

Restorative Justice Concept Definition

Miao Zhuang

East China University of Political Science and Law, Shanghai, 201600, China

Abstract: *Since Barnett, a British scholar, first used the term “restorative justice” to describe the specific principles that should be followed for reconciliation between offenders and victims, the term had been given more connotations by scholars. As it is an emerging model of crime treatment and practice patterns vary from country to country around the world, there is not yet a widely accepted definition of restorative justice. This paper aims to extract the “conventionality” of restorative justice through a comparative study of the concepts related to restorative justice from different perspectives, to sort out the hard core of the concept definition of restorative justice, and to play a certain role in understanding the concept definition of restorative justice.*

Keywords: *Offender, Victim, Restorative justice, Retributive justice, Community correction, Criminal reconciliation*

1. Introduction

“Restorative justice” is a new system promoted by Western countries in the field of criminal policy in recent years, and its implementation in some countries indicates a trend that in criminal justice, the focus of attention is gradually shifted to the damage caused to victims and society by criminal acts, and less attention is paid to the specific analysis of offenses. This has also received considerable attention from relevant United Nations agencies. At its eleventh session in Vienna in April 2002, the United Nations Commission on Crime Prevention and Criminal Justice adopted a draft resolution on the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, encouraging Member States to make use of the resolution in the development and implementation of restorative justice procedures[1].

In recent years, many countries have been actively exploring restorative justice procedures, and scholars from various countries have conducted a lot of research on restorative justice. However, due to the rich connotation of restorative justice, the theoretical community has described the meaning of restorative justice from different aspects and perspectives in recent years, and there is an increasing number of related studies on restorative justice. Different concept definitions of restorative justice exist, with some focusing on the special decision process of restorative justice; others on the compensation of injured legal interests in restorative justice. This paper explores the growing literature on restorative justice research, with the intention of arriving at a more accurate overview of the meaning of restorative justice through a comparative analysis of concepts related to restorative justice. This paper will specifically discuss the connotation and significance of restorative justice from the aspects of retributive justice and restorative justice, community corrections and restorative justice, criminal reconciliation and restorative justice, and the value of restorative justice[2].

2. Retributive Justice and Restorative Justice

“Punishment is the reward for the harm done to the offender”, this deep-rooted concept of retribution has always existed in the past people’s understanding of the penalty system, and retribution has formed the value basis of the traditional penalty system, and its focus is on the causal relationship between crime and punishment. The retributivist value of punishment believes that the value of punishment lies in its positive significance in satisfying the need of social subjects to achieve justice, and that this need to achieve justice is the “retribution of evil”.

To further explain what “retributive justice” is, here I quote Zell, who mentions that “Restorative justice is a new criminal justice paradigm, an alternative to the retributive paradigm that has dominated Western notions of criminal justice for centuries.” In his view, the main activity of retributive justice is the attribution of blame for crimes that have occurred. Retributive justice is concerned with the

question, “Who should we hold accountable for crimes?”

Restorative justice is opposed to the traditional notion of retributive justice. It breaks away from the traditional notion of crime as an “isolated struggle of the individual against the relationship of domination” and instead considers crime as a personal matter, a violation of the individual by the individual, and only then involves the relationship between the individual and the state. Restorative justice focuses on “restoration” and believes that crime is first of all a kind of damage and harm to the harmonious relationship between people, so it is dedicated to repairing the damaged relationship between people by building a platform, promoting communication and reaching understanding. The most effective way to deal with the problem of crime and recidivism is through “relationship repair”[2].

3. Community Correction and Restorative Justice

“Community Correction, also known as Community Treatment, refers to the execution system of placing offenders in the community and relying on social forces to supervise, manage, educate and correct them, and is a non-penal alternative disposition.” According to the definition we can draw a conclusion that community correction essentially belongs to non-custodial sentence enforcement measures. That is, the leading authority of community correction is still the state authorities; community correction is mandatory; the purpose of community correction is not different from traditional penalty enforcement measures[3].

Restorative justice, in which offenders voluntarily compensate victims for their losses and proactively repair the social relationships damaged by their criminal behavior, “should be thought of more as a personal mechanism that encourages offenders to take responsibility for their actions,” and it emphasizes Braithwaite’s point about “it underscores the importance of Braithwaite’s goal of reintegrative shaming, which maximizes the possibility of rehabilitating offenders, in contrast to the suffering and resentment that often result from a punishment model that focuses on punishment and incarceration. As a kind of “tolerant justice,” restorative justice, with its emphasis on “restoration”, has a different philosophy about the crime, the causes of the crime, the responsibility of the offender, and the purpose of the punishment than the traditional criminal justice, with its emphasis on “punishment”.

The community correction system attaches importance to the role of the community, which is objectively conducive to the further repair of the offender’s relationship with the victim and reintegration into the community, and to a certain extent reflects the concept of restorative justice. It can be seen that the concept of restorative justice has an inherent fit with the concept of community correction system design. Based on this fit, some scholars have conducted theoretical discussions on the introduction of restorative justice in community corrections, arguing that both restorative justice and community corrections share the same pursuit in mitigating the negative effects of imprisonment, manifesting the humanitarianism of punishment, and reducing judicial costs[4].

Community correction originated from the community corrections system in Western countries, and its important characteristics are its non-custodial and community participation. Both the “restorative” in restorative justice and the “openness and public participation” in community corrections emphasize “people-oriented” in the process of reforming offenders, where the “people” include both the defendant and the victim. Restorative justice emphasizes the mental comfort of the victim, it is that the victim fundamentally understands the defendant, and completely repair the normal social order damaged by the crime; community correction focuses more on the protection of the rights of the defendant, and requires the joint assistance of all community residents, including the victim, so that the offender’s vices of thought and behavior are corrected and return to society.

4. Criminal Reconciliation and Restorative Justice

VOR (Victim-Offender Reconciliation) is a way to settle criminal cases through negotiation and cooperation. It is based on the admission of guilt by the aggressor and the voluntariness of the victim. After face-to-face communication and negotiation between the two parties, the aggressor finally reaches a settlement through compensation, apology and other means, while the judicial authorities will not hold the perpetrator criminally responsible, or will reduce or waive the punishment based on the result of reconciliation. According to the existing practice of criminal reconciliation, it can be roughly divided into three types: party-based, people’s mediation and judicial mediation[5].

In general, restorative justice is both a judicial model (institutional level) and a new criminal justice concept, while criminal reconciliation is a specific criminal justice model under the guidance of restorative justice concept. From this perspective, criminal reconciliation and restorative justice are both related and different.

Restorative justice differs markedly from criminal reconciliation in that it is rooted in a rethinking of the traditional criminal justice system and penal system, and a reconceptualization of the nature of crime. Restorative justice is therefore a postmodernist legal ideology, based on a critique of the traditional criminal law system, and with a strong emphasis on community participation. The origin of the so-called criminal reconciliation between victims and perpetrators can be traced back to the settlement of disputes by ransom instead of revenge at the end of human primitive society, and many historical and modern systems bear the marks of this dispute settlement method, such as ransom, fines, and damage orders for victims. The concept and practice of reconciliation has coexisted with mainstream criminal dispute resolution in human history, and there has been no shortage of such attempts in China since ancient times[6].

In terms of the connection between the two, the current trend of restorative justice in the international arena and the traditional concept of criminal reconciliation in China appear to intersect, i.e., both are concerned with the protection of victims' rights and the restoration of interpersonal relationships and social order after the occurrence of disputes. Therefore, in constructing our criminal reconciliation system, people can absorb the beneficial experience of Western restorative justice theory and practice, but this does not obliterate the differences between the two sources.

5. The Value of Restorative Justice

Combining the views of different scholars, in my opinion, understanding the value of restorative justice is conducive to defining the concept of restorative justice more clearly. As a modern criminal justice model, restorative justice plays an extremely important role that cannot be ignored. In addition, it plays a pivotal role in restoring social relations.

First, restorative justice can greatly improve judicial efficiency. According to the provisions of China's criminal procedure law, a criminal case must go through multiple procedures such as filing, investigation, prosecution and trial, which will certainly cost a lot of judicial costs, especially in judicial practice. When the facts are unclear, and insufficient evidence or the defendant refuses to admit guilt, it will greatly prolong the case processing cycle. In restorative justice, face-to-face communication and negotiation between the victim and the defendant will be more conducive to the resolution of conflicts between the two sides, which will, to a certain extent, greatly reduce judicial costs and improve judicial efficiency[7].

Second, restorative justice has greatly enhanced the status of victims. In the traditional conception of criminal justice, "crime is an isolated struggle of individual reactionary relations of domination" and the victim is marginalized because the crime violates the interests of the state. However, restorative justice believes that the crime essentially violates the rights of the individual victim, so it allows the victim and the defendant to negotiate face-to-face on compensation issues, which solves the problem of difficult enforcement of civil litigation incidental to criminal proceedings, and allows the victim to express his or her feelings, whether they are angry or sad, to some extent.

Third, restorative justice is conducive to the defendant's return to society. In the traditional justice model, more punishment is given to the crime, and education and probation are rarely reflected. In restorative justice, the defendant is often able to recognize the harm caused to the victim by his or her criminal behavior, prompting him or her to reflect on his or her behavior and thus try to get the victim's understanding as much as possible, and society will also largely forgive the defendant's behavior, thus facilitating the defendant's return to society and largely reducing the defendant's chances of committing another crime.

Fourth, restorative justice is conducive to reducing conflicts. Restorative justice promotes face-to-face communication between the defendant and the victim, which can largely release the victim's emotions and enable the victim to know the reason why the defendant committed the crime, and can effectively resolve the conflict between the two sides[8].

6. Conclusion

Above all, this paper specifically discusses the connotation and significance of restorative justice from the aspects of retributive justice and restorative justice, community corrections and restorative justice, criminal reconciliation and restorative justice, and the value of restorative justice, which provides theoretical knowledge for the academic community to study restorative justice and has positive significance for the research in this area.

In terms of definitions by different scholars, some emphasize restorative justice as a judicial process. For example, Tony Marshall, an early advocate of restorative justice, argues that restorative justice is a process by which the parties involved in a particular crime jointly decide how to deal with the consequences of the crime and its future impact. Some scholars emphasize the restorative outcomes of restorative justice. For example, “restorative justice is the acceptance by remorseful offenders of their responsibility to victims and the community for their wrongdoing.” Clearly, both of these perspectives understand restorative justice as a judicial process. Some scholars emphasize restorative justice as a concept of justice. For example, “restorative justice provides a radically different framework for understanding and responding to crime. Rather than being offender-centered, restorative justice recognizes that there are three parties: the victim, the offender, and the community.” In addition, the different formulations of the term “restorative justice” by Chinese scholars when translated into Chinese also illustrate this issue[9] .

In fact, the different views of scholars only show that they are expressing the same issue from different perspectives and at different levels, and there is no antagonism. Whether they regard it as a process or an outcome, or as a judicial process or judicial philosophy, the core view expressed is more or less the same, that is, restorative justice is a new model of crime treatment in response to the shortcomings of the existing retributive justice, which emphasizes that the crime has caused damage to the victim as well as the offender himself and the community, and not only the government but also the victim, the offender and the community should be involved in repairing the damage caused by the crime, so that the offender can actively take responsibility for the harm caused by his or her actions, and so that social relationships can be restored. Therefore, restorative justice can be considered as a restorative justice process guided by the concept of restorative justice.

In 2002, the United Nations Commission on Crime Prevention and Criminal Justice recommended that the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, adopted by the Economic and Social Council, state that restorative justice is an evolving response to crime that builds understanding and promotes social harmony by restoring victims, offenders and communities, respecting the dignity and equality of each person. This approach provides victims with the opportunity to obtain redress, increase their sense of security and seek to bring closure, enables offenders to gain insight into the causes and effects of their actions and take effective responsibility, and enables communities to understand the root causes of crime, promote community well-being and prevent crime.

Since there are many models of restorative justice practices, and the theoretical connotations are extremely rich, it is difficult to reach a consensus on understanding. At this point, a wise and pragmatic way to think about restorative justice is to extract the “conventionality” factor in restorative justice to help us recognize and judge.

In *Restorative Justice: A Conceptual Framework*, the two authors, with their broad and subtle observations, distill 11 components of restorative justice. They are: (1) inclusion of all parties with a stake in the conflict; (2) recognition and seeking to address the harm; (3) voluntariness of participation in the process; (4) a process premised on truth-telling; (5) direct meetings between victims, offenders, and the community; (6) safeguarding the rights of victims and offenders; (7) involvement of process supporters to safeguard the needs of the broader community; (8) the goal of reintegration of the offender and victim into the community; (9) reaching agreements; (10) not being punitive in content; and (11) the assessment of whether the outcome of the process has achieved restorative effects as a reference.

In my opinion, these 11 elements can basically cover the different understandings and definitions of the concept of “restorative justice” by different scholars. Therefore, no matter how scholars understand or define the concept of restorative justice, I think these elements can be said to have completely and concisely abstracted the hard core of restorative justice, which also plays a certain guiding role in understanding the definition of the concept of restorative justice, and has a certain academic significance and influence.

References

- [1] Daniel W. Van Ness, Wang L. *Restorative Justice in a Global Perspective* [J]. *Journal of Nanjing University (Philosoph. Humanities. Social Science Edition)*, 2005(04):130-136.
- [2] Song Y, Xu S. *Reflections on Restorative Justice Process* [J]. *Modern Jurisprudence*, 2004(03): 32-37.
- [3] Wang R. *On the Restorative Choice and Path Innovation of Community Correction-Taking the Implementation of the Community Correction Law as an Opportunity* [J]. *Crime Research*, 2020(02): 34-42.
- [4] Guan J. *A Brief Discussion on the Development of Community Corrections in China-the Application of the Concept of Restorative Justice in Practice* [J]. *Law and Society*, 2020(16):92-94.
- [5] Zhao Y, Zhang Huiqing. *Research on Community Correction Related Issues under the Concept of Restorative Justice* [J]. *Hebei Law*, 2012, 30(01):149-152.
- [6] Du Y. *The "Warring" Views of Justice: Traditional Criminal Justice vs. Restorative Justice* [J]. *Chinese and Foreign Law*, 2009, 21(02):215-235.
- [7] Wu L. *On the Relationship between Criminal Reconciliation and Restorative Justice* [J]. *Academic Forum*, 2012, 35(02):107-110.
- [8] Chen G, Ge Lin. *A Preliminary Study on Criminal Settlement* [J]. *China Jurisprudence*, 2006(05): 3-14.
- [9] Li Q. *The Construction of China's Criminal Reconciliation System under the Concept of Restorative Justice* [J]. *Journal of Beijing University of Technology (Social Science Edition)*, 2010, 12(04): 92-97.