

Victimology Basis of Restorative Justice

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Abstract

Restorative justice has strong victimology base, which is shown in offender-victim interaction theory, physical compensation for victims, narrative theory for victims and prevention of evil inverter of victims. We need to explore various aspects of protecting rights and interest of victims in order to promote the development of restorative justice.

Key words: Restorative justice; Victim; Basis

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INTRODUCTION

In 1974, the first victim-offender reconciliation program was established in Kitchener, Ontario, Canada, marking the entrance of restorative justice into judicial practice. With progressing judicial practice, restorative justice spread to North America, Western Europe, Latin America and Asia, which fostered the popularity of restorative justice worldwide.

Restorative justice, by its name, is aimed at repairing the crime-damaged relationship by promoting victim-offender reconciliation through negotiations, focusing on

protecting legitimate rights and interest of the victims and offering opportunities for criminals to integrate back into the society. Restorative justice has the characteristics of full participation and negotiations, negotiated punishment and restorative purpose of punishment. This new judicial philosophy is different from traditional, retributive justice in the purpose of punishing and reshaping criminals; it gives more attention to the principal role of victims in solving crimes, which is in line with the trend of judicial civilization and has strong victimology basis.

Since 1920s when Israeli jurist Benjamin Mendelsohn studied victims in “On Personality of Victims”, victims have become a research field in law and criminology studies, and “victimology” has become a discipline. Victim phenomenon and victims, as a twin of crimes, need to have a place in criminal law, criminal procedure and criminology studies. On the one hand, “Victim went into criminal law and criminal procedure studies largely because of victimology whose emergence originated from the discussion of offender-victim relationship and marked an important milestone for development of criminology.” (Zhang, 2013, pp.59-67) On the other hand, the rapid emergence of victimology in criminal law studies should also be attributed to the fact that victimology provides food for thought to criminal law and criminal procedure studies. The victimology basis of restorative justice is one example.

1. VICTIM-OFFENDER INTERACTION

The word “victim” originated from the Latin word “Victima” and now means “the bearer of harms or adverse consequences” (Ye, 2011, p.23) and interacts with the offender in victim process (crimes). The same event (crime or victim) is both criminal act with adverse consequences to the criminal, and victim process with victim stigma or even sequela to the victim. Since crimes (or victim event) are mutual actions with participation of both parties, then

“no matter what condition the criminal and the victim were in, they were in the same pair of contradictory movement. Their interaction mutually influences the development of such contradictory movement.” (He, 2004, pp.87). German criminologist Hans Von Hentig once said, “The collision of criminals and victims is a basic fact in criminology. Of course, it does not mean that criminals and victims reached any agreement, or deliberate crimes or victims, but the two do have interaction and are triggers to each other.”(Xu, 2007, pp.149) It is then no wonder for Benjamin Mendelsohn to define the criminal relationship of criminals and victims as “criminal partner” or “penal couple”.

Restorative justice fully respects the party disposition right. As long as criminals and victims reach mediation agreement, it will not hold the criminals accountable for criminal liability through criminal procedures or will give lenient sentencing. Mediation agreement is reached after fair, complete negotiations between the two parties where negotiation is the key point. Both criminals and victims participated in the criminal (victim) behavior, and their interaction shaped the appearance and consequence of the crime. They know best about the whole process and were damaged by the event, which makes negotiations possible. Negotiations are mainly centered on the original criminal (victim) behavior and the damages. The extent of damage to victims and demand for compensation, as well as the apology from criminals and compensation amount are all based on the criminal event, and therefore only subjects of the event can conduct most substantive negotiations. “The occurrence of victim events is always accompanied by the explicit social interaction between victims and offenders, and victim events are nothing but the outcome or final result of such interaction.” (Xu, 2007, pp.126-127). Besides, according to the victim-offender interaction theory, in conflict model and victim-catalyzed model, victims make mistakes to a certain or large extent. In these cases, discussion about the mistakes of victims between the two parties is also an important component of negotiations. If victims made big mistakes, then it is not only criminals who should apologize, and compensation amount should be adjusted, because victims know their mistakes in the criminal event that are reasons for reducing culpability for criminals. In this sense, compared to court trials, negotiations between the two parties based on their interaction in criminal activities have more respect to facts, and reduce evidence collection and proof procedures, which shows fairness and efficiency.

2. COMPENSATION FOR DAMAGES TO VICTIMS

There is no doubt that the nature of victims is being victimized; only when someone is harmed or bears adverse consequences can he/she becomes a victim.

Crimes lead to adverse consequences, and to most crimes, “victims are the object of harm to criminal behavior or the subject of the social relationship harmed by criminal behavior.” (Zhang, 2010, pp.100). Victims are harmed not only in where criminal behavior directly harmed. Criminal behavior is complex, multi-tiered and penetrative; its scope of harm is not confined to direct individual victims. The complexity of harm to victims is first shown in direct harms of property loss and personal injuries. Property loss mainly takes place in crimes violating property rights or related to property; personal injuries occur more in crimes violating or jeopardizing personal rights. After direct harms, second-tier harms follow, especially when direct harms are personal injuries, victims also need medical treatment and care, which adds to the economic burden. Besides, victims have to suffer from psychological impairment, frustrated sense of dignity, hatred after grievance and damage, or even mental disorder and need dignity restoration, emotion expression and comfort or treatment on psychic trauma. Finally, damages will spread to others with circle of social support of victims, which enlarges the scope of victim. Hence, victim is a comprehensive idea with many aspects.

Victim needs reparation. The greatest reparation that traditional retributive justice can offer is best satisfying the demand of retaliatory punishment from victims to criminals. In traditional criminal justice, either confrontational litigations or authority charges represent their respective state judicial organs in prosecuting criminals for criminal liabilities, declaring their crimes and punishing them, and criminals receive retaliatory criminal punishment. Such model best satisfies the demand of severely punishing criminals from victims, but ignores other damaged aspects to victims. Even criminal litigations with civil actions are attached to criminal procedure. If criminal judgment is innocent, then victims have no possibility of demanding compensation—they can neither recall the case to private prosecution nor ask for compensation from innocent defendants. Litigation efficiency also makes little room for victims in criminal litigations with civil actions; victims are unable to ask for reparation or compensation one by one for their multi-tiered damages in court. Besides, victims may have to suffer from victims again in litigations when they make “victim statement” as witnesses or go through the court trial as litigation participants; narration or hearing of the event makes victims experience the damages again. When victims can do nothing above, the only thing they can be to pursue greatest and severest punishment on criminals to get comfortable. It is then understandable that in traditional retributive justice, alleviation of punishment and socialized reformation of criminals do not work. In current criminal law framework worldwide, many victims still think punishment is too gentle, let alone alleviating punishment.

Repeated mentioning of defendant rights and continued ignorance of victim rights aggravate psychological impairment and mental damage. It is not until the emergence of victimology when “attention to victims and studies on victimology (made) people form a basic concept that human rights are both criminals and victims.” (Hou, 2010, pp.88) Because “in the process of crime and crime prevention, victims are not passive objects but active subjects. We should not only emphasize human rights of criminals, but also acknowledge and protect human rights of victims.” (Schneider & Hans, 1992) In restorative justice, through negotiations, victims and criminals can cover multi-tiered damages to victims, and have complete discussions and resolution. Victims can ask for compensation for medical treatment and care and even mental damage from property loss and personal injuries, and resolve damage of sense of dignity from talking and demanding apology, and community harmony can be repaired by apology and community service of criminals; all these can be fully discussed and resolved through negotiations. If victims think these decriminalized punishment cannot make up for the damage, they can hand over the criminals to judicial organs and punishment them through criminal procedure. Hence, in restorative justice, the state uses the greatest power to make up for the damage on victims. The subject role of victims determines that they have priority in making claims and can end criminal procedure. State prosecution is only the final gate used when victims are unsatisfied by decriminalized punishment on criminals.

3. NARRATIVE THEORY FOR VICTIMS

The narrative theory for victims was originated from the “free association” therapy by Freud. In the therapy, the healer will give neither conscious guidance to the patient (with mental illnesses) nor any approach, but ask the patient to have free association, and narrate what they think about or feel about without any constraints. After victim events, victims suffer from damaged dignity and mental frustration, and have the need to directly talk and complain about the mental damage and property loss to criminals; the narratives and complains are effective ways of treating mental damage. However, in serious state prosecutions, victims have no opportunities of freely narrating and expressing emotions, even in criminal litigations with civil actions they find it hard to express emotions. When victims have strong wills of narration but no opportunities of doing so, hatred and anger may accumulate. When court judgment is not as severe as what victims have expected (their only wish now is severe punishment on criminals but judgment seldom reaches their expectation), negative emotions will become evil inverter and victims may become potential offenders.

The narrative theory focuses on emotional reparation for victims. It uses free narration of experience to release

pain in order to alleviate stress, calm down, forget about mental damage and repair emotion. Restorative justice “turns from abstract protection of legal interest to concrete protection of victims, and therefore turns from satisfying retributive emotions to protecting substantive interest of victims” (Xu, 2006, p.449). “Protecting substantive interest of victims” involves not only compensation for losses, but also comprehensive reparation and protection of all kinds of interest. Negotiation procedure is face-to-face dialogue between victims and criminals. Criminals are not only doers of criminal behavior, but also helpers that give comfort and compensation to victims in the procedure, so that victims have full opportunities of narration. In this non-state-dominated procedure, victims can give free narration directly towards the criminals that do harms to them, and get response until their sorrow and anger are released completely. Only after victims completely express their negative emotions can be negotiations about compensation, reparation, punitive labor and other reparative measures proceed. Hence, the primary task for face-to-face negotiations is for victims to narrate their damages and release angry emotions. Agreement procedure can only proceed after victims are comforted.

4. PREVENTION OF EVIL INVERTER OF VICTIMS

“Victim psychology is particular to people harmed by criminal behavior, and is the sum of psychological activity process, condition and disposition constrained by victims’ psychological traits and social psychology.” (Zhao & Zhou, 2002, pp.11) Victim psychology is a complex of various damaging psychological traits occurred during the victim process and remain after the criminal event ended. Specifically, victim psychology includes near-term damaging factors such as fear, anger, grievance, disappointment, despair or dissimulation and long-term damaging factors such as victim stigma and victim sequel (Luo & Yu, 2001, p.3). Victim emotion will not disappear automatically, but remain in the mind of victims and dies away until criminals appropriately handle the damages caused by criminal behavior such as heavy punishment on criminals to remove hatred of victims, psychological and economic compensation after victims express anger towards criminals and damaged dignity and harms are repaired, or criminals get criminal punishment after giving compensation. If victim cannot restore psychological balance, then once external triggers occur, negative emotions will be triggered, and therefore forms criminal motivation, and “innocent victims may go to another extreme and become criminals” (Li, 2012, p.1). One side effect of victim events is psychological impairment.

According to the frustration-aggression theory in the criminal psychology, aggression is a human nature, and frustration is more likely to stimulate aggressive

desire and behavior. Whether frustration will stimulate aggression and the extent of aggression is influenced by the extent, scope and frequency of frustration, and the punishment after aggression. Victim events will definitely result in strong frustration, which will easily stimulate extreme passions, and intuitive, radical defense behavior. In extreme passion state, victims have extremely intense emotions. If subjective or objective reasons hinder victims to fight back crimes in time, the frustration will stimulate victims to use more dangerous means to take revenge. Victim passion is so diffusive and revenge is so urgent that crimes resulting from evil inverter are more dangerous than normal crimes in terms of brutal means and extensive scope of the attack. According to incomplete statistics, every year, "evil inverter" crimes account for 31.22% of all criminal cases, the number of criminals accounts for 40.15%" (Xie, 2006, p.24).

It has been expounded and proved that in traditional retributive justice, victims find it difficult to directly face criminals and give effective emotional narratives, rather they can only get comfort by asking for severe punishment on criminals in court. However, the judicial judgment usually disappoints victims, and made them more emotional. In restorative justice, victims narrate the mental damage brought by property loss and personal injuries to criminals face-to-face, which can effectively unleash negative emotions such as anger, frustration, disappointment and despair, restore psychological balance, sense of security and respect, and prevent evolution towards evil inverter.

CONCLUSION

Protection of right and interest of the victims is a critical characteristic of restorative justice, and an important

reason for its popularity in judicial practice. It is necessary to study the multi-tiered right and interest of victims, and prevent potential problems in its implementation to advance restorative justice.

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