

Restorative justice in Chinese Communities: Current Practices and Challenges

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Paper presented at the Interdisciplinary Research Day: Interdisciplinary Perspectives on Conflict Resolution Persuasion, Negotiation & Mediation, Hong Kong Shue Yan College, Nov 15, 2017.

The Research Grants Council of Hong Kong provided a grant to support this study (Project number: CityU/11409214).

What is Restorative Justice

- Restorative justice is a way of addressing conflict that focuses on repairing harm.
- The goal is not penalize, but to rehabilitate and restore.
- It makes victims central & empowers them to have a key role in the justice process.

Principles of Restorative Justice

- Emphasizes full participation and consensus
- To heal what is broken
- To take full and direct accountability
- To restore what has been divided
- To strengthen the family or community in order to prevent further harms

Development of RJ

In recent two decades, key processes that are now seen to be central to the restorative justice approach are:

- **Conferencing** (as in the Family Group Conferences, family conferences or community conferences in New Zealand, Australia, England, Canada, Singapore, Belgium, Netherlands and elsewhere);
- **Circles** (as in the sentencing circles in Canada), and
- **Mediation and VORPs** (as in the United States, Germany, Austria, England, and elsewhere).

Restorative justice (RJ) practices in Mainland China



A Recent Review of Chinese Academic Journals

- To understand whether RJ are really growing rapidly in mainland China, a comprehensive literature review is conducted.
- The review searched all the printed academic journals with the words of '*huifuxing sifa*' (restorative justice) and '*tiaojie*' (mediation) in the paper title and key words in "China Academic Journals Full-text Database" during the period between 1 January, 2011 and 31 December, 2014.
- In the four years period, there were 588 Chinese academic journal articles which contained the abovementioned key words.

Table 1: Major Theme of the paper

Key Theme	N	%
Theme 1: RJ and Victimology	50	8.5%
Theme 2: RJ and Criminal Justice (excluding juvenile justice)	391	66.5%
Theme 3: RJ and Juvenile Justice	77	13.1%
Theme 4: RJ and Chinese Philosophy	26	4.4%
Theme 5: Development of RJ in Western Countries / Regions	24	7.48%
Total	588	100.0%

Table 2: RJ be used at different levels of CJ system

Uses of RJ mentioned in the articles	N	%
RJ be used in policing and public security	88	15%
RJ be used in prosecution (pre-court)	164	28%
RJ be used in court (during court)	173	29%
RJ be used in sentencing (post-court)	100	17%
RJ be used in community correction / reintegration	71	12%
N= 588		

Table 3: In favor of the development of restorative justice (RJ) in PRC

	N	%
1 Straightly in favor of RJ to be implemented in China	438	75.5%
2 Moderately in favor of RJ to be implemented in China with criticism	142	24.1%
3 Not in favor of RJ to be implemented in China	8	1.4%
Total	588	100.0%

An in-depth analysis of 588 articles regarding whether some salient Chinese philosophy and values are quoted, it is found that RJ is closely linked to the following concepts and values:

- 49.7% mentioned ‘Repair of harm’ (修補傷害)
- 39.6% mentioned ‘Harmonious society and stability’ (社會和諧穩定)
- 39.1% mentioned ‘Offender reintegration’ (重新做人)
- 21.9% mentioned ‘Peace comes first’ (以和為貴 / 人際和諧)
- 9.86% mentioned ‘Full participation’ (重視多方參)
- 8.67% mentioned ‘Avoiding litigation’ (無訟/勸訟)
- 6.29% mentioned ‘Forgiveness’ (寬恕)
- 4.0% mentioned ‘Shame or Shaming’ (恥觀/知恥)

Judging from the literature review, restorative justice or practices seem to be prevalent and increasingly used in China. Let's examine how RJ and mediation be used in China.



Restorative justice and mediation in mainland China

- In contemporary China, there are many different types of mediation practices commonly known by the public including community mediation, the people's mediation, administrative mediation, judicial mediation, criminal mediation, and grand mediation.
- In a broader sense, all types of mediation currently practised in China can be considered as RJ practices since they all focus on resolving conflicts.

1. Informal Mediation:

Community mediation (社區調解)

- “Community mediation” - refers to a general type of mediation commonly used in most of the neighbourhoods. *Tiaojie* (mediation) has long existed in China and is often used in disputes resolution. Chinese scholars sometimes refer *tiaojie* as a type of traditional Chinese restorative practices.
- In old China, either an elder of the village or a community leader of the clan may become the third party mediator for resolving disputes. Under the influence of Confucian values, regulations and mechanisms, the Chinese are believed to have shaped a mediatory society over dynasties.
- With the establishment of a formal legal and CJ systems, community mediation practices do not fade out and this kind of practice does occur spontaneously in many occasions.

2. People's Mediation (Renmin Tiaojie) (人民調解)

- This is non-judicial type of mediation conducted by People's Mediation Committees (PMC).
- The Provisional Regulations on the Organization of PMC, adopted in 1954, provided that the PMC's function was to mediate common civil cases and minor criminal cases.
- PMC consists of 3-9 persons, under the guidance of the People's Courts and local governments. Mediators do receive some kinds of training.
- PMC had settled a wide range of cases, including divorce, inheritance, parental and child support, debts, real property, production, and minor criminal cases. The agreements reached have a similar property as civil contracts according to the latest Interpretation from the Supreme People's Court in 2002.

3. Judicial Mediation (*Fayuan Tiaojie*) (法院調解)

- The People's Courts can conduct judicial mediation with the consent of all parties. Judicial mediation is applicable to a wider range of civil dispute cases, for
 - both disputes generating from property and contract relationships
 - and disputes from personal relationships
 - such as divorce, adoption, custody, inheritance
- It is also applied to economic disputes and minor criminal cases.
- For divorce cases, judicial mediation is a requirement. Agreements accomplished have the same legally binding power as court decisions. If no settlement agreement is reached, the case immediately goes to trial.

4. Criminal Mediation (*xingshi tiaojie*) (刑事調解)

- Criminal mediation – refers to the mediation practice designed for offenders who have committed criminal acts, but possessed a sense of remorse during the investigation and prosecution process.
- It was initially applied in cases of assault with minor injury in the period between 2002 to 2004. Between 2005 and 2006, criminal mediation became a widely accepted practice within the police departments, the people's prosecution, and the people's court.
- Throughout the development of criminal mediation, the scope of cases in which criminal mediation is applied has gradually expanded to include assault (covering assault with serious injury), serious traffic offences, the intentional destruction of property, robbery, theft, fraud, rape, extortion, and murder by negligence. It can also be applied to serious punishable crimes where a sentence of imprisonment of over 3 years applies.

Restorative justice (RJ) practices in Taiwan



RJ Development in Taiwan

Late
1990s

- RJ came to prominence in Taiwan

1997

- Ministry of Justice (MOJ) set up a committee to review criminal policy

1999

- White Book (Paper) on Prosecution Reform was published in response to growing problems in justice sectors, such as increase in serious crimes, constraints on judicial resources, and prison overloaded
- To tackle with above issues, a non-adversarial approach combined with both punishment and leniency was addressed
- Mediation, deferred prosecution, and probation were suggested for offenders who committed minor offences (Ministry of Justice, 1999)

RJ Development in Taiwan (Cont'd.)

- ‘Restorative Justice Initiative’ was proposed in July, 2009, operated by the Ministry of Justice
 - 2-year pilot programme from September 2010 to August 2012
 - 8 District Prosecutors Offices
 - Designed for all stages of CJ
 - Offenses, including theft, embezzlement, false pretense, breach trust, extortion, and swag, with maximum punishment of no more than 3 years imprisonment, detention or a fine only (Code of Criminal Procedure, Article 376)
 - Excluded cases with no direct victims
 - Victim and Offender Mediation (VOM) was the main approach

Implementation of RJJ in the cooperating District Prosecutors Offices from December 2010 to December 2015 in Taiwan

Items	Total (A= B+C)	Dropped Cases (B)	Accepted cases (C=D+I)	Finalised cases (D= E+H)			Being processed (I)
				RJ Dialogue (E = F+G) 548		Withdrawn (H)	
				Agreement (F)	No agreement (G)		
Total	1254	168	1086	395	153	480	58

RJ cases in Taiwan

- By the end of December 2015, 1,254 cases had been referred from various sources to the RJl. Of the 1,254 cases, the Prosecutor Offices considered 1,086 (i.e. 87%) to match the criteria for mediation after the initial assessments. Of these 1,086 cases, 548 (51%) entered into the final stage of dialogue.
- Of the 548 finalised cases, 395 (72%) were settled through an agreement and 153 (28%) were closed without agreement.
- Cases were primarily offences related to the following:
 - ‘causing injury’ (21%), ‘domestic violence’ (10%),
 - ‘negligently causing injury while performing occupational duties or activities’ (10%), ‘against sexual autonomy’ (7%), ‘manslaughter’ (7%),

Evaluation of Restorative Justice Initiative

- From 1st September, 2010 to 31st May, 2013
 - 388 out of 463 cases were considered by Prosecutor Offices as matching with the criteria of mediation. 40% (158 cases) of the qualified cases were then selected for evaluation survey:
 - Out of 158, 156 valid questionnaires were collected
 - Results indicated that psychological and tangible harms caused by offending behaviours could be restored through mediation
 - Difficulties and challenges in implementation
 - Some of the administrators/mediators were not skillful in mediation
 - Motivation to participate in VOM was low for most of the cases. This may be due to the fact that mediation meetings were administered through the Prosecutor Offices or Courts.

Similarities of RJ practices in Mainland China and Taiwan

- RJ practices are commonly found in both pre-sentencing and post-sentencing levels
- At pre-sentencing stage, prosecutor possesses power to initiate RJ through deferred prosecution
- At post-sentencing stage, mediation practices are available for offenders regardless offences and the duration of sentence

Peace comes first

- Unlike in Western RJ, the safety and interest of victims as well as individual rights are regarded as a top priority in the process of mediation.
- The Chinese method of performing RJ is different because collective interests, social solidarity, and community harmony are normally the top priority, rather than victim or perpetrator rights.

Matters of concern regarding Chinese mediation practices

1. Mediators might be biased and aimed at get things done according to family rites or party line politics.
2. Mediators sometimes emphasize moral teachings and collective interest than individual's right. There is concern that the mediators would share their opinions towards the case and may persuade parties to resolve the conflict with the account of family bonds or interests of one party at the expenses of the other.
3. Domestic violence has become an increasingly serious problem in mainland China. In an attempt to attain settlement, mediation as an compulsory exercise before court hearing may sacrifice the legal rights a woman supposedly enjoy.

Matters of concern regarding Chinese mediation practices

4. In China, judges sometimes share a dual identity: representing adjudicators as well as government officials. They also bear 'potential hazards' when dealing with collective disputes largely because of how they settle mediation cases is related to the evaluation of their work and future promotion.
5. This leads to public worries about the Party/government's interference in managing disputes and may lead to a lack of impartiality during the mediation process, especially when the amount at stake is high or the legal issues are related to national interests, or when the outcome of the case might affect a particular government official, who might have been involved in corrupt behavior.

A good facilitator may help to bring a good result

- I have once interviewed a youth services coordinator in China in 2015. The interviewee described his experience as follows:
- “As an observer, I witnessed a conference facilitated by a worker in a family service center. The facilitator was a trained social worker and facilitator; the participants involved were the offenders (more than one), the victim, family members of both parties, a teacher of an offender, the police, the procurator, and members of neighborhood committees.
- In the conference, I saw many people blaming the wrongdoings of the perpetrators. However, there were chances for the young perpetrators to explain their acts and apologize.”

A good facilitator may help to bring a good result

“When the victim and his family members shared what the hardest things that they had ever experienced were, it was rather emotional.

There were tears coming out from the perpetrators and their parents—they seemed to have a great sense of remorse. The parents of the perpetrators were more than happy to pay a reasonable restitution.

All participants felt that RJ is highly effective for the rehabilitation and reintegration of juvenile and youth offenders.”

Experiences of victims involved in criminal mediation in China (Yuan and Di, 2015)

- The scholars conducted a survey to examine the experiences of victims. The study was conducted in Nanjing with the help of a nongovernmental body, the Reconciliation Centre for Juveniles and Young Adults.
- According to the data collected from seven in-depth interviews of victims of crime, the researchers noted that these victims had been seriously harmed and were very upset by the incident. However, the victims were able to produce a constructive reflection after the mediation. Most of the victims felt that not only were they affected by the crime, but they also noted that the community was hurt, and that the offenders and their families had also suffered from the crime.

Making good use of RJ

- Yuan and Di (2015) concluded that both victims and perpetrators could learn from the mediation session if restorative justice was properly conducted.
- Chinese people believe that human goodness is natural, and consider that people commit wrongdoings not just because of personal failures in character but also because of factors significantly influenced by family and social environments.
- If RJ is rightly conducted, perpetrators might be forgiven by victims and stakeholders, with the aim of maintaining social harmony.
- Ultimately, an offender's guilt could be induced from such an ethos, and the RJ process could eventually help offenders take responsibility; therefore, human relationships can be restored to a certain extent.

Principles for Practicing RJ in Chinese Communities

- Involving neutral and impartial third-party mediators
- Emphasising voluntary participation
- Minimising the influence of the Chinese moral imperative, diluting family or political party influences (Challenging the Three Bonds)
- Emphasising proper procedures for screening targets
- Balancing the power between participating parties (parents vs. child; husband vs wife)

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