Restorative Justice and Chinese Traditional Legal Culture in the Context of Contemporary Chinese Criminal Justice Reform

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The restorative justice movement of recent decades has largely developed in Western countries (Van Ness 2002). The present study examines the Chinese Confucian traditional philosophy and legal cultural values that are compatible with the philosophy and principles of restorative justice and analyzes the specific principles of the Confucian traditional legal culture that were conducive to restorative justice practices. It explicates several major Chinese contemporary programs and practices which are compatible with modern restorative justice and explains how the Chinese Confucian traditional legal cultural principles continue to influence criminal justice policy within the context of contemporary Chinese criminal justice reforms. The study suggests that unlike the typical Western restorative justice movement, which is a response to the problems of justice system, the main impetus for the development of China's restorative justice is its Confucian traditional legal culture.

The restorative justice movement has grown rapidly in the past twenty five years. It has been estimated that there are about 1,000 restorative justice programs in the world and at least eighty countries have adopted some form of restorative justice program in response to crime problems (Van Ness, 2005). As an important initiative for criminal justice reform, restorative justice has predominantly taken place in countries with Western legal systems, particularly those with common law and civil law traditions as a response to the limitations of the conventional Western criminal justice system (Van Ness, 2002). Although the essential theory and principles of restorative justice programs are largely consistent in different countries, there are significant variations across different parts of the world. Restorative justice has grown faster in some countries than in others and the programs have worked better and been more effective in some regions than in others. The theoretically challenging undertaking for restorative justice is to understand the source of the variations.

The literature on restorative justice programs and practices deals mostly with Western countries. Information about most non-Western countries is more li-

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mited. The fact that in the past few decades the restorative justice movement has developed faster in Western countries indicates the possibility of different pathways under different political and cultural contexts. The motivation or impetus for restorative justice may be different in Eastern countries. To fully understand the complexity and prospects of the development of restorative justice in different contexts, examination of the influence of tradition and contemporary political and socio-legal forces is necessary. What distinctive principles of their philosophical and legal cultural traditions impact the development of restorative justice in different countries? How do different contemporary political and legal contexts interact with the growth and practice of restorative justice? Are there different patterns or pathways of development for restorative justice in different legal and political contexts? These are some of the questions to be examined.

The passing of restorative justice legislation and the effective enforcement and implementation of such programs within a country are conditioned by the general sentiment of the population, the traditions and the dominant legal culture. Modern development of law and justice has deep roots in these traditions and cultures and restorative justice as an important criminal justice reform is inevitably influenced by the social morals of each country. Contemporary trends and future prospects of restorative justice hinge on a good understanding of this moral heritage and of the legal cultural principles passed down through tradition. This is especially true for those nations that have a long and rich history in which their citizens take pride in and on which they are accustomed to falling back. Therefore, theoretical advancement in the field of restorative justice requires thorough understanding of the moral philosophies and legal cultural traditions of various cultures of the world.

Some scholars have stressed the theoretical importance of studying traditional legal culture and recognized the important general consistency between the Confucian Chinese traditional philosophy and the values of restorative justice. For example, John Braithwaite wrote, “Confucius is the most important philosopher of restorative justice” (Braithwaite, 2002:22). However, few studies have analyzed and specifically identified those specific philosophical ideas and principles of the Chinese traditional legal culture which encourage restorative justice values and practices. Indeed, Braithwaite pointed out that it is “a pity that so few Western intellectuals are engaged with the possibilities for recovering, understanding and preserving the virtues of Chinese restorative justice while studying how to check its abuses with a liberalizing rule of law” (Braithwaite, 2002:22). The present study examines the major legal cultural principles rooted in the Chinese Confucian traditional legal culture and elaborates on their compatibility with the values of the contemporary restorative justice philosophy. Further, it identifies contemporary practices of Chinese criminal justice that share similarities with established restorative justice programs. The paper suggests that although the con-

temporary restorative justice movement has been limited in its direct influence on developments in China, the Chinese traditional cultural underpinning has independently produced many programs and practices that are compatible with its philosophy and principles. The Chinese Confucian legal tradition lends high promise for the development of restorative justice in China.

CONFUCIANISM AND CHINESE TRADITIONAL LEGAL CULTURE

Space limits preclude a thorough examination of the Chinese traditional legal culture here. We focus on the most influential source of the Chinese tradition—Confucianism, to analyze how its seemingly diverse concepts and their meanings, which appear to change from context to context, do, in fact, follow a coherent relationship. From these major concepts and relationships, we can derive several major principles that are more explicitly consistent with the principles of modern western restorative justice.

The Confucian theory of ethics and moral teachings is the foundation of traditional Chinese legal culture. H. Patrick Glenn (2000) wrote, "Probably the greatest traditional source of normativity in Asia is Confucianism" (p.280). Confucianism had enjoyed great dominance since the time of Han Wudi (140-88 B.C.), the third king of the Western Han dynasty (202 B.C.-9 A.D.), who banned all other schools of thought, respecting only Confucianism as the official ideology. Since then, for over two millennia, Confucianism had been the dominant orthodox philosophy and foundation of legal culture for Chinese dynasties.

"*Ren*" and "*Li*": The Core Concepts of Confucianism Philosophy

Confucianism is a broad system of thought, consisting of many concepts and ideas. However, only a few core concepts are central in Confucianism. The most fundamental concept, which is usually used as a starting point for understanding and summarizing Confucius's system of thought, is the concept of *ren*. The Analects of Confucius mentioned the concept of *ren* 109 times (Tang, 1998). When asked what is *ren*? Confucius answered, "*Ren* means loving others" (Confucius [1998]:156). The concept reflects the fundamental idea of humanity and secularity in Confucianism. Indeed, the Confucian legal tradition was not religiously inspired. Rather, there was a denial of the primary role of both the secular lawmakers and the idea of a sweeping religious law. The Confucian legal tradition was secular and largely informal (Glenn, 2000:287). Humanity and the human world were the focus of Confucian philosophy.

Confucius sought ideal harmonious human-society relationships and harmonious human-nature relationships. This harmonious society is achievable by call-

ing for and educating people, particularly rulers, to practice *ren*. A king ruling his countries based on the idea of *ren* would be practicing *ren zheng* (benevolent rule). In this way, an ideal harmonious and orderly society could be achieved. This ideal society is mostly described by the concept of *li*, which reflects the Confucian theory of government and social control. It is directly relevant to understanding the Chinese traditional legal culture and legal system. The Analects of Confucius mention *li* 75 times, second only to *ren* (Tang, 1998).

Western scholars, in reading Chinese classics, are often puzzled by the changing meanings of some concepts or terms. *Li* is one such concept. The concept has many meanings (Glenn, 2000; 288) and, because its meaning evolves, it is often interpreted differently by different scholars. Chinese literature also provides many different definitions of the concept, each used under a different context. Originally, *li* was developed in the Zhou dynasty as a system of rites and codes of conduct to regulate stratified relationships among high ranking members of clans. It ensured that their conduct was within the political and clan systems, followed traditions, and sustained the status system. *Li* specified the stratification, the expected roles and conduct in performing rituals relating to variety of occasions, extending to a broad range of daily conduct and to details of social conduct for people of different status, as well as to regulations of these. Its applications were largely within the clan and emphasized persuasion and internalization as means of enforcement. In essence, *li* is a moral code regarding rules of conduct, regulations, or quasi-laws for the government and within the upper class.

The advantage of applying *li* is to effectively prevent serious violations and crime in order to maintain an environment in which a serious offense is less likely to take place and, when signs of antisocial behavior are noted, to impede its further development. The counterpart of *li* is *fa*, which is criminal law and punishment. Success in the application of *li* could avoid the necessity for the invocation of *fa*.

Gradually, *li* evolved and expanded to include the broader population. In contrast to *fa*—the legal code—*li* emphasized moral persuasion, rather than forceful sanctions. Indeed, it can be seen as "a tradition of great and friendly persuasion" (Glenn, 2002:280). Generally speaking, it is a moral code that specified a differential system of status that people follow automatically and willingly. Confucius emphasized that a society must be organized according to the system of status and its associated moral code. Through *li*, the differential status system was instilled through education and persuasion and was internalized. It was believed that if people followed the status-specific moral code—*li*—an orderly and harmonious society would be achieved.

Li has an intertwined relationship with *ren*. *Ren* is the inside spirit of *li*. When *ren* is forgotten, *li* becomes only a formality, it is broken from inside. This situation was called *li ben le huai* by Confucius (meaning, the *li* and rituals are broken,

the country is broken). Because this was what happened during the time of Confucius, he devoted his life to reviving *li*, hoping to rebuild the ideal society. The paramount way to achieve that is to call for the people, particularly the rulers, to practice *ren*, to be a benevolent ruler to his people.

Traditional Confucian Legal Cultural Principles with Restorative Character

"Li" and "Fa": The Principles of Administration of Law

Among the major legal traditions in China, the major earlier rival tradition to Confucianism was legalism. Legalists advocated using *fa*, or formal law, as the main means of government and social control, and over two thousand years of imperial history China developed many important legal codes. The most comprehensive codes were the Tang Code, the Ming Code, and the Qing Code (Song, 1982; Yang, 1990; Yang & Wang, 1987). Although Confucius did not deny the utility of formal law and punishment, he stressed the superiority and effectiveness of the moral code *li*. Confucius said: "Regulated by *fa* or law, the people will know only how to avoid crime and punishment, but will have no sense of shame. Guided by virtues and *li*, the moral code, they will not only have a sense of shame but also correct their wrong doings of their own accord" (Confucius, 1998:12 (book two, article three). From Confucius' point of view, *fa*, or formal law, focuses on punishment, while *li*, or moral code, emphasizes prevention.

Since the time of the Western Han Dynasty (202 B.C.—9 A.D.), the combination of *li* and *fa*, with *li* dominating, has been the most important feature of the Chinese legal tradition. Indeed, formal sanctions have always played a subordinate role to the moral code and moral persuasion of Confucian ethics in the administration of the law, formal law lacking real independence and autonomy. In traditional China, the concept of law was in essence very different from that of Western law. The line between law and ethics was blurred. Chinese laws are moralized, or *Confucianized*, and ethical principles have entered the law, so much that it is often hard to distinguish between them. The legal code must be consistent with the spirit of Confucian ethical principles. Thus, acts that violate the law are unethical, and unethical behavior often is also seen as illegal or even criminal. Formal law, on the other hand, is indistinguishable from administrative decisions. There is no legal reasoning beyond moral reasoning. There are no independent lawyers and prosecutors.

As stated earlier, the essence of *li* is to maintain an orderly society in which social status is clearly defined and to realize and maintain harmonious social relationships among people. When order and harmony are disrupted by disputes and crimes, the final objective of the law is to restore that order and harmony, to restore the relationships to their original state. This principle is in essence restora-

tive in nature. It is influentially expressed in various forms to guide the administration of law. One influential form of the expression is: *De Zhu Xin Fu*. The phrase means that *De*, or education, is the major approach in the administration of law, while *xin*, or punishment, is only a supplemental measure. Another form of this expression is *Chu Li Ru Xin*; that is, only when *li* does not resolve the problems is punishment used. Another influential form of this expression with the same essence is *Ming De Sheng* Fa, that is, care and education must be clearly conveyed, the use of punishment must be very cautious.

Therefore, in administrating the law, the principle is that the punishment should supplement moral education. Moral teachings are given priority and higher status compared to law and punishment. Punishment is only a tool, while moral teachings and the internalization of ethics are the fundamental purpose. The use of punishment must be to enhance the effectiveness and to realize the goal of moral teachings. The essential purpose of Confucian moral philosophy is to maintain and to restore social order and human relationships in a long-lasting effective way. In placing social relationships over other goals, Confucian thought coincides with modern principles of restorative justice.

Harmony and "wu song" (no law suit) as the Highest Ideal and Mediation as the Main Method

Confucianism believed in the unity of nature and human beings. This thought was implied in the concept of *ren*. This unity of nature and humanity suggests a value of harmony and order as the final goal of all human efforts. In social interactions among human beings, seeking harmony and reconciliation was fundamental and most valuable. Confucius said: "In applying *li*, seeking harmony is the most valuable aspect" (Confucius, 1998:8 (Book one, article 12). Derived from this principle, *wu song*, (no lawsuit) was the highest purpose of the law. Confucius said: "The way I try a lawsuit is not different from others. But it would be better still if there were no lawsuits" (Confucius 1998:152 (Book Twelve, article 13). Accordingly, the upholding of the law by the court was not the objective of the legal process. The ultimate objective of law was to achieve harmony and restore peace.

Therefore, *wu song* (no law suit) was the ultimate goal of legal processes. It was morally correct. A moral person who resolved problems with others would avoid resorting to litigation. He or she was one who practiced *ren*, who was frank and open, who was considerate to others, who was compromising, who did not place personal interest above the harmony of communities. Suing someone in court was considered to be shameful. It was not usually the deed of a noble person. Although corruption was one reason for people not to bring disputes to court, the most important reason for Chinese to dislike litigation was found in the fun-

damentals of Chinese culture. When two parties went to court, the judge/administrator typically would repeatedly advise both parties to settle privately. The main purpose of the court process was not to allocate blame or fault but to teach the disputants ethics and to help them to understand that disputing was immoral. It was improper to dispute with others, especially with members of one's family.

Traditional Chinese did not typically apply the law in their lives. They were not interested in what the law had set forth. They were more used to applying common sense rules from their tradition and to look for solutions that were consistent with their feelings. With this cultural tradition, mediation, or *tiao jie*, was the method most extensively developed and used. All villages were familiar with various types of mediation and the rules of arbitration. These rules included asking a respectable elderly person to intervene, to investigate, to discuss the matters among the parties, and the party at fault admitting his or her mistake and apologizing according to the traditional rules and format used in the village. Other solutions to disputes were making symbolic or substantial compensation, having respected important locals ask for saving the face of the party at fault by accepting a symbolic solution, letting the party who has the larger fault arrange a banquet and have respected locals attend, and persuading the party at lesser fault to accept a subtle apology to end the matter. Mediation and arbitration methods were very extensive and highly developed, and widely adopted in traditional Chinese society (Clarke, 1992). These extralegal methods provided practical and preferred ways to settle disputes and dispose of cases in traditional communities. They also provided and reconfirmed the values and standards of behaviors for the members of the communities. We will discuss in a later section how this tradition has passed on to today's community.

Braithwaite (2002) refers to mediation in China as the largest and most diverse form of restorative justice. Seeking harmony and peace is fundamentally consistent with restorative justice and mediation is a most important method of restorative justice

The Concept of Justice: "tian li ren qing" (fairness and respect for human feelings)

Different from the conventional Western conception of justice, the paramount Confucian principle of justice in traditional China was that resolution must be fair and must respect human feelings (*tian li ren qing*) (Fan, 1950:227-228). Fairness was based on finding the truth. The methods or procedures used to find the truth did not matter. The rights of the suspect were rarely a concern, as long as the truth was found. The idea of due process was unknown in Traditional China. The concept of rights was moral rather than legal and was of paramount importance. The

moral concept of right safeguards the moral "gentleman" against infringement by inferior and immoral people who might take advantage of litigation.

Traditional Chinese were not especially concerned with what legal codes stipulated. They were more comfortable applying the common sense rules from their tradition and accepting legal decisions that were consistent with their feelings. Even the courts did not follow the legal code if it was deemed to be in conflict with the general sense of what was morally right and fair. Legal rules typically yielded to "justice", which referred to human feelings and a sense of reasonableness. The rules applied to settle a dispute or to punish an offense were not limited to those within the considerations of the law, nor were judgments constrained by the law and considerations of rights. Laws and legal codes were adopted according to human feelings and ethics. Again, the purpose of justice was to maintain and restore human relations and peace.

Howard Zehr (1990:181) stressed that the conventional Western concept of justice is allocating blame and punishment. In contrast, in the view of restorative justice, it is "a process in which all the parties search for reparative, reconciling, and reassuring solutions." Wesley Cragg emphasized that restorative justice is a process that "respected the feelings and humanity of both the victim and the offender" (Cited in Wright, 1991: 112) These ideas about justice moved beyond the conventional Western conception of justice that saw the government and the offenders as the sole parties involved and emphasized that the ultimate goal of justice was not limited to punishing the offenders and protecting their due process rights. Although serious limitations and drawbacks existed with the traditional Chinese approach, to the extent that it stressed the feelings of the all parties, was aimed at restoring relationships and peace, stressing consequences and repairing harm, in many important aspects it can be seen as compatible with the spirit of restorative justice.

CONTEMPORARY CHINESE LEGAL REFORM AND ITS IMPACT

After 1949, when Communists took state power through their revolutionary war, Confucianism was openly denounced as feudalism and its ideas as anti-revolutionary. Thereafter, over a period of about three decades, the top leaders initiated a number of political movements in their exploration of "socialist road with Chinese characteristics". The economy suffered during each of these political movements, and Confucianism continued to be seen as feudalistic and was severely criticized.

China's economic reform, begun in the late 1970s, has brought profound changes to Chinese society and its social institutions. As economic reform progressed, legal reform was put on an agenda aimed at establishing a system of rule

by law to replace the tradition that was described as rule by men. The development of a market-oriented economy and an "open door" policy required the adoption of laws that are customary in Western market economies, and Western legal principles and legal culture began to emerge in China and to influence it. The trends and aspiration of the reformers and enthusiastic scholars called for the construction of a new, modernized socio-political and legal system characterized by the rule of law. That system would avoid the governing of the country by the will of the leaders, who might make mistakes such as those of the "Cultural Revolution", the disastrous consequences of which were still fresh in the minds of the citizens.

Since the mid 1980s, these Western legal and cultural influences have extended beyond academic discussions and have become part of legal education and governmental reforms. Many Western ideas previously considered "bourgeois" or "capitalistic" have gradually been accepted by the Chinese people, and the modern Western legal culture has become an essential component of contemporary Chinese legal culture. The 1996 criminal procedural law and the 1997 criminal law, influenced by Western cultural and legal thinking, were enacted as a result of legal reform under this broad background, and new ideas and legal principles transformed traditional thinking. Many laws were formulated along the lines of standard Western legal theory and practices and many others were modernized to depart from traditional and established legal precepts. Indeed, legal scholars enthusiastically and extensively criticized Chinese traditions. Fundamental Western legal principles, including separations of power, the primacy of human rights, and democracy, are favorably discussed in academia as scholars and reformers have recognized the severe drawbacks in a legal tradition that place ethics and morality above legal codes as part of the system of rule by man.

The tradition of social morality and harmony emphasized the citizens' obligation to the collective over the individual's human rights, infringing upon democracy and liberty. The Confucian harmonious ideal of *wu song* (no law suit) was seen as implemented at the expense of individual interests and legal rights. This concept of justice based on morality, feelings and reasonableness was felt to violate the basic principles of adjudication according to the law and, as a result, Western legal principles have become a mainstream of legal reform.

Among the most important Western legal principles introduced into China are those of criminal law and punishment. Leading contemporary Chinese scholars of Chinese criminal law define crime as an act against the government (Chen, 2003; Gao, 1993; Li, 2000). Professor Mingxuan Gao, an authority in criminal law and author of a widely adopted official textbook of criminal law, wrote: "The moment an offender commits a crime, a relationship between him/her and the state has been established. The essence of the criminal responsibility is the relationship, the rights and obligation between the offender and the state." (Gao,

1993:419). In general, leading scholars strongly advocate the exclusive monopoly of criminal processes by the State. Within this social and political context, contemporary Chinese criminal law and criminal procedural laws include many articles that to a large extent depart from legal tradition and even are contrary to the essence of restorative justice. Two primary legal rules in the criminal justice procedure exemplify the situation.

One rule requires that the authority for the prosecution of the criminal cases belongs to the Procuratorate, a branch of the Chinese government that is responsible for monitoring the officials of the government and prosecuting serious criminal cases. The Procuratorate monitors the filing of criminal cases by the police. In all cases that meet the minimum standards of a criminal case, it exercises its authority to ensure that the police file charges. Thus, even though victims and offenders may have resolved the case on their own through a private settlement in which the offender may have paid damages or in other ways repaired the harm done, if the Procuratorate has information about the case, the private agreement must be invalidated, money paid must be returned, and the case must be entered into the legal system and handled by the justice system. The offenders and victims have no choice in deciding whether to initiate a criminal case.

Another rule is that cases filed by the Procuratorate may not be settled by victims and offenders privately, even if the offenders are truly sorry for the acts and are willing to settle with the victims and the victims are willing to accept a settlement. After a case is entered into the legal procedure and an investigation begins, the development of the case is exclusively in the hands of the justice system. Prosecutors and the police will not allow opportunities for the offenders and victims to meet face to face, to discuss the case or to reach any settlement. Even if the case involves long and costly emotional suffering and drains resources, and the rights of victims are not being protected, the victims have no choice but to endure it.

Nonetheless, although the contemporary context has moved in the direction of reforming the traditional legal culture with Western legal ideas and models, the influence of tradition continues. The philosophy and principles compatible with restorative justice in the traditional legal culture still have a significant impact on criminal justice programs and practices and are also reflected in the current criminal justice reform. In the following sections, we illustrate some of the major programs and practices that have the characteristics of restorative justice.

PRACTICES OF RESTORATIVE JUSTICE IN CONTEMPORARY CHINA

The following are some major Chinese practices that have significant elements of restorative justice.

Mediation Program

The methodology and format of restorative justice is centered on mediation. As previously discussed, China has a long tradition of mediation. Traditional Chinese prefer mediation to going to court; going to court is considered immoral. The typical organization of mediation includes mediation by a clan leader, by relatives or friends, by neighbors, by respected persons in the village, or by a respected leader of a trade.

In contemporary China, the most popular forms include mediation by a People's mediation committee, by the town's legal service, by law firms, by respected family clan leaders in rural areas, by relatives and friends, or by neighbors. Among these forms, the most important is the mediation by a People's mediation committee. This is a mediation organization legitimized by the government and by law. In February 1954, the state council issued the "The temporary rule for organization of People's mediation committees" (1954). The rule stipulated the nature, the tasks, the organization, the responsibilities, the guidelines for its activities, and the methods of mediation. This rule established the official status of mediation in China under the communist government. However, after the political turmoil and cultural revolution of the period from the late 1950s through 1976 the system was not officially developed. Its development was renewed after reforms began in the 1980s, when "the temporary rule for organization of People's mediation committee" (State Council, 1954) was modified and reissued. The 1982 "Civil Procedural Law" and "People's Republic of China Constitution," and the 1987 "Organizational Law of Villager's committee" all include specific articles about people's mediation systems. In 1989, the "Rules for the organization of a People's mediation committee" included more details on aspects of people's mediation committees, and in 1990, the Ministry of Justice issued "the rule of resolution of people's disputes" detailing the specifics of mediation.

The general guidelines for mediation in China based on these laws are that mediation should first of all follow the law, policy, or rules if any of these are published. When no law or official policy has been published regarding the issue at hand, the mediation will follow the "social mores and ethics" to mediate a dispute (State Council, 1989). The mediation must be based on the voluntary participation of both parties, and each party must be treated fairly. It should not deprive either party of the right to go to court to seek formal adjudication. These rules are highly compatible with the general principles of restorative justice. In recent years, the number of mediations done by People's mediation committees has been about seven to eight times the number of cases adjudicated by courts.

Criminal Legislations with Restorative Features

Although since the legal reform the mainstream features of the Chinese criminal justice system are now based on state primacy in the punishment of criminal offenses, there are a number of laws reflecting restorative features that retain the influence of the Chinese legal tradition.

Again, the central principle of restorative justice is to restore and repair harm done by offenders. Article 36 of the Criminal Law stipulates that "if a victim has suffered economic losses as a result of a crime, the criminal shall, in addition to receiving a criminal punishment according to law, be sentenced to making compensation for the economic losses according to the circumstances. If the criminal who is liable for civil compensation is also sentenced to a fine but his property is insufficient to pay both the compensation and the fine, or if he is sentenced to the confiscation of property, he shall, first of all, bear his liability for civil compensation to the victim" (Peoples' Congress of PRC, 1997). This stipulation of Chinese criminal law gives the priority for receiving compensation to the victim and is consistent with the principles of restorative justice.

Restorative justice advocates the role of informal procedures in handling certain criminal offenses in order to facilitate the restoration of social relationships. Consistent with this philosophy, Chinese Criminal Law and Criminal Procedural Law allow certain criminal offenses to be handled by informal procedures. Specifically, these offenses include: 1) offenses for which victims choose not to file an official claim; 2) minor criminal offenses; and 3) offenses that the State decides not to prosecute (see Criminal Procedural Law article 170). The offenses victims can choose not to have prosecuted include: insults and slander (Article 246); forced interference in the freedom of marriage (Article 257); abuse (Article 260), and occupying properties of others (Article 270). Further, Article 172 of the Criminal Procedural Law stipulates that the court, *sua sponte*, can mediate some criminal offenses, which by law can be handled by informal procedures. Even if the victims seek to have these offenses prosecuted, they are permitted to settle the case with the offender, and to withdraw the case from the court any time before a judgment is proclaimed by the court. Article 15 of the Criminal Procedural Law stipulates that criminal cases withdrawn by victims or cases where victim sought no prosecution are not liable to criminal punishment.

Restorative justice prefers that non-criminal punishment be used to facilitate the restoration of relationships, to repair harm, and to facilitate the reintegration of offenders into the community. Several laws reflect this restorative feature. For example, Article 37 of the Criminal Law stipulates that for minor offenses criminal punishment can be replaced by non-criminal punishment. In such cases, the offender may be reprimanded, ordered to promise to repent for his or her criminal actions, to pay compensation and apologize, or administrative punishment may be

given. Such minor offenses include growing plants used for illegal drugs but destroying them before harvest (see Article 351 of Criminal Law); rape when the victim does not seek prosecution and engaged in sexual behavior willingly multiple times after the initial rape (Supreme Court of PRC, of PRC 1984); theft in which all damages and loss have been returned or compensated for by the offender (Supreme Court of PRC of PRC, 1998); restitution of misappropriated public funds, including interest, before the crime is detected, and others. In sum, although present-day Chinese laws are largely established based on a more Westernized model, in many cases there are features that reflect the spirit of restorative justice.

Restorative Justice in Juvenile Justice and Law

In most countries where restorative justice is implemented, as a rule, its principles are most frequently adopted in juvenile justice law. Chinese juvenile justice has many principles that are consistent with that of restorative justice. The government officially states that the primary purpose of juvenile justice is "to educate, persuade, and save juvenile offenders." A primary recommendation is to treat juvenile offenders "as parents treat their children, as doctors their patients, and as teachers their pupils." (Zhang & Liu, unpublished) This principle is a continuation of the traditional legal culture of protecting the young and being tolerant toward their mistakes, and is consistent with the principle of restorative justice, which develops methods for solving problems and educates offenders to understand their wrongdoings and be willing to correct them, and to be reintegrated into society.

Consistent with restorative justice, the Chinese juvenile justice system emphasizes the principle that "education is the priority, punishment is only a supplement" (*De Zhu Xin Fu*). It stresses the use of "reintegrative shaming" and "thought education" to help the offenders feel shame for their behavior and to be willing to accept their mistakes and make the necessary changes so as not to recidivate.

The public strategy applied to juvenile delinquency is known as "comprehensive treatment". It combines social resources, including a wide range of social organizations, particularly within the community, to solve the problems. These organizations include the family, neighborhoods, schools and the police, as well as other authorities. The "comprehensive treatment" principle is a general approach to crime and deviance problems officially established by the government (Feng, 2001; Wang, 1991) and originated in the 1980s as a response to rising juvenile crime. Under this strategy, communities have implemented programs in which community leaders, families, victims and offenders face the problems of a juvenile offense together, discussing the issue and devising a treatment plan that

helps the juvenile offender to understand and correct his mistakes in a helpful community environment, to repair the harm done, and to restore prior relationships. Mediation is widely used in the process. For minor criminal offenses the prosecutor will suspend prosecution unless the juvenile offender is unable to recognize his wrongdoing or is unwilling to repair the harm done and correct his/her mistakes.

Community Based Correction

Community based correction is a new initiative in recent criminal justice reform.

In 2003, the Supreme Court of PRC, the Supreme Procuatorate of PRC, the Ministry of Public Security, and the Ministry of Justice issued notification of a pilot community-based correction program. Since then, such programs have begun to be developed officially in some major cities. The purpose of these programs is "to correct the criminal psychology of the offenders, correct bad behavior habits, and to facilitate the offenders return to the society." (Supreme Court of PRC, 2003).

The target offenders suitable for community correction programs are those offenders who, according to the Notice, "committed minor crimes, with minor criminal intent, and did not cause very serious harm to the society and community" (Supreme Court of PRC, 2003). Specifically, there are five types of offenders who are suitable for community correction programs: 1) those who received control sentences; 2) those who received suspended sentences; 3) those who were sentenced to serve their sentence outside of prison, such as those who have serious diseases, who are pregnant, or have a young child, and those who need assistance in their daily lives; 4) those released on parole; 5) those who are deprived of political rights and are serving their sentence outside of prison. The primary targets are minors, the elderly, those who committed a minor offense as a first offense, and those who committed an offense of negligence.

Community correction emphasizes the participation of the community in the process in order to educate the offenders' thinking, to provide legal and moral education, to correct their unhealthy psychology and behavior, to help them to recognize their mistakes and repent for them, and to be willing to give up past patterns of antisocial behavior and reintegrate themselves into the community. These methods may not replicate exactly the popular methods established in Western restorative justice programs, but they are very consistent with them, particularly with their emphasis on community participation, helping offenders to recognize and show remorse for their mistakes, and the re-integration of offenders into society. The emphasis of community participation in the correction process reflects values similar to those of restorative justice. One report stated that by the end of

the experimental stage (August 2006), 65,616 offenders had participated in community corrections. More than 15,000 (15,092) had completed the programs and been released. Recidivism was insignificant. The restorative justice practice in community corrections was deemed to have been successful (Xinhua News, 2006).

The contemporary restorative justice programs not only are influenced by the restorative values of the traditional Confucian ideas, but also by the same tradition in its other features: lack of rule of law and due process. Scholars have pointed out that compared with Western restorative justice Chinese practice shows limitations in some aspects, such as coerciveness; lack of full information for offenders; offender's incompetence; insufficient protection of offenders; and conflicts between victim empowerment and offender rights. Also noted were conflicted loyalties of community members. These weaknesses have been discussed by a number of scholars. (Ashworth, 2002; Becroft & Thompson, 2007; Harines, 1998; Karp et al., 2004; Radzik, 2007; von Hirshch, Ashworth & Shearing, 2003), some of whom have termed this type of restorative justice as "Control restorative model" (See Lo, Maxwell, & Wong, 2005).

CONCLUSION

In discussing the developmental patterns of restorative justice, we emphasize that traditional legal culture is an important source of variation throughout the world. Scholars have recognized that restorative types of justice practice existed in many ancient cultures, including ancient Babylonian, Greek, indigenous Arab and Mesopotamian societies. These pre-existing traditional legal cultures had long lasting effects. In the case of China, despite severe disruption by revolutions, the effects have been profound. Indeed, although contemporary political and social events directly influence the features of social reality, tradition influences contemporary actions in many forms, including formal policy and informal practices.

The restorative justice movement was extensively developed in Western countries as a response to the limitations and drawbacks of conventional criminal justice theory and practices and spread to other parts of the world. However, a review of the international literature reports little about its impact on China. The typical restorative justice literature does not list China as a country that has significantly adopted restorative justice programs. This reality has significant theoretical implications. Indeed, restorative justice programs in China have developed largely independent of the influential movements outside of China. This seems to indicate there are different motivations for restorative justice. In the West the stimuli seems to have come from forms of punishment that were often too severe and not congruous with the crime committed and, in addition, often led to recidi-

vistic behavior. The impetus for such programs within China seems to have come largely from the persistent influence of traditional legal culture. Little spillover from the Western movement seems to have taken place in China. Indeed, the concept of restorative justice has only recently been introduced to Chinese scholars by their foreign colleagues.

The first international conference on restorative justice was held in Nanjing University in 2003. Many scholars who were thought to be among the best in the field of Chinese criminal justice reform expressed opposition to it. Later, a minor debate occurred in academia (e.g., see Shao, 2005; Zhou, 2004) with scholars expressing mixed views on the concept. Nevertheless, at present there are significant criminal justice programs and practices in China that reflect the value and philosophy of restorative justice. Thus, it can be concluded that there are at least two pathways for the growth and development of restorative justice. One is represented by the Western movement that was motivated as a response to problems of conventional criminal justice system; the other is represented by China's approach, which is a continuation of its traditional legal culture. Theoretically, this finding is interesting and significant in understanding the patterns and development of restorative justice. In reality, a combination of the two pathways combines to produce developments in restorative justice.

This also has implications for the future of restorative justice in China. The profound influence of traditional Confucian legal culture will endure, particularly in the minds and habits of large portions of the population, where the concepts of harmony, morality, dispute resolution, and justice will persist. This provides favorable cultural conditions for the growth and development of restorative justice. We anticipate that tradition and modern ideas will co-exist, and that ancient wisdom will take new forms as it continues to play an important role in the future of Chinese criminal justice.

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