

Evaluating Restorative Justice Programs in Taiwan

Hsiao-fen Huang · Lennon Y. C. Chang

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Abstract This paper aims to evaluate four restorative justice programs in Taiwan: (1) a mediation system; (2) deferred prosecution and conditional suspended sentence; (3) a youth justice system; and (4) the Taiwan Restorative Justice Initiative. In this paper, models proposed in Marshall (*Restorative justice: An overview*. London: Home Office, 1999) and Braithwaite (*British Journal of Criminology* 42:563–577, 2002b) are used as criteria to evaluate the four programs. Based on governmental documents, official statistics, and the findings of previous empirical studies, this paper will examine whose needs and power is focused and what types of value are highlighted in those four programs. This paper finds that current restorative justice programs in Taiwan place greater emphasis on offenders than on other parties such as victims and communities. In addition, maximizing and emergent standards that Braithwaite identifies are implemented more in Taiwan's restorative justice programs than constraining standards. This paper suggests that restorative justice practices in Taiwan need to be more concerned with victims' needs and interests, and to strengthen constraining types of restorative justice values.

Keywords Restorative justice practices in Taiwan · Principles of evaluation · Priority of restorative justice values

Introduction

Restorative justice has gained significant recognition in recent years and become one of the most discussed concepts of criminal justice. As Sherman (2003:11) argues, restorative justice is “any means that can produce reconciliation between victims, offenders and their supporters, minimizing anger and leaving all satisfied that they have been treated fairly while justice has been done”. It creates an opportunity for victims, offenders, and their relatives to explain and/or voice their feelings. It seeks to

H.-f. Huang (✉)

School of Regulation, Justice and Diplomacy, The Australian National University, Canberra, Australia
e-mail: Hsiao-Fen.Huang@anu.edu.au

L. Y. C. Chang

Department of Applied Social Studies, City University of Hong Kong, Kowloon, Hong Kong

restore the victim's security, self-respect, dignity, and sense of control as well as the responsibilities of offenders for their illegal behavior (Morris 2002).

Restorative justice came to prominence in Taiwan in the late 1990s. The Ministry of Justice (MOJ) formed a committee to review criminal policy at that time. In 1999, a White Paper on Prosecution Reform was published in response to growing problems in the justice sector, including a growth in serious crimes, constraints on judicial resources, and the prison system was becoming overloaded. The MOJ argued that adopting an approach that combined both punishment and leniency was the best way to address the growing problems (Ministry of Justice 1999). MOJ also suggested that different diversion techniques should be applied for minor criminals, such as mediation, deferred prosecution, and probation, which will be introduced later in this paper. Thus, applying restorative justice in the criminal justice system became the subject of much discussion in Taiwan.

While discussing restorative justice in Taiwan, people tend to use the term broadly and four programs are usually claimed to be associated with the ideas of restorative justice, including (1) a mediation system, built upon the Chinese tradition of mediation and practiced by mediators, (2) deferred prosecution and conditional suspended sentence within the current criminal justice system, initiated by criminal justice officials, (3) a youth justice system, implemented with a special focus on the rights and interests of young offenders, and (4) the Restorative Justice Initiative, being the first and only program in Taiwan following and realising restorative justice principles and values (Huang et al 2011; Jean 2008; Lou 2008; She 2011; Sheu et al. 2006, 2007).

Each of these four programs has its own operational model, although they can all be included under the broad umbrella of 'restorative justice'. This paper considers the extent to which these programs realise the ideas of restorative justice. In doing so, it outlines the development of the practice of restorative justice in Taiwan.

This paper will start with a brief discussion on appeals, values, and evaluation models of restorative justice. Based on this discussion, it will look into the strengths and weaknesses of Taiwan's restorative justice programs and raise some issues which are important for the future development of restorative justice in Taiwan.

Goals and Evaluation of Restorative Justice

Appeals and Values of Restorative Justice in Theory

Restorative justice is a new lens through which justice can be viewed. It evolved in response to criticism that state justice and retributive justice had neglected, replaced, or misrepresented voices and interests of victims, offenders, and communities. In contrast to the weaknesses of state justice and retributive justice that characterize the criminal justice system, restorative justice is proposed as a process that enables the needs of most affected parties (including victims, offenders, and communities) to be satisfied. Also, in restorative justice advocacy, the focal point in the handling of crimes is redefined as restoration. That is, harm caused by crimes needs to be restored, rather than simply paid back through the punishment of offenders (Johnstone 2002; Weitekamp 2003; Zehr 2002).

Restorative justice encompasses a different set of values. The numerous values and goals include 'involvement of the parties', 'voluntary participation', 'responsibility', 'empowerment', 'restoration', 'reintegration', 'whole truth', 'rehabilitation', 'balance of interests', and 'problem-solving' (Braithwaite 2002a; McCold 2006; Van Ness 2003; Zehr 2002). All these values are set to meet the three most affected parties' needs and to deal with relationships

between victims, offenders, and communities after a crime is committed. Marshall's (1999) diagram, shown in Fig. 1, illustrates the various interests in restorative justice fairly well.

The Degree of 'Restorativeness' of Restorative Justice Programs in Practice

The theoretical discussion of restorative justice identifies values and focal points. However, in practice, these values and the most affected parties may not get equal attention in all the restorative justice programs. It is very likely that a program will be more successful in achieving some values more than others and focus more on the needs of one party than on those of all parties. In other words, the degree of 'restorativeness' could vary in different programs (Braithwaite 2002a; Presser and Voorhis 2002; Van Ness 2003; McCold and Wachtel 2003).

For example, McCold and Wachtel's (2003) restorative justice typology, shown in Fig. 2, clearly demonstrates that a so-called restorative justice program may only have one or two parties' voice and needs in its design. As the typology illustrates, only the programs in the central zone of this diagram are fully restorative because these programs consider and include all three parties' voices and needs. Other programs that involve one or two parties' benefits might be seen as only partly restorative or mostly restorative. Also, Van Ness (2003) argues that, in a restorative justice program, the restorative attributes in the process layer, such as balance of interests, problem-solving orientation, inclusion, and voluntary practices, could be fully achieved, but the restorative attributes in the outcome layer such as encounter, amend, reintegration, and whole truth, might be only moderately or minimally achieved.

In McCold and Wachtel's (2003) and Van Ness's (2003) interpretations of 'restorativeness', even in a program addressing all three parties' needs, victims' restoration may be preferred to offenders' rehabilitation, or acknowledgment of wrongdoing might be addressed prior to compensation (Acorn 2005; Bazemore 1998; Zehr 2002). In other words, as the degree of

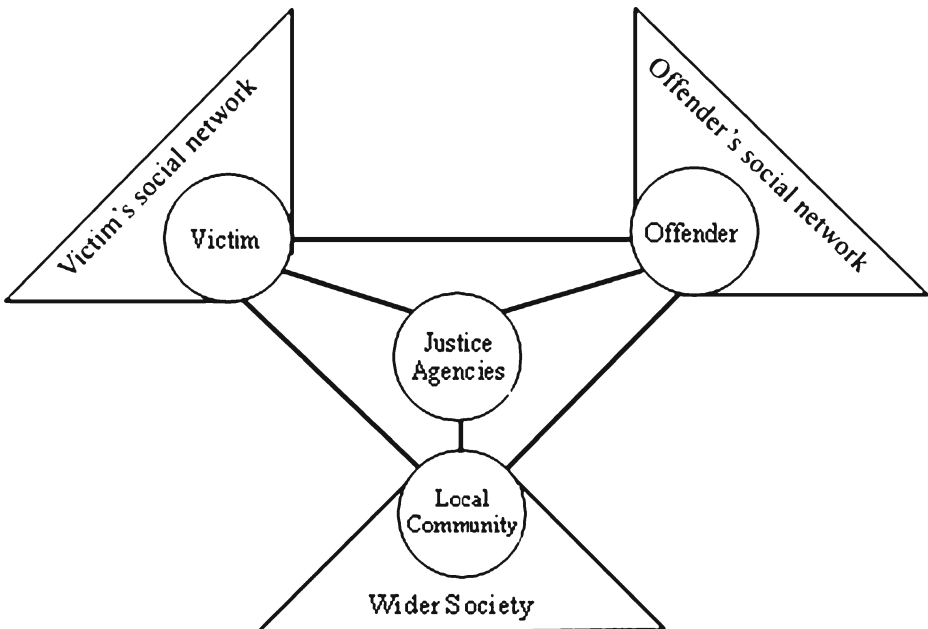


Fig. 1 Marshall's diagram of restorative justice system. Source: Marshall (1999: 5)



Fig. 2 McCold and Wachtel’s restorative justice typology. Source: McCold and Wachtel (2003: 3)

‘restorativeness’ is analyzed, the limitations and priorities of a program are revealed. This infers that the degree of ‘restorativeness’ of a program is an outcome of cooperation, competition, or conflict among the various parties’ interests and different restorative justice values. Therefore, it is important to have a framework within which to arrange these values and interests.

Standards in Restorative Justice Programs

To address the prioritization of the different values and parties’ interests, a number of frameworks have been established, proposing what must be secured, what should be promoted, or what should not be forced (Braithwaite 2002b; Harris 2003). Braithwaite’s (2002b) framework expounds the necessity and nature of restorative justice values and goals and responds to the reality of priorities and limits within a program. This is elaborated below.

In Braithwaite’s (2002b) framework, there are three types of standards. The first type are called ‘constraining standards’, such as non-domination, empowerment, respectful listening, equal concerns for all stakeholders, accountability, respect for human rights, and legally specified upper limits on sanctions. The second type are ‘maximizing standards’, such as restoration of human dignity, restoration of property loss, emotional restoration, provision of social support, restoration of compassion, and prevention of future injustice. The third type are ‘emergent standards’, including remorse over injustice, apology, censure of the act, forgiveness of the person, and mercy.

Constraining standards are regarded as the essential principles, which should be secured in all circumstances in order to protect human rights. Unlike constraining standards, maximizing standards are to be encouraged, but only under the premise that the value of empowerment is secured. Clearly, constraining standards should never be compromised or sacrificed in the pursuit of maximizing standards. Emergent standards are to be implemented without any coercion and are based entirely on the willingness of the parties, even though they could be the most meaningful component of restorative justice for the parties.

Among the three standards, Braithwaite (2002b) argues that, for a restorative justice program, the priority should be protection of the basic rights and needs, even though the program might not be able to achieve other seemingly more ‘restorative’ outcomes. His interpretation of constraining standards fits most scholars’ minimal expectation of restorative justice—to safeguard the nature

of informal justice in restorative justice. The maximizing standards are consistent with the goals to be promoted in restorative justice, and emergent standards are also frequently upheld by many scholars to prohibit any domination imposed on the parties, particularly the victims (Acorn 2005; Harris 2003; Hudson 2004; McEvoy et al. 2002; Zehr 2002).

To conclude, restorative justice is a means, at least in theory, to transform the justice system. But, in practice, restorative justice programs need to be assessed in terms of their degree of 'restorativeness', with particular regard to the limitations of, and priorities within a program.

Methods

This paper analyses four of Taiwan's restorative justice programs: (1) a mediation system, (2) deferred prosecution and conditional suspended sentence, (3) a youth justice system, and (4) the Restorative Justice Initiative. With the goal of reviewing these programs, this paper employs Marshall's (1999) model to demonstrate which parties are considered in a program and adopts Braithwaite's (2002b) framework of restorative justice standards to examine which values are emphasized or compromised in a program. In doing so, this paper reaches conclusions on the strengths and possible weaknesses of these programs.

Our analysis is based on published official documents, relevant laws, official statistics, and findings of past empirical studies on the programs, but does not contain any new first-hand data. The benefit of adopting established models and using second-hand data is to review these programs in a macro-perspective, in the hope that this could prove useful for future policy-making. But, there are two main limitations in applying such methods. First, this methodology denies the opportunity to create a new evaluation model to suit local contexts and problems. Secondly, no new evaluative information is collected on the implementation of each program.

Review of Taiwan's Restorative Justice Programs

In the following discussion, Taiwan's restorative justice programs will be described briefly and their proposed values and goals evaluated in accordance with the frameworks proposed by Marshall (1999) and Braithwaite (2002b).

Taiwan's Mediation System

A Profile of Taiwan's Mediation System

The legal basis for the current mediation system in Taiwan is the *Act on Mediation at Villages, Towns and Counties* (鄉鎮市調解條例), enacted in 1931. Apart from civil cases which are not the focus of this paper, the current mediation system can be applied to criminal cases with a supplementary civil action¹ or to criminal cases that are chargeable only upon complaint by victims.² Mediation can be initiated by litigants petitioning, either orally or in writing, a mediation committee before the closing argument. According to Article 11 of the Act, the petition needs to

¹ According to Article 12 of the Act, in addition to civil cases, criminal cases with a supplementary civil action are also subject to mediation under an order by a district court in the first trial of a case.

² According to Article 1 of the Act, mediation can be applied to civil cases and criminal cases that are only chargeable upon complaint by victims. The criminal cases stipulated here include assault and defacing, fraud, conversion and stealing, offenses against family, offenses against freedom, fame, trust and secrecy, property crimes among relatives, and traffic incidents.

be agreed by all litigants in civil disputes and by victims. It can also be initiated through an order by a district court. The 2005 amendment of the Act gave the district courts the power to transfer cases in the first trial stage for mediation, even where there is not the consent of the litigants.

According to Taiwan's official statistics on the use of mediation and the rates of settlement (Table 1), the total number of criminal cases settled has been gradually increasing since 2002 and has exceeded the total number of civil cases settled. The settlement rate for criminal cases (78–85 %) is also higher than the settlement rate for civil cases (65–71 %) over the period 2002–2011. Among criminal cases, cases of 'assault and defacing' have the highest settlement rate (80–86 %); but cases of 'fraud, conversion and stealing' (49–63 %) and cases regarding 'offenses against family' (41–55 %) have lower settlement rates.

An Evaluation of Taiwan's Mediation System

Taiwan's system of mediation has been transformed in recent years, with the major change being the recruitment of more legal and mental health professionals, rather than community elders, as mediators. But, even with this change, Taiwan's mediation system is still very much based on the ancient Chinese tradition of mediation, which regards face protection, harmony, restoration, and family inclusion as its main objective. In the Chinese tradition of mediation, the ideology of harmony is underpinned by consolidation of social order or family unity. Due to the tightness and hierarchical nature of family relationships in Chinese culture, the parties are usually strongly supported by their families and replace the head of the family in terms of account-giving and decision-making in the mediation.

The success of Chinese mediation very much relies on the mediator's ability and reputation in moral teaching, analyzing pros and cons, and negotiating agreement between the two parties and their families. The traditional features of Chinese mediation are prevalent in mediation in Taiwan today. According to the findings of empirical studies on the current mediation system, the abilities and role of mediators are regarded as the most important factor in successful settlements, and harmony and restoration remain the major goals of the process (Hsia 2006; Lin 2002; Lou 2008; Sheu et al 2007).

Under Marshall's (1999) model, the current system of mediation in Taiwan focuses on the relationship between offenders and victims and their families, and also elevates and strengthens the role of 'justice agencies', which are played by mediators. The justice agencies—the mediators—usually play an important role not only in facilitating the process of mediation but also by suggesting, commenting, and even forcing the parties to reach an agreement.

Secondly, according to Braithwaite's (2002b) framework, the focus of mediation on restoration of property loss, restoration of relationships, and apologies can be classified into maximizing standards and emerging standards. But, in terms of constraining standards, such as empowerment, non-domination, respectful listening, and accountability, Taiwan's mediation system may produce relatively poor outcomes. In Taiwan, mediation can be initiated by judges under court orders and both sides can be compelled to attend the mediation. In these circumstances, both sides might not be willing to respect or listen to their counterpart and the mediation will be without meaning. Furthermore, even though the parties are given opportunities to communicate and express themselves, the mediator and the parties' families often play a much more significant or dominating role in the process. Moreover, accountability is somewhat compromised in the pursuit of harmony and face protection or even replaced by the payment of compensation. It may be concluded that, due to the influence of traditional Chinese mediation, the standards in Braithwaite's (2002b) framework that are regarded as essential—the constraining standards—are less present than other standards in Taiwan's mediation system.

Table 1 The use of mediation in Taiwan

| Year | No. of mediators | Civil cases | | Criminal cases | | | | | | | | | | | | | |
|------|------------------|----------------------|----|----------------------|--------------------|--------------------------------|------------------------|----------------------|---|----------------------|----|----------------------|----|-----|----|-------|----|
| | | No. of settled cases | % | Total | Assault & defacing | Fraud, conversion and stealing | Offense against family | Obscenity | Offense against freedom fame, trust and secrecy | Others | | | | | | | |
| | | No. of settled cases | % | No. of settled cases | % | No. of settled cases | % | No. of settled cases | % | No. of settled cases | % | No. of settled cases | % | | | | |
| 2002 | 3,762 | 33,534 | 65 | 30,678 | 78 | 26,875 | 80 | 633 | 56 | 163 | 45 | 128 | 76 | 180 | 58 | 2,699 | 77 |
| 2003 | 3,807 | 33,335 | 67 | 42,177 | 82 | 35,913 | 83 | 512 | 49 | 177 | 51 | 82 | 65 | 196 | 60 | 5,297 | 84 |
| 2004 | 3,841 | 32,987 | 71 | 47,617 | 85 | 41,527 | 86 | 428 | 56 | 138 | 50 | 79 | 68 | 178 | 56 | 5,267 | 85 |
| 2005 | 3,811 | 35,890 | 71 | 48,218 | 84 | 43,845 | 85 | 461 | 53 | 87 | 46 | 68 | 71 | 178 | 59 | 3,579 | 78 |
| 2006 | 3,790 | 35,309 | 70 | 50,490 | 82 | 46,223 | 84 | 577 | 54 | 127 | 51 | 90 | 67 | 233 | 58 | 3,240 | 72 |
| 2007 | 3,932 | 32,743 | 68 | 53,405 | 83 | 48,630 | 85 | 769 | 56 | 118 | 49 | 96 | 65 | 286 | 58 | 3,506 | 78 |
| 2008 | 3,959 | 33,575 | 70 | 58,320 | 83 | 52,290 | 85 | 842 | 60 | 92 | 41 | 120 | 71 | 363 | 55 | 4,613 | 79 |
| 2009 | 3,963 | 33,066 | 69 | 62,539 | 81 | 54,155 | 82 | 1,110 | 63 | 135 | 50 | 115 | 73 | 460 | 61 | 6,564 | 82 |
| 2010 | 3,956 | 34,745 | 69 | 68,478 | 83 | 62,884 | 85 | 980 | 59 | 134 | 53 | 106 | 73 | 570 | 62 | 3,804 | 74 |
| 2011 | 4,028 | 35,715 | 71 | 71,695 | 82 | 64,764 | 83 | 1,312 | 61 | 160 | 55 | 186 | 79 | 603 | 60 | 4,670 | 77 |

Ministry of Interior (2012), retrieved from <http://sowf.moi.gov.tw/stat/year/list.htm>

Deferred Prosecution and Conditional Suspended Sentence

A Profile of Deferred Prosecution and Conditional Suspended Sentence

Deferred prosecution and conditional suspended sentence were introduced in Taiwan in order to achieve better victim restoration, offender rehabilitation and a more effective judicial system. Deferred prosecution took effect in 2002 through amendments to the Code of Criminal Procedure set out in Articles 253-1 to 253-3.³ Conditional suspended sentence was added⁴ under Article 74 of the Criminal Code⁵ in 2005 and took effect in 2006. These two amendments allow prosecutors or judges to order offenders to make apologies or restitution to victims, or to set aside space and opportunities for dialogue between victims and offenders, or to require offenders to do community service. If a deferred prosecution or

³ Articles 253-1 to 253-2 of the Code of Criminal Procedure are the main articles setting out how to achieve a more restorative result. These two Articles are: Article 253-1: If an accused has committed an offense other than those punishable with death penalty, life imprisonment, or with a minimum punishment of imprisonment for not less than 3 years, the public prosecutor, after considering the matters specified in Article 57 of the Criminal Code and the maintenance and protection of public interest, deems that a deferred prosecution is appropriate, he may make a ruling to render a deferred prosecution by setting up a period not more than 3 years and not less than 1 year thereof, starting from the date the ruling of deferred prosecution is finalized. The period of statute of limitation shall be discontinued during the period of deferred prosecution. The provisions of section IV of Article 83 of the Criminal Code shall not apply to the reason for discontinuance specified in the preceding section. The proviso of section I of Article 323 shall not apply during the period of deferred prosecution.

Article 253-2: A public prosecutor in making a ruling on deferred prosecution may require the defendant to comply with or perform the following items within a limited period of time: (1) Apologize to the victim; (2) Make a written statement of repentance; (3) Pay to the victim an appropriate sum as compensations for property or non-property damages; (4) Pay a certain sum to a governmental account or a designated non-profit or local self-governing organization; (5) Perform 40 to 240 h of community service to a designated non-profit, local self-governing organization, or community; (6) Complete drug addiction treatment, psychotherapy and counseling, or other appropriate treatments; (7) Comply with the necessary order for the protection of the victim's safety; (8) Comply with the necessary order for the prevention of recommitting the offense. Before a public prosecutor can order the defendant to comply or perform the acts specified in the items three through six in the preceding section, the defendant's consent shall be obtained; items three and four may also constitute a ground for civil compulsory enforcement. The matters specified in section 1 shall be noted in the written deferred prosecution. The period of time specified in section I shall not exceed the period of time allowed for the deferred prosecution.

⁴ Suspended sentence has existed in the Criminal Code since 1928. In 2005, a number of conditions were added to expand and enrich the use of suspended sentence. Thus, conditional suspended sentence is a new and additional form of the original suspended sentence.

⁵ Article 74 of the Criminal Code: A punishment of imprisonment for not more than 2 years, short-term imprisonment, or a fine may be suspended for not less than two years but not more than 5 years from the day the decision becomes final if either of the following circumstances exists and probation is considered appropriate: 1. There has been no previous sentence to imprisonment or a more severe punishment pronounced for an intentional offense. 2. There has been no sentence to an imprisonment or a more severe punishment for an intentional offense pronounced within 5 years after completing execution or remission of a previous sentence to imprisonment or a more severe punishment for an intentional offense. The pronouncement of probation may consider the circumstances to order the offender to do the following things: 1. Making an apology to the victim; 2. Writing a statement of repentance; 3. Paying an appropriate amount to the victim as compensation for his property or non-property losses; 4. Disbursing a certain amount to Public Treasury; 5. Contributing labor service of no less than 40 h and not more than 240 h to a governmental department, governmental institution, administrative legal entity, designated public welfare organization or group; 6. Carrying out detox therapy, mental treatment, psychological counseling or other appropriate programs; 7. Giving necessary order for protecting the victim; 8. Giving necessary order to prevent re-committing a crime. The situation set forth in the preceding paragraph shall be included in the written judgment. Items 3 and 4 of paragraph 2 may be the certificate of compulsory execution. The pronouncement of probation carries less force than the pronouncement of accessory punishment and the pronouncement of rehabilitative punishment.

conditional suspended sentence conviction includes community service work, probation officers are responsible for arranging relevant tasks for offenders in accordance with the conditions that prosecutors or judges impose.

According to statistics published by Taiwan's Ministry of Justice, the use of deferred prosecution has increased alongside a general decrease in prosecution and non-prosecution⁶ (Ministry of Justice 2012). It may indicate that deferred prosecution is regarded as better than non-prosecution because it has some rehabilitative or restorative potential. Table 2 shows the use of deferred prosecution in terms of types of offences. The offences most likely to be granted deferred prosecution are offences against the Child and Youth Sexual Transaction Prevention Act, offences against public safety, offences against Trademark Act, and offences of interference with voting.

The use of conditional suspended sentence was not very common in the first two and half years after its introduction (from July 2006 to December 2008). The average number of suspended sentences each year since 2004 has been around 20,000 (Ministry of Justice 2009), but the number of conditional suspended sentences in the first two and half years was only 6,121 accounting for around 10 % of all suspended sentences⁷ (Table 3). In addition, from Table 3 we can see that the court orders were mainly payments to government and hours of community service work,⁸ while in the regular court system, most judges decided on compensation for victims. The public complained that the rich could avoid being imprisoned by paying compensation or a fine.

An Evaluation of Deferred Prosecution and Conditional Suspended Sentence

Deferred prosecution and conditional suspended sentence there is the potential to ask offenders to responsibility for restoration of harm, to give victims a position in the criminal justice process, and to consider the restoration of the relationship between offenders and communities. Therefore, in Marshall's (1999) model, deferred prosecution and conditional suspended sentence cover all three main parties: victims, offenders, and communities. Yet, all these restorative activities are initiated, managed, or even demanded by judicial officers (prosecutors, judges, and probation officers). Accordingly, the space of decision-making or the power of initiation is fairly limited for victims and offenders. Moreover, there is greater emphasis on offenders than victims or communities as shown in Fig. 4. As previous studies have found, court orders from deferred prosecution or conditional suspended sentence cases are more focused on community service or rehabilitation work. These two justice mechanisms are primarily concerned with offenders' needs in rehabilitation and reintegration (She 2011; Sheu et al. 2006; Tsai 2010). In this regard, the position and interests of victims are absent from or peripheral to the process.

Moreover, under Braithwaite's (2002b) framework, the focus of these two justice mechanisms on apologies, responsibility for restoration, rehabilitation, and public benefit are more related to maximizing standards and are partly connected to emergent standards. In relation to constraining standards, legally specified upper limits on sanctions are secured under judicial officials' legal enforcement. But other constraining standards, like

⁶ Although the non-prosecution rate increased at the beginning of the implementation of deferred prosecution, from 4.7 % in 2001 to 6.8 % in 2002, but it started sliding down the following year and reached 2.3 % in 2011.

⁷ From the official statistics shown at Table 3, there is no indication whether a person was given one or more probation tasks. Therefore, it is possible that the number of conditional suspended sentences is greater than the number of cases.

⁸ Public interests were emphasised here probably due to the nature of offences in conditional suspended sentence. But official statistics in this regard are not available.

Table 2 Investigation concluded in district prosecutors offices-deferred prosecution

| Major offences | Investigation concluded (2/2002–10/2010) | | | |
|---|--|---------------------------|---------------------|---------------|
| | Total (person) | Deferred prosecution (DP) | | |
| | | Total (person) | Proportion in DP | DP rate |
| Grand total | 3,986,387 | 255,687 | 100 % | 6.4 % |
| Offenses against public safety | 481,412 | 120,716 | 47.2 % | 25.1 % |
| Offenses of forging instruments or seals | 191,425 | 12,812 | 5.0 % | 6.7 % |
| Offenses of larceny | 393,729 | 10,972 | 4.3 % | 2.8 % |
| Offenses of gambling | 103,007 | 9,615 | 3.8 % | 9.3 % |
| Offenses against Child and Youth Sexual Transaction Prevention Act | 30,062 | 8,971 | 3.5 % | 29.8 % |
| Offenses against Trademark Act | 30,730 | 6,353 | 2.5 % | 20.7 % |
| Offenses of interference with voting | 31,286 | 5,941 | 2.3 % | 19.0 % |
| Offenses of criminal conversion | 105,231 | 4,536 | 1.8 % | 4.3 % |
| Others | 1,263,600 | 44,859 | 17.5 % | 3.6 % |

The Ministry of Justice (2010a), retrieved from <http://www.moj.gov.tw/ct.asp?xItem=185074&ctNode=27438>

Bold type indicates offences most likely to be granted deferred prosecution

empowerment, non-domination, and respectful listening, are sacrificed because there is limited time for the process, which is controlled mainly by judicial officials.

Youth Justice System

A Profile of Youth justice System in Taiwan

The Juvenile Delinquency Act, the legal basis for the youth justice system in Taiwan, provides for the rehabilitation of young offenders. Instead of punishment, rehabilitative treatments and family involvement and responsibility are the goals of the youth justice system.

According to Article 29 of the Juvenile Delinquency Act,⁹ if consent is granted from the young offender, the young offender's statutory agent, and the victim, then young offenders may be ordered to apologise to victims, write a statement of repentance, and pay restitution. Based on this article, Juvenile and Family Courts in Taiwan may appoint Juvenile Court judges or mediators in Family Courts to hold a conference with young offenders, their

⁹ Article 29 of Juvenile Delinquency Act: (Ruling Not to Hear the Case) The juvenile court may pronounce a ruling not to hear the case and order the following disposition upon finding the delinquency trivial or finding it proper not to try the case pursuant to results of investigation by a juvenile investigator: 1. Transfer the juvenile to a child or juvenile welfare or cultivation institute for appropriate tutoring; 2. Send a child or juvenile to his/her statutory agent or a person who currently protects the juvenile for strict discipline; 3. Warning. Dispositions in the preceding paragraph shall be executed by the juvenile investigator. The juvenile court has the discretion to order the juvenile to accomplish the following items before pronouncing a ruling in Paragraph 1, if consented by the juvenile, his/her statutory agent, and the victim: 1. To apologize to the victim; 2. To write a repentance letter; 3. To compensate the victim. A juvenile's statutory agent shall be jointly liable for the item under Subparagraph 3 of the preceding paragraph, and it may be the title for civil compulsory execution.

Table 3 Court orders pronounced in suspended sentence

Mandatory conditions pronounced in suspension of punishment in District Prosecutors Offices (7/2006–12/2008)

| Task | No. of people undertaking the task |
|---|------------------------------------|
| Making an apology to the victim | 16 |
| Writing a statement of repentance | 49 |
| Paying compensation to the victim | 1,026 |
| Paying a certain amount to Public Treasury | 2,558 |
| Contributing labour service (40–240 h) | 2,537 |
| Carrying out detox therapy, mental health treatment or other appropriate programs | 46 |
| Giving order to protect the victim | 45 |
| Giving order to prevent future offence | 99 |
| Total | 6,121 |

Ministry of Justice (2009), retrieved from <http://www.moj.gov.tw/public/Attachment/9461002623.pdf>

families, and victims. The model is more similar to New Zealand's Family Group Conferencing. District courts in Taipei, Shilin, Banciao, Hsinchu, Taichung, and Pingtung have started such trials (Jean 2009; Tsai 2009). However, there are no official statistics published on the use of Article 29 in juvenile cases.

Another emerging issue in regard to the use of Article 29 is school bullying, which is receiving increasing attention. In 2011, the former Minister of Education, Ching-ji Wu, encouraged schools to hand over bullies to the youth justice system for further treatment or punishment. If schools were slow to notify bullying cases to the police, schools would be subject to fines (Xue and Meng 2011). As a result, bullying cases increased the workload of the youth justice system and there was greater recourse to Article 29 (Jean 2008, 2009).

An Evaluation of the Youth Justice System

Even though victim participation or victim restoration is considered in Article 29 of the Act, it is clear that young offenders and their families are the focus of the restorative mechanism in the youth justice system. A previous study even suggested that parents of young offenders were the key persons determining whether a conference could be successfully finalised. Because parents of young offenders could pay restitution to victims, demand their children make an apology to victims or even make apologies for their children, the seemingly 'restorative' outcomes are more likely (Tsai 2009). Moreover, judges in charge of juvenile cases are the ones who have the authority to initiate such restorative processes and to decide the extent to which victims are granted space and respect. With this judicial discretion and parental power, the voices and space for young offenders or victims are limited. Applying Marshall's (1999) model, the restorative mechanism in the youth justice system may be drawn as Fig. 3 with more emphasis on the offender, particularly the offender's family.

According to Braithwaite's (2002b) framework, the restorative mechanism of the youth justice system, although it provides legally specified upper limits on sanctions, is less focused on constraining standards, such as empowerment and accountability. Empowerment that could be offered to victims and young offenders or accountability that

should be taken up by young offenders are very likely taken away by parents of offenders or suppressed by judicial officers or adult victims. Maximizing standards could be better achieved, including restoration of property loss, restoration of the relationship with the offender's family, and counselling to reduce the likelihood of future crimes (Tsai 2009). Judges' orders to offenders to make apologies or restitution are an emergent standards in the youth justice system

Restorative Justice Initiative

A profile of the Restorative Justice Initiative

In July 2009, the Minister of Justice announced the start of a plan of 'Restorative Justice based on a dialogue mechanism and with the aim of restoring harm caused by crime'.¹⁰ Under this plan, a 'Restorative Justice Initiative (修復式司法試行方案)' was proposed, organised by the Justice Ministry's Department of Prevention, Rehabilitation and Protection. It was the first program in Taiwan to explicitly introduce restorative justice (Ministry of Justice 2010b).

The first stage of 'Restorative Justice Initiative' was a 2-year trial from September 2010 to August 2012.¹¹ There were eight District Prosecutors Offices participating in this Initiative, including Shilin, Banciao, Miaoli, Taichung, Tainan, Kaohsiung, Yilan, and Ponghu. The original Initiative was designed for all stages of criminal justice, but it turned out that the cases referred under this Initiative were mostly in the investigation stage. The applicable offence types in each District Prosecutors offices were slightly different from one another. Most of the participating District Prosecutors Offices restricted eligible cases to Article 376 of the Code of Criminal Procedure¹² and excluded cases with no direct victims. However, in two District Prosecutors Offices—Tainan and Kaohsiung—the target cases involved family conflicts or domestic violence. A brief outline of the selected case types in different jurisdictions can be seen in Table 4. Even with different targets on case types, under the guidance of the Ministry of Justice, all the joining jurisdictions chose the Victim and Offender Mediation (VOM) model as their preferred operating model (Fei 2011; Huang et al 2011)

According to statistics from the Ministry of Justice, in the first 15 months of the implementation of the Initiative, a total of 219 cases were referred under this Initiative. Table 5 shows that around 25 % of the cases were declined right after referral, and another 25 % of the cases were withdrawn in the process. Only about 27.4 % of the cases were finalised with agreement.

¹⁰ The first time that restorative justice was formally included in the action plan of the Ministry of Justice was in 2008. It was promoted under the policies of victim protection, covering several aspects: the use of mediation system, restorative justice information campaign in prisons, the use of suspended sentence and victim participation in the parole process.

¹¹ Tainan jurisdiction was an exception; its implementation started in April 2010, earlier than the official commencement but still counted as part of the trial. Since September 2012, the 'Restorative Justice Initiative' has entered a second stage of trial with all District Prosecutors Offices in Taiwan joining the Initiative.

¹² Article 376 of the Code of Criminal Procedure: (Judgments not Appealable to the Third Instance) Once judged by the court of second instance, cases involving the following offenses are not appealable to the court of third instance: 1. Offenses with a maximum punishment of no more than three years imprisonment, detention, or a fine only; 2. Offense of theft specified in Articles 320 and 321 of the Criminal Code; 3. Offense of embezzlement specified in Article 335 and Paragraph 2 of Article 336 of the Criminal Code; 4. Offense of False Pretense specified in Articles 339 and 341 of the Criminal Code; 5. Offense of breach of trust specified in Article 342 of the Criminal Code; 6. Offense of extortion specified in Article 346 of the Criminal Code; 7. Offense of swag specified in Paragraph 2 of Article 349 of the Criminal Code.

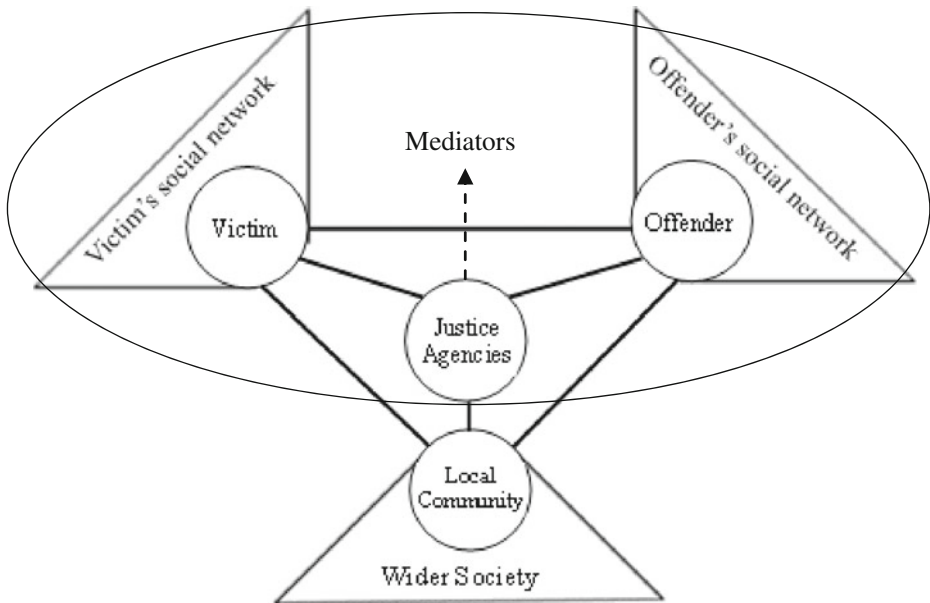


Fig. 3 The involvement and relevance of the parties in Taiwan mediation system

Under this Initiative, there was also a project designed as a restorative justice growth group for female inmates in Taichung Women's Prison. Besides lessons and discussions about compassion and responsibility, the ultimate goal of this project was to assist these inmates to write an apology letter or to express their remorse and regret to the victims or victims' families in a video recording. There were 13 female inmates participating in this project. At the end of the first trial year, three out of 13 inmates had completed video recordings, which were sent to the victims' families. There were no responses from the victims (Chen 2011; Chen and Chang 2011).

An evaluation of Restorative Justice Initiative

Restorative Justice Initiative Under Investigation Stage The Restorative Justice Initiative adopted a Victim Offender Mediation model, implying that offenders and victims were the focus of the Initiative and their families were excluded to some extent.¹³ According to the official evaluation report of the Initiative, prosecutors were the key persons who decided whether a case was referred to the restorative justice process, but the facilitators were the soul of the process, directing the real process. This report also pointed out that facilitators were inclined to give the power and space to the parties and were concerned about the willingness of the parties to participate (Huang et al 2011). Also, the parties could lodge an application to participate in this Initiative. Consequently, the domination of prosecutors and facilitators in this Initiative is less significant than in the three other types of restorative justice programs in Taiwan. Under Marshall's (1999) model, the Initiative may be presented as Fig. 6.

Moreover, from the official documents, it is clear that restorative justice was interpreted by the Ministry of Justice as concerned with the goals of 'relationship restoration',

¹³ In some cases, family members of the parties did take part in restorative justice meetings.

Table 4 Applicable offences in District Prosecutors Offices (DPOs) in RJ Initiative

| DPOs | Offence types |
|-----------|--|
| Shilin | Causing bodily harm, manslaughter, (serious) assault, offences against property, youth crimes, other minor offences and other cases evaluated as appropriate |
| Banciao | Offences under Article 376 of the Code of Criminal Procedure (excluding cases without victims) |
| Miaoili | Offences against the person, offences under Article 376 of the Code of Criminal Procedure (excluding offences without victims) and offences against sexual autonomy (only for cases when young couples whose sexual behaviour was based on mutual consent but they were under 18 years old) regulated under Article 227 of the Code of Criminal Procedure and the Domestic Violence Prevention Act |
| Taichung | Offences under Article 376 of the Code of Criminal Procedure (excluding offences without victims), youth crimes, serious crimes and other cases evaluated as appropriate |
| Tainan | Offences deviated from conflicts in marital or family relationships |
| Kaohsiung | Traffic accidents and offences against Domestic Violence Prevention Act (such as family violence cases and breach of a Protection Order but excluding child abuse cases or cases involving other serious offences) |
| Yilan | Manslaughter, assault and other cases evaluated as appropriate |
| Penghu | Offences under Article 376 of the Code of Criminal Procedure (excluding offences without victims), youth crimes, other cases evaluated as appropriate |

Fei (2011: 508)

‘reconciliation’, ‘reintegration’, ‘harmonious society’, and ‘mercy’. At the policy level, these goals align the Initiative with the implementation of maximizing and emergent standards, according to Braithwaite’s (2002b) framework.

Table 5 Case referral and implementation of RJ initiative (9/2010–/12/2011)

| Jurisdiction | Total cases referred (A = B + C) | No. of cases declined (B) | No. of cases accepted (C = D + I) | No. of cases finalised (D = E + H) | | | No. of cases still in the process (I) |
|----------------|----------------------------------|---------------------------|-----------------------------------|---|---|------------|---------------------------------------|
| | | | | No. of cases entering dialogues (E = F + G) | No. of cases withdrawn in the process (H) | | |
| | | | | Agreement (F) | No agreement (G) | | |
| Shilin | 44 | 10 | 34 | 17 | 7 | 2 | 8 |
| Banqiao | 15 | 0 | 15 | 2 | 4 | 5 | 4 |
| Yilan | 18 | 9 | 9 | 0 | 0 | 7 | 2 |
| Miaoili | 22 | 14 | 8 | 1 | 4 | 2 | 1 |
| Taichung | 33 | 4 | 29 | 8 | 0 | 12 | 9 |
| Tainan | 40 | 0 | 40 | 23 | 0 | 14 | 3 |
| Kaohsiung | 28 | 18 | 10 | 2 | 0 | 6 | 2 |
| Penghu | 19 | 0 | 19 | 7 | 4 | 6 | 2 |
| Grand total | 219 | 55 | 164 | 60 | 19 | 54 | 31 |
| Percentage (%) | 100 (A) | 25.1 (B/A) | 74.9 (C/A) | 27.4 (F/A) | 8.6 (G/A) | 24.7 (H/A) | 14.2 (I/A) |

As mentioned before, under this Initiative, Tainan jurisdiction started its RJ practices since April 2010
Fei (2011: 510)

Table 6 A comparison of Taiwan's restorative justice programs

| | Standards strongly emphasised | Standards potentially compromised |
|---|---|---|
| Mediation system | <ol style="list-style-type: none"> 1. Maximizing standards: restoration of property loss and restoration of relationships 2. Emerging standards: apologies | Constraining standards, such as empowerment, non-domination, respectful listening and accountability, might be compromised in the pursuit of maximizing standards. |
| Deferred prosecution & conditional suspended sentence | <ol style="list-style-type: none"> 1. Maximizing standards: restoration, rehabilitation and public benefits 2. Emergent standards: apologies 3. Constraining standards: legally specified upper limits on sanctions | Constraining standards, such as empowerment, non-domination and respectful listening, might be restricted due to the authority of judicial officials and limited time given in the process. |
| Youth justice system | <ol style="list-style-type: none"> 1. Constraining standards: legally specified upper limits on sanctions 2. Maximizing standards: restoration of property loss, restoration of offenders' family relationship, and prevention of future crimes 3. Emergent standards: apologies (without force) | Constraining standards, such as empowerment and accountability, could possibly be taken away by parents of offenders or suppressed by judicial officers or adult victims. |
| Restorative Justice Initiative | <p>At the policy level:</p> <ol style="list-style-type: none"> 1. Maximizing standards: relationship restoration, reintegration, restoration of peace between parties or in the society 2. Emergent standards: mercy <p>At the practical level:</p> <ol style="list-style-type: none"> 1. Constraining standards: empowerment, non-domination, and respectful listening 2. Maximizing standards: restoration of property loss, restoration relationship, and rehabilitation | It may greatly depend on individual facilitators' decisions to see which standards were prioritised or sacrificed. |
| Restorative Justice Initiative (prison project) | <ol style="list-style-type: none"> 1. Constraining standards: offenders' responsibility, empowerment of offenders, and non-domination 2. Maximizing standards: offenders' compassion for victims 3. Emergent standard: remorse and apologies | None |

'Restorative Justice is a process where victims and offenders are assisted to take part in handling their cases. Through negotiation and communication, restorative justice is able to enhance reconciliation between two parties, to turn enmity to mercy, to make peaceful settlement possible and to create a harmonious society.' (Huang et al 2011: 12)

'The Ministry promotes restorative justice in the hope to resolve crimes in a more humanistic way. Restorative justice is a process that victims, offenders, and communities are placed in the centre. Under the premise of respecting voluntariness of the parties and creating a safe and warm dialogical environment, restorative justice creates possibilities that the parties may come up with their restoration plan collectively. Also, under the goal of relationship restoration, restorative justice provides victims and

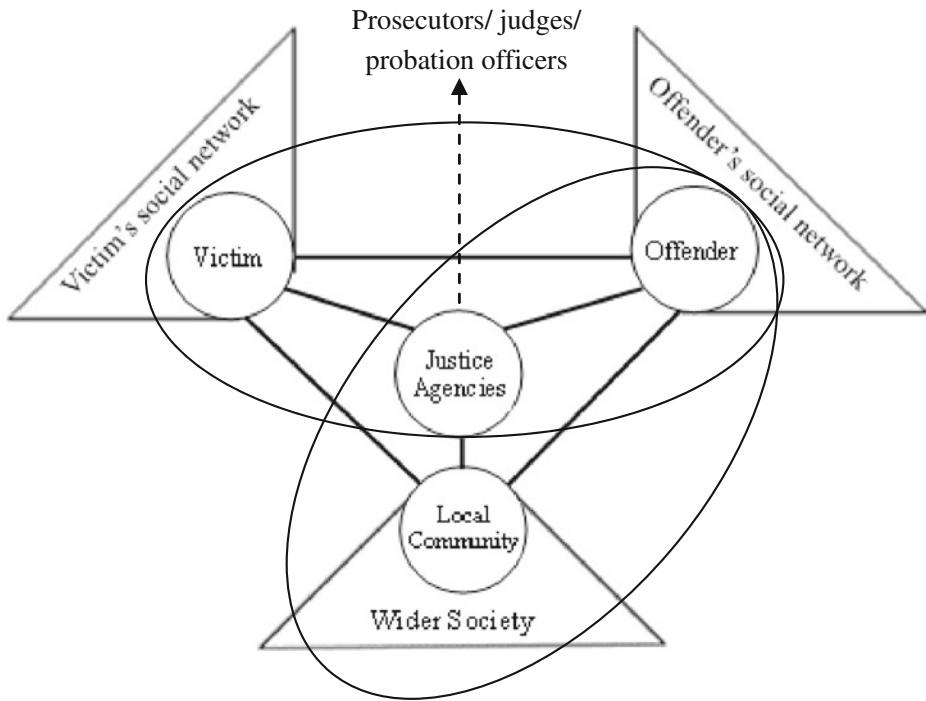


Fig. 4 Involvement and relevance of the parties in deferred prosecution and conditional suspended sentence

offenders with opportunities of reintegration into their families and further looks forward to restoration of the society.’(Ministry of Justice 2010b)

However, the official evaluation report finds that in practice the benefits of the Initiative were: provision of opportunities of expression, reconsideration, communication, conflict reduction, and case settlement, and provision of support for victims and offenders (Huang et al 2011). These findings indicate that the Initiative addressed not only maximizing standards but also constraining standards of values, such as non-domination, empowerment, and voluntary participation. Nevertheless, it is important to note that accountability, another constraining standard, was absent or represented only in so far as it constituted agreement on restoration. Lastly, according to the official evaluation report, emergent standards of values, such as apologies or forgiveness, were not forced on the parties. However, another study, focused on domestic violence cases in this Initiative, found that, irrespective of whether accountability or apologies were set as a goal, in practice this very much depended on facilitators achieving relationship restoration (Huang 2012). Therefore, at the practical level, which standards of values were actually prioritized or sacrificed is dependent on the approach and decisions of individual facilitators.

Restorative Justice Initiative Under Executive Stage In the prison project, the focus was on cultivating the offender’s sense of compassion and responsibility. Project instructors who led the change program were key persons. Victims and their families were considered with their needs expected to be satisfied through the offender’s apology and repentance. Although most of the work was focused on transforming offenders, the prison project aimed also to restore the harm caused to victims (Chen 2011; Chen and Chang 2011). This indicates that

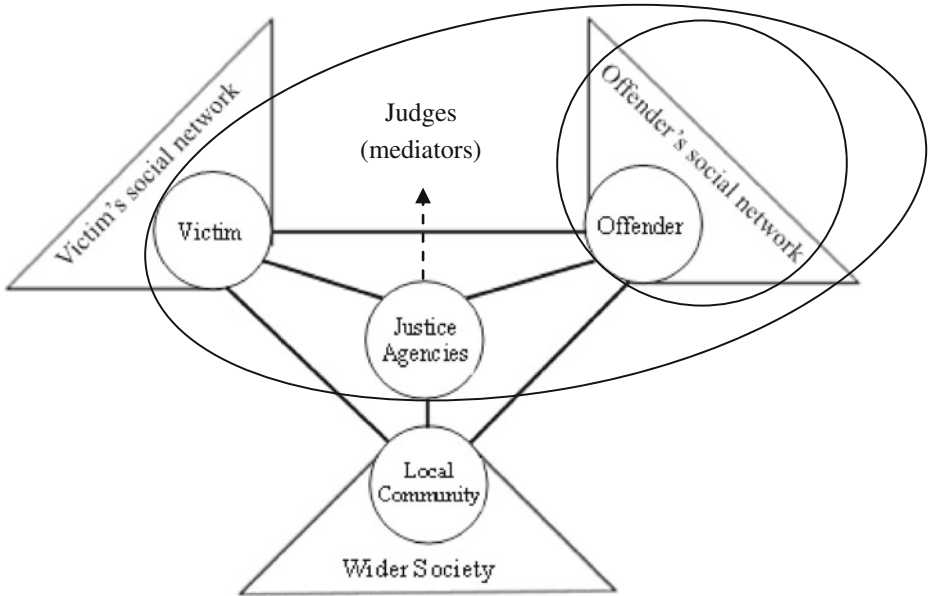


Fig. 5 Involvement and relevance of the parties in the restorative mechanism in the youth justice system

the prison project is more balanced on the positions of victims and offenders, compared with deferred prosecution and conditional suspended sentence programs with their greater emphasis on offenders than victims. Figure 7 demonstrates the involvement and relevance of the parties in this project.



Fig. 6 Involvement and relevance of the parties in Restorative Justice Initiative

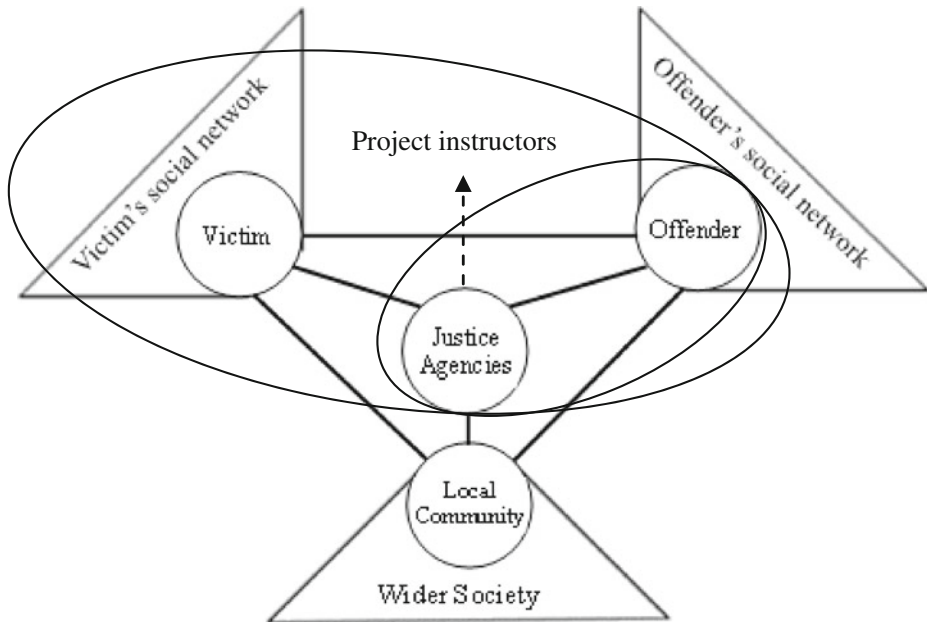


Fig. 7 Involvement and relevance of the parties in prison project in the RJ Initiative

According to Braithwaite's (2002b) framework, the prison project with its emphasis on offenders' responsibility, empowerment of offenders, and non-domination, is strong on constraining standards of values and with its emphasis on remorse and apologies, also has emergent standard values. However, there is relatively less emphasis on maximizing standards, except for cultivation of offenders' compassion for victims.

Discussion and Conclusion

Table 6 summarizes the features of Taiwan's restorative justice programs in regard to the standards strongly emphasized and standards possibly compromised in each program. In Taiwan's restorative justice programs, Braithwaite's (2002b) maximizing values and emergent values seem to flourish, including restoration of property loss, restoration of relationship, rehabilitation of offenders, apologies, and mercy. This tendency might reflect the fact that Chinese cultural characteristics, such as harmony and moral education, are still prominent in Taiwan's justice thinking and act as the main components of restorative justice in Taiwan. However, in these programs, constraining standards obtain insufficient attention or are at risk of being overlooked. Accountability is particularly vulnerable to being neglected as it is overshadowed by other values such as reconciliation and restoration. In the official evaluation report of the Restorative Justice Initiative, restorative justice practices were deemed by many judicial officers as unnecessary as they were considered no different from the original mediation system (Huang et al 2011). This might be attributed to the emphasis on peaceful case settlement and restoration of property loss and relationships in the promotion of restorative justice, and the lack of emphasis on the importance of accountability.

Moreover, based on Figs. 3, 4, 5, 6, and 7, it can be easily seen that there remains more attention on offenders than victims when Taiwan's restorative Justice programs are taken as a whole. Even in the mediation system and Restorative justice Initiative, where the concerns of victims and offenders are treated equally, the focus of the programs is more on relationship restoration, which belongs to maximizing standards, rather than the basic needs of victims. As Bazemore and Bell (2004) and Ward and Langlands (2009) have suggested, victims' rights and interests should not be overshadowed by offenders' benefits such as rehabilitation. But, in Taiwan's restorative justice programs, the basic needs of victims, including expression, accountability, and empowerment (Strang 2002), are less stressed. As Table 6 shows, constraining standards are often in a position of possibly being compromised. Thus, given that there is less attention to victims and less focus on constraining standards of values, the future development of restorative justice in Taiwan needs to focus on the improvement of victims' needs and interests.

So far, there have been four types of restorative justice programs in Taiwan: the mediation system, deferred prosecution and conditional suspended sentence, the youth justice system, and the Restorative Justice Initiative. These programs are the start of the transformation of Taiwan's justice system into a more restorative model of justice. They advance offenders' circumstances and, measured against Braithwaite's framework (2002b), promote maximizing standards and emergent standards. However, in terms of the needs and position of victims and constraining standards of restorative justice, these programs are inadequate. This paper suggests that the deficiency of Taiwan's restorative justice development should be taken seriously. The restorative justice system in Taiwan needs to be developed to protect the basic needs and rights of victims and offenders, especially victims. With this, the pursuit of 'restorative' outcomes would be more meaningful to both victims and offenders. The community's estimation of and confidence in restorative justice might also rise with further reforms to the system.

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