

摘要

摘要：罪名不是可有可无的知识片段，罪名不但有自己的理论体系，还与整个刑法有着密切的关联，欠缺完整的罪名理论体系已成为制约刑法发展的理论短板。罪名是犯罪的名称，是犯罪构成的标识符号，链接刑法的具体条文。评价功能、区别功能和检索功能，不过是标识符号和链接法条的另外解读。概括性和多样性是罪名的形式特征，说明性和准确性体现着罪名的实质特征，两者分别从罪名自身、罪名与罪状的关系观察罪名的特征。从文法结构看，罪名分为词型罪名和句型罪名两大类。罪名的刑法结构是从罪名中是否含有客体、客观方面、主体、主观方面来做的类型划分。罪名分类是一项系统工程，对罪名分类应体现特定的价值追求。有必要区分罪名分层和罪名分类，罪名分层在纵向上审视类罪名和个罪名之间的种属关系，罪名分类是按照一定的标准对个罪进行排列组合。罪名可以分为单一罪名和选择性罪名，官方罪名和学理罪名，文本罪名和约定罪名，合理罪名和问题罪名，法典罪名、单行罪名、附属罪名，单条（款）罪名、多条（款）罪名、单条（款）数罪名，历史罪名、现行罪名、未来罪名，国内罪名和国外罪名。罪名分类是一个开放的体系，罪名分类应朝着多元化方向发展。由于概念、分类和使用规则的混乱导致了选择性罪名面临着一系列困境，选择性罪名应以并罚为原则、不并罚为例外。对一个罪刑条文是拟定为选择性罪名或者单一罪名还是数罪名，没有一定之规，完全依赖于司法罪名的选择偏好。罪名生成没有了并罚与否的牵绊，更有利于推进一条一罪名原则的实现。

罪名生成应坚持五个原则，即一条一罪名原则、概括原则、文本原则、准确原则、协调原则。概括原则强调罪名的精简、干练。坚持文本原则是罪名生成的整体方向，在没有优势理由的前提下，不可以绕开刑法文本用语拟定罪名。准确原则要求罪名与罪状之间形成紧密契合关系。协调原则要求将罪名放在罪名家族中整体把控，保障同类性质的罪名之间具有一致性和呼应性。一条一罪名原则是罪名生成的第一原则，它提供了罪名数量的基准单位。一条一罪名原则被长期忽略，导致了一条数罪名大量存在。条是犯罪构成的数量标志也是罪名的基准单位。一条一罪名的实现能够优化认识错误的处理、可以从数量上削减死刑罪名。一条一罪名的实施将对刑法完善起到极大地推动作用。罪名寄身于法条、罪状中，与法条、罪状、犯罪构成关系密切。刑法分则法条可以划分为创设型罪刑法条和非创设型罪刑法条，非创设型罪刑法条还可分为规定性法条、拟制性法条和说明性法条，说明性法条可进一步划分为提示性法条和定义性法条。罪名来自法条承载的罪状，罪名与创设型罪刑法条最为密切。罪名是对罪状的概括，罪状是罪名的

展开，罪名与罪状存在对应关系。犯罪构成是犯罪的成立标准，犯罪构成可以分为一类型犯罪构成和多类型犯罪构成。罪名与法条、罪状、犯罪构成存在一一对应关系。罪名生成作为一个重要的刑法问题，有一套规范的操作标准，条文是判断罪名个数的基本单位，应反思司法罪名中的一条多罪名、多条一罪名的罪名体例。罪名来源于罪状，根据罪名是否使用了罪状用语，可以将罪名分为引用罪名、截取罪名和借鉴罪名三种类型，三者体现罪名与罪状用语之间从完全等同到彻底分离的关系。罪名的体系性要求可以保障罪名与相关罪名相呼应，增强罪名间的制约。罪名的生成应在科学方法引导下展开，这样才能实现罪名的规整、准确、协调。

纵观 483 个司法罪名，绝大多数罪名都恰当的处理了罪数关系、符合准确性的要求，但个别罪名存在一定的改进必要。当前司法罪名主要存在冗长、松散、杂乱三大问题。现存罪名中，带“非法”一词的有 73 个罪名、带“徇私舞弊”一词的有 7 个罪名，带“擅自”一词的有 6 个罪名，带“违法”一词的有 5 个罪名，带“违规”一词的有 2 个罪名，带“私自”一词的有 1 个罪名，这些词汇原则上都属于多余成分。罪名的调整应在立法和司法两个层面上双轨并行，立法上章类罪名应进行合并或者拆分。若类罪名不能为个罪提供足够的空间，就要对个罪做出新的位置调整，这涉及跨章调整和章内调整。按照一条一罪名和行为类型，很多被司法解释误解为多罪名的实为一罪名，需要将它们合并为一个罪名。罪名的删除有不同的根据，或者是竞合的原因或者是因为罪名不具有规制效果或者是相应的犯罪已经无害化。司法罪名在坚持一条一罪名的同时应充分契合刑法规定的类型，立法罪名要符合刑法的发展趋势。刑法 483 个罪名的立、改、废，势在必行。罪名法定化应提倡标题式罪名、注重罪名的类型化、保持罪名的协调。罪名法定化对于提升刑法的立法水平，彰显刑法的明确性，促进刑法的可操作性意义重大。学界和立法者应当重视罪名的法定化，将罪名法定化尽快提上立法日程。

关键词：标识符号；犯罪构成；选择性罪名；数罪并罚；一条一罪名

Abstract

Abstract: Charges are not dispensable knowledge fragments. Charges not only have their own theoretical system, but also have a close relationship with the entire criminal law. The lack of a complete theoretical system of charges has become a theoretical weakness that restricts the development of criminal law. The charge is the name of a crime, the symbol of the constitution of a crime, and links the specific provisions of the criminal law. The evaluation function, distinguishing function, and retrieval function are just additional interpretations of identification symbols and link methods. Generality and diversity are the formal characteristics of charges, while interpretive and accurate reflect the substantive characteristics of charges. Both observe the characteristics of charges from the perspective of the charges themselves and the relationship between charges and facts about a crime. From the perspective of grammatical structure, charges can be divided into two categories: word type charges and sentence type charges. The criminal law structure of charges is classified based on whether the charges contain objects, objective aspects, subjects, and subjective aspects. The classification of charges is a systematic project, and the classification of charges should reflect specific value pursuits. It is necessary to distinguish between the stratification of charges and the classification of charges. The stratification of charges vertically examines the relationship between category charges and individual charges. The classification of charges is the arrangement and combination of individual charges according to certain standards. The charges can be divided into single and selective charges, official and academic charges, textual and agreed charges, reasonable and problematic charges, code charges, separate charges, subsidiary charges, single article (single paragraph) one charge, multiple articles (multiple paragraphs) one charge, single article (single paragraph) several charges, historical charges, current charges, future charges, domestic charges, and foreign charges. The classification of charges is an open system, and the classification of charges should develop in a diversified direction. Due to the confusion in concept, from classification to usage rules, selective charges face a series of difficulties. Selective charges should be based on the principle of combined punishment, with non combined punishment as an exception. There is no fixed rule on whether a criminal provision should be formulated as a selective charge, a single charge, or multiple charges, and it entirely depends on the preference of Supreme judicial authority. The generation of charges is more conducive to promoting the

implementation of the principle of "one article, one charge" without the constraints of combined punishment.

The generation of charges should adhere to five principles, namely the principle of "one article, one charge", the principle of generalization, the principle of text, the principle of accuracy, and the principle of coordination. The principle of generalization emphasizes the simplification and simplicity of charges. Adhering to the principle of text is the overall direction of the generation of charges. Without advantageous reasons, it is not possible to bypass the language used in criminal law texts to formulate charges. The principle of accuracy requires a close fitting relationship between charges and the facts about a crime. The principle of coordination requires a unified examination of charges within the family of charges, ensuring consistency and correspondence between charges of similar nature. The principle of "one article, one charge" is the first principle for the generation of charges, which provides a benchmark unit for the number of charges. The principle of "one article, one charge" has been neglected for a long time, resulting in a large number of multiple charges. Article is a quantitative indicator of the facts about a crime and a benchmark unit of charges. The implementation of "one article, one charge" can optimize the handling of cognitive errors and reduce the number of death penalty charges. The implementation of "one article, one charge" will greatly promote the improvement of criminal law. The charges are embedded in the legal provisions and facts about a crime, and are closely related to the legal provisions, facts about a crime, and criminal composition. The legal provisions in the Criminal Law can be divided into criminal provisions for creative crimes and criminal provisions for non creative crimes. The criminal law articles for non creative crimes can also be divided into prescriptive articles, fictitious articles, and explanatory articles. Explanatory provisions can be further divided into indicative provisions and defining provisions. The charge comes from facts about a crime carried by the legal provisions, and the charge is most closely related to the criminal law provisions of the crime of creation. A charge is a summary of facts about a crime, which is the unfolding of facts about a crime, and there is a corresponding relationship between the charge and the facts about a crime. Constitution of a crime is the standard for establishing a crime, which can be divided into one type of constitution of a crime and multiple types of constitution of a crime. There is a one-to-one correspondence between charges and legal provisions, the facts about a crime, and constitution of a crime. As an important criminal law issue, the generation of charges has a set of standardized operational standards, and provision is

the basic unit for determining the number of charges. It is necessary to reflect on the style of charges appointed by Supreme judicial authority, such as multiple articles one charge, single article several charges. The charge originates from the facts about a crime, and according to whether the charge uses language from the facts about a crime, it can be divided into three types: citing charge, intercepting charge, and borrowing charge. The three types reflect the relationship between the charge and the facts about a crime from complete equivalence to complete separation. The systematic nature of charges can ensure that they correspond with relevant charges and enhance the constraints between charges. The generation of charges should be guided by scientific methods, in order to achieve the standardization, accuracy, and coordination. Looking at the 483 charges appointed by Supreme judicial authority, the vast majority of them have properly handled the number of charges and meet the requirements of accuracy, but there is a certain need for improvement in some of the charges. The current charges appointed by Supreme judicial authority mainly have three major problems: verbosity, looseness, and disorder. Among the existing charges, there are 73 charges with the word "illegal", 7 charges with the word "malpractices for selfish ends", 6 charges with the word "unlawful", 5 charges with the word "break the law", 2 charges with the word "violation", and 1 charge with the word "unauthorized". These terms are all redundant. The adjustment of charges should be carried out simultaneously at the legislative and judicial levels, and the legislative categories of charges should be merged or split. If the category of charges cannot provide sufficient space for individual crimes, a new position adjustment should be made for individual crimes, which involves cross chapter adjustments and intra chapter adjustments. According to the standard of "one article, one charge" and behavior types, many cases that are misunderstood as multiple charges appointed by Supreme judicial authority are actually one charge, and they need to be merged into one charge. The deletion of charges has different grounds, either due to overlapping reasons, or because the charges do not have regulatory effects or the crimes have been harmless. charges appointed by Supreme judicial authority should not only adhere to the principle of "one article, one charge", but also fully conform to the types stipulated in the criminal law, and legislative charges should be in line with the development trend of the criminal law. The legalization of charges should promote title style charges, focus on the categorization of charges, and maintain the coordination of charges. The legalization of charges is of great significance for improving the legislative level of criminal law, highlighting the clarity of criminal law, and promoting its

operability. Academics and legislators should attach importance to the legalization of charges and put them on the legislative agenda as soon as possible.

Key words: Identification symbol; Constitution of a crime; Selective charges; Concurrent punishment for several crimes; "One article, one charge"