pollution should obey the prevention principle. Strict liability does not need to prove fault but only cares about the outcome. This increases the voluntary responsibilities of the polluters, making them aware of the fact that if they want to prevent accidents from happening they must take effective preventive measures in production or other activities, and these preventive measures can prove down the line that proper duty of care has been fulfilled. Having polluters take preventive measures to possibly save themselves down the line is one way to fundamentally prevent major environmental pollution incidents from happening.

(c) Here strict liability does not clash with the traditional mainland criminal law's "no offense no crime" subjective and objective principle. This is because not requiring the proof of agent's subjective fault does not mean that there is no fault, but only considers the agent to be at fault to increase his responsibility awareness. Unless

he can prove himself to not have committed any fault, he would be charged.

CONCLUSION

As summarized, crimes of major environmental pollution incidents should be bifurcated according to subjective attitude into crimes of intentional environmental pollution and crimes of negligent major environmental pollution, and the fixation of liability of crimes of negligent major environmental pollution incidents should be based on the relative strict liability. Through this, crimes of major environmental pollution can be better punished and prevented, environmental interests adequately emphasized, and the transformation from anthropocentrism to weak anthropocentrism possible.

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