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Restorative JUSTICE and Community Sentence

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Abstract

In recent, restorative justice has become a new paradigm for criminal justice in response to crime. In the existing criminal justice system, punishment is a legal consequence of crime, which has the nature to impose harm on the crime committed by the actor. On the other hand, restorative justice focuses on conflict parties to resolve conflicts. In this view of the world, the problem of crime is the wound of the community and the damage of the network. More fundamentally, this view of illicit behavior implies an interest in the healing of the affected parties, including the perpetrator and the community, as well as the victim. So the parties (the perpetrators, the victims, the community members, etc., in relation to the recovery) participate in the process of resolving conflicts and set and pursue the goal of restoring and reintegrating conflicts. The recovery of the perpetrator is also as important as the recovery of the victim, and it is necessary to accept the perpetrator as a member of the community again

Therefore restorative justice emphasizes active support and involvement of the community in the process of recovery. From this point of view, we consider that social treatment is appropriate for the realization of ideology of restorative justice rather than treatment in facility at the correction stage, and we seek to utilize social treatment as restorative sanction by practice program of restorative justice.

In this respect, the process of acknowledging responsibility for their actions and trying to heal the damage they have with them will lead to regret and responsibility for the past. In addition, you can expect the preventive effect, which is the purpose of punishment. On the other hand, "restorative justice differs from the existing criminal justice in that it pursues its goals and means, so many theorists of restorative justice have found that the restorative programs they want to practice are uncritically absorbed into the existing criminal justice system, the problem is that it is simply a solution to the problem-solving type of the problem by restoring the victim's damage to the victim.

Therefore, in the aspect of recovery of the main keyword which is the center of restorative justice, the criminal apologizes for himself and takes a restorative duty, so that the result of his / I must start with. It should not be forgotten that in this process, the promise of restoration of the damage between the parties is the starting point for restoring the relationship, not the purpose of distressing the sufferer.

[Keywords] Restorative Justice, Restorative Sanction, Community Sanction, Criminal Sanctions, Restorative Sanction

1. Introduction

In recent, restorative justice has become a new paradigm for criminal justice in response to crime. In the existing criminal justice system, punishment is a legal consequence of crime, which has the nature to impose harm

on the crime committed by the actor. On the other hand, restorative justice focuses on conflict parties to resolve conflicts. In this view of the world, the problem of crime is the wound of the community and the damage of the network. More fundamentally, this view of illicit behavior implies an interest in the

healing of the affected parties, including the perpetrator and the community, as well as the victim[1]. So the parties (the perpetrators, the victims, the community members, etc., in relation to the recovery) participate in the process of resolving conflicts and set and pursue the goal of restoring and reintegrating conflicts. The recovery of the perpetrator is also as important as the recovery of the victim, and it is necessary to accept the perpetrator as a member of the community again.

Because of the nature of restorative justice, the term restorative sanction may sound like a contradiction. However, the term restorative sentencing is used in the sense that it is a countermeasure against crime and a concept corresponding to criminal sanctions. In this paper, therefore, we start from the point of view of responsibility in restorative justice and the necessity of alternative to punishment and detention. We will identify the meaning of the restorative sanctions and discuss the possibility of applying them to these sanctions.

2. Restorative Sentence

2.1. Criminology implications of sanctions in society

Community Sentence is used as a concept against the sanctions in the facility. It was presented as an Sanction without liberty[2] to the problem of overcrowding of the treatment of existing facilities, problems of economics, and efficiency of short term imprisonment. On behalf of the existing freeforms deprived of freedom and punishment in the facility, the guards are guided and guided by the guards in the society, and continue to live their lives and receive criminal sanctions. However, 'sanctions in society' is used as a concept similar to 'treatment in society', but the concepts of both are not the same[3]. The treatment of social treatment is used to refer to specific programs for the improvement[4], rehabilitation, and rehabilitation of offenders in the community rather than in prisons, so social treatment understands the program of sanctions in society.

In Korea, the treatment of social workers is guilty, while the various postponement (probation and postponement) of deferring execution and sentencing of punishment (detention and fines) Social service, enrollment orders, and probation. In addition to these treatment programs, discussions on the necessity of development of various social treatment programs based on advantages of social sanctions are being steadily raised.

2.2. Definition of restorative sanctions

Restorative justice, in which the parties participate in problem solving, provides an alternative framework for thinking about how to deal with illegal acts[5]. The concept of restorative sanctions is also being tried variously, but according to Professor Tony Marshall, "the process by which interested parties in a particular crime are gathered together to deal with the consequences of crime and how it will deal with its meaning in the future[6]." Professor Howard, who has done a lot of research in defining the concept of restorative justice, says restorative justice is "a way to correct and correct the mistakes as much as possible, And the process of identifying and dealing with obligations".

On the other hand, the attempt to incorporate the restorative restoration system into criminal sanctions and influence the judgment of sentencing is likely to result in resurrection and reorganization of private revenge[7], and the restriction of tangible and intangible, There is also a negative view that there is a great likelihood of bringing about such a situation[8].

Professor Kim Sung Don said, "These concerns exist in the form of fines. Instead, the fines are attributed to the national treasury and are not attributed to victims, so they are carried out irrespective of the victim. The negative view is that the system for the protection of damages between the parties is civil damages "It is argued that the criminal act is based on a fixed consciousness that it is solved by a system of national criminal sanctions inherent in criminal law[9]."

Therefore, for restorative sanctions, first of all, it is necessary to understand the exist-

ing definition of criminal justice and new definition according to the restoration perspective. Based on this understanding, and for more effective sanctions, Professor Lode Walgrave explains that restorative justice is "a regime that requires voluntary participation to restore justice by realizing the damage caused by a crime. Instead, restitutive sanctions such as a restoration order or a civil service order imposed by the court are also incorporated into the restorative justice framework[10].

2.3. Restorative responsibility

Responsibility used in restorative justice does not coincide with the concept of accountability. When the restorative justice takes accountability requirements as the premise of recovery, the responsibility used in restorative justice is broader in that it covers moral responsibility. As O'Malley points out, "The responsibility for crime or the prevention of crime is not the domain of political rights, nor does it just mean a punitive response to the perpetrator[11]." In the end, responsibility is a fundamental and debatable issue in all judicial systems, including restorative justice. "Emphasize that restorative justice has its roots in the current criminal justice paradigm and its first starting point in fulfilling that role is the meaning and role of responsibility in restorative justice. Likewise, the view of responsibility in relation to the restoration of contexts, such as the claim that restorative justice is not entirely new, and that it did not originate in any particular area, is often visible in our judgment.

Judges in many criminal trials (almost all), as the judges say, because of the weight of sentencing, "... Without trying to forgive the victim or recover the damage (compensation for the loss), there is no repentance...", we would like to start from the premise that restorative justice is not entirely new. Our society as well is an insult to the fact that it is an important factor in problem solving, in that it tries to recover from the victim's relationship with his or her abusive behavior.

Of course, in such premises, it is difficult to expect everyone to acknowledge and act on our behalf as we anticipate, and in such cases,

to add or to impose penalties (especially imprisonment), which is a supplement to the criminal law. It is desirable to give the parties an opportunity to recover positively before leaving the judge for the victim's recovery to the discretionary judgment of the judge solely. It will be a more accurate and reasonable sentence to judge the elements of sentencing in light of the will and efforts of the parties to recovery in these procedures. Also, even if a party does not have access to such a procedure prior to his sentence, the judge will be able to fulfill the purpose of punishment in the original sense by providing a place for the recovery of the party's injury rather than imprisonment.

3. Encounter with Restorative Sanctions and Social Treatment

3.1. Possibility of combining with restorative sanctions and social treatment

The core principle of restorative justice can be called 'recovery process' and 'effort process' for recovery (conflict resolution) between the parties. This viewpoint is worthy of the process of dialogue and recovery between the parties even though there is no result of resolution between the parties. In order to be able to combine both the restorative justice and the retaliatory justice without being alternatives, it requires the process of resolution between the parties and the society members and the expectation effect of the process as a post-treatment of the criminal act do. In addition, Professor Choi Seok-yoon argues that it is better to refrain from applying penalties such as freestyle if the treatment of society is sufficient by the last means of punishment and the flexibility of punishment by turning minor offenders who do not have the risk of recidivism into social treatment, they also have a criminal policy function that can reduce the overcrowding phenomenon of the hanging facilities and improve the correction effect by focusing the criminal ability on the criminal offenders. I would like to see the necessity of improving treatment in society[7].

On the other hand, Professor Kim Yong - seh warned against the adverse effects of selective or preferential application of restorative justice, especially in the issue of criminalization or the introduction of recovery into the criminal procedure. Damage restoration and criminal reconciliation are legitimate in themselves because it is desirable to end the dispute by self-talk and damages, but it is dangerous to over-emphasize the victim's interests in this process. In this case, the victim has the entire right to decide the conflict resolution between the parties, and the problem of genetic innocence (advantageous to the defendant capable of compensation) remains. If the victim needs to recover enough damage, the victim's excessive demands will make it difficult to reach an agreement, and the perpetrator who wants to treat the lighter brother especially in society should endeavor to listen to the victim's demands while enduring the unfairness something to do. It is argued that this should be complemented as a supplementary procedure to improve the efficiency of traditional criminal justice system, pointing out that it is an indirect coercion, a pressure, and a means to compel civil compensation. If the enlargement of the social treatment by using alternative sanctions as a means of criminal reconciliation and restoration of the damage is expected to solve some of the side effects and problems of the traditional punishment enforcement[12].

3.2. Encounter with current social treatment

Restorative justice theorists argue for "priority work" of the restorative justice mechanism, but in reality, the restorative justice program is largely dependent on decisions (sentence of probation or probation) It is also uncertain that the Criminal Justice agencies of the United States are willing to cooperate favorably with the restorative procedural programs coming into their territory[13]. Therefore, in order to construct social treatment as a recovery sanction, first of all, it is necessary to review the economics of the efficiency and effectiveness of the restorative sanctions.

If we look at social treatment systems individually, probation, postponement of sentence, and fines are the means of treatment in the society in accordance with the current criminal law, and social service and lecture orders are relatively recently introduced sanctions measures in society[14].

A Community Service Order means a person who commits a convicted offender or a juvenile offender to engage in public activities (labor) within a certain period of time[14]. The Attendance center order started by ordering a certain lecture or education to correct or improve the offender or the juvenile delinquent.

The purpose is to develop mentalities for minor offenders, to instill proper values, and to promote the normal return to society by correcting sexual activity[15]. It is a compulsory disposition for criminals whose punishment and treatment must be accompanied by a high degree of fear that they will repeat crimes without being aware of their crime tendency[16].

The probation system promotes the well-being of individuals and the public by promoting healthy social rehabilitation by guiding and supervising probation officers for a certain period of time in a society, not a specific facility, but by promoting effective crime prevention activities and to protect society(Act On Probation). It is also important to improve and educate the criminals, but the probation system focuses on finding out the resources needed in society and utilizing, managing and evaluating them[17].

4. Outro

The expectation that the regret of past acts and the suffering of punishment will prevent future crime has been largely met. On the other hand, anger and resentment of what they have lost may happen rather than counting how their opponents are hurt and hurt by their actions. In fact, these are also the visible aspects of the criminal justice system in which I work. These reactions are reactions to the progress of the formula coming from the

equilibrium of the crime = punishment of suffering that it hurts itself as much as the wound of the opponent by paying the pain of harming his actions. In the course of these procedures, the legal consequences of crime, the accusation and the focus on suffering, have already focused on the pain and suffering that will be witnessed as soon as they enter the criminal justice process (Considering and consideration of the victim), the recovery and care of the victim will be excluded.

Perhaps this paradigm and process are making it harder to nurture a process that focuses on self-centered pain alone? In this respect, the process of acknowledging responsibility for their actions and trying to heal the damage they have with them will lead to regret and responsibility for the past. In addition, you can expect the preventive effect of second conviction, which is the purpose of punishment.

On the other hand, Professor Lee Ho-Jung's "Restorative Justice, because its goals and means are different from existing criminal justice, many theoreticians of restorative justice have unanimously absorbed the restorative programs they are trying to practice into the existing criminal justice system. "I do not want to fall to the level of a diversion program that is paralyzed by the criminal justice system." As pointed out in the article, it should be remembered that the solution to crime is merely converted to a problem-solving program by simply restoring the victim's damage[13].

Therefore, in the aspect of recovery of the main keyword which is the center of restorative justice, the criminal apologizes for himself and takes a restorative duty, so that the result of this start with. It should not be forgotten that the promise of restoration of the damage between the parties is a starting point for restoring the relationship, not for the purpose of harassing the perpetrator, nor for imposing pain.

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