

Restorative Justice and Confucianism in Hong Kong

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Abstract

This thesis is a study of victim-offender mediation meetings in two non-government organisations in Hong Kong – Methodist Centre and Evangelical Lutheran Church Social Service – that the author conducted between January 2015 and February 2016 for the purpose of a doctorate. 22 social workers from Methodist Centre (Project Concord) and Evangelical Lutheran Church Social Service (Hong Kong Youth Enhancement Scheme) have been interviewed. The prime aim of the study was to understand in what way and what sense Confucianism, Confucian relational ethics and filial piety affect the attitude of social workers towards restorative justice and the implementation of restorative justice in Hong Kong. Social workers as mediators play a vital role in victim-offender mediation meetings because they actualise and interpret restorative justice principles. The social workers' understandings of Confucianism and restorative justice are fundamental to the implementation of restorative justice in Hong Kong. The focus of this study is an interpretation of: the lived experiences of social workers and their understanding of Confucianism and its core values; the role of macro-community members; the role of parents as micro-community members;

and the role of social workers as mediators in victim-offender mediations.

The aim and focus of the study translate into three central research questions:

- (1) How do social workers in Hong Kong understand Confucianism in general, and hierarchical social order, 'face', shame, and filial piety in particular?
- (2) From the perceptions of social workers in Hong Kong, under the influence of Confucianism, who are the macro-community members and what is the role of parents as micro-community members in victim-offender mediation?
- (3) How do Confucian relational ethics, filial piety, shame and Confucianism influence the attitudes of social workers as mediators in relation to the philosophy and practice of restorative justice in victim-offender mediation?

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Chapter 1 Introduction

Aims of the study

This thesis is the outcome of a study of victim-offender mediation meetings in two non-government organisations in Hong Kong – Methodist Centre and Evangelical Lutheran Church Social Service – that the author conducted between January 2015 and February 2016 for the purpose of a doctorate. The prime aim of the study was to understand in what way and what sense Confucianism, Confucian relational ethics and filial piety affect the attitude of social workers towards restorative justice and the implementation of restorative justice in Hong Kong. Social workers as mediators play a vital role in victim-offender mediation meetings because they actualise and interpret restorative justice principles (Bradt, Bie & Visscher, 2014). The social workers' understandings of Confucianism and restorative justice are fundamental to the implementation of restorative justice in Hong Kong. The focus of this study is an interpretation of: the lived experiences of social workers and their understanding of Confucianism and its core values; the role of

macro-community members; the role of parents as micro-community members; and the role of social workers as mediators in victim-offender mediations.

The aim and focus of the study translate into three central research questions:

- (1) How do social workers in Hong Kong understand Confucianism in general, and hierarchical social order, 'face', shame, and filial piety in particular?

Social workers involved in victim-offender mediations are Hong Kong Chinese, and previous studies (for example, King, 1975, 1996; Lau & Kuan, 1988; Cheung, Chan, Chan, King, Chiu & Yang, 2006) have claimed that Confucianism is still relevant in understanding Hong Kong Chinese. In this study, the first issue to be clarified is how social workers understand Confucianism and related concepts such as hierarchical social order, face, shame, and filial piety. The findings showed that social workers had an intimate knowledge of Confucianism and sometimes selected the useful parts of the ideology while reinterpreting or ignoring less useful parts. For example, social workers observed that young offenders considered restorative justice a process of saving face and removing the shame they had experienced.

Victim-offender mediation provided a chance to restore offenders and reintegrate them into society. On the other hand, one social worker felt that Confucianism over-emphasized proper behaviour related to social position and thus he tried to reinterpret Confucianism by truth, kindness, and beauty while ignoring the orthodox understandings of Five Relations, which emphasized obedience to authority.

(2) From the perceptions of social workers in Hong Kong, under the influence of Confucianism, who are the macro-community members and what is the role of parents as micro-community members in victim-offender mediation?

Following on from the first question, it is worth asking whether social workers' understandings of Confucianism will affect their view of macro- and micro-community members. The findings revealed that Confucianism did affect social workers' understanding of a) macro-community members and b) the role of parents in restorative justice. Though, social workers were reluctant to consider strangers as macro-community members, they were more willing to consider teachers as macro-community members. Under the

Confucian ethical system, friends and acquaintances belong to pseudo-kinship. They need to follow the rules by expressing their affection and concern for others in the process of social interaction (Jacoh, 1979). This is how acquaintances are differentiated from strangers. Teachers and coaches, however, are persons with intimate knowledge in a particular field. In Confucianism, they have been entrusted with the responsibility to teach and take care of their students, just as parents would do. When observing the role of parents as micro-community members, social workers realized that Chinese parents face the dilemma of being both parents in a Confucian society and supporters in victim-offender mediation. As parents in a Confucian society, they knew that they occupied the highest position in the family and were responsible for their children's wrongdoings. However, in victim-offender mediation, they knew that it is inappropriate to force their children to make a particular decision. Thus, they tried to change their children' decisions by persuasion in order to 'save face'. Unlike other supporters from "micro-communities", perhaps due to the unique nature of the parent-child relationship, parents were caught between being responsible for their children and supporting them without question or reservation.

(3) How do Confucian relational ethics, filial piety, shame and Confucianism influence the attitudes of social workers as mediators in relation to the philosophy and practice of restorative justice in victim-offender mediation?

If Confucianism is relevant to understanding social workers in Hong Kong and does affect social workers in understanding macro-community and micro-community, it is natural to explore whether Confucianism influences the attitude of social workers as mediators in relation to the philosophy of restorative justice, and their practices of it, in victim-offender mediation. In order to answer this question, the role of social workers as mediators was explored. The findings showed that Hong Kong Chinese mediators subtly accepted the role of fixer rather than remaining neutral facilitators (Deng & Xu, 2014). Under the influence of Confucianism, these social workers prioritized social harmony in response to the dilemma of maintaining neutrality while still utilizing their values in mediation. In the meantime, they tried to justify this practice, saying that it benefited both victims and offenders. In pre-mediation sessions, social workers as mediators acted as director, trying to coordinate the behaviour of offenders and their parents. Sometimes, social workers allowed parents to influence their children's decisions in the name of filial piety.

As restorative justice emphasises the equality of participants, the acceptance of filial piety as a justification for this power imbalance seems to threaten the effectiveness of restorative practices.

Restorative Justice Nowadays

Restorative justice is a global movement and an evolving concept that has been interpreted and implemented differently by different jurisdictions (Boyack, Bowen, & Marshall, 2004; United Nations Office for Drugs and Crime, 2006). It views crime as a rupture in interpersonal relationships requiring all stakeholders – victims, offenders, and the community – to come together to resolve the crime and its aftermath. In other words, a proper response to crime is one which seeks to repair the ruptures in interpersonal relationships which cause and are caused by crime (Braithwaite, 1989, 2000, 2002a; Crawford & Newburn, 2003; Hill, 2009; Marshall, 1996, 1999; McCold, 2000). The core ethical values of restorative justice include the need for consensual participation of stakeholders, the principle of mutual respect for all parties, and non-coercive practices and agreements. The restorative process concerns consensus-building through a problem-solving approach towards crime.

Before building a consensus, the offenders must accept their involvement in and responsibility for a particular offence. The participation of both offender and victim is critical in the restorative process, and some kind of denunciation to offender is necessary. The offender accepts a penalty as due in a context of reconciliation and support, and formal justice remains to deal with cases where restorative justice is inapplicable (Braithwaite, 1989; Crawford & Newburn, 2003; Marshall, 1996, 1999). In this sense, restorative justice is a victim-centred approach in dealing with crime, while the criminal justice system treats the victim as a piece of evidence in court. In restorative justice, victims have the opportunity to have questions answered about why the offences occurred, tell the offenders how they have been affected, receive an apology from offenders, and ask offenders for compensation or reparation. Reparation is intended to be of benefit to the victim and is a clear opportunity for the use of restorative processes, such as mediation (Mediation UK 2001). However, some critics have reservations about restorative justice because the participation of victims seems to serve the interests of offenders rather than victims (Ruggiero, 2010). Restorative justice has been widely implemented in youth justice systems in different jurisdictions, with the emphasis is always on offenders. For instance, the United Kingdom's 1988 Crime and Disorder Act

defines the purpose of the youth justice system as being the prevention of offending. The common criticism is that projects aimed at reducing recidivism use victims as part of the process to rehabilitate offenders, rather than genuinely recognising victims' own interests (Crawford & Newburn, 2003). Restorative practices likewise struggle with the muddle of serving both offenders and victims. In order to overcome this problem, mediators use pre-mediation sessions to prepare and control both sides' expectations and behaviours (The role of mediator will be discussed in Chapter 8 and 9). Otherwise, restorative justice practices would simply provide an opportunity for re-victimisation because of the exclusive concentration on the young offender's difficulties.

The first restorative justice practice in contemporary society began as an experiment in Kitchener, Ontario, Canada in the early 1970s when a youth probation officer convinced a judge that two youths convicted of vandalism should meet the victims of their crimes. This probation officer believed that the meetings could be helpful to both parties. After the meetings, the judge ordered the two youths to pay restitution to those victims as a condition of their probation. This first restorative justice practice became known as

Victim-Offender Mediation and is considered a probation-based or post-conviction sentencing alternative, especially for youth offenders (Furio, 2002). All parties involved engage in dialogue in a way to find a resolution by exchanging information and clarifying the precise contours of what happened. Restorative justice is a way for all stakeholders (the victim, the offender, and the community) to reclaim the conflict from the criminal justice system and the state. Otherwise, those involved in the conflict will habitually return to the view that the only agency able to deal with offenders is the police force (Ruggiero, 2010). Ruggiero remarks that the salient feature of restorative justice is letting victims, offenders and community members control the process of solving crime and exchanging information. If restorative justice cannot satisfy this need, victims, offenders and community members will abandon their ownership of the conflict and let the police force, on behalf of the state and the criminal justice system, deal with offenders and conflicts.

Although the form of restorative justice varies with the local context, restorative processes regardless of jurisdiction are based on the principles of equality, social inclusion, and participation. Restorative justice is markedly different from criminal justice, which (true to its roots in Western culture) emphasises

individual responsibility for criminal behaviour. The criminal justice system views human beings as atomistic and individual actors who make rational calculations about the consequences of their behaviour (Llewellyn, Archibald, Clairmont & Crocker, 2013). The criminal justice system involves the imposition of an appropriate sanction or punishment for violation of the penal law. The state, through prosecution before a judge, must establish the guilt of a person for violation of the law. Following the determination of guilt, a judge imposes the appropriate sentence, which can include a fine and/or incarceration (Donald, 2017). Under the rubric of restorative justice, four different models of restorative justice are prominent – Victim-Offender Mediation, Family Group Conferencing, Healing Circles or Sentencing Circles, and Community Boards (Bazemore & Schiff, 2005; Lightfoot & Umbreit, 2004; Office of Juvenile Justice and Delinquency Prevention, 1998; Umbreit, 1998; Zehr, 2002). By 1995, the United Nations NGO Working Party on Restorative Justice adopted the principles of restorative justice as a foundation for global prison environments (Shapland, Robinson & Sorsby, 2011; Van-Ness & Strong, 2010). However, in most jurisdictions, victim-offender mediation is a part of agency mediation; specific institutional actors, such as prosecutors or the police, apply specific mediation programmes and procedures. Case

referrals are generally coerced, while disputant participation is often involuntary. In other words, a certain party may be attending the mediation session only because of the agency's pressure (Ruggiero, 2010). The involvement of institutional actors may pose a threat to the principle of restorative justice that the victim, the offender, and the community reclaim the conflict from the criminal justice system and the state.

For mediators or facilitators in restorative practice, there is no consensus on whether to use professionals (for example, social workers) or laypersons as mediators. Professional mediators have more formal training but may give more directives in telling what participants should behave in mediation. Layperson mediators, who get training before mediation, are more likely to place responsibility for the expression and resolution of the conflict on the disputants, because many of them are former disputants and understand the importance of the central role of disputants (Ruggiero, 2010; Rypi, 2017). In this sense, layperson mediators are more willing and able to practice the principle of restorative justice that offender and victim occupy the central role in mediation.

Hong Kong and Confucianism

Hong Kong, a British colony from 1842 to 1997 as the result of opium war, is a special administrative region of the People's Republic of China with a population of more than seven million people in 426 square miles. The majority of the Hong Kong population is of Chinese ethnicity, and Cantonese is the common language in daily life (Census and Statistics Department, 2017). Despite the majority of the population in Hong Kong is Chinese, the administrative-legal framework set up by the British is still used by the local government. As a city of immigrants, Hong Kong has a long history in receiving immigrants from mainland China. For example, an influx of Chinese immigrants has been streaming to Hong Kong in the 1950s and 1960s as a result of several political movements (Lau, 1982; Tsang, 2007) and, in more recent years, as mainland Chinese have chosen to live, work and buy property in Hong Kong. Some scholars formulated the "refugee mentality" hypothesis, which will be discussed in the following paragraphs, based on the large number of Chinese immigrants in Hong Kong.

Hong Kong is one of the safest cities in the world. In 2014, the number of crimes per 100,000 population in Hong Kong was 935; in New York (2199) and London (8470) that figure was much higher (Legislative Council, 2016). Compared with other world cities, Hong Kong thus possesses very low levels of fear of street crime and perhaps the highest levels of confidence in police (Broadhurst et al., 2007, 2010). In 2016, the number of crimes per 100,000 population in Hong Kong further decreased to 825, with juvenile crime decreasing from 9008 arrested in 2008 to 2732 arrested in 2017 (Hong Kong Police Force, 2018).

Government officials in colonial time often said that Hong Kong Chinese people were law-abiding citizens and held a pragmatic approach to politics. Therefore, crime and social conflict were rare in Hong Kong. For example, in 1976, the then-Secretary for Home Affairs explicitly distinguished Hong Kong's system of response to youth crime from that of 'Western' nations. He claimed:

Fortunately, only a minimal number of young people are involved in violent crime. Most youngsters are in no danger of becoming criminals. Rather they

have in them a latent potential to improve society, and it is this that most youth services seek to release (Hansard, 1976)

He then proceeded to contrast Hong Kong's political culture to 'Western Cultures':

In Western Cultures, one is accustomed to settling social questions by conflict. There are advocates for both sides of a question, and a vote settles the matter. A majority wins. A minority has to give way. In Hong Kong, we do not proceed in this way. Conflicts fade out in compromise. The ballot box is not there. A compromise must be struck. Therefore, when a leader of a group sees something wrong and starts to say so the Hong Kong reaction is to bring that person into the machinery to deal with the problem. Rather than to shut him out, to fight a campaign in an election that will never be held; he is brought into the machinery (Hansard, 1976).

Some critics attributed the rarity of crime and social conflict to the 'refugee mentality' of Hong Kong Chinese (Ngo, 1999). In this hypothesis, people stayed aloof from the mundane reality of the then-colonial government and did

not question the legitimacy of British colonialism because they did not perceive themselves as locals (Gordon, Ma & Lui, 2008). However, several local scholars have developed theories on Confucianism to understand the rarity of crime and social conflict in Hong Kong. King (1975, 1996) claims that Confucianism induces political apathy among Hong Kong Chinese. Lau (1982) states that Chinese familism in Confucianism encourages Hong Kong Chinese to obtain resources through familial groups and demand nothing from the Hong Kong Government, and that Hong Kong Chinese are thus a politically conservative and stabilising force in society. Lau & Kuan (1988) remark that Confucianism heavily influences ideas about social order and individual rights, causing Hong Kong Chinese to believe that social order has to be maintained even at the expense of individuals' rights. All these studies suggest that Confucianism affects the behaviour of Hong Kong Chinese. With reference to the criminological literature, local scholar Wong (1999) asserts that filial piety in Confucianism protects young people from committing juvenile crime because they want to save the family's name and reputation (Details of these studies will be discussed in Chapter 2).

The above theories based on Confucianism emphasize different values. As a complicated philosophical system, Confucianism can be understood from different perspectives such as religion, philosophy and literature. In this thesis, Confucianism is understood as one kind of relational ethics – individuals in society are bound in a social network where the appropriateness of an action depends on one's position within that network (Yao, 2000). This ethical-moral system governs all relationships in society as a vertical, hierarchical structure of superiors and subordinates.

Confucianism and Youth Justice in Hong Kong

Patricia Gray, a British scholar, who spent 16 years in Hong Kong (1981-1997), made extensive studies of youth problems, youth crime, and youth justice in Hong Kong. She coins the term 'disciplinary welfare' to describe the combination of rehabilitation and punishment for juvenile offenders in Hong Kong (Gray, 1996). The central feature of disciplinary welfare, Gray concludes, is that the perceived disciplinary needs of the juvenile are a greater determinant of the sentence than the offence itself. The colonial state made use of filial piety in Confucianism, with Western concepts of welfare, to

legitimise the control of unruly working-class youth. Filial piety in Confucianism thus heavily influenced the development of youth justice in Hong Kong. From the late 1970s, juvenile delinquency was portrayed as a pathological deviation from Chinese normative standards of conduct. This pathological deviation was caused by both a breakdown in parental discipline (the failure to teach children proper conformity to lawful social order), and the weakening bonds of family and school. From these beliefs, juvenile delinquency became the personal problem of young people. It was the responsibility and obligation of parents and families to save young people from committing juvenile delinquency. The disciplinarian aspects of Confucianism were often used to justify the use of residential training and custody in Hong Kong. Juvenile justice professionals mobilised cultural rules and resources from Confucianism – such as ‘filial piety’, ‘conformity to normative rules’, and ‘obedience to authority’ – to legitimise the unequal, hierarchical order of capitalist social relations that juveniles face in daily life (Gray, 1997, 1999).

Confucianism and Restorative Justice

John Braithwaite and his reintegrative shaming theory have had a profound influence on restorative justice and restorative practices in Australia and New Zealand (Sherman, Strang & Woods, 2000). Braithwaite once wrote, “Confucius is the most important philosopher of restorative justice” (2002a, p.22). He refers to mediation in China as the largest and most diverse form of restorative justice. Several scholars in mainland China (Liu, & Palermo, 2009; Liu, 2016; Lu, 2008; Yuan, 2017) agree with Braithwaite (2002a) in asserting that seeking harmony and peace in Confucianism is fundamentally consistent with restorative justice. Mediation, the most important method of restorative justice, is part of Chinese Confucian traditional legal culture. The essential purpose of Confucian moral philosophy is to maintain and to restore social order and human relationships in a long-lasting, effective way. In prioritizing social relationships, Confucian thought coincides with modern principles of restorative justice.

However, studies in criminological literature in Hong Kong (Gray, 1997, 1999; Vagg 1998; Wong, 1999; Yeh, Yi, Tsao, & Wan, 2013) showed ambiguous and

even contradictory findings on the nature of filial piety and shaming in Confucianism. As mentioned above, Gray (1996; 1997; 1999) asserts that filial piety in Confucianism is used to justify punitive elements in the criminal justice system and has nothing to do with restorative justice. Vagg (1998) agrees, arguing that Hong Kong is one example of a culture that values interdependence and communitarianism and that has a sharp sense of shame and shaming. However, this results are not in the possibility of reintegration for deviants, but in a strong commitment to labelling and exclusion. Wong (1999), though, argues that filial piety socialises adolescents as inner-directed persons who do not engage in law-breaking behaviours.

From the existing literature, we can conclude that Confucianism still plays an essential role in understanding both Chinese culture and youth justice in Hong Kong. Filial piety and shaming are indeed two core values in Confucianism, and different understandings of these two core values will lead to different interpretation of Confucianism. However, whether Confucianism in general, and filial piety and shaming in particular, are compatible with restorative justice is in doubt. There is still no consensus among different scholars on this issue.

Role of Mediator and Victim-Offender Mediation

Mediators are translators of restorative principles into restorative practices and are key persons in affecting the restorative experiences of all participants (Choi, J.J. & Gilbert, M.J. (2010). Layperson mediators who come from education, mediation and social welfare backgrounds adapt more easily to the role of neutral referee in a conference (McDonald, and Moore, 2001). The attitude of mediators certainly affect the implementation of restorative justice. Mediators' interpretations of Confucianism and restorative justice are undoubtedly important and decisive in the feasibility of the Community Support Service Scheme under the Hong Kong Police Superintendents' Discretion Scheme, which is intended to divert young people who have committed a minor offence from being prosecuted (Lo, Wong & Maxwell, 2006). Since 1963, Superintendent of police is responsible to caution young people, who are usually first-time offenders committing minor offences. The young people must admit the offence; and the young people and their parents or guardians must agree to the cautioning. If the young people does not agree to the use of the caution or denies committing the offence, the case is referred to the juvenile court. The Community Support Service Scheme was launched in 1995 to help

young people cautioned by the police. The scheme provides supportive services to those young people through structured programs and supervised activities within the community. The service content includes individual and family counselling, therapeutic groups, skill training as well as recreational and community services (Lo, Wong & Maxwell, 2006). Among the five non-government organisations helping provide the Community Support Service Scheme, Methodist Centre (Project Phoenix) and Evangelical Lutheran Church Social Service (Hong Kong Youth Enhancement Scheme) are two non-government organisations which provide victim-offender mediation.

Several studies, such as Umbreit & Greenwood (1999), Umbreit, Coates & Vos (2001), Bazemore & Umbreit (2003) and Choi & Gilbert (2010), have explored the role of mediators, the skills that should be possessed by mediators, and how their role and skills affect the satisfaction of participants – namely victims, offenders and their supporters – in restorative practices. For example, some victims stated that they received a great deal of information without being allowed adequate time to prepare emotionally for the meeting. Some victims were encouraged by mediators to ‘keep things positive’ when

interacting with youth offenders at victim-offender mediation sessions and complained that this guidance discouraged them from expressing disappointment and other negative emotions. However, none of the above studies discussed the role of mediator in Chinese societies. Some researchers have examined mediation in Chinese societies (for example, Deng & Xu, 2014; Chia, Lee-Partridge & Chong, 2004), but none of them studied victim-offender mediation and the role of mediator in Chinese societies.

Victim-offender mediation brings a victim and an offender together in either direct dialogue or shuttle dialogue using a mediator to obtain answers, repair harms and make amends to the victim (Bazemore & Umbreit, 2003; Lemley, 2001). This voluntary, dialogue-driven process provides a safe, controlled setting for victims to meet and speak with offenders (Bazemore & Umbreit 2003). It also allows stakeholders to develop a mutually acceptable plan to address the harm caused by the crime and affords offenders an opportunity to understand the human impacts of their behaviour on those harmed and take personal responsibility for their actions (Bazemore & Umbreit, 2003). In Hong Kong, all mediators who conduct victim-offender mediation sessions, which are offered by Project Phoenix of Methodist Centre and Youth Enhancement

Scheme of the Evangelical Lutheran Church, are social workers who graduated from local universities. Some of them did not study social work as undergraduates but have their master of arts in social work. All social work programmes, both undergraduate and postgraduate, are scrutinised and approved by the Social Workers Registration Board (<https://www.swrb.org.hk>). Although different programmes in different universities have a few unique features, all of them convey the same core values in social work philosophy and practices.

What We Know and What We Do Not Know: Filial Piety and Shaming

Filial piety demands obedience – honouring one’s parents, and bringing honour and avoiding disgrace to the family name. Responsible women and men are defined as those exercising self-control, behaving properly, and fulfilling their filial obligations (Chiu & Hong, 2013; Gray, 1997). Delinquency is viewed less as a narrow breach of legal codes, and more in the wider context of family failure – i.e., that children have not been taught proper conformity to lawful social order. Thus an assessment of ‘family strength’, or the family’s ability to fulfil its filial piety responsibilities, is viewed by youth justice

professionals as a key indicator of whether the juvenile is likely to remain within the boundaries of the norm or law-abiding behaviour (Gray, 1997; 1999).

However, the relationship between filial piety, shame, and guilt is unclear. Some studies (for example, Barbalet, 2013; Bedford & Hwang, 2003) argue that it is important to differentiate shame and guilt, while others (for example, Wicker, Payne & Morgan, 1983; Harris, 2006) claim that the differentiation of shame and guilt on theoretical dimension is trivial with limited empirical support. Barbalet (2013) and Bedford & Hwang (2003) argue that filial piety affects Chinese people how to understand the concepts of guilt and shame. Guilt refers to wrongdoing, a violation of internal law according to objective morality while identity remains intact. Shame is felt when identity is called into question according to subjective morality. Guilt and shame are mechanism of informal social control and provide channels for processing stress or norm violation into self-punishment. Guilt and shame subtly shape behaviour, often by causing people to behave so as to avoid experiencing them. (Bedford & Hwang, 2003). Under the influence of filial piety, an individual in Chinese culture is obligated to protect the family against any threat from the outside,

and shame is emphasised instead of guilt. Family is conceptualized as the “great self” and the boundaries of the self are flexible enough to include family members and significant others (Barbalet, 2013). Confucian relational ethics assume hierarchy based on role differentiation of the type implicit in parent-child, teacher-student, ruler-ruled relationship. It is arguable that such hierarchical role relations imply a dependency of one on the other and therefore a particular sensitivity of one to the needs and purposes of the other. The idea of a relational-self may be seen as involving the subordination of an individual person “lesser self” to a “greater self” constituted in the relationship in which they participate, especially family relationship. (Barbalet, 2013; Bedford & Hwang, 2003). The Chinese family does not produce offspring who shall on maturity be independent of it, but rather produces offspring who on maturity are more firmly tied to the requirements of the maintenance of the family as a continuing entity. Individual identities in Chinese culture are defined in terms of the system of relationships in which a person is involved. Group-oriented behaviour, such as the harmonious interaction of group members, is valued more highly than individuality or individual freedoms. Harmony is an important component of relational identity.

Proper behaviour varies with each circumstance, depending upon the relationships of those involved. Thus, wrong and right are socially defined. Shame is a more effective means of social control in a system where maintaining harmony in relationships is valued. The revelation of a failure or a flaw in one's identity produces the experience of shame. Shame is associated with the fear that one's inadequacies will result in rejection by or expulsion from the group. There is less need for objective moral guidelines to limit behaviour when the natural social repercussions, rejection by the group and loss of personhood, are severe enough to discourage antisocial acts. Relational identity is conducive to shame and situational morality as a method of social control. It is not compatible with use of objective morality and guilt (Bedford & Hwang, 2003).

The mechanism of shaming may be much more complicated than Braithwaite suggests (1989). Braithwaite defines reintegrative shaming as disapproval that does not label the person as evil, nor allows condemnation to result in a master status trait. The theory predicts that reintegrative shaming will result in less offending. Conversely, stigmatising shaming is not respectful of the person, is not terminated by forgiveness, labels the person as evil and allows them to

attain a master status trait. The theory predicts that stigmatising shaming results in a higher level of offending. However, the emotions of shame play an essential role. Harris (2006), who did not distinguish between shame and guilt in the study, remarks that the emotion of shame-guilt, involves acknowledging and is associated with empathy for those hurt, but unresolved shame involves an inability to resolve issues arising from the event and feelings of hostility towards others. Reintegrative shaming may be important for reducing offending not because it results in shame, but because it provides a mechanism that assists offenders in managing their feelings of shame in more constructive ways (Harris, 2006).

Confucianism emphasises relational ethics: everyone is embedded in a personal nexus. The hierarchical social order is important in Chinese society, and the individual avoids shame to save the reputation of the family. However, the Hong Kong Chinese have reinterpreted the meaning of 'filial piety', from "obedience to authority" in the past to "love and care" in the present time (Ting, 2009). Likewise, although 'filial piety' is a gender-specific concept (it is required of sons) in Confucianism, the Hong Kong Chinese have applied the concept of 'filial piety' to both sexes. It is worth studying any changes in the

meaning of shaming as well. If the meaning of shaming has changed, it is important to understand whether the different understandings on shaming affect the practices of restorative justice, and whether female and male social workers have different understandings of filial piety and shaming. Under the influence of Confucian relational ethics and filial piety, Chinese people are placed in a nexus of personal relationships, and they judge right or wrong in terms of social position in that relationship. When victims and offenders come to mediation, they have to discuss how to repair the harm caused by the crime. Can they make their decisions without the influence of their families? Is shame an effective means to make offenders confess their wrongdoings to victims? Alternatively, do offenders want to 'save face' for their families? It is unclear whether family members of victims and offenders in Hong Kong Chinese society are merely supportive role and whether they influence the decisions of victims and offenders.

What We Know and What We Do Not Know: Community

McCold (2000) argues for the importance of community in restorative justice. The community is defined as natural networks of personal relationships, and

networks which can reintegrate and support victims and offenders. McCold differentiates notions of communities into (1) micro-communities and (2) communities of support. Micro-communities refer to those who have a personal relationship of responsibility with a victim or offender, including family. Communities of support refer to those who have an ongoing relationship of concern for a victim or offender and are only indirectly connected emotionally to the specific offence. Restorative justice envisions a moral order based on respect for others and personal responsibility for their behaviour (McCold, 2004).

Umbret, Coates, & Vos (2004) disagree with McCold's view of a community. They argue that the understanding of a community should incorporate geographic boundaries and the level of inter-reliance for goods and services among the residents within a given boundary. Volunteer mediators, mediators, circle keepers, and circle participants are often chosen to reflect participation in a local community, neighbourhood and broader community in order to offer victims and offenders a supportive, safe environment in which to share their stories, their pain, and their hopes.

Although there is still no consensus on notions and definitions, community participation in restorative justice has been increasing. Programs such as sentencing circles, elders' or community sentencing panels, sentence advisory committees, and community mediation committees aim to increase community participation in sanctioning criminal activity (Andersen, 1999). However, Crawford (1999) expressed his concern over the participation of the community in restorative justice. Communities are often assumed to be largely homogenous entities with easily discernible needs and objectives. He coined the term "ideology of unity" to express his worries. "Ideology of unity" refers to a moral order or consensus that is taken as given, rather than constructed through negotiations. In practice, this often results in the acceptance of the view of the most powerful or well-organised interests within a given community. One dominant group is able to impose its values upon others, with little regard for individual rights. The moral voice of a community may come to be dominated by unrepresentative elites within the community.

The existing literature has not discussed the relationship between Confucianism and community, including macro-community and micro-community. With reference to macro-community, under the influence of

Confucianism in general and relational ethics and filial piety in particular, how Hong Kong Chinese understand the meaning and nature of macro-community, the relationship between macro-community and restorative justice and restorative practice. The participation of community members is important to keep accountability in the restorative justice meeting. However, committing a crime actually lead to the risk of 'losing face' of offenders and their family members. The participation of community members, who have no personal relationship with offender, will probably not considered as appropriate. The relationship between Confucianism and the participation of macro-community is unclear. With reference to micro-community, who should be considered as micro-community members? Under the influence of Confucianism and its core values, how Hong Kong Chinese understand the role of micro-community members have not been explored. Whether the relational ethics lead to power imbalance between offenders and micro-community members is in doubt.

Questions to be asked

Two questions should be considered in assessing the feasibility of implementing restorative justice in Hong Kong: (1) whether shaming should be

involved; and (2) whether community involvement should be included. If shaming in Hong Kong is reintegrative, Braithwaite's reintegrative shaming theory should be adopted in understanding and exploring restorative justice and its practice locally. Furthermore, we have to investigate the presence shame-guilt or unresolved shame in the process. If the shaming is disintegrative, shaming should not be involved, and the views of abolitionism should be adopted in understanding and exploring restorative justice and its practice in Hong Kong. One of the main differences between Braithwaite's reintegrative shaming theory and abolitionism is shaming. Abolitionists leave no room for shaming and do not agree with the logic of reintegrative shaming (Ruggiero, 2010). From the view of abolitionists, the role of the mediator is to help the victim and the offender understand the nature of their conflict and mobilise community resources to solve the conflict. Braithwaite's reintegrative shaming theory and abolitionism are competing theories in exploring the feasibility of restorative justice in Hong Kong. If reintegrative shaming should be involved in restorative justice, Braithwaite's reintegrative shaming theory is the most suitable option. Otherwise, abolitionism should be adopted.

Meanwhile, if Confucian relational ethics and filial piety affect the involvement of the community in Hong Kong, we need to explore which notion of community is suitable for implementing restorative justice in Hong Kong. If relational ethics and filial piety discourage the involvement of strangers, micro-communities and community of support seem suitable. That means personal networks are crucial in exploring the feasibility of restorative justice in Hong Kong, and that and Hirschi's control theory and Braithwaite's reintegrative shaming theory may not be adopted in exploring restorative justice in Hong Kong. If a high level of community involvement is suitable, abolitionism is a suitable vehicle for exploring and understanding the feasibility of restorative justice in Hong Kong. This is because abolitionists believe that conflict should be solved in the community.

Furthermore, if Confucian relational ethics and filial piety inhibit victims and offenders from discussing and reaching a consensus independently of family influence, will victims and offenders reach consensus in order to 'save face' for their families? Based on the above discussion, these two questions should be explored in this study.

The Structure of the Thesis

In this thesis, Chapter 2 is a literature review dealing mainly with whether Confucianism is still relevant in understanding Hong Kong Chinese and their decision-making. How Hong Kong Chinese understand core values in Confucianism, such as *Ren* (benevolence), *Yi* (righteousness), *Li* (propriety), shame, and filial piety will be explored. Whether the core values of Confucianism affect the development of youth justice in Hong Kong will be discussed. Confucianism's view of sexuality and a comparison between Confucianism and Durkheim in the area of morality and anomie will be examined.

Chapter 3 is another literature review chapter dealing with the development of restorative justice, restorative practices and developments of mediations in mainland China, Taiwan, and Hong Kong. Braithwaite's reintegrative theory, control theory, theory of neutralisation, Zehr's changing lens, and abolitionism will be reviewed in relation to restorative justice. When scholars try to trace the history of restorative justice, there are two competing narratives of the history of restorative justice available. These two narratives will be compared and

contrasted. Finally, the development of restorative practices, and the development of mediation in mainland China, Taiwan, and Hong Kong will be reviewed.

Chapter 4 outlines the research methodology adopted in the study. The aims of this study, research settings, interview, the theoretical approach of this study and related issues will be reviewed and discussed.

Chapter 5 explores the interpretation of Confucianism in Hong Kong and how restorative justice has been implemented for young offenders under the Police Superintendent's Discretion Scheme. The contemporary meaning of core values of Confucianism, which include face, shame, filial piety, and hierarchical social order, will be explored and discussed. Whether the core values of Confucianism influence the participants in victim-offender mediation will be discussed.

Chapter 6 explores the understandings of macro-community members under the influence of Confucianism and whether this understanding affects the involvement of the macro-community in Victim-Offender Mediation. The

principle of respecting the superior and favouring the intimate are relevant in understanding how Hong Kong Chinese differentiate acquaintance from strangers. The understandings between acquaintance and strangers will be discussed in relation to the understandings of macro-community members.

Chapter 7 explores the role of parents as micro-community members in Hong Kong and the differences between the role of parents in Chinese societies and non-Chinese societies. Under the influence of Confucianism, Hong Kong parents are not merely supporters, but also indirect victims and decision makers too. The unique parent-child relationship in Confucianism will be discussed in order to understand the complexities of parental role in victim-offender mediation.

Chapter 8 explores the role of mediators in victim-offender mediation in Hong Kong and how mediators understand and interpret key values of restorative justice under the influence of Confucianism. Under the influence of Confucianism, the attitude of mediators in relation to maintaining neutrality and apology in mediation will be discussed.

Chapter 9 explores the restorative encounters in pre-mediation sessions and the interplay among mediators, victims, offenders, and their parents. Under the influence of Confucianism, the nature of the preparation work in pre-mediation session is unclear and in doubt. With the help of Goffman's theory, and Durkheim's theory, Foucault's theory, the nature of interaction and power in pre-mediation session will be discussed.

Chapter 10 offers a concluding account of the project's key findings and reflects on their implications for future sociological analyses. The findings will be synthesised into five themes: (1) Confucianism and restorative justice; (2) "face", shame, hierarchical social order and filial piety; (3) macro-community, micro-community and Confucianism; (4) role of mediator and restorative justice; (5) feasibility of restorative justice in Hong Kong. The chapter ends with the limitation of the study and suggestions for future study.

Chapter 2 Confucianism and Chinese People

This chapter is a review of the core values of Confucianism – *Ren* (benevolence), *Yi* (righteousness), *Li* (propriety), and filial piety – which form the Confucian system of relational ethics. First, the relationships between individuals, families, and society will be discussed. Next, previous studies of Confucianism among Chinese people in Hong Kong, Taiwan, and mainland China will be introduced. The relationship between filial piety and youth justice in Hong Kong will also be discussed. The chapter ends with an examination of Confucianism's view of sexuality and a comparison between Confucianism and Durkheim in the area of morality and anomie.

The influence of Confucianism has spread throughout East Asia. Confucian intellectualism, philosophies, and religious beliefs and activities have penetrated all strata of society, influencing political, social, economic, religious, and cultural life in China, Korea, and Japan, and even in Vietnam and other Southeast Asian countries (Yao, 2000). It is undeniable that Confucianism is the cornerstone of traditional Chinese culture, but it is still

worth investigating whether Confucianism is relevant in understanding Chinese people in contemporary societies.

In Confucianism, individuals have to behave according to Confucian relational ethics: *Ren* (benevolence), *Yi* (righteousness), *Li* (propriety). Individuals in society are bound in a social network where the appropriateness of an action depends on one's position within that network (Yao, 2000). *Ren* (benevolence), which recognises that the individual is embedded in a social network, means that people should take care of parents and siblings first, then more distant relatives, friends, and lastly strangers. *Yi* (righteousness) means respecting hierarchy in relationships and stresses respect for someone who is an elder or in a higher position. *Li* (propriety) means acting correctly according to social norms and rites, which are constructed on the principles of *Ren* (benevolence) and *Yi* (righteousness). The central Confucian virtue, filial piety, resulted from the evolution of the primitive rituals of ancestor worship into general respect for ancestors, parents, and elders (Hsu, 1948, 1983). Sacrifice to ancestors was important because it gave the descendants a religious dependency and spiritual reliance, and continued the chain linking ancestors and descendants. Confucianism endows ancestral worship with the meaning of 'not forgetting

one's origin' (Yao, 2000). Filial piety, which is the cardinal value in the family, emphasises 'conformity to normative rules', and 'obedience to hierarchy' (Gray, 1997, 1999). Filial piety has three levels. At the highest level, a person honours and glorifies his or her parents by achievement in moral cultivation and by service to the people and the state. At the second level, a person avoids bringing disgrace to his or her parents through his or her own failure. At the lowest level, a person serves his or her parents with reverence and ensures that they have a decent life (Yao, 2000). Parents are on top of the family hierarchy, while children have to follow parents' orders. In Confucianism, society is considered as a larger family for everyone, and the principles of filial piety are applied to the society too (Gray, 1997). In ancient China, the Emperor occupied the highest position of the social and political system; government officials held a more senior position in relation to the general public, which occupied the lowest position. Subordinates were meant to follow orders from their superiors without resistance. Filial piety is thus about much more than parents and children: it is the keystone of social order in Confucianism. This ethical-moral system governs all relationships in society as a hierarchical and vertical structure of superiors and subordinates (Ho, 1995; Hwang, 1999, 2000; Yao, 2000).

Confucian relational ethics are responsible for a social system which deprives individuals of any feeling of independence, while at the same time enabling them to share whatever wealth or glory is due to their ancestors (Hsu, 1983). Relational-self means that individuals in Confucian society are not allowed to express their personal feeling and ideas without first considering others. Conformity is emphasised, at the expense of personal existence, uniqueness, direction, goals, or intention in daily social functioning. This blurs the boundary between the self and others. Confucian relational ethics socialises Chinese people to accept duties and obligations to others and to consider the appropriateness of an action depending on their position within the social network. In Confucian relational ethics, individuals cannot live alone without the family and the nexus of personal relationships. Individuals are cultivated to be situation-centred in their personal and cultural orientation; thus, they tend both to view the world in relational terms, i.e., that no explanation of social phenomena can be complete without knowledge of the facts about individuals, and to seek mutual dependence among family members friends and acquaintances. In Confucianism, eternity exists in self-cultivation as well as in the collective and practical life of the family. A sense of eternity can be obtained through the continuity of the family. Each generation is treated as a

necessary link in the family chain, and every life is considered a contribution to the huge enterprise that was initiated by the ancestors and continued by their descendants (Yao, 2000). Situation-centred individuals are not encouraged to develop unique personalities or pursue personal attainment without consideration of the reactions of others with whom they stand in relationship.

Following the logic of Confucianism, Chinese traditional legal culture does not have the notion of individual rights or the idea of personal autonomy. This is because it conceptualises individuals in relational terms and seeks to ensure individual values within the relational cadre it proposes. Individuals are nothing without being part of a family. Individuals who occupy higher social positions enjoy privilege and power, while individuals who hold lower social positions do not. Inequality is recognised as a necessity for existing in society because it decides who has the power to make decisions and who has to follow orders. Inequality is a kind of coordinated diversity in Confucianism. The Confucian principle of justice is that the resolution of a conflict must respect human feelings. Truth is essential because it helps us maintain harmony; the methods or procedures used to find the truth do not matter. The rights of the suspect are rarely a concern, and the idea of due process is unknown in traditional Chinese

culture. The concept of rights is moral rather than legal; it must co-exist with harmony. The Confucian harmonious ideal of *Wu Song* (no lawsuit) is implemented at the expense of an individual's interests and legal rights. The purpose of justice in Chinese traditional legal culture is to maintain and restore peace in human relations. For the interest of society and family, the individual's interest is negligible and must be sacrificed (Liu & Palermo, 2009). In Chinese traditional legal culture, individuals' rights, individual autonomy and proper procedures of obtaining truth are all expendable in order to maintain a harmonious society.

Confucianism insists that the proper societal response to offenders is education. Punishment does not make people learn or induce them to be good, and the primary aim of education is to cultivate and correct mental attitudes toward social norms. In other words, the offender should be reformed and reintegrated into society as a useful member of that society by properly inculcating social norms and values. Although intervention from agents of social control does not attempt to demean or humiliate offenders in China usually have fewer opportunities to enter school, find jobs, or even establish families (Chen, 2002; Liu & Palermo, 2009). In the Confucian reality, a

harmonious society is a stable society. Offenders, criminals, and all those people who do not conform to the social norms and values assigned by the state are enemies of the state because they would jeopardise a stable society, and so they must be segregated from the rest of society.

Study of Chinese people in Hong Kong, Taiwan, and mainland China

The Hong Kong population was approximately 7.4 million at the end of 2017. The majority of the Hong Kong population is of Chinese ethnicity (94%) and speaks Cantonese as a common language (88.1%) (Census and Statistics Department, 2017). Although Hong Kong is a Chinese society, it was a British Colony for one and a half centuries. The administrative-legal framework set up by the British is still the dominant system. As a city of immigrants, Hong Kong has since the Second World War experienced a flow of immigrants from mainland China, who carried with them with various cultural traditions (Chan & Lee, 1995). Many of these immigrants came as refugees during several political movements, such as the Great Leap Forward in the 1950s and the Cultural Revolution of 1967-77. The Great Leap Forward, one of Mao's signature policies, intended to increase steel and agricultural production

without reliance on modern technology, but it led to severe famine. The Cultural Revolution, also under Mao's policy, was intended to renew the spirit of the Communist revolution in mainland China and eliminate Mao's political enemies. The resulting political turmoil caused an influx of illegal immigrants to Hong Kong (Lau, 1982; Tsang, 2007).

Several studies argued that Confucianism is still relevant in understanding Chinese people in modern societies. Lau and Kuan (1988) argue that the traditional Chinese legal culture, which is one crucial component of Confucianism, still heavily influences ideas on social order and individual rights among the Hong Kong Chinese. Social order has to be maintained even at the expense of individual rights. Lau & Kuan (1988) surveyed Hong Kong Chinese in 1985 and 1986 and found a general agreement that social order was more important than an individual rights. For example, 69.8% of respondents were not against police officers using illegal methods to obtain evidence to convict a suspect. Furthermore, respondents did not mind the colonial government remaining an authoritarian regime and the deprivation of individual right if colonial government could maintain law and order and economic prosperity in Hong Kong.

Everyday Confucianism in Hong Kong

King (1975; 1996) and Lau (1992) studied politics in Hong Kong. Both King and Lau found that Confucianism is a necessary element in understanding the Hong Kong Chinese. King (1975) proposes 'Administrative Absorption of Politics' to explain the political apathy among this group of people. King argues that traditional Chinese Confucian political culture, which is more parochial-subject than participatory in nature, causes political apathy. It is important to note that Confucianism in Hong Kong is neither of the scholar-official nor of the literary tradition. There is only social Confucianism, the Confucianism of everyday life, which refers to a set of Confucian beliefs and values accepted widely by the man in the street. King used the term 'rationalistic traditionalism' to describe the attitude of the Hong Kong Chinese towards Confucianism. Hong Kong Chinese identify with Chinese traditions because they are capable of assessing the practical utility of Chinese traditions for achieving their social and economic goals. In other words, the Hong Kong Chinese have made Confucian values more 'rational' by subordinating them to the higher value of wealth creation. Education becomes valuable only to the extent that it is instrumental to success in business, while

nepotism in hiring is practised because the employers think that family members can be trusted more than strangers. Chinese traditions are often treated as cultural resources to be utilised according to instrumental considerations, and familial values such as filial piety and respect for the elderly have not completely changed. The Hong Kong Chinese follow and practice Confucian tradition in a rational and selective fashion aimed at achieving personal economic goals (King, 1996).

Based on the ideas of King, Lau (1982) introduces the concept 'minimally-integrated social-political system' to explain the low political participation among the Chinese in Hong Kong and the maintenance of political legitimacy of colonial government without democracy. Lau argues that utilitarian familism, which evolved from Confucianism, is the cornerstone of Hong Kong's 'minimally-integrated social-political system'. Utilitarian familism can be defined as the normative and behavioural tendency of an individual to place his familial interests above the interests of society and of other individuals and groups. A familial group is a group of individuals bound to each other by family and kinship ties, as well as by quasi-kinship relationships. Confucianism treats the familial group as the indispensable unit of social

integration, bridging the vast distance between the individual and the overarching socio-political system (Chan & Lee, 1995; Lau, 1982).

The ethos of utilitarian familism and interdependency among family members in Hong Kong Chinese let familial groups function as networks for the exchange of resources among their members. The Hong Kong Chinese meet many of the mundane needs of urban living through their primary resource network, i.e., the familial groups. Thus, these groups represent a politically conservative and stabilising force in society. Conversely, participation in political or other groups beyond the family is low among the Hong Kong Chinese, which, Lau (1982) argues, is because there are no mechanisms to tie these small familial groups into large, cohesive groups for political action. Self-interest and economic gains are recognised as the prime concern of Hong Kong people. However, such interests and benefits are conceived not so much at the level of individuals as at the level of the group – the family – to which one belongs. It is a kind of ‘collective egocentrism’, with the family constituting the simple framework of calculation and consideration. The Hong Kong Chinese put familial interests above any other kind of social interests. Utilitarian familism takes a disjunctive view of familial and social interests, i.e., the two

interests are more or less compartmentalised. Responsibilities towards society are not individual obligations, which begin and end with the familial group. Utilitarian familism is not a qualitative departure from Chinese familism in rural-traditional settings. Instead, it should be conceptualised as an adaptation of Chinese familism to a particular set of structural conditions imposed by the urban-industrial environment of Hong Kong.

Study of Chinese people in Taiwan

Another study, conducted by Chang & Holt (1991) in Taiwan, showed that interpersonal relations in Chinese society could be manipulated to fulfil individual goals. They interviewed 55 Chinese people in Taiwan, who varied in age, occupation, social status, and educational background. Their findings were consistent with Hsu's situation-centred individual (1983) and King's rationalistic traditionalism (1975; 1996). Chang & Holt used the term *Kuan-hsi* ("relationship"; Chinese people in mainland China pronounce it *guanxi*) to illustrate the particularities of interpersonal relationships among Chinese people in Taiwan, stating that Chinese interpersonal relationships are not conducted merely by following a set of well-prescribed rules. The Chinese

world of interpersonal relationships is complicated by distinctions based on the closeness of a given relationship, and by expectations for preferential treatment that arise out of one's connections. *Kuan-hsi* (relationship) indicates whether one belongs to a member of an in-group, and Chinese people try extremely hard to make the relationship as close as possible. There are two strategies to establish *Kuan-his (relationship)*: (1) relative relationships and (2) previous association. The first strategy is appealing to blood or marriage relationships. Even if the relative is quite distant, one can still enjoy a certain degree of special treatment. The second strategy is building the feeling of association through emphasising that the two people have something in common, for example being from the same geographical location or attending the same school. Most Chinese in Taiwan tend to stay in the same place for most of the time, and thus geographical location becomes something meaningful. By attending the same school, one is allowed to address the other at approximately the same level as an elder brother or sister might address his/her younger brother or sister. Simply by having attended the same school, one is able to mark the relationship as more or less special; the other is no longer a "stranger." Some might object that this is a natural tendency of human beings: by having some similar life experience, by living in the same place or

attending the same school, one naturally has more to share with the other. For some Chinese, however, it is not a problem of whether one naturally feels more close to the other by having had some previous association or common experience. Rather, it is the constraining effect of this association on the interpersonal relationship that makes the burden of association inescapable. One may be blamed for "lacking human feeling" if one chooses not to grant any particular feeling or treatment to such associates, regardless of any emotional connection. Such relationships may easily fall prey to manipulation and abuse (Chang & Holt, 1991).

Chang & Holt argue that *Kuan-hsi* (relationship) is the fast track to achieve one's economic and political goals. Politicians and businessmen spend time and resources in establishing or employing a particular kind of *Kuan-hsi* (relationship) in Chinese society. The more power one has, the more complicated and extended one's *Kuan-hsi* becomes. On the other hand, the better one's *Kuan-hsi* (relationship) becomes, the more power he or she can claim. Therefore, a person can try to expand his or her network of interpersonal relationships, so that others are less likely to refuse requests, giving a better chance for success in society. Maintaining social harmony is a

primary task, and the Chinese have developed a great variety of verbal strategies – such as compliments and greeting rituals – to maintain social harmony and good interpersonal relationships. This focus on social harmony may also explain why the Chinese prefer not to say something open in front of others in order to save ‘face’. The Chinese cultural pattern of relationships is built upon other relationships. Interpersonal bonding has its basis in bonding that is already established and ongoing. Social harmony is, in fact, a means of achieving the individual’s goals. The focus of attention in the practical aspect of Chinese interpersonal relationships is the individual. Starting from the individual as the centre, this fluctuating web of interpersonal connections is further extended to the family, societal and, finally, national level (Chang & Holt, 1991).

Comparative study of Chinese people in Hong Kong, Taiwan, and mainland China

Ruan & Lai (2005) interviewed Chinese people in Beijing and Hong Kong, finding that close kin play a stronger role in instrumental support than does emotional support from Chinese social networks. Chinese people prefer

turning to non-kin such as friends and co-workers when confronting emotional issues, while families tend to specialise in the provision of instrumental support. Ruan & Lai explain that the relatively weak function of the Chinese family in providing emotional support is due to a central feature of Chinese family tradition: the strict hierarchy of age, sex, and generation. The paternalistic and hierarchical kinship structure in China may discourage the sharing of emotional problems among close relatives. Close kin are more likely to provide care during sickness, assistance in household jobs and advice on important decisions. Among close kin, the partner or spouse is the most frequently named person for all kinds of support, followed by children, parents, and siblings. Mothers are consistently more important than fathers in providing instrumental as well as emotional support. While brothers are more important for providing assistance in household jobs, sisters are more often turned to for emotional comfort (Chan & Lee, 1995; Lau, 1982; Ruan & Lai, 2005). Thus, in daily life, Chinese people in Hong Kong and mainland China tend to take care of and get assistance from their families, while staying away from the political system.

Cheung, Chan, Chan, King, Chiu & Yang (2006) surveyed the attitudes of Chinese people towards Confucianism between 1997 and 1998. Their findings showed that the position of the Chinese towards Confucianism was ambivalent, even contradictory. There were a total of 1208 respondents from three different Chinese communities: the Shatin district in Hong Kong; the Tianhe district in Guangzhou, mainland China; and the Neihu district in Taipei, Taiwan. Cheung et al. operationalised the concept of Confucianism into seven dimensions of formal values: (1) an intrinsic motivation of moral attainment; (2) the belief of moral perfectibility for all human beings and the incessant striving for the cultivation of character; (3) a reflexive consciousness; (4) the priority of moral considerations over material gains; (5) a social consciousness; (6) striking an optimal balance among extremes, and (7) seeing things holistically in an attempt to seek social harmony. Most respondents scored highest in social consciousness, and lowest in the primacy of moral considerations. Although the majority of respondents agreed with the traditional Confucian view that the government should legislate to punish those who do not support aged parents, they disagreed with the conventional notion that the daughter-in-law should obey her mother-in-law in every circumstance. Respondents showed similarly incompatible views on political and family

issues. According to the scale adopted in the survey, Cheung et al. classified 5% (63) of respondents as a strong Confucian group while 5% of respondents (66) were a weak Confucian group. In Confucian parlance, the strong Confucian group is regarded as the 'gentlemen', while the weak Confucian group is regarded as the 'commoners'. Both the strong and the weak Confucians displayed the same pattern of ambivalence in their responses to specific statements. Shatin residents in Hong Kong were least likely to endorse the idea of asking the government to legislate against those who do not care for aged parents. They were also least willing to regard family glory as the highest goal in life. However, the Shatin residents agreed more strongly than the other regional groups with traditional gender-role differentiation. With regard to political issues, the Neihu residents in Taiwan were most likely to emphasise the importance of a politician's integrity and the least squeamish about becoming involved in politics. Respondents across all three regions, both strong and weak Confucians, considered social order to be of prime importance, and equal distribution of wealth much less important. These results show that Chinese people in different Confucian societies follow and practice Confucian traditions in a rational and selective fashion. They will

select and reinterpret Confucianism in order to cope with the challenges of daily life.

Classical and Everyday Confucianism

A review of past studies on Confucianism and Confucian core values reveals that there are discrepancies between Classical Confucianism and Everyday Confucianism. Classical Confucianism is about the harmonious human relationship and harmonious society based on the *Ren* (benevolence), *Yi* (righteousness), *Li* (propriety), and filial piety (Hsu, 1948, 1983; Yao, 2000). In this sense, Classical Confucianism plays a key role in forming personal, familial, and social relationships. However, Everyday Confucianism is about the reinterpretation of Confucianism by Chinese people in different Confucian societies. It is impractical to expect that classical Confucianism can provide solution for different Chinese societies in different places and times (Chan & Lee, 1995; Chang & Holt, 1991; King, 1975, 1996; Lau, 1982; Ruan & Lai, 2005).

King (1975; 1996) is the first scholar to point out that Confucianism in Hong Kong is neither of the scholar-official nor of the literary tradition while Lau (1982) claims that Utilitarian familism is an adaptation of Chinese familism to the urban-industrial environment of Hong Kong. The study of Chang & Holt shows that Chinese in Taiwan considered social harmony as a means of achieving the individual's goals. Comparative study of Chinese people in Cheung, Chan, Chan, King, Chiu & Yang (2006) has similar findings. The emergence of Everyday Confucianism reflect that Classical Confucianism is unable to provide solutions for the modern challenges in different Confucian societies. Everyday Confucianism is an attempt by Chinese people in different Confucian societies to reinterpret Confucian tradition in order to find solutions for new challenges.

Filial Piety and Youth Justice

Meanwhile, filial piety is still a common belief among the Hong Kong Chinese, and based on this notion, they develop a distinct view on how to develop a good society. The individual's right attitude to authority is obedience, which makes a stable hierarchical social order possible (Gray, 1997, 1999). 87.6% of

respondents in the 1985 survey conducted by Lau & Kuan either strongly agreed or agreed with the statement that the first thing in a good society is to have everyone practising filial piety. 71.6% of respondents in the 1986 survey agreed with the statement that an unfilial person must be a rascal (Lau & Kuan, 1988).

On the other hand, the meaning of filial piety has been changing over time, from “obedience to authority” to “love and care”. The study conducted by Ting in 2009 adopted a convenience-sampling method and interviewed 44 people, 21 of whom were male, and 23 were women, from 27 Chinese families, including 10 working-class families and the rest middle-class families. The findings showed that the interviewees emphasised the subjective aspects of filial piety: love, care, and respect for parents. All interviewees agreed that filial piety in Confucianism was gender-specific and required the sons to live with and provide for their aged parents, but that such obligations were not imposed upon married daughters, although daughters often played an essential role in caring for ailing parents. Few people still adhered to the traditional view that filial piety means the respect of absolute parental authority. The majority of

interviewees emphasised love and care as the key elements of filial practice in Hong Kong today (Ting, 2009).

Filial piety is the core element in shaping personality, and different types of filial piety forge two opposing personalities. The studies of psychology and social psychology give some insight into the meaning of filial piety, expanding the concept into (1) authoritarian filial piety, and (2) reciprocal filial piety. Authoritarian filial piety is based on the Confucian principle of respecting the superior, and as parents are at the top level of the family hierarchy, children are morally required to obey them. Authoritarian filial piety emphasises oppression of self-autonomy through children's submission to hierarchical authority. Children who believe in authoritarian filial piety have been socialised to respect and never question authority. This characteristic of authoritarian filial piety may foster suppression of a child's own will. Reciprocal filial piety focuses on children providing emotional, physical, and financial support to parents in gratitude for the parents' devotion in having raised them (Leung, Wong, Wong & McBride-Chang, 2010).

In understanding of Hong Kong Chinese adolescents, filial piety is an important concept that cannot be neglected. A study of Hong Kong Chinese students aged 9 to 17 found that children who understood filial piety as submission to hierarchical authority and oppression of their autonomy (i.e., authoritarian filial piety) experienced feelings of relative incompetence, helplessness, or frustration. Children who understood filial piety as reciprocal filial beliefs were more likely to be motivated to support and care for their parents in appreciation for their parents' efforts in bringing them up. This motivation may have helped them build and maintain good parent-child relationships, promoting their satisfaction within the family. It is likely that children generalise the positive-affective social orientation acquired from their parents to other social interactions (Leung et al., 2010).

A study of Hong Kong Chinese parents found that they reinterpreted their filial expectations into hopes of a bright future for their offspring by giving to them, rather than receiving from them, in order to alleviate their worries about their children's livelihood. Parents offered financial or instrumental help to their adult children when possible. The majority held relatively low expectations about financial, emotional and companionship support from their adult children,

as well as about the continuation of the family bloodline. However, lower-income parents still believed in authoritarian filial piety and demanded unconditional respect from lower to upper members of the hierarchical system, with fear, threats, shame and loss of 'face' often used as a means to control lower-ranking members (Chong & Liu, 2016).

According to two local studies (Vagg, 1998; Wong, 1999), 'face' and filial piety can also be applied to understand youth offenders. Vagg (1998) doubts the existence of 'reintegrative shaming', as proposed by Braithwaite (1989). Braithwaite argues that social-control processes result in youth offenders losing their stake in conformity. Since youth offenders have fewer reasons to conform, the current 'disintegrative shaming' processes could be replaced with 'reintegrative shaming' to create a stake in conformity and reduce in recidivism (The details of Braithwaite's reintegrative theory will be discussed in chapter 3). Vagg, however, stated that the negative label of 'poor integrity' from a criminal conviction might be quite damaging to the future of a young offender. A loss of social rank and prestige may have profound implications for the individual's future in any particular social group in Hong Kong. Vagg further argued that the colonial government could not tolerate any form of non-conformist behaviours

and thus harsh strategies were used for minor and first offenders unless they were prepared to demonstrate openly a level of remorse, contrition, and respect for authority. Young offenders in Hong Kong were likely to be prosecuted rather than cautioned even for minor first offences, charged with offence types that were prone to exaggerating the gravity of their acts; likewise, the courts were over-ready to give custodial sentences. The students more likely to have had these problems were those who were involved in the kinds of behaviour that criminal justice agencies tend to describe as 'pre-delinquent' – which may amount to little more than smoking, occasionally staying out late, and 'answering back' when questioned by the police. In short, even minor non-conformist behaviour could call forth relatively harsh punishments rather quickly because anything less than full co-operation, a frank admission of guilt, and a contrite demeanour are likely to lead to labelling of a young person by public agencies as unrepentant, indifferent, defensive or evasive.

In Braithwaite's term, such shaming is disintegrative. According to Braithwaite, disintegrative shaming emphasises the evilness of an act and pushes the individual even farther out of the community. Hong Kong is one example of a culture that values interdependence and communitarianism and articulates a

strong concern for shame and shaming. However, this results not in the possibility of reintegration for deviants, but in a strong commitment to labelling, which takes place quickly and harshly, and then exclusion. However, Wong (1999) asserts that shaming is a major social-control element limiting the autonomy of citizens and cultivating an adolescent's filial piety towards parents can prevent the onset of delinquency. Filial piety will socialise adolescents as inner-directed persons who do not engage in law-breaking behaviours and who maintain harmony in interpersonal relationships. Wong argues that forgiveness is the central theme of reintegrative shaming – presenting tolerance and acceptance but showing appropriate social disapproval. Respect can be functional for maintaining harmonious relationships between parents and children. If mutual respect exists between parents and children, parents may feel honoured if the child shows respect for their opinions. If a child feels parental interference is less intrusive, the child will see it as respect from parents. Mutual respect is one way to show the intention of 'face-saving'. Wong asserts that the findings of his research are in line with Braithwaite's reintegrative shaming theory and further suggests that filial piety and respect with love are two important values for the prevention of youth crime. Wong

concludes that reintegrative shaming, forgiveness and family responsibility are possible solutions for crime in Chinese societies.

The main differences of these two studies centre on the nature of shaming. Vagg basically doubts on the existence of reintegrative shaming in Hong Kong and asserts further that shaming in Hong Kong is disintegrative, while Wong believes that shaming in Hong Kong is reintegrative and that this kind of shaming is a necessary component for reducing crime in Confucian societies.

Gray (1996, 1997) uses filial piety, the basic social principle of Confucian philosophy, to explore the relationship between Confucianism and youth justice in Hong Kong. In Gray's (1997) understanding, filial piety emphasises appropriate attitudes to authority, which makes social order possible in Chinese societies. Children are taught from an early age to obey their parents and fulfil filial obligations. Great emphasis is placed on moral training, proper conduct, the acceptance of social obligations, and conformity to normative standards. Gray (1996, 1997) reviewed the history of youth justice in Hong Kong and found that juvenile crime was not seen as a particularly serious problem in the 1950s. Critics at that time usually blamed juvenile crime on

poor social conditions in Hong Kong. Welfare services were mainly provided by the voluntary efforts of indigenous charities, overseas missionaries, and international relief organisations. Nonetheless, these organisations could do little more than offer short-term humanitarian aid when faced with widespread poverty. In the case of children, this aid took the form of food, shelter, and basic educational/recreational facilities.

By the early 1960s, community attentions was increasingly drawn to the much more inflammable group of young people aged 14 to 19. Youth crime emerged as a social issue, with considerable public concern over the Ah Fei (Teddy boy) problem and gang fights among young people. However, the government working party investigating the problem took a more liberal stance, concluding that violent crime amongst young people had been sensationalised by the press and that existing correctional measures were more than adequate (Gray, 1996).

Juvenile crime became a hot topic of research in the 1980s. Delinquency was now portrayed as a behavioural problem caused by the breakdown or loosening of social bonds within the family and school, in the belief that, once

young people became detached from these social institutions, they were more likely to associate with undesirable peers, assimilate anti-social values, and ultimately become involved in a criminal lifestyle. To stop this chain of events, preventative measures within the young person's home, school, or leisure environment were recommended (Gray, 1996). Gray (1996) coined the term 'disciplinary welfare' to describe the characteristics of youth justice in Hong Kong. Disciplinary welfare did not see delinquency merely as a narrow breach of legal codes, considering it in the wider context of a failure (by the family as teachers and the child as a student) to achieve proper conformity to lawful social order (Gray, 1997). Disciplinary welfare uses information about the offence, criminal career, family instability, behaviour at school, attitude to work, leisure activities, and peer group attachments to judge the extent to which the juvenile has wandered off the right track or deviated from a normal lifestyle. The main characteristic of the disciplinary welfare tariff is that the perceived disciplinary needs of the juvenile are a greater determinant of the sentence than is the offence itself (Gray, 1996). From Gray's understanding, the colonial government in Hong Kong made use of filial piety in Confucianism with Western concepts of welfare to legitimise the control of unruly working-class youth.

Lee (2009) conducted a telephone survey on adopting a restorative approach to youth offenders in Hong Kong between the end of February and early March 2008. 333 eligible respondents were interviewed. All respondents were aged 18 or above and were able to communicate in Cantonese. 63.4% of respondents favoured the use of both punishment and treatment/rehabilitation in dealing with juvenile offenders, while 88.9% of them were in support of implementing a restorative-justice approach in Hong Kong's juvenile justice system. This reflects an ambivalent attitude towards retributive justice and restorative justice. On the one hand, respondents hated crime and therefore agreed that juvenile offenders should be punished. On the other hand, respondents had compassion for juvenile offenders and hoped for them to be rehabilitated. With reference to the functions of the juvenile justice system, the majority of respondents remarked that rehabilitating young offenders, punishing young offenders and deterring young offenders from committing crime again are the main function of the system. However, this ambivalent attitude might become an obstacle to the implementation of restorative justice in the local juvenile justice system (Lee, 2009).

Confucianism and Sexuality

As same-sex relationships receive more and more acceptance, it is worth asking whether Confucianism is compatible with homosexuality. Unfortunately, there are limited studies on Confucianism and homosexuality, and no consensus on whether Confucianism accepts same-sex relationships, marriages, and families. One possibility is that Confucianism does not accept these things because the function of the family is to produce male offspring in order to perpetuate the family name (Curtin, 1997), thus fulfilling the key filial obligation. Following this logic, same-sex relationships/marriages/families do certainly fail to fulfil filial obligation. Some scholars (for example, Curtin, 1997; Morgan, 2001; Shi, 2013) further propose that Confucianism condemns female same-sex relationships much more seriously than male same-sex relationships because they violate female gender roles and expectations in Confucianism – that women should be entirely subservient to men, and that their greatest virtue is self-sacrifice for the benefit of men (Morgan, 2001). As daughters, women are meant to do house chores such as cooking, cleaning, sewing and washing clothes for the whole family; as wives, women's most important obligation is to bear male children to perpetuate the family name. If

she does not fulfil this task, she can be cast out of her husband's home, disgraced, and socially ostracized. It is only in her function as a breeder that she attains status in society (Curtin, 1977). In this sense, the condemnation of female same-sex relationships may be viewed as an extension of the suppression of female sexual desire, as these relationships threaten to exclude men from access to women and keep women away from participating in extending the family line, consequently posing a direct challenge to the core values of Confucianism and undermining the authority of its patriarchal order (Shi, 2013).

There is another narrative, however: that Confucianism does accept same-sex relationships, marriages, and families. This comes from the Chinese gay community in Singapore (Tan, 2011). In this narrative, coming out (admitting the gay identity) stresses the values of honesty and integrity that Confucianism advocates. Moreover, Confucianism does not seek to completely efface the individual self in favour of the social. Rather it recognises the importance of the individual impulse as long as it does not tear society apart. In this light, one can theoretically justify going home in a Confucian framework by removing the need to discuss the topic of sexuality

and bringing the parent and the gay child closer together. This specific interpretation of Confucianism attempts to serve as a guideline on how to disclose sexual orientation to parents in Singapore. Singaporean Chinese have grown up in a Confucian society and are taught to emphasise their social position over their individual rights. Gay men in Singapore thus remain in the closet to avoid hurting and shaming their families. In order to overcome this obstacle, some gay men bring their boyfriends home. This frames homosexuality in kinship terms – love and care – that their parents can understand and accept. Going home provides the perfect means for politically uninterested Singaporeans to reconcile the tensions between the individualism of their sexual identity and the communitarian nature of their social upbringing.

Thus there is no consensus on whether Confucianism accepts same-sex relationships, marriages, and families. In the first narrative, the emphasis is on the function of family, gender roles and expectations, and same-sex relationships certainly violate the doctrines of Confucianism. In this sense, Confucianism does not accept same-sex relationships. However, the second narrative emphasises honesty and integrity of individual. Concealment of

sexuality is certainly violate this principle. Going home is a strategy to frame homosexual in the issue of love and care of family. This interpretation leads to the conclusion that Confucianism does accept same-sex relationships.

Confucianism and Durkheim

One of the central theme for Emile Durkheim is the relationship between individual and society. Durkheim argued that modern industrial society needs a religion. For Durkheim, religion is a system of collective beliefs and practices that have special authority (Bowring, 2016). Durkheim wrote,

'Religious representations are collective representations that express collective realities; rites are ways of acting that are born only in the midst of assembled groups and whose purpose is to evoke, maintain, or recreate certain mental states of those groups. But if the categories are of religious origin, then they must participate in what is common to all religion: They, too, must be social things, products of collective thought' (Durkheim, 1995 [1912]), p.9).

In this sense, individualism is such a religion, deriving from Christianity, in which the individual becomes its sacred focus. Individualism has penetrated our institutions and our customs and has become part of our whole life (Luke & Prabhat, 2012). Follow this logic, Durkheim offers a similar reason for why legal and other kinds of intervention are required in order to prevent suicides, because individual is sacred and has to be preserved. Durkheim wrote,

'In fact, social life, wherever it becomes lasting, inevitably tends to assume a definite form and become organised. Law is nothing more than this very organisation in its most stable and precise form. Life in general within a society cannot enlarge in scope without legal activity simultaneously increasing in proportion. Thus we may be sure to find reflected in the law all the essential varieties of social solidarity' (Durkheim, 1984 [1892], p.25).

Durkheim does maintain that social integration is sustained by a kind of moral cement, created and maintained by the enforcement of the law. The law reflect all the essential varieties of social solidary. Durkheim's conception of the moral domain ranges from the fundamental to the apparently trivial and invokes no distinction between morality and custom. Legal rules constitute a

subset of moral rules and law and morality are too intimately related (Lukes & Prabhat, 2012).

The situation is entirely different in the case of solidarity that brings about the division of labour. Whereas the other solidarity implies that individuals resemble one another, the latter assumes that they are different from one another. The former type is only possible in so far as the individual personality is absorbed into the collective personality; the latter is only possible if each one of us has a sphere of action that is peculiarly our own, and consequently a personality (Durkheim, 1984 [1892], p.85).

Durkheim argues that mechanical solidarity are maintained by normative consensus while organic solidarity, however, rest on the division of labour. Workers collaborate to meet a practical goal, with the repetition of actions, and breed a consciousness of their mutual interdependency and an awareness of the collective end they serve (Bowring, 2016).

With regard to social integration, there are similarities between Durkheim's theory and Confucianism. Filial piety is a religion, in Durkheim's terms, to

make social integration possible. Confucian relational ethics enables individuals to share whatever wealth or glory is due to their ancestors (Hsu, 1983). Individuals in Confucian society are not allowed to express their personal feelings and ideas without consideration of others. Contrary to Durkheim, Confucianism treats law as irrelevant to maintaining social integration and believes that education is the only way to cultivate correct mental attitudes toward social norms. In other words, individuals will not commit crimes if social norms and values are properly inculcated through education.

Durkheim argues that abrupt economic growth can disrupt the ability of society to place any limits on human desire, leaving many individuals with insatiable aspirations. Durkheim wrote,

'The result is that each industry produces for consumers who are dispersed over the length and breadth of the country, or even the whole world. The contact is therefore no longer sufficient. The producer can no longer keep the whole market within his purview, not even mentally. He can no longer figure out to himself its limits, since it is, so to speak, unlimited. Consequently

production lacks any check or regulation. It can only proceed at random, and in the course of so doing it is inevitable that the yardstick is wrong, either in one way or the other. Hence the crises that periodically disturb economic functions. The increase in those local and limited crises represented by bankruptcies is likely to be an effect of the same cause' (Durkheim, 1984 [1892], p.305).

During periods of anomie caused either by “economic disasters” or “fortunate crises,” many individuals find themselves unable to satisfy their desires through the means available to them and experience a perpetual state of unhappiness (DiCristina, 2016).

In all these cases, if the division of labour does not produce solidarity it is because the relationships between organs are not regulated; it is because they are in a state of anomie (Durkheim, 1984 [1892], p.304).

Anomie is a condition that knows no limits. The passions of the fatalist are constrained and blocked by the enduring burden of overregulation. For Durkheim, the optimal social regulatory arrangements must lie somewhere between anomie and fatalism. After all, individuals are subject to both inadequate forms of social regulation, with their tendency to anomie, and coercive structural forces, which can lead to fatalistic rationality (Amatrudo, 2015). From the perspective of Confucianism, anomie is unlikely, if not impossible. In Confucian relational ethics, individuals always know their limits. Individuals cannot live alone without the family and nexus of personal relationships. Individuals are cultivated as being situation-centred in their personal and cultural orientation. Situation-centred individuals tend to: view the world in relational terms, i.e., that no explanation of social phenomena can be complete without knowledge of the facts about individuals; and seek mutual dependence within family members, friends, and acquaintances. For Confucianism, fatalistic rationality can be prevented if the individual obtains a sense of eternity through self-cultivation and through the collective and practical life of the family. Regulations will not become a burden on individuals, as Confucian relational ethics socialises individuals to accept duties and obligations to others and to consider whether the appropriateness of an action

depends on their position within the social network. In this sense, individuals know what they should and should not do, with clear guidelines and rules. Problems, difficulties and burdens are shared by the family.

Merton rewrites the concept of anomie, replacing its original sense (related not to a crisis in late modernity and a failure of organic solidarity but to the birth of modernity) with a failure of agreement over legitimacy, in terms of dominant group goals (Merton, 1993). Merton's primary aim is to discover how social structures exert a definite pressure on individuals to engage in non-conforming conduct. He draws a distinction between culturally defined goals, which he saw as desirable, and the legitimate means of achieving those goals. Whenever goals and means are harmoniously integrated, the result is a well-regulated society. Strain is said to occur where there is a disjuncture between culturally defined goals and the institutionalised means of obtaining them. Anomie occurs within the social structure itself and is a measure of the gap between goals and means in society. Merton is interested in the social causation of anomie whereas Durkheim is more interested in its consequences (Amatrudo, 2015). In Confucianism, the individual, through self-cultivation, should internalise norms and values completely and

successfully. Crime is not an option in Confucianism. However, solutions offered by Confucianism come at the cost of independence, which contradicts the individualism that Durkheim treats as invaluable.

Discussion

When victims and offenders attempt resolution, they should come to mutual agreement on how to deal with the consequences of crimes and conflict without the influence of others. The community, including both macro- and micro-community members, should be assigned the role of supporter and provider of resources to victims and offenders. Despite the definition of community is controversial and some restorative justice theorists (for example, McCold, 2004; Umbreit, Coates, & Vos, 2004) even poses question on community to one another, no one will deny the importance of community for integration and reconciliation. However, Chinese people emphasise the nexus of personal relationships and filial piety, in which family members influence individual decisions. The participation of micro community may hamper the dialogue between victim and offender, because it is difficult for individuals to resist the influence of family members, especially that of parents. Family

hierarchy and inseparable family connections mean that family members are major players at a conference and that they cannot be relegated merely to the role of supporter and provider of resources. Meanwhile, macro-community members are those persons without personal relationship with victim and offender. In Confucian society, the presence of strangers in restorative practise may not be welcomed because they are not from the personal network of victim and offender. Their presence may make victim, offender and their micro-community members feel uneasy because it violate the principle of favouring intimacy. Whether Confucianism is conducive to the implementation of restorative justice is questionable. The purpose, nature, and functions of community in Chinese society might be different from the ideas proposed by restorative justice theorists (for example, Braithwaite 1989, McCold 2004, Umbreit, Coates & Vos 2004).

The studies of King (1975; 1996), Lau (1982; 1992) and Lau and Kuan (1988) on Hong Kong Chinese, Chang & Holt's study (1991) on Taiwan Chinese and Ruan & Lai's study (2005) on Hong Kong Chinese and Chinese in mainland China have some consistent findings: (1) All three groups tend to use family resources to solve problems and seldom seek assistance from the

government; (2) All three groups treat personal relationships and familial ties with great importance. They utilise personal connections and familial relationships as a way to obtain economic and material returns. Personal relationships and familial ties are important criteria to decide whether Chinese people will help or coordinate with others; (3) The emphasis on personal relationships and familial relationships hinders the importance of community and its development. Chinese people will make every effort to include friends or colleague in personal relationships or quasi-kinships and are reluctant to accept or offer help from strangers without any personal ties. The weak sense of community is probably an obstacle for the development of restorative justice, which emphasises the participation of community members in solving crimes and conflicts.

The studies of Gray (1997, 1999), Vagg (1998) and Wong (1999) all focus on the core value of Confucianism, filial piety, and trying to apply it to the understanding of criminal justice and the attitudes of Hong Kong Chinese towards criminal justice in Hong Kong. Gray argues that filial piety is deeply rooted in Chinese culture and emphasises 'conformity to normative rules' and 'obedience to hierarchy'. Based on this, Hong Kong Chinese prefer punitive

sanctions towards youth crime and deviant behaviours which do not conform to normative rules, and they accept inequality in the social and political system, i.e., in Gray's terms, the hierarchical Confucian order. Vagg's study (1998) analyses the importance of filial piety and shaming in Hong Kong society and argues that the nature of shaming in Confucianism is disintegrative, which will lead to stigmatisation – losing face, prestige, and status. Vagg asserted that Braithwaite's reintegrative shaming could not apply to Hong Kong Chinese society, which is Confucian and collectivist. Wong (1999) proposed a contradictory explanation, arguing that filial piety is a safeguard to protect young people from committing crimes. Young people who internalise filial piety will try everything to avoid shaming, the consequence of committing crimes against the family name. Wong asserted that Braithwaite's reintegrative shaming theory applies to Hong Kong. Lee's study (2009) revealed that Hong Kong Chinese have an ambivalent attitude to retributive justice and restorative justice and that restorative justice may not be compatible with Confucianism.

As for the nature and meaning of filial piety, Ting's study (2009) explored how Hong Kong Chinese understand the meaning of filial piety and found that the majority of respondents interpreted this as 'love and care'. In the psychological

study of Leung et al. (2010), children who believed in reciprocal filial piety would provide emotional, physical, and financial support to parents in gratitude for parents' devotion in having raised them. On the contrary, children who believed in authoritarian filial piety have been socialised to respect but never question authority, thus fostering suppression of children's own will. Chong's & Liu's study (2016) found that the majority of Hong Kong Chinese parents interpreted filial piety as reciprocal filial piety and wanted to take care of their children.

It is difficult to say whether Confucianism is compatible with homosexuality, but it is worth exploring, as same-sex marriage is gradually being recognised in more jurisdictions. Two different interpretations of Confucianism lead to two opposing answers. If the function of family, gender roles and expectations is emphasised, same-sex relationships, marriages, and families certainly violate the doctrines of Confucianism. Meanwhile, if the concept of filial piety is applied to understand the above narratives, it will probably be able to find out the discrepancies between these two narratives. Those parents who hold the view of authoritarian filial piety will probably not accept the homosexual children because they violate the Confucian expectations. However, if those parents

hold the view of reciprocal filial piety, which emphasises love and care of family, will probably accept their children with same-sex partner.

Confucianism and Durkheim's theory have commonalities on social integration and relationships between the individual and society. In Durkheim's theory, anomie happens when there is lack of regulation and no limit on individuals' desire; fatalism happens when there is over-regulation. The Confucian relational ethic of self-cultivation seems to provide solutions to the dilemma of anomie and fatalism, at the expense of individualism, which Durkheim treats as an invaluable asset.

The existing literature paints a picture of Confucianism as still relevant in understanding Hong Kong Chinese and their decision-making. The understanding of Confucianism varies among Chinese people in different societies. However, the Hong Kong Chinese understanding of core Confucian values such as *Ren* (benevolence), *Yi* (righteousness), *Li* (propriety), shame and filial piety is unclear. From Chapter 5 and onwards, with the assistance of empirical data, we will attempt to figure out, from the viewpoint of mediators, how Hong Kong Chinese understand those core values in Confucianism and

how this understanding influences their decisions in pre-mediation sessions and during victim-offender mediation.

The next chapter will explore and review five theories related to restorative justice, namely Braithwaite's reintegrative shaming theory, Hirschi's control theory, Matza & Sykes's neutralisation theory, Zehr's changing lens and abolitionism, the history of restorative justice, common restorative practices and mediation in mainland China, Taiwan, and Hong Kong.

Chapter 3 Restorative justice, history, theories and practices

The previous chapter reviewed the Confucian system of relational ethics, previous studies of Confucianism among Chinese people in Hong Kong, Taiwan, and mainland China and the relationship between filial piety and youth justice in Hong Kong. The previous chapter ended with an examination of Confucianism's view of sexuality and a comparison between Confucianism and Durkheim in the area of morality and anomie.

This chapter presents several theories related to restorative justice, namely Braithwaite's reintegrative shaming theory, Hirschi's control theory, Matza & Sykes's neutralisation theory, Zehr's changing lens, abolitionism. Next, the history of restorative justice will be examined. Four common restorative practices throughout the world: *Wagga Wagga model of conferencing*, *Family group conferencing*, *Circles*, and *Victim-Offender Mediation* will be introduced. The chapter ends with the discussion of mediation in mainland China, Taiwan, and Hong Kong.

Restorative justice advocates and practitioners (Christie, 1977; Dzur, 2003; McCold, 2000; Zehr, 1990, 2002) emphasise and recognise that crime is personal and that relationships between people are paramount in producing a safe and liveable society. Crime is traumatic for victims because it undermines their sense of personal autonomy and belief in social order. Restorative justice pushes back against the idea in criminal prosecution that victims – human beings – are mere witnesses or evidence. The punishment of offenders is inadequate as a way for victims to overcome trauma; the primary responsibility for offenders is instead to make things right with victims they have harmed. This is accomplished through an offender's sincere efforts to make amends by repairing harms and improving broken relationships (United Nations Office for Drugs and Crime, 2006; United Nations Office for Drug Control and Crime Prevention, 1999). To regain a sense of power over their world and to reaffirm a sense of social order, victims need answers and information about the crime. Justice is a search to make things as right as possible. For a real experience of justice and real accountability, the criminal justice process ought to be more dialogical (Mika & Zehr, 1997; Zehr, 2004). Professionalization and abstract proceduralism hinder the reintegration of offenders into (law-abiding) society. As the process is adversarial and non-participatory, it does little to challenge

any stereotypes or rationalisations that offenders have built up about their victims and the community, encouraging them to focus on their legal situations and how to minimise penalties.

Restorative justice adopts the idea from Nils Christie (1977) that alternatives to punishment, such as apology or restitution, are preferable simply because they break the cycle of pain infliction by deterring future offences, educating offenders, and compensating victims (Christie, 1977; Dzur, 2003). The primary objectives for restorative processes are to promote healing and reconciliation among stakeholders through dialogue focused on repairing interpersonal relationships; healing harms caused by offenders; and, providing offenders with opportunities to accept responsibility for their acts (Van Ness, 2004; Van Ness & Strong, 2006). These processes place both victims and offenders in roles that promote active, interpersonal and collaborative problem-solving (Braithwaite, 2002; Zehr, 2002). A non-punitive measure like restitution seeks to: raise the victim to his or her previous level; acknowledge the role of the offender and possibilities for repentance; and give offenders a chance at real accountability. Restorative justice procedures are valuable because they return the responsibility for conflict resolution to communities (Dzur, 2003).

Restorative justice also involves reintegration of victims, as well as offenders, into the community (United Nations Office for Drugs and Crime, 2006; Zehr, 1990). The process of finding justice requires the active participation of all stakeholders in respectful dialogue focused on maximising information and mutual agreement between victims, offenders, and communities (Lemley, 2001; Zehr, 2002).

No single theory can completely explain restorative justice and its practices. Scholars from different disciplines –sociology, psychology, criminology, psychiatry, law and even economics – have attempted to understand the mechanism of restorative justice. The theories introduced below are most prominent in sociology and criminology and are related to restorative justice.

Braithwaite's reintegrative shaming theory

Braithwaite's reintegrative theory heavily influence the implementation of restorative justice in Australia and New Zealand. The link between Braithwaite's concept of reintegrative shaming and New Zealand conferencing was initially made in 1990s by John MacDonald, who was then

adviser to the New South Wales Police Service. MacDonald proposed that New South Wales adopted features of the New Zealand conference model, but that it located within the police service (Moore & O'Connell, 1994). As a study conducted by Braithwaite & Mugford (1994), they have observed community conferences, which were called family group conferences, for juvenile offenders in Auckland, New Zealand, and Wagga Wagga, Australia. Both family group conferences in New Zealand and Wagga Wagga in Australia aimed to divert young offenders from court and keep them out of exclusionary juvenile institutions. Shame and shaming were common elements in both programmes. Wagga Wagga in Australia emphasised reintegration in its process, while family group conferences in New Zealand stressed healing in its process.

Braithwaite's reintegrative shaming theory focuses on the social process of shaming as the crucial mechanism in crime control. He emphasises that criminal is not a passive agent and make rational choices in deciding whether he or she wander off the right track. Thus shaming is a deterrence for criminal and reminds them the consequences of committing crime.

The theory of reintegrative shaming, in contrast, adopts an active conception of the criminal. The criminal is seen as making choices – to commit crime, to join a subculture, to adopt a deviant self-concepts, to reintegrate herself, to respond to others' gestures of reintegration – against a background of societal pressures mediated by shaming (Braithwaite, 1989, p.9).

He claims that the participation of community members is the most effect way to curb crime; reintegrative shaming is the most powerful measure to help offender avoid reoffending and reintegrate them into the community.

Crime is best controlled when members of the community are the primary controllers through active participation in shaming offenders, and, having shamed them, through concerted participation in ways of reintegrating the offender back into the community of law abiding citizens (Braithwaite, 1989, p.8).

He mentions that the only way to keep society with low crime rate is to use shame potently and judiciously. The role of community member is irreplaceable and even experts and professionals cannot replace them.

Community members should bear the preventive obligation and tackle the crime by themselves.

Low crime societies are societies where people do not mind their own business, where tolerance of deviance has definite limits, where communities prefer to handle their own crime problems rather than hand them over to professionals (Braithwaite, 1989, p.8).

The key explanatory variable in the theory is shaming. Braithwaite defines shaming as social process that expresses disapproval of a sanctioned act. Shaming intends to induce moral regret in the person being shamed.

Shaming means all social processes of expressing disapproval which have the intention or effect of invoking remorse in the person being shamed and/or condemnation by others who become aware of the shaming (Braithwaite, 1989, p.100).

Braithwaite argues that a crucial element of punishment is shaming, which is essential for crime control. Shaming can be classified as *reintegrative shaming*

and *disintegrative shaming* (Braithwaite, 1989; Van-Ness & Strong, 2010). He is explicit about how shaming contrasts with a more classical view of sanctioning and remarks that shaming should come from community members within interdependent communities.

Shaming, unlike purely deterrent punishment, sets out to moralize with the offender to communicate reasons for the evil of her actions. Most shaming is neither associated with formal punishment nor perpetrated by the state, though both shaming by the state and shaming with punishment are important types of shaming. Most shaming is by individuals within interdependent communities of concern (Braithwaite, 1989, p.100).

From Braithwaite's theory, shaming is reintegrative when it reinforces an offender's membership in the community of law-abiding citizens. This prevents the shamed individual from adopting a deviant master status and is accomplished when shaming maintains bonds of love or respect between the person being shamed and the person doing the shaming. Shaming is directed at the evil of the act rather than the evil of the person and is delivered in a

context of general social approval is terminated with gestures or ceremonies of forgiveness

Reintegrative shaming is shaming which is followed by efforts to reintegrate the offender back into the community of law-abiding or respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant. Shaming and reintegration do not occur simultaneously but sequentially, with reintegration occurring before deviance becomes a master status (Braithwaite, 1989, pp100-1).

Reintegrative shaming reconciles and includes the offender back into society before the deviant identity is established as his master status. Interdependency, communitarianism and cultural homogeneity are necessary social conditions facilitating reintegrative shaming and inhibiting the formation of a criminal subculture. Disintegrative shaming denounces the offence and offender, treats offenders as outcasts and provokes a rebellious and criminal reaction from them, and the community rejects the offender. Disintegrative shaming is exemplified in the traditional criminal justice systems by the court and the prison (Van-Ness & Strong, 2010).

Shaming that is stigmatizing, in contrast, makes criminal subcultures more attractive because these are in some sense subcultures which reject the rejectors” (Braithwaite, 1989, p.102).

Braithwaite uses Japanese society as an example to illustrate his idea of reintegrative shaming. In his understanding of Japanese society, there is a high level of interdependency and communitarianism between family members, and between workers and employers. Braithwaite even says micro-community members and macro-community members accept the collective responsibility for offender’s wrongdoing and are willingness to place the community above individual interests,

Shaming as a feature of Japanese culture is well known to even the most casual observers of Japan. What is not so widely known is the reintegrative nature of this shaming (Braithwaite, 1989, p.63).

When an individual is shamed in Japan, the shame is often born by the collectivity to which the individual belongs as well – the family, the company,

the school – particularly by the titular head of the collectivity (Braithwaite, 1989, p.63).

In sum, Braithwaite reintegrative shaming theory claims that individuals who are exposed to reintegrative shaming should commit fewer crimes. Communities or societies with high level of reintegrative shaming should have low aggregate rates of crime. Interdependency and communitarianism are the conditions for societies with reintegrative shaming (Braithwaite, 1989; Vagg, 1998).

Issues of Braithwaite's Reintegrative Theory

Guilt and Shame

A feature of Braithwaite's theory is to consider guilt and shame to inextricably part of the same social process. Braithwaite remarks that shaming is a cultural process to induce the guilt and the distinction between shame and guilt culture is unfit for the theoretical framework of reintegrative shaming theory. In this sense, shaming is prior to guilt and constitutes guilt.

The distinction is rather too fine for our theoretical purposes because 'guilt-induction' always implies shaming by the person(s) inducing the guilt and because, as we will argue later, in broader societal terms guilt is only made possible by cultural processes of shaming. For our purposes, to induce guilt and to shame are inextricably part of the same social process (Braithwaite, 1989, 57).

Equally, the old distinction between shame and guilt cultures has no place in my theoretical framework because the conscience which cause us guilt are, according to the theory, formed by shaming in culture (Braithwaite, 1989, 57).

Braithwaite is reluctant to adopt a dichotomous conceptualization of guilt culture in western culture and shame culture in Japan and other Asian countries (Vagg, 1998). As the discussion in chapter 2, it is necessary to differentiate between guilt and shame. Guilt is related to individualism, while shame is related to collectivism (Bedford & Hwang, 2003). Guilt emphasises on individual responsibility and is the proper foundation for a moral system composed of individualism. Individual is understood to be generally responsible for his or her own behaviour. Individual is expected to internalize

a sense of proper behaviour in congruence with social norms, and to experience guilt when these norms are transgressed. However, collectivism cultivates relational identity for individual and make it difficult to admit guilt in the objective sense. If the individual perpetrates the crime, responsibility for the crime extends beyond the single individual. His or her parents will be held responsible for not teaching their child better and will suffer socially for the crimes of the offspring. The principle of respecting the superior defines ethical obligations in a hierarchy. The relationships among the actors determine the appropriate course of action for a given situation. Therefore, relational identity is easily connected to use of shame and situational morality in collectivism (Bedford & Hwang, 2003). As discussed in chapter 1 and 2, the emotion of shame-guilt in Braithwaite will probably make the mechanism of shaming difficult to observe and understand (Harris, 2006). Moreover, it is also difficult to discern whether guilt or shame function as the preventive measure for crime.

After that, Vagg (1998) questions the nature of shaming in Braithwaite's theory. As discussed in chapter 2, Vagg argues that the Hong Kong is certainly a society in which close relationships exist between members and in

some situations between families organized into clans. It values interdependence and communitarianism and articulates a strong concern for shame and shaming. However, the nature of shaming in Hong Kong is definitely disintegrative. If shaming is done successfully, there will be a strong commitment to labelling and exclusion for offenders. A loss of social rank and prestige may have profound implications for the individual's future in any particular social group in Hong Kong. The nature of shaming and related emotion in Chinese societies will be discussed in chapters 5, 6, 7, 8, and 9 in relation to other related issues.

Parent-child relationship

The description of parent-child relationship in Braithwaite's theory is unrealistic and one-dimensional (Prichard, 2002). Braithwaite describes the role and feeling of parents for offender is the same. Parents, like colleagues and friends, will share the shame and reintegration with offender (their child) together. Again, Parent, like colleagues and friends, use informal control to restrain him or her to commit crime. However, the performance of child is used to judge whether the parents are successful or not. The role of parents

and their feeling towards offender (their child) must be more complicated than Braithwaite's description.

The effectiveness of shaming is often enhanced by shame being directed not only at the individual offender but also at her family, or her company if she is a corporate criminal. When a collectivity as well as an individual is shamed, collectivities are put on notice as to their responsibility to exercise informal control over their members, and the moralising impact of shaming is multiplied (Braithwaite, 1989, p.83).

.....a shamed family or company will often transmit the shame to the individual offender in a manner which is as reintegrative as possible. From the standpoint of the offender, the strategy of rejecting her rejectors may resuscitate her own self-esteem, but her loved ones or colleagues will soon let her know that sinking deeper into the deviant role will only exacerbate the shame they are suffering on her behalf (Braithwaite, 1989, p.83).

Based on the parent-child relationship, the shaming and embarrassment parents experience in crime and restorative justice practice must be different

from other macro-community members, micro-community members, and offenders. The unique nature of parent-child relationship will be discussed in chapters 7, 8, and 9

Hirschi's control theory

Hirschi's control theory focuses on the sociological forces that cause people to refrain from participating in deviant/criminal behaviour. Hirschi asks why people conform to legal codes and suggests that a bond to society is the reason. For Hirschi, there are no delinquent subcultures, and the motivation to commit deviant and criminal behaviour is constant across persons. When a person's bond to society is broken or weakened, he or she is free to engage in delinquency. These bonds come in four interrelated forms: attachment, commitment, involvement, and belief. Attachment refers to the level of psychological affection among people and institutions such as parents and schools. Commitment refers to the importance of the social relationships that people value; they do not want to risk these relationships by delinquent behaviour. Involvement relates to the opportunity costs associated with how people spend their time. Involvement in everyday activities dissuades a person

from delinquency because he or she has limited time to contemplate and commit deviant behaviours. Belief refers to the degree to which people adhere to the values associated with behaviours that conform them to the law. The less they believe in norms, the more they engage in deviant behaviour (Hirschi, 2002).

Hirschi recognises the importance of community in dealing with people who engage in deviant behaviours. The notions of attachment, commitment, involvement, and belief are similar to restorative theorists' idea of the community. From the viewpoint of Hirsch's control theory, state intervention in criminal justice cannot replace the power of community ties and acceptance to control misbehaviour. The state system is meant to be used only as a last resort. Although Hirschi explains delinquency per se, the role of the community as the dominant player in crime control, as emphasised in his theory, can be directly linked to Braithwaite's reintegrative shaming theory (Hirschi, 2002).

Matza & Sykes's neutralisation theory

Matza & Sykes's neutralisation theory argues that techniques of neutralisation are a significant element in enabling offenders to commit crimes while they maintain a positive self-image. Offenders minimise the effect of their criminal behaviour by learning *these* techniques (which are a direct contradiction to those of the dominant society) rather than moral imperatives, values or attitudes. There are five techniques of neutralization: (1) Denial of Responsibility means that offenders define themselves as lacking responsibility for their deviant actions; (2) Denial of Injury means that offenders question whether anyone has clearly been hurt by their wrongfulness and claim that the matter is open to a variety of interpretations; (3) Denial of Victim means that offenders might accept responsibility and admit that their deviant actions caused injury, but they claim that the injury was a form of legal retaliation or punishment; (4) Condemnation of the Condemners means that offenders shift the focus of attention from their deviant acts to the motives and behaviour of those who express the norms of the dominant society, thereby painting their condemners as hypocrites and deviants in disguise; (5) Appeal to Higher Loyalties means that offenders neutralize

internal and external social controls from the larger society in order to satisfy the demands of smaller social groups such as the sibling pair, the gang, or the friendship clique (Sykes & Matza, 1957).

The confrontation between victims and offenders in Restorative Justice adopts the idea of Matza's theory of neutralisation. It is difficult for offenders to maintain a positive self-image and justify their actions by techniques of neutralisation when they are confronted with their victims. The confrontation with victims makes offenders realise the reality of the harm they have caused and accept responsibility for their offending behaviours. The importance of Matza's theory of neutralisation for restorative justice is to deconstruct the mind-set of offenders so that they are willing to participate in the restorative process, reconcile with victims and achieve therapeutic outcomes (Braithwaite, 2002b; Hayes, 2006).

Zehr's changing lens

Howard Zehr, a pioneer in promoting restorative justice, argues that victims' needs and rights are central, not peripheral. Offenders are encouraged to

understand the suffering of victims. In Zehr's understanding of restorative justice, crime is a violation of relationships; violations create obligations, and the central responsibility is to put right the wrongs. Therefore, the focus of restorative justice is to restore human bonds, to reunite the victim, the offender, affected individuals and the rest of the community. Zehr promotes the engagement of an enlarged set of stakeholders and advocates that communities play important roles in healing at an individual and societal level (Mika & Zehr, 1997; Zehr, 2004).

For Zehr, no pure model can be seen as an ideal restorative justice model. All models of restorative justice are culture-bound, and no single model can be implemented in all communities. Restorative justice should not be reduced to a particular type of program such as Victim-Offender Mediation. Restorative justice should be built from the 'bottom up' by the victims, offenders, and communities; it is an invitation for dialogue and exploration (Zehr, 2004).

Abolitionism

Abolitionism promotes an end to the use of imprisonment and a minimisation of the impact of formal criminal justice. It is against the provision of governmentally centralised compensation schemes as the only option for an institutional response. It favours community control instead of state control, because social problems, conflicts and troubles are inevitable parts of everyday life – professionals and specialists should not monopolise them. In this sense, abolitionism follows the idea of Nils Christie (1977) that direct communication between victim and offender is a better response to crime.

Restorative justice in the abolitionist perspective is a process which brings actors and communities affected by a problematic situation back into the condition in which the problem arose. Restorative justice aims to clarify value rather than restore the pre-conflict situation. The practice of restorative justice may widen the net of social control, such as agency-mediation programmes.

Although abolitionism and restorative justice share similar ideas (i.e., against formal justice), abolitionism criticises restorative justice for encouraging professionalisation by, for example, discouraging voluntary or lay members

from joining mediation or reparation boards. This is because restorative justice aims at turning the initial community-led motivation of members into a profession such as a trained mediator. Mediation, which follows a voluntary referral model and is accepted by abolitionists, is based on the principle of community-centred rationale. Abolitionists disagree with the logic of reintegrative shaming – in fact, they have no room for shaming. They contend that the role of mediators is to help people, by themselves, understand each other and the nature of their conflict. Therefore, the abolitionist approach allows people to get involved in the conflict to discover and mobilise resources to deal with conflict in the community (Marshall, 1996; Ruggiero, 2010, 2011).

In order to understand the nature and development of restorative justice, it is necessary to review its historical development. Like other legacies in human history, there is always a lack of consensus on the origin of restorative justice. In the following, two competing narratives on the history of restorative justice, as well as the different forms of restorative justice, will be critically reviewed.

The History of Restorative Justice

There are two competing narratives on the history of restorative justice. Under the first narrative, restorative justice is as old as human history itself and has been the dominant model of criminal justice throughout most of human history for all of the world's peoples (Van-Ness & Strong, 2010). Under the second narrative, restorative justice is a relatively recent invention, a novel and innovative criminal-justice solution that began in the 1970s in Europe and North America, and has since become an international phenomenon (Hill, 2009; Mulligan, 2009).

Weitekamp (1999) and Van Ness & Strong (1999) are proponents of the first narrative. Weitekamp explains that nomadic tribes responded to inter-clan transgressions through a form of restorative justice called 'restitution negotiations.' When members of an outside clan committed a crime, such as theft or homicide, clan elders facilitated negotiations between the clans. Weitekamp concludes that restitution was probably the most common form of resolving a conflict in pre-state societies (Sylvester, 2003). Van Ness & Strong cite the Code of Hammurabi, an ancient Babylonian code (1700 B.C.), as an

example of restitution for property offences. They argue that 'shillum,' the Hebrew word for 'restitution,' comes from the same root as 'shalom' which translates as 'peace.' They conclude that ancient Hebrew justice aimed to restore peace by restoring wholeness (Mulligan, 2009; Richards, 2004; 2011).

Other proponents of the first narrative cite Roman law, West German Schiedsman, and French *juge de paix* as historical support for the long-standing practice of restorative justice in the human world. They note that the Roman Law of Twelve Tables (449 B.C.) included provisions that thieves had to pay restitution for stolen property and that offered restitution as an explicit alternative punishment to certain physical offences. According to Sylvester (2003), however, these restorative justice scholars fail to mention that the Twelve Tables also contained death penalties for specific crimes and certain recidivist criminals. In most cases, the executions were to be undertaken by victims against offenders once the process granted authorisation for the execution. Some legal scholars even see the basis of the Twelve Tables as revenge, not restoration (Johnston, 2004). The West German Schiedsman, a local conflict conciliator available for the voluntary resolution of disputes, and the French *juge de paix* or *justice de paix* (justice of

the peace), a system of locally elected justice officials designed to increase access to justice and mediate disputes within communes, are two other examples of informal justice before the emergence of state centralization and formal legal power in the twelfth century (Mulligan, 2009; Woolford & Ratner, 2008).

Under the second narrative, restorative justice originated from several movements in Europe and North America between the late 1960s and 1970s. The initial decline of the welfare state in the 1960s and heightened criticism of the state from social activism created conditions amenable to a revival of legal informalism. In the 1970s, an informal reform initiative called for the abolition of prisons. The common theme of critique was that prisons had not only failed at rehabilitation but were also places of acute suffering for prisoners. At the same time, there was a general dissatisfaction towards the power of professionals and the state to control people's lives, and some envisioned an extensive reclamation of social services from the state's grasp. Discourses of deprofessionalisation and deinstitutionalisation provided an ideational framework for imagining forms of justice that would allow for greater citizen involvement in, and control over, dispute resolution processes. The community,

rather than the state, became the basis for a reconstructed justice. The 'community mediation' movement sought to re-establish the community as a locus for informal justice, combining communitarianism with themes of social justice that emerged in this period of heightened political activism. By situating dispute resolution in the community and the hands of law activists, it was hoped that community capacity for autonomy would increase and that the foundations could be laid for building community harmony and individual skills for peaceful conflict resolution. The informal justice critique developed further in the 1970s with the recognition by legal anthropologists that legal structures and ways of thinking about law are specific to particular times and places and that, in virtually all societies, justice is pursued using both formal and informal proceedings (Woolford & Ratner, 2008; Van-Ness & Strong, 2010).

Jerold S. Auerbach and Nils Christie were the leading proponents of informal justice. Auerbach (1983) argued forcefully for the need to deprofessionalise the justice system, citing the example of Puritan and Quaker communities in colonial America. When conflicts arose in Puritan and Quaker communities, it was considered an antisocial act to take one's fellow community member to a court of law. A local notable, who was familiar with both of the parties in the

conflict, helped resolve matters. Christie (1977) suggests that conflict is not, in fact, something to be 'solved' but something to be possessed. The criminal justice system, from this perspective, reflects a theft by the state of the victim and offender's conflict. Christie draws a connection between this 'theft' and the use of punishment. In criminal law, values are clarified by graduated punishment. He proposes participatory justice as a better response to crime, a response characterised by direct communication between the owners of the conflict, which leads to compensation (Ruggiero, 2011; Van-Ness & Strong, 2010; Woolford & Ratner, 2008).

The first Victim-Offender Mediation Programme began as an experiment in Kitchener, Ontario in the early 1970's, when a youth probation officer convinced a judge that two youths convicted of vandalism should meet the victims of their crimes (Shapland, Robinson & Sorsby, 2011). After the meetings, the judge ordered the two youths to pay restitution to those victims as a condition of probation. Thus, victim-offender mediation programme began as a probation-based/post-conviction sentencing alternative inspired by a probation officer's belief that victim-offender meetings could be helpful to both parties (Furio, 2002). By 1995, the United Nations NGO Working Party on

Restorative Justice adopted the principles of restorative justice as a foundation for global prison environments (Van-Ness & Strong, 2010).

Although some practices and ideas similar to restorative justice existed in the various ancient retributive justice systems mentioned above, it is hard to say that restorative justice originated from the ancient world. We can conclude only that retributive justice systems throughout the world contain the element of restitution. Restorative justice, which emphasises the participation of all stakeholders and the importance of the owner of the conflict, is a recent and novel system in human history.

Having undertaken an overview of the histories and nature of restorative justice, we can now more skilfully examine four common restorative practices throughout the world. These are the *Wagga Wagga model of conferencing*, *Family group conferencing*, *Circles*, and *Victim-Offender Mediation*, which will be reviewed in the following session.

Restorative Practices

The Wagga Wagga model of conferencing was developed in Australia in 1991 and follows a 'scripted' format, which is heavily influenced by Braithwaite's (1989) theory of 'reintegrative shaming', involving shaming and reintegration of offenders into the community, rather than stigmatization and rejection (O'Connell, 1993; Crawford & Newburn, 2003). The Wagga Wagga model intends to solve the causes of committing the offending behaviours as well as heal the harms caused by those behaviours within the context of the community of victims and offenders (Sherman et al., 2000). It involves stakeholders and requires police to become mediators to achieve the best possible outcome for all involved in a cautioning conference. Family and friends of the offender are essential figures in offender reintegration. In conferencing, the mediator encourages offenders to accept responsibility for their behaviour and helps parents be more accountable for the young offender (Van-Ness & Strong, 2010).

Family group conferencing requires the mediator to make sure that the process remains safe for all involved and that parties do not wander into

irrelevant side issues. Participants in the conference include not only the victim and offender but also their families and supporters, sometimes referred to as their community of care. Meetings are usually conducted with minimal if any preparation by the parties. If the victims cannot or will not come, the conference can proceed nonetheless. (Van-Ness & Strong, 2010)

Circles were developed explicitly from native Canadian customs. They seek to include a higher level of community involvement and place the highest value on healing the community after a crime. Circles intend to draw extended family and community members into the process of finding resolution and redress to crime. Circles can include any community members who choose to participate. The circle process allows for the expression of its members' norms and expectations. Circles are not just for the offender, the victim, their friends, and families, but for the community at large. This context offers renewed community identity and strengthens community life for its members through their participation (Van-Ness & Strong, 2010). The mediator is a community member whose role is primarily to keep the process orderly and periodically to summarise for the benefit of the group. Participants speak one at a time and may discuss and address a wide range of issues regarding the crime, including

community conditions or other concerns that are important for understanding what happened and what should be done. In other words, Circles tend to incorporate a broader notion of community and offer a process and structure to enhance local community involvement in matters of justice. A Circle challenges the monopoly of professionals, encourages lay participation, enhances the amount and quality of information available, leads to a creative search for new options and promotes a sense of shared responsibility (Crawford & Newburn, 2003).

There are two forms of Circles: (1) healing Circles, and (2) sentencing Circles. Healing Circles focus on repairing the harm done by the offence and rehabilitating the offender to avoid future damage. Sentencing Circles focus on making recommendations to judicial authorities for actual case dispositions. Circles are suitable for communities with a strong identity and a tradition of operating interdependently (Crawford & Newburn, 2003). Indigenous populations in some countries with a strong ancient tradition use similar practices as an alternative to legal procedures. However, as younger members of these indigenous populations become more influenced by outside society, these communal processes are less able to exert any power over

them. Traditional Maori clan-based practice in New Zealand faces precisely this problem (Marshall, 1999; Van-Ness & Strong, 2010).

Victim-Offender Mediation programs offer victims and offenders the opportunity to meet together with the assistance of a trained mediator to talk about the crime and to agree on steps toward justice. These programs seek to empower participants to resolve their conflict on their own in a safe and structured setting. The mediator imposes no specific outcome; the goal is to enable participants, promote dialogue, and encourage mutual problem-solving (Van-Ness & Strong, 2010). The meeting allows the victim and offender to pursue three basic objectives: to identify the injustice, to make things right, and to consider future intentions. Such encounters help victims achieve a sense of satisfaction that justice is being done and causes offenders to recognise their responsibility in ways that the usual court process does not. Both victim and offender are confronted with the other as a person rather than a faceless, antagonistic force, permitting them to gain a greater understanding of the crime, of the other person's circumstances, and of what it will take to make things right (Shapland, Robinson & Sorsby, 2011).

In the following section, we are going to review different forms of mediation in mainland China, Taiwan, and Hong Kong. Confucianism heavily influences all three of these Chinese societies, though of course in different ways. Their distinctive interpretations and implementations of mediation provide us with insights into the influence of Confucianism on the understandings of restorative justice and mediation.

Mediation in Mainland China

A central political motto of the Communist Party of China, first announced in 2004, is to construct a harmonious socialist society. The Party has incorporated the idea of social harmony as a fundamental value of the modern Chinese legal system, and mediation is one outcome of the judiciary's reaction to the proposition of social harmony. People's mediation (presided over by the people's mediation committees), administrative mediation (presided over by administrative organs), and judicial mediation (presided over by the judiciary) are all formally recognised as means of dispute resolution. It is thought that mediation, which leads to an agreement between the disputing parties, can eliminate social contradictions, prevent the escalation of social contradictions,

and educate the general public to uphold a harmonious society (Xiang, 2013; Xing, 2015).

It is unanimously acknowledged that the political motto of social harmony largely, if not completely, stems from Confucianism, the predominant philosophy of state governance in dynastic China, which admired harmony most. *Li* (propriety), which means proper behaviour based on the place or status of a person within the family or the social and political system, was regarded as the most significant instrument in state governance under Confucianism. Confucius, the founding father of Confucianism, held that in practising *Li* (propriety), harmony is to be prized, which means that the compliance with *Li* (propriety) aims to achieve harmony. Confucianism believes that human beings can be educated and cultivated to behave well by virtues, not by laws (Xiang, 2013; Xing, 2015).

In addition, on the grounds that litigation is an enemy of harmony, Confucius imagined an ideal society with no litigation, taking the elimination of litigation in the community as a vital characteristic of good governance. These core propositions of Confucianism emphasise educating (instead of punishing)

people, showing benevolence (by rulers), and disdaining a reliance on the law in state governance (Xiang, 2013; Xing, 2015).

Mediation in Taiwan

Taiwanese society is still a relationship-driven society composed of primary and secondary interpersonal relationships. Since the maintenance of relationship or *guanxi* is more important than questions of actual right and wrong, fairness must be judged in the context of such social relations instead of according to strict justice under the law. If a mediator happens to be an acquaintance of a disputant, his relatives or his friends, the mediators will often appeal to mutual relations or *guanxi* as part of reaching a settlement (Lin, 2011).

Mediators in town mediation in Taiwan tend to be mostly elder males. By 2008, the overall percentage of male mediators had dropped to 72%, but they still comprised 78% of mediators over fifty years of age. This common practice is consistent with Confucian teachings on gender roles and the respect due to elders. Court mediation is not conducted directly by judges, but rather by a

panel of one to three mediators appointed by the court. If the dispute is not settled, the process of litigation resumes and neither statements made nor compromises agreed to during the mediation phase may be used as the foundation of a later judicial decision. Compared to town mediators, court mediators generally have a higher level of education and more opportunities to partake in specialised training programs. In 2005, the Judicial Yuan launched a family mediation pilot project in six district courts, and in 2008 promoted this to every family court in Taiwan (Lin, 2011).

The obstacle for the adoption of modern civil litigation in Taiwan is the traditional expectation of a selfless individual. Confucianism honours selfless righteous deeds and often contrasts these with personal interests, which it labels trivial or less important. To carry out honest conduct, one must calculate profit, but not for oneself – for the greater good. As a result, asserting one's rights is generally not encouraged in Confucian societies. (Lin, 2011).

Mediation in Hong Kong

For statutory criminal justice in Hong Kong, detention centres, training centres, reformatory schools, and probation homes have been established to deal with young convicted offenders. Young offenders found guilty of less serious offences are put under community supervision by probation or community-service orders (Wong, 2000). The Police Superintendents' Discretion Scheme is intended to divert young offenders who have committed a minor offence from being prosecuted. Since 1963, police officers who hold the rank of Superintendent or above have been authorised by the Secretary for Justice to caution first-time offenders who commit minor offences. If a young offender does not agree to join this scheme or denies committing the offence, he or she will be referred to the juvenile court. Finally, a youthful offender is given a warning by the Police Superintendent after a personal interview (Jones & Vagg, 2007; Lo, Wong, & Maxwell, 2006).

The Juvenile Liaison Officer helps young offenders to obtain a job and encourages them not to get re-involved with crime (Jones & Vagg, 2007). If the Police Superintendent considers that a young offender is in need of the

services of three or more government departments, a family conference will be set up to discuss follow-up services for the young offender. After that, the youthful offender has to join the Community Support Service Scheme, which is provided by five non-government organizations: The Methodist Centre Project Phoenix, The Boys' and Girls' Clubs Association of Hong Kong Youth Action Network, The Hong Kong Playground Association New Horizon Community Supportive Services Scheme, The Hong Kong Federation of Youth Groups Youth Support Scheme, and the Evangelical Lutheran Church Social Service – Hong Kong Youth Enhancement Scheme. The Community Support Service Scheme was launched in 1995. It aims to help young offenders reintegrate into mainstream education/workforce and reduce the likelihood of being drawn back into the criminal justice system; to divert them from the need for residential or custodial care; and to help them reintegrate into the community if they have previously been held in institutions. It provides structured programs and supervised activities and services for young offenders within the community. Among these five non-government organisations, two offer Victim-Offender Mediations: Project Concord of the Methodist Centre and the Youth Enhancement Scheme of the Evangelical Lutheran Church (Lo, Wong, & Maxwell, 2006; Social Welfare Department, 2007, 2011).

The recidivism rate of young offenders who join the Community Support Service Scheme has remained below 20% in recent years. The majority of ex-offenders reported a high level of satisfaction with the scheme and said that it exerted a positive influence on their behaviour, family values and sense of social responsibility (Lo, Wong, & Maxwell, 2006).

Discussion

The theories reviewed, Braithwaite's reintegrative shaming theory, Hirschi's control theory, Matza & Sykes's neutralisation theory, Zehr's changing lens, abolitionism, all argue that state intervention cannot replace the power of community ties and acceptance to control misbehaviour. Nonetheless, Hirschi emphasises delinquency and neglects victims and justice. This is one reason why the application of Hirschi's control theory is restricted in restorative practice – it cannot see the influence of crime on a community level. Braithwaite's reintegrative shaming theory reworks Hirschi's control theory and puts victims, offenders and community together through reintegrative shaming. Braithwaite incorporates Matza's theory of neutralisation and reworks it to accommodate reintegrative shaming. Moreover, Matza's theory of

neutralisation provides a theoretical foundation for confrontation between victims and offenders. Zehr's changing lens also promotes an extended set of stakeholders and communities in healing at the individual and societal level but does not propose a specific mechanism to do so. Abolitionism and Braithwaite's reintegrative shaming theory share similar ideas against formal justice; however, Abolitionism proposes understanding the causes of conflict to replace reintegrative shaming and criticises restorative justice, as it may discourage voluntary/lay participation.

The different practices have different theoretical foundations, such as the influence of Braithwaite's reintegrative shaming on the Wagga Wagga model of conferencing. Though informed by different theoretical perspectives, the centrality of the victim, offender, and community is paramount in restorative justice. As Howard Zehr says, all models of restorative justice are culture-bound. It is worth studying the diverse understandings of restorative justice from different cultures.

After that, the two competing narratives of the history of restorative justice show that the ideas and practices of restitution have been practised in different

times and places. Restorative justice is a novel measure to cope with crime, but its elements could be found and observed throughout human history. In other words, restorative justice, which places the victim, the offender and the community at the centre, is a recent and novel system in human history. Among the diverse interpretations and implementations of restorative justice, four common restorative practices are the *Wagga Wagga model of conferencing*, *Family group conferencing*, *Circles*, and *Victim-Offender Mediation*.

In three different Confucian societies – mainland China, Taiwan, and Hong Kong – Confucianism still influences the behaviours of Chinese people. However, mediations in these three societies have distinctive characteristics, as all are affected by the different interpretations of Confucianism. Just as there is no single understanding of Confucianism, no single theory or theoretical perspective can fully understand and explain restorative justice. Hirschi's control theory, Matza's theory of neutralisation, Zehr's changing lens, Abolitionism and Braithwaite's reintegrative shaming theory all contribute to the development of restorative justice.

The next chapter will present the methodology for this study. The scope of the study, ontological, epistemological assumptions and paradigm of the study, research setting, interview, interview schedule and data analysis will be presented and discussed.

Chapter 4 Methodology

The previous chapter reviewed several theories related to restorative justice, two competing narratives of the history of restorative justice, four common restorative justice practices throughout the world and a brief account of mediation in mainland China, Taiwan, and Hong Kong.

This chapter presents the methodology of this study. The scope of the study, ontological, epistemological assumptions and paradigm of the study, research setting, interview, interview schedule and data analysis will be presented and discussed.

The scope of the study

This study is inspired by my colleagues at the Department of Applied Social Sciences, The Hong Kong Polytechnic University ten years ago. At that time, we, most of our colleagues were social workers, were discussing the feasibility of restorative justice in Hong Kong. These discussions ranged from

philosophical issues of restorative justice to the policy level about the implementation of restorative justice. Ten years later, some of my colleagues left the department; some of them retired; some of them died. However, there is only a little bit of change in the youth justice system in Hong Kong. I know that the discussion will go on until real change comes.

This study is concerned merely with one part, a very small part, of the whole picture. The completion of the whole picture would involve a comprehensive and definitive exploration of how victims, offenders, community members, including macro-community members and micro-community members, and mediators understand Confucianism and the relationship between Confucianism and their attitudes in relation to the philosophy and practice of restorative justice. This exploration will probably produce a very rich bodies of data based on the multiple realities from different stakeholders in victim-offender mediation. However, the negotiation with different stakeholders, the time of waiting approval from managements of different institutions will definitely be time-consuming and endless waiting. Such exploration is well beyond the scope of this study. This study will focus on mediators and their experience on victim-offender mediation. That is the

analysis of how mediators in Hong Kong understand Confucianism and how the understanding of Confucianism affect their attitudes in relations to the philosophy and practice of restorative justice. Although mediators play vital role in victim-offender mediation meetings (Bradt, L., Bie, M.B., Visscher, S.D, 2014), the study of mediators in Hong Kong is rare. This study intends to fill this gap.

The delimitation of the scope of this study also reflect the restriction of time and resources imposed on the author by particular circumstances within which this study was undertaken. The author conducted this study on the basis of an individual doctorate in part-time, engaged in full-time employment and father's job in the same time. Effective methodologies are always a lesson in the art of the do-able and in the final instance this often becomes a question of time and budgets.

Ontological, Epistemological Assumptions and Paradigm

The underpinning ontological position of this study is that reality is subjective and multiple, as seen by mediators involved in this study. In order to reflect

their subject experience and multiple understanding of restorative justice and Confucianism, quotes from the interview (words of mediators) will be used as evidence of different experience and understandings of the subject matter in this study (Creswell, 2006). In order to understand the richness and complexity of their experience and understandings, the lived interactions with mediators are necessary for this study. Therefore, the epistemological position of this study is that the researcher (author of this thesis) should lessen distance between mediators and me. Considering the focus of this study is an interpretation of the lived experiences of social workers and their understanding of Confucianism and its core values, the role of macro-community members, the role of parents, the role of social workers as mediators and victim-offender mediations, qualitative research methods were employed in this study. Glaser (1992) & Creswell (2006) posit that qualitative methods can be used to uncover the nature of people's actions, experiences and perspectives which are yet a little known in the world of research products. Also, qualitative research design is considered ideal for generating thorough and holistic descriptions of complex processes (Corbin, 2016; Strauss & Corbin, 1998).

The paradigm informed this study is social constructivism. By social constructivism, I refer to premise that individuals seek understanding of the world in which they live and work. They develop subjective meanings of their experience – meanings directed toward certain objects or things. These meanings are varied and multiple, leading the researcher to look for the complexity of views rather than narrow the meanings into a few categories or ideas. The goal of research is to rely as much as possible on the participants' views of the situation. They are not simply imprinted on individuals but are formed through interactions with others and through historical and cultural norms that operated in individuals' lives. Rather than starting with a theory, inquirers generate or inductively develop a theory or pattern of meaning (Creswell, 2006). Social constructivism proposes that each individual mentally constructs the world of experience through social interactions (Young & Colin, 2004) and views knowledge and truth as created in the process of social interaction (Schwandt, 2003). Lincoln & Guba (1985) argue that the research process is influenced and bounded by values in several ways including the choice of the problem, the choice of the paradigm, the choice of the theory in guiding the data-gathering and data-analysing process, the choice of context,

and the choice of format for presenting the findings. However, it is inevitable to include a value in understanding the lived experiences of the interviewees.

The purpose of sociological research is not merely to achieve descriptive renditions of social behaviour and individual consciousness, as these cannot themselves produce explanation, but to locate these renditions within a theoretical context. Therefore, we have to find a way for establishing the quality, veracity and meaning of data. A grounded and inductive approach to theory development is therefore warranted, enabling an understanding of how broader societal dynamics become produced and reproduced within specific social locations. The strength of adaptive theory lies on the use of pre-existing theory and theory generated from data analysis in the formulation and actual conduct of empirical research (Layder, 1988). Grounded theory informed this study is the importance of developing well integrated set of concepts that provide a thorough theoretical explanation of social phenomena under study. As Corbin & Strauss (1990) said that a grounded theory should explain as well as describe.

Demographic Characteristics of Interviewees

I have interviewed 22 social workers from Methodist Centre (Project Concord) and Evangelical Lutheran Church Social Service (Hong Kong Youth Enhancement Scheme) who run victim-offender mediation. 12 of them were female social workers while 10 of them were male social workers. I conducted interviews from January 2015 to February 2016.

All interviewed social workers had tertiary education, and 9 of them had obtained postgraduate degree. The average age of them were 30 years old, and those social workers have been working in restorative justice services for 4.14 years on average. The majority of them were practising Christian.

Research Settings

Community Support Service Scheme (CSSS) aims at helping children, and youth cautioned under the Police Superintendent's Discretion Scheme, which intends to reintegrate them into the mainstream education or workforce and reduce the likelihood of re-offending. Among the five non-government

organisations in provisions of Community Support Service Scheme (CSSS), Methodist Centre (Project Phoenix) and Evangelical Lutheran Church Social Service (Hong Kong Youth Enhancement Scheme) are two non-government organisations which provide victim and offender mediation for victims and offenders under Police Superintendents' Discretion Scheme. The Social Service Department, HKSAR funds the Project Phoenix of Methodist Centre and Hong Kong Youth Enhancement Scheme of Evangelical Lutheran Church Social Service. All social workers in the Project Phoenix and Hong Kong Youth Enhancement Scheme were invited to participate in this study.

Gaining access

When I applied for the Ph.D. programme at Middlesex University, several colleagues said that they knew the supervisors who oversaw Project Phoenix and Hong Kong Youth Enhancement Scheme. At that time, I thought that the data collection process would be smooth. In order to understand restorative justice practices in Hong Kong, I attended the course "Restorative Dialogue: Victim-Offender Mediation Training", which was offered by the Evangelical Lutheran Church of Hong Kong Integrated Service Centre for Reconciliation in

2012. The social workers, who oversaw the Hong Kong Youth Enhancement Scheme, shared their experiences on restorative justice. After the class, I discussed with them the initial research plan. After sharing my ideas on the initial research plan, they showed enthusiasm in it. I asked them whether it was possible for me to observe the victim-offender mediation. They said that I needed to reach the head office to get approval. I made a call to head office to see what procedures I had to go through. The staff at head office asked me to get approval from The Hong Kong Police Force first. After I sent several mails to the Hong Kong Police Force, I got the reply finally. I found out that there was no such procedures for application of research in the Hong Kong Police Force. I went back to the starting point. This above process already took more than one year. On the other hand, the information I got from my colleagues turned to dead end too. The person I contacted at the head office of Methodist Centre said the research would not be possible until I got approval from the Hong Kong Police Force.

After that, I refined my research plan a bit. Instead of observing the process of victim-offender mediation meeting, I tried to interview mediators, all of them were social workers. When the revised research plan was ready, I contacted

the social workers who I met in the training course offered by Evangelical Lutheran Church Social Service (Shatin branch). Both of them got promotion and one social worker has been assigned to a new service. Another social worker was in charge of the centre, including Hong Kong Youth Enhancement Scheme. I discussed the revised research plan with her and asked whether I could interview those social workers who ran victim-offender mediation for the Hong Kong Youth Enhancement Scheme. She said that it was possible to arrange the interview after she got the interview scheme. Several week after I sent all required documents, she replied me that the application was approved and I could conduct interviews with those social workers. I started the interview in January 2015. Since social workers in Hong Kong had very busy working schemes, I often had to change the time and date for interviews. Several months later, it was summer holiday. Social workers had to organise summer activities for youth members at the centre and I needed to postpone the interviews until October 2015. The interview resumed in mid-October and end in February 2016

In the meantime, I got a breakthrough that I could interview social workers who ran the Project Phoenix of Methodist Centre. I was able to interview them

because of my college, Dr Raymond Tam. Dr Raymond Tam knew the supervisor of Project Phoenix personally. One day I shared the difficulties of contacting those social workers involved in the Project Phoenix. Dr Raymond Tam recalled that his ex-colleague might still work as the supervisor of the Project Phoenix. He sent an email to his ex-colleague and introduced me to her. After explaining the aim of my study, I was allowed to interview those social workers involved in Project Phoenix. The interviews of social workers involved in Project Phoenix started in September, 2015 and ended in February 2016.

The experience of gaining access reminds me that despite Hong Kong is a city with unique fusion of East and West, the personal relationship is still very important in getting things done.

Conducting the interview

In this research, the prime aim is to understand in what way and what sense, Confucianism, Confucian relational ethics, filial piety affects the attitude of social workers towards restorative justice. Interviews with them allowed me to

learn more about the thinking and experiences of social workers involved in victim-offender mediation.

Semi-structured interview was adopted in this study and interview schedule with 12 open-ended questions was prepared as a guideline in doing the interviews. Because of tight schedule of social workers, every interview was conducted at their office and most interview lasted between 1 hour and 1.5 hours.

The interview schedule covered the areas such as interviewees' basic information, their understanding of Confucianism, filial piety, shame and restorative justice, their understanding of the relationship between family members and friends and their viewpoints on restorative justice. These interviews ended up in the construction of multiple realities. Corbin (2016) stresses that this kind of multiple realities would uncover the interactions among the inquirer, the interviewees and others. Interview is the effective way to uncover the richness of multiple realities.

Before proceeding to the interview, I explained to the interviewees the purpose of the interviews and the aims of the study. This was a way to lessen the distance between research and interviewees and develop mutual trust with us (Creswell, 2006). The interviewees were given information sheets about the research in advance of the dialogue. The interviewees were then requested to sign a consent form to acknowledge their willingness to participate in the study. Agreements were made that no particulars of the interviewees would be disclosed and that the data collected would be used for this study only. To ensure no pieces of information would be missing, apart from jotting field notes after the interviews, I audiotaped the interviews.

In the first two interviews, I discussed questions in interview schedule with interviewees following the order from question 1 to question 12. I found out that the format of interview was not fruitful and made interviewee felt nervous. Therefore, I changed the format of interview and started the interview with a very brief introduction of Confucianism and invited them to share their general understanding of restorative justice. After that I asked them to select one question they were most interested in and shared their views. The atmosphere became better and the interviews were more fruitful than before.

Based on the experience of first two interviews, I avoid to mention filial piety, *Ren* (benevolence) and other 'terminology' in Confucianism. I mentioned the general term 'Confucianism' and let them shared those ideas in their mind about Confucianism. This experience echoes what Denzin & Lincoln (2005) and Flick (2006) suggest that that qualitative studies and interviews are more natural and effective way to seek answers to questions about how social experience is created. Interviewees' experience of restorative justice practices and their understandings of Confucianism and restorative justice certainly belong to this kind of question. Rubin & Rubin (2005) suggest that researchers should try to elicit the interviewee's views of their worlds, their work, and the events they have experienced and to build an understanding based on those experiences. In fact, social constructivism assumes that there are multiple realities (Lincoln & Guba, 1985; Guba & Lincoln, 1994). The interviews with semi-structured questions fit for the purpose of this study. From the interviewee's view on offenders, victims, and their parents, it enriches our understanding of the relationship between Confucianism and restorative justice practice in victim-offender mediation meetings in Hong Kong.

The Rationale for interview

The fulfilment of the aims and research questions required an interpretive and flexible approach primarily. Apart from parameter mentioned above, statistical analysis does not cater to how people interpret their experiences and attribute meanings to them and, therefore, does not account for the value they acquire.

The sense of qualitative research may vary in different moments, and it is difficult to give a specific definition to qualitative research. Denzin & Lincoln (2005) provides a generic description to qualitative research and define qualitative research as a situated activity that locates the observer in the world.

Qualitative research involves a set of interpretive material practices that make the world visible. Regarding the role of the researcher, Denzin and Lincoln (2005) put forward that qualitative researchers are attempting to make sense of or to interpret, phenomena regarding the meanings people bring to them. As Patton (1990) observes, data from qualitative interviews usually provides rich information that is of central importance to the purpose of research. There is nothing predetermined about the size of these samples and flexibility is the keynote. The interview is a turn-taking system that requires that the interviewer proposes topics and that the interviewee seeks to produce locally acceptable

answers. An interview is not a conversation. It is a deliberately created opportunity to talk about something that the interviewer is interested in (Dingwall, 1997). If a balance needs to be struck between the 'subjectivity' implied by the intersubjective understanding characteristics the forms of interaction produced within in-depth interviews, and the 'objectivity' associated with a 'detached' analysis of the data so generated (May, 2001), then the semi-structured interview would seem to offer some opportunity to achieve this via the richness/comparability couplet. An interview is a strategy to enable people to share their experiences in a flexible way (Noaks & Wincup, 2004). Marshall & Rossman (1989) point out that interviews are a useful way to gather a significant amount of data quickly, and allows for immediate follow-up questions and clarification. McCracken (1990) states that interviews enable the researcher to step into the mind and to experience the world of others. Noak & Wincup (2004) further states that the semi-structured interview offers the interviewer more opportunity to probe and offers more opportunity for dialogue and exchange between the interviewer and interviewees.

Data Collection Methods and Limitation

In this study, theoretical sampling and theoretical saturation from grounded theory were adopted. Theoretical sampling directs researchers to look for interviewees that will enable researchers to systematically develop the categories in terms of their properties and dimensions. Saturation occurs only when each category is fully developed in terms of its specific properties and dimensions in as much as possible within the limits of a study (Corbin, 2017).

The specific research techniques employed were semi-structured interviews and questionnaires. The research aims, the size of the sample and time constraints determined the type of interviews chosen. The semi-structured interview with the use of an interview schedule will adopt an essential technique in collecting data for this research. A series of open-ended questions were formulated and organised thematically to produce a question route in response to which social workers were enabled to determine the breadth, depth and length of their answers. Semi-structured interviews particularly have proved a useful tool for enabling the production of rich data, and make comparison possible with a degree of standardisation (May, 2001).

The richness derives from the manner in which interviewees can elaborate their position with a reduced level of interviewer-imposed constraint and in terms mainly of their choosing (May, 2001). It is also a product of the capacity of the interviewer in this context to probe for clarification and further information as a means to maximise the opportunity to achieve a subjective understanding of the data (O'Connell-Davidson and Layder 1994). Semi-structured interviews also seem well suited to exploratory research where there is a need to assume as little as possible about in the studied field. Semi-structured interviews were selected because of the opportunity they provided for clarification of meaning both through the facility they offer for asking supplementary questions, and through the richness of the data generated, so enabling a level of validation. Of course, the relative 'openness' of the semi-structured interview is no automatic guarantee of the analytical status of the data that emerge (Seale, 1998). However, if I am open to criticism from some for introducing a degree of direction and structure in adopting a semi-structured approach, then I would suggest that such an interview format reflects the true nature of the interview accurately as an interactive event. Against the alternative option of unstructured interviews, the semi-structured format provided me with a sense of direction and focus-indispensable to a

novice researcher while it gave participants considerable leeway to express themselves. This was not achieved by the mode of interviews alone. Without a clear interview schedule of research questions and an adequately devised interview schedule, this would not have been possible.

As for reliability, the choice to use qualitative methods is typically associated with a much-reduced concern with reliability in its strict sense, on the part of both research project and researcher. As this project is concerned with a field about which little is sociologically known, the concern of this exploratory research has been to interpret primary themes in the absence of already-existing research data, and therefore in the lack of any means to 'standardise instruments' (Mason, 1996). The principal concern is exploratory and seeks to establish a data set and related interpretations which may serve as a means to developing a range of more specific research questions in terms of which future work may be undertaken. It would be for this future work to be concerned with issues of reliability. The data obtained in this study would be considered as resources to assist us in understanding the relationship between Confucianism and restorative justice. I would consider questions of reliability to be important in the longer term.

Generalisability is concerned with the extent to which more extensive claims can be made on the basis of the data set and conclusions generated (Mason, 1996). In so far as the interviews conducted were not able to be based upon a systematic (random or stratified) approach to sampling, formal claims to generalisability are precluded. Instead of using random or representative sampling, I used purposive sampling in this study. Lincoln and Guba (1985) argue that this kind of sampling increases the chance to uncover the full array of multiple realities. The fact that a high level of saturation was achieved in the coded data may be taken to be suggestive that the inclusion of more interviewees would have produced similar results, supporting some claim to the generalisability of the data.

Given the importance of accuracy in the recording of the data and the immersion within the data during the process of analysis, a decision was made to use digital voice recorder in the interviews. The use of digital voice recorder in interviews enabled both interviewer and interviewee to engage in an interactive exercise in the absence of the ongoing references to an external agenda induced by the process of note-taking. May (2001) claims that both the interviewee and interviewer may, in fact, forget that they are being recorded,

and this seemed to be the case in these interviews. The fact that I did not need to concern myself with recording information allowed for a more natural dialogical approach to be adopted. All the interviewees were informed in advance and agreed to be recorded in interviews. They understood how this data would be managed and disposed of during the research process. Upon conclusion, all the interviewees were asked if they had any questions for me or the research, and whether they would like a copy of the transcript.

Interview Schedule

In the interview, I asked interviewees what the role of offenders, macro-community members, parents of offenders and victims, their positions are in the victim-offender meeting. Based on the research as mentioned above, 12 guiding questions were further developed into the interview (For details, please see Appendix 4).

As the study intends to explore the role of mediators (social worker) in victim-offender mediation and their perception on the interactions among victims, offenders, their parents in victim-offender mediation, the 12 guiding

questions assisted them in recalling and reflecting their experience in mediations they have conducted. As Creswell (2006) mentions that the broad and general questions are necessary for the participants construct the meaning of a situation, a meaning typically forged in discussions or interactions with researcher. The open-ended questions enable researcher to listens carefully to what people say or do in their life setting. Researcher can focus on the specific contexts in which people live and work in order to understand the historical and cultural settings of the participants. Researchers recognize that their own background shapes their interpretation and acknowledge how their interpretation flows from their own personal, cultural, and historical experiences. Thus the researchers make an interpretation of what they find, an interpretation shaped by their own experiences and background. The researcher's intent is to make sense the meanings others have about the world.

With the assistance of questions 1, 2, and 3, social workers, based on their observations and memories, tried to delineate how Confucianism, filial piety and shame in specific, affected the offenders and victims in making their decision in pre-mediation session and meetings (Ho, 1976; Yao, 2000; Yeh, Yi,

Tsao & Wan, 2013). With the assistance of questions 4, 5, and 6, social workers tried to delineate how Confucianism, filial piety and hierarchical social order in specific, affected parents in making decisions when they disagreed with their children (Ho, 1993; Hsu, 1983; Yao, 2000; Yeh, Yi, Tsao & Wan, 2013). In the assistance of question 7 and 11, social workers reflected their role in pre-mediation sessions and victim-offender meetings and recalled how they coordinated different stakeholders in pre-mediation sessions and meetings (Choi & Gilbert, 2010; Baldry, 1998). With the assistance of questions 8, 9 and 10, social workers tried to recall and reflect their understandings of Confucianism and restorative justice and any contradictions between Confucianism and restorative justice (Xiang, 2013; Xing, 2015). With the assistance of question 12, social workers explored their understanding of macro-community members in restorative justice and Confucianism and whether there were any discrepancies in perceptions macro-community members between restorative justice and Confucianism (Gerkin, 2012; Huang & Chang, 2013).

Social constructivist assumes that people who work, play, or interact in the same group may hold shared meanings to certain things. Therefore, in the

research process, in addition, to understanding the distinct manner of interviewees in encountering specific experiences, researchers are figuring out the shared meanings that interviewees hold. These shared meanings are negotiated with others around them (Rubin & Rubin, 2005). In this sense, social constructivism draws our attention to the “multiple pieces of knowledge” that are related to the social, cultural, political, economic, ethnic, and even gender factors among interviewees (Guba & Lincoln, 1994). Based on the above understandings, social constructionism adopts a transactional and subjectivist position in social research. Researchers and the interviewees are interactively linked. Being influenced by this interactive relationship, knowledge is created as the research proceeds. Values are important and are seen as inevitable in creating research outcomes (Guba & Lincoln, 1994; Lincoln & Guba, 1985).

Transcriptions

Data analysis in qualitative research can be considered as the process of making meaning from the data collected. In this study, the interviews with social workers have been used to create definitions to understand their lived

experiences of Confucianism and Restorative Justice. I transcribed the interviews in Cantonese and translated them into English. After translating the interviews into English, I read and reread English transcriptions to see, while referring to the Cantonese transcriptions, whether anything was lost in translation. Both English and Chinese transcriptions have made up the database for analysis in this study.

The reasons for turning the interview data into transcripts was as what Silverman (2000) has suggested, by referring to the transcripts, we are able to focus on the actual details of one aspect of social life, to inspect sequences of utterances and make sense of conversation. As the database of the study, it is essential to keep the series of the conversation, to avoid piecemeal data.

The transcripts of interviewees have been saved in separate folders assigned to different interviewees. The transcriptions are the original interview data, which consists of stories. Polkinghorne (1995) suggests narrative can also be referred to as the interview data that is collected in qualitative inquiries. Meanwhile, Guest, MacQueen & Namey (2012) state that a qualitative researcher should adopt various methods of analysing data. As informed by

narratives (Polkinghorne, 1995) and theoretical coding as introduced by Glaser & Strauss (1967), a thematic analysis of data will be used.

In this study, I explored the concepts of Confucianism and different theories related to Restorative Justice. After coding and categorising, the data in the interviews were examined to see if any implicit or explicit ideas have not been mentioned in previous studies to capture the complexities of meaning within a textual data set. This way of analysing data enables the possibilities of generating new concepts and theories from a dataset.

Coding

Interpretation of data is the core of qualitative research. Coding and categorising in qualitative analysis allow the researcher to construct the concepts (Flick, 2006; Polkinghorne, 1995). I read the transcriptions thoroughly and focused on identifying themes. After that, I developed codes to represent the identified themes and applied to raw data as summary markers for later analysis. I reviewed the topic I set before and saw whether there was enough data to support the theme. I merged or removed specific ideas when

there was a lack of data to support them. The definition and name of themes had been assigned.

Once I applied the identified themes to all transcription from interviewees, I retrieved all the text coded at codes listed and compared what interviewees said on the same theme. In this process, I was able to discover the similarities and differences between different interviewees on the same theme. An analytical theme would be sought out after comparing similarities and differences on the same theme (Guest, MacQueen & Namey, 2012).

Analysis of data

The grounded theory tradition informs the analysis of data and inspired by Layder's formulation of adaptive theory (1998). Grounded theory is a research strategy that was first propounded by Glaser and Strauss (1967). In its original form, it was exclusively driven towards theory generation as opposed to theory verification. The researcher would approach and treat the fieldwork tabula rasa without the employment of hypotheses or established theories. The conclusions drawn from the data were the sole basis upon which subsequent

theorising took place and led to the development of new theoretical propositions (Punch, 2001). For the purposes of the present research, grounded theory was utilised in a slightly more flexible way. In contrast to its original rigidity, which eschews outside the fieldwork influences, theory and concepts mingle together from the beginning. To use a metaphor, they function as the `software` of the research. Being the software rather than the hardware is what induces their adaptability, which permits their fittingness to be tested against the data, pointing when and what is in need of an update. This adopted stance is a representation of Layder`s adaptive theory, which emphasises both analytic induction and deduction in relation to the research design and data analysis. For Layder, neither induction nor deduction should be treated preferentially. The fact that they process information differently does not entail that they cannot co-exist in the development of the research. In reality, each is existent in the other.

The next chapter will explore how mediators, youth offenders and their parents – as seen by mediators – understand restorative practices in the context of Confucianism.

Chapter 5 Confucianism Meets Restorative Justice: ‘Face’, Shame, Filial Piety and Hierarchical social order

The previous chapter reviewed the methodology for this study, the scope of study, ontological and epistemological assumptions, theoretical approach of research method, research settings, data collection, data analysis and related issues.

This chapter presents research findings on the reasons why youth offenders join the Police Superintendent’s Discretion Scheme. The offences these young offenders have committed are usually minor ones, such as fist-fighting and shoplifting. Why are they willing to take part in Victim-Offender Mediation? From the standpoint of a mediator, it is because restorative justice is a process of removing the shame youth offenders have experienced. This chapter will explore how mediators, youth offenders and their parents— as seen by mediators – understand restorative practices in the context of Confucianism. In the following sections, the literature on the compatibility between Confucianism and restorative justice, the meaning of face and shame in the

context of Confucianism, the Police Superintendent's Discretion Scheme, and the empirical findings will be presented and discussed.

Previous studies have argued that reconciliation and restitution, two key values in restorative justice, can be traced back to Confucianism and that restorative justice is compatible with Confucian ideas on harmony, stability and social order (Braithwaite, 2002a; Liu & Palermo, 2009; Shen & Antonopoulos, 2013). According to the above studies, restorative justice should be applied in current Confucian societies without reservation. However, the possible influence of Confucianism on restorative justice practice has not received enough attention. Restorative justice theories reiterate that victims and offenders are both crucial players, and they stress that an individual's rights must be protected and respected. The emphasis on participation, empowerment, responsibility, restoration and related principles is meant to ensure the protection of individual rights. On the other hand, Confucianism emphasises relational ethics and a hierarchical social order. The individual is considered a dependent member of the family, and the individual's rights should not exceed or supersede the family's reputation. It is essential for us to figure out whether family interests will compromise individual rights. This

chapter intends to explore the interpretation of Confucianism in Hong Kong and how restorative justice has been used with young offenders under the Police Superintendent's Discretion Scheme.

Following the ideas of Christie (1977), the criminal justice system reflects a theft (by the state) of the conflict between the victim and the offender. Restorative justice theorists – for example, John Braithwaite (2002) – suggests that the state should distance itself from the centre of dealing with crime in order to return the space and power to victims, offenders and communities who are more relevant to the offence. In restorative justice discussions, family members and other significant others are most commonly regarded as communities that are important to victims and offenders.

In traditional Chinese societies, communities are composed of kindred families and clans; therefore communities are the expansion of families. In restorative justice theories, families and communities act as supporters and resource providers; individuals at the centre of violence are regarded as the major players at the conference. Bringing families and communities into the discussion is a way of making sure the rights and interests of all parties are not

overlooked (Gerkin, 2009). Confucianism, however, has a different expectation of how to cope with crime. It relies more on families and communities instead of on victims and offenders themselves. In Confucianism, individuals are persons of relational self (Ho, 1976, 1993; Hwang, 1987; 2012). Such a concept of relational-self does not merely mean that 'personal character built up in relational ethics' is the way of making humans human. Confucian relational ethics mainly consists of *Ren* (benevolence), *Yi* (righteousness), and *Li* (propriety). This presumes that individuals should live up to their hierarchical role expectations and obligations in the family through lifelong self-cultivation. It also shapes Confucian personhood in a moral and interdependent sense, with no necessity for a distinct boundary between self and others, particularly family members. Therefore, when it come to the resolution of crimes or conflict, individuals are not independently present. Family hierarchy and the inseparable family connection mean that the group is the major player at a conference, not relegated to the roles of supporter and resource provider.

'Face' and Shame

It is crucial for an individual in Chinese society to save his or her 'face', a concept which denotes an individual's social position or prestige in his or her interpersonal network. 'Face' can be gained by performing social roles that are well recognised by others (Hu, 1994; Hwang, 1987); 'face' can be lost by being criticised and humiliated for doing acts that are not acceptable by the social norm (Ho, 1993). A moral failure, which implies a weakness in self-cultivation advocated by Confucianism, is more likely to cause a sense of 'losing face' than is a failure concerning one's capabilities. People who engage in behaviours related to moral shortcomings should feel a sense of shame as a result (Hwang, 2012). In Chinese societies, 'face' is never a purely an individual thing – it must be considered in relation to others in the social network (Ho, 1976). 'Losing face' has been viewed as having serious implications for one's self-esteem and moral decency (Chan, 2012; Ho, 1993).

Police Superintendent's Discretion Scheme

In Hong Kong, youth offenders under the age of 18 who have committed a criminal offence may come under the Police Superintendent's Discretion Scheme. In this procedure, offenders are cautioned instead of being brought before a court. The offenders are then placed under police supervision for a period of two years or until they reach 18 years of age, whichever is sooner.

The preconditions for this 'caution' are: there is sufficient evidence to support a prosecution; the offenders must admit the offence; and the offenders and their parents or guardians must agree to the cautioning. The nature, seriousness and prevalence of the particular offence is considered, as is any previous criminal record. If there was a previous conviction, it is unlikely there will be a caution. The attitudes of the offenders and their parents/guardians, and the opinions of the victim(s) are also taken into account. A caution under the Police Superintendent's Discretion Scheme is not a criminal conviction. There is no obligation of police to disclose it, and the offender has a clear record. The police keeps records of these cautions. There is nothing to prevent the police or other discipline services personnel from checking whether an applicant for employment with them has received a Superintendent's caution, and then

taking this into account when considering the application (Jones & Vagg, 2007).

The Findings

Shame and Guilt

It is not compulsory for youth offenders who participate in the Police Superintendent's Discretion Scheme to join victim-offender mediation. However, according to social workers, the majority of these offenders take part voluntarily in victim-offender mediation. For young offenders, restorative justice is a process of removing the shame they have experienced. They have been arrested by police but have not gone through any process to address their shame. Shame prompts an individual to avoid an embarrassing, 'face-threatening' situation because the shame draws one's attention towards one's distressing internal experience rather than the external environment (Kam & Bond, 2008). As one mediator explained, taking part in victim-offender mediation meeting means that offenders are willing to take the responsibility

and initiative to repair and restore relationships, especially in their personal network.

When I explained restorative justice to offenders, I emphasised that they have to take responsibility. The guilt they felt, accusations their own family and friends hurled at them, the shame they felt – all of these feelings hurt them badly (Ann).

From this mediator observation, we can understand that shame is a self-directed emotion (Kam & Bond, 2008). Offenders fear that other people might devalue them; they feel worthless and powerless. In victim-offender mediation meetings, offenders try to show remorse for what they have done and save their status and self-esteem. In this sense, the shame they experience is integrative. By going through the restorative-justice process, they remove their shame and feelings of guilt. Victim-offender mediation thus provides a chance to restore and reintegrate offenders into society.

Another mediator said that saving the parents' 'face' was another reason offenders attended victim-offender mediation meetings. They did not want only

to remove their shame, they also wanted to 'save face' for their parents because they knew how much their wrongdoings had cost their parents. Before the crime, their parents would have been busy working, not spending so much time taking care of them and chatting with them. When the offenders were arrested and detained in the police station, they realised how their wrongdoings had affected their parents.

In victim-offender mediation, they (youth offenders) were shocked to know that their parents needed to rearrange their working schedule to bail them out. They had no idea how long their parents would have to stay at the police station. Their parents typically needed to wait 4 to 5 hours at the police station. This was the first time they understood how much their parents suffered from 'losing face'. This why the youth offenders were willing to give an apology (Edward).

Face

The concept 'face work' developed by Goffman (1955) helps us understand the importance of removing shame and guilt in a Confucian society. People

create 'face' as the public-image and may claim to possess some values praised by society, such as wealth, achievement, or ability. When others recognise this claim, the person gains 'face'. If the claim is rejected, the person loses 'face'. The goal of 'face work' is to shape and instil in the minds of others a particular favourable image.

'Face' is an image of self – delineated in terms of approved social attributes – albeit an image that others may share, as when a person makes a good showing for his profession or religion by making a good show for himself (Goffman, 1955, p.213).

Goffman further argues that proper behaviour and 'face-saving' practices are based on the norms and values in the mainstream culture and the subculture(s) in our particular environment and group. Although every individual has his or her own personality and personal characteristics, nobody can completely ignore social norms and values because everyone is concerned with how others perceive them in social interactions. Goffman claims that creating 'face' and preserving 'face' are mutual interactions where individuals send and receive messages. Based on norms and values, individual create 'face' and

expect others will act accordingly. If others accept the 'face' an individual presents and act as the individual has predicted, 'face' is preserved and the social interactions will continue smoothly. If others do not accept the 'face' an individual presents and interrupt it, an individual risks losing 'face'. If an individual presents the 'face' but then behaves in a way that violates norms and values, he or she will face the risk of losing face, too. 'Face-saving' is a phenomenon common to all human societies. The only difference in Chinese and Western concepts of 'face' is that, for the Chinese, 'face' has greater social significance and is more constantly on their minds (Wei & Li, 2013). 'Face-saving' is the primary objective in social interactions in Chinese societies. Using the lens of 'face-saving', it would be easy for us to understand the common strategies of saving 'face': avoiding criticizing family members, friends, colleagues, especially superiors in public. If individuals need to give comments on others' performance, they have to express their criticisms in an unclear and indirect way (Huang, 1987).

Each person, subculture, and society seems to have its own characteristic repertoire of 'face-saving' practices. It is in this repertoire that people partly

refer to when they ask what a person or culture is 'really' like (Goffman, 1955, p.222).

When we apply 'face work' to understand the importance of 'face' in a Confucian society, we have to pay attention to the particularity of Confucianism. In a Confucian society, the relational self and hierarchical role expectations locate the individual within a matrix in which each person must maintain relationships with others at a satisfactory level of dynamic equilibrium (Hwang, 1987; Yao, 2000). 'Face' is preserved when relationships are maintained based on four principles: *Ren* (benevolence), *Yi* (righteousness), *Li* (propriety), and filial piety. These four principles are criteria for judging whether relationships with others are maintained at a satisfactory level of dynamic equilibrium or, in Confucian terms, a 'harmonious relationship'.

In this scheme examined by the present study, mediators encouraged offenders tell victims (e.g., shopkeepers) about their remorse for their wrongdoings. Meanwhile, these offenders understood the importance of preserving 'face' in a Chinese society. When offenders committed their crimes, they violated *Yi* (righteousness) and *Li* (propriety), which in turn caused their

parents to 'lose face'. Offenders had to apologise and seek forgiveness from victims. An apology in Confucianism aims to restore the relationship harmed by the wrongful conduct. It is very important idea in Confucianism to restore the harmony of the ethical relation. An apology must recognise and publicly acknowledge that their wrongdoings have caused serious harm to these ethical relationships. The acknowledgement is considered as the basic precondition of making apology. Because of the adverse influence on social harmony, the Chinese believe that apologies must be brought into the open with the acknowledgement of fault, so that a broad popular identification with the existing ethical relationships can be awakened and sustained. In the context of Chinese tradition, an apology is thought of as the result of self-reflection on one's wrongful conduct. It shows moral courage to face up the justifiability of an action and its moral permissibility. Once aware of the wrongful nature of the conduct, the wrongdoer must fulfil his moral obligation to accept responsibility for having done so and for mitigating the consequences that have ensued. The moral work of responding to wrongdoing is not just to punish the individual wrongdoer and compensate the individual victim, but also to repair the damaged relationship and to restore the ethical relationships. Reparation must include a remorseful recognition of wrongdoing and efforts to

reduce the negative consequences. An offer to compensate in money for damages without a clear understanding of right and wrong is considered in Confucianism to indicate no sense of shame. Offenders who express a sense of shame indicate their willingness to return to the ethical relationships, which may assist them in regaining social acceptance. (Lin, 2015).

I encourage them to share their feelings with victims, to let victims know they are ashamed of their wrongdoings. For shoplifting, the shoplifters were very ashamed when police arrested them. In the victim-offender mediations, some shoplifters wanted to let shop owners know their remorse and expressed a sense of shame to these managers (Ann).

Youth offenders were concerned not only with their own 'face'. They worried that their behaviour would lead to their parents 'losing face'. As observed by three mediators, the youth offenders understood how their wrongdoings affected their parents' social status, i.e., this shameful experience would cause neighbours and bystanders to judge their parents by the behaviours of their sons and daughters. One mediator observed that Hong Kong Chinese parents who had more education seemed to be more worried about 'losing face'.

Youth offenders worried about 'losing face' for their parents. For example, parents of youth sex offenders usually felt disgraced. Parents who had a higher education level usually felt they were 'losing face' (Catherine).

As the mediators further elaborated, youth offenders usually stole from stores that were close to their homes. When the police arrested them, their friends, neighbours, and acquaintances were watching. Youth offenders knew that their wrongdoings deserved punishment, but they still worried about their parents 'losing face'.

Youth offenders thought of their parents 'losing face' when the police officer in a public area arrested them and their neighbours were watching. When the police arrested them at home, the residential security guards were watching the whole process. In both situations, youth offenders could feel they were 'losing face' and worried about their parents 'losing face' as well (Dennis).

In a Confucian society, crime is not an individual issue. When a youth offender perpetrates the crime, responsibility for the crime extends beyond the individual youth. Parents will be held responsible for not teaching their child

better, as parents have the obligation to nurture and discipline them (Hwang, 1987). The wrongdoings of children reflect that parents have failed to fulfil the obligation of disciplining their children. Youth offenders realise the impact of their wrongdoings on themselves and their parents.

Youth offenders worried about their families 'losing face'. They feared the comments from their relatives that their parents are not successful parents because of their children's wrongdoings (Olivia).

Hong Kong Chinese parents are generally worried about 'losing face', and parents with higher education and social status are more concerned about it. These parents are particularly cautious to avoid being criticised and preserve their 'face' because they have social status and prestige that needs to be protected. The wrongdoings of their children thus endanger their 'face' and prestige. The British and American parents this mediator handled before were also well-educated with higher social status. However, they are less under the influence of Confucianism and do not share Hong Kong Chinese parents' idea of 'losing face'. The stronger impact of 'losing face' in Hong Kong than in the United States echoes Ho's (1976) arguments for the greater importance of

'losing face' in a collectivistic culture (Kam & Bond, 2008). As Ho (1976) claims, 'face' becomes an issue in social interactions where the evaluations by others of an individual are perceived to be of significance to the maintenance of his or her standing in society. Hong Kong Chinese, under the influence of Confucianism, are more concerned with maintaining harmonious relationships with people in their personal networks. 'Face', 'face losing' and 'face preservation' become more important in Hong Kong Chinese society. Shame, an emotion after 'losing face', plays a more crucial role in collectivist cultures like the Hong Kong Chinese, as it inhibits retaliating responses in the event of 'losing face' (Kam & Bond, 2008). The future study should focus on the British and American parents in Hong Kong to explore their understanding on 'face'. (For the British and American parents mentioned above, the alternative explanation is that they are expatriates and have no relationship in local community. For them, 'face' and 'face losing' do not matter because they have no plan to stay in Hong Kong for long. As the above mediator said, the cases of the British and American young offenders and their families were limited. The majority of the cases they handled were Chinese young offenders and their families. Although I doubt the alternative explanation, it is worth for future study to explore this issue).

Upper-class parents hesitate to meet victims because of embarrassment. They are worried that their friends will know what their sons and daughters have done. Parents with higher education attainment are concerned with their rights and privacy. For white people from America and Britain, they welcome the idea of victim-offender mediation. I am not sure whether it is because of cultural differences. Hong Kong Chinese parents are hesitant about the idea of Victim-Offender Mediation (Matt).

Jacobs' study (1979) explained the importance of social networking in Chinese societies and provided a better basis for the understanding of this issue. Parents' social networks are taken into consideration by others in judging their overall social position. The social interactions of parents will go well if their social networks are kept intact. Parents develop closer relationships with colleagues and friends through social interactions, so it is important for parents to obtain resources to solve their problems at work and in daily life. The children's wrongdoing will undoubtedly damage their parents' social networks and disturb their social interactions with others.

The issue of 'losing face' sometimes becomes the hurdle to parents giving consent for their children to participate in victim-offender mediation. This fear of 'losing face' will prevent the participation of parents in victim-offender mediation too. Three mediators mentioned that the immediate psychological reaction for youth offenders and their parents is the fear of 'losing face'. Most parents felt anxious to participate in and to let their children to participate in victim-offender mediation because they were afraid of being blamed by victims. If this fear is too strong, parents will refuse to join the mediation with their children (The fear of 'losing face' will be discussed in chapter 7, 8, and 9 in details).

On the one hand, parents want to protect their children (offenders) from being blamed and criticised, so they do want their children to participate in victim-offender mediation. On the other hand, parents sometimes want to know whether this method (victim-offender mediation) could benefit their children. Parents of youth offenders usually face this kind of struggle. I think parents worry about 'losing face'. Offenders' parents are afraid that in victim-offender mediation they will be blamed for not teaching their children (Ann).

Parents are responsible for their children and their children's wrongdoing. If children commit offences, parents will experience shaming and, in turn, loss of 'face'. The participation in victim-offender mediation forces parents to deal with this dilemma. Parents know that the involvement of victim-offender mediation is a chance for their children to regain social approval. On the other hand, parents also know that they need to tackle the confrontation and embarrassment in mediation, leading to a loss in 'face' (Karp, Sweet, Kirshenbaum & Bazemore, 2004).

Youth offenders had come to understand that their wrongdoing caused a loss of face for their parents because they saw police officers blamed their parents. It was the first time youth offenders understood the negative impact of their behaviour on their parents.

The youths usually did not use the word 'face'. They depicted what they saw.

For example, they recognised that the police blamed their parents at the police station (Gary).

If both parents and offenders fear 'losing face', it is necessary to reflect on the nature of shaming in Confucian society. This goes back to the argument between Vagg (1998) and Wong (1999) on the nature of shaming in Hong Kong Chinese society, although they both agree that Hong Kong Chinese have a strong concern with the issue of shame and 'face'. Vagg proclaims that if a person is shamed successfully in Confucian society, this person loses 'face'. 'Losing face' implies the loss of social rank and prestige in any particular social group. In Braithwaite's term, it is disintegrative shaming. However, Wong asserts that adolescents will not engage in law-breaking behaviour if they internalise the value of filial piety. In this sense, in Braithwaite's term, it is reintegrative shaming. Braithwaite first proposed reintegrative shaming theory in his book "Crime, Shame and Reintegration" (1989). He suggests that shame can be used constructively to discourage criminality when elicited in ceremonies attended by the offender's 'community of concern' ('micro-community' is the term used in this thesis), or significant others, and in the backdrop of an overarching affirmation of the offender. The reason of directing shame towards families is useful because it alerts them both to their responsibility to control their members and to the reality that informal control will often be transmitted in a way which is as 'reintegrative as possible'

(Braithwaite, 1989, p. 83). Reintegrative shaming is not necessarily weak and can be cruel, even vicious. He argues that reintegrative shaming is for a set period, positive bonds are maintained, and it ends in forgiveness (1989, p. 101). In the process, offenders are confronted with the misery they have caused, and they come to understand that they have transgressed the moral norms of the community. The proper use of shame might motivate offenders to seek reconnection with the community and that, following expressions of shame or repentance, the community with law-abiding citizens will welcome them back as qualified members again. In order for shaming to be reintegrative, a clear distinction needs to be made between an unacceptable act and the person who has committed that act. Shaming should be directed at the action without degrading or stigmatising the actor. The interviews with mediators indicated that the shaming in Hong Kong Chinese society is likely disintegrative. It is because both youth offenders and parents try to avoid the shaming they would experience in victim-offender mediation. The detailed discussion will be provided in Chapter 7.

Filial Piety

The concern about shame and 'face' among parents and offenders does not imply that they accept the traditional understanding of filial piety. In traditional Chinese societies, the individual exists to serve the family and ensure its continuance. Family functions as a 'continuum of descent' in which any single living individual personifies all of his forebears and ancestors, and all of his descendants, both born and unborn (Barbalet, 2013). The subordination of the actions and interests of an individual to the needs and imperatives of a family collective come out of a particular conception of the relation between the individual and his/her family. In this sense, the Chinese family does not produce offspring who on maturity become independent of it, but rather produces offspring who on maturity become even more firmly tied to the requirements of the maintenance of the family as a continuing entity. The institutional context in which this ideational formation operates is a family structure in which a number of functions are located: a religious function, through which ancestors are worshiped; a social function, which carries the responsibilities of both caring for elderly parents and marrying in order to produce heirs; and an economic function, discharged by its member's

activities which contribute to collective family fortunes. By custom and law, the traditional Chinese family is the locus of the control of property. Indeed, through legal enforcement the traditional Chinese state, from the Han dynasty (206-220) to the end of the Qing dynasty (1644-1911), treated the family as a mutual responsibility group, so that the crime of one member could lead to the punishment of all members. In Confucianism, filial piety is highly valued because it is associated with a person's citizenship and leadership in society. It is believed that children who respect their parents will become good citizens and leaders. However, the Hong Kong Chinese do not completely accept the traditional understanding of filial piety. According to Ting's study (2009), the Hong Kong Chinese transforms the traditional understanding of filial piety, interprets it as 'love and care', and applies the concepts of filial piety to both sons and daughters, although traditionally only sons are required to perform it. The responses from two of the mediators reflect that they interpret 'filial piety' as 'love and care', which is consistent with Ting's study.

Youth offenders felt unease when they found out how much their parents worried about them. Moreover, their parents accompanied them to attend

court hearings and needed to be away from work for a few days. They knew that their parents were anxious about them (Ben).

According to the above mediator, youth offenders appreciated their parents' worries and sacrifice of time. The youth offenders' responses reflect the reciprocal side of filial piety, which focuses on children providing emotional, physical and financial support to parents in gratitude for their parents' devotion in having raised them (Leung, Wong, Wong & McBride-Chang, 2010).

Although those youths had committed a crime, they did not forget what their parents had given up for them.

Another mediator expressed her own idea of filial piety as 'repayment', a strong motivation for filial behaviour (Ting, 2009). Her reply shows that material obligation is foremost to ensure that parents do not need to worry about making a living as they get older. This understanding of filial piety is similar to reciprocal filial piety, which was proposed by psychologists as distinct from authoritarian filial piety. Reciprocal filial piety emphasises that children should show greater care toward their parents and should repay their parents and ancestors by honouring them. On the contrary, authoritarian filial

piety emphasises that parents are at the top level of the family hierarchy and that children are morally required to obey them (Leung, Wong, Wong & McBride-Chang, 2010).

Filial piety is to take care of parents, to love them and give them financial support. Parents have given everything to their children. Children should love and provide financial support to their parents when growing up (Helen).

Psychological studies show that people who interpret filial piety as reciprocal filial piety embrace the ideas of egalitarianism, openness, gender equality and affection-centrism. However, people who interpret filial piety as authoritarian filial piety embrace the ideas of family hierarchy and obedience to superior (Leung, Wong, Wong & McBride-Chang, 2010). Authoritarian filial piety justifies a hierarchical social order, which we will discuss in more detail below.

Those who hold the first understanding of filial piety would seem to be unlikely to accept Confucianism's idea of hierarchical social order. However, the mediators' responses show that their perceptions of Confucianism are not systematic.

Hierarchical social order

Previous studies (Canda, 2013; Jacob, 1979; Yao, 2000) showed that Confucianism was not purely concerned with the practice of filial piety and family responsibility. Jacob (1979) expresses that Chinese kinship terminology ranks people differentially either by a generation or by age within a generation; therefore, truly egalitarian relations between kin are practically impossible. Yao (2000) shares a similar understanding, further pointing out that Confucianism emphasises the importance of each person cultivating their inner virtues and then extending the benefits of virtue outwardly through relationships with family, the wider society, and the world. Confucian thought does not have a concept of individual rights grounded in a view of human beings as free, autonomous individuals; it does, however, have room for a conception of rights that is rooted in a view of the relational self, a belief that emphasises social interactions and regards human excellence as something realised in such interactions. It uses family hierarchy to support social hierarchy. Canda (2013) argues that Confucianism is fundamentally about the establishment of the social order based on a set of hierarchical relationship

that treats the ideal society as a hierarchy, in which everyone knows his or her proper place and duties.

Mediators may not use these same scholarly terms; in fact, they admitted they were not very familiar with Confucianism. However, they do share scholars' understanding of Confucianism. When two mediators expressed their interpretations of Confucianism from the perspective of social order and family hierarchy, they revealed that Confucianism, especially the concept of *Li* (propriety), regulates personal relationships in society. One mediator expressed that Confucianism is a set of rules regulating the behaviour of individuals in order to maintain harmony in social interactions.

(Confucianism) It is something about norms and values in society. It aims to maintain harmonious relationships among individuals. It tells everybody what they should do (Richard.).

Although he did not use the term *Li* (propriety), Richard clearly described the importance of *Li* (propriety) in Chinese society. Another mediator further stated her understanding of *Li* (propriety) as a kind of law in Chinese culture.

Li (propriety) is about a code of ethics. For me, Li (propriety) is similar to law.

(Tina)

All the interviewed mediators recognised the importance of *Li* (propriety), which occupies a paramount place in Confucianism. In ancient time, the central aspect of government was to use *Li* (propriety) to create a harmonious society. In Confucianism, *Li* (propriety) is the fundamental regulatory etiquette, which refers to propriety and respect for social norms and is considered the best way to realise harmony (Wei & Li, 2013). Confucianism as the mainstream culture in Chinese society, like other cultures, regulates human functioning and impulse and develops the patterning of human behaviour into orderly conduct in accordance with basic assumptions and beliefs (Frank, 1944). In Chinese society, the basic assumptions and beliefs are that everyone has a specific social position and should respect those who occupy higher positions in the social network. *Li* (propriety) is how Chinese people, by their patterned conduct and way of life, creates a hierarchical social order. Hierarchy is understood as an implicit or explicit ranking of individuals or groups with respect to their relative possession of valuable resources (Magee & Galinsky, 2008). “Hierarchical social order” refers to a social system in which

the individual's roles and expectations of individuals in a group correspond with one's hierarchical position in the group. A person's power and resources vary according to his or her hierarchical position. When making a decision, those who sit lower on the hierarchy scale are normally not expected to play the decisive role, they commonly deemphasise their ideas or stand less firmly (Wei & Li, 2013).

One mediator expressed that the hierarchical social order is good because there is no need to rely on a specific law. He elaborated on his particular interpretation, which may have come from a misunderstanding of Confucianism and hierarchical social order, claiming that it was similar to the idea of restorative justice.

My understanding of Confucianism is about respecting seniority. Family members have different power and status based on seniority (Nelson).

Although he did not use the word 'hierarchy' to describe power in the family, seniority is a fundamental principle in assigning power to different members of the family. His comments implied that everyone is not equal in family hierarchy,

an idea which is quite contrary to the concept of restorative justice. Family hierarchy, which emphasises seniority, will finally be used to justify social hierarchy.

Another mediator elaborated the idea of hierarchical social order clearly by expressing his understanding of Confucianism. He saw *Ren* (benevolence), the inherent ability of human beings to show love and affection to others in social interaction, as good for society because it teaches proper behaviour without the use of legal suppression (Wei & Li, 2013).

When I hear of Confucianism, I think of ethics. For example, the elder brother acts like a nanny ensuring the naïve younger brother is not led astray or makes harmful mistakes. In return, the younger brother loves and respects the elder and listens to his wise words. I always think that law is a tool to suppress people, like the one legalism proposed. If people treat each other with Ren (benevolence), there is no need for law. Restorative justice shares similar ideas (Frankie).

This mediators' view reflects the collectivism and social harmony in Confucianism. Collectivism in Chinese social interaction requires an individual to maintain group harmony by being attentive to the norms of the group. Group harmony entails emphasising group achievement and others' contribution to the group, acting in accordance with others, and deemphasising one's own needs and thought. Chinese social interaction has a prevailing interdependent self-image, which views individual participation in groups as the basic unit of self-image. On the other hand, Confucianism emphasizes that humans exist in interactive relationships with others and that most human relationships are characteristically hierarchical. Chinese people are good at identifying with their own relative positions in hierarchies and at behaving properly according to their place on the scale (Wei & Li, 2013). Social harmony can be preserved when all parties in a social situation act in a proper way. One important way to maintain a harmonious relationship is to accept and respect each person's need to keep his or her 'face'.

Some mediators were aware of the potential inconsistencies between Confucianism and restorative justice, and they may have been reinterpreting some ideas of Confucianism or abandoning some of its principles in order to

avoid these inconsistencies. This reflects the ambivalent and selective attitudes of Hong Kong Chinese toward Confucianism and its traditions (Cheung, Chan, Chan, King, Chiu & Yang, 2006; King, 1996). The following responses from two mediators are the best examples of such ambivalent attitudes.

I haven't adopted the ideas of Confucian Classics or literary tradition. It emphasises too much on social class. Your social class determines your rights, freedom and behaviour. If we do something because we belong to a particular social class, it is not sincere. Confucianism should include truth, kindness and beauty. If Confucianism relates to restorative justice, I think it should be something about truth, kindness and beauty. The five relations proposed by Confucius should reflect the idea of truth, kindness and beauty. I do something good because truth, kindness and beauty guide me. From what I understand, Confucianism is something about morality, which is something that regulates the relationships between individuals. I cannot say with certainty that Confucianism shares the idea of harmony with restorative justice. Although I design posters to promote restorative justice, I always try to find commonalities between Confucianism and restorative justice on harmony. We seldom

mention or discuss the application of Confucianism in providing victim-offender mediations (Dennis).

The above response implies that this mediator recognises the contradictions between the ideas of Confucianism and restorative justice. He admitted that Confucianism pays too much attention to proper behaviours related to social positions. Therefore, he tried to reinterpret Confucianism by truth, kindness, and beauty, ignoring the orthodox understandings of Five Relations.

Another mediator likewise attempted to point out the contradictions between Confucianism and restorative justice. She admitted that it was difficult to resolve the problems of 'superior-subordinate relationship' and 'harmonious human relationship', in which Confucianism advocates found similarities with restorative justice.

One side of Confucianism emphasises obedience to authority and the superior-subordinate relationship. In this sense, Confucianism is entirely different from restorative justice. The other side of Confucianism emphasises

respecting others and maintaining harmonious human relationships. In this sense, Confucianism is similar to restorative justice (Landy).

Although there are similarities between Confucianism and restorative justice, such as an emphasis on restoring relationships, the core assumptions between them are different and sometimes contradictory. For example, from the viewpoint of Confucianism, an individual is located in a family hierarchy and a social hierarchy. This position will affect the individual's judgments about right and wrong (Hwang, 2012; Yao, 2000), which is contradictory to the assumptions of restorative justice, such as equality for every individual. Mediators who are aware of the tension between the core values of Confucianism and of restorative justice have to either abandon some core values of one or the other. Otherwise, the tension cannot be resolved.

Discussion

When Confucianism meets restorative justice, there is one controversial issue we have to deal with: the role of individuals and the role of families. Restorative justice theorists treat individuals as the major players, while Confucianism

treats individuals as persons of relational self, where individuals live up to their hierarchical role expectations and obligations in the family. *Ren* (benevolence), *Yi* (righteousness) and *Li* (propriety) and filial piety are the fundamental principles locating individuals in families and social networks. Social harmony can be preserved when all parties in a social situation behave correctly. One significant way to maintain a harmonious relationship is to accept and respect each person's need to keep his or her 'face'.

In Confucian societies, 'face' is considered in relation to others in the social network. 'Face' is preserved when relationships are maintained, based on four principles. For Hong Kong Chinese, shame and 'face' is still relevant in understanding their reactions and responses to crime. One of the hurdles for Hong Kong Chinese is that participating in restorative justice means 'losing face'. People with higher educational attainment and social status are more reluctant to accept the restorative practices, perhaps because they feel they have more 'face' to lose. Although Hong Kong Chinese accept certain values from Confucianism, they reinterpret some core values such as 'filial piety' as well. The argument between Vagg (1998) and Wong (1999) on the nature of shaming in Hong Kong Chinese society, as well as Braithwaite's reintegrative

shaming theory, thus must all be put into the context of Confucianism. Braithwaite's reintegrative shaming theory is not designed for Confucian societies such as Hong Kong. The main difference between Vagg's (1998) and Wong's (1999) understanding on the nature of shaming is whether shaming should be considered as an isolated concept or shaming should be regarded through the prism of Confucian relational ethics. From the responses of mediators, Vagg's disintegrative understanding of the nature of shaming provides us with a more realistic picture about the relationship between shaming, 'losing face', and social prestige in Confucianism. Wong states that filial piety can socialise adolescents into law-abiding citizens. However, this optimism is possible only because he overlooks the reinterpretation of filial piety among Hong Kong Chinese, who understand filial piety as love, care and repayment to parents rather than its traditional meaning of respecting parents as the sole authority in the family.

However, the understanding of filial piety as reciprocal filial piety does not mean that mediators refuse to accept the hierarchical social order. Some of them even expressed that a hierarchical social order is good because it can replace law and make people aware of their place in society. Several

mediators were aware of the tensions between the core values of Confucianism and restorative justice and thus selectively used Confucian traditions. The mediators interviewed for this study insist on practising restorative values and reinterpreting Confucianism in order to solve the tension. This reflects the ambiguous attitude of Hong Kong Chinese toward Confucianism: they select the useful parts of Confucianism while reinterpreting (or even ignoring) the parts that seem less useful.

Next chapter will explore the relationship between macro-community and restorative justice. 'Community' is a controversial and complicated concepts, even different restorative justice theorists have their own definitions of community. For mediators, what are 'community'? Will their understanding of community influence their restorative justice practices? The above issue are the focus of next chapter.

Chapter 6 Who are macro-community members: From the viewpoints of Confucianism?

The previous chapter reviewed the research findings about the reasons why youth offenders voluntarily join victim-offender mediation via the Police Superintendent's Discretion Scheme and how mediators understand the meanings of shame, guilt, face-saving and filial piety through the prism of Confucian relational ethics. Chapters 7 and 8 will provide a more detailed discussion of the nature of shame in Hong Kong Chinese society.

The main points of this chapter are the meaning of macro-community, and the relationship between macro-community and restorative justice practices. We will explore and discuss how mediators understand the nature of macro-community. Does Confucianism affect mediators' understandings of macro-community? How do their understandings of macro-communities affect their restorative justice practices?

'Community' is a controversial concept among restorative justice theorists, and different restorative justice theorists have incompatible understandings of what community is. The community plays a significant role in restorative justice because it holds the offender accountable, while providing assistance to encourage and support reintegration of offender and victim. In this sense, community could be neighbourhood, or simply a group of individuals who come together to provide support for the offender and victim (O'Brien & Bazemore, 2005). Although the community is crucial to restorative justice theories, its meaning changes from one theorist to another. For example, McCold (2004) uses the concept of micro-communities to refer to the natural networks of personal relationships, and the concept of macro-community to refer to groups defined by geography and location. However, Umbreit, Coates & Vos (2004) argue that micro-communities, referring to the relatives and friends of the victim and the offender, create more confusion than clarification on the understanding of community. They suggest that 'social networks' should be used instead. These researchers further suggest that 'community' should incorporate both geographic boundaries and the level of inter-reliance for goods and services among the residents within a given boundary. The

community is one of the stakeholders in restorative justice theories and practices, but further clarification of its meaning is needed.

The community not only holds offenders accountable for their crimes and provides assistance to both offenders and victims. The community is also itself an indirect victim of crime. Christie (1981) describes crime as a dysfunctional way of asking questions, and punishment as a dysfunctional way of answering them. In the light of this, crime should be considered as one kind of social problems due to misallocation of resources. The solutions should involve the reallocation of resources in community. Crime, a dysfunctional way of asking questions, and punishment, a dysfunctional way of answering questions, have spillover effects on communities: fear and insecurity. Though residents in communities are not direct victims, the feelings of fear and insecurity among residents can weaken social ties (Baker, 1997, 106). Recent studies (Bradt, Vettenburg & Roose, 2007; Gilbert & Settles, 2007; Umbreit, Coates & Vos, 2004) also confirm Christie's (1981) idea that residents in communities are indirect victims, and that offenders need to know what they feel about crime and how they have been affected. Umbreit, Coates & Vos (2004) point out that community members from neighbourhoods need to share their fears with the

offenders, because the crime has happened in the community they all live in and love. Community members also have the right to let offenders know how they have been affected. This is why community members participate in restorative justice, although they are outside the social networks of offenders and victims and are thus not supporters assumed to have major emotional significance to the offender or the victim.

Some restorative justice theorists, such as John Braithwaite, treat community as one of the important tools in reintegration. Braithwaite wrote,

'For a society to be communitarian, its heavily enmeshed fabric of interdependencies therefore must be a special kind of symbolic significance to the populace. Interdependencies must be attachments which invoke personal obligation to other within a community of concern. They are not perceived as isolated exchange relationships of convenience but as matters of profound group obligation. Thus, a communitarian society combines a dense network of individual interdependencies with strong cultural commitments to mutuality of obligation' (Braithwaite, 1989, p.85).

As discussed in chapter 3, communitarian society is a low crime society because community members handle the crime themselves. The preconditions for community, which perform the function of reintegration, are the close relationships existing between family members and among community members. He wrote further,

'But communitarian societies can deliver more than state shaming, they can also deliver shaming by neighbours and relatives and congregation members in a way that individualistic societies cannot. Shaming by significant others should be more potent than shaming by an impersonal state' (Braithwaite, 1989, p.87).

He considers shaming from community members the most effective way to prevent the acceptance or reinforcement of a deviant status by reintegrating offenders into their immediate communities. Shaming from community members is more effective than shaming from the state. As discussed in chapter 3, in Braithwaite's theory, reintegrative shaming shares a prominent position, communitarian society (community) is salient in delivering shaming and thus the role of community is irreplaceable.

Although it can be difficult to develop a sense of community in modern societies, restorative justice theorists have proposed that restorative justice programs should help local organisations (such schools and businesses) contain crime locally (Dhami & Joy, 2007). Restorative justice proponents call for more public participation in the criminal justice process so that the harm to the community is more clearly brought to the attention of the offender and offender will know how their wrongdoings affect the neighbours (Dzur & Olson, 2004). Restorative justice calls for a shift in the essential role of the citizen, from mere service recipient to decision maker, i.e., someone who has a stake in what services are provided and how they are delivered. In this sense, the community can be an active participant and resource rather than a “client” of professional services (Bazemore, 1998). Christie (1977) suggested that conflict is a kind of property belonging to victims, offenders and the community; therefore each group has the right to participate in finding a solution. Professional and modern criminal control systems should not monopolise the conflict. The role of the professional is to provide skilful facilitation in the restorative process, transferring power to ordinary people and respecting their intelligence and competence instead of treating them as outsiders (Chapman, 2012). This echo what Ruggiero (2010, 2011) suggests, which was discussed

in chapter 3, that people involved in the conflict should have rights to discover and mobilise resources to deal with conflict in the community. Professionals have no authority to monopolise the conflict.

The study of Wall & Blum (1991) reveals that Confucianism highly values compromise and persuasion. They contend that mediation is well integrated within Chinese society. However, Wall & Blum (1991) have not explored the relationship between the hierarchical nature of the family relationship in Chinese culture and the participation of community members. The existing literature is inconclusive; for example, several studies show that Confucianism is inconsistent with restorative justice while victim-offender reconciliation in China is mentioned as an example of restorative justice practised in mainland China in other studies (for example, Lu, 2008; Xu, 2010; Shen & Antonopoulos, 2013; Zhang & Liu, 2007). Meanwhile, victim-offender mediation in mainland China is orchestrated by government officials and mediators who have official power (The detailed discussion will be provided in chapter 8.). Whether victim-offender mediation in mainland China should be used as an example of restorative justice is in doubt. On the other hand, other scholars argue that the hierarchical nature of family relationships in Chinese culture may contradict

the value of open and equal relationships in restorative justice, leaving no room for community members to participate (Hwang, 1998; Huang & Chang, 2013; Jiang and He, 2006). As mentioned in chapter 2 and 5, Chinese societies are governed by social norms that emphasise familial relationships, including filial piety, 'face', collectivism, and social harmony. Confucian social norms prioritise the patriarchal family unit at the expense of the individual (Chia, 2012). The loyalty and duty to the family required in Confucianism may lead to a negative attitude toward restorative justice, including community involvement (Huang, Braithwaite, Tsutomi, Hosoi & Braithwaite, 2012). Given the above discussion, the compatibility between Confucianism and the participation of community is uncertain.

The Findings

The Stranger

The mediators interviewed in this study did recognise the importance of community participation. One mediator pointed out that the participation of community members in victim-offender mediation helped offenders fully

understand the nature and impact of their wrongdoing. Durkheim (1984 [1892], pp.78-86) states that the practice of restitution reflects a kind of social relationships that is different from the kind regulated by the repressive practices of the law. Durkheim wrote, *'There are, as we already know, administrative and governmental functions where certain relationships are regulated by repressive law, because of the special character marking the organ of the common consciousness and everything appertaining to it'* (1984 [1892], pp.82-83). After the elaboration of the relationship between repressive law and mechanical solidarity, Durkheim further wrote, *'Likewise this means that we can ascertain the measure of concentration that a society have reached through the social division of labour, according to the development of co-operative law with its restitutory sanctions'* (1984 [1892], p.83). Following this logic, the understanding of this mediator on the participation of the community reflects his understanding of the social relationships he intended to restore and repair.

The participation of community members is paramount. The presence of community members can help offenders understand the impact of their wrongdoings from a wider angle (Gary).

The response from this mediator showed that he understood and agreed with the importance of community members, who played a vital role in victim-offender meetings by acknowledging the harm experienced by the victim and confirming that the behaviour of the offender was wrong (Gerkin, 2012). The presence of community members is important to keep accountability in the meeting. Community members help create effective rituals through their authority and knowledge to challenge an offender who is reticent, lying, or omitting elements (Rossner & Bruce, 2016). The participation of community members promotes solidarity – it is a way for the parties to come together in a meeting (Ruggiero, 2010). For Durkheim (1984 [1892]), organic solidarity come from the division of labour. Durkheim wrote, *‘The situation is entirely different in the case of solidarity that brings about the division of labour. Whereas the other solidarity implies that individuals resemble one another, the latter assumes that they are different from one another. The former type is only possible in so far as the individual personality is absorbed into the collective personality; the latter is only possible if each one of us has a sphere of action that is peculiarly our own, and consequently a personality’* (1984 [1892], p.85). However, in postmodern society, the participation of community would probably provide another way to promote solidarity.

However, in daily practice, not all mediators in Hong Kong welcome the idea of the participation of community members in victim-offender mediation for youth offenders. This interviewed mediator said that not all victim-offender mediations were suitable for community members' involvement.

It depends on the case. If the case relates to some community members and all parties agree to let them in the mediation, we will consider it (Jaffe).

The response from the above mediator showed that she had reservation of the participation of community members, who were strangers without any personal relationship with victims and offenders, in victim-offender mediations.

The following two mediators had reservations too about the participation of community members because of privacy concerns. They worried that the privacy of offenders and victims would be compromised because of the involvement of community members.

Allowing community members to attend mediation must be done with a great deal of caution. If an offender knows the community members and has a good relationship with them, it is possible to let them attend. Otherwise, we need to

think about their roles in mediation. We need to protect the privacy of victims and offenders because they are under the Police Superintendent's Discretion Scheme (Nelson).

If we aim to educate community members, we should let them attend the mediation. However, we have reservations on this issue. If community members attend the mediation, the identities of victims and offenders will be compromised. We need to consider the willingness of victims and offenders (Dennis).

The hesitation and suspicion of the above mediators on the participation of community members comes from the issue of privacy. Since all participants in victim-offender mediation meetings are youth offenders, under 18 years of age, under the Police Superintendents' Discretion Scheme, mediators, who are social workers, intend to give them a second chance by restricting the presence of community members. The concern from social worker seems reasonable. However, Roche (2003) argues that the issue of offenders' privacy is not always the first priority in the meeting. The loss of offenders' privacy may be justifiable if the restorative meeting puts the offence into a

context for positive community involvement. However, the mediators proposed other reasons to justify the loss of offenders' privacy instead of putting the offence into context: (1) community members should have a good relationship with offenders; (2) the case must related to community members; and (3) the consent of victims and offenders must be sought beforehand. For the mediators, putting the offence into context was not a strong enough reason to justify the loss of offenders' privacy. Their responses reflected the Confucian idea of favouring the intimate. Instead of treating everyone with equal affection, Chinese people trust and welcome people from the intimacy of relationships (Hwang, 2012). Committing a crime indeed leads to the risk of 'losing face'. The participation of community members, who have no personal relationship with victims or offenders, could risk the 'face' of victims and offenders. Despite the mediators had not explicitly mentioned the ideas of favouring the intimate and 'losing face', the reasons they mentioned just echoed the importance of intimacy and the risk of 'losing face'.

As mentioned above, some mediators said the participation of community members was acceptable if they knew the offenders and victims. From the understandings of the above interviewed mediators, community members

should be people who are essential for victims and offenders. The majority of conflicts do involve people who are known to one another, and restorative justice mediation in practice is based on this awareness. Community members can bring shared information and knowledge to the meeting (Ruggiero, 2010). Whether community members are familiar with victims and members should not be the main issue. In the light of this, Confucian idea of favouring the intimate certainly downplay the importance of community member in victim-offender mediation.

In order to explore why mediators thought community members should be familiar with victims and offenders, I asked the interviewed mediators to give a few examples of community members. Three mediators considered teachers, sports coaches (Taekwondo) and school social workers as suitable examples because of their higher position in the hierarchical social order (as mentioned in chapter 5), which refers to a social system in which the individual's roles and expectations of individuals in a group correspond with one's hierarchical position in the group. A person's power and resources vary according to his or her hierarchical position (Wei & Li, 2013).

The community members could be school social workers, relatives, neighbours or a Taekwondo coach because they would have known those offenders for a long time (Frankie).

As community members, teachers can tell them how people in society view their wrongdoings (Helen).

At present, the general public is unfamiliar with restorative justice. If we let community members to participate in victim-offender mediation, we want to educate them. If the offender's parents are too busy and are not able to attend mediation or they are drug addicts and do not care for their child, the presence of offender's significant others is essential. The significant others could be school teachers or an aunt. Their attendance at mediation means everything to offenders (Ivy).

These three mediators mentioned teachers, coaches, and social worker in a specific way, aligning them with relatives, aunt and neighbours. This specific description underlined the principle of respecting the superior and favouring the intimate, the basis of the Confucian ethical system (Hwang, 1999). In the

Confucian ethical system, friends and acquaintances belong to the category of 'quasi-kinship'. They need to follow the rules by expressing their affection and concern for others in the process of social interaction (Jacoh, 1979). The responses from mediators reflected the importance of this Confucian value in choosing community members from a group of strangers and acquaintances. Teachers and coaches are people with knowledge in a particular field. In Confucianism, they have been entrusted with the responsibility to teach and take care of their students as parents would do (Canda, 2013). We will discuss this point further in a later section.

If community members are indirect victims, one mediator said, they should be invited to attend victim-offender mediation. For example, arson can arouse public fear about the safety of the neighbourhood, which is a good reason for community members to participate in mediation. As Christie urges, neighbourhoods have the right and the need to solve the crime – this is the idea of 'conflicts as property', i.e., it is the neighbourhood's property (Christie, 1977, p.12). Umbreit, Coates & Vos (2004) clearly state that the community members from the neighbourhood have the right to attend the meeting and tell

offenders how the crime has affected their lives. This mediator shares the same understanding of the issue.

It depends on whether the case relates to community members. I have not invited community members. For cases of arson such as burning blinds and curtains, there are not direct victims, but neighbours feel scared. Then we should invite community members to attend the mediation meeting (Olivia).

Nonetheless, another mediator expressed that even though the participation of community members in this particular situation was justifiable (for example, community members were indirect victim), he would still not allow community members to participate in victim-offender mediations. It was because he avoided to put youth offenders into a stressful situation. Once again, putting offences into context was not seen as a strong enough reason to cause stress for youth offenders.

In cases that community members were affected by crime and were indirect victims, the community members may feel the need to attend victim-offender mediation. However, the offenders under the age of 18 may not be able to

cope with a large number of victims and members of community in victim-offender mediation with. We have never held victim-offender mediation in this way, but it is possible to do so (Dennis).

The above mediators recognised the importance of community members and the need for community members to participate in victim-offender mediation. However, some mediators felt uncomfortable to put this idea into practice. Some mediators were afraid that youth offenders were too young to face the stressful environment, i.e., the presence of community members they did not know at mediation sessions. Their worries may be unfounded, if we consider the experience of a youth offender panel in England and Wales. Some panel members and community members expressed that everything was arranged for the convenience of offenders (Crawford, 2002). This experience revealed that offenders' interests were well-considered and that offenders at mediation did not necessarily face a more stressful environment than at a court trial. Therefore, it is acceptable to compromise the privacy of offenders that is the cost of community involvement. From the above discussion, the main reservation of mediators about the participation of community members may not purely come from the privacy of offenders. It is because the participation of

community members simply violate Confucian idea of favouring the intimate and make mediator feel uneasy.

Authority Figures: Teachers

When offenders and victims come from the same class at the same school, it is necessary to involve members of the school in victim-offender mediation.

Schools should be an ideal place for restorative justice because they encourage discussion and dialogue. At a societal level, schools provide socialisation for young people and exercise social control on youth delinquent behaviours (Karp & Breslin, 2001).

One mediator said that teachers were more suitable than fellow students to serve as community members in mediation. In America, middle-school teachers participate in community affairs in many ways such as serving on juries and on registration and election boards (Flury, 1946; Henson, Battered & Chissom, 1986). In Hong Kong, there have been no studies on the participation of teachers in community affairs; the responses of mediators could enlighten us why teachers are suitable for victim-offender mediation,

which is a particular type of community affair. The first reason proposed by this mediator was that acceptance from teachers is important for the reintegration of students who have committed crimes. Teachers sometimes held prejudices against troublemakers in the classroom and always thought that victims were innocent. Victim-offender mediation provided a chance for teachers to more deeply understand both offenders and victims.

In school, it is worth letting teachers participate in victim-offender mediation. They handle conflicts between victims and offenders, but they may not understand what offenders thought, how they struggled, what they reflected on after committing a crime and how their behaviour affects victims. If school teachers participate in mediation, they will have a chance to know the more comprehensive picture. Offenders may not be as bad as teachers think, while victims may not be as good as they think. Both victim and offender need to reflect on what they have been done. Victims may provoke offenders by language. After offenders apologized to victims and promised to behave well, teachers could act as witnesses on their progress. The participation of teachers can make the mediation better (Ann).

In the meantime, teachers play the role of community members to let offenders know how the crimes affect them. The participation of teachers in victim-offender mediation is a way to understand students (both victims and offenders) and solve the conflict without stigmatisation. Although teachers may be prejudiced against offenders, this concern may simply echo the hesitation about the implementation of restorative justice in American high schools, i.e., that all types of offense need to be resolved instead through a structure that allows authority figures – principals, teachers, counsellors – to dictate punishments without much consideration of the victim’s feelings or the offender’s needs (Karp & Breslin, 2001). If the power imbalance exists, the principle of restorative justice may be compromised, and the outcome of restorative justice that all parties are equal and should be empowered may not be achieved. The restorative justice meeting in this situation probably replicates the power imbalance in school.

It depends on when crimes happened. We usually invite class teachers to participate in the victim-offender mediation when the crime happened in school. We believe that if class teachers know more about victims and offenders, they will not stigmatise either victims or offenders (Simon).

If those cases were to happen in school, we would invite teachers because they inform parents and contact the police. We hope that they can understand their students more in a mediation meeting. We hope that mediation gives teachers a chance to see whether they have missed something and misunderstood their students. Teachers can tell offenders what they think about the conflict. For the long-term agreement, teachers can monitor whether offenders breach the agreement (Olivia).

Another two mediators further explained the importance of teachers in victim-offender mediation. The role of teachers is quite special in Confucianism – teachers, unlike other professionals, are similar to older family members. A recent study (Wong, 2016) about the power relations between teachers and students in Hong Kong asked students to elaborate on their relationship with their teachers. Students stated that they respected older, more experienced or more knowledgeable teachers because they saw those teachers as elders (Wong 2014). This reflects the unique role of teachers in Chinese societies. Students are more willing to obey and cooperate with their teachers, in particular those who occupy a higher positions. Teachers have to behave as models for students to emulate. On the other hand, teachers can

also help their students find their unique characteristics and become people of character (Shim, 2008). In this sense, the teacher plays a significant role in mediation as a witness for the effort and reconciliation that offenders have already made. The responses of the following two mediators emphasized the importance of teacher as witness for youth offenders.

The role of teachers is as a witness. Teachers testify to the reconciliation of the relationships that were harmed by the crime. Both victim and offender need to make an effort, but their parents may not recognise or cherish their efforts. Teachers play the role of older members of the family and cherish what they have done. Offenders can establish an identity based on the appreciation of their teachers (Ben).

I have handled a victim-offender mediation meeting in this way. The offender wanted to invite a teacher who always supported him. After he stole something from his friend, this teacher was distraught and disappointed. Although this teacher had nothing to do with this case, the offender wanted him here to testify to the process of reconciliation (Rachel).

In practice, it is not so easy to involve teachers in victim-offender mediation. Two interviewees mentioned difficulties in involving teachers. Only if the principal encouraged teachers or sent teachers on behalf of the school, this would provide an incentive for teachers to attend mediation. School management in Hong Kong reflects a hierarchical social relationship between school authorities, teachers and students. Between principal and teachers, principal is certainly the most important people in school management. He has the power to require teachers respect him and obey his decision teacher. Between teachers and students, teachers are the most important people in classroom. They have the power to require and expect students to obey their guidance (Wong, 2015). The responses from the mediator mentioned below testify to the importance of principals in motivating and directing teachers' decisions.

We tried to invite teachers to attend victim-offender mediation, but they always declined our invitation. However, if principal send them to attend victim-offender mediation, they will attend without question (Ann).

Although principals have the power and ability to encourage teachers to attend victim-offender mediation, some of them may not appreciate and understand the importance of restorative justice. The following mediator said some principals did not think victim-offender mediation was essential, instead feeling that police could handle crime better. This was a common situation preventing mediators from having the chance to run mediation in schools.

Some school principals do not want to devote time and human resources to participate in victim-offender mediation and let police take care of the cases.

They separate victim and offender into different classes and don't buy the idea of the restoration of human relationships (Nelson).

As the above mediator pointed out, the principals and management still held to the traditional punitive model on school discipline, and they assigned some teachers as discipline masters or mistresses. They likewise overlooked the importance of restorative justice in crime prevention, seeing the nature of school discipline as similar to police work in society. School discipline work reinforced the tradition of respecting those in positions of authority in general, and teacher-student hierarchical relationships in particular. Each school

featured a disciplinary team, consisting of school discipline teachers and prefects, selected from among the students, that was responsible for enforcing school regulations, setting guidelines and supervising students' daily behaviour (Wong, 2014). The daily practice of school discipline is entirely different from the nature of restorative justice. If school discipline works well, principals and discipline teachers have no incentive to consider restorative justice as an alternative.

Discipline masters/mistresses only punish students and do nothing about restoration. If we help them restore their relationships, both victims and offenders will feel safe and be respectful. If school authorities understand the importance of restoration, it will lead to restoration in the relationship between victim and offender and prevent serious disputes in future. If their relationships have not been restored, they will escalate to gangster fighting (Jaffe).

In Britain and the USA, the person responsible for ultimate discipline in a school is the principal. However, in Hong Kong, the discipline master or mistress is the teacher who is in charge of the planning, organisation, development and monitoring of matters relating to student discipline at school.

This staff member is responsible for giving recommendations to the principal about the allocation of resources for student discipline. Principals and other school administrators believe that an authoritarian management style is the only way to maintain a higher degree of teacher authority (Wong, 2014). They always overlook the need for restoration and do not realise that the conflict will escalate until the relationship between victim and offender has been restored.

However, promoting restorative justice directly to the principal or other top administrators faces a dilemma: If these leaders principal are unaware of restorative justice, they will not become involved with victim-offender mediation and consider restorative justice an alternative way to dealing with conflict at school. The participation of the principal and management in victim-offender mediation is the only way for them to experience an alternative way of dealing with crimes and conflicts, and it also challenges to move their policies in this direction.

The participation of school authorities promotes an alternative way of dealing with conflict and crime. Contacting police is not the only way to do so. If school authorities are willing to promote dialogue between victim and offender, it may

not be necessary to let police attend. Youth can learn an alternative way to deal with conflict. Through mediation, teachers can learn that punishment is not the only response to conflict and crime. Understanding is another possible response (Nelson).

Moving on to the discussion of community members within the school community, interviewees were asked whether any other people besides school teachers should be considered as community members. In Hong Kong, school teachers are always busy at administrative work as well as teaching work. They have very little energy and free time. Therefore, they may not be willing to spend time volunteering as community members in Victim-Offender Mediation. Moreover, offenders and victims may not be familiar with their teachers, due to the power imbalance in school – this is another reason to consider someone other than school teachers. When teachers are not suitable community members for mediation, school social workers are another possible option.

It depends on the nature of the case. If offenders are familiar with school social workers and have discussed the case with school social workers, it is suitable

to let school social workers in. We always remind offenders that supporters are not limited strictly to family members. If the case happened in school, they could ask those teachers they trust to be supporters. If they do not want to find teachers as supporters, they could ask school social workers instead (Ben).

In some cases, both teachers and school social workers who have handled the cases were invited to join the restorative process (Dennis).

In other instances, there were multiple offenders involved in victim-offender mediation and more community members were required, i.e., school social workers. Some mediators considered school social workers as community members because they are familiar with students and are professionals with knowledge. Ruggiero (2010) states that small societies with little shared history and limited mutual knowledge about members would express demands for behaviour uniformity and would seek knowledge from professionals. Primary schools and high schools in Hong Kong share this characteristic: students and teachers spend so much time preparing for examinations that they have inadequate time to understand each other (Wong, 2014; 2016).

Authority figures: Police Officers

When interviewed mediators continued to think about persons other than teachers and school social workers who should be considered as community members, some of them said that police officers were authority figures and that their presence could enrich victim-offender mediation. Whether police officers should attend restorative justice meetings is a controversial topic. The most important role of police officers is to point out the seriousness of the facts and the broader consequences of the crime for society as a whole. Meanwhile, the attendance of police officers in restorative justice meetings reassures the victim and enhances the feeling of safety for all the parties present. But if the police officers attend the restorative justice meetings purely in their authoritarian professional role, their presence may jeopardise the principles of restorative justice, i.e., that all parties are equal and should be empowered (Bradt, Vettenburg & Roose, 2007).

One mediator mentioned that the presence of police officers in victim-offender mediation was essential because they could clearly explain the consequences of crime to offenders. The response from this mediator reflected that mediators who come from social-work backgrounds may not be familiar with the consequences of crime from a legal standpoint. If police officers attended the meeting, they could explain those issues in a professional way.

I think that the presence of police officers is suitable. Police officers can explain what the consequences are for breaking the law. This will help prevent offenders from committing a crime in the future. No matter whether it was shop-lifting or fist-fighting, the presence of police officers is suitable and necessary. They can assist mediators in explaining the impact and consequences of the offender's behaviour. The viewpoints of police officers can enrich the reflection of offenders and make the mediation more fruitful (Edward).

From the above conversation, this mediator was concerned that offenders would turn again to crime if they did not fully comprehend the consequences. The presence of a police officer will remind the offenders of the seriousness of

their wrongdoings so that offenders will not forget what they should learn. Since restorative justice is not a part of formal justice, the participation of police officers can give offenders a feeling of solemnity. Offenders will treat the victim-offender mediations more seriously because of their participation. The mediator's responses reflected that he had a high level of trust and satisfaction with police performance. As suggested by a recent study, the satisfaction of police performance and police trustworthiness come from the low crime rate in Hong Kong and from views about police competence in fighting crime (Adorjan & Lee, 2017).

Offenders listen to authority figures seriously because [offenders] may underestimate the importance of social workers and victims. Offenders always remember what police superintendents have said (Simon).

For some offenders who do not understand the consequences and impact of their wrongdoings, a police officer may be able to tell them and prevent them from committing a crime in the future. For those offenders who are very remorseful for what they did, it seems unnecessary to do so (Helen).

Two mediators mentioned above expressed that the professional role of police officers helped offenders understand the consequences, so that they will be less likely to commit crimes in the future. For offenders who understand the consequences of their wrongdoings and are remorseful, the presence of police officers may not be necessary. This understanding of the role of police officers reflects a class issue. Middle-class Hong Kong Chinese adults class usually consider police a professional force without political stance or bias (Adorjan & Lee, 2017). This two mediators pointed out that police officers could be considered as macro-community members because they themselves have also been affected by the crime. The crime affects how they understood the youth offender, and thus victim-offender mediation provides a chance for reconciliations between police officers and offenders. Police officers would know more about the offenders, and offenders could get a chance to reintegrate into society and live without the fear of police. This understanding of police as macro-community members reflects again a belief in police neutrality (Adorjan & Lee, 2017). This understanding of the role of police faces the problem of what community is and what values a modern multicultural society should have (Amatrudo, 2009). Hong Kong Chinese have a very weak or ambiguous sense of community and have limited communication and

contact with non-Chinese (Adorjan, & Chui, 2014). In this context, it will be challenging to have a consensus on community and values, and difficult to decide whether police are in fact macro-community members.

The following mediator mentioned that although youth offenders have broken the law, the process they have gone through is still a nightmare. The long waiting time, the attitude of police officers, the taking of photos and fingerprints – it all reminds youth offenders that are part of the evidence gathered by the criminal-justice system. The interactions between police officers and youth offenders in police stations are disempowering.

Offenders always complained that police officers at the police station did not respect them. If police officers attend mediation, they do not need to support victims and offenders. They need to understand what has happened between the victims and offenders. When police officers understand more, they may change their attitude towards youth offenders next time. The youth offender may be scared by the treatment at the police station such as taking photos, fingerprints being taken and the impolite attitude of police officers. The presence of police officers at mediation helps youth offenders cope with their

fears. Recently, I got a case from the police. One police officer briefed me about the case and at the same time showed concern about the youth offender and hoped those offenders would get a second chance. If some police officers are concerned for the youth and want to attend the mediation, letting them attend mediation is a good thing. They will know that the youth feels remorse and will be able to witness the youth become a better person (Kathy).

The presence of police officers in victim-offender mediation provides a chance for youth offenders to tackle their fear of authority. At the same time, for police officers who care about youth offenders, participation in mediation offers a chance to witness the changes in those youths. In this sense, victim-offender mediation provides a chance for reconciliation between youth offenders and police officers. However, youth offenders' experience of the police matches the experience of people who live in public housing estates in working-class areas (Adorjan & Lee, 2017). People from these areas are almost resigned to the fact that they will continue to be treated as 'police property' in street-level policing. Therefore, whether police participation in Victim-Offender Mediation can lead to reconciliation with youth offenders is an open question.

Discussion

In traditional Chinese societies, communities are composed of kindred families and clans; therefore communities are the extension of families. In restorative justice theories, families and communities act as supporters and resource providers, and individuals at the centre of crime are considered the major players in the conference. The responses from some mediators reflect that the principle of respecting the superior and favouring the intimate in Confucianism affect mediators' understanding of macro-community members. Some mediators in this study expressed that it was suitable to let teachers attend victim-offender meetings as macro-community members. For community members without any personal relationship with victim and offender, mediator expressed that they were not suitable to participate in victim-offender mediation. Though some mediators used privacy and stressful environment to explain why 'stranger' was not suitable in victim-offender mediations, the principle of respecting the superior and favouring the intimate in Confucianism certainly could offer better explanation for mediators' understanding of macro-community members.

When mediators remarked that offenders who involved in the Police Superintendents' Discretion Scheme often committed their offences in schools, teachers thus become the most viable option for representing the macro-community. The role of the teacher is extraordinary in Chinese culture, which treats teachers as if they are fathers (Wong, 2014; 2016). The unique role of the teacher reflects the social order of Confucianism, which is based on a set of hierarchical relationship. Although teachers are not members of the kinship system, they play a role which is similar to the role of fathers and older family members. In this sense, the presence of teachers in victim-offender mediation is significant because they function as senior family members to support offenders. The participation of a teacher means everything to offenders. The acceptance of a teacher helps offenders reintegrate into their immediate community, i.e., the school community. Braithwaite (1989) depicts community, which perform the function of reintegration, are the close relationships existing between family members and community members. Schools in Hong Kong, under the influence of Confucianism, are similar to community described by Braithwaite. However, the close relationship exist because of the hierarchical social order in Confucianism that coordinate principal, teachers and students according to their roles. The Confucian

community shares the characteristics of community depicted by Braithwaite, but community members are not equal in hierarchical social order.

Although police officers have no personal relationship to offenders and victims, they occupy the superior position in the social hierarchy. Their superior position can explain why mediators accept the participation of police officers in victim-offender mediation, when police officers are complete strangers to both victims and offenders.

In daily practice, social workers in Hong Kong have a unique interpretation of the criteria for someone to be a 'community member'. The presence of community members represents the interests and concerns of the larger society, which will help the offender reintegrate into society. Thus community members should offer kind words, emotional support and forgiveness, and take steps towards the reintegration of the offenders involved in pre-mediation and victim-offender mediation meetings. The community members represent community concerns and needs, and they speak collectively as a community voice of forgiveness or reintegration (Gerkin, 2012). They should have no personal relationship with victims and offenders. The relevant responses from

the social workers in this study tacitly reflect the influence of Confucian relational ethics on them. Confucian relational ethics emphasise that everyone lives in a personal nexus and that wrongdoings disturb this nexus. Reconciliation and reparation should therefore be dealt with by the people in the network. The involvement of non-acquainted community members will certainly disturb this network (Yao, 2000). In Hong Kong, the majority of Hong Kong Chinese live in high-rise apartments and are used to living alongside strangers in an overcrowded city. However, under the influence of Confucianism, Hong Kong Chinese always keep their distance from strangers, even if they are neighbours. Although Hong Kong Chinese are living in an environment with considerable opportunities to interact with strangers, it is difficult to cultivate a sense of community because of the influence of Confucianism (Adorjan & Chui, 2014). This unique understanding of community members will probably induce victim-offender mediation without the involvement of the macro-community. Since restorative justice theories give a prominent role to the macro-community in response of crime, seeing its participation as integral to success, the absence of the macro-community raise the question of whether restorative justice has been truly implemented in Hong Kong's current form of victim-offender mediation (Gerkin, 2012).

The next chapter will explore and discuss the role of parents in victim-offender mediation and whether Confucianism will affect parents' understanding of their role in victim-offender mediation.

Chapter 7 Are parents merely micro-community members?

Chapter 6 reviewed the Confucian ethical principle of respecting the superior and favouring the intimate in order to understand who community members are from the viewpoint of Confucianism. The role of teachers is quite special in Confucianism – teachers, unlike other professionals, are similar to older family members. The teacher plays a significant role in mediation as a witness for the effort and reconciliation that offenders have made. Police officers occupy a superior position in the social hierarchy and are considered macro-community members, despite that fact that police officers have no personal relationship with offenders or victims, this superior position can explain why social workers accept the participation of police officers in victim-offender mediation even though police officers may be complete strangers to both victims and offenders.

In this chapter, the role of parents will be explored. Under the mixed influences of Confucianism and individualism, will parents act according to the

hierarchical social order? Will they let their children (offenders and victims) make their own decisions on participation in victim-offender mediation? Will young people consider their parents as decision-makers? Will young people be able to be independent agents who make their own decisions? These are the focal questions of this chapter.

The particularities of Hong Kong make the above problems more complicated. On the one hand, Hong Kong is a Confucian society with a majority of Hong Kong Chinese. On the other hand, Hong Kong is a highly modernised industrial-commercial centre in Asia, and Hong Kong Chinese have been widely exposed to cultural influences from other parts of the world, particularly the West (Chan & Lee, 1995). The Confucian cultural tradition teaches that the essential social relationships for Chinese are those with family members, for example, the parent-child relationship, sibling relationships, relationships among relatives and so on. When Chinese people encounter a situation where they may lose 'face', they will not let their family members know and will not seek help from them.

But are Chinese parents the only parents in this world who try to avoid the situation of 'losing face'? There is literature addressing this question, i.e., in non-Chinese societies (for example Prichard, 2002; Karp, Sweet, Kirshenbaum & Bazemore, 2004). The Australian parents documented in Prichard's study usually expressed strong emotions toward their children, and parents who did not attend conferences, mostly fathers, tried to avoid perceived allegations of personal inadequacy. Fathers felt too embarrassed to meet victims, mediators and other stakeholders in restorative meetings. In the study of Karp, Sweet, Kirshenbaum & Bazemore (2004), American parents were generally passive participants during the panel discussions, but mothers were more likely than fathers to join the discussion. Most fathers stayed quiet throughout the panel. This was because parents felt embarrassed about what their children did, and they acted as supporters, follow mediators' instructions in pre-mediation sessions.

Findings

The Role of Parents

The role of parents has received significant attention from restorative-justice theorists. Braithwaite (1989) recognises the importance of families towards offenders and suggests that it is the responsibility of parents to control their sons and daughters. If parents fail to do so, reintegrative shaming will be useful to remind them of their responsibility to do so. McCold (2000) treats family, and parents in particular, as an indispensable member of the 'micro-community' or 'community of care', playing an essential role in restorative practices. As a member of "micro-community", like friends and significant others, parents provide personal, emotional, and material care to offenders or victims which they utilise in times of need for support and survival.

From Braithwaite's descriptions (1989), family is very important because it socializes sons and daughters and help them receive socialization in the wider society. Braithwaite further emphasizes that culture with reintegrative shaming will make this transition smoother.

Cultures with heavy emphasis on reintegrative shaming established a smoother transition between socialization process in the family and socialization in the wider society. Within the family, as the child grows, social control shifts from external to internal control; punishment-oriented cultures set this process more starkly in reverse in the public domain than do shame-oriented cultures.(Braithwaite, 1989,p.82)

Family is also the first place for individuals learn reintegrative shaming. Braithwaite claims that family are the most effective agent of social control. If individual have not learnt and experience of reintegrative shaming, it is the failure of family.

Family life teaches us that shaming and punishment are possible while maintaining bonds of respect. Two hypotheses are suggested: first, families are the most effective agents of social control in most society partly because of this characteristic; second, those families that are disintegrative rather than reintegrative in their punishment processes, that have not learnt the trick of punishing within a continuum of love, are the families that fail at socialising their children (Braithwaite, 1989, p.56).

Family is such important in Braithwaite's theory and parents are paramount in socialisation. However, Braithwaite does not differentiate parents from other community members. The unique child-parent relationship has not been depicted and discussed in-depth (The following excerpt was cited in chapter 3 once).

The effectiveness of shaming is often enhanced by shame being directed not only at the individual offender but also at her family, or her company if she is a corporate criminal. When a collectivity as well as an individual is shamed, collectivities are put on notice as to their responsibility to exercise informal control over their members, and the moralising impact of shaming is multiplied (Braithwaite, 1989, p.83).

Parents, in Braithwaite's theory, feel the same as other micro-community members and do not have strong emotions about their children. Even though McCold (2000; 2004) admits the function of parents as provider of personal, emotional, and material care to offenders/victims, he does not differentiate parents from other supporter such as friends and significant others. Nevertheless, the below response from a mediator tells another story. In her

opinion, parents cannot be replaced by other micro-community members. It is imperative for parents to attend Victim-Offender Mediation because it may be the first time parents find out what their children have done. Participation in Victim-Offender Mediation is a way for parents to support and know their children.

Family plays the role of supporter. Offenders usually are afraid of meeting victims and their families. Offenders' parents can comfort offenders when they attend the meeting as supporters. In the meeting, parents will find out what their children have done. It may be the first time parents find out that police beat their children. It is a good chance for parents and children to hear other's feelings in the meeting (Vicky).

Parents definitely are supporters, but at the same time they are victims: parents do suffer, psychologically and emotionally, from the wrongdoing of their children. Though the girl described below did not hurt her parents directly, her wrongdoings raised many questions that her parents had to answer. For example, were their parenting skills inadequate or even wrong? Did they give enough attention to her? Such questions make parents an indirect victim.

Parents are victims, too. For example, one case I have handled was that of a girl who came from a well-off family. Her parents did not understand why she stole a pack of potato chips from the supermarket (Landy).

It would be misleading to suggest that there is a dual role for parents, i.e., as supporters and as indirect victims. Parents are *decision-makers*; they can make decisions on behalf of their children, decisions which sometimes violate their children's agency and freedom. The opinion of one mediator reflects this point.

On the contrary, offenders wanted to attend mediation, but their parents did not want them to do so. Offenders' parents were very cautious because they did not want others to think that their children were trying to find excuses in the mediation (Ann).

In order to understand the roles of parents, the unique nature of the parent-child relationship has to be considered. Despite Braithwaite's and McCold's influential research, the parent-child relationship does in fact

distinguish parents from other micro-community members and significant others.

Parents as Supporter

Although police have caught these offenders, participation in victim-offender mediation is not compulsory. Mediators made this point very clear to youth offenders and their parents before participation. Unlike Gerkin's (2012) findings, the interactions between these Hong Kong offenders and their parents (supporters) were quite good. Gerkin observed 14 mediations at Balanced and Restorative Justice (BARJ) Centre in America and found that the offenders' supporters offered little in the way of emotional or verbal support to supporters and did nothing to help their loved ones maintain a positive self-identity. However, these Hong Kong Chinese parents were active participants in victim-offender mediation. They were willing to listen to their children (offenders) and gave feedback during the mediation.

Parents were some of the most crucial supporters. They accompanied their children to attend police cautions. We all knew that supporters were very

important to offenders. In victim-offender mediations, offenders spoke out their feelings while supporters listened to their sharing. Supporters also had chances to give feedback. Supporters were one of the most important stakeholders in victim-offender mediation (Frankie).

In spite of the active participation of offenders' parents, the role of parents is different from that of other supporters because of the unique parent-child relationship. Parents are the primary socialisers for their children. When children do something wrong, parents have a moral responsibility for their wrongdoings. Other supporters such as friends and colleagues do not need to socialise offenders and have no responsibility for offenders' wrongdoing. The participation of parents in victim-offender mediation may offer a possibility for them to express their concern about the future of their child. The process may give the family a more positive social experience, which in turn can stimulate young people to take a more positive grip on their life (Bradt, Vettenburg & Roose, 2007; Weijers, 2002). Likewise, the presence of family and friends signals to the offenders that they belong to a community that cares for them. This feeling of belonging can boost self-confidence (Bradt, Vettenburg & Roose, 2007; Hassall, 1996). Meanwhile, parents are considered to be an

irreplaceable resource for young offenders because parents have the duty of supporting their children in the conference and supervising them in fulfilling any agreements made at the conference (Bradt, Vettenburg & Roose, 2007; Hudson et al, 1996).

We place a very high value on the participation of parents. As supporters, parents can understand their children better. Parents are one of the parties involved in the conflict. For example, if their children stole someone's mobile phone, they would need to pay for it, or buy a new mobile phone for the victim (Ben).

Participation in victim-offender mediation is a chance for parents to understand their children. When parents believed that they and their children were treated respectfully and their opinions were considered, they felt better. Part of the parents' comfort stemmed from their recognition that their child was not being stigmatised as a bad person. If parents felt included in the decision-making process and, were able to voice their concerns about their ability to assist their child in fulfilling suggested contract items, they were much more comfortable (Karp, Sweet, Kirshenbaum & Bazemore, 2004).

The role of family is supporter. They face the problems together with offenders. They have a chance to let their children know how they feel. Meanwhile, the family is second victim too. Victims' parents also want to know why offenders bullied their children. Offenders' parents also want to know why the school authorities called for police. School authorities sometimes do not want to call the police, but they do not know how else to proceed. When they cannot handle the victims' and offenders' parents, calling the police becomes the only way out (Ann).

Encouragement from parents is very important for children. For parents, there are so many questions and too much doubt. For example, parents always want to know why their children have ended up this way. Victim-offender mediation is a chance for parents to understand their children and what happened to them. However, if parents in mediation feel condemned, and no one recognises and deals with that feeling, the meeting could stigmatise parents, damage their confidence in being parents and put unnecessary strains on parent-child relationships (Bradt, Vettenburg & Roose, 2007). Parents will be supportive of the process when they considered the contract negotiation as a cooperative and just process. While parents generally remain quiet, they will

intervene when they perceive that their child misunderstand a question or has trouble remembering what had happened (Karp, Sweet, Kirshenbaum & Bazemore, 2004).

Sometimes the youth might not have much incentive to join the victim-offender mediation, and so parental encouragement was significant. We invite parents to attend the pre-mediation session and mediations. They told the youth how their offences affected their families. Parents were supporters of their children (Ivy).

Parents can be a powerful incentive for their children to attend victim-offender mediation, because their very presence is the most significant encouragement they can offer. In the meeting, parents can share their feeling about their children's wrongdoings. It may be the first time their children understand how important they are to the family. This reflects the reciprocal, natural, intimate, and affectionate relationship between parents and children (Chen, 2014; Leung, Wong, Wong & McBride-Chang, 2010). For parents, victim-offender mediation is also a useful way in understanding their children. Before these children committed their crimes, their parents might not have spoken with them

for a long time. They did not understand what their children needed and why their children committed the crime. The meeting, in some cases, was the first time parents realised that their children needed their attention and care. Probably, you could also say in this way, parents finally need to face the problem they had already known. This time, they cannot escape from the problem.

Parents as Indirect Victim

As we see in the mediators' answers, these Hong Kong parents are not only supporters but also indirect victims. Under the influence of Confucianism, Hong Kong Chinese parents blame themselves severely for not teaching and disciplining their children well – for them, crime is not an individual issue. When children commit a crime, parents will be held responsible for not teaching their child better and not disciplining them (Hwang, 1987).

Victim-offender mediation is a chance for parents to know their children better.

Parents might blame themselves for not teaching their children well. Parents are secondary victims at the same time (Olivia).

Although parents were not the direct victims, they played a role in the mediation. That is why we want them to participate in the mediation (Ben).

Parents felt disappointed. They never thought of what their children did. They could not understand why their children stole things. Parents thought that the participation of Victim-Offender Mediation was good for their children (Jaffe).

Parents are victims too. For example, one case I have handled was that of a girl who came from a well-off family. Her parents did not understand why she stole a pack of potatoes chip from the supermarket. She had several thousand dollars in her wallet. Another case was that of a boy who stole several books from a bookstore. At his home, he even had his own library. His parents did not understand and were disappointed. Parents own the conflict before children do anything. Children sometimes commit crimes because they want to seek their parents' attention. Those parents usually did not spend enough time with their children (Landy).

The feelings of Hong Kong Chinese parents just echo what Prichard (2002) says about the feelings of Australian parents. In Australia, the wrongdoings of

children are highly relevant to parenting and parents too. Despite parents are not held responsible for the wrongdoings of children, the development of their children is considered as a way to gauge the success of parents. When children developed into valued and appreciated individuals, parents, as well as onlooker, consider it as evidence of the success of parents. On the contrary, the criminal behaviour of their child will suggest that they are “not succeeding” as parents. The comments from onlookers are vital for parents because parents perceive the actions of the young offenders as an intensely personal reflection upon themselves. In this regard, both Hong Kong parents and Australian parents feel uneasy and stressful in mediation. Confucianism just intensifies the shameful and embarrassing experience of parents and hold parents responsible for their children’s wrongdoings morally.

The roles of Hong Kong Chinese parents are both supporters and victims. The wrongdoings of the children brought trouble to parents and embarrassed their parents. In this sense, parents of offenders are the indirect victim too. This is also the reason mediators encouraged parents to participate in the victim-offender mediations. The unique nature of parent-child relationships in Confucian society will put parents into a complicated situation. Parents will be

blamed for not teaching their children well and hold the responsibility personally (Huang, 1989; Yao, 2000). On the other hand, both parents and children interpreted filial piety as love and care (Ting, 2009), which is equivalent to reciprocal filial piety depicted by social psychologist and psychologist that Parental and children develop a reciprocal, natural, intimate, and affectionate relationship (Chen, 2014; Leung, Wong, Wong & McBride-Chang, 2010). The wrongdoings of children will damage parents' prestige and 'face-losing' socially and hurt parents' emotionally.

Parents as Decision Maker

Nonetheless, Hong Kong parents do not play the role of supporters and indirect victims all the time. Since all offenders and victims are under the age of 18, parents have the right to decide on behalf of them. Hong Kong parents, using parental rights, sometimes want to protect their children (offender) by not attending victim-offender mediation.

It depends on the age of youth offenders. For example, if the youth offenders are older, let say 16 or 17 years old, their parents will usually let their children

decide whether they participate in mediation or not. All the youth offenders between the age of 10 and 17 years old are eligible to join the Police Superintendent's Discretion Scheme. In some cases, offenders' parents did not want to let their children meet victims while offenders wanted to make an apology to victims. We were trying to persuade the parents and let them see the willingness of their children although parents had the power to make the final decision (Dennis).

We emphasised that the participation of youth was not compulsory and the youth offenders should make decisions based on their willingness. If parents disagreed on what decisions their children made, they could use parental rights to override them (Gary).

The involvement of the parents in victim-offender mediation is invaluable if young people can demonstrate their goodwill to their parents. The active involvement of the parents may offer a possibility for the family to express their concern about the future of their child. It could be the finest moment for both parents and children (Bradt, Vettenburg & Roose, 2007). Under the influence of Confucianism, Hong Kong parents bear the responsibility of teaching and

disciplining children (Hwang, 1987). Since they have already missed a chance to teach and discipline their children properly, they are eager to amend this mistake. When parents have different views on their children's participation, parents are highly motivated to exercise their power to prevent their children from participating in the mediation. Since Hong Kong parents occupy a higher position in hierarchical social order, and the traditional Confucian culture emphasise the respect for authority, it would easily translate restorative practice to a preference for authoritative decision making from above (Chan, 2013). Young people in this situation find it very difficult to act according to their will. The parents of offenders who have power and seniority in the hierarchical social order could turn this finest moment into the worst moment for young people and their parents.

When offenders were not old enough, for example, studying at primary school, parents have a significant influence on their decision. We talked to offenders and parents separately. We would ask what the offenders wanted to do and helped them to maintain a good parent-child relationship. We were not only concerned about the victim-offender mediation but also wanted to help them maintain the parent-child relationship as well (Dennis).

When mediators tried to solve this complicated situation, they were concerned about how to preserve parent-child relationships as well as maintain their participation in victim-offender mediation. Mediators understood that victim-offender mediation was a choice to restore the parent-child relationship. Parents were always acting on behalf of their children. When they saw the discomfort, shame and fear their children suffered, parents were likely to be suffering personally. They may feel blamed by others in the conference, guilty that they had not prevented a situation, worried that they will not be able to avoid future problems and so on (Prichard, 2002). In Confucianism, parent-child relationships are governed by filial piety, which is defined as the important virtue and responsibility for children to respect, care for, and bring honour to their families (Ho, 1996). As I mentioned in Chapter 5, Hong Kong Chinese adults reinterpret filial piety as love and care (Ting, 2009). Both mediators and youth offenders' emphasised the reciprocal side of filial piety, which focuses on children providing emotional, physical and financial support to parents in gratitude for parents' devotion in raising them (Leung, Wong, Wong & McBride-Chang, 2010; Ting, 2009). One mediator expressed that the financial support from parents was foremost to ensure that parents not to worry about how to maintain their living. In this sense, people who interpret filial piety as

love and care are more likely to have a reciprocal, natural, intimate, and affectionate relationship with their parents. On the contrary, people who interpret filial piety as submission to parental power are likely to have apathy and keep a distance from their parents (Chen, 2014; Leung, Wong, Wong & McBride-Chang, 2010). The understanding of filial piety will affect how mediators interpret the nature and importance of a parent-child relationship. Mediators in Hong Kong tend to interpret filial piety as love and care, therefore, they tend to understand parent-child relationship as reciprocal, natural, intimate and affectionate relationship.

Although parents and children interpret filial piety as love and care, reciprocal filial piety is the term used by psychologists and social psychologists; parents did not spend time on taking care of their children (Chen, 2014; Leung, Wong, Wong & McBride-Chang, 2010; Ting 2009). Children who committed a crime sometimes just wanted to get the attention of their parents. In this sense, both parents and children wanted to build a more intimate and affectionate relationship.

From the observation of mediators, parents always had their preference for children's decision in pre-mediation sessions. Parents occupy a higher position in the hierarchical social order and usually have superior power in the family. Parents in Hong Kong exercise their power, not by coercion but by the power of persuasion. If parents did not favour their children's decision, they would persuade their children to change their decision. The reactions of victims' parents and offenders' parents were quite different. Victims' parents always encouraged their children to attend victim-offender mediation while offenders' parents always avoided attending it. Offenders' parents are terrified of the opinions of the onlooker and don't want the onlooker to think that they were trying to find excuses. Sometimes, offenders' parents were worried about the adverse effect of the case.

According to the "facework" of Goffman (1955, 1959, 1967), every person intends to shape and instil in the minds of others a particular favourable image so that the interaction with others will continue without interruption. 'Facework' is merely a sort of front-stage behaviour that is deliberately performed in front of other people. Goffman wrote the consequences for individuals who fail to maintain the favourable image in social interaction:

Embarrassment has to do with unfulfilled expectations (but not with those of a statistical kind). Given their social identities and the setting, the participants will sense what sort of conduct ought to be maintained as the appropriate thing, however much they may despair of its occurring (Goffman, 1967, p.105).

Like what Goffman (1967) said, offenders' parents were reluctant to face embarrassment because they fail to maintain a favourable image. In Chinese society, parents have to bear the consequence of children's wrongdoings (Hwang, 1987). Parents, who wanted to change the decision of their children, intended to 'save face'. Sometimes, parents used the legal issue as an excuse to avoid making an apology or attending Victim-Offender Mediation because they were afraid their apology would have an adverse effect on their children's cases. However, once their children participated in the Police Superintendent's Discretion Scheme, their children would not be charged with what they did. Making an apology would not change this situation.

One case I handled before was where the offender wanted to apologise to the shopkeeper because he stole something from the shop. However, his mother prevented him from doing so because the shopkeeper already called the

police and worried that his apology might have adverse effect on this case (Gary).

The victims' parents, wanted to change the decisions of their children based on different reasons. The victim was afraid of meeting the offender, but their parents wanted their child to attend the meeting. It is quite contrary to Gerkin's study (2012) that most victims have no supporters at the meeting, and the situation is quite different in Hong Kong from Gerkin's observation.

Victims sometimes do not want to attend Victim-Offender Mediation, and their parents encouraged them to do so (Ann).

The victims' parents wanted their children to do what was right and to regain control of his or her life. The opinions of victims' parents echo Gerkin's study (2012) that acknowledgement from the community about the harm victim experienced can be very powerful. The empowerment felt by victims created through the restorative process is paramount in the process of healing. Camp's & Wemmer's study (2013) described how the restorative intervention had allowed victims to gain a better understanding of the offender's motives. In

other words, through the restorative intervention, the victim felt they had some sense of process control. This sense of control did not only empower them; it made them feel safe. The victims did not just feel involved; they felt they were in the driver's seat. The victim's parents wanted to change their child's decision because they needed their child to regain the sense of control in their life again.

Victims' parents want their children to reclaim their right and learn how to cope with difficulties in their lives. That is why victims' parents always persuade their children to attend the mediation meetings. Victims' parents also want to know why the offender bullied or hit their children (Ann).

Mother's Decision or Father's Decision

One mediator mentioned that mothers, instead of fathers, had a higher involvement in victim-offender mediation in Hong Kong. They explained that it did not mean that the mother got the power of decision making. The power still lies in the hands of father and matches the idea of male domination in the family in Confucianism (Yao, 2000). Mediators thought that it was essential to

find out whether the mother was the one who had the power to make any decision. In her experience, the father was always the person who had the power to make the final decision.

Mothers play an important role in Hong Kong families. However, in most cases, the fathers had higher educational attainment or were policemen and, therefore, the fathers were the person in charge of the family. During a mediation meeting, we are always aware of who has the authority to settle a conflict. Mothers sometimes seem to be the person-in-charge. However, the father has the power to make the final decision (Ann).

Another mediator in Hong Kong observed that Chinese parents behaved differently with non-Chinese parents. According to his observation, unlike the non-Chinese parents, Hong Kong Chinese parents were reluctant to attend the Victim-Offender Mediation. Father usually wanted to 'save face' and not attend the meeting. For expatriate parents, with further elaborations that they were British or American, they were more willing to attend the meeting. However, this observation contradicts with existing literature. As mentioned in Prichard's study (2002) in the paragraphs above, Australian fathers were less likely to

attend conferences because of embarrassment. Karp, Sweet, Kirshenbaum & Bazemore study (2004) reported similar findings that parents were generally passive participants during the panel discussions, but mothers were more likely than fathers to join the discussion, and most fathers stayed quiet throughout the panel. All these findings seem to show us similar social phenomenon that women are better than men at handling conflict and embarrassment in social interaction and expressing herself in a stressful environment. From the observation about expatriate parents, it probably came from the sampling error as there have been a limited number of expatriate families joining the Police Superintendent Discretion Scheme and only tiny proportion of them participating in the Victim-Offender Mediation. This tiny proportion of expatriate parents could represent the characteristics of British and American families.

For Hong Kong Chinese, usually, the mother or the father attends the Victim-Offender Mediation. For expatriate parents, both the father and the mother attend the mediation. Chinese people want to 'save face' so the mother, on behalf of the father, attends the meeting (Frankie).

Based on the observation, experience, and interpretation of mediators, they asserted that fathers in Hong Kong Chinese family had a leading role in decision making. Mothers were the proxy of fathers and dealing with troublesome with mediators. This observation matched the Tsun's study (1999) about the power structure in the patriarchal Chinese society that females and children were ascribed to a subordinate position and subjected to the control of males. In the child rearing process, Chinese expect their youngsters to respect elders and obey authorities' demands without undue delay. When the father dies or is absent, the oldest brother replaces him as head of the family. However, this observation simplified the emotional aspect of the husband-wife relationship. Chan's study (2000) stated that Chinese spouses in Hong Kong valued the conjugal bond more important than the paternal relationship and were willing to share their ideas and feelings with their spouse. In Hong Kong society, the husband-wife relationship is equal and mutually independent. Back to the observation and interpretation of mediators, the father and the mother probably made their decision together, and the mother would be the one to announce their decision.

Losing 'Face' of Parents and Shaming

The unique nature of the parent-child relationships may not be fully discussed either by Braithwaite (1989) or McCold (2000; 2004) and other restorative literature. The parent-child relationship in Confucian society is lack of research by restorative justice theorists. A child represents the product of his or her parent's genes, parenting skills, lifestyle and values (Prichard, 2002). One mediator expressed this point clearly that Hong Kong parents were very concerned with the evaluation from onlookers and police officers because they lost 'face' because they do not teach and discipline their children properly (Hwang, 1987).

Once police caught young offenders, they and their parents went through the tedious procedures under the Police Superintendent Discretion Scheme before showing up in the Victim-Offender Mediation meeting. They knew their behaviours made trouble for their parents. Some parents even expressed that they seemed to be the offender rather than the parents of the offender. The youth knew that they made a tremendous amount of trouble for their parents (Ann).

Those parents felt embarrassed and lost their 'face' because of the wrongdoings of their children, which distinguish parent-child relationships from other supporters. This feeling of parents can also be explained by the importance of 'losing face', which is the most concerning issue for Hong Kong parents, from the idea of Confucianism (Huang, 1989; Yao, 2000). The observation of this mediator leads us to think about (1) whether Braithwaite depiction (1989) of parents within ceremonies is one dimensional and over-simplistic: the feelings and emotions of parents are similar to any other member micro-community; (2) whether Braithwaite's reintegrative shaming theory can be applied to Confucian society, where shaming will lead to 'face-losing' and damage and disrupt parents' prestige and social rank in social group.

When parents told their children "I never want to go to the Mandarin when I am alive; I never want to go to the hell when I am dead (Chinese idiom), the children understood how shameful their parents felt when they came to police station and bailed them out. The children knew how their wrongdoings affected their parents (Queenie).

Braithwaite's reintegrative shaming theory (1989) suggests that shame can be used constructively to discourage criminality when elicited in ceremonies attended by the offenders and offenders' parents may bring them to catastrophe in Chinese society. Moreover, the use of shame without socially embedded forgiveness may lead to stigmatisation and increased criminal behaviour (Prichard, 2002). As mentioned in chapter 3 and earlier section of this chapter, Braithwaite concentrates on the benefits of deliberately directing shame at "collectivities", which include families and companies. He asserts that the shame directed at collectivities is often transmitted to the offender in a manner which is as reintegrative as possible. He further argues that families can begin the process of socialisation of children which will be "taken over" by wider society and form the basis of social control. As discussed in chapter 5, Hong Kong parents are usually afraid of losing 'face' because losing face will lead to the losing of prestige and social rank. The above discussion reveals that Hong Kong parents will refuse to participate in victim-offender mediation when they perceive shaming is overwhelming.

Moreover, our theory posits that cultures in which social bonding is intense, with attachment and commitment to the family being the most important kinds

of bonding, are cultures which foster reintegrative shaming. These are cultures which can direct effective communitarian control against the most heinous corporate crime as well as minor delinquencies (Braithwaite, 1989, p.30).

When Braithwaite claims that society with intense social bonding will foster reintegrative shaming, the nature of shaming is in doubt. Hong Kong, a Confucian society, matches the descriptions of Braithwaite about intense social bonding, but shaming in Hong Kog is not reintegrative one. If shaming is successfully conducted, Hong Kong parents will refuse to participate in victim-offender mediation.

Shaming is therefore both the social process which builds consciences, and the most important backstop to be used when consciences fail to deliver conformity. Formal punishment is another backstop, but a less effective one than reintegrative shaming (p.82).

When Braithwaite argues that shaming is the most important and an effective backstop to prevent delinquencies, this idea will be quite problematic in a

Confucian society, like Hong Kong. Hong Kong parents and young offender (the discussion in chapter 5) will do anything to avoid shame and shaming, but shaming in Chinese society is certainly not the social process which build consciences. If shaming is successfully conducted, it is not the effective way of crime prevention. Shaming actually damages the social rank and prestige in Chinese society and pushes them to criminal subculture.

Cultures with heavy emphasis on reintegrative shaming establish a smoother transition between socialization practices in the family and socialization in the wider society. Within the family, as the child grows, social control shifts from external to internal control; punishment-oriented culture set this process more starkly in reverse in the public domain than do shame-oriented cultures. To the extent that crime control can be made to work by continuing to catalyse internal controls it will be more effective; this is precisely why families are more effective agents of social control than police forces (p.82).

When Braithwaite begins to describe families and reintegrative shaming ceremony, he does not adequately recognised the emotions which families, and in particular parents, might feel. He considers family as a mechanism,

without emotion and feeling, to socialise children in early development and then transfer them to the socialization of wider society. When parents sense the discomfort, shame, and fear their children experience, parents will not act just a part of a “collectivity”. Parents take everything personally on behalf of their child and suffering personally.

Even Braithwaite admits that reintegrative shaming is not necessarily weak and can be cruel. He asserts that reintegrative shaming will be ended by forgiveness and the bonds of love or respect will be maintained after shaming. Hong Kong, as a Confucian society, embedded forgiveness is unlikely available and reintegrative shaming is unlikely to happen (Vagg, 1998). The nature of shaming in Hong Kong is disintegrative shaming and it is totally different from the reintegrative shaming in Braithwaite’ theory.

Reintegrative shaming is not necessarily weak; it can be cruel, even vicious. It is not distinguished from stigmatization by its potency, but by (a) a finite rather than open-ended duration which is terminated by forgiveness; and by (b) effort to maintain bonds of love or respect throughout the finite period of suffering shame (Braithwaite, 1989, p.101).

The above parents' attitude towards police is a typical attitude from young men and those living in public housing estates in working-class areas (Adorjan & Lee, 2017). Although the mediator did not reveal the background of the above parents, and only said parents of offenders usually with lower educational level, this attitude was prevalent among parents who attended Victim-Offender Mediation. They were afraid of the police because they considered themselves as "police property". That police can harass them any time without consequences (Adorjan & Lee, 2017). As discussed in Chapter 6, mediators trusted the police and believed that the presence of police could facilitate the Victim-Offender Mediation. However, the response from the parents might tell another story. They treated police officers as authority from the state and considered their professional role only. The presence of a police officer may jeopardise the principles of restorative justice that all parties are equal and should be empowered (Bradt, Vettenburg & Roose, 2007).

Discussion

The roles of parents are vital, but restorative theorists and theories seldom illustrates the particularities of their roles, which is different from other

members from "micro-community" such as friends and neighbourhood. Parents, as members of a 'micro-community', are indeed the supporters of offenders, indirect victims and decision-maker. Participation in mediation is a way for parents to own the restorative process and get benefits from this ownership (Gerkin, 2012). However, the 'face' of parents in Confucian society is closely linked to the status in their interpersonal network. The crimes committed by sons or daughters will certainly damage the status of parents in their interpersonal network, and this will finally lead to a loss of 'face' (Hwang, 2012). Therefore, Hong Kong Chinese parents are very eager to make decisions on behalf of their children or pursue their children to make 'right decision'- i.e. the decision made by parents. Because of the fear of 'losing face', Hong Kong Chinese parents want to do 'damage control' by making 'right decision'. Moreover, the study shows that the fathers in Hong Kong Chinese family have a leading role in decision making even in victim-offender mediation. It probably reflects the power imbalance among father, mother, and children in the patriarchal Chinese society that females and children are ascribed to a subordinate position and subjected to the control of males. In this sense, face and shaming make the roles of parents more complicated.

The various functions of the "micro-community" include supporting the victims, and offenders, hearing their stories, acknowledging the harm inflicted by the offender's actions, offering forgiveness, and taking steps to reintegrate both parties. These are not trivial roles and should not be viewed as secondary to other goals like producing agreements. These functions are at the core of restorative processes and are a part of what makes justice restorative (Gerkin, 2012). Nonetheless, the role of parents need to be clarified in restorative justice theorists in order to understand how restorative justice practice worked.

Reintegrative shaming is unlikely to observe in Confucian society like Hong Kong. The losing face and shaming in Chinese society will make offender more difficult to integrate into society, which contradict what Braithwaite predicts. Hong Kong Chinese parents face the dilemma of being parents in Confucian society and supporters in Victim-Offender Mediation. Being parents in Confucian society, parents know that they occupy the highest position in the family and they are responsible for their children's wrongdoings. However, they know that it is inappropriate for them to force their children into victim-offender mediation. They try to change their children decision by persuasion in order to 'save face'. In Victim-Offender Mediation, they are

supporters to their children. Due to the unique nature of parent-child relationships, they were unlike other supporters from "micro-communities". They struggle between being parents who are responsible for their children and being supporters who support them without question and reservation.

The existing studies on the role of parents in restorative meetings focus on parents in non-Chinese societies, for example, Bradt, Vettenburg & Roose (2007) conducted their study in Belgium. Parents are important for achieving restoration and constitute an important link in the victims' recovery process. Parents offer their child (be it the offender or the victim) support during the process. Offender's parents may hinder the process, sometimes causing a failure, or that they coerce the offenders into participating (Bradt, Vettenburg & Roose, 2007). Gerkin (2012) conducted their study in United States. Offenders' micro-communities did become indirectly involve in some mediations despite a weak physical presence, and in most instance, a silent presence. Usually victims attend the meetings without supporters (Gerkin, 2012); Prichard (2002) conducted their study in Australia; Karp, Sweet, Kirshenbaum & Bazemore (2004) conducted their study in America. There are

limited studies in understanding the roles of parents in Chinese societies and non-Chinese societies.

For the dynamics between parents and youth offenders in victim-offender mediation, the detailed discussion will be provided in chapter 9. Next chapter will explore the role of mediator in victim-offender mediation.

The next chapter will explore the role of mediator in victim-offender mediation and how mediator understand and interpret neutrality and apology under the influence of Confucianism.

Chapter 8 Role of mediators in Confucian society

Chapter 7 reviewed the roles of parents. Apparently, parents are not merely the supporters for offenders and victims only but are indirect victims and decision makers in the same time. Father, instead of mother, is always the person-in-charge. The unique nature of parent-child relationship has been discussed in order to understand the complexity of the parental roles. The importance of 'losing face' and shaming in the Confucian context have been explored and discussed. The participation of parents in victim-offender mediation is irreplaceable.

The main points of this chapter are the role of mediator in victim-offender mediation and their understanding of restorative justice. What is the role of mediators in victim-offender mediation in Hong Kong? How will mediators handle the principle of maintaining neutrality when they deal with the conflict between group interests and individual interest? What is the relationship between apology and 'face-saving' when 'losing face' is very unacceptable in Confucian society? It is worth investigating how mediators understand and

interpret key values of restorative justice, which are neutrality and apology, under the influence of Confucianism.

Mediators play an essential role in victim-offender mediation. They apply restorative justice principles in victim-offender mediation (Baldry, 1998; Choi & Gilbert, 2010). Mediators' view on restorative justice will undoubtedly influence their restorative practice. The ideal restorative justice process is to let victim, offender, and community handle crime. Every party needs to trust each other in resolving crime and consequences of crime. When we consider the role of mediator in restorative justice in Chinese society, we need to think of the influences of Confucianism.

Victim-offender mediation aims to bring a victim and an offender together in either direct dialogue or shuttle dialogue. Mediator is a person to oversee the process of obtaining answers, repairing harms and making amends to the victim. This voluntary, dialogue-driven process provides a safe and controlled setting for victims to meet and speak with offenders. It also allows stakeholders to develop a mutually acceptable plan to address the harms caused by the crime; and it affords offenders an opportunity to understand the

human impacts of their behaviour on those harmed and take personal responsibility for their actions (Bazemore & Umbreit, 2003).

Every victim-offender mediation is an application of restorative justice principles, and the mediator is a person to apply those principles in mediation.

When the mediator cannot uphold those principles, the translation of theory into action is impaired, and the meaning of these processes for victims, offenders and the community is changed. United Nations Office for Drugs and Crime (2006) found that no specific practices or processes make a response to crime restorative. Rather, it is the adherence to a set of restorative principles (Van Ness & Strong, 2006; Zehr, 2002).

There are several studies about the role of mediators and their responsibility in victim-offender mediation. The first survey conducted by Umbreit and Greenwood (1999) provides critical information regarding the mediators' roles and responsibility. The findings remark that the most critical tasks for mediators included: (1) facilitating the dialogue between the victim and offender; (2) making the parties feel comfortable and safe; and (3) assisting the parties in negotiating restitution plan. Their findings also reveal the

paramount importance of in-person preparation to the effectiveness of the process. There was considerable agreement that the mediators played a significant role in mediation. The importance of key elements of mediators' style and attitude, including patient listening, empathising, and neither pressuring nor pushing and allowing sufficient time for the process, is cherished by participants in victim-offender mediation.

The second study conducted by Bazemore and Umbreit (2003) provides several important issues in implementing victim-offender mediation, which addresses the importance of the roles and skills of mediators in the restorative justice context. First, they urge that the processes used should be sensitive to the needs of the victim and the participation of the victim and the offender should be voluntary. Then, they emphasise the mediator's roles and skills: (1) conducting in-person preparation sessions with both parties to clarify issues to be resolved; (2) ensuring participants understand the process, values and principles that govern victim-offender mediation; (3) contacting other stakeholders; and (4) preventing re-victimization of victims during the process.

The third study was the review of restorative justice programs by Umbreit, Coates and Vos (2001) and Umbreit et al. (2005). The review reveals that mediators need to provide a nondirective and unobtrusive mediation style. Mediators have to maximise the involvement of participants and do not pressure or push decisions or actions by victims and offenders; ensures there is sufficient time for the process; and serves a supportive role by being empathetic, respectful, patient, calm and understanding, treating people fairly and employing good listening skills. Mediators are expected to apply restorative justice philosophy and principles in ways that foster empathy, a sense of shared humanity, peace and reconciliation among participants. In summary, studies commonly note that the mediator's role is to: (1) exercise nondirective and unobtrusive style by neither pressuring nor pushing; (2) allow sufficient time for the process; (3) be empathetic, respectful, patient, calm and understanding and showing good listening skills as well as treating participants fairly; (4) prepare the meeting in advance by providing in-person preparation; (5) provide follow-up contacts with offenders to ensure that they comply with agreements and victims to ensure their needs are met; and perhaps most importantly, (6) be fully committed to restorative justice philosophy and principles.

The fourth study was conducted by Choi & Gilbert (2010). This study further refines several of the roles of mediators and skills they should have. Mediators should (1) facilitate conversation among participants; (2) keep things under control; (3) maintain neutrality; (4) demonstrate respect; (5) create a victim-sensitive environment. This study also confirms that the supportive 'background' role of the mediators, characterised by a nondirective and unobtrusive style, was important to facilitating conversations in a manner consistent with existing literature (for example, Coates, Umbreit, & Vos, 2003; Umbreit & Greenwood, 1999; Umbreit & Vos, 2000).

The above studies were conducted in non-Chinese societies. Whether Chinese people, under the influence of Confucianism, have other criteria on the role of the mediator are in doubt. The following studies conducted in China, Taiwan, Hong Kong and Singapore enlighten us with some understandings in this issue, although not all of them are empirical studies and about restorative justice mediation. Liu (2016) discusses the concept of "justice" from the perspective of Confucianism and notes that Chinese people believe "laws in the culture", which is ideas that exist in people's thinking and influences their actions, that community, and people are able to find out solutions to legal

issues. Therefore, Chinese people prefer mediation to litigation because the Chinese concepts of crime and justice are relational concepts. The most intimate group and most reliable personal relationship for Chinese people is family. Chinese people understand society in terms of family and personal relationship. Relationships that are further away from the family are less important in resource and influence. The network of friends, including the neighbourhood and community members, is the least importance.

Deng & Xu (2014) states that Chinese tend to treat those they have personal relationships with significantly differently from strangers with no relationship. Confucianism emphasises tolerance is a virtue of dealing with conflict, highlights collect responsibility and downplays individual rights. When the group interest conflicts with individual interest, individual interest should be sacrificed. Chia, Lee-Partridge & Chong (2004) notes that the Chinese community believes that the community is part of the individual's self-identity, and self-interest is in part defined as community interest. The goals of mediation are to 'save face' and settling conflicts. Mediation in the Chinese community in Singapore emphasises community interests over the individual's self-interest. Mediators are more than facilitators aiding individuals toward a

negotiated settlement and are entrusted with the role of guardian of community interests. Mediators in Chinese community may emphasise on harmonious relationships at the expense of individual rights.

The mediators in the study indicated that there are two issues about the role of mediators in victim-offender mediation: (1) maintaining neutrality; and (2) making apology for victims.

Finding

Maintaining neutrality

As mentioned above, mediators in principle should maintain neutrality in victim-offender mediation. Maintaining neutrality is one of the fundamental principles of restorative justice. Mediators cannot act either in the interest of offenders or the interest of victims (Baldry, 1998; Choi & Gilbert, 2010). The power of the mediator gains from their role of being a neutral third party. All the training for mediators emphasises the importance of maintaining neutrality so that each party can trust mediators in the victim-offender mediation (Olson &

Dzur, 2003). Mediators have to facilitate every participant to find out how to make amends for the victim and reintegrate offenders into the community. Mediators are responsible for translating the restorative justice principle into a restorative experience for participants in victim-offender mediation (Choi & Gilbert, 2010). If mediators cannot maintain neutrality, it certainly will affect the restorative experience for victims, offenders and supporters.

However, Confucianism affects Chinese people in understanding the role of mediators. Chinese people in Mainland China believe that mediators represent the political authority and community interest. Mediators in mainland China occupy a higher positional power in mediation. It is an acceptable norm for participants to submit to the power of the mediators. On the other hand, Chinese mediators are not stuck to the principle of neutrality. They regard themselves as fixer rather than neutral third parties and facilitators (Deng & Xu, 2014).

Under this cultural background, whether mediators in Hong Kong can remain neutral in mediation is an interesting and important issue. One mediator

expressed that the role of mediator was to facilitate the conversation between the victim and the offender.

Social workers have to facilitate each party to share his or her understandings on the wrongdoings and consequences of wrongdoings. In victim-offender mediation, each party must be given enough time for sharing and reflecting in order to achieve an agreement (Landy).

The above mediator's response pointed out that the role of mediator was a facilitator. As restorative justice processes emphasise the participative involvement of victim and offender in mediation, it is imperative to make sure that those dialogues based on the principles of non-coercion and democratic participation. The mediator's role in facilitating communication between victim and offender and assisting both parties implies neutrality. Mediator is not decision maker, but a facilitator. Mediator does not choose sides and does not interfere in or direct the eventual face-to-face conversation either. They will only intervene to help the victim and offender if needed, for example, when one of the parties lose his train of thought (Camp & Wemmers, 2013; Choi & Gilbert, 2010).

Another mediator also emphasised that mediators have to uphold the principle of maintaining neutrality. She said that mediators could not provide counselling service to victims and offenders. If counselling were necessary, mediators would refer those parties to their caseworker. She emphasised that she would try everything to remain neutral in mediation. Maintaining neutrality is to make sure that the victim, offender, and other participants trust the mediator. Trust is the result of an assessment of the motive of the mediator by participants. If participants see mediator maintaining neutrality and facilitate all participants rather than just making decisions for them, they trust the mediator's judgments that are for the benefits of all participants. The primary objective for mediators are to help create a safe space for communication between victim and offender. Mediators offer practical and emotional support and they prepare both the victims and the offender for an eventual face-to-face meeting (Camp & Wemmers, 2013).

In bullying cases, it is necessary to give counselling to offenders and victims.

For counselling services, we will refer them to caseworkers. We will not compromise our roles (Catherine).

The above mediators emphasised that neutrality was of paramount importance in mediation. Sometimes, it would be difficult for mediator to face the dilemma of remaining neutral and exercising intervention. Another mediator tried to solve this dilemma. He expressed that mediators must remain neutral while encouraging and pressuring the offender to admit his wrongs and promise not to repeat their mistake. When one of mediators in the study further elaborated his role in mediation, his answer reminded me of the situation described by Zernova (2007a; 2007b) that mediators inculcated a set of ideas in offender's and victim's minds in order to achieve restoration.

I think neutrality is essential for mediators. I am on the side of neither offender nor victim. My role is to assist them in the process of communication. I try my best to create a safe environment and make sure that everyone has a chance to share his or her feelings and ideas. I have been working in victim-offender mediations since two years ago. Based on these experiences, I find that it is important to assist victims and offenders in interpreting the meanings of the wrongdoings. Sometimes, the details offenders' wrongdoings are unimportant (Dennis).

The response from this mediator showed that the way victims and offenders in interpreting the meanings of the wrongdoings was important. In order to do so, a particular identity of offenders needed to be inculcated before they attended victim-offender mediation and apologised to victim. Victims also needed to hold a particular identity in understanding the importance of forgiveness before they were able to give particular responses to offenders. Mediators, using dialogue and reflection, inculcated offenders an identities of repentant individuals (The details of such preparation in pre-mediation session will be discussed in chapter 9). Once offenders accepted this new identity, they would be willing to follow the instructions from mediators and achieve reconciliation with victims because they wanted to do so.

Nevertheless, mediators knew that dialogue was an opportunity for offenders to repent and to make things right, they needed to maintain every party communicate effectively without domination from any party, has to ensure a respectful, impartial, and voluntary dialogue because participants feeling of fairness constituted one of the critical criteria of restorative justice success (Kuo, Longmire & Cuvelier, 2010). On the other hand, mediators had to persuade participants to understand the meaning of their wrongdoings in some

specific way. In the process of doing this, it was necessary for the mediator to instil a set of ideas into participants' minds (Zernova, 2007a; 2007b). Although mediators in the study believed that there was no conflict between maintaining neutrality and 'interpreting the meanings of wrongdoings', they actually exercised their power to inculcate the particular identity and mindset to offenders and/or victims. In daily restorative justice practice, mediators try to give the impression of neutrality to victims and offenders, but they exercise their power in intervention in the same time.

The following conversation with mediator provided some hints about how mediators exercise his or her power subtly. Although he admitted that mediators should remain neutral, he emphasised that mediators also need to prevent quarrels and arguments from the beginning. Otherwise, it would harm the mediation. If quarrel happens, the mediator needs to exercise his or her power to intervene in the dialogues between parties.

The mediator needs to remain neutral and facilitate victims and offenders in understanding the nature and consequences of wrongdoings. I will not let them quarrel. I try my best to let them tell their own stories (Edward).

Another mediator expressed a similar idea that mediators could not remain neutral all the times. It was necessary for mediators to make a value judgement in mediation. He may not be aware of the difficulties in expressing his values, and the need to remain neutral at the same time. From his response, we can see the influences of Confucianism on the mediators, who are social workers and received social work training at the university. They see their duty as maintaining the harmony of interpersonal relationships among people, which was beyond the role of maintaining neutrality prescribed by restorative justice, and appeasing conflict before it even arises (Deng & Xu, 2014). However, maintaining neutrality and appeasing conflict are the contradictory in nature. Mediators in the study struggle with these two tasks in every victim-offender mediation without awareness the contradictory nature of them. Under the influence of Confucianism, it would be difficult for mediators to aware this problem especially for heavy workload of mediators.

I try to help create an environment where open conversations possible between the victim and the offender. Sometimes, I may involve my values in conversation in order to clarify things. I think this is also useful for victims and offenders (Dennis).

It reflects that Hong Kong Chinese mediators accept the role of fixer rather than neutral facilitators subtly. Even mediators may not really aware the contradictory nature of being fixer ad facilitator in the same time. In mainland China, mediators' authority is the product of positional power and community interested shared by both the mediators and the disputants. Mediators in mainland China are assigned by local governments although they may not be government employees. Disputants and mediators usually live in the same community, and disputants know that mediators have power to recommend government official to do further actions. Under this political and social backgrounds, mediators in China use more active, direct and coercive means to implement the law, community norms and practices in order to appease conflicts between disputants. Mediators are willing to disregard the disputants' values and opinions in order to achieve harmony. The goals for mediators in China are to ensure social stability and unity, and to find conflict and to appease it. Sometimes, it is the job for mediators to settle disputes before escalating the conflict. Respecting face, and avoiding face threat and face loss are important values in Chinese conflict resolution and management. In such face-threatening situations as mediation, the Chinese mediator will actually use this to their advantage. They will push reconciliation by asking for the

consideration of avoidance of face threat to the mediator or any other people involved in mediation. This provides the disputants a way, without losing face, to overcome their pride, which is often the obstacle towards compromising (Deng & Xu, 2014). Under the influence of Confucianism, Hong Kong Chinese mediators have not paid attention to the dilemma of maintaining neutrality and involving their values in the mediation. The above mediators in study tried to justify this practice by saying that involving their values in mediation actually benefited both victims and offenders. However, this understanding was against the findings of Choi & Gilbert' study (2010). Their findings suggested that the bias of mediators could induce the discontent and distrust from victims, offenders, and supporters in mediation. Meanwhile, victims, offenders and supporters would be difficult to develop a sense of trust towards mediators and the process of mediation (Camp & Wemmers, 2013).

Another mediator emphasised the importance of maintaining power balance in mediation at the cost of violating the principle of maintaining neutrality. He stated that it was necessary to exercise his power to solve the conflict between victims and offenders in order to maintain power balance. Otherwise, it is impossible to achieve reconciliation in victim-offender mediations.

We try to maintain a power balance in victim-offender mediation. Both victim and offender feel safe and comfortable to share their stories and understandings on wrongdoings (Frankie).

In mainland China, mediators represent the local governments, disputants and other participants in mediations usually cooperate with mediators and submit to the power of the mediators who represent local governments. From the ideas of Confucianism, it is doing the right thing to submit to the higher positional power, and being tolerant and reasonable (Deng & Xu, 2014).

However, in Hong Kong, mediators in victim-offender mediations are not sent by the government and have no position in the criminal justice system in Hong Kong. It is not a must for victims and offenders to cooperate with mediators and accept reconciliation from mediations. Nonetheless, mediators in the study claimed that victims and offenders normally achieve reconciliation in victim-offender mediations. In this situation, we cannot use the reasons proposed by Deng & Xiu (2014) to explain why victims and offenders comply with mediators in Hong Kong.

Mediators in victim-offender mediation in Hong Kong are social workers and have received their training from universities. Chapter 6 discussed that school social workers were considered as community members because they were familiar with students and were professionals with knowledge. Mediators in victim-offender mediation in Hong Kong, who are social workers, with university training are professionals with knowledge. Ruggiero (2010) claims that disputants (for example, victims and offenders in victim-offender mediation), who come from a small society with little-shared history, limited mutual knowledge and information about the other members, normally demand behaviour uniformity and seek knowledge from professionals. The victim and offender in victim-offender mediation in Hong Kong do not know each other very well even they are classmates. It is the precondition for victims and offenders to cooperate with mediators who are the perfect candidates for providing answers and solutions that victims and offenders need. In Chapter 5, we discussed the hierarchical social order in Chinese society, the individual's roles and expectations of individuals in a group that corresponds with one's hierarchical position in that group. The power and resources a person has according to his or her hierarchical position. When making a decision, those who sit lower on the hierarchy scale are normally expected not to play the

decisive role, they commonly deemphasise their ideas or stand less firmly (Wei & Li, 2013). For mediators in victim-offender mediation in Hong Kong, they occupy a higher hierarchical position because of their profession. Those are the reasons why victims and offenders are willing to comply and cooperate with mediators. The ideas of Foucault on knowledge and power provide us the insight for understanding victim's and offender's willingness to cooperate with mediators. Foucault takes the critical view of knowledge and power and do not focus on the ways in which knowledge systems could function as delivery systems for 'ideology'. Foucault argues more radically that knowledges are themselves forms of power (Foucault, 1991; Hill, 2009). Mediators received professional training and obtains knowledge in the field of social work. Mediators acquire knowledge and control the power. Under the influence of Confucianism, mediators occupy a higher hierarchical position at the same time. Both victims and offenders internalised the Confucian values and accept the hegemony of knowledge, they are willing to cooperate with mediators in victim-offender mediation.

Apology

The mediators pointed out the importance of pre-mediation session for the reconciliation in victim-offender mediation. If offenders do not have enough reflection and sharing, it will be difficult for them to make apology to victims. Without apology, it will be difficult for victims to give forgiveness and achieve reconciliation. In restorative justice, apology or community work are considered typical symbolic reparations, since they supposedly allow to amend the relational bond between parties damaged by crime (Braithwaite, 2000). Apology is often associated with other dynamics such as accountability, remorse and empathy and these are integral part of restorative justice practice (Bolitho, 2012). Apology is indispensable element in restorative justice and in victim-offender mediation.

In order to assist offenders in making apology, mediators might encourage offenders to embrace the self-identities of offenders that are defined by criminal law (Zernova, 2007b). As discussed in Chapter 5, an offer to compensate in money for damages without a clear understanding of right and wrong is considered in Confucianism to indicate no sense of shame. Offenders

who expressed a sense of shame indicated the willingness to return to the ethical relationships, which may assist them to regain social acceptance (Lin, 2015). An apology is a clear way to share the sense of shame in order to regain social acceptance from the viewpoint of Confucianism.

As mediators, we need to understand the opinions of both the offender and the victim in pre-mediation session. If we did not prepare them well in pre-mediation sessions, they might not be able to clarify their concerns in victim-offender mediation. In a conflict, the offender and the victim probably know parts of the story. The victim would want to know why offenders stole his belongings while the offender would want to show his remorse to the victim. After sharing those ideas, the offender would be more willing to make an apology. This process leads to reparation more easily (Ben).

The response of above mediator resonates the findings in recent studies that offenders are primarily responsible for restoring the relationship (for example, Choi & Severson, 2009; Umbreit, 1994) and that offenders can take responsibility in restoration by making apologies to victims (Braithwaite, 1989; Petrucci, 2002) because victims want apologies from offenders (Marshall &

Merry, 1990; Strang, 2002; Strang & Sherman, 2003). The responses and observations from mediators in the study delineates the function of an apology accurately. A successful apology enables participants involved to acknowledge negative emotions and provoke a positive social representation, reinforcing shared norms and increasing social cohesion or improving intergroup relations. A successful apology reinforces the attachment to a shared basic norm and symbolically reintegrates offender and victim in a community (Paez, 2010).

In Goffman's *Relations in Public* (1971), he defines remedial work as either verbal or non-verbal behaviour that might transform the meaning of an offensive act into an acceptable act. Goffman views the apology as a strategic division of the self of sorts:

“An apology is a gesture through which the individual splits himself into two parts, that part that is guilty of an offence and the part that dissociates itself from the delict and affirms a belief in the offended rule... apologies represent a splitting of the self into a blameworthy part, and a part that stands back and

sympathises with the blame giving is by implication, worthy of being brought back into the fold” (p.113).

From Goffman’s theory, the purpose of the apology is to regain moral integrity.

Goffman’s view of apology can enlighten us the importance of apology in victim-offender mediation in Hong Kong and the importance of participation in victim-offender mediation for offenders and their parents in Chinese societies.

As wrongdoings of offenders will damage prestige and status and offenders’ parents, delivering an apology is certainly a way to repair the damage offender have done on themselves and their parents. As discussed in Chapter 5, both offenders and their parents are aware of the issue of 'losing face'. They are very concerned about the comments from onlookers. As discussed in Chapter 6, mediators are reluctant to let community members participate in victim-offender mediations because they want to help offenders and their parents save ‘face’. As discussed in Chapter 7, parents do not want their children (offenders) to attend victim-offender mediations because they are afraid that they need to deal with the embarrassment and 'losing face' much further. In victim-offender mediation, delivering an apology is necessary for offenders and their parents, victims and mediators as well. Offenders make

apology to victims because they want to save 'face' for themselves and their parents

Before offenders make an apology, they must have a sense of shame and remorse. Otherwise, offenders are not able to make a sincere apology. However, not every offender has a sense of shame because he or she may not be aware of the seriousness of his or her behaviour. The pre-mediation session is an avenue to cultivate an offender's sense of shame and induce him or her to give an apology in victim-offender mediation.

This arrangement matches with what Zernova (2007b) described. Mediators have to plan how to induce an emotional response from the offenders in order to achieve the purpose of restoration. One mediator in the study further elaborated why pre-mediation sessions are vital for successful victim-offender mediations. When offenders understood that stealing of a cell phone was not trivial, he would realise that the loss to the victim was not only material loss and might lose their invaluable memories too. Mediators might exercise their skills subtly to encourage offenders to make an apologies to victims.

For example, offenders may think that stealing a mobile phone was not a big deal. In the pre-mediation session, the victim told the offender that he was so worried about the loss of photos, messages and contact numbers of his friends.

(Ben)

For some offenders, after hearing what the victim said and had a sense of shame and remorse; they might still hesitate in giving an apology. The encouragement of parents certainly acts as a catalyst for giving an apology. As discussed in Chapter 7, parents in Hong Kong exercised their power not by coercion but power of persuasion, although parents occupy a higher position in hierarchical social order and usually have a superior power within the family. If parents wanted their children to do something, encouragement would be a way for parents to try to influence the decision of their children. Several studies show that an apology should include some action, such as the return of property (restoration) or reparative behaviour that indicates that the offender is determined to desist from offending (for example, Allan et al., 2010; Slocum et al., 2011; Zechmeister et al., 2004).

However, Choi & Severson's (2009) study and Umbreit et al. study(2001, 2002, 2005) show that many victims consider the symbolic reparation of an apology more or equally important than the receipt of monetary reparation. Choi & Severson (2009) further argue that constructing, delivering and receiving an apology within the restorative justice context is of paramount importance for victims and is a necessity for reintegrating offender into the community. In the victim-offender mediation in Hong Kong, offenders usually deliver an apology and make reparation. For example, in Chapter 7, one mediator (Ben) mentioned that the offender' parents, on behalf of the offender, bought a new phone for the victim. In this study, it has been difficult to say whether an apology is more important than monetary reparation. From experience in Hong Kong, an apology and monetary reparation are indispensable parts in Victim-Offender Mediation.

Parents were supporters and would not speak much during the meeting. When some offenders were afraid of making an apology to victims, encouragement from parents would be very important (Peter).

As mentioned above, offenders are primarily responsible for restoring the relationship and can take responsibility by making apology to victims in victim-offender mediation and other restorative practices (Allan, Beesley, Attwood & McKillop, 2014). Restoration within the community is the basic premises of restorative justice theory that offenders come to think about their behaviour and accept responsibility (Bolitho, 2012). Participants, such as victims and offenders, in victim-offender mediation are engaged in a project of a self-formation set within the normative parameters of restorative justice. Victim discover, under the guidance of mediator, that an apology from the offender helps them to recover personal dignity as much as having the state officially vindicate their perspective that they have suffered grievously. In victim-offender mediation, victims have a chance to reconstitute themselves as reasonable and conciliatory people who merely require that their basic interests in safety and dignity should be met, rather than that punishment should be meted out. Indeed, the willingness to undertake this sort of self-work is often a prerequisite to participation in restorative justice programmes. The response from this mediator (below) confirmed that both victims and offenders had to undergo the project of self-formation.

My understanding of restorative justice is the restorative process. When the mediation is over, both victims and offenders understand each other better. I think this makes for successful victim-offender mediations. In some cases, victims cannot always get the answers they are looking for. For example, victims' mothers in a bullying case would not be satisfied by the answers they get from mediation. It is vital that victims and victims' parents know that offenders apologised sincerely and promised not to continue to bully the victims (Ann).

When offenders have apologised, they have taken responsibility for their action and understood the harm they have caused. The above mediators pointed out that apologies delivered by offenders should be congruent and sincere. This understanding of apology is consistent with the study of Allan, Beesley, Attwood & McKillop (2014). Apologies empower victims to deal with negative feeling concomitant with the experience of a harmful act (Petrucci, 2002) and is a particular way for offenders to take responsibility of their wrongdoings and express remorse for what they have done (Bolitho, 2012).

In restorative justice, every participant joins the victim-offender mediation voluntarily. Victims listen to the offender's words and understand why the offender behaves in this way. Offender make a sincere apology to victims; parents express their support for their children; Victim offer forgiveness to offender. For me, a successful victim-offender meeting is everyone learns something from the meeting (Peter).

The above mediator remarked that an apology was significant in victim-offender mediation and used it as one of the criteria to decide whether victim-offender mediations were successful. On receiving an apology and having the possibility of accepting or rejecting it, the victim experiences an increased perception of control, efficacy and self-esteem. Showing a pro-social attitude and behaviour, the offender accepts and cancels any negative past facets of the self, and also increase their own self-esteem.

An apology, the simultaneous humility of the offender, and the victim's improvement in status, as well as the "gift" of remorse, excuses and regrets from the offender to offended, restores equity in the victim-offender relationship. Apologies validate the claims of victims, who feel that their

suffering has been long ignored or denied has at last been recognised. Apologies allow offenders to 'save face' and thus permitting the acknowledgement of wrongdoings (Goffman, 1971; Páez, 2010). If there is no successful delivery and receiving of apology, victim-offender mediation will be consistent with a retributive justice approach, that is, where the focus is on punishment and stigma (Choi & Severson, 2009).

The opinions of the above mediators reflected that conflict between the victims and the offenders resulted from individual faults. Offender bears the most significant responsibility. If we follow this logic, we may reframe broader social problems as interpersonal conflict and achieve peaceful resolutions in individual cases. From the above case of stealing mobile phones, we could understand this conflict from social-structural inequalities rather than interpersonal conflict (Zernova, 2007b). For mediators in the study, an apology means everything in victim-offender mediation. An apology implies that the offender accepts responsibility and is ready to do reparation while the victim can make amends and move forward.

Discussion

Under the influence of Confucianism, Hong Kong Chinese mediators tend to violate the principle of maintaining neutrality and encourage the victim and the offender to achieve reconciliation. Although mediators are trained social worker, the influence of Confucianism is still inevitable for them. As mediators are professional, victims, offenders and their parents accept this arrangement because they occupy a higher position in hierarchical social order. In Foucault's interpretation, mediators has power to orchestrate victims, offenders, and their parents because they obtain knowledge, which is power in itself.

As mediators are the persons to implement restorative principle in victim-offender mediation, every victim-offender mediation meeting is a translation of restorative justice in daily life. For the previous studies (Baldry, 1998; Bazemore & Umbreit, 2003; Choi & Gilbert, 2010; Umbreit & Greenwood, 1999; Van Ness & Strong, 2006; Zehr, 2002), the adherence of mediators on restorative principle is a way to achieve successful victim-offender mediation. However, in this study, mediators sometimes need to violate some restorative

principle in order to achieve successful victim-offender mediation. In order to induce an apology, mediators have to persuade offenders to accept that an apology is necessary. Mediators will make use of parents, who occupy a higher position in the hierarchical social order, to persuade offenders to deliver an apology. An apology is necessary for victims, and mediators will try their best to achieve successful victim-offender mediation.

If Hong Kong Chinese accept the idea of harmonious society is more important than individual rights and each party does not share equal status, restorative practice in Hong Kong may not return the conflict to the victim, the offender and the community. Restorative practice in Hong Kong is probably a set of subtle techniques of discipline. It tries to shape individual attitudes and personal aspirations through the encouragement from mediators. Finally, victims and offenders embrace particular self-identities that are similar to those identities created by the traditional criminal justice system.

The next chapter will explore the interplay between mediators, victims, offenders, and supporters in pre-mediation session.

Chapter 9 The preparation of victim-offender mediation in Confucian society

The previous chapter reviewed the role of mediator in victim-offender mediation and their understanding of restorative justice in general and neutrality and apology in particular. Under the influence of Confucianism, mediators in Hong Kong sometimes consider them fixer rather than facilitator when they try to appease conflict in victim-offender mediation. While making apology and offering forgiveness, mediators will inculcate the particular self-identity to offenders and victims. Mediators occupy higher position in hierarchical social order and possess knowledge so that victims, offenders and supports are willing to cooperate with them.

The main points of this chapter are the restorative encounters in pre-mediation sessions and see how they interplay between mediators, victims, offenders, and their parents. Mediator plays the role of director and assigns specific role to each participant – victim, offender and parents.

Victim-offender mediation is a front stage for them while pre-mediation session is a back stage.

Previous studies (Gerkin, 2012; Rypi, 2017; Zernova, 2007b) showed that mediators tried to orchestrate every participant to say in a specific way and influence their understanding on the consequences of wrongdoings in order to achieve a restorative outcome. Zernova (2007b) observes that mediators apply certain skills in pre-mediation sessions such as the use of skilful questioning, encouragement and praise, re-phrasing statements, refocusing discussions, invoking feelings of guilt and empathy in order to pressurise offenders to reach agreements and produce specific aspiration and attitudes. Rypi (2017) shares similar observations with Zernova and find that mediators use subtle cues or instruction, including avoiding specific topics, refraining from answering questions in order to achieve a restorative outcome. Goffman (1955) wrote that the preservation of the dignity of members was necessary for many social relationships. In this sense, the function of pre-mediation session is to restore and create social relationships between victims, offenders, and their parents. It is quite natural for mediator to use tactics such as avoiding

specific topics in order to save the 'face' of each participant and cultivate the sense of collective consciousness.

It seems to be a characteristic obligation of many social relationships that each member guarantee to support a given 'face' for the other members in given situations. To prevent disruption of these (social) relationships, it is, therefore, necessary for each member to avoid destroying the others' 'face' (Goffman, 1955). The purpose of pre-mediation session is to prepare the victim, the offender, victim's parents and offender's parent for a victim-offender mediation meeting by informing them of how mediation works in practice and the significance of mediation. For example, each participant needs to show respect and consideration; the offender has to admit his or her wrongdoing; the victim has to forgive offender; both parties have to show willingness to put things right. The mediators help both parties to present person as tailored to a successful future victim-offender mediation encounter and to avoid presenting potentially destructive information about themselves or the other party (Rypi, 2017; Zernova, 2007b). If a mediator finds out that offender refuses to admit their wrongdoing, there will be no future victim-offender mediation meeting.

Durkheim's justice ritual

The idea of justice ritual from Emile Durkheim (1984 [1892]) illuminates the function and meaning of pre-mediation session and make it easy to be comprehended. Durkheim wrote,

'The task of the most advanced societies may therefore be said to be a mission for justice. That in fact they feel the need to tread this path we have already demonstrated, and this is proved also by everyday experience. Just as the ideal of lower societies was to create or maintain a common life as intense as possible, in which the individual was engulfed, ours is to inject an even greater equity into our social relationships, in order to ensure the free deployment of all those forces that are socially useful... Because the segmentary type is vanishing and the organised type developing, because organic solidarity is gradually substituting itself for the solidarity that arises from similarities, it is indispensable that external conditions should be evened out. The harmony between functions, and consequently in existence, is at this price. Just as ancient peoples had above all needs of a common faith to live by, we have need of justice. We can rest assured that this need will become ever more

pressing if, as everything leads us to foresee, the conditions that dominate social evolution remain unchanged' (1984 [1892], pp.321-322).

Durkheim explains the function of justice rituals, like the legal process, as creating a collective consciousness and social cohesion. As he points out, the law and punishment, the boundaries between right and wrong, are not in place for the sake of the criminals. These institutions, which are mainly the trials, are necessary for our collective identity in a dichotomous way. In this case, this means “we” (the law-abiding, good citizens) are against “them” (the criminals).

Durkheim’s conception of the moral domain is extremely broad and no distinction between morality and custom. Legal rules constitute a subset of moral rules while law and morality are too intimately related to be radically separated (Lukes & Prabhat, 2012). For Durkheim, law and morality basically serve the same function for society, i.e. maintaining social cohesion. Law is the most stable and precise element in society and involves some institutionalised means for publicly declaring and enforcing norms. All the essential varieties of social solidarity can be found in law.

Durkheim argues that social integration is sustained by a kind of moral

cement, created and maintained by the enforcement of the law. Durkheim focused on sanctions that is a measure to deal with those persons who violates laws. He developed his idea of mechanical solidarity and organic solidarity based on two broad types of sanction, which are sustained and revealed by distinctive types of law: repressive law and restitutory law. Repressive law focus on punishing the offender while restitutory law focus not on the infliction of suffering but rather on restoring the state of affairs that existed previously. Restitutory law, including contract law, administrative law, and civil law generally, aims to make the victim 'whole' again (Lukes & Prabhat, 2012). There are similarities between Durkheim's theory and Confucianism on social solidarity. In Confucianism, like Durkheim's idea of social solidary emphasise social harmony and social stability. In Confucian, filial piety is used to make social solidarity possible. Confucian relational ethics enables individuals to share whatever wealth or glory is due to their ancestors (Hsu, 1983). Individuals in Confucian society are not allowed to express their personal feelings and ideas without consideration of others. From the view of Confucianism, the hierarchical social order remain unchanged whatever the society change. Therefore, Confucianism underlines the importance of education, which inculcate individual social norms properly.

Contrary to Durkheim, Confucianism treats law as irrelevant to maintain social integration and believes that education is the only way to cultivate correct mental attitudes toward social norms.

For Confucianism, the society is rather static and pay no attention to the relationship between economic development and social stability. On the contrary, Durkheim argues that economic prosperity can disrupt the ability of society to place any limits on human desire, leaving many individuals with insatiable aspirations. During periods of anomie caused either by “economic disasters” or “fortunate crises,” many individuals find themselves unable to satisfy their desires through the means available to them and experience a perpetual state of unhappiness (DiCristina, 2016). Anomie is a condition that knows no limits. The passions of the fatalist are constrained and blocked by the enduring burden of overregulation. For Durkheim, the optimal social regulatory arrangements must lie somewhere between anomie and fatalism. After all, individuals are subject to both inadequate forms of social regulation, with their tendency to anomie, and coercive structural forces, which can lead to fatalistic rationality (Amatrudo, 2015). From the perspective of Confucianism, anomie is unlikely, if not impossible. In Confucian relational

ethics, individuals always know their limits. Individuals cannot live alone without the family and nexus of personal relationships. Individuals are cultivated as being situation-centred in their personal and cultural orientation. Situation-centred individuals tend to: view the world in relational terms, i.e., that no explanation of social phenomena can be complete without knowledge of the facts about individuals; and seek mutual dependence within family members, friends, and acquaintances. For Confucianism, fatalistic rationality can be prevented if the individual obtains a sense of eternity through self-cultivation and through the collective and practical life of the family. Regulations will not become a burden on individuals, as Confucian relational ethics socialises individuals to accept duties and obligations to others and to consider whether the appropriateness of an action depends on their position within the social network. In this sense, individuals know what they should and should not do, with clear guidelines and rules. Problems, difficulties and burdens are shared by the family.

Merton rewrites the concept of anomie, replacing its original sense (related not to a crisis in late modernity and a failure of organic solidarity but to the birth of modernity) with a failure of agreement over legitimacy, in terms of

dominant group goals (Merton, 1993). Merton's primary aim is to discover how social structures exert a definite pressure on individuals to engage in non-conforming conduct. He draws a distinction between culturally defined goals, which he saw as desirable, and the legitimate means of achieving those goals. Whenever goals and means are harmoniously integrated, the result is a well-regulated society. Strain is said to occur where there is a disjuncture between culturally defined goals and the institutionalised means of obtaining them. Anomie occurs within the social structure itself and is a measure of the gap between goals and means in society. Merton is interested in the social causation of anomie whereas Durkheim is more interested in its consequences (Amatrudo, 2015). In Confucianism, the individual, through self-cultivation, should internalise norms and values completely and successfully. Crime is not an option in Confucianism. However, solutions offered by Confucianism come at the cost of independence, which contradicts the individualism that Durkheim treats as invaluable.

Similar to Durkheim, restorative justice emphasises the forming of a collective and moral consciousness by engaging in social justice rituals, but instead of excluding the criminal, the inclusion of the criminal is encouraged.

Goffman's Dramaturgical Theory

Nevertheless, Durkheim still left several questions without answers: Who can forge the law-abiding good citizens and the criminals in a team and form a collective and moral consciousness? What kind of rituals should be involved? How can we perform such rituals? Goffman (1959) provides us with a hint by dramaturgical theory. In theatrical analogy, he describes how the back region, a place without an audience, can be a place where the team can go through their performance and sort out disturbing expressions. The team members who are not seen as expressive enough can be trained or separated from the performance. The actors can also reinforce one another's morale by supporting the impression that the approaching performance will succeed. In restorative practice, the team leader is the mediator and team members are the victims, the offenders, and their parents. The pre-mediation session is the back region which team members can rehearse under the direction of the mediator. In the process, the mediator will exercise their power and skill to complete this ritual.

In a pre-mediation session, mediator prepares victim and offender for the performance that will take place later in the victim-offender mediation. The communication in pre-mediation is secret and subtle. A significant part of the team collusion is found in the system of secret signals through which victim and offender can receive or convey significant information confidentially, as well as get the support that is significant for successful performance (Rypi, 2017). The cues are a contact medium between those who are engaged in the performance and those who help or direct them from behind the scenes (Goffman 1959).

The team leader, mediator, giving the direction and preparing victim, offender, and parents, aims to prevent a meeting where one party is negatively affected by the other party's expressed prejudices or negative and irresponsible attitude. The purpose can be understood as the management of an interaction ritual through which the participants' behaviours follow norms of deference and demeanour related to the particular situation (Goffman, 1967). The purpose can, from a Durkheimian perspective, can be seen to make the offenders share the moral standards of right and wrong through the justice ritual (Durkheim, 1984 [1892]).

The mediator set up a pre-mediation meeting as a rehearsal to prepare the victim-offender mediation meeting and guide the impression management of the offender. As we have discussed Goffman's concept of "face work" (1955) in Chapter 5, people create 'face' as the public-image and may claim to possess some values praised by society. When others recognise this claim, the person gains 'face'. If the claim is rejected, the person loses 'face'. When offenders committed a crime, they and their parents' lose 'face'. A pre-mediation session is a chance for offenders and their parents to create the public-image again. Goffman (1959) write that every individual has a desire to perform one's role well. When an individual takes on an established social role, usually he finds that a particular front has already been established for it. Whether his acquisition of the role was primarily motivated by a desire to perform the given task or by a desire to maintain the corresponding front, the actor will find that he must do both (Goffman, 1959, p.27). Following the logic of Goffman, the victim, the offender and the parents follow the instructions and directions from mediator, because all of them intend to have a good show and excellent performance.

A pre-mediation session is an avenue that the participants concretely imagine and deal with the conflict with the offenders, stigmatising persons, as a “specific and approaching future-set event”. The pre-mediation session also gives a sense of immediacy for all participants (O’Brien 2011: 298) and is also a rhetorical device that allows the participant to get a specific view of the possible outcome (Rypi, 2017). In pre-mediation sessions, the mediator as a director tries to orchestrate the victim, the offender and their parents to understand the crime in a very consistent and specific way so that they will cooperate to make a successful Victim-Offender Mediation meeting.

Goffman’s concept of impression management (1959) helps us to understand what the mediator wants all participants to do in the pre-mediation session. Goffman writes that it is difficult to observe impression management unless we can observe a performer leaving the back region and entering the front region: a performer puts on and takes off of a character while walking between two regions.

One of the most interesting times to observe impression management is the moment when a performer leaves the back region and enters the place where

the audience is to be found, or when he returns therefrom, for at these moments one can detect a wonderful putting on and taking off of character (Goffman, 1959, p.121).

Impression management includes the avoidance of revealing destructive information (Goffman, 1959). Victim-offender mediation is a front region, which offenders, victims, and their supporters present favourable images to each other and turn impression management into identity exploration. Personal identity is not a material thing, to be possessed and then displaced; it is a pattern of appropriate conduct, coherent, embellished, and well-articulated. Mediators play the role of director of victim-offender mediation to ensure that every participant plays their role well. The directing and rehearsing of participant impression management is a significant part of the enactment of the mediator's professional role.

Findings

Pre-mediation session

Follow the idea of Goffman (1959), a pre-mediation session is a form of secret communication that prepares victims, offenders and their parents for the performance that will take place at victim-offender mediation meetings.

Mediators engage in these performances and help victims, offenders, and their parents, or direct them at pre-mediation sessions. Gerkin (2012) found that mediators always tried to persuade offenders to recognise the harmfulness of their actions on their social network.

Mediator prepares every participant according to his or her role. Offender may get extra help from the mediator because they are underage. Mediator in the study mentioned that he prepared transcripts with and for offenders to ensure that they would remember what to say in victim-offender mediation meetings.

In this sense, victim-offender mediation meeting is a performance while the pre-mediation session is a rehearsal of this performance.

In pre-mediation sessions, mediators recorded everything offenders have said and given him a copy of the recording. In victim-offender mediation, offenders could read the recording if they needed. Before victim-offender mediations, we helped the offender reflect on something they did wrong and make sure that they have thought over the wrongdoings. In victim-offender mediation, victims would ask offenders questions, and they would have conversations about the crime (Peter).

In Hong Kong, mediators try to persuade offenders to apologise to their parents. Under the influence of Confucianism, parents in the personal network of offenders play a paramount role, more so than other persons. Under the framework of restorative justice, parents are the most critical stakeholders in 'micro-community'. In pre-mediation sessions, mediators inculcate the ideas of filial piety in the offender's mind and remind them of the importance of parents.

When we ask offenders to give feedback, we encourage them to think of how their wrongdoings affect their parents. Usually, they want to apologise to their parents (Frankie).

Since parents are so important in a personal network of offenders and one of the crucial stakeholders in restorative practice, it is very tempting for parents to take control of victim-offender mediation meetings. One mediator expressed that it is imperative to clarify the role of parents from the beginning. Otherwise, they may dominate the meeting. In some cases, parents are trying to arrange too much, leaving children little chance to have their own say (Claes, 1998; Bradt, Vettenburg & Roose, 2007). Mediators try everything to direct and encourage the management of parents in pre-mediation sessions, which they are expected to do so themselves.

As discussed in Chapter 7, Hong Kong parents occupied a higher position in hierarchical social order and the traditional Confucian culture respected for authority, it would easily translate restorative practice to a preference for authoritative decision making from above (Chan, 2013). Young people in this situation find it challenging to act according to their will. The parents of offenders who have power and seniority in the hierarchical social order could turn the finest moment into the worst moment for young people and their parents. The mediators try to inculcate the ideas of being supporters in the parents.

In pre-mediation sessions, we need to clarify the role of the parents. Parents always want to let their children know how they feel and how the wrongdoings of their children affect them. We have to make sure that parents understand their role as supporters in victim-offender mediation. If they know their roles clearly, they will not dominate the meeting. They will speak less and play the role of supporters well in victim-offender mediation (Gary).

As the mediators occupy higher positional power based on their professional and knowledge (the details has been discussed in chapter 8), parents usually behave according to the opinion of mediators, and they will leave their children to make their decisions. Since parents in Hong Kong are preoccupied with Confucianism, it will be easy for mediators to orchestrate the performance of parents in victim-offender mediation meetings through the exercising of professional power in pre-mediation sessions. Because of child-parent relationship, parents would not coerce their children change decision. If they willing wanted their children to follow their ideas, they would persuade them to do so (For details, please read chapter 7). Pre-mediation session is a significant avenue for mediators to brief the role of parents before mediation.

When parents accept their role as supporter in victim-offender mediation meeting, they will act according to the assigned role.

We would discuss with the parents about their role in pre-mediation session.

Once parents agreed with the arrangement of the meeting, parents would not exert influence on their children (Simon).

One of the essential tasks for mediators is to distribute the roles to each participants in the performance. When parents and offenders do not play their roles correctly, mediators have to do the job of role distribution. When parents dominate the meeting because of their anger and frustration, mediators have to suppress their emotional expression and distribute the role of supporter to them. On the other hand, when offenders do not participate actively with remorse, the mediator has to encourage him to take the initiative and stimulate an appropriate emotional expression. The preparation in pre-mediation sessions is just like what Goffman (1959) said about impression management. Mediators act as the director and try to coordinate the behaviour of offenders and their parents in pre-mediation session, in Goffman's term, backstage.

The first time we met offenders and their parents were at pre-mediation sessions. Offenders' parents were mortified, with their frustration and anger, and usually dominated the pre-mediation sessions while the offenders participated passively. In pre-mediation sessions, we prepared offenders, victims and their supporters for the victim-offender mediation meeting. Parents had to learn how to behave before joining the victim-offender mediation. We were telling them in the pre-mediation session that everyone must have a chance to talk and share and no one could interrupt another's conversation. Afterwards, we briefed them about the procedures of the meeting and the rules they needed to follow in the meeting (Jaffe).

Another mediator expressed clearly the importance of appropriate emotional expression. The offender would need to make an apology and expressed that they wanted to participate in the victim-offender mediation meeting. However, the mediator has the power to discern whether the offender's request is accepted. In some cases, if mediator interpreted that the offender participated in the victim-offender mediation because of the coercion from her father, the mediator would not let offender proceed to victim-offender mediation meeting until the offender showed deep regret and guilt, which is the appropriate

emotional expression. From the response of this mediator, mediators use pre-mediation to train the appropriate behaviours, attitudes and emotions that are suitable for victim-offender mediation (Rypi, 2017; Zernova, 2007b).

In a specific pre-mediation session, when the offender's father dominated the session, we asked the father to stop speaking and informed him that he had to wait until his daughter finished talking according to the procedure. When we asked his daughter, 'What do you want to do?' Her father interrupted her replied and said, 'You need to apologise.' Then his daughter said what she was told. I spoke to his daughter and asked, 'Do you really want to make an apology? You have not made any eye contact with the victim.' We were trying to make sure that the offender wanted to join the victim-offender mediation at her own will. We would not proceed until we were sure that the offender was willing to proceed (Landy).

As discussed in Chapter 9, Hong Kong Chinese mediators accepted the role of fixer rather than the neutral facilitators (Deng & Xu, 2014). Under the influence of Confucianism, Hong Kong Chinese mediators have not paid attention to the dilemma of maintaining neutrality and involving value in the mediation. In Hong

Kong, under the influence of Confucianism, Hong Kong mediators are more accessible to accept their role in pre-mediation session.

Although the core values of Confucianism may not compromise on the principle of restorative justice seriously, mediators allow participants to behave according to Confucianism. The following mediators interpreted that offenders seek advice from their parents as the expression of filial piety. Although mediators do not encourage offenders to seek advice from their parents, they do not suppress them.

Some youth offenders wanted to seek advice from their parents. They pay attention to what their parents say in victim-offender mediation. It reflects that they are obedient to their parents. It is an example of following filial piety (Richard).

For those youth offenders who had a close relationship with their parents, they tended to follow their parents' decision. It reflects the influence of filial piety in Confucianism (Tina)

As discussed in Chapter 7 about the issue of filial piety, most mediators interpreted filial piety as reciprocal filial piety, which focused on children providing emotional, physical and financial support to parents in gratitude for parents' devotion in raising them (Leung, Wong, Wong & McBride-Chang, 2010; Ting, 2009). However, when mediators mentioned that youth offenders seek advice or follow their parents' decision, they thought that reflects filial piety, which should be understood as authoritarian filial piety (Chen, 2014; Leung, Wong, Wong & McBride-Chang, 2010). From this example, we can see that mediators have an ambiguous and ambivalence understanding of Confucianism (Cheung, Chan, Chan, King, Chiu & Yang, 2006).

When we consider the following case about shop theft, we see how mediators reframe from wider social problems in interpersonal conflict. The mediator mentioned below understood shop theft as the conflict between the shopkeeper and the youth. If we follow this idea, an apology can restore the relationship between the shopkeeper and the youth.

I dealt with a case of shop theft. A youth stole items from the shop. Before the victim-offender mediation, this youth was afraid to go to the same shop. The offender felt that others were watching him in the shop. When he attended victim-offender mediation, he admitted his wrongdoing and made an apology to the shopkeeper. He was remorseful for what he had done. After mediation, he felt comfortable to go to this shop again. For me, it was a successful victim-offender mediation (Edward).

Shop theft certainly is not behaviour that should be encouraged and tolerated. However, shop theft could reflect a more comprehensive social problem such as wealth inequalities, unemployment and other social ills. If we deal with the problem in this way, we may personalise the social problem rather than solve it (Crawford, 2002; Zernova, 2007b). Since this study did not observe pre-mediation directly, it was difficult to determine whether the offender in this shop theft case is an individual problem or social problem. However, from the interview with the mediator, we find that mediators tend to simplify this issue and personalise the problem as the problem of the offender.

Pre-mediation session as a healing process

Since the pre-mediation always involves offenders and their parents, different mediators expressed that pre-mediation sessions are also a healing process for parent-child relationships. A mediator pointed out that parents and children could foresee a brighter future and could have a better parent-child relationship after the preparations in pre-mediation session.

The pre-mediation session is a beginning to restoring their relationships. We help them review what they have done; understand the strengths and potentials of the offenders. Parents assist this process thoroughly. We hope that they can lay down everything after the meeting and concentrate on what they will be able to do in the future (Tina).

From this mediator' response, we can see that pre-mediation sessions are backstage that mediators can teach them to understand some issues from a particular angle. For example, the mediator encouraged the offender to think about the impact of their wrongdoings on parents; the mediator could also give the layout of what parents should do. The mediator's response confirmed what

Goffman idea (1959) on front stage and back stage. A successful victim-offender mediation (front stage) a series rehearsal coordinated by mediator in pre-mediation session (back stage) to get every participant ready. Offender always get additional assistance from mediator, because offender need to show genuine remorse in order to make a successful victim-mediation possible.

In the victim-offender mediation, we have a high level of parents' participation. When they participated in the pre-mediation meeting and victim-offender mediation, parents talked about their feelings. Their children would know their wrongdoings and know how their behaviours affected their parents. Meanwhile, parents could be their supporters, and the children would understand how much their parents love them (Edward).

Victim-offender mediation is a chance for the restoration of the parent-child relationship. Zernova (2007) observed that the majority of offenders and offender supporters did not interpret conferences as punishment. Similarly, most victims and their supporters felt that conferences were not punishments. In this sense, the mediator cultivates a sense of closeness between offenders

and parents because they have chances to know the feelings of each other. After the pre-mediation session, both parents and offenders knew the rules and their role in victim-offender mediation meeting. Without a feeling of punishment, pre-mediation session and victim-offender mediation provide a chance to restore parent-child relationships (Bradt, Vettenburg & Roose, 2007).

Parents as supporters can be a healing process. Before attending victim-offender mediation, parents and children might not have good communication for a long time. In the meeting, we ask for the details of the crime the offenders have committed. Parents will understand how their children feel and become proper parents again (Helen).

The following mediator remarked clearly that the pre-mediation session would repair and restore the parent-child relationship as offenders showed that they care about their parents and parents would encourage their children to attend victim-offender mediation. This mediator treated the this 'showing of care' as a sign of restoration in the parent-child relationship, which reflects filial piety that

lies in the heart of the parent-child relationship in Hong Kong (Cheung, Chan, Chan, King, Chiu & Yang, 2006; Ting, 2009).

When I asked for feedback, the offenders usually looked at their parents before answering. If they did not care for their parents, they would not do so (Richard).

Usually, parents would encourage their children to participate in victim-offender mediation when their children are hesitant to make a decision.

Parents will not force them to join (Mat).

Discussion

In the restorative justice process, mediators present themselves as impartial and the mediation as the participants' process, which conceals a quite dominant director role of mediators at the pre-meeting. Durkheim's justice ritual (1984 [1892]) reminds us to understand victim-offender mediation from its ritual and its meanings for society. Both Confucianism and Durkheim's theory underlines the importance of social solidarity and social stability.

Meanwhile, Goffman's Dramaturgical Theory (1959) enlighten us how to understand every move in pre-mediation session and states that impression management is inevitable in human lives. The victims, offenders, and their families are encouraged and are orchestrated by mediators to adopt proper roles and appropriate emotional expressions. Mediators encourage victims and offenders to adopt particular mentalities that offenders bear the most significant responsibility and ignore the possibility that crime is a result of social problems. The victim-offender mediation and pre-mediation session were a consequence of careful preparation and skilful management of the process by mediators.

Under the influences of Confucianism, participants are willing to accept such an arrangement because of the acceptance of higher positional power and 'face-saving'. Filial piety seems like a "backdoor" for parents to influence the decision of their children. As restorative justice emphasises the equality for participants, the acceptance of filial piety as a justification for power imbalance seems to threaten the restorative practices.

Whether victim-offender mediation helps to integrate offenders into society is questionable. Mediators in pre-mediation sessions and victim-offender mediation seem to maintain – and contribute to – the construction of a “we vs them” dichotomy, and no other possibilities are introduced or explored. If restorative practice reinforces the dichotomy in traditional criminal justice, the principle of restorative practice may be lost. However, Mark Umbreit (1995), who is one of the leading scholars in restorative justice theory, noted twenty years ago that this is also a concern for the mediators: “power imbalance is a major concern to most mediators.” He believed that a pre-mediation session is a strategy for attempting to balance power in the context of age and communication differences. Instead of adjusting or “protecting” the offender or victim, the mediators could perhaps follow Christie’s (2004) suggestion to separate the criminal act from the person who committed the act. The Victim-Offender Mediation intends to create a shared sense of morality and enforce social bonds, in the same spirit as Durkheim’s consensual view of society. In Durkheim’s theory ([1892] 1984), the criminal is not included in this moral and social community, which is something that the restorative justice movement is trying to change. The pre-mediation meeting is the backstage

arena where moral boundaries are initiated as well as negotiated and questioned.

Chapter 10 Conclusion

As Hongkongers, we always face the problem of identity. In the eyes of mainland Chinese, we are not fully Chinese; in our own eyes, we are not entirely westernised. In terms of our ethnic origin, we are undoubtedly Chinese. Cantonese is our mother tongue, although we speak English and Mandarin (Putonghua) when necessary. We have family gatherings at Chinese New Year and mourn our ancestors at Qingming Festival (Tomb-sweeping Day) while we also celebrate Christmas and Easter. As a former British colony, we have borrowed from British culture and transformed it to suit local needs and preferences. For example, the Hong Kong Chinese took British tea and created Hong Kong milk tea, which is different from both British tea and Chinese tea. In the eyes of outsiders, this kind of tea is neither British nor Chinese. In this study, restorative justice and Confucianism are like Hong Kong milk tea. As we discussed in the history of restorative justice (Chapter 3), restorative justice and its practices originated in western countries such as the United States, Australia, Canada and New Zealand. Hongkongers have learnt restorative justice from these places and

transformed it into something that is different from its origin. Confucianism, as discussed in Chapter 2, has also been transformed by Hong Kong Chinese to fit the local context.

It is worthwhile to stress the main points flowing from the previous chapters. A simple repetition of each chapter's conclusion would be redundant; instead, I will synthesise them into several themes and consider the answers and questions integratively (Guest, MacQueen & Namey, 2012). Here are the research questions this study intended to answer:

(1) How do social workers in Hong Kong understand Confucianism in general, and hierarchical social order, 'face', shame, and filial piety in particular?

(2) From the perceptions of social workers in Hong Kong, under the influence of Confucianism, who are the macro-community members and what is the role of parents as micro-community members in victim-offender mediation?

(3) How do Confucian relational ethics, filial piety, shame and Confucianism influence the attitudes of social workers as mediators towards the philosophy and practice of restorative justice in victim-offender mediation?

Confucianism and Restorative Justice

Confucianism is fundamentally about the establishment of social order based on a set of hierarchical relationships. For Confucianists, the ideal is a harmonious and hierarchical society, in which everyone know his or her proper place and duties (Yao, 2000). In Confucian society, crime is not an individual issue. When a youth offender commits a crime, responsibility for the crime extends beyond the individual youth. Parents will be held responsible for not teaching their child better and will 'lose face' (Hwang, 1987).

Restorative justice theories reiterate the role of victims and offenders as key players and stress that an individual's rights must be protected and respected. The emphasis on participation, empowerment, responsibility, restoration and related principles ensures the protection of individual rights (Lemley, 2001; Zehr, 2002). However, Confucianism emphasises relational ethics and

hierarchical social order. The individual is considered a dependent member of the family, and the individual's rights should not exceed or supersede the family's reputation (Hsu, 1983; Yao, 2000).

Confucianism thus has a different understanding and expectation of how to cope with crime. It relies more on families and communities instead of victims and offenders themselves. In Confucianism, individuals are persons of relational self (Ho, 1976, 1993; Hwang, 1987; 2012). Such a conception of relational self does not simply mean that building personal character in relational ethics is the way of making humans human. Confucian relational ethics mainly consists of Ren (benevolence), Yi (righteousness), and Li (propriety) (Yao, 2000). This presumes that individuals will live up to their hierarchical role expectations and obligations in the family through lifelong self-cultivation. It also shapes Confucian personhood in a moral and interdependent sense, with no necessity for a distinct boundary between self and others, particularly family members. Therefore, when it comes to the resolution of crimes or conflicts, individuals are not free and independent persons. Family hierarchy and inseparable family connections mean that parents must be one of the major players at victim-offender mediation and

cannot be relegated to the role of supporter.

Although there are similarities between Confucianism and restorative justice, such as an emphasis on restoring relationships, the core assumptions between them are different and sometimes contradictory. For example, from the viewpoint of Confucianism, an individual is located in both a family hierarchy and a social hierarchy. This position will affect the individual's judgments about right and wrong. It is contradictory to the assumptions of restorative justice, such as equality for every individual. Mediators in this study were aware of the potential inconsistencies and tension between core values of Confucianism and restorative justice. They reinterpreted some ideas of Confucianism, selectively practiced Confucian tradition, insisted on practising restorative value and reinterpreted the Confucianism or even abandoned certain principles in order to avoid these inconsistencies and tension.

'Face', Shame, Hierarchical Social Order and Filial Piety

In Confucian societies, 'face' is closely linked to the individual's status in

his/her interpersonal network. 'Face' can be gained by performing social roles that are well recognised by others. 'Face' can be lost when one member is criticised and humiliated for acts that are not acceptable according to social norms (Hu, 1994; Hwang, 1987). A moral failure, which implies a defect in the self-cultivation advocated by Confucianism, is more likely to cause a sense of 'losing face' than a failure concerning one's capabilities. People who engage in behaviours related to moral failures should feel a sense of shame as a result (Ho, 1993). 'Face' is never a purely individual thing and it must be considered in relation to others in the social network. 'Losing face' has been viewed as having serious implications for one's self-esteem and moral decency (Chan, 2012; Ho, 1993). For Hong Kong Chinese, shame and 'face' are still relevant in understanding their reactions to crime. Specifically, the fear of 'losing face' is a key hurdle to Hong Kong Chinese participating in restorative justice. Also, people with higher educational attainment and social status are more reluctant to join restorative practices because they have more 'face' to lose. When we reconsider the argument between Vagg (1998) and Wong (1999) on the nature of shaming in Hong Kong Chinese society, and Braithwaite's reintegrative shaming theory, we have to put this question in the context of Confucianism. Braithwaite's reintegrative shaming theory is not

designed for Confucian societies, e.g., Hong Kong. The main difference between Vagg's (1998) and Wong's (1999) understanding on the nature of shaming is whether shaming should be considered an isolated concept or connected to Confucian relational ethics. Viewed with the responses of the mediators in this study, Vagg's disintegrative understanding of the nature of shaming provides us with a more realistic picture about the relationship between shaming, 'losing face', and social prestige in Confucianism. Wong stated that filial piety could socialise adolescents into law-abiding citizens – but he had not paid enough attention to the way Hong Kong Chinese have reinterpreted filial piety away from its traditional meanings. Hong Kong Chinese understand filial piety as love, care and repayment to parents rather than respecting parents as the sole authority in the family.

Mediators use shame as one way to motivate youth offenders to join victim-offender mediation. The 'losing face' of parents is another reason for youth offenders to participate in victim-offender mediation. The participation of youth offenders in restorative justice means that they are willing to take the responsibility and initiative to repair and restore relationships, especially those in their personal network. Youth offenders show remorse for their

wrongdoings in order to save their status and self-esteem.

Mediators, like other Hong Kong Chinese, tend to understand filial piety as reciprocal filial piety. However, it does not mean that mediators refuse to accept the hierarchical social order. Some of them even said that a hierarchical social order is good because it can replace law and make people clear about their place in society. Several mediators were aware of the tensions between the core values of Confucianism and restorative justice; therefore, they practiced Confucian tradition selectively. They insisted on practicing restorative values and reinterpreting Confucianism in order to solve the tension. This reflects the ambiguous attitude of Hong Kong Chinese towards Confucianism: they select the useful parts while reinterpreting and ignoring the less useful parts.

Macro-community, Micro-community & Confucianism

Confucianism and its' view on the role of the individual certainly influences the way mediators understand macro-community and micro-community.

Confucianism treats individuals as persons of relational self, where individuals

live up to their hierarchical role expectations and obligations in the family. Ren (benevolence), Yi (righteousness), and Li (propriety) and filial piety are the fundamental principles to put individuals in families and social networks. Social harmony is preserved when all parties in a social situation behave properly. One meaningful way to maintain a harmonious relationship is to accept and respect each person's need to maintain his or her 'face'. When mediators were asked whether community members should participate in victim-offender mediation, they remarked that the age of offenders made this consideration more complicated, since all youth offenders participate in victim-offender mediation meetings are under the age of 18. The mediators expressed clearly that the first priority is the privacy of offenders. They said it was suitable, however, to let teachers attend the victim-offender meeting as a member of the macro-community because many of the youth offenders had committed their offences in schools. Teachers were seen as the most viable option for representing the macro-community. The role of teachers is special in Chinese culture because Confucianism treats teachers as fathers. This unique role reflects the social order of Confucianism, which is based on a set of hierarchical relationships within a hierarchical social order. Although teachers are not members of the kinship system, their roles are similar to the

role of fathers and older family members. Teachers enjoy this special status because they are quasi-kin members in the hierarchical social order. In this sense, the presence of teachers in victim-offender mediation is significant because they function as senior members of the family to support offenders. The participation of teachers means everything for offenders: the acceptance extended by teachers helps offenders reintegrate into their immediate community, i.e., the school community (Braithwaite, 1989; Gerkin, 2012). From the viewpoint of mediators, the victim-offender mediation provides a chance for teachers to understand both offenders and victims more thoroughly. If teachers do not attend the victim-offender mediation, their understanding of offenders and victims will be based only on classroom interactions; they will remain unaware of the backgrounds of victims and offenders. In this sense, victim-offender mediation can repair relationships between offenders and teachers as well as relationships between victims and offenders. However, in most victim-offender mediations, it is difficult to get consensus from different parties on introducing teachers as members of macro-community. Principals and school authority do not always let teachers participate in victim-offender mediation meetings. In reality, it is difficult to involve teachers in victim-offender mediation.

Although classmates are indeed members of macro-community, social workers had reservations about letting classmates participate in victim-offender mediation. They thought it was a good chance to educate the general public about restorative justice, but they were not sure whether offenders could cope with meeting a number of strangers. This reservation reflects the influence of Confucianism, i.e., that classmates are both strangers and not of higher status in the hierarchical social order. That is why classmates are not qualified to attend the victim-offender mediation meeting.

Police officers have no personal relationship with offenders and victims but occupy a superior position in the hierarchical social order, so mediators were willing for police officers to be community members in victim-offender mediation. This was because police officers are government officials, who occupy a higher social status in Confucianism, and their presence represents the power of the state. The privacy of offenders and protecting offenders from a stressful environment is more important on the agenda of social workers and also becomes an obstacle for the participation of community members in restorative justice in Hong Kong. For these Hong Kong mediators, putting offences in context is not a reason to let strangers as community members

participate in restorative justice meeting, but police officers' presence is seen as more worthwhile than that of other strangers.

Mediators in Hong Kong have a unique interpretation on the criteria for macro-community members. The primary objective for the participation of macro-community members is to represent the interests and concerns of the larger society, which will help offenders reintegrate into society. In order to do so, macro-community members should offer kind words, emotional support and forgiveness, and take steps towards the reintegration of the offenders involved in pre-mediation and victim-offender mediation meetings. Macro-community members represent the community's concerns and needs, and they speak collectively as a community voice for forgiveness or reintegration (Gerkin, 2012). They should have no personal relationship with victims and offenders. The responses given by the mediators in this study tacitly and subtly reflected how they have been influenced by Confucian relational ethics, which emphasises that everyone lives in a personal nexus and wrongdoings will disturb this nexus. Reconciliation and reparation should be dealt with by the people in the network, and the involvement of macro-community members will certainly disturb this network (Yao, 2000).

In Hong Kong, the majority of Hong Kong Chinese live in high-rise apartments and are used to living in an overcrowded city with strangers. However, under the influence of Confucianism, Hong Kong Chinese always keep a distance from strangers, even neighbours. Though Hong Kong Chinese are living in an environment with many opportunities to interact with others, it is difficult to cultivate a sense of community because of the influence of Confucianism (Adorjan & Chui, 2014). This unique understanding of community members will probably lead to victim-offender mediation without the involvement of macro-community members. Since restorative justice theories give a prominent role to the macro-community in the response to crime, its participation is integral to success, and the absence of macro-community will lead to the question of whether restorative justice principles have been properly implemented in victim-offender mediation (Gerkin, 2012).

As members of the micro-community, the role of parents (both as supporters and as victims) is essential: the presence of parents can be a powerful incentive for their children to attend victim-offender mediation. Parents as members of micro-community are certainly the supporters of their own children (whether victims or offenders). Participation in mediation is a way for

parents to own the restorative process and benefit from this ownership. The role of parents is different from that of other supporters because of the unique parent-child relationship. Parents are the primary socialisers for their children, and when children do something wrong, parents have a moral responsibility for their wrongdoings. Meanwhile, parents are considered to be an irreplaceable resource for young offenders who need the input and support of their parents, both during the conference and afterward, in fulfilling the commitments that have been agreed to.

Hong Kong Chinese parents face the dilemma of being both parents in a Confucian society and supporters in victim-offender mediation. Being parents in a Confucian society, parents know that they occupy the highest position in the family and are responsible for their children's wrongdoings. However, they know that it is inappropriate for them to force their children into victim-offender mediation. They try to change their children's decision by persuasion in order to save 'face'. In victim-offender mediation, they play the role of supporter, but due to the unique nature of the parent-child relationship, they are unlike other supporters from the micro-community. They are struggling between being parents who are responsible for their children and being supporters who

support them without question or reservation. The reactions of victims' parents and offenders' parents are quite different. In Hong Kong, victims' parents are not afraid of the gaze of onlookers – they want to claim back their children's rights. Offenders' parents, however, want to protect their children and thus may refuse to participate in victim-offender mediation. But in Hong Kong, victim-offender mediation meetings are a key opportunity for offenders to recognise their wrongdoings and apologise to their parents.

Role of Mediator and Restorative Justice

Under the influence of Confucianism, Hong Kong Chinese mediators tend to violate the principle of maintaining neutrality – they subtly encourage victims and offenders to achieve reconciliation. Indeed, in Chinese societies, mediator are traditionally assertive and directive (Wang et al. 2007).

Although mediators are trained social workers, the influence of Confucianism is still inevitable. But, since mediators are professionals, victims, offenders and their parents accept this arrangement because it is an acceptable social norm in Confucianism. As mediators are the persons to implement restorative

principles in victim-offender mediation, every victim-offender mediation meeting is a translation of restorative justice into daily life. In Hong Kong, mediators sometimes need to violate some restorative-justice principles in order to enable successful victim-offender mediation. For example, in order to induce an apology, mediators have to persuade offenders to accept that an apology is necessary. Mediators will thus make use of parents, who occupy a higher position in the hierarchical social order, to persuade offenders to deliver an apology, which is something necessary for victims and thus desirable for mediators to achieve.

Through these strategies, mediators help victims, offenders, and their parents, or direct them in pre-mediation sessions. Under the influence of Confucianism, parents of offenders play a paramount role. Under the framework of restorative justice and Confucianism, parents are the most critical stakeholders in the micro-community who have been harmed by the crime.

Mediators play the role of the director in victim-offender mediation to ensure that every participant plays his/her role well. The directing and rehearsing of participant impression management is a significant part of the mediator's

professional role. Mediators apply specific skills in pre-mediation sessions such as the use of skilful questioning, encouragement and praise, re-phrasing statements, refocusing discussions, invoking feelings of guilt and empathy in order to subtly pressurise offenders to reach agreements and produce specific aspirations and attitudes.

As mediators occupy a position of more power, parents usually comply with their suggestions, even opposing their children if necessary. It is relatively easy for mediators to orchestrate the performance of parents in victim-offender mediation meetings through the exercising of professional power in pre-mediation sessions. When parents and offenders do not play their roles adequately, mediators have to do the job of role distribution. If parents dominate the meeting because of their anger and frustration, the mediator has to suppress their emotional expression and distribute the role of supporter to them. On the other hand, when offenders do not participate actively with remorse, the mediator has to encourage them to take the initiative and stimulate them to produce appropriate emotional expressions. For example, if the mediator observed that the offender was participating because of coercion from her father, the mediator would not let the offender

proceed to an actual victim-offender mediation meeting until the offender showed deep regret and guilt, i.e., the appropriate emotional expressions.

Under the influence of Confucianism, participants are willing to accept such an arrangement because of the acceptance of higher positional power and 'face-saving'. Filial piety seems like a 'backdoor' for parents to influence the decisions of their children. However, as restorative justice emphasises the equality of participants, the acceptance of filial piety as a justification for power imbalance seems to threaten the restorative practices.

In the restorative justice process, mediators present themselves as impartial and the mediation as belonging to participants, which conceals the quite dominant director role of mediators at the pre-meeting. Restorative justice emphasise reconciliation, restoration and restitution, but these core values may force mediators to focus on successful victim-offender mediation meetings. In order to do so, mediators sometimes have to encourage victims and offenders to adopt particular mentalities that offenders bear the most significant responsibility and ignore the possibility that crime is a result of social problems. The victim-offender mediation and pre-mediation sessions

are a result of careful preparation and skilful management of the process by mediators.

Whether victim-offender mediation helps to reintegrate offenders into society is questionable. Mediators in pre-mediation and victim-offender mediation sessions seem to maintain – and contribute to – the construction of a ‘we vs. them’ dichotomy, with no other possibilities introduced or explored. If restorative practice reinforces the dichotomy of traditional criminal justice, the principles of restorative justice may be lost. However, Mark Umbreit (1995), one of the leading scholars in restorative justice theory, noted twenty years ago that this is also a concern for mediators: ‘power imbalance is a major concern to most mediators.’ He believed that the pre-mediation session is a strategy for attempting to balance power in the context of age and communication differences. Instead of adjusting or ‘protecting’ the offender or victim, the mediators could perhaps follow Christie’s (2004) suggestion to separate the criminal act from the person who committed the act. Since the goal is reintegration into society, the victim-offender mediation attempts to create a shared sense of morality and enforce social bonds, in the same spirit as Durkheim’s consensual view of society. In Durkheim’s theory ([1892] 1984),

the criminal is not included in this moral and social community, which is something the restorative justice movement is trying to change. Durkheim argues that social integration is sustained by a kind of moral cement, created and maintained by the enforcement of the law. He focused on sanctions that is a measure to deal with those persons who violates laws. Contrary to Durkheim, Confucianism treats law as irrelevant to maintain social integration and believes that education is the only way to cultivate correct mental attitudes toward social norms.

The pre-mediation meeting is the backstage arena where moral boundaries are initiated as well as negotiated and questioned. If Hong Kong Chinese accept the ideas that a harmonious society is more important than individual rights and that each party does not share equal status, restorative practice in Hong Kong may not in fact return the conflict to the victim, the offender and the community. Instead, restorative practice in Hong Kong may have a set of subtle discipline techniques. It tries to shape individual attitudes and subjective aspirations through encouragement from mediators. Victims and offenders end up embracing particular self-identities that are similar to those created by the traditional criminal justice system. Under the influence of

Confucianism, it is relatively easy for Hong Kong Chinese to accept power imbalance and role distribution (from mediators) in victim-offender mediation meetings. Although restorative justice principles state the importance of equality between victims, offenders, and community members, it is much less of a consideration for Hong Kong Chinese.

Though it is true that Hong Kong Chinese do not entirely embrace the idea of Confucianism, some of its core values still affect their understanding of their social world. Community participation is essential in restorative justice practice; however, Hong Kong Chinese tend to understand the concept of community from the viewpoint of a personal network that will exclude community members who have no personal relationships with victims and offenders. This understanding of community may further hinder the development of restorative justice in Hong Kong.

Whether offenders and victims can reach an agreement voluntarily without the influence and interventions of others is questionable. In victim-offender mediation meetings, parents may try to influence the decisions of their children (whether offenders or victims), and mediators certainly exert their

power to stop parents' overstepping. However, there is no mechanism to check and balance the mediator's power in meetings. Mediators orchestrate the proper roles and behaviours of all participants, and every participant cooperates with mediators. Restorative justice theorists propose that democratic participation is a counterbalance to ensure that no single participant dominates restorative encounters and practices. This seems impractical for victim-offender mediation meetings in Hong Kong.

The implementation of victim-offender mediation in Hong Kong is an example of how Hong Kong Chinese neither completely follow Confucianism nor completely embrace the principles of a "foreign" system (restorative justice). On the one hand, mediators and participants in Hong Kong recognise and understand the rationale and principles of restorative justice; on the other hand, they adopt Confucian ideas as they re-interpret the core values of restorative justice.

Feasibility of Restorative Justice in Hong Kong

Cain (2000) once wrote that 'the deep presumption of western theories may

be harmful to non-western consumers of them' (p. 239) and reminds us that there are always differences in understandings for people from different cultural backgrounds. The findings of this study imply that the application of restorative justice in Hong Kong is a compromise between Confucianism and the principles of restorative justice. Mediators in Hong Kong certainly understand the principles clearly. When they apply these principles in victim-offender mediation meetings, they need to decide on how to compromise. If they want to achieve a restorative outcome, they may sacrifice some restorative principles. During interviews, the majority of mediators admitted that restorative outcomes are important. In this sense, the feasibility of restorative justice is possible if we focus on a restorative outcome. Some critics may ask, 'Is it really restorative justice if it doesn't follow restorative principles?' This leads us back to the basic question: 'What is restorative justice?' If the emphasis is on the restorative process, restorative justice may not be feasible in Hong Kong. However, if the emphasis is on a restorative outcome, restorative justice in Hong Kong is undoubtedly feasible.

Limitation of the study and future study

This study interviewed only one group of stakeholders – mediators – involved in restorative justice. Although it is important to discern these mediators' understandings of Confucianism and restorative justice, the story of restorative justice is a never-ending one. For future study, direct observations on victim-offender mediation (and the pre-mediation sessions) are needed, though this would be difficult because offenders are underage. The role of mediators in victim-offender mediation should be further explored and discussed through direct-observation. The wordings and skills mediators used in victim-offender mediation definitely reflect their understanding of Confucianism and restorative justice. When researcher have two sets of data of mediators' understanding of Confucianism and restorative justice from interview and direct observation, it will be very meaningful and important whether the discrepancy exists between two sets of data. There will probably be another opportunity to study the influence of Confucianism on this discrepancy. Meanwhile, direct observation can provide valuable information on how the interaction between offender, victim, parent and mediator.

Besides direct observation, interviews with offenders, victims, and their parents are needed to better understand the perspectives of other stakeholders. The research on other stakeholders in victim-offender mediation in Hong Kong is limited. It is worth to study and see whether they get benefit from victim-offender mediation. The pre-mediation session is another focus for future study. Since pre-mediation is an essential stage for successful victim-offender mediation, it is important to know how mediators prepare participants for pre-mediation sessions. Meanwhile, both Durkheim's theory and Confucianism emphasize social solidarity and social stability. It is necessary to conduct empirical research to see whether Durkheim's theory or Confucianism can provide better understanding of Chinese societies.

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Appendix 1

THE FEASIBILITY OF RESTORATIVE JUSTICE IN HONG KONG: A STUDY OF THE POLICE SUPERINTENDENTS' DISCRETION SCHEME IN HONG



You are being invited to take part in a research project undertaken by Hungkei Lo for the qualification of PhD at Middlesex University. Before you decide, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask us if there is anything that is not clear or if you would like more information.

The purpose of the study: Restorative Justice is a progressive and a holistic approach to deal with crime in society and is a global movement for transforming legal justice. Although restorative justice has not been installed in the statutory criminal justice in Hong Kong, Security Bureau and related bureau claimed that there have similar elements and practices in it. The Police Superintendents' Discretion Scheme is one of these similar elements and practices. In this study, I intend to explore whether Confucianism is conducive to the implementation of Restorative Justice in Hong Kong. The Police Superintendents' Discretion Scheme will be used as an example to discuss the possibility of developing restorative justice in Hong Kong. The study will use interviews to gather the required information.

Why have I been approached? I would greatly appreciate your involvement in the project, through participation in an interview. I believe that your experiences will shed valuable light on the project's aims.

Do I have to take part? It is up to you to decide whether or not to take part. Even If you decide to take part, you are still free to withdraw at any time and without giving a reason.

What will happen to me if I take part? I will ask you to participate in an individual interview. The length of the interview will be determined by yourself, but as a guide, we may expect the average interview to last for a duration of approximately one hour. In the interview, we will ask you some questions relating to your experience of work related to restorative justice. In the interests of accuracy and fairness, the interview will be recorded, transcribed, anonymised, archived and securely stored.

Will my taking part in this study be kept confidential? All information that is collected about you during the course of the research will be kept strictly confidential. The ground rules for maintaining confidentiality and anonymity will be established on commencement of the interview. Any information about you which is used will have your name and address removed so that you cannot be recognised from it. All data will be anonymised (personal identifiers will be removed and replaced with pseudonyms), stored, analysed, reported and archived in compliance with the UK Data Protection Legislation, the ethical regulations of the University of Middlesex

What will happen to the results of the research study? The results of the research will be disseminated via a thesis, and the publication of papers within appropriate academic journals.

Who has reviewed the study? The project, in all its elements, has been reviewed and supported by the Middlesex University, School of Health and Social Sciences, Research Ethics Committee.

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Appendix 2

THE FEASIBILITY OF RESTORATIVE JUSTICE IN HONG KONG: A STUDY OF THE POLICE SUPERINTENDENTS' DISCRETION SCHEME IN HONG KONG



CONSENT FORM

I..... confirm that I have read and understood the information sheet and that I agree to participate in this research project. I understand that I can withdraw at any time.

I understand that:

- the research data will be completely anonymised, with all participants' personal identifiers (name, residential location, place of employment etc) being changed to protect confidentiality
- the anonymised data will be archived and securely stored;
- the results of the research will be disseminated via a thesis, and the publication of papers within appropriate academic journals.

Signed:

Date:

Contact for further information

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Appendix 3

Questionnaire:

The Feasibility of Restorative Justice in Hong Kong: A Study of the Police Superintendents' Discretion Scheme in Hong Kong

Researcher: Mr. Lo Hung Kei, Middlesex University, The Burroughs, London, NW4 4BT

1. How old are you? years

2. Are you?: married cohabiting or single (please tick the box)

3. What is your highest level of educational qualification (please tick the box)?
 Diploma Higher Diploma Associate degree
 Bachelor's degree Postgraduate degree

4. How long have you worked as social worker? years

5. How long have you worked for the service related to restorative justice? years

6. What is your job title?

7. How long have you worked for this job? years

8. How would you describe your religious status?

Practicing Christian (Protestant/Catholic)
Non-practicing Christian (Protestant/Catholic)
Buddhist
Muslim
Agnostic
Atheist
Other – Please specify.....

Contact details:

Name.....

Tel. number.....

E-mail address.....

Appendix 4

Interview Schedule

1. Would offenders make reconciliation with victims because they wanted to 'save face' of their parents?

2. Would victims make reconciliation with offenders because they wanted to 'save face' of their parents?

3. Did offenders think that their parents felt shame in what they did?

4. Confucianism emphasises respecting seniority and respecting parents.

Did parents get more power in Victim-Offender Mediation under these cultural values?

5. When there was a disagreement between offenders and their parents, what would you do?

6. When there was a disagreement between the victims and their parents, what would you do?

7. What role did mediators play in victim-offender mediation?
8. Please share your understandings on restorative justice with me.
9. Please share your understandings on Confucianism with me.
10. How does Confucianism affect you when practising the ideas of restorative justice in Victim-Offender Mediation?
11. In your mind, what is the most successful victim-offender mediation?
12. Except for mediators (social workers), victims, offenders and parents of victims and offenders, who should join victim-offender mediation?