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# Development of Restorative Justice in China: Theory and Practice

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### Abstract

Restorative justice has become a global social movement for criminal justice reform, with over eighty countries adopting some form of restorative justice program to tackle their crime problems. The theory of restorative justice was introduced to the Chinese academia in 2002. So far, various restorative justice programs have been developed in China. This paper aims to systematically review the development of restorative justice in China by analyzing academic literature on restorative justice and key legislative documentations. Major debates in restorative justice among Chinese scholars and a review of the indigenous restorative justice practice, criminal reconciliation (*Xingshi Hejie*), are provided. The study also analyzes the impetus of this soaring popularity of restorative justice in China, considering the macro social, political and legal background. Last but not least, a review of the major evaluation studies of current programs reveals that little is known about the process of various restorative justice programs from the parties' own perspective.

### Keywords

Restorative justice; literature review; criminal reconciliation; China.

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## Introduction

Since the establishment of an experimental victim-offender reconciliation program in 1974 in Kitchener, Ontario, there has been growing interest in restorative justice in the West, engendering a proliferation of new and varied models of restorative justice (Braithwaite 1999). Today, restorative justice has become a global social movement for criminal justice reform, with over eighty countries adopting some form of restorative justice program in response to their crime problems (Van Ness 2005). As an approach to justice that aims at restoring victims, offenders and communities rather than simply determining guilt and punishing offenders, restorative justice is not new in history. Restorative justice principles have existed for millenniums in various traditions of justice; for example, in ancient Arab, Greek, and Roman civilizations (Braithwaite 1999). The reemergence of restorative justice in the West is closely linked to dissatisfaction and frustration with a conventional Western criminal justice approach that is ineffective in preventing or controlling crime and to some notion of a 'good society' (Carson 2002; Crawford and Newburn 2003: 20-21).

The first journal article on restorative justice was published in China in 2002 (Wu 2002). In the following years, the number of publications on restorative justice grew quickly. Concurrent with the academic interest, many indigenous or localized programs of restorative justice were also started in various provinces or municipalities in China (Chen 2006a). John Braithwaite regards Confucius as the most important philosopher of restorative justice (Braithwaite 2002: 20). However, China has very different cultural, social, legal and political contexts from Western countries, which can substantially impact on the pathway of development of contemporary restorative justice. A systematic review of how the Chinese academia understands and debates the Western restorative justice theories and practices and a review of the Chinese restorative justice programs are needed to understand this emerging 'Eastern' restorative justice in the past decade and its challenges in the future. Analyzing academic literature on restorative justice since 2002 and key legislative documentations at the national level, this study reviews the major debates on restorative justice among Chinese scholars and the indigenous restorative justice practice, criminal reconciliation (*Xingshi Hejie*). It also analyzes the impetus of this soaring popularity of restorative justice in China in the macro social, political and legal context. Last but not least, it reviews current evaluation studies of restorative justice practices.

## What is restorative justice?

Restorative justice is an evolving concept around which there is constant debate (Daly 2006). Johnstone and Van Ness (2007) identified three major conceptions that existing definitions of restorative justice typically fall within. The first is the encounter conception, emphasizing stakeholder meetings outside formal, professional-dominated settings, the rights of stakeholders, and the benefits to them of discussing the crime, its causes and its aftermath (Johnstone and Van Ness 2007: 9-10). The second is the reparative conception, emphasizing repairing the harm caused or revealed by a crime (Johnstone and Van Ness 2007: 12). The third is the transformation conception, which defined restorative justice as a way of life that emphasizes equal and wholesome relationship with other beings and the environment (Johnstone and Van Ness 2007:15-16).

This paper uses the definition by Van Ness and Strong (2010) that emphasizes the reparative conception with one important condition: an encounter of the stakeholders is essential for the repair. These authors defined restorative justice as 'a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior; it is best accomplished through cooperative processes that include all stakeholders' (Van Ness and Strong 2010: 43).

Comparing restorative justice to a building, Johnstone and Van Ness (2010) suggest encounter, amends, reintegration and inclusion as the cornerstone values of restorative justice. Inclusion refers to the direct and full involvement of all parties in the procedures after a crime is

committed and is indispensable for a system to be minimally restorative (Johnstone and Van Ness 2010). Encounter means 'affected parties are given the opportunity to meet the other parties in a safe environment to discuss the offense, harms, and the appropriate responses' (Johnstone and Van Ness 2010: 49). Amends means that those contributing to the harm are accountable for repairing it as much as possible (Johnstone and Van Ness 2010). Reintegration means 'parties are given the means and opportunity to rejoin their communities as whole, contributing members' (Johnstone and Van Ness 2010: 49).

The rise of restorative justice in the West is closely linked to dissatisfaction and frustration with a conventional Western criminal justice approach that is ineffective in preventing or controlling crime and to some notion of a 'good society' (Carson 2002; Crawford and Newburn 2003: 20-21). Many advocates of restorative justice do not think of this as merely a system of techniques that have beneficial effects (Braithwaite 1999; Johnstone 2013; Umbreit 1998; Van Ness and Strong 2010; Zehr 2002). What restorative justice embodies is a different perspective from the conventional Western criminal justice way of thinking about what crime means; how to do justice in the aftermath of a crime; and whose obligation it is to deliver justice (Johnstone 2013; Zehr 2002).

In the *Basic Principles on the Use of Restorative Justice Programs in Criminal Matters*, the United Nations defines programmatic expression of restorative justice as 'any program that uses restorative processes and seeks to achieve restorative outcomes' (United Nations 2002: 7). Adapted from the definition by Tony Marshall, a *restorative process* refers to a process where 'the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator' (United Nations 2002: 7; Van Ness 2003). A *restorative outcome* is 'an agreement reached as a result of a restorative process', 'aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender' (United Nations 2002: 7).

Today, there have been about 1,000 restorative justice programs all round the world, with over eighty countries adopting some form of restorative justice program to tackle their crime problems (Van Ness 2005). Major categories of restorative programs in Western countries include: victim-offender mediation, the oldest and most empirically grounded restorative justice practice (Umbreit 1998); conferencing, which was adapted from Maori traditional practices in New Zealand; and circles, which draw from First Nations' practices in Canada (Johnstone and Van Ness 2010).

### **The rise of restorative justice in the Chinese academia**

It was not until 2001 that jurisprudential scholars in Mainland China started to introduce the ideas of restorative justice, and debate and experiment with it (Wong and Mok 2010). Up until the end of 2004, the publications mostly focused on the introduction of the concept, characteristics, values and history of restorative justice, and its practices and evaluation in the West (see Wu 2002). After 2004, more articles examine the advantages, limitations and challenges of restorative justice, and the underlying social, political and legal impetus for its resurgence in the West (see Chan 2006; Liu 2005; Song and Xu 2004). Meanwhile, scholars also started to analyze its value to the criminal justice system in China, whether to introduce it, and how (Chan 2006; Du and Ren 2005; Liu 2006; Miao 2011; Shan and Zhou 2008; Shen and Zhou 2010; Song and Xu 2004; Tang 2006; Xu 2010; Zhu 2008). For example, Liu (2006) was interested in the active role of community in crime control and prevention in the framework of restorative justice; she proposed the establishment of a community criminal reconciliation system with specialized organizations of community criminal reconciliation. Shan and Zhou (2008) were interested in the benefits of restorative justice to the protection of victim rights in the criminal justice system in China. Chan (2006) identified the necessity of, and local recourses

for, the introduction of restorative justice. Xu (2010) and Miao (2011) analyzed the predicaments to its introduction. Since 2006, scholars have begun to evaluate, review and criticize the current restorative practices in China and analyze the impetus behind its rise (Song 2011; Wong and Mok 2010; Wong, Mok and Au Yeung 2012; Yao 2007).

### **Major debates among Chinese scholars**

There are three major debates in restorative justice among Chinese scholars. One axis of debate is whether restorative justice should be viewed principally as a set of values, a process, or a set of practices. Some scholars argued that restorative justice is a set of values or principles of dealing with crime and conflicts; it is not simply a justice model (Ma 2005; Yao 2007). This is echoed by Zehr (2002), the grandfather of restorative justice, who sees it not as a map, but as a set of principles akin to a compass pointing to a direction. Many other Chinese scholars consider restorative justice as a justice model (for example, Chan 2006; Du and Ren 2005; Liu 2006; Song 2011; Tang 2006; Wu 2002) or a set of practices (Song and Xu 2004).

Another axis of disagreement is whether criminal reconciliation is the indigenous restorative justice practice with some scholars (for example, Qin 2010; Shi 2008; Song 2011; Wu 2007; Xu 2010) arguing in favor of this viewpoint. This approach has as its central tenet the restoring of victim interests and damaged relationships, the urging of offender repentance, and the inclusion and empowerment of the parties. Shi (2008) argued that the four basic values of criminal reconciliation are encounter, amendment, reintegration and inclusion; these four elements match the restorative process provided in the Basic Principles outlined by the United Nations (2002). However, some scholars regard the practice of criminal reconciliation as different from restorative justice in nature and origin. For example, Chen (2006a), Chen and Ge (2006), Yang (2008) and Zhang and Xie (2010) have argued that criminal reconciliation has central values directed towards improving criminal procedure efficiency and constructing a harmonious society and has not originated from postmodern reflection and criticism on the conventional criminal justice system.

The last axis of disagreement is whether now is the right time to put restorative justice into practice in China. Some scholars have argued that restorative justice should not be localized for the time being, as China lacks local resources for its implementation (Li 2007; Zhu 2008). For example, according to Zhu (2008), Confucianism cannot provide local resources for restorative justice, as Confucianism emphasizes conformity and hierarchy, not individual rights and mutual respect. This tradition cannot be enriched by adding a conflicting modern spirit such as autonomy, equality and deliberative democracy. Moreover, under the strong power of the authoritarian state, China has weak community and weak citizens and has not achieved rule of law (Zhu 2008). Conscious of these predicaments, Tang (2006) argued that it is impossible for restorative justice to operate outside the criminal justice system as an alternative to formal response to crime. Instead it is desirable to integrate restorative justice into the criminal justice system and achieve a unification of restoration and retribution and a balance between state and community, offender and victim. Chen (2006b) supports this approach, maintaining that the Confucian value of harmony, the extensive system of people's mediation, the experiment on community correction, and the existing restorative elements in the current criminal law make it feasible to establish a double-track system where restorative justice system and the conventional criminal justice system supplement and coordinate with each other.

### **Restorative justice practices in China**

Concurrent with the academic interest in restorative justice is the emergence of restorative justice practices. Since 2002, criminal reconciliation (*Xingshi Hejie*), debatably the indigenous restorative justice practice, has been gradually implemented in the criminal justice system in twenty provinces or municipalities (Wei 2014). Since 2004, many programs under the name of 'restorative justice' have also been explored in Beijing, Shanghai, Liaoyang, Suzhou, Wuxi, Yantai

and Chongqing (Shen and Zou 2010). The People's Procuratorates are the main agent exploring and promoting restorative justice (Shen and Zou 2010; Yao 2007; Zeng and Chen 2010). Criminal reconciliation constitutes the vast majority of restorative justice practices in China (Wu 2007).

Criminal reconciliation is a new practice in the proceeding of public prosecution that began in 2002 at a local level, and gradually became widespread on a national scale (Wei 2014). In 2012, the newly revised criminal procedure law (Criminal Procedure Law of the People's Republic of China (2012 Amendment)) absorbed criminal reconciliation into public prosecution proceedings, which substantially accelerated its adoption (Wei 2014). Criminal reconciliation is a mechanism in the criminal proceedings where the judicial organ exempts suspects from criminal liability or punishment, or imposes lenient penalties, after the offender and the victim reconcile with each other through offender's sincere remorse, compensation, apology or other measures (Chen and Ge 2006; Di and Cha 2007; Zhou and Wang 2010). Once both parties reach mutual consent, they are required to reach a written agreement where 'the offender expresses remorse and agrees to compensate, and the victim agrees with the criminal justice authorities' lenient decisions' (Wei 2014: 198).

Criminal reconciliation can be initiated at every stage of the criminal proceedings, from investigation to sentencing, and no limit is put on the number of times reconciliation can be attempted (Wei 2014). The criminal cases settled through criminal reconciliation are mainly minor injuries, especially those between relatives or neighbors, but the scope has expanded to include traffic accidents, thefts, embezzlement, fraud, robbery and serious injuries (Chen 2006a; Shi 2008; Song 2009). In China's mediation (*Tiaojie*), the mediator has a key role to play in the process and the final agreement; in comparison, the phrase *reconciliation* (*Hejie*) emphasizes agreement is reached between the two parties by themselves (Shi 2008). However, in practice, criminal reconciliation may still involve an influential mediator.

The modes of criminal reconciliation can be categorized into three types according to the mediator: (a) a reconciliation between the victim and offender themselves; (b) a mediation hosted by People's Mediation Committee; and (c) a de facto mediation hosted by the public security organ, procuratorate or court (Chen 2006a; Shi 2008). Since the 2012 Regulations for People's Procuratorate on Criminal Procedure (Trial) was announced, prosecutors are no longer allowed to host criminal reconciliation (Wei 2014). Participants in the criminal reconciliation process are classified within the victim-offender mode, the family mode, and the community mode (Song 2009). Apology is the essential part of criminal reconciliation; lump sum compensation is the primary content (Song 2009).

### **Impetus behind the rise of restorative justice**

The surging interest in restorative justice in China has as its crucial political impetus, the country's goal of constructing a harmonious society. *Harmonious society* (*Hexie Shehui*) is a concept introduced by Hu Jintao, the former President of China (2002-2012), as an objective for the country's socioeconomic development (Chan 2010). It was written into the Chinese government's eleventh five-year plan (2006-2010) in 2005 and also into the constitution of the Chinese Communist Party (CCP) in 2007 (Chan 2010). This ideology was introduced in the context of rising levels of social disparities and social unrest brought about by rapid socioeconomic development (Chan 2010; Wei 2014). Aware of threats to social stability and overall social control, the CCP identified that constructing a harmonious socialist society through a continuous process would solve the social problems and conflicts (CCP 2006; Chan 2010).

In the academia, a vast majority of the literature emphasized the benefit, if not the necessity, of restorative justice for constructing a harmonious society. For example, Chen Xiaoming (2006)

argued that *people* and *relationship* have now become unprecedentedly important in China, because harm on them greatly impedes the establishment of a harmonious society. Given that restorative justice aims to alleviate harm on people and relationship, it is necessary to introduce restorative justice into the Chinese criminal justice system, from the perspective of constructing a harmonious society. Some scholars even stated that harmony is the ultimate value of restorative justice (Cui 2009).

In practice, this new ideology requires criminal justice actors to 'proactively promote harmony in their daily work' (CCP 2006; Wei 2014: 196). Correspondingly, 'Companion of Strictness and Lenience' (*Kuanyan Xiangji*) replaced 'Severe Strike Campaign' (*Yanda*) as the dominant criminal policy in 2007 (Chen 2009; Supreme People's Procuratorate 2007; Wei 2014). Restorative justice practices, especially criminal reconciliation, meet the requirement of 'leniency' and the need for new ways to deal with crime other than imprisonment (Chen 2009; Miao 2011; Shi 2008).

Moreover, serious social outrage and unrest can originate from one single criminal case where parties feel they have been treated unjustly after investigation, prosecution and conviction (Chen 2006a; Wei 2014). As mediation and reconciliation are useful mechanisms in achieving agreement among parties and putting an end to a case, they are encouraged, not only in civil and administrative areas, but also in the criminal field (Shi 2008; Supreme People's Court 2010; Wei 2014). In 2010, the whole justice system was required by the Supreme People's Court to follow the working principle of 'Giving Priority to Mediation and Combining Mediation with Trial' (*Tiaojie Youxian, Tiaopan Jiehe*) (Supreme People's Court 2010). As criminal reconciliation becomes widespread in China, more scholars have sought an understanding of the restorative justice theoretical base and research on 'Victim-Offender Reconciliation' conducted in the West (Chen 2006a; Liu 2007).

Another important impetus of restorative justice is to improve the efficiency of the criminal justice system. In the past decade, the number of criminal cases in China has been rising steadily; moreover, more time and resources are spent on each case due to the improvement of the criminal law and specification of criminal procedure (Shi 2008). The number of offenders in prison has also increased sharply; however, imprisonment is costly but ineffective in deterring or rehabilitating offenders (Chen 2006b). Therefore, it is urgent for the criminal justice system to find more efficient ways to deal with criminal cases. Restorative justice seems to be a good choice to achieve procedural diversion (settle the minor criminal cases promptly before trial and put more resources into serious and complex cases) and reduce the resources used in the execution of sentence (Chen 2006b; Miao 2011; Shi 2008).

Despite the above factors, it is noteworthy that there are scholars and judicial authorities who identify with the goal of healing within the restorative justice process (Shen and Zou 2010; Wong and Mok 2010). Other incentives to promoting restorative justice include protecting the rights of victims, restoring juvenile offenders, acceptance of the non-confinement theory, and limiting the use of the death penalty (Shi 2008; Song 2011). In sum, as Crawford and Newburn (2003: 19) have argued, 'the popularity of restorative justice has seen it being pulled in divergent and often competing directions as it is shaped to meet the interests and ideologies of different groups, professions and organizations'.

### **Evaluations of restorative justice practices**

As the number of restorative justice practices increases in China, it is important to evaluate how restorative the process and outcome of the current practices are. There have been some empirical studies of criminal reconciliation practices in China. Most studies focus on criminal reconciliation conducted by local public security organs or procuratorates (Deng 2011; Feng

and Cui 2008; Shi 2006; Wang and Li 2008; Zhang and Lu 2011; Zhou 2012). Song (2009) conducted the only nationwide empirical study on criminal reconciliation in procuratorates.

In terms of the process of criminal reconciliation, empirical evidence on how restorative the process is, is very limited. One study of the criminal reconciliation in the procuratorate in Chao Yao District shows that procurators fully respect the wishes of the parties in terms of whether to reconcile, the amount of compensation, and the way and the time of compensation in criminal reconciliation (Feng and Cui 2008).

A greater number of empirical studies examined the outcome of criminal reconciliation. Despite the limited application of criminal reconciliation, the rate of success was quite high, ranging from 71 per cent to 95 per cent (Song 2009; Zhang and Lu 2011). In Song's study (2009), the rate of successful restoration of the relationship between offenders and victims who had known each other before the crime reached 90.9 per cent. Another study shows that 85 per cent of the parties who had known each other before the crime think their relationship was restored to the state before the crime or better (Deng 2011).

In terms of the restoration of the victims, Song's study reveals that, for 80.3 per cent of the victims, criminal reconciliation had removed the impact of crime from them (Song 2009). The fulfillment rate of the compensation to the victims was also high, ranging from 91.4 per cent to 100 per cent (Deng 2011; Shi 2006; Song 2009). In Wang and Li's study (2008), 93.75 per cent of the victims were 'very satisfied' with the process of criminal reconciliation and 79.17 per cent of the victims were 'satisfied' with the fairness of the result. In Song's study, 67.5 per cent of the victims were 'satisfied' and 32.5 per cent were 'moderately satisfied' with the process and outcome of criminal reconciliation (Song 2009).

In terms of the reintegration of the offenders, 88.8 per cent of the offenders revisited in Song's study had continued to work, study or help with their family's work (Song 2009). As for the rate of recidivism, none of the offenders revisited in Song's study had reoffended (Song 2009). In Wang and Li's study, 88.89 per cent of the offenders were 'very satisfied' with the process of criminal reconciliation and 77.78 per cent of the offenders were 'satisfied' with the fairness of the result (Wang and Li 2008).

### **Discussion and conclusion**

Alternative responses to crime and social disorder must be able to engage with the problems and possibilities of the historical moment and at the same time challenge the punitive ideologies that leave the social wound open (Scott and Gosling 2016). The development of restorative justice in China has the right historical moment with the political need for a harmonious society and legal need for efficiency. Restorative justice is concerned with restoring the balance that crime upsets and the emphasis is as much on the process as on the outcome. However, the current practices of criminal reconciliation in China seem to overemphasize the result of resolving conflicts but neglect the process of doing justice and restoration. It is therefore a real challenge for the Chinese restorative justice practices to restore people and their relationships, instead of becoming a political tool for social stability.

As with restorative justice practices, the existing evaluation studies also tend to focus on the result and neglect the process. It is essential to evaluate the process of criminal reconciliation in terms of voluntariness, dialogue, relationship building, communication of moral values, respect and procedural justice. It is also important to explore what needs the victims, offenders and the communities have for them to be fully restored and to what extent their needs are fulfilled in criminal reconciliation. Those needs may not simply be compensation but also information, empowerment, dignity and social support (Braithwaite 2004; Wood 2013). Last but not least, the long-term effect of restorative justice on recidivism needs to be studied. To promote the

development of restorative justice, more rigid and systematic empirical studies should be conducted to evaluate current restorative justice practices, from investigation to sentencing.

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