Plea Bargaining in Legal Sociological Perspective: The Case of Taiwan Criminal Judicial Reform

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Abstract

From the experience of plea bargaining implementation in the U. S., the American plea bargaining system provided benefits for prosecutors, judges, defendants and victims in a multi-aspect approach. Thus, despite the academic voices against the plea bargaining system, the enthusiasm of parties involved to apply the system could not be cooled and vanished. In the case of Taiwan, since the formulation of the Code of Criminal Procedure, Taiwan criminal justice system in the framework of continental European Law had been using the trial system based on the inquisitorial model to establish the "truth" of criminal events. Since the National Judicial Reform Conference held in 1999, the Code of Criminal Procedure had been amended from time to time. In addition to referring to the spirit of adversarial model of American legal system, systems such as the cross-examination and legal aid system were introduced. Although the National Judicial Reform Conference had reached consensus to introduce the "plea bargaining" to effectively cut down the number of cases in the trial system, making it possible for judges to concentrate on cross-examination for major cases, plea bargaining was severely condemned and doubted in the legislation process. Even the plea bargaining procedure was officially introduced to Taiwan in 2004, the color of "trading justice" of plea bargaining had been always the focus of doubts and concerns of the critics.

This study employed the "qualitative research" in sociology and interviewed 20 criminal procedural practitioners including judges, prosecutors, lawyers and public defenders. This study analyzed the views and willingness of

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legal practitioners in Taiwan to apply the plea bargaining procedure from legal sociological viewpoints, and provided a reference to law amendment in the future.

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