

# Asian Paradigm Theory and Access to Justice

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## Abstract

Asian Paradigm Theory states that there is a significant difference between the Western and Asian concept of justice, produced by differences in social organization and cultural traditions. On one hand, Asians tend to stress three important cultural values: attachment, honor, and harmony. At the other end, Western society tends to stress independence, materialistic success, and individual rights. Asian participants tend to use a “holistic thinking mode,” while Western counterparts tend to use an “analytical thinking mode.” The theory states that the differences in cultural values and thinking modes produce differences in the concept of crime and justice. Asians tend to conceive the concept of crime and justice as relational concepts, and Westerners tend to conceive the concept of crime and justice as individualistic concepts. This article uses Asian Paradigm Theory to explore approaches to the issue of access to justice, which suggest that the Asian concept of justice and practice may offer a more suitable approach to access to justice under the context of Asian societies.

## Keywords

Asia, comparative criminal justice, theory, restorative justice, collectivism

## Introduction

Equal justice is an essential issue for achieving justice. In conventional usage, “Equal justice” typically means “equal access to justice.” Equality in access to justice itself is part of what we mean by “justice.” Without properly addressing the issue of a “justice gap,” there will not be “justice for all.”

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There are many criteria for equal justice, but a major issue is that access to justice should not depend on the ability to pay. However, the reality is that economic resources are the primary obstacle for access to justice, which I will demonstrate in this article. The issue of access to justice has become a central topic in recent academic research and public policy debates. A World Justice Project (2011) survey indicates that access to justice is a serious issue around the world. Former U.S. President Jimmy Carter criticized, "Ninety percent of our lawyers serve ten percent of our people," and the United States supplies only about one lawyer for every 1,400 poor or near-poor persons in the United States (Rhode, 2004). Earlier research reported that in the United States, 80% of the legal needs of the poor and two thirds of the legal needs of middle-income Americans are not met. Millions of Americans lack any access to the justice system, let alone equal access (Rhode, 2004; Rhode & Packel, 2011).

Another issue is "access to what." It is difficult for everyone to have access to a formal justice system, or legal assistance such as lawyer support, especially for the poor and residents of undeveloped countries. It is important to explore easier and affordable means for more people to have their problems settled in a just and equitable manner. In my Asian Paradigm Theory, which is reviewed in later sections in this article, I explain the essential differences between the Western and Asian concepts of justice. Asia is different from Western society in many aspects, and there exist many traditions and practices in Asian countries, especially restorative justice practices, that can be learned from in solving the problem of access to justice. In this article, we address several related questions: What are the primary obstacles to solving the problem of unequal access to justice? What are the contemporary solutions? Can solutions adopted in Western countries be adapted to Asian contexts? What insights can Asian countries contribute into the research literature and policy debates focused on solving this problem? What are some of the possible directions Asian countries can consider in moving toward more equal access to justice?

Despite the importance of this topic, systematic research on access to justice in Asia has been lacking. This article will explore answers to these questions and review the implications of the Asian Paradigm for access to justice in Asia, a conceptual framework that summarizes the major themes and features of crime control and justice in Asian cultures, which has implications for a broad range of issues related to crime control and justice.

### *Difficulties and Solutions*

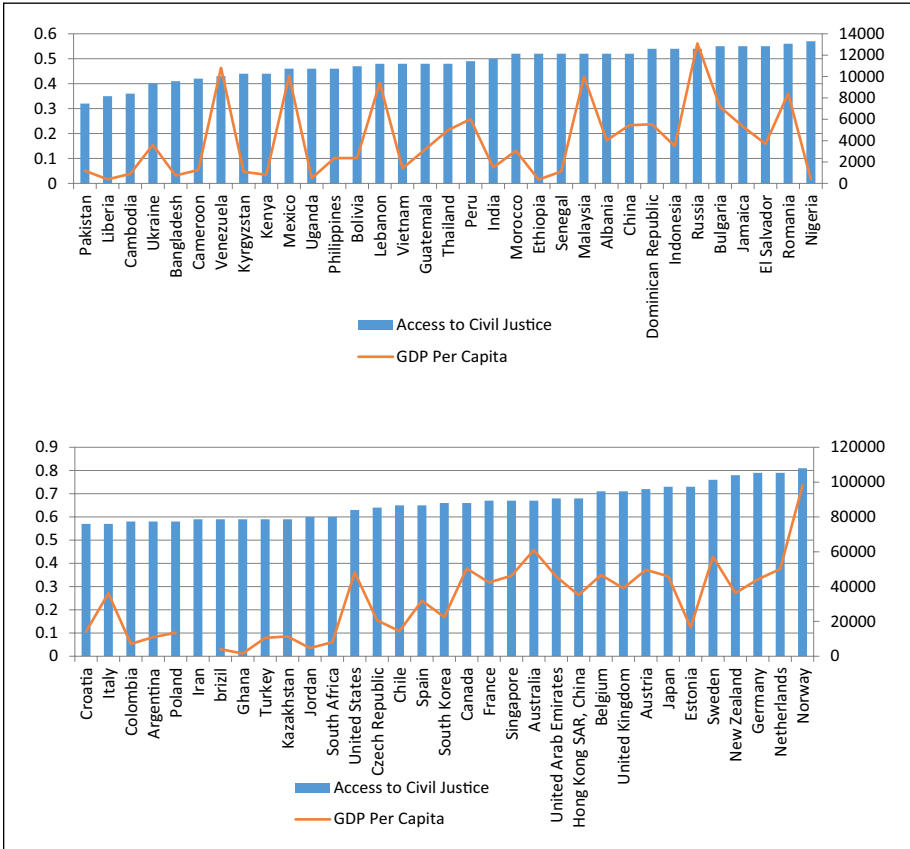
There are many obstacles in accessing justice. For example, some people cannot get access to justice due to physical and mental disability or cultural and linguistic differences. However, the primary and most common obstacle is still cost. Martin (2012) reviewed the major difficulties for access to justice and pointed out that the major issues preventing equal access to justice are the triumvirate of evil—cost, delay, and complexity, among which he believes cost is the most important. Access to justice has been a topic of discussion since the early 20th century, and in many studies, unequal access is considered a social problem faced by lower status groups, especially the poor (Sandefur, 2009).

The most common reason a person in need of legal services chooses not to utilize such services is that the expense is too costly to afford. Thus, the primary assistance provided for the poor and marginalized is to provide them with legal aid. Every country has this issue, including the United States. Research reported that the United States has only about one legal aid lawyer or public defender for every 4,300 persons below the poverty line, compared with a ratio of one lawyer for every 380 Americans in the population generally (Rhode, 2004). So as we can see, the primary issue for access to justice is financial resources. A most influential research project is the World Justice Project. It created a Rule of Law Index. The project provides much useful macro data on justice. Figure 1 below adapts some of the macro data, which show that the primary obstacle for access to justice is financial resources. I use these data to examine the relationship between access to justice and per capita gross domestic product (GDP) based on data for 66 countries from 2011. Measures of access to justice are based on the World Justice Project Rule of Law Index, while per capita GDP is based on United Nations Reports. Figure 1 shows access to justice is significantly correlated to GDP Per Capita. Figure 2 shows Due Process of Law in Criminal Justice System is significantly correlated to GDP Per Capita. These figures using macro data suggest that a primary obstacle for access to justice is insufficient financial resources.

Western literature has discussed three primary solutions to improve access to justice. Generally, three solutions have been adopted. One, access to lawyers. This solution is primarily realized in the form of legal aid. Two, access to judges. This solution is primarily realized in terms of improved procedure. Three, access to legal information. This solution has taken many different forms. The cost efficiency of each of these three different solutions has been compared in the literature (Martin, 2012; Rhode, 2004; Rhode & Packel, 2011). The fundamental difficulty, on the whole, remains insufficient financial resources to meet the high legal needs of the poor. The most suggested solution is to increase funding for legal aid. Professional organizations in the legal field (the Bar) tend to support the legal aid solution. To address the issue of access to justice in Asia, we are concerned with the implications of contemporary solutions for Asia. This leads us to examine the major characteristics of Asian societies.

Asia is the largest and most populous continent, comprising almost 30% of the Earth's land area and roughly 60% of its human population. Asian countries are generally characterized as underdeveloped, and many have large populations and accordingly low economic resources per capita. According to a country-breakdown of World Bank data on GDP per capita, most Asian countries are below the world average level of GDP per capita, especially the two most populous countries, China and India. Accordingly, governments generally have fewer financial resources available for legal aid.

Although recent years show great progress in economic growth and social development in Asian countries, there still exists a large gap when compared with their Western counterparts. In Asian countries, school enrollment rates and levels of education have increased: In the past few decades, literacy rates have grown to 87%, and gross secondary and tertiary enrollment rates have risen to 81% and 27%, respectively. Nonetheless, according to the Asia Development Bank's 2015 report, average years of



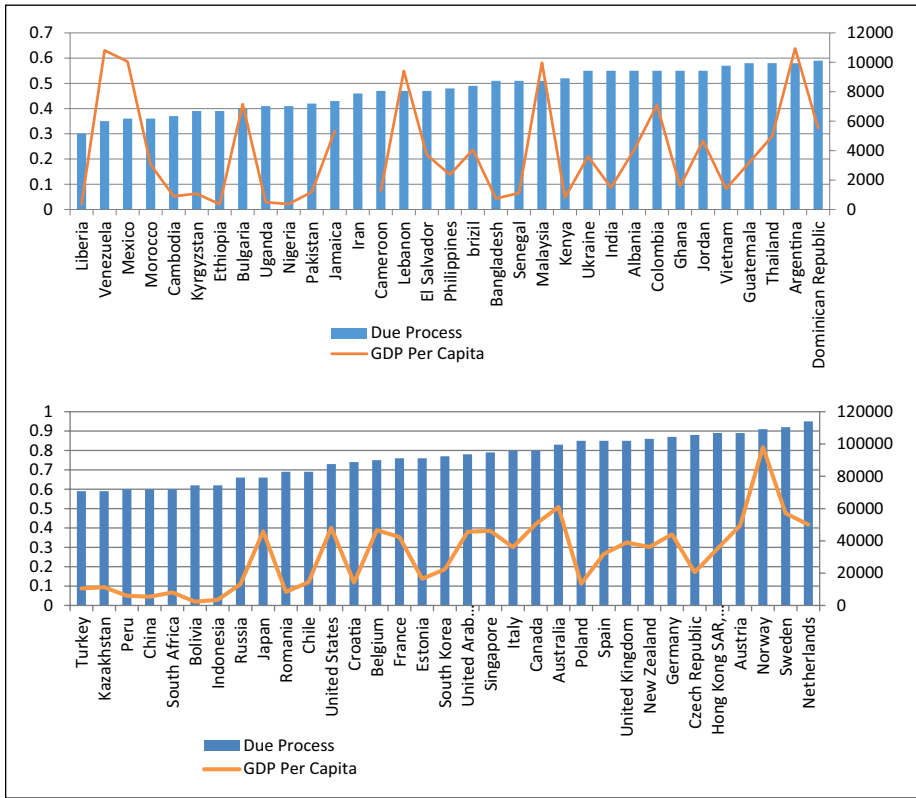
**Figure 1.** Access to civil justice.

Source. Agrast, Botero, and Ponce (2011) and the World Bank (2013).

Note. Access to Justice is significantly correlated to gross domestic product (GDP) Per Capita:  $r = +.793^{**}$ ,  $n = 66$ ,  $p < .01$ , two-tailed. Subfactors: (1) People are aware of available remedies, (2) People can access and afford legal advice and representation, (3) People can access and afford civil courts, (4) Civil justice is free of discrimination, (5) Civil justice is free of corruption, (6) Civil justice is free of improper government influence, (7) Civil justice is not subject to unreasonable delays, (8) Civil justice is effectively enforced, and (9) Alternative Dispute Resolution (ADR) systems are accessible, impartial, and effective.

schooling is 8 years in developing Asia in 2010, whereas in more advanced, Western countries, it is 11 years. Developing Asia has made significant progress in expanding educational attainment, but the current situation is still at a relatively low level. Accordingly, low levels of education make it difficult to understand complicated legal information when access to information is adopted as a solution to access to justice.

In addition, Asia still has vast rural areas. Overall, Asia's urban population is 47.5%, compared with 73.4% in Europe, 81.5% in Northern America, and 70.8% in Oceania.



**Figure 2.** Access to due process in criminal justice system.

Source. Agrast, Botero, and Ponce (2011) and the World Bank (2013).

Note. Due Process of Law in Criminal Justice System is significantly correlated to GDP Per Capita:  $r = +.789^{**}$ ,  $n = 66$ ,  $p < .01$ , two-tailed. Subfactors: (1) Presumption of innocence, (2) Arrest and pre-trial detention, (3) Torture and abusive treatment to suspects, (4) Legal representation, (5) Access to translators, (6) Evidence, and (7) Rights of prisoners.

China's urbanization rate is 54%, and India is just 32% as of 2014. This means a vast majority of the world's rural inhabitants live in Asia, with China and India accounting for a large proportion. The cost of transportation from rural areas to towns and cities in Asia fundamentally conflicts with the West's foundational advanced urban infrastructure. Because infrastructure is scarce in Asia, access to justice for the rural population is limited. In other words, the barriers to justice in Asia are different compared with those in the West due to gaps in infrastructure.

Given Asia's characteristics, there are many difficulties in adapting the existing Western approach to Asian countries. We must look for new approaches from the Asian reality and consider Asian cultural and structural conditions. I will review Asian Paradigm Theory in the following sections. The "Asian paradigm" is a conceptual

framework that summarizes the major themes and features of crime control and justice in Asia cultures (Liu, 2011, 2012, 2014a, 2014b; Liu & Xiong, 2014); it is a convenient tool in contrasting the large differences between Asian and Western cultures along many important dimensions.

I must stress that the use of the concept of “Asian” compared with “Western” is only valid along those dimensions where differences between Asian societies are generally accepted as much smaller and their shared similarities are much stronger when compared with Western societies collectively. We acknowledge the vast diversities that exist along many dimensions among Asian societies, but we use it in the sense where the concept of “Asia” exists and is applied in many similar academic exercises. For example, from the perspective of world systems (Wallerstein, 1974, 1992), most Asian countries belong to the peripherals, or semi peripherals rather than core countries as compared with Western countries; in this usage, Asian countries show a collective sense as a group. Recent work by Raewyn Connell (2007) provides further analyses about the larger differences between “North” and “South,” where Asia is largely “Southern,” to analyze the global divisions of “global North” and “global South” in political, economic, cultural, and military power and their impacts (Connell, 2007).

Intuitively, we can hypothesize that various countries’ criminal justice systems fall into several natural clusters in terms of their differences and similarities, with similar systems falling into a single cluster. Variation within a cluster would be relatively small, and variations between different clusters would be larger.

The large differences are expected between clusters of criminal justice systems that belong to Western societies and Asian societies. Differences between the West and Asia are realized in many aspects. Although these descriptors are broad and potentially problematic, to name “Asia” and “The West” can assist us in simplifying the issue and allowing for comparison. Western countries have better economic conditions, a complete legal system, and are mostly under the rule of law. Asian countries, by contrast, have a huge gap in their economies and legal systems. With the development of globalization, Asia has made great progress in advancing the rule of law, but customary law is still dominant in broad areas of Asia. Comparing “the West” with “Asia” therefore encompasses the largest difference between systems. According to this reasoning, a theory that aims to explain the variation between Western criminal justice systems and Eastern criminal justice systems should be a priority in theory building (Liu, 2011, 2012, 2014a, 2014b; Liu & Xiong, 2014).

Furthermore, Asian Paradigm Theory distinguishes between the concepts underpinned by culture and established institutions such as justice agencies. With regard to the criminal justice system, the Asian Paradigm discusses the “laws in the culture,” not the laws written and enforced by legal institutions and processes. “Laws in the culture” are ideas that exist in people’s thinking and influence their actions, which often are not consistent with legislatively approved law. “Laws in the culture” manifest themselves through what communities and people do in their actions and their solutions to legal issues. The Asian paradigm stresses the role of community, and the importance of empirical examination and fair evaluation of people’s cognitive mode and actions in their solutions to the issue of access to justice. Aimed at systematically explaining

conceptual differences underpinning the Asian criminal justice and Western criminal justice, Asian Paradigm Theory was proposed and presented in various forms and stages (Liu, 2011, 2012, 2014a, 2014b; Liu & Xiong, 2014). Over the past few years, more and more leading criminologists have begun to discuss the differences between Asian societies and Western societies, and recognized that the development of criminological theory should take the contexts of Asian societies into consideration (Agnew, 2015; Joo, 2015; Messner, 2015). Asian Paradigm Theory or Asian Relational Theory has drawn the attention of prominent scholars. In his newly published article, Braithwaite (2015) listed five cases of radical diversity in Asian reconciliation such as Polynesian shame and Confucianism, used to suggest hypotheses for this Asian Relational Theory building. These ideas of relational concepts are drawn from the Asian Paradigm Theory renamed as "Relationism Theory," which is a different form of the theory and was presented in the sixth Annual conference of the Asian Criminological Society in Osaka in 2014 (Liu, 2014b).

In this article, I will summarize the Asian Paradigm Theory first and then analyze its usefulness for suggesting solutions to the problem of access to justice in Asian contexts.

## **Asian Paradigm Theory**

The Asian Paradigm Theory addresses the key conceptual differences behind institutions and operations of criminal justice systems in Western and Asian societies. For Asian societies that have modeled their criminal justice systems after Western institutions such as India and Japan, the conceptual differences will be reflected in the operations of formal and informal justice processes. The theory argues that the Western concepts of crime and justice are individualistic concepts and the Asian concepts of crime and justice are relational concepts, supported by different value systems. These fundamental conceptual differences are rooted deeply in different social organizations, as well as cultural, philosophical, and legal traditions. The theory analyzes the nature of Western concepts of crime, justice, and approaches to justice and how they are influenced fundamentally by the Western key values; these Western concepts are related to each other and determine the major features of Western criminal justice systems. The theory then presents, in contrast, an "Asian paradigm" of crime, justice, and social control, which underlines essential features of Asian criminal justice systems. The logically related concepts and propositions provide a systematic explanation of the differences between Western and Asian models of criminal justice. Below, I will contrast the Western and Asian paradigms of crime and justice. For each paradigm, I highlight the distinguishing features of the concept, resulting approaches to justice, and the social organization and culture underpinning the nature of the paradigm.

### ***The Western Paradigm***

Three major aspects form the cornerstone of Western criminal justice systems. They are the concept of crime, the concept of justice, and the approach to justice. I argue that

the fundamental nature of these concepts is that they are “individualistic” and analyze how these concepts are rooted in the individualistic traditions of Western philosophy.

**Concept of crime.** In the Western Paradigm, crime is defined as acts by individuals in violation of criminal laws instituted by the state. The concept of crime is “state centered.” This concept of crime views crime as a conflict between the state and the offender. Therefore, the issue is that the state must identify and punish the offender. This view makes an assumption that the state represents the public interest. However, in actuality, the state does not necessarily represent the public interest as the victims’ interests are often in conflict with state actions and interests.

**Concept of justice.** The state centered concept of crime logically leads to an offender centered concept of justice—because the state is powerful in comparison with the offender in a conflicting process, the suspects are entitled to added rights and protections to ensure fairness and justice. The rights of the offender in the offender centered justice system become the central concern. The concept of Due Process is a cornerstone of the U.S. criminal justice system, putting the emphasis of the system on the protection of all rights of the suspect as the most important consideration of criminal procedure. Similar concepts are used in other Western contemporary criminal justice systems such as natural justice, or procedural justice, and the rule of law in the British system as articulated by A.V. Dicey and others (Marshall, 1977). In the United States, offender’s rights became a central concern when the U.S. Constitution and Bill of Rights (the first 10 amendments to the constitution) were passed. The fifth and 14th Amendments to the U.S. Constitution each contain a due process clause.

The state centered concept of crime and offender centered concept of justice create an imbalance in legal institutions and processes, which are made necessary by the need to resolve disputes between parties—in cases of crime, between the offender and victims—whose opposing interests form the natural bases of the case. In state centered justice, the role of victims becomes marginalized. The imbalance is clear because there is no consideration of due process for victims.

In offender centered justice, along the same line of stressing offenders’ rights, punishing the guilty offender becomes a primary objective. Thus, offender centered justice tends also to stress the punishment of offenders and leads to a retributive justice system. Western surveys found that many people consider the purpose of punishment to be serving justice. This contrasts with the Asian concept, where the objective of justice is to repair harm, provide restitution for victims, and resume peace and social relations.

**Approaches to justice.** The third distinguishing aspect of a criminal justice system is in its approach to justice. The Western system is characterized as a conflict-based approach. The truth can be found only through an adversarial system and process based on due process. This notion is not widely accepted in Asian culture because an adversarial approach can also lead to the concealment of truth, as the adversarial process is not isolated from social stratification in power and influence. The resources of



the powerful and wealthy can be translated into advantageous positions in the adversarial process. Conflict as a context may lead to the concealment of truth.

*The individualistic nature of Western concepts of crime and justice.* A state centered concept of crime, an offender centered concept of justice, and a conflict-based approach to justice are fundamental to the Western criminal justice. They are rooted deeply in Western philosophical traditions in which a discourse of individualism is dominant. Western classical political philosophers analyze the nature of individuals and their relationship with the state, establishing profound theories that laid the foundation of Western political and societal development. The logical starting points of the theories are largely around the analyses of nature of individuals. The unit of analyses is an individual. The individuals' relationship with each other and with groups, such as a state, is a contracted relationship. Groups are built through "social contracts," where individuals cede some of their rights in exchange for the possibility of achievements of their goals. The founding philosophers, despite having different interests and contributions in various fields, all take great pains to analyze the nature of individuals and their fundamental characteristics; this is the shared tradition of Western philosophers, despite differing philosophers' different assumptions about the basic characteristics of the individual. The classical Western tradition further established individual liberty as a major topic of discourse in Western political philosophy. This individualistic tradition can be shown in the work of the most famous Western classical philosophers and modern representatives, such as Thomas Hobbes (1588-1679), John Locke, Jean-Jacques Rousseau, and John Bordley Rawls.

### *The Asian Paradigm*

The Asian paradigm is a conceptual framework that summarizes the primary themes and features of Asian institutions and processes of crime and social control. The Asian paradigm puts a strong emphasis on collective orientation in the concepts of crime and justice and approaches to justice. I elaborate the theoretical concepts and statements following a logical sequence, starting from the most fundamental cultural differences, to explain differences in the concept of crime, the concept of justice, and approaches to justice between Asia and the West.

*Collectivism and relationism.* Much research has identified collectivism as a shared characteristic feature of many Asian societies (American Academy of Arts & Sciences, 1988; Komiya, 1999). Individuals tend to identify themselves with various groups, from family to community. People expressed stronger nationalism than in modern Western countries. Inseparable from an individual, Asians' sense of need for belonging to relationships is higher than for their Western counterparts. This need grows out of and reflects the way of life of Asian people. The importance of relationships in the life of Asians is the source of many other significant features of Asian societies, including conceptions of crime and crime control. Historical, archaeological, and anthropological evidence shows how Asians in various countries emphasize groups in their social

life. The American Academy of Arts & Sciences (1988) has reported that throughout East Asia, family, community, and state have been and continue to be important levels of human organization.

An important point is that there are different forms and levels of collectivism. For example, research has found Japanese have a strong emphasis on group relationships. The group emphasis and differences in significance are found in Japan between “uchi” (inner circle) and “yoso” (outer circle; Komiya, 1999). Research has found that Japanese society is oriented around the family and the group to an unusual degree. Informal crime controls begin in the family, where every Japanese individual automatically assumes a set of obligations to family and to society. A sense of collective responsibility for individual behavior and family responsibility for the behavior of its members has always been a fundamental precept (Thornton & Endo, 1992). Similarly, research has found that in India, the welfare of the community is very important. Comparatively, research has found that the Chinese emphasis is centered on personal relationships. Family is the most intimate group with the strongest relationship. This extends to extended family. The next larger circle includes a wider kin network, which may be located in the same village or rural area. Next is the network of friends, potentially extending to the neighborhood and the community, and work places. Generally, relationships that are further away from the central relationship (primarily the family) are considered less important in resource and influence. This contrasts with the Japanese emphasis group identification. Research found that Chinese tend to treat those they have personal relationships with significantly differently from strangers with no relationship.

Among various forms and levels of collectivism, the most essential component is relationships, both personal and group. It is the relationship that is the common denominator that is shared by and reflected by various forms of collectivism, reflecting the essential nature of Asian ways of life, different from the West. Research shows that individuals in East Asian societies are embedded in many social relations; in contrast, individuals in Western societies tend to have fewer social relations (Nisbett, Peng, Choi, & Norenzayan, 2001). I term this level of embeddedness, in terms of emotion and activities in relationships, as “relationism.” I argue that differences in relationism are the most basic sources for other differences. The emphases in relationships often orient an Asian, such as a Japanese or an Indian, to a group. As such, the level of relationism is often reflected as collectivism. The central proposition in the Theory of Relational Justice is that relationism in Asian societies strongly affects key Asian cultural values, thought patterns, and their fundamental concepts of crime and justice and approaches to justice.

I propose that collectivism/relationism produces three key cultural values: Attachment, Honor, and Harmony. Each of these values is a strong motivation behind the behavior of people and groups in Asian societies. We explain these ideas in turn.

**Attachment.** Asian cultures value very highly the intimate environment, feelings, and satisfaction that a personal or group relationship provides. This is due to the collectivism associated with living arrangements. Collectivism includes placing a high value on intimate feelings from and attachment to personal and group relationships.

The attachment and intimate feelings that come from primary and group relationships, particularly families and inner groups, are often considered to have much higher value than any other forms of enjoyment, such as material satisfaction. This is the Asian psyche. This is a key to understanding Asian people and their behavior. Motivation for behavior is often to be found primarily in contexts surrounding the seeking and protecting of attachment to relationships, despite other individual needs. The high value that Asians put on intimate feelings and attachments is the distinguishing feature of their motivation for behavior.

Losing the attachment and intimate feeling provided via these personal and group relationships due to disapproval of one's actions is a critical loss that most individuals cannot bear. This perhaps touches the essence of Asian social control. Numerous studies have found that informal social control plays a major role in Asian social control. This will not be difficult to understand once we understand the essential importance of relationships and inner groups in providing the most valuable satisfaction: intimate attachment and intimate feelings.

*Honor.* Collectivism/relationism causes a high value to be placed on honor, both the individual's honor and the honor of the primary group the individual belongs to. Research has found that maintaining family honor and good reputation is a top priority in every Chinese, Japanese, and Korean family. If a family member steals, he disgraces the whole family. This Asian cultural pattern is sometimes referred to by Westerners as "face," as in the importance of not "losing face," or of "saving face." The family also may be shunned in the community ("mura hachibu"; Thornton & Endo, 1992). Research has examined the meaning, functions, and roles of "face," which is a relational concept playing an important role in evaluation of situations and decisions, including the concepts of crime and justice.

*Harmony.* Collectivism/relationism also causes a high value to be placed on group/relationship harmony, conflict avoidance, self-sacrifice, and compromise when personal interests are harmed or personal conflict arises. Research has identified evidence in various Asian countries that emphasize harmony over dispute or conflict. It can be reasonably proposed that collectivism produces an emphasis on harmony and mean (中庸).

The cultural value systems exemplified by these three primary values reflect a focus on relationships, often appearing in the form of a group orientation, reflecting relationships as a level of analysis.

*Holistic thinking mode versus analytical thinking mode.* Nisbett et al. (2001) argue that there are cross-cultural differences in styles of thinking. Holistic thinking is defined as "involving an orientation to the context or field as a whole, including attention to relationships between a focal object and the field, and a preference for explaining and predicting events on the basis of such relationships" (Nisbett et al., 2001, p. 293). In contrast, Analytic thinking is defined as "involves a detachment of the object from its

context, a tendency to focus on attributes of the object to assign it to categories, and a preference for using rules about the categories to explain and predict the object's behavior" (Nisbett et al., 2001, p. 293). Because people in East Asian societies emphasize relationships in their cultures, they will have beliefs about focusing on the field and paying attention to relationships between objects. In contrast, individuals in Western societies, who have fewer social relations, will have beliefs that the world is discrete and discontinuous and that an object's behavior can be predicted using rules and properties (Nisbett, 2003, 2007; Norenzayan, Choi, & Peng, 2007; Oyserman, Coon, & Kemmelmeier, 2002; Varnum, Grossman, Kitayama, & Nisbett, 2010). In this way, Eastern cultures promote holistic thinking, whereas Western societies promote analytic thinking.

These cultural values stress the importance of relationships and determine that the concepts of crime and justice are relational concepts that stress their functions in the context of personal and group relationships.

**Concept of crime.** In the Asian concept of crime, the unit of concern is the group, not just the crime event as a unit of observation or even the individuals involved. Under this orientation, crime is seen as harm done to victims and social relations. Therefore, the issue is to repair harm and resume harmony and peace, reestablishing social relations. Crime is primarily the concern of victims, direct and indirect.

**Concept of justice.** Similarly, the Asian concept of justice reflects a group concern and is a relational concept. Harmony is a central value for justice. The harmonious society is an ideal for humanity. Harmony as a high social value motivates justice (Confucius, Korea, India, Japan, etc.). Harmony derives from the nature of a collective social organization, the way of living among most people. Much evidence has been found about the group orientation of Asian people.

The primary objective in reacting to crime is this conflict resolution, rather than formal procedures. This includes restoring the harmony of the groups, including family and community; restoring attachments for the offender (reintegration); and restoring the honor of the offender through shaming. Conflict resolution is the essence of justice. Justice is to achieve fairness for all parties involved in the group through resolving conflicts and arriving at a fair solution, where the victim is a central party. The higher objective is to resume relations and peace for the victim, for the community, and for the offender, thus defending public interests. Justice arrives at its solution not primarily through a conflict-based and adversarial process, but by working with the parties involved to resolve the conflict. This conflict resolution process targets hearts, rather than focus on retributive criminal punishment. It stresses the role of moral education as primary, punishment as supplementary. In the end, conflict resolution is backed up by formal and informal punishment.

Supporters of relational justice claim many advantages over the Western model. Resolutions tend to be more accepted by all the parties concerned and by society, compensation is more likely to be realized, offender and victim relations are more open, the truth is more often found, victims are equal parties of the justice process and their

needs are better met, honor and respect are maximized, recidivism is reduced, decisions achieve higher legitimacy, and law, if applied, is better respected.

Examples of a relational concept of justice are more often seen in the legal traditions of Asian societies than in the West. It often stresses the importance of substantive justice to achieve fairness (Chinese call it “*tian li ren qing*” [heaven’s law and human’s feelings]). Law plays an important role in relational justice processes. However, laws are not the only means; a whole set of codes that define rights and obligations are considered in achieving justice when handling a crime. These include high morals (such as “*tian li ren qing*”; can be religious morals in some societies), customary law, local traditions, clan rules, village/community agreements, precedents, specific circumstances, and so on. It takes into account the entire situation and long-term implications and potential consequences, and avoids the mechanical application of laws.

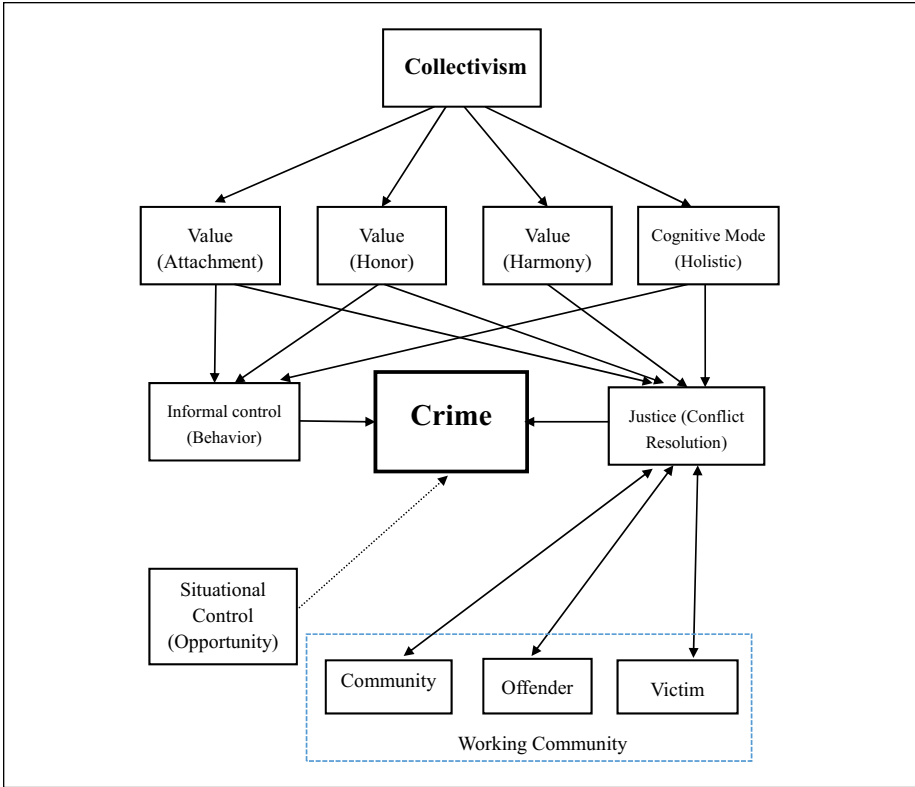
Traditional relational justice has several characteristics. It prioritizes the group/collective. It considers strengthening social organization as fundamental. For example, it allows a rule for strengthening the family, “*Qing qing xiang ying*” (avoid calling family members of the accused as witnesses against them). In its procedure, it uses a dialectic/flexible and holistic way of thinking that avoids mechanical/analytical/isolated thinking styles that do not take the whole picture into account. It avoids mechanical application of laws. This is reflected in using “the rule of Median” (the middle way: “*zhong yong*”). Judges try to avoid extremes but should balance the rights and interests of all, unlike in the Western system, which stresses the rights of suspects and minimizes concern for the rights of victims. Cost is often a consideration as well, the solution should be realistic and low cost for all parties. The eventual objective of justice is “No Law suit” (“*wu song*”; Confucius).

In practice, truth-finding processes have several characteristics. They generally do not believe in conflict processes used in Western systems (e.g., exclusionary rule). They often encourage confession. Investigative processes endeavor to consider all aspects of the case. This system does not believe that formalism can handle complex realities.

## Summary

By comparing the Western and Asian paradigms, we can summarize their different patterns and approaches to crime control (see Figures 3 and 4).

The most relevant themes and elements in the Asian paradigm are the value of harmony and the concept of justice as being based in conflict resolution. These are rooted in the collective social organization and living patterns in Asia. Compared with Western approaches, there is a stronger emphasis on resolving disputes or conflicts, including crimes, through practical considerations. Substantive justice is typically stressed over procedural justice. In contrast, Western criminal justice takes a conflict-based approach: It uses a conflict-based process to resolve conflicts. The Asian paradigm re-examines the “state centered concept of crime” and re-examines the “offender centered concept of justice.” It stresses the “working community approach” over the “conflict approach” for resolving legal issues. And appealing to the Law is only one option among many in

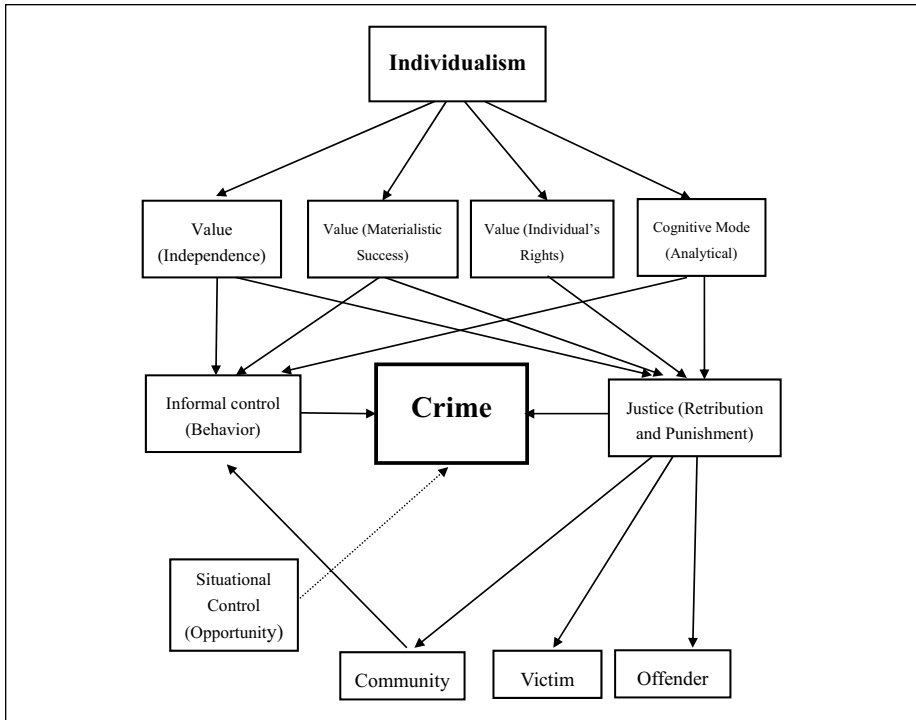


**Figure 3.** Asian paradigm of crime control working community approach.

the “working community approach.” Asian paradigm emphasizes the concept of “Working community,” which means that the community, offender, and victim work collectively to reach justice. The “working community” operates through balanced discussion and, in this way, reaches justice through a conflict resolution. This practical and solution-oriented nature lends to the Asian paradigm’s contrast to the Western emphasis on strict judicial procedure and retribution. The “working community” also considers broader societal consequences such as community recovery, offender correction, and victim compensation. Asian countries have a long-existing tradition of such restorative justice practices.

### *Implication of Asian Paradigm Theory for Access to Justice*

Asian countries have larger populations, fewer economic resources, lower education levels, and most importantly, often lack a complete complex formal justice system and legal system. The conflict-based approach in the Western paradigm requires complex legal procedures to ensure legal rights and fairness. Complex legal procedure requires



**Figure 4.** Western paradigm of crime control conflict approach.

highly trained legal professionals whose labor is expensive to properly exercise the legal process. Complex legal procedures also require costly institutional resources to support them. This makes the traditional legal process expensive. Although rationales and advantages of the traditional conflict-based approach and its system are well recognized, the high cost of the system undermines access to justice for the poor and socially disadvantaged.

In contrast, conflict resolution as the concept of justice results in many inexpensive practices in achieving justice. One such practice is the wide use of customary law. Rule of Law is the foundation of modern society. Human rights are an established consensus of the international community. Western countries are generally well-known for rule of law. Although Asian countries have made great progress in rule of law, local practices are often governed by customary law, which reflect cultural contexts and tradition. Much literature has been devoted to analyzing the strengths and weakness of customary law. A primary concern of customary law is violation of human rights in some cases. However, in solving the problem of access to justice, we should take advantage of customary law. An integration of formal law and customary law can be achieved by upholding internationally accepted minimum standards for human rights while giving maximum consideration to cultural customs to enhance access to

justice. Many challenges will be faced, but specific situations need to be analyzed and solutions should be considered under specific contexts. To solve the problem of access to justice, not every dispute must go through a formal justice system to produce a judgment or punishment, but can sometimes be better resolved in a soft and informal way based on specific context, tradition, and culture.

Another widespread practice is mediation. Mediation, for example, is rooted in traditional China. Zeng (2009) summarizes "with wu song (litigation-free) and harmony as the ideal goals of Confucian justice, harmony and reconciliation [in mediation] were fundamental and valued for social stability, concord and order." Chinese mediation reflects the spirit of "working group" because "compared to court adjudication, mediation better protects disputants' interests, addresses the roots of conflict, and tries to satisfy the needs of all parties" (Zeng, 2009). Cao (1999) further investigates the origins and importance that mediation has held in Chinese history, and confirms that the tradition of mediation was based specifically on Chinese moral and social philosophy. Accordingly, mediation plays an important role in contemporary China's judicial system and judge procedure. Huang (2006) discusses the importance of mediation in Chinese courts today: He notes that arbitration and adjudication always follow mediation under the same judge, and that Chinese courts exercise great discretionary powers through mediation. Comparatively, current alternative dispute resolution in the West is very different. Chinese culture specifically places great importance on community or neighborhood mediation. For example, the new People's Mediation Law passed in 2010 in China encourages people to settle disputes at a neighborhood level, outside of courts and arbitration. According to the law, people's mediation committees should be created at street, village, and enterprise levels; in addition, the law encourages righteous, sociable, and warm-hearted citizens to join mediation committees. This law popularizes mediation, a cheap and easier way for citizens to access justice. Likewise, this law demonstrates that China's government formally supports the "Working Group" approach, in which community, offender, and victim collectively work toward a solution to achieve justice. This traditional spirit of problem solving and conflict resolution exists in both formal and informal Chinese judicial systems. Overall, it is this spirit and its application through the "Working Group" approach that forms the Asian paradigm of justice.

Similarly, other Asian countries have similar traditions and justice practices. For example, India's judicial tradition also focuses on conflict resolution and problem solving. S. Latha and R. Thilagaraj (2013) explain that the Panchayat is and has been integral to dispute settlement since ancient times: "Referring a conflict to a Village Panchayat without Court intervention was one of the natural and traditional ways for ancient Hindus to resolve their disputes. Village Panchayats were often villagers who mediated between contending parties in their own village."(p.310) Today, the "informal practices by Panchayats within the villages have been formalized through the introduction of the Gram Nyayalayas Act of 2008."(p.313) This Act provides access to justice to the citizens on their doorsteps. In addition, mediation has similarly been favored and popularized by the Indian government; structured mediation is a more recent addition to contemporary law in India, propelled by legislative and judicial initiatives.



Another primary practice consistent with Asian Paradigm Theory is restorative justice. In my view, restorative justice is neither new nor novel; it is a common spirit and practice rooted in different cultures and society, especially in Asian countries (Liu, 2015). This is not a new idea but a traditional viewpoint supported by a large number of scholars. Mulligan (2009) said restorative justice is “the most ancient and prevalent approach in the world to resolve harm and conflict.” And also Weitekamp (1999) indicated that “restorative justice has existed since humans began forming communities.” In support of this claim, Weitekamp (1999) cites evidence from a diverse range of sources from the practices of ancient indigenous Australian and Eskimo communities, to the Code of Hammurabi, the Laws of Ethelbert of Kent and even Homer’s *Iliad* (Mulligan, 2009). It is perhaps epitomized in Braithwaite’s (1999) widely quoted remark that restorative justice has been the dominant model of criminal justice throughout most of human history for all the world’s peoples.

From the discussion about the Western Paradigm, we can see that Western society does not show an obvious tradition of restorative justice. In the conflict-based approach, the Western judicial system stipulates that all criminal justice issues should be managed by government agencies, such as the police and courts, and solutions are based on punishing criminals, which is an approach of conflict resolution via another conflict. Restorative justice, learned from other cultures and societies, was considered an alternative after Western scholars sought additional approaches to remedy the flaws of a formal justice system. People realized the value of different criminal justice traditions in different cultures. Asian countries are among these traditions and cultures.

The concepts discussed in the theory of the Asian paradigm, such as collectivism/ relationism and Asian cultural values, are consistent with the principles of restorative justice. For Asian countries, there are many principles and practices close to restorative justice that can be used to help solve the problem of access to justice. Braithwaite (2015) listed several restorative justice practices in Asian reconciliation to suggest hypotheses for Asian Relational Theory building.

The Asian paradigm requires examination of Asian local practices in exploring solutions to access to justice, and draws insights and lessons from these practices; examines the possibility of building their beneficial aspects into the law; and removes the adverse aspects of the practice, such as in some cases, serious violations of human rights. Asian countries have different conditions in terms of economy, legal and justice system, and culture. As a result, it is necessary to explore new ways to solve the problem. Directly applying Western methods to solve the problem of access to justice for undeveloped countries is impossible. For example, low-income people are often unable to engage a lawyer, and formal court proceedings typically have a high cost. Based on Asian countries’ special social conditions and traditions, many useful traditions and practices exist to be learned from, especially restorative justice practices. In conclusion, Asian Paradigm Theory promotes solutions to the problem of access to justice by adopting and improving approaches and practices that are most suitable to the Asian conditions and contexts, which are relatively inexpensive and flexible and better adapted to the specifics of Asian societies. In future work, it is necessary to systematically examine and analyze local practices in access to justice with empirical

data. If possible, experiments should be conducted applying best practices and solutions, evaluating relevant programs and projects. Finally, we should seek to theoretically understand the cultural underpinnings of these practices, their beneficial and adverse aspects, and then propose a balanced policy that integrates the wisdoms of both Western and Asian contributions, integrating the wisdoms of both legal elites and local communities.

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