ARTICLE

Concerns about the meaning of 'restorative justice' from a Chinese criminologist's perspective

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1 Introduction

I am a Hong Kong–born Chinese, and I received an undergraduate education in the social work profession in Hong Kong and postgraduate degrees in criminology in the UK. Owing to Christian belief at a fairly young age, the principles of restorative justice were always upheld when I worked with misbehaving children and delinquents as a social worker. After putting in some years of frontline social work practice, I became a social work educator and criminologist at the City University of Hong Kong in 1989 and continued to advocate for the use of restorative justice in Hong Kong and other jurisdictions in the Greater China region, including in Macau, Taiwan and mainland China.

This article reflects my direct experience with restorative practice and research on restorative justice. Over the years, I have advocated the use of restorative justice to handle youth offenders, resolve the vicious cycle of school bullying and mediate interpersonal conflict. I am grateful for the opportunity to contribute with my knowledge and ideas in assisting the Legal Affairs Bureau of the Macau Government and the Ministry of Justice of the Taiwanese Government to develop their local restorative justice system and procedures for the past two decades. In addition to my experience in training conference facilitators across different cities, such as Hong Kong, Macau, Taipei, Guangzhou, Nanjing and Beijing in the Greater China region, I believe that I have gained valuable insight into the meaning of restorative justice according to the perceptions of the Chinese. And it is against this background that I will respond to Lode Walgrave's concerns as expressed in this special issue of *The International Journal of Restorative Justice*.

I find Walgrave's paper informative and illuminating. In it, Walgrave discusses various definitions of restorative justice as well as its application in different settings and poses the question:

Do we conceive restorative justice as a wide, all-encompassing notion, including the dynamism and liveliness of the activist engagement for more justice at all levels, in all social relations and structures? Or do we keep restorative justice as

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a clearly delimited concept focused on doing justice after the occurrence of offences? (Walgrave, this issue).

If I were asked whether restorative justice should be limited to addressing issues that are explicitly or implicitly about dealing with crime-related matters, I would immediately say 'No'. I believe restorative responses can be used to address problems, conflicts and injustices in other social fields as well, such as schools, care and welfare, neighbourhoods and workplaces. If restorative justice is extended to settings beyond the criminal justice context, I would normally call it 'restorative practices'. Like Walgrave pointed out in his article, both restorative approaches, be it focusing on crime in general or on disciplinary problems at school, 'are grounded in the same philosophy of respectfulness and inclusion, seeking participation of all stakeholders in the pursuit of an outcome which minimizes harm and strengthens relationships'. Although 'they deal with different matters in different contexts, with different actors and even with different purposes', such restorative approaches are highly similar since they aim at repairing the harm done after an untoward incident and restoring relationships for the benefits of the perpetrator, victims and stakeholders in the community.

However, if I were asked whether there is a need to consider widening the concept even further and adopting restorative justice as a mechanism to transform social relations and structures like the 'model of transformative justice' (Llewellyn, 2021), I would say: No, it is better to keep our own passion and values under control. That is to say, I agree with Walgrave's idea that

Good research on restorative justice must describe unambiguously the object of its investigation ... It must indicate the objectives of a restorative intervention, so that its success or failure can be assessed (Walgrave, this issue).

In other words, I appreciate the fine-tuned, outcome-focused definition suggested by Walgrave (2008: 21) – that restorative justice be seen as 'an option for doing justice after the occurrence of an offence that is primarily oriented towards repairing the individual, relational and social harm caused by that offence'. I also agree that restorative justice cannot be equivalent to 'a purely process-based approach' that only focuses on relational values and skills. Let me explain my ideas more clearly with recent developments of restorative justice policies and practices in Chinese communities. Perhaps, readers may discover that despite the differing ways in which individual advocates conceive and practise restorative justice, developments of restorative justice in different jurisdictions may not be synchronised at the same pace.

2 Restorative justice concepts and practices in mainland China

For most supporters worldwide, restorative justice is considered an approach to achieving justice that is victim-focused and aimed at repairing the harm caused by

an offence. Interestingly, there are some proponents who perceive restorative justice as an all-encompassing notion and would like it to bring more justice to all levels of life. Being Chinese, I am aware of how Chinese scholars and policymakers generally perceive restorative justice. In the Chinese community, restorative justice is considered a new approach to integrating mediation practices and a community-based treatment philosophy into criminal justice practices with the aim of crime control, offender rehabilitation and victim support. Bearing in mind that mediation is considered one of the customary ways of dispute management in Chinese communities, mediation and restorative justice share similar goals of maintaining law and order, promoting social harmony and improving neighbourhood spirit. Traditional mediation in Chinese communities has the fundamental objective of achieving a harmonious society. Among Chinese philosophical schools of thought, scholars believe that Confucian values, such as 'avoiding litigation', 'forgiveness' and 'shaming', might catalyse the process of knowledge transfer of Western restorative justice ideas to localised restorative justice practice in Chinese communities (Di & Wu, 2009; He & Ng, 2013; Liu & Palermo, 2009; Trevaskes, 2010; Yuan & Di, 2015; Zhang, 2021). Specifically, the value of 'peace comes first' is believed to be conducive to the Western restorative justice model (Wong, 2014; Wong & Fung, 2023). Thus, Chinese criminologists seldom consider restorative justice an innovative and standalone criminal justice model; however, they appreciate that restorative justice is an amalgamation of humanistic beliefs and judicial practices which contribute to social stability and community harmony.

A general impression generated by the findings of my recent studies is that the underlying principles of Western restorative justice models, traditional Chinese values and essence of mediation are compatible. When we conducted a literature review based on a Chinese keyword search, such as *'huifuxing sifa'* (restorative justice) and *'tiaojie'* (mediation), among published Chinese-language academic articles on restorative justice, hundreds of academic papers in the China Academic Journals Full-text Database could be found (Wong, 2016; Wong & Fung, 2023; Wong & Kwan 2020; Mok & Wong, 2013). The major research themes identified in these Chinese papers include the following:

- 1 Western restorative justice ideas and Chinese philosophy
- 2 Similarities and differences between restorative justice and Chinese mediation
- 3 The feasibility of integrating restorative justice models into criminal justice in China
- 4 Community-based treatment and restorative justice
- 5 Victimology and restorative justice.

When I conducted another preliminary literature review of English-language academic journals over the past fifteen years based on keyword searches, such as 'restorative justice' and 'mediation' and 'China', I discovered that the number of articles is relatively small compared to the number of Chinese-language articles. However, the content and discussion topics are broader in scope. The English-language articles include the following areas of focus:

1 Connections between restorative justice and Chinese legal traditions

- 2 The application of restorative justice to youth or criminal justice
- 3 Historical analyses and policy challenges in restorative justice development
- 4 Practice notes and practice wisdom of mediation and restorative justice practices
- 5 Connections between community corrections and restorative justice
- 6 Restorative justice as a diversion for minor criminal cases
- 7 Research focus on restorative justice along the Silk Road.

3 Developments of restorative justice in different Chinese communities

The above description summarises the research focus and academic attention on restorative justice in China. It indicates that the focus on the historical and future developments in restorative justice remains prevalent. In mainland China, with the endorsement of the revised Criminal Procedure Law (2012) and promulgation of the Community Corrections Law (2020), restorative justice can be implemented at various levels of the criminal justice system, including the pre-court, during-court and post-court levels. In terms of both civil law and criminal law applications, restorative justice is connected to the arrangement of various measures for youth delinquents with conditional non-prosecution under the administration of the People's Procuratorate; for example, people's mediation under the People's Mediation Committees; judicial mediation (or court-based mediation); criminal mediation referred to by statutory agents (Wong, 2016; Wong & Fung, 2023; Wong & Kwan, 2020); and community corrections suggested by the People's Courts in mainland China.

In 2008, the Ministry of Justice (MoJ) in Taiwan formally adopted restorative justice as its priority policy for criminal justice reform and proposed a pioneer programme entitled the 'Restorative Justice Initiative' to be implemented at various district prosecutors' offices. Since the announcement of the initiative, a two-year pilot programme was implemented from 2010 to 2012 in eight district prosecutor offices and subsequently extended to nearly all district prosecutor offices (Ministry of Justice, 2016; Taichung District Prosecutor's Office, 2016). I witnessed the growth of restorative justice programmes in Taiwan as I was invited by the Ministry of Justice (MoJ) (on behalf of the Centre for Restoration of Human Relationships) to develop and conduct native-language training courses for the first few batches of restorative justice conference facilitators between 2010 and 2012. The MoJ collaborated with the National Taipei University to establish advanced training courses for restorative justice facilitators in the following years. From 2014 to 2017, more than 1,000 facilitators participated in the advanced training workshops. Since 2019, the legislative framework has been gradually developed to ensure that restorative justice is considered one of the statutory measures for dealing with criminal cases. Judges in juvenile tribunals can also refer juvenile cases to restorative justice or victim-offender mediation based on the revised Juvenile Justice Act (Huang, Sheu, Lu, Yu & Umbreit, 2023).

As we can see from the above, both Taiwan and mainland China jurisdictions confined the use of restorative justice to a statutory response for handling matters

related to offending. Restorative responses were not yet extended towards dealing with disciplinary problems, conflicts and injustices in other social fields. Compared to its counterparts in Asia, Hong Kong is renowned for being relatively advanced in developing professional social work intervention strategies and innovative restorative practices. Although restorative justice has developed rapidly over the past few decades in many jurisdictions, no statutory restorative measures have been incorporated into Hong Kong's mainstream criminal justice system. Restorative justice is practised in non-statutory sectors, such as youth services, primary and secondary schools, family mediation services and local communities (Lui, 2023; Wong, 2014, 2016; Wong, Cheng, Ngan & Ma, 2011; Wong & Fung, 2023; Wong & Lo, 2011; Wong & Tu, 2018).

I introduced restorative justice to youth workers and teachers in the late 1990s in Hong Kong (Wong, 1996). In 2002, with increasing interest in the use of restorative justice in many parts of the world to treat juvenile offenders and offending students, our research team encouraged the Hong Kong government to examine whether restorative justice should be introduced into the Hong Kong judicial system (Lo, Wong & Maxwell, 2003). In the same year, a research group was established to determine new alternatives for youth offenders. We identified six jurisdictions as sample cases. In submitting our recommendations to the government, we proposed several pre-trial diversion measures, including community-based restorative justice systems, as alternatives to prosecution (Lo et al., 2003). Despite these efforts, the government did not accept our proposal. The following are plausible reasons for rejecting the restorative justice proposal: Lo (2012) explained that the failure to implement restorative justice in Hong Kong at that time may be related to Hong Kong's pre-colonial past and the growing political tensions between Hong Kong and China. He believed that there was a trend of 'mainlandisation' across different policy fields and disciplines in the Hong Kong community immediately after the handover of Hong Kong from the UK to China in 1997. The intention to keep the Hong Kong legal system intact could be an obstacle in integrating innovative restorative justice initiatives into the criminal justice system. Since there are no obvious procedures in the criminal justice system to safeguard individuals' human rights, let us be convinced that restorative justice is a fair and just process. When this restorative justice system is viewed as being closer to the discretion exercised in China, the concerns increase. In cases where restorative justice is implemented as part of the criminal justice system, judges are given the discretion to allow this practice to occur (Wong, 2016). Considering the huge difference in political perceptions between the two jurisdictions, namely Hong Kong and mainland China, the introduction of restorative justice into Hong Kong's criminal justice regime may result in the assimilation of biased and unfair practices. Therefore, distrust of the Chinese government is considered an obstacle to restorative justice's development in Hong Kong.

Another reason for rejecting our proposal was that the Security Bureau of the Hong Kong government believed that the present juvenile justice system had already provided a balance of services for preventing and controlling delinquency and, thus, a new alternative was not necessary. The Hong Kong government and relevant nongovernmental organisations are committed to providing different

preventive welfare services, diversion and sentencing programmes to assist juvenile offenders. However, as stated in the official statistics, the low recidivism rate for juveniles who were police-cautioned was not enough to conclude that the current statutory measures for convicted juveniles were sufficient and had not been further improved. Well-functioning and efficient social work and rehabilitation services are commendable. However, they do little to help offenders repair the harm caused, bring justice to victims, restore relationships with relevant stakeholders and earn redemption. Reparation, restoration and achievement of true justice are important elements of criminal justice for restoring social harmony and preventing recidivism. Given the complexity of the interaction between different variables, including individual and environmental factors, it is difficult to combat crimes (Wikström, 2014). One of the many reasons that adolescents commit crimes is that they underestimate the seriousness of the harm that their criminal behaviour may cause to others. Restorative justice emphasises on not only reducing the risk of recidivism but also on repairing the harm caused by delinquency, especially in the relationship between offenders and victims (Justice and Reconciliation Centre of Prison Fellowship International, 2005; UNODC, 2020).

4 Research on restorative justice in the Chinese context

At present, research on restorative justice in different jurisdictions in the Greater China region has undergone an introductory period and has transitioned into in-depth research and development. In addition, except Hong Kong, a series of restorative justice pilot projects have been carried out at the criminal prosecution, investigation, trial and review stages in various jurisdictions in the Greater China region. Nonetheless, the Chinese scholars in the Greater China region generally agree on the following five key points of restorative justice (Huang et al., 2022; Lui, 2023; Wong & Fung, 2023):

- 1 Restorative justice encourages full participation and consultation. First, this includes the participation of both parties. Without the participation of both parties, it is challenging to properly deal with the consequences of a crime. Second, the purpose of participation of the parties, including the victim, the offender and other stakeholders, to the crime is to 'negotiate' and not to 'adjudicate', which is 'to jointly discuss how to deal with the consequences of the crime and its impact on the future'. Third, it is to 'encourage' the parties to participate in consultations rather than to force them. 'Voluntary' behaviour is one of the characteristics of restorative justice.
- 2 It seeks positive healing of wounds caused by the crime. Restorative justice recognises that after a crime occurs, both the victim and the perpetrator have been harmed and both may have experienced trauma. This result differs from what is typically understood. People generally believe that the crime caused harm to the victim, but restorative justice points out that the crime has caused harm to the perpetrator as well, such as facing criminal sanctions, living in fear and being abandoned by the community where they live. Therefore, restorative justice actively seeks to heal the harm caused by the crime to both the victim

and the perpetrator, not only to amend the situation created by the crime or simply punish the perpetrator but also to heal the wounds caused by the perpetrator to themselves as a result of their criminal acts.

- 3 *It seeks full and direct responsibility*. In restorative justice, liability does not just mean that the perpetrator bears general criminal responsibility because they have committed a crime. In addition, they must directly confront the person they hurt, that is, the victim, to clarify how their actions have specifically harmed others, narrate the history of the crime and explain their criminal behaviour to seek communication with the victim and the community.
- 4 It seeks to integrate the divisions already caused. One of the most serious consequences of crime is that it divides people and communities. Restorative justice seeks reconciliation between victims and offenders and encourages mutual integration into the community. The concept of restorative justice insists that the roles of the victim and the perpetrator should be temporary and that both parties should be freed from the past and encouraged to look to the future.
- 5 *It emphasises the role of communities in crime prevention.* On the one hand, restorative justice recognises that crime causes harm to communities, and on the other, it exposes problems in the community. Issues in the community lead to crime, which, in turn, exacerbates issues in the community, thereby creating a vicious circle. Therefore, community-building should be strengthened to create harmonious and peaceful residential areas.

From this perspective, the Chinese understanding of restorative justice is not that different from Walgrave's approach to restorative justice, and both approaches position restorative justice as a challenge to the conventional approaches in youth justice and in criminal justice with their treatment or punitive premise. It aims to help the victim and the community to recover and promote the rehabilitation and reintegration of the offender. Although restorative justice exists in judicial systems in different parts of the world, it is applied and practised in slightly different legal contexts in Hong Kong and other parts of the Greater China region. For example, Hong Kong practises common law, whereas mainland China, Taiwan and Macau practise continental law systems. Chinese policymakers across jurisdictions in the Greater China region have introduced some restorative justice measures through legislation, while others are promoted in the private sector, such as in communities and schools.

In mainland China, the restorative justice model under the continental law system is generally viewed as a policy of judicial leniency, which aims to encourage suspects to turn themselves in, confess their guilt and avoid harsh punishment through a reconciliation between suspects and victims. This approach may save judicial resources and contribute to the maintenance of social stability. However, the practice of restorative justice in China's legal system has certain shortcomings. For example, since political and legal cultures in mainland China emphasise state control over society, restorative justice may be subject to political and administrative interference, making the process of reconciliation less fair and less transparent.

Moreover, restorative justice may be limited in practice owing to China's severe penalty for crime.

In Hong Kong, with the background of a British common law system, the restorative justice model is primarily achieved through dialogue and consultations between victims and perpetrators, and stakeholders related to the incident, including delinquent-related and school bullying cases. This approach emphasises the rights and needs of victims and helps perpetrators to take responsibility for their actions. Restorative justice in Hong Kong, especially when it is used as a diversionary measure or alternative to punishment, can help reduce the burden of the judicial process, promote harmonious relationships among community members and increase delinquents' ability to participate in society again. However, restorative justice development in Hong Kong has been stagnant. Under the current common law system, restorative justice is not yet incorporated into the mainstream criminal justice system since no formal law reform on the uses of restorative justice for criminal matters has been undertaken. In summary, restorative justice approaches have both advantages and disadvantages in mainland China and Hong Kong. Therefore, it is necessary to appropriately adapt the practice of restorative justice to different judicial systems and cultural backgrounds to achieve maximum benefits.

Evidently, there are several challenges to implementing restorative justice programmes in both Hong Kong and jurisdictions which are under continental law systems, such as Macau, Taiwan and mainland China. Some of them are as follows:

- 1 Limited resources: Restorative justice programmes require trained facilitators, mediators and support staff. In many jurisdictions, limited resources may be available to implement and sustain these programmes.
- 2 Legal background: The legal framework and traditions of common law and continental law systems may be oriented towards retribution and punishment rather than restoration and healing. This can create challenges in implementing restorative justice programmes and obtaining support from the judicial system.
- 3 Cultural attitudes: Restorative justice programmes may be perceived as lenient by victims, offenders or community members who believe in a more punitive approach to justice. This can create resistance to the implementation of restorative justice programmes.
- 4 Inadequate participation: Restorative justice programmes rely on the participation of all parties involved, including victims, offenders and community members. However, some parties may be reluctant to participate due to fear, mistrust or other factors that can limit the programme's effectiveness.
- 5 Limited scope: Based on our observations in different jurisdictions in the Greater China region, it can be concluded that restorative justice programmes may not be appropriate for all types of offences or parties involved. In some cases, the harm caused by an offence may be too great to be addressed through restorative justice or the offender may not be willing or able to participate in the programme.

Despite these difficulties, restorative justice programmes have been successfully implemented in both social and political contexts and have been shown to have positive outcomes for victims, offenders and communities. Addressing the challenges requires commitment from justice system stakeholders as well as ongoing research and evaluation to improve the effectiveness of restorative justice programmes.

Restorative justice is a relatively new concept in many parts of the world, including in Taiwan and mainland China. While both jurisdictions have made efforts to incorporate restorative justice practices, several factors affect their smooth implementation. In Taiwan, one factor that largely affects the implementation of restorative justice is resource inadequacy. Taiwan's justice system is already under significant strain, with limited resources available for enforcing new programmes and initiatives. For example, probation officers are the key officials responsible for taking over restorative justice cases from the district prosecutor's office and facilitating restorative meetings for the concerned parties and stakeholders. Nevertheless, the restorative justice duties are extra tasks assigned by their supervisors in addition to the existing heavy workload of writing court reports and supervising probationers. In other words, more time spent on restorative justice leads to less time to finish normal probation duties, which are sometimes statutory but inescapable.

The following factors affect the implementation of restorative justice in mainland China:

- 1 Political considerations: The Chinese government places a strong emphasis on maintaining social stability, which can make it difficult to implement restorative justice practices that may be perceived as lenient on crime.
- 2 Limited access to legal representation: This is a problem caused partly by the lack of independent legal professionals, which can make it difficult to implement restorative justice practices that require safe participation of both parties.
- 3 Inadequacy of resources: China's judges and procurators are already under significant strain; therefore, the idea of implementing new restorative justice programmes and initiatives may not be easily sustained.

5 Concluding remarks

To conclude, restorative justice considers crime more holistically than revenge justice and advocates restoring justice in the community by holding perpetrators accountable for their actions. Based on our previous experiences in running restorative justice programmes in different jurisdictions in the Greater China region, which if possible are offered through face-to-face conversations with victims or other restorative actions, it can be concluded that the restorative justice programmes do provide a valuable opportunity for offenders to better understand the seriousness of the damage caused by their misconduct. Nevertheless, such a view is not equivalent to an advocacy of a mandated (coerced) resolution of restorative justice. I personally do not believe that a coerced restorative conference

will work. I would rather solicit help from surrogate victims if the victim related to the incident could not be present. With concerted efforts towards following the significant principles of restorative justice, in the long run, once these offenders are able to recognise their victims' feelings, the risk of reoffending is greatly reduced. Restorative justice is a better way to deal with youth offenders than are purely deterrence policies. The successful implementation of restorative justice practices in Hong Kong, Taiwan and mainland China requires a combination of education, cultural awareness, legislation and resource allocation. Ongoing efforts will also be required to adapt restorative justice practices to the specific needs and cultural contexts of these jurisdictions.

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