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The presence of the "internationality" of international criminal justice

Justice is a perpetual topic for mankind. International criminal justice is generally regarded as criminal justice or global justice in academia, but neither of them can provide comprehensive content for international criminal justice alone. In order to make international criminal justice be correctly understood, both theories must be integrated. But there is tension between the two propositions. In order to bridge the gap between the two theories, it is necessary to build a bridge for the integration of the two theories — international criminal justice must incorporate the "international" element. "Internationality" is an indispensable element of international criminal justice. Through the historical investigation of the concepts of "global justice" and "criminal justice", this paper believes that the International Criminal Court must fully consider the "international" characteristics of "individual" embedded in "state" when allocating "negative evaluation" between different cases. The authority of the International Criminal Court can be maintained only when the "internationality" of international criminal justice is fully considered by the International Criminal Court.

Keywords: criminal justice, global justice, internationality, distributive justice, ICC, social contract, constitutional power, individual.

Introduction

The metaphysical concept of "justice" occupies a core position in the axiology of international criminal law, and contains two levels of content-basic justice and distributive justice. In the dimension of basic justice, the International Criminal Court focuses on justice for the victims, and is committed to making both parties "equal-armed" to achieve absolute justice in each case; In the dimension of distributive justice, although international criminal justice and world justice overlap in the core propositions of "different levels of allegiance, governance, and intervention, as well as relativism and universalism" [1], it is one of the highest behaviors that transcends international anarchy, but the "generally conservative legal research paradigm" of international criminal justice has not been favored by philosophers, therefore, the connotation of "distributive justice" has not been fully deduced in international criminal justice, so that the distribution of international criminal justice is often questioned.

Criminal justice includes procedural justice and substantive justice. The British jurists Peter Stein and John Shand clearly pointed out that the legal system has three basic values: "order, fairness and personal freedom" [2] in <The Value of Law in Western Society>. Criminal justice is the embodiment of legal justice in the field of criminal law. World justice includes basic justice and distributive justice. "Basic justice means that everyone should have an equal right with similar freedom systems that are compatible with the broadest basic freedom system owned by others; distributive justice means that in the face of social and economic inequality, basic justice should be reasonably expected to suit everyone's interests"[3]. Both criminal justice and world justice include part of the content of international criminal justice. It is impossible to correctly understand international criminal justice without any party, but there is tension between the two propositions. In order to prevent the two theories from continuing to split, bridge the gap between the two, and fully grasp the connotation of international criminal justice, it is necessary to integrate the content of "criminal justice" and "world justice" in the context of "internationality", and to understand criminal justice in multiply dimensions. Otherwise, the lack of "internationality" of international criminal justice will, on the one hand, cause the International Criminal Court to be trapped in a "sea of cases" because of the excessive manifestation of the "retaliation" of criminal justice; on the other hand, due to excessive emphasis on universalism, the International Criminal Court will show a tendency toward power politics.

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The issue of justice is the core and fundamental proposition of the philosophy of law. International criminal justice is therefore also the core proposition of the philosophy of international criminal law. If the connotation of international criminal justice cannot be grasped correctly and completely, neither can the development of the philosophy of international criminal law be promoted, nor can the conscious sublimation and economic thinking of international criminal law be realized.

Method and Material

This paper discusses the “internationality” of international criminal justice. This paper analyzes the two mainstream understandings of international criminal justice, and points out the rationalities and defects of “global justice” and “criminal justice” as international criminal justice respectively. Only by combining the two concepts of justice can international criminal justice be fully understood. Under the guide of political realism, this paper points out that the “social contract theory” proposed by Cherif Bassiouni doesn’t conform to the current situation of the international community. With the help of Carl Schmitt’s political theory, the author reconstructs the theory of “state contract” with “internationality” as the core, and finally realizes the integration of “global justice” and “criminal justice”, making the content of international criminal justice more complete.

The methodology of the article is based on logical analysis, dogmatic, comparative analysis and other methods.

Results

1) Rationalities and limits of criminal justice as international criminal justice.

The famous international criminal jurist Ambos believes that “international criminal law is a branch of criminal law” [4], the purpose of the <Rome Statute> is to eliminate “impunity”, “the criminal law is the part of the legal order that stipulates the prerequisites for the penalties of constituted acts and the manner in which penalties can be punished” [5]. The two are consistent in purpose, and both are important means to punish crimes and maintain domestic/international legal order. The impulse to regard international criminal justice as criminal justice is mainly based on the following two reasons.

First of all, both are suppressing the most serious crimes in the name of collective. Even though many political philosophers and even the famous international criminal jurist Bassiouni believes that there is no “supra-national organization” or “central sovereignty” in the international society, the existence of international criminal law proves that the international society is a coexisting society, and the interest and restriction relation among states promotes the implementation of international criminal law; the definition of crime in the domestic criminal law fully embodies the collective nature of punishment — “the struggle of an isolated individual against class rule”.

Second, the purpose of the two is the same. “The mission of criminal law is to protect the common living order of human society” [6], and international criminal law is an important means of “maintaining world peace, security and well-being” and “eliminating the history of impunity”, that means both are to maintain the peace and security of mankind, and the goals of domestic legal politics and international criminal law overlap in order dimension.

Although criminal justice overlaps with international criminal justice in content, criminal justice can’t be equated with international criminal justice.

First, criminal justice cannot cover all the content of international criminal justice. Criminal justice uses “stigmatization” and “penalty” as the means to achieve the most serious legal judgments on criminal behaviors. It is a special technical means, a tool to purpose, in other words, it is not purpose itself. Because it does not reveal to us what the crime violates — neither legal interests nor order are premised on criminal law. In addition, substituting criminal justice for international criminal justice runs the risk of falling into a logical contradiction between international criminal justice and classic world justice. For example, “deliberate tolerance of conditions that can alleviate poverty” risks committing crimes against humanity, but it may be an important means to achieve world justice. Since the content of international crimes changes with the development of the times, equating international criminal justice with criminal justice makes us ignore the most important economic justice issue in the work of justice theory researchers, that is, justice needs to tell us that “what is justice” or “what is not justice”, rather than just standardize the characteristics of criminal behavior in a systematic way.

Secondly, criminal justice is a minimalist and mutually agreed type, which completely eliminates the uncertainty of distributive justice disputes in the theory of “world justice”. Because domestic judicial institu-

tions have sufficient resources, so as to extensively and systematically consider the inclusion of "considerable crime" criminal acts into the normative system, and thus have not developed a powerful theory that affects their distribution justice. However, the resources of the International Criminal Court are limited, and that its efforts to "eliminate the history of impunity" conceals the content of distributive justice on "who should be prosecuted". In practice, international criminal justice is still a kind of exceptional justice, and it cannot be reduced to domestic undifferentiated trial justice. For example, ICTY and ICTR are largely attributable to a highly selective political posture, and the complicated form of defendant selection deepens the selectivity. Even for the International Criminal Court, a permanent court established to regulate international criminal justice, the selectivity of criminal justice is still obvious. As long as the ability of individuals to commit crimes exceeds the ability of the International Criminal Court to try them, this situation will not end. In this context, international criminal justice is a question of "between justice", rather than an issue of "justice to whom". In other words, international criminal justice is not "whether A was tried in a fair trial", but "why A, not B was tried" [7]. Everyone wants others to be punished, not oneself, and often adopts the beggar — neighbor way to avoid punishment. This is not only the result of denialism, but also rooted in the feeling of whether a person is excessively and unfairly stigmatized.

Finally, regarding criminal justice as international criminal justice has a normative risk of challenging distributive justice. Since the Enlightenment, under the influence of Kant's moral philosophy, criminal justice prides itself on "non-instrumentalism" treating the defendant as an end rather than a means. Of course, this is not to question the discretion of prosecutors, but to worry about blatant "political bias" [8], scapegoats and even unreasonable prosecution policies. The <Rules of Procedure and Evidence> and the <Rome Statute> provide for legal punishment and evidence to prevent the defendant from being instrumentalized by the domestic rude methods with arbitrary characteristics, but this does not mean that they will not be instrumentalized because they are selected rather than others who should be prosecuted.

In summary, criminal justice has part of the content of international criminal justice, but the biggest crisis in equating criminal justice with international criminal justice is the inability to resolve the distribution of different types of justice between whom, and why and how.

2) Rationalities and limits of global justice as international criminal justice.

The theory of world justice takes contract theory as its fundamental starting point, and uses "hypothetical", "non-historical" and "procedural" contract theories to establish a "pure" and "political" "universal identity" [9]. This is consistent with the "universalism" impulse inherent in international criminal justice.

First of all, crimes under the jurisdiction of the <Rome Statute> are the content of international jus cogens. International criminal law scholars based on theory of human rationality of natural justice and "law is part of the order of society" [10; 604], and pointed out that "the normative principle derived from the jus cogens law has universal applicability, because it is applicable to everyone in the same situation, regardless of their identity and location" [10; 604]. The cosmopolitan supporters of international criminal justice hope that, in accordance with the universal principles of criminal law, the common legal heritage of mankind will leave ample room for criminal rulings by the International Criminal Court even under the conditions of the "complementary principle". To a large extent, universalism won the "debate about whether international criminal justice should be universal or plural" [11], even the importance of place is emphasized and recognized [12], it also always refers to the general recognition of cosmopolitan values by the International Criminal Court.

Secondly, both international criminal justice and world justice are aimed at promoting the development of human rights, especially in the fields of the right to life and human dignity, and they are the same. For example, crimes against humanity have gone from the <Nuremberg Charter> that "must be associated with armed conflict" to the <Statue of Former Yugoslavia> does not have to be associated with armed conflict, and then the <Statue of Rwanda> applies to "non-international armed conflict". The applicable conditions have dropped again and again. It is obvious that international criminal justice is increasingly being affected by the booming human rights law, and it is gradually focusing on protecting human life and human dignity. It is true that the criminalization of violent acts such as "genocide", "apartheid", "persecution", and "forced migration" are regarded as the basis for building a diversified and inclusive society. But it is undeniable that international criminal justice and world justice are developing in the same direction under the influence of humanitarian law.

Third, the international criminal law directly punishes individuals, which seems to bypass national sovereignty and be responsible to the "community of mankind". Based on the philosophical foundation of "international contract", Bassiouni pointed out that the basis of the judicial power of the International Criminal

Court lies in the authorization of all mankind [10; 608]. Therefore, the scope of application of international criminal justice and world justice has reached the same level.

Regarding international criminal justice as a descriptive form of world justice goes beyond the metaphysical understanding of international criminal justice and ignores that the International Criminal Court is still essentially a “regional” court. And the courts that regard the International Criminal Court as all mankind still lack “philosophical persuasiveness”.

First of all, world justice puts the grand concept of humanity above the potential interests of individuals and society, even though the <Rome Statute> is “to protect the well-being of mankind” and international criminal justice is based on individual initiative, it is still doubtful whether the social embeddedness of the individual, the national authorization and the responsiveness of the international structure can make the international criminal justice truly surpass the international system and national sovereignty. For example, in the Rohingya case, the Myanmar government repeatedly refused the jurisdiction of the International Criminal Court. At the same time, the ongoing debate on the compatibility of amnesties implemented by sovereign states through democratic procedures with the <Rome Statute> also shows that — “world justice” and “democracy” are in tension because of the “legitimate principle” familiar to humanitarian law.

Secondly, the <Rome Statute> on behalf of “maintenance of the well-being of mankind” is easy to be mistaken for just a fantasy “rhetoric”. First, “It is not yet clear whether international crimes truly “shocked the conscience of mankind” in some recognizable sociological way, or does such a meager reality match the actual, targeted, and intensely felt trauma of the actual victim” [1; 85]. Second, the creation process of the <Rome Statute> is always full of “elite”, “expert”, “transnational” and “sovereignty” atmosphere. The cosmopolitan belief in international criminal justice seems to remain in concept rather than reality.

Third, the crimes governed by the <Rome Statute> are considered crimes against the entire human race, and international criminal justice is therefore universal. But to make international criminal justice truly universal, the individuals who are indicted must be judged purely based on the conditions of their entire human society or based on their ability to evil against the entire region or country — they must be at least replaceable free men who are ultimately responsible to humans, rather than puppets representing specific countries. However, in international criminal practice, individuals cannot be merely morally and legally autonomous individuals, and are always embedded in related system issues in a symbolic way. In this way, the idea of world justice as international criminal justice indispensably avoids falling into a dilemma — they are committed to treating people as ends, but in order to achieve their ends, they have to use people as means. Moreover, the International Criminal Court prosecutes those who are “most responsible for the most serious crimes”. It is impossible to focus on a certain country. However, from the practice of the International Criminal Court, it can be seen that the International Criminal Court has avoided issue of distributive justice. In other words, it didn’t solve the “why A and not B was sued”.

Discussion

Although the term “internationality” is rarely discussed in the theories of world justice and criminal justice, it is undeniable that international criminal justice operates and has effects in the context of a flexible international system. Therefore, international criminal justice should not be broadly understood as justice for all mankind, or minimalist criminal justice, but as justice between specific nations. From the above analysis of the two theories of international criminal justice, it can be seen that the current two types of international criminal justice do not emphasize the “international dimension” inherent in the concept of international criminal justice itself. Even if it is mentioned, it is a criticism that “the consideration of the dimensions of nations not only fails to achieve world justice, but increases the barriers to sovereignty” [10; 601]. However, the potential and real dangers of world justice and criminal justice as international criminal justice force us to face the specific international justice issues raised by the inter-state dimension. This is not only a theoretical need, but also a practical one. Because even though the International Criminal Court is concerned about serious domestic violations of human rights, its focus is more on crimes between countries. In addition, the 1950 <Draft Statute of the International Criminal Court> was stranded because of the unclear concept of “crime of aggression”, a crime full of “inter-state factors”. The current <Rome Statute> also does not provide a specific definition of “crime of aggression”, which shows that the inter-state factor has not been rejected by the world, on the contrary, it may become more prominent in the future.

1) Individuals are embedded in the state and social structure.

The most important meaning of the “internationality” of international criminal justice is how to deal with the distribution of justice among nations, that is, “why A is prosecuted but B is not prosecuted?” The

prerequisite for understanding the issue of the distribution of justice among nations is to reject the romantic tendency of world justice that treats "individuals" as "free moral individuals" who are only responsible for human conscience. Because international criminal justice still operates in a world dominated by competition between countries, individuals in the world are not "segregated subjects completely separated from their objects" [3; 560], but "experienced subjects" [13; 70] who are contextualized and embedded in specific countries and societies. This is not a return to early "nationalism" and "community/groupism", because the indicted crime was committed by the perpetrator in conspiracy with other leaders in the state organization, and the criminal has elevated the criminal plan to the national will to form part of the policy of the country or international organization, "therefore, the criminal finally bears a symbolic and more serious responsibility than in the strict sense" [14]. Even though the supreme philosophical basis for punishing international crimes is the worldwide obligation to transcend local and national allegiance, the reason why individuals are prosecuted, as demonstrated above, is precisely because they are deeply rooted in the specific situation of the country and region — being the leader of a country or region does not break the national or social structure — these structures have become the goals of international criminal justice. This conclusion is not difficult to prove in the judicial practice of the International Criminal Court. For example, "Milosevic and Karadzic tried by ICTY are regarded as purely free individuals in court, but local residents are more inclined to regard them as representatives of the state, society, and political groups" [15].

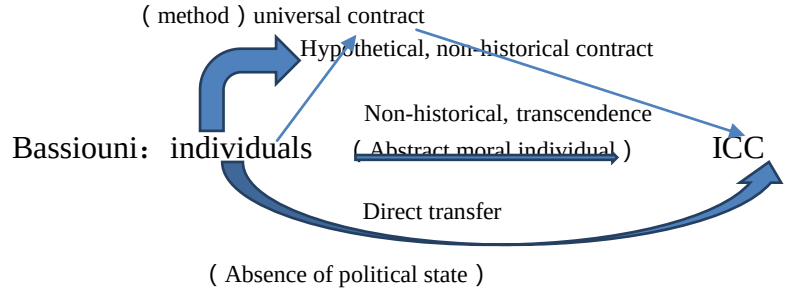
2) Internationality can integrate criminal justice and world justice

International criminal justice includes criminal justice and world justice. However, there is tension between the two theories, but there is no lack of consistency. Proposing the "internationality" proposition of international criminal justice can realize the connection between criminal justice and world justice. It not only fills in the lack of distribution justice in criminal justice, but also reconciles the conflict between "individualism" and "cosmopolitanism" of world justice in the real society. Thus, it can bridge the gap between criminal justice and world justice. As a result, the connotation of international criminal justice is fully grasped like a Russian doll: First, in terms of attributes, international criminal justice is a "negative moral assessment" in the international context; Secondly, in the dimension of purpose, treat international criminal justice as a form of justice that parallels individualism and cosmopolitanism; Finally, in the dimension of method, the country is regarded as the basic justice distribution unit to judge the country's political system and group culture, and then allocate the limited resources of international criminal justice.

First, the emphasis on the internationalization of international criminal justice has realized the extension of criminal justice in the world dimension. International criminal justice punishes international crimes, not only to achieve criminal justice with "principal of suiting punishment to crime" and "due process" in individual cases, but also to extend the purpose of international criminal justice to the entire "welfare of mankind". However, the philosophical and political dual identities of moral individuals are tense in the ethical and national loyalty dimensions, because moral laws do not force free individuals to serve the whole of mankind instead of national loyalty. "Internationality" here embodies the role of bridging criminal justice and human well-being. Because all crimes under international law establish a connection with the most important value of the international community through a common feature, this is the so-called international factor: All international crimes have a background of systematic or large-scale use of violence. As a norm, it is a collective that bears responsibility for the use of such violence, typically a country [16]. International criminal justice not only protects the international legal order connected with the most important values of the international community — well-being, peace and security — and punishes those who are most responsible for the international crimes committed in order to achieve retaliation justice, and to deter potential perpetrators. Therefore, "internationality" — individuals are embedded in the country and society—combines individual justice with human well-being.

Second, the emphasis on the "internationality" of international criminal justice fills the vacancy in the legitimacy of the International Criminal Court's exercise of international criminal justice. First, the transfer of sovereignty by a sovereign state is the most direct explanation for the jurisdiction of the International Criminal Court, but the ICC's jurisdiction over non-parties is full of controversy. Take the situation submitted by the Security Council as an example. The Security Council takes measures in accordance with Chapter VII of the <the Charter of the United Nations> to set up an ad hoc international criminal court or submit the situation to the International Criminal Court. Although non-parties are not parties to the Rome Statute, they are members of the United Nations. Therefore, the Security Council has the right to refer non-parties to the International Criminal Court in accordance with <the Charter of the United Nations> — the highly artificial nature of this reasoning, although logically impeccable, also exposes the distance between valid legal argu-

ments and persuasive justice. Second, there are also tensions in the relationship between the State party and the International Criminal Court. States parties agree to the ICC’s jurisdiction through sovereign consent, but this does not mean that a sovereign state has handed out a blank check to the ICC so that they can confirm their acceptance of all their decisions, especially with the prosecuted National decision. To solve this dilemma, Bassiouni pointed out: “The international criminal justice system, like the national criminal justice system, is based on the existence of a hypothetical and implied social contract” [10; 598]. Although the theory of contract has been supplemented by Spinoza, Locke, Rousseau, and Kant since the beginning of Hobbes, it has its own charm and rationality. However, “contract is an act of will, and its morality lies in the voluntary character of the transaction” [13; 125]. Its foundation is a metaphysical thing, which can neither be justified nor falsified. Contract theory goes beyond “internationality (national sovereignty)” to give the ICC a philosophical basis for legitimacy. Obviously, it cannot shorten the distance between legitimacy and the persuasiveness of justice.

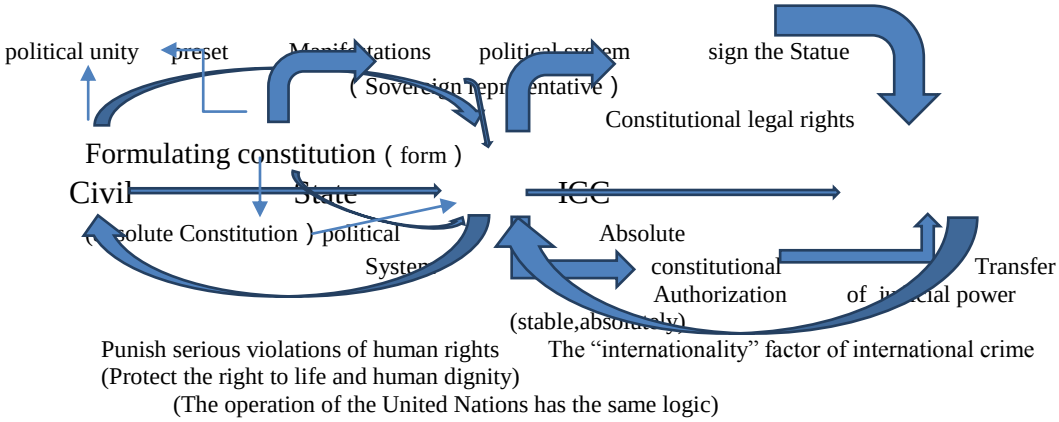


As shown in the figure, since purely moral individuals lack the state carrier, they can’t achieve their goals without historical conditions. The proposal of “internationality” embeds the moral subject in the time and space of the country and society, which is historical and empirical, and solves the problem of the lack of persuasiveness in the justice of the international contract.

“The right to life” is the logical starting point of the social contract. “The first rule of human nature is to protect his own survival; his first concern is to take good care of himself” [17; 125]. Therefore, people give part of their power to the state in exchange for the state’s protection of their lives and well-being. Although the social contract has infinite charm, treating the contract as an act of will — will lead to permanent metaphysical disputes. People’s direct form of protecting their right to life is through the exercise of the political will of “constitutional power”, “relying on power or authority to make a specific general decision on the type and form of their own political existence” [17; 75]. The social contract is the “constitution” in legal terms, and the content of the constitution is not aside, it is “a specific way of living that is automatically given together with each existing political unity” [17; 4]. The people are the main body of the constitutional power, because the people are the root of all political events and power, and only by directly implementing the people’s will can be fully manifested in the constitution (contract), that is, through voting or “cheers”. This enables the people to achieve a combination of experience and purpose, rather than transcendental and metaphysical.

The constitution here is different from the constitutional law. The act of formulating the constitution itself does not contain any individual norms, but stipulates its overall structure through a one-time decision and a special form of existence for the political unity, and this political unity presupposes the existence of a country. Since the will of the people is intangible, the constitutional law as the carrier of the people’s will came into being. The constitutional law stipulates the government system of the country, or the organization form of state power. The state exercises sovereignty on behalf of the people, and this kind of representation is stable. Because the absolute constitution is the political decision of the people, including the decision of the state’s form of government. The change of the constitutional law cannot shake the effectiveness of the absolute constitution. Therefore, the sovereign representation of the country is stable and does not change with the change of the constitutional law. Therefore, the transfer of judicial power by sovereign states to the International Criminal Court not only provides stability, but also fills in the flaws in the foundation of justice.

As shown in the table:



Third, the proposal of "internationality" provides a fair way for the distribution of international criminal justice, and makes up for what is lacking in international criminal justice. International criminal justice, as a limited resource (whether it is active "maintain justice and promote peace" or negative "stigmatization"), cannot generally punish international criminal acts in the real dimension, so the issue of distributive justice — "why is A Instead of B being prosecuted" — must be faced by the International Criminal Court; In addition, the quasi-global public goods created by the International Criminal Court for world peace and security are beneficial to parties and non-parties of the <Rome Statute>, and such public goods are largely exclusive. When the State party "paid most of the fees (Article 114 of the Rome Statute)" for this purpose, non-state parties enjoy the convenience of the International Criminal Court for free, which is undoubtedly an unfair to the State party; Furthermore, the characteristics of international crimes are international and extensive. Therefore, if a contracting state has contact with a non-contracting party, the non-contracting party will not have the opportunity to influence the ICC system (the Assembly of States Parties shall revise the statute, elect judges, and prosecutors). It is also a kind of "armed" injustice for non-parties.

The emphasis on the "internationality" or "nationality" of international criminal justice provides a way to solve the problem of distributive justice faced by the International Criminal Court. First of all, the emphasis on internationality denies the non-historical nature of moral individuals, but treats individuals as individuals embedded in the history of the country and society with a combination of experience and purpose. In this way, when an individual commits an international crime in a national context, its role is no longer replaceable. In other words, it is judged whether the criminal is prosecuted as a model according to the criminal's ability to control the crime. In the same way, the positive effects of international criminal justice should also be dealt with in the same way. Secondly, the limited resources of the International Criminal Court make it impossible to conduct investigations against every individual, but can only conduct investigations in larger national units. Just as individuals have different endowments, there are also differences in the level of development and the ability to rule of law between countries. Therefore, the distribution of international criminal justice must recognize the principle of difference on the basis of respect for equality — that is to say, countries or regions with "relatively backward legal capacity" or "frequent international crimes" should receive relatively more attention, and more serious crimes should be prosecuted earlier than less harmful crimes. Finally, "internationality" respects national sovereignty and exercises "complementary jurisdiction". When non-parties infringe on the safety and interests of the people of the contracting states, and due to the equality of national sovereignty, the contracting states cannot exercise the power to try the crimes of the non-parties, and the International Criminal Court assumes the obligation to protect the "right to life" of the states. As a result, the relationship between the International Criminal Court and the United Nations is of great significance, that is, the United Nations, as a world organization, has the right to refer criminal situations of non-parties to the International Criminal Court.

Conclusion

As the core proposition of justice theory, distribution justice has undergone the changes of classical liberalism, classical republicanism and classical utilitarianism, presenting the struggle between communitarianism and individualism in current philosophy. The theory of distributive justice based on "free ontology" [3; 157] was criticized by Sandel in the dimensions of "veil of ignorance" and "social contract". He considered it to be "hypothetical and non-historical" [13; 150], and then advocates that distributive justice is "moral de-

serves” on the basis of communitarianism, and “unity” has become the most important reason for opposing inequality. The international community is still based on sovereign states as the basic unit, rather than atomic individuals with free subjects, and Sandel’s moral proposition that “goodness takes precedence over rights” is consistent with the purpose of the <Rome Statute>, so the distribution method — “morally deserves” — should be paid attention to.

International criminal justice is a kind of “international” justice. Neither single “criminal justice” nor single “world justice” can correctly understand international criminal justice. Criminal justice lacks thinking about the limited resources of international criminal justice. That world justice’s emphasis on individual responsibility and human rights ignores the fact that the distributive justice of international criminal justice not only between “purely moral individuals”, but should be understood as embedded in the state or region. The emphasis on “internationality” of international criminal justice bridges the gap between criminal justice and world justice. The openness of “internationality” not only implies a worldwide interpretation of the dimensions of “human rights and humanity”, but also presents a very real justice between nations — not only do acts that endanger the well-being of human beings be punished in terms of personal responsibility, but also at the national level, more attention is paid to countries that frequently commit international crimes, so as to prevent the recurrence of crimes. Therefore, the correct understanding of international criminal justice should be carried out in accordance with the logic of “criminal — internationality — cosmopolitan”, so that international criminal justice can be understood correctly.

References

1 Frederic, M. (2015). What sort of global justice is “International Criminal Justice”? *International scientific journal “Journal of international criminal justice”,* 13, 77-96.

2 Peter, S., & John, S. (1990). *Legal value of western society*. Monograph. Bei Jing: China People’s Public Security University Press, 35 p.

3 John, R. (1988). *A theory of justice*. Monograph. Bei Jing: China Social Science Publishing House, *60*, 560, 156 p.

4 Kai, A., & Zhigang, Z. (2017). Belling’s theory of crime in the past century: the revival of the concept of causal and crime at the international level. *Chinese scientific journal “Journal of suzhou university”, Vol. 4*, 4, 143-152.

5 Johannes, W. (2008). *General Introduction to German criminal law.* Monograph. Bei Jing: Law Press, 7 p.

6 Thomas, W. (2001). *Textbook of German criminal law.* Monograph. Bei Jing: China Legal Press, 1 p.

7 Horvitz, L.A., & Catherwood, C. (2009). Encyclopedia of War Crimes and Genocide. Monograph. Berlin: Facts on File, 140-141 p.

8 Cayley, C. (2019). Justice beyond the international criminal court: towards a regional framework in Africa. *International scientific journal “SAIIA occasional paper”, Vol. 293*, 1-21.

9 John, R. (2000). Political Liberalism. Monograph. Bei Jing: Yilin Translation Publishing House, 90 p.

10 Bassiouni, C. (2006). Introduction to International Criminal Law. Monograph. Bei Jing: Law Press, 604, 608, 601, 598 p.

11 (2012). Amnesty International. Universal Jurisdiction-A Preliminary Survey of Legislation Around the World-2012 Update. Monograph. London: Amnesty International Publications, 62 p.

12 Natalie, K. (2019). Limits of law in ending impunity for state crime: time to re-frame the international criminal court’s mandate? *International scientific journal “State crime journal”, Vol. 8*, 2, 219-240.

13 Micheal, S. (2001). *Liberalism and the limits of justice.* Monograph. Bei Jing: Yilin Translation Publishing House, 70, 125, 145 p.

14 Backer, L.C. (2002). The Further Principle of International Law: Individual Responsibility and Collective Punishment. *International scientific journal “21 Penn state international law review”, Vol. 2*, 509-572.

15 Schrag, M. (1997). The Yugoslav War Crimes Tribunal: An Interim Assessment. *International scientific journal “Transnational law & contemporary problems”, Vol. 7*, 15-22.

16 Gerhard, W. (2009). *Principles of international criminal law.* Monograph. Bei Jing: Commercial Press, 40 p.

17 Carl, S. (2005). *Constitutional Theory.* Monograph. Shang Hai: Century Publishing Group, 25, 75, 4 p.

Ван Хэюн

Халықаралық қылмыстық сот төрелігінің «интернационалдылығының» болуы

Әділдік — адамзат үшін мәңгілік тақырып. Академиялық ортадағы халықаралық қылмыстық сот төрелігі әдетте қылмыстық сот төрелігі немесе жаһандық сот төрелігі ретінде қарастырылады, бірақ олардың ешқайсысы халықаралық қылмыстық сот төрелігінің жан-жақты мазмұнын қамтамасыз ете алмайды. Халықаралық қылмыстық сот төрелігін дұрыс түсіну үшін екі теорияны біріктіру керек, алайда осы екі ереже арасында қайшылық бар. Сондықтан осы екі теорияның арасындағы алшақтықты жою үшін екі теорияны қоссақ, онда халықаралық қылмыстық сот төрелігі «халықаралық» деген элементті қамтуы қажет. «Интернационалдылық» дегеніміз халықаралық қылмыстық сот төрелігінің ажырамас элементі болып саналады. Бірақ осы элементті елемеу халықаралық қылмыстық сот төрелігінің қабылданған заңдылығының төмендеуіне, яғни өз кезегінде халықаралық қылмыстық сот төрелігіндегі кемшіліктерге әкеледі. Басқаша айтқанда, халықаралық қылмыстық сот әртүрлі істер арасындағы «теріс бағалауды» көрсеткенде, ол «мемлекетке» енгізілген «жеке тұлғаға» тән «интернационалдылықты» толығымен ескеруі керек, әйтпесе бұл халықаралық қылмыстық соттың бейтараптығына әсер етеді.

Кілт сөздер: қылмыстық сот төрелігі, жаһандық сот төрелігі, интернационалдылық, сот билігінің төрелігі, ХҚС, қоғамдық келісім, конституциялық билік, жеке тұлға.

Ван Хэюн

Наличие «интернациональности» международного уголовного правосудия

Справедливость — вечная тема для человечества. Международное уголовное правосудие в академических кругах обычно рассматривается как уголовное правосудие или глобальное правосудие, но ни одно из них не может обеспечить всеобъемлющее содержание только международного уголовного правосудия. Для того чтобы международное уголовное правосудие было правильно понято, обе теории должны быть интегрированы, но между этими двумя положениями существует противоречие. Чтобы преодолеть разрыв между этими двумя теориями, необходимо построить мост для интеграции двух теорий — международное уголовное правосудие должно включать в себя «международный» элемент. «Интернациональность» является неотъемлемым элементом международного уголовного правосудия. Игнорирование этого элемента спровоцирует снижение воспринимаемой легитимности международного уголовного правосудия, что, в свою очередь, приведет к дефектам в международном уголовном правосудии. Иными словами, когда Международный уголовный суд распределяет «негативную оценку» между различными делами, он должен в полной мере учитывать «интернациональность», характерную для «индивида», встроенного в «государство», в противном случае это повлияет на беспристрастность Международного уголовного суда.

Ключевые слова: уголовное правосудие, глобальное правосудие, интернациональность, распределительное правосудие, МУС, общественный договор, конституционная власть, индивид.