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e-mail: 307204815@qq.com**RESEARCH ON THE CONCEPT “RESTORATION”
OF THE TESTORATIVE JUSTICE**

Restorative justice, which originated in the 1970s, has been applied to various crime response systems worldwide. The judicial practice of foreign countries has proved that the restorative judicial system has the benign value of complementing the traditional criminal justice system, which has the disadvantages of diluting the interests of victims and the stability of the community, failing to prevent crimes, and not conducive to helping the offender to return to society. Restoration is the precondition of restorative justice, so implantation of restorative justice must correctly understand the leading concept of restoration. This paper conducts inspections on “restoration” from three dimensions. First, in the existential dimension, this paper did research on the etymological interpretation of “restoration of restorative judicial” and its meaning in historical evolution, and proposed that the concept of “restoration” must include efficiency and economic content; secondly, in the normative dimension, this paper explained the two-dimensional structure of the internal time dimension and participation dimension of the concept of “restoration”; finally, in the value dimension, this paper deconstructed the internal oppositional elements of the concept of “restoration”, and pointed out the trend of elimination of barriers among the elements inside the concept of “restoration”.

Key words: restoration; two-dimensional structure; various elements; deconstruction.

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e-mail: 307204815@qq.com**Қалпына келтіру сот төрелігі шеңберіндегі
«қалпына келтіру» ұғымын зерттеу**

1970 жылдары пайда болған қалпына келтіру әділеттілігі бүкіл әлемдегі қылмысқа қарсы әрекет етудің әртүрлі жүйелеріне қолданылды. Шет елдердің сот практикасы қалпына келтіретін сот жүйесінің пайдалы құндылығы бар екенін дәлелдеді, дәстүрлі қылмыстық сот төрелігі жүйесін толықтырды, оның кемшіліктері құрбандардың мүдделері мен қоғамның тұрақтылығын бұлыңғырлау, қылмыстардың алдын алу мүмкін еместігі және құқық бұзушының қоғамға оралуына ықпал етпейді. Қалпына келтіру қалпына келтіру әділеттілігінің алғышарты болып табылады, сондықтан қалпына келтіру әділеттілігін енгізу қалпына келтірудің жетекші тұжырымдамасын дұрыс түсінуі керек. Бұл мақалада «қалпына келтіру» тексерулері үш өлшемде жүргізіледі. Біріншіден, экзистенциалды өлшемде бұл мақалада «қалпына келтіретін сот төрелігін қалпына келтіру» этимологиялық түсіндірмесі және оның тарихи эволюциядағы маңызы зерттелді және «қалпына келтіру» ұғымы тиімділік пен экономикалық мазмұнды қамтуы керек деп ұсынылды; екіншіден, нормативтік өлшемде бұл мақала ішкі уақытты өлшеудің екі өлшемді құрылымын және «қалпына келтіру» тұжырымдамасының қатысуын өлшеуді түсіндірді; ақырында, құндылық өлшемінде бұл мақала «қалпына келтіру» тұжырымдамасының ішкі оппозициялық элементтерін деконструкциялады және «қалпына келтіру» тұжырымдамасындағы элементтер арасындағы кедергілерді жою тенденциясын көрсетті.

Түйін сөздер: қалпына келтіру, екі өлшемді құрылым, әртүрлі элементтер, деконструкция.

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e-mail: 307204815@qq.com**Исследование понятия «восстановление»
в рамках восстановительного правосудия**

Восстановительное правосудие, зародившееся в 1970-х годах, применялось к различным системам реагирования на преступления по всему миру. Судебная практика зарубежных стран доказала, что восстановительная судебная система имеет благотворную ценность, дополняя

традиционную систему уголовного правосудия, недостатки которой заключаются в размывании интересов жертв и стабильности общества, неспособности предотвращать преступления и возвращать правонарушителя в общество. Восстановление является предварительным условием восстановительного правосудия, поэтому необходимо восстановительного правосудия должно правильно понимать ведущую концепцию восстановления и следовать ей. В данной статье проверки на «восстановление» проводятся в трех измерениях. Во-первых, в экзистенциальном измерении в данной статье рассматривается этимологическое толкование «восстановительного правосудия» и его значение в исторической эволюции, и предлагается, чтобы понятие «восстановление» включало в себя действительность и экономическое содержание; во-вторых, в нормативном измерении в этой статье объяснялась двумерная структура измерения внутреннего времени и измерение участия понятия «восстановление». Наконец, в ценностном измерении данная статья деконструировала внутренние оппозиционные элементы понятия «реставрация» и показала тенденцию к снятию барьеров между элементами в понятии «реставрация».

Ключевые слова: реставрация, двумерная структура, различные элементы, деконструкция.

Introduction

«The current criminal justice system is a huge machine, devouring and spitting out a large number of people. These people take turns losing their lives, honor, sense of morality and health. As a result, they leave indelible wounds...» (Fili 2004) From Ferri’s pessimistic statement, we see that the traditional criminal justice system, which is centered on criminal behavior, utilitarian pursues the balance of crime and punishment, and ignores the problem of the offender’s resocialization. The increasing number of crimes, especially recidivists, shows that the traditional criminal justice system is not only unable to prevent crimes effectively, but with the increase in the number of cases, judicial costs have increased year by year, but with little effect... The self-denial nature of the traditional criminal justice system makes legal scholars had to turn their attention from state-based «retributionism» to individual-based «social relationship restoration». As a result, restorative justice, which centers on the victim, emphasizes social participation and re-socialization of the offender, came into being. However, legal scholars have different opinions on the definition of restorative justice, and even the concept of restorative justice has never been uniformly defined. This has caused confusion in the further development of restorative justice in theory and practice. In order to promote the prosperity of legal theory, it is necessary to clarify the «restoration» of restorative justice.

Etymological interpretation of restoration of restorative justice and its meaning in historical evolution

Etymological interpretation of «restoration»

The concept of Restorative Justice, which was considered a utopian concept in the early days, was

first proposed by American scholar Barnett in the article «Compensation: A New Paradigm in Criminal Justice». From the perspective of etymology, there are at least two specific elements that constrain each other within the concept of restorative justice: the «restoration» element and the «justice» element. Both of two elements have very rich space for free interpretation, and thus also increasing the difficulty of definition of «restorative justice». The concept of «restorative justice» is a compound word. Xu Zhier pointed out: «In the compound words that restricts the relationship, the restricted is the basic word, expressing the basic characteristics and basic meaning of the whole word» (Zhier 1997) Restorative justice also belongs to this category. Since «restorative justice is produced in contrast to retributive justice», the fundamental meaning of the concept of justice in «restorative justice» will not change, and the change can only take place in concept and operating process of «restorative»-Restore social relations damaged by crime-therefore, the focus of the prejudiced concept of «restorative justice» must be on «restoration». The concept «restoration» in «restorative justice» is the cornerstone of the whole concept, so only by first solving the question of what is «restoration» can we further explore what is «restorative justice».

After the word «Restorative Justice» was introduced into China, there were two translation methods. Because «Restorative justice», which was abstracted by Barnett through mediation experiments on early American victims and perpetrators, is a rational, positive, and reintegrative judicial system. Its goal is to make up the interpersonal and social relationship damaged by crime. Moreover, interpersonal and social relations is abstract concept, and it is difficult to determine and implement the standards of restoration – for example, the ancient motto «it’s hard to restore a broken mirror» provides empirical evidence. Re-

storative justice is committed to the reconstruction of interpersonal and social relations. «It is a kind of transcendence, not a simple restoration. Simple restoration of the relationship does not help, because it is this abnormal relationship that caused the crime» (Xiaoming 2007) Therefore, the most appropriate translation method for «restorative» should be «xiufu».

The meaning of «restoration» in different definitions of restorative justice

In the world, there are few discussions on the concept of «restoration», so this paper tries to summarize the meaning of «restoration» from the definition of the concept of «restorative justice» by different scholars. The concept of «restorative justice» is quite flexible. The most influential definition in the international arena was proposed by Marshall. Marshall pointed out: «Restorative justice is a process in which all parties involved in a specific violation gather to deal with and resolve the current consequences of the violation and its future impact» (Marshall 1999).

Marshall focused the content of restoration on four aspects: related parties, solution and handling, consequence and future impact. We can summarize the following types of information from Marshall's definition:

1. A crime is damage to the individual victim by the offender, or damage to related personnel and order in the community;

2. The status of the victim has been greatly improved, and he can participate in the judicial process throughout the entire process and become the core of the judicial process;

3. Both the community and the victim are indispensable elements in the judicial process, and the progress of restorative justice is controlled by the victim, the community and the offender;

4. Although the victim is the core of the judicial process, the offender and the community are all participants and both enjoy equal status;

5. The offender must take responsibility for the victim and the community, and be forgiven by the victim and the community;

6. Pay attention to the community return of criminals and the restoration of community stability and order.

It can be seen from Marshall's definition of restorative justice that its «restoration» is mainly carried out from three dimensions: offenders, victims, and communities:

1. to restore the personality of the offender;

2. to restore the victim's property, dignity, and mental damage;

3. to restore the stability of community order and legal order. The issuer of the restoration is the criminal, the community, and the country; the method of restoration is to assume responsibility; the content of the restoration includes property, dignity, personality, spirit, legal order, social relation and other damage caused by crime. Therefore, the meaning of Marshall's «restoration» can be understood as «full, gentle, and integrated restoration».

The definition of «Restorative Justice» by Chinese scholars is also relatively flexible, and even the translation method is in debate. However, the normative effect of the law comes from the normative and restrictive nature of the behavior requirements or standards by which the behavior of people is measured, so it must be accurate. Even though «legal language cannot achieve the accuracy of symbolic language» (Zheng 2017), it cannot be independent of general language and flexible like some other academic languages, but the limitations of language itself cannot be a reason for refusing to find a corrective judicial definition. «It doesn't matter what 'restorative justice' is, under what circumstances, in what scope, and in what way» (Larenz 2004: 200), but blindly interprets its philosophy and specific implementation methods based on legal doctrine, thus it falls into the Kant's criticism: «purely rational dogmatic process without first criticizing one's own abilities».

The interpretation of the concept of restorative justice by Chinese scholars is scattered in the aspects of participating subjects, content, characteristics, and concepts. In terms of content and characteristics, Professor Chen Xiaoming pointed out: «Restorative justice is actually a response to crime on the basis of the victim as the center. The victims, offenders, their family members and community representatives are provided an opportunity to directly participate in response to the damage caused by the crime, and the content is more extensive... Restorative justice shifts the judicial purpose from abstract legal interests to specific victim protection; it increases the participation of victims and the attention to interests; it no longer pays attention to punishment but pays attention to responsibility and restoration; it has the characteristics of low operating cost.» (Xiaoming 2007: 12-13)

In terms of idea, Dr. Wu Lizhi believes that the concept of restorative justice mainly focuses on the following four aspects: «First, restoration is the core goal; second, reconciliation and mediation is encouraged; third, victim-oriented; fourth, justice communitization...can be summarized by...responsibility, restoration, and reintegration» (Zhili 2012: 38)

From the perspective of legal history, Dr. Zhiru Jiang pointed out that «love, confession, and tolerance» run through «community justice», «biblical justice» and «restorative justice» (Jiang 2020: 64-65) to supplement the concept of restorative justice. It can be seen that the definition of «restoration» by domestic and foreign scholars mainly focuses on three aspects: education and assistance of offenders; restoration of victims' injuries; and community participation. Therefore, according to the understanding of «restoration» by domestic scholars, «restoration» is «the correction and restoration of social relations involving the community».

Supplement to the meaning of restoration

The overall understanding of restorative justice by domestic and foreign scholars is supported by the following fulcrums: «meeting (the meeting of the offender, the victim, and the affected community), restoration (the offender's restoring the victim, the community and even himself), integration (the offender returns to the community as an active member), participation (the offender, the victim, and community members voluntarily participate in and achieve a meaningful and constructive process), and harmony (the transformation of individuals and the reconstruction of interpersonal relationships).» (Ness 1997) However, apart from professor Chen Xiaoming mentioning of «low operating costs» in the dimension of characteristics, the «efficiency and economy» of restoration is rarely mentioned. This paper believes that the «efficiency» and «economics» of «restoration» have been neglected intentionally or unintentionally by legal scholars. «Because in a certain sense, legislation and the inseparable judicial and law enforcement are an economic activity» (Posner 1992: 3-4), and economic activity is to seek the optimal allocation of social resources, so the judicial system within the framework of market economy must comply with the «principle of efficiency and economy».

This paper believes that the concept of «restoration» should have economic and efficiency content mainly due to the following two reasons. First of all, according to historical materialism, the market economy as the economic foundation determines that the judicial system as a superstructure should maintain the efficiency and economic, which is the principle of market economy; Secondly, the legal doctrine interpretation of legal concepts should be restricted by the original intention of the legislator. As Larenz pointed out: «Although the interpreter takes the purpose determined by the legislator in history as the starting point...In fact, it has surpassed the will of the legislator in history... Although judges can still

adapt to the new situation and supplement the law according to the teleological interpretation or the continuation of the law, the legislator's intention to stipulate and the value decisions made for this purpose are still binding norms for the judge» (Larenz 2004: 207) Therefore, we must apply the concept of «restoration» to its historical background to gain insight into its original intent, because legislators or jurists cannot create laws or concepts beyond the historical background-«Law has always been a relatively conservative force in society, not a force for change.» (Li 2004: 7)

In America, «since the Marbury case, the Supreme Court has stepped towards the supremacy of justice... Whether it is President Jefferson, President Jackson or President Lincoln, they are opposed to the supremacy of justice... Even during the Roosevelt New Deal...» (Qiangshigong 2007: 270-277), all of them advocated the restriction of judicial expansion. At the same time, the «popular constitutionalism» of Becker and Erie also criticized the «counter-majoritarian difficulty» of the supremacy of justice in the sense of legitimacy, stressed that the legitimacy of justice must be coordinated with democratic ideals. In the second half of the 20th century, popular democracy came, and American justice was subject to the popular democracy and high cost of confrontational judicial models. The reduction of judicial costs and the satisfaction of the public's demands for «judicial economy» are not only «public opinion», but also one kind of political right. At the same time, justice as an economic activity must also pay attention to the issue of efficiency. With the in-depth development of the market economy, the market economy's requirements for judicial «efficiency and economy» have also increased, coupled with the inefficiency of the traditional criminal justice system and the increasingly obvious difficulties of crime prevention, Barnett must consider the «efficiency and economy» content of the concept of «restoration» when he proposed the concept of «restorative justice».

In summary, based on the above analysis of the concept of «restoration» by domestic and foreign scholars, this paper believes that «restoration» should include the factor of «efficiency» in the interpretation of the concept of «restoration», that is, «restoration» is «efficient, community, specific correction and integration of social relations». Then, «restorative justice» should be defined as «restorative justice is a process by which all parties involved in a particular violation gather together to efficiently deal with and resolve the current consequences of the violation and its future impact»

Internal two-dimensional structure of restoration

The interpretation of the concept of restorative justice in the legal field, especially the clarification of restoration is carried out at least in terms of scope, concept, method, object, participant, process, etc., there are divergent opinions, but no conclusion. Through the integration and induction of the concept of “restoration”, firstly, we can find that “restoration” is a process. It is a continuation of time with time dimension content; secondly, the actions of “restoration” are issued by multiple parties, therefore, it has the content of participation dimension. According to the theoretical discussion of restorative justice and the experience of judicial practice, we can understand that in the time dimension, the content of restoration is a dual-track system, which includes the macro-time content and the micro-time content. In terms of participation, the content of “restorative” is divided into two levels: real part and imaginary part. The real part is the specific participant and way of participation, and the imaginary part is the value contained in the legal mechanism that guarantees participation.

Time connotation of restoration

The time content of the restoration is divided into a macro and micro dual-track structure. At the macro level, «restoration» is the precondition of restorative justice, and the concept of «restoration» runs through the entire restorative justice process. Article 6 of the United Nations «Basic Principles on the Use of Restorative Justice Programs in Criminal Matters» stipulates: «the restorative justice program can be applied at any stage of the criminal justice system, provided that it does not violate the laws of the country» It should be noted that, unlike traditional criminal justice, which aims to achieve «retribution» by imposing penalties on the offender, restoration does not end with the emergence of «restorative results» (Restorative results refer to agreements reached as a result of restorative procedures, which can include countermeasures such as compensation, restitution, and community services). The restoration covers all aspects of the crime, and even extends to the release stage. For example, «family group conferencing» in New Zealand can be conducted either before or after the trial, and it has become part of the police and pre-trial procedures in the United States and Australia. (Steven 2010: 303) In short, the «restoration» of the macro dimension is a ideal that runs through the judicial process.

At the micro level, the time content of restoration is divided into the past-oriented phase content and the future-oriented phase content. In the past-oriented stage, «restoration» aimed to «actively facilitate the offender, the victim, family members of both parties, and community members to jointly explore the cause of the crime» (Steven 2010: 303), and encourage the offender to take responsibility for the victim and the community to make up for the damage; In the future-oriented stage, the contents of restoration include the achievement of the interests of the victims, the maintenance of community order, and the reshaping of the offender’s personality so that it can achieve resocialization. From this point of view, the restoration work dilutes the state from the relationship between crime and responsibility and focuses on the logic of «responsibility-restoration». This kind of «decriminalization» restoration work has also achieved good results in practice. «According to empirical investigations, many participants in the round table (a model of restorative justice) have reached an agreement. Numerous research results show that the settlement rate is as high as 80%. If part of the reconciliation is included, the ratio is more than 90%» (Aertsen 2008: 507-525)

The repair method allows a large number of crimes to be resolved in a moderate and effective manner, which not only saves litigation costs, but also prevents endless appeals due to differences in judgments.

The connotation of the time dimension of «restoration» can only be grasped as a whole through the description of the «dual track system». First of all, restoration is an active process rather than just an act. Some scholars have pointed out that «restorative justice focuses on what people do in the future, not what they did in the past» However, if «focusing on the future» is understood as focusing only on the future, it will undoubtedly violate the principle of responsibility. And the dual-track time content of the restoration is carried out at the same time, that is, the concept of «restoration» runs through at the macro level, but at the micro level, the focus of work of restoration changes from the past to the future, as Zehr said: “It is a changing Lens” (Zehr 1990: 133).

The real and imaginary parts of the participating dimensions of restoration

The content of restoration in the participation dimension is divided into real part and imaginary part. The real part is the specific participant and participation method; the imaginary part is the value content embodied by the participant and participation method. The difference in value orientation determines the differences in the participants and

participation methods of the real part. When the value orientation is more specific, there are more participants, and the methods are more equal and informal; on the contrary, the value orientation is more abstract, there are fewer participants, and the methods are more formalized.

Restorative justice requires that all parties involved in a specific violation participate equally and voluntarily in the crime handling process, and the handling results are obtained through negotiation and conversation. Participants include the offenders, the victims, the victims' family and relatives, the community, and other parties related to the violation and social loving people. The restoration mode is divided into three types according to the different amount of participants.

The first is the mediation mode. The mediation mode involves the participation of the victim, the offender and a mediator, and is divided into direct mediation and indirect mediation. Direct mediation refers to the way in which the offender and the victim communicate face-to-face, under the auspices of the mediator, to deal with and solve criminal problems; Indirect mediation is that the offender and the victim do not meet directly, but a middleman conveys the message, which aims to promote the parties to reach agreement on the information exchanged and achieve the effect of social relationship restoration.

However, there are only three participants in this mediation model. Although the procedure is relatively simple and economical, due to the lack of community participation, the damage to the community relationship caused by crime cannot be directly repaired. The absence of the community leads to the lack of social supervision, which is likely to cause the judicial organs to ignore the interests of the victim or the purpose of reshaping the offender's personality and unilaterally pursue the success rate of mediation. As a result, the failure to fully implement social justice may lead to frequent crimes, which is not desirable. And the mediation model aims to reach a reconciliation between the two parties on the results of the crime, and the mediators are mostly non-judicial persons and are «native» (hometown people speak the hometown dialect), and the results of mediation are often only reached a form of fairness between the victim and the offender. This fairness is quite abstract and involves fewer stakeholders, leaving a blank space for the protection of the interests of the community, offenders, and family members of the victim.

The second mode is the family group conferencing mode. «In the family group meeting mode, the victim, the perpetrator, and the family members of both

parties are called to participate in the meeting, chaired by the coordinator, then the judicial organs state the facts of the crime, and confesses the offenders, who can also express their opinions on the statements made by the investigative agency, and the victims can also express their own opinions. The conference mainly focuses on crime-related issues, emotional damage, or compensation issues. In the end, all the participants negotiated on the issue of crime and compensation, and when they reached a consensus, the meeting ended» (Jun 2019: 23-29)

Compared with the mediation model, the participants of this model have increased the number of family members of both parties. Because the crime not only damages the victim's personal interests, but also causes mental injury to the victim's family and relatives, especially when the victim dies, the mental injury to the victim's family is permanent. Therefore, the participation of relatives of both parties in the meeting is more conducive to restoring the mental damage to the family members of both parties. However, the family meeting group model lacks the participation of community members like the mediation model, so the dilemma faced by the family group meeting model is similar to that of the mediation model.

The third mode is the round table conference mode. «There are more participants in the round table conference mode than in the family group conference mode. Not only the family, but also their relatives and friends, community members, or social members interested in the case can join in to negotiate a rectify plan. All the members form a circle. First, the offender explains the course of the case, and then the victim or his family members states the harm and impact that he and his family have suffered as a result of the crime. Then every member of the round table expresses the views they want to express, and finally a mediator will summarize and mediate unanimously in response to the victim's request» (Yanfeng 2014: 41-44)

The participants in this mediation model are the most extensive. Although it is slightly more difficult for the participants to reach an agreement than the previous two models, multi-party participation is conducive to satisfying relevant interests in the largest range. The interests of the victim, the interests of the community, the interests of the victims' family members and other specific interests can be reached through negotiation and conversation, not only the criminal justice can be achieved through the way, in which the offender assumes responsibility, but the specific demands of all parties involved can be met, and specific justice can also be achieved.

From this we can draw the conclusion that the content of the restoration in participation dimension-value and participation-is in an inverse relationship. The fewer participants in «restoration/rectify», the more abstract the justice obtained, and the harder it is to take into account the specific interests of the relevant individuals. For example, in the process of restoring the results of criminal violations in traditional criminal justice, the participants are mainly the prosecutorial agencies and courts which represent the country, as well as the criminals, and the victims often appear in court as witnesses. The judiciary imposes penalties equivalent to the «quantity» and «quality» of the criminal act on the offender in order to achieve social justice. This state-based ideal of punishment of retribution abstracts the interests of the victims as a member of the intangible overall interests and marginalizes it, ignoring the interests of the victim, and at the same time, it is difficult to take into account the demands of the community and stakeholders; When there are more participants in the restoration/rectify, the more specific justice is obtained. For example, when the restoration is carried out in a «round table mode», first of all, the victims can realize their expected benefits through negotiation and mediation, including compensation of material damage and mental damage caused by crime; Secondly, the offender rebuilds a healthy personality through the help of the community and caring people, psychological counseling, skills training, and the reconstruction of interpersonal relations; Thirdly, the community proposes and realizes its own interests, and at the same time supervises the criminals' restorative actions, enhances mutual trust with the criminals, and helps them to better return to the community; Finally, social people participate in the restorative process and supervise the restorative behavior of the offender, that can meet the needs of social justice. From victims, offenders, communities to the entire legal order, specific interests or specific justice can almost all be satisfied through restoration. This not only promotes public safety, but also achieves broader social justice.

This paper borrows the coordinate axis in mathematics, and expresses the content of the restoration in time dimension and participating dimension.

Deconstruction of internal elements of restoration

Through the layer-by-layer analysis of the content of the restoration concept, we can see

that the various elements in the restoration: «past-future», «punishment-rectify», «victim-state», «abstract justice-concrete justice», «social control-state authority». Over the past ten years since the introduction of restorative justice to China, most scholars have admitted that internal elements of restoration has achieved a balanced and pluralistic trend among opposing elements. «The exploration of various positions that exist at the same time but conflict with each other, and the resolution of the dual opposition, are in line with the so-called deconstruction of modern philosophy.» (Huegli 1991: 134) Therefore, the in-depth process of restoration research is also a process of deconstructing the concept of «restoration», and in this process, dissolving the barriers of opposing elements. Looking at the historical evolution of the concept of «restoration», it can be seen that the controversy over the nature of «restoration» from beginning to end is actually a dispute of opposing positions among a number of basic elements. These basic positions can be attributed to the opposition among «prejudiced emphasis-both emphasis», «state (authority)-society (rights)», and «behaviorism-behavioral humanism».

The resolution of opposition in offender's dimension

In the past-oriented dimension, traditional criminal justice scholars who adhere to the state (authoritative)/prejudiced emphasis/behaviorist position believe that crime is a violation of rules. The criminal justice system is a system design that appeals to the national judicial organs to impose criminal penalties or security sanctions for illegal and responsible acts. Regarding the issue of crimes, classical criminal law scholars believe that judicial organs impose penalties equivalent to the «quantity» and «quality» of criminal acts on criminals in order to achieve social justice. Restoration (penalties) protects the authority of the country-«Any acts committed in bad faith shall be treated as retributive sanctions (Binding)». The traditional criminal justice system is behaviorist/state (authoritative)/prejudiced emphasis on punishment in «restoration»; In the future-oriented dimension, classical criminal law scholars are influenced by positivist and believe that the punishment of offenders should be based on the potentiality of offence derived from social factors, through punishment (deprivation of personal freedom of offenders) and correction (implementation of labor education), in order to achieve the purpose of crime prevention and maintenance of national law and order. In its context, first of all, the restoration of criminals is

national (authoritative); secondly, it is punitive, because the «deprivation function and deterrence function of punishment are the prerequisites of the education and correction function» (Mingxuan 2008: 123-124), which is the most important means to remove the criminal’s potentiality of offence. State (authority)/behaviorist/prejudiced emphasis position pointed out:

1. Restoration of restorative justice “due to the adoption of a de-formalized trial mode, the use of extensive discretion... may cause the consequences of infringement of human rights... insufficient legal protection” (Xuemin 2020: 87);

2. Emphasize the leading role of individuals and communities in handling cases – “overly rely on criminals to voluntarily assume and perform responsibilities” (Xiaoming 2006: 59). The lack of national coercive protection may lead to failure to realize responsibility and fail to implement social justice;

3. There is a tension between the damage to the interests of the victims caused by crimes and the damage to the national legal order. The restoration of restorative justice emphasizes the interests of the victims, and weakens the state’s presence in the restoration process, which is not conducive to the protection of the national legal order;

4. The content of restoration is too kind and the effect is weak.

Proponents of restorative justice believe that «crime is a normal phenomenon, not a pathological one» (Zongxian 2010: 289). Therefore, in the past, the proponents of restorative justice shifted the concept of crime from «violation of the rules» to «social conflict». Therefore, in the restoration process, the offender was emphasized to actively assume the responsibility caused by the crime in order to achieve the goal of restoring social relations. They believe that: «pure punishment is ineffective in changing people’s behavior. It not only has disadvantages such as high cost and poor effect, but also destroys the harmonious social relationship» (Xiaoming 2006: 54)

In the future-oriented dimension, they believe that punishment cannot achieve the effect of rectifying the personality of the criminal, because the shortcomings of the freedom penalty that is widely implemented worldwide are mainly infectious, closed, blind, surplus and insufficiency. The closedness of the prison is the root cause of blindness and contagion. During the period of imprisonment, the offender is isolated from the outside world and cannot be informed of changes in the outside world-«Especially in the ever-

changing modern society, it forms a strong contrast with the closedness of the prison. This makes it more difficult for criminals to socialize and can easily lead to recidivism» (Xingliang 2001a: 696-698). Therefore, proponents of restorative justice emphasize the social participation of rectify on the basis of «decriminalization». On the one hand, through mediation and negotiation between the offender and the victim, the inner hatred of the victim is smoothed and the victim is prevented from «sympathetic revenge»; On the other hand, through the participation of social forces in the repair process, the trust between each other is enhanced, which is conducive to the return of the criminals to society. From this, it can be concluded that the restoration of restorative justice is social (rights)/humanism/behavioral humanism/both emphasized.

The two positions seem to be tit-for-tat, but through careful analysis, it can be found that the proponents of traditional criminal justice advocate restoring social justice through retribution and elimination of the potentiality of offence of criminals to return to society. Both of them show «social» element of restoration. That is, the punishment of retribution, when punishing the offender, to achieves the goal of restoring social order by imparting justice in the ethical sense of the people to the victim. And through rectify methods to remove the potentiality of offence of criminals, so that they can return to society, thereby restoring social relations. And in judicial practice, traditional criminal justice pays more and more attention to the integration of «social» elements, because «social desire is the characteristic of human beings beyond other animals. According to this natural tendency, humans and their kind live together in a peaceful way, and form a community» (Grotius 2005)

For example, the «community rectify system» and the «criminal reconciliation system» are widely implemented. The opposition between traditional criminal justice and restorative justice is gradually dispelled under the influence of social elements.

The resolution of opposition in dimension of victims

Proponents of traditional criminal justice believe that crime is socially harmful and endangering the legal order of the state, because the state needs to rectify criminals that can be rectified. That is, with criminals and the state as the core, it serves to realize public welfare and maintain public order. Therefore, in the restoration process, the victim is in a relatively unimportant or even neglected position, that leaves space for the protection of the victim’s interests. Proponents of traditional criminal

justice believe that national interests are higher than personal interests and that individuals should be subordinate to the authority of the state. They also believe that excessive emphasis on the specific interests of victims will place a heavy burden on the judicial agencies, because the interests of victims often differ from person to person and cannot be unified. Therefore, the proponents of traditional criminal justice are state (authoritative)/prejudiced emphasized in their attitude towards restoring the interests of victims.

Proponents of restorative justice believe that the core of the restoration process should be around the victim, through various ways to restore and make up for the victim's property loss, mental injury, and psychological problems caused by criminal behavior. In the restoration process, the victim and the offender communicate face-to-face, negotiate their own interests, and actively restore the damage suffered by the victim to eliminate the victim's revenge psychology induced by criminal behavior, and promote people to be more convinced of the justice of the law. According to Tom Taylor: «People are more likely to abide by the law if they think they have been treated fairly by the criminal justice system» (Taylor 2006). Therefore, the restoration of restorative justice also pays attention to the restoration of the national legal order but uses a gentle and indirect way to protect and maintain the legal order. Therefore, the restoration of restorative justice is both emphasized/social (rights).

In the dimension of the victim, the focus of the debate on restoration between the traditional criminal justice and the restorative justice is «who is the core between the victim and the national legal order», that is, whose value is better between «state (authority)/society (right)». The fundamental task of criminal law is to serve public welfare and maintain common order by means of safeguarding legal interests. However, the state-based ideal of retribution abstracts the interests of the victim as a member of the intangible overall interests and marginalizes, ignores it. The true demands of the heart may cause the victim to disagree with the judgment of the judiciary, leading to endless appeals or petitions, and may even go to the road of illegal crimes without results in the appeals or petitions, thereby again damaging the legal order. Restorative justice enhances the importance of the victim in the restoration process to meet the specific demands of the victim. The more respect their dignity and interests, the heavier they will obey the criminal law and legal order. Restorative justice restores and pays attention to the victims' damaged interests so

as to establish the victims' inner submission to the national legal order, and indirectly maintains and consolidates the national legal order. The purpose of traditional criminal justice overlaps with the objective result of restorative justice.

The resolution of opposition in dimension of community

Proponents of traditional criminal justice believe that the content of restoration is mainly to restore the damaged national legal order, so the criminal law does not directly stipulate the content of restoration of community order. Regulations on the interests of the community are scattered in «rectifying offenders through penalties and re-education through labor so that they can return to the community», or «whether it affects the community as the sentencing circumstances for the application of probation, parole, and surveillance». The traditional criminal justice cares a bit about community. In recent years, the «community rectify system», which has an indirect restorative effect on the community, has gradually received attention. The community rectify system aims at the criminals' «sincerely repenting» and «return to society», and emphasizes socialization and the participation of social forces in the execution process. However, the focus of this system is to help criminals return to society, while the restoration of community interests is still indirect. In the community dimension, the restoration of traditional criminal justice is still state (authoritative)/prejudiced emphasized.

For restorative justice, the community, as one of the main participants, participates in the restoration process throughout the whole process, integrates the restoration process into the community, and «cares about the health of the community and restores the harm caused» (Quinn 1998: 178). Because crime not only does damage to victim, but also endangers the order and safety of the community. Therefore, restorative justice will provide criminals with service projects to community. Criminals use unpaid labor to compensate for the losses caused to the community due to the crime. Proponents of restorative justice emphasize that: «the criminals can and must contribute their own strength in this restorative process» (Quinn 1998: 178), and in this way, criminals can restore their relationship with the community; Restorative justice is not only aimed at repairing the damaged interests of the community in the past, but in the future, it requires community members and victims to actively participate in preventive procedures, strengthen the community's crime prevention and control capabilities, and consolidate the peace and security of the community.

At a deeper level, restorative justice changes the community’s perception of crime, treating crime as a “natural social phenomenon...society must maintain a certain degree of flexibility...it will inevitably appear to violate social norms» (Xingliang 2006: 54). Restorative justice allows community members to no longer prejudiced view criminals, and to accept criminals with a more tolerant perspective, so that the re-socialization of criminals will also achieve better results. In this logic, the restoration of restorative justice is social (right)/both emphasized in the community dimension.

In the community dimension, the community rectify system indirectly restores the damaged relationship between the offender and the community, because «the task of rectify includes establishing or re-establishing a strong connection between the offender and the community, so that the offender can be reintegrated into social life» (Butler 1991: 22). The traditional criminal justice system puts the community as an important part of its vision. However, compared with restorative justice, it does not directly include the community as the injured party in the restoration process. Restorative justice is more forward-looking. In the restorative process, all the communities related to the infringement are involved. They restore the interests of the community damaged by crimes and eliminate the barriers between individuals and the community. Restorative justice strengthens the role of the community as a bond and restores the community more directly. There is an obvious opposition between the traditional criminal justice and restorative justice, and the reason is that their value trends are different. Because the traditional criminal justice system aims at maintaining the national legal order, while restorative justice aims at restoring social relations. However, «light punishing is a process and a trend» (Xingliang 2001: 665), so the community rectify system applicable to misdemeanors will inevitably expand, and the role of the community will inevitably become more and more important. The opposition between the two will also increase with the degree of judicial civilization improved.

Conclusion: evaluation of the two positions and the position held by this paper

Proponents of traditional judicial believe that “restoration” should focus on punishment, past-oriented, emphasizing social justice and state. This position is undoubtedly prejudiced or incomplete in understanding the concept of “restoration”. Limiting

the “restoration” to the restoration of the legal order, and not focusing on the reshaping of the offender’s personality and the restoration of its social relations with stakeholders will undoubtedly increase the difficulty of re-socialization of the offender. Because the interests of the victims and the community are ignored, it is difficult to alleviate the tension between them and the criminals. Therefore, abstract social justice will dilute or even dissolve in this tension. However, since the heavy penalty thought still has a broad market in China, and people’s perception of «crime» is still relatively rudimentary, so the «restoration» of traditional criminal justice is still appropriate.

The ideal of «restoration» of restorative justice is in line with the development trend of the «rule of law» of the world. It not only allows the offender to assume responsibility, protects the interests of the victim and the community, and safeguards social justice, but also reshapes the offender’s personality and makes it easy to return to society, that is conducive to the realization of the purpose of crime prevention. Here, the economic and efficiency content of «restoration» must be emphasized again. The judicial system is not a set of principles and rules without background, but a system of knowledge. No matter how we describe and define the restorative justice system in detail, that does not equivalents to foreign successful experience. «The motto ‘Books don’t say everything, words don’t say what they mean’ is a universal and unsolvable problem in human society.» Therefore, ignoring the specific national conditions and directly implanting restorative justice into China is undoubtedly a partially understanding of restoration, at least, it ignores the cost of judicial reform and neglects the economic and efficiency connotation of «restoration».

Through a multi-faceted investigation of the concept of «restoration», this paper believes that «restoration» is a two-dimensional four-level compound concept. Therefore, trying to find a simple synonym for «restoration» often fails to obtain satisfactory results. Regardless of whether it is from the time dimension or the participation dimension, it is necessary to look at the other side, adding a large number of attributives, and it is inevitable that it will not be able to fully express its accurate meaning. Therefore, this paper believes that the understanding of «restoration» should not be based on a specific concept, but should be based on the two-dimensional four-level structure of the concept of «restoration». The material cause of «restoration»-internal elements is of course

important, but the form factor-internal structure is more important. Like carbon in chemistry, different combinations will form different substances, such as graphite and diamond.

All in all, for the understanding of the concept of «restoration», the position adopted in this paper is the two-dimensional four-level structural

model. If the definition doesn't meet this structural standard, no matter how close to the criteria for «restoration» it is, it is not enough to define «restoration» in dogmatics. Even if the internal elements fully meet the criteria of «repair», those that do not combine the structure are still not «restoration» from the perspective of criminal law.

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