

Theories and Practices of Chinese Community Correction System

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Abstract

The emergence and development of community correction system adapts to the international trend of punishment from severity to tenderness, reflecting the concepts changed from "punitive retribution" to "correction and rehabilitation". Taking into account the fundamental purpose of community correction system, we should establish a scientific evaluation system focusing on the effects of correction process upon the offenders returning to society. Currently there is a certain bias against the evaluation criteria of community correction system.

Key words: Community correction thought; Community correction system; Legal origin; Effect evaluation

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INTRODUCTION

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Community correction thought emerged as the concept of "punitive retribution" changed to be "correction and rehabilitation". The development and evolution of this thought to reflect a rational exploration on punishment and punishment execution. The international trend of punishment is changing from severity to tenderness, and the emergence and development of community

correction system conform to this trend. As a newly created legal system, community correction system remains to be perfected. Currently there is a certain bias against the evaluation criteria of community correction system. Taking into account the fundamental purpose of community correction system, we should establish a scientific evaluation system focusing on the effects of the correction process upon the offenders returning to society.

1. ORIGIN OF COMMUNITY CORRECTION

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In the early theory of criminal classical school, we can only find the concept of "punishment" instead of the word "correction." (Chen, 1998) With the increase of crimes and recidivism, people began to reflect on the punishment philosophy of criminal classical school, so criminal social school, criminal positive school and the concept of "correction" came into being. Different from retribution and intimidation, the "correct" concept gives a more positive sense to punishment and treats offenders as objects of correction instead of objects of punishment. Although correction cannot have good effects on all offenders, for those who can be rehabilitated by correction of the effects are still to be expected (Chen, 2006).

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Community correction system in the modern sense firstly appeared in the judicial practices of common law countries. They produced a series of decisions, execution systems and judicial practices which slowly promoted the concept of community correction to develop and get mature. Meanwhile, since the mid-20th century, the United Nations has enacted a series of criminal justice rules, such as *Alternative Measures to Imprisonment*, *Reduce Population in Prison*, *Alternatives to Imprisonment and Offender Social Integration*, and *Minimum Standard of the United Nations for Non-Custodial Measures*. They all advocated non-imprisonment measures and treated imprisonment as a last resort, which greatly promoted the

application of community correction in the international penal system (Guo, 2003). Since the second half of the 20th century, community correction has become one of the most widely used punishments in developed countries (Fan, 2004). In China's previous theories and practices, the word "correction" was used rarely, and the word "reform" was used more often. "Labor" was a major means of reform, and called as reform through labor in China's legal practices. For a long period, China's prisons were called as labor reform institutions, and reform through labor became the synonymous of reform through imprisonment. Article 4 of the 1954 *People's Republic of China Labor Reform Regulation* stipulates that, "Labor reform executed by labor reform institutions upon all counterrevolutionaries and other criminal offenders should implement the policy combining punitive control and ideological reform, combining labor production and political education." (Zhang et al., 2004) Article 3 of the 1994 *People's Republic of China Prison Law* stipulates that, "Prisons shall implement the doctrine combining punishment and reform, combining education and labor, and reform offenders to be law-abiding citizens". This turns prisons from labor reform institutions to be punishment execution organs, and has great similarities with correction in content. However, the word correction in Western countries is not exactly the same with the word reform in China's *Prison Law*. Correction in Western countries refers to a variety of disposal measures executed by legal authorities upon a person convicted of an offence, including imprisonment or monitoring (Sun, 1991). Therefore, correction is technical, emphasizing a change in personality of offenders, but China's "reform" is political, paying more attention to a change in mind of criminals. In order to meet the practical needs, in 2003 the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security and Ministry of Justice jointly issued *Notice Concerning the Implementation of Community Correction Experiments*, clearly manifesting that community correction is an opposite way to imprisonment. Community correction system thus boarded the stage of China's history.

2. STATUS OF CHINA'S COMMUNITY CORRECTION SYSTEM

The first is the relevant legal sources of community correction system. On February 25, 2011 *Criminal Law Amendment (VIII)* was approved by the National People's Congress Standing Committee, and its approval became an event marking the official establishment of community correction system in China's legal system. *Criminal Law Amendment (VIII)* provides that, community correction system provided by China's criminal law is applicable to the offenders of the following categories: a) Offenders sentenced to public surveillance; b) Offenders serving

probation; c) Offenders serving parole; d) Offenders serving sentences outside prisons; e) Offenders sentenced to be deprived of political rights and serve sentences in communities. Since then, on March 14, 2012 the National People's Congress approved the *Decision on Revising "People's Republic of China Criminal Procedure Law"* (hereinafter referred to as the *Decision*). The *Decision* made substantial amendments to *Criminal Procedure Law*, and included community correction system into *Criminal Procedure Law*. On January 10, 2012, Ministry of Justice, Ministry of Public Security, Supreme People's Procuratorate and Supreme People's Court jointly issued *Community Correction Implementation Measures* to ensure a smooth implementation of community correction system. *Community Correction Implementation Measures*, in a nature of judicial interpretation, is an important normative legal document and lays a solid foundation for the full establishment of community correction system in China. Therefore, the relevant legal sources for China's community correction system are *Criminal Law Amendment (VIII)*, 2012 *Criminal Procedure Law Amendment* and *Community Correction Implementation Measures*.

The second is the enforcing subject of community correction system. Community correction system is a non-custodial punishment execution system to reform offenders in community, so it requires the enforcing subjects to possess a high degree of specialization. Only a professional, standardized and specialized enforcement team can give a reliable organizational support and complete the historic mission of community correction system. The enforcing subjects of China's community correction system consist of managers, judges, executors and supervisors (Jiang, 2010). The managers of China's community correction system are the judiciary administrative organs at all levels. Ministry of Justice, as China's highest judicial administrative organ, is responsible for managing the enforcement of the country's community correction. Local judicial administrative organs at all levels are responsible for the enforcement of community correction within their own administrative areas. People's Courts are the judges of community correction. In China community correction is an execution way of punishment, so only people's courts have the right to determine the applicability of community correction and make judgments or decisions on the offenders or defendants who meet the conditions for community correction. Judicial administrative authorities are the executive bodies of community correction. Social workers, relevant departments and villagers' (neighborhood) committees shall assist the execution, and public security organs shall provide a powerful guarantee for community correction. Finally, people's procuratorates as the legal supervisory authorities shall conduct legal supervision upon community correction. In addition,

because the content and value target of community correction system has social characteristics, we should also attach importance to social forces in setting the executors in order to achieve optimal results.

The third is the applicable target. Community correction is applicable to those offenders who committed a crime but are less likely to conduct a second crime. According to China's *Criminal Law*, *Criminal Procedure Law*, *Community Correction Implementation Measures* and *Interim Measures for Judicial Administrative Organs to Conduct Community Correction* and other regulations, community correction system shall apply to: Offenders sentenced to public surveillance, offenders serving probation, offenders serving parole, offenders serving sentences outside prisons, and offenders sentenced to be deprived of political rights and serve sentences in communities. The *Opinion on Implementing Trial Community Correction in China* jointly issued by Supreme People's Procuratorate, Supreme People's Court, Ministry of Justice and Ministry of Public Security in 2009 clearly stipulates that, in the practices of community correction, we should accurately grasp the nature of the execution of community correction, accurately determine the targets of community correction, and must not expand or narrow the applicable target scope at discretion. In the cases conforming to the conditions prescribed by law, we shall apply non-custodial punishment to those offenders with a minor offense and less subjective malice, including juvenile offenders, old and sick prisoners, first-time offenders, negligent offenders, etc., and help them successfully return to and adapt to society through community correction

3. EFFECT ASSESSMENT OF COMMUNITY CORRECTION

Every system is set to achieve better results, so what're the effects of community correction system? How to assess the effects of its implementation? Effective assessment of community correction can be carried out from multiple angles, and the most used method to assess the effects is the recidivism rate and escape rate of correction targets. It can be ascertained that both of the two are very important in evaluating community correction, but the author of this article believes that they cannot serve as the main criteria to assess community correction. The fundamental purpose of community correction is to help correction targets return to and adapt to society, and the subsequent effects of the correction process on the correction targets should be paid more attention, so the assessment of the effects should focus on final purpose. It's not scientific to assess community correction solely based on recidivism rate and escape rate.

Firstly, we should take the comparison between the recidivism rate of community correction and that

of prison as a scientific index to assess community correction. Recidivism rate can serve as a referential index, but it cannot solve all the problems. We cannot simply conclude that the effectiveness of community correction is better than imprisonment because the recidivism rate of the targets of community correction is lower than the recidivism rate of the targets of imprisonment. Tracking time length, statistical sample representativeness, criminals' dangerousness will all affect the results. In general, the targets serving imprisonment have a heavier punishment, and the possibility of their dangerousness and recidivism is relatively higher than that of community correction, so the difficulty to correct their abuses is higher. Therefore, we cannot simply conclude that the effectiveness of community correction is better than imprisonment because the recidivism rate of the criminals after serving community correction is lower than the recidivism rate of the criminals after serving imprisonment. There is a difference in subjective malignant base.

Secondly, escape rate cannot reflect the effectiveness of community correction properly. In community correction, some techniques can be used to reduce the escape rate, but the real purpose of correction is not to reduce the escape rate, but to correct the targets' abuses, criminal psychology and help them better adapt to society after serving the correction. Escape rate only represents the performances of the targets during the correction process, but a real assessment criterion of the effectiveness of community correction should be long-term and traceable, focusing on the performance of the targets returning to society after being corrected. However, China's current community correction workers pay much attention on the performances of the targets during correction process and preventing their escape. The reasons for this phenomenon are related with the evaluation methods and standards of community correction workers. The research report by the community correction research team of Ren Xueliang, Zhang Shuhua and Lin Juhong shows that, 93.3% of the pressures of community correction workers lie in correction targets' escape, which is the biggest pressure source of community correction workers (Community correction research team, 2011). Thus, although China's community correction has made some achievements, its "corrective" effectiveness has been greatly reduced. An important reason to reduce the escape rate is the application of advanced technologies and strict law enforcement. Therefore, it is not scientific to take escape rate as a criterion to assess the effectiveness of community correction.

Measurement on the effects of community correction should focus on the ultimate goal of helping correction targets adapt to and return to society, so we should make changes in the following aspects: Firstly, establish a long-term tracking mechanism to evaluate the effects

of community correction in correction targets' social integration degree and their performance in society. Secondly, reform the existing evaluation methods and standards to community correction workers so that they can focus on correcting offenders' abuses and criminal psychology, and helping them return to society.

CONCLUSION

China's community correction system is exotic and is at the early stage of development. China's community correction system has made some achievements so far, but still has many shortcomings and needs further improvement. Although there are relevant legal systems, there are still in lack of specific laws of community correction. We should establish a trackable and long-term evaluation criterion for the effects of community correction, and cannot reach a conclusion just based on escape rate and recidivism rate.

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