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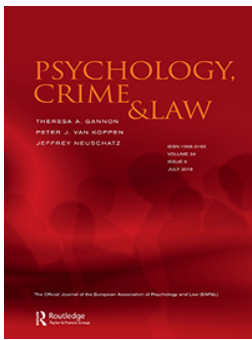
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Restorative justice and probation decisions – an analysis of intentional assault cases in China

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ABSTRACT

The restorative justice model focuses on amending offender-victim relations. Compared to Western countries, China's criminal justice policy has relied on both formal and informal mechanisms in dealing with criminal offending. Recently a victim-offender reconciliation (VOR) program has been codified in China to provide incentives for offenders and victims to resolve their disputes through court-guided mediation sessions. Using restorative justice as an interpretive framework and drawing upon 1000 minor intentional assault cases, this study examines the impact of core VOR concepts on probation decisions. Our analysis suggests that offender compensation and attitude were significantly related to the likelihood of receiving probation, and the defense attorney played an unexpected yet impactful role in shaping judges' probation decisions. Theoretical and policy implications are discussed.

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Introduction

The restorative justice movement in Western developed countries focuses on reparation and restoration. It differs significantly from the traditional criminal justice approach that emphasizes retribution and punishment. Programs such as family group conference (FGC) in Australia and New Zealand, and Victim-Offender Mediation programs in the United States (US) accentuate victim-offender reconciliation, and community healing and restoration (Burford & Hudson, 2000). Historically, 'punitiveness' and 'retribution' were used in describing China's penal policy (e.g. slicing with thousands of cuts to death in the Qing Dynasty) (Brook, Bourgon, & Blue, 2008; Lu & Miethe, 2010). Nevertheless, informal social control mechanisms were popular in resolving disputes and restoring interpersonal relationships and community harmony in minor cases (Zhang et al., 1996).

China is at a crossroad with dramatic economic and legal reforms since the 1980s. With changing economic and social structures, the punitive social control mechanisms have become inapt in dealing with emerging individual and community problems. The codification of victim-offender reconciliation (VOR) and community corrections programs in the

Chinese criminal proceedings in 2012 attempts to provide a buffer for courts and correctional systems to channel minor offenders while addressing the needs of victims and larger communities. Both programs aim to promote offender reintegration and community cohesion, and address the issue of cost-effectiveness. It is believed that the success of the VOR program would lead to better placement and outcome of community corrections.

Given that China's VOR programs were only recently formalized, it is important to dissect its core concepts and analyze how these concepts work in the current criminal justice system. In light of similar legal stipulations for cases involving the VOR and probation, this study examines determinants for probation decisions in China. Specifically, the current study drew on 1000 probation-eligible, minor intentional assault cases to examine if offender compensation and repentance are significant factors in probation decisions. Moreover, we examine the unique role and impact of criminal defense attorney on probation decisions in China. The findings could potentially shed light on the dynamics of successful VOR programs.

Restorative justice: theory, practice, and research

Restorative justice has received growing popularity since the 1970s (Braithwaite, 1989; Johnstone, 2013; Latimer, Dowden, & Muise, 2005, pp. 127–144). It is defined as 'an approach to post-crime reparation that focuses on healing the harm done, promoting accountability and personal responsibility, and encouraging the active participation of the victim, offender, and other concentrated parties' (Poulson, 2003, pp. 167–202). Restorative justice departs significantly from the traditional retributive justice model, in which assigning blames and punishing wrongdoers is the focus, rather than attending to victim's needs (Christie, 1977, pp. 1–15; Marshall, 1999; Sebba, 1996; Shapland, 2000, pp. 147–64; Wenzel, Okimoto, Feather, & Platow, 2008, pp. 375–389).

The restorative justice movement shifts the focus to victim empowerment, and attempts to provide opportunities for victims and offenders to meet in a non-adversarial environment, to discuss the crime and their concerns, and to work out a plan to compensate victims and restore the community (Umbreit & Greenwood, 1999, pp. 565–85; Zehr, 1990). In North America and Europe, for instance, VOR programs have been instrumental in facilitating victim-offender dialogs with the aid of a mediator, allowing parties to express concerns, identify problems, and reach a satisfactory resolution (McLeod, 1986; Lemley, 2001, pp. 43–65; Umbreit, 1998, pp. 1–29). FGC in New Zealand and Australia would reach out to offenders' extended family, victims and their support groups, such as lawyers, police officers, community leaders, and governmental or community program coordinators to design a plan of individual and community restoration (Umbreit & Zehr, 1996, pp. 24–29). Similarly, Sentencing Circle programs practiced by Native Americans and Canadian aboriginals focus on offender reintegration and community healing through harm repair, community service, and education and training (Johnstone, 2013; Lemley, 2001, pp. 43–65; Stuart, 1996, pp. 193–206).

Previous studies revealed substantial program benefits such as participants' satisfaction, perceptions of program fairness and outcomes, compliance of agreements, and reduction of recidivism (Davis, Martha, & Deborah, 1980; Nugent, Williams, & Umbreit, 2003, pp. 408–16; Umbreit & Coates, 1993, pp. 565–85; Umbreit, Coates, Kalanj, Lipkin, &

Petros, 1995). For example, a meta-analysis of 22 empirical studies found that restorative justice programs were more effective in terms of reduced recidivism, victim and offender satisfaction, and restitution compliance (Latimer et al., 2005, pp. 127–144). Similar outcomes were identified in a systematic review of empirical research on the psychological impact of restorative justice programs (Poulson, 2003, pp. 167–202). Nevertheless, the restorative justice philosophy and its practice also draw criticisms, ranging from its inability to restore victim-offender relationship, reduce recidivism rates, to its possible discriminatory nature, the tendency of maintaining the status quo by yielding to the existing power structure, and the danger of widening the net and invading privacy (Daly, 2006, pp. 134–45; Levrant, Cullen, Fulton, & Wozniak, 1999, pp. 3–27; Morris, 2002). More systematic research is thus needed to identify the causal relationship between restorative justice measures and their effects.

Probation and its socio-legal context in China

Compared to Western developed countries, China has traditionally been characterized as a communitarian society with individuals highly attached to complex familial and social relationships (Wilson, 2002; Zhang & Messner, 1995). The economic reforms since the 1980s, however, have brought significant changes to basic family and social structures in China (Walder, 1996). Correspondingly, social control mechanisms and penal policies have been transformed. For example, the rapid economic growth in the initial stage of the economic reforms caused a great degree of dislocation of individuals, families and neighborhoods, which resulted in a surge of criminal activities (Bakken, 2011; Deng & Cordilia, 1999; Whyte & Parish, 1984). To curb violence and maintain social and economic stability, the Chinese government adopted strike-hard campaigns and punitive penal policies in the 1980s and 90s (Liang, 2008). In contrast, in the twenty-first century, China witnessed a more steady economic growth and an increasing awareness of the importance of achieving social harmony through conflict resolution. As a result, the campaign-style law enforcement gave way to a more flexible and pragmatic penal policy that combines leniency with harsh punishment (Chen, 2016; Gao, 1994; Geis & Holt, 2009; Tursun, 2009; Wong & Mok, 2010). The steady increase in the use of probation sentence is indicative of the shift of penal policies in China since the millennium (see Table 1). As seen in Table 1, from 2002 to 2011, the percentage of convicted criminal cases that had received probation increased from 17% to 30%; in 2011, approximately 40% of criminal cases eligible for probation received probation.

To qualify for probation, the offender and offense must meet the following requirements: (1) offenders are sentenced to detention or to a fixed-term imprisonment not more than three years (Article 72 of Criminal Law (CL)); (2) offenses involve light criminal circumstances, and offenders demonstrate repentance, have a low risk of recidivism, and have little negative effect on communities upon being released (Article 72); or (3) offenders are under 18 years of age, pregnant women, or people older than seventy-five years of age (Article 72). Subject to official surveillance, probationers are required by law to (1) abide by the laws and administrative rules and regulations; (2) report one's activities to the supervising authority; (3) abide by conditions imposed for one's social gatherings; (4) receive an approval from the supervising authority when leaving or changing

Table 1. Percentage of probation cases between 2002 and 2011.

Year	Total number of convicted cases ^a	% of probation cases	Number of cases with 5 years (or less) of incarceration, and jail sentence (under 6 months)	% of probation cases with 5 years of incarceration or less ^b
2011	1,032,466	29.95	846,060	36.55 ^c
2010	988,463	26.83	790,601	33.54
2009	979,443	25.58	776,381	32.28
2008	989,992	25.16	785,460	31.71
2007	916,610	24.86	724,675	31.45
2006	873,846	23.63	681,902	30.28
2005	829,238	22.23	644,181	28.62
2004	753,314	20.50	576,913	26.76
2003	730,355	18.47	546,010	24.71
2002	690,506	16.98	508,067	23.08

Sources: Law Yearbooks of China (2003–2012).

^aThe conviction rate is on average at 98.08%.

^bIn the Chinese Criminal Law, probation for fixed-term imprisonment can only be given to offenders who receive three years or less imprisonment sentences. However, because the Law Yearbook of China does not provide information on sentences of less than three years, we use sentences under five years as a *proxy* to estimate the percentage of probation cases.

^cIn 2011, the Law Yearbook of China provided the total number of cases with fixed prison sentences of less than three years; the percentage of probation cases calculated based on this number is 41.18%, instead of 36.55% as reported in the table.

one's current residence (Article 75); and (5) participate in community corrections programs (Article 76).

Two issues particularly pertinent to the purpose of this paper are discussed below. The first issue deals with offender attitude and compensation. Offenders' financial compensation to victims has been traditionally viewed as a sign of sincere apology and repentance, an act of good will to amend the broken relationship, and a form of restitution. Though not explicitly codified in law for probation purposes, offender attitude and compensation had frequently impacted judicial decisions that benefited the defendants (e.g. Lu & Drass, 2002; Lu & Miethe, 2003). The 2012 Criminal Procedure Law (CPL, Articles 277–279) formally institutionalized these practices and made offender apology, repentance, and financial compensation necessary conditions for reaching a VOR agreement. Given that the eligibility for VOR programs is similar to that of probation (Article 277), it is reasonable to assume that findings of the impact of offender repentance and compensation on probation decisions, both in terms of its magnitude and condition, would provide valuable information for the VOR process. In particular, under the current Chinese criminal justice framework, any criminal justice officers, including the police, the procuratorate, and judge, appear to have authority to supervise and approve the legality of the VOR agreement (Articles 278–279). It thus seems critical to understand these facilitators' (e.g. judges') state-of-mind as they are the ones who translate the laws in practice.

The second issue involves defense attorneys. Given VOR's legally binding nature, its potential net-widening, and unpredictable process, it seems essential for parties, particularly the offender, to consult a legal professional before admitting guilt and settling the dispute. Nevertheless, the extent and effectiveness of legal representation in criminal cases are not clear. Based on limited studies, the rate of legal representation is generally low, at approximately 20%, in minor criminal offenses (Lu & Miethe, 2002, pp. 267–280). If so, the rate of legal representation would be at the similar level in probation-eligible cases given that most of these cases involve minor offenses. Regarding the effectiveness of legal representation in China, studies generally failed to demonstrate significant and beneficial

outcomes that criminal defense lawyers help bring for their clients, and tended to attribute the less vital role of criminal defense to the long standing legal tradition of punitiveness and the inquisitorial system in China (Fu, 1998; Lu & Miethe, 2002). With the transition from an inquisitorial to an adversarial criminal justice system in China since the millennium, the power structure has been steadily tilted more in favor of the defense. A further understanding of the defense role and effectiveness in probation-eligible cases would help shed light on their role in the VOR program in China.

In sum, the policy preference for probation over incarceration in minor criminal offenses in recent years has made probation a viable vehicle for the VOR to operate with. The increased use of probation by the Chinese judiciary represented the most recent effort to pursue a more harmonious society politically, and a Chinese version of the sentencing reform, which dovetails with the Western restorative justice movement.

The current study

This current research attempts to use restorative justice theory as an interpretive framework to examine the impact of core VOR concepts on probation decisions involving minor violent crimes in China. Specifically, this study addresses two related research questions: (1) Do offender attitude and compensation significantly affect the likelihood of receiving a probation decision? And (2) Is the effect of attitude and compensation on probation decision conditioned upon whether offenders had defense attorneys?

Our overall focus on offender attitude and compensation is based on two unique features of China's practice of probation. First, both behaviors are *post-crime* behaviors by the defendant. Regardless the nature and the severity of the crime, good and cooperative post-crime behaviors (e.g. confession, self-surrender, financial compensation) would supposedly earn credit for the defendant, which help the defendant secure a more lenient punishment. Such a practice, once established, would potentially alter both behavior/practice of the judiciary and the defendant. Second, both behaviors have gained firm legal bases consistent with the Chinese legal tradition. With regard to offender attitude, Chinese laws and practices have always placed a strong emphasis on one's cooperation with the authority (in exchange for leniency). The phrase 'leniency for confession and harshness for resistance' (*tanbai congkuang, kangju congyan*), adopted by the Communist government, is well known. The revisions of the CL and CPL in the last four decades never formally granted the defendant the right to remain silent, thus allowing such a practice to continue. With regard to compensation, the formalization and institutionalization of such a practice (via the VOR) is also consistent with the traditional belief in retribution and restitution based on the Chinese culture. The belief in 'a life for (killing) a life and restitution for debts' (*sha'ren changming, qianzai huanqian*) is deeply entrenched in Chinese history, and even predates the Communist era (Lu & Miethe, 2010).

Data & variables

The primary data source comes from the Beijing University Lawinfo Website (www.lawinfochina.com). This website contains the most comprehensive, up-to-date, published judicial legal documents in China. Using keywords 'intentional assault' (*gu yi shang hai*), we were able to generate intentional assault cases published in the database. For the purpose

of comparing probation and non-probation sentencing decisions, we excluded cases that were not eligible for probation. For example, based on the Chinese CL, cases that received an imprisonment sentence longer than three years do not qualify for a probation sentence. Among those cases that qualify for a probation sentence, we randomly selected 500 cases in which offenders received a probation sentence, and another 500 cases in which offenders received incarceration sentence of three years or less.

The Chinese judicial judgment documents contain key information about the offender, the offense, the victim, criminal process, and dispositional information. Major variables including offender's demographic characteristics, offense characteristics (e.g. offense severity, number of co-offender, crime planning, motive, location, number of victims, weapon use, harm, and offender-victim relation), victim characteristics (e.g. gender, victim blameworthiness), criminal process (e.g. legal representation), and disposition decisions (e.g. probation or non-probation sentences) were developed based on coding and analyses of case profiles.

All of these 1000 cases were coded with a unique number assigned to each defendant and cases with multiple offenders were coded separately. After removing cases with missing data, our database yielded 1005 valid minor intentional assault case entries. Major variables and their frequency distributions and means are presented in [Table 2](#) and are summarized below.

The dependent variable is the dichotomized probation outcome. Due to our matched samples, among 1005 cases, 53.2% ($N=535$) were incarcerated and 46.8% ($N=470$) received probation sentences.

Two primary independent variables include offender financial compensation and offender attitude. Offender compensation is dichotomized, and offenders offered compensation in a little over half of our cases (51.8%). We captured offenders' post-crime attitude and behavior in three different levels as an ordinal level variable, ranging from no cooperation (i.e. one refused to confess one's crime), to confession, and to self-surrender. In our sample, a very small group of defendants (6.1%) refused to cooperate with the police investigation, about two-thirds (66.5%) confessed their crimes and about 27.5% self-surrendered.

In addition, we included a number of control variables. First, four dichotomized variables, including offender gender, offender prior record, offender-victim relation, and victim precipitation, were created to capture offender and victim characteristics. Our data showed that 95.7% of offenders in our sample were male; only 10.3% had a prior criminal record; in 59% of cases, offenders and victims were acquaintances; victims were found by judges to precipitate the crimes in 13.8% of cases.

Second, a number of variables were created to capture crime features. The numbers of offenders and victims were dichotomized to distinguish crimes involving a single offender/victim from crimes involving multiple offenders/victims. Crime location (crimes committed in public vs. non-public locations), time (crimes committed during daytime vs. at night), planning (no planning vs. planning), and (defendant) use of weapon were all dichotomized. In our data, about two-thirds of defendants (66.1%) committed their crimes alone; a single victim was involved in over 90% of our cases; close to 60% of crimes were committed in public locations; 54.9% of crimes were committed during daytime; 83.4% of crimes were not planned; weapons were utilized by defendants in two-thirds of the cases.

Table 2. Major variables and frequency distributions.

Variables	All cases (%) N = 1005	Incarceration cases (%) N = 535	Probation cases (%) N = 470	Chi-Square (Cramer's V)
Probation	N = 1005	N/A	N/A	N/A
0 No	53.2			
1 Yes	46.8			
Offender compensation	N = 1005	N = 535	N = 470	280.414*** (.528)
0 No	48.2	72.9	20.0	
1 Yes	51.8	27.1	80.0	
Offender attitude	N = 1005	N = 535	N = 470	94.349 (.306)
0 refused to confess	6.1	11.4	0	
1 confessed	66.5	70.7	61.7	
2 turned self in	27.5	17.9	38.3	
Offender gender	N = 956	N = 509	N = 447	.070 (.009)
0 male	95.7	95.9	95.5	
1 female	4.3	4.1	4.5	
Offender prior record	N = 1005	N = 535	N = 470	64.312*** (.253)
0 No	89.7	82.4	97.9	
1 Yes	10.3	17.6	2.1	
Offender-victim relation	N = 998	N = 531	N = 467	3.554 (.060)
0 stranger	41	38.2	44.1	
1 acquaintance	59	61.8	55.9	
Victim precipitation	N = 1005	N = 535	N = 470	3.357 (.058)
0 No	86.2	84.3	88.3	
1 Yes	13.8	15.7	11.7	
Number of offenders	N = 1005	N = 535	N = 470	8.220** (.090)
0 single	66.1	62.1	70.6	
1 multiple	33.9	37.9	29.4	
Number of victims	N = 1005	N = 535	N = 470	16.517*** (.128)
0 single	90.4	86.9	94.5	
1 multiple	9.6	13.1	5.5	
Location of crime	N = 1002	N = 535	N = 467	.660 (.026)
0 public	59.7	58.5	61.0	
1 non-public	40.3	41.5	39.0	
Time of crime	N = 1001	N = 531	N = 470	10.750*** (.104)
0 d	54.9	50.1	60.4	
1 night	45.1	49.9	39.6	
Level of planning	N = 1005	N = 535	N = 470	51.126*** (.226)
0 No	83.4	75.5	92.3	
1 Yes	16.6	24.5	7.7	
Use of weapons	N = 1005	N = 535	N = 470	10.306*** (.101)
0 No	34	29.5	39.1	
1 Yes	66	70.5	60.9	
Number of aggravators	N = 1005	N = 535	N = 470	7.992*** (.241)
Mean = .15		Mean = .23	Mean = .05	
Number of mitigators	N = 1005	N = 535	N = 470	17.959*** (.530)
Mean = 1.81		Mean = 1.41	Mean = 2.26	
Crime severity	N = 1005	N = 535	N = 470	30.255*** (.174)
0 minor	82.2	88.4	75.1	
1 major	17.8	11.6	24.9	
Defense attorney	N = 1.005	N = 535	N = 470	.935 (.031)
0 No	72.9	74.2	71.5	
1 Yes	27.1	25.8	28.5	

* $p < .05$; ** $p < .01$; *** $p < .001$.

Third, two variables were created to capture mitigating and aggravating factors specifically found by judges in judicial judgments. Though some of aggravating factors (e.g. one's prior record, multiple victims, use of weapons) and mitigating factors (e.g. victim's blameworthiness, no crime planning, self-surrender, confession, no prior record) overlapped with a few control variables above, judges found other additional aggravating and mitigating factors. The former included one's cruel crime methods, lack of remorse, and one's leading

role in crimes, and the latter included one's young/old age, mental condition, secondary role in crime, meritorious services, and one's crime causing little damage. Our tally of the total numbers of aggravating and mitigating factors showed that on average, judges found 1.5 aggravating factors and 1.8 mitigating factors for each defendant. We further dichotomized all crimes into either a minor or a major crime based on the court opinion (e.g. relatively severe; relatively trivial), and 82.2% of crimes were minor in nature in our data.

Fourth, legal representation was used as a control variable in the overall regression analysis and as a conditional factor when assessing the effect of offender compensation and attitude on probation decisions. Previous studies yielded mixed findings about defense attorneys' role in criminal sentencing (Lu & Miethe, 2002, pp. 267–80; 2003, pp. 549–578). Given that legal representation is only mandated for offenders who face the death sentence and life imprisonment, the effect of legal representation on case outcome is uncertain and it has not become a norm for criminal defendants who were involved in minor cases to hire an attorney. Our data showed that only 27.1% of defendants hired a defense lawyer in these minor intentional assault cases.

Bivariate analysis

Pearson's r correlation coefficient analyses were conducted to assess the relationship among the dependent, independent and control variables. The results are presented in Table 3.

Probation decision was found to be significantly associated with a number of variables including compensation, confession, offense severity, number of aggravators, number of mitigators, level of planning, co-offender, offender prior record, number of victims, time of crime and weapon use. More specifically, offenders were more likely to receive a probation if the offender provided compensation to the victim, showed good attitude, involved in relatively more serious offense, and had no prior record and fewer aggravating factors and more mitigating factors, and crimes involved little planning, a single offender/victim, occurred during daytime and used no weapons.

Offender compensation was statistically associated with confession, offense severity, aggravating and mitigating factors, crime planning, offender's prior record, number of victims, victim blameworthiness and presence of weapon. More specifically, offenders who provided compensations were more likely to have confessed to the crime, involved in more serious offenses, had fewer aggravating and more mitigating factors, involved little planning, had no prior record, had no weapon involved, and the victim had little criminal responsibility.

Regarding offender attitude, it was found to be significantly associated with offense severity, number of mitigating factors, and offender gender. More specifically, those who confessed were more likely to have committed a more serious crime, had more mitigating factors, and were male offenders.

Each of the control variables had some significant correlations with other controls. For details on the significant correlation and their level of significance, see Table 3.

The Pearson's correlation coefficient analyses also served as a preliminary test for potential issues regarding multi-collinearity. Our analyses revealed that no correlation coefficient between any two variables reached as high as .80, signifying that each variable

Table 3. Correlation coefficients among major variables.

Variables	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1 Probation	1															
2 Compensation	.528**	1														
3 Confession	.294**	.198**	1													
4 Offense severity	.174**	.194**	.086**	1												
5 N of aggravator	-.235**	-.105**	.027	-.235**	1											
6 N of mitigator	.480**	.549**	.334**	.480**	-.105**	1										
7 Planning	-.226**	-.131**	-.019	-.226**	.141**	-.123**	1									
8 Cooffender	-.090**	-.045	-.004	.133**	.120***	-.096**	.420**	1								
9 Prior	-.253**	-.117**	-.038	-.056	.532**	-.139**	.059	.074*	1							
10 Gender	.009	.039	-.101**	.006	-.026	-.002	-.066*	.097**	-.057	1						
11 N of victim	-.128**	-.114**	-.035	.052	.069*	-.030	.128**	.196**	-.010	-.019	1					
12 OV relation	.006	.023	.054	-.024	-.059	-.015	-.059	-.190**	-.094**	.049	-.121**	1				
13 Victim blame	-.058	-.075*	-.041	.152**	-.031	.230**	-.086**	.005	-.023	.062	.076*	-.030	1			
14 Location	-.026	-.003	.038	.036	.006	-.011	.009	.037	.007	-.067*	.085**	.164**	.064*	1		
15 Time	-.104**	-.062	.017	.104**	.060	-.026	.069*	.171**	.014	-.107**	.135**	-.081*	.078*	.073*	1	
16 Weapon	-.101**	-.066*	.036	-.101**	.111**	-.041	.134**	.022	-.004	-.058	.162**	-.025	.038	.103**	.157**	1
17 Defense attorney	.031	.049	-.042	.031	-.049	.211**	-.116**	-.096**	-.045	.079*	-.030	-.015	.230**	-.017	-.080*	.017

* < .001; ** < .01; *** < .05.

measures a distinctively unique concept that would cause little problem when these variables were run together in multiple regression analyses.

Logistic regressions

In Table 4, we turned to logistic regressions to test the independent, net effect of offender compensation and attitude on the final probation decision. In Model 1, we tested the effect of two independent variables alone. As expected, both variables exerted a significant positive effect on the probation decision ($p < .001$). Offender compensation and good, cooperative attitude both increased one's odds of receiving a probation decision.

In Model 2, we added control variables. Once again, the results confirmed the significant net, independent effect of both offender compensation and attitude ($p < .001$), after controlling for other variables. A number of control variables exerted a significant effect on the probation decision. First, offender's prior record and victim precipitation

Table 4. Logistic regressions on probation decisions.

Independent/Control Variables	Model 1		Model 2	
	Unstandardized (standardized) Coefficients	Exp(B)	Unstandardized (standardized) Coefficients	Exp(B)
Offender compensation	2.326*** (.16)	10.232	1.449*** (.20)	4.258
Offender attitude	1.144*** (.16)	3.141	1.053*** (.20)	2.867
Offender gender			-.049 (.45)	.952
Offender prior record			-1.962*** (.46)	.141
Offender-victim relation			-.064 (.05)	.938
Victim precipitation			-1.204*** (.29)	.300
Number of offenders			.099 (.22)	1.104
Number of victims			-.616 (.33)	.540
Location of crime			-.106 (.19)	.899
Time of crime			-.290 (.19)	.748
Level of planning			-1.146*** (.29)	.318
Use of weapon			-.236 (.20)	.790
Number of aggravators			-.817* (.34)	.442
Number of mitigators			1.217*** (.17)	3.377
Crime severity			.326 (.24)	1.385
Defense attorney			-.437* (.21)	.646
Constant	-2.811*** (.24)	.060	-3.523*** (.42)	.030
<i>N</i>	1005		946	
Nagelkerke <i>R</i> square	.395		.564	
Chi-square	352.590***		518.867***	
-2 log likelihood	1036.429		788.759	

* $p < .05$; ** $p < .01$; *** $p < .001$.

both had a significant negative impact ($p < .001$): holding others constant, a defendant would be more likely to receive probation if the defendant did not carry a prior record and when the victim(s) precipitated the crime(s). Second, one's crime planning had a net negative impact as well ($p < .001$): holding others constant, a defendant would be more likely to receive probation if the defendant did not plan the crime(s). Third, both the total numbers of aggravating and mitigating factors exerted a significant net effect on the probation decision ($p < .05$ and $p < .001$ respectively): holding others constant, a defendant would be more likely to be granted probation if judges found fewer aggravating and more mitigating factors. Lastly, offenders who hired a defense attorney would be *less* likely to receive probation than those who defended themselves in the courtroom.

Offenders with legal representation receiving a harsher sentencing disposition in China is an interesting phenomenon. Though this finding is by no means definitive (see Lu and Miethe [2002, pp. 267–80; 2003, pp. 549–78] for mixed results on causal relationships between legal representation and sentencing decisions), it seems important to examine any conditional effect that legal representation may have on the relationship between attitude and compensation, and probation decisions. If attitude and compensation became the focal concerns in minor criminal cases under the VOR program with the role of prosecutors and judges diminished, a defense attorney, as a repeat player in the criminal justice system (Galanter, 1968, p. 65–90), could potentially play a more important role in mediating the process. Moreover, as urbanization escalates, traditional social control mechanisms inevitably weaken in China. Under these conditions, law is expected to weigh more than community norms in criminal justice decision makings, including that of the VOR program. Offenders, therefore, would probably benefit from a defense attorney who can provide useful information on the going rate, the legal process, and potential consequences for reaching a reconciliation agreement with victims.

To test potential conditional effect of legal representation, we ran two additional models in Table 5: Model 3 examines the effect of all variables on the dependent variable in cases with defense attorneys ($N = 272$) and model 4 examines cases without defense attorneys ($N = 733$). Our goal is to discern if the net impact of offender compensation and attitude on probation decisions varies by the presence of a defense attorney.

The results showed that while the impact of offender compensation and attitude on probation decisions remained significant (in the same direction), regardless whether the offender had a defense attorney, the odds of these independent variables in predicting the probation decision diverged markedly. For example, for offenders who had a defense attorney (model 3), the odds of receiving probation was approximately 3.374 times greater for offenders who compensated the victims than offenders who did not compensate the victims. This number increased to 4.413 when offenders were not represented by defense attorneys (model 4). In terms of offender attitudes, when a defense attorney was present (model 3), the odds of receiving a probation decision was 4.606 times greater for offenders with better attitudes than their counterparts. However, when offenders did not have a defense attorney (model 4), the odds dropped to 2.34.

The analyses of conditional effects of compensation and attitude on probation decisions helped clarify the overall negative effect of defense attorneys on sentencing decisions. While having a defense attorney would decrease offenders' chances of receiving probation, holding everything constant, offenders' good attitude would contribute more

Table 5. Logistic regressions on probation decisions by defense attorney.

Independent/Control Variables	With Defense Attorney (Model 3)		Without Defense Attorney (Model 4)	
	Unstandardized (standardized) Coefficients	Exp (B)	Unstandardized (standardized) Coefficients	Exp (B)
Offender compensation	1.216*** (.38)	3.374	1.485*** (.25)	4.413
Offender attitude	1.527*** (.37)	4.606	.850*** (.24)	2.340
Offender gender	.716 (.69)	2.047	-.743 (.69)	.476
Offender prior record	-1.405 (.95)	.245	-2.000*** (.53)	.135
Offender-victim relation	-.009 (.10)	1.009	-.096 (.06)	.909
Victim precipitation	-1.094** (.42)	.335	-1.334** (.43)	.263
Number of offenders	-.803 (.46)	.448	.376 (.26)	1.456
Number of victims	.795 (.64)	2.215	-1.152** (.42)	.316
Location of crime	-.097 (.36)	.908	-.114 (.23)	.892
Time of crime	-.471 (.36)	.624	-.275 (.23)	.760
Level of planning	-.275 (.65)	.760	-1.327*** (.33)	.265
Use of weapon	-.573 (.38)	.564	-.078 (.24)	.925
Number of aggravators	-.685 (.62)	.504	-1.007* (.42)	.365
Number of mitigators	.985*** (.31)	2.679	1.349*** (.22)	3.853
Crime severity	.943* (.40)	2.569	.089 (.31)	1.090
Constant	-3.912*** (.88)	.020	-3.540*** (.52)	.029
<i>N</i>	272		733	
Nagelkerke <i>R</i> square	.520		.600	
Chi-square	127.906***		409.357***	
-2 log likelihood	231.141		537.954	

* $p < .05$; ** $p < .01$; *** $p < .001$.

(in fact, twice as much) to a probation decision when they were represented by a defense attorney than when they were not represented by a defense attorney.

Discussion and conclusion

This study drew on 1000 minor assault cases to study judicial probation decisions, in which half of the defendants received probation and the other half imprisonment of three years or less. Our univariate analysis indicated that 52% of defendants paid financial compensation to victims, and 94% of defendants showed good attitude after their crimes. The bi-variate and multi-variate analyses further suggested that compensation and good attitude indeed significantly and positively contributed to the probation sentencing decision.

Before discussing theoretical and practical implications of our research, we would like to acknowledge several data and methodological limitations. First, our sampled cases were

not random, and only involved one type of crime – minor intentional assault. Thus any findings may not be generalized to other types of crimes in China.

Second, because the VOR program was formalized only in 2012, we were unable to obtain large samples of VOR cases. Instead, we used probation and probation-eligible cases to estimate the decision-making of VOR cases. Although probation and VOR involve two different legal processes, due to their similar legal qualifications, an understanding of the dynamics of probation decision could potentially unlock the workings of VOR programs.

Our research revealed several interesting findings and offers theoretical and practical considerations. First, despite the finding that offenders' good attitude and compensation significantly contributed to probation decisions, from a comparative perspective, the Chinese defendant does not have the ability to control the outcome of the case. A restorative justice model is designed to restore the broken ties between the offender, the victim, and the larger community. Apology, forgiveness, and compensation are necessary ingredients for the VOR programs. In the US plea bargain practice, a defendant's plea to a specific charge or a sentence disposition, good attitude, and compensation are used as bargaining chips to achieve this end. The defendant and the defense attorney thus have some control over the outcome. In contrast, a probation decision in China emphasizes the offenders' post crime attitude and compensation but deprives their ability to control the outcome. A substantial proportion of defendants (20%) who provided compensation did not receive probation in our sample. For instance, defendant Huang (#119) received an imprisonment sentence of one and half years for a minor assault and this sentence was affirmed by an appellate court, despite that his family compensated the victim 10,000 Yuan. In defendant Li's case (#20), the appellate court rescinded the original verdict of the trial court and reduced Li's three-year imprisonment sentence to four-year probation. The decision was nevertheless in the hand of the court, not the parties, albeit that the parties reached an agreement with the victim on compensation.

Second, the Chinese policy of 'leniency for good attitude and harsh punishment for those who refuse to confess' may serve as a double-edged sword. Traditionally, this penal policy viewed confession as both having probative value in criminal investigation as well as correctional value for repentance and rehabilitation. However, under the traditional system, an offender's confession was not explicitly tied to a lenient sentence, making it an 'unfair' process with little transparency. The new VOR programs may potentially alter this dynamic. However, it needs to be further explored as to what extent the offender will have control over the outcome of the case in the VOR programs.

Third, an attorney's role in probation decisions is very complex. While our data was not a direct measure of the VOR program, it suggests some interesting dynamics of the defense attorney and criminal justice decisions in minor assault cases. On the one hand, the results showed that having legal representation decreased the defendant's odds of receiving probation. One implication is the relative weak role by the defense attorney despite of decades of professionalization and legal reforms. The more punitive sentencing decision in cases represented by defense attorneys could suggest a repudiating attitude on the part of the judiciary that views criminal defense as a hindrance of the court proceeding, thus meting out a more severe penalty as a litigation tax. On the other hand, our data suggested that offenders could potentially benefit from their legal representation in securing probation. For instance, as shown, the positive impact of offender attitude on

probation decision was significantly stronger in cases with defense attorneys than cases without defense attorneys. It seems to suggest that despite the hiring of an attorney (a sign of defiance), the Chinese court would view an offender's good attitude in courtroom (a sign of submission and cooperation) much more positively. In addition, having a defense attorney would have affected probation decisions indirectly via its impact on other factors such as offender's prior record, number of victim, crime planning, and number of aggravating factors (see Table 5). Our analysis of the possible conditional effect of defense attorneys on probation decisions seems to suggest some promising roles that defense lawyers could play in future VOR programs. Such roles include to set the bar of negotiation informed by attorneys' practical knowledge in light of the legal vacuum in this area, and to facilitate communication between offenders, victims, and the court. Given the vague process for the VOR in the Chinese law and the preliminary, mixed results of defense attorneys' roles in the process, future studies should further explore the dynamics of the defense attorney and the reconciliation process involving minor criminal offenses.

Last but not the least, in our research, we found very little literature on specific guidelines for the negotiation process and settlements, and implications of an agreement on the final outcome of the sentence with regard to the VOR programs. The lack of norms or the going rate in these processes makes it difficult to predict how the negotiation will be conducted as the expectations of the amount and types of compensation could differ dramatically case-by-case. We call for future studies to employ a case study approach to observe and interview parties who are or have been involved in the negotiation process and to assess their expectations and satisfaction levels. We also call for policy makers to improve existing laws based on findings of empirical research so as to establish a fairer and more sensible scheme to guide the VOR programs. It is also worth pondering what would happen to defendants who, despite of sincere remorse, could not reach a settlement with the victims, or did not have the financial capability to pay for their crimes. In two cases in our sample, for example, defendants Guo (case #14) and Sun (#63) each received two and half years of incarceration due to lack of resources to provide compensation for their crimes. These cases pose both practical and theoretical questions as to the challenge of using compensation as a key consideration for probation decisions.

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