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Good seeds, bad soil? A case study of the vital context in the restorative justice process in mainland China

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ABSTRACT

Restorative justice (RJ) has gradually emerged as a global movement within the criminal justice systems of various jurisdictions around the world. Despite growth in the number of studies, very few have examined the social, moral, and structural elements in the current penal context that may contain the implementation and development of restorative justice. The present article builds on a case study of mainland China, offering an empirical analysis of how social, moral, and structural (legal) barriers have impeded the growth of a restorative atmosphere. That said, the key goals of responsibility, reintegration, and restoration in Western restorative justice need to be placed within its liberal democratic context. In conclusion, the article suggests that the current RJ scholarship should overcome its methodological individualism and that it may be rewarding to examine the social dynamics that link the macro socio-legal context with the micro restorative encounters.

1. Introduction

Restorative justice (RJ hereafter) has gradually emerged as a global movement within the criminal justice systems of various jurisdictions around the world. As a different paradigm than the criminal justice process, it gives voice to those who are harmed and neglected in the traditional criminal process, acts as a bridge for communication between the harmed and the wrongdoer, and facilitates respect, participation, empowerment (Pranis, 2007), and healing (Braithwaite, 2000; Strang and Braithwaite, 2001; Zehr, 1990). The RJ movement is believed to have had a deep impact on the way people view and respond to crime and deal with offenders. To cite Zehr (2002, p.19), ‘crime is a violation of people and of interpersonal relationships. Violations create obligations. The central obligation is to put right the wrongs’. The influence of RJ has moved beyond the traditional criminal justice sphere to schools, churches, post-war mass victimization scenarios, etc.

Despite an ongoing debate regarding whether RJ should be outcome-based (Walgrave, 2003, 2008, 2013) or process-oriented (Johnstone and Ness, 2007), or whether it should work to transform people’s ways of life and thinking (Sullivan and Tift, 2010), in the archetype model of RJ practice, offenders, with the support of their community of care, have a direct or indirect dialogue with their victims or community representatives and make amends; when this ritual has been completed, the offenders are re-accepted as members of the community. By involving the offenders in constructive responsibility-taking, their reintegration into the community, as well as the restoration of the broken relationships, will eventually be achieved. However, despite these claims, there is an ongoing concern regarding how responsibility, reintegration, and restoration can be realized in a society characterized by inequality and injustice (Daly, 2000; Gray, 2005).

While RJ has received wide scrutiny in the English-language literature, its use in the Chinese context has only recently attracted the attention of international academia. Existing studies have focused on the practice of restorative justice in juvenile offending in

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China (Shen and Antonopoulos, 2013; Wong, 2013; Wong and Mok, 2013), its impact on probation decision (Lu et al., 2018), and its use within the criminal justice context in comparison to the restoration model of the West (Yuan, 2017). Additionally, examinations of the compatibility of RJ values with the traditional Chinese legal culture have indicated that it has a natural affinity with the philosophies and values of Confucianism that still underpin some Asian societies, including China (Liu and Palermo, 2009). In particular, they both emphasize relational harmony (Wong, 2014), forgiveness, and the education and reintegration of the offender. Furthermore, some indigenous practices found throughout Asian countries or tribes are deemed to have been the predecessors of the modern RJ movement (Steels and Goulding, 2013). The successful use of reconciliation programs to help rebuild post-war societies may hold value for certain parts of Asia that have been torn by conflicts and wars.¹ Such a message sounds like spreading spring seeds, assuring people that healing and restoration are on the way. However, the ‘real story’ of RJ is always needed (Daly, 2002), and there is a necessity to take stock of the social, moral, and structural elements that may impede the development of RJ or deflect it from the path desired by its stakeholders.

Amidst the growth of the RJ literature and many unresolved thematic issues, this study is particularly concerned with the practice of RJ in context. It raises the question of how the RJ process interacts with the broad social context, or more narrowly, how RJ practice at the community level is playing out in the current penal climate. The present article draws on data collected from China to highlight the interplay between micro victim-offender encounters and the structural social problems that overshadow the encounter. Further, it places the understanding of responsibility, reintegration, and restoration within the current neoliberal context, primarily that of the Anglo-Saxon countries, arguing that an inappropriate neglect of the background factors has rendered the promise of RJ far from being realized. To achieve the goals of RJ, it calls for a holistic approach that takes full account of the social dynamics that permeate RJ encounters.

2. A research project introduced

There remains no doubt that as a potentially important player in RJ (Braithwaite and Zhang, 2017), China has conditions that are quite different from those in the Western democracies, not only in terms of its political system, but also in the tremendous social changes it is experiencing. So far, the opportunities and pitfalls of this significant social change for RJ development have not received sufficient attention. To fill in this gap, the present article builds on a finished research project as a case study, highlighting the social dynamics that exert tremendous influence in individual encounters.

The finished project (Yuan, 2017; Yuan and Di, 2015) examined a victim-offender mediation program implemented within the Chinese criminal justice context. When it is installed as an annex to the prosecution and the court in China, a reconciliation agreement can result in lenient punishment; the police can employ it to deal with minor crimes and neighborhood conflicts (Articles 277–279, Criminal Procedure Law of China). Notably, the reconciliation program was carried out against the state-initiated Grand Mediation (*Da tiaojie*), which mobilizes the people's mediation, administrative mediation, and judicial mediation (Su, 2010), whose major institutional impetus is to resolve conflicts and maintain peace and order. Over a five-month period of fieldwork in an eastern city of China, 32 mediation cases from across the spectrum of the criminal justice system were collected, including interviews with 26 participants and 13 professionals, observations of 29 mediation sessions, and case file analysis. The type of cases was mostly assault (19 in total), secondly theft (6 in total), involuntary manslaughter (2), sexual assault (1), and civil contractual dispute (4). The success rate in terms of the agreement being reached was very high. As recorded, only one out of ten cases failed at court, one out of seven failed at the prosecution phase, and three out of fifteen failed at the police stage (Yuan, 2017).

The previous analysis utilizing the aforementioned data suggests a different picture of the implementation of restorative justice in the Chinese landscape — an approach based on harmony that places societal stability over individual needs and rights, in which reconciliation is pursued, but very little is achieved (see Yuan, 2017). One shortcoming of this earlier study was that it did not provide a detailed discussion of the contextual issues, albeit the data supplies a fertile ground for doing so. Therefore, the current article undertakes this inquiry to offer some empirical analysis.

3. The societal, moral, and structural barriers: a case study

Since the late 1970s, China has undergone a massive social transformation (Xie, 2011, 2016). An unprecedented economic boom has accelerated class stratification and has spawned social classes in the making (Bian, 2002), worsening socio-economic inequality (Bakken, 2017). Changes in the social structure have caused the collapse of community values and have weakened community bonds. It might not be an exaggerated observation that conscience and moral values have given way to instrumental calculations; the apathy and indifference shown to strangers in perilous situations constantly appears in headlines (He, 2015). This critical context poses barriers and obstacles to the achievement of reconciliation between victims and offenders, each of which will be assessed.

3.1. Barriers in the social structure

While getting rich is viewed as a slogan and a pursuit for societal members (Rojek, 2001), there is certainly a population who has been left behind in the race for wealth and prosperity. The gap between the rich and the poor measured by the Gini coefficient (beyond 0.40 representing the severe income inequality) has reached an alarming point. The ‘three mountains’ of the post-reform era

¹ See the peacebuilding project led by Prof. John Braithwaite in Australian National University.

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