

Developing Restorative Justice for Juvenile Delinquents in Hong Kong

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ABSTRACT

This paper focuses on development of restorative justice in Hong Kong. Restorative practices are now rapidly gaining acceptance in many countries around the world. In Hong Kong, social workers have been adopting different kinds of restorative practices in a number of settings recently such as family mediation, neighborhood disputes settlement, commercial disputes resolution, and post-court victim-offender mediation. In order not to confuse readers, this paper narrows the scope of discussion to discussing the restorative justice for juvenile delinquents only. By contrasting the existing retributive justice model which has been already in place, I argue that there should be R.J. developed to take care of victims' needs, and to help offenders be integrated into the community.

INTRODUCTION

The juvenile justice in Hong Kong embraces disciplinary welfare-oriented and traditional court-based approaches for treating juvenile delinquents (Gray, 1991; 1994). Hong Kong, a Colony of UK before 1997, her criminal justice system is highly similar to that in England and Wales. The minimum age of criminal responsibility is still kept at seven, which is very low among all the developed countries/areas. This system has been operated since the Juvenile Criminal Ordinance was passed in 1933. Since then, the juvenile system has not been radically reformed in Hong Kong.

Based on the common law system, our juvenile justice system works closely with the whole criminal justice system. Our criminal system works like this. Whenever there is a crime, the police take care of the investigation and arrest. The judicial department is responsible for prosecution and monitoring. The court is designed to confirm "What laws were broken?", "Who broke them?" and "How to punish the lawbreaker? If offences are minor or offenders are under the age of 15, the social welfare department comes in to design treatment plan for offenders by providing alternative measures to harsh sentencing options such as probation orders, community services orders, probation homes and reformatory schools. As for those who have reached 15 (even though they have not committed a very serious crime), if they are judged by the court not suitable to be retained in the community, they will be sent to one of the institutions run by the Correctional Services Department. These institutions include drug addiction treatment center, detention center, training centers, and youth prisons.

IMPACTS OF RETRIBUTIVE JUSTICE

From the points of views of policy makers, the system apparently is well designed to treat juvenile offenders with different formal control mechanisms. The notion behind the disciplinary welfare approaches reflects an ideology consistent with the paradigm of 'retributive justice'. The central theme of retributive justice is that

the state is generally seen as the primary victim of a crime incidence, and the focus of attention is upon the offender who violated the interests of the state. Scholars (Haley, 1995; Moore, 1993) point out that a criminal justice system, which operates under the retributive justice paradigm, is driven by its focus upon the offender and the public fear of crime. Crime victims and their supporters as well as the families of offenders are nearly always placed in a totally passive position.

In addition, it is apparent that retributive justice often leads to young people being placed in institutions in which they may have more chance to be contaminated with more sophisticated deviant values and at the same time without having any chance to compensate the victims or to be reintegrated into the community without stigma.

In the mid-1990s, recommendations in two major studies on juvenile delinquency in Hong Kong (Vagg et al., 1995; Lo et al., 1997) have been that community-based treatment should be expanded to provide fair punishment for young people who are found guilty. They argue that there is evidence suggesting that custodial treatment is not as effective as community-based treatment.

The recommendations to expand community-based treatment, such as expanding police cautioning scheme, are indeed innovative suggestions for a Hong Kong society in which disciplinary welfare ideology has been dominant for many years. Their suggestions may be appropriate ways to divert some juvenile offenders from a more sophisticated criminal justice system; however, their suggestions do not go far from the retributive justice paradigm. Under the above suggestions the individual victim or offender is still treated as a passive object. Neither victims and their supporters nor offenders and their supporters have an input into the judicial process. Victims rarely have anyone to be listened. This isolation leads victims confused, angry, and fearful and often in-pain. In other words, with retributive justice, the courtroom is the battleground. The State, over here fights to the establish guilt. And the defendant over there tried to beat back the challenge.

But, if justice means helping offenders to get away of criminal careers and restoring peace to our community, then the system is failing. Failing because it is unable to lower the number of juvenile offenders or rates of recidivism. Failing because it is unable to keep our kids save from triad gangs' bullying in schools or in streets. But reformatory schools and youth prisons have proved not really effective as a way to reduce crime and fear. I concern that justice as retribution or revenge is not only failing crime preventive and correctional policies, but also conflicting with basic believes of rehabilitation. We have heard voices from the academic world, the victims, from police, the correctional officers and professionals of the court, who have seen the failure of the retributive justice. One basic question that we must ask: How do we make the victims of crime, offenders and the community hold again and live restoratively?

THE NEED FOR RESTORATIVE PRACTICES

Restorative practices cover a much wider spectrum of intervention strategies which relate to restore relationships between people in conflicts. Restorative practices can be considered an upper level umbrella which covers a wide spectrum of all strategies relating to restorative justice. These practices range from informal restorative statements, impromptu conference to as formal as third party formal mediation session or family group conference. It's real focus place upon restoration of relationships, not just resolving disputes without real reconciliation (Marshall, 1995; Umbreit, 1995, Wachtel, 1997).

In our Chinese culture, there is an old Cantonese phrase called "Woo See Lo". "Woo" means restore. "See" means an event or a case. "Lo" means "an elder". The meaning of the term "Woo See Lo" represents an elder playing the role of mediator or facilitator to rebuild relationships between two parties. As Chinese people used to live with kins in a village, elders are respected by all members of the family. Throughout the Chinese history, many elders and local community leaders have been acting as "Woo See Lo" informally to mediate conflicts arising from family, community and inter-village disputes. However, unlike the Western model, our

practices are rather informal and unprofessional.

“Woo See Lo” goes beyond mediation. In Western countries, process of mediation is equivalent to disputes settlement through negotiating the best decision for conflicting parties. It may not be equivalent to a process leading to an ultimate outcome of restoring human relationships. The Chinese concept of “Woo See Lo” emphasizes on rebuilding harmony relationships between parties, sometimes at the expense of individual rights.

To apply restorative practices in treating juvenile delinquents, we do need to strike a balance between care and punishment. We all know that, not just by using different models of mediation, can delinquents be treated effectively. Thus, I would like to draw your attention to the concept of “reintegrative shaming” suggested by John Braithwaite (1989) and the use of “Family Group Conference” (FGC) to replace juvenile prosecution. Braithwaite's theory combines several contemporary sociological theories on crime. He believes that theory of reintegrative shaming as well as recent innovations in criminal justice, and particularly restorative justice, have focused attention upon the role of positive shaming and “shame” might play in reducing crime. To put the theory of reintegrative shaming into practice, we need a forum to shame the offender so that reintegrative shaming can be taken place. Thus, it is generally believed victim-offender mediation conference, like the New Zealand’s Model of Family Group Conference (Alder & Wundersitz, 1994; Morris & Maxwell, 1993), can be seen as forum for implementing reintegrative shaming theory and to restore the broken relationships between victims and offenders.

It is apparent that the spirit of the New Zealand juvenile justice reforms is to get offenders and their communities, particularly their families, to take responsibility for offending. Braithwaite (1989) asserts that shaming directed at offenders is the essential necessary condition for low crime rates. The FGC can be seen as citizenship ceremonies of reintegrative shaming in which disapproval is channeled to the offenders while sustaining a relationship of respect. These ceremonies provide chances for the offenders to know the evil of their deeds and to understand the feelings of the victims. In the mean time, the offenders may have chances to make reparation to the victims. Accordingly, restorative justice programs emphasize on offender's direct accountability, victim's right and support, involvement of concerned family members and communities in the offender-victim mediation.

There have been studies comparing the effectiveness of normal court processing with the restorative alternative. Scholars (Strang, 1999; Harris, 1998) found that those offenders who had gone to court in normal way tended to be angrier, to feel that the process not been fair and that their respect for police, the justice system and the law had gone down. In comparing the official re-offending by school crime offenders, Strang (1999) found that the rate of repeat offences per offender is 6.5 times higher for court than for conference. Thus, the FGC and victim-offender mediation programs seem to be an effective mechanism for preventing recidivism.

THE AUTHOR'S RESEARCH EXPERIENCE

Based on two recent studies, a longitudinal study and an in-depth interview, conducted by the me, I found the protective factors, which are crucial for pulling or pushing the Chinese youngsters to or from commit law-breaking acts or further engage in criminal activities, are positive shaming practices, forgiveness, brotherhood, and the logic of interdependency. Restorative approach and the use of mediation seem to be compatible to a Chinese culture that emphasizes collective values and the restoration of harmony (Wong, 1997; Wong, 1999a). In addition, the findings of my study shed light on the side effect of retributive justice in the way that over-reaction to juvenile rule-violative or problem behavior may further promote delinquency. This view is in line with some local findings on juvenile delinquency suggested by Gray (1994) and Vagg et al. (1995).

To prevent the onset of delinquency, if we could cultivate the adolescent's filial piety towards parents or mutual respect between adults and youngsters in the form of 'respect with love', an adolescent would therefore be socialized or re-socialized as an inner-directed person, which in turn, would prevent youngsters from engaging in law-breaking behaviors. To cultivate an adolescent's self-control ability requires the co-operation of the social authorities and changes in the criminal justice system and its procedures. To prevent recidivism, a new approach must be considered which should emphasize the concept of Chinese collective responsibility towards crime control (interdependency) and advocate the values of forgiveness, interpersonal harmony and family values. Taking the cultural findings into consideration, a new approach such as victim-offender mediation program other than the retributive approach for treating the problem of delinquency in Hong Kong is necessary (Wong, 2000).

Overall, the emphasis on reintegrative shaming, forgiveness, and family responsibility for crime control through the FGC, is a possible solution for delinquency in Chinese societies that value shame culturally. Moreover, the protective factors, which are crucial for pulling or pushing the Chinese youngsters to or from commit law-breaking acts or further engage in criminal activities, are positive shaming practices, forgiveness, Brotherhood, and the logic of interdependency. The restorative justice or reintegrative shaming approaches are compatible to a Chinese culture, which emphasizes collective values and the restoration of harmony (Wong, 1999a; 2000).

ADVANTAGES OF ADOPTING RESTORATIVE JUSTICE

1. This is a new initiative other than the existing community-based treatment methods. It fits to the overall policy of expanding community-based treatment suggested by the Central Fight Crime Committee in Hong Kong (Vagg et al., 1995).
2. In the past, the police tend to adopt surveillance tactics to tackle juvenile crimes. The main objective of such an approach is focused on the prevention of crime through a reduction in the opportunity to commit crime. However, it does not deal with the root causes of juvenile crimes such as social deprivation and loosening of family relationship. The use of restorative justice provides chances for young offenders to restore relationships with their family members.
3. The advantage of restorative justice rests on its very nature in its contrast with the retributive justice system. In restorative justice, offenders are being reintegrated into the society through repentance and reparation. Victims are also given opportunities to forgive offenders for their wrongdoing. Besides, restorative programs are diversions so that young offender does not enter into the criminal justice system all together. An early settlement for these offences saves money and therefore is more cost-effective. It eases the problem of overcrowding prisons.

POTENTIAL DANGERS OF ADOPTING RESTORATIVE JUSTICE

The HKFYG (1998) identified the following potential dangers regarding the implementation of restorative justice in Hong Kong:

1. Inadequate preparation by the primary parties of the victim-offender mediation conference may inhibit them to participate freely in a genuine dialogue;
2. Victim insensitivity and coercion may occur in which programs may end up not being sensitive to the emotional, informational and participation needs of the victims;
3. Young offenders feeling intimidated by adults, including police officer in uniform and others;
4. Lack of neutrality by the police officers, probation officers, or school officials which give rise to shaming the offenders;
5. Inflexibility and assumed cultural neutrality of the process which makes the transferability of experiences

ineffective;
6. Net-widening effect.

FACTORS HINDER THE DEVELOPMENT OF RESTORATIVE JUSTICE

However, influenced by the concern about the spread of ambiguous criminal practices in communist China, just after the handover of Hong Kong, the legal justice professionals tend to have a negative view of the informal model of social control such as the use victim-offender mediation program. For instance, the presumption of innocence is a concept missing from the Chinese judicial system (Davidson & Wang, 1996). The legal professionals in Hong Kong concern that restorative justice may render the criminal justice system ineffective, nourish abuse of power, encourage false restoration or even create greater injustice. They also worry about whether real justice can be achieved outside the court system (HKFYG, 1998). The following factors seem to be hindering the development of restorative justice in Hong Kong (Wong, 2000):

1. Ignorance of the concepts by legal, social work, criminal justice professionals;
2. Discussion of the notion of crime is not common, whether crime is seen as action violating state rules or violation of person's rights;
3. Worrying about whether real justice can be achieved "outside the court system" or rule of law is not followed;
4. They are concerned that in practice restorative justice may render our criminal justice system ineffective, nourish abuse of power, encourage false restoration or even create greater injustice;
5. We do not have an Act, e.g. Children, Young Persons and Their Families Act (1989) in New Zealand, to provide a framework to further develop the restorative justice system in Hong Kong.

In talking about whether rule of law is not followed, Hong Kong people are not really trusted the informal practices of delinquency control in the Mainland China. The Chinese government has used local committees as part of their ongoing effort to monitor the society and mobilize support for Party policies. The informal network of control was set up in the early days of the post-revolutionary period. It has to be added, however, that this close informal social control system is also in line with Confucian philosophy, which emphasizes interpersonal relationships and the good nature of human beings. Both Confucianism and communism play down individual rights and highlight collective responsibility. Three local committees stand out in this informal model of control, namely, the residents' committee, the security and defense committee, and the mediation committee. All three committees play a part, individually and jointly, in the prevention of crime as well as in the rehabilitation of juvenile offenders through the use of mediation and community-based treatment (Wong, 1999b).

For instance, mediation committees were set up immediately after the establishment of the PRC in 1949 and their numbers increased rapidly over the years. While in 1954 there were only 155,100 throughout the country (Hun, 1986), the number increased to as many as ten million (10,001,579) in 1996 (China Law Year Book, 1997:948). The mediation committee is responsible for handling disputes as well as granting permission for divorce. A mediation committee generally consists of 3-9 members, all 'good citizens' in terms of political ideology and they tend to be retired Communist Party cadres or teachers. Mediation sessions involve the conflicting parties, the mediators or representatives from work units, and sometimes a party cadre (Clark, 1989; Leung, 1991).

Several criticisms of the informal model of social control by both Chinese and Western scholars (Biddulph, 1993; Hun, 1986; Ma, 1986; Ogden, 1992) are noted. These criticisms include: (1) various local committees seem to be politically biased with the result that they pay more attention to the enforcement of the communist political ideology than to the reform of the individual offender.; (2) in the absence of a legal or administrative code to guide the work of these committees, decisions and practices vary enormously; (3) being local committees, it inevitably means that committee members may be acquainted or even related to many of the

offenders. China's mediation is particularly susceptible to the influence of personal persuasion and may often favor the more powerful; (4) members of these mediation committees receive no financial compensation for their services, the result is that membership relies too heavily on retired persons and members' interest in their work wanes over the years.

THE WAYS AHEAD

Although Hong Kong do not have an Act to allow restorative justice be fully implemented, I see social workers using victim-offender reconciliation program to help young offenders to reflect their wrong doings and to restore relationships with victims. I have been working closely with a group of social workers to conduct victim-offender mediation meetings between those who have committed minor crimes and those who are victimized since 1998. The forum for mediation is though a voluntary post-caution meeting.

In 1997, a "self-strengthening scheme" for young offenders, police cautioning scheme was set up in north district. This scheme provides community support services to those who are diverted to the police cautioning scheme without prosecution. Being the consultant of this scheme, I asked the non-governmental organization to provide post-caution mediation spontaneously while the offenders are receiving caution. I then helped to trained up some social workers and shared with them the steps and skills for conducting mediation. In 1999, the first case known to the public was undertaken just after a Superintendent in Police station cautioned the offender. We then invited the offender, his supporter (outreaching social worker), the victims and one victim's mother to attend the conference. This is the first known VOM conducted in Hong Kong, albeit not entirely formal (on a voluntary basis) (Wong, 2001a).

To tackle school bullying, one of the best methods that most teachers and social workers adopt is to mediate conflicts between rivalries. I started to bring this concept to school teachers since 1999. With the help of some research grants, I have conducted two large-scale studies in school bullying: one investigates primary schools bullying problems, and the other in secondary. I have suggested that before bringing the case to police, peer mediation programs are useful strategies. Schools should consider train up a number of student harmony ambassadors to help teachers to deal with minor bullying issues (Wong, 2001b).

The first VOM meeting was held in 1999. Since then, more than 30 VOR meetings were conducted between 1999 and 2001. Starting from 2000, I set up a Centre for Restoration of Human Relationships, and devoted more time to educate teachers and social workers to adopt mediation tactics to tackle school bullying. In two years time, our Centre had provided more than 200 workshops to relevant professionals, student mentors, and parents in Hong Kong and had published three books/reports in this aspect. With the help of mass media, more and more people knowing what restorative justice is? We are now writing a mediation menu for people who are interested in this aspect, and are trying to re-start the conversation with the government soon. I have just got a research contract studying the development of alternative measures for treating juvenile offenders. I am expecting the government to take the development of restorative justice more seriously in Hong Kong in the near future.

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