

# Rechtsgut, Harm Principle and Constitutionality — A Comparative Study on the Limit of Criminalization —

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Traditionally criminal law academics in Germany and Japan have used the concept of “Rechtsgut” as a tool to criticize criminal legislation. But after the Federal Constitutional Court of Germany rejected the effectivity of Rechtsgut in the context of criminal legislation, the focus has shifted into the constitutionality of statutes or drafts in question. A similar trend has also risen in the common law area. Problems about criminalization has been analyzed with the help of the harm principle. However, the phenomenon of overcriminalization casts some doubts on the effectivity of harm principle to limit the legislative power.

In this article the Author explores the framework that effectively limits and theoretically analyses the criminal legislation. This paper argues that the Rechtsgut or harm principle can no longer function as a “single” tool to analyze and criticize the overcriminalization and the framework based on the constitutionality should substitute for them.