

Welzel's teleological behavior theory: Foundation, Body and Influence

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Телеологическая теория поведения Вельцеля: Основание, Тело и Влияние

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Республика

Abstract: *the most remarkable theory proposed by Welzel is teleological behavior theory. That theory is based on ontology, maintaining that propose is the nature of human behavior. The standpoint changes the traditional concept of behavior, which regards objective elements as the only ingredient of behavior, and turns it into a combination of subjective and objective elements. Furthermore, affected by reconstruction of concept of behavior, the theoretical criminal system also develops into a new type. Subjective elements such as mens rea are also removed onto the layer of constituent requirements from culpability layer. The doctrine of distinction between subject and object should be treated in the sense of methodology. The wrongfulness is no longer a pure objective judgment, and combines both subjective and objective elements. Namely the nature of wrongfulness is valueless act instead of valueless result. So the purpose of criminal law is preserving the order rather than pure protection of legal interest, for excessive focus on legal interest would cause endless burden for every people. In the case of negligence, violation of duty of care constitutes the most significant element for wrongfulness rather than the consequences. The cognition of wrongfulness should not be taken as part of mens rea because it is part of culpability.*

Аннотация: *самая замечательная теория, предложенная Вельцелем, - это телеологическая теория поведения. Эта теория основана на онтологии и утверждает, что намерение есть природа человеческого поведения. Точка зрения изменяет традиционную концепцию поведения и рассматривается как объективный элемент и основной ингредиент поведения, и она превращает его в сочетание субъективных и объективных элементов. Кроме того, влияние реконструкции концепции поведения, теоретическая преступная система также развивается в новый тип. Субъективные элементы, такие как виновная воля, также удаляются на слой составных требований от виновности слоя. Учение о различии между субъектом и объектом следует рассматривать в смысле методологии. Противоправность больше не является чисто объективным суждением, а сочетает в себе как субъективные, так и объективные элементы. А именно характер противоправности является бесполезным актом вместо бесполезного результата. Поэтому целью уголовного права является сохранение порядка, а не чистая защита законных интересов, так как чрезмерное внимание к правовому интересу вызовет бесконечное бремя для каждого народа. В случае халатности, неисполнение долга*

скорее является наиболее важным элементом для незаконности, чем для последствия. Познавание незаконности не следует воспринимать как часть виновной воли, потому что она является частью виновности.

Keywords: *teleological behavior theory, wrongfulness, valueless act, purpose of criminal law.*

Ключевые слова: *телеологическая теория поведения, противоправность, бесполезный акт, назначение уголовного права.*

Introduction

Since the reform and opening up, Japanese criminal law theory has been the most overwhelming majority in importing academic resources in criminal law. Affected by Japanese scholars, the concept and significance of teleological behavior theory, named finale handlungslehre in German academia, has not been treated right in China for years. For example, Professor Zhang Mingkai believes that although the purpose of the teleological behavior theory aims to make human behavior evolve from pure causal respective into the one that manipulated by subjective purpose, but its explanatory capacity is restricted to intentional acts, without negligence and omission included. And that new theory leads to huge change in theoretical criminal system that *meas rea* is no longer the element in culpability layer but element in wrongfulness layer, which is not appropriate [1]. That is, the advocates of the theory of the valueless result object to the so call limitation of explanatory capacity of teleological behavior theory, and its overturning conventional theoretical criminal system. For neoclassical criminal system, it is unshakable that elements in the layer of wrongfulness are pure objective, and subjective elements are all in culpability layer. The doctrine points to the that separation between wrongfulness evaluation limited to the elements of external behavior and culpability evaluation limited to the elements of internal mentality. Merely, some scholars supporting neoclassical system hold the point that some subjective elements such as criminal purpose attributed to wrongfulness element, at the meantime they assist the core principle that intention and negligence only belong to culpability elements. this is intentional and negligent insisted elements of the responsibility [2]. With the increasing academic communication with German academia, causal behavior theory and theory of the valueless result cannot hold their predominance at the criminal law academic forefront of our academic positions are no longer as before. Tracing the source, can we find the critical turning point in the time of Hans Welzel. It was Welzel who leded the German academia from causal behavior theory and the theory of the valueless result to teleological behavior theory and the theory of valueless behavior. From that on, the role subjective elements in theoretical system has changed and became the mainstream in German academia. That also has caused a series of huge changes in constitution criminal system.

1. The Philosophical foundation of teleological theory

At first it is essential to understand the original philosophical thoughts of Welzel's theory. The so-called content ontology is composed of two parts, namely the doctrine and ontology. To be brief, doctrine is one-sided emphasis

on the effect of material. It is only aware of that person's reliance on material of infinitely, and ignores the subjective initiative of people, so that results in the infinite growth of money worship, and even make people become slaves of material. So starting from the content standard, value is rooted in the material itself, while people's behavior is bound with a kind of utilitarianism, namely to attain some material and its benefit as the goals, people intend to govern their behavior to pursue the matter and interests, attempt to achieve the preset goals. The advocates of this idea further argue that the pursuit of material benefits for human themselves is the only driving force of the development of the economy, the material incentive is the only means to mobilize the enthusiasm of people, and the pursuit of material comforts is the only goals of life.

Look at ontology. Theory of ontology can be traced back to ancient Greece and ancient Rome era, having a history of more than 2400 years up to now. It is debated in philosophical history, and unable to agree. But it is certain that ontology connects with doctrine, otherwise it will lead to the ultimate nihilism or nihilism in the sense of result. According to Arthur Kaufman's classical saying, the third root of philosophy is existence shock. When a person is situated before the so-called edge situation, the existence shock will attack on him. This situation, can neither be change, gone beyond, and closed. With others, people, the society and even the whole human experience the their there-being, feeling with changing condition of the world that responsibility, disease, death, war, plague, the destruction of the culture, the national decline. Awareness of this margin status and weakness of themselves, forces people to take a stand and seek the meaning of there-being [3]. From Kaufman's argument above it's not hard to find that, in order to survive in a specific environment, a person has to live purposefully in the complicated, changeable and dangerous society. If people resolutely cope with the marginal situation, meaningfully incorporate it into the plan for themselves to carry out, and make it become the condition of themselves completely through transformation of own consciousness, they can attain the real existence and achieve this in nature. Ontology calls for people to make decision for their own destiny and self-actualization.

Affecting the appearance of Welzel's teleological behavior theory, the basic nature of ontology should be considered as fellow. Due to the existence of material and its benefits is significant for human survival, development and spirit, the existence of object is leading the method of cognition of relationship between subject and object. Therefore there is purposefulness in people's life. Through their own struggle, people pursue material and spiritual benefits, realize their own value and demonstrate the value and meaning of their existence at present. Because the social behavior theory does not fully understand ontological meaning of the behavior above, Welzel developed teleological behavior theory at the historic moment. The scholar argued that ontological fact is a spiritual being. The behavior is the object of criminal law evaluation. The behavior is not only a ontological fact before theories and concepts of criminal law, but also a spiritual being of value.

2. . Welzel's new establishment of concept of behavior

2.1 New understanding concept of behavior under teleological behavior theory

The first and most significant idea of reconstruction of theoretical criminal theory, rendering by Wenzel, was to

reshape the concept of behavior. In his magnum opus, *Introduction of Teleological Theory*, he put forward a striking idea at the outset that human's behavior was the implementation of the purpose activity [4]. The basis lied in that people could predict the results caused by their activities within a certain range be based on the understanding of causality, set different goals on such basis, and guide their activities toward the realization of the goals of development designedly. This is the most distinctive feature of human behavior, which has been ignored for a long time. From this perspective, the purpose activity is manipulated toward target by subject, on the contrary, causal events are not subject to volition towards scheduled target. Obviously causal event is the accidental result of a variety of existing causal factors. This argument shows that the past causal behavior theory's regarding the human behavior as confined to external events and their consequences, and now it is essential to introduce concept of manipulation by human's and make it the predominant part of behavior. Volition of purpose becomes an integral part of the behavior.

According to Welzel's viewpoint, the purposeful manipulation of behavior could be divided into two phases. The first phase lies fully in the areas of thought, in which the subject raise goal in advance he wants to achieve, and prepare essential means and conditions for achievement. To achieve that goal to provide the necessary means to act. These two processes are carried out in reverse. Meanwhile the accompanying results which may occur outside the target will also be considered, but the process is the way forward [5]. The second stage lies in the external world, and it depends on affirmation of method and purpose in the realm of thinking [6]. Welzel believed if the result does not answer criminal's purpose, the behavior can only be sentenced as inchoate crime. Compared with the tradition theory in which attempted crime can constituted by objective elements without concerning subjective elements, this new thought paves ways for setting subjective elements on wrongfulness layer before culpability layer. After all, attempted crime is the issue concerning wrongdoing other than responsibility.

2.2. Welzel's criticism to causal behavior theory

Then, in Welzel's opinion, what is the fundamental problem of causal behavior theory, which has excluded all the subjective aspects from behavior of human from the root? In the causal behavior theory, behavior is restricted to an arbitrary act and the subsequent causational processes. However, on account of boundless scope of consequences caused by the arbitrary human activities, the content of this behavior theory is also beyond count. Only resort to purposeful correlation between behavior and a particular outcome can we determine the meaning of so-called killing, fraud and so on [7]. It is worth chewing over that the standpoint above is frequently utilized by advocates of social behavior theory to criticize teleological behavior theory. But in the eyes of Welzel, teleological behavior theory, is just the necessary and sufficient conditions of viewpoint regarding the human behavior as social phenomenon [8].

According to Welzel, there are many systematic problems incurring by the causal behavior theory. Firstly, after recognition of the part of the subjective element of wrongfulness, if the theory does not advance to the stage of regarding *meas rea* as element of constitutional requirements it will fall into the great paradox: without *meas rea* as

element of constitutional requirements, other subjective elements such as purpose, and tendency cannot be laid in the wrongfulness layer rationally. Because *meas rea* is fundamental part of subjective elements, other subjective elements have to rely on it in the sense of judging stage. Secondly, the the object of wrongfulness is a combination of objective and subjective elements, but the causal behavior theory reject to attribute subjective elements into wrongfulness. Furthermore, in the field of criminal negligence, causal behavior theory commits the same mistake as the same as in the field of deliberation. Without considering valueless act of negligence, namely necessary attention in social interaction, all behavior causing the results will conform with constituent conditions of crime if not particularly justified.

The realistic purpose in the teleological behavior theory, refers to the willpower that the subject recognizes the causal consequence to some extent. Therefore realizing the will, namely behavior, occurs regardless of external phenomenon. *Meas rea* constitutes elements of behavior objectively because of its recognition of causation and consequence. In other words, realizing the will is a process of directing the *actus reus* designedly towards goal. In the sense of constituent requirements, *meas rea* belong to elements of behavior. According to the opinion, under normal circumstances, subject can foresee particular consequence, and choose necessary means to ensure its realization. The process, which refers to adopting some means to achieve that goal of purpose, is the so-called domination of behavior under purpose. Welzel pointed out that, the nature of behavior, lies in foreseeing the consequence. And the behavior, also known as *actus reus*, is a process that subject directs and dominates the causation to realize that goal under the goal of predictable consequence. Because Welzel took the process that subject foresees the consequence thus desires to realize it as *meas rea*, *meas rea* therefore becomes one part of behavior, even the nature of behavior rather than culpable element or condition. *Meas rea* belongs to constituent requirements, and constituent requirements is core of wrongfulness. So *meas rea* is subjective wrongful element. As he mentioned, for majority of crime, wrongfulness cannot be understood as objective elements. They also contain subjective and inner elements [9].

In the eyes of the criminal law scholar after Welzel, the viewpoint of Welzel should receive attention and be agreed. As matter of fact. the causal behavior theory ironically walks its own antithesis:

According to this criminal law naturalism, the issue of result attribution is simplified as empirical causation, and even become monism of causation. In consistent and absurd way, the monism of causation transfers issues which cannot be solved in the sense of objective wrongfulness to the layer of subjective culpability, which leads to many theories relying on subjective elements being put forward. I would just enumerate some subjective theories, for instance, subjective attempted crime, subjective theory for distinguishing perpetrator and accessory, and interference theory for offense of non-typical omission. Especially according to advocates of interference theory, we cannot find the causation itself on the objective layer, which is indispensable and plays a decisive role in judging whether the behavior is punishable, but in psychological attitude on the layer of subjective culpability [10].

3. Rethinking of the doctrine of distinction between subject and object

Wenzel made great efforts for reconstruction of the doctrine that wrongfulness is limited to objective aspects while the culpability to those subjective. He pointed out that the objectiveness of lawlessness refers to the objective criteria of universality, not limited determination object to the objective external part of behavior. This judgment on wrongfulness layer is based on the overall order of law. For judging whether the behavior is the constituent elements of certain crime in criminal code, it is necessary to examine the objective external factors, but also to examine the inner subjective elements [11].

4. Welzel's View on Relationship between conformity to constituent requirements and wrongfulness

On the issue of relationship of conformity to constituent requirements and wrongfulness, in respective of forbidding norm and permissible norm, Welzel has distinguished content of conformity to constituent requirements layer and wrongfulness layer. The so-called constituent requirement is description of prohibited acts (normative material) in detail, an image of concept, while the wrongfulness refers to the situation that the behavior violating forbidding norm implied by constituent requirements and not complying with permissible norm conflicts with overall order of law [12]. Since it has been in violation of the prohibition norms, the behavior in the case does not meet the permit rules conflict and the overall legal order. As regard to Mezger's viewpoint that the layers of constituent requirements and wrongfulness can be combined and considered in union, and the constituent elements are the typical types of wrongfulness, Welzel suggested that he made a mistake of circular argument [13]. Although Huang Rongjian, one of advocates of combinative layers, division of constituent requirements layer and wrongfulness layer has resulted in a gap between the judgements of two layers, of which the conclusion is meaningless if a behavior conforms with constituent requirements but not wrongful [14]. Nevertheless the views of Welzel is still worthy of discussing.

5. The nature of wrongfulness: correlated with the purpose of criminal law

In the discussion about the concept of intentional wrongfulness, continuing to criticize causal behavior theory, Welzel successfully drove the old theory into despair. If we merely observe human behavior in respective of objective externality, an objective causal event can be even impossible to be identified as what kind of acts, and let alone complying with what the constituent requirements. Likewise, in the field of attempted crime, we have to admit that *meas rea* is subjective elements of constituent requirements, then it is irrational to transfer *meas rea* into culpability layer in the situation of accomplishment of a crime. Welzel further believed that wrongfulness could be only restricted to prohibition associated with specific behaviors driven by certain subject with *meas rea*. The concept of wrongfulness should be reconstructed into wrongfulness based on personality. Which is the common ground and essential element of all kinds of wrongfulness, the valueless result or the valueless act? Without any question, the latter aspect [15].

Some scholars are also conscious of the issue. And basically, the issue is relevant to the purpose of criminal law. In a long period, criminal law has been considered to protect legal interest. The theory affected by liberalism

followed the trend of cautious punishment, and thus opposed to punishment to thought. So it is normal that its advocates argue that. Lawlessness is merely concerning about the external consequences, rather than inner attitude of the subject. In opinion of them, considering intention and negligence while on the layer of wrongfulness, it is nothing else but punishing the defendant on account of thought, which repeats the conventional practice in middle age. Obviously only based on the theory can the scholars develop the classical and neoclassical theoretical criminal systems.

According to typical defense of theory that regarding damage of legal interest as purpose of criminal law, teleological behavior theory would shake the foundation of departure system, which distinguish wrongfulness from culpability. The mainstream theory insists the necessity of separation of wrongfulness and culpability, which is closely related to purpose of criminal law. The purpose of criminal law is either to protect legal interest or to preserve order of law. The theory of valueless result is based on the former while the theory of valueless act on the latter. The theory of valueless result judges wrongfulness on the consequences of damage of legal interest, while the theory of valueless of act on violation of morality or legislation. The former aims at retribution to actual consequence, while the latter at precaution to crime in the future. The former argues that criminal law is designed to restrict state power of punishment in case to preserve liberty and human rights, but the latter takes criminal law for justification of state power of punishment to preserve moral order in society. If subjective wrongful elements are accepted, the dualism approach regards both protecting legal interest and preserving order as task and purpose of criminal law. But there are different implementation model in the two kinds of criminal law purposes, which is unavoidable contradiction. The model of legal interest protection is judging from consequence to subject, while the model of order preserving is judging from subject to consequence. Different models of judgement determine the two purposes cannot co-exist. Therefore although we just admit the dualism above, the purpose and task of criminal law would be obscured and destroy the foundation of criminal law system [16].

But these viewpoints have exposed so many problems as mentioned above, and the theory of legal interest itself is not immune. If the purpose of criminal law is to prevent from all damage to legal interest, it would eliminate all incentive for society to develop, and make social life descend to lifeless exhibits in museum. Human civilization thus becomes stagnant [17]. Apparently, some certain kinds of damage legal interest should be permissible and justified in normal social life. The attention of criminal law should thus be transfer from the result of infringement of legal interest to the behavior type of causing the infringement of legal interest in a particular way. The meaning of criminal law does not lie in that providing all-round protection to ensure legal interest safe and sound, rather picking up those intolerable for maintaining community through order of morality from innumerable damages of legal interest.

6. The essence of negligence: violation of duty of care

The academia is used to criticize Welzel's theory for its inappropriate explanation of negligence, which we are so familiar with. But if we refuse to listen to Welzel's defense in person, we will fall into the dark by listening to the

partial misunderstanding. According to teleological behavior theory, subject chooses necessary means to achieve the goals, with goals as the starting point in reverse. In this process we must consider the occurrences which are caused by this behavior, when the goal is not achieved. The order of law requires that the subject must pay the necessary attention in social interaction in order to avoid the occurrences. Thus the key to criminal negligence committing is the behavior itself of the occurrence. The determination, that the actual implementation under control of neglecting necessary interaction rules, cannot comply with what it should be according to law, is a judgement in respect of valueless of act rather than consequences in nature [18]. If we deny this review, everyone will be exerted endless and irrational burden, only to avoid even a little loss.

In Welzel's system. when judging the constituent requirements of negligence, we should consider whether the behavior constitutes violation of duty of care at first, then turn to the fact of consequence. The judgement reflects the viewpoint that consequence is not the nature of negligence crime, for the behavior conforming to constituent requirements is just picked up among those result in damage of legal interest according to criminal law and constitutes wrongfulness. Because the consequence is realization of violation of duty of care, there will not be consequence with conformity to duty of care. If there are behavior conforming with constituent requirements and actual consequence one after another, we can say there is conformity to negligent constituent requirements and wrongfulness. Of course, if justification can be found in the case, the wrongfulness can be excluded. As a result, by introducing substantive duty of care, the systematic structure of negligence can break away from stereotype of naturalism [19].

Welzel has foreseen the criticism for his transferring intention and negligence from culpability layer onto constituent requirements layer. In his contradicting, the normative theory of culpability does not solve a problem, that is what kind of relationship between culpability and psychological correlation between perpetrator and wrongful result. Afterwards it could be realized that culpability itself corresponds with evaluation, and *meas rea* with object of evaluation. However a suitable solution is not proposed until the appearance of purpose of the teleological behavior theory. According to the solution, *meas rea* is removed to the layer of the constituent requirements, which becomes object of evaluation of culpability naturally, in the term of that the evaluation object of culpability layer is wrongful act. The concept of culpability is not emptied by removing *meas rea* to other layer. On the contrary, its scope can be shrunk to an appropriate extent [20].

7. Cognition of wrongfulness: separated from *meas rea*

There is an issue worthy concerning which is the systematic situation of cognition of wrongfulness. Coincidentally, the stand of point regarding *meas rea* as elements on culpability layer, actually leads to the situation that *meas rea* contains cognition of illegality. As Welzel stated, *meas rea* is the object of culpability evaluation while cognition of illegality is an integral part of culpability. As matter of fact, the two elements are different in nature. The inclusion that cognition of illegality belongs to *meas rea* fails to recognize that people take responsibility for the correctness of the decisions made by their own based on their capacity of social

understanding. So not only when people realize that their forming of willpower complies with subjective requirements on wrongful layer, can the wrongful will itself be considered culpable. In fact, as long as he recognizes that situation, the affirmation of culpability is correct. Thereby cognition of illegality separates itself from *meas rea*, and is located on the culpability layer. On this basis, the new system develops distinction between the error of constituent elements and error of prohibition. *Meas rea* can be excluded under the former, while culpability under the latter.

Conclusion

Welzel's theoretical contribution cannot be ignored. Its positive significance lies in those as follow. Teleological behavior theory, as his most remarkable contribution, clarifies the relationship between ontology and concept, and makes a clear emphasis that we cannot separate the content of consciousness and objective behavior while considering constituent requirements. It points out that causality in criminal law is not pure objective constitutive requirements of crime, which also contains the content of perpetrator's consciousness thus avoids excessive extension of wrongfulness caused by limiting it in the scope of causation. Because behavior in real life is combination of both subjective and objective elements. In respective of ontology, teleological behavior theory attributes subjective elements in behavior concept, proposing review both on subjective and objective aspects. This offer so sufficient grounds for excluding pure objective act such as sleepwalking, epilepsy, the objective behavior of the conditioned reflex that objective imputation can be avoided. This is correct without doubt.

Welzel attributed *meas rea* and negligence on the layer of constituent requirements, rather than on culpability layer. And the two type of subjective elements are unified in the concept of behavior. Teleological behavior is considered as type containing objective and subjective element. Welzel argued that, the essence of teleological behavior is *meas rea*. The content of will lies in purpose and is reflected in the actor's subjective aspect. The valueless result of negligent crime also belongs to the category of valueless act, and would be examined through purpose, a noumenon category. There is no doubt that the subjective elements have become more critical in the process of distinguishing crime and innocent. So to speak, the statue of subjective elements in theoretical criminal system is outstanding so that the theory draws attention of practice. Since Welzel's proposing teleological behavior theory in the 1930s, *meas rea* has been removed into constitutive requirements, broken the traditional situation of domination of objective wrongfulness, and opened a new era of co-existing of subjective and objective wrongfulness. As to Chinese academia, it is necessary to rethink the current theoretical situation governed by pure objective wrongfulness, in respective of Welzel's theory.

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