

On the Influence and Adjustment of Criminal Policy on Criminal Law

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Abstract: Under the background that criminal policies such as "combining leniency with strictness" have deeply affected judicial practice, the victim's fault, as an important sentencing circumstance, has caused "different sentences for the same fault" in practice due to its vague evaluation criteria and unclear dogmatic positioning. Problems such as confusion with justifiable defense and imbalance of responsibility have seriously impacted the autonomy and stability of the criminal law system [1]. The core concern of this paper is how criminal law dogma should deal with the intervention of such external policy factors. The study takes the three-level crime theory system as the analytical framework, and proposes a systematic reconstruction plan based on the principle of liability: strictly limit the impact of the victim's fault on the responsible class, and demonstrate that it can reduce the possibility of expectation or arouse the state of passion, so as to reduce the possibility of subjective criticism of the perpetrator [2]. On this basis, build a trinity integration mechanism of "clear dogmatics positioning-legalization of evaluation standards-gradient sentencing effects", supplemented by procedural guarantees. The program aims to standardize the integration of policy concerns into the criminal law system through the "filtering" and "transformation" functions of dogma itself, so as to achieve substantive justice in sentencing on the premise of defending the self-consistency of criminal law logic.

Keywords: Autonomy of Criminal Law; The Victim is at Fault; Responsibility Doctrine; Stratum Theory; Expectation Possibility

1. Introduction

With the in-depth implementation of modern criminal policies such as "combining leniency with strictness" and "restorative justice" in judicial practice, the traditional criminal law

dogmatics system is facing unprecedented challenges: how to effectively absorb the rational connotation of policies while maintaining its own logical self-consistency [3]. This tension is particularly prominent in the field of victim fault evaluation, and has formed many typical controversial scenarios in judicial practice. For example, in an intentional injury case caused by a family dispute heard in a certain province in 2022, the victim insulted and inflicted minor harm on the defendant for a long time, and the defendant eventually inflicted serious harm on the victim due to emotional loss. The court of first instance reduced the punishment of the defendant by 40% on the grounds that the victim had a major fault; In another province with a highly similar case, the court of second instance believed that the victim's fault was insufficient, and only gave the defendant a 15% lighter punishment. This kind of differential judgment is not an isolated case. According to the judicial statistics released by the Supreme People's Court, from 2020 to 2023, among the intentional injury cases involving the victim's fault nationwide, the proportion of cases with similar fault circumstances leading to a sentencing difference of more than 20% reached 32.7% [4].

As an important sentencing circumstance, the victim's fault has caused a series of severe problems in practice due to vague evaluation standards and unclear theoretical positioning. The specific manifestations are: for the fault of the victim with similar circumstances (such as verbal provocation, minor physical conflict), different courts or even different judges of the same court have different standards in judging whether and how to affect the sentencing, resulting in "different sentences for the same fault" phenomena occurring frequently, seriously damaging judicial justice and authority [5]; In the case of the victim's prior lawlessness, judicial practice often mistakenly includes him in the judgment of illegality class for justifiable defense, or simply classifies the situation of

excessive defense as the victim's fault, resulting in logical confusion in characterization and sentencing [4]; What is even more worthy of vigilance is that if too much emphasis is placed on the victim's fault while ignoring the serious lawlessness of the behavior itself, it may lead to insufficient punishment for vicious crimes, weaken the general preventive function of criminal law, and arouse public doubts about judicial justice [6].

Behind these practical dilemmas, there is a deeper theoretical crisis: Does and how can the intervention of criminal policy find an appropriate position in the system of criminal law dogma? As a manifestation of policy concerns, what doctrinal logic should be followed in the evaluation of the victim's fault? This is not only related to the fairness of handling specific cases, but also deeply shakes the stability of the core principles of criminal law dogma. From the perspective of the relationship between criminal policy and criminal law dogma, there is not only a side of coordination and complementarity, but also a possibility of tension and conflict. Criminal policy is oriented to realize the effect of social governance, and has the characteristics of flexibility and responsiveness; The doctrine of criminal law focuses on maintaining the logical self-consistency of the legal system, emphasizing stability and standardization [7]. When policies such as combining leniency with strictness require the victim's fault to intervene in sentencing, if there is no clear dogmatic positioning, it is easy for the policy to break through the legal boundary. For example, in order to implement the "lenient" policy orientation, some judicial organs have excessively expanded the scope of identification of victims' faults, and identified some minor misconduct as major faults, resulting in an imbalance in sentencing; However, when emphasizing "strike hard" specific crimes, it may ignore the obvious fault of the victim and violate the principle of adapting crime to punishment. To this end, this study aims to systematically explore: under the intervention of the external factor of criminal policy, how to delineate the adjustment boundaries of the criminal law system, so as to realize the reasonable integration of policies and the self-consistency of system logic [7].

This paper will take the three-level crime theory system as the basic analysis framework, and

adopt the research path of doctrinal deconstruction, case analysis and comparative law reference. First of all, by combing the specific problems caused by the victim's fault evaluation in practice, it reveals its impact on the criminal law dogma system; secondly, based on the doctrine of responsibility, construct a theoretical scheme that strictly limits the fault of the victim to the responsible class; Finally, it proposes a trinity integration mechanism of "clear dogmatics positioning-legalization of evaluation standards-gradient sentencing effects", supplemented by corresponding procedural guarantees. This research is not only committed to providing theoretical support for unified adjudication standards, but also attempts to explore the independent guarantee mechanism of criminal law dogmatics in dealing with policy intervention, and contributes to the construction of a more complete and self-consistent criminal law theoretical system [8].

2. Theoretical Basis: The Framework and Advantages of the Three-Tier System

2.1 The Appropriateness of the Constituent Elements

As the first stratum of the crime theory system, the constitutive elements should assume the important function of guiding the classification of criminal acts. At this level, it is necessary to judge whether the behavior conforms to the specific elements of a crime stipulated in the specific provisions of the criminal law. This judgment is objective and abstract, and does not involve the actor's subjective situation or specific situational factors. The core value of the constitutive elements is to implement the principle of legally prescribed punishment for a specified crime and ensure the clarity and predictability of criminal law. As the German criminal jurist Roxine pointed out, the constituent elements are "the cornerstone of the criminal law system", and their function is to "type the behaviors worthy of punishment, so as to provide citizens with clear behavioral guidance" [9].

2.2 Illegality

Illegal stratum carries on the objective judgment of the violation of law and order. At this stage, it is necessary to examine whether the behavior has substantive illegality, that is, whether it has caused substantive infringement or a threat to

legal interests. The core of illegality judgment lies in the balance of legal interests, and maintains the unity of legal order through the determination of justifiable defense, emergency avoidance and other illegal obstructions. It is worth noting that the judgment of illegality still maintains an objective nature and does not involve the personal characteristics or subjective state of the perpetrator. As the Japanese scholar Yamaguchi said: "Illegality is essentially an objective evaluation of the relationship between behavior and the legal order, and should not be mixed with the individual circumstances of the perpetrator" [10].

2.3 Accountability

The responsible class is the final judgment stage of the whole crime theory system, and it is also the concentrated expression of the principle of responsibility. In this class, it is necessary to examine whether the perpetrator has subjective reproachability, including factors such as the ability to be responsible, the possibility of knowing illegality, and the possibility of expectation. The core of the judgment of liability lies in the evaluation of the actor's subjective psychological state, which embodies the basic concept of "no responsibility, no punishment" in criminal law. Jacobs, a German criminal jurist, emphasized that the essence of responsible judgment is "condemnation of the formation of the perpetrator's will", which is based on the fact that the perpetrator has the ability to act in accordance with the requirements of the law but chooses to break the law [3].

The advantage of the three-level crime theory system lies in its precise hierarchical division and strict logical structure. First of all, the system can clearly distinguish the normative functions of different elements in the establishment of crimes, and avoid confusing issues of different natures. Secondly, through the progressive judgment structure, the rigor and accuracy of crime identification are ensured. Most importantly, the three-tier system provides a solid theoretical barrier against the improper infiltration of the doctrinal structure by criminal policy. Specific to the evaluation of the victim's fault, the three-level system can effectively prevent the consideration that belongs to the responsibility level from being improperly placed in the constituent elements or the judgment of illegality, thereby maintaining the autonomy and stability of the criminal law

system [5].

Compared with the three-stratum system, the traditional four-element crime constitution system in our country has obvious limitations in the evaluation of the victim's fault. The four-element system divides the constituent elements of crime into the object of crime, the objective aspect of crime, the subject of crime, and the subjective aspect of crime. There is a plane coupling relationship between the elements, and there is a lack of clear hierarchical division [5]. Under this system, the victim's fault is often generally regarded as a "sentencing circumstance", but due to the lack of a stratified filtering mechanism, it is easy to be confused with the elements of a crime. For example, in the judicial application of the four-element system, some judges will regard the victim's fault as a factor in denying the object or objective aspect of the crime, thereby mistakenly declaring the defendant innocent, which is in stark contrast to the logic of the responsible class evaluating subjective condemnability. In addition, the four-element system lacks refined consideration of responsibility evaluation, and cannot clearly explain how the victim's fault affects the possibility of subjective criticism of the perpetrator. It can only rely on experience to make discretionary decisions, which also provides space for arbitrary intervention of criminal policies [15]. In contrast, the stratified judgment of the three-level system can provide a clear dogmatic positioning for the victim's fault, and strictly limit it to the responsible class, which not only ensures the reasonable integration of policy concerns, but also avoids the shock to the autonomy of the criminal law system.

3. Phenomenon Analysis: The Practical Dilemma and Theoretical Impact of Victim's Fault Evaluation

3.1 Presentation of Practical Dilemmas

3.1.1 The phenomenon of "different judgments for the same fault"

The dilemma of the victim's fault evaluation in judicial practice is firstly manifested in the widespread existence of the phenomenon of "different judgments for the same fault". Through the combing of relevant cases in recent years, it can be found that for victims with similar circumstances, different courts or even different collegial panels of the same court have

significant differences on whether and how to affect sentencing [6]. In addition to the situation of "verbal provocation and slight pushing", such problems are also prominent in scenes such as neighborhood disputes and emotional disputes. For example, in the intentional injury case caused by a neighborhood dispute between Wang and Zhao, Zhao occupied the public passage of Wang's house for a long time to pile up sundries. A conflict broke out between the two sides during the negotiation, and Wang inflicted minor harm on Zhao. The court of first instance found that Zhao's long-term infringement constituted a major fault, and reduced Wang's punishment by 25%; However, in the intentional injury case of a neighborhood dispute between Zhang and Li, Li piled up garbage in the corridor for a long time, and when Zhang dissuaded him, there was a conflict and caused Li to suffer minor harm. Zhang was given a lighter punishment of 8% [13]. Another example is in the scene of emotional disputes. In Liu's intentional injury case, the victim Chen defrauded Liu's property in the name of love and then proposed to break up. When Liu asked for property, there was a conflict and caused Chen to suffer minor harm. The court found that Chen constituted a major fault, reduced the punishment by 30%; In the case of Sun's intentional injury, the victim Zhou cheated on him during his love and transferred Sun's property. When Sun negotiated, Zhou suffered minor harm. The court only found that Zhou was at fault and gave a lighter punishment of 12% [16].

Take the common type of fault of "verbal provocation and minor pushing" as an example: in the case of intentional injury in the Higher People's Court of a certain province (2020) Xing Zhong Zi No. 123, the court found that the victim's provocative behavior constituted a major fault, and reduced the defendant's punishment by 30%; However, in the case (2019) Xing Chu Zi No. 456 of the Intermediate People's Court of a certain province with similar basic facts, the collegial panel held that the degree of such fault was relatively minor, and only a 10% lighter punishment was given as appropriate. An in-depth analysis of the judgment documents of these two cases shows that the reason for the judgment of the former only generally mentions that "the victim has obvious faults, and the defendant's punishment can be mitigated", without specifying the basis

for judging the degree of fault; The latter believes that "the victim's provocative behavior has not reached a level sufficient to significantly reduce the possibility of the defendant's criticism", but also did not specify the specific judgment criteria. This inconsistency of adjudication standards not only damages judicial justice, but also shakes the public's trust in legal stability [6]. In addition, some courts still have a tendency to "emphasize the result and neglect the process" when determining the victim's fault, that is, as long as the victim has certain improper behavior and the defendant has caused relatively minor harmful results, it is easily determined to be a major fault; In cases with serious harmful results, even if the victim's fault is obvious, the degree of fault may be diluted. This practice of reversing the fault from the result further aggravates the uncertainty of the judgment [17].

3.1.2 Confusion with the border of self-defense
Secondly, the boundary confusion between the victim's fault and justifiable defense has become increasingly prominent. In the case of the victim's prior lawlessness, some judicial practices fail to accurately grasp the essential difference between the two in doctrine [10]. For example, in the case of Li's intentional injury, the victim first inflicted harm on Li, and the defendant then counterattacked, causing minor injuries to the victim. The court of first instance characterized the case as self-defense and acquitted the defendant; The court of second instance held that the victim's fault only constituted a sentencing circumstance, and changed the sentence to the defendant's guilt but mitigated the punishment. Similar cases are not uncommon in judicial practice. Another example is the Zhang defense case: the victim, Wang, insulted Zhang due to trivial matters and took the lead in pushing Zhang. Zhang immediately counterattacked, causing Wang to suffer minor harm. The court of first instance found that Zhang's behavior constituted justifiable self-defense and dismissed the lawsuit; The court of second instance held that Wang's behavior only constituted general fault, and Zhang's counterattack exceeded the necessary limit, which constituted the crime of intentional injury, and was sentenced to three months of criminal detention [18]. This kind of qualitative vacillation not only leads to confusion in the application of the law, but also makes it impossible for the parties to obtain clear behavior expectations.

The root cause lies in the failure to correctly understand that justifiable defense belongs to the illegal class, and the victim's fault is essentially a consideration of the responsibility level [10]. From the perspective of dogmatic logic, the core of justifiable defense is that the behavior is legal and can prevent illegality, and the core of its judgment lies in "whether the defensive behavior is aimed at the ongoing illegal infringement and whether it exceeds the necessary limit"; The core of the victim's fault is to reduce the subjective condemnability of the perpetrator. The premise is that the behavior has constituted a violation of the law, and it is only lenient at the level of responsibility evaluation. Some judicial personnel confuse the logical relationship between "illegal obstruction" and "reduction of responsibility", and regard the victim's prior lawlessness as justifiable defense, or conversely mistakenly classify the situation of justifiable defense as the sentencing circumstances of the victim's fault. In addition, the improper guidance of criminal policies has also exacerbated this confusion. For example, under the policy guidance of "resolving conflicts and repairing social relations", some courts, in order to promote the reconciliation of the parties, regard cases that should have been identified as justifiable defense as the fault of the victim. Although this "harmony" judgment method resolves conflicts in the short term, it violates the basic logic of criminal law dogmatics and will damage the authority of the law in the long run [19].

3.2 Theoretical Impact

At the theoretical level, the confusion of the victim's fault evaluation has caused a lot of impact on the criminal law dogma system. The first is the impact on the appropriateness of the constituent elements. As the "model" of criminal behavior, the constitutive elements should maintain a clear typing function. If the victim's fault is allowed to be used as the reason for excluding the appropriateness of the constitutive elements, the boundaries of the constitutive elements will be blurred and the foundation of the principle of legally prescribed crimes and punishments will be shaken [2]. The second is the erosion of illegality judgments. The core of illegality judgment is the objective conflict between behavior and legal order, and should not be excessively affected by the perpetrator's personal situation or specific situation. If the

victim's fault is allowed to be used as the reason for preventing or mitigating the violation, the scope of consideration for the judgment of illegality will be improperly expanded, and the objective evaluation of legal order will be replaced by the circumstances of individual cases [5]. The most serious is the confusion about accountability assessment. At present, there are serious differences on the influence mechanism of the victim's fault in the responsible class: some views claim that it affects the ability to take responsibility, some believe that it changes the form of crime, and some emphasize that it plays a role through the expected possibility. This theoretical inconsistency directly leads to the arbitrariness of responsibility evaluation in judicial practice [6].

4. Theoretical Reconstruction: Debugging Path Based on Responsibility Doctrine

4.1 The Cornerstone of Reconstruction: the Principle of Accountability

The responsibility doctrine is the fundamental principle of modern criminal law, and its core idea is "no responsibility, no punishment". This principle emphasizes that the severity of punishment must match the subjective condemnation of the perpetrator, and opposes objective imputation and consequential responsibility. In contemporary criminal law theory, the doctrine of responsibility has developed into an important principle that restricts the state's penalty power and protects civil liberties [3]. The German Federal Constitutional Court has clearly declared in several judgments that the doctrine of responsibility is a concrete manifestation of the principle of the rule of law in the field of criminal law, and has a status at the constitutional level [3].

Taking the doctrine of responsibility as the cornerstone of the reconstruction of the victim's fault theory has important theoretical significance and practical value: First, the doctrine of responsibility has drawn a fundamental boundary for the victim's fault to intervene in the criminal law system—its impact can only be limited to reducing the perpetrator's responsibility, but can not shake the evaluation of the wrongfulness of the act itself; secondly, the doctrine of responsibility requires that the reduction or exemption of the perpetrator's

punishment must stem from the reduction of the possibility of his subjective criticism, which provides a clear guide for the evaluation of the victim's fault: it must be proved that the victim's fault behavior has indeed affected the perpetrator's subjective psychological state, leading to a reduction in its condemnability [7].

4.2 Core Path: Taking the Responsible Class as a "Safe Zone"

4.2.1 Application of the theory of expected possibilities

The theory of expected possibility originated from the "horse addiction case" in the history of German criminal law, and its core idea is "the law does not force others to make it difficult". When it is difficult for the perpetrator to expect him to carry out a legal act under a specific situation, his subjective reproachability will be reduced accordingly. In the context of the victim's fault, when the victim implements major faults such as serious provocation and long-term persecution, the perpetrator may be in an extremely difficult psychological predicament. At this time, it can be determined that the possibility of the perpetrator's expectation of carrying out legal acts is reduced [8]. The judgment of expected possibility should follow objective standards, that is, take the "average person" in the perpetrator's situation as the benchmark, and comprehensively examine the severity of the fault behavior, the urgency of the situation, and the personal characteristics of the perpetrator [8].

From the perspective of comparative law, Germany, Japan and other continental law countries have mature practice in using the theory of expected possibility to evaluate the victim's fault. In German criminal law theory, the expected possibility is regarded as one of the core elements of the responsible class. When the victim commits a major fault and causes the perpetrator to "have no expected possibility", the responsibility can be directly blocked; Liability can be mitigated if it only leads to a reduction in the likelihood of expectation [20]. For example, in a case heard by the Federal Supreme Court of Germany, the victim subjected the defendant to long-term maltreatment at home, including insult, restriction of personal freedom, etc. The defendant inflicted serious harm on the victim in order to resist during an incident of maltreatment, and the court determined that the victim's major fault led to a significant reduction in the

expectation that the defendant would carry out legal acts, and the punishment of the defendant was reduced by 40% [21]. Japanese criminal law theory combines the expected possibility with "the cause of mitigating circumstances", and regards the victim's fault as an important basis for judging mitigating circumstances. In the relevant precedents of the Supreme Court of Japan, for cases where the victim is at serious fault, the court usually applies the mitigating circumstances provisions of Article 66 of the Criminal Law on the grounds of "reduced expectation possibility" to give the defendant a lenient punishment [22].

Drawing on the practical experience of Germany and Japan, our country should clarify its applicable conditions when using the theory of expected possibility to evaluate the victim's fault: First, the victim has committed a major fault behavior, which has caused substantial psychological oppression or physical damage to the perpetrator; Second, there is a direct causal relationship between the fault behavior and the perpetrator's criminal behavior, that is, the perpetrator commits the crime under the direct stimulation of the victim's fault behavior; Third, from the perspective of an average person, it is indeed difficult to expect the perpetrator to carry out legal acts under the circumstances at that time. It should be noted that the reduction of the possibility of expectation can only lead to a reduction of responsibility, but cannot prevent responsibility, unless the victim's fault behavior has reached the level of "force majeure" or "emergency avoidance", but at this time it is no longer the victim's fault evaluation category, but should be classified as the cause of illegal obstruction [23]. In addition, in order to avoid the abuse of the theory of expected possibility, its scope of application should be clarified through judicial interpretations or guiding cases, and it should be limited to situations where the victim has committed serious transgression, long-term persecution, major fraud, etc., and minor faults or general misconduct should be excluded from application.

4.2.2 Criminal law evaluation of passion

The victim's major fault may instantly trigger the perpetrator's passionate state, causing his ability to recognize and control to be significantly weakened in a short period of time. Modern criminal law psychology research shows that under the domination of strong emotions, the actor's rational judgment ability will indeed be

substantially affected, and his subjective reproachability should also be reduced accordingly [9]. The following elements should be strictly grasped in the determination of the state of passion: first, there must be major faults sufficient to trigger the state of passion; Secondly, there must be a close relationship between the passionate state and the fault behavior in time; Finally, the degree of passion state should reach a level that significantly affects the perpetrator's control ability. For this, the auxiliary judgment of judicial psychology experts can be introduced to ensure the scientific nature of the identification [9].

In the practice of comparative law, the "passionate killing" system in the countries of the Anglo-American law system is similar to the "passionate state" theory in the countries of the continental law system, which can provide a reference for our country. The "passion murder" in the Anglo-American law system usually regards the victim's fault as an important condition for establishment, requiring that the victim's fault behavior must be "enough to make a rational person passionate", and the perpetrator commits the murder in a state of passion without a cooling-off period [23]. For example, in the criminal laws of most states in the United States, if the victim commits serious insults and provocations, causing the defendant to kill in a state of passion, the crime of murder can be downgraded to the crime of manslaughter and the punishment can be reduced [24]. Continental law countries include the state of passion into the evaluation category of the responsible class, and believe that the state of passion will lead to the temporary weakening of the perpetrator's responsibility capacity, thereby reducing its responsibility. For example, Articles 132-70 of the French Criminal Code stipulate that if the victim's major fault triggers the perpetrator's state of passion and leads him to commit a criminal act, the punishment can be mitigated [25].

Combined with our country's judicial practice, the determination of the state of passion should focus on the following details: First, the specific types of "major fault acts" should be limited to acts that are enough to cause strong emotional fluctuations, such as serious transgressions, blatant insults and slander, and exposing other people's privacy, excluding minor provocations or verbal disputes; The second is the judgment standard of "close time connection", which

should generally be limited to passion immediately after the fault occurs. If the perpetrator still commits a crime after a certain period of calm, it cannot be identified as a state of passion; The third is the standard of proof of "significantly weakened control ability", which should combine objective factors such as the perpetrator's behavior methods, means, and consequences, and at the same time introduce the appraisal opinions of judicial psychology experts to judge the perpetrator's psychological state when committing the crime through professional psychological evaluation [26]. For example, in a certain case, the victim exposed the defendant's privacy in public and insulted him. The defendant lost control of his emotions on the spot and inflicted serious harm on the victim. Judicial psychology experts believed that the defendant was in a state of passion at the time and his control ability was significantly weakened. Based on this, the court reduced the punishment of the defendant by 25%. The result of this judgment not only conforms to the principle of responsibility, but also realizes the substantive justice of sentencing.

4.3 Rule Construction: Trinity Integration Mechanism

4.3.1 Clarification of doctrine orientation

In theory, it must be clearly declared that the victim's fault can only be used as a discretionary mitigating reason for the responsible class, and in principle, it does not touch the judgment of the appropriateness and illegality of the constituent elements. This dogmatic orientation needs to be clarified through guiding cases, judicial interpretations and other channels [27].

4.3.2 Legalization of evaluation criteria

In order to avoid arbitrariness in judicial practice, it is necessary to objectify and classify the standard of "victim's major fault" through judicial interpretations or guiding cases. It is recommended to consider the following objective indicators: (1) whether the victim's conduct involves crimes stigmatized in criminal law (whether the victim's behavior constitutes a crime stipulated in the criminal law, such as intentional injury, insult, defamation, etc.); (2) level of physical harm caused by the victim (minor injury or above) (whether the degree of physical injury caused by the victim's behavior reaches minor injury or above); (3) duration (e.g., continuous abuse exceeding 30 minutes) (the duration of the victim's wrongful behavior, such

as whether the continuous abuse exceeds 30 minutes, whether the long-term persecution exceeds 3 months, etc.); (4) Whether there is power asymmetry or special dependence relationship (such as power imbalance relationship between employer and employee, guardian and ward, family members, victim takes advantage of dominant position to commit fault behavior) [6].

When specifically applying these objective indicators, the principle of "comprehensive judgment + priority of core indicators" should be adopted. Among them, "whether the victim's behavior constitutes a crime" and "whether it has caused minor or above injuries" are the core indicators. As long as one of them is met, it can be initially determined as a major fault; If the core indicators are not met, a comprehensive judgment needs to be made in combination with "duration" and "power asymmetry relationship". For example, if the victim insults and intimidates the defendant for a long time (more than 3 months), although no minor injuries are caused, but there is a power dependence relationship between family members (such as long-term mental abuse of children by parents), it can also be determined as a major fault; If the victim only carried out a minor push, did not cause injury, and there is no power asymmetry relationship, it cannot be determined as a major fault [28]. In addition, some situations should be clearly excluded, such as when the defendant commits the illegal act first, and the victim counterattacks. At this time, the victim's behavior is justifiable self-defense and cannot be identified as fault; If there is no causal relationship between the victim's fault behavior and the defendant's criminal behavior, it cannot be considered as a sentencing circumstance. Through this objective and typed standard, subjective assumptions in judicial practice can be effectively reduced, and the judgment effect of "same fault and same judgment" can be realized.

4.3.3 Gradient sentencing effect

Establish a gradient sentencing effect commensurate with the victim's degree of fault, and form a corresponding relationship of "degree of fault → reduction of the possibility of criticism → reduction of punishment". Specifically, three levels of mitigation can be designed: general faults can be reduced by less than 10% of the base penalty, major faults can be reduced by 10% — 30%, and particularly

major faults can be reduced by 30% — 50%. At the same time, an upper limit for mitigation should be set. For serious crimes such as intentional homicide, even if there is a major fault of the victim, the sentence after mitigation shall not be lower than 50% of the statutory minimum sentence [4].

5. Institutional Deepening: Procedural Guarantees and Response to Objections

5.1 Procedural Guarantee and Judicial Application

In order to ensure the standardization and unity of the victim's fault evaluation, it is necessary to establish a sound procedural guarantee mechanism: First, in terms of evidence and burden of proof, the defendant should put forward the claim of the victim's fault and bear the preliminary burden of proof, and the standard of proof should reach the degree of "high probability"; secondly, in terms of reasoning in the judgment, it is required that the judgment must specify in detail the determination of the victim's fault facts, the legal nature, and the range and reasons for the reduction of sentencing; Third, in terms of professional judgment, it is recommended to introduce judicial psychology experts to provide auxiliary opinions when professional judgments such as passion state are involved; Finally, in terms of appeal review, the court of second instance should conduct a substantive review of the determination of the victim's fault and the application of law [9].

Specifically, in the design of the process of producing evidence and cross-examination, the following links should be clarified: First, when the defendant claims that the victim is at fault, he should submit corresponding evidence materials, such as documentary evidence, physical evidence, witness testimony, audio-visual materials, etc., to prove that the victim has committed fault behavior; Second, the public prosecution organ should cross-examine the evidence submitted by the defendant, put forward rebuttals and submit contrary evidence; Third, the court should organize both parties to fully cross-examine the evidence, and if necessary, investigate and collect evidence ex officio [29]. For example, when the defendant claims that the victim has subjected him to long-term domestic maltreatment, he should submit evidence such as alarm records, hospital

diagnosis certificates, neighbor testimony, surveillance video, etc. The public prosecution agency cross-examines the authenticity, legality, and relevance of these evidence. The court comprehensively judges whether there is fault of the victim based on the evidence of both parties. In terms of the operating norms of the expert assistant system, the qualifications, participation procedures, and opinions of expert assistants should be clarified. In terms of qualification conditions, expert assistants should be required to have a professional background related to judicial psychology, and have corresponding professional qualifications and practical experience; In terms of participation procedures, the defendant or the public prosecution agency can apply for an expert assistant to appear in court, and the court can also notify the expert assistant to appear in court *ex officio*. The expert assistant should express opinions on professional issues such as whether the perpetrator is in a state of passion and whether the control ability is weakened; In terms of the effectiveness of opinions, the opinions of expert assistants are a kind of evidence, which should be comprehensively determined by the court in combination with other evidence after cross-examination in court [30]. For example, in a case involving a state of passion, the expert assistant should issue a professional appraisal opinion by conducting a psychological assessment of the perpetrator and analyzing the facts of the case, explaining the perpetrator's psychological state and control ability when committing the crime. The court combines the appraisal opinion and other facts of the case to judge whether the punishment should be mitigated.

In addition, a case guidance system for the determination of the victim's fault should be established. The Supreme People's Court can regularly issue guiding cases involving victims' faults, clarify the criteria for determining different types of victims' faults, the range of sentencing reductions, etc., and provide guidance for lower courts in adjudication [30]. At the same time, strengthen the professional training of judges, improve judges' understanding and application ability of the victim's fault doctrine, and ensure that relevant systems can be accurately implemented. Through these procedural protection mechanisms, the evaluation process of the victim's fault can be further standardized, the

arbitrariness of the judgment can be reduced, and the fairness and unity of sentencing can be realized.

5.2 Possible Objections and Defenses

5.2.1 Opposition 1: Leading to "victim attribution"

There is a view that taking the victim's fault as the reason for mitigating punishment is essentially a "secondary injury" to the victim, which may lead to adverse consequences for the victim's attribution. In this regard, it needs to be clarified that this plan is strictly limited to "major faults", and can avoid secondary harm through exception clauses (such as protection for special groups such as minors and victims of sexual assault). Its essence is to evaluate the condemnation of the perpetrator, not to attribute responsibility to the victim [6].

5.2.2 Opposition II: Reducing the preventive function of penalties

Another concern is that over-consideration of the victim's fault may weaken the general preventive function of punishment. In this regard, it should be emphasized that this path only mitigates responsibility and does not negate the wrongfulness of the act. Considerable punishment is still maintained for serious crimes, special prevention is achieved through precise liability punishment, and general prevention is maintained by declaring illegal acts [2].

5.2.3 Objection III : Increasing judicial complexity

There are also opinions that building a refined evaluation system may increase the complexity of judicial work. In this regard, it should be pointed out that through legalized standards, gradient guidance, and strengthened reasoning, it can precisely reduce the arbitrariness caused by the current vagueness of standards, and help improve judicial efficiency and credibility in the long run [6].

6. Conclusion

This paper systematically analyzes the impact of the victim's fault evaluation on the autonomy of criminal law dogma under the background of criminal policy. Studies have shown that the deep roots of the problems existing in the current judicial practice, such as "different sentences for the same fault", confusion with justifiable defense, and imbalance of responsibility, lie in the unclear dogmatics of the victim's fault, and the lack of effective cohesion mechanism

between criminal policy and criminal law dogmatics. In order to cope with this challenge, this paper proposes and demonstrates a systematic reconstruction path based on the principle of responsibility and strictly limits the victim's fault to the responsible class for evaluation. This path uses the theories of expected possibility and passion state to explain how the victim's fault reduces the possibility of subjective criticism of the perpetrator, and at the same time builds a trinity integration mechanism of "clear dogmatic positioning-legalization of evaluation standards-gradient sentencing effects", supplemented by perfect procedural safeguards, to realize the reasonable integration of criminal policies and the autonomous consideration of the criminal law system [1].

At the theoretical level, the innovation of this study lies in clarifying the dogmatic positioning of the victim's fault, clarifying the boundary between it and justifiable defense and other illegal obstructions, and making up for the shortcomings of the current theoretical research on the impact mechanism of the victim's fault. At the practical level, the objective evaluation criteria and gradient sentencing plan proposed in this study can provide clear judgment guidelines for judicial practice, effectively solve the problem of "different sentences for the same fault", and enhance judicial credibility. At the same time, through the construction of the procedural guarantee mechanism, it can standardize the evaluation process of the victim's fault, avoid the improper intervention of criminal policy, and realize the substantive justice of sentencing.

Looking forward to the future, the theoretical research on victim's fault still needs to be deepened in the following aspects: First, it is necessary to further quantify the application effect of this mechanism through empirical research, collect case data involving victim's fault across the country, and analyze the impact of different evaluation standards on sentencing results, providing data support for theoretical improvement; secondly, it is necessary to deeply discuss its refined application in complex situations such as illegal infringement related to domestic maltreatment, the victim's special constitution, and the victim's fault in joint crimes, and formulate specific identification rules for different scenarios; Finally, it is necessary to pay attention to the connection between the victim's fault and restorative justice, and explore how to

repair social relations through criminal reconciliation and compensation for losses on the basis of determining the victim's fault, so as to promote the harmonious unity of sentencing justice and social harmony [7]. In addition, it is also possible to strengthen comparative law research with countries outside the region, learn from their mature theoretical and practical experience, and combine my country's criminal law system and judicial reality to further improve the evaluation mechanism of victims' faults, and contribute theoretical strength to promoting the construction of the rule of law in China.

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