

Contents

Part I Introducing the Topic

1	Introducing the Topic	3
1	Who Is Qiuju? Old Wine in New Wineskins	3
2	Research Background: Restorative Justice	4
3	Understanding of Restorative Justice in China	6
3.1	“Chinese Practice” and “Chinese Context”	7
3.2	Does Restorative Justice Fit Chinese Realities?	7
4	Clarifying Mediation Under Examination	8
5	Research Purpose	10
6	Research Questions	10
7	Research Methodology	11
	References	12
2	Conflict Resolution in China: Cultural Then Political?	15
1	A Glimpse of Traditional Chinese Culture	16
1.1	Harmony Culture	16
1.2	Shame Culture	17
1.3	Interdependent and Communitarian Society	18
2	Traditional Dispute Settlement in China	20
3	Traditional Chinese Mediation and Western Restorative Justice: Convergences and Divergences	23
3.1	Defining Harm	24
3.2	Defining the “Victim”	25
4	Mediation in the Republic of China (1912–1949)	25
5	Mediation in the People’s Republic of China	29
5.1	Early Period of the Socialist Regime (1949–1978)	29
5.2	Conflict Resolution After the 1978 Opening Up and Reform	32
6	“The End” After the End	35
	References	37

3	Criminal Mediation in the Chinese Criminal Justice Context	41
1	Introduction	41
2	Modern Criminal Law and Criminal Procedure Law in China	41
3	The Place of Mediation in Criminal Legislation	42
4	Criminal Mediation in Practice	43
4.1	An Edited Book on the Theory and Practice of <i>Xingshi Hejie</i> in China	44
4.2	Professor Song Yinghui's Empirical Research	45
4.3	Pitfalls, Concerns, and Critiques	48
4.4	Gaps and Topics for Further Research	49
5	Conclusion	50
	References	51

Part II Discovering Realities: A Naturalistic Qualitative Inquiry

4	Discovering Realities: A Naturalistic Qualitative Inquiry	55
1	Introduction	55
2	Existing Fieldwork of Criminology in China	55
3	A Naturalistic Qualitative Approach	57
4	Accessing Institutions, Documents, and People	59
4.1	Entrée	59
4.2	Ongoing Access	60
4.3	Relationship or Connection: <i>Quanxi</i> and <i>Renqing</i>	61
5	The Identity of the Researcher	62
5.1	The Researcher: Chinese or a Foreigner?	62
5.2	An Insider or an Outsider?	63
5.3	Researcher's Bias: Knowing and Coping	64
6	Doing Research: Dialogue and Power	65
7	Sampling	66
8	Data Collection	67
8.1	Interviewing	67
8.2	Observing	69
8.3	Between Interviewing and Observing	71
8.4	Diaries and Field Notes	71
8.5	Case File Analysis	72
9	Research Ethics	73
9.1	The Issue of Informed Consent	73
9.2	The Issue of Confidentiality	75
9.3	"No Harm" and Responsibility: The Relationship Between the Researcher and Respondents	76
9.4	A Note on the Representativeness and Trustworthiness of the Sample	77
10	Data Analysis	79
10.1	Working with NVivo	79
10.2	Coding	80
10.3	Constant Comparison and Writing Memos	81
	References	81

Part III Empirical Findings

5 Case Summary and Description-Based Case Studies	87
1 Case Summary	87
1.1 Type of Cases	87
1.2 Adult and Juvenile Offending.....	88
1.3 Success Rate	89
1.4 Participants and Characteristics	89
1.5 The Case	90
1.6 Note on the Extent of Information for Each Case.....	90
2 Starting from a Local Project	91
2.1 A Description of the Daily Work of the State Apparatuses and the Job of Mediation.....	93
2.2 A Presentation of the Cases	94
References.....	105
6 Thematic Analysis.....	107
1 Introduction	107
2 Initiating the Mediation	107
3 Observation of the Encounter.....	109
3.1 Education	109
3.2 Communication.....	111
3.3 Victims' Voice.....	112
3.4 Compromise Expected from the Victim	116
3.5 The Importance of <i>Shouren</i>	117
3.6 Persuasion Leading to Harmony.....	118
4 Outcome	119
4.1 Reintegration of the Offender.....	119
4.2 Benefits for the Justice System.....	122
4.3 Restoring Victims	122
References.....	126
7 What Is the Harmony Approach?	127
1 Introduction	127
1.1 Harm Reduction	127
1.2 Repairing Social Relationships.....	128
2 A Harmony Approach.....	129
2.1 Not About Rights	130
2.2 Not Just About Needs	131
2.3 Compromise and Harmony.....	132
3 An Authoritarian Approach	132
4 Harmony: Reconciliation in a Broad Sense	134
5 A "Harsh" Harmony.....	137
6 Conclusion	137
References.....	138

Part IV Doing “Restorative” Justice: China and the West

8 Restorative Justice	141
1 Introduction: Restorative Justice – A Movement Within the Criminal Justice System	141
2 Two Origins of the Western Restorative Justice Movement.....	142
3 Defining Restorative Justice: Various Attempts	144
3.1 Scholarly Attempts	144
3.2 Definitions in NGO Working Documents.....	145
3.3 Definitions in International and Regional Instruments	147
3.4 Discussion.....	148
4 Restorative Justice Values.....	153
4.1 Respect	154
4.2 Inclusion	155
4.3 Healing	155
5 Restorative Justice Modalities	156
5.1 Victim-Offender Mediation (VOM) Programs	157
5.2 Family Group Conferencing (FGC)	158
5.3 Peacemaking Circles (PMC).	159
References	160
9 Restorative Justice Practices: The Restoration Model	163
1 Introduction	163
2 Restorative Justice Practices.....	163
2.1 Case Examples	163
2.2 Evidence-Based Practices.....	164
2.3 A Process Approach to Restoration	170
3 Restoration Model	171
3.1 Voluntariness: What Is Required of Victims and Offenders	171
3.2 Neutrality: The Role of the Facilitator/Mediator	172
3.3 Empowerment: Promise to Victims	172
3.4 Storytelling: What Is Supposed to Happen.....	173
3.5 An Intermediate Reflection.....	174
4 A Maximalist or Minimalist Understanding of Restoration.....	175
References	177
10 A Dialogue Between China and the West on Doing Restorative Justice	181
1 Introduction	181
2 Does China Need the Restoration Model?.....	181
3 Implementing the Restoration Model in China	183
3.1 Impartiality	183
3.2 Voluntariness.....	184
3.3 Storytelling	185
3.4 Empowerment or Power Balance	185

Contents	xiii
4 Going Beyond the Restoration Model	187
5 A “Restorative” Justice System	189
References	189
11 Conclusion	191
1 Introduction	191
2 A Brief Response to the Research Questions	191
3 The Implications of the “Lived” Experiences for Western Counterparts	192
3.1 Social Harmony Comes First	192
3.2 Shame and Reintegration	193
4 Enriching the Understanding of RJ	194
5 Some Challenges	195
6 The Way Out for Chinese Practices: Possible Solutions	196
6.1 Toward Better Communication	196
6.2 Satisfaction of Participants	197
6.3 Judicial Reform in China	198
7 Methodology Revisited	199
7.1 A Chinese and a Non-Chinese Perspective	199
7.2 “Twist” of the Methodology	199
7.3 A Little Confession	200
References	201
Appendix: Guideline for Reconciliation Center for Juvenile and Young Adult Crimes (Excerpts, Translated by Xiaoyu Yuan)	203
Index	207