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Conference Proceedings



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PART *1*

COMPARATIVE STUDY





EXTENDING GENERAL STRAIN THEORY AND SELF-CONTROL THEORY TO GAMBLING ADDICTION: A COMPARISON OF CHINESE STUDENTS AND MARGINAL YOUTHS

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Over the last two decades, the proliferation of opportunities to gamble, and the increasing recognition of problem gambling as a public health issue, have fostered concern over gambling pathology of youth. Yet, the theoretical frameworks of prior gambling studies scarcely approach this behavior from the sociological explanations of deviance, while there is a paucity of deviance studies that look into gambling behaviors. This study intends to bridge the gambling and deviance literature by testing whether social strain from Agnew's general strain theory and its conditioning by self-control are pertinent to understanding gambling addiction. Data are drawn from two Chinese adolescent samples of 4,734 students and 703 marginal youths in Hong Kong. Only 1.3% of students but 21.6% of marginal adolescents evince probable pathological gambling (measured by DSM-IV-J). Multivariate ordinal regressions find that both social strain and low self-control independently predict pathological gambling and that their effects are somewhat stronger in marginal youth than students. A significant negative interaction effect of social strain and self-control on pathological gambling is also observed in students yet not in marginal youth, indicating that self-control mitigates the impact of social strain for students only. Results support the merits of GST and self-control theory in predicting gambling addiction. They also emphasize the need of considering the high-risk population of marginal youth, which is understudied in the gambling field.

GENERAL STRAIN THEORY AND JUVENILE DELINQUENCY: A CROSS-CULTURAL COMPARISON

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INTRODUCTION

Psychologists and sociologists often refer to the period of adolescence as a time of storm and turmoil. One must understand that the connotation of “storm and turmoil” not only points out the high risks involved in various antisocial behaviors during this period (Goffredson & Hirschi, 1990), but also refers to the increasing stress and the levels of negative emotions that occur during puberty. In fact, Studies from the stress literature document that the juvenile period is fraught with struggles, distress, and negative emotions (Compas & Wagner, 1991).

Agnew’s (2001, 2006) general strain theory (GST) offers a rich framework for analyzing the underlying mechanisms that connect strain, negative emotions, and delinquency in adolescents. However, extant tests of GST have relied almost exclusively on samples drawn from the U.S. Froggio (2007) raise a question regarding the utility of GST in explaining juvenile deviance in other countries. Cultural attitudes and values influence one’s definition of events and conditions as either typical or stressful (Chun, Moos, & Cronkite, 2005). Hence, a strain in the U.S. may not be seen as stressful in other cultures, which may not lead to subsequent negative emotions and delinquency. This raises some questions regarding the generality of GST. So far, only a few studies have applied GST in non-Western cultural settings (e.g., China, Korea, Philippine). A study that compares and contrasts GST model across two dramatically different cultures is virtually non-existent.

In addition, scholars have argued that cross-cultural studies could help to refine a theory so that such a theory is able to accommodate cultural differences (Kim, Triandis, Kagitcibasi, Choi, & Yoon, 1994; Kohn, 1987). Adler (1996), for instance, implicitly advocates conducting cross-cultural study by noticing that globalization offers a great opportunity to test and develop criminological theory. Similarly, Karstedt (2001) states that comparative studies “offer new insights, fresh theories and chances of innovative perspectives” (p.285). To echo this and address the limitations of previous study, the present study employs two similar samples, one from the U.S. (Western culture) and one from Taiwan (Eastern culture), to test general strain theory.

REVIEW OF GST

Agnew defines strain as the product of negative relationships with others (2006) and outlines three types of major strains: (1) relationships in which others prevent the individuals from achieving positively valued goals, (2) relationships in which others present or threaten to present negative stimuli, or (3) relationships in which others remove or threaten to remove positively valued stimuli. The first type of negative relationship includes strains from classic strain theories (e.g., monetary strain) and strains from recent revision (e.g., unjust treatments from others). The second type of negative relationship includes various situations in which the individual feels uncomfortable (e.g., victimization). The third type of negative relationship is commonly found in stressful life-events lists (e.g., death of family members).

GST argues that each type of strain can lead the individual to experience an array of negative emotions, including anger, fear, and depression. Among the various negative emotions, anger is the



most important to GST, because anger is very likely to increase an individual's level of outward attribution of the injury, instigating the individual to act, motivating the individual to take revenge, and lowering the individual's inhibitions. Although anger is the most criminogenic emotion, delinquency might still occur in response to other negative emotions (e.g., depression). For example, anger might cause an individual to act aggressively against other individuals, whereas depression might lead the individual to take drugs in order to feel "better."

According to GST, strain generates negative feelings in the individual, which, in turn, makes the individual want to respond so as to correct the bad feeling and/or stressful situation. In other words, individuals want to do something (e.g., delinquency) about their negative feelings and/or strain. Consequently, a direct relationship between strain-delinquency and strain-negative emotions is expected from GST. With regard to the strain-delinquency relationship, studies have confirmed that strained individuals are more likely to commit delinquency than people without such experience (Broidy, 2001; Eitle & Turner, 2003; Slocum, Simpson, & Smith, 2005). Previous studies also find that strain does increase individuals' level of anger (Broidy, 2001) and depression (Ford & Schroeder, 2009; Jang, 2007). Although the two major relationships between strain, negative emotions, and delinquency have been found empirically, these studies mostly rely on the U.S. samples or samples that have very similar cultural background to the U.S., such as Canada (Baron, 2006).

CULTURE AND GST

The major difference between the Western culture (e.g., the U.S.) and that of Chinese culture/Eastern culture (e.g., Taiwan) is their different position on the continuum of individualism and collectivism. The United States, as an individualistic culture, can be documented in various historical accounts and other scholarly writing (Hsu, 1983; Bellah et al., 1996). For example, Bellah et al. (1996) stated that "individualism lies at the very core of American culture" (p. 142). In contrast, Chinese culture has been described as a particularly collectivistic culture (Leung & Bond, 1982).

The individualistic society (e.g., the U.S.) places a higher priority on self, and the individual is the central unit of society; consequently, self-fulfillment, emotional independence, individual rights, and autonomy are valued. Individualist societies emphasize "I" consciousness, and members give priority to personal goals over others' goals (Hofstede, 2001; Triandis, 1995). Therefore, an individualistic society promotes the "independent self" (Markus & Kitayama, 1991), such that people place high value on independence, individual freedom, and personal achievement. In contrast, collectivistic societies are oriented toward groups (e.g., family, nation), which are the central unit of society. Hence, obligation, interdependence, and fulfillment of social roles are the focal points. Collectivistic societies stress a "we" mentality, and members are willing to give priority to the goals of the collective and emphasize group solidarity (Hofstede, 2001; Triandis, 1995). Collectivism, then, cultivate an "interdependent self," so that individuals place a high value on cooperation, mutual support, and maintenance of group harmony.

The major differences between Western and Eastern culture on individualism and collectivism affect GST process in various ways. One example might explain this well. Markus and Kitayama (1994) pointed out that in the United States, "it is the emotional states that have the individual's internal attributes (his or her needs, goals, desires or ability) as the primary referent that are most commonly manifest" (p.101). Hence, expression of negative emotion that is often caused by other

people who block or prevent individuals to achieve their goals is not prohibited, such as anger. In contrast, a Chinese culture, which focuses on harmony within relationships and interdependence (Markus & Kitayama, 1991), negative emotion that is related to failing to maintain relationships or meet others' expectations is expressed, such as depression.

With the potential differences, applying GST in Eastern countries seems very important. So far, some published studies have directly applied GST in three non-Western countries: China (Bao, Haas, & Pi, 2007), South Korea (Moon & Morash, 2004; Moon, Blurton, & McCluskey, 2008; Moon, Morash, McCluskey, & Hwang, 2009; Morash & Moon, 2007), and the Philippines (Maxwell, 2001). The basic conclusion from these studies is that strain-delinquency relationship does exist in these collectivistic cultures. However, these studies also found some differences (e.g., cultural specific strains) and suggested for further cross-cultural investigations.

While studies have employed the GST approach to explain juvenile delinquency in some non-Western countries (Bao et al., 2007; Maxwell, 2001), these studies reflect certain limitations. First, previous studies did not include all major types of strain in their model nor do they investigate the strain-anger and depression relationship (see Moon et al., 2009, for an exception). Second, previous studies that applied GST to non-Western countries did not have a similar U.S. sample for comparison. Hence, the similarities and differences found in comparing the results to established evidence from the United States are subject to various explanations, including cultural differences, and sampling.

THE PRESENT STUDY AND RESEARCH QUESTION

Drawing on the above discussion, there is a need to empirically evaluate the basic GST model and conduct a more systematic cross-national comparison, especially between Western countries and Eastern countries. This study uses a sample of U.S. adolescents and a sample of Taiwanese juveniles to address this gap in the literature. Specifically, the present study will address the following three questions:

1. Is there any difference in the strain-delinquency relationship in the U.S. and Taiwan?
2. Is there any difference in the strain-anger relationship in the U.S. and Taiwan?
3. Is there any difference in the strain-depression relationship in the U.S. and Taiwan?

METHODS

Sample

This study includes two samples: one from the U.S. and the other from Taiwan. The U.S. sample is from an existing cross-sectional data set that was collected purposely to examine juvenile delinquency among middle and high school students. All the subjects from the U.S. sample were recruited from one public middle and one public high school in Largo, Florida. New data for this study were collected from students in Taiwan who were enrolled in a public junior and a public senior high school in one school district in Kaohsiung.

U.S. sample



The U.S. data were collected in Largo, Florida, in 1998. Largo is a metropolitan area and located about 23 miles west of Tampa. Two public schools were selected for the study. The Largo middle school, one of the two area middle schools (grades 6-8), enrolled 1,294 students during the 1998-1999 school year; the average class size was 25 students. Students from all Social Studies classes were invited to participate. Before the actual survey, a passive parental consent form was distributed to students (see Verrill, 2008 for details). On the day of the survey, a researcher explained the purpose of the study to all participants, reminded students that participation was voluntary, and reassured them of the confidentiality of all the information they gave. The researcher then remained on site to answer questions related to the survey. The final response rate was 81% (N = 1,049).

The Largo public high school, one of several high schools (grades 9-12) in this area, enrolled about 1,848 students during the 1998-1999 school year; the average class size was 33 students. As in the Largo middle school survey, a passive parental consent procedure was used. Students from a random sample of 30 third-period school classes were asked to participate. On the day of administration, a researcher described the purpose of the study, explained that participation was voluntary and that the provided information was confidential, and remained available to answer questions. The final response rate was 79% (n = 625).

Taiwanese sample

The additional data for this study were collected from a sample of junior and senior high school students in Kaohsiung, which comprises about 59.3 square miles and has a population of about 1.5 million. Two public schools were selected from the Zuo-Ying school district for this study. The first school is Zuo-Ying junior high school, which is one of the three large schools in this district, similar in size to the Largo public middle school. The age range of junior high school students in Taiwan as a whole is 12-15. The second school is Zuo-Ying senior high school, which is one of the two senior high schools in this district, smaller in size to the Largo public high school. The total number of students in the Zuo-Ying junior high school was 2,265 in 2010 and the Zuo-Ying senior high school that was selected for the present study enrolled 1,789 students in 2010.

The school principals agreed to supply teachers to help in administering the survey by distributing the survey and then remaining on site to help answer questions. All students present on the day of the survey were given opportunity to participate, but because of the voluntary nature of this survey, not all students present on the day participated. The participating rate is 91% (860 students out of 945 students) for the Zuo-Ying senior high school, and the rate is 96% (960 students out of 999 students) for the Zuo-Ying junior high school.

Survey preparation

The instrument used in the Taiwan survey is an adaptation of that used in the Largo schools. One important issue that most cross-cultural studies face is the equivalence of the instrument. The most common remedy is back-translation (Hofstede, 2001), which does not guarantee a perfect or error-free translation (Hofstede, 2001; Sanchez, Spector, & Cooper, 2005). Other steps can be employed to reduce the "variance" left unsolved by back-translation, including the use of translators who not only understand both languages, but also have considerable deep experience with both cultures (Hofstede, 2001; Sanchez et al., 2005). These extra steps can provide a more accurate translation than just back translation. Following these suggestions from others, this study employed five steps to ensure the accuracy of the translation. First, all survey items in the English version were

translated into Mandarin by the author. Second, the same version was translated into Mandarin by two doctoral students from Taiwan, who were studying at U.S. universities. Third, the resolution of any differences between the three translated Mandarin versions occurred through discussion between all these doctoral students and the author. Fourth, the consensus Mandarin version was back-translated by a professional bilingual translator. Finally, the differences between the original English version and the back-translated English version were resolved through an in-depth discussion between the author and the translator. The final version of the survey instrument resulted from this discussion.

Measurement of variables

Delinquency

Self-reported delinquent behaviors included in the present study are fairly commonly reported in the criminological literature. The questionnaire asked students to report whether they have done each of several delinquent acts. However, close examination of these items revealed that for many items, less than 1% of subjects endorsed the acts in both countries; this was especially true in Taiwan. Hence, these items were discarded because of lack of variance to be explained. We finally chose two delinquent acts as our outcome variables. These variables not only have relatively high percentages of students reporting that they had done the acts in the past 12 months, but also were theoretically relevant and representative of the general delinquency categories (e.g., violent crime).

The 2 selected delinquent acts are “hit someone with intention to hurt them” (violent offense) and “alcohol use” (substance use). Individuals who report they have not committed a particular act receive a score of 0, and students who report that they have received a score of 1. Each of these three delinquent acts is examined separately because they represent different domains of acts, and Agnew (2006) has advocated separating various coping behaviors by type of act. Each of these two delinquent acts has over 7% of students report yes: “hitting someone” (U.S.: 24.5%; Taiwan: 7.1%) and “alcohol use” (U.S.: 37.9%; Taiwan: 27.6%).

Strain

Failure to achieve positively valued goals—disjunction between desired and actual outcome. Agnew (1992) criticized classic strain theories because they focus only on blockage of long-term monetary goals. Later researchers argued that, although monetary goals are important, a juvenile may have goals other than money, such as popularity and autonomy. The present study covers various goals that a youth might find important in his or her current life (e.g., relationships, autonomy). Specifically, students were asked to evaluate whether they strongly agree, agree, disagree, or strongly disagree with several statements regarding receiving respect from parents and teachers (3 items), relationships with others (2 items), and autonomy (2 items). Higher scores indicate that students did not achieve or were unsatisfied with their situation regarding these goals and hence experienced greater strain.

Failure to achieve positively valued goals—unjust strain. Another possible and related source of a strain is when an individual enters into a relationship with the expectation that a certain rule of justice will be followed. Agnew (1992) argued that a relationship is most stressful if the outcome/input ratio is not equal, when individuals feel they have been under-rewarded. To capture these feelings of unjust strain, seven items asked students whether they agree or disagree with



statements about unequal relationships in which they are involved. For example, students can choose from strongly agree to strongly disagree in response to the statement, “Many students don’t study as hard as I do, but they still make better grades.” Although these items do not specify the exact input/output ratio of all involved parties, all the statements delineate clearly a situation in which the respondent does not “get the best deal” (Agnew, 1992). Higher scores indicated greater unjust strain.

Loss of positive stimuli–negative life-events. Strain can be a result of losing a positively valued goal. The most widely used instrument that captures this type of strain and the presentation of negative stimuli is the negative life-event scale. Although many different negative life-event scales exist, Turner and Wheaton (1995) argue that there is no advantage in using one particular scale rather than another and that scales should be tailored to fit the studied population. In addition, these authors also suggest that a 1-year time frame should be used and unweighted indices are as useful as any. The negative life-events scale (10 items) used in the present study has all of the four recommended features. Students reported whether the event had happened to them (yes = 1) in the past 12 months or not (no = 0). Higher scores indicate that a student experienced many stressful life-events and consequently had a higher level of strain.

Presentation of noxious stimuli–victimization. Noxious stimuli by definition are those events or incidents that are disliked by individuals. Criminal victimization is one of the most severe noxious stimuli and types of strain. Six different victimizations were used to tap into this strain, such as being forced to give up money or possessions or being physically attacked by others. Students were asked to indicate whether they have experienced an incident in the past 12 months (yes = 1) or have not (no = 0). Higher scores indicate a higher level of strain.

Negative emotion

Anger. Eight items were used to measure anger, five of which are adopted from Spielberger’s (1988) State-Trait Anger Expression Inventory (STAXI), which examines anger as a personality trait that is situational (Wareham, Cochran, Dembo, & Sellers, 2005). One example of these five items is “When I get frustrated, I feel like hitting others.” The other three items capture angry feelings or reactions that are also more situational. One example is “It makes me mad when I don’t get the respect from others that I deserve.” These eight items appear to be primarily situational, which is in tandem with the suggestions of Agnew (2006). Response categories were coded so that a higher score indicates a higher level of anger.

Depression. Four items are used to measure depression. In contrast to the anger measures, which are more situational, these four items appear to be trait-like or symptoms of depression. This may incur criticism because currently GST advocates use of measures that tap into situational emotions. Three reasons may justify such use. First, most measures of depression in psychology are similar to the present items, which capture symptoms of depression, whether physical or behavioral (e.g., Radloff, 1977). Second, studies that claim to measure situational distress/depression use similar items/symptoms. The difference is that they ask respondents to answer questions based on when they were experiencing strain. Third, in an even more direct measure of situational depression by using vignettes, Ganem (2008) failed to capture pure situational depression, in that respondents reported other emotions along with depression. Hence, capturing situational depression may not be as easy as one would think, and without more sophisticated strategies, one may measure negative emotions other than depression.

The four depression items to be used in the present study are adopted from the Beck Depression Inventory, second edition (BDI-II) (Beck, Steer, & Brown, 1996). These items ask students to indicate how often the following statements describe them. (1) I don't look forward to things as much as I used to, (2) I find it hard to keep my mind on school work, (3) I sleep very well (reverse coded), and (4) I have lots of energy (reverse coded). These four items include both a somatic component of depression (the last two items) and an affective component of depression (the first two items) (Storch, Roberti, & Roth, 2004). The response categories are identical to that of the anger measure. A higher score indicates a greater level of depression.

Demographic variables

The present study includes two important demographic variables, gender and age, that have been shown to influence the strain-delinquency relationship. *Gender* is therefore included in the survey, with male coded 1 and female is coded 0. *Age* is also included (students' age on the date of the survey), because as individuals grow older, they may accumulate different experiences, and develop different responses to strain and different coping skills. Race is not considered as a control variable because in Taiwan, there is essentially no "minority group," except for some aboriginal individuals who constitute only 2% of the total population.

ANALYTIC STRATIES

The study uses path analysis to test the GST model in the U.S. and Taiwanese samples. Because the delinquent acts in this study are all dichotomized variables, regular ML method cannot be used. One proper alternative estimator is weighted least square mean and variance (WLSMV), which is used to account for non-normality. Flora and Curran (2004) have shown that WLSMV is an accurate estimator when sample sizes vary from 100 to 1,000 with various degrees of non-normality and model complexity. Each sample in the present study has more than 1,500 subjects; hence, employing WLSMV as the estimator seems appropriate. To compare and contrast the GST model across the two countries, multiple group analysis is employed.

The present study employs two steps to handle missing data. First, students who did not report either their gender or age and missed too many items are excluded from the analysis. After these cases are deleted, the U.S. sample has 1,516 subjects and the Taiwanese sample has 1,717 students. After deletion, MI (Rubin, 1987) with the Markov Chain Monte Carlo (MCMC) is used to replace the missing values for all items and generated five complete datasets (Allison, 2003) for the consequent analyses.

RESULTS

The present study uses a step-up approach to conduct the multiple group analysis; that is, the GST model is free to be estimated for each group and then restrictions on a path are imposed one by one. The restrictions that are enforced are based on the results of separated analyses because the empirically found similarities and differences can be further tested. Before any restrictions are imposed, the least restricted model, or the most complex model (e.g., all paths are free to be estimated) was tested. The results can be found in Table 1. As can be seen, unjust strain is related to hitting someone but not alcohol use in both countries. Similarly, goal strain bears no effects on alcohol use and hitting someone in both countries with one exception: it has moderate and significant effects on alcohol use in Taiwan. In contrast, negative life-event and victimization exert

statistically significant and large direct effects on alcohol use and hitting someone in both countries. On Table 1 we can also see that all the strain variables are positively and significantly related to anger and depression in the U.S. and Taiwan.

All these results indicate that if we stop here, the conclusion is that the GST model is reasonably similar across cultural boundaries. This conclusion is important, because the data were collected on the basis of almost identical survey items and the multiple group analysis combines both samples, which provides greater statistical power than analyzing individual sample alone. This conclusion confirms that of previous studies that only indirectly compared results across countries (Bao et al., 2004; Lin & Mieczkowski, 2011). However, more can be gained if the differences and similarities of path coefficients are directly examined.

To statistically evaluate whether the strain-delinquency relationships were similar or different across countries, constraints were imposed on all the paths from the strain to hitting someone and alcohol use. With regard to hitting someone, of the four imposed constraints, one was rejected (victimization → hitting someone) ($\chi^2(1) = 21.78, p < .01$). Hence, although victimization is a risk factor for violent delinquency (e.g., hitting someone) in both countries, the effect of this stressor on hitting someone is significantly stronger in the U.S. than in Taiwan (see Table 2). Unjust strain and negative life-events are also important risk factors for hitting someone in both countries, but the influence is about the same.

Table 1 Multiple Group Analysis for the Strain-Delinquency relationship ¹²

The U.S. (n = 1,516)		Anger	Depression	Hitting someone	Alcohol use
Goal strain		.237(.036)**	.122(.019)**	.002(.013)	.008(.012)
Unjust strain		.328(.034)**	.159(.018)**	.026(.011)*	.006(.011)
Negative life-event		.053(.023)*	.028(.012)*	.017(.008)*	.021(.007)**
Victimization		.212(.036)**	.051(.019)**	.105(.011)**	.075(.012)**
Age		.298(.058)*	.305(.031)**	-.034(.022)	.289(.020)**
Gender		.064(.228)	-.567(.120)**	.317(.076)**	-.188(.071)**
Taiwan (n = 1,717)		Anger	Depression	Hitting someone	Alcohol use
Goal strain		.138(.031)**	.133(.015)**	.008(.012)	.006(.009)*
Unjust strain		.204(.031)**	.098(.015)**	.031(.011)**	.019(.009)
Negative life-event		.097(.023)**	.032(.011)**	.039(.008)**	.027(.006)**
Victimization		.129(.038)**	.035(.019)	.034(.010)**	.013(.009)
Age		.322(.074)**	.110(.036)**	-.066(.032)*	.061(.021)**
Gender		.651(.241)**	-.143(.118)	.404(.100)**	.039(.066)

*p < .05. **p < .01.

¹Unstandardized coefficients are shown, with standard errors in parentheses and the coefficients are the averaged estimation from the 5 complete datasets.

²All path are free to be estimated.

Turning to alcohol use, similarly, only one imposed constraint was rejected: victimization → alcohol use ($\chi^2(1) = 14.93, p < .01$). Hence, victimization has dramatically different effects on alcohol use in both countries. On the one hand, students in the U.S. drink alcohol to cope with victimization; on the other hand, students in Taiwan do not employ such a coping strategy. Similarly, negative life-events and unjust strain both exert significant impact on alcohol use.

Table 2 The Multiple Group Analysis with Constraints (Hitting Someone and Alcohol Use)¹²³

	Hitting Someone		Alcohol Use	
	U.S.	Taiwan	U.S.	Taiwan
Goal strain	.005(.009)		.007(.007)	
Unjust strain	.029(.008)**		.014(.007)*	
Negative life-event	.028(.008)**		.025(.005)**	
Victimization	.105(.011)**	.034(.010)**	.075(.012)**	.013(.009)
Age	-.034(.022)	-.066(.032)*	.289(.020)**	.061(.021)**
Gender	.317(.076)**	.404(.100)**	-.188(.071)**	.039(.066)

*p < .05. **p < .01.

¹Unstandardized coefficients are shown, with standard errors in parentheses, and the coefficients are the averaged estimation from the 5 complete datasets (N = 1,516-U.S.; N = 1,717-Taiwan).

²The model fit for hitting someone is: $\chi^2(3) = 3.978$, NS; CFI = .977; TLI = .994; RMSEA = .014

³ The model fit for alcohol use is: $\chi^2(3) = 1.50$, NS; CFI = 1.000; TLI = 1.022; RMSEA = .000

To test whether strain-negative emotions relationships is similar or different across countries, similar procedure is used (see Table 3). As can be seen, of the four imposed constraints on strain-anger relationship, three were rejected: goal strain-anger, unjust strain-anger, and victimization-anger relationships. On the other hand, only one imposed constraint was rejected: unjust strain-depression relationship. Two summaries are in order with regard to Table 3. First, most constraints imposed on strain-anger relationship are reject; that is, most strain-anger relationships are different. For example, while unjust strain and goal strain both increase students' anger, the magnitude is not the same across countries. The relationship is always stronger in the U.S. than in Taiwan. Second, in contrast, most strain-depression relationships are fairly similar in both countries. The only exception is that unjust strain has stronger effects on depression in the U.S. than in Taiwan.

Table 3 The Multiple Group Analysis with Constraints (Anger and Depression)¹²³

	Anger		Depression	
	U.S.	Taiwan	U.S.	Taiwan
Goal strain	.241(.036)**	.138(.031)**	.129(.011)**	
Unjust strain	.326(.034)**	.203(.031)**	.157(.018)**	.099(.015)**
Negative life-event	.075(.016)**		.030(.008)**	
Victimization	.208(.036)**	.133(.038)**	.042(.013)**	
Age	.298(.059)**	.322(.080)**	.306(.030)**	.110(.036)**
Gender	.065(.230)	.651(.242)**	-.567(.122)**	-.143(.118)

*p < .05. **p < .01.

¹Unstandardized coefficients are shown, with standard errors in parentheses, and the coefficients are the averaged estimation from the 5 complete datasets (N = 1,516-U.S.; N = 1,717-Taiwan).

²The model fit for anger is: $\chi^2(1) = .232$, NS; CFI = .999; TLI = .990; RMSEA = .016

³ The model fit for depression is: $\chi^2(8) = 9.31$, NS; CFI = .999; TLI = .995; RMSEA = 0

CONCLUSION AND DISCUSSION

The present study sets out to examine three questions: whether the strain-delinquency, strain-anger, and strain-depression relationships similar or different between the U.S. and Taiwan. First, we find strain-delinquency relationship is fairly similar throughout the tested model. For example, goal strain is unrelated to violent delinquency in both countries but unjust strain is related to violent



crime only. In contrast, victimization and negative life-events exerts strong and significant influence on alcohol use and hitting someone in the U.S. and Taiwan. Consequently, victimization and negative life-events are criminogenic in both countries which is consistent with previous studies (Agnew, 2002). The most significant cultural difference is that the victimization-alcohol and goal strain-alcohol use relationships. The former was only significant in the U.S. and the latter was only significant in Taiwan. This is somewhat unexpected, but two possible explanations can be offered. First, students in Taiwan are under close supervision by family members and others because of the small land area and crowding, and the drinking norms in the Chinese culture demand that individuals drink with others or during feasts or meal time (Harrell, 1981). Consequently, students may reject alcohol as a coping strategy in Taiwan due to the two close supervision and drinking norms. Second, victimization threatens individuals' identity, which causes significant problem in an individualistic culture but not the collectivistic culture. In contrast, many of the goal strain items capture the relational problem; hence, it is more detrimental to Taiwanese students. Students in Taiwan may be aware of this norm, and may reject alcohol use as a coping strategy. Other imposed paths do not make the model fit worse. As a result, it shows that goal strain and unjust strain have no effects on drinking alcohol in either the U.S. or Taiwan.

Second, we find that strain-anger relationship is positive in both countries but the magnitude is always higher in the U.S. sample than in the Taiwanese sample. The differences are consistent with Heine (2008, p.352), who concluded that “[l]ooking at emotional experience, there is more evidence for cultural diversity.” Markus and Kitayama (1994) stated that in an individualistic culture, negative emotion that is related to self (e.g., goal, self identity) is more likely to be felt and expressed. Goal strain, unjust strain, and victimization threaten an individual in various ways (e.g., blocking goals, harming oneself), which increases anger. In addition, Chinese students often attribute their failures to themselves but their successes to the group (Heine, 2008; Yu, 1996); this self-attribution might make one attribute the strain experience to oneself, which in turn could lead to lower anger, because anger is more likely when one has external attributions.

Finally, the strain-depression relationship is found to be similar in both countries. This cross-cultural similarity suggests that strained adolescents are in great risk of depression in the U.S. and Taiwan. This echoes the report from the World Health Organization (2001) that depression becomes a serious health problem to the youth around the world.

Although this study is valuable and contributes to the literature on GST, several limitations need to be addressed. First, this study measures only anger and depression; other negative emotions, such as fear, anxiety or shame, need to be included. This is especially important given that different cultures may have different focal negative emotions. Second, the data are only cross-sectional; hence, this study cannot firmly establish the causal relationship between variables. However, the path analysis used in this study is meant to evaluate causal patterns; thus, the results can at least indicate where to look for causal relationships among variables. Moreover, some scholars have argued that the relationships between strain, negative affect, and reactions are fairly simultaneous (Piquero & Sealock, 2000). Finally, the U.S. sample was collected more than a decade ago. Hence, it might be unwise to compare those data to the recent data from Taiwan. However, this may be a desired feature rather than a limitation. The U.S. was more developed than Taiwan was a decade ago but the difference today is smaller. Consequently, comparing these two datasets should not cause a problem.

In conclusion, although previous studies may have come to the same conclusion that the present study provides, the lack of direct comparison prevents these studies from giving firm conclusion.

This research contributes to the current GST literature by directly comparing and contrasting the GST model in the U.S. and Taiwan. The results show that GST is useful in explaining juvenile delinquency in both the U.S., a more individualistic culture, and Taiwan, a more collectivistic culture. In addition, this study found that victimization and negative life-events are criminogenic to youths; hence, future studies that do not include these two strains may risk of model misspecification. Anger and depression are found to be related to strain in both countries. Consequently, these two negative emotions should be incorporated into the GST model as well.

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THE COMPARATIVE ANALYSIS ON CRIMINAL POLICY OF MILITARY CRIMINAL LAW OF RULE BY LAW AND THE STRIKE HARD OF MAINLAND CHINA

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Recently, the quality of military justice and amending the law before and after due to media's misunderstanding, caused people to lose trust of the military justice, thereby affecting the overall military image is very huge. In view of this, this paper is based on the current running military regime is the criminal policy to subversion the view of the past that people think of traditional military law. Therefore, Mainland China by the "Strike Hard" criminal policy as contraposition, to subvert the past traditional view of military justice that people followed. At the same time, through military criminal policy of substantive military law and procedural military law, That martial law, since 1999, unlike Mainland China, different advanced legislation, protection of human rights, international and localization characteristics of the rule of law and hope to raise public awareness of a new style of military and introduction and to try our best to promote the core values in this paper. With the meeting of the Grand Justices, No. 436 explains on October 1999, the impact of the current military justice system has laid a new milestone. This is the prelude to the program area of innovation. On the solid surface, the new Criminal Code of the Armed Forces under the concept of the rule of law, was enacted by the Legislative Yuan in the period of September 2001, to protect human rights in the military, the democratic trend and thorough response to a face-lift. The criminal policy perspective, there is more than ever, even more than the criminal legislation of extraordinary significance. Therefore, this article is the first to wear the military uniform of the citizens, military personnel are set for a special military trial proceedings, the Judge Advocate the interests of the trial-level changes to describe the program area (CJM) and the solid surface (CAF) to describe the current military criminal policy. Unlike the mainland, "strike hard" policy means from severity · fast to crack down on major criminal activities. The policy of Criminal Code of the Armed Forces put emphasis on "usually lenient, strict wartime; lighter harm, real harm severely," that is from the traditional the concept of "speedy trial and verdict," into the policy of "proper trial speed knot". It is hopes that: First, the military criminal breaking strict; Second, the military criminal law strict liability; three wartime military punishment severe, to achieve military criminal law of rule of law - the legislation that should be strict when the strict intention.

INTRODUCTION

Constitution, Article 9 expressly provides: "Except those in active military service, no person shall be subject to trial by a military tribunal." It is Taiwan's current military justice system's legal basis. But in the past, for most people, for the military trial of understanding has always been the negative view of "heavy", "strict" and "death at every turn," With the meeting of the Grand Justices, No. 436 explains on October 1999, the impact of the current military justice system has laid a new milestone. This is the prelude to the program area of innovation. On the solid surface, the new Criminal Code of the Armed Forces under the concept of the rule of law was enacted by the Legislative Yuan in the period of September 2001, to protect human rights in the military, the democratic trend and thorough response to a face-lift. The criminal policy perspective, there is more than ever, even more than the criminal legislation of extraordinary significance. Even the existing Armed Forces Criminal Code has changed dramatically, in general the inveterate tradition, or that martial law is harsh merciless. Therefore, this article as a contrast to mainland China, compared to China, its criminal policy department of so-called "strike hard" policy-oriented—The "draconian punishment" for the call. I hope that the Armed Forces Criminal Law criminal policy and the current strike hard

in China policy compared to a view to arouse people's understanding of military law has a new look, this also goes for my best to promote the core values.

FROM THE PROGRAM AREA (CJM) ON THE CURRENT POLICY OF MILITARY CRIMINAL

For a long time, to master weapons of this army, with force, an important feature, affecting the military protection of the rights of this job. Historically, the military soldier dead weight, separatist areas, about political situation, is common. Thus, in the past authoritarian era, the military, and more scared of getting hold of the mind. Severely punished if it is not cool to control, limit the military to prevent their abuse of power against the State, is a variety of systems to limit the military and to play down the military's social status. China proverb saying: "a good man not a soldier, a good iron is not nail", is the military the right to limit the status of best example (Lu Qi-Yuan, 2002). Therefore, the judge interpretation of the Grand Justices No. 436 on active duty also means the people, but "soldiers are citizens in uniform" (Chen Xing-Min, 2000), with the same ordinary people to share the relief the Constitution Article 16 proceedings right.

Active duty bears a special obligation to defend the country. Based on national security and military needs, get set for the criminal acts of the special court-martial proceedings, military justice system that is tailored for the military "special proceedings." Have more to show the difference—Therefore, By comparison with the criminal system, to highlight the characteristics of the military justice system. In addition to the basic judicial different, the composition of the different judges, the discretion of the heavier penalty, implementation of the different premises and the parties, the most important of these differences that are as follows: (A) applies to different targets; (B) the norms of war; (C) more than "permitted" clause and (D) Military interests of the trial-level changes—that is, different ways to the relief appeal. This breaks the traditional military criminal will be tried in military courts myth. That is, the current military justice system, military courts for military criminal jurisdiction is not absolute or exclusive jurisdiction over cases, soldiers may also seek judicial relief to the trial court of justice. Implementation of the soldiers is human beings, to like people in general, have the right to legal relief purposes. This shows that military criminal policy in the face of the innovation process, especially in the interest of highlighting the appeal a great breakthrough.

FROM THE SOLID SURFACE (THE ARMED FORCES CRIMINAL CODE) ON THE CURRENT POLICY OF MILITARY CRIMINAL

Rule of law in the country the main features of the military criminal law, but also highlight the characteristics of the criminal policy of the rule of law, it is as follows :

Meet the needs of national defense modernization

Legal modernization is part of the modernization of national defense. Taiwan's military justice system, all the amendments since 2001, in response to the law change with the times characteristic is in line with the needs of national defense modernization.

Multiple areas of criminal law penalties



Taiwan's military include the major domestic criminal law is a special criminal law. And updating heritage crime, traffic crime, environmental crime and computer crime and other new types of crime. Legislative intent in the construction of a new military criminal law, called the content is comprehensive of the special law.

The same punishment with the crime of military and civilian

Criminal Code and special laws that affect military discipline, fighting crime and major law and order into the specification. Generally normal times with the public are to adopt the principles of punishment with the crime. As the provisions of the Criminal Code and special laws of the crime, according to their degree of punishment at the break, to avoid crime and have different effects. Criminal acts according to the military criminal connotation of high or low, measured between the severities of the crime. All martial law "cut" the punishment to the crime (only exempt from military service abuse and the crime of treachery slightly raised). This is from the traditional martial law "draconian punishment" of the image.

Legal distinction between peacetime and wartime

Comprehensive revision of the military criminal law before the "enemy before" and "military or martial law region", the "rest" of different situation, for the difference in applicable regulations and produce cognitive differences. Therefore, the new amendments to the military criminal law based on peace, war rule of law principle of distinction, to adopt the merger peacetime and wartime legislation imposing strict distinction between the way in order to the style clear.

Balancing the protection of legal interests

According to the latest military thinking, how to define the military service of the acts or omissions and to protect objects against the old law in the past tend to Executive, the relative neglect of the protection of his subordinates, the law stipulates that Executive or any rights against the subordinate character of the act, therefore correspondingly punished. To protect the dignity of subordinates and personal safety, highlighting the Law on the fairness of the sanctions and the relative.

Implement the requirements of the military according to law

In addition to traditional Executive subordinates and other crimes of violence and abuse, the abuse of the disciplinary authority of this Act set new crime, crime and blackmail to block prosecution of crime complaints. The consciousness of men that want to develop a rational power of justice and law-abiding spirit of mutual respect and reached under the rule of law, "according to law and Army" requirements.

Elements of explicit

The old law for criminal acts of the constituent elements of uncertainty as to adopt a legal concept. The full interpretation of space legislation, making it easier to identify the establishment of crime, such as collaborators, disobedience, flight, military service, etc., are more lenient definition. The new law related to the substantive criminal law reference, be uniform integration.

Expand the scope of discretion

In the military criminal law for various offenses, the military judge to give a considerable degree of room for discretion. The statutory sentence of three years imprisonment who have elective provisions of detention or a fine, to regulate the situation method level, and the crime of insulting Executive and the general destruction of military crimes, the amendment to be told that the victim or reserves the right to tell, circumstances of the case and the defendant may be guilty of discretion after the performance and attitude, to decide whether to tell, a source of reducing litigation, the effect of promoting a harmonious unit, but also highlight the use of criminal law is used less. Therefore, the new amendments to the Armed Forces Criminal Law criminal policy has guided the traditional martial law is draconian punishment of conservative ideas, so close to the protection of human rights both to maintain the military discipline of the function. At the same time, more emphasis on "military to military" values.

THE COMPARISON OF STRIKE HARD POLICY AND CRITIQUE OF THE CRIMINAL IN CHINA

The significance of Strike Hard policy

The so-called "strike hard" means that according to severity, from fast to crack down on major criminal activities. Shaping the fight against crime through a high pressure situation, the limited police resources to focus on a specific period of emergence of certain crimes (Men Jin- Ling, 2010) . The "strict" of Strict Hard which significance for two of the interpretation. First, the key direction is to combat "serious crime"; the second is a serious criminal activities "against to stern". Such a criminal policy to implement the law severely, should be reported from the fast-style "felony subject to heavy penalties," featuring the emphasis on the manner of "stable", "fast", "cruel" and "precise" against criminals (Qin De-Liang , 2007). Thus, after 1983, this policy of Strike Hard in China has become of criminal justice policies of the mainstream. In short, the basic meaning is "in accordance with the law severely, and quick to crack down on criminal activities." Among them, the "severe" refers to the entity on a more severe sentence; "quick" refers to the case gone through the program to speed up the pace, to highlight its efficiency. This criminal policy response in China, September 2, 1983 the NPC Standing Committee passed the "serious danger to social order on punishing criminals decision" and "serious harm to a speedy trial on the criminal elements of the social security program requirements" (referred to as "The two of 9 • 2 decision"). It says: homicide, rape, robbery, explosions and other serious harm to public safety should be sentenced to death the criminals, the main facts of the crime and the evidence clearly, and aroused great public indignation responders, should be promptly brought to trial, was not limited by mainland China Criminal Procedure Law Article 110 provides that a copy of the indictment served on the defendant and the period within which the summons, notice of time limits. That is, for such crimes, no restrictions on the trial period, indirectly deprived the right to exercise their defense, so the "The two of 9 • 2 decision", the basic spirit can be summarized as: heavy, fast-contracting, fast to kill! Therefore, "The two of 9 • 2 decision " laid the Chinese mainland's "strike hard" policy for criminal government source, so that the "severity and speed in accordance with law" has become synonymous with strike hard.

The comparison of Strike Hard of the criminal policy



(A) Criticism of the criminal policy of striking hard

The criminal policy of striking hard of to be implemented in the previous action (Wang Dou-Dou, 2008). Unfortunately, from a practical effect, heavy, fast-contracting, although in the short term quick kill received some success, but overall, its deterrent effect is very limited threat. Mainland China after the strike hard of crime is often rapid rebound increase. Moreover, one-sided emphasis on "chaos heavy penalties," the pursuit of draconian punishment. In particular the implementation of too much death, not only did not reduce violent crime, but rendering the "violence with violence," the social atmosphere, and inviting the community opposition, is not conducive to social harmony and stability. The work of law enforcement agencies in China should be the norm: "the law must be strictly enforced, and violators are prosecuted." The strike hard policy as if a person does not eat meals on time, often one or two meals or even a day or two without eating, hungry to 1 gluttony, so long way, of course, not normal, usually does not lead to strict enforcement, the law non-compliance, impunity, serious crime strike hard on the use of policy, likely to cause imbalances in sentencing, wrongful convictions of the disadvantages of injustice (Xing-Min Weekly, 2010).

(B) Comparison of the criminal policy of striking hard

However, mainland China's strike hard by the criminal policy of the other hand, the traditional criminal law the Armed Forces, that is, the old law era emphasis on "speedy trial and verdict," just like the concept of criminal policy, but the frustration that was caused by space-time background. But the new law as amended, the emphasis the military protection of human rights, and the distinction between peacetime, wartime policies have different criminal. Therefore, the current emphasis on military criminal law of criminal policy is "usually lenient, strict wartime; harm lighter, heavier real harm", that is, from the traditional "speedy trial and verdict," the concept into a "proper trial" of policy. In addition, the report will be added from His crime, administrative penalties for the expansion of Executive power to maintain the existing leadership skills and the penalty of death penalty to no absolute concept of the New Army Criminal Code of last resort for criminal law and punishment rather attention Modesty, tend to be less favorable and economic policy objectives of the criminals. Compared with the criminal policy of striking hard in China compared to Taiwan's criminal law is also called the most severe of the military in line with the democratic ethos can still have such a change, and criminal policy in mainland China really these differences; in contrast, mainland China for there is still room for progress in the protection of human rights. Over the years, the mainland China with the democratic ethos of the trend, the strike hard policy reflection, questioning and criticism heard, even by some scholars, crackdown policy dubbed: "Strike Hard is severely undermine the criminal law, from the quick destruction of Criminal Procedure." So the Chinese mainland in the summary and reflection for several years on the basis of striking hard, and finally the central political and legal work in 2004 first proposed the meeting, "Leniency" of the criminal policy. 2006 Sixth Plenary Session of the tenth CPC Central Committee in "building a socialist harmonious society and a number of major issues" in an explicit proposal to "implement" Leniency in criminal justice policy (Cai, 2011). But "wide is not wide enough, strict or too strict," is the main disadvantages. Thus, compared to Taiwan's military criminal law is still reviewing the pace of regret of reform.

CONCLUSION: MILITARY CRIMINAL LAW OF RULE OF LAW - SHOULD BE STRICT WHEN STRICT

Despite the mixed reviews for the military, but with special consideration of the Judge Advocate for the military, military justice system, yet still run, is also an indisputable fact. But there is the sense of how to make it a criminal policy more in line with the concept of rule of law; it should be strict as strict. The criminal law of concept of the rule of law, relatively, it should have the rule of law of military criminal law thinking (Zheng Kun-Shan, 2011). As the times progress and development of military law, if the "strict martial law" is equivalent to "military punishment and strict" or "martial law severely," is clearly not desirable. Understanding the meaning of the law, military law and strict criminal policy, should be the "strict," understood as "tight", "strict" and "severe" three both, and in peacetime as "tight", "strict" of criminal policy; in the "limit time" to achieve "strict" policy. Accordingly, the basic connotation of strict martial law should be: a military crime, particularly the military crime of violation of the responsibilities of staff served to give the combat in line with the principle of proportionality; for in time of war, contrary to undermine combat effectiveness, operational damage and other harm national order military interests of criminal offenses to be severely punished, it should be defined for the specific content with three, it is said, shows the following:

First, the legal network of military criminal law must be strictly. The legal network of military criminal law through rigorous elements, so that the convicted act is not by the legal network of the omission to get rid of the criminal sanctions the military guilty easily. The legal network for military personnel, in violation of military duty, damage and destruction of military combat operations and other reaches a certain degree of order. In contrast, for the average citizen (i.e. the person with non-military status) who had no interest in the protection of military law is binding.

Second, the strict liability of military criminal law. This mainly refers, if the crime is subject to military trial, the judge, its jurisdiction should be divided to the military judicial organs, and the person who should be punished by military penalty must be suffered the military punishment .By strict criminal liability, it can reduce the chance to slip through the net, and enhance military punishment certainty and timeliness. Military criminal law and thus while enhancing deterrence, and to train military personnel on the military the loyalty and trust of the general sense the people for the military.

Third, military punishment of the wartime severely. War is defined as political system (Zheng Kun-Shan, 2011) .In wartime, military benefits for military crimes real harm is more serious than usual in nature, consequences will be greater. Therefore, the most significant performance in this particular period (time-limited law) that is on criminal policy of strict martial law is severity of the penalty the military. The severity of the penalty the military means the military severely punished, that the heavy weight, not heavy but not heavy; of course, more means non-heavy sentences. Severe penalties for wartime military criminal law are based on very principles of crime and punishment of general criminal law. However, the appropriate penalty should be considered whether the military and wartime military relationship between crime prevention. Therefore, the severity of wartime military punishment should be designed to be relatively prominence compared to normal, in order to demonstrate the capabilities of military punishment fully. It hopes that assess the fairness and justice under the premise of last resort, to play to maximize the military value of the order.

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COMPARING JUVENILE JUSTICE SYSTEMS: TOWARDS A QUALITATIVE RESEARCH PROJECT IN EAST ASIA

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Even though we are living in an increasingly interdependent global world, most criminologists are still concerned with their own countries, and there is relatively little interest in comparative research. In the field of juvenile justice, this normally involves collecting statistical data, supplemented by interviews with key informants, that is either assessed against international standards, or used to test universal theories. These studies may conceal distinctive features of criminal justice systems in particular countries, including internal debates. They also tend to answer questions that interest the researcher based in the USA or UK rather than contributing to a dialogue between countries that have different institutions, philosophies and cultures. This paper will consider these issues in relation to comparative research on juvenile justice, mainly drawing on studies about Europe, the USA and Australia. It will also consider what we know about different juvenile justice systems within East Asia, focusing on Japan, Korea and Taiwan. Why would one want to compare such countries? How can qualitative researchers contribute in addressing internal debates and their significance for the region?

Although international comparative research has become a large sub-field of criminology, with many empirical studies published in journals such as the *International Journal of Comparative and Applied Criminology* and the *International Criminal Justice Review*, many have argued that the subject still lacks strong conceptual or methodological foundations (Leavitt 1990, Bennett 2001). There still seems to be a divide at a foundational level between quantitative researchers who see the experimental method as offering a route to truth (Sherman 2005), and even solving the crime problem, and relativists who believe that comparison is misguided or even impossible (Beirne 1983).

Wes Sharrock and John Anderson (1982, p.120) have commented in relation to similar debates in anthropology on "the tendency for discussions of ethnographic method to degenerate into wild and woolly talk of a quasi-philosophical bent, eventually dissipating into a furious argument over only marginal issues". This paper is also driven by an interest in the underlying philosophical issues that divide quantitative and qualitative researchers. It will, however, try to make a case for the value of qualitative methods in a more direct fashion through considering examples of empirical research and the considerations involved in using different methods as part of a rigorous, scientific programme of investigation.

The paper will start by reviewing the objectives of quantitative inquiry, that broadly speaking is influenced by the methodological writings of Emile Durkheim (1951, 1966). The next part of the paper will consider the assumptions of the interpretive tradition, a body of thought influenced by Max Weber (1978). The paper discusses the problem of relativism and how the interpretive traditions of symbolic interactionism and ethnomethodology within sociology have or could contribute to comparative research. It will draw on a study conducted in Australia that employed qualitative methods in comparing how young offenders are sentenced in different states (Travers 2007, 2010).

The third part of the paper will consider, in a preliminary way, how one might want to conduct an interpretive comparative study about juvenile justice systems in East Asia that leads to dialogue between different cultures and societies in this region.



THE QUANTITATIVE TRADITION

The quantitative tradition in comparative research developed as a reaction against the travellers' tales or eclectic amateur research of 19th century anthropologists and colonial officials, that was often coloured by unexplicated prejudices and assumptions (Bennett 2011). There is also a strong philosophical commitment to the model of explanation used in natural science.

Using quantitative methods in comparative criminology

The most sophisticated comparative studies have measured the crime rates in different countries and found causal relationships with other social phenomena, such as population density, family structure and cultural values (Leavitt 1990). Several theories have been developed to explain patterns of crime in the USA, including strain theory and control theory, and in some formulations these are presented as universal theories that can explain crime in any industrialised or industrialising society.¹ However, it would be a mistake to see the legacy of Durkheim as confined to sophisticated, quantitative studies employing multivariate analysis, or to the structural-consensus tradition in sociology. In more general terms, it represents a type of reasoning about comparison that is quite widespread in criminology, and across the social sciences. A central assumption is that it is relatively easy to describe differences between countries through using some objective measure, whether this is crime statistics, legislation or policies. Another is that it is possible to explain variations through identifying causal factors that can also be measured. A third is that criminal justice policies of countries around the world can be judged using some universal standard, often framed in terms of human rights.

The first two assumptions have informed a number of collections published about juvenile justice, as well as the reports commissioned by the United Nations on juvenile justice systems (for example, UNICEF 1998).² They often use the objectives and principles in the UN Convention on the Rights of the Child as both a guide for obtaining comparative information, and an evaluative framework (for example, Bala et al 2002, Zalkind and Simon 2004). Studies informed by the conflict tradition in sociology have also employed statistical methods, and similar ways of thinking in terms of causal relationships, to explain growing punitiveness (Muncie and Goldson 2006).

Some criticisms

In many comparative collections about juvenile justice, explanatory models remain rather undeveloped, in the sense that counter-examples are not considered in great depth, and there has been no attempt to identify general causal factors following similar procedures to Durkheim. Despite the hopes of developing universal theories, it still remains unclear whether strain theory or control theory, themselves based on different assumptions about the nature of offending in the USA, offer the best means of conceptualising crime around the world.³ Similarly, it is not clear from

¹ Strain theory, originally developed by Robert Merton (1949), views a rising crime rate as inevitable in any society undergoing a change in social structure and values. It is, therefore, relevant to East Asian countries in recent times (although see Cao 2004).

² International collections on juvenile justice include Friday and Ren (2006), Winterdyk (2003) and Zalkind and Simon (2004).

³ Cao (2004) offers an interesting discussion of the value and limitations of such universal theories.

the critical comparative literature why economic policies associated with neo-liberalism, such as lowering trade barriers to stimulate world economic growth, result in greater punitiveness towards young offenders in some countries, but not in others.

Even though they might appear to produce objective knowledge or apply universal standards, comparative studies normally advance a particular political viewpoint. Much of the literature sides unashamedly and unreflectively with the welfare position. To give an example, the international review by Zalkind and Simon (2004) concludes with some heart felt, critical comments about juvenile justice systems internationally:

"Overall, abuse of minors rages across the world. No nation involved in this study fully used detention only as a last resort, attempted to rehabilitate the offender, and never resorted to physical violence against youths. A number of nations continue to allow juvenile capital punishment. Other nations prohibit corporal punishment in policy, but utilize it liberally in practice. Young children are detained in deplorable, unhealthy, and dangerous physical conditions...." (Zalkind and Simon 2004, pp.182-3).

From a moral perspective, no one could disagree with this viewpoint. But from a sociological perspective that seeks to get close to what actually happens in human group life, this evaluative account seems inadequate. It seems too far removed from how policies are debated inside different countries, or from the practical considerations that arise when implementing them in practice.

INTEPRETIVISTS AND COMPARISON

There is an alternative way of approaching comparison in social science. This is, broadly speaking, informed by the objective of addressing the meaningful character of human life, and rejecting natural science as an inappropriate model (Weber 1978).⁴ In this discussion, I will consider three issues raised by research informed by this objective.

The problem of relativism

Taken to extremes, interpretivism can lead to the view that not only is cross-national comparison impossible, because every society has a distinctive history and culture, but that there are no absolute moral standards (Beirne 1983). Discussion in comparative criminology has so far presented qualitative research as an uniform enterprise, and has little interest in the different theoretical traditions or how they engage in qualitative research. In fact, there are several traditions in sociology and anthropology, and these approach the issue of relativism differently.⁵ Symbolic interactionism is, itself, a diverse tradition. Some varieties seem to invite or welcome relativism through viewing society as constructed (Becker 1962; see also Berger and Luckmann 1967). Herbert Blumer (1969) viewed social worlds as real for their participants and criticised Erving Goffman for suggesting that social life is simply a performance (Blumer 1972). Ethnomethodology, outside some early popular statements such as Meehan and Wood (1975), has always had a strongly anti-relativist stance. The philosophical basis of this tradition comes from Alfred Schutz (1962) who views the lifeworld as an objective, constraining reality (Travers 2009). Ethnomethodologists have conducted some cross-cultural or anthropological research (for example,

⁴ For discussion of positivism and interpretivism in sociological explanation, see Hughes and Sharrock (2007).

⁵ See Travers (2004).



Moerman 1998, Liberman 2004). Sharrock and Anderson (1982) have argued that, despite the philosophical difficulties imported into the field by relativists, in practice, understanding another culture is possible, and the methodological problems are similar to those that arise when conducting research in your own country.

Producing rich, in-depth descriptions

The challenge for interpretivists generally is to address the meaningful character of human group life. The “gold standard” method, almost the equivalent of the experiment in the quantitative tradition, is participant observation in which the researcher immerses him or herself in a particular social setting (Bruyn 1968). Methods books provide guidance on how to obtain access to closed institutions, collect data over a long period, and write up an ethnographic case study.⁶ There is no agreement on what constitutes a rich or in depth description. In the symbolic interactionist tradition, it should address a range of perspectives, making it possible to appreciate the complex nature of organisations (Becker 1967). Ethnomethodologists and conversation analysts seek to describe processes in some detail (Rouncefield and Tolmie 2011, Ten Have 2007).

This interest in rich or in-depth description explains why there are so few comparative studies by interpretivists. It is not normally practically possible to conduct research in more than one site. But even if this is possible, conducting additional fieldwork in another setting does not normally assist in understanding the activities in the original social setting.⁷ It is, of course, possible to conduct interviews in a range of institutions or social groups, or to conduct observational studies based on shorter periods of access. But this is one step towards quantitative research: it may not adequately address the local context or provide the “thick description” valued by the interpretivist.

On the face of things, this might seem to make comparative international research by interpretivists as impossible or ill-advised. Researchers in the symbolic interactionist and related traditions tend to circumvent this problem, in the same way as Weber, by producing formal generalisations from a number of studies about similar institutions or social groups. An example of comparative research within one country would be Everett Hughes' (1993) writings on occupations. Hughes' students conducted many ethnographies in different organisations. Hughes used these studies to write about general themes such as the relationship between professionals and clients or the nature of mistakes at work. It was only possible to make these formal generalisations because each case study provided considerable detail about the day to day work of these occupations.

This suggests that we need more descriptive studies about criminal justice institutions internationally before it is possible to engage in comparison. To use juvenile justice as an example, only a few American, British and Australian studies have employed observation and interviewing systematically when examining the work of practitioners in children's courts.⁸ It is possible to compare children's courts in different countries using policy reports and the statistics collected by international agencies. But it is not possible to engage in a case by case comparison from this data that might illuminate similarities or differences, or allow one to develop general themes in the same way as Hughes' project about work.

⁶ See, for example, Spradley (1979), Hammersley and Atkinson (2007).

⁷ The qualification is necessary because one can generate insights as a sociologist by identifying similarities and differences (see Hughes 1993). However, one can only obtain a thorough understanding in the first place by spending a considerable amount of time with one social group.

⁸ These include Emerson (1969) and Kupchik (2006), and Travers (2007, 2010).

Interpretivists on statistical variation

Interpretivists are usually critics of quantitative research for what they see as reducing the complex activities that take place inside institutions to a set of statistics. Symbolic interactionists and ethnomethodologists have investigated these processes using ethnographic methods. A good example of an interactionist study is Eisenstein et al's (1988) *Contours of Justice*. This looked at variation in outcomes, and the extent to which plea-bargaining took place, in a number of American criminal courts. The research team also conducted multiple interviews with the aim of identifying possible causes of the variation. The authors distinguish this from a quantitative research design because they did not believe there were causes that determine outcomes. To give an example, one might expect that there would be a tough approach to sentencing in a Republican county, especially since judges in the USA are elected. However, this was not always the case. To explain practices and outcomes in each court required understanding the people and processes in that court.

In their critique of positivist approaches during the 1960s, ethnomethodologists argued that sociologists should examine how official statistics are produced, in the routine work of criminal justice agencies, rather than using them to build universal theories that explain variation. An example of this kind of research would be my own study of a firm of criminal lawyers in the United Kingdom (Travers 1997). This describes the work involved in an one hour episode of plea-bargaining. It resulted in a finding of guilt for three charges, that became part of the annual crime rate in that city. But the work of producing the outcome, and the circumstances of the offence are not available from the official statistics.

More positively, one can argue that qualitative methods can strengthen the findings of quantitative studies because they do more than collect bare statistics. To give an example, those seeking to promote welfare-oriented reforms to juvenile justice systems in Australia can draw on national statistics collected by the Australian Institute of Criminology on detention rates (for example, Taylor 2009). One striking feature is that Victoria has for many years had a much lower detention rate for non-Indigenous offenders. This means that the welfare-oriented critic could point to this state as an example of how things could be done differently. There is, however, no agreement on the meaning of the statistics. Practitioners in other states told me that the different outcomes reflected a low crime rate in Victoria rather than greater leniency in sentencing. In these circumstances, case by case comparison and contextual description of hearings can demonstrate actual differences.⁹

Practitioners and comparison

One implication of interpretivism is that, instead of building theories and models that explain variation, the sociologist should consider how ordinary people engage in comparison. This is challenging since for the most part practitioners in any professional field do not compare themselves systematically with colleagues.¹⁰ One example is the typical university department in which a group of staff is delivering courses. There is often comparison of teaching performance at a managerial level that results in statistical tables showing outcomes. But for professionals,

⁹ There is something of a paradox here in that the practitioner denying a difference would immediately be able to see one when visiting hearings in another state. But, in practice, in Australia there is little movement of practitioners between states.

¹⁰ For discussion, see Travers (2008).



comparison if it takes place at all takes place on an ad hoc basis, when for example you come across something a colleague is doing that is relevant to your own teaching.

Magistrates interviewed for my comparative project had only a limited knowledge of what was happening in other Australian states. One senior manager in an agency told me that the states were, for many purposes, like different countries. I also encountered some resistance towards the idea that performance could be compared in a country founded on the principle that states are independent from the Federal government.

INTERPRETIVE COMPARATIVE RESEARCH: RESEARCHING JUVENILE JUSTICE IN EAST ASIA

The comparativist normally collects data from a wide range of countries, selected because they have features relevant to the theory being tested or developed (Leavitt 1990, Bennett 2011). Durkheim (2004), in a classic experiment using historical data, compared the nature of punishment in traditional and industrial societies. Recent comparative studies are often based on the assumption that there are differences between traditional and modern societies, but that there is an increasing convergence between countries in the developed world both in terms of the nature of crime and criminal justice institutions.

There is already a growing body of research that examines different aspects of crime and criminal justice in Asian societies, and some attempts to apply universal theories using quantitative methods. The main studies about juvenile justice in Asia are mainly descriptive summaries focusing on legislation and government policies (for example, Friday and Ren 2006). To the best of my knowledge, there have not so far been rigorous quantitative studies testing universal theories relevant to juvenile justice. Whatever the merits of this programme, interpretivists have to proceed differently. They have somehow to address the meaningful nature of juvenile justice systems in a way that goes beyond, and is likely to complicate or problematise, statistical comparison. The best known in-depth studies about the response to adult offending have been conducted in Japan, a society that has fascinated western criminologists because it has appeared, until recently, to have a low crime rate in the same way as Italy.¹¹ There have not been in depth studies, employing qualitative methods, that interview practitioners or observe legal hearings in other Asian countries.

One important methodological principle in interpretive research is that inquiry should be both inductive and exploratory (Glaser and Strauss 1967). Instead of seeking to test a theory, the aim is to generate new questions. An additional practical consideration is that research should be achievable, and in a comparative project it is important to choose a few comparable societies in which it is possible to pursue in depth research. Three countries in East Asia that are active in the Asian Criminological Society are Japan, Korea and Taiwan. There are institutional and intellectual resources in these countries that could support both quantitative and qualitative studies as part of a regional initiative.

One question that occurred to me from attending the recent International Society for Criminology conference in Japan, was that practitioners in this country are concerned about a rising juvenile crime rate, and looking to introduce institutions from the west, including social workers that have

¹¹ See, for example, Johnson (2002).

previously been seen as unnecessary or inappropriate (Atsumi 2011). There seem to be concerns about the breakdown of traditional societies and communities. Other contacts have suggested that debates over criminal justice policy in Korea and Taiwan cannot be separated from concerns about the extent to which they are developing effective democracies. There may be a variety of views about trends in juvenile offending in each country that can only be discovered by speaking to practitioners. It would also be necessary in a comparative project to describe what happens in each of these juvenile justice systems: to map out the procedures, observe hearings and examine how decisions are made by the police, courts and other agencies.

There are a variety of ways in which one could design and pursue such a project. Thomas Scheffer et al (2010) obtained funding in Germany to enable researchers to conduct ethnographic studies of defence lawyers in Germany and three other countries. An alternative would be to establish three national projects that employed similar methods and addressed a common set of questions. A national project in Australia about children's courts was organised in this way (Borowski and Sheehan 2011). Questions were developed in collaborative meetings and telephone conferences between research teams in each of the states and territories. My own study in Australia was based on observing sentencing hearings in three states: this methodology made it possible to meet practitioners on relatively short visits, describe sentencing hearings, and develop comparative insights, for example on how children's courts respond to minor offenders (Travers 2010). There have also been some interesting projects in which a visiting researcher conducted interviews through an interpreter, and developed an analysis working with a local contact (for example, Barry 2011).¹²

In each case, one might add that within the interpretive or qualitative paradigm the methods used, or research design, is less important than a common interest in addressing meaning, and obtaining rich ethnographic data. Even without a shared theoretical language, it should be possible to produce an account that makes a substantive contribution to understanding juvenile justice in East Asia, and also raises interesting issues about the nature of comparison.

CONCLUSION

David Nelken summarises the value of the interpretivist approach in the following terms:

"it recognizes that data such as crime or prosecution statistics used in behavioural science explanations are themselves cultural products the interpretation of which requires considerable preliminary knowledge of the society concerned" (Nelken 2002, pp. 187-8).

Obtaining this preliminary knowledge poses many practical challenges, not least that the researcher hoping to pursue comparative research may live some way from research sites and speak a different language. There is also the more fundamental question as to why one might wish to spend time trying to understand criminal justice institutions in a different country. Most comparative studies about juvenile justice have been influenced or dictated by policy questions that interest governments. But criminologists have also pursued pure scientific questions. For the interpretivist, as already stated, these are likely to arise from being open minded, and attempting to

¹² One interesting aspect to Barry's study is the apparent similarity of the issues as understood by young people in Japan and Scotland.



understand how practitioners in each country understand the practical issues that arise in their day-to-day work.

One problem that still faces European studies, even after decades of economic and political integration is that most people in Europe are not greatly interested in what happens outside their national borders. The same problems are likely to constrain attempts to develop comparative projects in Asia. There was much talk of comparison in the recent International Society of Criminology congress in Japan, but few papers really addressed comparison as an intellectual issue or considered similarities and differences between countries.

This, however, seems too negative an assessment. Countries in East Asia, as in many areas of the world, have much to gain from establishing closer economic and cultural links. This provides a powerful rationale for comparative research as a means of bring practitioners and academics together, and building shared institutions. The Asian Society for Criminology was only formed recently, and provides a means of making contacts and developing such initiatives. Another rationale for conducting interpretive research is that it may assist in developing a local criminological literature that is distinctively Asian, as against applying or testing theories developed in western countries. Quantitative researchers tend to avoid too great an engagement with a local institutional or cultural context, since they are concerned with testing or developing universal theories. Interpretive studies, by contrast, are required to address different viewpoints. As global criminology develops, it might be possible to establish a dialogue between countries that have different institutions, philosophies and cultures. Juvenile justice is only one aspect of the criminal justice system, but offers a potentially interesting site for pursuing comparative research.

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THE IMPACT OF MEDIA ON PUBLIC TRUST IN LEGAL AUTHORITIES IN CHINESE SOCIETIES

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Literature on public perceptions of legal authorities in Chinese societies has been accumulating recently, yet a critical line of inquiry is missing, regarding the effects of the media. Relying on nationwide survey data, this study examines: (1) to what extent do Chinese and Taiwanese citizens trust their police and courts; and (2) how does media consumption influence Chinese and Taiwanese trust in police and courts, after controlling for a range of individual demographic, experiential, attitudinal, and locality variables? Results show higher levels of trust among Chinese than Taiwanese. Chinese are more trustful of their courts than police, but Taiwanese trust their police more than courts. Media exposure variables have a limited effect on trust in legal authorities. Consumption of television and newspaper does not influence Chinese or Taiwanese trust, but frequent use of the Internet and exposure to foreign news reduce police trust.

PART 2

CORRECTION AND OCCUPATIONAL ATTITUDES





ENGENDERING IMPRISONMENT: THE STATE AND INCARCERATED SUBJECTS IN TAIWAN

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In International feminist perspectives in criminology, Rafter and Heidensohn contended that current mainstream criminology was the most masculine of all social sciences. A look at arguments about penal development confronts us with the fact that most historical studies are not gender-specific. Whether female offenders were victimized or acted as their own agents in the penal institutions can be determined with reference to two considerations: first, women prisoners have persistently been treated differently from their male contemporaries; second, female offenders have typically been burdened with formal penalties and informal gender disciplines as punishments for their wrongdoings. The relationship between women and the state provides some clues regarding how penal institutions, which are authorized to act for the state in imposing penalties, treat female offenders and why women's imprisonment has taken the forms that are evident historically. This study traces the unique political and social conditions of Taiwan's history to determine what reformations penal institutions have sought to enforce upon female prisoners and which body-types of female inmates have been 'docile', 'obedient', and 'useful' to the state. From the establishment of women's care homes and the practice of separating the genders in penal institutions, to the implementation of independent women's prisons, the state in Taiwan has played a dominant role in penal reforms in various historical contexts. This investigation aims to provide a critical and unique perspective of the penalization of women.

COMPARING CORRELATES OF TURNOVER INTENT AMONG JAIL AND PRISON OFFICERS IN TAIWAN: AN EXPLORATORY STUDY IN A “GET-TOUGH” ERA

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Similar to developed countries, Taiwanese correctional officers have also suffered challenges and pressures following the “get-tough-on-crime” policy that was enacted in July 2006. Although numerous custodial officers still support their correctional positions even under a rigorous and struggling situation, researchers are curious concerning an answer to the following question: “Have jail and prison officers ever given serious thought to withdrawing from the correctional system?” Compared to a growing body of literature and research in the United States concerning turnover intent, the topic has unfortunately been largely overlooked in the Taiwanese correctional system over the past decades. In addition, the extant literature related to correctional officers’ turnover intent traditionally focused on prison officers yet frequently ignored personnel employed in jails. Therefore, we designed our study to advance the literature on correctional workplace turnover intent by examining personal and environmental factors in order to determine whether distinct precursors consistently have a great impact across the two domains. Using data collected in 2011 through a self-reported survey consisting of 799 Taiwanese custodial officers from 6 jails and 16 prisons, the results indicated that personal characteristics including tenure and position (line personnel) were significantly related to prison officers’ turnover intent, whereas age was the only significant factor among respondents who were employed in jails. In terms of environmental factors, job dangerousness, organizational climate, and organizational commitment consistently demonstrated the most robust impact on correctional officers across the two different domains (prisons vs. jails).

INTRODUCTION

Following the “get-tough-on-crime” policy adopted across the United States and other developed countries during the 1990s, the Taiwanese Legislative Yuan passed a similar law in 2005 which took effect in July, 2006. Although Taiwan’s inmate population reached more than 65,111 by the end of 2010, the capacity of all correctional facilities was 54,593 as reported by the Ministry of Justice (MOJ, 2011). Thus, numerous correctional facilities had an average overcrowding rate of 20% and a high staff/inmate ratio of 1:13 (Peng, 2011) that directly affected the ability of correctional officers to perform their jobs due to the decreased proportion of inmates in rehabilitation programs and the increased potential for inmate assaults, violence, turbulences, and riots (Bottoms, 1999; Gaes & McGuire, 1985; Jan, 1980; Nacci, Teitelbaum, & Prather, 1977). Humphrey (1998) noted that fatigue and passivity became evident among individuals who worked in labor-intensive occupations that often led to job burnout. Similarly, positions in correctional systems require daily interaction with inmates which is usually negative in nature thus making occupations in corrections inherently risky (Lai, Wang, & Kellar, forthcoming).

Specifically during the “being-tough-on-crime” era, previous studies conducted in the United States revealed that tension between inmates and correctional officers contributed to an increased risk of injury, impaired delivery of services, physical and emotional problems, and loss of inmate privileges (Langan & Pelissier, 2001; Liebling & Maruna, 2005; Wooldredge, 1998) as well as increased physical and emotional repercussions for correctional officers (Cullen, Latessa, Burton, & Lombardo, 1993; Dennis, 1998). As a result, numerous correctional officers wanted to withdraw from their correctional careers (Rugala & Isaacs, 2002). In the United States, the most recent estimates of annual correctional staff turnover rates vary from 15% to 25% (Lambert & Hogan,



2009). Although Taiwan's turnover rate has been relatively low and stable (i.e., less than 5%) over the past decade (MOJ, 2011), turnover intent is of great concern in the current correctional system. For example, Peng (2011) found that more than 60% of Taiwan's correctional officers reported higher levels of perceived turnover intent due to the "get-tough-on-crime" policy.

Next, there are currently 12 independent Taiwanese jails employing 1,073 staff and housing 11,669 inmates. Eight out of 24 prisons in Taiwan also function as a jail to provide housing to over 700 suspects (Huang, 2010). In other words, jails are the second largest correctional category with more than 12,000 inmates following the prison system. More importantly, jails were the first departments to experience the greatest impact resulting from the "get-tough-on-crime" policy since judges sentenced more violent and assaultive offenders to jails. Thus, it can be expected that jail staff faced a more rigorous and struggling situation than prison employees. Although jails play a critical role in Taiwan's correctional system with a unique and ever-changing mix of inmates, they do not always receive the empirical attention they deserve. Specifically, the wealth of literature on turnover intent in the correctional workplace focused on prison officers and frequently ignored line personnel employed in jails (Castle & Martin, 2006). Scholars have, in fact, acknowledged the lack of studies related to jail personnel (Lambert, Reynolds, Paoline, Watkins, 2004; Lovrich & Stohr, 1993; Stohr, Lovrich, & Wilson, 1994). For example, Hemmens, Schoeler, Sanders, et al. (1999) noted that "while there is a tremendous amount of research on attitudes and perceptions of correctional officers, there is relatively little research on the attitudes and perceptions of jail staff" (p. 16). Therefore, we have attempted to fill this empirical void.

Our study has added to the existing literature in three ways. First, we explored the perceptions of turnover intent among Taiwanese correctional officers working under a "get-tough-on-crime" policy. One might expect that most correctional officers would be inclined to report a high level of turnover intent. Among the correctional officers, we further expected that jail officers would be more likely to report a higher level of turnover intent since jails were the first departments impacted by the "get-tough-on-crime" policy. Second, we examined the literature related to correctional officers' turnover intent by exploring personal and environmental factors to explain Taiwanese correctional officers' turnover intent. Third and specifically, we determined whether predominant predictors for turnover intent consistently had a great impact across prisons and jails. The data used in our study were collected by a self-reported survey consisting of 799 Taiwanese custodial officers staffed in 6 jails and 16 prisons during April 2011.

REVIEW OF LITERATURE

Differences between Jails and Prisons

Compared to prisons, perhaps jails are the most misunderstood institutions in the criminal justice system (Kellar & Wang, 2005). Mays and Winfree (2002) referred to jails as "the gateway to the criminal justice system" (p. 90). Among the correctional system's institutions and programs, jails have been most neglected by scholars and least known to the public (Clear & Cole, 1997). Because both prisons and jails represent penal institutions, they each comply with principles related to corrections theories that have been meticulously constructed by scholars trained in the study of prison systems. However, certain assumptions associated with prisons may be invalid, or at least misleading, when applied to jails (Kellar & Wang, 2005). For example, jails differ from prisons in the high volume of admissions and average length of stay (LOS) estimated to range between 15 to

20 days, although many individuals are released within 24 hours (Mays & Winfree, 2002). Hence, the differences between jails and prisons may contribute to a unique work environment.

In many other respects, jails differ from prisons. First, jails as opposed to prisons house a wider variety of offenders (Kellar & Wang, 2005; Lambert et al., 2004). In other words, jails include inmates who are awaiting trial, sentenced for misdemeanors and felonies, waiting transfer to classification centers or prisons, and parole and probation violators (Farkas, 1999). Taiwanese jails also house drug abusers for a short-term abstinence period (MOJ, 2011). Second, jails have a far higher rate of admissions than do prisons since most jail inmates are released after a short period of time (Lambert et al., 2004). For example, while the daily population is approximately 3,500, it was estimated that 17,800 defendants passed through jails in 2010, or a ratio of about 5. Conversely, the prison ratio was only 2 (MOJ, 2011). Third, while prisons recruit psychological counselors and social workers in order to provide inmates with rehabilitation programs and services, jails are unable to do so due to their limited resources (Huang, 2010) despite the high rate of mentally ill jailed inmates (Lambert & Hogan, 2009). As a result, jails recruit a variety of volunteers, namely religious monks, to help inmates in need (Huang, 2010). Finally, Stohr, Lovrich, and Mays (1997) noted that most prison officers receive more training than jail staff since all levels of government invest in additional resources and equipment for prisons rather than jails. Hence, prison employees are required to receive extra training.

In addition to operational differences that exist between jails and prisons, limited research on the attitudes and perceptions of correctional staff revealed that jail officers reported higher levels of job stress and dangerousness as well as lower levels of job satisfaction and organizational commitment (Byrd, Cochran, Silverman, & Blount, 2000; Castle & Martin, 2006; Griffin, 2001; Lambert & Paoline, 2005; Lambert et al., 2004; Paoline, Lambert, & Hogan, 2006). To the best of our knowledge, Kieckbusch, Price, and Theis (2003) were the first researchers to explore the turnover intent among jail staff yet failed to conduct a comparison between jails and prisons. Accordingly, a comparison of employee turnover intent between jails and prisons is warranted. Given the worst scenario, one might expect that higher turnover intent would be reported among jail staff when compared to prison staff.

The Impact of Turnover Intent by Correctional Officers

Turnover, or the involuntary and voluntary permanent withdrawal from an organization (Robbins & Coulter, 2005), has been an ongoing issue in the field of corrections for more than 40 years (Lambert & Hogan, 2009; Tipton, 2002). Involuntary turnover occurs when an employer forcefully removes an employee from a job, whereas voluntary turnover occurs when an employee chooses to voluntarily leave a job (Lambert & Hogan, 2009). Both types can create a problem due to increased recruiting, selection, and training costs as well as disruptions at the workplace. Compared to involuntary turnover, voluntary turnover in the correctional field is a costly problem given that correctional facilities rely heavily on staff members in order to meet their objectives (Archameault & Fenwick, 1988). The U.S. Department of Justice (2000) reported that “except for police officers, the number of workplace nonfatal incidents is higher per 1,000 employees for correctional officers than other profession ... From 1992 to 1996, there were nearly 218 incidents per 1,000 correctional officers, for a total of 58,300 incidents” (p. 14). Specifically among law enforcement agencies consisting of police, corrections, and private security systems, the highest rate of violent victimization (260 per 1,000) was experienced by police officers followed by correctional officers



(155 per 1,000) (Duhart, 2001). Consequently, recent estimates of annual correctional staff turnover rates in the United States varied from 15% to 25% (Lambert & Hogan, 2009).

However, researchers would prefer to examine turnover intent, or a cognitive process of thinking, planning, and desiring to leave a job (Mobley, Griffeth, Hand, & Meglino, 1979), rather than actual turnover (Lambert & Hogan, 2009). Turnover intent has been consistently linked to voluntary turnover and is usually viewed as the final stage before a person quits (Lambert, Hogan, & Barton, 2001; Steel & Ovalle, 1984). However, four advantages should be addressed when examining turnover intent as opposed to actual turnover. First, turnover intent is easier to measure and tends to be more accurate as an outcome variable given that it can precisely explore the relationship between employees and employer (Lambert & Hogan, 2009). Although these particular staff did not actually leave a job, the process of thinking about quitting produces serious harm to an organization. Second, in reality, it is difficult to access employees who have left their jobs and conduct a survey to understand why they quit (Firth, Mellor, Moore, & Loquet, 2004). In contrast, turnover intent can make up for this weakness. Third, administrative records are sometimes closed to outside researchers or may be incomplete or inaccurate (Mitchell, MacKenzie, Styve, & Gover, 2000). Finally, from an employer's point of view, if the precursors of intent to quit are better understood, the employer and organization could possibly eliminate any facilitators that affect this intent (Lambert & Hogan, 2009).

Predictors of Turnover Intent Related to Correctional Officers

Turnover is costly and disruptive to correctional organizations, thus understanding the factors that contribute to staff turnover intent is important (Lambert, Hogan, Jiang, Elechi, et al., 2010). Based on the extant literature, researchers have divided predictors of correctional employee turnover intent into two categories: (a) those pertaining to employees' demographic and background characteristics and (b) those stemming from the correctional facility or organization's work environments (Lambert & Hogan, 2009; Lambert & Paoline, 2010; Lambert et al., 2001; Mitchell et al., 2000). In terms of personal characteristics, age, gender, educational level, tenure, and position are typically included. According to previous studies, younger employees (Byrd et al., 2000; Camp, 1994; Lambert & Hogan, 2009; Lambert et al., 2010; Mitchell et al., 2000; Tipton, 2002), female employees (Camp, 1994; Lambert, 2006; Mitchell et al., 2000; Tipton, 2002), educated employees (Lambert, 2006; Lambert & Paoline, 2010; Mitchell et al., 2000), employees with less tenure (Camp, 1994; Lambert, 2006; Lambert & Paoline, 2010; Mitchell et al., 2000), and non-line personnel or supervisors (Lambert & Paoline, 2010; Mitchell et al., 2000) were all more likely to quit their jobs or think about leaving their positions.

Lambert et al. (2001) suggested that older workers as opposed to their younger counterparts tend to have a great stake in continuing employment with an organization. For example, Mitchell et al. (2000) indicated that older employees showed a less propensity to quit their positions since they were more entrenched and involved in their communities and jobs. However, recent studies indicate that age produced an insignificant association with turnover intent (Lambert, Hogan, & Altheimer, 2010a; Lambert & Paoline, 2010). Similarly, the longer that employees remain with an organization, the more investments they will accrue such as pay, social connections, seniority, and retirement. As a result, this makes it more difficult for a worker to leave a position (Lambert, 2006). In terms of females, Camp (1994) argued that women are generally responsible for child care and household maintenance thus leading them to express a higher degree of turnover intent than their male counterparts. A growing body of recent research, however, has indicated that gender is no longer a

salient predictor (Lambert & Hogan, 2009; Lambert & Paoline, 2010; Lambert et al., 2010; Lambert et al., 2010a). In explaining the relationship between educational level and turnover intent, Lambert and Paoline (2010) claimed that more educated employees may enjoy greater external job opportunities that might increase their desire to quit their present employment. Unfortunately, most research has failed to show a direct link between educational level and correctional turnover (Camp, 1994; Lambert & Hogan, 2009; Lambert et al., 2010; Lambert et al., 2010a). Position has also been linked to turnover intent in that line custody staff usually express a greater degree of desire to quit when compared to their counterparts (Byrd et al., 2000; Lambert, 2006; Slate & Vogel, 1997).

While the aforementioned variables were included in past research, marriage, shift, and victimization should be further examined. Married individuals typically expressed higher levels of job stress and lower degrees of job satisfaction (Lambert et al., 2001) suggesting that they are more likely to leave their jobs. Next, shift is a unique factor in terms of examining correctional Taiwanese officers' attitudes and perceptions. Shift can be broken down into two categories: (a) daytime shift which refers to employees who work from 8 a.m. to 6 p.m.; and (b) nighttime shift which refers to employees who must be at their positions 24 hours per shift (Huang, 2010). The extant literature in Taiwan's correctional field showed that employees who work the nighttime shift were more likely to express higher degrees of job stress and lower job satisfaction and organization commitment (Chen, 2002; Hsu, 1996; Kuo, 2009) thus leading them to be more likely to leave their jobs. Limited research has indicated that victimization had a great impact on correctional officers' perceived job dangerousness (Lai et al., forthcoming). Although there is no existing advanced research that has been conducted to examine the relationship between victimization and turnover intent, it is reasonable to speculate that victims who work in the correctional field are more willing to express high levels of turnover intent. Finally, it is important to note that while related to turnover intent and actual turnover, personal characteristics are less powerful predictors when considering work environment factors and work attitudes (Lambert, 2006; Mitchell et al., 2000).

Although there are many dimensions, work environment factors (i.e., job stress, job dangerousness, organizational climate, organizational commitment, and external employment opportunities) have also been employed to predict correctional officers' turnover intent and turnover (Hsu, 2003; Lambert, 2006; Lambert & Hogan, 2009; Lambert & Paoline, 2010; Lambert et al., 2001; Kieckbusch et al., 2003; Mitchell et al., 2000; Slate & Vogel, 1997).

Job stress has been defined as "the psychological discomfort or tension which results from exposure to stressors," that have been defined as "the conditions which place excessive or unusual demands on a person and are capable of engendering psychological discomfort (that is, stress)" (Cullen, Link, Wolfe, & Frank, 1985, p. 507). Job stress should be included when examining the predictors of turnover intent given that correctional officers typically work in custody — a difficult and demanding job. Some researchers have indicated that correctional officers who work in custody with inmates increase their physical and emotional repercussions (Cullen, Latessa, Burton, & Lombardo, 1993; Dennis, 1998). On the other hand, few researchers have found that job stress is positively related to correctional staff turnover and turnover intent (Hsu, 2003; Slate & Vogel, 1997). For example, in one study related to juvenile correctional officers, Mitchell et al. (2000) found that those with higher levels of job stress were more likely to express a desire to quit.

Similarly, *job dangerousness* or perceptions concerning whether an employee's workplace presents a dangerous situation (Cullen et al., 1985), has also been found to have a positive effect in helping to shape turnover intent among correctional officers (Lambert & Paoline, 2010; Mitchell et al.,



2000). Lambert and Hogan (2009) suggested that staff members who perceive of their work as dangerous are less likely to view their jobs positively and more likely to blame the organization for the worsened situation, which in turn reduces the likelihood of bonding with an employer. In terms of *organizational climate* which refers to a subfield of job satisfaction, Herzberg (1968) noted that job satisfaction in the work environment was complex, wherein three dimensions were identified: (a) the importance of the work itself, (b) one's responsibility while at work, and (c) the recognition received from one's work performance (Zhao, Thurman, & He, 1999). Thus, it appears reasonable to argue that employees who maintain good interpersonal relationships with supervisors, colleagues, and friends are less willing to withdraw from their jobs. Other researchers have indicated that employees who enjoy good organizational relationships with coworkers (Lambert & Paoline, 2010) and have supervisory support (Mitchell et al., 2000) are less likely to express turnover intent.

A number of researchers have found that *job satisfaction* has a negative impact on both turnover intent (Byrd et al., 2000; Lambert, 2006; Lambert & Hogan, 2009; Lambert & Paoline, 2010; Lambert et al., 2001) and turnover (Mitchell, et al., 2000; Robinson, Porporino, & Simourd, 1997; Wright, 1993). Similarly, *organizational commitment* has also been found to have a significant negative effect on both turnover intent (Lambert, 2006; Lambert & Hogan, 2009; Lambert & Paoline, 2010) and turnover (Camp, 1994; Robinson et al., 1997). Specifically, Lambert and Hogan (2009) suggested that both job satisfaction and organizational commitment represent the most salient factors in shaping turnover intent among correctional staff. Finally, Lambert et al. (2001) examined *external employment opportunities* which were found to have a direct positive effect on turnover intent. Accordingly, external employment opportunities are important due to the ability in finding a new job affects employees' turnover intentions (Kieckbusch et al., 2003; Lambert & Hogan, 2009; Lambert et al., 2001). However, this factor produced no significant relationship with turnover intent except when local unemployment rates are relatively high (Lambert & Hogan, 2009).

METHODOLOGY

Participants

Participants in our study included custody staff employed at the Agency of Corrections (AOC), Ministry of Justice (MOJ) in Taiwan. In the spring of 2011, AOC operated 49 correctional institutions comprised of prisons (24 units), vocational training centers (3 units), drug abstention and treatment center (4 units), juvenile correctional schools (4 units), jails (12 units), and juvenile detention and classification houses (2 units) with a total of 4,890 staff members (Agency of Corrections, 2011). For purposes of our comparison study, however, only custody officers who were employed in prisons and jails were included. According to AOC, prisons and jails are classified into three groups: (a) units housing more than 2,500 inmates = category A; (b) units housing 1,500 inmates or less than 2,499 = category B; and (c) units housing 500 inmates or less than 1,499 = category C.

Therefore, the stratified random sampling method we used was appropriate and included the following three steps. First, we obtained the total number of custody officers in each correctional institution for all shifts ($n = 2$ in Taiwan). As a result, the total population of custody officers in both prisons and jails represented approximately 4,000 employed in 36 units. Second, we randomly selected a survey unit. In category A, we randomly selected 9 units in which 50 questionnaires were distributed to each unit. In category B, 6 units were selected, and 40 questionnaires were distributed. In category C, 7 units were randomly selected in which 30 questionnaires were

distributed to each unit. Finally, the self-administrated questionnaires were disseminated to custody officers who volunteered to participate in our survey. In April 2011, a total of 900 self-report questionnaires containing an enclosed notice letter and guaranteeing that all respondents would remain anonymous were distributed to those custody officers employed in 22 selected units. One month later, approximately 868 questionnaires were returned for a 96.4% response rate. After deleting invalid surveys, 799 respondents who returned usable surveys were included in the final analysis.

Measure

Dependent variable. In our study, *turnover intent* represented the dependent variable that was measured by translating the following four items taken from Lambert and Hogan (2009) and Mobley et al. (1979): (a) thinking about quitting, (b) a desire to leave the current job, (c) searching for alternative employment due to preparing for official exams, and (d) undecided to stay during the next year. On a 5-point Likert-type of scale, response options ranged from 1 = never to 5 = always. The turnover intent index of the four items was calculated as the sum of scores divided by 4. Therefore, higher scores represented a greater level of perceived turnover intent with a reliability index of .83.

Independent variables. The independent variables were classified into two groups: (a) personal characteristics and (b) work environment variables. Personal characteristics included age, gender, education, marriage, tenure, shift, position, and victimization. Age was measured as an order variable with "1" representing 20-29 years, "2" representing 30-39 years, "3" representing 40-49 years, and "4" representing 50 years >. Gender was coded as a dichotomous variable with 0 = male and 1 = female. An officer's level of education was measured as an ordinal variable ranging from 1 = high school level to 4 = at least or beyond a master's degree. Marriage was measured by a binary variable where 1 = either being married or living together, and 0 = respondents who were divorced, separated, widowed, or single. Tenure was measured as an order variable in which "1" represented < 3 years, "2" represented 3-6 years, "3" represented 6-10 years, and "4" represented 10 years >. Shift was measured as a dichotomous variable where 0 = a 10-hour day per shift job and 1 = 24-hour rotating days and nights per shift. Similarly, position was measured as a dichotomous variable designed to determine whether respondents were non-line personnel (coded as 0) or line personnel (coded as 1). Finally, victimization was a dichotomous variable developed by asking if the respondent had ever been a victim of any physical threat, assault, attacks or non-physical forms of aggression by inmate(s) or coworker(s) during the past 12 months prior to the survey; no victim experience was coded as 0 and being the victim of at least one experience was coded as 1.

With respect to work environment, six variables were examined: (a) job stress, (b) job dangerousness, (c) job satisfaction, (d) organizational climate, (e) organizational commitment, and (f) external employment opportunity. Job stress was measured by utilizing eight items taken from Crank, Regoli, Hewitt, and Culbertson (1995) and Hsu (1996) which have been previously used in studies related to job stress in Taiwan's correctional field. These items allowed participants to assess their overall workplace job stress by asking each one the following questions: (1) due to the shortage of custodial personnel, I am usually under a lot of pressure; (2) due to overcrowding, I feel tense or uptight working in the prison/jail; (3) the increase of long-term offenders and violent criminals leads me to feel under alot of pressure; (4) I usually feel tense because there are more and more non-disciplined inmates in my area; (5) the conservative characteristic of prison/jail makes me feel upset; (6) I feel alot of pressure due to the increase of elderly inmates; (7) the long-lasting shift



makes me feel under pressure; and (8) the low levels of job efficiency upsets me and my colleagues. On a 5-point Likert-type scale, responses ranged from 1 = strongly disagree to 5 = strongly agree. This index was calculated as the sum of scores divided by 8. Therefore, higher scores represented a greater level of perceived job stress with a reliability of .88. Drawing from Lambert and Hogan's (2009) study, job dangerousness was measured using six items: (1) I feel dangerous when I am in custody of inmates; (2) my job is much more dangerous than most other jobs; (3) I have been physically injured on the job; (4) many of the colleagues I work with have been physically injured on the job; (5) in my job, a person stands a good chance of becoming hurt; (6) the unpredictable dangerousness of my job makes me feel anxiety. Using a 5-point Likert-type scale, response options ranged from 1 = strongly disagree to 5 = strongly agree. This index was calculated as the sum of scores divided by 6. Therefore, higher scores represented a higher level of perceived job dangerousness with a reliability of .80.

Job/intrinsic satisfaction was captured by using seven items derived from Weiss & Lofquist's (1967) measurement: (1) I am satisfied with keeping busy in my workplace; (2) I am satisfied that this position provides me with an opportunity to learn new things; (3) I am satisfied with fair opportunities to be promoted; (4) I am satisfied with having a stable job; (5) I am satisfied that I can devote myself to this job; (6) I am satisfied that my job requires me to experience a variety of different duties; (7) I am satisfied that I have the full authority to perform my job well. Using a 5-point Likert-type scale, response options ranged from 1 = strongly disagree to 5 = strongly agree. This index was calculated as the sum of scores divided by 7. Therefore, higher scores represented a higher level of job/intrinsic satisfaction with a reliability of .89 on this index. Drawing from Herzberg's (1968) argument, "factors that are extrinsic to the job satisfaction include: company policy and administration, supervision, interpersonal relationships, working conditions, salary, status, and security" (p. 176), organizational climate emphasized the levels of interpersonal relationships and extrinsic atmosphere around employees through four items: (1) I am not satisfied with the workplace atmosphere in my job; (2) I am not satisfied with the way that my supervisors treats me and other colleagues; (3) I do not like to talk about my job with others; and (4) The rules in prison/jail are too strict. The response options on a 5-point Likert-type scale ranged from 1 = strongly disagree to 5 = strongly agree. After reverse coding, this index was calculated as the sum of scores of the four items divided by 4. Therefore, higher scores represented a higher level of perceived organizational climate with a reliability of .68.

Organizational commitment was measured by translating six items from the work of Allen and Meyer (1990) who argued that organizational commitment was conceptualized and measured by a three-component model including affective, continuance, and normative components. In our study, six items drawn from affective commitment stated: (1) I would be very happy to spend the rest of my career with this unit; (2) I like my current job; (3) The job in prison/jail leads me to feel achievement; (4) I really feel as if this unit's problems are my own; (5) I do feel a strong sense of belonging to my unit; and (6) I really care about the fate of this prison/jail. Response options using a 5-point Likert-type scale ranged from 1 = strongly disagree to 5 = strongly agree. This index was calculated as the sum of scores divided by 6. Therefore, higher scores represented a higher level of perceived organizational commitment with an index reliability .87. Finally, external employment opportunity was measured by three items: (1) Except for my current job, I believe that I have no choice for other employment opportunities; (2) The main reason that I cannot leave this job is because so far I have no better employment opportunities; (3) I think I still stay with this job since no one can offer me a better job. Response options ranged from 1 = strongly disagree to 5 = strongly agree on a 5-point Likert-type scale. After reverse coding, this index was calculated as the

sum of scores for the three items divided by 3. Therefore, higher scores represented a higher level of external employment opportunity on this index with .68 reliability.

FINDINGS

The descriptive statistics for all study variables are reported in Table 1. As shown, the first column presents only those descriptive statistics of custody officers employed in prisons. With respect to the dependent variable, turnover intent, the mean was 3.03, suggesting that respondents who worked in prisons expressed a higher degree of turnover intent with responses ranging from 1 to 5. In terms of personal characteristics, the mean age was 2.50 ranging from 30 to 39 years old. More than 85% of the participants were male officers, and more than 50% reported having a bachelor's degree as their highest educational level. In terms of marriage, approximately 69.4% of respondents stated that they were married or lived together as a married couple. The mean of tenure was 3.77, suggesting that most respondents held from 3 to 6 years in corrections. With respect to shift, nearly one-half of the respondents reported that they were assigned to 24-hour rotating day and night shifts in the unit. In addition, over 94.5% reported that they were line personnel. Finally, approximately 36.9% reported that they had experienced physical victimization by either inmates or coworkers in the year prior to our survey.

Taking into consideration work environment variables, the job stress mean was 4.07 thus indicating that most respondents perceived higher levels of job stress and pressure in their organization. Similarly, a majority also reported higher levels of perceived job dangerousness ($M = 3.23$). This finding indicated that, on average, respondents were slightly satisfied with the job itself ($M = 2.90$) and its organizational climate ($M = 2.64$). In addition, most respondents expressed higher levels of perceived organizational commitment ($M = 3.20$). Finally, external employment opportunities had a mean of 2.75 which was marginally higher on responses ranging from 1 to 5, thus suggesting that almost one-half of the respondents viewed their jobs as a priority.

---Insert Table 1 about here---

As shown in the second column of Table 1, descriptive statistics related to staff employed in jails are presented. The mean of turnover intent was 3.06, suggesting that participants reported a higher degree of turnover intent. In addition, this value was greater than that reported by prison officers. In terms of personal characteristics, the mean age was 2.50 ranging from 30 to 39 years which was consistent with the mean reported by prison officers. Over 91% of the participants were males and similar to prison officers, more than 50% reporting having attained a bachelor's degree as their highest educational level. In terms of marriage, approximately 67.7% reported being married or living together as a couple. Tenure had a mean 3.67 or 3 to 6 tenured years in corrections. With respect to shift, approximately 45.5% of respondents reported that they were assigned to 24-hour rotating day and night duties. In addition, over 94.4% stated that they were employed as jail line personnel. Finally, nearly 49.5% of the participants had experienced physical victimization by either inmates or coworkers over the year prior to our survey. This percentage was significantly higher than 36.9% reported in prisons ($\chi^2 = 9.612, p < .01$).

As for work environment variables, the mean of job stress was 4.26, indicating that most respondents perceived higher levels in their facility. Similarly, a majority of respondents also reported higher levels of perceived job dangerousness ($M = 3.41$). This finding indicated that, on average, respondents were slightly satisfied with their jobs ($M = 2.85$) as well as the organizational



climate ($M = 2.54$). In addition, most respondents expressed higher levels of perceived organizational commitment ($M = 3.12$). Finally, the mean of external employment opportunity was 2.94 or marginally higher on a response ranging from 1 to 5, thus suggesting jail officers reported relatively higher degrees of external employment opportunity than their prison employed counterparts.

Next, a t -test was employed in order to determine the means of perceptions and attitudes pertaining to work environment between the two different groups (prisons vs. jails). As illustrated in Table 2, an analysis of mean differences is presented. As shown, officers employed in jails had higher means of job stress, job dangerousness, and external employment opportunities than those staffed in prisons but lower means related to job satisfaction, organizational climate, and organizational commitment. Specifically, jail personnel perceived significant higher levels of job stress ($t = -3.511$, $p < .001$), job dangerousness ($t = -2.889$, $p < .01$), and external employment opportunities ($t = -2.746$, $p < .01$). Unexpectedly, while officers employed in jails expressed a higher level of turnover intent than their prison employed counterparts, the association was not significant. Therefore, it can be concluded that jail officers rather than prison officers have a significant higher perception of job stress, job dangerousness, and external employment opportunities but did not significantly express a higher level of turnover intent.

---Insert Table 2 about here---

Finally, ordinary least square (OLS) regression models were used to identify the effects of personal characteristics and work environment variables on correctional turnover intent by officers working in different domains as displayed by the results shown in Table 3. Although not a perfect method for examining multicollinearity, the variance inflation factors (VIFs) that were computed by regressing each independent variable on other variables in the model is a good indicator of the problem (Judge, Hill, Griffiths, Lütkepohl, & Lee, 1988; Tabachnick & Fidell, 1996). In our study, a correlation check indicated that organizational commitment and job satisfaction were highly correlated ($r > 0.7$). Entering both variables in the same model resulted in multicollinearity examinations which indicated that the VIF was 2.6, suggesting that the score was lower than the tolerance statistic value of 4. Since VIF scores were below 4, multicollinearity was not therefore considered to be a substantially serious issue.

The first column shown in Table 3 represents all multivariate variables regressed on the turnover intent index by prison officers. Among the personal characteristics, only tenure and position had a statistically effect on the dependent variable ($\beta = -.127$ and $.132$, respectively). As indicated, when tenure increased, the desire to leave decreased. Respondents who held first line positions also reported higher levels of perceived turnover intent. Interestingly, age, gender, education, marriage, shift, and victimization failed to produce a significant association with the turnover intent index. Regarding work environment variables, job dangerousness, organizational climate, and organizational commitment were significantly related to turnover intent ($\beta = .243$, $-.207$, and $-.270$, respectively). As postulated, custody staff who perceived higher levels of job dangerousness and lower organizational climate and commitment also tended to report higher levels of turnover intent. Unfortunately, job stress, job satisfaction, and external employment opportunities revealed nonsignificant effects on tenure intent in this column. Among those significant variables, while organizational commitment was the robust predictor among those significant variables, tenure had the smallest impact. Finally, based on the R^2 coefficient, approximately 26% of the variance observed in the turnover intent index was accounted for by all variables.

The second column shown in Table 3 provides the results of all multivariate variables regressed on the turnover intent index by jail officers. Among the personal characteristic variables, only age had a statistically significant effect on turnover intent ($\beta = -.194$) in which younger officers expressed more propensity to quit their positions. Conversely, gender, education, marriage, tenure, shift, position, and victimization had nonsignificant effects. Consistent with the first column, work environment variables including job dangerousness, organizational climate, and organizational commitment had a greater impact in the turnover intent index among jail staff respondents ($\beta = .157, -.194, \text{ and } -.278$, respectively). While organizational commitment was the robust predictor among those significant variables, job dangerousness had the smallest impact. Based on the R^2 coefficient, nearly 36% of the variance observed in the turnover intent index was accounted for by all variables.

DISCUSSION AND CONCLUSION

While a wealth of prior research has been conducted by using staff employed in prisons, jail officers' perceptions and attitudes regarding turnover intent have been largely overlooked over the past decades (Castle & Martin, 2006; Lambert et al., 2004). Therefore, we attempted to fill the gap in the literature related to turnover intent among Taiwanese prison correctional officers and jail officers who worked under the "get-tough" era. Similar to previous studies, explanatory variables derived from the two models were included in the analysis.

In the following discussion, three observations are highlighted.

First, jails traditionally play a multifunctional role in the criminal justice system (i.e., housing felons bench-warranted as witnesses in pending cases, parolees, probationers, absconders, offenders placed in protective custody, prisoners held for other state or federal jurisdictions, inmates awaiting transfer to mental institutions, and even civil detainees) (Kellar & Wang, 2005; Mays & Winfree, 2002). In addition, Castle (2008) found that jails typically house the more violent suspects and criminals. Indeed, custody officers employed in jails expressed significant and higher levels of job stress, job dangerousness, and external employment opportunities than officers staffed in prisons. Unexpectedly, however, they did not report a significant and higher degree of turnover intent than their counterparts, suggesting that officers employed in jails and in prisons both indicated greater levels of thoughts to leave their jobs.

Second, while tenure was a significant predictor related to personal characteristics among prison officers, older respondents displayed less propensity to quit their positions, a finding that is consistent with prior studies (Byrd et al., 2000; Camp, 1994; Kiekbusch et al., 2003; Lambert, 2006; Lambert & Paoline, 2010; Lambert et al., 2010; Mitchell et al., 2000; Robinson et al., 1997; Stohr et al., 1992; Tipton, 2002). For example, Lambert and Hogan (2009) suggested that older prison employees have greater financial and familial obligations thus leading them to have a lower willingness to seek other jobs. Further, Lambert (2006) indicated that the shorter period of time that a worker remains with an organization, the individual will acquire fewer investments, namely pay, social networks, seniority, and retirement, which make quitting a job easier. In addition, line personnel expressed a greater desire to leave than non-line staff (Byrd et al., 2000; Slate & Vogel, 1997). Actually, custody line staff are faced daily with the fact that violent inmates may unexpectedly attack them (McShane, 2005). Furthermore, working in custody is often a difficult and demanding job that does not result in the adequate praise it deserves (Lambert & Hogan, 2009).



Thus, custody line staff are more willing to leave the prisons compared to their non-line counterparts.

Third, our study joined the growing correctional literature on staff turnover intent indicating that work environment attributes are the most salient factors (Lambert, 2006). Specifically, job dangerousness, organizational climate, and organizational commitment have significant effects on correctional staff turnover intent across the two prison and jail domains (Lambert, 2006; Lambert & Hogan, 2009; Lambert & Paoline, 2010; Lambert et al., 2001; Mitchell et al., 2000). An increase in job dangerousness resulted in a decrease in turnover intent; however, when workers perceived higher levels of organizational climate and commitment, their turnover intent was lower. In terms of other work environment variables, job stress, job satisfaction, and external employment opportunities failed to produce a significant association with custody staff across both prisons and jails. For example, Lambert and Hogan (2009) found that external employment opportunities had a nonsignificant effect on turnover intent among correctional staff working at a maximum security private prison (see also, Camp, 1994). It is reasonable to speculate that correctional officers would not prefer to leave jobs since compared to private sectors, public sectors offer higher salaries, welfare benefits and retirement plans. Simultaneously, the current unemployment rate in Taiwan (< 5%) (Directorate-General of Budget, Accounting, and Statistics, Executive Yuan, 2011) was relatively higher during the 12 months prior to our survey. In contrast, work-related attitudes and perceptions lead correctional staff to continuously think about quitting.

Policy Implications

These results contribute to the literature as well as provide policy implications. First, for younger and rookie officers, administrators should focus on increasing organizational commitment in order to reduce their turnover intent. For example, young officers should be encouraged to participate in job-related conferences and be provided with various decision-making opportunities. According to Robbins and Coulter (2005), these strategies greatly matter in helping to shape organizational commitment that leads to a reduction in the levels of turnover intent. In addition, increased salaries, benefits, and scheduled vacations are facilitators that help to retain youth who work in correctional positions (DiIulio, 1987; Lambert & Hogan, 2009).

Second, with respect to line personnel, their primary concerns include safety and security. Accordingly, correctional departments must improve unsafe workplace conditions such as dangerous workshops and blind spots. For example, administrators can have more closed circuit televisions (CCTVs) installed, employ duress alarm systems, and build emergency reporting and safe evacuations systems. Recently, correctional institutions in the United States began to explore ways in which geographic information systems (GIS) can assist with daily operations. Specifically, Karuppanan (2005) found that GIS can help correctional officers separate potential violent inmates and gang members, identify hazardous locations, track the movement of high-risk inmates or at-risk personnel throughout a prison, and reduce perceptions of fear at the workplace. Maintaining workplace safety and reducing the fear of potential victimization are the first steps in lowering the turnover intent among line staff (Triplet, Mullings, & Scarborough, 1996).

Third, a podular design should be introduced to jail administrators in order to replace outdated structures by employing linear supervision or simply a corridor consisting of separate cells. Similar to the United States, direct supervision facilities in Taiwanese jails allow line staff to constantly observe all aspects of an inmate's living space (DeLisi & Conis, 2010; Huang, 2010). As a result,

jail custody officers reported higher levels of job dangerousness and victimization experiences in our study. Therefore, podular modules/designs representing a new generation jail are theorized to serve three important interrelated purposes. First, they are more humane facilities compared to the traditional ones in which all inmates are housed in small cells and are detained in a small block for most of their detention. Second, increased amenities offer inmates an incentive to obey jail regulations. Third, and most importantly, podular modules create safer jails since officers would have no need to continuously supervise inmates in very close contact quarters (Brandon & Paoline, 2007). In addition, training can reduce perceptions of job dangerousness (Griffin, 2001; Lai et al., forthcoming). Thus, building a safe and secure workplace is a viable method to reduce turnover intent and ensure professional correctional officers that they will remain devoted to their jobs.

Finally and consistent with previous research, designing ways to increase staff organizational climate and commitment are paramount. The results of our study suggest that work environment factors greatly matter in shaping turnover intent among correctional staff across jails and prisons alike (Lambert & Hogan, 2009; Lambert & Paoline, 2010). Actually, while jails and prisons are operated by different levels of government in the United States, they are centralized in Taiwan by the Agency of Corrections, Ministry of Justice (Huang, 2010). In other words, correctional administrators should equally design the same policies and strategies that can be applied to jails and prisons. Based on the literature, it is recommended that correctional administrators focus on improving the staff workplace environment. For example, Kiebusch et al. (2003) found that jail officers who perceived a realistic promotion opportunity were less likely to leave, suggesting that providing promotional opportunities for officers and cultivating career plans truly matters in the correctional field. In addition, correctional administrators should continuously strive to improve communication channels between supervisory level and line personnel by providing staff with a private and relaxed atmosphere and praising them for superior work (Garland, 2004). If impossible, correctional administrators should encourage line personnel to participate in warden-election activities in order to increase organizational cohesion and belonging and decrease turnover intent rates.

Limitations

As with any research, our study is not without limitations. First, we only examined custody officer perceptions and attitudes rather than all correctional officers including non-custody officers (e.g., counselors, case managers, medical personnel, etc.); therefore, the results are important but may not be generalized to other staff members employed in jails and prisons. Second, a longitudinal study is warranted. For example, while respondents reported a higher level of turnover intent in our study, there were no criteria available to determine if this finding was consistent with previous studies. Although few studies have been recently conducted in Taiwanese correctional facilities (e.g., Hsu, 2003; Kuo, 2009), the following two questions call for an answer using a longitudinal design. First, "Do personal characteristics actually result in less work in Taiwanese correctional facilities?" Second, "Is the trend of turnover intent rising or falling under the 'get-tough-on-crime' policy?" Finally, similar to Camp's (1994) study, we found that the local unemployment rate in Taiwan had no relationship with actual turnover among correctional staff. In addition, it is may be possible that external employment opportunities did not fully capture the concept. Hence, additional research is recommended for future research.



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Table 1 *Descriptive statistics for all variables (N = 799)*

Variable	Description	Prisons (n = 601)			Jails (n = 198)		
		Mean	SD	Frequency (%)	Mean	SD	Frequency (%)
<i>Dependent Variable</i>							
Turnover intent	4 item index, $\alpha = .79$	3.03	0.82		3.06	0.83	
<i>Personal Characteristics</i>							
Age	1 = 20-29 yrs. 2 = 30-39 yrs, 3 = 40-49 yrs. 4 = 50+ yrs.	2.50	0.87		2.50	0.80	
Gender	0 = Male 1 = Female			516(85.9) 85(14.1)			181(91.4) 17(8.6)
Education	1 = High school 2 = Associate's 3 = Bachelor's 4 = Graduate	2.23	0.87		2.20	0.87	
Marriage	0 = Single & others 1 = Married			176(29.3) 417(69.4)			64(32.3) 134(67.7)
Tenure	1 = 0 to 1 yr. 2 = 1 to 3 yrs. 3 = 3 to 6 yrs. 4 = 6 to 10 yrs. 5 = 10+ yrs,	3.77	1.32		3.67	1.41	
Shift	0 = Days only 1 = Rotating days & nights			294(48.9) 298(49.6)			90(45.5) 105(53.0)
Victimization	0 = No 1 = Yes			364(60.6) 222(36.9)			96(48.5) 98(49.5)
<i>Work environment variables</i>							
Job stress	8 item index, $\alpha = .88$	4.07	0.68		4.26	0.57	
Job dangerousness	6 item index, $\alpha = .80$	3.23	0.73		3.41	0.76	
Organizational climate	4 item index, $\alpha = .68$	2.64	0.73		2.54	0.69	
Job satisfaction	7 item index, $\alpha = .89$	2.90	0.80		2.85	0.80	
Organizational commitment	6 item index, $\alpha = .84$	3.20	0.75		3.12	0.78	
External employment opportunity	3 item index, $\alpha = .68$	2.75	0.81		2.94	0.90	

Table 2 *The outcomes of dependent samples using a t- test (N = 799)*

Variable	Prison (n = 601)		Jail (n = 198)		t-value
	Mean	SD	Mean	SD	
Job stress	4.07	0.68	4.26	0.57	-3.511***
Job dangerousness	3.23	0.73	3.41	0.76	-2.889**
Organizational climate	2.64	0.73	2.54	0.69	1.755
Job satisfaction	2.90	0.80	2.85	0.80	.725
Organizational commitment	3.20	0.75	3.12	0.78	1.263
External employment opportunity	2.75	0.81	2.94	0.90	-2.746**
Turnover intent	3.03	0.82	3.06	0.83	-.460

Note. *** $p < .001$, ** $p < .01$, * $p < .05$

Table 3 *OLS regression results with turnover intent as the dependent variable (N = 799)*

	Prison (n = 601)			Jail (n = 198)		
	B	SE	beta	B	SE	beta
<i>Personal Characteristics</i>						
Age	.008	.055	.008	-.198	.095	-.194*
Gender (Female)	-.142	.096	-.060	-.189	.189	-.068
Education	.056	.040	.059	.054	.070	.058
Marriage (Married)	-.053	.084	-.029	-.134	.135	-.077
Tenure	-.079	.037	-.127*	.060	.058	.105
Shift (Rotating days and nights)	-.113	.070	-.069	-.077	.122	-.047
Position (line personnel)	.458	.137	.132**	.021	.235	.006
Victimization	.009	.068	.005	.147	.123	.090
<i>Work environment variables</i>						
Job stress	-.028	.061	-.023	.107	.122	.075
Job dangerousness	.277	.053	.243***	.171	.090	.157*
Organizational climate	-.229	.052	-.207***	-.231	.098	-.194*
Job satisfaction	.098	.063	.096	.011	.106	.010
Organizational commitment	-.293	.064	-.270***	-.292	.108	-.278***
External employment opportunity	.007	.040	.007	.014	.060	.015
<i>F</i>	12.87***			6.45***		
<i>R</i> ²	.263			.356		

Note. *** $p < .001$, ** $p < .01$, * $p < .05$



ATTITUDES OF PRIVATE SECURITY OFFICERS IN SINGAPORE TOWARDS THEIR WORK ENVIRONMENT

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The present research addresses the nature of the security guard industry in Singapore. In 2009, Singapore had 273 guard companies employing nearly 29,000 personnel, a number nearly three times that of police officers. In this study, we outline the regulatory framework for the unarmed security guard industry followed by a preliminary assessment of the security personnel views on their job scope and empowerment, organizational attributes and satisfaction level regarding pay and benefits. Data for this research is drawn from a survey conducted in 2010 of 251 security guards. The respondents found satisfaction and meaning in their work and experienced competent supervision though they appeared dissatisfied with pay and benefits. They also strongly believed that mandatory training was necessary for private security officers.

INTRODUCTION

Over the last five years, the regulation and licensing of private security organisations and personnel in Singapore has been significantly enhanced so that they may complement state law enforcement in crime and loss prevention. The enhanced requirements overall have had profound effects on how security providers organise their operations as well as determine their manpower policies and practices relating to recruitment and training. These changes have been entrenched in legislation and the regulatory regime, and the details are readily available.

The topic of how security personnel in Singapore perceive the recent changes and their work environment is under-researched. The few studies done on Singapore security officers' perceptions in previous years are more than likely obsolete, as recent changes in the regulatory framework have been in effect nationwide from 2005 onwards, and with 100 percent implementation due to a unitary system of government.

The present research surveys security personnel¹ from various security suppliers, including those not currently employed as such, so long as they have had some working experience in the private security industry. The respondents were surveyed on their views on their job scope and empowerment, satisfaction level regarding pay and benefits, and the importance of a range of training topics.

CONTEXT

Singapore was a colony of Britain from 1819 till 1963. Thereafter, the rapid expansion of the industrial and commercial sectors in Singapore led to a surge in the demand for private security services, in particular to protect buildings, hotels, warehouses, factories, shopping complexes and

¹ In this paper we refer use the terms security guards and security officers interchangeably.

ships, and for private investigation services (*Chua, 1973*). In 1973, the government decided to act against the phenomenon of a large number of security agency staff being engaged in crime and excessive use of force. The regulatory regime then introduced was basic. The Private Investigation and Security Agencies Act 1973 (“PISA ‘73”) was designed to simply ensure that licenses to run security agencies were only issued to persons who were of good character and who only employed security staff who had been screened by the police.

Since those early days, the transformation of Singapore from a largely rural population into a metropolis, and the increased security concerns following the 9-11 attacks in the United States in 2001, ensured the exponential growth in the demand for private security. This growth is borne out in the growth in private security manpower relative to law enforcement. To understand this in context, a description of the distribution of duties among the triumvirate of the three key players in Singapore is necessary.

The first key player is state law enforcement. Law enforcement, except in certain specialised fields such as narcotics and corruption, is carried out primarily by the Singapore Police Force (“SPF”), an organisation which comes within the jurisdiction of the Ministry of Home Affairs. SPF officers are an armed force, empowered under the Police Force Act (Chapter 235, Singapore Statutes), Criminal Procedure Code (Chapter 68, Singapore Statutes), Public Order Act 2009 and other statutes to exercise wide coercive powers in order to maintain law and order, take preventive actions, and investigate crimes. Their services are funded out of the general taxation fund.

SPF uniformed officers are largely full-time career officers and numbered 7,810 on March 31, 2009. However, due to the mandatory draft applicable to male Singapore citizens under the Enlistment Act, there is also a force of national servicemen who serve two years full-time with the SPF and this number was 4,750 on March 31, 2009 (*Singapore Police Force, 2009*). There is also a reservist force of those who have completed police national service but are still required to return annually for about two weeks of police duty, for about ten years after their initial service is completed.

To complement the SPF in its heavy law enforcement workload, the second key player, viz. auxiliary police forces, are deployed. There are currently only three such auxiliary police forces – Certis CISCO Security Pte Ltd, AETOS Security Management Pte Ltd and SATS Security Services Pte Ltd, and they are all government-owned entities. They supply security services for profit and are not funded by general taxation. The total number of auxiliary police is not easily available, apparently due to commercial sensitivities (*Singh, J. 2010*), though the approximate number is between 5,000 to 8,000.

Auxiliary police officers have some police powers and carry firearms. The training of these officers is not as comprehensive as SPF officers, and their remuneration and public standing are similarly affected. In the past these officers were likely to be confined to less confrontational policing duties such as accompanying cash-in-transit and guarding of key buildings. In recent years, especially since the Police Force Act was amended in 2004, the auxiliary police have increasingly been deployed alongside SPF officers in major crowd control operations such as used for providing



security for special events such as heads of government attending important meetings. However, the tasks assigned may be calibrated, e.g. under the Public Order Act 2009, and an auxiliary police officer can check the property of persons entering a restricted area but only SPF officers can do frisk searches (Sections 24 and 25, Public Order Act 2009).

The final key player in the triumvirate is the unarmed security provider. This is comprised largely of privately-owned businesses supplying unarmed guards. According to police records, there were 273 security agencies licensed to provide services in 2009 (*Singapore Police Force, 2009*). These companies range from small outfits with a handful of guards to large companies with 500 or more guards employed.

The number of guards approved for security work rose dramatically from 18,000 in 2005 to 29,000 in 2008 (*Shanmugam, 2009*), with the industry facing manpower shortages due to heightened demand. Besides the greater security consciousness arising from terrorism-related fears, the Singapore economy has moved into fifth gear. The completion of two mega-projects involving casinos at Marina Bay Sands and Resorts World Sentosa has been one cause for the increased demand for security services, with the government's push for Singapore to be a centre for MICE (Meetings, Incentives, Conventions and Exhibitions) being another.

In terms of relative manpower numbers, the private security to state law enforcement ratio is thus at least 3:1 (with 29,000 guards versus about 7,810 career police, not counting the auxiliary numbers). The fact that private security outnumbers state law enforcement personnel is common in jurisdictions with market economies. In Hong Kong SAR the ratio is about 5:1 (*Broadhurst, 2004*), while in India about 4:1 (*Singh K.V., 2010*).

REGULATORY FRAMEWORK FOR UNARMED SECURITY GUARDS IN SINGAPORE

Up until 2005, the unarmed security industry had been lightly regulated. Under PISA '73, business owners who wanted to register a guard company would need to demonstrate they have at least two years' experience in security-related work as well as in personnel-management, and have a paid up capital of S\$25,000 (approximately US\$19,100 in Dec 2010). They also must have completed secondary education and be of good character (*Nalla and Lim, 2003*). Guards wanting to be hired would have to pass a police screening for criminal offences (criminal background check). The licensing of security businesses and guards came under the purview of the Licensing Department of the SPF, which also issues a variety of other licenses including those for massage parlours, retail liquor sales, and public entertainment. There were no mandatory training requirements for security personnel, although as a matter of licensing practice, security agency owners did not get their licenses renewed unless they could show that at least 50 percent of their guards had completed basic security training (*Nalla and Lim, 2003*). In-house security staff who provided security for their own employers were also not required to be licensed.

Such a minimalist approach may account for the profile of security personnel at that time. It was typical then for persons to embark on security work in their retirement years, when one would not

be at his/her physical prime. Even leading security companies in Singapore reported typical staff profiles where the majority of their guards were older than 50 years (*Nalla et al., 1996*).

In 2004, a dedicated department within the Singapore Police Force was formed to oversee the regulation of the private security industry, viz. the Security Industry Regulatory Department ('SIRD'). Since its formation, the SIRD has worked closely with the government labour upgrading authority (Workforce Development Authority) and the private security industry to enhance standards and career pathways so as to attract higher caliber personnel to enter and remain in the industry.

In the last five years, the regulation of the industry has gone from minimum-narrow to a deeper and wider model. In 2005, mandatory training and assessment was mandated as pre-assignment training for guards, wherein each potential guard was required to pass two mandatory modules – Providing Guard and Patrol Services, and Providing Incident Management Services. The training collectively took about five working days, and there were one-to-one assessments thereafter.

In 2007, a new Private Security Industry Act ("PSIA") was passed by the Parliament of Singapore, superseding PISA '73, in an attempt to enhance industry regulation. One of the key changes was to bring in-house security manpower (persons providing security services to their own employers) within the licensing and training regime (*Wong, 2007*). In-house security employees were required to do the two compulsory licensing modules (for a total of 40 hours) and to be individually licensed, just like contract guards.

The paid-up capital requirement for security businesses was doubled to S\$50,000 (about USD\$38,221). Applicants for a security agency license began to be required to submit a business plan outlining their financial outlay, market opportunities, audit and internal procedures (to ensure compliance with all regulations), as well as provide their mechanism for continuous training and the names and resumes of key personnel running their operation (*Singapore Police Force, 2010*).

Additionally, in 2006 an annual security agency audit by police regulators was introduced as optional but by 2008 it was clear that about 50 percent of security agencies did not wish to participate. The nonparticipants tended to be smaller players who did not want to change their methods of operation (*Teh and Chong, 2008*). By 2009, the audit became a mandatory condition for the licensing of guard agencies under PSIA (*Chua, 2009*).

In addition to the annual audit, collaborative efforts between the SIRD, the Workforce Development Agency, and industry representatives have given rise to national training standards for the private security industry, leading to qualifications such as a Certificate in Security Operations (for guards), Advanced Certificate in Security Supervision (for supervisors) and a Diploma in Security Management (for managers and business licensees). These are additional modules (beyond the core licensing ones) aimed at raising the knowledge and skills of security personnel. Having such qualifications would also enable the agency to obtain better scores during the annual audit.



These changes have been sweeping and resulted in the falling away of some businesses. For instance, as of 2002, there were 301 licensed agencies (*Nalla and Lim, 2003*) whereas in 2009, there were only 273. The reluctance of 50 percent of the agencies to take part in the then optional annual audit in 2008 noted above is a reflection of the lack of motivation on the part of security business owners to subject themselves to public scrutiny.

With this background, it was thus timely to ascertain how the recent changes have impacted the security officers themselves, as they were meant to uplift standards, wages, and job satisfaction and career prospects (*Wong, 2008*).

LITERATURE REVIEW

Private security in Asia has grown in tandem with its rise in economic importance on the world stage. There is evidence that the manpower strength in private security outnumbers state law enforcement in Japan (*Yoshida and Leishman, 2006*), South Korea (*Button et al., 2006*), Hong Kong SAR (*Broadhurst, 2004*). China, which is communist in ideology, but because of adopting a market economy, the private security industry has grown, with some devolution of previously public policing functions to privatized bodies (*Zhong and Grabosky, 2009*).

In Indonesia, there has been concern expressed about the growth of paid militias that are not accountable to the public and often used for political ends (*Asia Report, 2003*). Malaysia has also faced calls for enhancements to its regulatory regime (*Teoh, 2009*).

As far as Singapore is concerned, a 1994 study of security officers' perceptions of their relationships with police and the public showed an industry at that time with a relatively poor self-image but at the same time optimistic about progress through enhanced training (*Nalla et al., 1996*). Eight years later, a study of student perceptions of private police in Singapore showed more positive public perceptions of security officers (*Nalla and Lim, 2002*). A survey of security officers from four large guard companies in Singapore showed highly positive attitudes towards working relationships with both the state police and auxiliary police (*Nalla and Lim, 2003*).

Assessing how widely and deeply the private security industry is regulated is one model for assessing the nature of a regulatory regime (*Button and George, 2006*). Width would refer to how widely the net is cast for regulation, with jurisdictions regulating more tasks/types of organizations being classified as wider, and those who regulate fewer groups (e.g. only guard companies) as narrow. A narrow focus, which excludes in-house security from regulation, would have an impact on national standards overall (*Berglund, undated*).

Some comparative studies have been undertaken. Public policing regimes in Hong Kong and New York were compared (*Jiao and Silverman, 2005*), as were the regulation of private security in South Korea versus the United States (*Lee, 2008*).

PRESENT STUDY

The purpose of the present study is to examine the attitudes of security agency officers towards their work environment. The goal is to assess whether there is any evidence suggesting that security officers' work attitudes have been enhanced in light of the recent changes to the licensing and training requirements. Understanding security guards' opinions regarding their work environment, more specifically aspects such as the larger cultural dimensions of work including autonomy, satisfaction with supervision, work, and pay, would be instructive.

Methodology

The data for this research was gathered from respondents with prior working experience in security who had enrolled for training courses conducted by the Security Industry Institute, Temasek Polytechnic, Singapore and the Employment and the Employability Institute, Singapore. The courses which contributed the most respondents were the security supervisors' module and the counter-terrorism module.

The sample thus may not be representative of the industry as a whole for a few reasons. First, these respondents were motivated to attend further training, either through employer support or their own initiative. Their views and job experiences may be more positive than those who were simply too busy or not motivated to attend training. Secondly, the training courses were predominantly attended by Singapore citizens and permanent residents due to the generous government subsidies available to them, which were not available to many Malaysians working in this industry who are not permanent residents. To overcome this issue, attempts were made to obtain returns from non-course participants by way of mail returns from colleagues of the course participants; however, the postal returns proved negligible and this method was then discontinued. Nevertheless, the survey gives a sense of how this particular segment of security officers perceive their work environment and prospects.

The questionnaire was developed from earlier research related to organizational and work culture in the context of law enforcement organizations in the U.S., Turkey, Slovenia, and South Korea, among others (Nalla and Kang 2011; Nalla, Rydberg, and Mesko 2011; Nalla and Boke 2012). The questionnaire was modified to suit the demographic and local circumstances of the security industry in Singapore. Responses were elicited on a Likert scale with the range of 1 (Strongly Disagree) to 5 (Strongly Agree). About half-way through their courses, the questionnaires were distributed to cohorts of trainees attending the Supervise Security Officers and the Handle Counter-Terrorism Activities modules. A total of 325 surveys were handed over to the participants attending the training sessions, out of which 251 returns were usable surveys, representing an 77 percent response rate.



FINDINGS AND ANALYSIS

Respondents' Characteristics

The demographic characteristics of the respondents are presented in Table 1. The respondents were evenly distributed along different age categories. About 22 percent of the sample were in the age group of 30 years or less and between 31 and 40 years, with both categories suggesting a significant presence of younger personnel in the security industry relative to findings from the early 1990s (Nalla et al., 1996). Coincidentally, this squares with the government estimate for the industry overall, where the then Home Affairs Minister noted in 2008 that the proportion of security personnel below 39 years had increased from 29 percent in 2005 to 33 percent (*Wong, 2008*).

At 88 percent, males predominate the sample. In terms of ethnic composition, 42 percent were Chinese, 22 percent Indian and 28 percent Malay. This is a significant departure from the general population which was comprised of 74 percent Chinese, 9 percent Indian and 14 percent Malay, and demonstrated an over-representation of Indians and Malays and an under-representation of the majority Chinese population.

As for the respondents' ranks, nearly a third of the entire sample (35 percent) were supervisors while the remaining were security officers/guards. Almost 78 percent of the respondents secondary education or some secondary education while 16 percent had additional secondary education and only 5 percent had college education.

Nearly half of the entire sample had three or less years of experience while 22 percent had four to six years of experience. However, as regards security officers' perceptions of their public image, the proportion of those who believed the public viewed them positively (31 percent) was similar to those who believe that the public perceives them negatively (33 percent) or neutral (37 percent).

Table 1. Distributions and Descriptive Statistics of Respondents in Singapore Study (N=251)

Variable	Description	N	%	Mean	St. Dev.	Min	Max
Demographic Characteristics							
Age (N=251)	1 = ≤ 30 years	54	21.5	2.6	1.1	1	4
	2 = 31 - 40 years	56	22.3				
	3 = 41 - 50 years	76	30.3				
	4 = 51 and above	65	25.9				
Gender (N=251)	1 = Female	30	12.0	1.9	0.3	1	2
	2 = Male	221	88.0				
Ethnicity (N=238) ^a	1 = Chinese	101	42.4	2.1	1.6	1	4
	2 = Indian	53	22.3				
	3 = Malay	68	28.6				
	4 = Others	16	6.7				
Rank (N=215) ^a	1 = Supervisor	76	35.3	1.7	0.5	1	2
	2 = Security Guard/Officer	139	64.7				
Education (N=224) ^a	1 = Some Sec.	86	38.4	1.9	0.9	1	4
	2 = Finished Sec.	90	40.2				
	3 = Add. Sec.	36	16.1				
	4 = College.	12	5.4				
Years of Experience (N=251)	1 = ≤ 3 years	135	53.8	1.9	1.1	1	4
	2 = 4 – 6 years	56	22.3				
	3 = 7 – 9 years	19	7.6				
	4 = 10 and above	41	16.3				
General Public View of Pvt. Sec. Profession (N=251)	1 = Negative	82	32.7	2.0	0.8	1	3
	2 = Neutral	92	36.7				
	3 = Positive	77	30.7				

a. Missing cases were excluded from the analysis.

b. 1= Some secondary education; 2 = Completed GCE O Level certificate or SPM; 3 = Additional certification - Polytechnic Diploma or STPM; 4 = Bachelor's degree or higher.

nb. Missing cases were assigned to the mode for variables with ten or fewer missing cases.



Attitudes Towards the Work Environment

Findings relating to security guards' attitudes regarding various dimensions of the work environment are presented in below tables. These tables display the percentage of subjects falling within each response category for the survey questions used in the analysis, as well as the means for determining these questions. Note that while in the original survey there are five response categories, for purposes of presentation the "Strongly Agree" and "Agree" categories were collapsed into one category, and the "Strongly Disagree" and "Disagree" categories were also collapsed into a single category. In addition, the last column shows the mean value on a scale of 1 through 3 with 1 representing strongly disagree/disagree, 2 representing unsure or neutral, and 3 representing strongly agree and agree. However, the mean scores and standard deviations were not interpreted as we were more interested in ascertaining general trends. Questions were posed to the security guards in categories that include job autonomy, job challenges, supervisor support, innovation, and job satisfaction, among others.

Table 2 displays findings related to guards' views on job autonomy. There were three questions in this category. On the issue of guards' views on deciding how to do their jobs, over half of the respondents (54 percent) did not believe they have a choice regarding the matter while 41 percent reported that they did feel some autonomy. Nearly two thirds (63 percent) felt that their job assignment allows them to do different things and use many skills. However, only half (51 percent) said that their job gives them considerable opportunity for freedom in how they do their job.

Table 2. Singapore security guards perceptions of Job Autonomy (N=251)

	Strongly Disagree/Disagree	Neutral	Strongly Agree/Agree	Mean/SD [¥]
	N/%	N/%	N/%	
I can decide how to do my job and don't have to follow instructions strictly.	135/53.8	13/5.2	103/41.0	1.9/1.0
My job assignment allows me to do different things and use many skills.	69/27.5	25/10.0	157/62.5	2.3/0.9
My job gives me considerable opportunity for freedom in how to do my work.	100/39.9	22/8.8	129/51.4	2.1/1.0

[¥]1 = Strongly Disagree; 3 = Strongly Agree

Findings regarding job challenges are presented in Table 3. Over two-thirds (71 percent) of the respondents noted that their job is challenging while 59 percent said that they have new and interesting things to do at work. A similar response regarding boredom at work was expressed by the respondents. 63 percent of the guards said that they are never bored at work since they have many things to do.

Table 3. Singapore security guards perceptions of Job Challenges (N=251)

	Strongly Disagree/	Neutral	Strongly Agree/	Mean/SD [¥]
	Disagree		Agree	
	N/%	N/%	N/%	
My job assignment is challenging.	55/21.9	19/7.6	177/70.5	2.5/0.9
I have new and interesting things to do in my work.	74/29.5	28/11.2	149/59.4	2.3/0.9
I am never bored at work since I have many different things to do.	72/28.7	20/8.0	159/63.3	2.3/0.9

[¥]1 = Strongly Disagree; 3 = Strongly Agree

There was generally a positive response regarding supervisors in the job (Table 4). Overall, more than half and in some instances over two-thirds of the respondents were supportive of their supervisors and expressed confidence in them. Fifty five percent of the respondents said that their supervisors were capable, allowed the guards to solve problems on their own (63 percent), and take risks (47 percent), that they communicated expectations (69 percent), treated them fairly (66 percent), and made decisions after consulting with the guards (52 percent).

Table 4. Singapore security guards perceptions of Supervisor Support (N=251)

	Strongly Disagree/	Neutral	Strongly Agree/	Mean/SD [¥]
	Disagree		Agree	
	N/%	N/%	N/%	
My supervisor likes me to solve problems on my own.	60/23.9	33/13.1	158/62.9	2.3/0.8
My Supervisor likes me to take risks	92/36.6	42/16.7	117/46.6	2.0/0.9
My supervisor explains to me what he expects.	44/17.5	33/13.1	174/69.4	2.5/0.8

[¥]1 = Strongly Disagree; 3 = Strongly Agree

Findings regarding guards' attitudes toward innovation are presented in Table 5. This idea was represented through five specific questions which received mixed views.

Table 5. Singapore security guards perceptions of Innovation at work (N=251)

	Strongly Disagree/ Disagree	Neutral	Strongly Agree/ Agree	Mean/SD [¥]
	N/%	N/%	N/%	
We security officers are asked to make suggestions for improvements in our work.	65/25.9	27/10.8	159/63.3	2.4/0.9
Security officers in my guard agency can try out their own ideas of new and better ways of doing the job.	87/34.7	37/14.7	127/50.6	2.2/0.9
My security guard agency welcomes new ideas about working.	88/35.1	41/16.3	122/48.6	3.1/1.2
Those who come up with new ideas get rewarded by the guard agency.	102/40.6	86/34.3	63/25.1	2.7/1.2
Security personnel in the guard agency stick to the old way of doing work. ^a	67/26.7	45/19.0	139/55.3	2.1/0.9

[¥]1 = Strongly Disagree; 3 = Strongly Agree

^a Reverse Coded

Although 63 percent of security guards were very pleased that they were asked to make suggestions to improve matters at work (63 percent), a little over half (55 percent) said that security personnel in the guard agency stick to the old way of doing work but welcomed new ideas about doing the work (48 percent). About a quarter of the respondents (25 percent) did not believe that those who come up with new ideas get rewarded, a finding that is contradictory to some other responses.

Findings relating to satisfaction with job, pay, and benefits are presented in Table 6. Contrary to negative stereotypes in popular culture about security guard occupation, nearly two-thirds of all the respondents expressed satisfaction with their work. Sixty five percent respondents that they look forward to their job each day while 62 percent indicated that overall they were satisfied with the job. However, there were some concerns relating to pay and benefits. About half were dissatisfied with their salary while a similar number (54%) were dissatisfied with benefits.

Table 6. Singapore security guards perceptions of Job Satisfaction, Pay and Benefits (N=251)

	Strongly Disagree/ Disagree	Neutral	Strongly Agree/ Agree	Mean/SD [¥]
	N/%	N/%	N/%	
I look forward to my job each day	47/18.7	40/15.9	164/65.3	2.5/0.8
Overall, I am very satisfied with my job	58/23.1	37/14.7	156/62.2	2.4/0.8
I feel that I am receiving a fair salary for what I am doing.	122/51.0	28/11.7	89/37.2	2.0/1.0
I am satisfied with the benefits that I receive.	129/54.2	33/13.9	76/31.9	1.7/0.9

[¥]1 = Strongly Disagree; 3 = Strongly Agree

Security guards views on citizen support and non-security employee support are presented in Table 7. Compared to citizen support, findings on employee support (i.e., employees who work in other departments at the site) appeared more positive. Fifty-five percent of the security noted that other employees who work at the site cooperate with guards and trust security personnel (55%), while only 47 percent noted that other employees at the work site are willing to help security guards solve problems. However, regarding citizen support for security guards, less than half of all the respondents felt that the public generally cooperates with security officers (46%) and trusts security personnel (46%). Even a smaller percentage of the respondents (39%) felt that the public is willing to help security officers solve problems.

Table 7. Singapore security guards perceptions of support of public and other non-security employees (N=251)

	Strongly Disagree/ Disagree	Neutral	Strongly Agree/ Agree	Mean/SD [¥]
	N/%	N/%	N/%	
<i>Public Support</i>				
The public generally cooperates with security officers.	88/35.1	47/18.7	116/46.2	2.1/0.9
The public trusts security officers.	88/35.1	51/20.3	116/46.2	2.1/0.9
The public is willing to help security officers solve problems.	100/39.8	53/21.1	98/39.0	2.0/0.9
<i>Non-Security/Employee Support</i>				
Other people who work at the site cooperate with security officers.	64/25.5	48/19.1	139/55.4	2.3/0.9
Other people who work at the site trust security officers.	64/25.5	50/19.9	137/54.6	2.3/0.4
Other people who work at the site are willing to help security officers solve problems.	73/29.1	61/24.3	117/46.6	2.2/0.9

[¥]1 = Strongly Disagree; 3 = Strongly Agree

Finally, findings relating to security guards' views on government mandated training are presented in Table 8, which suggests overall overwhelming support. Eighty seven percent of the respondents said that there is a need for mandatory training for security officers and that such training should be in the area of legal issues pertaining to arrest, search, and seizure. Nearly two-thirds of the respondents noted that citizen respect for guards has increased because of training (61 percent) and that the guards had become better security personnel because of the mandatory training (63 percent).

Table 8. Singapore security guards perceptions of Government Mandated Training (N=251)

	Strongly Disagree/ Disagree	Neutral	Strongly Agree/ Agree	Mean/SD [¥]
	N/%	N/%	N/%	
<i>On Issues Relating to Government Mandated Training</i>				
There is a need for compulsory training for private security officers.	14/5.6	17/6.8	220/87.6	2.8/0.5
The public respects security officers more now, because all guards have training now.	62/24.7	35/13.9	154/61.4	2.4/0.9
People with better qualifications will become security guards because there is compulsory training.	46/18.3	48/19.1	157/62.5	2.4/0.8
Security officers need training in legal matters such as arrest, search, and seizure.	18/7.2	14/5.6	219/87.3	2.8/0.6

[¥]1 = Strongly Disagree; 3 = Strongly Agree

Overall, the most significant agreement among respondents was that mandatory training for security officers is needed and, in particular, training in areas concerning legal matters such as arrest, search and seizure. Significant satisfaction was noted in job environment and job scope: A majority liked working with their colleagues and supervisors; found their job assignments varied and multi-skilled; work to be challenging; supervisors clear in their expectations; and, were pleased when they were asked to make suggestions for work improvement. A significant disagreement was found in terms of receiving a fair salary for work done and benefits relative to their job satisfaction.



CONCLUSION AND RECOMMENDATIONS

In this study, overall, on the basis of the respondents surveyed, the profile of security officers appears to show some shift towards younger persons entering the industry, though those below 40 were still a minority. The respondents found satisfaction and meaning in their work, and experienced competent supervision. They also strongly believed that mandatory training was necessary for private security officers.

There was significant dissatisfaction with pay and benefits, with less than one-third of the respondents satisfied that their pay and benefits were fair. Some ambivalence was also seen in the questions concerning the general public's perception of security officers and their willingness to cooperate with them.

It would appear from this survey that there is strong support for initiatives to professionalise the industry and invest in training. The topics deemed very important were not only hard knowledge such as emergency and fire procedures, but also soft skills such as working in a multiracial and multireligious environment.

Caution should be exercised not to overplay the significance of the survey findings. As mentioned above, the sample has limitations as the respondents were drawn from persons who had enrolled in continuing training since these persons may have different perceptions, experiences and aspirations than those of guards who do not enroll for training because their employers will not give them release time or pay their course fees. Given the wide range of profiles of security agencies in Singapore, and the even wider range of assignments that security officers may be deployed to, a more representative study would be instructive so as to draw more accurate conclusions about the industry as a whole.

Caution should also be exercised in inferring the findings since the findings are limited to a percentage breakdown and mean scores as this is the first stage of the analysis. This study warrants additional analysis which requires identifying specific factors that contribute to identifying variables that explain job satisfaction. Future research should also include respondents who are not self-selective in attending professional development programs. Nevertheless, this study is a useful starting point to assess security personnel perceptions of at least one segment of the overall security personnel since the enhanced regulatory regime came into place in Singapore.

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IS THIS THE RIGHT JOB FOR ME AND MY CHILDREN? TURNOVER INTENTION AND CHILDREN'S JOB SUGGESTION FOR CORRECTIONAL OFFICERS IN TAIWAN

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Correction officers play an important role in the functioning of any correctional facility. There is a growing body of literature focused on job turnover and turnover intention of correctional officers in Western societies. Since the culture and the correctional facilities working environment are different in Taiwan, reasons for turnover may come from different sources and result in different consequences. Also, parents' opinions play an important role in children's job selection in non-Western societies. To extend our knowledge, this study examine the factors affect correctional officers' turnover intention and children's job suggestion among officers in Taiwan. Specifically, the factors related to turnover and job suggestion were examined with multivariate modeling to assess their relevance and applicability in Taiwan.

Turnover is one of the major issues to a correctional facility. According to Lambert and Hogan's (2009) review, the annual staff turnover in correctional facilities in the United States is about 20%, but the problem for some agencies can be as high as 30% to 68% per year. The turnover rates in Taiwan ranges from 2.5% to 6.68 per year (Chang, 2003). Even the turnover rates are much lower than their counterpart in the United States, but these numbers could be 23 times higher than police officers in Taiwan.

Turnover is disruptive and harmful to correctional facilities, and the impacts can both be direct and indirect. The direct impacts include the loss of the performance and expertise of the staffs, recruitment costs, and training of novices (Weisberg & Kirschenbaum, 1991). Besides, overtime to cover vacated positions, administrative time to rearrange schedules and obtaining approval to hire new staff also cannot be disregarded. The indirect impacts of turnover consist of the loss of social networks, increased use of inexperienced staff, lack of personnel, and decreased morale (Lambert & Hogan, 2009). Maintaining a safe and secure environment is based on social networks and good communication skills which take time to develop (Mitchell, Mackenzie, Styve, & Gover, 2000; Stohr, Self, & Lovrich, 1992). Similarly, high turnover can cause insufficient personnel which may decrease the service quality and increase the unintended security incidents. Shortages of staff can lead to overtime and overloaded among the remaining employees who may also consider quitting as well. The remaining employees who are decreased moral can result in additional problems (Byrd, Cochran, Silverman, & Blount, 2000). Briefly speaking, turnover is very costly to correctional facilities (Kiekbusch, Price, & Theis, 2003).

Most of the research on correctional officers' turnover has done in Western societies (e.g., Lambert, 2001, 2006; Lambert & Hogan, 2009; Minor, Wells, Angel, & Matz, 2011), but only few studies focused on the Eastern societies (Chang, 2003; Chu, Syu, & Chen, 2005; Moon & Maxwell, 2004). This study attempted to enhance the literature by examining if the factors



influencing correctional officers' turnover intention in western societies also can be used in Taiwan.

In Taiwan, like other Asian societies, family roles are structured mainly by age. Parents, also other elder relatives, represent greater authority than do younger family members (Chao & Tseng, 2002). They are expected to be highly involved, responsible for decision making, and caring for children throughout their lives. Parents should provide advice and guidance even after the child becomes an adult and do not live with parents. On the other hand, children are expected to consult with parents and other family members on important decisions which range from mate selection to career planning. Therefore, it is also important to know what factors affect correctional officers to suggest their children working in correctional facilities. Specifically, the other purpose of this study is to examine if the turnover intention and child job suggestion can be predicted by the same set of factors among correctional officers in Taiwan.

Turnover intentions

Instead of examining actual turnover, this study focused on turnover intention which is the cognitive process of thinking of quitting, planning on leaving a job, and the desire to leave the job (Mobley, Griffeth, Hand, & Meglino, 1979). In Lambert & Hogan's (2009) study, they claimed several advantages to study turnover intention rather than actual turnover: 1) Compared to measure actual turnover, turnover intention is much easier to measure and more accurate. When people already left, it is difficult access to the reason why they really quit (Firth, Mellor, Moore, & Loquet, 2004). 2) An employee might be thinking of quitting but not actually do so. Also, it is already too late to change the work environment for those who have already left employment. It is more important to understand the employees still at their position than those who already left. 3) Turnover intention has been indicated the best predictor of voluntary turnover among other organizations (van Breukelen, van der Vlist, & Steensma, 2004).

Employee turnover intention is affected by personal characteristics and work related elements. Personal characteristics, included as, gender, tenure, and education level, have been found to be linked with turnover intention among correctional officers. Some studies indicated that age has negative influence (e.g., Byrd, et al., 2000; Mitchell, et al., 2000), but other did not find the correlation (e.g., Lambert, Hogan, & Altheimer, 2010; Minor, et al., 2011). Studies also found the mix results on the relationship between gender and correctional turnover intention (e.g., Byrd, et al., 2000; Lambert, 2006; Lambert, et al., 2010; Minor, et al., 2011; Mitchell, et al., 2000). Some studies (e.g., Lambert & Hogan, 2009; Lambert, et al., 2010) found no relationship between tenure and turnover intention, while many other studies have observed a relationship (e.g., Byrd, et al., 2000; Lambert, 2006). Most studies concluded that there was no significant relationship between education level and turnover intention (e.g., Lambert & Hogan, 2009; Lambert, et al., 2010; Minor, et al., 2011), however still some empirical evidence supported the relationship (e.g., Lambert, 2006; Mitchell, et al., 2000).

The working environmental and attitudes, such as role overload, family conflict, perceived dangerousness of the job, pay and benefits, burnout, job stress, job satisfaction, and organization commitment, has been discussed. Role overload occurs when a worker is required to do too many tasks or duties than are manageable (Triplett, Mullings, & Scarborough, 1996). Studies pointed that role overload have significant positive effects on correctional staff turnover

intention (Lambert, Hogan, Paoline, & Clarke, 2005). Family conflict have also been found to be related to correctional staff turnover intention (Lambert, 2006).

Job stress has been found positively related to correctional staff turnover and turnover intent (e.g., Mitchell, et al., 2000). Several studies have stressed that job satisfaction has a negative impact on turnover intent (Byrd, et al., 2000; Lambert & Hogan, 2009). Similarly, organizational commitment has been indicated to have a significant negative effect on turnover intent (Lambert, 2006; Lambert & Hogan, 2009). Maslach & Jackson (1981) defined burnout as “a syndrome of emotional exhaustion and cynicism that occurs frequently among individuals who do people work” (p. 99). It also has been proved that burnout has a positive influence on turnover intention (Carlson & Thomas, 2006; Lambert, et al., 2010).

Other work environment and attitude variables have no significant effect on turnover. These include perceived dangerousness of the job, pay and benefits (Kieckbusch, et al., 2003; Lambert, 2006; Mitchell, et al., 2000).

Prison in Taiwan

In Taiwan, all correctional facilities are under the control of the Correction Bureau as a component of the Ministry of Justice in the national government. Currently, there are 78 correctional facilities in Taiwan, which are 24 prisons (including 21 male and three female prisons), three skill training institutions, nine drug treatment institutions, two juvenile reform schools, and two juvenile correction schools. 20 adult detention centers and 18 juvenile detention house are under the control of the Taiwan High Prosecutors Officer. Because of the limited resources and very few defendants are detained waiting for trial, most of the adult detention centers also hold the inmates as branch prisons. The criminal justice policy in is still based on the harsh mechanisms of the criminal justice system, which maintains the ideology of “catching all of the fish (all criminals) in a net” and the preference for custodial punishment (Hsu, 2003). Because of the criminal justice policy, the incarcerated population in Taiwan was increased steady. In end of year 2010, the incarcerated population was 65,311, which was 19.6 percent over rated capacity (54,593).

Since all correctional facilities in Taiwan are under the control of the national government, correctional officers are public servants. Normally, it is almost impossible for a public servant to be laid off because of economic recession. Besides, public sector employees are covered by two pension schemes that complement each other: the Government Employees’ Insurance and the Public Service Pension Fund (PSPF). Therefore, income for a public servant cannot be considered as the best, but it is highly stable even after retirement.

In Taiwan, like the other counties, correctional facilities are high pressure environments not only for inmates but also for correctional staff. However, the economic status is much more stable than working for private sectors. Therefore, some factors influence correctional staff’s turnover intention in western societies may not be able to predict the correctional staff in Taiwan.



METHODOLOGY

The sample of correctional officers was selected from the two-stage cluster sampling process. Correctional facilities were selected in the first stage and correctional officers within sampled facilities in the second stage.

First-Stage Sampling. Correctional facilities were separated into two sampling frames: one for prisons with male inmates and one for prisons with female inmates. Since only three female correctional facilities in Taiwan, all three were selected. In the sampling of male correctional facilities, prisons were selected with certainty if the rated capability was greater than 2,000. The remaining prisons were grouped into five categories: general prison, open prison, skill training institution, detention center, and drug abused treatment center.

Eleven general prisons were divided into four groups based on region (North, South, East, and outlying islands), and one prison were randomly selected for each region. For open prisons and skill training institutions, one correctional facility was randomly selected for each group. Within these 13 detention centers, five centers were randomly selected. Two of four drug abused treatment centers were randomly selected as sample.

In the *Second Stage* of sample selection, correctional officers were randomly selected within each facility. This resulted in 1,323 correctional officers in sample. Research team visited each selected facilities and distributed the questionnaires between Sept. 2010 and Jan. 2011. A cover letter and the front page of the survey explained that participation was voluntary and the results would be anonymous. After filled out the survey, correctional officers were asked to seal the survey in the envelope and mail back to the research team. A total of 860 useable surveys were returned (i.e., a response rate of 65%), and 87.4% of the respondents were men. The average age was 39.5 years and ranged from 19 to 61 years of age. The average tenure at correctional facilities was 126.26 months and ranged from 0 to 413 months. In terms of education level, 28.3% had no college degree. With regard to the working shift, 33.4% of the respondents were day shift, and 66.6% were night shift.

MEASURES

Dependent variables. Turnover intent and children's job suggestion were the dependent variable. Turnover intent was measured using one item scale, which was "In the last 6 months, I have thought about quitting my current job." Children's job suggestion was also measured with one item scale. The item was "I would suggest my children to work in correctional facilities." Both questions' response options were 5-point Likert-type scale range from *strongly disagree* to *strongly agree*.

Personal characteristics. The personal characteristics of gender, age, tenure, education, and working shift were included in the study (Detail see Table 1). Gender, education, and shift were measured as dichotomous variables. Age was measured in continuous years and tenure at the correctional facility was measured in continuous months.

Working environment variables. Role overload, family/social life conflict, perceived dangerousness of the job, pay and benefits, and job stress were included in the model as measures of a person's perceptions of the working environment (see appendix). Six items were

combined to form an index for role overload (Cronbach's $\alpha = .732$). An index for family/social life conflict was measured by averaging six items (Cronbach's $\alpha = .855$). An index for perceived dangerousness of the job was measured by five items (Cronbach's $\alpha = .825$). Pay and benefit was measure by one item Likert-type scale which was "For my work loading, the salary I received is reasonable (Reversed coded)." Job stress was measured with two indexes: sources of stress and stress reaction. Respondents were asked to answer if 16 possible stress sources were considered as stress situations with 5-point Likert-type scale range from *not considered as a stress* to *extremely stress* (Cronbach's $\alpha = .949$). The stress reaction were measured with "how often did you have each of following physical conditions in the past year?" 15 physical conditions, such as headache, insomnia, and nightmare, were included (Cronbach's $\alpha = .948$).

Working attitude variables. The working attitudes were measured by job satisfaction, organization commitment, and burnout. Overall level of satisfaction with the job was measure with "generally speaking, I like my current job" responding with 5-point Likert-type scale range from *strongly disagree* to *strongly agree*. Organizational commitment was measured by summing four items from Mowday et al. (1982) to form an index (Cronbach's $\alpha = .824$). Twelve items adopted from Maslach and Jackson's study (1981) measured three burnout areas of emotional exhaustion, depersonalization, and ineffectiveness in dealing with others at work were included in this study (see appendix). Five items used to form the emotional exhaustion index had a Cronbach's alpha of .737. Depersonalization was created by averaging three items, which had a Cronbach's alpha value of .674. The ineffectiveness index was formed using four items, which had a Cronbach's alpha of .780.

Table 1. Descriptive Statistics for Variables

Variables	Description	mis	max	mean	SD
Turnover Intent	1-item Likert Scale	1	5	3.11	1.11
Children's Job Suggestion	1-item Likert Scale	1	5	2.44	.99
Gender	Male(0): 87.4%; Female(1): 12.6%				
Age	Years	1 9	6 1	39.50	7.98
Tenure	Months	0	1 3	126.26	.54
Education	No college degree(0): 28.3%; College degree(1): 71.7%				
Shift	Day Shift(0): 33.4%; Night Shift(1): 66.6%				
Role overload	6-item index; $\alpha = .732$	1	5	3.01	.63
Family/Social Life Conflict	6-item index; $\alpha = .855$	1	5	3.07	.77
Dangerousness	4-item index; $\alpha = .825$	1	5	3.44	.80
Pay and Benefit	1-item Likert Scale	1	5	3.44	1.15
Sources of Stress	24-item index; $\alpha = .949$	1	5	3.14	.77



Stress Reaction	15-item index; $\alpha = .948$	0	4	1.25	.85
Job Satisfaction	1-item Likert Scale	1	5	3.08	.97
Organization Commitment	4-item index; $\alpha = .824$	1	5	2.92	.78
Emotional Exhaustion	5-item index; $\alpha = .737$	1.20	5	3.05	.68
Depersonalization	3-item index; $\alpha = .674$	1	5	2.70	.82
Ineffectiveness	4-item index; $\alpha = .780$	1	5	2.70	.66

Note: Min = minimum value; Max = maximum value. N = 860.

RESULTS

The results of OLS regression models are presented in Table 2. Based on the variation inflation factor (VIF) scores, the tolerance values, multicollinearity was not a problem for the two OLS equations.

Turnover intention model. Age was the only personal characteristic variable has a significant relationship with officer's turnover intention. Compared with the older officers, the younger officers responded with stronger turnover intentions. For these six working environment variables, role overload and family/social life conflict were the only two can predict officers' turnover intention. The officers with higher role overload and family/social life conflict were likely to report higher turnover intention. Among the third set of variables, job satisfaction and emotional exhaustion were significantly associated with the dependent variable. Overall job satisfaction had a reverse effect on officers' turnover intention. Emotional exhaustion had significant positive influences on job turnover intention (detail see Table 2).

Children's job suggestion model. Similar to turnover intention model, age was the only personal characteristic variable could predict the dependent variable significantly. Older workers were more likely than younger workers to suggest their children to work in correctional facilities. Three working environment variables were significantly related to children's job suggestion, and all three had negatively effects. The officers who had high perception of dangerousness, unfair payment, and more sources of stress at work were less likely to suggest their children to work in correctional facilities. For working attitude variables, three variables were significantly associated with the dependent variable. Higher overall job satisfaction and organizational commitment could result in more willing to suggestion children to work in correctional facilities. Officers reported higher depersonalization were more likely to suggestion their children working in correctional facilities (detail see Table 2).

Table 2. OLS Regression Results on Correctional Officer's Turnover Intention and Children's Job Suggestion

Variable	Turnover Intention		Children's Suggestion	Job
Gender	.053		-.092	
Age	-.023	***	.014	*
Tenure	.001		-.001	
Education	.008		.083	

Shift	.001		.091	
Role Overload	.198	**	.029	
Family/Social Life Conflict	.158	**	-.028	
Dangerousness	.082		-.084	*
Pay and Benefit	-.021		-.068	**
Sources of Stress	-.031		-.117	**
Stress Reaction	.064		.044	
Job Satisfaction	-.323	***	.261	***
Organizational Commitment	-.016		.573	***
Emotional Exhaustion	.262	**	.081	
Depersonalization	-.077		.091	*
Ineffectiveness	-.075		.011	
R^2	.302		.473	

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

DISCUSSION

Turnover intention model. Some results were consistent to the previous studies done in the western societies, while others were not. Current study revealed that older officers were less likely to express a desire to leave than were younger officers. According to the turnover literature, older employees showed less propensity to leave their positions; such employees are believed to be more attached in their communities and jobs (Arnold & Feldman, 1982; Hom & Hulin, 1981). This may be the result of that older correctional officers have fewer opportunities than younger officers to find other jobs which are as good as or better than their current one.

As predicted, job satisfaction had a significant influence on officers' turnover intent. Officers' with higher job satisfaction were less likely to express turnover intent. For most people, financial reward is not the only important thing to consider if they will level the current position or not. If a person is highly dissatisfied with his or her job, and the job is causing pain and discomfort, he will be more likely to express intentions to leave in order to alleviate the negative feelings.

The studies conducted in the western societies concluded that as organizational commitment increased, the desire to leave decreased. However, the current study found no significantly association between organizational commitment and turnover intention among correctional officers in Taiwan. This may be the results of the negative public image of correctional facilities in Taiwan. One of the possible strategies to cope this problem is to consider working in correctional facilities is just a job not my career which is not associated with their self-identity at all.

Among three burnout variables, only emotional exhaustion could significantly predict officers' turnover intention. This finding is in line with what was proposed by Maslach & Jackson (1981), who claimed that emotional exhaustion have the most powerful dimension of burnout which brings the greatest negative outcomes for workers. It is reasonable for most individuals



wishing to escape a negative state. If a correctional officer experiences emotional exhaustion for his job, the rational choice for him is a desire to leave this facility. However, the results of current study concluded depersonalization was not associated with turnover intention among correctional officers in Taiwan.

Children's job suggestion. Except age and overall job satisfaction, a different set of variables were associated with children's job suggestion than turnover intention. Similar to turnover intention, older correctional officers with higher job satisfaction were more likely to suggestion their children working in correctional facilities. However, perception of dangerousness, pay and benefit, and more sources of stress, which had no significantly effect on turnover intention, were negatively associated with if they were willing to suggest their children working in correctional facilities. Even organizational commitment could not predict officers' turnover intention it was one of the most important variables to influence children's job suggestion. However, the officers with higher depersonalization were more likely to suggestion their children working in correctional facilities. It is possible that Taiwan's correctional officers employed depersonalization as a coping strategy facing the high pressure working environment. They may have a positive attitude toward depersonalization and believe it is the good way to deal with the stress.

The difference between the two models in current study is that the variables are changeable or not. Those variables, that could predict turnover intention but not children's job suggestion, are changeable. In Taiwan society, it is reasonable that correctional officers attribute the problems of role overload, family/social life conflict, and emotional exhaustion to themselves. They believe that their children will be superior to themselves and can handle these issues without problem. On the other hand, variable that only could predict children's job suggestion were unchangeable. Correctional officers are willing to make sacrifice for their children and hope their children have a better life than themselves. Since these issues could not be changed or improved by any individual, they did not want their children face the same problems they were facing.

The findings of this study have several important administrative implications. The major one is that to reduce turnover intention among correctional officers, correctional administrators should focus on improving job satisfaction of staff. Besides, the role overload is another key issue that administrators have to face and deal with. Improving officers' operational commitment may not reduce turnover intention, but it will make correctional officers more willing to suggestion their children working in correctional facilities. Also, the negative public image could be one of the start points to improve officers' organizational commitment.

While the current study is one of the very few study focus on the correctional officer in eastern societies and provides some important insights, it is not without any limitation. First, several measures used in this study only contained one item. Future research may include multiple-item measures to improve the reliability and validity. In addition, more research is required to determine the mechanism between the working environmental, working attitudes, and children's job suggestion in non-western societies. Future research will benefit all involved, including correctional officers, administrators, inmates, the friends and families of officers, and also the society in general.

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Appendix

The items used in this study were answered by a five-point Likert-type scale range from 1 to five: strongly disagree (coded 1); disagree (2); uncertain (3); agree (4); strongly agree (5).

Organizational Commitment

- I tell my friends that correctional facilities are great organizations to work for.
- I am proud to tell people that I work at this prison.
- This prison really inspires the best in me in the way of job performance.
- My suggestions are considered by the managements and coworkers. (Reverse Coded)

Burnout

Depersonalization

- I feel that I treat some inmates as if they were impersonal objects.
- I feel that I have become more callous toward my coworkers.
- I am becoming less sympathetic to others at work.

Emotional exhaustion

- Working with others is an emotional strain for me.
- I feel that I am burned out from my job.
- I am emotionally drained at the end of the day from my job.
- When I get home from work, I am often too frazzled to participate with family or friends.
- The amount of work I am required to do seems to be increasing all the time.

Ineffectiveness

- I feel that inmates value my help. (Reverse Coded)
- I have the ability to deal effectively with the problems of inmates. (Reverse Coded)
- I feel that I am positively influencing inmates with my work here. (Reverse Coded)
- I feel that I can create a relaxed atmosphere with inmates. (Reverse Coded)

Family/Social Life Conflict

- My job keeps me away from my family too much.
- My time off from work does not really match other family members' schedules and/or my social needs.
- Work makes me too tired or irritable to fully enjoy my family social life.
- Because of my job, I can't have a normal social life.
- Because of my job, I can't have any close friends.
- Because of my job, I can't have a normal intimate relationship.

Role Overload

- My rotational leave is often canceled
- The Maximum overtime hours are often exceed.
- The amount of work I am required to do seems to be increasing all the time.
- I often receive an assignment without adequate resources and materials to get it done.
- The amount of work required in my job is reasonable. (Reverse Coded)
- I sometimes have to bend a rule or policy to get an assignment done.

Dangerousness

- There is not enough security equipment in this facility
- The security equipment in this facility is not good enough
- The security equipment in this facility is outmoded and not well maintained
- Many colleagues have been physically injured during their working shift



THE PHILIPPINE PRISON SYSTEM

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This paper utilized data collected from three groups – the inmates, the prison personnel/staff members and prison administrators at the New Bilibid Prison under the purview of the Bureau of Corrections. The main purpose was to explore the current state of the prison system in terms of compliance with the UN Standard Minimum Rules for Treatment of Prisoners. Generally, all the three groups finds that the Philippine Prison System in the areas of Admission and Assessment, Living Conditions, Healthcare, Contact with the outside world, Prison Regime, Safety and Security, Complaint or Grievance Procedures, and Other Conditions are compliant with the minimum rules. A few exceptions were noted involving the factors of prison overcrowding, food and basic necessities, lack of physical facilities, lack of medicine, insufficient training and lack of personnel, and unnoticed graft and corrupt practices.

INTRODUCTION

The Philippine prison system is distinct as one of the country's pillars of the Criminal Justice System (CJS). It is administered and managed by the government, and as such, the correctional process remained to have one of the dynamic fronts of management and operational issues. In this context, correction as a pillar of the Criminal Justice System has two systems based approaches. One is the institution-based and the other is the community-based system. Both systems are being implemented on a fragmentary basis by three departments of the executive branch of the Philippine government. These are the Department of Justice (DOJ), which takes care of national prisoners, the Department of Interior and Local Government (DILG), which takes care of municipal, city and provincial prisoners, and the Department of Social Welfare and Development (DSWD), which takes care of, sentenced youth offenders (*Foronda, 2008*).

The Philippine prison system at the national level is supervised by the Bureau of Corrections under the Department of Justice. The bureau is responsible for the safekeeping of prisoners and their rehabilitation through general and moral education and technical training in industry and agriculture. It also oversees the operation of prison agro-industries and the production of food commodities in the different penal colonies under it. (*BUCOR Manual of Operation*). Many reports have concluded that conditions of the prison system in the Philippines are regarded as harsh, cruel and degrading. Even regarded as “*one of the worst*” prison system (*CBCP, 2008*). In view of this, the study looked into the current state of the prison system, particularly on its compliance with the set UN Standard Minimum Rules for the Treatment of Prisoners as it is imperative to know whether or not the standards are met. This is significant in the development of social policies affecting convicted felons in the country.

PROBLEMS AND SETTINGS

This study described the condition of the prison system in the Philippines. Specifically, it answered the following problems: (a) How does the Philippine Prison System described in its historical setting? (b) How does the Philippine prison system described in terms of *Admission and Assessment; Living Conditions; Healthcare; Contact with the outside world; Prison Regime; Safety and Security; Complaint and Grievance Procedures; and Other conditions?* (c) How does the Philippine Prison System assessed by the following respondents: Inmates (Prisoners), Prison Administrators, and the

Penal Guards (Custodial Officers) or Prison Staff Members? and What developmental programs maybe designed or recommended to enhance the Philippine Prison System?

Since the study reflected on the Philippine Prison System, it covered a discussion of the historical background of the Prison System and the development of its legal or regulatory framework. The UN Minimum Standards in Treating Criminal Offenders was presented as used in the areas of the research instrument. The data assessing the prison system covered only the prison camps managed by the Bureau of Corrections (BUCOR) under the Department of Justice (DOJ).

OVERVIEW OF RELATED LITERATURES USED IN THE STUDY

The innovations introduced by the pioneers of reformation were considered the forerunner of today's system of treating criminal offenders. However, still the primary purpose of imprisonment is punishment. The management of prison is still directed to punish. Even at present, it is still observed that prisoners must have to suffer even though there is a great change of contemporary ideas that prison management should be done in such a manner that prisoners should suffer more in order to facilitate and ensure future reformation. The trend of life is never the same after some time that imprisonment should be dealt with for the reformation of offenders, as it is somewhat impossible to bring about good citizenship among prisoners who will eventually be released from a place where they have experienced a "hellful life". Pain is inevitable as a fundamental fact of prison life (*Johnson, 2001*).

With respect to the treatment of prisoners, the United Nations Standard Minimum Rules for the Treatment of Prisoners set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions. In Asia, despite of some positive developments in recent years, criminal justice policy remains punitive. Large prison populations, attributed to the over-use of pre-trial detention and custodial sanctions, have created problems of overcrowding and poor conditions of pre-trial detention. The absence of separate juvenile justice systems, poor measures to support the reintegration of offenders back into the community and the detention of political prisoners remain persistent problems (*Taufa, 2003*). In the Philippines, the institutions for the confinement of convicts and the detention of those awaiting trial included a variety of national prisons and penal farms as well as numerous small local jails and lockups. In general, the national prisons house more serious offenders, and those serving short-term sentences are held in local facilities.

METHODOLOGY

The descriptive research design was adopted in gaining the relevant information for this study since the principal aim was to describe the conditions about the Philippine prison system in relation to the *UN Standard Minimum Rules for Treatment of Offenders*. The descriptive data were used as a basis in formulating the development plans through the recommendations for enhancing the prison system in the Philippines.

Locale and Respondents - The study was conducted among the localities governed by the Bureau of Corrections (BUCOR) under the Department of Justice (DOJ) primarily the New Bilibid Prison (NBP) in Muntinlupa City, Philippines. The prison administrators, prison staff members and inmates were considered as respondents.



Sampling Size - There were three groups of respondents in this study. Group I includes the inmates (prisoners), Group II includes the government officials who are involved directly in supervising the prison facilities such as prison administrators or superintendents and Group III includes the line officers such as the penal guards and prison staff members who are involved in enforcing the prison systems. For Group I (Inmates), the minimum required sample size of 377 was computed using the following formula:

$$n = \frac{Npq}{(N-1)D + pq}$$

$$D = \frac{B^2}{Z_{\alpha/2}^2}$$

where

* *Level of confidence (1- α)* – measures the degree of confidence on the estimate = 95%

* *Maximum tolerable error (B)* – the margin of error one is willing to tolerate = 5%

* *Perceived value of p = q = 0.5 ; Z = 1.96 ; N = population size = 21,034 prisoners*

For Group II (Administrators), 10 personnel were considered while for Group III (Prison Guards), 36 of them were selected. The selection for group II and group III were made at random according to the available personnel during actual days of the survey since the total number of both administrators and penal guards were unknown at the time of survey.

Sources of Data - Primary data was obtained through a self prepared but validated survey questionnaire classified according to the group of respondents, document analysis of prison records, interview with respondents, and ocular inspection and observation to the prison facilities at the New Bilibid Prison. Secondary data was obtained from government portals (website), official gazette, books, journals, magazines, circulars, materials and reports and other published resources.

Research Instrument - The data used in this study was derived from both qualitative and quantitative data, hence the methods constitute a multi-method procedure. For this study, gathering of data used the following instruments:

1. *Survey Questionnaire* – This was formulated in accordance with the *United Nations Criminal Justice Assessment Toolkit*. In particular, the indicators were extracted from seven key areas on prison management such as *Admission and Assessment, Living Conditions, Healthcare, Contact with the Outside World, Prison Regime, Security and Safety, and Complaints Procedures*. These key areas were noted under the *UN Minimum Standards in Treating Criminal Offenders*. Part of the questionnaire was a space for comments and suggestions. The formulated survey questionnaire was translated into its *Filipino* version and was tested for validation using the inmates and personnel of the Bureau of Jail Management and Penology (BJMP) located in Angeles City, Philippines.
2. *Guided Interview* – This was prepared according to the questions posted at the *United Nations Criminal Justice Assessment Toolkit* related to the key areas identified in the

Survey Questionnaire. Selected inmates, prison officials and penal guards at the Bureau of Correction were interviewed with these sets of questions.

3. *Record/Document Review* – Data were also taken from open sources such as documentaries prepared by the BUCOR, annual reports, and those available records from official journals of the bureau. For instance, the BUCOR Manual of Operation, Comparative Assessment made by the DOJ on the state of Philippine Prison, Statistical Reports on the BUCOR as of December 2009, and other retrieved documents.
4. *Observation or Actual Visual Inspections* – This was made through the actual reconnaissance of the internal and external periphery of the three camps of the New Bilibid Prison.

Statistical Treatment of Data - The data used in this study was derived from both qualitative and quantitative data through the collection procedures. They were analyzed and interpreted with the help of numerical computations represented by *frequency*, *percentage*, *weighted mean* and the *Kruskal Wallis H test*. *Frequency Distribution* is any arrangement of data that shows the number of observations per category or number of occurrence of the value falling within arbitrarily defined ranges of variables. *Percentage* is a descriptive statistic that is used to determine and show the relationship between two magnitudes. The formula is $\% = f/n \times 100$ where f = frequency; n = total number of respondents and $\%$ = percentage frequency. *Mean* was used to show the general perception of the respondents for each item under each component. The formula is $Mean = \sum fv / n$ where f = frequency, \sum = summation; v = value of response category (scale) and n = number of cases. As to the comparison of the group-mean responses, 1.00-1.49 indicates (*Strongly Disagree*), 1.50-2.49 indicates (*Disagree*), 2.50-3.49 indicates (*Agree*) and 3.50-4.00 means (*Strongly Agree*). *Kruskal Wallis H test* was used to compare the perceptions of the three groups of respondents for each item under each component. This test is the non-parametric counterpart of the one-way analysis of variance. This test is used for ordinal data as in the case of the rating scales used in this study. *P-values* less than 0.05 were considered significant (resulted to the rejection of the null hypothesis). All the statistical computations were facilitated by the use of *SPSS* for Windows.

FINDINGS AND RESULTS

A. *Philippine Prison System: Historical Perspectives*

Pre Spanish Period - Historical accounts provide that during the pre-Spanish era, the Philippine prison system was marked by basic political diversity. The main political unit was the barangay which exercised jurisdiction within its small territorial limits composed mostly of about 100 to 200 families. Accordingly, there was no single criminal justice system and there was no single prison system in the Philippines. Imprisonment was unheard as a penalty for law violations during this time. There were no prisons to house any felon since punishment was mainly retributive in character. There were some historical documents such as the Code of Kalantiao (1433) which prescribed death, incineration, flagellation, mutilation, swimming under water for a fixed time, and treatment and fines. Those guilty of recidivism were beaten to death or exposed to ants for one day. Slavery or servitude was also imposed as subsidiary penalties for fines. All these indicate that the pre- Spanish penal and legal system was purely punitive and retributive (*Abelardo, et. al., 1977*).

The European Influence - The arrival of the Spanish colonizers shortly began the imposition of the Spanish control, thus, the European criminal and penal system was introduced in the Philippines. Those penal laws consisting of royal decrees, orders, ordinances, rules and regulations for the



governing of colonies which were later embodied in the *Recopilacion de las Leyes de India* which became the base of the Philippine Penal Laws. The compilation also was the basis for rules governing prison administration. Consequently, there were laws which prohibited the imprisonment of poor people in lieu of fines, rules separating men and women prisoners. In addition, the segregation of persons detained apart from those already convicted by the courts and the separation of prisoners of good conduct from those incorrigible characters were practiced. Maltreatment of the prisoners was also prohibited including extorting of money from them by employers of the prison for personal benefits. The receiving of gifts in any form by prison employers from families of the prisoners was strictly forbidden while the bringing of food and clothes was permitted. Rigid search was also a practice for purposes of preventing the introduction of weapons and alcoholic drinks. In 1887, the Spanish Penal Code of 1870 was imposed. And basically, the Spanish criminal justice system was punitive or retributive in character. It sought to segregate convicted criminals from the main-stream of the society through punishment of criminals by incarceration of convicts for a period depending on the nature of the crime. Initially, prisoners were confined in jails under the jurisdiction of the *commandancia* of the province. There was no single penal system until the Spanish government decided to erect national penitentiaries. On September 12, 1859, the Spanish government opened for public bidding the construction of a prison to be known as the *Carcel y Prisdio Correccional* which would house about 1,127 prisoners all over the Philippines. Upon awarding the contract to Sixto Ejida Obispo for only P268, 083.25, the construction of the building began at Azcarraga, Manila. IIO. Seven years later, the building was completed and became the Bilibid Prisons. It was composed of the following buildings: one building for the offices and quarters of the prison warden and 15 buildings or Departments for prisoners which were arranged radially and formed spokes. The central tower formed the hub. Under this tower was the chapel. There were four cell-houses for the isolated prisoners and four isolated buildings located on the four corners of the walls which served as kitchen, hospital and stores. The prison was divided in the middle by a thick wall. Aside from the Bilibid Prisons, there were three other principal penitentiaries established by the Spanish government in Cavite, Zamboanga and the Marianas Island (*Abelardo, et. al., 1977*).

American Regime - Upon the withdrawal of the Spanish government, all prisoners were released and the penitentiaries were abandoned until 1905 when the American Army reestablished the institutions and created the Bureau of Prisons under the Department of Commerce and Police. During this period, additional insular prisons were established such as the Iwahig Penal Colony, San Ramon Prison (reactivated), Corregidor Stockade which was phased out in 1941, Bontoc Prison, the Correctional Institute for Women and the Davao Penal Colony (*Vinarao, 2005*). In 1924, Director of Prisons Ramon Victorio advocated the transfer of the Bilibid Prisons from the heart of Manila to a place outside the city because of the rapid increase of the prison population. A committee headed by the Secretary of Justice was formed in order to study the feasibility of the proposal. In 1936, the City of Manila exchanged its 552 hectares of land located in Muntinlupa, Rizal for the Bilibid Prison which later became the Manila City Jail. Thereafter, the construction began and shortly before the outbreak of the war and before the complex was completed, the transfer of all insular prisoners was undertaken. During the war, the New Bilibid Prison at Muntinlupa was used by the Japanese for incarcerating suspected guerrillas and Japanese enemies. Upon the liberation of Manila, former American prisoners of war were confined at the New Bilibid Prisons for recuperation. But the American period did not radically alter the penal philosophy of the Philippines. It continued to rely on the outmoded classical doctrine of free will which punished the crime rather than the criminal. The promulgation of the Revised Penal Code did not also significantly change the philosophy and remained to be punitive in character, although with some redeeming features such

as the considerations of mitigating and aggravating circumstances of the criminal at the time of the commission (*Foronda, 2008*)

In 1919 the Philippine Bar Association created a committee to investigate the conditions inside the national penitentiary. The committee found out that the prisoners were subjected to cruel and excessive punishment. They singled out the “*bartolina*” which constitutes close confinement in irons with the prisoner's hands chained to a post or wall. A gag was also used occasionally to prevent the prisoners from making loud or disagreeable noises. This gag consisted of a piece of wood fitted to enter the mouth of the prisoners. On the other hand, the institution of open penal farms was introduced. Prisoners with good record of behavior at the New Bilibid Prisons were transported to penal colonies at Iwahig and Davao to work as farmers in an atmosphere similar to a free society. Upon the establishment of the present Philippine republic, ideas of rehabilitation began to be advocated. In 1949, the Department of Justice issued rules for the treatment of prisoners which aimed, among others, at the rehabilitation of the criminal. The purpose of the prison system was not merely to punish the crime but likewise to rehabilitate or correct the criminal. However, this did not significantly alleviate the actual condition of the prisons. The New Bilibid Prisons proved to be inadequate to meet the demands of growing prison population. The overcrowding, inadequate food, accommodation and idleness of the prisoners were cited as causes of the prison riots of the 1950's and the 1960's. The Senate committee on Justice of the Fourth Session of the Sixth Congress investigated the condition of the penitentiaries in 1968-69, and findings revealed the sub-human conditions inside the prisons.

In 1971, the government erected two satellite camps to alleviate the problem of congestion inside the National Bilibid Prisons proper. The Camp Sampaguita houses the medium-security prisoners, the youthful offenders and the Reception Diagnostic Center. The Camp Bukang-Liwayway on the other hand houses the minimum-security prisoners who have served at least one-fifth of their maximum sentence. In 1976, the Philippine government had more than 1,500 correctional institutions. Of this number, 8 are insular prisons under the direct supervision of the Directors of Prisons; 72 are provincial jails administered by the provincial governors; 65 city jails and 1,437 municipal jails 18 which are administered by the local police agencies under the Integrated National Police, which later on supervised by the Bureau of Jail Management and Penology (*Abelardo, et. al., 1977*)

Present Period - Prison conditions in the Philippines are generally poor, and prison life is harsh. Jails and prisons are overcrowded, have limited exercise and sanitary facilities, and provide prisoners with an inadequate diet. The government reported that jails in the Metropolitan Manila area are operating at 250 percent of capacity, and that 85 percent of the inmates are detainees unable to post bail. Administrators budget a daily subsistence allowance of 30 pesos (*before the present administration*). Prison inmates often depend on their families for food because of the insufficient subsistence allowance. In national prisons, male and female inmates are held in separate facilities, overseen by guards of the same sex. In provincial and municipal prisons, male guards may oversee female prisoners, directly or indirectly (*Winslow, 2008*). There are also reports that guards abused prisoners. In March 2001, Amnesty International reported that women in police custody were particularly vulnerable to sexual and physical assault by police and prison officials. Victims often were afraid to report incidents (*Amnesty International Report, 2001*).

According to penal authorities, nearly 24,000 persons were incarcerated in 7 national prisons and penal farms at year's end 2001, including 108 minors imprisoned on specific orders from the



sentencing judge. Another 39,000 persons were incarcerated in more than 1,250 district, city and municipal jails, including more than 2,000 minors; nearly 92 percent of these persons had not yet been convicted of a crime. Statistics were not available for the 78 provincial and 29 sub-provincial jails under the control of local government units nationwide. The Department of Social Welfare and Development (DSWD) operates 10 Regional Rehabilitation Centers for Youth Offenders. Nearly 1,300 youths, more than 98 percent of them males, were assisted in these centers during the year. In 2000 the Commission on Human Rights (CHR) conducted a nationwide investigation of prison facilities. Its advisory opinion cited inhuman conditions in jails and prisons in many parts of the country. The CHR stated that the Manila city jail was unfit for human habitation, housing 3,400 inmates in facilities designed to hold 1,000 inmates. Such conditions, according to the CHR, contributed to violence among inmates. It also stated that 27 inmates at the Manila jail should have been confined at a psychiatric facility and that convicted prisoners are commingled with inmates awaiting trial. International monitoring groups are allowed free access to jails and prisons. There were reports that detainees at some facilities were required to pay guards in order to receive medical attention (*Winslow, 2008*).

For the longest time, the Bureau of Prisons had transformed itself to make it responsive to changes. The use of leg irons and imposition of hard labors were dropped. In 1987, pursuant to Sec. 26 of the Administrative Code of 1987, it was renamed Bureau of Corrections when the primary thrust was focused on rehabilitation/reformation of national prisoners in preparation for their reintegration to society. Since then, no more major development transpired. While the bureaucracy has undergone a lot of organizational changes, the bureau remained unperturbed to the prejudice of the employees and the inmates as well.

Comparatively, in 1991 the Bureau of Jail Management and Penology under the DILG was established with a salary grade entry level at 10 which overtook the BUCOR entry level at SG 5. Since then, the BuCor was left behind despite resemblance of functions. Notably 20 years ago (1989), the authorized plantilla positions in the BuCor is 2,362 (1,461 custodial, 761 civilian/admin positions & 140 medical positions) with 12,970 inmate population. Today, it's still the same number of plantilla positions as against the present inmate population of 35,452 (173% increase from 1989 population). Worst, only 2,033 positions are filled up due to the government's rationalization program. BuCor takes custody of 35,452 inmates as of June 30, 2009 distributed to the 7 prisons and penal farms: New Bilibid Prison in Muntinlupa, Metro Manila (20,694), Correctional Institution for Women in Mandaluyong Metro Manila (1,652), Iwahig Prison & Penal Farm in Puerto Princesa, Palawan (3,191), Davao Prison & Penal Farm in Davao del Norte (5,381), CIW extension in DPPF (209), Sablayan Prison & Penal Farm in Mindoro Occidental (1,672), San Ramon Prison & Penal Farm in Zamboanga City (1,299), Leyte Regional Prison in Abuyog, Leyte (1,354). For year 2009, BUCOR's budget for inmates' food subsistence increased from P40 to P50 per inmate per day while the medicine allowance increased from P1.00 to P3.00 per inmate per day.

From the words of former BUCOR Director Oscar Calderon, also known as *Father of Modern Inmate Reformation System*, the BuCor is not just an ordinary office like the jails. He observed the existing conditions and saw lot of potentials in terms of development and expansion of the programs for the welfare of the inmates. Accordingly, development was so stagnant and personnel were lacking in motivation to make the institution known locally and internationally. Although previous administrations tried to change this outlook, people are adamant as they are pessimistic to change and improve. For this reason, he introduced the BUCOR Re-engineering Program that could reorganize the Bucor, boost the morale of personnel, and opens the avenue for change and

improvement. The new vision was created, that is: “A world-class organization that provides an opportunity to develop professional, disciplined and spiritually guided environment for BuCor stakeholders and for inmates to become more productive, responsible and law abiding citizen.” While the new mission is: “To maximize the assets’ value of the Bucor to effectively pursue its responsibility in safely securing and transforming national prisoners through responsive rehabilitation programs managed by professional correctional officers.”

To properly manage the increasing population, BUCOR has initiated a reorganized structure. From the original organizational structure (old org structure shown) consisting of 6 divisions, it added other vital divisions that caters to the reformation programs of the inmates. Furthermore, an additional Assistant Director for Reformation was created to supervise the reformation offices that are responsible for the full implementation of the reformation programs which prepares the inmates psychologically and economically once they rejoined their families and the community. A Program Management Office under the Office of the Director was also created to monitor the smooth implementation of the functions of the line offices and the operating units. With the new organizational structure, various rehabilitation programs were enhanced. These includes the 1. *Moral & Spiritual Program* which develops moral uprightness and a God-centered prison life for total reformation; 2. *Education and Training Program* that provides opportunity for qualified inmates to undergo elementary, high school and college education. Others are given non-formal education through vocational courses and skills enhancement. Adult literacy courses as well as alternative learning system are being offered. The Muntinlupa Juvenile Training Center (MJTC), various vocational trainings for the children in conflict with the law were also introduced such as courses in Practical Electricity, Basic Welding Course, Computer Literacy Course, Cellphone Repair, and various Livelihood Education Programs; 3. *Work and Livelihood Program* that enhances productivity and livelihood skills which prepares the inmates economically once they are released from prison. Inmates are also provided with work programs (agro-industrial programs) for them to earn money for their personal needs and for their families; 4. *Sports and Recreation Program* maintains physical fitness through regular sports and recreation activities; 5. *Health and Welfare Program* that promotes healthy lifestyle through proper health care and dietary requirements. Health services for the inmates are provided in the 500-bed capacity hospital at NBP and the other mini hospitals and clinics in the other prisons and penal farms; 6. *Behavior Modification Program* which is a behavioral change program that can develop positive outlook in life and virtuous attitude. It is a therapeutic community program that caters newly committed inmates especially those with drug problems.

B. System Assessment Based on the UN Minimum Standards

Result of the survey reveals that responses from the three groups of respondents showed that items enumerated under *Admission and Assessment* are generally acceptable, adequate or satisfactory. Under this category, it recorded a general weighted mean average of 3.21 (*Agree*) and an average frequency of 211.42 or an average percentage of 52.51%. The items categorized under *Living Conditions* are generally acceptable, adequate or satisfactory having a general weighted mean average of 3.16 (*Agree*) and an average frequency of 220.8 or an average percentage of 52.04%. The items grouped under *Healthcare* are acceptable, adequate or satisfactory having a general weighted mean average of 3.05 (*Agree*) and an average frequency of 238.2 or an average percentage of 56.02%. The items grouped under *Contact with the outside World* are also acceptable, adequate or satisfactory having a general weighted mean average of 3.31 (*Agree*) and an average frequency of 238.6 or an average percentage of 56.12%. The items grouped under *Prison Regime* are also



acceptable, adequate or satisfactory having a general weighted mean average of 3.13 (*Agree*) and an average frequency of 240.2 or an average percentage of 51.01%. The items grouped under *Safety and Security* are acceptable, adequate or satisfactory having a general weighted mean average of 3.20 (*Agree*) an average frequency of 224 or an average percentage of 57.79%. The items grouped under *Complaints and Grievance Procedures* are also acceptable, adequate or satisfactory having a general weighted mean average of 3.07 (*Agree*) an average frequency of 250.8 or an average percentage of 59.7%. And the items grouped under *Other Conditions* revealed a general weighted mean of 3.09 (*Agree*) and an average frequency of 240.6 or an average percentage of 57.02%.

Over all, the area grouped under *Contact with the outside World* was given the highest rating reflecting a 3.31 general weighted mean while items under *Healthcare* and *Complaint Procedures* were given the lowest rating showing a 3.05 and 3.07 general weighted mean respectively. These means that the perception of respondents agrees with the policies and procedures implemented by the Bureau of Correction and that they feel these policies and procedures are appropriate, acceptable and satisfactory. The prison system, therefore, has overall rating to have met the *UN Standard Minimum Rules in Treating Offenders*. On the other hand, while general perception of respondents show their agreeability and satisfaction on the procedures and policies of the prison system, written comments from the respondents reveals dissatisfaction on *overcrowding, sanitation, lack basic necessities like food and water, dilapidated physical facilities of the prison camps, unprofessional dealing of custodial officers, and lack of commitment of prison administrators to the aim of rehabilitation*. Visual inspection of the camps and interview of the stakeholders also showed similar issues and concerns. As a case in point, the movements of inmate outside the camp facilities accordingly covered by strict rules in the BUCOR Manual of Operation, revealed clear violations, thus “VIP” treatment among few inmates were raised.

With the above findings, it was concluded that the Philippine prison system is basically compliant to the *UN Standards Minimum Rules for Treatment of Prisoners*. But it is undeniable that there are still a lot of issues and problems the BUCOR needs to undertake and correct in order to enhance the system and promote effectively a total and holistic rehabilitation of inmates. Among these issues and problems include the following:

1. *Related to inmates* are problems of overcrowding, lack of adequate physical barriers and inefficient security measures, shortage of food of nutritional value, inequality of treatment among them due to VIP treatment of other inmates, inadequate health or medical services, delays or inattention of inmate’s application for parole or other executive clemencies, lack of legal services for overstaying inmates.
2. *Related to Penal Guards/Custodial Officers* includes lack of personnel given the number of inmates they supervise and secure, insufficient training and professionalism among them thus laxity in the implementation of the prison rules and regulations is common.
3. *Related to Penal Administrators* are administrative issues such as indecisiveness or ignoring the existing problems and place them to the hands of middle management personnel, lack of budget appropriated to sustain quality services, unnoticed graft and corruption practices.

RECOMMENDATIONS (REMEDIES)

The recommendation herein enumerated primarily concerns the entire prison system under the new management and administration of the Bureau of Corrections (BUCOR). These recommendations are relative reiterations or additions to the findings and proposals of the Department of Justice (DOJ)

Fact-Finding panel on the *Leviste Case* which was reported and published at the *Official Gazette on May 28, 2011* and the proposals of former *BUCOR Director Oscar C. Calderon* to modernize the prison system in the Philippines. The recommendations are as follows:

1. The Department of Justice (DOJ), may consider in its strategic planning and program developmental processes, lobbying in Congress the enactment of a statute that rules on the following issues and concerns:
 - 1.1. A law that seeks to resolve the age-old plight of the Bureau of Corrections in terms of outdated law, inequitable personnel remuneration, obsolete facilities and equipment, antediluvian organizational structure, which are all deemed vital in the efficient and effective implementation of its mandates in its day-to-day operations.
 - 1.2. A law that can update the system of the Bureau of Corrections (BuCor), which was created by virtue of the Reorganization Act 1407 of 1905 and has seen not much major legislative updating except for a change in its name from formerly Bureau of Prisons through the Revised Administrative Code of 1987. Its operations are still based on the Prison Law of 1917 thereby making it difficult for the organization to cope up with the modern demands in penology and other functional considerations in accordance with the United Nations standards which has already shifted from punitive to reformatory treatment of prisoners.
 - 1.3. A law that concerns the issue on inmate population. In 1989, it was 12,900 manned by 2,362 employees, where 1,461 of which were Custodial Personnel and 901 Civilian Employees, with a prison guard-to-inmate ratio of 1:27. In 2009 or after 20 years, the inmate population rose to 35,400 manned by the same 2,362 employees, where 1,328 are Custodial Personnel and 1,034 civilian employees with a prison guard-to-inmate ratio of 1:81, and is continuously increasing at an average rate of five percent (5%) annually. As of December 2010, BuCor has a total of 35,937 inmates with the same 2,362 plantilla positions.
 - 1.4. A law that addresses the unequal distribution of resources and government budget. The BUCOR local government counterpart, the Bureau of Jail Management and Penology (BJMP), which is in charge of local inmates (under trial and convicted of 3 years and below), has about 8,976 employees manning 61,000 inmates at an approximate ratio of 1:18 and has an ongoing yearly recruitment of additional 500 Jail Officers as new plantilla positions since 2007 until they reach the 1:7 ratio. The international standard of guard inmate ratio is 1:6. The Bureau of Corrections has no yearly recruitment of its Prison Guards despite its present 1:81 ratio. This should be taken to serious consideration by the new administration.
 - 1.5. A law that concerns remuneration of personnel. The BuCor miserably lags behind BJMP in terms of personnel remuneration. The entry level for a Jail Officer 1 at BJMP is SG-10 while a Prison Guard 1 of BuCor has a measly pay grade of five (5); the lowest commissioned officer of BJMP is at salary grade 22 while its BuCor counterpart is at salary grade 11. Furthermore, unlike BJMP, BuCor custodial personnel are not considered Uniformed Personnel, thereby not entitled to salary increases/bonus and other benefits pertaining to uniformed personnel enjoyed by such agencies like Bureau of Fire and Protection, National Mapping and Resource Information Authority, and Bureau of Immigration, whose jobs are not closely exposed to high-risk criminals as compared to BuCor. Promotion system in this agency has also been subjective. There are Prison Guards who are retiring after 40 years or more in service without having a taste of promotion.



- 1.6. A law that upgrades the security facilities of BuCor. As it has been found out through constant visitation and through interview, despite having vast land areas under its control and supervision, security facilities are antiquated and inadequate as its present capacity has been overloaded to reach high congestion rates (141% for NBP, where 60% of national inmates are confined). Likewise, BuCor lacks modern security equipment such as surveillance cameras, handheld radios, firearms and other security-related equipment.
- 1.7. A law that cares the BuCor's vast lands. They are "small worlds" of national inmates (especially those serving life sentences) though they may appear large areas of land to the free society. Its trees and vegetations were planted and taken care of by inmates for almost 100 years and BuCor managed to preserve large forested land within its reservation area from illegal loggers and from large influx of squatters for several decades now. Furthermore, these vast lands serve as security buffer in the event of hot pursuit against escapees. However, in the past, large portions of BuCor lands had been appropriated in favor of certain local government units and other government agencies through Presidential Proclamations and other laws to the detriment of its operation.
2. Implementation of the BUCOR's Re-engineering Program. As commenced during the present administration, the bureau deliberately seek transformation of an efficient, effective and modernized national prison. It envisioned itself into a world-class correctional organization that provides an opportunity to develop professional, disciplined, spiritually-guided environment for BuCor stakeholders and for inmates to become productive, responsible and law-abiding citizens. In order to achieve this, the bureau should maximize the assets' value of the BuCor through responsive rehabilitation programs managed by professional correctional officers. Since its mandate is to accomplish its twin objective - the effective safekeeping and rehabilitation/reformation of national prisoners.
3. Subsequent to the Transformation Management Framework of the Philippine National Police (PNP), the Department of Justice (DOJ) and the Bureau of Correction (BUCOR) should consider a Five (5) year Development Plan dubbed as "*BUCOR Transformation Roadmap 2016*" (See Annex D) under a new administration. This should be the guiding governance system that the bureau should follow in order to achieve institutional goals and objectives.
4. Revisit and, if necessary, amend the BUCOR manual of Operation to cope up with the demands of present situations.
5. Further research be conducted to disclose other problems of the Philippine prison system and to come up with legal or acceptable remedies that would consequently improve the system – one that can be considered internationally competitive prison system.

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PART 3
CYBER CRIME





COMBATING CYBER TERRORISM IN SOUTH AFRICA: ARE ADEQUATE MEASURES IN PLACE?

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Cybercrime is said to be growing faster in Africa than any other continent. The absence of suitable legal frameworks to address cyber terrorism at national and regional levels, the pre-occupation of African countries with internal factors such as the Aids crisis, poverty, rising unemployment, crime and corruption have all contributed to the continent becoming a “haven” for cyber criminals. This has created an environment that can be easily infiltrated by cyber terrorists. The fact that African countries have long and permeable borders, compounds the problem of detection and effective prosecution. The horrific events of 9/11 provided the impetus for South Africa to introduce anti-terrorist legislation. South Africa has taken the lead in Africa in introducing the following legislation to combat terrorism, cyber crime, money laundering and organised crime:

- The Prevention of Organised Crime Act 38 of 1999
- Financial Intelligence Centre Act 38 of 2001
- The Electronic Communications and Transactions Act 25 of 2002
- The Regulation of Interception of Communications and Provision of Communications-Related Information Act 70 of 2002
- The Protection of Constitutional Democracy against Terrorism and Related Activities Act 33 of 2004

This paper will examine cyber terrorist threats facing South Africa and measures introduced by the government to address such threats. Finally, the paper will propose a way forward.

INTRODUCTION

Cyber space is regarded as the meeting place for criminal groups (Tushabe & Baryamureeba, 2005). Cyber space has recently emerged as the latest battleground in this digital age (Veerasamy, 2009). Cyber terrorists are computer savvy individuals who look for vulnerabilities that can be easily exploited and without any effort. Cyber terrorism is one of the recognised cyber crimes. It has been defined as the “premeditated use of disruptive activities, or the threat thereof, in cyber space, with the intention to further social, ideological, religious, political or similar objectives, or to intimidate any person in the furtherance of such objectives (Tushabe & Baryamureeba, 2005). Usually such attacks can take different forms: a terrorist could break into a company’s computer network causing havoc, sabotage a country’s gas lines or wreak havoc on the international finance system (Guru & Mahishwar, 2011). These attacks against information infrastructures, computer systems, computer programmes and data may cause injury, loss of life and destruction of property. The aim of such unlawful attacks is to intimidate or persuade a government or its people to further a political or social objective.

Cybercrime is said to be growing faster in Africa than any other continent. The advent of information technology has made Africans more dependent on the Internet. At the same time, the increase in untrained and apathetic users has made information infrastructures in African countries more vulnerable to attacks by criminals who can pursue their malicious agendas undetected. The absence of suitable legal frameworks to address cyber terrorism at national and regional levels, inadequate telecommunication infrastructure, the pre-occupation of African countries with internal factors such as the Aids crisis, poverty, rising unemployment, crime and corruption have all contributed to the continent becoming a “haven” for cyber criminals. This

has created an environment that is vulnerable to attacks by cyber terrorists. The fact that African countries have long and permeable borders, compounds the problem of detection and effective prosecution.

The horrific events of 9/11 provided the impetus for South Africa to introduce anti-terrorist legislation. South Africa has introduced a number of legislative measures to address the growing threat of cyber terrorism such as the Prevention of Organised Crime Act 38 of 1999 (“POCA”), the Financial Intelligence Centre Act 38 of 2001 (“FICA”), the Electronic Communications and Transactions Act 25 of 2002 (“ECT”), the Regulation of Interception of Communications and Provision of Communications-Related Information Act 70 of 2002 (“RICA”) and the Protection of Constitutional Democracy against Terrorism and Related Activities Act 33 of 2004 (“PCDTRA”).

DEFINITION OF CYBER TERRORISM

Definitions of cyber terrorism may vary depending on the role or function of the particular organisation. Denning defines cyber terrorism as “the convergence of terrorism and cyberspace. It is understood to mean unlawful attacks and threats of attack against computers, networks and the information stored therein when done to intimidate or coerce a government or its people in the furtherance of political or social objectives” (Denning, 2002; Gordon & Ford, 2002). Pollit defines cyber terrorism as a “premeditated, politically motivated attack against information, computer systems, computer programmes, and data which result in violence against noncombatant targets by sub national groups or clandestine agents” (Pollit, 1998; Goodman & Brenner, 2002). Such attacks may lead to death or bodily injury, or cause explosions, plane crashes, water contamination, severe economic loss or serious attacks against critical infrastructure (Gordon & Ford, 2002; Goodman & Brenner 2002). Cyber terrorism encompasses attacks against life and electronic infrastructure which are directed against national security establishments and critical infrastructure (Goodman & Brenner, 2002). The aim of the attacks is to cause a state of terror and panic in the general public. Terrorists may thus use information technology to perpetrate new offences or integrate cyberspace into more traditional activities such as planning, intelligence, logistical capabilities and finance (Goodman & Brenner, 2002).

EXAMPLES OF CYBER TERRORISM

Organised crime and terrorist groups are using sophisticated computer technology to bypass government detection and carry out destructive acts of violence. The actions of Rami Yousef who orchestrated the 1993 World Trade Center bombing by using encryption to store details of his scheme on his laptop computer, is a case in point (Bazelon *et al*, 2006). It is also reported that the first known attack by terrorists against a country’s computer system took place in Sri Lanka in 1998, when the ethnic Tamil Tigers guerrillas overwhelmed Sri Lankan embassies with 800 e-mails a day over a two-week period. These messages threatened massive disruption of communications, and caused fear and panic among ordinary Sri Lankans as the rebel group was notorious for killing people (Tushabe & Baryamureeba, 2005; Denning, 2000). It has been reported that computers and the Internet played a key role in the execution of the September 11 attacks in that computers were used to make travel plans and purchase air tickets (Gordon & Ford, 2002; Gerke, 2009). Thus computers have been used as tools by terrorists to execute terror attacks.



Terrorists can also use the computer to commit various crimes such as identity theft, computer viruses, hacking, use of malware, destruction or manipulation of data (Gordon & Ford, 2002). Terrorists can use information communication technologies (ICTs) and the Internet for different purposes: propaganda, information gathering, preparation of real-world attacks, publication of training material, communication, terrorist financing and attacks against critical infrastructures (Gerke, 2009). This means that organisations or governments which depend on the operation of computers and computer networks can be easily attacked. The anonymity of cyberspace facilitates the task of terrorists to execute their plans unhindered.

Gordon and Ford (2002) maintain that an urgent need arises for the development of minimum standards of security for computer networks. They endorse the idea of negotiations to resolve long-standing disputes with terrorist groups, the careful use of surveillance techniques to gather information on terrorist communications and the sharing of information across various public and private sectors to combat terrorism (Gordon & Ford, 2002). Although cyber terrorism has become a more dominant force in the global battle between information and network warfare, much misconception still exists over what cyber terrorism entails. The media has also sensationalised the possibility of cyber terrorism attacks causing much concern and panic in the public domain (Veerasingam, 2009).

INTERNATIONAL INSTRUMENTS FINANCIAL ACTION TASK FORCE (“FATF”)

This is an inter-governmental body that facilitates the development and promotion of national and international policies to address money laundering and terrorist financing measures (FATF, 2011). FATF recommendations comprise the 40 Recommendations on money laundering and 9 Special Recommendations on terrorist financing. These recommendations also contain a set of guidelines for member countries to incorporate when drafting the contents of their respective legislation. South Africa is a member of FATF.

THE EUROPEAN CONVENTION ON CYBER CRIME (ETS No 185) (“ECCC”)

The Convention is the first international treaty addressing crimes committed via the Internet and other computer networks. It was signed by member states of the Council of Europe and by non-member states in Budapest on 23 November 2001. It came into force on 1 July 2004 (Anonymous 2011). It deals specifically with infringements of copyright, computer-related fraud, child pornography and violations of network security (Section 1 – substantive criminal law, articles 2-13). It is submitted that articles 2-6 (offences against the confidentiality, integrity and availability of computer data and systems) may be used to address the offence of cyber terrorism. Similarly, Articles 7-8 (computer-related forgery and fraud) may be used to address the offence of cyber terrorism. The Convention also contains a range of powers and procedures addressing the search of computer networks and interception of computers (Section 2 – procedural law, articles 14-21). Its main objective, set out in the preamble, is to pursue a common criminal policy aimed at the protection of society against cybercrime, especially by adopting appropriate legislation and fostering international co-operation (Convention on Cybercrime, 2011). An international 24/7 network of contacts requires all participating countries to establish points of contact for transnational investigations that are accessible 24 hours daily, 7 days a week (Article 35). The Convention requires parties to establish substantive criminal laws against cyber crime, to ensure that their police officers have the necessary authority to investigate and prosecute cybercrime effectively, and to provide

international cooperation to other parties in the fight against computer-related crime (Bazelon *et al.*, 2006).

GLOBAL SECURITY AGENDA (“GSA”)

A global security agenda (GSA) was launched by the International Telecommunication Union in May 2007. It is a global framework for dialogue and international cooperation. It aims to coordinate an international response to the increased challenge to cyber security and to enhance confidence and security in the Information Society. It calls for the development of cyber crime legislation that is globally applicable and consistent with existing national and regional legislative measures (Gerke, 2009).

REVIEW OF CURRENT LEGISLATION IN SOUTH AFRICA

1. The Prevention of Organised Crime Act 38 of 1999 (“POCA”)

POCA contains measures to *inter alia* combat organised crime, money laundering and criminal activities. The Act also contains provisions to freeze and confiscate property, and forfeit it to the state if such property is acquired through criminal activities (section 18). POCA requires businesses to report transactions involving funds or assets associated with criminal activities. This includes the financing of future terrorist activities. Thus, POCA targets organised crime, money laundering and criminal gang activities both nationally and internationally.

2. Financial Intelligence Centre Act 38 of 2001 (FICA)

South Africa is a country rich in mineral resources such as gold, diamonds, uranium and platinum. This makes the country vulnerable to clandestine business transactions which can be used to facilitate terrorist financing and money laundering. The advent of AML/CFT (anti money laundering and combating the financing of terrorism) regimes have thus become key tools in addressing terrorism in the post 9/11 era (Basdeo, 2011). FICA outlaws money laundering and other unlawful actions. The aim of this legislation is to prevent and suppress terrorism financing. To this end, the Act has introduced an anti-money laundering regime to encourage voluntary compliance and self-regulation by institutions (such as banks) which may be exploited for money laundering. To this end, all bank customers are required to be FICA compliant to operate their accounts. Section 21 of FICA requires banks or financial institutions to verify the identity and residential addresses or business addresses of all customers before rendering any financial service. Thus, stringent financial controls have been put in place to counteract the threat posed by terrorist financing.

3. The Electronic Communications and Transactions Act 25 of 2002 (ECT)

The main aim of the ECT is “to provide for the facilitation and regulation of electronic communications and transactions in the public interest” (section 2(1) of ECT). The ECT deals comprehensively with cybercrime in Chapter 13. The following offences are punishable offences: sections 86(4) and 86(3) introduce new forms of crimes called anti-cracking (anti-thwarting) and hacking law, which prohibit the selling, designing or producing of anti-security circumventing technology; e-mail bombing and spamming are addressed in sections 86(5) and 45 of the ECT respectively, whereas the crimes of extortion, fraud and forgery are addressed in



section 87. Denial of service attacks (DOS) are attacks that cause a computer system to be inaccessible to legitimate users. These actions include unauthorised access, unauthorised modification or the utilisation of a programme or device to overcome security measures (Kufa, 2009). It is submitted that DOS attacks are criminalised in sections 86(1) to 86(4) of the ECT. Although, the ECT does not specifically refer to the offence of cyber terrorism, sections 86-88 may well be used to address the offence of cyber terrorism.

Section 15 provides for the admissibility of data messages in any legal proceedings, including criminal cases. The ECT thus creates a rebuttable presumption that data messages and or printouts are admissible in evidence. This is commendable. Cyber inspectors are empowered in sections 80-82 to enter any premises and obtain information that may be helpful to an investigation. However, this provision in respect of search and seizure may infringe certain sections of the South African Constitution, namely, section 14 (right to privacy) and section 25 (right to property) of the Constitution 108 of 1996.

Jurisdictional issues are regulated by section 90 of the ECT. Section 90 of the ECT provides that a court in the Republic (SA) trying an offence in terms of this act committed elsewhere, will have jurisdiction in the following instances:

- (a) where the offence was committed in the Republic;
- (b) where part of the offence was committed in the Republic or the result of the offence had an effect in the Republic;
- (c) where the offence was committed by a South African citizen or a person with permanent residence in the Republic or a person carrying on business in the Republic;
- (d) or the offence was committed on board any ship or aircraft registered in the Republic or on a voyage or flight from the Republic at the time that the offence was committed .

It is submitted that section 90(b) facilitates the prosecution of perpetrators of viruses and hackers based abroad who may attack our local computer networks. A South African court will thus be vested with jurisdiction in instances where the above-mentioned crimes “had an effect in the Republic”. A South African court will also be vested with jurisdiction if a South African national commits a cybercrime abroad based solely on the nationality of the perpetrator.

Penalties range from a fine or imprisonment not exceeding 12 months (sections 82 or 86 offences) to a fine or period of imprisonment not exceeding five years (sections 86(4) - (5) offences and section 87 offences). These penalties have been criticised as not being stringent enough to deter cyber criminals (Van der Merwe *et al*, 2008).

4. The Regulation of Interception of Communications and Provision of Communications-Related Information Act 70 of 2002 (RICA)

RICA requires all customers with cell phone numbers on cellular networks in South Africa to register their details with their respective networks as from 1 August 2009. Section 39 of RICA provides that before a telecommunication service provider must register a contract, the customer is required to furnish the service provider with his or her full name and address and a copy of his or her identity document. Section 40 of RICA contains a similar requirement but it is

directed at the sellers of cellular phones and SIM cards. The aim of RICA is to help make South Africa a safer country. The objective of the Act is to help law enforcement agencies identify users of cell phone numbers and track down criminals using cell phones for illegal activities. The failure to comply with this law will result in the disconnection of cellular numbers from their cellular networks. Thus, this Act can also be used to track down cyber terrorists using cell phones to plan their malicious agendas and commit illegal activities.

RICA prescribes harsher measures than the ECT. To illustrate this, section 51 of RICA prescribes fines not exceeding R 2000 000 or imprisonment not exceeding 10 years. Regarding juristic persons, fines may increase to a maximum of R 5000 000. Thus, the criminal sanctions in the ECT appear to be inadequate when compared to RICA. RICA legislation has proved to be useful to police in securing convictions with intercepted cellphone evidence. It has been reported that convictions in numerous cases have depended on cellphone evidence either in terms of the communication between individuals involved in crime or determining the location of individuals who were involved in crime (Anonymous, 2011). However, the implementation of the Act is not without criticism. It has been reported that South Africa has no system in place to reel in cellphone customers who are in possession of RICA-registered SIM cards even if their personal information has not been entered into the network databases as required by law. Unscrupulous traders have also sold RICA-registered SIM cards without asking buyers for their personal information and documentation in contravention of the law. Thus, a national audit of the RICA system is due to be debated to discuss the scope of the problem (Anonymous, 2011).

5. The Protection of Constitutional Democracy against Terrorism and Related Activities Act 33 of 2004

This Act provides measures to *inter alia* prevent and combat terrorist and related activities; it gives effect to international instruments addressing terrorist and related activities; provides measures to prevent and combat the financing of terrorist related activities and provides investigative measures in respect of terrorist and related activities. The term “terrorist activity” is widely defined in Chapter 1 (xxv). It encompasses any act committed in or outside the Republic which:

- (i) involves the systematic, repeated or arbitrary use of violence by any means or method;
- (ii) it involves the systematic, repeated or arbitrary release into the environment or the distribution or exposing the public to any dangerous, hazardous, radioactive or harmful substance or organism or any toxic chemical or any microbial or other biological agent or toxin;
- (iii) endangers the life or violates the physical integrity or physical freedom or causes serious bodily injury or death of any person or any number of persons;
- (iv) causes serious risk to the health or safety of the public;
- (v) causes the destruction of or substantial damage to any property or natural resource or the environmental or cultural heritage whether public or private;
- (vi) causes serious interference with the disruption or delivery of an essential service, facility or system, whether public or private;
- (vii) causes major economic loss or destabilization of an economic system or substantial devastation of the national economy;
- (viii) creates a serious public emergency or causes insurrection in the Republic.



It should be noted that “an essential service, facility or system” refers to an electronic system, including an information system, a telecommunication system, a banking or financial service or system, an essential government service system, an essential public utility or transport system, an essential infrastructure facility or any essential emergency services such as the police, medical or civil defence service. The harm or activity must threaten the unity and territorial integrity of the Republic, intimidate or cause insecurity within the country or have a negative impact on the public or the operation of state organs or international bodies. From the above, it can be ascertained that any act which causes interference with an essential service, facility or system can be labeled as an act of cyber terrorism.

A range of penalties is addressed in section 18. The penalties range from a period of life imprisonment in the High Court to a five year sentence in the magistrate’s court for a section 2 offence (offence of terrorism) or section 5 offence (offence relating to explosive or other lethal device) . Section 4 offences (offences associated with the financing of specified offences) are considered to be more serious, and carry a fine of R100 million or a period of imprisonment of 15 years in the High Court or regional court. A similar offence in the magistrate’s court will attract a fine of R250 000 or five years’ imprisonment. A court can together with any punishment, order the forfeiture of any property believed to be used in the commission of the offence on conviction (section 19).

THE VULNERABILITY OF SOUTH AFRICAN SOCIETY: REPORTED CASES OF CYBER TERRORISM IN SOUTH AFRICA?

The question arises how real is the threat of cyber terrorism in South Africa? There is presently no reported case of cyber terrorism in South Africa. Similarly, the nature of terrorist financing in South Africa is not well documented, although the spectre of terrorist threats looms in Africa. It has been reported that a number of al-Qaeda or al-Qaeda-related operatives have been arrested in Southern Africa or being captured in transit (Basdeo, 2011). Botha maintains that a likelihood of al-Qaeda attacks against Western interests exists in South Africa, even though the South African government disregards such a threat because of its neutrality on the so-called “war on terror” and its pro-Palestinian stance (Botha, 2005). Nevertheless, there are also reports of right-wing terrorism in South Africa with members of some right- wing organisations currently facing trial for sabotage and terrorism. Right wingers remain on trial for trying to overthrow the government in 2002 through many attacks. Such attacks included an explosion on a railway line at Soweto outside Johannesburg that killed a woman. The case is still continuing (Anonymous, 2011). Despite reports of plots by terror groups ranging from al-Qaeda to “home grown” white militants to attack the World Cup Soccer 2010 event, none materialised (Anonymous, 2011). There have also been recent reports of the use of South African passports by terrorist groups (Anonymous, 2011). The South African home affairs government has conducted an investigation concluding that the passports were fake. The government is also tightening its counter corruption measures at its various home affairs departments.

THE WAY FORWARD

South Africa has ratified numerous international instruments such as the International Convention on the Suppression of the Financing of Terrorism, which was adopted by the United Nations in 1999 and ratified by South Africa in May 2003. South Africa has entered into bilateral agreements with other Southern African states such as Lesotho, Swaziland and

Namibia regarding financial policy measures implemented in the Southern African region including the prevention of terrorism. South Africa has also signed the agreement on mutual cooperation in the field of crime prevention with other African nations such as Angola, Botswana, Lesotho and Zimbabwe. The aim is to facilitate cross border investigations and operations. South Africa has also implemented the International Cooperation in Criminal Matters Act 75 of 1996, which facilitates the provision of evidence and execution of sentences in criminal cases and the confiscation and transfer of proceeds of crime. Thus South Africa is taking steps to address the spectre of terrorism. South Africa is also the only African country to sign the European Convention on Cyber crime (ECCC). However, it still needs to ratify and accede to the ECCC.

The establishment of a Computer Security Incident Response Team (CSIRT) indicates that steps to tackle cybercrime and cyber terrorism have gathered momentum (Anonymous 2011). South Africa can also examine the success of Internet filtering measures introduced in countries like Saudi Arabia. Saudi Arabia introduced the Internet Service Unit during 2000 to filter web traffic from ISPs before permitting users access to the contents. The result is that if the requested URL is blacklisted, then the user is directed to a page that informs him or her that access to the requested page has been denied (Tushabe & Baryamureeba, 2005). It is submitted that such measures may prevent access to illegal websites that promote terrorism and pose a serious threat to the government's national security. However, such measures may well infringe the constitutional right to privacy in section 14 of the South African Constitution 108 of 1996. It is noteworthy that an organisation called SABRIC (South African Banking and Risk Information Centre) was established to combat crime in the banking industry through effective public private partnerships. Its key stakeholders are the major banks in the country, such as Absa, Standard, Nedbank and First National Bank (SABRIC, 2011).

RECOMMENDATIONS AND CONCLUSIONS

The global nature of computer technology presents a challenge to South Africa to address cyber terrorism. Domestic solutions are inadequate because cyberspace does not recognise any geographic or political boundaries, and many computer systems can be easily accessed from anywhere in the world. Cyber terrorism is a global menace which requires a united, global response. Countries must work together to introduce a set of core consensus crimes that can be enforceable against cyber criminals in any jurisdiction (Goodman & Brenner, 2002).

Although attempts by South Africa to address terrorism and cyber terrorism are laudable, the South African government needs to do more. It is submitted that this problem can be addressed not only through enacting stringent legislation but also through international cooperation. It is submitted that while the global fight against cyber terrorism is necessary, combating cyber terrorism should not jeopardise basic human rights and fundamental freedoms. Therefore, South Africa needs to ensure that a balance is maintained between the protection of human rights and the need for effective prosecution. South Africa needs to take the following steps to combat the spectre of cyber terrorism on the African continent:

- Ensure that its cyber terrorism legislation is compatible with international human rights instruments. It appears that adequate legislation has been introduced by the South African government. However, the protection of human rights and fundamental freedoms must be maintained.



- Educate the public about the threat of cyber crime and cyber terrorism as ignorance, lack of awareness and apathy have been mooted as the main reasons for Africans falling victims to cyber crime. Users should also be encouraged to adopt stronger security measures.
- Regulate cyber cafés as most cyber crime is reported to take place at these cafés which are popular internet access points.
- Introduce internet filtering measures to control access to websites that pose serious threats to the national security of the country.
- Introduce specialised law enforcement and training skills, and improve computer forensic capabilities. The government must also initiate support and training within government, with the help of the private sector and international enterprises. Crime and corruption at government departments should also be rooted out.
- Develop cyber intelligence as a new and better co-ordinated government discipline to predict computer-related threats and deter them.
- Enter into partnerships with other countries to provide technical and material support and increase cooperation among the intelligence agencies of different countries to facilitate exchange of sensitive information to counter cyber terrorist threats. International cooperation is important to ensure the integrity of the Internet. There should also be cooperation to secure networks.
- Encourage reconciliation and respect for diversity, and bridge gulfs between different countries in the broader international community to counteract terrorist threats. To this end, negotiations should be explored as a way to resolve long-standing disputes.
- They also need to ratify and accede to the ECCC as the Convention is open to accession by non-member states.

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APPLYING BROKEN WINDOW THEORY IN COMBATING CYBER CRIMES

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This paper will seek to highlight the fact that cyber crimes like any other crimes can be best tackled by nipping the problems at the bud. The paper will briefly explain the underlying principles of broken window theory and illustrate how the police translate the theory into action in their crime prevention efforts. Cyber crime may grow and develop out of society's apathetic attitude towards minor violations of laws. One of the most significant aspects of cyber crime is that they are mostly committed by the younger generation of computer users who see the cyber space as a frontier that invites to be explored and challenged. Potential cyber criminals may begin their career as young computer users bent on overcoming the challenges posed by the cyber world. They may start with minor violations and graduate to more serious crimes as their wrongdoings were not curbed or checked from the very beginning. This paper will attempt to apply the principles of broken window theory in cyber environment.

CYBER FORENSICS: A NEW PARADIGM

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Cyber Forensics is relatively a new field of interest among scientific and law enforcement communities. The rapid technological advancements and increasing popularity of information technology, computers and cyberspace pose great challenges for investigators and law enforcement officials all over the world. Telecommunication gadgets are compact hybrid devices integrating the capabilities of Personal Digital Assistant (PDA), mobile phone, camera, music player, FM radio, Global Positioning System (GPS) and so on. They have basic computing facilities and advanced communication features including Wireless and Bluetooth. Technology in any form whether it is computer, mobile or anything have paved way for crimes in spite of its goodness. This present paper explains the importance of understanding and implementing cyber forensics techniques in its appropriate way especially in developing countries like India.



FACING CHALLENGES OF RECENT CYBERCRIMES IN SOUTH KOREA

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In July 7th, 2009, websites and intra-nets of the legislative, the executive body and the judicial body of South Korea, including that of the presidential office called Blue House, were attacked by concentrated traffic and entries which proved to be Distributed Denial of Service(DDoS) attack. The DDos attack made not only normal function of the website and intra-net disrupted but also malicious code spread through making personal computers which visited the website or accessed to the net so called zombie PCs. The zombie PCs infected by malicious codes worked as DDoS attacking tools by sending false information to a certain website(s).

In Apr. 12th, 2011, Nonghyup(NP), a national bank in South Korea, was stopped to do electronic transaction due to sudden mass data deleting and destruction. It took around 18 days for NH to restore all financial data and re-start all monetary transactions. Prosecutor's Office in South Korea announced that the attack was due to North Korea's plot which succeeded in planting malicious codes onto a PC of a worker maintaining NH server. Most recently, the most popular social networking site called 'www.cyworld.co.kr' was penetrated by anonymous hackers, who stole name, personal identification number, password of around 35 million people. Police investigation revealed that the attack originated from a worker's PC which, after being infected by malicious code, turned into zombie PC, accessed to customer database, and obtained customer information. Since the way of attacking the SNS was very similar to NP attack and nobody asked money in exchange of stolen personal data, investigators suspicion goes toward North Korea. Formerly-mentioned Cyber-terror or cyber-attack have caused lots of identity theft and deriving pecuniary damages. However, current legislation with maximum five-year imprisonment or US\$ forty-five-thousand fine does not have appropriate penalty regarding the cyber attacks. This thesis would present proper penalty provisions in South Korea by examining American laws protecting cyber-security and national infrastructure.

INTRODUCTION

In July 7th, 2009, websites and intra-nets of the legislative, the executive body and the judicial body of South Korea, including that of the presidential office called Blue House, were attacked by concentrated traffic and entries which proved to be Distributed Denial of Service(DDoS) attack. The DDos attack made not only normal function of the website and intra-net disrupted but also malicious code spread through making personal computers which visited the website or accessed to the net so called zombie PCs. The zombie PCs infected by malicious codes worked as DDoS attacking tools by sending false information to a certain website(s).

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customer database, and obtained customer information. Since the way of attacking the SNS was very similar to NP attack and nobody asked money in exchange of stolen personal data, investigators suspected that the confidential information had been caught by North Korean special troop targeting on undermining cyber security and gathering confidential information.

Formerly-mentioned Cyber-terror or cyber-attack have caused lots of identity theft and deriving pecuniary damages. However, current legislation with maximum five-year imprisonment or US\$ forty-five-thousand fine does not have appropriate penalty regarding the cyber attacks. This thesis will investigate three accidents mentioned above, and problems that South Korean legislation and investigators faces to deal with the cyber-attacks. Then it will examine laws protecting cyber-security and national infrastructure in the United States. Finally, it will present proper regulations and penalties in South Korea and propose international measures to investigate and punish the cyber-attacks.

ACCIDENTS OF CYBER ATTACK IN SOUTH KOREA

1. DDos Attack on Governmental Intra-nets

Intra-nets of South Korean major governmental organizations, including the legislative, the executive and the judicial body, and official websites of the presidential office, called Blue House, and governing party, were attacked on July 7th, 2009, by concentrated traffic and entries which proved to be Distributed Denial of Service(DDoS) attack, thereby being blocked from working. According to internet security experts, the DDos attacks were made by computers which visited a website or accessed to a network with the malicious code and were infected by it. The zombie PCs infected by the code, around 12,000 PCs in Korea and 8,000 PCs overseas, worked as attacking tools by sending false and mass information to the websites and the servers of intranets.¹

A few days before the attacks on Korean major intranets, July 4th, one day after the Independence day, the servers and websites of the U.S. government were attacked, and some websites were completely downed.² Other non-governmental websites such as New York Stock Exchange, the Nasdaq stock market, and the Washington post, were targeted. Due to the swift data block, damages were much less in the U.S. than that in South Korea.³ The National Information Agency of Korea highly suspected that North Korean agency or allies were behind the attack.⁴ There is no specific evidence regarding the origin of the attacks although there was a line of text within the malware, "get/china/dns."⁵

¹ Tim Wilson, Report: North Korea May Be Behind DDOS Attacks On U.S., Korean Government Sites, Security Dark Reading, Jul.8, 2009, available at <http://www.darkreading.com/security/news>

² The Department of Transportation's website had allowed no access for two days and recovered in two days while the Federal Trade Commission website, after three days of reparation, functioned to the only half degree of normal operation. Wilson, id.

³ South Korea's government had advance warning of the DDOS attack in the U.S., Jul.11, 2009, available at <http://www.hani.co.kr>. Due to belated response from government, the websites of the Defense Ministry, the ruling Grand National Party, and the National Assembly in South Korea were not at all accessible by users even after four days of recovery efforts. Wilson, supra note.

⁴ Wilson, id.

⁵ Wilson, id.



In two years, on Mar. 4, 2011, 29 websites of governments, including ministries of defense, foreign affairs, and unification, and local businesses such as banks were attacked by D-Dos and malfunctioned for a brief time. However, there was not much loss reported at this time. Government urged users to download anti-virus software made in cooperation with cyber-security agencies.⁶

2. Cyber Attack on a Financial Institution, Nonghyun (NP)

The intra-network of a Financial Institution, Nonghyup, was stopped from operating due to mass damages to its financial data. Depositing and withdrawing money was restored next day but electronic banking system started to be restored only partly in two days. However, many of customers of the bank were not able to use their cards for purchase or ATM to withdraw money from their own accounts more than a week.⁷ Some of the electronic transaction records were missed completely and never to be recovered.

Prosecutors' office revealed that the cyber-attack was plotted and orchestrated by North Korea. It explained that a laptop computer of a contracting agent in charge of maintenance and reparation of NH servers was infected by malicious codes made by North Korean information agency, that, through the computer, NH server computer was infected by the codes and its confidential information including passwords were caught by hackers in North Korea, and that files with joint-attack order were distributed through the laptop computer which had already been turned into zombie computer. After remote attack order from North Korea, servers of NH with the malicious codes implanted turned into zombie, started to attack other servers, and destroyed almost half of the electronic financial system. Prosecutors' office in Korea stated that one of the internet protocol address used to break into NH network was the same as the one used at the attack on governmental website in last March, originating from North Korea.⁸

3. Hacking of a Popular Social Network Site, Cyworld

On July 26, it was reported by SK Communications which operated the most popular social network site, Cyworld, that confidential personal information with 35 million users and Nate, the 3rd internet portal site, was stolen by a hacking from China. Most of the users feared that the information might be used to mass online or voice scams including voice phishing.⁹ Although an email from the SNS and Nate to urge users to change its password made many users change their passwords, there are still possibilities that most of their personal information were gathered and used by the hacking group for other purposes such as logging into financial institution and withdrawing money.

⁶ South Korean government agencies hit by DDoS attacks, Info Security, Mar. 4, 2011, available at <http://www.infosecurity-magazine.com>

⁷ 'North Korean Hackers Crippled Bank In South', Sky.Com, May 4, 2011, available at <http://news.sky.com>

⁸ North Korea hackers behind attack on S.Korea bank: prosecutors, Reuters, May 4, 2011, available at <http://uk.reuters.com>

⁹ A intra-net of a Korean unit, called Auction Co., of eBay Inc., a U.S. based internet commerce firm was penetrated by hackers in 2008. Its 18 million users were caused to change their passwords but they still reported secondary damages including voice phishing, fake calls and spam mails. Yang Sung-jin, Personal Info of 35 million Cyworld, Nate Users hacked, Korea Herald, July 28, 2011, available at <http://www.koreaherald.com>

While police still investigates who the hacker is and how much information he/she gathered, the Korea Communications Commission blamed China after having trace to the source and founding an IP address based in China.¹⁰

4. Governmental Measure after Successive Cyber-Attacks

Challenged by the continuous attacks on Korean major public and private networks, Korean government with a joint effort among fifteen government agencies announced 'Master Plan for National Cyber Security'. The Plan proposed that cyberspace should be considered another domain similar to national territories such as land, sea, and air which deserves a state-leveled defense system. According to the Plan, the National Cyber Security Center under the National Intelligence Service, which has operated as a primary intelligence agency, is supposed to serve as a control tower to coordinate defense measures of governmental agencies against cyber attacks. The NCSC will oversee governmental policies on cyber-security, and prevent serious attacks on national computer networks by monitoring the public networks and training public officers on security issues. The NCSC issues warning to the whole governmental agencies if it detect any sign of cyber attack against Korean government and ascertain concrete threats.¹¹

The whole governmental agencies and major private enterprises are required to encrypt and backup important data including personal information, and to install necessary software to prevent potential infringement to information security.¹²

PROBLEMS OF KOREAN LEGISLATIONS TO PUNISH CYBER TERRORISTS

1. Less Organized Penal Provisions against Cyber Attack

Korean Criminal Code(KCC) has implemented art.314(2) which imposes no more than five year imprisonment or US\$ fifteen thousand on those who destroy or place improper order into computer or use other ways thereby obstructing another's work since 1995. Article 366 proscribe destroying, damaging or concealing another's property, document, special media records including electromagnetic record and penalize the crime with not more than three year imprisonment or not more than US\$ seven thousand fine.

Moreover, Act on Promotion of Information and Communications Network Utilization and Information Protection (APICNUIP), enacted since 2001, has article 48 which prohibits a person from (1) intruding into information and communication network without proper authority of access or beyond the coverage of prior permission, (2) destroying, altering, or forging information and communication network without just cause, or (3) obstructing network system by a way of transmitting massive signals or data. Those who commit the intrusion under art. 48 (1) shall, pursuant to article 72(1).No. 1, be penalized with imprisonment of not more than three years or fine of not more than US\$ thirty thousand. On the other hand, those who violate article 48(2) or (3) shall be punished with imprisonment of not more than five years or fine of not more than US\$ fifty thousand.¹³

¹⁰ Hacking Attack Hits South Korean Internet Users, Nate & Cyworld, Techno Globes, Oct.18, 2011, available at <http://technoglobes.com>

¹¹ Refer to the website of the National Intelligence Agency (<http://eng.nis.go.kr>)

¹² S.Korea draws up master plan on national cyber security, Xinhua News Agency, Aug.8, 2011, available at <http://news.xinhuanet.com>

¹³ Article 72(1) No.1 of APICNUIP.



It is argued that the intrusion under art.48(1) cannot cover every misbehavior of entering a network and gathering confidential data including particularly appropriating the data through misusing network access.¹⁴ Such criticism points out the fact that improper access to data by insider as well as the intrusion by outsider should be penalized.

	KCC	APICNUIP	APICI
Obstruction	art.314(2) Obstruction of Works	Art.48(2) ③ Obstruction of Operation of Network	Art.12 No.1 Obstruction of Operation of MICN
Max. Imprisonment	5 year(yr)	5 yr	10 yr
Max Fine (US\$)	50Thousand(Th)	50 Th	100 Th
Destruction of Property	Art. 366 Destruction of Another's Property, Electronic Information, Data, etc	Art. 48(2) ② Destruction of Network	Art.12 No.3 Destruction of Data of MICN
Max. Imprisonment	3 yr	5 yr	10 yr
Max Fine (US\$)	7 Th	50 Th	100 Th
Intervening into Network(NW)	N/A	Art. 48(2) ① Intrusion into NW	Art.12 No.1 Access into MICN
Max. Imprisonment		3 yr	10 yr
Max Fine (US\$)		30 T	100 Th

[Cyber Attack and Responding Penalty in Korea's Law]

It is noteworthy that Act on Protection of Information and Communications Infrastructure (APICI) has criminalized 'accessing' major information and communication network(MICN)¹⁵ without authority of the access or manipulating, destroying, hiding, or exposing stored data of MICN under article 12. The unauthorized access to MICN shall be punished as the same penalty as obstructing of the operation of MICN, and destroying data stored by MICN, which

¹⁴ Gwang Hoon Baik, A Study on Cyberterrorism, p.252(Korea Criminology Research Institute, 2001)

¹⁵ Major Information and Communications Network(MICN) is selected by a minister of central government in the light of several legislated points including national/social importance of works of a agency in charge of managing information and communications infrastructure, and dependence of the works of the agency on the infrastructure. Article 8 of APICI.

amounts to not more than ten year imprisonment or not more than US\$ one hundred thousand fine.¹⁶

In light of art.12 of APICI where obstructing the operation, destroying data, and accessing without permission, of MICN are under the same penalty, the penalty against intrusion into non-MICN network or private network, maximum 3 year imprisonment under APICNUIP, is insufficient. Art.48 under APICNUIP is to be considered which stipulates that cyber attacks on network such as obstructing the operation, and destroying the data are to be punished with maximum 5 year imprisonment. It is very difficult to find any reasonable ground to distinguish in terms of penalty between cyber attacks against MICN and those against non-MICN including privately-operated network service.

By the same reason, article 366 of KCC should increase the level of penalty against the crime of destroying electronic data, particularly mass personal data stored at computer. Article 347-2 of KCC, criminalizing computer fraud through inputting false information or improper order, or inputting or altering the data without any authority into computer, has the maximum penalty of either 10 year imprisonment or US\$ 20 thousand fine. Maximum 3 year imprisonment and US\$ 7 thousand fine are such insufficient penalties that practitioners may avoid using the article 366 for massive data destruction. Intrusion into a private network operated by a private company, for example <http://www.cyworld.co.kr>, and gathering personal information of the network users, almost half of Korean people, can cause much larger damages than computer fraud punishable with maximum ten year imprisonment.¹⁷

2. Lack of Consolidated Power to Operate Inter-Governmental Measures

In summer 2011, Korean government issued a guideline for protecting the basis of national defense information communications. So called 'a national cyber security master plan' announced that cyberspace is the fourth territory of South Korea to protect by state power besides land, waters and air, and that a joint defense system would be launched which calls for full cooperation between the public and private sectors in the event of cyber terrorism attacks.¹⁸ However, a legislation to place legal ground to work the guideline has not been enacted. Currently, the National Cyber Safety Management Regulation(NCSMR), which is effective as presidential administrative directive, has been effective as the sole legal basis for organized governmental activities to deal with cyber attack. When the National Intelligence Agency(NIA) as the actual control tower tries to coordinate effective counter-measures among public agencies and private institutions in case of cyber terroristic attacks, a public agency or private institution can deny any technical or personnel support. Since the NCSMD is not a law with binding power to require the counter-party's cooperation but a kind of work guideline within an agency.

Unlike the United States, South Korea does not have formal advisor or counselor for cyber security within the Presidential Office, so called the Blue House. Chief of NIS plays a role of the advisor or counselor, but the professional knowledge of the chief does not usually match that of the advisor.

¹⁶ Article 27 (1). Section 2 penalizes attempt to violate article 12.

¹⁷ Article

¹⁸ KBS World News, the need to strengthen national cyber security, Aug.8, 2011, available at <http://world.kbs.co.kr>



In light of the weak power of NCSMR, the common argument from both academic and practitioners' groups has been that National Parliament should enact a law to organize national cyber security defense strategy and place the powerful legal ground for NIA to work as a control tower.¹⁹ Through the legislation as formal legal foundation of playing a role of control tower, the professional capacity of NIA can increase to an advanced level.

3. No Integrated and Sophisticated Legislation Centering on Cyber Attack

Although the Act on Promotion of Information and Communications Network Utilization and Information Protection (APICNUIP) has been implemented, currently, it does not have overall provisions dealing with various kinds of cyber attacks on network, let alone overall cyber crimes. Korean Criminal Code of 1995, and the APICNUIP in 2001, followed by the APICI, have been enacted one another in response to growing threats of cyber crimes without efforts to harmonize each other legislation. As the table 1 illustrates, there are some disparities regarding cyber crimes and their penalties.

To overcome such disparity, KCC revision can be an effective measure. The revised KCC may include as crimes various cyber attacks, including intrusion into a network, destruction of data stored in the network, and obstruction of its operation. The other proposal is that an integrated legislation should be enacted to absorb various cyber crimes including cyber attack. As each cyber crime provision is scattered in different legislations, it is difficult to find appropriate provision, let alone to compare each provision. Since Korea's legislative body tends to review KCC revision draft with more carefulness than new legislation, the latter proposal will be more realistic.²⁰

THE NECESSITY OF INTERNATIONAL AGREEMENT FOR INVESTIGATING AND PUNISHING CYBER TERRORISTIC ATTACKS

1. International Cooperation to Respond to Cyber Terroristic Attacks in light of Korea's Experiences

Recent intrusions into Korean governmental and major financial institution's intra-network, followed by destruction of confidential data and obstruction of operation of the network have been investigated by Prosecutor's Office and Police Department Cyber Investigation Troop. They revealed that the intrusions and subsequent destruction of data came from an IP address located in China, lent to North Korean agency, and the malicious code used at the two accidents were the same. On the ground, the investigators highly suspected that a North Korean group committed the cyber attacks. However, except blocking the link of the IP access to Korean

¹⁹ Hueng Seok Kim, Cyber Terrorism, Presentation at the International Symposium on Security and Military Law, Oct.27, 2011 (document on file); So-Young Yook, The Necessity of Enacting Cyber Security Act, Public Law Research Vol.11 No.2, 325-329.

²⁰ Department of Justice proposed Revision of KCC in 2010, but the draft of the Revision is still being reviewed by a committee of National Parliament of Korea (NPK). On the other hand, Act on the Punishment of Sexual Crime and Protection of its Victim was revised almost every year by NPK.

network, Korean government could not take any measure or further action to identify one of the attackers since the attack might happen either in North Korea or China. Without related countries' support for identifying attackers and taking custody of them, South Korea could not take any proper and effective measure against any of suspect.

Hacking techniques and tools are shared and spread internationally through internet. Rapid information technology outgrows domestic legal measure to regulate it,²¹ and the technology is misused to gather confidential information from competing company or neighboring country's public network, or to attack main infrastructure network system. Without sufficient international cooperation, any country or any company will be tempted to hire rogue hacker groups to gather information from or to obstruct the operation of neighboring state or competing company located in other country. Without international cooperation, particularly, countries or companies in Asia, where public awareness against cybersecurity is not such a level as to drive public policy for or to invest public fund in solving challenges from cyber terrors or cyber crimes, will grow more exposed to cyber attacks.

2. Necessity of International Agreement to Support International Cooperation to Fight against Cyber-terror

Currently, Convention on Cybercrime, which European Union proposed in 2001 for protecting member countries against cybercrime and took effect in 2004, has worked as the sole legal ground for international cooperation of legislating criminal provision and its penalty, expeditious procedural reform, and extradition against cybercrime. The Convention was ratified by not only EU member countries but also other countries such as the United States. Although the Convention on Cybercrime opens its membership beyond the European Union, Asian countries may hesitate to ratify it. Designed for advanced countries, the Convention requires member countries to criminalize infringements of copyright and related rights as a kind of major cybercrimes under domestic law. It is noted that copyrights and its related rights are less developed in Asian countries than in European countries, and that quite a few Asian countries wanted temporary reserve or hesitated for criminalization of infringement of intellectual property right when they acceded to World Trade Organization.

In Asia where information technology and its industry prospered but public awareness about danger of cyber-crime is relatively low, an international agreement which models Convention on Cybercrime but respect current economic and social situations in Asia is worthy of being adopted. Damages which South Korea endured during a few years may happen sooner or later in another Asian country. Without such international agreement, the Asian country will face sever hurdles to investigate and punish criminals who cunningly manipulate its pivotal network system from a country where its jurisdiction is limited. South Korean government still does not find culprits for the successive cyber-attacks. Without cooperation from China's and North Korea's government, it will be a mission impossible.

²¹ Stilgherrian, eCrime Symposium wrap: Satisfaction tinged with frustration: There's steady progress, but can businesses face the challenge?, Nov.11, 2001, available at <http://www.cso.com.au>



CONCLUSION

Last year, an U.S. non-profit cybercrime research organization stated that Asian countries faced almost the same cybercrime to the western countries.²² Asian countries famous for concentrated population and dense internet connection are increasingly exposed to cyber-attack through speedily-evolving malware. During the last three years, South Korea has experienced unauthorized intrusion into governmental network, bank intra-net system, and the most popular social network site. As a result of every effort from prosecutors, police and national intelligence agency, South Korea announced that two of the cases are related to North Korean hacking group's harassing tactics. Still, there is no one who has been prosecuted or under criminal trial for the cyber attacks.

South Korea, although adopting some laws or revised criminal law to place legal ground for cyber attacks, such as intrusion, destruction of data, and obstruction of network operation, has no integrated cyber-crime act. Sophisticated balance of responsibility of criminal behaviors and maximum penalties leaves much room to be desired. Unauthorized intrusion into governmental network is subject to the same penalty as destruction of data and obstruction of the network operation. Meanwhile, intrusion into private network faces much less penalty as destruction of its data or obstruction of its operation.

Besides development of domestic law against cybercrime, international cooperation is needed for a country to investigate and prosecute a criminal who usually takes advantage of loopholes in the law. Such international cooperation will work better with the auspice of international agreement. In light of unique social, economic and legal situations in Asia, Asian countries need to work on an international agreement on cooperative measures to fight against cybercrimes. Placing an example of Convention on Cybercrime of European Union as a model, Asian countries should work on an appropriate agreement reflecting characteristics of future threat of cybercrimes and network environments in Asia, considering the level of computer network, importance of computerized data, etc. It should be considered that South Korean accidents may be your country's experience in near future.

²² Avantikumar, Study: Asia faces same level cybercrime as the West, NetworkWorld, March 22, 2010, available at <http://www.networkworld.com>

POLICING CYBERCRIME: MEETING THE LATEST CHALLENGES ON THE CYBER-THREAT LANDSCAPE

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This paper will specifically focus upon how new sophisticated forms of malicious software, new types of frauds and new uses of social network media have changed the cyber-threat landscape. It will then discuss recent challenges faced by police and policy makers when responding to public pressure to increase the effectiveness of policing cybercrime. It will explore the problem of reconciling the tension between the high level of demand for increased police cover with the practicality of what cover the police and government can actually provide. It will discuss how existing provision can interact with the private sector to tap into existing structures (security networks) that also currently exert a policing function upon internet users and abusers. Finally, it will then look at the many ways that police are currently using networked technologies to deliver and enhance their services to the public.



ASIAN CRIMINOLOGICAL SOCIETY

PART 4

DRUG USER AND OFFENDER REHABILITATION





THE EXPLORATION OF DRUG RELAPSE PREVENTION AND THE ANALYSIS OF CAUSES OF RECIDIVISM BETWEEN MALE AND FEMALE

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Drug abuse has always been causing serious damage to Taiwan's security. The statistics show that women use drugs increased year by year, while men and women in the physical, psychological, social and cultural aspects have their differences. Therefore, drug use and recidivism because of the kind of state is also very different, there is a need to explore the differences meantime. Therefore, these reports will analysis of drug abuse and relapse factors on the discovery of men and women in Taiwan's current situation. Finally, the problem of drug abuse in Taiwan to make specific recommendations, and made specifically for gender differences in viable approach.

Research: In drug abuse issues, men and women do for physical, psychological and social impact of cultural factors vary. Therefore, not only to pay attention to gender differences in drug response, including the medication process, relapse factors, out of prison after the social, psychological adjustment and other issues, should focus on women drug addicts may face the situation of vulnerable (For example, psychology of attachment and intimacy of the tangle of drugs, the spread of infectious diseases, violence, pregnancy and parenting issues such as child care) . In short, these issues are to be professionals, and government agencies of the importance and develop a feasible method at the event, and the other through cross-system, multi-disciplinary integration of co-operation to assist addicts towards rehabilitation of the road.

INTRODUCTION

Drug abuse has always been causing serious damage to Taiwan's security. Turned around drugs and prison-related cases of the inmates in the majority. Recidivism rate of drug properties as one of the reasons causing this phenomenon. In addition, the statistics show that women use drugs increased year by year, while men and women in the physical, psychological, social and cultural aspects have their differences, the kind of state of drug use and recidivism very different reasons, there is to explore during the necessity of difference. In addition, the community there for more general drug prevention of recurrence of the myth: that through the vigorous investigation of drug police sources, the arrest of drug offenders, drug offenders or correction of the counseling agencies to strengthen measures to reduce drug-related crimes so you can reduce recidivism rates; however , both domestic and international research literature that the drug of abuse has its own complex and diverse factors, no single unit of the judicial police to solve the problem of drug abuse to reduce recidivism rates. It still need to integrate justice, health, social affairs, education and other units, and with family, school, community and other informal support systems, a viable co-develop specific policies to prevent drug relapse. Therefore, this report will present, male and female drug abuse in the situation analysis, factors for relapse and recurrence rate of discovery. Finally, the domestic drug abuse problems make concrete proposals, and made specifically for gender differences in viable approach.

MOTIVATION

A. Drug offenders in prison inmates have always accounted for nearly half, while the recidivism rate is often highest for the various types of crime, the focus of correctional services.

- B. Male, two female sex due to physical, psychological and life tasks are different; the quantity of crime there is no significant difference.
- C. Understanding of the factors drug recidivism, to provide a reference implementation of business practitioners

DISCUSSION AND SUGGESTIONS

- A. First, the current drug Fanjie governance model at the event can be factors for recurrence at the event?

As many of the families of drug offenders in institutions for the correction of expectations that the family should be put off after the poison out quit and look forward to correct the body to "cure" the inmates of drug offenders in drug addiction, or look at the event within the correctional effectiveness can continue to the community, in reflecting on our country in physical therapy at the event for the addiction model of scarcity, instead giving a lot of responsibility for corrective institutions. Domestic authorities for drug offenders in the correction (refer to application in terms of) the host at the event, within five years divided into two types of first-time offenders and recidivism, after five years if the first-time offenders or repeat offenders, the observation rehab. If the assessed tendency to continue drug use, the diameter of the compulsory physical therapy physical therapy delivery. For five years for repeat offenders are sentenced to imprisonment in the prisons of Justice to be in prison. Drug Abuser Treatment Center sub-adjustment period, the period of psychological counseling and social adaptation period. At the same time as determined according to the Ministry of Justice to impose course syllabus at the event (including counselor classes, career counseling class, the concept of addiction classes, health education classes, cultural education classes, legal education classes, adapting to life in class, work and leisure, sports classes, religious education, etc.), medical services for physical therapy things count. The physical therapy are still arranged according to their short-term technical training resources training. In addition, there are social workers and clinical psychologists lend a professional assessment and individual, group at the event. And punishable by imprisonment of drug offenders are imprisoned in the prisons, mainly in the factory in operation, part of the monitoring of all technical training programs or to impose remedial education. However, the current drug offenders at the event may encounter the following problems, leading to the recurrence of drug addicts can not hit them at the event and the factors that influence the effectiveness of abstinence.

(A) Limited effect large class teaching

The syllabus taught in large classes with good intentions. It is hoped that arrangements for dealing with drug offenders in the course of drug addiction. However, teachers employed by the physical therapy varies greatly limited by the large class teaching faculty, teaching methods and other conditions of the restrictions, become a mere formality can not attract people's interest in resettlement, the effect is limited.

(B) Group life ills

In addition, the prison of the group life, resettlement of people from all over the snakes and domestic, and therefore difficult to avoid the conclusion of more addicts to buy medicine, medication and interpersonal networks. Guided through professional counseling, although people



do accept the notion of positive selection, but the current shortage of professional manpower under the circumstances, can not be comprehensive in-depth manner the depth of expertise at the event.

(C) Technical training program can not meet demand

Although some correction authorities imposed for drug offenders in the skills training. However, the training program was not updated for many years, but in reality does not match the generations has been the trend. Drug offenders out of jail is difficult to engage in technical training related industries, resulting in life can not be on track to increase the likelihood of recidivism. Therefore, the proposed correction authorities should consider the diversification of skills training projects, the development of skills for the job market of the project, to increase the drug offenders out of prison after jobs.

(D) Professional counseling and counseling deep enough manpower

As of the end of November 1999, correctional occupancy number of 56,905 people, including hazard prevention and control regulations violate drug accounted for 24,363 persons (42.8% of the total number of asylum). The face of a large number of drug offenders, prison counselors and more in the busy submit cumbersome administrative matters such as parole, counseling for drug offenders in the multi-stream training in the broad teachings, relapse is more difficult to play a factor in dealing with the function to avoid repeated. And although social workers in the Drug Abuser Treatment Center, psychologists are prepared, but the national physical therapy only 1,006 people by the number of asylum, in prisons only 4.1% of drug offenders, even if the physical therapy professionals are committed to drug abusers are professional at the event, return to the calculation of drug offenders in the national recidivism rate of inmates when the results still can not escape its fate of being diluted. It is suggested that correction authorities are prepared to be teachers and psychologists social workers professional manpower, and strengthen the function of the professional at the event for the characteristics of drug offenders to provide professional, individualizer's at the event.

B. Community modalities are relevant to the real needs of drug addicts?

Drug offenders out of prison return to the community, the high possibility of recidivism. However, drug addicts relapse within the community have not yet entered the judicial system before the correction is beyond the reach of authority at the event. Current community treatment model, including medical institutions to implement the replacement therapy (methadone, butyl originally not due, etc.), Dawn, Lord of Love, Immanuel Lutheran homes and other religious drug treatment, and these community treatment is able to meet drug addicts really demand, it is discussed below:

(A) Replacement therapy failed to doctors "heart"

Current replacement therapy (methadone, not because the original butyl, etc.) only drugs to replace drugs, and limited to opiate drugs, not one for amphetamines, ecstasy and other non-one of the other drugs. Replacement therapy, although the implications of its harm reduction, but if no other support measures with psychological treatment, addicts can not really solve the "heart of addiction" problem. Report regularly to the hospital and the daily routine action, but the first to

point to attract increased drug "business" of convenience, nor address the causes of recurrence of interpersonal factors.

(B) Treatment for other religious beliefs causing crowding

Dawn, Lord of Love, Immanuel Lutheran and other religious modalities of family, religion, rich atmosphere, is positive in terms of guidelines for drug addicts into the addiction of spiritual sustenance. However, for "my breed" of different religions, the entry of accessibility is not high. But like most religious drug treatment needs an interview, but they need to pay the deposit. 1 and a half years or so living in the remote village of treatment, and control access to calls and other limitations, not only for the purposes of drug addicts is determined to set a threshold.

Drug addicts in the community when faced with the plight of recurrence, relapse has its history. How to relapse in drug addicts gradually rein in real time back, will not fall into the abyss of a comprehensive relapse, there is an urgent need to provide the ground-based, real-time of at the event. Drug Control Ordinance on 24 November 1999 to amend section 2-1 of the law explicitly requires the municipality, county (city) government for the enforcement of drug control work, the organization should be responsible for drug control education, advocacy, providing use of drugs families restructuring and psychological counseling care visits, provide or refer the application of drug users social assistance, legal services, education services, protection placement, crisis intervention services, vocational training and employment services, provide or refer the application of drugs who received addiction treatment and follow-up counseling, according to mining inspection visits and the use of urine drug users, tracking and referral services, case management and other related matters such as drug control. Hope Drug Control Centre, the legal system, it can play more in the way of real-time functional.

C. Higher than the power of religious faith inspired

As mentioned earlier, non-religious drug treatment agencies currently strong religious exclusiveness high. If drug addicts are the same religion more acceptable to its treatment at the event. However, if significantly different religions are incompatible with the low acceptance. Therefore, drug addiction treatment appropriate to seek to go beyond the realm of religion, level of spirituality, such as Lin Jianyang, Chen Books (2007) found that drug offenders in the enhanced belief in supernatural power, may inhibit the recidivism of drug offenders.

D. Cross-system integration of multi-disciplinary cooperation

As many studies have found that drug addicts relapse factors are its complexity. So for those of drug abuse at the event, can not be corrected depends on the prison authorities to close off the addiction counseling that effect. But should the healthcare system, prison system, probation system, the county Drug Control Center and other different systems for drug abuse by those who conducted the psychological state or recurrence prediction evaluation the data from the integration, and various stages at the event results be extended, continuous assessment for relapse prediction, in order to systematically provide comprehensive protection of drug addicts. Moreover, for drug abuse prevention and control should be extended to elementary, junior high and high school and other school areas, the advocacy of drugs dangers to avoid young people into the drug ring, resulting in youthful drug use increasing ring of the problem.



E. Family support is one of the sides

Most studies have found that all addicts family support system is an important factor towards rehabilitation. However, Lin Jianyang, Chen Books (2007) also pointed out that the men were drug offenders, the number of family contact with the more interactive links, the more family conflict, family alienation of stronger, more may contribute to recidivism. Therefore, family support can be said that one of the two sides can carry a boat may capsize. If the family fails to provide positive support to help the success of drug addicts for addiction but just the opposite, so the unit should provide the opportunity to educate families on how the road to drug addiction by providing the correct, forward the love and help teach the family how to take care accepted.

F. Specifically designed for women who use the drug at the event

Shu-Yu Lyu et al (2009) found that drug use in the drug experience and the reasons for such variables are significant gender differences, 41.8% of girls have drug experiences, significantly better than boys (28.3%) and more. Obvious motivation for female drug addicts of the drug high. Thus, if drug designed specifically for women at the event program, its effectiveness would be expected, the following for female drug abusers of the recommendations at the event:

(A) Corrective institutions in place for women drug offenders

According to Article 10 of the prison lines of the Criminal Code states: "Women's request to carry their children into the prison who was allowed to it. But limited to those under three years old." Thus, unlike male inmates are inmates for women, the Department should provide special opportunities, including child rearing parenting skills, parenting education, to teach use of drugs in pregnancy and child physical and psychological impact of fetal health education and other related knowledge, and future send their children outside prison or placed for adoption and other links to community resources and psychological counseling.

(B) Strengthen the emotional management of physical therapy and other topics at the Event

Literature have shown that female drug users than men, drug users have significant psychological problems, some research indicates that depression, negative emotions leading to female drug addicts relapse important factors (Dong Shu-Ling, 2000; Chen Zi Huang, 2003; Xu meaning of State, 2009) . Thus, compared to male addicts, female drug users to prevent recurrence of the mood at the event must also strengthen the adjustment, emotional management skills.

(C) Understand the intimate nature of the relationship to strengthen self-affirmation and self-exploration

Li Yi-Chen (2008) A study of female drug addicts partner intimacy of the study, found that female drug addicts on the partner's emotional attachment has inherent emotional factors and the practical realities of the plight of the dual considerations, and more in order to reward partners, respondents were due to emotional loss, drug interaction partner, partner funded by medication, and because of companion affect the sale of drugs. Also to maintain emotional and withdrawal. Although the cause addictive behavior with a partner's emotional crisis, but also strengthen the emotional attachment, respondents will use drugs in response to emotional interaction, and due to the impact of drug use emotional coping strategies to promote adjustment.

Obviously women's drug addiction problem drug users and their intimate relationships often entangled. Therefore, we should promote female drug abusers for the attachment of the notice, realize the relationship is not love all of life, in intimate relationships remain self-independence, enhance self-affirmation and self-exploration at the event. In addition, women should make themselves responsible for drug users understand the importance of not blindly blame the drug addiction partner, while ignoring their own responsibility.

(D) Strengthen the functions of a constructivist vision of the career training program

Of female drug addicts to prevent relapse, should offer appropriate femininity and to meet market demand of vocational training projects to help drug addicts independent female self-reliance. In addition, some for women drug users as the object of study also pointed out: If the excluded drugs and companion, the case of other life goals and a general lack of focus, in some cases also self-withdrawal, but owing the lack of vision of life, and come back hotel work, leading to recurrence (Li Yi-Chen, 2008). Therefore, the need to strengthen the career planning of women drug users to have a vision for life, to become stable living conditions.

(E) Promote the concept of health education right

Zhuangshu Ting (2005) pointed out that female drug abusers to come to make daily life of drug trafficking and of drug money. However, no fixed work or unemployed, and there is no stable source of income for those who will likely be required in exchange for sex, so will bring social and public health of the worries. Shu-Yu Lyu et al (2009) found that in the sample who had been pregnant, that past drug use during pregnancy as high as over half. Study found that female drug abusers for lack of knowledge or indifference health, may cause its own health crisis, or the next generation of health problems and even become a public health security worries. Therefore, the need to strengthen health education the right idea.

CONCLUSION

In drug abuse issues, men and women do for physical, psychological and social impact of cultural factors vary. Therefore, not only to pay attention to gender differences in drug response, including the medication process, relapse factors, out of prison after the social, psychological adjustment and other issues, should focus on women drug addicts may face the situation of the disadvantaged, such as the psychology of dependence intimate relationship with the tangle of drugs, the spread of infectious diseases, violence, pregnancy and child care education issues. These issues are to be professionals and government agencies of the importance and to develop concrete measures at the event feasible.

Addiction long and difficult road, now for drug addiction at the event were dedicated to religious counseling, drug rehabilitation programs, health care health care, alternative therapy. However, the characteristics of drug addicts should be considered, habits, social environment, inspired by their addiction motivation, will strengthen the drug initiative, determination and willpower. Good faith rather than blindly forced to give professional assistance in ways that may cause secondary damage, not only off the road reverted to abstinence, is more likely to compel him to repeat exactly the same choice to leading the way, it should be with the family and social affairs, justice, education, health and other related units together to help drug addicts towards rehabilitation of the road.



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A NEW GENERATION OF DRUG USERS: NEW CHALLENGES TO DRUG RESEARCH IN HONG KONG

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The beginning of the 21st century has witnessed the instant popularity of psychoactive drugs, especially ketamine, among young drug users in Hong Kong, replacing the age-old dominance of heroin. This new drug scene has not only generated the need for more innovations in existing heroin-based treatment and prevention programmes, but also brought new challenges to drug research. Parker's "normalization of recreational drug use" thesis, proposed more than a decade ago, seems to have fully taken shape in Hong Kong by now, as the prevalence of psychoactive drug use since 2000 has persistently been on the rise, and users are no longer confined to marginal youths or school drop-outs, but also coming from regular high school students and working youths. One of the salient characteristics of normalization of drug use is what I call "bad habitization", which is young people's cognitive tendency to subjectively reduce the seriousness of abuse of an illicit and harmful drug to that of a bad habit, thereby undermining their awareness of addictive consequences of psychoactive drug use and the need to seek help. These and other new phenomena surrounding psychoactive drug use have posed new challenges to the research into drug use and drug policy in Hong Kong.

INTRODUCTION

A socio-historical examination of the drug policy in Hong Kong from 1900 to the mid-1990s (Cheung and Ch'ien, 1996, 1997) delineates three broad stages. The first stage was: "1900 – 1945: Government Monopoly", in which the government maintained monopoly of the sale of opium by forbidding its sale by merchants, thereby making great revenues. The second stage was "1946 – 1960: From Monopoly to Prohibition", in which non-medical use of opium was banned when the British yielded to growing international pressure to forbid the sale and distribution of opium in UK and its colonies, including Hong Kong. Heroin, a new form of the opium derivative, began to flourish in Hong Kong because of it was much easier to carry and consume than opium. Since the 1960s, Hong Kong has undergone rapid post-WWII economic growth and modernization. Drug policy had also expanded in scope, incorporating treatment and prevention work, although prohibition was still the dominant approach. This stage, from 1961 to 1996, may be designated as "Enlightened Prohibition". Research became one of the components in drug policy since 1990.

The most recent stage of drug policy can be said to begin in 1995, when there was a rather rapid increase in young people's drug use, and the then Governor of Hong Kong held two drug summits, one in 1995 and the other in 1996, to discuss with specialists, professionals, service providers, and the public the best way to tackle the problem (Cheung, 1998). The most important outcome of the summits was the establishment of the Beat Drugs Fund (BDF), which offered extra resources for the treatment and prevention of drug abuse (Narcotics Division, 2011). Research was also included in the BDF sponsorships since 2000. As will be described later, the period from 1996 to the present may be described as the "New Drug Era".

RESEARCH ON THE OLDER GENERATION OF DRUG USERS

Heroin became the most popular drug in Hong Kong in the 1950s, and its dominance had lasted until the mid-1990s, when psychoactive drugs, especially ecstasy and ketamine, suddenly became the drugs of choice among young people. The earliest research studies funded by the BDF in the



1990s had already examined a variety of relevant topics surrounding heroin abuse and treatment, including the pattern of use and social background of drug abusers, female and young drug abusers, clients of the Methadone Treatment Programme, effectiveness of treatment & rehabilitation modalities, social and psychological factors in recovery, and the needs of drug abusers and their families. There were also studies that looked at the public's views of prevention and publicity work of the government and NGOs, the trend of drug abuse in Hong Kong, and the social cost of drug abuse.

One of the landmark studies of heroin abusers conducted in 2000 was a longitudinal study of chronic drug abusers. The study surveyed a sample of over 500 active and former drug addicts (mostly heroin abusers) at three waves, with two 12-month intervals between the waves. The findings ascertained some of the major social and psychological factors that affect the recovery or relapse of chronic drug abusers (Cheung, 2009), and have been useful references for the improvement of drug treatment and rehabilitation services.

Before 2000, the Narcotics Division had commissioned research organizations to conduct large-scale self-report surveys of students of secondary schools and vocational training schools to find out their prevalence and pattern of drug use in 1990, 1992 and 1996 (similar studies were carried out in 2000, 2004 and 1008/09). Each of these surveys randomly sampled over 80,000 students and used an anonymous questionnaire for data collection.

THE NEW DRUG ERA: PSYCHOACTIVE DRUGS

When more and more studies were conducted in the 1990s for a deeper understanding of the drug problem, the arrival of the new wave of drugs consumed by young people in the late 1990s was sudden and unexpected. The new drugs at the centre stage were ecstasy and ketamine (see Table 1).

Table 1:

Reported Individuals Aged Under 21 by Selected Type of Drug Abused
(Source: Central Registry of Drug Abuse, Narcotics Division)

Selected type of drugs	1988	1990	1992	1994	1996	1998	2000	2002	2003	2004	2005	2006	2007	2008	2009	2010
	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Heroin	47.3	48.2	58.0	79.5	66.6	58.4	21.6	10.7	7.7	5.3	3.8	2.0	2.1	1.8	2.3	2.8
Cannabis	31.9	29.5	22.9	17.9	21.0	26.6	21.2	25.8	28.4	25.5	25.5	18.7	11.9	9.0	7.4	8.1
Methylamphetamine (Ice)	--	--	--	--	7.6	17.3	11.0	8.1	6.5	6.7	8.0	10.5	13.6	14.9	16.6	22.0
Ecstasy	--	--	--	--	<.05	2.0	56.2	37.1	34.7	38.3	53.3	42.6	21.3	15.6	11.9	5.8
Ketamine	--	--	--	--	--	--	36.9	70.5	62.9	69.6	61.1	73.3	80.2	85.5	84.3	79.9
Cough medicine	2.9	15.7	25.3	11.0	7.8	5.2	2.6	3.0	7.8	9.6	9.6	6.9	4.4	3.1	3.8	2.7
No. of individuals under 21 with known type of drug reported	697	892	1,653	3,891	3,363	2,551	3,466	2,490	2,494	2,127	2,219	2,524	2,919	3,423	3,296	3,486
% of all reported individuals with known type of drug reported	6.0	6.6	12.1	20.1	18.1	16.2	21.1	15.6	13.9	14.6	16.0	19.2	21.6	24.0	23.7	22.3

Table 1 shows the percentage of individuals under the age of 21 reported to CRDA taking selected drugs over the years from 1988 to 2010. Ecstasy began to emerge in the mid-1990s, consumed by only very small percentages of individuals under 21. But the percentage rose

sharply to 56.2% in 2000, and fluctuated between the 35% and 53% from 2001 to 2006, before declining quickly to only 5.8% in 2010. On the contrary, ketamine was abused by only 36.9% of the reported individuals under 21 in 2000, but this percentage increased quickly to 70.5% the next year, and to 85.5% in 2008, remaining at 79.9% in 2010. Indeed, since the early 2000s, ketamine has been the dominant psychoactive drug among young people. The consumption of heroin has drastically dropped since 2000, and the percentage of individuals under 21 abusing heroin was only 2.8% in 2010.

The last two rows of Table 1 show the number of reported individuals under 21 taking drugs, and its percentage among reported individuals of all ages. The higher the percentage, the more young people's involvement in drugs. The alarming change came in 1992, when the percentage doubled from 6.6% in 1990 to 12.1% in 1992. This percentage continued to increase to over 20% in 2007, and remained over 20% in 2010.

What happened since 2000 may be called a "New Drug Era" (Cheung, 2010). Not much was then known about the nature and harms of ketamine and ecstasy. Even less was known about why they suddenly became so popular in young people. The work of Howard Parker, a British sociologist, and his team offered some clue to the social process of young people's drug use today. The research team had studied a sample of more than 700 juveniles in Britain for 5 years, and they found that when they were 14 years old, only 26% had ever used illicit drugs, but when they reached 18, the percentage rose to 65% (Parker, Aldridge and Measham, 1998). Parker proposed the thesis of "Normalization of recreational drug use" to explain the growing popularity of party drugs among young people. He used the concept of "risk society" (Beck, 1992; Giddens, 1991, 2000) for his analysis. Growing up in a risk society, young people are required to understand and assess the risks in everyday life. However, the society has now become so complicated and is changing so fast that young people are facing very high degrees of uncertainty and insecurity. The faster the social change, and the greater the competition in society, the more difficult it is for young people to predict their future. Unlike people in the older generation, youths today find that following conventional rules, such as being a good kid, a good student, and studying hard, could not guarantee success in future. Against this background, young people's being attracted to taking drugs in rave parties and discos is, to a certain degree, a response mechanism to the tough reality they face in society. In the disco setting, heavy music and drug use with friends offer a "runaway world", where they can temporarily escape from harsh reality (Giddens, 2000), experience a span of stability, and re-construct their youth identity.

In Hong Kong, the public was alerted to the fast increasing popularity of the psychoactive drugs among young people. In his 2007 Policy Address, the Chief Executive announced the formation of an inter-departmental task force headed by the Secretary for Justice to study the youth's drug problem and recommend solutions (Task Force on Youth Drug Abuse, 2008).

Since 2000, research relating to young people's psychoactive drug use focused on the abuse of such drugs, northbound cross-boundary drug abuse in Shenzhen and other mainland cities, treatment services for psychoactive drug abusers, ways to reduce misunderstanding of psychoactive drugs, and also the physical harms of ketamine.



NEW CHALLENGES IN RESEARCH OF PSYCHOACTIVE DRUG ABUSE

In the “New Drug Era”, there are new challenges to the conduct of research. Some of the major challenges are as follows:

(1) "Normalization of Recreational Drug Use"

As discussed above, Parker’s normalization thesis predicts that more recreational drug use will be found in youths of different age groups, education levels, occupational ranks, and socioeconomic conditions. If this trend also occurs in Hong Kong, then there will be the need to conduct surveys of young people who are in the labour force.

Those young people who were in their teens when they started to use psychoactive drugs since the late 1990s, would now be working young adults 25 to 30 years of age. For those who still have the habit of using drugs, their performance in their work may be affected. Recently, there have been quite a number of “drug driving” cases, in which taxi drivers and truck drivers took ketamine before driving and got into car accidents. I was told by participants of my focus group sessions who were young drug abusers that besides driving, there are other workplaces where some young employees may regularly use ketamine and other drugs, such as restaurants and construction sites. Conducting surveys of students is relatively easy. How to survey the drug use of working youths in a spectrum of occupations is a great challenge.

(2) “Bad Habitization” of Psychoactive Drug Use

Many young drug users are of the view that psychoactive drugs such as ketamine are not as scary as heroin, are not as easy to get addicted as is heroin, and even if one is addicted, it’s easier to quit. Thus, the perceived harm is not serious. On the contrary, heroin is very harmful, difficult to quit, and is therefore a real drug. Also, in the eyes of young people, heroin represents a favourite drug of a much older generation, whereas ketamine is a fashionable drug.

One of the reasons why ketamine is very popular is that its use is very easy to administer. Taking the drug would not be easily noticed by other people, whether it is consumed at home, on the street, or even in school. According to some young users I interviewed, they agreed that taking ketamine is not good for health. But it is only a bad habit. Many young people have lots of bad habits, such as playing computer games, gambling, drinking, smoking, gang fighting, absence from school, speaking foul languages, pre-marital sex, theft, vandalism, etc. Snorting ketamine is no more than one of the common bad habits. Bad habits are not good, but who don’t have any bad habits? This reduction of drug abuse to bad habit, or what I call “bad habitization”, will result in a low degree of awareness of the danger of psychoactive drug abuse, and also the denial of “drug” abuse, not to mention the motivation to seek treatment.

Is the above description a true representation of the current youth subculture in our society? We need more research on this topic in order to better understand our youths’ values and behaviours associated with psychoactive drug abuse.

(3) Treatment for Psychoactive Drug Abusers

The treatment and rehabilitation system in Hong Kong has been based on heroin abuse for decades. Now that more and more psychoactive drug abusers need treatment, there is the need to do evaluative research on how effective the present heroin-based T&R system could be used for the treatment of psychoactive drug abuse. While there are many generic elements in treatment programmes regardless of the kind of drugs, specific needs of psychoactive drug abusers should be addressed in the existing T&R service.

(4) Surveillance of Pattern of Drug Abuse

Although in this paper I make a distinction between two generations of drugs and drug abusers, such a classification is too simplistic and rough. Young people caught in the tide of ketamine abuse when they were in their late teens may exhibit a different pattern of drug use after they become young adults and join the labor force. There is evidence from overseas research that some of the earlier psychoactive drug abusers have turned to “hard drugs” such as heroin and cocaine as their drug use continued to young adulthood. Will such a change of drugs occur in Hong Kong? Psychoactive drugs have started to dominate the drug scene for over ten years now. It is opportune to monitor through research the trend of drug use from adolescence to adulthood.

CONCLUSION

In the past decade, the sudden arrival and dominance of psychoactive drugs, especially ketamine, has marked a pattern of drug use and attitude towards use very different from those of the previous heroin generation. We have discussed the challenges to drug research due to the normalization of recreational drug use, bad habitization of drug abuse, the need for modification of the conventional heroin-based treatment programmes for psychoactive drug abusers, and the need to monitor the possible change of drugs from adolescence to adulthood.

Before we end, it should be pointed out that psychoactive drug abuse is only one of the common risk behaviours committed by young people today. It is, of course, important to reduce the supply of, and demand for, such drugs. More important, however, is conducting research into the subculture of youths, trying to better understand the difficulties facing them in the domains of the family, school, mass media, and community. To a certain extent, the “youth problem” we have today is a product of the “problem society” we have produced. If youth problems have their roots in the problem society, we need to understand what kind of change that should be made to the society in order that young people are provided with more resources and opportunities that would better protect them from drug abuse and other risk behaviours. On this note, future research must eventually address issues at the more societal level.

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DRUG USERS' PERCEPTIONS ABOUT THE EFFECTIVENESS OF DRUG CONTROL IN CHINA

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Illicit use of drugs has received tremendous public attention in China in recent years, but little is known about the effectiveness of the get-tough practices, especially those adopted by the police. Due to the lack of official data, the study explores the effectiveness of drug control as perceived by drug users. Using citizen surveys collected in Yunnan province, this research also analyzes citizens' perceptions about what is effective in drug control. Policy implications and future research are discussed.

INTRODUCTION

Illicit drug use has become an increasing public health and social concern in the past decades worldwide. Among the problems are loss of productivity, transmission of infectious diseases, family and social disorder, and crime. In China, drug use can be traced back to the late Qing Dynasty, when British colonists forcefully brought opium into China. The Opium Wars between 1839 and 1860 made China open the door to a free flowing opium trade. By the foundation of new China in 1949, more than 20 million Chinese people were opium addicts, representing 5% of the total population. After a short nationwide anti-drug campaign in the early 1950s, China became a drug-free nation (McCoy et al., 2001).

Illicit drug use emerged, however, with the new economic reform and open-door policy in 1978 and quickly became a serious social problem in the late 1980s. It has created disastrous social and public health consequences. Today, drug abuse is usually linked to the spread of HIV/AIDS and to the rising crime rates in China.

It is estimated that the number of drug users in China is 3.5 million. According to the report of the National Narcotic Control Commission (NNCC), heroin was the main drug of choice and used by 87.6% of all drug users in 2002 (China NNCC, 2002). In the 1980s, farmers in Yunnan and Guangxi provinces who lived in rural areas close to the border constituted a large fraction of drug users. Since the early 1990s, more and more urban residents use illicit drugs, and the abuse of ATS (i.e., amphetamine-type-stimulants) and MDMA (i.e., methylenedioxymethamphetamine or ecstasy) is popular in city night clubs. NNCC data showed that 74% of the drug users were 17-35 years old in 2002.

Due to the very limited number of systematic evaluations, the effects of governmental control of illicit drug use in recent years are not clear. There is no sufficient evidence showing that the general public has the same understanding about the seriousness of drug problem, and public attitudes toward drug control and treatment are largely unknown. The goal of this study is to fill this research void. Using surveys, this study will examine public perceptions of drug control strategies. It will specifically assess the effectiveness of law enforcement activities in controlling drugs as perceived by drug users. The findings are also useful for policy-makers and criminal justice officials to reconsider the best ways of controlling drugs in China.



Drug Control in China

In response to drug problems, the Chinese government traditionally takes zero-tolerance crackdown approaches. It was successful in the 1950s, as China was claimed to be a drug-free nation at that time (McCoy et al., 2001). However, in the changing social and economic context of recent years, this success has not been repeated yet.

In addition to continuous crackdowns on drug smuggling activities, the substantive criminal law provides that offenders who smuggle 50 grams of heroin or more should be sentenced to fixed-term imprisonment of 15 years, life imprisonment or death penalty. There are also new components in the new anti-drug campaign (Chu & Levy, 2005). For example, medication and treatment programs are extensively used, and collaboration with neighboring countries to prevent drug smuggling across borders is established. Furthermore, anti-drug education has been spread widely into the general population with mass media and school curricula.

According to the white paper of the Chinese government on “Narcotics Control in China”, the Chinese government has taken an attitude of supreme responsibility and adopted all necessary measures to prohibit illicit drugs. In particular, the white paper emphasizes seven measures: (1) sticking to the position of strict drug control, (2) constantly strengthening drug control legislation, (3) cracking down on drug-related crimes, (4) exercising strict control over the precursor chemicals, (5) treatment and rehabilitation, (6) raising the consciousness of the entire people vs. drugs, and (7) developing international cooperation in drug control (Information Office of the State Council of the People’s Republic of China, 2000).

It is argued in the white paper that severe punishment of drug-related crimes is one of the outstanding characteristics of China’s drug control. This principle has guided the revised criminal law and its strict administration. By 2000, China had promulgated more than 30 relevant laws, statutes, and regulations for drug control. In addition, some provinces and autonomous regions enacted local drug control statutes based on the local conditions (Information Office of the State Council of the People’s Republic of China, 2000). Further, the Anti-Drug Law of the People’s Republic of China went into effect on June 1, 2008. The new Anti-Drug Law stipulates that fighting against narcotic drugs is the duty of the entire society, under the unified leadership of the government, within the budgetary plans of the people’s governments at or above the county level as part of national economic and social development.

Cracking down and law enforcement

The new Anti-Drug Law describes the principles of the fight against narcotic drugs as putting prevention first while tackling the problem in a comprehensive manner and imposing a simultaneous ban on cultivating and manufacturing of, trafficking in, and ingesting or injecting of narcotic drugs. It gives the public security officers the power to conduct test on persons suspected of using narcotic drugs. Further, under the new law, public security officers should have the drug users registered and may order users to receive treatment in the community.

The white paper of the Chinese government points out that police officers and other drug control officials enforce the relevant laws strictly and administer merciless punishment to those involved in drug related criminal activities. The government has continuously organized special battles against drugs. From 1993 to 1996, under the leadership of the Ministry of Public Security,

southwest border areas launched a three-year campaign against drugs and firearms. Since 1999, under the unified organization of the National Narcotics Control Commission (NNCC), more key areas nationwide cracked a series of major drug –related cases. For example, in 1999, china cracked down 65,000 drug-related criminal cases, and confiscated 5.364 tons of heroin, 1.193 tons of opium, and 16.059 tons of crystal methamphetamine.

The campaign style law enforcement has raised a number of concerns among scholars. According to Fu (2001), campaign style law enforcement was institutionalized by the National People’s Congress in 1983 and has become a permanent feature of Chinese policing since then. Fu (1994) argues that the campaign style and its large scale of enforcement result from the political control of the Communist Party. As a control instrument, the police are supposed to follow the priorities determined by national and local party leaders. However, the local control is sometimes so great that the national standards are compromised. Prior research has pointed out a number of unintended consequences of campaign style law enforcement, including abuse of police power in administrative sanctions, excessive punishment, and ineffectiveness in reducing crime rates (Biddulph, 1993; Dutton & Lee, 1993; Liang, 2005; Tanner, 1999; Tanner, 2005; Trevaske, 2003).

Taken together, the literature has provided inconclusive evidence about the effectiveness of drug control in China. Though the governmental reports have claimed big successes in the past campaigns again narcotic drugs, it is recognized that China still has a long way to go to achieve the objectives of drug control. Scholarly research further suggests that the effectiveness of drug control in China might be limited, and there exist unintended consequences on drug users, families, communities and society as whole. Thus, there is great need in the literature to further examine the effectiveness of China’s drug control and future ways to solve this complicated problem.

RESEARCH METHODS

This study explores the effectiveness of drug control in China by surveying drug users who participated in community treatment programs. Those survey respondents not only had knowledge about drug-using but often had interactions with the police and the legal system. Therefore, they may provide more realistic views about the effectiveness of current drug control efforts.

Site Selection

The study was conducted in Kunming, the capital city of Yunnan Province, China. As the major drug trafficking route between the Golden Triangle (comprising Myanmar, Laos and Thailand) and other inland provinces, Yunnan Province has been playing an important role in the Chinese drug market (McCoy & Lai, 1997). It is reported that 80% of all illegal drugs in China are distributed through Yunnan. With the rising drug-related crimes, HIV infection rates in Yunnan have increased more than doubled each year since 1994 (U.S. Embassy Report, 2000).

Drug control efforts are also more noticeable in Yunnan Province with the continuous campaign style law enforcement. For example, from 1982 to 2000, more than 70,000 drug trafficking cases were cleared up in Yunnan Province alone, and more than 80 tons of heroin and opium from the “Golden Triangle” area were confiscated. Specifically, in August 1992, Yunnan province organized an 83-day armed drug elimination operation and smashed a massive criminal syndicate. In May 1994, the police in Yunnan cracked extraordinarily serious drug smuggling case, in which

the “Golden Triangle” drug ring kingpin was sentenced to capital punishment (Information Office of the State Council of the People’s Republic of China, 2000).

Kunming, as the capital and also the largest city in Yunnan Province is suffering from all these social harms brought by illegal drugs. Therefore, Kunming provides all the needed social contexts to address the research questions.

Data Collection and the Sample

Data were collected by the investigator during the summer of 2009. With the assistance of volunteers at a community drug treatment center in Kunming, Yunnan Province, 100 citizens who had received drug treatment were identified and selected to complete the survey. Because the research objective was to explore the opinions of citizens who had more experiences and/or knowledge of illicit drugs and the drug control mechanisms, the sample was not a random sample of community residents. As such, the sample offered unique and probably deeper insights on the effectiveness of drug control in China.

The following figures describe the sample. Figure 1 presents the distribution of survey respondents by age. All respondents were 21 years or older, and most of respondents were at the age groups of 36-40 and 41-45. Thus, the findings of the survey may not represent the views of younger people. Because of the older ages, these respondents might be more conservative and having a more comprehensive understanding of social complexity.

Figure 1: Distribution by age

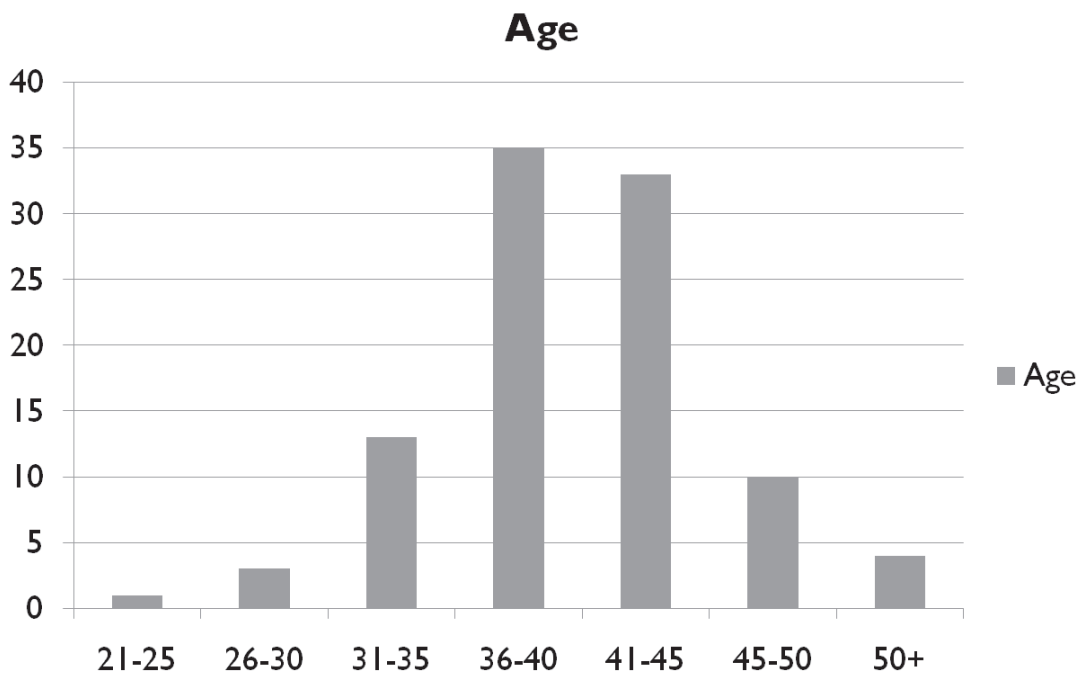


Table 1: Characteristics of the respondents

Gender	Male	50
	Female	50
Education	Elementary	21
	Middle school	61
	High school	15
	Associate degree	3
Employment	Full time	2
	Part time	10
	Retired	1
	Unemployed	85
Marital Status	Married	56
	Single	39
	Divorced	2
Housing	Rent	64
	Own	5
Household registration	With parents	23
	Temporary	6
Nationality	City resident	94
	Han	95
Income (in RMB)	Other	5
	Less than 1000	73
	1000-1999	19
	2000-2999	3
	3000+	5

Table 1 presents other demographic characteristics of the survey respondents. Specifically, the sample was equally distributed by gender, as one half of the respondents were males and the other half were females. Most of respondents (82%) were not highly educated, having completed only middle school or elementary school. Employment status showed that 85% of the respondents were unemployed when taking the survey. More than half of the respondents were married, renting apartments, and making a monthly income less than 1000 RMB. Though the survey was conducted in the capital city with a relatively high percentage of minority nationalities and moving populations, 95% of the respondents were Han people, and 94% were local residents.

Correlating Social Factors

Prior research on citizen perceptions has suggested a number of social factors may exert significant influences on one's perceptions of and attitudes towards the political and social systems, especially law enforcement. Therefore, in the survey, there were measures capturing the social ties and neighborhood conditions.

Table 2 presents the social ties of the survey respondents. It shows that most respondents lived with one or two adults (59%), stayed at current address for 1 to 5 years (57%), had no close friends or relatives in the neighborhood (58% and 845), were not familiar with other residents in the neighborhood (64%), and rarely visited their neighbors (71%). Taken together, this



information suggests that many respondents did not have strong social ties in the communities. However, they might have stronger bonds to the family.

Table 2: Social Ties

How long at current address	Less than a year	8
	1-2 years	34
	3-5 years	23
	6-10 years	13
	10 + years	21
How many juveniles live together with	0	62
	1	27
	2 or 3	6
How many adults live together with	0	16
	1	33
	2	26
	3 or 4	24
How many close friends in the neighborhood	0	58
	1	16
	2	13
	3 or more	11
How many relatives in the neighborhood	0	84
	1	5
	2 or more	5
Recognize whether one lives in the neighborhood	Very easy	11
	Easy	24
	difficult	44
	Very difficult	20
Visit neighbors	Never	71
	Several times a year	23
	More often	5

Table 3 and Table 4 present the perceived conditions of the neighborhoods where survey respondents lived. Table 3 shows that many respondents believed that there were community officers in the neighborhoods (83%) and mediation committees (58%). These grassroots neighborhood-level organizations represented a certain degree of less formal social control in the neighborhoods. However, their influences on drug control are not clear. Further, Table 3 shows that respondents believed there were some workers from rural areas living temporarily in the neighborhoods (59%), neighbors did not solve problems together very often (90%), neighbors did not have much trust in each other (72%), and they did not feel very safe at night (71%). Table 4 further describes the common problems in the neighborhoods. Among the nine problems, graffiti was considered as the most serious problem.

Table 3: Neighborhood conditions

Community officers	Yes	83
	No	6
	Do not know	11
Mediation committee	Yes	58
	No	9
	Do not know	32
Workers from rural areas	Many	20
	Some	39
	None	28
	Do not know	13
Feeling of safety	No worries	29
	A little worried	57
	Worry a lot	14
Neighbors solve problems together	Always	4
	In many cases	5
	Occasionally	50
	Never	40
People trust each other	Always	2
	Generally	26
	Not too much	56
	Definitely not	16

Table 4: Neighborhood problems

	Very serious	A little serious	Not serious
Trash	15	20	64
Drunk people create problems	3	13	83
Drug use	4	25	70
Juvenile problems	3	16	81
Property was stolen	3	32	65
Robbery	2	16	82
Graffiti	20	40	38
Vandalism	6	29	65
Burglary	3	20	77



Perceptions about Crime Control and Drug Control

One of the objectives of this study is to explore the variations of citizen perceptions about the crime control and drug control. First, selected questions included in the survey were about the best way to control crime, responsibility for crime prevention, overall satisfaction with the police, and specific satisfaction with a number of aspects of police work, including working with citizens to solve community problems, community crime prevention, and the last contact with the police. Second, the survey asked citizens about drug control, including questions about satisfaction with the police in drug control, affects of drugs on one's personal life and community, effectiveness of drug control, and so on. The responses to these questions are presented in Table 5.

Table 5: Perceptions about crime control and drug control

Who is more responsible for crime prevention?	Residents	8
	Police	19
	Same	73
Overall satisfaction with the police	Very satisfied	5
	Somewhat satisfied	45
	Somewhat dissatisfied	37
	Very dissatisfied	13
Satisfied with police working with citizens to solve community problems	Very satisfied	4
	Somewhat satisfied	61
	Somewhat dissatisfied	30
	Very dissatisfied	5
Satisfied with police job in community crime prevention	Very satisfied	8
	Somewhat satisfied	56
	Somewhat dissatisfied	29
	Very dissatisfied	7
The best way to control crime is arrest	Agree completely	5
	Agree to a certain degree	21
	Disagree	44
	Disagree strongly	33
Satisfaction with the last contact with the police	Very satisfied	20
	Somewhat satisfied	43
	Somewhat dissatisfied	23
	Very dissatisfied	9
Satisfied with police job in drug control	Very satisfied	21
	Somewhat satisfied	45
	Somewhat dissatisfied	24
	Very dissatisfied	9
How drug problems affected your personal life	No impacts	6
	A little impacts	6
	Big impacts	88
How drug problems affected your community	No impacts	17
	A little impacts	14
	Big impacts	69
Drug control policies are effective	Very effective	22

	A little effective	59
	Not effective	13
	With unintended consequences	4
The police will be more effective in controlling drugs in the future	Will be more effective	34
	The same effects as before	41
	Remain ineffective	24
The police themselves can control drugs	Yes, they can	7
	May be possible	24
	Impossible	68

The findings suggest that most respondents believed that crime prevention was a shared responsibility of both police and residents. However, 50% of the respondents were not satisfied with the police in general. This finding is not surprising, as prior research suggests that offenders and other targets of the police are less likely to be satisfied with the police. Among those specific aspects of police work, respondents usually were satisfied or somewhat satisfied with the police. These inconsistent findings about the general satisfaction and specific satisfaction suggest that respondents might hold the police accountable for other things that were not listed specifically in the survey. The respondents might also view the police as part of the larger legal and political system and express their dissatisfaction with the larger system to the police.

In terms of drug control, about two-thirds of these respondents believed that the police had done a satisfactory job. However, majority of them (59%) believed that the current drug control policies were just a little effective. Only one-third of the respondents had confidence in the police and believed that police will be more effective in the future. In contrast, many believed that the police would be the same as before (41%) or remain ineffective (24%). Majority of the respondents (68%) suggested that the police should work with others in drug control.

CONCLUSION AND DISCUSSION

By surveying drug users, this study presents a special way to evaluate the effectiveness of drug control in China. Inconsistent with prior research on campaign style policing, the findings suggest that these users were generally satisfied with the police and with their efforts in drug control. They were also very conservative about the effects of drug control and believed that the police should do more to establish better collaborative relationship with other mechanisms in society to achieve better drug control. The analysis presented in this study is descriptive and preliminary, and future research will employ more advanced statistical models to explain the variations of perceptions captured in this study.

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FEMALE DRUG OFFENDER PROGRAM IN JAPAN

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Crime is committed disproportionately by males. Because of this, many treatment programs in Japanese prison are male-oriented. One good example is sex offender treatment program in 2006. We introduced this program from Canada after one year discussion by criminologists and other professionals. However, it has never happened to program in female prison. Treatment programs in female prison are marginalized and get less attention by them. After new prison act introduced in 2006, educational programs in prison are compulsory for prisoners. This means that programs in prison must be checked and evaluated properly. To make female treatment programs better, I interviewed female prisoners and ex-prisoners who committed drug offences and asked their experiences concerning drug offender program. My study shows that because female drug offenders have social and family problems, it is not enough to focus on drug issues only. They might need programs how to deal relationship or communication problems with partners or boyfriends. Female drug use is strongly related to man and money. Female drug offender programs have to cover these issues. I will propose new female drug offender program to prevent further drug use. My new program has to be connected to treatment program in community.



THE EFFECT OF EDUCATION ON DRUG CRIME RATE: EVIDENCE FROM TAIWAN'S DRUG OFFENDERS

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Results from many studies have shown that graduating from high school is related to lower proportion of incarceration. This study goes further to test the effect of high school completion on drug crime rate. Additionally, this study addresses the relationship between drop-out rate and drug crime rate among drug offenders' residence. The results show that the following variables are related to drug crime rate at significant level: (a) treatment period by month, (b) drop-out rate, (c) education level, and (d) classes of drug used. The key variables, treatment period and educational level, are both related to drug crime rate. In other words, the treatment program is negatively related to drug crime activities. The longer the drug treatment is, the lower the total drug crime rate from the population tends to be. However, the relationship between educational level and drug crime rate is slightly positive at .01 significant level. It seems that higher educational level among drug offenders is relative to the higher drug crime activities. This outcome is different from our expectation.

INTRODUCTION

Many studies have proven that postsecondary education is the most successful and cost-effective way of preventing crime. Scholars argued that the Government of the United States should resume its long-standing policy of a fraction of Pell Grants to qualified imprisoned Americans, as its impact on crime or recidivism was enormously positive. Brought this issue back to Taiwan, this topic hasn't been thoroughly explored. This study set out to test the relationship between education level and crime again in local data. Especially, we planed to uncover association among drop-out rate, education level, treatment period with drug crime rate. The results will be very helpful for our future educational policy.

LITERATURE REVIEW

Instrumental variable estimates using changes in the state compulsory school attendance laws as an instrument for high school graduation uncover a significant reduction in incarceration for both blacks and whites. Generally, the estimation suggests that completing high school reduces the probability of incarceration by about .76 percentage points for whites and 3.4 percentage points for blacks.

Harlow's research indicates in the United States about 75 percent of the state prison inmates, almost 59 percent of federal inmates, and 69 percent of jail inmates did not complete high school. Additionally, the number of inmates without a high school diploma has increased over time (Harlow, 2003).

Theories between Education and Crime

According to the National Center for Education Statistics (2006), the nation spends an average of \$9,644 a year to educate a student. The average annual cost per inmate is \$22,600 (Stephen, 2004). Theories abound as to why people with higher education commit less crime. From the

strain theory, people who received high school diplomas have more opportunities earning higher wages through legitimate work, thus reducing the individual's perceived needs to commit a crime, or increasing the possibility of committing a crime to that person (i.e. getting caught and being incarcerated) to unacceptable levels. The stigma of getting caught with criminal activities may have a stronger effect of shame to a person with higher status, often based on higher income or higher levels of education, than to a person with lower-paying, lower-skilled jobs. More time spent in the classroom may play a role in instilling values that are opposed to criminal activities. Criminal behavior that begins during youth can continue into adulthood. By keeping adolescents in the classroom and off the streets, later criminal activity may be avoided (Lochner & Moretti, 2004).

Other empirical findings are introduced as follows: A ten percent increase in the male graduation rate would reduce murder and assault arrest rates by about 20 percent, motor vehicle theft by 13 percent, and arson by eight percent (Moretti, 2005). Of black males who graduated from high school and went on to attend some college, only 5 percent were incarcerated in 2000 (Raphael, 2004). Of white males who graduated from high school and went on to attend some college only 1 percent were incarcerated in 2000 (Raphael, 2004). State prison inmates without a high school diploma and those with a GED were more likely to be repeat offenders than those with a high school diploma (Harlow, 2003).

Sabates (2008) argued although the theoretical bases for educational effects on crime are well established, the quantitative empirical literature is less advanced in estimating the impact of education. In the United States, Lochner and Moretti (2004) found robust evidence that completing high school reduces the probability of incarceration by about .76 percent for white people and 3.4 percent for black people. Penn (2000) found that the Quantum Opportunity Programme, designed to increase the likelihood that youths would complete high school and enter into further education, significantly reducing the number of times study subjects were arrested compared with non-subject. In the United Kingdom, Hansen (2003) showed that there are larger reductions in crime for individuals with higher levels of education as individuals aged than for individuals with lower levels of education; whereas Sabates (2007) showed consistent evidence that the increase in participation in post-compulsory education together with income support was associated with reductions in juvenile burglary and possibly theft.

This paper adds to the quantitative empirical literature by providing a robust estimate of the relationship between education and crime. The particular question being addressed is: Does the increase in educational attainment for drug offenders lead to reductions in drug crime rates? The analysis uses drug crime rates aggregated at the city or county level in Taiwan. We link drug crime rates to drug offenders' educational attainments, controlling for treatment period, drop-out rate, and gender.

METHODOLOGY

Our analysis focuses on the impact of educational program on drug crime rates for drug offenders. In order to do this, we select drug offenders released from prisons from 1998 to 2000 in Taiwan. The selection of subjects is based on the availability of aggregate data on drug crime rates, educational attainment, drop-out rates, gender and so on. Since data come from different sources, our empirical analysis is restricted to drug offenders released between 1998 and 2000.



Crime Data and Education Data

The annual time-series data among inmates undergoing drug treatment were extracted from the Republic of China, Ministry of Justice (1998-2001). The data consist of detailed offenders' characteristics, sentencing, and correctional experience information on inmates undergoing drug treatment since 1998. The total study group of this research concludes 46,621 released drug offenders, which are the total population of inmates undergoing drug treatment between June 5, 1998 and October 31, 2001. With respect to available data of drop-out rate in 2000, we only can test correlation with our subjects between 1998 and 2000.

Drop-out rates were summarized from Teng's dissertation (Teng, 2000). Drug crime rates were downloaded from the Bureau of the Police Administration (2004). Drug crime rate is defined as cases known to the police per 100,000 citizens. In fact, there is no information about drug crime rate from 2000 to 2003. Therefore, we cannot test the correlation between drop-out rate and drug crime during that period. That means we are not able to test the short-term effect of drop-out rate and education level on drug crime rates. However, we found 2004 data of drug crime rates from the Bureau of the Police Administration, so we are able to test the lag or delay effect of drop-out rates and education level on drug crime rate. The sample of individuals is a census of all drug offenders accepted from 1998-2000.

Educational data that relate to each district of Taiwan mainland came from Deng's Dissertation (2000). Information was aggregated from school level. Educational attainment was measured by the proportion of students (% of dropouts) in public schools reporting to the Ministry of Education from 1996 to 2000.

Descriptive Analysis

The descriptive statistics are revealed in Table 1. There were 46,621 subjects in our sample. Among them, 6,573 were female and 40,047 were male. In respect to drug classes, 17,822 offenders belong to the first class, and the rest, 28,799 used the second class. In respect to educational background by year, range is from 1 to 16. Considering dropout rate (%) divided by city/county, it's rate ranges from 1.09 to 18.36. The minimum admission age was 13 and the maximum was 80. Treatment period (month) is extracted between leaving month and admission month and range is from 0 to 36. Residences of subjects cover county and city within Taiwan Island.

Table 1: Descriptive Statistics

		Mini	Maxi	Average	SD
Dropout%	46621	1.090	18.360	6.69965	5.32755
Education	46621	0	90	5.17	1.82
Treatment	46421	0	36	5.96	1.69
Class of Drug	46621	1	2	1.62	.49
0=female;1=male	46620	0	1	.86	.35
Drug crime rate	46621	15.85	126.41	53.0864	20.5217
Valid cases N	46420				

Our dependent variable (*C*) is drug crime rates. Independent variables include education level by years, treatment period by months, and drop out rate. Extraneous variables would include gender and residence by county or city, classes of drugs used.

Questions we need to answers are:

- (a) Correlation between drug-related crime and drop out rate by city- Is drop out rate related to crime?
- (b) Education level- Is it true that the higher the education level, the lower crime rate?
- (c) Education level * gender- Is there a difference between female and male, that the higher education level, the lower crime rate?

In order to answer above questions, we use Pearson product-moment correlation (*r*) to test our data.

RESULTS

Results from the Pearson’s product-moment correlation (*r*) analysis are shown in Table 2. We found that the average increase in educational attainment was related to drop-out rates per 100 students. The results show that the relationship between Drop-out rate and Drug Crime rate is significantly negative (-.522) at .01 level. That means the higher the drop-out rate of subjects, and lower the drug crime rate is. It seems drug users’ drop-out behavior will reduce their drug activities. It is necessary for us to figure out their causality. In addition, we also found that the longer the treatment is the lower reoffended drug crime rate will be. However, the relationship between education level and drug crime rate is significantly positive (.036) at .01 level. We did not find evidence of an expected correlation in education level over drug crime rate over time. That means higher education level tends to increase slightly drug crime rate. This is inconsistent with the expected relationship between education and general crime rate. It is possible that dropping out of school may be caused by financial difficulties. For example, someone dropped out of school because his/her family needs him/her to work for money. Thus, he/she is more likely to be involved in positive life style and not in crime or drug crime. For instance, subjects with 6th grade education don’t mean they ‘dropped out’ from school. It is possible that they left school to engage in job markets in a productive way of life. The reasons for this outcome are worthy for us to figure out in the future research.

Table 2: Pearson’s Product-moment Correlation (*r*) Analysis

		Treatment	0=female 1=male	Drug crime rate	Dropout%	Education	Class of Drug
Treatment	Pearson r	1.000	-.020**	-.102	.086**	-.016**	.059**
	p	.	.000	.000	.000	.000	.000
	N	46421	46420	46421	46421	46421	46421
0=female 1=male	Pearson r	-.020**	1.000	-.005	-.024**	.040**	-.016**
	p	.000	.	.304	.000	.000	.000



	N	46420	46620	46620	46620	46620	46620
Drug crime rate	Pearson r	-.102**	-.005	1.000	-.522**	.036**	-.051**
	p	.000	.304	.	.000	.000	.000
	N	46421	46620	46621	46621	46621	46621
Dropout%	Pearson r	.086**	-.024**	-.522**	1.000	-.019**	.033**
	p	.000	.000	.000	.	.000	.000
	N	46421	46620	46621	46621	46621	46621
Education	Pearson r	-.016**	.040**	.036**	-.019**	1.000	-.005
	p	.000	.000	.000	.000	.	.251
	N	46421	46620	46621	46621	46621	46621
Class of drug	Pearson r	.059**	-.016**	-.051**	.033**	-.005	1.000
	p	.000	.000	.000	.000	.251	.
	N	46421	46620	46621	46621	46621	46621

** Significant level at 0.01(Two-tailed test)

CONCLUSIONS

This paper focuses on the links between education and different indicators of crime, such as drop-out, educational level, drug activities, and so on. There are good theoretical grounds for education to reduce young people's involvement in criminal activities, but also some arguments that education is related to the skills need to commit criminal acts and, hence, it may be positively associated with crime. If subjects dropped out from school and involved in positive life style, consequence is related to reduction of opportunity in criminal activities.

We tend to believe that improving the quality of high school education is the key to students' success and graduation. To increase the number of students who graduate, the nation's schools— particularly its high schools—must dramatically improve. Low graduation rates are particularly severe in urban areas and in schools serving large numbers of poor and minority students. The Editorial Projects in Education Research Center estimates that of the approximately four million students who entered ninth grade four years ago, 1.2 million did not graduate with a regular diploma this year. Only about 52 percent of African-American and 56 percent of Hispanic students graduate on time, compared to 76 percent of their white peers (EPE, 2006). If these statistics are available for us in the future, it is important for us to test these data. Then, we can compare whether there is a consistent results. In order to reduce financial burden for those dropped out from school due to financial difficulties. In addition, we strongly suggest that our Government to increase the compulsory education to high school. As high school education is the key to reduction of the number of times targeted subjects were arrested, this new policy will be helpful for many subjects with financial difficulties.

We also curious that a person who has a 6th grade education (low educational level), doesn't that means he/she "dropped-out" after graduated from 6th grade? These people maybe divert from normal school education to job market as plaintiffs, who are involved in a normal life style but not in delinquent activities.

LIMITATIONS AND DISCUSSIONS

We highlighted some limitations of our study. Taiwanese After-care Association could consider offering scholarships for inmates before and after release from prison to help them finish high school education. Usually, inmates with long-term sentence could finish high school education. If they only finish half term of program, prison and after-care association should help transfer them to a high school program. Eventually, released offenders have chance to finish their high school degree, if they want.

The purpose of this study is to propose and support our hypothesis: crime is related to drop-out rate. However, there is no current study address this issue as relevant data are not available for researchers to test short-term effect of drop-out rate and education level on drug crime rates. We hope to continue kind of research in the future with better data.

As crime tends to increase in teenage years and then decrease with age (Hansen 2003), our future research will divide our data into several age groups to see whether there are differences among subgroups, such as less 18 or between 18 and 24 years old.

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THE CONSTRUCTION OF DRUG ADDICTS' SOCIAL INCLUSIVE SYSTEM

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This study attempts to explore the challenges of the social inclusive network of drug addicts' medical care system. By employing the grounded theory of qualitative research method, 17 heroin addicts cases (some AIDS cases) with Methadone treatment at one Health Center of Yunlin County were interviewed. The goals aim to present these addicts' perspectives toward their life experience and predicaments of social support of. The analytical dimensions include their family support, peer influence, the interaction with the criminal justice system and AIDS' stigma. The results reveal the consistent situations of marginalization, social exclusion, dangerous other. Also, it is founded that the heroin cases with huge desire are very likely to lead to material, emotional, respectful and friend relational breakdown of social support system. Moreover, their family relationships become deteriorated and family members are also victims. The drug policy, particularly punitive and coercive penal policy, plays significant role in the social exclusion of these drug addicts and contributes to the fail of social reintegration. The results also reveal that the drug policy has already caused to the structural conditions and pressure of social exclusion. It is suggested that the government should avoid the policy plan which could lead to social exclusion and should increase the social investment of community intervention and treatment. The Methadone treatment needs to maintained and the harm reduction implementation should be expanded with the incorporation of medical resource and service. In addition, the penal control of drug addicts should be the last of social control. It is hoped that this study can offer a critical perspective and a different landscape in analyzing and discussing for the field of drug policy.

PART 5

JUVENILE DELINQUENCY AND JUSTICE





THE MEDICALIZATION OF DEVIANCE IN CHINA

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Conrad and Schneider's now classical work on the historical transformation of definitions of deviance from "badness" to "sickness" is relevant for the situation in China today, although with some modifications. The weakly founded medical/psychiatric profession and the strong political/ideological discourse in China leads to a strange combination of medicalization and moralization, even criminalization of deviance. The "sick" is often combined with the "bad", and "sickness" is often seen as a secondary sign of "badness". The pan-moralist tradition of ancient China seems to be closely combined with the Communist era's strong belief in political-ideological correctness, and its strong belief in social engineering. It is interesting to note that my research on crime and deviance in China in the 1980s and 1990s seems to be confirmed by today's discourse, although there are new moral panics and new forms of medical-moralistic definitions of deviance in China today. Still, the categories of deviance are very much socially constructed entities closely related to the moral-political order of present day China. I will use three cases to underline my argument. First, the type of deviance I call "majority deviance", related to the case of the prejudice and dangers associated with the only-child. My second example has to do with what I term the "wayward girl" and the moral panics concerning so-called *zaolian* – or "premature love" among young girls. The third example is the new panic surrounding "internet addiction disorder" or IAD. While the "disco" and the "dance hall" were the sites of disorder in the 1980s and 90s, the *wangba* – or "internet bar" is now seen as the most dangerous site of crime and deviance.

INTRODUCTION

When I started my research on deviance in China in the 1980s, there was a lot of moralizing tales surrounding deviance. There were also frequent references to medical deficiencies when deviance was being discussed, but such references, although they were frequent, represented no real *systematic* medicalization or use of medical labels to define the deviance involved. They were often pseudo-scientific labels taken from old books and used in a fairly random manner although the lists of "diseases" mentioned later in this essay will seem fairly extensive. Revisiting the scene today, I expected the picture to be somewhat different. First of all I expected the scene to be considerably more medicalized and updated in terms of the use of medical categories. I know that this has been attempted in the case of the recent mounting moral panic about the Internet. The label of "Internet Addiction Disorder" (IAD) has been the most significant recent attempt to medicalize deviance in China. This kind of deviance is definitely the new deviant on the block in China today. Medicalization in China, as elsewhere, is a kind of official labelling, and has to do with how certain behaviours are labelled and treated (in the moral/political literature and in practice) as a form of social control. The process of such labelling has to do with a redrawing of social boundaries in the face of a disorderly modern world. The tales of medicalization in China is caused by different social, political, and cultural factors, some of them uniquely Chinese, some of them close to our own prejudices and practices. Such labelling, however, has little to do with the technical repair of the body as we will see in the following. Tales of "insatiable desire" and "addiction" are frequently referred to, and youthful behaviour is the clear focus of this moral-political exercise.

I will in the following talk briefly about what I have termed "majority deviance" – the alleged defects and deviant manners of the only child, then switch to another of my former topics of deviance, the "wayward girl", or the phenomenon of "premature love" (*zaolian*), before I briefly introduce the new deviance of the alleged "internet addict". I have left out the more serious political

issues of how psychiatry is used as a tool against dissident views here, because I think this belongs to another category of argument. It is an alarming and increasing tendency to brand political opposition in terms of mental disorder in China today (Munro, 2007). Recently, a remark from a Beijing professor about the increased number of petitioners in China attracted much attention since he blurted out that all petitioners had a psychological problem rather than a social issue to complain about. It belongs to the story that he had to take back some of his insensitive comments and ask for an apology for his remarks. He was saying something everybody knew shouldn't be said loudly, that political opposition is often concealed as mental health problems. The basic element of politics lurks behind all these stories of deviance, however, and we are reminded about Howard Becker's remark in his classical book *Outsiders* from the early 1960s that the definition of any behaviour or action as deviant is essentially a political matter (Becker, 1963: 7).

Another classical work in the sociology of deviance, Conrad and Schneider's work on the historical transformation of definitions of deviance from "badness" to "sickness" (Conrad & Schneider, 1981, 1992) is relevant for the situation in China today, but we have to be aware of the modifications we have to introduce when we discuss and apply Becker, Conrad and Schneider in China today. In many ways, the weakly founded medical/psychiatric profession and the strong political/ideological discourse in China lead to a strange combination of moralization and medicalization in this country. In short, the "sick" is often combined to the "bad", and "sickness" is a still often a secondary sign of "badness". We might be advised to look at Stan Cohen's concept of "moral panics" in this regard, and I will use that concept and its development by Goode and Ben-Yahuda (Cohen, 1980, Goode, Ben-Yahuda, 1994) to show the sources of remaining strong moralistic definitions of deviance in China today. In this regard, the pan-moralist tradition of ancient China seems to be closely combined with the Communist era's strong belief in political-ideological correctness and "exemplary" behaviour (Bakken, 2000). It is interesting to observe that my research on this topic in China in the 1980s and 1990s seems to be confirmed by today's discourse although there are new panics and some developments of the medical-moralistic dichotomy today that wasn't there earlier (Bakken, 1993, 2000). The categories of deviance are still very much socially constructed entities closely related to the moral-political order of present day China. Still, what I have previously termed as "super social norms" and "exemplary norms" are defining the discourse of deviance in China. The central claims maker and provider of such "exemplary norms" is very much the strong Party State and its propaganda machinery.

Becker noted that deviance is always the product of enterprise (Becker, 1963:162). There is always a political process behind this enterprise of defining deviance, and where Becker uses "political" in the broadest sense of the term, we need not take that precaution in China. The political is directly linked to the policies of the Party State, and what we see is politics in a much more narrow and powerful sense than in Becker's account. The Propaganda Ministry and its networks together with the Public Security forces are actively defining deviance as part of the narrative of moral/political order. This might also explain why the moralist discourse is still so strong, and that medicalization, at least as propagated by medical institutions, has only been moderately successful in China. The development of medicalization has very much to do with the development of the medical institutions, and the medical profession does not have an independent role in China, restricting their independent role as moral crusaders. Like the Church had a monopoly on defining morality and immorality in the Western world in the past, in China today deviance designations emerge and are legitimised by the Party State in a more direct fashion than Becker could have thought possible working in another political and cultural context. The moral entrepreneurs who crusade for the creation of new rules are still the same in China as they were in the 1980s and 1990s, although some



new voices are heard in the background. Still, those voices are background noises compared to the monopoly held by the Party State. Sometimes the medical profession is even at odds with the Party State and its definitions of deviance as illness. Some years ago I met a petitioner in Beijing. She had been an activist against the widespread practice of tearing down houses in the *hutong* areas in Beijing, and she had stood up for her own rights as well as that of others in her neighbourhood, being arrested by the police on several occasions as a consequence. The police regularly sent her to a psychiatric hospital and asked the doctors there to cure her of her “delusions”. The doctors, however, did not find anything wrong with her although they had to take her in since the police brought her. The practice was unpopular among the doctors who regularly gave her “medicine” and “cured” her fast. They actually just kept her for a few days and let her go, saying she was cured because they did not approve of the police’s practice at all. At least the story illustrates the fact that the medical profession may not have the same status as moral entrepreneur in China today as it has had in the Western world over the last decades, and that it does not always play on the same side as power even if there are numerous examples of such cooperation. Perhaps my petitioner in Beijing was even the exception of the rule rather than a typical example. Even if the physician has been used as a moral entrepreneur, the picture is somewhat more mixed in China. The moral/political tales of deviance are still very strong, however. Even in situations where the medicalization of deviance has gone very far, like it has with the Internet Addiction Disorder craze, the leading protagonist of that movement, Dr. Tao Ran, is donning a military uniform, and the boot camps (or reboot camps as they have been termed abroad) are often leased out by the People’s Liberation Army who also cashes in on the big sums paid by anxious parents to have their offspring “cured” of Internet addiction. The Party State again lurks behind the scene and still dominates the role of the crusading reformer, but commercial interests are also cashing in on the consumption of fear. Deviance designation and moral entrepreneurship has become big business in China through the Internet boot camp regime.

I will in the following re-visit some sites of deviance that I have formerly visited and discussed, that of the only-child and the panics about juvenile delinquency, particularly the “wayward girl” and the panics surrounding *zaolian* or “premature love” affairs, and add to those panics the new development of IAD or “Internet Addiction Disorder”. Already in the late 1990s there seems to be a change in the alarmist tales about sites of disorder. While the “disco” and the “dance hall” used to take centre stage in those discussions back in the 1990s, it seems the “internet bar” (*wangba*) is now seen as the most dangerous site of crime. As I will show later, the police is defining the Internet bar as a primary site of crime, claiming that an enormously high number of juvenile criminals are “Internet addicts”. All in all, the nature of socially constructed deviance designations in China follows a pattern linked to the increased official propaganda of social order and “harmonious society” (*hexie shehui*). The topic of social stability and order has been closely linked to illness metaphors in the sociological literature. We have already mentioned Becker, Conrad, and Schneider. In addition Talcott Parsons, in his discussion of the “sick role” in his famous book *The Social System* pointed out that both crime and illness are designations for deviant behaviour (Parsons, 1951: 428-479). Parsons saw illness as deviance basically because of its threat to the stability of a social system. Crime and illness are different forms of deviance, according to Parsons, and different mechanisms of social control should be implemented to deal with these two different forms of deviance, one *wilful*, the other *unwilful*. In China, illness and crime are often seen in the same order, and that may be some of the reason why “badness” has not been replaced by “sickness” as predicted by Conrad and Schneider, and the distinctions between “wilful” and “unwilful” have also been muddled in the Chinese climate of moral crusade. We will in the following see that “badness” becomes a part of the “sickness”, and that the moralized and medicalized narratives go very much

hand in hand. “Medicine”, even given in the form of electroshocks, has become an “appropriate” method of social control for the “bad” as well as the “sick”. We may talk of a “medical socialization” or “social engineering” linked to moral notions of “exemplarity” (Bakken, 2000).

THE DEVIANT ONLY-CHILD, OR DEVIANCE BY MAJORITY

The cohorts of only children have come to dominate China today. In the cities we seldom find children with siblings today. But this majority has been the object of a paradoxical moral panic about the only child, paradoxical because the one-child policy has been official State and Party policy. The moralizing and medicalizing agenda has been seen ever since the start of the one-child policy started.

Let me first go back to some of the interesting tales surrounding the one-child policy that was introduced in China in the late 1970s. Economic modernization and one-child policy followed each other closely from the start. Only children, however, even if this policy was prescribed by the Communist Party, was frequently referred to as “problem children” (*wenti ertong*) (Xin, 1990: 256) China suddenly found itself experiencing the deviance of a majority. The policy created a form of modern moral panic since the still prevailing traditional code in China was to have male descendants. With a one-child policy the chances of achieving this aim was drastically reduced. The start of the reforms triggered a social prejudice against the only child, and early Western medical panics about the only child soon became the vocabulary of medicalized deviance designation in China. American psychologist G. Stanley Hall (who was active around a century ago) became a favourite for quotations on the only child in China. Particularly popular was his notion that “*being and only-child is a disease in itself*” (Fenton, 1928, Jiaoyu, 1990: 172, Xin, 1990: 255-56). Another quotation from the beginning of the 1900s, psychiatrist Abraham Arden Brill, became another unlikely crusader against only children in China a century later. His most frequently quoted pun line was: “*It would be best for the individual as well as the race that there should be no only-children*” (Brill, 1917: 288). A history of only-child prejudice stemming from Europe and the United States paradoxically re-emerged in China in the 1980s and 1990s. The reason for such prejudice originated in the only-child’s symbolic representation of a “modern danger” rather than from the child’s actual behaviour. The only-child became the deviant of modern dangers in China as it did in Western countries in the past. The only child was a phenomenon of the upper classes to begin with, and popular prejudice must be sought in class and in the “dangers of modernity” generally striking panic in all modernizing societies. The only-child was an upper-class novelty, and the process of only-child prejudice and scapegoating created myths we still struggle with today (Bakken, 1993).

Western stereotypes, stemming from the late 19th and early 20th centuries were also formed in a period of strong tension between the traditional and the modern society. The long list of alleged only-child defects were repeated with the zeal of a true moral entrepreneur. A Western description from 1928 says: “Because of the undue attention he demands and usually receives, we commonly find the only-child jealous, selfish, egotistical, dependent, aggressive, domineering and quarrelsome” (Fenton, 1928:547) The Chinese equivalent was to brand the only-children as “little emperors” (*xiao huangdi*) and “little princesses” (*xiao gongzhu*) because of their alleged selfish and demanding behaviour. A whole literature of prejudice unfolded in China during the 1980s in the wake of the only-child policy. An extreme emphasis on moral and social order defined the tales of disorderly only-children. Some of the “findings” in a series of biased “research reports” showed that the onlies were “selfish, individualist, hyper-critical, self-centred, and dependent”, that they “lacked cooperative character”, that they showed “laziness, wilfulness and carelessness”. They were



“without scruples” (*wusuo guji*), suffered from “insatiable desires”, and were “unsociable and eccentric” just to mention a few (Zhou, 1988:55-56, Yang, 1988: 4). Even the Party’s own theoretical journal added to the choir of moral panic by adding to the list that the onlies were “pampered, arrogant, and selfish” (Deng, 1987:31). A report from the early 1990s showed that the only-child showed far more undesirable behaviour than the non-onlies. More than 70 % of the only-children were “picky about food” compared to less than 30 % of non-onlies. 65 % of the onlies were “wilful” compared to only 20 % of the non-onlies, and the onlies were much more likely to “not show respect for parents and telling lies”. The survey showed, however, that all groups, only-children as well as non-only children had shown a deteriorating behaviour from 1980 to 1991 (Shanghai 1980:5, Wang 1991: 2).

Yang Chengpu, in an article from 1988, might be quite representative in summing up the “dangers” perceived in the only child. His list of “evils” among onlies resemble Hall and Brill’s “early warning signals” from the early 1900s: “*All the weaknesses in psychology and behaviour among only-children can already basically be described as an epidemic disease (liuxing bing)*” (Yang, 1988: 4). The “warning signals” were perfect descriptions of stereotyping, and the “epidemic diseases” found in Yang and others’ surveys are not at all the well established scientific fact they seemed to make us believe. Research concerning the allegedly “spoiled”, demanding, selfish and unsociable only-child seems to provide virtually unequivocal answers. Both the old psychoanalytic attacks on only-children and the popular Chinese stereotypes have time and again been totally refuted (Blake 1989). It is one of the characteristics about stereotypes, however, that they do not easily change, and that they are resistant to contrary facts and evidence in general. On popular beliefs and stereotypes about only children, Blake comments: “(T)he fact that only-children have been found, in study after study, to be intellectually advantaged, does not bear on the popular belief that singletons are ‘spoiled’, maladjusted, asocial, lonely, and self centred... No evidence supports such popular stereotypes” (Blake, 1989: 46). Falbo and Polit, in their extensive analysis of the research literature on the only-child systematized results about achievement, adjustment, character, intelligence, parent-child relationships, and sociability. They concluded this meta analysis of research literature spanning over several decades that: “(T)he results... contradict the theoretical notions that only-children are deprived or unique. In achievement, intelligence, and character, only-borns excelled beyond their peers with siblings. Furthermore, across five development outcomes, only-children never differed significantly from firstborns or people from two-child families (Falbo & Polit, 1986:185). Poston and Falbo’s fieldwork in China some years later confirmed the findings from the meta-analysis (Falbo & Poston, 1989, Poston & Falbo, 1990). Only children did not differ significantly from families with multiple siblings. Comparative representative samples from Changchun and Beihing showed that: “(A)nalysis of the combined sample ... indicated that the only-child advantage in achievement were found among children from urban families, not rural peasant families... None of the analyses indicated that only-children had undesirable personalities, as judged by teachers or mothers” (Falbo & Poston, 1989).

Chinese research reports soon came up with the same type of findings, and particularly the leading universities had been telling the true story already from the early 1980s to more or less no avail. The Sociology Department of Beijing University reported from a survey in Hubei in 1984 that: “The ingrained belief that the offspring of one-child families are pampered and behave like little emperors is naïve, if not prejudiced (Wan, Fan, Lin, 1984). In another study, Mao Yuyan, comparing onlies and non-onlies found that “(T)here were no significant differences in adaptive behaviour between these two groups of children” (Mao, 1984).

The “spoiled only-child” is a sort of cultural truism found in the West as well as in China. The moral crusaders against this novel “danger of modernity” claimed “sickness” all over the line when they described the only-child. In some ways these prejudiced truisms stem from what we may call “a solidarity of prejudice” since in China there is no welfare system to take care of the old other than having (male) children. The preferences for multiple children was particularly strong throughout the in China during the 1980s (Whyte & Gu, 1987), but has prevailed throughout the era of modernization. There are recent attempts to alter the whole one-child policy because of these pressures today. We have to see such “cultural truisms” in a historical and socio-cultural context to understand the character of such norms of prejudice and such stereotyping processes. First of all repeated reproduction is still considered as a “moral imperative” even in countries like the United States, although less so in Europe. In the United States the ideal norm of family size was still two to four children as late as in the 1970s. In China non-reproduction is still regarded as a social sin (Li, 1988). In China today, the regime has succeeded to some degree in reducing family size preferences, but this trend is considerably more developed in modern cities than in the traditional countryside where the one child policy were never implemented in the same manner as in the cities. The countryside has often had a two-child policy, and for some groups like national minorities, even a multiple-child policy. In the perception of danger and moral panics, there is a rational core. The mechanism of prejudice and moral panics, and their ability to resist facts and evidence is found in the Chinese only-child stereotype. In the last instance the only-child upsets the certainties of the past. We have experienced a moral panic directed against the loss of parental authority, departure from collective solidarity, blatant individualism, new and excessive consumer patterns, and generally bodily and social imbalance. The only-child threatens to break social bonds. Thus, one should not be surprised to find the only-child frequently linked to such phenomena as illness and crime, particularly illness in the case of the only-child because we talk about smaller children here, and not the juveniles of “Internet addiction”. The answer to the dilemma of the only-child has been an official moral crusade of strengthened ideological-political education and strengthening the personal “quality” (*suzhi*) of parents and only-children. The only-child has become part of the policy of “parading evil” in order to counter the unintended consequences of modernity. A whole campaign against spiritual pollution (*jingshen wuran*) was launched in the 1980s, and “pollution” also described the only-child even if it was a product of Party policy. The “majority deviance” of the only-child still prevails in China today.

REVISITING THE DEVIANCE OF “PREMATURE LOVE” (*ZAOLIAN*)

In terms of “premature love”, or *zaolian* in Chinese, we are talking about what Western scholars have termed the “kicking in of the biological romantic attachment systems” during puberty when (Larson, Clore, Wood, 1999) the onset of female menarche and the production of sex hormones among boys reach maturity, something that generally starts earlier in modernizing societies. This has often led to moral panics among Chinese parents. I have formerly termed such phenomena and their subsequent moral panics to belong to the “dangers of modernity” perceived by the older generations. In China we have seen a lot of medicalized moral panics surrounding these phenomena. The differences I can spot from the former moral panics in this regard are relatively small. Still the alarmist language from the 1980s and 1990s seems to be used in the literature.

To go back to the 1980s and 1990s, I then observed a long range of medicalized descriptions of “premature love” (Bakken, 2000: 354-76). In many ways these descriptions coincided with similar descriptions of the only-child, but the moral crusaders’ attack was in particular directed against *the wayward girl*. This moral crusade stressed the connection between “*the first love*” (*chulian*) to a



chain narrative of disorder ending with the breakdown of social boundaries. The “*first time*” became a symbol of the initial transgression of social borders. The “sexual disorder” of “premature love” or puppy love concentrated on “purity and chastity”, defending traditional morality in a rapidly changing and modernizing society. The physical body was seen as threatened by uncontrollable forces, thus putting society at large in danger. Like Ericsson described it in his famous book on deviance in Puritan America, *Wayward Puritans*, the premature love of the *wayward girl* described the same kind of “boundary crisis” experienced by Ericsson’s wayward puritans in 17th century America (Ericsson, 1966). Defending the primary social boundaries against the rapid erosion caused by modernization, “exemplary” norms and standards of “normality” and “abnormality” found an important battlefield in the practices of youthful romantic love. “Disorderly sexuality” became a symbol of the threat to collective identity in China in the wake of the shock effect of the modernization programme started in the late 1970s and early 1980s. Sexuality was increasingly subsumed under a scientific (and often pseudo-scientific) discourse of medicine, psychology and criminology as a discourse of power, human improvement, and purification. “Premature love” was said to debase human quality, and obstruct the building of a new “spiritual and material civilization” as the propaganda described the issue at the onset of reforms.

While traditionally, having a boyfriend was seen as shameful and embarrassing, even illegal, 14 year old girls and boys now regarded it as something to boast about. “The more it was prohibited, the more it spread” reads the crusaders manuals of the 1980s (Yang 1990: 8, Ding, 1988: 21). The term “sexual disorder” (*xingluan*) was used to describe a wide range of activities, from the innocent “talk of love” (*tan lianai*) among juveniles to sexual deviance and sexual crime. As late as October 1991 when I was myself stationed as a research fellow in Beijing, Beijing University decided to ban hugging and kissing on campus. A system of warnings and fines was introduced to make the regulation effective.

Medical reports of the “premature lover” became common. In particular, the “truth” that premature lovers were particularly weak students became one of the truisms of the times. There was a close connection between “early love affairs”, school results and “moral quality” according to such reports (Wang, 1986: 12). A “clear indication” that young love was even a direct *cause* of crime was published by the Chinese police authorities. In one central police document it was claimed that: “(P)remature love is a very important factor in bringing about criminal activities in secondary school children”. These allegations were based on a (not so representative) survey showing that among 33 students involved in premature love, 31 were also involved in criminal activities. In contrast, a control group of 300 students not involved in early love affairs had only two offenders among their ranks (Li, 1988: 215). That wayward girl became the focus of the attacks on premature love as illustrated by the inmate numbers of one detention centre. While only ten per cent of the boys had been arrested for “sexual crime” (*xing fanzui*), as many as 95 per cent of the girls were there because of “sexual crime” (Yuan, 1986: 4). Statistical material from the whole country in 1988 showed that as much as 90 per cent of all crime among young girls was defined as “sexual criminal offences” (*xing zuicuo*) (Cao, 1988: 261). There is less tolerance for girls transgressing social and moral boundaries. This is the case in China as it is in the West. A Swedish researcher, Gustav Jonsson, basing his conclusions on a survey of Swedish juvenile correction institutions, reminds us that there are “sex-girls” but no “sex-boys” in this regard (Jonsson, 1977: 39).

In one description of the girls who were incarcerated for “sexual crimes” we read that 72 per cent are prone to “insatiable desires” (*tanyu*) for food, clothes, luxury items, and sex. “Unrestrained individualism” was displayed by a strong tendency to “become visible” or “manifest oneself”

(*xianlu ziji*). Such “self parading” and extrovert activity did not fit to the moral boundaries of a girl (Zhang & Zhang, 1988: 414). We further are told that: “Extreme egoism, unrestrained squandering, pleasure seeking, and sexual freedom” are the catalysts of “hooligan crime”. The standard expression *chi-he-wan-le*, or to eat, drink, and have fun became almost obligatory in descriptions of crime and sexual crime (Shao, 1990: 238).

The medical crusaders found medical diagnoses for the early and too frequent lovers. For persons who suffer from “sexual hyper-function” (*xingkangjin de ren*) and “sexual addiction” (*xingpi de ren*) psychological and medical treatment should be applied. Medical treatment is needed to regulate sex hormones in order to transform the deviants’ “defective mental structure” and rectify their “evil individuality” (Zheng, 1986: 61-63). Again we see “sickness” and “badness” go hand in hand, being discussed in the same fashion with the same remedies at hand, the message here is medicine against evil! And criminology plays along to that tune: “An unhealthy sexual psychology” is listed as one of the “major, objective factors leading to crime” (*Fazhi ribao*, 1997). One researcher claims that premature love causes crime, and that early love affairs causes endocrinopathy, i.e. internal secretion disorder (*neifenmi shitiao*) that again leads to “violent physical impulses in the form of sexual hyperfunction” which in turn leads to social disorder (Zhonghua, 1987: 44). It all sounds like a take on Confucius’ Analects with a medicalized twist.

I mentioned that the dance hall and the disco were seen as the major sites “locating vice”. The independent and sexually active girl is portrayed as a dangerous criminal, and the dance halls are depicted as “temples of evil”. Numerous stories, a virtual genre of cautionary tales, about “fallen” teenage girls in youth magazines and educational publications start at the dance halls, ends in the loss of virginity and self-respect, and often ends in crime and prostitution. This narrative of cautionary tales, small beginnings and “first times” became the narrative of the moral/medical crusade against young love in the 1980s and 1990s. The moral double standard was quite evident in the fact that young girls became the target of attack. The tales of the “early lover” has to do with passivity, dependence, and submission as appropriate behaviour for the girls more than for the boys. Early love is in addition associated with the “psychology of defiance” also found in only children. According to one comment: “(I)f this psychology of defiance among the young is allowed to spread, it can even lead to setbacks in the national economy and social civilization” (Xu et al., 1990: 193). In traditional Chinese literature and folk beliefs, the independent girl was often portrayed as an evil “fox spirit” or *huli jing*. She now appears in the guise of a new “folk devil”, the target of a moral panic to use an expression from Stan Cohen (Cohen, 1980).

What has happened since the 1980s and the 1990s? The basic “problem” of premature love is still very much in focus. It is also evident that the dual narrative of moral and medical explanations of the phenomenon is still intact. The medical narrative has seen some recent developments. One recent change in focus in such literature has been the warnings against food hormones. Such hormones can cause early puberty according to some researchers, leading even primary school children to show interests in the opposite sex prematurely (Hu, 2007). This debate on premature love has gone hand in hand with less irrational food scares recently occurring in China. Such scares were recently topped by the famous tainted milk scandal when contaminated baby milk powder produced by Chinese milk giant Sanlu led to infant deaths all over China. The case led to the subsequent conviction and execution of the person found ultimately responsible for the matter. The Sanlu scandal was preceded by similar incidents. In 2004, 13 babies in eastern China died after they were fed milk made with powder that contained little nutritional value. That incident was known as the “big headed babies” scandal because the malnourished children developed swollen heads



(Ramzy, Yang, 2008). It is interesting to see how one scare has triggered another one, and how premature love has become part of the medical concern surrounding contaminated food. Fear is still part of the rationale and basis of moral panics.

The age issue has also become increasingly emphasized by recent research in China. Clearly, the age of *zaolian* or premature love has sunk since I did my previous research on this matter, and there is now much talk of primary school students (6-12 year olds) when there is talk of juvenile “bad” or “sick” romantic and sexual practices (Hu, 2008, Jin, 2008, Liu 2008). Some of the explanations are not directly medicalized, but lead us to other moral panic sites like the Internet. Primary school teacher Liu Juan noted that Internet horoscope love matching had become enormously popular among her students (Liu, 2008).

It is interesting to note that some of the more exaggerated medical scares about the practices of *zaolian*, although they are still there, are now contradicted by a more sane voice among researchers and teachers alike. Labelling processes are for the first time used as explanations of the premature love panics. It is pointed out by some Chinese observers that alarmist teachers and parents may mistake normal friendship relations for being premature love affairs. They simply misinterpret quite normal behaviour in the light of alarmist stories about premature love (Shen, 2005). Another new and more sensible trend among psychologists is to point out that premature love may be a symptom of dysfunctional families rather than using the “badness” or “sickness” labels pasted on the young in the past. It has been found that adolescents experiencing poor parent-child relationships are more likely to engage in premature love (Hu, 2007). This finding is much in line with the findings of Trent Bax concerning the causes for so called “internet addiction” (Bax, 2010) Bax is arguing that the famous medicalization of Internet use as AID or “Internet Addiction Disorder” is a result of failed family relations and an escape from authoritarian family structures. Bax’ notions of the “family war-machine” finds its “premature love” equivalent in the interviews of parents about premature love conducted by Zou Daipeng in 2004. One of the parents interviewed by Zou uses exactly the same expressions of “spiritual opium” about premature love as the boot-camp protagonists of Internet addiction use to describe that alleged “disorder”. Mr. Gao, one of the interviewees and a father of a girl practicing “premature love” said: “Premature love is spiritual opium (*jingshen yapian*). I’d rather prefer my child to hate me for a short period of time than her regretting (her deeds of premature love) for the rest of her life” (Zou, 2004).

The cautionary tales about premature love that I noted in the literature in the 1980s and 1990s still prevail. There is an abundance of stories about the innocent girl who starts up getting in love and the horrible consequences of “losing their body” and falling into a life of misery and crime because of this (Jiang, 2003, Lin 2008). Despite the constant flow of alarmist moralist tales about premature love and the occasional “sick” or “bad” approach of descriptions of “addiction” and “hysteria”, there are novel voices emphasizing the positive side of premature love. Some claim that a relationship between boys and girls can improve their motivation and study results (Leng, 2003, Wang 2003). Some students even report that their teachers deliberately point out couples to work together to improve study results, underlining the positive effects of youth relationships (Kipnis, 2010). Other commentators attack the school authorities for imposing fines on students who have love affairs (He, 2007), and for using the secondary school code of conduct to ban such relationships, advising teachers to gain students trust instead of punishing them (Geng, 2009). Lastly, Professor at Zhongshan University in Guangzhou, Qiao Xinsheng criticizes schools and parents for their overprotection, control, and surveillance of youth and children, suggesting such “slave mentality” (*nixing*) should be abolished completely (Qiao, 2009). Instead of the moral crusade against

premature love he suggests that the re-education of parents and teachers should be the first step to handle premature love. Stripping children of the right to love and making friendships between the sexes feely brings no hope for the future of China, Qiao concludes.

A SHORT NOTE ON THE NEW DEVIANCE: “INTERNET ADDICTION” AND “INTERNET ADDICTION DISORDER” (IAD).

One entirely new development in the field of deviance compared with the 1980s and 1990s is the introduction of the Internet in China, and the perceived disorders that has brought to the country. The moral crusaders have rallied to this field, and it has probably become the centre of the Chinese debate on deviance and modern dangers today. Internet use is a part of the modern society of consumption and modernization of communication technology, and China is now rapidly moving into the number one spot in the world in terms of numbers of Internet users, completely knocking out the former leader, the United States. The latest numbers operate with a Chinese Internet population of around 380 million people. It is still a fairly urban and youthful phenomenon although this is also about to change. Around 60 per cent of the 380 million internet users in China at the end of 2009 are aged between 10-29, which means that about 228 million of the altogether 375 million or so aged between 10-29 years in China are getting online by then. In 2009 175 million, or 51.8 per cent of all internet users, were teenagers, while 28.8 per cent of this 380 million were students (Bax, 2010: 186). Mobile internet users increased from 117 million in December 2008 to 233 million in December of 2009 (CNNIC, 2009). In June 2011 the number of internet users in China had officially increased to 485 million (CNNIC, 2011). CNNIC’s 24th Report points out that mobile Internet use is not merely a useful portable electronic tool, but now has become a symbol of fashion and an integral part of popular culture.

This part of popular culture, however, has become the breeding grounds of another moral panic and another field of medicalized moral crusade against social disorder. The same alarmist medical metaphors apply to Internet addiction as we have seen applied to the only-child and the “premature lover”. Bax has shown that the internet addict is now described as being “*poisoned by*” or “*intoxicated with*” Internet games. Or the kids simply possess an “*insatiable desire for*” play. The metaphors of pollution also show up in the new narrative on the Internet addict. According to Wu and Zhang: Having weak self-control over this new modern technology causes youth to suffer from “*information pollution*”, and therefore they waste their golden time and precious youth (Wu, Zhang, 2008:14, Bax 2010:151).

In contrast to the medicalized tales of the only-child, the issue of crime is more closely linked to the new disorder of Internet Addiction Disorder. A recent unverified report from the Public Security Police claimed that as much as 76 per cent of juvenile criminals in the People’s Republic of China have internet addiction or *some kind of relation* with the internet? The underlying assumption is that the content and structure of so-called violent video games is said to “teach” the gamer to fight, steal and kill, and as a result the gamers’ moral system and moral judgment dissolves under the constant exposure to, and proficiency toward, virtual violence (Bax, 2010: 44). In the fight against such deviance, there are now medical professionals prescribing drugs as well as electroshocks against the new deviant, the “Internet Addict”.

There is, however, clear opposition against the pseudo scientific medicalized moral crusade against the deviant “Internet addict”. In his thorough discussion of the battle around Internet Addiction Disorder, Trent Bax is distinguishing between the moral crusader Tao Ran, contrasting this camp to the much more humanistic and sociologically informed camp around Tao Yongkai. The medical



and moral crusader Tao Ran bases some of his ideas on the American IAD activist Kimberly Young, and Bax terms this camp the Young-Tao model of claims making. While Tao Ran has been advocating – using the internet addiction concept – a psychiatric-based medicalised discourse for framing the problem, Tao Hongkai has been arguing that what China is facing is a set of societal problems, in particular a problematic education system and counter-productive parenting (Bax, 2010: 21, Chapter 3). It is interesting to observe that the moral crusaders against alleged Internet addiction are contradicted by a well-articulated opposition. This is a new and hopeful development in the People's Republic of China although the picture is still one of constant pressure of moral-political crusading.

International viewpoints make the argument of the moral crusaders somewhat more complicated these days. According to the American Psychiatric Association's latest Diagnostic and Statistical Manual (DSM-IV), neither deviant behaviour nor conflicts that are primarily between the individual and society are mental disorders, such as "internet addiction" or "sexual addiction" unless the deviance or conflict is a symptom of a dysfunction in the individual (American Psychiatric Association, 1994). A lot of the moral panics launched in China over the last thirty years, however, have done just that; made conflicts between the individual and the society into mental and individual disorders. Perhaps the new moral crusade against Internet Addiction Disorder has been the clearest distortion of such international definitions of medical disorders.

CONCLUDING REMARKS

The picture painted in the 1980s and 1990s seems still to be in force. The Party State still massively dominates the moral crusade, and the pseudo-medical claims are still there as they were at the outset of the reforms. There are more liberal voices present today, and there is an intellectual opposition against the old order as we have seen, particularly in the case of premature love and Internet addiction. The truisms of deviance and prejudice held against the only-child are still there, but changes seem to be coming in that area as well, possibly altering the strict policy of only-child families in the cities. The culture of prejudice against onlies, however, will remain. As for the Internet addict, there are clear voices against the practices of the military style Tao Rong approach of boot camps and pseudo medical procedures. In many ways, this moral panic can be seen as the general panic about youth in a modernizing society. The anti-crime campaigns (*yanda*) against alleged juvenile gangs in 1983 were probably among the biggest moral panics about youth experienced anywhere during the last century. The demography of youth explains some of this phenomenon, the protection of moral and cultural boundaries and the fears of crime and "Western pollution" has to be blamed for the rest. The youth cohorts between 14 and 24 increased from about 170 to over 270 millions in the short period from 1975 to 1987. Such demographic dramas are some of the rational bases for a moral panic, but I will leave that discussion for another occasion. The cohort will sink to about 150 millions in 2020, and it will be interesting to see if that drama is easing the moral panics against youth in combination with a more modern and less crusading regime of politics.

The pseudo-scientific tools of the Chinese moral crusaders against deviance have been highly politicized, and turned much more directly political than ever anticipated by Howard Becker's observations in the early 1960s. The medical profession, however, has been less independent and less powerful than in the Western examples, and the State and the Party has a virtual monopoly when it comes to claims making, leading the moral crusades with a tight hand through its organizations of propaganda.

The distinctions between Conrad and Schneider's "badness" versus "sickness" and Parson's distinction between "willful" and the "unwillful" deviance seems to be muddled in the often centralized quest for order. The reactions against the "dangers of modernity" can undoubtedly be described in Stan Cohen's language of a moral panic, and such panics do come from below as well as from the elite. To borrow an expression coined by Goode and Ben-Yahuda (Goode, Ben-Yahuda, 1994, 2009) the moral panics we have seen in China during the period of modernization have been *elite engendered moral panics* with a resonance in the *laobaixing* – the so-called hundred names – or the common man and woman in China. The moral crusaders might have popular backing, but in the last instance these are State and Party engendered elite crusades aimed at achieving social and political order, or in the present language of Party propaganda, to maintain the harmonious society (*hexie shehui*). The moral crusades are about the same type of boundary crisis described by Ericsson in his account of Puritan America, and concern the redrawing of social boundaries in an era of rapid modernization. One is tempted to use Mary Douglas' distinction between "purity" and "danger" in this regard. In particular the metaphor of "pollution" is constantly recurring in the ideological-political construction of deviance in today's China. There was even a centrally led political campaign – or *yundong* – against "spiritual pollution" introducing the topic on a nation wide political level in the 1980s (Bakken, 2000). A lot of that campaign was directed against perceived threats of modern deviance. The Party is rallying support against the "moral dangers" brought about by the forces of modernity threatening the stability of their power. We may, using Kai Ericsson's concept, say that the powerful crusaders are rallying to protect their boundaries of power, managing China's ongoing "boundary crisis". In the last instance these pictures of deviance and deviance control are strictly political in character. They are ultimately addressing the question Karl Marx described in the Communist Manifesto when he remarked that the "Modern bourgeois society... is like the sorcerer, who is no longer able to control the powers of the nether world whom he has called up by his spells" (Marx, 1932).

Paradoxically, the Communist Party is now in the same situation as the modern bourgeois society was when Karl Marx wrote his remarks for the Manifesto. The Chinese programme of modernization can be described as an attempt at taming or binding, of completely controlling the path and the pace of the Juggernaut of modernity. The Chinese regime wants to put brakes on the runaway engine, although at the same time they want to let it run. They want to control the "dangers of modernity". The moral crusades and moral panics concerning the perceived deviance of the reform era are ultimately about another sociological issue than deviance as such – that of social control and power.

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THE EARLIER THE BETTER? TAO-YAUN COUNTY JUNIOR HIGH SCHOOL STUDENTS' FIRST USE OF THE INTERNET AND INTERNET ADDICTION

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In 2007 and 2008, Hou and Jou collected data on Internet usage by 2,864 Tao-Yuan County (Taiwan) junior high school students. This paper reanalyses their data and finds that the earlier that students first use the Internet, the greater the possibility that they will become Internet addicted. Even when the variables that might be highly correlated with Internet addiction? such as sex, academic scores, family social economic statues, influence of peers? are controlled, the variable of ?age of first use?of the Internet remains highly correlated with Internet addiction. Nonetheless, the data also show that if a student's first use of the Internet occurs after grade 5 on average, there will be negative consequences for the student. That is, whether first use of the Internet was at a young age or later in adolescence there were negative consequences in the sample of students analysed. This paper suggests that parents should not force their children to use the Internet at a young age out of a fear that their children might fall behind other students. On the other hand, it is also not good to postpone deliberately a child's first use of the Internet. The right time for a child to use the Internet is after he/she has learnt about the Internet at school, that is, in a formal educational environment.



MEASURES FOR IMPROVING COUNSELING SERVICES FOR SCHOOL DROPOUTS: CRIME PREVENTION PERSPECTIVE FOR A RURAL COUNTY

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School dropout has long been a serious juvenile problem and has empirically being confirmed to be highly related to juvenile delinquency. Scholars and practitioners all agree that early intervention, including counseling services, for the young dropouts is very critical for crime prevention and reintegration. However, the distribution of professional resources for dropout counseling has been very uneven in Taiwan. To empirically examine the current situation, problems, and better measures for improving counseling services for the dropouts, the researcher interviewed 11 practitioners of counseling services qualitatively from a rural county, and conducted phenomenological content analysis to the verbatim text. Some meaningful findings were drawn and promising recommendations were proposed. Family problems were the primary problem resulted in juvenile school dropouts. The establishment of better professional relationships between counselors and dropouts was critical to the success of helping. Referral services to psychiatric units was essential when facing the dropouts who had major depression, emotional disturbance, suicide attempt, and mental illness. School counseling was not professionalized enough to coping with the demands from troubled students. Therefore, professional social workers, case managers, brokers between teachers, parents and professional resources were urgently needed in rural areas of Taiwan. Lots of concrete recommendations were proposed for future success in preventing juvenile school dropouts.

COMPENSATED DATING: A STUDY ON YOUTH ACCEPTANCE

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The growing number of youths engaging in compensated-dating has raised serious public concerns, but it has not led to major changes in law and enforcement. The safety net rests predominantly on parental control and self-restraint. Yet, despite popular belief that materialism is to be blamed for the problem, there is little empirical evidence on contributing factors. The present study addressed this knowledge gap by investigating youths' attitude towards compensated dating and how acceptable is the social-commercial activity to them. Furthermore, the vague notion of "Compensated- dating" was crystallized into two concise types based on one distinguishing feature of various forms of compensated-dating. A survey was conducted to 284 teenagers randomly selected from two selected secondary schools in Hong Kong in 2010. Zero-order correlations revealed that Materialism, Normlessness and Sexual attitude were significantly associated with the Acceptance of compensated dating. However, Materialism did not have significant effects on Acceptance of compensated dating while holding other variables constant in multiple regression analysis. Normlessness and Sexual attitude showed significant effects on the Acceptance of compensated dating. The results challenge common wisdom and are useful in formulating how social actions should be focused.



RESEARCH JUSTICE PROJECT IN THAILAND

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Apasiri Suawannanon, Suan Dusit Rajabhat University, Thailand

Chatchai Mahakeeta, Suan Dusit Rajabhat University, Thailand

The research synthesis on the Youth-powerjustice Project had been conducted with 60 schools throughout the country. This research aims to promote health by focusing on the development of life skills, morals, ethics and laws with numerous learning processes among children. The children and youth in the educational places were encouraged to develop their potential with self-efficacy through arranging activities and board exhibition for children. Moreover, the network connection for teachers, parents, communities and personnel allowed the justice system to get involve with the development of children and youth in the educational places for Best practice so it could be applied with school curriculum to build better children and youth capable of handling most activities through life skills development appropriate for each level. The internal factors leading to success arranging ideal activities are the voluntary mind of core leaders, both students and teachers with sincerity, perseverance and knowledge in conducting activities whereas the external factors comprise of the network of strong supporters such as school executives, guidance teachers, counselors and homeroom teachers, including parents, Sub-district Administration, communities, homes, temples and school networks. All of these resulted in the activities for building consciousness, developing healthy body and mind with improvement in the environment, life skills, morals, and ethics and expanding the network into the educational places and nearby communities, crime prevention and solving crime problems. The research synthesis is extremely significance in identifying the direction and guideline to develop the Youth-powerjustice Project, specifically on the analysis of the project potential, limitations and conditions in order to support the future development. This aims to accomplish mainly in content and synthesis process for extracting true data that could yield the successful and concrete results.

1. PRINCIPLES AND REASONS

Justice is defined as the situation deemed appropriate by majority based on legal and justice procedures. Reconciliation is the total agreement or full satisfaction, especially when the disagreement, dispute, conflict or misdemeanor occurred. Therefore, justice and reconciliation are extremely crucial for developing the country towards peace, harmony, long-lasting and stable economy, social, politic and administration. The country which infested with injustice and disharmony would be unable to develop the country as much as those civilized countries.

Thai society at present is coping with ever changing situation and environment positively and negatively, leading to more social irresponsibility and injustice until becoming the nation most concern problem. Therefore, such problem should be prevented and corrected through raising right awareness, values and attitudes, including arranging activities with the active public participation, starting from youth and children and expanding further into the community and society.

Thus, the Office of Justice Affairs, Ministry of Justice cooperated with Faculty of Social Sciences and Humanities, Mahidol University had established the Youth Power Justice Project to raise ideal awareness, values and attitudes as well as promoting participation among children and youth which focused on the body of knowledge in laws, justice process, honesty and reconciliation. The operation has started since the budget year 2004 with Phase 1 to master the project at Nakorn Ratchasima Province. Total 21 schools had joined in the project which divided into 3 levels. Phase 2 was done in the budget year 2005 with implementation of studied model to better the operation which had been continued in many provinces as followings : Chachoengsao,

Chiangmai, Ubol Ratchathanee and Phuket with 58 volunteer schools. In phase 3, the study area had been expanded to 54 schools in Bangkok. Such operational outcomes help shaping activities suitable for children and youth. Phase 4, during the budget year 2007, the operation moved up to the nation level. It was selected as one of the project to celebrate the auspicious occasion of His Majesty the King 80th Birthday under the new name "Youth Power Justice Project learning in accordance with His Majesty teaching during his 80th Royal Birthday". There were 80 schools participated in this project. Phase 5, in the budget year 2008, the operation was focused on all educational places in the country with youth centered. It intended for each educational institute to adapt the Ministry of Education curriculum with regular instruction appropriately which could lead to stronger and better public justice process.

The arranged activities by the educational institutes were set up in numerous designs, but the widely accepted activities, so called Best Practice such as broadcasting legal knowledge, moral plays, musical plays on justice, truth for your eyes (crime news in modern society, students and teachers together analyzing the situation and find prevention for self and family members to avoid being crime victims) reconciliation, loving each other just like one of own family), school disputes, justice reconciliation council, returning good offspring to own family, rehabilitation for trouble students), anti-drugs and solve drugs problems in schools, safe drive, legal and traffic knowledge, establishing Reconciliation Justice Center in school. Since the beginning of the project in 2004 until now, there have been 313 parties joining the project nationwide comprised of teacher network, parents who allowed their children to participate in the project. The number of youth joining the program estimated 200,000 persons.

Findings from project evaluation indicated that teachers and parents highly agreed with the project activities to raise awareness among children and youth, building reconciliation, reduce conflict and violence. It can be seen that children and youth behavior after joining the project developed positive attitude, having leadership, reducing conflicts, caring and helping each other with love, being harmony and more reconciliation. As for the children and youth who had participated in numerous projects agreed that participating in the program made their families know more about legal and justice process from different data sources and applied with the lesson and daily living. They could be familiar with justice and quarrelling in school reduced. So this is the good way to spend leisure time to benefit self and others and unafraid to stand for truth. They have gained many roles such as skill training on solving problems peacefully based on reconciliation, including learning group functions systematically, loving harmony and knowing how to co-exist with other happily. Crucial factors to ensure the success of project were the educational administrators and teachers encouraging students and youth in the educational institutes planning together and actually committed to such plan. Besides, the student leader who received training agreed that the activities should be constantly arranged and added values after the participants joined the project. All other concerned parties suggested adding more contents and activities in the curriculum and instruction as required by the Ministry of Education in all levels.

During the budget year 2009, the Faculty of Social Science and Humanities, Mahidol University realized that model for all activities resulting from the children and youth creative thinking. The success of this project could be done concretely and help preventing and solving youth problems on quarreling, injustice and social conflicts which would make children grow up to be better adults, happy and healthy, physically and psychologically. Therefore, the Youth Power Justice Project should receive continuous support through budget allocation from Thai Health Promotion Foundation to guarantee project continuity and appropriate operation model. This included the

extended network to reach children and youth, teachers in the educational institutes throughout the country.

Because it is necessary for this project to develop many network of schools throughout the country, there should be the lesson interpretation on Youth Power Justice Project. In another words, summarized concrete knowledge derived from the follow-up and activities assessment of 60 master schools which explained outcomes from the Best Practice as being required by the master schools. It is another form of knowledge management that aroused children and youth's interests in learning and raising right awareness, values and attitudes on justice and reconciliation, including the development of physical and psychological health, life skill, morals and ethics systematically. This aims to extract knowledge deeply embedded within a person and body of knowledge locally so the acquired lesson could be summarized and synthesized as the manual and different forms of media. Outcomes from lesson interpretation besides making into knowledge media, the most important matter is those involved in the process must share knowledge that could lead to changes in thinking process and creative work method with better quality.

2. OBJECTIVES

2.1 Synthesizing the Best Practice from Youth Power Justice Project, having legal knowledge, promoting reconciliation, building ideal Thai society among 60 master schools in Thailand.

2.2 Proposing Youth Power Justice Project model to concerned schools for trying out

3. SYNTHESIS CONCEPTUAL FRAMEWORK

In the synthesis process, lessons interpretation was done through the Best Practice, starting from the project background, operation objectives, steps and activities model. Factors leading to successful operation and expected benefits are being show in chart 1 as follows:

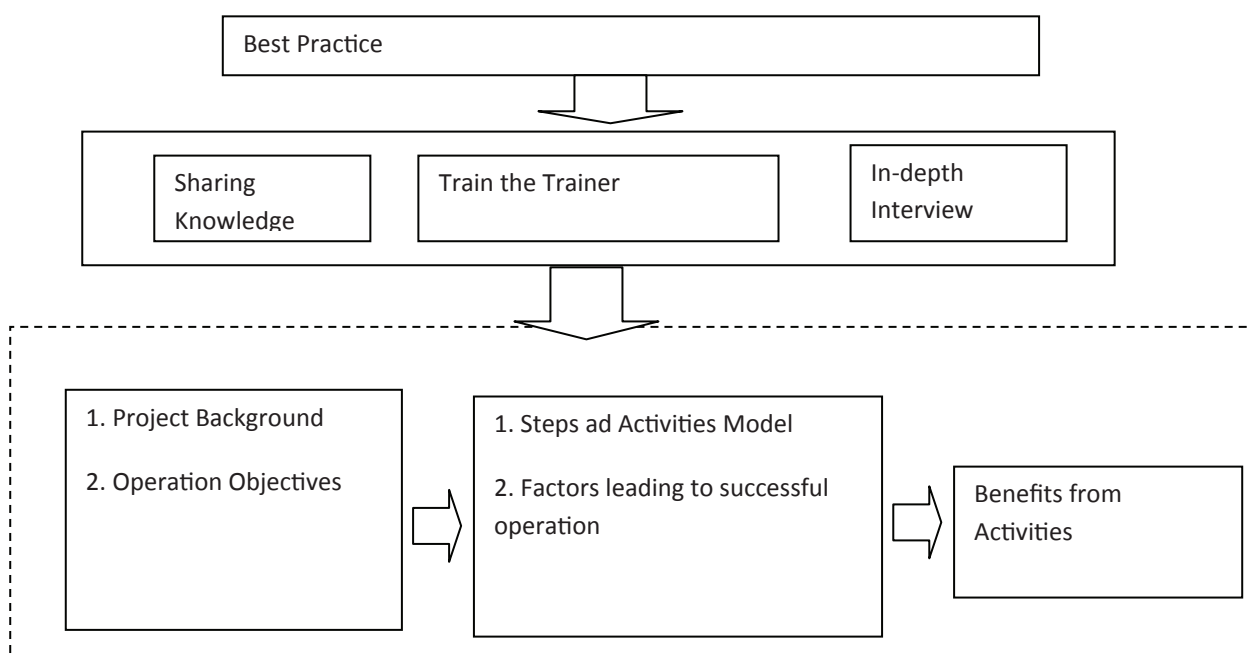


Chart 1 Synthesis Conceptual Framework

4. EXPECTED BENEFITS

4.1 The school prepared manuals for Best Practice to raise correct awareness, values and attitudes on justice, reconciliation and developing physical and psychological health, life skill, moral and ethics systematically.

4.2. Students can handle activities with understanding and apply with lessons and daily living.

4.3 Teacher and student leaders can also transfer knowledge to the network schools and local communities.

4.4 Students are interested in joining activities for good citizen and extended network of student leader to establish reconciliation within the society.

5. LESSON INTERPRETATION CONCEPT

5.1 Definition

Lesson interpretation is another form of knowledge management that focused on group learning systematically. It may be the extraction of knowledge which deeply embedded within a person and local knowledge to express as the lesson that could be synthesized and summarized for value added further. The most important thing in lesson interpretation is sharing knowledge, leading to changes in thinking and working process, more creative and productive. We have learnt from our own and other experiences that could become model for others. Therefore, the appropriate lesson interpretation is important process for extracting the core information through sharing learning process or goal, so called “Successful lesson interpretation required learning awareness”

5.2 Lesson Interpretation

Methodology is not only the method, but also the operational process which unable to produce knowledge without right thinking.

Correct Thinking Correct Methodology: Having knowledge/Truth

Correct Thinking Incorrect Methodology: Having knowledge /certain facts

Incorrect Thinking Correct Methodology: Not knowing the fact

Incorrect Thinking Incorrect Methodology: Not knowing the fact

When starting with the “Right View”, it should lead to the Right Action. The thinking process is extremely crucial same as lesson interpretation with numerous supports of thinking base and beliefs that required clear understanding before starting the process.

5.3 Paradigm of lesson interpretation

It consisted of Positivism and Construction/Interpretive, the two major paradigms to search for knowledge and fact in the modern world. Both paradigms have separated characteristics as follows:



Table 2 Paradigm of Lesson Interpretation

Positivism	Interpretive
Concrete and measurable truth	1.Perceived truth from concerned parties interpretation
Only single and modern fact	2.None of modern , only context
True facts separated between the study and studied phenomena	3. Facts from interaction between the study and studied phenomena are inseparable.
Reasonable interacted phenomena	4. Phenomena Interaction are identified separately.

The practitioner must understand the fact through Interpretive which mainly focused on changing and developing the studied phenomena as the dynamic process to answer questions of what, why, and how. This was done through thinking process and feeling of the one under scrutiny within the context of the study and completely rejected Interpretive of Mixed Methodology. In fact, accessing knowledge is both interpretive and Positivism focusing on materials completely separated from the studied context. It also searched for the standard model to explain all things regardless of time and location as the significant paradigm for lesson interpretation, and understanding the concept of each paradigm which made the lesson interpretation appropriately identified, leading to Higher Quality Lessons Learned for Best Practices.

6. RESEARCH METHODOLOGY

6.1 Scope of the Study

This study was the lesson interpretation from Best Practice among 60 master schools throughout Thailand.

6.2 Methodology

This study was the quantitative study with 60 master schools with the application of the following techniques:

6.2.1 Train the Training is training student leaders on legal knowledge in the educational process, developing leadership skill and conducting activities to expand network for 2 schools in each community.

6.2.2 Sharing knowledge through Storytelling among teacher group and student leaders with questions in the meeting as follows:

- 1) Regarding activities under Youth Power Justice Project of master school for Best Practice with other schools stating reasons or activities strength
- 2) Factors leading successful operation in Youth Power Justice Project

3) Model and operation methods used in the expansion of Youth Power Justice Project to the network schools.

As for the technique for sharing knowledge, a group of researcher had engaged story teller so the students and teachers could relate the significant issue for 10 minutes each, Then other schools took their turns until all schools finished telling the story. The whole time, the researcher would make the observation and record knowledge with AAR (After Action Review).

6.2.3 In-depth interview was done by the Exhibition Activities Committee and Project Assessment Committee acting as the interviewer, observer and recorder.

7. GLOSSARY

Student Leaders are 1,200 students in 3-4 level, Upper Elementary (Mathayom1-3) from 60 master schools throughout the nation acting as the lecturers on laws, leadership and operation for students leaders in the network and community schools.

Teacher Leaders are teachers who provided consultations, guidance and liaison with the network school, organization or outside agencies that had conducted activities with the maser schools.

Lesson Interpretation is the extraction of knowledge from the teacher and student leaders and expressed as academic documents and Best Practice developed by the teacher counselors on the project from master school. These project activities were done to coincide with objectives, having outcomes that could actually be implemented. The lesson interpreters would arrange the acquired knowledge on the project background, operational objectives, steps and operational model, factors leading to successful operation and outcomes from the project operation into the learning system.

Best Practice is the activities from 60 master schools that had been executed and solved initial problems concretely and coincided with the project ideal activities such as raising right awareness, values and attitudes on justice and reconciliation, developing physical and psychological and environmental stage, life skill, morals and ethics with activities to promote and extend network into the educational institutes and nearby communities, including crime prevention and solving problems on crime.

8. BEST PRACTICE SYNTHESIS MODEL

The operational results indicated that 2,660 students from 193 schools that already exercised best practice had participated in the project. Best practice was synthesized and summarized being shown based on activity types as follows:

8.1 Raise good awareness, values and attitudes on the justice and reconciliation

8.2 Develop physical and psychological health and environmental stage

8.3 Develop life skill, moral principles and ethics

8.4 Promote and extend network into the educational institutes and nearby communities

8.5 Crime prevention and problems-solving

Activities for raising good awareness, values and attitudes on the justice and reconciliation intended for the children and youth in the educational places to learn about such operation from the master school through lecturing by student leader on Train the Training so the network schools and community could learn as well. Activities consisted of mediator for Ban Bok Kang School, Student Activities Council for reconciliation, Ideal Thai Youth, DJ teaching laws, teaching laws, democratic family, modern youth for goodness and reconciliation, harmonious reconciliation, reconciliation camp and reconciliation clinic as being shown on chart 1.

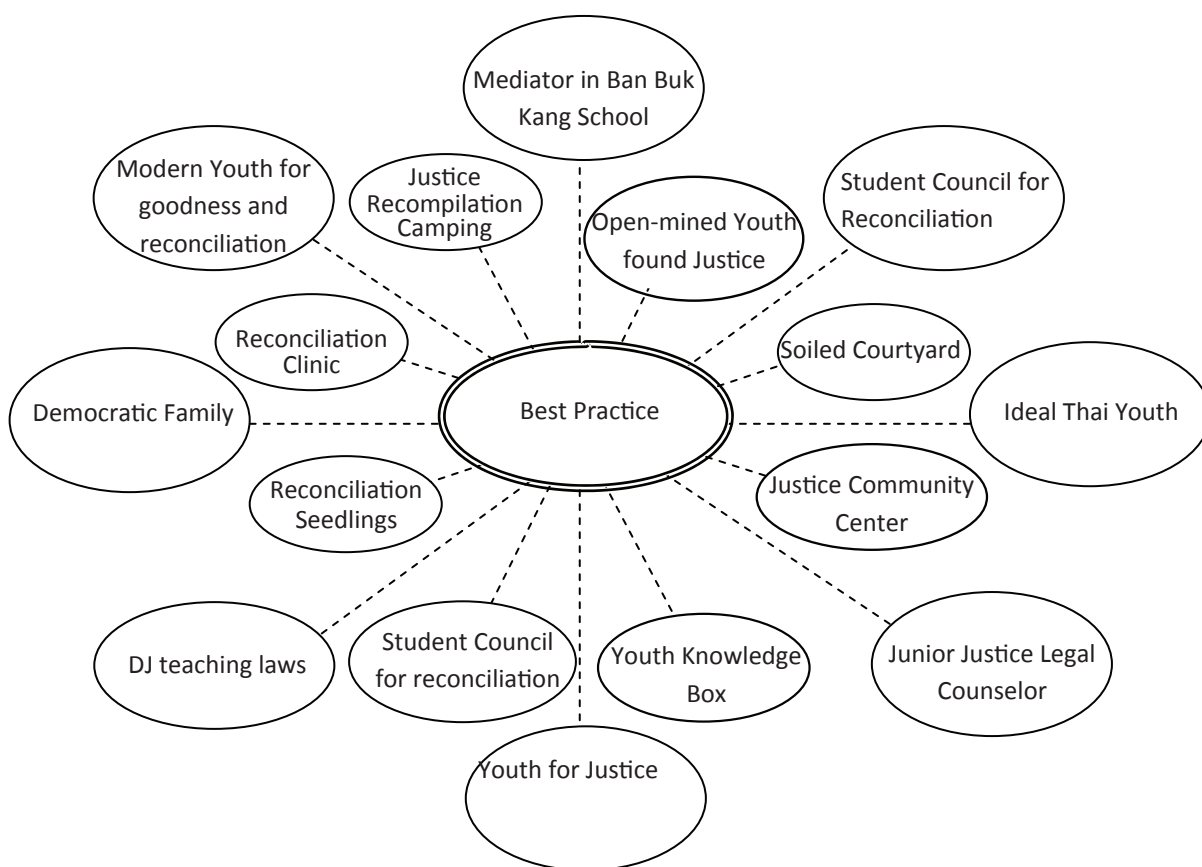


Chart 1: Raising Awareness and Values and Right Attitudes on Justice and Reconciliation

Developing Physical and Mental Health and Environmental Stage

Activities for developing Physical and Mental Health and Environmental Stage focused on youth group in the educational institutes to develop physical and mental health through school and community environment as the significant tool for constant integration activities. These ideal activities must be able to measure how healthy youth and children participated in the project, having similar indicator to Thai Health Promotion Foundation, namely number of people received skill development in health promotion as the one under practice by the master school:

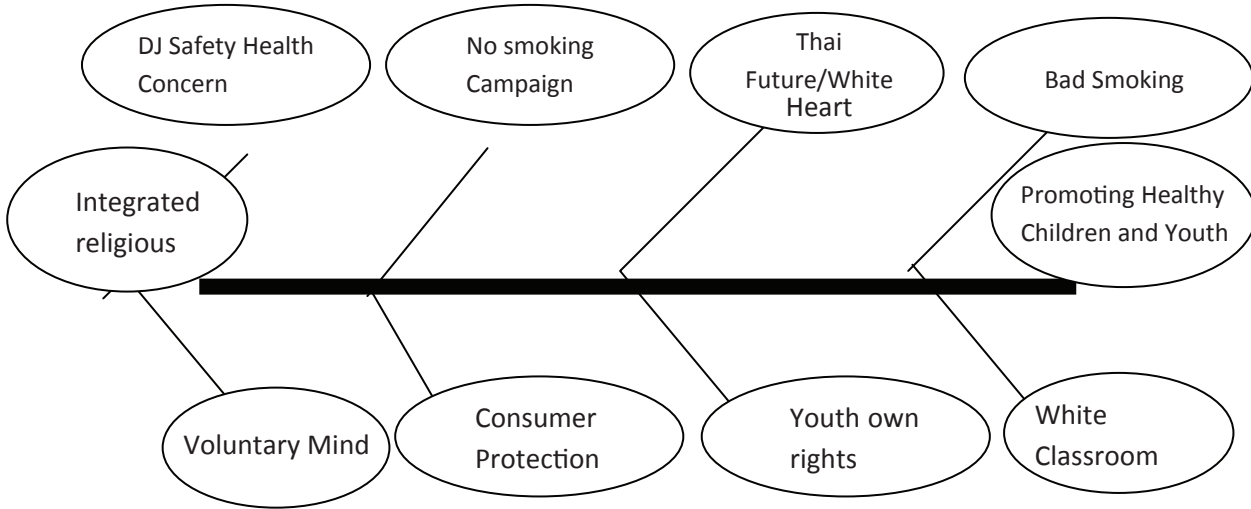


Chart 2 Developing Physical and Mental Health and Environmental State

Activities to develop like skill, morals and ethics focused on the children and youth activities for life skill such as asking the children to construct good citizen map as the master copy for community, building grass root virtues to mold children and youth with volunteerism and ability to carry on activities for the community as being shown in chart 3

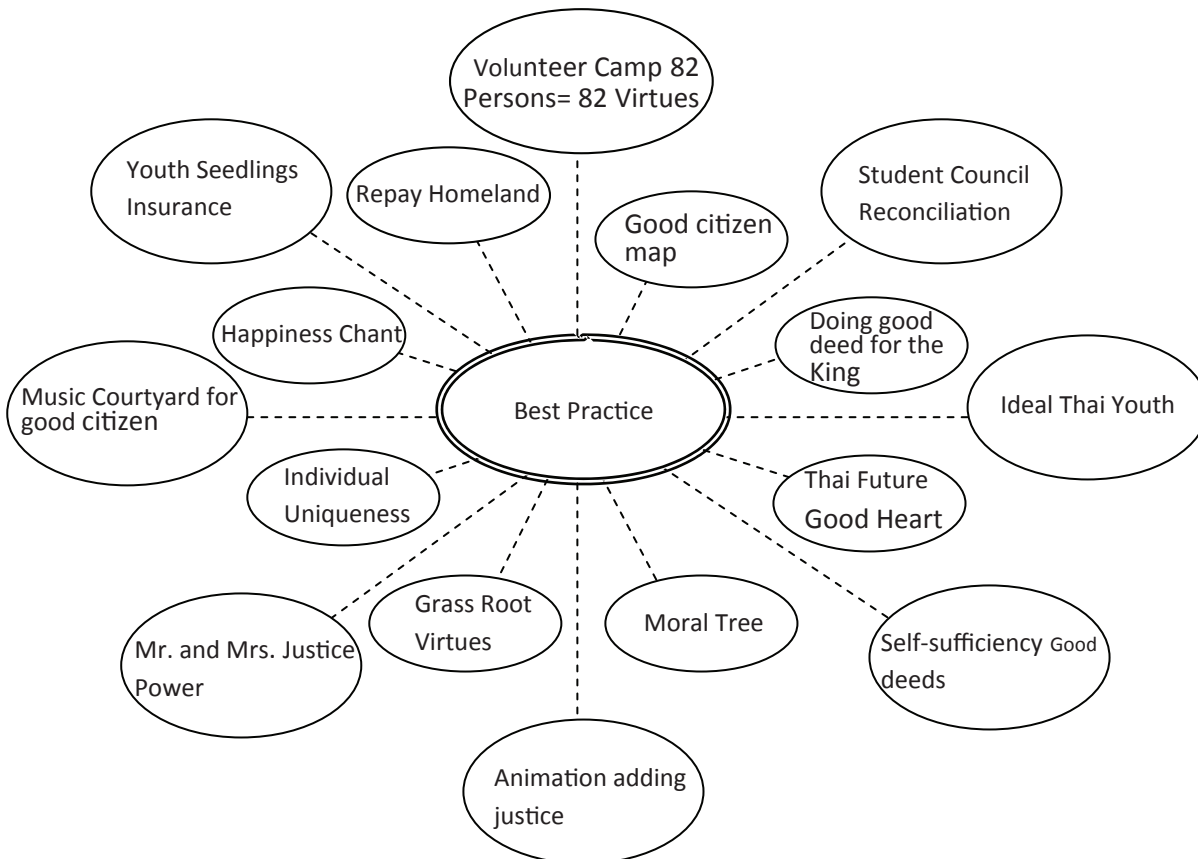


Chart 3 Developing Life Skill, Moral Principles, Ethics

Building and Extending Network into Educational Places and Nearby Community

Activities to build and extend network into Educational Places and nearby community aim for the young to learn community life-styles, cultures and community livings as well as providing legal knowledge to the community so both community and school could join as an active network to fight against crime and raise children and youth for ideal citizen as being shown in chart 4.

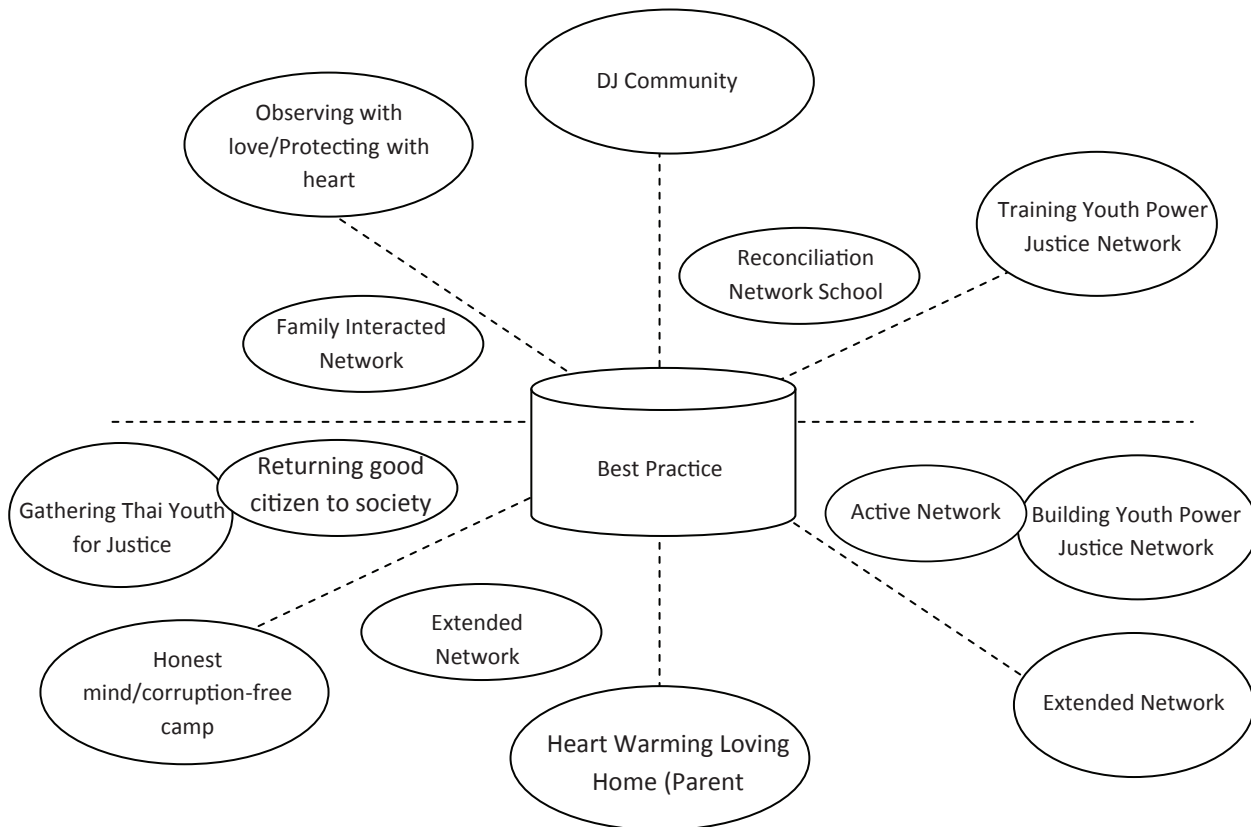


Chart 4 Building and Extending Network into Educational Places and Nearby Community

Crime Prevention and Problems-solving

Crime prevention and problems-solving activities should enable youth and children to study laws and punish the wrongdoers, including learning and presenting methods and guidelines for preventing and solving crime through the following ideal project:

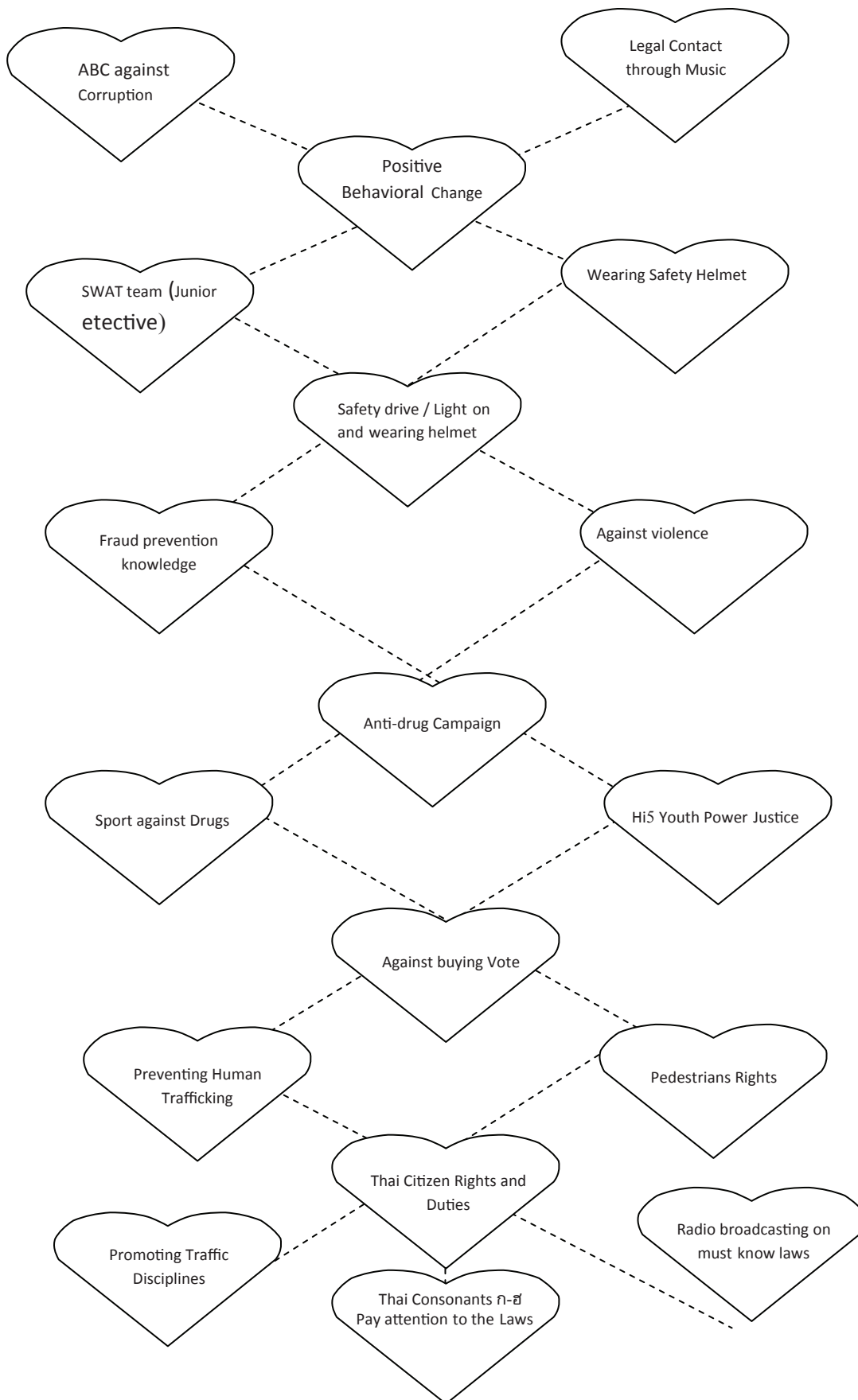


Chart 5 Crime Prevention and Reduction



9. CONCLUSION AND RECOMMENDATION

9.1 Conclusion

Findings from the outcomes of Best Practice in Youth Power Justice Project indicated that all 60 master schools had employed at least 1 Best Practice. However, some school employed more than 1 Best Practice. The following are factors leading to successful operation under Youth Power Justice Project.

Internal Factors comprised of student and teacher leaders volunteerism, having sincerity, perseverance and knowledge in the operation. In reality, Youth Power Justice Project is the supplementary activities apart from the external agencies of the Ministry of Education, the schools made their own decisions whether or not to join the activities but all 60 schools developed volunteerism among children and youth with the sense of justice and legal knowledge until able to act as junior lecturer transmitted activities to the network schools and others with full confidence.

External Factors is the true and active support network consisted of the educational administrators, guidance, counselor, class teacher, parents, Sub-district Administration, community, home, and temple and school networks.

Promoting and supporting activities are consisted of the following

1. Activities for raising awareness, values and attitudes on justice and reconciliation among children and youth in the educational institutes with master school activities and allowing the student leader passed Train the Training course to act as the lecturer for the network schools and extend to community. Activities in this area comprised of mediator for Ban Bok Kang School, Student Council for Reconciliation, gathering Thai Youth, DJ for justice, Youth love Justice, DJ activities, Teaching laws, Democratic family, Modern youth for goodness, Harmonious reconciliation, Reconciliation clinic.

2. Physical and Psychological Health activities intended for children and youth in the educational institutes through the application of school and environment as the significant tool to integrate activities constantly. The Best Practice activities must be to measure how healthy the children and youth participated in the program with the indicator similar to the one of Thai Health Promotion Foundation in the number of population received skill development in health promotion.

3. Developing life skill, moral principles and ethics was done for children and youth to improve life skill such as asking children to make good citizen map as the community master plan, building the children as the grass root of virtues so they could develop volunteerism and ability to prepare community activities.

4. Promoting and extending network into the educational institutes and nearby activities aim for the children to familiar with community lifestyles, cultures, community livings as well as providing legal knowledge to community so school and community can join together and becoming the active network for community crime prevention and encouraging youth and children to become good citizen.

5. Crime prevention and solving crime problems prepared youth and children for legal knowledge and how to punish the wrongdoers as well as learning methods and guidelines for crime prevention and solving crime problems through Best Practice.

Lesson interpretation is crucial and essential to identify the direction and guideline for developing Youth Power Justice Project, especially on potential analysis, limitations and conditions to ensure the success of future development closely relate to fact both context and process on lesson interpretation. The person in charge of lesson interpretation must understand 4 major components consisted of project, activity, personnel and group relations as the basis for building questions. Besides, the interpreter needs to make acquaintance with such group for better understanding and verifying data and successful lesson interpretation.

9.2 Recommendations

1. The educational administrators should encourage and support ideal project of the master school on the regular basis.
2. The master school should broadcast more ideal projects among the public.
3. The leader network should be extended to other student levels such as those in second level.
4. Positive relationship must be built between teachers and students with stronger merits, having disciplines, honesty, moral and public mind.
5. Thai Health Promotion Foundation must follow-up constantly on the operational outcomes of the master school.
6. Outstanding activities of the master school should be included in the activities to improve educational quality or instructional process.



PREVALENCE AND CHARACTERISTICS OF LEARNING DISABILITIES (LD) AND PERVASIVE DEVELOPMENTAL DISORDERS (PDD) IN JUVENILE COURT CASES IN JAPAN

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The author is family court investigator to conduct psychological and environmental assessment for juvenile offenders. This study is to survey the prevalence of learning disabilities (LD) and Pervasive Developmental Disorders (PDD) in juvenile cases encountered in family courts in Japan. Method: Family court juvenile cases were investigated in regard to the type of crime committed, the socioeconomic status (SES) of the family, and relevant rearing factors, such as adverse childhood experiences (ACEs). Results: 17.1% with LD and 3.4% with PDD were detected. Juveniles with LD symptoms experienced difficulties in math reasoning and calculating. Next, While the criminal rate for the sexual offences were high in the juvenile offenders with PDD. Conclusions: In family court cases it was found that the number LD and PDD in these cases were higher than in the general population. Regardless of their developmental difficulties, most of juveniles who were transferred to family court may have experienced different types of maltreatment. Therefore, forensic professionals and educational practitioners should consider the possible existence of developmental problems and adverse rearing factors when dealing with juveniles who appear in family court.

A THEORETICAL MODEL FOR CHINESE YOUTH IN CONFLICT WITH THE LAW IN CANADA

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This article reports the findings of a qualitative study of Chinese youth and their parents' experiences with the criminal justice system in Canada. By using grounded theory approach, this study focuses on developing a theoretical model in understanding the criminal pathways of Chinese youth in Canada and identifies promising practices for this population. This study found that: Chinese youth and their parents have the propensity to internalize the problems that they blamed themselves for their inadequacy rather than attributing the issue to systemic discrimination; Chinese youth have a very close tie with the family regardless their levels of crime involvements; they are more hesitant to turn to professional assistance, but ethnicities of the professional helpers is not the most determining factor when comes to asking for help outside the family. This article examines how these findings could inform the existing theories on delinquency to be more culturally sensitive and discuss the implications for policy formation and frontline practices for this population.

INTRODUCTION

Most studies on delinquency in Canada are primarily focused on mainstream cultural groups (Doob, 2001; Kwok & Tam, 2004). The under-researched issue of crime and racialized youth are due to a ban on the release of race-based crime statistics in Canada (Moyer, 2005; Wortley, 2003) and challenges related to collecting field data from ethnic minorities (Chin, Kelly, & Fagan, 1993.; Kwok & Tam, 2006). However, the limited literature on youth from racialized groups post challenges for policy makers and service providers in the criminal justice system to understand and address the needs of these populations. This article reports a qualitative study of the experiences of 56 participants of Chinese heritages (44 youth and 12 parents) with criminal justice system in Canada as an attempt to fill the knowledge void in current literature and explore the promising practices for this population at both policy and direct service levels.

LITERATURE REVIEW

Developmental stresses of youth from radicalized groups are different from youth in dominant cultures (Martell, 2002). Examples of these stresses include being at a disadvantaged minority status and having acculturation challenges (Kwok, 2008; 2009; Pih, & Mao, 2005). Already, studies demonstrated that members of the Chinese community were less trusting of the criminal justice system than their white counterparts (Commission on Systemic Racism in the Ontario Criminal Justice System, 1995; Kwok, 2008; 2009; Wortley & Owusu-Bempah, 2009). In addition, there is a growing concern from the law enforcement agencies and the public over gun-related gang activities of racialized youth (Doob & Gartner, 2005). The Criminal Intelligence Service Canada (2006) and Public Safety and Emergency Preparedness Canada (2003) reported that Chinese gangs have actively recruited members and were among the fastest-growing Asian gangs in Canada.

Notwithstanding the unique developmental stresses faced by youth from racialized groups and the concerns from the public, there is a paucity of research studies in Canada on racialized youth and crimes generally and on Chinese youth specifically (Bania, 2009; Kwok & Tam, 2004). There are



a few studies on Chinese youth in conflict with the law in the United States over the last three decades; however, the findings are far from conclusive (Tsunokai, 2005; Tsunokai & Kposowa, 2002).

In late 1970s, scholarly works focused on verifying the longstanding criminological theories, such as social disorganization theory¹, on Chinese youth (Rice, 1977; Tsunokai & Kposowa, 2002). However, the findings to support these theories on Chinese youth were mixed (Knox, McCurrie, Laskey, & Tromanhauser, 1996). Contemporary researchers, therefore, began to investigate whether distinctive cultural qualities together with other social factors (e.g., structural racial discrimination) could better explain crime involvement of Chinese youth. Sheu (1986) found that the best approach to understand Chinese youth and crimes was to integrate social control theory² with a cultural disorganization perspective. Sheu suggested that Chinese values that underscore obedience and filial piety are often eroded as Chinese youth adjust to a new culture that emphasizes individuality and independence. These Chinese youth could neither be socialized in Chinese culture nor could they fully integrate to the mainstream culture. The struggle with acculturation process, thus, is suggested as one of the factors associated with delinquency of Chinese youth (Chin, 1996; Song, 1988).

Other researchers have sought to explain the connection between Chinese youth and crime involvement by combining social disorganization theory with differential opportunity theory³ (Chin, 1996); social control theory with social learning theory⁴ (Wang, 1996), or subcultural theory⁵ with social disorganization theory (Song, 1988). Despite these efforts, there is still no consensus on a dominant theory to understand and explain the criminal behaviours of Chinese youth in western countries, and even less on a descriptive or explanatory model to understand the experiences of Chinese youth in the criminal justice system in Canada (Kwok, 2009). In response to this knowledge gap, this paper is to report a qualitative study to develop a theoretical framework to understand Chinese youth in the criminal justice system in Canada and exploring the promising practices for this population.

METHODS

Grounded theory⁶ was used to understand the interactions of the Chinese youth and their parents with the criminal justice system. Participants were located in Vancouver and Toronto. Forty-four

¹ Social disorganization theory suggests that high crime rates link to neighborhood ecological characteristics. Youths from disadvantaged neighborhoods were participants in a subculture in which delinquency was approved behavior (Burgess, 1925)

² Social control theory proposes that when youth are more attached to mainstream social institutions (e.g., family, school, church) through socialization and learning process, it would reduce their inclination to indulge in anti-social behaviour (Hirschi, 1969).

³ Differential association theory suggests that peer negative influence is another strong predictor of delinquent behaviour apart from weak attachment to family and school (Sutherland & Cressey, 1978).

⁴ Social learning theory focuses on the learning that occurs within a social context. It considers that people learn from one another, including such concepts as observational learning, imitation, and modeling (Bandura, 1977).

⁵ Subcultural theory emerged from the work of the Chicago School gangs and developed through the symbolic interactionism school into a set of theories arguing that certain groups or subcultures in society have values and attitudes that are conducive to crime and violence (Fischer, 1995).

⁶ The grounded theory approach is a qualitative research method that uses a systematic set of procedures to develop an inductively derived theory grounded on data in the field about a phenomenon (Strauss & Corbin, 1998).

Chinese youth and twelve parents have participated in this study. The youth range from 14 to 17 years of age and have been in Canada from 3 to 10 years. The offenses include robbery, assault, extortion, drug trafficking, and possession of fire arms. They received sentences ranging from probation orders, community services, to incarceration. Participant recruitment is guided by theoretical sampling, which is a data gathering process driven by concepts comparison with the purpose of discovering variations among concepts (Strauss & Corbin, 1998). Semi-structured individual interviews were used for data collection and each interview lasted approximately 2 hours. All interviews were recorded and transcribed.

Data were coded using the methods of open, axial, and selective coding. Specifically, the researchers read through all the interviews with the objective of identifying common themes, after which the themes were coded and data were searched for instances of the same/similar phenomena. Data were then translated into working hypotheses that were refined until all instances of contradictions, similarities, and differences were explained, thus increasing the dependability and consistency of the findings (Strauss & Corbin, 1998). Following this method of data analysis, five themes were identified that represent the structural contexts (*perceived blocked opportunities, cultural values, criminal involvement, and support systems*) and the pathway (*coping with a spoiled self*) of criminal involvement for Chinese youth in the conflict with the law.

RESULTS

Perceived blocked opportunities

All youth in this study revealed their frustration regarding the perceived barriers to success because of their status as visible minorities. They generally felt that they were not treated in a fair manner. For example, the youths thought that they have received harsher punishments because of their racial backgrounds.

What's wrong with self-defence, he [the white student] started the fight. He got suspended [from class] only a few days, and I got [suspended] two weeks. I was put in an alternative class and he [the white student] went back to regular class.....I am a Chinese; [they think I am] a gangster. (Participant 11)

Furthermore, the school has taken advantage of their immigrant parents who have limited knowledge of the school administration and policy over suspension and withdrawal.

[The school] asked my mother to sign [letter of voluntary withdraw from the school]. They [school] knew that my parents are immigrants... My mother knows nothing [about the school] and didn't speak much English. She [my mother] just nodded and said yes to them [the school] I don't think they [the school] would have done it to other [Caucasian] parents. (Participant 31)

Further, police often picked on Chinese youth when they hang out in a group at night. Participants complained that they were treated with disrespect.

He [police] dragged me to the ground....My friend talked back and said we know our own rights... They [police] choked my friend's neck and shouted at him "If you don't like it, go back [to your country]." (Participant 17)



Cultural Values

Internalizing the problems and stressing on family connection are the themes frequently come up in the interviews. Chinese parents have high respect for authority. They attributed misbehaviour of their children to their own inadequate parenting rather than to systemic discrimination or institutional inequalities.

They [my parents] just didn't see this was discrimination. They thought the school was right to punish me. Why should I complain? (Participant 14)

Not only the parents, but also the immigrant youth consider that they should be partly responsible for their misbehaviours and share the blame. They considered that they were not in a position to request any changes because they were visible minorities.

We [Chinese] are second citizens in this country.... The White does not like us [Chinese].... [Now] I broke the law. They [White] have every reason to hate us. (Participant 12)

Regardless of their degree of criminal involvement, all participants stressed that family connection is paramount in their lives.

[When I was arrested by the police].....The first thing came to my mind was what would be the reaction of my family.....Family is the number one priority of us [Chinese]....without family, we [Chinese] are only isolated islands. (Participant 1)

Most parents were hesitant to approach ethnic-specific organizations for help but they also have limited knowledge of the services offered by mainstream organizations. Still, the families would not rule out the possibility to request assistance from mainstream organizations if they deem it is necessary.

My mother went everywhere: school, police station... community centre when she thought [they] could help me. [Participant 1]

My parents didn't speak much English, but they went to the school and talked to the school principal.....They [parents] wanted me to stay in school. (Participant 9)

Criminal Involvement

The data revealed that all participants' first brush with the law happened in a group context. Group loyalty is the major reason behind.

We always fought against other gangs...We ran into XXX [a Chinese gang] in downtown. We beat them up. You must fight along with your friends. It was a loyalty thing. (Participant 1)

Some participants turned to gangs for emotional support when the family was not able to or did not know how to deal with the incident

She [mother] was nagging me all days. "You never do this again. You never do that again".....she [mother] was scared too. (Participant 23)

Moreover, participants agreed that the more one get involved with gang activities; the more likely one will engage in serious criminal activities. Participants further commented that they did not believe in the anti-gang propaganda of the school and the police. They felt that the school and police did not understand the lives of Chinese gang members at all:

They [school] invited the police to come and talked about gang problem on the street.....I don't think he [police officer] knew anything about Chinese gangs...He [the police] like to scare us. (Participant 1)

Contrary to popular belief, there were no initiation ceremonies for gang member recruitment. Participants 'drifted into the gang.' They joined gangs because their friends were gang members already, or because the gang could offer them protection:

I was pushed and given a punch by a white guy at school, XX came and beaten him up. XX told me that we [Chinese] should look out for each other. I knew that he was a gang member.....I did not want to act like a jerk when someone helping you. (Participant 31)

Support Systems

Support system of respondents consists of support and resources provided by family, friends, relatives and social service practitioners or criminal justice professionals. Most respondents found that family support were crucial in helping them deal with their experiences in the criminal justice system.

They [the family] were upset [about the offence of assault] ...later they tried to come up with something to help. [During my suspension from school], my elder brother drove me to the uncle's garage every day. My uncle is a car mechanic. He promised to keep me around his garage until I returned to school. (Participant 1)

Most participants displayed behavioural problems while they were in junior high school; nevertheless, they perceived that the school was not providing them enough support. One research participant was involved in a fight with his classmate and was referred to an anger management class for therapy rather than addressing the root cause of the problem.

I need no anger management. I was being picked on by the white [student]. I fought back. I fought back and I fought for respect. (Respondent 31)

These youth's comments on probation services were positive, but not helpful. They commented that most probation officers were nice but did not understand Chinese gang culture and their immigrant backgrounds. Nonetheless, these young men suggested that ethnic background of the social worker/counsellor is not a deciding factor when comes to asking for help. Rather it is the caring attitude and understanding of immigrant youth backgrounds on the part of the social worker/counsellor are the keys in the helping process.



I prefer a counsellor from my cultural background...but what matter most was the attitude to care about us...I don't mind if he is from other cultural background. (Participant 8)

Spoiled Self

Coping with a spoiled self refers to the internal struggle of youth within the criminal justice system.

I turned into a bad person, a villain. I tried to fight back and prove them wrong, but it was very hard. You cope with whatever name came up to you. The society didn't care about what you think. (Participant 17)

Four sub-themes are organized under the category of spoiled self (*Re-defining, conflicting, shady, and reclaimed*) to denote different stages of involvement and relationship with family, criminality and helping professionals.

Re-defining self is the stage the Chinese youth asked the question “who am I?” for the first time.

I guessed things might be changed after the arrest, but I did not know it would be that bad... They (schoolmates) stayed away from me. I was classified as high-risk student... Before that, I am only an ordinary student, but now I am dangerous. (Participant 5)

It is this stage they re-discovered the care and concerns of their family which they largely ignored before the incident (*family relationship: patching up*).

I used to turn to a deaf ear to my family. Now I took every their words in my heart. I agreed to return home right after school, no more mingling with my friends (with gang background), and went to work in my uncle's garage... I did that because my family told me to do so. I owed them. (Participant 1)

They did not consider themselves deeply involved with the criminal activities. If they are affiliated with a gang, they are only a fringe member and could leave the gang without too much trouble (*criminal careers: resisting*).

They (the gang) would not go after me. I told them I did not want to fool around; it hurt my family. They (the gang) did not like it, but they let me go. I just quitted like that. (Participant 1)

In contrast to general beliefs, the parents were receptive to the idea of asking help from mainstream organizations and seeing counsellors from other cultural backgrounds (*help-seeking: proactive*)

My mother asked everyone: the school, legal aid, probation, and community centre. Every one as long as she thought could help me....At the first few times, she went with me to see the probation officer. My mother asked (my probation officer) to get some counselling for me...I didn't like the idea (of getting help everywhere).... I was in the middle of ocean and the family tired to throw me something to grab and keep me afloat. (Participant 1)

At the stage of conflicting self, Chinese youth still regarded themselves as not career criminals. Nevertheless, they could not explain their continuing involvement with criminal activities.

It drives me nuts. I have two faces. I am no devil you know, but I did 'bad' things. Sometimes, I asked myself which one is mine: a bad guy or a good guy. If you asked me I was a good guy or a bad guy a year ago. I definitely said I was of course a good guy. Now, I am not sure. (Participant 17)

Shady self is the stage where the research participants convinced themselves that they would be leading a criminal life. This stage is characterized by these young people firmly believed that they were certainly making a definite move into a criminal career; they have acquired the knowledge and skills to succeed in a criminal career; and they found that they have a limited social circle that all their friends are gang members or involved in serious crimes.

Unable to face the fact that they are still involving with criminal activities, youth at the stage avoided contacts with their family. Still, I felt and understood that their family were concerned about them (*family relationship: distancing*).

My elder sister told me (that) my mother stop eating beef...She (mother) worried that I might get killed someday on the street. (Participant 14)

In order to alleviate their internal conflicts, these youth rationalized their criminal activities (criminal career: rationalizing) and were more discrete in selecting services for help (help-seeking pattern: selective).

There is a market (illicit drugs) out there. We got no guns pointed at their heads. They were happy to come and buy. We sell, and they buy. It is a question of demand and supply. If you didn't do it, other would. (Participant 28)

I did a little research myself before I came to see XX (youth worker). I heard his name many times from my friends and my brother. This guy understood us; I was not going to see him for any changes of my life. I wanted to have someone I thought I might want to talk to. (Participant 17)

Shady self is the stage where the research participants convinced themselves that they would be leading a criminal life. This stage is characterized by these young people firmly believed that they were certainly making a definite move into a criminal career; they have acquired the knowledge and skills to succeed in the trade; and they found that they have a limited social circle that all their friends are gang members or involved in serious crimes.

I got no other skills (than stealing cars). I might be born as a booster. Cool, not cool, (it was) not the question. This is my life; it sucks, but I must accept it. There was no other way out. (Participant 31)

Their family were indifferent to them (*family relationship: alienating*); they focused on honing their skills to become career criminals (*criminal career: establishing*); and they did not consider themselves would go back to regular lives (*help-seeking pattern: passive*).

My father and I do not talk to each other; I feel the distance between us. But we are still family. I am not totally cut off from my family; I still live with them. I know that if they needed I would be there. (Participant 9)

Fight with other gangs is bad for business (selling drugs)...If I got detained by the cops or thrown in jail for a month or two, I would be losing money. I learned hard to get away from the cops. (Participant 9)

They (youth workers) were nice people, but I did not think you could talk away the problem.. The problem was still over there. I did not think I need a counsellor. (Participant 31)

In the reclaimed self stage, the youth have stopped involving in any form of illicit activities. They saw themselves as “re-entering” the society again. At the same time, this stage is also described as the most difficult as it takes time for the larger society to change its perception on them.

They (cops) still asked me whereabouts of my friends. I told them I was not with them already. They did not believe it....It was hard to turn back (into a good student). (Participant 1)

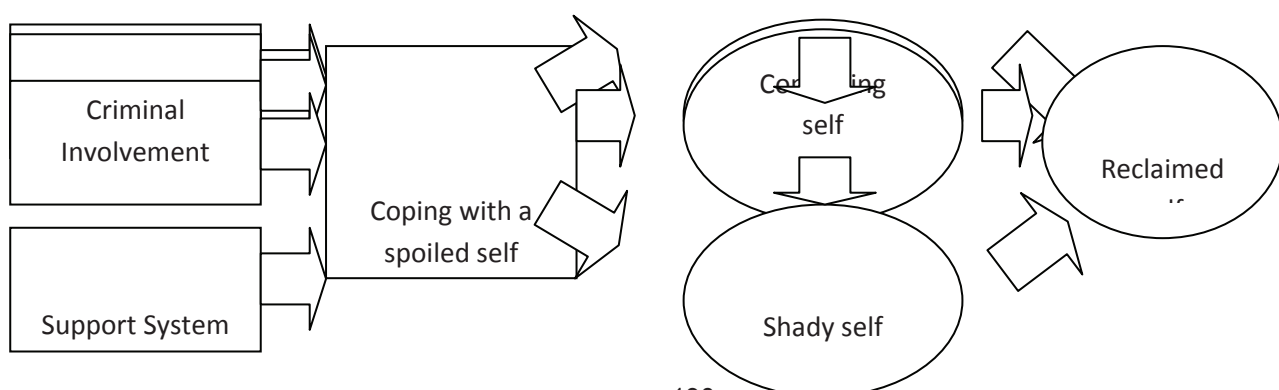
They re-connect with their family (family relationship: re-connecting); they keep themselves out troubles (criminal career: keeping at bay); and they are willing to work with the helping professionals for their rehabilitation (help-seeking pattern: cooperative).

It might be a blessing for me. I did not treasure what I got if it was not for this. I knew my mother always cared about me. But now I knew elder brother cared about me too...I better not screw up this time. (Participant 1)

I did not cut them (friends from the gang) off totally. I still went to their birthday parties. But I did not go out with them to do the stuff (criminal activities), and they understood that. We are still friend, but not that kind. (Participant 23)

He (youth worker) asked me to see a waiter job. No, I did not want that job. I knew people (gang members) in the area. They might make troubles for me. I better found another job (that) no one could find me... XX (youth worker) helped me found another job in the kitchen. Good! I could hide in the kitchen. I bothered no one. No one bothered me. (Participant 25)

Figure 1. Themes Identified in the Study



DISCUSSION AND CONCLUSION

Results from this research are consistent with findings from previous studies and have implications for formulating policy framework and developing a service provision model for Chinese youth in conflict with the law.

Findings of the present study have corroborated the results of other studies on *perceived blocked opportunities* and *criminal involvement*. The acculturation stresses of being a visible minority and the feeling of being marginalized by the mainstream institutions (e.g., school and law enforcement agency) have rendered these Chinese youths less trusting and attaching to the society. This finding is consistent with the assumption of social control theory and the findings of Sheu's study on Chinese youth gangs in New York City (Sheu, 1986). Other literature also support that when youth are facing multi-forms of social marginalization, such as a lack of meaningful ties with family and friends, discrimination based on race/ethnicity, and/or the stigma of having been in conflict with the law, they are left with a sense of exclusion and pessimism about the future (Chettleburgh, 2007; Davies & Tanner, 2003).

Furthermore, the finding on *criminal involvement* has supported the differential association theory. The data demonstrated that the first offending of these youths was mostly happened in a group context with other gang members. They gained a sense of belonging and protection which they did not have otherwise. Nonetheless, it should be noted that other scholarly works also pointed out the irony of victimization of being a gang member; that is, they are often being the target of other gangs. In a survey of high school students in Toronto, it found that youth who identify being in a criminal gang report significantly greater level of victimization (Wortley & Tanner, 2004).

Findings of the present study have implications for policy formulation at three levels of governments. Discrimination against ethnic immigrant youth should be addressed in any youth policy deliberation at both federal and provincial levels. Recently, the *Report of Youth Violence in Ontario* has already acknowledged that discrimination against ethnic youth is systemic and structural in Canada (Government of Ontario, 2008). Discrimination is conducive to alienating the Chinese immigrant youth from the society. Also, the Chinese culture of internalizing problems and immigrant parents' inadequate knowledge of pertinent social services further exacerbate the problem. Therefore, public education across the province to increase the awareness and acknowledge the systemic discrimination and marginalization against immigrant youths in public institutions should be a priority in formulating a youth policy.

At the local level, municipalities should work with local police forces and school boards in addressing the challenges faced by Chinese youth. For example, as a preventive measure, more resources should be invested on youth from racialized groups to engage them at junior high school level and involve their parents in school administration and management. In addition, local police force should be provided with culturally sensitive training in their day-to-day operation as a way to establish dialogue and working relationship with immigrant communities.

Findings of this study have implications for the service provision related to Chinese youth in conflict with the law as well. The discovery of four stages organized around the coping with a spoiled self provides insights for crime prevention and intervention for this population. Focus of intervention program should be changed to accommodate the changing needs in different stages of their criminal involvements. In addition, families should be included for prevention and intervention



initiatives. In consistent with other research findings (Wang, 1995; Wong, 2000), this study suggests that connections to family are very important to these youth regardless of the level of crime involvement. Parental involvement and engagement in the helping process is critical in addressing the needs of Chinese youth in the criminal justice system. In fact, as suggested in this study and other studies that it was the parents who took the initiative to seeking outside help from mainstream organizations (Kwok, 2009). Social workers and criminal justice professionals should take this into consideration in their practice. In addition, data of the present study revealed that youth might turn to other youth-at-risk for emotional support and could be “drifting” to gangs and are more likely to have their first offending together with other gang members. As such, early intervention should be focused on resisting peer pressure and demystify the gang culture. For example, instead of being protected by the gang, these youth should be made aware of the irony of victimization of being a gang member (Wortley & Tanner, 2004).

Moreover, the finding that ethnic backgrounds of social workers/counselors are not a determining factor in the helping process has significant implication for social work training in working with Chinese immigrant youth in conflict with the law. Training in cultural sensitivity and learning local Chinese gang cultures become imperative in working this population. Such knowledge includes an understanding of the dynamics of different youth gangs in local context and possible penalty for those who attempt to leave the gang. Acquisition of this knowledge would not only help workers build trust with Chinese youth and understand what they have gone through, but also help to work out concrete plans for the youth.

Last, but not the least, in order to address this issue from a more wholistic and inclusive perspective, advisory boards are proposed to set up in response to local community needs. These advisory boards are similar to the local special governance body such as School Boards but with a focus on co-ordinating the current services to immigrant youth in conflict with the law and providing consultations to service providers. The board could comprise members from schools, judicial system, police, social services organizations, university or professional body, and all relevant stakeholders in the communities. For day to day operation and contact with local communities, these community advisory boards could hire multicultural liaison officers and link to schools, social service organizations, academia that are interested and/or involved in working with immigrant youth in conflict with the law.

In terms of limitations, findings of this study should be interpreted with caution for its generalizability to other cities. The context of Chinese communities in Toronto and Vancouver are different from other Canadian cities where the Chinese communities are much smaller and with fewer sources in support of racialized youth.

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ASIAN CRIMINOLOGICAL SOCIETY

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CONCENTRATION OF CRIME AMONG TAIWANESE DELINQUENT YOUTHS: A 10 YEARS FOLLOW-UP

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Empirical studies of criminology have consistently shown that crime is highly concentrated on particular people, places, and things. This suggests that focusing prevention resources where crime is concentrated will yield the greatest benefits. These concentrations have attracted labels such as : chronic offenders ,repeat victimizations, hot spots and hot products etc.. Inspired by the nonrandom distribution phenomenon of crime, this research intends to investigate how the crime is concentrated among different groups of 817 Taiwanese youths, 10 years after they were studied in 1997. Research subjects were selected from a middle size industrial town near Taipei. They include 416 normals from 8th grade students of 3 junior high schools and 401 delinquents from probation office, living in the same area. The 1997 data included: demographic variables, personality variables ,self-control, social control variables, strain variables, delinquent friends, life-style, self-reported delinquency and crime, health variable. The 2007 follow-up data included police arrest ,traffic violation ,conviction and imprisonment data from 1997—2007. The results show that 11.2% of chronic offenders account for 69% of total crimes and 37.2% of total sample account for 85.7% of traffic violations. Chronic offenders also committed higher amount of traffic violations, more likely to be male, early starters, longer criminal career, longer and more times of imprisonment and committed more crimes at each age .

INTRODUCTION

A very important principle of criminology is that crime is highly concentrated on particular people, places, and things. This suggests that focusing resources where crime is concentrated will yield the greatest crime prevention benefits. These concentrations have attracted labels that are well known to most criminologists:

1 · Chronic Offenders : In Wolfgang's famous Philadelphia cohort, about 6 percent of all offenders in the study were responsible for 52 percent of the crimes,71% of homicides ,82% of robberies and 69% of assaults.

2 · Repeat Victims : Ellingworth, Farrel and Pease(1995)used four sweeps of British Crime Survey from 1982-1992 to analyze repeat victimization and found , repeat victims (just over 4 percent of all victims) endure 40 percent of the crimes reported in the survey.

3 · Hot Spots : In a landmark paper, Lawrence Sherman and colleagues (1995) found that 6 percent of the addresses in Minneapolis accounted for 60 percent of the calls for police service.

This kind of concentration is not peculiar to crime and disorder, but is almost a universal law. A small portion of the earth's surface holds the majority of life on earth. Only a small proportion of earthquakes cause most of the earthquake damage. A small portion of the population holds most of the wealth. A small proportion of police officers produce most of the arrests.

This phenomenon is commonly called the 80-20 rule, where in theory 20 percent of some things are responsible for 80 percent of the outcomes. In practice, it is seldom exactly 80-20, but it is always a small percentage of something or some group involved in a large percentage of some results.



Inspired by the nonrandom distribution phenomenon of crime, this research intends to investigate how the crime is concentrated among different groups of 817 youths, 10 years after they were studied by these authors in 1997.

SAMPLE

Research subjects were selected from a middle size industrial town near Taipei. They include 416 non-delinquents from 8th grade students of 3 junior high schools and 401 delinquents from probation office, living in the same area. The 1997 data included: demographic variables, personality variables, self-control, social control variables, strain variables, delinquent friends, life-style, self-reported delinquency and crime, health variable. The 2007 follow-up data included police arrest, traffic violation, conviction and imprisonment data from 1997—2007.

As can be seen from Table 1, 395 (95%) of the original sample of 416 normal group who were drawn from 8th grade junior high school students remain nondelinquent. 21 subjects become delinquent. Among them, 14 are one time offender, 5 are 2-4 offender and only 2 become chronic offender. For the 401 delinquent group (who were drawn from district probation office of the same area), 238 (59.4%) are one time offender, 72 (18%) are 2-4 time offender and 91 (22.7%) are chronic offenders. In other words, for those who are non-delinquents 10 years ago, most of them remain non-delinquents, only 5 percent of them become delinquent. However, for those who are delinquents 10 years ago, almost 60% of them become one time desisters and about 23% are chronic offenders.

Table 1. Percentage Distribution of Different Groups

Groups	Normal	Del.	Total
Normal	395 (95.0%)	0 (0%)	395 (48.3%)
One time offender	14 (3.4%)	238 (59.4%)	252 (30.8%)
2-4 offender	5 (1.2%)	72 (18%)	77 (9.4%)
5 or above(chronic)	2 (0.5%)	91 (22.7%)	93 (11.4%)
Total	416 (100.0%)	401 (100.0%)	817 (100.0%)

χ^2 ; df ; $\chi^2 = 737.555^{***}$; df=3

*p < 0.05 ; **p < 0.01 ; ***p < 0.001

OBSERVED FREQUENCY DISTRIBUTION OF CRIME AND TRAFFIC VIOLATIONS

As can be seen in Table 2, the total amount of crime committed by the 817 samples are 1,557. 48.5% committed no crime, one time offender occupies 30.9%. In total, they are 79.4%. However, there are only 11.2% who are chronic offenders and they committed more than 69% of total crime. In other words, 11.2% of samples account for 69% of total crimes. Similar pattern of distribution can be observed for traffic violations. 37.8% of the sample youths committed 85.7% of total traffic violations.

Table2. Observed Frequency Distribution and Cumulated Percentage of Crime and Traffic Violation

Crime				Traffic violation			
number of times (persons)	cumulated percentage of persons	cumulated percentage of times	of	number of times (persons)	cumulated percentage of persons	cumulated percentage of times	of
0(395)	48.5	0.0		0(229)	28.2	0.0	
1(252)	79.4	16.2		1(106)	41.0	2.5	
2(25)	82.5	19.4		2(77)	50.5	6.2	
3(28)	85.9	24.8		3(60)	57.9	10.5	
4(24)	88.8	31.0		4(40)	62.8	14.3	
5 or above(93)	100.0	100.0		5 or above(300)	100.0	100.0	
Total	817	1,557		Total	812	4,159	

Table3. Average Number of Traffic Violations Among Different Groups

Groups	Number of Persons	Mean	F ; sig.
Normal (A)	395	.7367	80.971*** A<B
One time Offender (B)	252	7.3492	
2-4 Offender (C)	77	11.0779	A<C
5 or above (D)	93	12.4946	
Total	817	5.0894	A<D

*p < 0.05 ; **p < 0.01 ; ***p < 0.001

Table 3 indicates that there are differences among different groups of delinquents. For the non-delinquent group, each person committed very few traffic violations---.7367 on the average. However, for the chronic offender group each person committed 12.4946 traffic violations on the average.



CORRELATIONS ON SEX AND AGE

1 · Sex

As indicated in Table 4, males are more likely to be in the chronic offender group (13.4% Vs. 4.4%) and females in the normal group (44.0% Vs. 63.5%). There is also a higher probability for females to commit drug offences, comparing to males (66.7% Vs. 40.8%). Sex is very much correlated with crime group and offense type.

Table 4. Crime Changes and Sex

Crime Change	Sex			df	X ² ; sig.	
	Male	Female	Total			
Crime Group	Normal	280 (44.0%)	115 (63.5%)	395 (48.3)	3	29.155***
	One Time	201 (31.6%)	51 (28.2%)	252 (30.8%)		
	2-4 Offender	70 (11.0%)	7 (3.99%)	77 (9.4%)		
	Chronic offender	85 (13.4%)	8 (4.4%)	93 (11.4%)		
	Total	636 (100%)	181 (100%)	817 (100%)		
Crime Type	Theft	281 (22.1%)	14 (13.7%)	295 (21.5%)	6	16.641***
	Drug	518 (40.8%)	68 (66.7%)	586 (42.7%)		
	Violence	150 (11.8%)	3 (2.9%)	153 (9.4%)		
	Fraud	148 (11.7%)	10 (9.8%)	158 (11.2%)		
	Victimless	39 (3.1%)	1 (1.0%)	40 (2.9%)		
	Other	134 (10.5%)	6 (5.9%)	140 (12.3%)		
	Total	1,270	102	1,372		

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

2 · Age

As indicated in Table 5, the mean age of the first crime for one time offender is significantly older than the 2-4 offender and chronic offender. On the contrary, the mean age of the most recent crime for one time offender is significantly younger than the 2-4 offender and chronic offender. The Table also shows that the year of criminal career and year of imprisonment for the chronic offender group are much longer than the other two groups. The number of imprisonment for the chronic offender group is also higher than the other two groups. Clearly, age is correlated with crime groups.

Table 5. Age Differences Among Different Groups

Variable	Groups	Number of respondent	Mean	F ; sig	Group difference
Age of first crime	One time offender (A)	54	21.72	10.108***	A > B
	2-4 offender (B)	72	20.74		A > C
	Chronic offender (C)	90	19.58		
	Total	216	20.50		

Variable	Groups	Number of respondent	Mean	F ; sig	Group difference
Age of most recent crime	One time offender (A)	54	21.72	45.215 * * *	A<B
	2-4offender (B)	71	24.41		A<C
	Chronic offender (C)	90	26.44		
	Total	215	24.59		
Crime career (year)	One time offender (A)	252	0.00	443.089 * *	A<B
	2-4offender (B)	77	4.39		A<C
	Chronic offender (C)	93	7.67		
	Total	422	1.59		
Year of imprisonment	One time offender (A)	252	0.06	121.981 * *	A<B
	2-4offender (B)	77	0.39		A<C
	Chronic offender (C)	93	2.14		
	Total	422	0.30		
Number of imprisonment	One time offender (A)	252	0.08	362.484 * *	A<B
	2-4offender (B)	77	0.99		A<C
	Chronic offender (C)	93	3.97		
	Total	422	0.57		

P<0.05 ; * * P<0.01 ; * * * P<0.001

Table 6 shows average number of crimes in different age brackets among different groups(per one hundred persons).It shows the peak age for the one time offender is concentrated in the age of 18-22,while the peak age for both the 2-4 offender group and chronic offender group is concentrated in 23-27 years old. Moreover, the average number of crime for the chronic offender group in each age bracket is much higher than the one time offender group and the 2-4 offender group. In other words, the chronic offender group committed more crimes in each age and their criminal career persisted longer. However, for the 3 groups, crime declined after reaching peak ages.

Table6. Average Number of Crimes in Different Age Brackets Among Different Groups (per one hundred persons)

Groups/Age	13-17	18-22	23-27	28-32
One Time offender (n=252)	0.02	0.10	0.08	0.01
2-4 Offender (n=77)	0.04	1.22	1.27	0.34
5 or above (n=93)	0.09	4.18	5.90	1.26

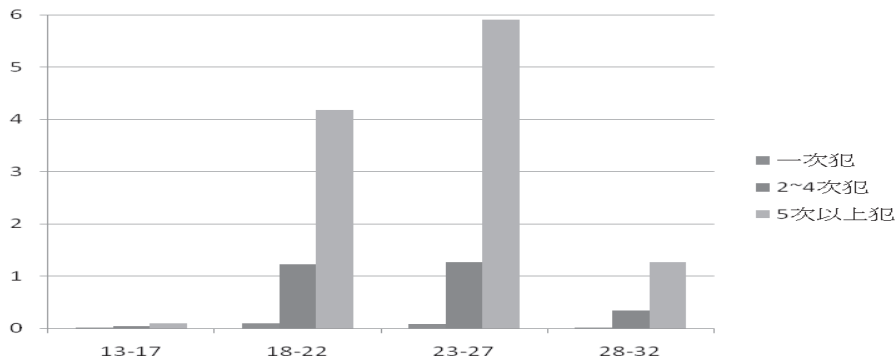


Figure1. Average Number of Crimes in Different Age Brackets Among Different Groups(per one hundred persons)

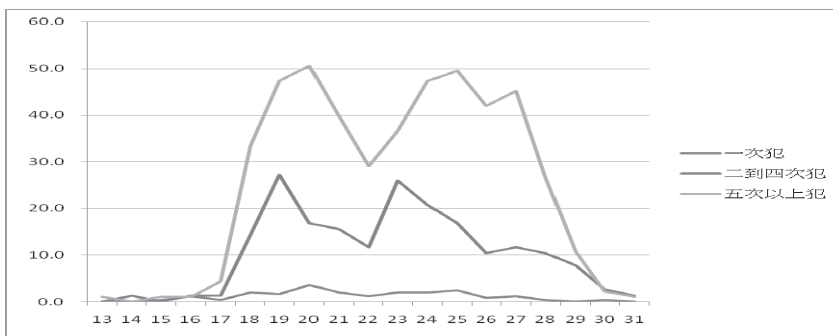


Figure2. Average Number of Crimes in Each Age Among Different Groups(per one hundred persons)

CONCLUSIONS

Four conclusions can be drawn from the above discussion:

- 12% of sample youth (chronic offenders) accounts for 69% of total crimes, 37% of youth (who committed 5 or more than 5 times of traffic violations) accounts for 86% of total traffic violations.
- Chronic offenders committed higher number of traffic violations.
- Chronic offenders are more likely to be male, early starters, longer criminal career, longer and more times of imprisonment.
- Chronic offenders committed more crime at each age.

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SOCIAL BONDING THEORY AND VULNERABLE CHILDREN: A CASE STUDY OF TZU-CHI CHARITY FOUNDATION'S "BUD PROJECT" IN WANHUA DISTRICT, TAIPEI CITY

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Based on the four basic elements of Hirschi's social bonding theory, this thesis employed in-depth interviews with people based at the Tzu Chi Foundation's "Bud Project" in Wanhua in Taipei city. The study focused on 11 children, and compared with 8 parents and 5 Tzu Chi volunteers to explain the impact of the project on the improvement of social bonding among children. The research findings showed that: firstly, it could create social commitment bonds: future goals and aspirations; secondly, it could establish a social involvement bond to reduce deviance and improve moral ability through change of behavior; thirdly, it could develop children's positive views on life; finally, it could enhance children's attachment to the volunteers through the connection between volunteers and families. However, it was found that the "Bud Project" did not significantly improve children's school performance. In short, the volunteers helped to reconnect at-risk families and their communities in order to prevent crime due to the link between charity programs and educational projects.

INTRODUCTION

Although Taipei is the capital city of Taiwan, Wanhua District is in the top five in weak indicators (e.g., low-income households, population over 65 years old, disabled population, population of foreign spouses). In particular, the proportion of low-income households is the highest among the 49 administrative regions (Peng, 2008).

Collective Efficacy Theory

Violence has been associated with low socioeconomic status (SES) and residential instability of neighborhoods. But the question remains: why? What is it, for example, about the concentration of poverty that accounts for its association with rates of violence?

As Sampson (1997, 2002) noted, the capacity of residents to control group-level processes and visible signs of social disorder is a key mechanism influencing opportunities for interpersonal crime in a neighborhood. In sum, it is the linkage of mutual trust and the willingness to intervene for the common good that defines the neighborhood context of collective efficacy. It is not that individuals or individual characteristics are unimportant, but rather that much can be learned, and possibly changed, by focusing on community and social organizational context.

Characteristics of the social work profession emphasize "people in the environment". Since its campaign on Community Volunteering in 1996, Tzu Chi volunteers have been encouraged to cultivate themselves in their own community.

The aim of this project is to enable closer relationships among volunteers, expedite news circulation, promote cooperation at work, and form a network for "relieving the suffering at call". They often actively look for people in need in their community.



Tzu Chi “Bud Project”

The financial crisis of 2008 caused mass unemployment, and the economic fallout exacerbated social problems. In 2009 Tzu Chi Foundation officially promoted the “Bud Project” which emphasized schoolwork counseling and humanitarian educational activities.

The plan targeted "vulnerable children" from elementary to secondary school age, as well as grandparents, single-parents, low-income families, foreign spouses, and indigenous families. Vulnerable families are assessed through the Tzu Chi local volunteers visit after the confirmation of the student is required to teach in this program.

Definition of After-school Programs

Halpern (2003) defines after-school programs as protection and care, and provides students with rich opportunities for knowledge, self expression, and play. In addition to the family, schools and streets, children can explore different safe environments to learn and broaden their horizons.

The Impact of Character Education for Children: Taking Jing Si Aphorisms Teaching as an Example Jing Si Aphorisms is a compilation of Master Cheng Yen’s words of wisdom with an emphasis on humanistic principles. It is also a source of philosophical thinking that Tzu Chi members keep close to their hearts. Its concise, straightforward phrases can unlock numerous puzzles and worries of daily life and inspire the compassion and goodwill of many. In 2009, Jing Si Aphorisms was translated into over 20 languages, and more than 3.5 million copies were printed around the world.

Furthermore, Tzu Chi Teachers’ Association practices and carries out the spirit of Jing Si Aphorisms in a meticulously designed course – Jing Si Aphorisms Teaching. The class comprises storytelling and role playing, and using pictures to enhance the teaching. The lessons help students build their character in life, and have a positive influence on their parents.

The advantages of Jing Si Aphorisms Teaching (Chang, C. Y., 2009)

1. Sensory awareness: Experience activities make children aware of their problems.
2. Mental thinking: The combination of cognitive psychology describes the problem situation with a story. Cognitive psychology emphasizes the left brain to understand the symbols of language, and the use of right brain images and spatial relationships. Children learn to more easily identify problems.
3. Integration problems: Meditation activities are thought to experience the relationship between the events of the story and "self", and guide children to link the significance of the story and life events. When the problem, knowledge and "self" have a relationship, students are more willing to think deeply. At the same time, developing keen observational powers is an important method to enhance creativity.
4. Physical practice: Life practice guides students to retreat to hear and think of the meaning through a variety of creative ways, and pushes ideas to implement in their own lives.

5. Internalization: When students internalize the knowledge, they will shape models in the intrinsic character.

The "Bud Project" combines schoolwork counseling with "Jing Si aphorisms teaching". It aims to imbue students with moral ability through character education.

Lytle Creek Elementary School is located in the most problematic area of San Bernardino County in the United States. It is a low-income area, where drugs and violence are common. By grade five or six, many children will already have joined local gangs.

Tzu Chi volunteers have been actively involved in charity work in San Bernardino since 1994. As Jing Si aphorisms gradually gained the support of the teachers and the school in 2006, it became part of the school's Character Education syllabus. For several years, volunteers have developed lively classes with videos, skits and storytelling to incorporate humanity education into the curriculum. It is hoped that Tzu Chi's Jing Si teaching can improve students' morals and behavior.

The teaching of Jing Si aphorisms has been successful in other counties in Taiwan and other nations. The plan in the Wanhua district continues to be promoted, and the assessment of its effectiveness should be systematically studied.

Aims of This Study

Tzu Chi's "Bud Project" in the Wanhua district will be examined to determine whether the program is effective or not. This study thus intends to explore the interaction between volunteers and children and how social bonding theory works in relation to vulnerable families.

To allow for a better understanding of the above aims, I will first examine changes among children by way of the volunteers' long-term concern in relation to strengthening social attachment, belief, commitment, and involvement bonds. Secondly, I will examine the relationship between guardians, children and volunteers, and interactions in order to establish an effective family support project, child development plan, and the prevention of crime.

The research framework is illustrated in Figure 1:

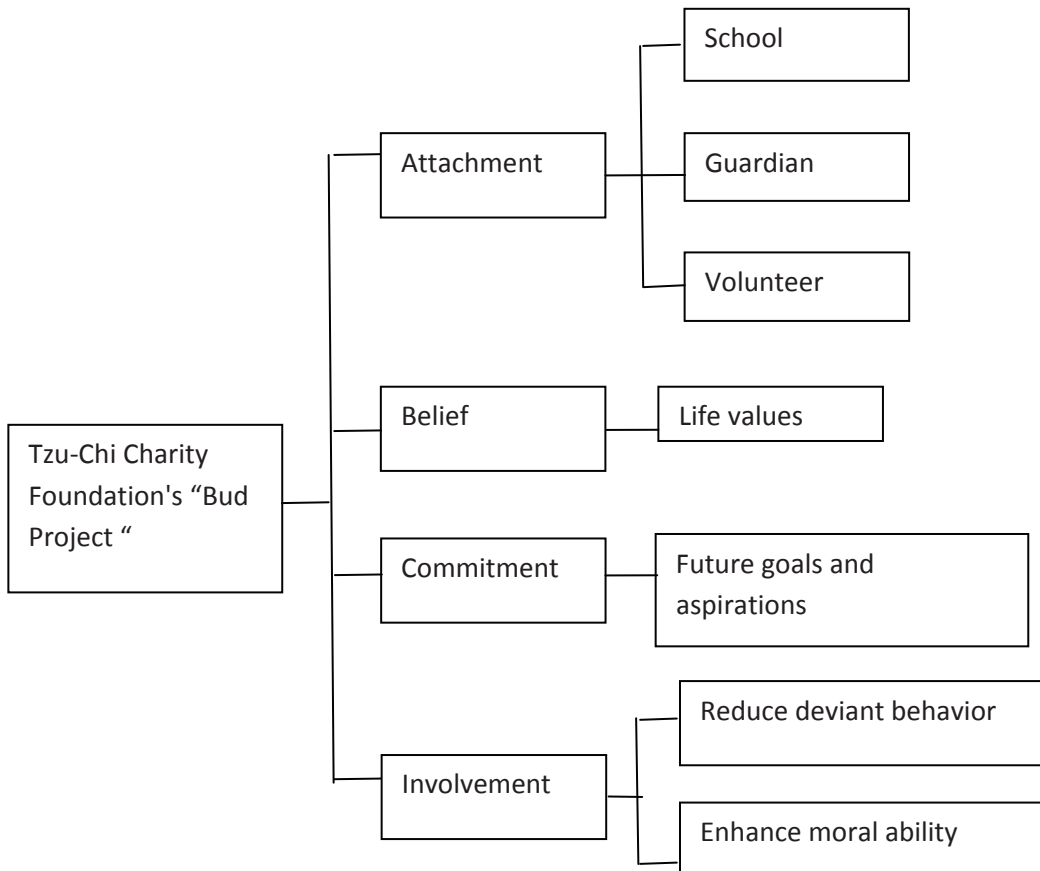


Figure 1. Research framework

METHODOLOGY

The study will adopt a qualitative approach (Table 1) and will focus on the interaction between children, volunteers and guardians. Through interviews, it will identify the effectiveness of the project, and explore how social bonding theory works in relation to vulnerable families.

Table 1: Interview Outline

Theme	Item
Attachment: affection ties	1. Do you like school? Why? 2. What do you have learning difficulties with? e.g., subjects? 3. How do you feel about reading? Has your attitude about self-learning changed? 4. What have you learned about family relationships? 5. How do you feel about Tzu Chi volunteers? Do you trust them?
Belief: life values	1. What do you like about aphorisms? 2. How do you feel when you hear stories about character education?
Commitment: aspirations	1. What are your plans for the future? 2. What do you expect for an occupation?

Involvement: conventional activities	1. Do you have bad habits? e.g., swear or lie? 2. Have you changed your bad behavior since you joined the plan? 3. What do you learn here? e.g., behavior?
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Firstly, I interviewed eleven students in the plan. On the basis of the students' interview contexts, I proceeded to interview their guardians (8 persons) and volunteers (5 persons). To ensure greater reliability and validity, I compared with three groups' (students, guardians, and volunteers) interview contexts to collect their thoughts.

Sample Selection

The interview process focused on both the subject of conversation and non-verbal responses. Through convenience sampling, I selected twenty four appropriate interviewees, including "drug users", "single-parents", "low-income members" and "foreign spouses" of the families, to construct their family life stories and the effectiveness of the intervention (Table 2).

Table 2: Backgrounds of the Vulnerable families in the "Bud Project"

Case (Gender, Age)	Year join the project	Family Structure	Family Condition
A (F, 15)	2008	Grandmother (aged approx. 78 years), mother (aged approx. 39 years), young brother (aged approx. 5 years)	When her mother was young, she was a drug user. Owing to family economic hardship, her grandmother scavenges on the streets to support the family. Her grandmother has severe negative discipline due to fear of repeating the same mistake.
B (M, 15)	2008	Father (aged approx. 36 years), stepmother (aged approx. 31 years), grandmother (aged approx 61 years) other: 2 young brothers and 2 young sisters	They live in a slum. His growth environment: poor community environment and complicated family structure. His grandmother is paralyzed and bed ridden. "Congenitally deficient (family), the day after disorders (community)".
C (F, 17), D (M, 11)	2008	Single mother (aged approx. 39 years)	They have a conflict in the parent-child relationship. She (C) has always been a bit rebellious because she does not receive the proper concern.
E (F, 16), F (F, 12)	2009	Single mother (aged approx. 45 years)	Their mother is an Indonesian spouse, and she must raise three daughters independently.
G (M, 12), H (F, 11)	2009	Grandfather (aged approx. 73 years), grandmother (aged approx. 72 years)	G said: I have encountered two drug dealers in my life; one is my father, and the other my mother. She (H) responses the same answers. He also says: my health was affected by my mother, but I am now in good health and have discharged the poison, but my sister has not.
I (M, 11)	2009	Single mother (aged approx. 36 years)	His home is leased to the sheet-metal building next door neighbor. The living room comprises a few tables, chairs and his bed. His mother lives in a room just across the



			board.
J (M, 15), K (M, 14)	2009	Single mother (aged approx. 40y)	These brothers are optimistic and cheerful despite their tough environment. Their mother, who plays a dual role, is "strict but loving".

FINDINGS

Create the Social Attachment Bond

Control theory assumes that the bond of affection for conventional persons is a major deterrent to crime. The stronger this bond, the more likely the person is to take into account when and if he contemplates a criminal act (Hirschi, 1969). Volunteers actively visit the vulnerable families in their community, and regularly support them with all kinds of resources through realistic assessment (e.g., economic aids and spiritual inspiration). Most importantly, the volunteers show concern for the children's development and education. In terms of affection ties, the students have participated in the plan for about 1-2 years, and these cases will examine how to attach to schools, guardians, and volunteers.

Attachment to Schools

There are three aims in the attachment to the school, which include reducing the difference in learning, improving schoolwork, and creating a self-learning attitude. The volunteers teach the students one-by-one so that they can understand the students' learning difficulties and situations.

1. Reduce the Difference in Learning

The volunteers help the students with their schoolwork. Most importantly, the volunteers encourage them to like school and to enjoy learning.

Table 3: Analytic result of reducing the difference in learning

Theme	Item	Content
Attachment: affection ties	Like, or dislike school	11 students responded: (A, B, C, D, E, F, G, H, I, J, K) 1. like school: 4 students (A, B, H, J) 2. dislike school: 3 students (C, D, G) 3. neither like nor dislike: 4 students (E, F, I, K)
	Reasons	9 students responded: (A, B, C, D, G, H, I, J, K) 1. like school: 4 students. 【friend: 2 students (A, J)】 【teachers: 1 student (B)】 【change herself: 1 student (H)】 2. dislike school: 3 students. 【punishment: 2 students (C, D)】 【teachers: 1 student (G)】 3. neither like nor dislike: 4 students. 【friend: 2 students】 【I: He wants to play with friends; K: He wants to meet classmates.】

There are three students who dislike school due to their teacher’s factor. This teacher’s factor could classify as the attachment bond. It finds the concept of the “negative attachment” among the three students.

There are two students who like school due to the friend’s factor. There are also two students who neither like nor dislike school due to the friend’s factor. Also, there is a student who likes school because of the teacher’s factor. “Friends and teachers” could classify as the attachment bond. It finds the concept of the “positive attachment” among the five students.

In terms of reducing the difference in learning, it shows the concept of the “positive and negative attachment” among the eight students. The concept of the “attachment” plays an important factor among the students who like or dislike school.

2. Improve Schoolwork

Table 4: The analytic result of improving schoolwork

Theme	Item	Content
Attachment: affection ties	Learning difficulties	Subjects English: 5 students (A, C, I, J, K). Math: 5 students (C, D, F, J, K). Chinese: 3 students (G, H, K). Science: 2 students (D, H) . Chemistry: 3 students (A, C, J). Geography: 1 student (A). Art: 1 student (H). Computer: 1 student (K) .
		Reasons 9 students responded: (A, C, D, F, G, H, I, J, K) 1. the teaching method of the teachers: 5 students (A, F, H, J, K) 2. own factor: 3 students (C, D, G) 【C: no interest; D: learning frustration; G: laziness】 3. transfer school: 1 student (I)
	Improvement 9 students responded: (B, C, D, F, G, H, I, J, K) 1. improvement: 7 students (B, C, D, F, G, H, I) 2. no improvement: 2 students (J, K) 【they only joined the project twice】	

The students mainly have learning difficulties in subjects such as English and Mathematics. Five students responded that the teaching method of the teachers caused learning difficulties. Also, there were three students who had learning difficulties due to their own factors. Thus, there were nine students out of eleven who experienced learning difficulties. This indicates that the vulnerable students have learning difficulties. These results do worth concerning the learning difficulties on the vulnerable children.

3. Create a self-learning attitude

Table 5: Analytic result of creating a self-learning attitude

Theme	Item	Content
Attachment: affection ties	Reading feeling	8 students responded: (A, C, D, E, F, G, H, I) 1. like reading: 4 students (A, D, H, I) 2. dislike reading: 1 students (C) 3. neither like nor dislike: 2 students (E, F) 4. other factors: 1 student 【G: He only likes science.】
	Change about self-learning attitude	8 students responded: (B, C, D, E, F, G, H, I) 1. agree: 3 students (B, G, H) 2. disagree: 2 students (C, D) 3. neither like nor dislike: 2 students (E, F) 4. other factors: 1 student 【I: He must take medication for “ADHD”.】

There were four out of eight who liked reading. In addition, there were three students who changed their self-learning attitudes. However, others did not obviously change their self-learning attitude.

Vulnerable families face economic hardship and social isolation. Their children lack learning resources, not in terms of attention and love because the guardians are probably reluctant to do so, but in economic support. The Project can provide schoolwork counseling that will support vulnerable families and show concern about educational issues.

Attachment to Guardians

Thus affection identification, love, or respect is taken as the crucial element of the bond to the parent, all of which suggests that it is not simply the fact of communication with the parents but the fact of communication that is crucial in affecting the likelihood that the child will recall his parents when and if a situation of potential delinquency arises (Hirschi, 1969).

Table 6: Analytic result of attaching guardians

Theme	Item	Content
Attachment: affection ties	family relationship	7 students responded: (B, D, E, F, G, H, I) 1. take care of family: 1 student (B) 2. actively help housework: 3 students (E, F, I) 3. actively embrace their guardians: 4 students (B, G, H, I) 4. share and communicate with the guardian: 2 students (D, I)
		4 guardians responded: (D's, I's mom; E and F's mom; H's grandma) 1. actively help housework: 2 guardians (E and F's mom; H's grandma)

		2. actively embrace their guardians: 2 guardians (I’s mom ; G and H’s grandma) 3. share and communicate with each other: 2 guardians (D’s, I’s mom)
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In respect of attaching guardians, seven students think that they strengthen the family relationship. For instance, the student (B) feels great affection for his family so that he will take care of his paralyzed grandmother. His father said that it is a miracle that the grandmother could show a slight reaction to the boy. When he felt the expectation of his father, he cried.

They (G, H) also feel great affection for their family so that they will be concerned about the health of their grandmother and actively embrace her. Similarly, other students (E, F, I) help with housework. As Hirschi (1969) noted, communication is the crucial element of the bond to the parent. The children (D, I) often share and communicate with their mothers, so that their mothers are touched beyond words.

Attachment to Volunteers

Table 7: Analytic result of attaching volunteers

Theme	Item	Content
Attachment: affection ties	Support and Trust partners	10 students responded: (A, B, C,D, E, F, H, I, J, K) 1.strict: 2 students (C, K) 2.concern and care: 4 students (C, D, F, J) 3.friendly: 3 students (E, H, K) 4.Trust partners: 5 students (A, B, D, I, J)
		6 guardians and 2 volunteers responded: Like family relationship: 6 guardians and 2 volunteers (D’s, F’s ,I’s and K’s mom ; A’s, H’s grandma) (A’s, B’s volunteers)

In respect of attaching volunteers, ten students responded to the item. They think that the volunteers are strict and friendly. Similarly, they (C, D, F, J) feel that the volunteers are concerned and care about them. This makes sense in that they are trust partners. Moreover, six guardians feel that the volunteers are like family relationship. For instance, the two grandmothers (A’s, H’s) think that they are close rather than their parents. It is evident that the students in the "Bud Project" create the social attachment bond.

The theory of social learning points that the behavior require through learning or the interaction of the environment. The cognitive ability is influenced by significant others, regardless of age or particular step. The behavior’s reaction of the significant others are pivotal factors (Jou, 2004).

The young volunteers interact with the students as a partnership or family. They support the students and establish trust relationship with affection ties. Most importantly, they become the significant others of the students over a long period of time.



These examples reflect that affection identification, love, or respect is taken as the crucial element of the bond to the guardians and volunteers.

Create the Social Belief Bond

In terms of belief, the children comply with the value of traditional norms to prevent them from going astray. Through character education, the volunteers guide the children to change life values. For example, before the end of the course, the volunteers will ask the children how to put these aphorisms into practice and help them implement them in daily life.

Table 8: Analytic result of belief

Theme	Item	Content
Belief:	Life values	8 students responded: (D, E, F, G, H, I, J, K) 1. filial piety: 4 students (D, E, H, I) 【He (D) would share Jing Si Aphorisms with his mother.】 【They (E,H, I) learn how to be filial from the aphorisms.】 2. relationship: 3 students (H, I, J) 【thoughtfulness; learn how to get along with others】 3. contentment: 3 students (G, J, K) 【reduce material desire and cherish all things】 4. do good things (happiness) : 1 student (K) 5. learn Buddha Dharma: 1 student (F) 【She would watch the life wisdom programs of Master Cheng Yen on Da Ai TV.】
		5 guardians and 1 volunteer responded: (D's, E's, I's and K's mom; H's grandma) (B's volunteer) 1. parent-child interaction: 4 guardian (D's, E's, and I's mom; H's grandma) 2. relationship: 1 volunteer (B's volunteer) 3. mature mental: 1 guardian (J and K's mom,) 4. learn Buddha Dharma: 1 guardian (F' mom)

Four students learned how to be filial to improve the parent-child relationship. True filial piety is cultivating oneself spiritually through actions. For example, they would do housework voluntarily, and embrace and share what they learned to comfort their mothers. Their guardians also think that their children make progress in filial piety. Moreover, three students learned how to get along with others in a relationship, and three students learned how to reduce material desire and cherish all things.

Actions speak louder than words. It is imperative that the students put these aphorisms into practice in daily life. It is evident that the students in the "Bud Project" create the social belief bond.

Jing Si Aphorisms Teaching could significantly enhance self-recognition, and interpersonal relationships. It explores the delayed effects produced on elementary school students' self-recognition, school-recognition, and family-recognition. Regarding the effects of relationship with classmates and teachers, it indicates delayed effects (Tsou, S., Liu, & Tsou, W. 2007) .

Therefore, the psychological theory to explain the moral judgments can be divided into the following three categories (Jou, 2004) :

1. The theory of cognitive development

Moral judgments differ from individual differences in the development of cognitive structure. Therefore, the person of the moral judgment with younger age, low intelligence or low level of education is worse than the one older, high intelligence, or the higher level of education.

2. The theory of motivation

Individual differences in moral judgments differ from the training process of the motivation. The person of the moral judgment due to lower empathy and communication skills is poorer than the one with higher empathy and communication skills.

3. The theory of social learning

When a person develops good moral judgment and behavior, he is required to train self-control capability through a variety of social environments. A person has poor moral judgment because of the worse factors of social environment (e.g., family, school, or social surroundings). Furthermore, moral judgment is different from moral behavior. Specifically, moral behavior hinges on self-control, situational changes and personal interpretation of situational factor, in addition to moral judgment.

The theory of social learning is suitable to describe the situation of vulnerable children. The plan targeted "vulnerable children" from elementary school to secondary school, including single-parents, low-income families, foreign spouses, and drug user families. Their guardians mostly supervise and educate their children without capacity.

Apparently, a poor environment have a detrimental influence upon the moral judgment of children's capability. In contrast, the "Bud Project" combines schoolwork counseling with humanity education. It aims to gradually inspire the students' morals and behaviors through character education over the long term.

Vygotsky (1978) indicates the concept of zone of proximity development. He thinks that intelligent operation implicates in the social and cultural context. Children grow in different cultural contexts so that they gain access to knowledge, and behavioral patterns are influenced gradually by cultural norms and social experience. Bourdieu (1990) demonstrates the concept of habitus. The habitus makes possible the free production of all the thoughts, perceptions and actions inherent in the particular conditions of its production, and only those. It is the product that a person interacts with the environment.

Vulnerable children are influenced gradually by cultural norms and social experiences. The humanitarian educational activities in the plan put moral judgment and behavior into practice through interactive relationships and a warm environment. In terms of belief, the vulnerable children comply with the value of traditional norms. Through character education, the volunteers help instill positive values in the children.



In the humanity education of the project, the volunteers discipline the children through various daily courtesy courses. As the theory of social learning notes, the individual is required to train self-control capability through a variety of social environments. The children are able to learn and internalize life values in a friendly environment.

Create the Social Commitment Bond

Table 9: Analytic result of developing future goals and aspirations

Theme	Item	Content
Commitment: aspirations	Plan for the future	<p>11 students responded: (A, B, C, D, E, F, G, H, I, J, K)</p> <p>1. expected occupation: 9 students (B, C, D, E, F, G, H, I, K)</p> <p>2. others: 2 students (A, J) 【They wish to be a smart and happy person.】</p>

If, for any reason, a person loses his motivation to struggle for conventional goals, he is to that extent free to commit deviant acts without “normal” concern for the consequences. The stance toward aspirations taken here is virtually opposite to that taken in strain theories, where conventional aspirations are typically seen as a source of motivation to delinquency. In contrast, such aspirations are viewed as constraints on delinquency (Hirschi, 1969).

Halpern (2003) defines after-school programs as protection and care, and provides students with rich opportunities for knowledge, self expression, and play. In addition to the family, schools and streets, children can explore different forms of safe environment to learn and broaden their horizons.

The "Bud Project" is a safe place of protection and concern. Likewise, it not only provides students with rich opportunities for knowledge, but also inspires the students to put their moral ability into practice through character education.

Vulnerable students probably lose their ambition and motivation to struggle for future goals due to economic hardship and social isolation. The young volunteers support the students to establish trust relationships with affection ties. Most importantly, they become the significant others of the students, and encourage them with educational and occupational aspirations for the future life.

The more the students commit to conventional goals, the less they commit to deviant acts.

In terms of developing future goals and aspirations, nine students responded that they have an expected occupation. For instance, although the student (D) encountered punishment from a strict teacher, he still wants to be a friendly and patient teacher. The sister (C) desires a steady job having witnessed the hardship of her mother.

Furthermore, they (F, K, H) want to make a lot of money to be filial to their guardians and help others. Although she (A) grew up in a narcotic and single-parent family, she merely wants to be a smart and happy person.

As long as the children do not give up on themselves and their future life goals, learning difficulties are only temporary obstacles. It is evident that the students in the "Bud Project" develop the social commitment bond. Clearly, the project would inspire their aspirations for their future life.

Create the Social Involvement Bond

Table 10: Analytic result of reducing deviant behavior

Theme	Item	Content
Involvement: conventional activities	Have bad habits	8 students responded: (B, C, D, G, H, I, J, K) 1. behavior: 4 students (B, C, D, K) 2. dirty words: 5 students (B, D, I, J, K) 3. lie: 4 students (H, I, J, K) 4. others (e.g., fight, play, or misbehave) : 6 students (G, I, H, B, C, J)
	Change bad behavior	4 students responded: (B, H, I, K) 1. behavior: 1 student (B) 2. dirty words: 2 students (B, K) 3. reflect: 2 students (H, I) 4. others: 2 students (B, I) 【He (B) seldom plays on-line games in the internet cafe.】 【He (I) seldom quarrels with others.】

Table 11: Analytic result of enhancing moral ability

Theme	Item	Content
Involvement: conventional activities	Learn moral ability	10 students responded: (B, C, D, E, F, G, H, I, J, K) 1. parent-child interaction: 7 students (B, D, E, F, G, H, I) 2. courtesy: 6 students (C, D, F, I, J, K) 3. contentment: 2 students (J, K) 4. help others: 1 student (D) 5. responsibility: 1 student (J)
		5 guardians and 2 volunteers responded: (C's, I's, E's, J's mom; G's grandma) (A's, D's volunteer) 1. parent-child interaction: 4 guardians (D's, I's mom, E and F's mom; G and H's grandma) 2. courtesy: 3 guardians (C and D's, I's, J and K's mom) 3. responsibility: 1 guardian (J's mom) 4. help others: 1 volunteer (D's volunteer) 5. optimistic: 1 volunteer (A's volunteer) 【She (A) would actively embrace the volunteer like a sister.】



Most of the students have bad habits, including swearing and lying. On the other hand, when they participated in the plan, four students responded that they changed their bad behavior (e.g., swearing, reflect, quarrel). Moreover, ten students responded that they learned moral ability. For example, six students learned courtesy. There were also three guardians who responded that their children have seen improvements in courtesy.

Additionally, seven students learned how to promote parent-child interaction. Their guardians also felt that their children made progress in filial piety. It is evident that the students in the "Bud Project" create the social involvement bond.

A person's behavior in society does not depend on their own likes and dislikes, but should comply with social norms and expectations of the community. The process learns social norms and expectation is called socialization process (Tsai, 2005). The "Bud Project" could be a part of socialization. To prevent children from going astray, the volunteers in the community help them to learn to respect others and to abide by rules. The vulnerable children begin to practice real participation through observation, imitation, and dialogue with people. They are getting into the core of cultural context. As Sampson (1997,2002) noted, it is the linkage of mutual trust and the willingness to intervene for the common good that defines the neighborhood context of collective efficacy.

Such a general approach is rooted in Bronfenbrenner's (1979) system theory point of view. Everyone lives in a particular environment by the impact of various systems, such as family, school, neighborhood and community as well as social environment. Such as parent-child interaction within the members or the teacher-student relationship have significant impact learning for the individual. Like a seed, a growing person needs soil and deep roots over time, and is shaped by the surrounding environment.

CONCLUSIONS

This study explores the effectiveness of the project in the interaction and how social bonding theory works in relation to vulnerable families. Some concrete initiatives include the following:

1. Attachment: Affection Ties

Control theory assumes that the bond of affection for conventional persons is a major deterrent to crime. The stronger this bond, the more likely the person is to take into account when and if he contemplates a criminal act (Hirschi, 1969). In respect of attaching guardians, the students strengthen the family relationship. They feel great affection for their family so that they will actively embrace, concern, share, and communicate with their guardians. The young volunteers interact with the students as a partnership or family. They support the students and establish trust relationships with affection ties. Most importantly, they become the significant others of the students over a long period of time. These examples show that affection identification, love, or respect is taken as the crucial element of the bond to the guardians and volunteers.

2. Belief: Life Values

In the humanity education of the project, the volunteers discipline the students through various daily courtesy courses. As the theory of social learning notes, the individual is required to train self-

control capability through a variety of social environments. The children are able to learn and internalize life values in friendly environments and through interaction. The students comply with the value of traditional norms to prevent them from going astray. Through character education, the volunteers help the children change their life values, and inspire them to implement them in daily life. Actions speak louder than words. It is imperative that the students put these aphorisms into practice in daily life. It is evident that the students in the "Bud Project" create the social belief bond.

3. Commitment: Future Goals and Aspirations

If, for any reason, a person loses his motivation to struggle for conventional goals, he is to that extent free to commit deviant acts without "normal" concern for the consequences. Aspirations are viewed as constraints on delinquency (Hirschi, 1969). In terms of developing future goals and aspirations, the students have expected occupation. Furthermore, they want to make a lot of money to be filial to their guardians and help others. As long as the children do not give up on themselves or their future life goals, learning difficulties are only temporary obstacles. It is evident that the students in the "Bud Project" develop the social commitment bond. Clearly, the project would inspire their aspirations for the future life.

4. Involvement: Conventional Activities

Most of the students have bad habits, including swearing and lying. On the contrary, when they participate in the plan, they change their bad behavior and learn moral ability. It is evident that the students in the "Bud Project" create the social involvement bond.

A person's behavior in the society does not rely on their own likes and dislikes, but should comply with social norms and expectations of the community. The process learns social norms and expectation is called socialization process. (Tsai, 2005). The "Bud Project" could be a part of socialization. To prevent the children from going astray, the volunteers in the community help them to learn to respect others and to abide by rules. The vulnerable children begin to practice real participation through observation, imitation, and dialogue with people. They are getting into the core of cultural context.

RECOMMENDATIONS

1. Rights of the Child and Support of the Families

Healthy relationships play a pivotal role in the family and are crucial to the well-being of children and adults, as well as society in general. There is not a perfect family, but the vulnerable families face immense pressure and burden which, without some outside aid and support, could be harmful to the children and adults involved.

"Rights of the child, supporting families" is a new paradigm for child welfare, and shifts child welfare policy from child protection prevention to family support services. The Tzu Chi volunteers actively seek out vulnerable families in their community. They aim to support families in providing adequate care and protection for their children through community based concepts which work in partnership. They not only support the guardians, but also show concern for the children's future. They establish trust relationship with the families, and help them to form positive parent-child attachments over the long term.



2. The Connection between Charity and Education

Characteristics of the social work profession are to emphasize "people in the environment". The services for vulnerable family strategies provide effective intervention strategies that focus not only on individual psychology and behavior of the adaptation, but also are concerned about family interaction, and do not neglect the social environment change.

It is recommended that the future charity programs for assisting vulnerable children should focus on children's development and educational intervention and take the family as a support target because of the family centered social model.

3. Social Bonding Theory Gain Feedback from the "Bud Project"

(1) Social Bonding Theory Could Influence the Social Structure (vulnerable families)

Some argue that social bonding theory seriously neglects the impact of social structure on crime, such as race, the gap between rich and poor. The value of qualitative research does not find the variables and analyze the causal relationship between variables. It identifies the situations and context of the objects (Xiao, 2009). This study through the analysis of the interview context explores its effectiveness of the project and how social bonding theory works in relation to vulnerable families.

(2) The Cause is Overlapping on the Concept of Social Bonding, and the Result is Related to the Social Bonding

Hirschi thinks that the four bonds are related and influential. When a person is more strongly attached to the bond, they will strengthen to the bond of the commitment and involvement in traditional activities. Moreover, they will better internalize the traditional belief system. However, the interrelated mechanisms of the social bonding are not clear. What is the model of the mechanism? The study finds that it is the reflection between interrelated and overlapping concepts of the social bonds. Because of the overlapping concepts of the social bonds, it is not clearly distinguished. Although the social bonds were effective, they could not identify what caused the result of the social bonds. For example, when vulnerable families face immense pressure and burden, the volunteers support the families in providing adequate care and protection. These interventions strengthen the effectiveness of the social bonds. Nevertheless, it could not determine exactly what kinds of intervention generate what kinds of result. As the project is implemented, the effect is mixed.

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THE ADOPTION, EVOLUTION AND PROSPECTS OF THE JUVENILE JUSTICE IN CHINA

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The past three decades witnessed a stunning development in the juvenile criminal justice system in China. Despite of the significant progress made, many outstanding issues accompanied by the increasing juvenile delinquency rate and questionable policies to juvenile crime remain unsolved. Controversy remains between the criminal justice “striking-hard against crime” ideology and sympathetic attitude from the general public. Overall, the mechanism of modern juvenile justice in China is still far from sufficient in handling these issues. Based on the statistics from various surveys and official data, this paper presents preliminary analysis on the adoption, evolution, and prospectus of the Chinese juvenile justice as a whole. The paper then discusses the challenges that hinder the development of juvenile justice and predicts the trends in the future.

THE DEVELOPMENT AND INNOVATIONS OF JUVENILE JUSTICE SYSTEM IN CHINA

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The juvenile judging has undergone almost 30 years of development in China. In setting up and developing juvenile judicial agencies, many new trial mechanisms began exploring, such as education through trial, round-table trial, social investigation, suspend judgment and so on. The protection concept has already fixed. China's draft amendments to the Criminal Procedure Law have approved the positive exploration of the juvenile judging. But how to summarize local experiences and settle an integrated national juvenile judging is an important development direction in the future.

THE ESTABLISHMENT AND DEVELOPMENT OF CHINA'S JUVENILE TRIBUNAL

The history about China's juvenile tribunals. As national juvenile judging developed with juvenile delinquency, China's juvenile crime in the early 1980s began to surge and featured violence, gangs, younger-age and. It is that China's Juvenile tribunal and the related came into being.

In November 1984, the first juvenile tribunal showed in Changning District, Shanghai, which declared the juvenile justice came into China. (Yao,2003).With 30-yearlong exploration, there are 2219 juvenile tribunals with 7,000 judges till September 2010 and nearly all juvenile cases belong to juvenile tribunals.(Wang, 2010, September14)Developing China's juvenile justice has the following four stages by the Supreme People's Court of the People's Republic of China.

The first phase, from 1984 to 1988, is to create juvenile tribunals, the exploratory stage. Jiangsu, Beijing, Fujian and other provinces follow Shanghai, having found out a few juvenile tribunals. To exchange experience, in May 1988 a national meeting by the Supreme People's Court was in Shanghai. It clearly stated that to set up juvenile tribunals is a reform of the criminal justice and the experience can extend conditionally. After the meeting, most courts across the country quickly began finding out juvenile tribunals and a juvenile tribunal became an important part of tribunals. The main feature of this stage is that juvenile tribunal work actively explored and the number of juvenile tribunals is increasing larger.

The second phase, from 1989 to 1993, is to extend juvenile tribunals, the universal stage. In 1991, the first normative document, *rules on juvenile criminal cases (test issued)*, by the Supreme People's Court formally made the basic principles and procedures of juvenile tribunals. The same year witnessed another normative document, *a notice to employ special juries in juvenile tribunals*. The Supreme People's Court, the Education Commission, the National Federation of Trade Unions, the National Women's Federation, China Communist Youth League and other related departments jointly issued it. It promotes the comprehensive management of juvenile delinquency and developing related work. Approved by NPC Standing Committee, Chinese government began applying to join Convention on the Rights of the Child, which promoted the international exchanges and cooperation on Juvenile Justice. *China's Protection of Minors Act* of 1991 first took minors as the legal subject. Since then juvenile judiciary should follow the related guidelines and principles and there are increasing juvenile tribunals. This stage is the long-term developing phase of modeling China's juvenile tribunals.

The third phase, from 1994 to 2003, is to consolidate juvenile tribunals, the standardized stage. In 1994, the Supreme People's Court settled a steering juvenile tribunals group, which is responsible



for national juvenile tribunals' work. The juvenile tribunals are of supervision and guidance from the Supreme People's Court and embarked on a more standardized and orderly developing track. In 1999, *China's Prevention of Juvenile Delinquency* passed and juvenile tribunal as a name was for the first time clearly used. Shanghai Higher People's Court in 2001 first proposed the vision of proving juvenile pilot tribunals. Afterwards NPC Internal and Judicial Affairs Committee in 2003 for the first time clearly stated: "In many cities, juvenile tribunals should prove for carrying out experimental work." Juvenile tribunals became exploration of hot spots.

The beginning of this century has witnessed the instant popularity of psychoactive drugs, especially ketamine, among young drug users in Hong Kong, replacing the age-old dominance of heroin. This new drug scene has not only generated the need for more innovations in existing heroin-based treatment and prevention programmes, but also brought new challenges to drug research. Parker's "normalization of recreational drug use" thesis, proposed more than a decade ago, seems to have fully taken shape in Hong Kong by now, as the prevalence of psychoactive drug use since 2000 has persistently been on the rise, and users are no longer confined to marginal youths or school drop-outs, but also coming from regular high school students and working youths. One of the salient characteristics of normalization of drug use is what I call "bad habitization", which is young people's cognitive tendency to reduce the seriousness of use of an illicit and harmful drug to that of a bad habit, thereby undermining their awareness of addictive consequences of psychoactive drug use and the need to seek help. These and other new phenomena surrounding psychoactive drug use have posed new challenges to the research into drug use and drug policy in Hong Kong. The fourth stage, since 2004, is the deeper reform of juvenile tribunals, the improved and perfected stage. The Supreme People's Court in 2004 made the Second Five-Year Reform Plan. According to this, judicial institutions in juvenile cases shall improve; some juvenile pilot tribunals shall prove to meet special needs. And juvenile justice with Characteristics should settle. In 2006, the Fifth National Conference on Juvenile Tribunals was in Guangzhou. Its theme is to quicken the juvenile justice. Since then the juvenile tribunals entered a new period and the reform was of the unified guidance from the Supreme People's court. After the conference, the Supreme People's Court led Intermediate People's Courts to settle integrated juvenile tribunals and determined 17 Intermediate People's Courts of 15 provinces and autonomous regions as pilots.ⁱⁱ

The status quo of China's Juvenile tribunals. There are two main patterns: 1800 juvenile tribunals fixed in the criminal tribunals and 419 juvenile tribunals. By comparison with settling patterns, there are two case ranges: only accepting and hearing minors accused of criminal cases and not only minors criminal cases, also some minors involved in civil and administrative cases. Minors' criminal cases have cut to a special juvenile tribunal trial. (The Supreme People's Court website, 2009, July18)

THE EXPLORATION AND REFORM OF CHINA'S JUVENILE JUSTICE WORKING SYSTEM

The past two decades witness China's juvenile justice development, on which all levels of courts considering characteristics of minors and advanced experience from abroad explored some working methods on China's national conditions, as follows.

Round-table trial. The so-called of round-table trial is a court trial with the principles of the combining flexibility and seriousness, the round-table style rather than trial hearing, and the adaptation to physical and psychological characteristics of minors. Its main feature is to create an

ease, relaxed, yet serious nature of trial atmosphere. The former trial is sharp and pointed, but the current is slow and moderate. Changing the past layout of the courtroom, the trial questioning tone, focus and attitude, and the trial control achieves the unity of form and content and gets the best result. (Lian, Pei and Guo, 1998)

Most juvenile courts have adopted Round-table Trial. But concrete forms are slightly different, some of whom are U-, oval or round. And the juvenile defendants do not wear restraints, sitting and accepting the court investigation and inquiry, which reflects the characteristics of juvenile criminal proceedings. In some juvenile tribunals, the dock looks like a book, so the accused in the dock feel returning to school and are more likely to accept the trial and education. (Hu, 2008)

Social investigation. Social investigation refers to in juvenile criminal cases, relying on social forces and looking into the background of suspects (the accused) before judging. It need to get a comprehensive view of juvenile suspects ' or the accused' upbringing and living environment, thus it is easier to made a detailed analysis of those subjective and objective reasons on making crimes. Social investigation on the juvenile accused seeks an important basis providing objective and fair criticism, probation and saves from sins for the judiciary. In 2004, Southern District court, Qingdao first carried out personality investigation, in which family background, upbringing, life path, and characteristics of the juvenile defendant become sentencing references in the juvenile tribunal. This reform attracted more attention from the public, the Supreme People's Court and courts throughout the country, which promotes establishment and instrument of social investigation. *PRC Criminal Procedure Law Amendment (Draft)* sent for deliberation by the NPC Standing Committee on August 24, 2011, confirmed this exploration. *PRC Criminal Procedure Amendment (Draft)* states that in the court investigation, judges should understand juvenile defendant's upbringing, causes of crime, and conditions of criticism and transformation.ⁱⁱⁱ

Appearance of his, her or their legal representatives. There is also another name, appearance with eligible adults. According to *PRC Criminal Procedure Law*, some defendants' legal representatives with a certain notice may attend the interrogation and the trial on juvenile suspects or the accused fewer than eighteen years old. *PRC Criminal Procedure Law Amendment (Draft)* has amended as followed: tribunals must let know legal representatives of the juvenile suspects or the defendants they have right to attend the interrogation and trial. Sometimes the notice cannot arrive at, legal representatives cannot attend or they are an accomplice of the suspects or defendants. Even in these circumstances, tribunals also may tell other close proper relatives and representatives of their school, their work unit, address committees, neighborhood committees, and protection of minors. And all will show in interrogation transcripts. Present legal representatives can attend the tribunal for the suspects or the defendants. After the last statement from the juvenile suspects or the defendants, legal representatives can add to statement.

Suspended prosecution. Suspended prosecution is a certain condition in which People's Procuratorate should have prosecuted certain criminal suspects. Because of some reasons, such as criminal suspects' circumstances, public interest and., the People's Procuratorate set a certain period and requirement. If it is beyond the duration and the criminal suspects meet the requirement, the People's Procuratorate no longer prosecute them. Recently there are some pilots, such as the People's Procuratorate of Penglai City, Shandong province. From early 2007 to August 2008, 13 cases had applied to suspended prosecution. Of these, six cases are of juvenile delinquency, whose percentage is 46.2%. (Lin and Sui, 2009) *PRC Criminal Procedure Law Amendment (Draft)* made this sure. Sometimes juvenile defendants were on suspicion of committing the crime on Chapter IV,



Chapter V or Chapter VI of PRC Criminal Law and possible penalties on them may be less than one year in prison. This moment the people's Procuratorate may decide not to prosecute them. But before the decisions, the people's Procuratorate should hear ideas from victims and Bureau of Public Security. In the test period, the People's Procuratorate supervises the suspects under the guardians of suspects also with the former together, strengthen the discipline on the suspects. The test period is from six months to one year. If the suspects in the period follow the relevant rules, beyond the period the People's Procuratorate shall decide not to prosecute.

Suspend judgment. Suspend judgment is a sentence considering not only defendants' offense and remorse, but also their performance during the investigation after judging. The defendants refer to juvenile defendants with certain conditions. According to judging decisions, they return working, studying at school, or being under relief with social welfare agencies appointed by the judiciary. Juvenile tribunals of Changning District People's Court Shanghai on December 20, 1993 first applied to juvenile defendants the suspend judgment.

Mitigation of penalty. China's juvenile tribunals have largely performed Mitigation of Penalty. Juvenile tribunals adhere to the former principle, which is gentle, prone to exemption from punishment, light punishment and probation. The rate of alternatives to imprisonment sentence rises. Mitigation of penalties has achieved significant results in practice, rescuing most minors with wrong steps in life. For example, from September 1987 to September 2007, Haidian District People's Court, Beijing among more than 5,200 juvenile offenders, more than 1200 have gotten alternatives to imprisonment sentence. However, only 1% with noncustodial sentence commits crimes again. There are 45 people studied in Tsinghua University, Beijing Institute of Technology, and.; three people became postgraduate and two studied abroad. (Yang, 2009, Online)

Psychological correction and treatment. In China, some juvenile tribunals began to hire counselors in the trial. It is a fundamental correction of juvenile offenders from psychological problems and received good results. In April 2009, Nanjing Intermediate People's Court and Nanjing Bureau of Education jointly found out the juvenile psychological justice correction center in Nanjing Intermediate People's Court with an expert team. There are seats sides the courtroom for correction officers. After the court debate, correction officers may carry out psychological counseling and treatment to juvenile offenders. In addition, the judgment takes defendants' psychological treatment into consideration. (Nanjing Intermediate People's Court website, 2009, online)

Various forms of relief and education. Besides judgment, juvenile tribunals also set up various forms of relief and education. Some courts have found out juvenile offender files, kept abreast of juvenile offenders in prison, and carried out education on juvenile offenders of non-custodial sentence. There are different schools of some courts like sunshine school, learning law school and newborn school and. According to minors' physical, psychological characteristics and cultural level, these schools pass on legal knowledge to juvenile offenders and carry out emotional and moral education on them. Some primary courts engage in Community Corrections on juvenile offenders of non-custodial sentence with relief base in community and aid agreements.

Sealed minors' criminal records. Some call it Elimination of minors' criminal records, Abolition of juvenile criminal records, or Destroying records of juvenile delinquency. If minors declared guilt or sentenced are with the statutory requirements, statutory authorities will seal off their criminal records or remove their declared guilty. In juvenile justice in China, this has continually explored.

In 2001, Changan District court, Shijiazhuang City, Hebei Province began to explore keeping juvenile stains secret. In 2003, the court first approved measures to erase minors' criminal record. (Gu, 2009). Afterwards, sealed juvenile criminal records in many provinces and cities have occurred, but no large-scale promotion. The good news is that PRC Criminal Procedure Law Amendment (Draft) made this sure. The draft provides that if one person under eighteen years old commits a crime and he is fewer than five years in prison, the judiciary and the relevant departments should seal his relevant criminal records. Additionally, criminal records sealed do not offer any unit and individual, but there is an exception to the judiciary or the relevant units for inspection or by law. But it is important for access to the units according to the law, should keep the sealed criminal records to be confidential. This reflects the progress of society. (Yang and Chen, 2011, Aug25)

In addition, there is Criminal Reconciliation, but it is not only in criminal justice, but also in investigation stage and prosecution stage.

They are mainly exploration of China's juvenile tribunals. Since the Supreme People's Court in 2006 unified set up an independent and comprehensive juvenile tribunal, it has covered minor civil cases and administrative cases. Each juvenile tribunal adheres to maximizing the minors' benefits and intermediating preferred especially on supporting children and getting custody for them. Meanwhile, juvenile tribunal first intermediate, quickly and timely judge. Followed, it gives priority to enforcement. (Xu, 2009, June2). In comparison, the number of administrative juvenile cases is smaller, and lesson from trial is less.

MAIN FEATURES OF CHINA'S JUVENILE JUSTICE

All courts attach importance to juvenile justice reform. Since juvenile justice is in China, with great attention, the Supreme People's Court, Higher People's Courts and local courts actively take measures to promote the reform and continually to develop. The Supreme People's Court in 1994 set up a steering juvenile tribunals group, to guide juvenile justice of local courts. Afterwards, all Higher People's Court under provinces, autonomous regions and direct municipalities settled a group specifically guiding juvenile tribunals. Nearly all intermediate courts and primary courts also have fixed steering groups, responsible for juvenile tribunals. In Shandong Province there are 17 intermediate courts and 147 primary courts. Besides 12 primary courts, other courts also have set up a steering group for juvenile tribunals, which account for 92.7%. Of these, 23% leaders of Steering Group are Presidents of courts, which fully reflect courts' importance on juvenile tribunals. (Zhao, 2011)

Since the 1990s, the steering group of Supreme People's Court has organized several national conferences on juvenile tribunals. It has summarized experiences from local courts to promote continual juvenile justice developing. In recent years, juvenile justice reform has gotten the Supreme People's Court's attention. In May 2009, Wang Shengjun, Present of the Supreme People's Court attended the meeting about juvenile tribunals. He said that as the juvenile delinquency grows and protecting minors' interests is most important, now and future we must strengthen juvenile tribunals rather than not weaken. It is necessary to set up juvenile tribunals, to research on legal issues related to juvenile justice and to strengthen reform of juvenile court through research and theoretical exploration. (Chen, 2009, May15)

It has based an idea of protecting minors. In area of juvenile justice, there are two ideas: juvenile protection and juvenile responsibility. After a deep history, the current idea is an integration of both



ideas, but juvenile protection is more important. (Zhao and Wang, 2006, 6) In China's juvenile justice, it mainly reflects on education through trial. Most courts settled education through trial, in which education and probation on defendants is through the entire trial. For example, before the trial, the judge let minors meet legal representatives, students, teachers and friends, which is a solid foundation of education. In the trial, the Full Court creates a good atmosphere with amiable and patient sayings to prompt minors changing ideas. In the court investigation, the investigator reads a report of community investigation on the juvenile defendant's upbringing and analyses the causes of crime. At the end of court debate, the full court guides prosecutors, defenders and legal representatives to instruct juvenile defendants. After announcing its decision, the collegial panel organized prosecutors, victims, defendants and their legal representatives together to criticize and help the guilty offenders. To achieve the aim of education, some courts also write something on the back of verdict, by furthering it affinity and persuasive. These exploring and innovating methods play a positive role on protecting, save juvenile defendants from sins and avoiding their reoffense.

The specific methods need to unify and improve. In fixing and developing juvenile justice, an important feature is that local courts to explore are the main driving force. Although the Supreme People's Court found up a Steering Juvenile tribunals Group, but in practice, most juvenile justice come from local courts rather than the National People's Congress or the Supreme People's Court. Some courts to carry out some new methods, explored to make many local rules and programs. Pengzhou Intermediate People's Court of Sichuan Province made a document named a program on sealed minors' criminal records. The rule of 11 Leling institutions and departments, in Shandong is known as opinions and rules on sealed minors' criminal records .there is a law called a rule on suspends judgment of juvenile defendants by Sha District Court of Chongqing. Jiamusi Intermediate People's Court in Heilongjiang arrived at a document, named a regulation on round-table trial in juvenile tribunal. There are still rules like these in local courts and Juvenile Tribunals. However, it is a question whether the documents are legal. PRC Criminal Procedure Amendment (Draft) made some methods sure, but there are still some questioned. Although some local courts regulated and imposed Suspended Judgment, there are some suspicions and even criticisms from judges, scholars on it.^{iv}

Thus exploration of local courts improves juvenile justice reform, but also inevitably brings some problems. In future, it is important to base on experiences from local courts and to fix a national unified juvenile justice.

Notes

1. Statistics show that the rate of juvenile crimes & criminal cases in the 1980 increase: 1980(61.2%), 1981(64%), 1982(65.9%), 1983(67%), 1984 (63.3%), 1985(71.3%), 1986 (72.5%), 1987(74.4%), 1988(75.7%), 1989(74.1%).(Kang& Xiang,1996).

2. See the Supreme People's Republic of China website. (2009) and (Shen, 2009).

3. PRC Criminal Procedure Law Amendment (draft) can be found in China Network website. (Sep30,2011)

4. Related content can be found in (Zhang, 2005; Wang, 2008).

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ASIAN CRIMINOLOGICAL SOCIETY

PART 6

LEGAL AND JUDICIAL REFORM AND BEHAVIOR





THE *XINGSHI HEJIE*: CRIMINAL CONCILIATION IN PEOPLE'S REPUBLIC OF CHINA AND IN TAIWAN

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INTRODUCTION

When we say *Xingshi Hejie* (刑事和解)¹, which could be translated as “victim-offender reconciliation” (VOR), we are talking about a conciliatory practice that was only recently implemented in China's criminal legal system² although, despite its recent appearance, it has very ancient roots.

It is founded, basically, on a choice that the person accused of minor criminal offenses makes to enable a conciliatory procedure, with the consent of the judge and the prosecutor, in order to obtain a less severe punishment at the end of the judicial process.³ It is a procedure that allows the victim to receive and promotes the offender's repentance, in fact, very often the rules of *Xingshi Hejie* emphasize the formal apology from the offender to the victim and society, or his acts expressing repentance and contrition.⁴

These features of *Xingshi Hejie* led to its insertion in what are called practices of *restorative justice*, which consist of encouraging the offender, to repent for his criminal actions, which in turn leads to a meeting.⁵ Including VOR in the list of restorative justice practices is essential to understand how deeply rooted in Chinese history and philosophy these practices are, and therefore how far back in time beginnings of criminal reconciliation in China go. John Braithwaite, one of the greatest theorists of restorative justice, recognizes the famous Chinese philosopher Confucius as probably the most influential thinker in the field⁶, and reports in support of its argument, a significant sentence of his Dialogues:

"One of Confucius's best-known views is that "if the people be led by laws, and uniformity sought to be given punishments by them, they will try to avoid the punishment, but have no sense of shame"(Confucius 1974, p. 16⁷). In opposition to His Contemporaries, He Was Against Capital

¹ *Xingshi Hejie* is a word composed of characters 刑 *xing*: punishment, torture, corporal punishment, commonly used to denote the criminal law branch of law, 事 *shi*: literally "deal" with *xing* means "criminal", 和 *he*: means harmonious, gentle, but also peace and is used as a conjunction as its sense of union; finally 解 *jie*: means to explain, interpret, solve, together with *he* takes on the meaning of "resolve with harmony" and, then, reconcile, mediate.

² Shi Yan'an (2008) On restorative justice practiced in China. *Front. law China*, (3)2, 294-323.

³ Shi Yan'an (2008) On restorative justice practiced in China. *Front. law China*, (3)2, 294-323; Xinzhou Zhang, (2004). *A restorative justice audit of the Chinese criminal justice system*. Unpublished doctoral dissertation, London School of Economics and Political Science (<http://www.restorativejustice.org/editions/2005/oct05/china>) Retrieved September 01, 2011, from restorativejusticeonline.org.

⁴ Yue Zhuo, Messner, S. F., & Lening Zhang, (2008). Criminal victimization in contemporary China: a review of the evidence and challenges for future research. *Crime, Law and Social Change*, 50, 197 - 209.

⁵ Braithwaite, J. (2002). *Restorative justice and responsive regulation*. New York: Oxford University Press.

⁶ Braithwaite, J. (2002). *Restorative justice and responsive regulation*. New York: Oxford University Press.

⁷ This is a quote from Confucius' dialogues, in particular, this is article 3 of the second book, an alternative translation is: "The Master said, Govern the people by regulations, keep order among them by chastisements, and they will flee from you, and lose all self-respect. Govern them by moral force, keep order among them by ritual and they will keep their self-respect and come to you of their own accord". English-Chinese edition: 论语 Confucius, (2008) *The Analects*. New York: Oxford University Press.

*Punishment (pp. 92-93, 98). Reciprocity, mutuality, and harmony were central to his ways of seeing.*⁸

Purpose of the research

This research is interested in *Xingshi Hejie* as it is enforced in legal systems of the People's Republic of China and the Chinese Republic of Taiwan. Consideration of the practice in both the People's Republic and Taiwan is justified by the fact that it allows observation of the same legal tradition in two nations that have taken very different political and social roads over the past century, thus permitting a more detailed examination of the influence of Confucian tradition in current criminal reconciliation practices.

Research profiles

The real influence of traditional Chinese legal institutions on current restorative justice practices is much debated. Field research therefore can be particularly valuable helping us to understand how much the modern *Xingshi Hejie* owes to the tradition, particularly Confucian ethics and principles.⁹ Other issues field research can help us analyze include the reasons that the parties choose a settlement procedure, and the advantages that Chinese litigants perceive from this mechanism.

Given the complexity of the questions it is better to put in place a research design that left a lot of freedom to the interlocutor, to let his/her original ideas emerge. So I oriented myself toward research through qualitative, unstructured and addressed to a privileged observer.¹⁰

The research was put in place, thanks to the efforts of Professor Ignazio Castellucci, professor of Chinese Law at the University of Trento, in June and July 2010 at the National Taiwan University, Taipei¹¹, with the kind cooperation of Professor Susyan Jou, and led to interviews to Professor Jou, Examination Yuan Member Frank Yuang, Professor Mou-Shen Lee, Professor Jim Sheu, and Judge Kong-Hu Tsai. While in Nanjing, in the People's Republic, the research has been put in place at the Nanjing University¹² thanks to the kind help of Professor Di Xiaohua, who granted me an interview and advised me on many useful texts about *Xingshi Hejie*.

I would like to take this opportunity to thank them all for their exquisite courtesy and availability, and to express my gratitude to the University of Trento for the financial support granted to this research.

THE *XINGSHI HEJIE*

In the People's Republic of China

⁸ Braithwaite, J. (2002). *Restorative justice and responsive regulation*. New York: Oxford University Press.

⁹ Xiaofeng Wu, (2010). Understanding of criminal reconciliation in ancient China. *Front. Law China*, 5(1), 91 - 114.

¹⁰ With regard to research profiles this text adheres to the classification of the instruments of social research here adopted: Corbetta, P. (1999). *Metodologia e tecniche della ricerca sociale*. Bologna, Italy: Il Mulino.

¹¹ Traditional Chinese: 國立臺北大學 ; English language website: www.ntpu.edu.tw/english/colleges.php (Accessed Oct. 2010)

¹² Simplified Chinese: 南京大学 ; English language website: <http://www.nju.edu.cn/cps/site/njuweb/fg/index.php> (Accessed Oct. 2010)



In People's Republic of China the legal background in the field of victim-offender reconciliation is rather vague and generic, with few laws that take into consideration the *Xingshi Hejie* at the national level.

Article 172 C.C.P. states that it is necessary that VOR is applicable only if an agreement between the parties has been reached and that the victim has evidence to prove that the crime is a "minor criminal case", Article 130 and 142 of the Code of Criminal Procedure state that a prosecutor in the stage of preliminary investigation may decide not to proceed further in prosecuting if the "*criminal suspect's criminal responsibility should not have been investigated*" (Article 130 C.C.P.) and if "*an act is obviously minor, causing no serious harm, and is therefore not deemed a crime*", or if "*the crime is to be handled only upon complaint according to the Criminal Law, but there has been no complaint or the complaint has been withdrawn*" and "*if other laws provide an exemption from investigation of criminal responsibility*" (Article 142 C.C.P.). Article 130 and 142 are important if the conciliatory settlement has been reached under Article 172 C.C.P., as they constitute the tool that allows the prosecutor to avoid proceeding further in criminal prosecution; also their being unspecific let the prosecutor to be more flexible in exercising this power, not only about cases prosecuted upon complaint covered by Article 172.

If instead we face a crime where the prosecution takes place automatically, *ex-officio*, and the prosecution has already been carried out, to let the conciliatory settlement enter the process we must refer to Article 37 of the Chinese Criminal Law.¹³ This Article is included in the section on different types of punishment provided for in the People's Republic, and is in a significant place at the end of the section, after a series of schematic rules for all other retributive penalties,¹⁴ and confirms the possibility of the Court to not impose criminal measures against the offender.

The Article says: "*If the Circumstances of a person's crime are minor and do not require criminal punishment, he may be exempted from it; however, he may, depending on the different circumstances of the case, be reprimanded or ordered to make a statement of repentance, offer an apology or pay compensation for losses, or be subjected to administrative penalty by the competent department*"¹⁵.

Article 37 of China's Criminal Code is therefore pivotal for the *Xingshi Hejie* in People's Republic of China, since it is not limited to offenses prosecuted upon complaint and even though the law does not speak explicitly of an agreement, it places a range of possible punishments for the offender that certainly fits well (and have in fact well adapted) to the conciliatory procedure. This article reflects the importance given to repentance, to apology, and to compensation, and then also reflects the influence of Confucian tradition, and the ultimate goal of achieving harmony in society. But we can also see a certain vagueness in the rule, the only requirement to engage in this type of punishment seems to be that the offense is minor, even if we could clearly state when a crime is to be considered such, we don't have any other requirement except the fact that crime should not require a punishment, certainly a factor difficult to interpret.

Everyday experience tells that this vagueness has played an important role in ensuring the application of an institution such as that of criminal mediation, which doesn't tolerate a compelling body of regulation. This conciliation system provides a more immediate and real satisfaction of

¹³ Here we refer to the new Criminal Law of 1997.

¹⁴ Chinese Criminal Law, chap. III: Punishments; section I: Types of punishments; artt.32-37.

¹⁵ Translation by Shi Yan'an (2008) On restorative justice practiced in China. *Front. law China*, (3)2, 294-323..

victims' interests, and from the standpoint of the public interest involved seems to be able to produce lower rates of recidivism. To give an idea of how *Xingshi Hejie* is actually applied in the People's Republic, it is useful to examine some significant local regulations, which may also give an idea of the complexity and variety of conciliatory procedures in the PRC:

I. The Office of Justice of the Yangpu District (one of the 19 districts that form the city of *Shanghai*¹⁶), the Public Security Bureau of the city and the Procuratorate have issued several documents¹⁷ in order to entrust to local People's Mediation Committees several minor criminal cases, especially regarding minor injuries. According to these document, with regard to minor injuries at every stage of ordinary criminal proceedings, the public institution having charge of the procedure (these are: the organs of public security in the initial stages; the Procuratorate and the court below) may decide to entrust the PMC of the conciliation procedure. In addition there is a mechanism by which, if the parties have reached an agreement in civil lawsuit related to the criminal process about compensation for damages resulting from the offense, the institution that is in charge of the procedure can consider not to report the case to the Attorney and to stop considering it a crime (if the department is an organ of public security), or (if the body in question is the procurator), not to prosecute, or (in the case instead it is the court) not to punish the offender.

II. The city of *Nantong*¹⁸, in Jiangsu, has developed a rather interesting and original conciliation program, not only functional in criminal mediation, but also in civil disputes and above all in administrative ones.¹⁹ The project is called *Dà Tiaojie*, 大调解, literally "Great Mediation", it also involves, as the procedure in Shanghai, the People's Mediation Committees, but is characterized by the fact that it not only involves these committees, but also other political representatives and directors, as officers from Public Security Organs, judicial organs and offices that bring together the complaints of citizens; the same PMCs are also involved at more administrative levels: district, city, sub-district. The District Procuratorate of Chongchuan²⁰ issued a document called "Provisional Measures on Bringing Civil Compensation Disputes Caused by Minor Offenses into "Great Mediation" Mechanism", which underlines that the reconciliation program is focused on the civil litigation incidental to the main criminal case, but influences directly the criminal proceedings. In fact, however, is the prosecutor who decides, whether the victim and offender are favorable, to mandate the procedure in the *Da Tiaojie* institute.

III. In *Xinbei*²¹, District of Changzhou²², another city in Jiangsu, has been issued in 2007 a set of rules for the mediation in criminal matters, based on the principles of restorative justice, and after this innovation the University of Nanjing, who also participated in the drafting of legislation as a

¹⁶ The city of Shànghǎi, 上海, enjoys the status of province, it is one of the four municipalities in China to enjoy this status, along with Beijing, Tianjin and Chongqin.

¹⁷ On 30 July 2002 a first document called "The Implementation Advice on Joint-Mediation of Injury Disputes among Civilians (for trial implementation)", In April 2005 a second document called "Some Provisions on Entrusting PMCs to Mediate in the Process of Handling Minor Criminal Cases (for trial implementation)", and finally in November 2009 a third document called "The Regulation on Authorizing PMCs to Mediate Minor Injury Cases in the Criminal Process (for trial implementation)". (Source Shi Yan'an (2008) On restorative justice practiced in China. Front. law China, (3)2, 294-323)

¹⁸ Nantong, 南通 is a city in Jiangsu province, which is located near the municipality of Shanghai.

¹⁹ In this respect: Professor Di, interview.

²⁰ One of the districts that divide the province of Nantong.

²¹ The District of Xinbei, *Xīnběi Qū*, 新北区, is one of the districts in which is divided the city of Changzhou.

²² *Changzhou*, 常州, is a city in Jiangsu province, located near the capital of this province, Nanjing.



consultant, sent a research team²³ which examined the satisfaction of victims and perpetrators after the mediation procedure. The set of rules referred to was adopted by the People's Procuratorate in April 2007 and is defined: "Rules on the Victim-Offender Reconciliation of Minor Criminal Cases in People's Procuratorate of Xinbei District". The application of conciliation in criminal matters before the adoption of these standards in the district was characterized by economic perspective, the institution was considered as a method to obtain more rapid and consistent compensation for damage suffered by the victim. So the reconciliation was poorly informed by the principles of restorative justice, principles which are instead central in the 2007 legislation. In particular the new legislation highlights the forgiveness of the victim and the apology from the offender; and even more it brings to the middle of the procedure the same victim and offender, thanks to procedures that help the victim to overcome the shock of the crime, and procedures that aim to the reintegration of the offender, and also that maintain the willing nature of the procedure and the freedom of choice for victim and offender.

In the Chinese Republic of Taiwan

The Republic of China is a young democracy, with a strong push for innovation provided by a vibrant doctrine. If you deal with the subject of *Xingshi Hejie* in the Chinese Republic of Taiwan you find yourself in front of an institute at times similar to that of the People's Republic, but fell in a very different context. First of all it must be remembered that the two systems are now different, with a democracy that can be considered complete in its essential features in Taiwan; and instead a complex political situation that we can superficially define as "single-party" in Mainland China. On the other hand one must remember that the reconciliation in Taiwan cannot rely on the apparatus and the experience of People's Mediation Committees developed in Mainland China during the Maoist period. And finally one must consider the different needs related to the size and population of the two states, so that decentralization is not so very important to Taiwan than to the Mainland.

As in Mainland China, the legal background for the criminal reconciliation is rather vague, it is based on Articles 57²⁴ and 59²⁵ of the Criminal Law of Taiwan²⁶, these two articles list a number of extenuating circumstances which the Court must keep in mind when issuing its sentence, one of the circumstances listed in Article 57 includes the fact that the offender has shown remorse for his criminal conduct, while Article 59, more vague, states that if the judge finds that the offender shall be forgiven for his conduct, he or she can impose a lighter sentence. The Taiwanese Judge Kong-Hu Tsai, during his interview, explained how, by practice, the Courts of the Republic of China, if a

²³ The text of the report of the research, of which a summary is provided here, was delivered to me by Professor Di, who I thank very much for this, and has not yet been published. References in the text are: Di Xiaohua, Li Xiang, He Lu, Gao Hui, (2010). Report on the Victim-Offender Reconciliation of Minor Criminal Case in People's Procuratorate of Xinbei District

(常州市新北区人民检察院课题"轻微刑事案件和解机制研究). Unpublished manuscript, Nanjing University, Nanjing, PRC.

²⁴ Article 57 refers to a series of circumstances which the court must take into account when deciding on sentencing; among them number ten: 十, 犯罪后之态度, requires to take into account the attitude of the offender after having committed the crime; it can be translated as, "if the offender shows remorse" (Judge Kong-Hu Tsai, interview).

²⁵ Also article 59 refers to circumstances under which the court must take into account when issuing his sentence, is that if the judge finds the offender otherwise forgivable, can impose a more lenient punishment, "if the judge Thinks That the offender is forgivable HIM or he can sentence her to a lenient punishment "(Judge Kong-Hu Tsai, interview).

²⁶ The Criminal Law was adopted in Taiwan March 10, 1928 and consists of 387 articles.

conciliation agreement has occurred between the parties, usually refer to these two articles to justify a less severe punishment or the fact for the culprit to be completely exempted from punishment.²⁷

From the point of view of criminal procedure, important rules can be found in the Code of Criminal Procedure in the section devoted to the phase called as "Investigation" (the first phase of criminal proceeding) governed by Articles 228-263.²⁸ In particular, Article 253 of the Code of Criminal Procedure states: "If a public prosecutor considers it appropriate not to prosecute a case specified in Article 376 after having taken into consideration the provisions of Article 57 of the Criminal Code, he may make a ruling not to prosecute."²⁹ This item allows the prosecutor not to prosecute if the case fall under the scope of Article 376 of the Code of Criminal Procedure, this article gives e a legal definition of what a "minor criminal case" is: unlike the People's Republic of China, Taiwan has in fact a law that lists which are the so-called minor criminal offenses³⁰. The second condition for which the prosecutor may decide not to prosecute is the reference to Article 57 of the Criminal Code, so it must be taken into account, among other things, the repentance of the perpetrator.

It can be seen therefore that the combined operation by Articles 57 and 59 of the Criminal Code about the trial stage, and by Article 253 for the previous phase before the criminal prosecution, provides the Court and the Prosecutor a tool that let them consider, within criminal proceedings, the successful experiment of conciliation between victim and offender. Unlike the procedure laid down in Mainland China, in Taiwan there are special "Conciliation Board" that are entrusted of VOR procedures by the same parties individually, or by the prosecutor or the judge (depending on the stage of criminal proceeding), or eventually even by the police for less serious cases, always with the agreement of the parties involved.³¹

The Republic of China has developed very comprehensive and specific programs with regard to juvenile justice, and in particular, for what concerns us here, reconciliation is always central in these programs. The introduction of a comprehensive program that included reconciliation within the juvenile criminal law occurred in 1997, on the 2 October of that year was in fact enacted a "Revision of Juvenile Criminal Law", whose rules have been enforced in 1999. This law is aimed at obtaining an agreement between victim and offender, rather than a criminal conviction, but it looks also with favor to the rehabilitation of the offender, it is in fact structured to guarantee a "second chance" to minors convicted of minor crimes and tries to achieve this by involving a wider range of actors in the process of conciliation, so, in addition to the victim and offender's parents, it includes teachers and employers of the parties, together with social workers who will be entrusted of the care of the offender after the dispute and, where appropriate, also of the victim.³² The main feature of these procedures is that them can be handled in court, with the judge acting as mediator; the judge, however, must receive special training in order to exercise this role, training less juridical and more sociological, in fact that training tries to stop the role of the magistrate and to carry out the one of the mediator as completely as possible; so, for example, the procedure takes place in special courtrooms where the judge "gets down" to the level of the litigants, developing what is called a "round table system".³³ This "round table system" is activated if the criminal case dealt with falls

²⁷ Judge Kong Hu-Tsai, interview.

²⁸ The Code of Criminal Procedure was adopted in Taiwan July 24, 1928.

²⁹ Source: www.moj.gov.tw (Accessed Oct. 2010)

³⁰ According to Article 376 are "minor criminal cases" the crimes for which there is a maximum sentence of 3 years imprisonment prescribed by law, along with other marginal cases such as minor cases of theft, embezzlement and fraud.

³¹ Jim Sheu, interview.

³² Susyan Jou, interview.

³³ Mou-Shen Lee, interview.



within the "*Ist loop*" or "protective loop", which includes all offenses for which the minimum sentence prescribed by law not exceed 5 years of imprisonment. A process carried out in the "protective loop" may lead to a simple confirmation of the agreement reached between accused and accuser, or the integration thereof by the court with a sentence to a period of community service, or to an additional compensation for damage, or even to a period of hospitalization. In addition to the large volume of cases that falls within the "*Ist loop*", the other cases, those with a minimum penalty of more than five years of imprisonment, may be carried out in accordance with the procedure of "protective loop" on the basis of a discriptive decision of the Court.³⁴

It may be useful to provide some examples of criminal cases and criminal policies in Taiwan concerning reconciliation, restorative justice and the Taiwanese spirit and culture about these institutions.

Professor Susyan Jou during her interview spoke of a significant event that took place in 2010 and had a wide coverage by the media: it was an accident caused by a British businessman, he drove with an alcohol content over the threshold permitted by law and had invested a guy who was on the side of the road, causing his death. In such a situation in Taiwan it is expected that the culprit presents himself at the home of the victim's family and offers his apologies, and then it is possible to start talking about the compensation. The British businessman instead chose to simply follow the law, refusing to set a procedure for conciliation with the victim to reach an agreement on compensation. Then the judge pronounced a sentence where, in addition to the punishment in accordance with the ordinary procedure, condemned the businessman to pay the costs. In addition to the non-reduction of sentences that would come from the use of the conciliation procedure, the Englishman was also the subject of a negative media campaign, with newspapers in Taiwan never tired of emphasizing how heartless was a person who had behaved this way. This case is important because it brings us back to Chinese tradition, yet so deeply rooted in Taiwan, as in the People's Republic, for which "go to the courts" is not morally correct or however it is absolutely not morally sufficient to atone for one's sins in front of the community.³⁵

As for the policies relating to restorative justice in Taiwan, one of them is very interesting and useful to realize the originality of the approach in the training of Taiwanese judges who shall set the conciliation procedures in juvenile justice, very important area for Taiwanese politics and doctrine.³⁶ It is a measure put in place in June 2010³⁷: the distribution to criminal prosecutors who deal with juvenile justice of 2000 copies of a Japanese comic book, titled "Love", which, based on a real story, tells of the reconciliation between a mother who has just lost his son after a murder and the family of the murderer, a sixteen year old student. This measure is part of a broader program to promote restorative justice, and the choice of a Japanese comic book is based on the fact that Japanese pop culture exerts a strong influence in Taiwan; the stated purpose of the invitation to read is the hope that prosecutors will develop a more compassionate attitude and try to facilitate the comparison between the parties in the process^{38, 39}.

³⁴ Mou-Shen Lee, interview.

³⁵ Susyan Jou, interview.

³⁶ Mou-Shen Lee (Mou-Shen Lee, interview) is one of the leading academics who are pushing for an implementation of mechanisms of restorative justice in the juvenile criminal justice in Taiwan

³⁷ The measure was announced June 9, 2010.

³⁸ This statement was made by Gloria Fei, head of the Department of Rehabilitation and Social Protection, Ministry of Justice of the Republic of China.

RESEARCH PROFILES

The Influence of Tradition

The influence of the Chinese legal tradition on modern *Xingshi Hejie* is carefully considered in many studies on conciliatory practices in the People's Republic⁴⁰, and about Taiwan the interviews I conducted in Taipei shows that also in that country there is high interest in the matter. Some scholars, in interviews I have done, pointed, variously reasoned, the important influence of tradition on the institution of criminal reconciliation and on the figure of the Chinese litigant; in Taipei in particular Frank Huang⁴¹ points out that in his country "I'll Sue You" is not a common phrase, as it is considered bad luck to take legal proceedings, and that in his view is a legacy of the Confucian tradition, still strong in Formosa. This phrase recalls the Confucian principle of *wu song* 无讼, or "do not go to the courts", that is central in the ideology expressed in the Dialogues of the Master. Jim Sheu⁴² on the other hand refers to how much are still important in contemporary China the principles of peace and harmony of the Confucian tradition, which leads to take into wide account the conciliatory procedures. Professor Susyan Jou⁴³ instead stresses the importance of a tradition precedent to Confucianism, which would have been later source of inspiration for the same Confucius. This is the transformation of the ritual of the court, the *Li* 礼, which occurred during the Zhou period, and led to the creation of a "culture of shame" where the value of forgiveness could find a place". Judge Kong-Hu Tsai⁴⁴ stresses the fact that the Confucian Chinese culture influences the disposition toward peaceful and constructive conversation, the reconciliation as a means of dispute resolution, which then creates a "positive environment" for forgiveness, reconciliation and restorative justice. Last (but not least) Taiwanese scholar to be taken into account is the Professor Mou-Shen Lee⁴⁵, professor of criminal law at National Taipei University, Professor Lee distances himself from the statements of other interviewees in that he considers the Confucian tradition as of little relevance in contemporary Chinese society, both in the PRC and Taiwan, and complains that Western scholars often overestimate the influence of Confucianism and its social influence in everyday life of Chinese people. In his opinion, the philosophy of Confucius is largely a *governance* tool, and is therefore targeted at legislators and governors, in order to enable the realization of that good moral government proposed by the Confucian philosophy. In common life,

³⁹ Source: AFP, (5 Jan 2010). *Taiwan hopes Japanese comics can teach prosecutors.*

(http://www.google.com/hostednews/afp/article/ALeqM5jiK8Hwmfv5EcC0nbU0_-KmJWKcPg) Retrieved September 01, 2011.

⁴⁰ Studies related to the tradition and its influence on modern penal settlement are, for example: Xinzhou Zhang, (2004). *A restorative justice audit of the Chinese criminal justice system.* Unpublished doctoral dissertation, London School of Economics and Political Science (<http://www.restorativejustice.org/editions/2005/oct05/china>) Retrieved September 01, 2011, from [restorativejusticeonline.org](http://www.restorativejusticeonline.org); Liu Jianhong, & Palermo, G. B. (2009). Restorative Justice and Chinese Traditional Legal Culture in the Context of Contemporary Chinese Criminal Justice. *Asia Pacific Journal of Police & Criminal Justice*, 7(1), 49 – 68; Yue Zhuo, Messner, S. F., & Lening Zhang, (2008). Criminal victimization in contemporary China: a review of the evidence and challenges for future research. *Crime, Law and Social Change*, 50, 197 – 209; Lening Zhang, (1996). Crime prevention in a communitarian society: Bang-jiao and tiaojie in the People's Republic of China. *Justice Quarterly*, 13(2), 199 – 222; Hong Lu, (1999). Bang jiao and reintegrative shaming in China's urban neighborhoods. *International journal of comparative and applied criminal justice*, 23(1), 115 - 125.

⁴¹ Frank Huang, interview.

⁴² Jim Sheu, interview.

⁴³ Susyan Jou, interview.

⁴⁴ Kong-Hu Tsai, interview.

⁴⁵ Mou-Shen Lee, interview.



however, are more influential for example the philosophy of life proposed by Taoism⁴⁶, or by other religions and philosophies significant in Chinese culture. At this point, Mou-Shen Lee acknowledges the existence in the history of Imperial China of a tendency to resolve disputes informally, but does not believe there is any Confucian influence in this trend. He also believes that resolving disputes informally is not to be considered a form of restorative justice; restorative justice, to earn its name, must appear in legal form, i.e. it must be justified in law and public power.

As for the interview that took place in the People's Republic of China, Professor Di Xiaohua⁴⁷ believes that the Confucian tradition is important for the modern VOR, he states in particular that thanks to the original and ancient Chinese tradition, the very term restorative justice assumes a different meaning in China than it has in the West, in China it does in fact indicate not just a reconciliation between victim and offender, it is something more, it subtend to a culture of dialogue, to a basic principle: to address and resolve problems through dialogue and agreement.

We are facing a surely complex framework, with views ranging from considering the influence of Confucian tradition essential to being regarded as completely irrelevant. This research however leads us to confirm that, regardless of the position taken in relation to the role of tradition, it is not possible to speak of restorative justice and of *Xingshi Hejie* in China and Taiwan without confronting this issue, without taking on a position about the importance of tradition and Confucianism in shaping the modern conciliatory institutions effective in these systems. Stating hypotheses about the importance of tradition, should be borne in mind, however (as noted in interviews with Jim Sheu⁴⁸ and Mou-Shen Lee⁴⁹), how the Confucian philosophy is an extremely complex phenomenon, and how from the short teachings and aphorisms of Confucius can be drawn different conclusions about many features of Confucian philosophy, however, seems to say, as also notes Jim Sheu in his interview:

*"Confucianism has different views, But the common idea is that of its principle of harmony, peacefulness, so if you have conflict with other people Confucianism asks people to reconcile."*⁵⁰

The Reasons for the choice of VOR

*".. It is not only 'I give you two million dollars', in real restorative justice these could be only two million pieces of paper, because what really matters is the fact that the one who pays has taken responsibility for his own actions."*⁵¹

It is very important to define what are the reasons why victim and offender choose the conciliatory procedure instead of the ordinary criminal process in Mainland China and in Taiwan, in particular whether the reasons are only economic for the victim, and of convenience for the offender (who tries to get a lighter punishment) or if indeed there is something more in the Chinese *Xingshi Hejie*, something that comes from the importance given by the Chinese society to the social and moral forgiveness of the victim and to the assumption of responsibility by of the offender. The existence

⁴⁶ Taoism, religion and philosophy which has first shown during the Zhou Era, proposes renouncing to the ambition, and the "practice of not acting" (wei wuwei).

⁴⁷ Di Xiaohua, interview.

⁴⁸ Jim Sheu, interview.

⁴⁹ Mou-Shen Lee, interview.

⁵⁰ Jim Sheu, interview.

⁵¹ Mou-Shen Lee, interview.

of this "something more" is really important since it can make this practice a model to be considered carefully by scholars outside of China.

Looking first at the research I have developed in Nanjing and Taipei, the respondents generally agree that the conciliation procedure is chosen for economic reasons by the victim, this is indeed a very effective tool for both a more rapid and a more consistent compensation than the one that would be obtained through civil proceedings for damages, and also the payment is actually paid in much greater extent when you set a restorative procedure. As for the reasons of convenience to entice the offender to opt for the conciliation these are given by the exemption or the substantial discount on the sentence that comes from reaching an agreement with the victim and the offender; an additional advantage derives from the immediate closedown of the procedure otherwise detrimental to his/her social image. But many scholars⁵² recognizes the Chinese "culture of forgiveness" as a major motivation to prefer a conciliatory procedure rather than an ordinary one, and even in interviews that I conducted I found many statements to that effect.

*"You see the cultural difference? To go to court and submit to punishment is not enough here, you have to pay responsibility, with this compensation after an agreement with the victim (..), this compensation is taking responsibility. In Western Countries probably you do not need to apologize, you just go to the court and it is enough."*⁵³

In interviews I've done it is highlighted the social and moral importance of this dyad apology-forgiveness: the reasons to choose *Xingshi Hejie* should not be sought only in affordability; the "culture of forgiveness" should in fact be granted an appropriate space in the examination of an institution such as the VOR, having to even admit a problem that stems from this culture: a culture that gives a such a high social value and moral support to apology and forgiveness, along with the presence of close-knit community, often brings with it the danger of a too strong social pressure on the parties to peacefully solve the dispute, that pressure can force the parties to accept an unwelcome agreement only to avoid the social disapproval which would result from its refusal. This point, however, open up new questions, one of which, very exciting, is whether the continued progress of Chinese society and the progressive loss of the old traditional values of the new generations will drain of meaning this procedure, making it equal to many of its like in the West.

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⁵² Xinzhou Zhang, (2004). *A restorative justice audit of the Chinese criminal justice system*. Unpublished doctoral dissertation, London School of Economics and Political Science (<http://www.restorativejustice.org/editions/2005/oct05/china>) Retrieved September 01, 2011, from [restorativejusticeonline.org](http://www.restorativejusticeonline.org); Liu Jianhong, & Palermo, G. B. (2009). Restorative Justice and Chinese Traditional Legal Culture in the Context of Contemporary Chinese Criminal Justice. *Asia Pacific Journal of Police & Criminal Justice*, 7(1), 49 – 68; Braithwaite, J. (1999). Restorative justice: assessing optimistic and pessimistic accounts. *Crime and Justice*, 25, 1 - 127.

⁵³ Susyan Jou, interview.



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LEGAL REFORMS IN MARITAL RAPE IN ASIA

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This paper will consider the historical context of the husband's immunity from rape of his wife in the criminal law and the modern movement towards the removal of this immunity. Legal reforms of the criminal laws and domestic violence legislation of various countries will be examined in a comparative perspective, with an emphasis on the developments within Asia. It is hoped that the discussion will spur further legal and non-legal reforms in Asia to give women the same protection from unwanted sexual acts within marriage as it does outside of marriage.



JUDICIAL ACTIVISM IN INDIA

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The landscape of recent Supreme Court rulings offers some interesting insights into the metamorphosis of judicial activism in India. Most strikingly, the Supreme Court recently issued a notice to the Union government seeking an explanation of the steps taken by it to ameliorate the plight of Indian students in Australia, who have been facing racially motivated attacks. Foreign policy is widely considered to be non-justiciable. Many such landmark rulings and judgements have come in recent past and the present paper explains the nature and scope of judicial activism in India.

THE RETROSPECTIVE AND PROSPECTIVE VIEWS OF TAIWAN CRIME VICTIM PROTECTION ACT

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As a response to the trend of enhancement of crime victim protection in modern criminal law legislation, the “Crime Protection Act” was promulgated in Taiwan in 1998 to protect the survivors of deceased victims and seriously injured victims and safeguard the rights and interests of the people in general. After implementation of the “Crime Victim Protect Act” for over a decade, serious administrative resource insufficiency, human resource shortages, excessively low compensations, difficulty in expanding the objects of protection, excessively low level of protection, as well as overemphasis on pecuniary compensation and oversight of human dignity continued to exist. As a result, the “Crime Protection Victim Act” was amended in 2009 to extend the right to compensation claim to victims of sexual assaults and include spiritual indemnity as a compensation item. At the same time, the protection was extended to cover 6 more types of crime victims, those of sexual offenses, domestic violence and human trafficking, child and juvenile, and foreign spouses and foreign labor workers, including those from mainland China, Hong Kong, and Macao. An additional article was also added to lay the legal basis for the MOF to establish the “Crime Victim Protection Fund”. However, the scope of crime victim protection still failed to cover victims of severe crimes and crime protection resource insufficiency, excessively low level of protection, and overemphasis on pecuniary compensation and oversight of human dignity have remained unimproved. Therefore, it is suggested in this research that the legislative tendencies in advanced countries be taken into consideration to enact and implement a “crime victim rights protection act” fully appropriate for Taiwan so that the efforts of central and local governments and private welfare promotion organizations can be integrated to promote crime victim rights protection measures systematically.

INTRODUCTION

Regretfully, the criminal policy in Taiwan appeared to place the emphasis on the human rights of defendants for a long time while the rights of the victims and obligation of the state to protect these rights were apparently overlooked. Crime victims or their survivors did not get the legal protection they deserved and it was a contradiction to the concept of protecting the human rights of the disadvantaged. As a result, the government began to formulate regulations for crime victim protection. Initially, the goal was to establish a “crime victim compensation mechanism” to allow crime victims to claim compensation from the state. However, as scholars and legislators thought, in addition to pecuniary compensation, it was necessary to see to other needs of crime victims, the “Crime Victim Protection Act” enacted in 1998 also included establishment of crime victim protection agencies and corresponding crime victim protection measures.

Although Taiwan established the legal framework for crime victim rights protection later than advanced countries, such as New Zealand’s Criminal Compensation Act and the Criminal Compensation Act of Japan, respectively entering into force in 1963 and 1980, the crime victim protection system in Taiwan is in fact superior to that of other countries in many aspects, such as not limiting the compensation claim to only victims of premeditated crimes and creation of crime victim protection agencies. However, after implementation of the “Crime Victim Protect Act” for one decade, serious administrative resource insufficiency, human resource shortages, excessively low compensations, and difficulty in expanding protection objects, excessively low level of protection, and overemphasis on pecuniary compensation and oversight of human dignity continued to exist. As a result, the “Crime Victim Protection Act” was amended in 2009 to extend the right to compensation claim to more crime victims to provide comprehensive crime victim protection.



Based on the above analysis, the author of this paper intends to examine the “Crime Victim Protection Act” and its enforcement guidelines and evaluate the operating mechanism of both and establish the conclusions on the possible prospects of these regulations to be suggestions for future efforts.

ENFORCEMENT GUIDELINES FOR THE VICTIM CRIME PROTECTION ACT

Background of the Legislation

In the past, Taiwan’s criminal policy had the tendency of emphasizing the human rights of defendants while the rights of crime victims and the obligation of the state to protect these rights were overlooked. Crime victims or their survivors did not get the legal protection they deserved and it was a contradiction to the concept of protecting the human rights of the disadvantaged. As a result, the government began to formulate regulations for crime victim protection. Initially, the goal was to establish a “crime victim compensation mechanism” to allow crime victims to claim compensation from the state. However, as scholars and legislators thought, in addition to pecuniary compensation, it was necessary to see to other needs of crime victims, establishment of crime victim protection agencies and corresponding crime victim protection measures were also taken into account. The Crime Victim Protection Act was promulgated on May 27th, 1998 and implemented on October 1st, 1998 by presidential order. Acting in line with Article 29 of the Crime Victim Protection Act, the Ministry of Justice worked with the Ministry of Interior and founded on January 29th, 1999 the “Association for Victims Support” , to be governed and supervised by the MOJ, and crime victim protection was launched nationwide (Kuo, M. C., 2008, P. 69-70).

Article 1 of the Crime Victim Protection Act states the legislative purposes of the Act, Article 2 the circumstances in which the Act shall apply, Article 3 the terminology, Article 4~Article 28 the regulations on crime victim compensation; Article 29 the protective measures for crime victims; Article 30 the authority of the crime victim protection agencies, and Article 31~Article 36 the service of documents and scope of application. The regulations depict the principles of protection for crime victims. After the “Crime Victim Protection Act” was implemented for more than 4 years, Article 12, Article 25, Article 29 and Article 37 of the Act were amended on July 10th, 2002 while Article 12-1 was also added. They all took effect on October 1st the same year. The amendment in 2002 was mainly adjustment to make the Act in line with the regulations of the “Administrative Procedure Act” that was implemented and the addition of Article 12-1 was to specify the agencies to be in charge of the crime protection measures (district courts or the prosecutors’ office of their branches). The said article stipulates that the prosecutors' office of a district court or a branch court has the authority to check with the tax bureau or concerned government agencies or organizations the financial status of offenders or those held liable in order to seek reimbursement for compensations the state has paid to the crime victims. Anyone involved in such investigations shall not refuse to comply with the investigator's requests. Most of the other amendments were also made to specify the central and local agencies responsible for executing the regulations and corresponding measures and processing compensation claims. Meanwhile, Article 29, which defines crime victim protection as part of the criminal policy, specifies the guidelines for the organization and supervision of the agencies responsible for crime victim protection shall be enacted by MOJ (Liu, C. H., Year 2008, Page 5).

Although Taiwan established the legal framework for crime victim rights protection later than advanced countries, such as New Zealand’s Criminal Compensation Act and the Criminal

Compensation Act of Japan, respectively entering into force in 1963 and 1980, the crime victim protection system in Taiwan is in fact superior to that of other countries in many aspects, such as not limiting the compensation claim to only victims of premeditated crimes and creation of crime victim protection agencies. Moreover, since the Act entered into force, survivors of deceased or severely injured victims have been able to acquire crime victim compensations and temporary compensation; organizations have been created to help crime victims to get emergency medical care, shelter, protection, physical and mental therapy, rehabilitation, litigation assistance, and social aid. Quick and necessary support for crime victims and their families have been provided in line with the legislative purpose of the Act, the responsibility of the state to look after crime victims, and the principle of welfare state.

During the ten years since the enforcement of the Crime Victim Protection Act, for the movement for crime victim protection has boomed across the globe. Every country has devoted efforts to improve the care and protection for crime victims. In Taiwan, advocacy for expanding the protection for crime victims has also grown. Therefore, since the second regime change in 2008, the new ruling party has been devoted to protection of the socially disadvantaged by implementing many new policies in conjunction with the revisions of the Act and expanding the coverage of crime victim compensation, protection and assistance. Meanwhile, Legislators Pan Wei-Kang and Huang Yi-Chao proposed a draft for partial amendment of the “Crime Victim Protection Act” to include “sexual assault victims” in the category of victims entitled to the right to compensation claim. This is because sexual assaults are not only criminal behavior and but also a violent crime. According to the empirical researches conducted domestically and overseas, most victims of this crime are female or under-aged and may become pregnant or infected with sexually-transmitted diseases, AIDS, , or even vicarious types of Posttraumatic Stress Disorder (PTSD) that could affect the victims the entire life and recovery of their normal capacity and mental state could not be achieved within a short time. Thus, it can be concluded that the sexual assaults can cause victims lifelong mental and physical injury as serious as or even worse than that of the severely injured victims. Throughout the international society, efforts are being made to guard the human rights of sexual assault victims. For example, in the “Criminal Injuries Compensation Scheme” of New Zealand, implemented in 1964, it is stipulated that sexual-assault crime victims have the right to seek compensation, including for spiritual damage. It is therefore justifiable to include sexual assault victims as crime victims entitled to the right to compensation claim and expand the compensation scope to cover spiritual damage to alleviate the pain of victims or their survivors.

Due to rapid social changes and increasing new immigrants from cross-country (region) marriages and foreign workers in the past few years, many related problems such as domestic violence, human trafficking, endangerment to the lives or mental-physical development of children and juveniles, and criminal assaults against female foreign spouses and infringement on human rights of foreign workers from mainland China, Hong Kong, Macao, and other Asian countries have surfaced. As such crime victims are mostly the socially disadvantaged, the government has also established the legal basis to include them as objects of protection under the Act as part of the effort and responsibility to maintain social justice and human rights protection. Only the socially disadvantaged are protected and social harmony is sustained, crime-prevention and social order control are also promoted and crime is reduced indirectly. Findings of researches conducted by domestic and foreign scholars have indicated that the percentage of offenders in sexual assaults, domestic-violence, and child abuse having been victims of the same crimes in their own childhood is relatively high. This leads to the high tendency of the transformation from “victim of today to offender in the future” referred to in criminology. If assistance can be provided to help them lead



their traumatic experiences behind, it may also help crime-prevention and social order control. (Meeting Resolution Document of 9th Meeting in 3rd Session, 7th Term of Legislation Yuan, year 2009, pp. 44-46). With this idea in mind, the relevant government departments invited criminology, and criminal law and policy scholars and specialists, as well as representatives from concerned agencies to meet frequently starting from July, 2007 to participate in revision of the Act. The amended “Crime Victim Protection Act” was approved by the Legislative Yuan on May 8th, 2009 and took effect on August 1st, 2009. The key revisions were (Hsu, F. S., 2009, pp. 179-182) (1) inclusion of sexual assault victims as compensation claimants and protection objects, (2) inclusion of spiritual indemnities as part of compensation claims, (3) relaxation of restrictions on compensation applicants, (4) increase of crime victim protection funds, and (5) expansion of coverage of crime victim protection.

THE KEY REGULATIONS OF THE ACT

(1) Compensation Measures

1. Theoretic Basis of Compensation

Initially, the enactment of “Crime Protection Victim Act” was based on the concept of “assistance for the needy.” The draft of the Act was devised with the idea that if victims of criminal-negligence had been included as compensation claimants, the resulting total amount could have been so tremendous and brought an excessive burden to national finance. Compensation was meant to help victims cope with their living conditions and financial difficulty had to be the essential consideration for the compensation to be provided. The legislation was intended to make up for the deficiency in the Civil Law. The offenders should be responsible for damages crime victims suffered. If the offenders were financially able to compensate for such damages, there would be no need for the state to intervene. Thus, Paragraph 1, Article 3 of the “Crime Victim Protection Act” defined compensation as available to only victims in cases where “the offender being unknown or lacking the financial ability to make the compensation and thus making the life of crime victims difficult” (Chiang, M. C., 1988, P.499).

However, the limited coverage of compensation stipulated in the Act was disapproved immediately when it was reviewed by the Legislation Yuan and Paragraph 1 of Article 4 was amended with an addendum to extend the right to compensation claim to “survivors of deceased victims”, and “victims of severe injury” and “being socially or financially disadvantaged” was no longer a prerequisite. The reason was: “If crime victims encounter financial difficulty after the offense and are even unable to pay their medical expenses, requesting them to prove the offender was indeed financially incapable of compensation would be unfair to the victims and the aid eventually provided might be too late to address the pressing need. Further more, it is the responsibility of the state to look after the people, especially crime victims who desperately require financial assistance. There is no excuse for reaching out a hand to such people.”

The aforesaid amendment indicated that “assistance for the needy” was no longer a principle of the Crime Victim Protection Act. Regardless of whether they were in a financial strait, crime victims were now considered socially disadvantaged and legally entitled to file compensation claims and receive assistance from the society. To avoid repeated compensation, the Act stipulates that if a victim has already received insurance benefits, compensation for damages, other indemnities for the criminal behavior in accordance with related laws, the sums shall be deducted from the crime victim

compensation given in line with the Act. Thus, the victim protection and financial aid as prescribed in the criminal policy can be achieved with fairness. (Zhong, B. C., 2004, pp. 9-14, Hsu, F. S., 2010, p. 514)

2. Compensation Objects and Receivers

The “Crime Victim Compensation” scheme is the most important part of the Crime Victim Protection Act. In the legislative purpose of the Act, it is clearly stated that the objects of protection shall include survivors of deceased victims, severely injured victims, and sexual assault victims. “Criminal behavior” refers to (1) intentional or negligent conduct resulting in endangerment to the life of body of another and deemed criminal according to the law of the ROC, (2) conduct legally deemed criminal but the offender given exemption in accordance with Paragraph 1, Article 18 and Paragraph 1, Article 19 of the ROC Criminal Law due to his or her criminal incapacity, and (3) conduct leading to endangerment to another as a result of the offender’s effort in an emergency or disaster within the territory of the ROC, or within the ships or aviation vehicles governed by the ROC navigating outside the ROC territory.

3. Compensation Types and Amounts

There are three types of crime victim compensation in Taiwan: (1) Deceased Victim Survivor Compensation: claimants may apply for a medical expense subsidy up to NT\$400,000, a funeral expense subsidy up to NT\$300,000, legal dependent support of NT\$1,000,000, and spiritual compensation of NT\$400,000; (2) Severe Injury Compensation: claimants may apply for a medical expense subsidy of NT\$ 400,000; compensation for loss or impairment of working ability or living support of NT\$1,000,000, and spiritual compensation of NT\$400,000; (3) Sexual Assault Compensation: claimants may apply for a medical expense subsidy of NT\$400,000; compensation for loss or impairment of working ability or living support of NT\$1,000,000, and spiritual compensation of NT\$400,000;

The amount of each item stated above is the statutory limit and the actual amount of payment shall be subject to the Review Commission of the District Prosecutors’ Office. In the event that crime victims or survivors are in urgent need to pay medical or funeral expenses, a “temporary compensation” no more than NT\$400,000 may be disbursed total compensation amount is finalized. The difference between the two said amounts shall be either paid to or returned by the claimant. For the amount of the compensation amount and “Temporary Compensation”, The MOJ may request the Executive Yuan to make the necessary adjustments to the two said amounts if the circumstances call for such adjustments.

4. Sources of Compensation Funds

To alleviate the financial burden of the government as well as fulfill the principle of justice, it is stipulated in the Act that the compensation funds, in addition to the budget the MOJ establishes, shall also include from appropriations from the total income from prisoner labor; proceeds from offenders’ criminal activities or from sales of property the criminals confiscated according to law, appropriations from the amounts paid by offenders for sentence reprieves, deferred prosecution, or plea bargains, and other incomes. Meanwhile, the MOJ may set up the “Crime Victim Protection Fund” for promotion of crime victim protection operations.



5. Application of the Exclusion Clause

To avoid moral crises, it is stipulated in the Act that if the cause of harm to a victims can also attributed to the victim, or the victim has participated in or induced the crime, or the relationship between the victim or his or her survivors with the offender should make compensation to the victim or his or her survivors appear to the general public as inappropriate, depending on the circumstances, only partial or no compensation at all shall be given.

6. Supplementary Principle of Compensation

To avoid repeated compensation, the Act stipulates that if a victim has already received insurance benefits, compensation for damages, or other indemnities for the criminal behavior in accordance with related laws, the sums shall be deducted from the crime victim compensation given in line with the Act.

7. The Authority for Compensation Decision

To facilitate processing of compensation claims from crime victims, the Act particularly specifies that the prosecutors' office of each district court and its branches shall establish a "Crime Victim Compensation Review Committee" (hereinafter briefed as "Review Committee") and the prosecutors' office of the High Court and its branches shall establish a "Crime Victim Reconsideration Committee" (hereinafter briefed as "Reconsideration Committee") to make decisions on compensation claims and relevant matters.

8. The Right of Claim

In theory, criminal offenders, or those held liable according to law, ought to compensate for the damage resulted from their criminal conduct. Due to considerations for social security, the Act stipulates that the state shall take the responsibility for compensation first in order to provide prompt relief for crime victims. Hence, the state has the right to claim compensations it pays from the liable parties. To ensure the execution of the said right, the Act stipulates that the prosecutors' office of a district court or a branch court is the authorized agent to act on behalf of the state to check with the tax bureau or concerned government agencies or organizations the financial status of offenders or those held liable in order to seek reimbursement. Anyone involved in such investigations shall not refuse to comply with the investigator's requests. In addition, the prosecutors' office of a district court or a branch court may request the court to execute provisional seizures of the property of offenders or those liable to ensure the right to claim is protected.

According to Article 13 of the Act, a crime victim or his or her survivors shall return all or part of the compensation received if any of the following circumstances occurs: (1) if an amount is to be deducted or excessive damages have been claimed; (2) if the recipient is found not entitled to compensation claim; (3) if the compensation claim is proven to be made through deception or other dishonest means. According to the Article 25 of this Act, decisions for return of compensations shall be made by the "Review Committee" in written statements and enforced accordingly. Compensation recipients who find such decisions unacceptable may act in line with administrative remedy procedures and file administrative litigation with the "Reconsideration Committee" of the prosecutors' office of the High Court or a branch or the Administrative Court.

9. Compensation Application

According to Article 6 of the Act, application for compensation by survivors shall follow the priority order of (1) parents, spouse and children; (2) grandparents; (3) Grandchildren; and finally (4) siblings. a survivor of lower priority may not apply for compensation unless survivors of higher priority do not exist or have renounced the right. The Grandparents, grandchildren, and siblings must have been the dependents of the deceased victim in order to have the right to apply for compensation, but the restriction does not apply to the parents, spouse or children. However, According to Article 6, a survivor of a deceased victim shall be stripped of the right to compensation claim if found to have employed deceptive or illegal measures to apply as set forth in Article 8 of the Act.

According to Article 16, the right to compensation claim shall expire if not exercised within two years from the time when the damage from the criminal act is detected or within five years following the criminal act. In addition, according to Article 34 of the Act, only application for compensation for criminal acts or consequences that have taken place after enforcement of the Crime Victim Protection Act shall be accepted. In other words, partial retroactivity is adopted and victims of crimes conducted before the Act entered into force are excluded. Moreover, when a victim is a foreign national, the principle of reciprocity is applied, but this does not include mainland Chinese people who fall victim to crimes taking place in mainland China.

(2) Litigation Aid

Crime victims have the right to follow the Civil Procedure to seek compensation from the offender. Yet according to the current Civil Procedure, besides compliance with litigation aid requirements (proof of incapability to pay the litigation fee) and presentation of the request, they still have to pay a considerable amount of litigation expenses. As a result, crime victims are unable to take the process. Hence, the second protection measure for crime victims is to help them acquire the compensation they deserve. Article 28 of the Act therefore stipulates that victims or their survivors are not required to pay litigation expenses when they take only civil procedure to seek compensation from the offender. Meanwhile, victims or their survivors who are unable to come up with the collateral for provisional seizures, besides those who have no chance of winning the case, may use a guarantee letter from a crime victim protection organization as the collateral. This is to ensure such victims or survivors can still adopt civil injunctive measures to prevent offenders from resorting to fraudulent conveyance of property so that the victims or their survivors will not be in the plight of winning the case without any compensation just because of their financial inadequacy.

(3) Establishment of Victim Protection Organizations

Helping crime victims or their survivors to return to normal life is another important protection measure. To expand the coverage of such assistance, Article 29 of the Act stipulates that the Ministry of Justice and the Ministry of the Interior shall work jointly to establish an organization for crime victim protection. It is to be an incorporated foundation operating under the direction and supervision of the Ministry of Justice and approval of the Ministry of Justice before registration is required. The Ministry of Justice shall set the regulations governing the organization and supervision of the foundation. The operation funds needed shall come from the following sources: budgets set up by the Ministry of Justice and the Ministry of the Interior, donations from private individuals and organizations, and appropriations from the amounts paid by offenders for sentence



reprieves, deferred prosecution, or plea bargains. Crime victim protection organizations shall conduct the following: (1) assist crime victims to obtain emergency treatment and get shelter; (2) assist crime victims throughout the course of judicial investigation and trial and after conclusion of trial; (3) assist crime victims to apply for compensation and relief aid and file civil claims; (4) assist crime victims to investigate the financial status of the offender or those to be held liable by law for the damages resulted from the criminal act; (5) assist with the protection of crime victims; (6) assist crime victims to obtain medical care and return to normal life; (7) promote the protection of crime victims; (8) provide other assistance.

REINFORCEMENT MEASURE FOR THE ACT – "CRIME VICTIM PROTECTION REINFORCEMENT GUIDELINES"

(1) Background of Promulgation

The Executive Yuan was aware the unreasonable limitation of the coverage of crime victim protection for only survivors of deceased victims or seriously injured victims of criminal acts. To expand the related operations and coverage as well as to perfect the protection system and improve the communication between concerned agencies and the consolidation of their efforts, the "Victim Protection Reinforcement Guidelines" were promulgated on Oct. 15 2009 to make up for the insufficiencies in the Crime Victim Protection Act. The Guidelines were amended in March 2000 and July 2002 and the duties set forth therein were classified as regular tasks to be conducted constantly. The Guidelines was considered having fulfilled their transitional function. However, when the Code of Criminal Procedure entered into force on September 1, 2003, the refinement adversary system was adopted to replace inquisitorial system transform and the protection for the defendants became even more complete. Consequently, the Executive Yuan thought it was necessary for the Guidelines to remain effective while a large extent of revision was also required to keep the Guidelines commensurable with social changes and in line with the objective of crime victim protection. Therefore, according to the instruction of the Executive Yuan on September 27 2004, the "Crime Protection Reinforcement Guidelines" were amended to enhance 39 concrete measures, including rescue, support, protection, damage compensation, litigation aid, educational propaganda, and other relevant matters. The aforesaid revised contents were apparently more inclusive than that of the regulations of the "Crime Victim Protection Act" and the duties prescribed have been regarded as regular tasks to be executed constantly by ministries/councils and special municipality governments. On May 27 2009, the Crime Victim Protection Act was amended to include victims of sexual assaults, domestic violence, human trafficking and child abuse as well as juveniles, and foreign spouses and labor workers as protection and assistance objects with the right to compensation claim. As a result, the Guidelines were amended in 2011 to stay in line with the regulations of the Act and the government policy to look after the disadvantaged in the society.

(2) Major Contents

The contents of the "Crime Protection Reinforcement Guidelines" revised in year 2011 are as follows:

1. Objects of the Guidelines: The objectives of the Guidelines include strengthening crime victim protection system, improving crime victim protection measures, executing effective emergency relief, protection, counseling to help victims to return to normal life, promoting

integration of resources, safeguarding the rights of crime victims to compensation and civil claims, promoting the “restorative justice” concept, and improving social stability.

2. Amendment Policy: Over the years, concerned agencies have all revised, added or deleted their regulations in relation to crime victim protection in order to demonstrate the “concrete measures” that best suited their function. Each agency has also established its “projected targets” and “completion deadlines” to facilitate tracking and performance evaluation. The principal and supporting agencies” have also been clearly defined to ensure division of labor and consolidate the efforts of the agencies.

3. Concrete Measures

The MOJ divided the tasks into 6 major categories: providing emergency rescue and protection for crime victims, their families and witnesses; assisting crime victims with their compensation claims and civil claims in accordance with the “Crime Victim Protection Act”; providing crime victims and their families with counseling and protection to help them return to normal life; integrating local resources and recruiting legal experts to assist crime victims with their litigations and protect their legal interests; educating and training the public to prevent themselves from becoming victims of criminal acts; and guiding crime victims to forgive and reconcile with the offenders to promote restorative justice step by step.

OVERVIEW OF CRIME VICTIM PROTECTION OPERATIONS

Taiwan adopts a dual protection mechanism in crime victim protection operations. On the one hand, the “Review Committee“ of the district prosecutors’ office in each district court or a branch court and the “Reconsideration Committee” of the prosecutors' office in the High Court and its branches are responsible for the compensation to crime victims to protect their “economic interests.” On the other hand, the Association for Victims Support carries out protective measure to help crime victims get medical care, legal aid and return to normal life (Kuo, W. T., 2008). At the same time, in order to strengthen the crime victim protection system and improve communication between various agencies to consolidate their efforts, the government also enforces the “Crime Victim Protection Reinforcement Guidelines” to make up for the insufficiencies in the “Crime Victim Protection Act”. The functions of the aforesaid Review Committee and the Reconsideration Committee are as follows:

1. The Crime Victim Protection Compensation Review Committee and Reconsideration Committee

(1) Organization and Human Resources

As set forth in Article 14 of the “Crime Victim Protection Act”, the MOJ shall create the “Reconsideration Committee” in the district prosecutors’ office of each district court and its branches and in the High Court and its branches to process compensation claims and make corresponding decisions as well as handle related matters. The chief prosecutor of each district prosecutors’ office shall chair the “Review Committee” or “Reconsideration Committee” as well as select the committee members from among the prosecutors or other individuals with expertise in law, medicine or related fields to be approved and appointed by the MOJ. The members shall serve a 2-year term and may be reappointed when the term expires. The chair shall also appoint from the



staff of the prosecutors' office one person to concurrently serve as the executive secretary and another 2 to 6 persons as secretaries to handle the daily affairs of the committee.

(2) Compensation Review Statistics

The "Review Committees" in all district prosecutors' offices received in total 9,851 compensation applications between Oct. 1988 and Dec. 2009 and reviewed 9,330 of the cases. 3,233 applications were approved and the aggregate of the compensations reached NT\$1.372653 billion. On average, 269 cases, or 32.8% of the total compensation applications were approved annually and an average amount of NT\$300,550 per person was awarded to 374 claimants each year (as shown in Table 1.)

Table 1. Results of Compensation Decisions by "Review Committees" Over the Years

Year	New Applications Received	Closed Cases	Applications Approved	Claimants Compensated	Compensation (Unit: NT\$1,000)
1998(Oct.-Dec.)	27	8	--	--	--
1999	776	490	215	308	103,152
2000	1030	853	410	560	197,172
2001	905	701	258	428	146,511
2002	784	912	291	497	143,093
2003	907	928	348	477	126,048
2004	792	817	294	364	106,021
2005	707	739	271	349	87,271
2006	639	730	216	258	61,544
2007	597	603	167	230	63,671
2008	669	615	196	227	83,667
2009	804	796	203	258	80,824
2010	849	817	243	319	112,548
Total	9851	9330	3233	4493	1,372653

Source: Ministry of Justice

Table 1 shows that the compensation application approval rate was merely 32.8%. Besides the ones rejected by the "Review Committee" on the grounds of incompliance with related regulations, most were disapproved simply because of the applicants' ineligibility which was determined in accordance with relevant laws. On the other hand, when the Review Committee acted in line with the Crime Victim Protection Act to determine the qualification of applicants and rejected certain applications, was it also because the restrictions set forth in the Act were too strict? This apparently calls for close examination. In addition, as stipulated in Article 9 of the Act, the average compensation for each crime victim or his or her survivors was NT\$300,550. The amount might be enough for the time being, but it could not possibly bring any significant change to the overall financial condition of the claimant. Moreover, according to Paragraph 2, Article 5 of the Act, the said compensation shall be given in one single disbursement. As crime victims or their survivors have just suffered from criminal acts and will have to go through the long process of mental reconstruction and livelihood improvement, what are they to do when the lump sum compensation is used up? How can the plight such crime victims are about to fall into be neglected in the Crime

Victim Protection Act that is the principal legal basis for crime victim protection in Taiwan (Cheng, C. H., 2011, p. 151)?

2. Association for Victims Support

(1) Structure and Human Resources

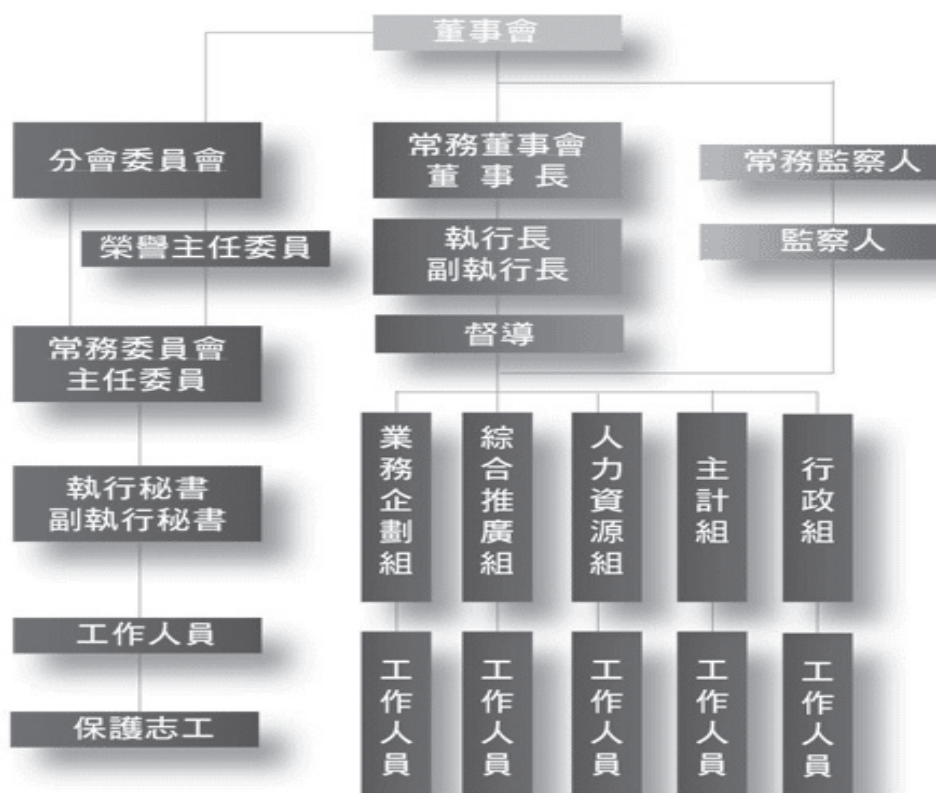
Crime victims need diverse assistance and support. Besides pecuniary compensation, they also require emergency relief, legal aid, counseling and medical care. Article 29 of the Act stipulates that, in order to assist victims or their survivors to return to normal life, the MOJ and MOI shall jointly create organizations for crime victim protection. In line with this regulation, the structure of crime victim protection organizations and the corresponding supervision rules were thus established and the Association for Victims Support (hereinafter referred to as the AVS) was created.

Following the creation of the AVS, besides continuing to work out the corresponding directions and regulations, 21 liaison offices were also set up in the prosecutors' offices of district courts in Taiwan as well as Kinmen and Lianjiang County on Apr. 1 1999. Each office was staffed with a director and a number of clerks to execute various crime victim protection tasks. On Dec. 11 2003, the liaison offices were reorganized to officially become AVS branches and each one also established a committee headed by an individual from the private sector to solicit social resources for promotion of crime victim protection. To extend the coverage of protection and assist crime victims or their survivors to return to normal life, the head office and the branches respectively recruited enthusiasts to be volunteer workers to expand the network and promote crime victim protection. At present, there are 6 full-time workers in the head office and 39 in the branches. About 20 people are employed to provide assistance in special projects while there are also 1,300 volunteers from the private sector. Most of the volunteers possess a college degree and the majority of them are either in business or government employees (data from the website of the association for Victims Support).

The "Association For Victims Support" operates under a board of directors and is entitled to set up a standing committee. There are 11 to 15 directors and 5 standing directors, all non-paying jobs. These positions are to be filled by people of executive status in the affiliates of the MOJ, related agencies or organizations, or enthusiasts from the private sector for a 2-year term and re-appointed is allowed. In addition, there are also 3 supervisors. One of them is the standing supervisor, and the position is to be held concurrently by the director of the Department of Accounting of the MOJ. The two other supervisors are to be appointed from among the executive personnel of the affiliates of the MOJ, related agencies or enthusiasts from the private sector.

The chair of the board leads the AVS. In the beginning, the position was held concurrently by the chairperson of "Taiwan After-Care Association". Today, the chief prosecutor of the Taiwan High Prosecutors' Office concurrently holds the position to oversee the operations as well as represent the AVS. The chairperson is responsible for the nomination of the chief executive but the approval of the board is required. Currently, the position is held concurrently by a prosecutor from the Taiwan High Prosecutors Office. Under the chief executive can be one or two deputy chief executives. Presently, the Director of the Records Section of the Taiwan High Prosecutors Office holds the position concurrently. Again, there is an inspector under whom are five divisions, namely the Planning Division, Promotion Division, Human Resources Division, Accounting and Statistics Division, and Administrative Division. Each division is staffed with a division head and several

clerks. Due to necessity, a number of consultants are employed. Each branch may establish a board of directors and a standing committee. The former consists of 9 to 15 members and the latter 4 members, all non-paying jobs. These positions are to be filled by enthusiasts from the private sector for a 4-year term and re-appointment is allowed. There is an honorary chair, to be held concurrently by the local chief prosecutor, and one chairperson to be appointed from among the executive personnel of the affiliates of the MOJ, related agencies or organizations, or enthusiasts from the private sector. The chairperson is to appoint an executive secretary from among the affiliates of the MOJ, related agencies or organizations, or enthusiasts from the private sector. Under the executive secretary can be one or two deputy executive secretaries, and a number of clerks and volunteers. The structure of the Association for Victims Support is as shown in Fig. 1.



分會委員會 Committee in an AVS Branch, 榮譽主任委員 Honorary Chair
 常務委員會主任委員 Chair of Standing Committee, 執行秘書 Executive Secretary
 副執行秘書 Deputy Executive Secretary, 工作人員 Clerks
 保護志工 Volunteers, 董事會 Members of Board of Directors, 董事會 Board of Directors
 執行長 Chief Executive, 副執行長 Deputy Chief Executive, 督導 Inspector
 常務監察人 Standing Supervisor, 監察人 Supervisor, 業務企劃組 Planning Division,
 綜合推廣組 Promotion Division, 力資源組 Human Resources Division,
 主計組 Accounting and Statistics Division, 行政組 Administrative Division, 工作人員 Clerks
 Fig. 1. Structure of the " Association For Victims Support "
 Source: Website of the "Association For Victims Support "

(2) Service Provisions

Article 30 of the “Crime Victim Protection Act” states: “Crime protection organizations shall conduct the followings: (1) assist crime victims to obtain emergency treatment and get shelter; (2) assist crime victims throughout the course of judicial investigation and trial and after conclusion of trial; (3) assist crime victims to apply for compensation and relief aid and file civil claims; (4) assist crime victims to investigate the financial status of the offender or those to be held liable by law for the damages resulted from the criminal act; (5) assist with the protection of crime victims; (6) assist crime victims to obtain medical care and return to normal life; (7) promote the protection of crime victims; (8) provide other assistance. There are 15 concrete services that the AVS currently provides in accordance with the above definition and they may be separated into 3 major categories, namely legal service, counseling, and social work services (Wang, H. H., 2011, pp. 16~18).

1. Legal Service

(1) Legal aid: This includes legal consultation, legal document drafting, attorney delegation, mediation, litigation fee funding. Legal consultation is free and the cooperation with the Legal Aid Foundation and funding are available to alleviate the financial burden of those under protection. Victims can receive complete and free-of-charge legal assistance throughout the legal procedure and have their interests safeguarded by professional practitioners of law. The “Legal Assistance All the Way” project is an example.

(2) Compensation application: Assistance is provided to help those under protection to apply to the prosecutors’ office of a district court or its branch for crime victim compensation and temporary compensation.

(3) Investigation assistance: To protect the interests of crime victims, the association provides the free service of sending written requests to tax offices to investigate the income and financial status of the offender or those to be held liable according to law.

(4) Guarantee letter issuance: When crime victims are financially unable to come up with the collateral required for imposition of provisional seizure of the property of the offender in order to seek compensation from the offender as stipulated in Paragraph 1, Article 9 of the Act and the likelihood of winning the case exists, the association may issue upon request a guarantee letter to the court to serve as the collateral.

(5) Protection: In the event that further attacks by the offender are likely, the association shall coordinate with the police department to provide protection.

2. Counseling: Individual or group counseling provided by professionals is provided. Outdoor activities for mental stress relief are also held to help victims return to normal life and face their future with positive thinking. The “Concern and Care” program is an example.

3. Social work services

(1) Shelter arrangements: For victims who have become homeless as a result of the criminal acts inflicted on them and urgently in need of shelter, arrangements will be made to find shelter for them in government or social welfare facilities.



(2) Medical care: For victims who are in destitution and social welfare organizations are unable to provide enough financial assistance for the medical expenses, the association will subsidize for the difference.

(3) Social aid: For victims who are unable to provide for themselves, the association will provide assistance to apply to concerned government agencies or social welfare organizations for emergency aid.

(4) Return to normal life: Assistance is provided to help victims or their survivors to attend school (including scholarships and funding for tuitions and miscellaneous fees from kindergarten to graduate school,) find employment, receive skill training, make career plans, and acquire counseling. Related information, referral service, and so on are also provided to help such people return to normal life. Currently, some programs are available, such as the “Salary Assurance Program”, “Micro-Business Startup Phoenix Program” and “Vocational Training Funding”.

(5) Trust management: According to the decision of the Review Committee, trust funds may be established to manage the compensations awarded to protect the interests of under-aged protectees and the their living expenses shall be provided on a regular basis or from the interest generated.

(6) Emergency aid: For crime victims who fall into financial plights as a result of criminal acts inflicted on them, the Association shall offer emergency aid as short-term relief.

(7) Home Visits: When criminal cases of social concern occur or the association receives referral reports from related agencies (prosecutors’ office, police department, hospital, social work office, center for prevention of domestic violence and sexual assaults, National Immigration Agency,) the association’s full-time employees or volunteers will visit the victims or their survivors to provide necessary assistance.

(8) Advisory Service: The association can provide protectees and the public with information and explanation related to crime victim protection.

(9) Other Services: Other matters and services relevant to the crime victim protection.

(3) Fund Sources

The 2009 financial statement from the association revealed that the annual budget amounted to NT\$ 218,519,956, of which operating income was NT\$50,983,056 (including government funding NT\$ 37,763,000 and donations totaling NT\$13,220,056,) and non-operating income was NT\$ 167,536,900 (including NT\$ 1,581,848 from interest received, NT\$ 114,193,069 income incurred from deferral prosecution of, income incurred from judicial sentence with plea bargain of NT\$ 51,565,733; and miscellaneous income of NT\$ 196,250). Those statistics indicates such two income items resulting from judicial sentence with plea bargain and deferral prosecution are the major fund sources for the Association, equivalent to 75% of the total, in contrast of only 17% contributed by the government subsidy only.

(4) Protection Services Fulfillment Performance

From April, 1999 until year 2010, the protection service cases have been proceed and handled by “Support for Victims Association” are in List 2 stated as below. In the first few years, the protection service cases handled by the Support for Victims Association increased from 3,000 to 4,000 in term of application cases (hereinafter the same). As the Act Amendment in year 2009 listing more objects into the protection category, the total service cases processed by the Association thus rose to more than 7,000 and to 8,904 in year 2010. The service provisions volumes has risen from about more than 10,000 in year 2008 in term of person/time (hereinafter the same) to about 50,000 in year 2009 and even surged to more than 70,000 in year 2009. The service volumes calculated in term of person/times rose from more than 10,000 in early stage following the association’s foundation to more than 100,000 in year 2010, all those proving the rapid business volume growth during for more than 10 years following its foundation, creating a prominent achievement by all association employees and volunteers’ devotion and endeavor.

Table 2 The Protection Processed by the Association in term of Total Cases and Service/Person

Year	1999 (April~Dec ember)	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total Case	1543	2902	2926	3195	2912	2291	2569	3285	3268	4711	7573	8904
Person/ Time	4862	12370	12777	15140	17971	16938	23571	28864	51401	48958	70173	108306
Protecti on Fees	1,636,147	11,159,967	10,067,316	15,849,622	18,767,075	16,778,583	24,466,077	23,542,022	41,419,062	32,767,449	80,754,564	86,901,241

Data Sources: Edition of the Data Provided by the “Support For Victims Association”

If evaluation is conducted in term of “Protection Service Provisions”, as of the end of December, 2010 from April, 1999, the “Support For Victims Associations” nationwide have processed up to 42,542 protection cases, representing total service 408,576 time/person in total. The List 3 stated below displays the total service volume in term of time/person for each of three major service provision categories, in which the social volunteer service the category contributed ranks the top with a ratio of to 70%, followed by the legal service category of 16.34%, and finally the mental consultancy of 13.67%. When all of single service provisions are compared in term of person/time, the life rehabilitation ranks the top with a total volume of 85,339 in person/time, and secondary is the home visits of 73,138 in person/time, the next is other service provisions, life rehabilitation, legal assistance and investigation consultancy. The List 3 displayed in the follow indicates clearly that the major protection service provisions of the Support for Victims Association include 6 provisions, inclusive of life rehabilitation, home visit, home visit, life rehabilitation, legal service provisions, mental consultancy, investigation assistance and other service provisions.

The latest survey indicates that only 26.0% of crime victims agreed the service provided by the nation can meet their requirements and 64.5% assumed although the necessary provisions have been provided but more improvement are necessary, 55.2% felt that the service provisions provided by the nation are not sufficient for solving problems, and 73.7% expressed that the due care and attention have not yet been performed by the government. Apparently, the statutory service



provisions in term of individual items and range are sufficient but not comprehensive, and pretty restricted, and do need recruitment of more personnel, budgets, professional knowledge, and more considerate measures which can't be improved without a long period of time for experience accumulation (Wang. H. H., 2011, P. 35). Especially, all district associations commonly suffer human resource shortage and if most of the social service volunteers can also offer professional service in alternation, it would contribute to much more service improvement.

Table 3 Provision Volume of Every Service Item of the Support for Victims Association in term of person/time between April 1999 and December 2010

Item	Person/Time	%	Ranking	Total (%)	
Law	Legal Assistance	40,045	9.80	5	66,778 person/time (16.34)
	Compensation Application	14,957	3.66	7	
	Investigation Assistance	10,906	2.67	8	
	Guarantee Certificate Issuance	691	0.17	13	
	Safeguard	197	0.05	15	
Mental	Mental Consultancy	55,859	13.67	4	55859 person/time (3.67)
Social Volunteers	Life Rehabilitation	85,339	20.88	1	285,939 person/time (70.00)
	Home Visit	73,138	17.9	2	
	Other Services	69,953	17.12	3	
	Investigation Assistance	37,306	9.13	6	
	Emergence Financial Aid	8,376	2.05	9	
	Aid from Social Welfare Institutes	6,504	1.59	10	
	Trust Management	4,095	1.00	11	
	Medical Care	797	0.19	12	
	Fostering	413	0.10	14	
Total	408,576 person/time(100.0)			Total Service Cases: 42,542	

Data Sources: Edition of the Data Provided by the "Support For Victims Association"

FUTURE OUTLOOK

Apparently, the Taiwan criminal statutory policy has been ignorant of carrying out legal obligations due and rights of crime victims in equality in favor of partially attention duly to human rights of defendants. Between both the crime victims and criminals involved, only partial attention due for criminals would cause failure of full grasp of criminal facts and effective fulfillment of crime prevention, solution or social security problems and assistance for the crime victims involve life normalization. After experiencing typically from the initialization phase (prior to year 1989), exploration phase (between years 1981 and 1990), development phase (years 1991~2000), statutory system readjustment period and innovation phase (from year 2001 until now), for the purpose of complying with the latest criminal statutory ideology in advocacy of crime victim protection, Taiwan legal competent authority has enacted, promulgated and implemented “Crime Victim Protection Act”, “Child and Youth Sexual Transaction Prevention Act”, “Domestic Violence Prevention Act”, “Witness Protection Act”, “Gender Indiscrimination in Employment Act” (Rectified as “Gender Equality in Employment” in year 2008), “Human Trafficking Prevention Act” in phase. Furthermore, as for meeting various crime victim demands, constructing a comprehensive protection network, full implementation of crime victim enhancement protection affairs, the supporting measures having been achieved include “Enhancement Crime Victim Protection Enforcement Guidelines”, “Sexual-Assault Depression and Crime Victim Interrogation Decrement Operation Program”, “Crime Victim Mental Relief Program”, “Community Supervision Network For People Under Custody Involved With Sexual-Assault”, “Continuous Sexual-Assault Case Handling Procedure Improvement Enforcement Guidelines”, “Serious Crime Victim Appeal Counter”, “113 Women and Children Protection Hotline”, “Coordination Council For Domestic Violence Victims”, Domestic Violence. As for in favor of crime victims appeals, the Taiwan criminal procedure law has created such systems as appeal, the systems in consideration of crime victims, adopted into the Taiwan criminal procedure law, complaint, accusation, private prosecution, claims, reconsideration, Settling for Trial, and civil procedure, and amendment of the Article 248-1 of Criminal Procedure Law regulates the “right for a companion to present during being interrogated”, and Item 2 Article 271 regulates that “The court may order the complaint to appear in court if necessarily”. However, the systematic and budgeting obstacles have resulted in pretty poor implementation efficiency in respect of the liquidated damages, protection, service and the “Batterer’s Relocation Program” have all been carried out with poor efficiency, due to resource shortage, human resource insufficiency, excessively low liquidated damages, impediment of expanding crime victim protection objects, excessively low hierarchical level of the protection institutes, partial concentration on compensation without due attention for dignity, insufficient supporting measures, relevant competent authorities failing to fully support, especially the protection and implementation of legal right of crime victims, all deserving solutions in urgency (Hsu, F. S., 2010, P. 16).

The “Crime Victim Protection Act” was further amended in year 2009 for the purposes of enlargement of compensation scope of additional inclusion of sexual-assault victims as the legal compensation claim objects in addition to the original category inclusive of legal heirs of deceased victims of severely-injured victims and sexual-assault victims, and also additional inclusion of mental relief in the category of compensation items, and further additional inclusion of 6 types of crime protection victims, including sexual-assault, domestic violence, human trafficking, child and juvenile, foreign spouses and foreign labor inclusive of mainland China, Hong Kong, Macao, and an additional article constituting the legal ground for specifying that that MOJ may “Crime Victim Protection fund”. It is a pity that the severe-violence crime victims could not be included in this Act amendment and serious resource shortage, personnel insufficiency, excessively low hierarchy level of governing institute for victim protection, partial attention concentration on pecuniary



compensation and ignorance of human dignity have still not yet been solved accordingly. Especially following the implement of this Act amendment, there have eventuated in new development in both the social policy and legal system, such as the “Drug Injury Relief Act”, “Compulsory Automobile Liability Insurance Act”, “National Pension Act”, and “Labor Pension Act”. While the social insurance coverage ideology has been reformed into the pension payment system, the legal crime protection shall be more concentrative on assisting crime victim succeeding in physical, mental rehabilitation and social reconstruction with utilization of social support resources, which seem can be expected from the non-government “Third Sectors”. (Kuo,, M. C., Year 2008, P. 85). The analysis of the crime victim protection and fostering policies in European countries developing from integration of the crime victim compensation mechanism, establishment of crime victim support and fostering institutes, safeguard for crime victim rights of criminal justice, the criminal jurisdiction reform laying stress on for improvement of victim loss recovery and enactment of basic laws for crime victim act, constituting the basic laws for the whole legal protection system can fully demonstrate the ideology of offering mental and financial aids firstly, followed by legalization of legal status of crime victims and loss recovery for crime victims and then by safeguard of basic rights of crime victims. The fact that the crime victim protection can't be satisfied simply by pecuniary compensation can justify seeking solutions urgently for relieving the Taiwan crime victim right protection of the compensation restriction and ideology, especially how to legitimate the legal status, loss recovery and remedy and basic right protection of crime victims.^[1]

As a result, the development trend of advanced countries should be taken into consideration for the enactment of a portfolio of “Crime Victim Right Protection Safeguard Act” fully suitable for Taiwan and thus for integrating the central, local governments and relevant social welfare promotion institutes for jointly planning and fulfillment of protection measures concerning crime victims. Such the enactment of “Crime Victim Right Protect Act” shall constituted of general provisions that states clearly the enactment purposes and also exactly specify and prescribe the regulations and measures for basic rights of crime victims, inclusive of meditation and provisions of information, support and aid for compensation claim for loss recovery, legalization of compensation system, provisions of medical care benefits and services, assurance of safeguarding, residence security, employment stability, guarantee of criminal litigation status, appointment of an attorney for assistance, the criminal jurisdiction procedure rights and protection due, promotion of people's understanding nationwide, implementation of investigation and research response channel for handling social welfare organizations' opinions and comments with assurance of full opening to the public. Meanwhile, the enactment for this Act shall also clearly specify that the Execute Yuan may establish a cross-department and cross-hierarchy Council for coordinating all relevant institutes and devising plans for implementation of crime victim right protection measures step by step. For implementation of this Act as early as possible, either the Executive Yuan or MOJ shall establish a Crime Victim Right Protection Research Team by means of appointing a qualified officer as the Team Congregant who shall invite relevant competent authorities, expertise scholars and non-government organizations for serving as the team members devising discussion schedule for this Act and promoting the implementation of this Act as early as expected.

Note

[1] The latest poll survey indicates that crime victims rate the protection performance of judicial civil personnel as poor; the satisfaction levels for all individual items approximate only 50% or even less in average; for the overall duty execution performance averages than 50%; for among all

individual posts of judicial personnel, only 53.5% for Prosecutors, for policemen and courts even less than 45%. Those survey results demonstrate that most crime protection victims commonly dissatisfy with jurisdiction as they can't enjoy the "God's Justice" in respect of criminal judicial personnel during litigation procedures but have been further detrimental on the contrary. (Wang, H. K. 2011; P. 35)

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JAPANESE LAY JUDGE TRIAL AND JUVENILE CASES

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New lay judge system was introduced in May 2009. Under this system, six lay judges and three professional judges join to decide on issues of facts and sentencing. Very serious juvenile cases are also tried by the lay judge panels. Tens of cases have already been tried. Several problems can be found in the current practice. The most serious one is that the court does not consider carefully the characteristics of the juvenile defendant or the circumstances of the particular case therefore that the court does not decide an appropriate sentences for the juvenile, including referral to the family court for protective measures. One reason for this practice is that professional judges do not permit to examine such evidences as the social investigation report by the family court probation officer and the assessment report by the juvenile classification center. Professional judges believe that these reports are too technical for the lay judges to understand fully and that examination of them carefully would make longer the duration of trial. Additionally the practice is related to the understanding of the purpose of the lay judge system is understood.

OVERVIEW OF JUVENILE JUSTICE IN JAPAN

The Juvenile Law in Japan provides that a juvenile means all people below the age of 20 and that, if a juvenile commit crime, his or her case shall be sent to the family court. The purpose of the Juvenile Law is to ensure the sound development of juveniles, rather than punishing them.

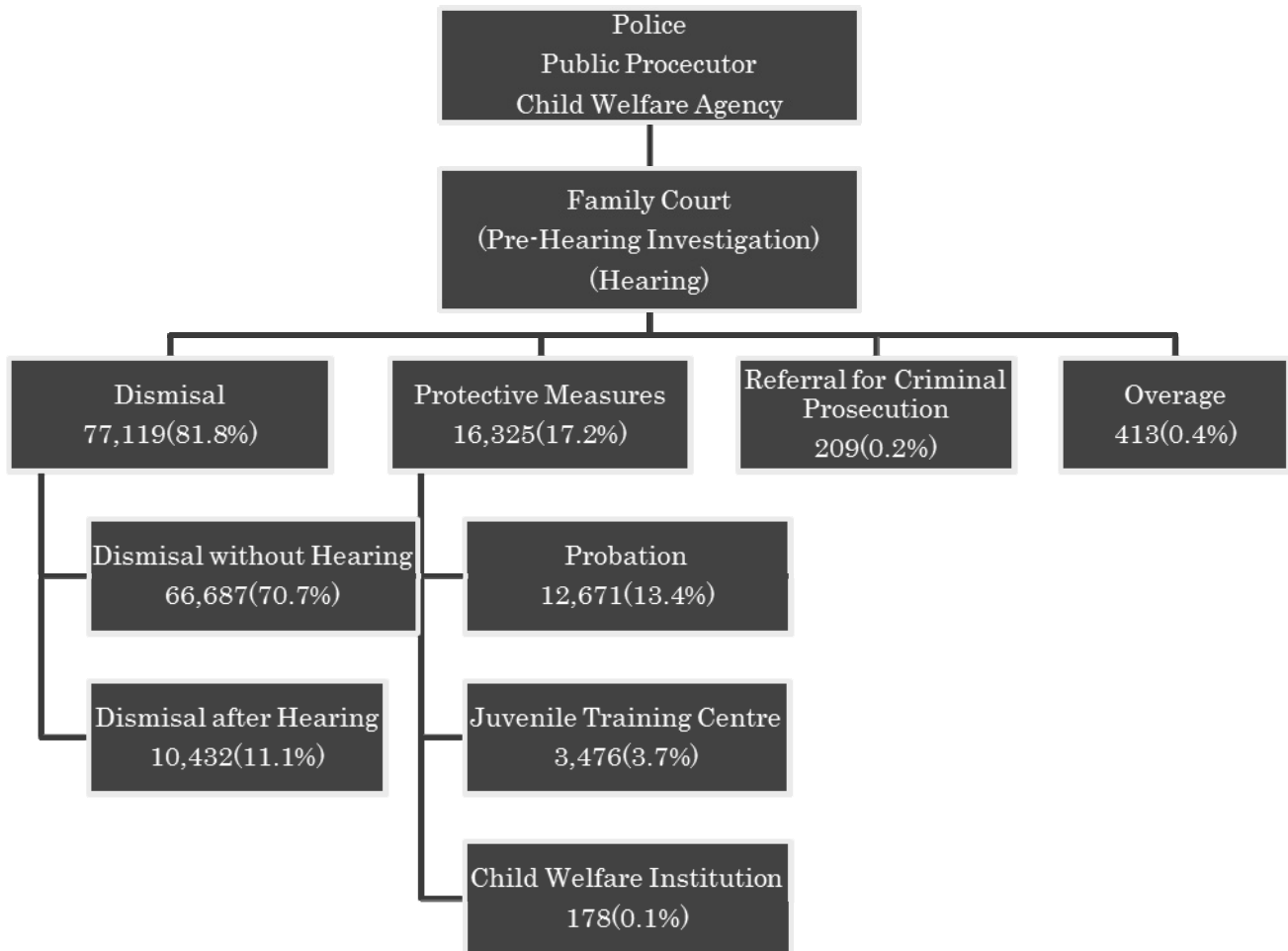
After the family court receives the cases, pre-hearing investigations are then conducted for all referred cases. The family court judge may order, after finding probable cause based on the legal investigation, the family court probation officer to interview the juvenile, parent(s) and persons concerned and to conduct any other necessary investigations. This is called social investigation. It is conducted in practically all cases. Article 9 of the Juvenile Law prescribes that a social investigation shall be conducted in regard to the behavior, life history, characteristics and environment of the juvenile, of his or her parent(s) or of other persons concerned, making every effort to utilize medical, psychological, pedagogical, sociological and other expertise.

The family court judge may detain juveniles at the classification center where classification on the predisposition or psychological state is conducted. Additionally the family court judge may adjourn a hearing and place a juvenile under tentative probation, which is supervised by the family court probation officer.

Based on the reports by the family court probation officer and the classification center, the family court judge decides whether a hearing should be held. If the family court judge finds that there is no probable cause of the offence or that it is inappropriate to subject the juvenile to a hearing, the case shall be dismissed without a hearing.

The hearing has a highly informal nature. Article 22(1) of the Juvenile Law prescribes that a hearing shall be conducted in a peaceful atmosphere with emphasis upon kindness. It is not open to the general public and mass media (Article 22(2)). Victims and their family members may be specially permitted to attend the hearing by the family court judge under the revised the Juvenile Law of 2008. The juvenile, parent(s), and attendants are summoned on the date of the hearing. The family court probation officer is also required to be present. Additionally teachers, employers and so on may be permitted to attend the hearing. The juvenile or parent(s) may appoint an attendant.

The attendants are usually lawyers. The percentage of such appointments to all non-traffic offence cases excluding very minor cases, however, was only 11% in 2009, although this was much higher than before.



The family court judge shall dismiss the case after the hearing if the judge finds that there is no proof of the offence or that it is unnecessary to place the juvenile under protective measures. Otherwise protective measures are imposed. They can be (1) commitment to the juvenile correction center; (2) commitment to the child welfare institution; or (3) probation. The family court judge may refer the case to a child welfare agency after the pre-hearing investigation or hearing. When the juvenile reaches 20 years of age, the case shall then be referred to the public prosecutor. In 2009 more than 80% of the referred juvenile cases were dismissed without or after the family court hearing. Protective measures imposed on 17.2% while nearly 80% of them were probation.

If the family court finds that criminal punishment is necessary in the light of the nature and the circumstances of the offence, the will be sent to the public prosecutor for criminal prosecution, where the juvenile become subject to a criminal trial and a criminal punishment (Article 20). Such



cases, however, account for only 0.2% of all the cases sent to the family court. Referral for criminal prosecution is regarded as exceptional for juveniles.

THE REVISION OF JUVENILE LAW IN 2000

(1) Main Features of the Revised Law

Juvenile justice has been deemed to have two functions: the educative function and the crime control function. The educative function has been the primary one since the Juvenile Law declares its purpose to be the sound development of juveniles. Accordingly the protection of society can be achieved through the prevention of re-offending as a result of the juvenile's sound development. The purpose of criminal punishment such as retribution and deterrence is excluded from the Juvenile Law.

Over the last twenty years, however, theory and practice have been placing greater emphasis on the crime control function. This position requires finding the truth in order that the State would never let a juvenile delinquent off without charge. Additionally it demands stricter dispositions or stronger criminal punishments for serious offences, with the intention of maintaining social order. It regards retribution and deterrence as important factors in disposing of juvenile cases. As a result of this trend, the Juvenile Law was revised in 2000.

The revision in 2000 contains three parts. The most important part was concerned with the criminal prosecution of juveniles. Before the revision, the family court was permitted to refer only the cases of juveniles over 16 to the public prosecutor for criminal prosecution. The revised Juvenile Law lowered the minimum age limit from 16 to 14 (Article 20(1)). Additionally the family court is obliged in principle to refer the cases of juveniles over 16 who have committed a homicide or a malicious offence resulting in death (Article 20(2)). Thus the likelihood for juveniles to be tried in the criminal court and punished criminally was increased. This clearly shows the nature of the revision as getting tough on juvenile 'crime'.

Secondly, the revised Juvenile Law changed the procedure of fact-finding. The maximum period of pre-hearing detention in the classification center was extended from 4 weeks to 8 weeks. The family court may permit the public prosecutor to attend the fact-finding hearing when the juvenile deny the alleged offence or the case is highly complicated. Until this revision, the public prosecutor had been totally excluded.

Thirdly, several provisions concerning victims were enacted. Victims can make statements regarding their opinion or feelings about the offence and offender either to the family court judge or to the family court probation officer should they so wish. They are permitted to access the case records and shall be informed of the final decision. Similar provisions had been made in the Law of Criminal Procedure immediately before the revision of Juvenile Law.

(2) Operation of the Revised Law

Before the revision of 2000, the percentage of transfers to the public prosecutor for criminal prosecution had been small even for very serious cases. Since Article 20(2) of the revised Juvenile Law made it a general principle to transfer the juvenile who committed a homicide or a malicious offence resulting in death for criminal prosecution, the percentage of the cases referred for criminal

prosecution has rapidly increased. Effectively, the disposition of these cases has been based primarily upon the criterion of the gravity of offence. The predominance of crime control is illustrated here.

Transfers to the Public Prosecutor for Criminal Prosecution

	Average Yearly Percentage over the 10 Years before Enforcement	2001.4.1-	2002.4.1-	2003.4.1-	2004.4.1-	2005.4.1-	Number of Cases for 2001.4.1-2004.3.31
		2002.3.31	2003.3.31	2004.3.31	2005.3.31	2006.3.31	
Homicide	24.8%	50.0%	36.4%	65.0%	65.0%	42.1%	85
Bodily Injury Resulting in Death	9.1%	68.2%	43.8%	50.0%	72.0%	25.0%	157
Robbery Resulting in Death	41.5%	88.9%	46.2%	33.3%	85.7%	100.0%	46
Dangerous Driving Resulting in Death			93.3%	100.0%	80.0%	100.0%	33
Others				100.0%		100.0%	3
Total Percentage		67.7%	51.7%	55.8%	73.6%	48.6%	324
Total Number of Cases Referred for Criminal Prosecution		44	51	45	36	17	

Source: The Supreme Court Homepage, http://courtdomino2.courts.go.jp/tokei_misc.nsf

Note: As for homicide, attempted homicide has been excluded since 1 April 2001.

LAY JUDGE SYSTEM NEWLY INTRODUCED IN JAPAN

(1) Lay Judge Trial

Japanese lay judge trial is called “saiban-in” trial. It was introduced by the Lay Judge Act, which came into force on 21 May 2009. In most cases, the judicial panel is composed of six lay judges and three professional judges. In cases where there is no substantial dispute over guilt, the panel is composed of four lay judges and one professional judge. The latter is very rare in practice. Under the newly introduced lay judge system, citizens participate into Japanese criminal trial for the first time in 66 years. This new system was a part of large-scale justice system reform from legal education and access to legal services to civil procedure and administrative litigation.

Lay judges are randomly selected from among the voters for each case through a procedure similar to jury selection in some other countries. Lay judges work together with professional judges to decide on the issues of facts and sentencing. Each lay judge and professional judge has equal voting power. Procedural issues and matters of interpretation of law are left to the authority of professional judges.



Lay judge trial will be held for (1) offences punishable by death or imprisonment for life; or (2) intentional conduct resulting in the victim's death, for which a minimum term of one year's imprisonment is prescribed. Such offences include murder, robbery resulting in death or injury, rape resulting in death or injury, arson of an inhabited residence, and certain serious drug offences. Lay judge trial is mandatory therefore defendants may not refuse it and request a bench trial. It is estimated that approximately three percent of all trials will be tried by lay judge panels.

In lay judge trial decisions are based on the majority opinion of the members of the mixed panel, but at least one judge and one lay judge must subscribe to the majority view. It means that the verdict of guilty or severer sentence is delivered by special majority's vote requiring one or more professional judges' vote.

The law holds the lay judge criminally liable for leaking secrets, making false statements during *voir dire* or other legal proceedings, and failing to appear at trial. Both the defendants and the public prosecutors may appeal against the final judgment by the lay judge panel. The ground for appeal should be one or more of the following: (1) non-compliance with procedural law in the trial proceedings; (2) an error in the interpretation or application of law which clearly influenced the judgment of the first instance; (3) excessive severity or leniency in sentence; and (4) an error in fact-finding in a guilty or not-guilty judgment. If there is reversible error, the high court will vacate the judgment and remand the case to the trial court. If the high court finds that a new decision can be made on the basis of the proceeding and evidence (including evidence examined at the appellate level), it may vacate the judgment below and, without remanding, enter its own judgment. High court judgments are given only by three professional judges.

(2) Pretrial Conference Procedure

There is one more feature of Japanese lay judge system. That is mandatory pretrial conference procedure newly introduced mainly for lay judge trial. This procedure is conducted before the selection of lay judges, therefore they do not attend it.

Generally the court may set the case for pretrial conference procedure for any case after hearing the opinions of the parties. But the cases that will be tried by the lay judge court must be put to pretrial conference procedure. Through this procedure, the parties prepare and clarify their arguments and disclose the evidences, and the court makes necessary rulings and advance planning for the upcoming trial.

Parties are required to clarify the arguments and defenses that they intend to present during trial, and make offers of evidence to support them. Once the pretrial conference procedure has concluded, neither party is allowed to offer additional evidence unless it can be shown that the delay was unavoidable.

(3) Operation of the Lay Judge System

Lay judge System has been operated so carefully as to avoid the failure of the system. First, the public prosecutor has been selected carefully the indictments for the lay judge trial in order to make sure guilty verdict. Second, refusals of the service by lay judge candidates have been accepted rather generously; acceptance rate mounts to almost 50%. Third, duration of the trial sessions has been kept very short so as to lessen the burden of the lay judges for their service term; rate for less

than 3 days is 34% and that for less than 4 days is 70%. Lay judge trials usually finish in a week from selection proceeding of lay judges to the declaration of final judgments, although most of them do not contain the serious contest on fact-finding.

Under the lay judge system, there seems to be slight diffusion of sentencing distribution although no serious disparity cannot be identified. Rather harsher sentences are imposed on several kinds of offences: offences resulting in the victim's death such as homicide; sexual offences. In contrast, more lenient sentences are given on such defendants when they murdered their bedridden family members that they had been taking care of for a long time. Some pointed out that the lay judges would demand lenient sentences for the defendants whom they could feel sympathy with while harsh sentences for those whom they do not.

Level of satisfaction among lay judges is high. 63.1% of people who had experienced to work as lay judge answered that they had comprehended the trial process. 77.3% answered that the atmosphere of deliberation with other lay judges and professional judges had been friendly and 71.4% answered that they had had serious discussion during deliberation. It was surprising that 95.2% felt they had had good experience themselves although only 31.1% had ex-aunte motivation to participate in trial. 75.1% had good impression totally.

According to the opinion poll conducted by the Supreme Court, general public show rather positive attitude about the lay judge system. They feel that familiarity, comprehensibility and swiftness of the trial has improved dramatically and that reflection of good sense of justice has doubled. But they feel no improvement in fairness or reliability of the trial. Only 15% show low motivation for the lay judge service. On the other hand, they are concerned about heavy burden of lay judge's task, difficulty of decisions and lack of self-confidence to make sober decisions.

JUVENILE TRIALS AND LAY JUDGE TRIALS

(1) Juvenile Cases in Criminal Courts

As mentioned above, very few juvenile cases result in criminal trials, although their number has been rising since the revision of the Juvenile Law in 2000. Most involve very serious cases. Under Article 40 of the Juvenile Law, a juvenile case is handled in the almost same way as an adult one is. Trial proceedings have an adversarial nature, and they are open to the public.

Under Article 1 of the Juvenile Law, the sound development of juveniles should be considered in criminal trials for juvenile defendants. Specifically, several special provisions apply in such cases. Article 50 provides that the proceedings of the criminal cases of juveniles shall be conducted in compliance with the purport of Article 9. The latter states that a social investigation by the family court probation officer and an assessment by the juvenile classification center shall be carried out using medical, psychological, pedagogical, sociological, and other expert knowledge of the behavior, background, personal capacity, and environment of the juvenile and other concerned persons.

Additionally, Article 55 prescribes that the criminal court shall refer a case to a family court if it is found appropriate to subject the juvenile defendant to protective measures. The sentences imposed on juveniles are reduced in several ways. A life sentence is imposed on an offender under 18 at the time of the offence when the death penalty would otherwise be considered appropriate, and an



imprisonment of 10–15 years may be imposed instead of a life sentence. When imprisonment for less than three years would otherwise be imposed, the sentence is reduced to an indeterminate one within the scope of an applicable penalty. Imprisoned juveniles shall serve their sentences separately from adult inmates. Although the reduction of the life sentence to 10–15 years of imprisonment for juveniles under 18 is now discretionary, it was mandatory before the revision of the Juvenile Law in 2000.

Number of Juveniles Convicted for Non-Traffic Penal Code Offences by Ordinary First Instance Court in 2009

Total in 2002	Death Penalty	Life Imprisonment	Imprisonment with or without Labor				Fine	Referral to family court
			Indeterminate Sentence	Determinate Sentence	Of which: Suspended Sentence	With Probation		
139	0	4	49	1	65	20	0	1

Source: White Paper on Crime in 2010.

Under these provisions, the criminal court must prescribe appropriate sentences for juveniles, including referral to the family court for protective measures, based not only on the demand for crime control but also on their need for rehabilitation. For this purpose, it is crucial to examine carefully the characteristics of the juvenile defendant and the background of the particular case.

(2) The Practice of Juvenile Trials under the Lay Judge System

A lay judge trial deals only with persons indicted for serious offences. Many juvenile cases referred by the family court for criminal prosecution are heard by the lay judge panels. The number of the juvenile cases in which the defendants are under 20 at the time of judgments by the lay judge panel is estimated at 30 or 40 per year. Beside these cases, there are 50 or 60 cases per year in which the defendants were under 20 at the time of indictments but reached 20 before the judgments.

The question is whether the requirements of the law are satisfied in practice. The answer is “No.” The best example is the trial and death sentence of one juvenile in the Sendai-Ishinomaki Case. In this case, the Sendai District Court handed down a death sentence to an eighteen-year-old (at the time of offence) juvenile who had murdered two young women, seriously injured one young man, and abducted his ex-girlfriend. The lay judge trial lasted for only five days. In this trial, the court examined the evidences on the characteristics of the juvenile defendant and the background of the case—small parts of the social investigation record made by the family court probation officer and the assessment record of the juvenile classification center—for only thirty minutes. In contrast, the court heard the statements of the victims for a much longer time. After a three-day deliberation, the professional and lay judges sentenced the juvenile defendant to death. They emphasized the seriousness and heinousness of the offence and denied the likelihood of his reformation. Additionally, they regarded the call of the victims and their close relatives for the death sentence as important.

Several problems can be found in the practice of juvenile trials under the lay judge system. First, the criminal court tends to interpret the requisite for referral of juvenile cases to the family court in

order to restrain the numbers of such referrals. Recently, an influential argument has been presented to the effect that the criminal court may refer juvenile cases to the family court only when the former, when considering only such factors as their motives, form, and consequences, finds special circumstances to reduce the seriousness and heinousness of offences. It is argued that the court may not consider the circumstances after the offence, personality traits, age, behavior, environment, or other circumstances of a juvenile, although Article 20(2) itself allows the family court to consider these facts in deciding whether to refer the case for criminal prosecution.

Second, based on the above-mentioned legal interpretation, the criminal court is reluctant to examine the social investigation and assessment reports prepared in the course of the family court proceedings. It is argued that the criminal court could determine an appropriate sentence for a juvenile, including referral to the family court, based on the same evidence as that in an adult case therefore that the court does not need to carefully examine such reports of the characteristics of the juvenile and the detailed background of the case. This practice, of course, is inconsistent with the legal provisions. It should be noted that as a consequence of its use, the social investigation by the family court probation officer has been losing its substance. They investigate only the circumstances concerning the offence itself in very serious cases that are highly likely to be referred for criminal prosecution.

Third, this practice of the criminal court is justified by the nature of the lay judge trial. Under the lay judge system, it is difficult for the court to carefully examine the social investigation and assessment reports of the characteristics of the juvenile and the detailed background of the case.

Generally, in pretrial conference procedure, professional judges tend to reduce the factual and legal issues and select the evidences carefully in order to keep the duration of trial very short. This is because they believe that a longer duration would overcharge the lay judges. They believe that the duration of trials would be longer if the lay judge panel carefully examined the social investigation report and the assessment report. Additionally, they assume that lay judges will not fully understand the meaning of these reports, since these are written by experts in human behavioral science and are often very long. Therefore, professional judges believe that lay judge panels should not examine such evidence.

Public trials of juvenile cases cause another problem. If social investigation report or the assessment report is examined in open court, the privacy of the juvenile and other concerned persons will not be maintained. If so, they may be unwilling to provide necessary information to family court probation officers. This would lead to the collapse of the system of social investigation.

Because of these reasons, lay judge panels do not examine the evidences as to characteristics of juvenile defendants and the backgrounds of particular cases; therefore, such courts apparently operate in violation of legal requirements.

CONCLUSION

The practice of juvenile trial under the lay judge system has serious problems. It does not meet the legal requirements of trials pertaining to juvenile cases and appropriate sentences for juveniles.



This practice seems to be related to the understanding of the purpose of the lay judge system, which is to promote the people's understanding of and increase their confidence in the justice system through their actual participation (Article 1 of Lay Judge Act of 2004). According to this understanding, satisfaction by lay judges after their service should be fostered. Therefore, lay judge trials that are simple and understandable are encouraged, a tendency that explains the present practice of juvenile trials under the system.

The purpose of the lay judge system should be reconsidered. One argument emphasizes the democratic control of the justice system through the participation of lay judges. It is true that a strong bureaucracy in the judiciary has caused some problems; however, a simple democracy is not necessarily good for the justice system, the ultimate purpose of which is to protect human rights. The main function of the justice system should be to protect human rights of the minority from the arbitrariness and oppression of the majority. This objective is especially important for criminal justice.

Therefore, the lay judge system should be regarded as one that encourages the justice system to pursue this function. Specifically, it should uphold better trials for defendants through the interaction between the expertise of professional judges and the good sense of laypersons. Correct fact-finding and appropriate sentencing are the most important functions of criminal courts, and these depend on productive trial proceedings and meaningful deliberations with the participation of lay judges. When lay judge panels deal with juvenile cases, they should seek trial proceedings fit for juvenile defendants together with appropriate sentencing. The present practice does not fulfill the purpose of the lay judge system.

THE INCREASING COMPANY'S LEGAL RISK AND THE UK'S GLOBAL ANTI-CORRUPTION EFFORTS UNDER THE BRIBERY ACT 2010

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With ever increasing global operations of multinational companies, it is not uncommon that employees of the company bribe foreign officials to obtain advantages. The parent company often escapes liability for acts of its employees abroad. The UK Bribery Act 2010 was enacted with a view to holding the multinational company accountable in these circumstances. It is argued that the approach of the Act is to increase the legal risk of multinational companies, which are risk-averse - so as to change corporate behaviour. The legal risk is not only placed on the company but also on the board and senior executives. In addition to the individual liability of the person who commits the act of bribery, the Act makes the company also liable unless it has an appropriate risk management regime, that is, adequate procedures, to prevent bribery. This corporate risk management model aims at incorporating anti-bribery culture into corporate identity in order to influence the behaviour of the company beyond the UK territory. However, there are enforcement problems that need to be addressed. Certain concepts – such as corporate hospitality - are difficult to define. A gift that is proportionate and reasonable in one country may not be so in the UK. However, the Act does not excuse conduct which is a bribery act under the Act on the ground that the conduct in question is customary or accepted practice in the country where it took place. This problem is particularly serious because cooperation of foreign authorities is crucial to make enforcement effective and, if foreign authorities do not consider the conduct under review in any way objectionable, they may be less willing to cooperate in the investigation.



DEFENSE LAWYERS IN CHINA AFTER LI ZHUANG'S CASE: A NEW ERA COMING OR NOT

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Historically, the defense lawyer hasn't played important role in Chinese criminal justice system. It has been generally criticized by the international society and Chinese inner academic and its lawyers even after the 1996 revised criminal procedure law. One typical example is that more defense lawyers were arrested or punished on the name of the crime - false witness or interfering with testimony. Li Zhuang' case of 2009 is good example for illustrating it, who was punished on such crime when being as a defense lawyer of one of the suspects during the campaign of Chong Qing Da Hei. He was re-accused in March of 2011 before he would be released in June of 2011 on the crime name of interfering with testimony, some of the Chinese defense lawyers and scholars voluntary organized to go to Chong Qing to support Li Zhuang. Finally, the prosecution withdraw their accusation. It happens that there is a similar case. The more update case is four defense lawyers in BeiHai city of Guang Xi province. They are being supported by the defense lawyers across the whole nation now. Whether the grass movement will change the position of Chinese defense lawyers, it will be discussed in the thesis

CIVIL COMPENSATION IN CASES OF DEATH PENALTY: BASED ON INVESTIGATION IN CITY T OF P.R.C.

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As the important discretionary sentencing in the judicial practice of P.R.C, civil compensation is of great significance for the restrictions on the application to the death penalty, Based on the investigation of 43 cases in City T of P.R.C, the data support the finding in general ,civil compensation has a significant impact on the death penalty. But this effect should be considered a rational manner. In the death penalty reform of P.R.C, it should attach importance to the function of the civil compensation on the limitation of death penalty. If the offender has shown repentance sincerely and compensated the loss of victims actively, it should be prudent in dealing with judgment of execution. In order to avoid spending money on buying the offender's life ,the other application of the death penalty should also be paid attention, when the victim could not forgive the offender and refuse to accept the compensation.

INTRODUCTION

In the Chinese mainland, civil compensation is of very important to the discretion of punishment in the criminal judicial practice. At the criminal proceedings, the civil action are usually incidental to the criminal cases of an infringement of the citizen personal rights. How to deal with the relationship between civil compensation and sentence of the death penalty in particular, is a problem which should be solved in the current criminal trial. It is important to research on civil compensation to limit the death penalty .In view of this, this article intends to expand on the exploration of the problem of civil compensation and the restrictive application of death penalty.

In the judicial practice of China, civil compensation in circumstances has critical impacts on the death penalty. From 2007 to 2008, the commuted cases which had been handled by the people's Procuratorate in Chongqing accounted for 57.89% in the cases of the second instance of the death penalty appeal, because of the defendants' compensation. Due to the compensation of the defendant in the cases of the death penalty, the commuted cases which the defendants suspended from the immediate implementation of the death penalty to death sentence with reprieve accounted for 63.64%ⁱ. On a positive analysis of 83 cases of intentional homicide, the conclusion were drew by some scholars as following: the chances of death sentence with reprieve awarded to be 87.5%,after the two sides reached conciliation on the civil part; the chances of death sentence with reprieve awarded to be 41.9%,if the defendant did not bear the civil responsibility.ⁱⁱ This showed that the civil part of the compensation had a significant impact on the immediate implementation of death penalty or the death sentence with reprieve awarded.

As a discretion plot, civil compensation reflects the defendant to a certain degree of penitence on subjective, the personal danger of the defendant decreased; objectively it reduces the damage of crime. It has the meaning of the criminal policy to resolve social conflicts and promote social harmony. However, in recent years a number of cases have been quarreled bitterly, in which the defendant is sentenced to the death sentence with reprieve or life imprisonment due to the positive compensation for victims' losses, such as Sun Weiming Case, in which Sun was alleged to have endangered public safety in dangerous ways. Although Sun was sentenced the death penalty in the first instance, he was commuted to the life imprisonment for the same offences in the second instance. The critical circumstances contributed to Sun Weiming from death were that Sun and his

family members tried their best to compensate the loss of the victim after the first instance. It is questioned by the public that Sun has spent money buying his life.

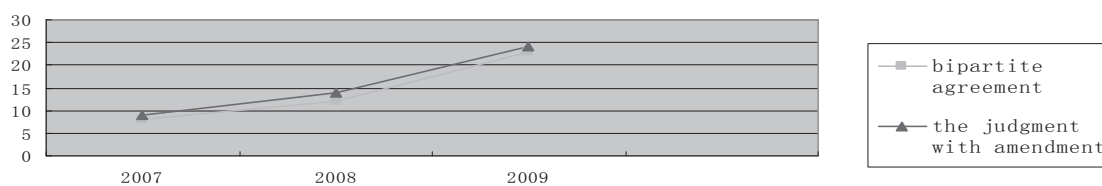
DATA AND METHODS

The present study used the data from the investigation of the cases in mediation of civil compensation, in which the suspended death sentences above were imposed on the defendants from 2007 to 2009 at T-municipal courts within the jurisdiction, 43 mediation agreement signed, the compensation for the victims amounted to 5.298 million Yuan, 47 commuted cases in the mediation of civil compensation, without any litigation petition in question.

In recent years, it has reflected the following characteristics in the trial of the death penalty cases supplementary to the civil compensation in City T:

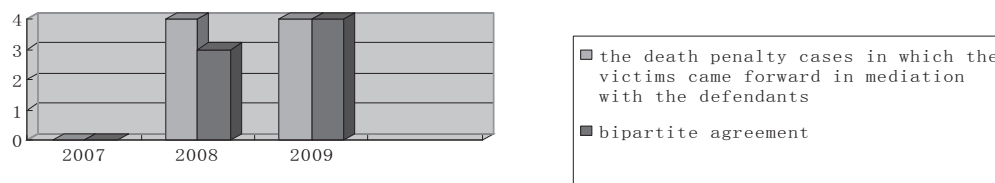
- 1, the cases increased in which both parties reached a criminal reconciliation agreement

Table1 death penalty commutation cases due to the civil compensation from 2007 to 2009 in City T



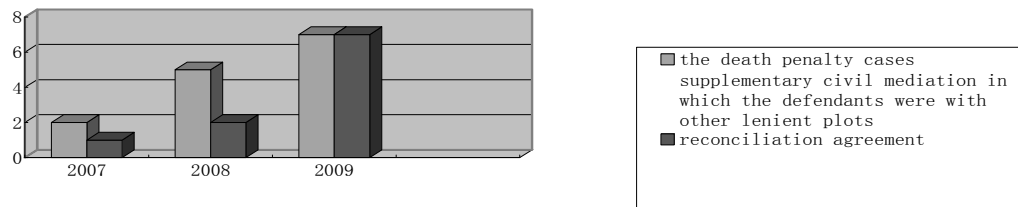
- 2, the cases increased in which the victims offered the civil mediation, and the compensation agreements could be easily reached

Table2. the death penalty cases in which the victims came forward in mediation with the defendants from 2007 to 2009 in City T



- 3, to the various degrees, the defendants were with other lenient plots such as the surrender and the meritorious performance in the death penalty cases supplementary to the civil mediation

Table3. mediation with the statutory lenient circumstances in the death penalty cases from 2007 to 2009 in City T



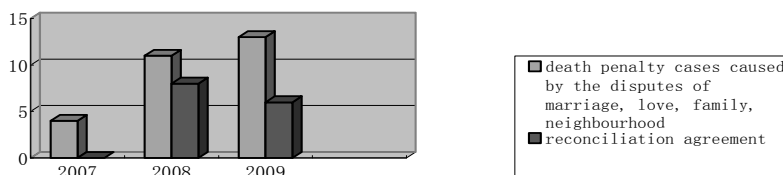
4, the compensation agreements were easily reached between the two sides when the victim had mistakes

Table4. death penalty cases of the victim at fault from 2007 to 2009 in City T



5, it was always difficult to reach a compensation agreement in the cases which were caused by the disputes of marriage, love, family and neighbourhood

Table5. death penalty cases caused by the disputes of marriage, love, family and neighbourhood from 2007 to 2009 in City T



I also had an interview with several criminal judges in City T in 2010. Judge A pointed out that some victims were in fact not willing to cooperate with the reconciliation of the accused, they had to agree with the defendant's claims because of great financial hardship, and eager to get some compensation. In view of the compensation by the defense, the courts did not apply the death penalty. Judge B said, although the defendant sincerely repented of his sins and was going to compensate for the loss of the victims actively in some cases, the victims disagreed with



understanding and refused the compensation, some even put pressure on the court by appealing or the other ways, and urged to sentence the defendant to death . So the criminal trials had to face a predicament how to deal with the relationship between the civil compensation and the death penalty.

How to get out of this dilemma? In my view, a correct concept should be fostered that the compensation of the defendan is not the same as the criminal responsibility and the defense should not therefore be lenient punishment. Compensation as a discretionary circumstances should be taken into account in the death penalty cases.

RESULTS

To fully abolish the death penalty in mainland China is impossible now, the rational practice is to strengthen the judicial control of the death penalty. In my view, death penalty reform should play the role of civil compensation in restricting death penalty in China .Mediation of civil compensation in the death penalty case should be of great significance not only to protect the interests of the victims and calm victims ' feelings of revenge ,but also to resolve social conflicts and promote social harmony.

THE EVALUATION TOOLS OF EVIDENCE IN SOUTH AFRICA

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The evaluation tools of evidence in South Africa. The evaluation of evidence is a critical process in the finalisation of the case against an accused. It is required of the court to determine the factual basis of the case before pronouncing on the rights, duties and liabilities of the parties in a dispute. The factual basis is determined by evaluating all the probative material admitted in court. This approach speaks to the credibility findings on the witness, reliability of the evidence and probative value thereof. Courts in South Africa have always cautioned that there are two basic principles when evidence is evaluated, to wit, that the evidence must be weight in its totality and that probabilities and inferences should be distinguished from conjecture or speculation. Arguably the innocent must be left alone and the guilt must be convicted. The writer will look at the various tools that are used not only in the collection of the evidence but in the presentation of the evidence as well as the evaluation of such evidence in criminal cases. My view is that these are interrelated and cut across all stages of the criminal justice system therefore must work in unison to decide cases and in return respect of the criminal justice system.



ON PERFECTING THE FUTURES CRIME LEGISLATION IN CHINA

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Futures crime is known as a new mode of Financial Crime, which is a great danger to the development of futures market as well as the whole market economy. Therefore, all the countries are using penalties punish on such crimes. In china, the futures crime legislation was later than other countries; and crime system was just established by the Criminal Law Amendments, which far from perfect. Therefore, our current futures crime system can not meet basic requirements against the current needs, at the same time, it can not line with international standards, which hinder the development and prosperity of China's futures market. In this paper, we try to analysis and evaluate our current futures crime system, and learn from international experience in futures crime legislation to give some advises on improving the elements of legislation about the existing Crime of Futures Inside Transaction and the Crime of Manipulate the Futures Market Price. And point out that the defects of Futures Crime legislation. Finally, the article puts forward that the futures crime system should be creating a Futures Fraud crime and some other related legislative proposals.

THE OUTLINE OF FUTURES CRIME

1.1 The Definition of Futures Crime

The name of Future, compare to stock or spot, is evolved from “future”, which means the transaction shall be taking in the future. The positive side of futures market is developing futures markets, taking financial innovation, opening financial services market, the preparation for the national development of a market economy. The characteristics of futures trading in the futures market make it has the function of price discovery, hedging and risk aversion and other features, meanwhile, it is also a paradise for adventurers. In the futures market, some form of speculation is allowed, even necessary to a certain extent.

However, some inappropriate speculation like financial legerdemain are not allowed, and serious futures speculation or convicted of serious offenses will be convicted. But what is futures crime? Different people have different opinions. Some people believe that futures crime is a serious hazard in futures management, which should be held criminally responsible behavior by criminal laws and regulations.¹ Some people hold that futures crime is an intentional violation of futures regulations, serious damage to the futures market management order, which shall be subject to penalties for punishment.² Some people think that futures crime refers to violations of futures laws and regulations, engaged in illegal futures trading activities, undermining futures market order, violation of the legitimate rights and interests of futures investors, endanger China’s economic construction and development, when the circumstances are serious shall be subject to criminal punishment.³

After learning from aforementioned scholars’ definition of the concept of futures crime, I think that futures crime means the crime constitutes a violation of futures laws and regulations, and the concept of futures crime follows the consistency of our criminal legislation, which is a violation of futures trading futures laws and regulations, and management which seriously damage to futures or futures order shall be defined as criminal acts to be held criminal responsibility.

¹ Sun Daxiong, (2003). On Futures Crime, CCNU Press, 74

² Gao Jinping, (2000). On Futures Crime. Southwest University for Nationalities Transaction, 11.

³ Liu Rukuan, (2006). The Futures Crime Legislation Improvement, Market Modernization. (25), 298.

In fact, there is no concrete offense named Futures Crime in China's Criminal Code. Here, the Futures Crime Refers to some "futures" trading-related crimes and other acts in criminal law.

1.2 The Characteristics of Futures Crime

Futures Crime is a new type of economic crimes arising with the emergence futures exchange, which is a great danger to the futures market and the whole market economy. Accordingly, when the countries establish futures markets in attach great importance to the use of such a crime punishable by penalties. However, futures trading behavior has a big difference compared to other economic behaviors, such as stock trading and spot trading, which along with the futures make the futures crime has generated its own distinct characteristics:

Firstly, Futures Crime is a statutory crime. It is a serious damage to the financial management order. This should be attributed to the special rules of futures trading. Futures crime occurred in the futures market are concerned, in which futures and other financial instruments or derivative financial instruments as instruments to violate the management and futures trading laws and regulations or rules, leading to the serious damage to the futures market and management order. Therefore, the prerequisite for futures crime is whether the perpetrator violates the exchange rules and other laws or regulations constitute.

Secondly, The Futures crime is detrimental to society. Funds futures market is an important gathering place. If the futures crime occurred, especially some of the larger futures crimes, will not only affect the security futures funds, but also jeopardize the entire financial system stability, and thus affect social stability.

Thirdly, the Subject of the Futures Crime is particular. In China, the subject of futures crime is a subject as a general principal, but we found that the behavior of people engaged in futures crime is not the general practitioners.

Fourthly, the pattern of futures crime is mainly committed by units. In a sense, in practice, in order to reap huge profits, some of the units or individuals by virtue of its partnership with the capital, information, personnel, and many other advantages, such as futures brokerage firms, investment consultants and investors, the media and other mutually coherent and jointly commit the crime. There is also a more common scenario is within the futures practitioners collusion to commit crimes, or futures practitioners collude with customers, co-perpetrators. Of course, there are some futures crime happened between clients and internal staff or customers together.⁴

THE OVERVIEW OF THE FUTURES CRIME LEGISLATION

2.1 Learning Futures Crime Legislation from Foreign Country

In view of the social harms of futures crime, so many countries attach great importance to control futures crime, especially America, Singapore and Japan.

2.1.1 Learning the American Futures Crime Legislation

⁴ Gao Jinping, (2000). On Futures Crime, Excellence Master Theory of Southwest University for Nationalities,10.



In U.S.A, the futures market really started to implement legislation to regulate should be in 1922, the “Grain Futures Act” introduced. However, before the “Grain Futures Act” introduced, the U.S.A futures market has a taste of the chaos caused by lack of supervision, which leads the American provides counts more heterogeneous crime in the “Futures Trading Law”. Mainly making the futures crime into two major types, felonies, including appropriation of property, misappropriation of deposit, false statements, market manipulation, insider trading and other types can be sentenced to five years imprisonment for the felony crime; others that sentenced to 1 year imprisonment crime is a misdemeanor.

The American legislation on the futures market manipulation criminal offense include that insider trading; false statement offense; fraud offense customers; misappropriation of deposit crime; appropriation of property. In 1984, The United States also promulgated the “Insider Trading Sanctions Act,” in 1988, enacted the “Insider Trading and Securities Fraud Enforcement Act” and other special criminal law. Meanwhile, CFTC has also developed the “Exchange Management Rules”, and the number of specific crimes futures regulation. Currently, “Commodity Futures Trading Modernization Act of 2000” has become the Basic Law of American futures crime.

2.1.2 Learning Singapore’s Futures Crime Legislation

Following the establishment of the futures market after the United States, many countries also has established futures market. These countries when in the process of establishing or managing the futures markets, to build efficient in the short term, often drawing on existing foreign transplant and establish their own legislative system of managed futures. Singapore is a typical example.

In the 1980s, when Singapore establish its own futures markets, who was full introducing the American futures law, promulgated on individual change, and thus futures market is growing rapidly. Currently, Singapore’s future market has some influence on the international market.⁵

2.1.3 Learning Japanese Futures Crime Legislation

Japan also attaches great importance to the national futures crime legislation. In addition to “Commodity Exchange Act”, the Japanese also developed a “Financial Futures Trading Law” on the field of financial futures to regulate criminal behavior. Japan Futures crime legislation can be roughly divided into two periods: one is from the First World War to 1990. Prior to 1990, the law of “on the overseas commodity futures markets of fiduciary and other legal” and “Commodity Exchange Act” was the basis of standardized futures crime laws in Japan. However, the futures still need the help of specific application of crime in the Penal Code on fraud, breach of trust, embezzlement and other relevant business requirements can be achieved for the identification of criminal behavior. The other period is after 1990, the “Commodity Exchange Act” modifications. During this period, the Penal Code in the regulation of futures weakened the role of crime.

After comparing national futures crime legislation and their content, we can find that foreign futures crime legislation does not provide for all the futures crime in the Penal Code, but scattered provisions in the “Commodity Exchange Act,” “Futures Exchange Act”, “financial Law”, “investment Law” and other related laws. Because the futures crime has a very close contact with the futures laws and regulations, to be provided in the futures law will be better to the futures criminal sanctions.

⁵ Zhu Ming. (2008). Analysis on Chinese futures crime legislation, *Enterpriser World*,(2).

2.2 History of China's Futures Crime Legislation and the Status Quo

2.2.1 History of China's Futures Crime Legislation

In February, 1988, the State Council instructed the relevant departments of the foreign futures market system to solve the problem of domestic agricultural price volatility. In March, a meeting of the Seventh National People's Congress proposed in "Government Work Report" that to positively develop all kinds of wholesale trade market, to explore futures, which is the beginning of China's futures market research and a prelude. On October 12th, 1990, Zhen Zhou Grain Wholesale Market was established by the State Council, by that China's futures market has taken the first step, but the phase of the futures markets have no normative documents or regulations, not to mention the futures crime provisions of. Until April 28th, 1993, the State Administration for Industry issued the "Interim Measures on Futures Brokerage Company Registration", then, the State Council issued a "strong curb blind development of the futures market," and other documents make the futures market violations have a basis. Although the 1997 "Criminal Law" amendment on the occasion, taking into account the futures crime problems, but there is no uniform legislation futures, and the futures crime can not be accurately determined, so the "Criminal Law" provides only the relevant securities crimes.

On June 2nd, 1999, the State Council issued the "Provisional Regulations on Administration of Futures Trading", which is the landmark event for China's futures legislation. "Provisional Regulations" is a summary of the previous legislation of China's futures, which is the end of the State Council departments and local legislation conflicts futures situation. It is systematically building the basic system of China's futures market. In Article 6 to Article 8 of "Provisional Regulations", detailed listing of the 8 kinds of futures criminal behavior, which later provides the basis for criminal legislation of futures crime.

2.2.2 The Status Quo of China's Futures Crime Legislation

On December 25th, 1999, the thirteenth meeting of the Ninth National People's Congress through the "Criminal Law Amendment" formally incorporated futures crime into the Penal Code. This is the first real sense of China's legislation on the use of criminal law norms to regulate the futures crime. The "Criminal Law Amendment" make change to the "Criminal Law", involving nine counts of criminal acts related to futures, including: the crime of unauthorized establishment of financial institutions; counterfeit, alter, transfer, financial institutions, business license, approval documents of the crime; insider trading, disclosure of inside information about the crime; altered the crime of false information and communication futures; lured investors to the crime of trading in futures contracts; manipulate futures prices crimes; misappropriation of funds; embezzlement of public funds; the illegal operation of futures business to be punished for the crime of illegal business. However, under normal circumstances, we believe that the crime of misappropriation of funds and embezzlement of public funds are not part of "immediacy futures crime", but the "relevant futures crime". however, because the revised provisions, the two criminal charges in the form involved in the futures exchanges, futures brokerage companies and other financial institutions, staff, misappropriation of client funds behavior, the behavior of financial markets, therefore, mainly against the order, the Criminal Law Amendment be placed in the "destruction of the financial management order" in the kind of offense.

After several years, on June 29th, 2006, the National People's Congress passed "Criminal Law Amendment (six)" and modified the manipulation of securities and futures market penalties for the



crime, the statutory maximum penalty from five to ten years; the second is that the fines from “more than five times” was changed to an unlimited fine, and the circumstances of the crime increases.

Now, in China’s “Criminal Law”, there are total of 10 criminal charges (in this offense as a crime of choice): that the crime of unauthorized establishment of financial institutions; forged, alter, transfer of financial institutions, business license, approval documents sin; insider trading, disclosure of the crime of insider information; altered the crime of false information and communication futures; lured investors to the crime of trading in futures contracts; manipulation of futures markets crime; staff of financial institutions misappropriation of funds and embezzlement of public funds; breach of trust fiduciary property crime and the use of illegal business. But there are still many parts of the executive and legislative futures criminal legislation does not converge with the place, so it is difficult to adapt to the current needs.

DEFECTS AND IMPROVEMENT IN CHINA’S FUTURES CRIME LEGISLATION

3.1 The Shortcomings of China’s Futures Crime Legislation

3.1.1 Futures Crime is not Independent

The China’s futures industry has no perfect “Exchange Act” till now, only the administrative rules or regulations stated by State Council of China Securities Regulatory Commission, which is not conducive to effective supervision of the futures market. In addition, as mentioned above, although China is the criminal provisions of the futures in the “Criminal Law”, there are many futures legislation and criminal law does not converge with administrative rules or regulations of futures. For example, in Article 60 of the “Provisional Regulations on Administration of Futures Trading,” provides that Futures brokerage firm have one of the following fraudulent customer behavior, and ordered to make corrections, give a warning, confiscate the illegal income, times the illegal income and impose a fine of more than five times; there are no illegal proceeds or the illegal income less than 10 million, at 10 Yuan from 50 million fine; the circumstances are serious, shall be ordered to suspend business for rectification or revoke its futures brokerage business license: (a) Failure to follow these instructions to our customers at risk of, or guaranteed to the customer as a profit sharing agreement with the interests of customers, total risk; (b) Without the client in the scope or not in accordance with client in conduct futures trading without authorization; (c) Provided false futures market prices, information, or use other improper means to lure customers to send transaction instructions; (d) Transaction to provide a false return; (e) Under orders not to reach the customer’s futures exchange; (f) Misappropriation of clients of; (g) With Chinese Securities Regulatory Commission and other fraudulent customer behavior. Futures brokerage firm have one of the acts listed in the preceding paragraph, the directly responsible person in charge and other directly responsible persons shall be given disciplinary action and impose a 10,000 Yuan to 100,000 Yuan shall be imposed; constitute a crime, be held criminally responsible. However, the above provisions in (a), (b), (d), (e) key provisions of the act in the Criminal Code is simply not the appropriate charge, so it can not under criminal law to hold the perpetrators of criminal responsibility, while in other countries and regions, the above actions belongs to futures fraud.

Another example, in Article 66 of “Provisional Regulations on Administration of Futures Trading”, states that during the Futures Exchange staff in his tenure or leave less than one year who become the member of futures exchange in the office of for disciplinary action ; constitutes a crime, be held criminally responsible. But in the Criminal Code, there is no corresponding crime.

3.1.2 Futures Criminal Charges System is not Independent

“Futures crime” has been on China’s current “Criminal Law”, but the futures crime, without exception, to merge with the provisions of securities crimes, that is in the corresponding provisions of the “securities” followed by the word “futures”. I think this provision does not highlight the special nature of futures crime, and can not conducive to combat such crime. The reasons as following: firstly, the targets of Securities Crime and Futures crime are different. Secondly, the transferring of ownership is different. In the futures market, the majority ownership of futures does not have to transfer underlying futures contract, hedging traders is to remove the obligation to perform. But in the stock market, all securities transactions must be transferred securities degree of ownership. Thirdly, their have different ways in the transaction. Futures margin system make this transaction a credit transaction, the transaction can “leverage” a lot of fictitious. Therefore, I believe that there is a need to establish an independent futures criminal charges system, combined with the characteristics of futures crime, constitutes the future crime to set its configuration and the corresponding penalties.

3.2 The Urgency of Futures Crime Legislation

Since 2004, China’s futures market accelerated the pace of innovation species; turnover and trading volume are all increasing rapidly. In order to meet market demand, many companies began to expand the scale. The most typical feature is that in recent years more and more new business department has been opened.⁶ However, the current criminal regulatory system has lagged far behind the great development of the futures market. And there are many provisions have limited the company’s business innovation and futures market varieties, mechanism innovation, but also can not meet the financial futures and options trading needs. Thus, in the great development of China’s futures market, we need to learn the lessons from developed futures markets, to avoid some design flaws of the laws.⁷

3.3 The Importance of Perfecting Futures Crime Legislation.

Criminal laws, with its unique features involved in the legal regulation of the futures market system, will play an irreplaceable role.

Firstly, the futures crime in the Penal Code provides the legal regulation of futures markets improve the system’s needs. A mature market would ultimately move toward the market mainly used legal means to manage the road. Analysis of world and regional development process of the futures market, found that national prosperity and development of the futures market and futures laws are closely linked and inseparable.

Secondly, futures crime in the Penal Code is also provides legitimate rights and interests of investors require. Although people tend to want to give the free market and relaxed environment by the economics profession, and do not want to interfere too much in futures market. The biggest risk of the securities and futures investment is an investment vehicle, lack of proper standards of market, investment risk can not control will inevitably lead to heavy losses to most of the legitimate investors.

⁶ Luo Xufeng,(2010). On Strengthening the Talents Cultivating, Promoting the Development of Futures Market, Journal of Zhe Jiang Gongshang University, (2),94.

⁷ Liu Yuan, (2006). On the Mode of Futures Crime Legislation, Studies in Law and Business. (2).



Thirdly, in a market economy, the futures market is an open market, it is an important channel for a variety of fund-raisers. However, in reality, some of the units or individuals for the purpose of obtain benefits or to reduce the losses issue, taking insider trading in futures, trading activities, or use of their capital, information and other advantages of market manipulation or abuse of power, influence futures prices, or knowingly providing false information or forged, altered, destroyed records of transactions, trick or lead investor in futures do not understand the real life situations, then make investment decisions and trading in futures contracts, resulting in significant loss of legitimate investors. Improving the system of legal regulation of the futures market is to protect investors' legitimate rights and interests

THE FUTURES CRIME LEGISLATION IMPROVEMENT

4.1 The Principles of Futures Crime Legislation

4.1.1 The Principles of Criminal Based on Futures Crime Legislation

Futures Crime committed in an administrative area. Criminal behavior of futures laws and regulations must be in violation of the premise, if there is no violation of futures laws and regulations, in this context, we can say that the futures of all crimes, administrative law is the premise of the criminal law. Therefore, the activities in the criminal legislation must be strictly in accordance with the content set.

4.1.2 The Principles of Light Degree of Criminal Penalty

Futures market itself has a combination of speculation and investment characteristic, its existence needs to be some free, relaxed environment conditions. In this environment, if the criminal law too involved, it may stifle the living conditions of market economy, so there will not be conducive to the development of futures markets. Therefore, the punishment for the futures of crime control is mainly focused on criminal law to grasp the reasonableness and necessity of intervention, which is a necessary requirement for the principles of Criminal Law.

4.1.3 The Principles of Combining the Free Criminal Penalties and Fines

Nowadays, most Countries and regions in the world have pushed the economic punishment for economic crimes to the main direction, which is the reform of the entire penalty system consistent. I believe that, in the Criminal Code for criminal punishment to futures liberty if it just provides for the establishment of criminal penalties, can not fully reflect the difference between the futures crime and other criminal offenses, which does not conform to judicial practice, and the need for crime against futures. However, if the criminal law only provides for criminal penalties for criminal futures rather than the establishment of liberty, it is clearly that our criminal law will not conducive to crime against futures.

4.1.4 The principles of double punishment of unit crime

With the establishment and development of the futures market, unit futures crime implementation is quite common, in some to units interest, name of the unit to implement a variety of futures crime to reap huge profits, which seriously disrupted the futures market management order, even jeopardized the legitimate interests of other investors. To this end, China's current criminal law clearly defines the unit committed insider trading, disclosure of inside information about the crime, fabricating and

disseminating false information to the crime futures, crime lured investors to trade futures contracts and futures price manipulation of the crime of criminal responsibility. I believe that the punishment of crime response unit futures dual-penalty system, because this punishment will surely be implemented directly or indirectly to the head of the internal members. According to the internal crime in the position and role of different enable them to assume different responsibilities. This is certainly trends of a punishment for crimes committed by units. China's current criminal law is clearly a response to this trend.

4.2 Improvement of Building a Futures Crime System

4.2.1 The Distinction between Futures and Securities Crime

China's "Criminal Law" under the charge of the entire system of financial crime has room for improvement, which is related crimes have certain dependence between the relations. At present, China's financial industry in the futures and fund management is not completely out of the securities industry. For example, our country does not like the U.S. Commodity Futures Trading Commission as independent regulator of futures on securities regulators, which is difficult to self-contained criminal charges futures, securities can only be attached to an important cause of crime. However, there are substantial differences between the nature of futures and securities. In addition, the futures and securities crime are different in the basic structure and shape. Therefore, the distinction between futures and securities crime in a targeted manner will conducive to the development of prevention measures.

China's futures is just only focus on the access phase of financial management, but neglect of the stage in the financial market transactions and exit stages of the destruction of the financial management orderly conduct of conviction, which lead to criminal charges of futures can not form a complete system. Therefore, the criminal legislation in the futures should be considered in the process of some provisions of criminal offenses, such as futures customer behavior during the fraud, misappropriation of futures trading in the futures margin process, hedging and other illegal acts in private pay and criminal law to regulate.

When I collected data found that many scholars put forward that improving criminal charges futures also need to improve the criminal law system and the legislative mode. Specifically mentioned that in developed countries in the futures crime legislation were all use more futures crime legislation or special criminal law in particular criminal law-based model, in particular, a subsidiary penal model is more prevalent, because it is so easy to separate futures legislation and the provisions of securities legislation. In China, the mode of the Penal Code is single. Therefore some scholars recommended that the current legislation should be modified in our criminal law model, to build futures, securities in separate charges system. But I think that building a system of futures criminal charges can be complete in the "Criminal Law". Putting acts like futures crime in one chapter. Extending the concept of securities and exchange to the securities and futures, extending the concept of the securities institutions to the securities and futures institutions.

4.2.2 Uniform Futures Criminal Penalties

The futures crime in China's "Criminal Law" is forced by the development of the futures market, so there is struggling with the suspect. Since China has not "Futures Act", therefore, only the relevant securities futures crime and criminal provisions and the "Securities Act" on the "fine" category



required to explain the inconsistency. Such as “Criminal Law” Section 182 prescribes that the pairs of manipulating securities and futures prices impose a 5 times fine, which is same to the “Securities Act” provisions of Article 184. But in the “Criminal Law” article 181 provided that false information of fabricate and disseminate securities will be fine 10,000 Yuan to 100,000 Yuan fine, then below the “securities Act” section 188’s 30,000 Yuan to 20 millions. As the futures crime is more harmer than the securities, so we should to adjust the amount of criminal fines of futures crime based on securities law to increase the number of existing fine provisions in the appropriate way.

4.2.3 “Prohibit Qualification” Should Be Set Up in the Futures Crime

Prohibit qualification is a kind of punishment that prohibit the commit from engaging in the industry related to certain futures, which is quite common in western countries, the main futures crime has own business background, if the Prohibit qualification in the Penal Code provisions can limit or deprive the offender to engage in futures trading and other qualifications established in the futures crime punishment against the qualifications of practitioners, it is not only face to the judicial practice need, but have a strong deterrent in the futures practitioners.

CONCLUSION

Criminal Law should intervene in futures markets in depth but not too wide to maintain the charm of futures investment risk. Criminal sanctions should only apply to serious futures offense. Otherwise it will hinder the development of futures market. In fact, I always thought that Taiwan’s development and growth of the futures industry and the futures legislation is worthy study, the operation of Taiwan’s futures industry is different from many countries of the world in reverse order, it is taking the way that opening foreign futures markets first, then to set up the local futures market. Of course, the development of Taiwan’s futures industry does not apply to the current China’s futures crime legislation, but it is not the hinder for learning and appreciation.

REFORMING THE CRIMINAL EVIDENCE SYSTEM IN CHINA

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Since 1997, China has proposed to reform Judicial System. In 1999, the Supreme People's Court of China issued the first People's Court Five-Year Reformative Outline. In 2007, China officially set its goal of judicial reform as to "establish a Socialist Judicial System with fairness, efficiency and authority". In May 2010, the Supreme People's Court of China and the Supreme People's Procuratorate of China, together with other Ministries, jointly issued the Provisions on Several Issues Concerning the Review of Evidence in Death Penalty Cases and the Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Criminal Cases which have been officially implemented since July 1, 2010. The issuance of the two new Provisions on Criminal Evidence marks a major step forward in China's reform of an evidence system, the enactment of which has at least four meanings: (1) it established the principles of evidentiary adjudication; (2) it improved the standard of proof for death penalty cases; (3) it established the rule of witness to testify in court; and (4) it improved the rules on exclusion of illegal evidence. However, the implementation of the two new Provisions on Criminal Evidence is only an initial step of China judicial reform, and there are still problems within it, with regard to its scientificity, reasonableness and feasibility. In this paper, a few cases are cited to illustrate problems emerged in implementing two new Provisions on Criminal Evidence in judicial practice.

Now that the goal of judicial reform has been firmly established, the key question is how to accomplish that goal. However, as until now, consensus still has not been reached yet in China. Two different views exist on the path choice for the judicial reform. One view advocates achieving judicial reform through administrative measures. For instance, in June 2010, the Supreme People's Court of China raised the idea that "the reform aims at protecting the legal rights of the people, focuses on the most urgent judicial requirements of the people, and takes the people's satisfaction as the criterion for the success of the reform". This pronouncement not only makes the goal of Judicial Reform become increasingly blurred, but also makes the path to implementation more elusive and unpredictable. A different path, which we proposed, is to accomplish the goal of Judicial Reform through reinforcing the construction of evidence system. What we believe is that the main reason for issues of Judicial Unfairness and corruption in current China is due to neglect of the construction of evidence system.

In China, a comprehensive evidence system has not yet been formed. The current evidence rules contain too many problems, such as deficiency of idea, repetition of content, logical fallacies, incongruent application, and so on. Undoubtedly, the aforementioned problems have become a bottleneck for China's judicial reform and an important reason for China to reconstruct the whole evidence system and particularly the criminal evidence system. Only when the construction of an evidence system is considered a top priority in China's judicial reform, will the principle of "taking facts as the basis, and laws as the criterion" be truly implemented and the goal of judicial reform finally achieved. Therefore, reforming evidence system shall be deemed as the breaking-through point for the long-term judicial reform in China and a comprehensive, unified system of evidence is indispensable. In the long run, it would be ideal for the legislature to promulgate a unified code of evidence law. However, coordinating the relation between the evidence law and the three major procedure laws is an extremely difficult task. In the short term, the most feasible compromise is to have the Supreme People's Court promulgate People's Court provisions on Evidence, gathering together all current evidence rules scattered in the three major Procedural Laws as well as other evidentiary rules in substantive laws and to make judicial explanations with one voice in a consistent way.[The Supreme People's Court has appointed the Institute of Evidence Law and Forensic Science (IELFS) in China University of Political Science and Law (CUPL) with the work of drafting the People's Court provisions on Evidence]. By doing this, validity of



People's Court provisions on Evidence will not be questioned, and it is a value-added effort with regard to avoidance of repetition and systematization of rules. With respect to methodology, we adopt the method of "upgrading the software" to sort out and reorganize the existing evidence rules in light of the basic theories of evidence law, compiling the evidence rules that have common effects into general principles and separate special evidence rules in criminal, civil and administrative litigation proceedings into specific categories. In this way, we can reconstruct a systematic framework that cleans up the current conflicts in logic, removes repetitions by merging similar terms, and eliminates noticeable errors by reviewing everything from the bottom-up. After repeated test through the trials, we believe that such a unified People's Court provisions on Evidence will dramatically improve the evidence system in China, as well as on promote judicial fairness and reform of legal education.

THE TWO PATHS FOR ACHIEVING JUDICIAL REFORM IN CHINA

Paralleling with the Reform and Opening-Up, China judicial reform is intensified progressively. It has lasted for twenty years if the civil trial procedure reform implemented by the People's Courts in late 1980s was counted as the starting point. If one begins counting from the comprehensive implementation of reforms to trial procedure carried out by the Supreme People's Court in July 1996 (as a support to the new *Criminal Procedure Law*), the judicial reform program has been under way for 15 years.¹ From this beginning, in 1997, China officially announced its goal to "push forward the judicial reform program, and institutionally ensure that the judicial authority is in a position to exercise judicial and procuratorial powers independently and impartially according to the law."² The judicial reform program was further advanced with the circulation of the first *People's Court Five-Year Reformative Outline*, which was issued by the Supreme People's Court in 1999. In 2007, "deepening the reform of the judicial system and establishing a socialist judicial system with fairness, efficiency and authority" was formally recognized as the goal of judicial reform in China.³

Now that the goal of judicial reform has been firmly established, the key question is how to accomplish that goal. In order to choose the right path, it is essential to understand the difficulties involved in judicial reform. The results of judicial reform over the past ten plus years have satisfied neither academia nor other groups in society. The number of cases in which people were unjustly, falsely or wrongly charged or sentenced is increasing and the trend of judicial corruption goes from

¹ See Shujie Qi, Shengrong Zhong, "The Impact of the Civil Trial Procedure Reform on the Evidence system in China", *Law Review*, 1998 (4). In reviewing China's judicial reform, some scholars trace the reform back to the time when new China was just founded. This paper, however, in consideration of the devastation over judicial system during the period of "Cultural Revolution", regards the judicial reform as the achievement made after the Reform and Opening-Up, and holds the view that the new *Criminal Procedure Law* of 1996 and the reform of People's Court adjudication model mark the launch of China's judicial reform.

² In the First Session of the Ninth National People's Congress held in 1998, the Supreme People's Court of China, in its work report, proposed to "actively promote the reform of court system to ensure that the court is in a position to exercise adjudicative powers independently and impartially according to law". At the same meeting, the Supreme People's Procuratorates, in its work report, proposed to "actively promote the judicial reform and the legal construction of procuratorate... actively promote the reform of the procuratorial system, contributing to exercising procuratorial powers independently and impartially according to law, and effectively preventing abuse of prosecutorial power".

³ In the First Session of the Eleventh National People's Congress held in 2008, the Supreme People's Court of China, in its work report, proposed to "orderly promote the reform of judicial system and work mechanism according to law and establish a socialist judicial system fairness, efficiency and authority, ". Within the same meeting, the Supreme People's Procuratorates, in its work report, proposed to "deepen the reform of procuratorate and promote the perfection of the socialist judicial system fairness, efficiency and authority.

bad to worse.⁴ The Supreme People's Court made it clear in its work report to the National People's Congress in 2010 that: "some judges do not have a correct idea of judicature; they do not have a strong sense of serving the people, legality, or responsibility; and they are not conscientious in handling cases impartially, independently and in accordance with the law as well as maintaining authority of the rule of law. . . . A small number of judges fail to perform their duties in an honest and fair manner, and they are found to intentionally mishandle cases out of personal considerations, and misused the law in rendering judgment; a few leading figures in the judicial system, especially senior ones, involved themselves in criminal activities, which has all caused widespread negative impact in society and seriously damaged the image of judges as well as the legitimacy of the judiciary."⁵ Although the Supreme People's Court has shown its awareness of the issue of "judicial unfairness and dishonesty", its understanding of the root of the issue, and the path to solving the problem are still unclear.

Two different views exist on the path choice for the judicial reform. One view advocates achieving judicial reform through administrative measures. For example, concerning the issue of "judicial dishonesty," in January 2009, the Supreme People's Court promulgated "*Five Prohibitions*" to regulate judges' fair and civilized adjudication of the law.⁶ Although these regulations are well-intended, they are still old fashioned solutions with the stereotyped expression of *administrativization* of justice, which is ineffective for regulating judges' behavior. Another example arose in June 2010, when the Supreme People's Court raised the idea that "the reform aims at protecting the legal rights of the people, focuses on the most urgent judicial requirements of the people, and takes the people's satisfaction as the criterion for the success of the reform."⁷ This pronouncement rightfully raises the goal, focus and milestone of the reform to the high plane of "serving the people", however, it is still a reflection of the idea that judicial reform should be advanced through administrative means, which makes the path to implementation more elusive and unpredictable. To be clear, all kinds of reform are for the good of people in general; the judicial reform, in particular, should have its own specific targets. The "people" we speak of in judicial reform are not abstract or unknown, but refers specifically to the parties involved in each and every particular case. "Judicature, through judicial activities and all kinds of proceedings of the State, is a process of acknowledgement of the parties' obscured rights and obligations and a process of restoration of the shelved or destroyed relationship between rights and obligations."⁸ However, fact-finders must reach correct conclusions for disputed facts based on evidence. Only in this way

⁴ See Hongyan Qin, "the Jurist Huixing Liang: Unbearable Judicial Corruption", *The Southern Metropolis Daily*, March 8th 2009.

⁵ See "Work Report of the Supreme People's Court" by the Chief Justice of the Supreme People's Court of China, Shengjun Wang, at the Third Session of the 11th National People's Congress, March 11th 2010.

⁶ 1. To prohibit accepting gifts from litigants and related others; 2. To prohibit having inappropriate contact with lawyers; 3. To prohibit intervening in cases handled by others; 4. To prohibit bribery and fraud in activities involving appraisal and auction; 5. To prohibit revealing work related confidential information in adjudication. See Yonghui Chen: "To Regulate Working Activities and Adjust Occupational Disciplines, the Supreme People's Court Issuing Provisions of 'Five Prohibitions'", *China Court*:

<http://www.chinacourt.org/public/detail.php?id=339384>. Issue time: 17:01:50, January 8th 2009.

⁷ "The Supreme People's Court Requiring to Accelerate Judicial Reform, Ensuring to Guarantee Judicial Fairness." Resource: Xinhua News. Responsible editor: Yan Xu; Renmin News: <http://politics.people.com.cn/GB/1026/11856735.html>. 19:10, June 11th, 2010.

⁸ Wenxian Zhang, *Study on Category of Philosophy of Law*, Press of China University of Political Science & Law. 2001, p325.



can disputes be settled and the parties' legitimate rights and interests be protected. "Without accurate fact-finding, rights and obligations are meaningless."⁹

This leads to the other view on the correct path for judicial reform. It advocates judicial reform by improving the evidence system, completely different from the administrative approach. As noted by Professor Wenxian Zhang, "the core of the judicial reform is institutional innovation. . . . Among all achievements of judicial reform, we should value institutional innovation the most, because it is both fundamental and long-lasting. Unfortunately, nowadays some courts consider even adjustment of their working method as reform, which in fact abuses this holy concept of reform."¹⁰ According to Professor Guangzhong Chen, the judicial system refers to the procedural system in a broad sense, and "all of the judicial proceedings such as basic principles, rules and regulations, procedures, and relevant systems are within the field of the judicial system. Therefore, the judicial system in China can be summarized and categorized into three parts: trial system, procuratorial system, and investigatory system."¹¹ These three systems constitute the superstructure of the judicial system, while the evidence system is the common ground for the whole judicial system. Both the settlement of disputes in litigations and the realization of litigants' rights and obligations are based on evidence. As a result, the primary task of judicial reform, which aims to improve the judicial system, should be to improve the evidence system.

A. Administrativization of Justice Produces "Judicial Unfairness"

Administrativization of justice displays itself in different forms: the regional *administrativization* of court setting, the *administrativization* of the rank and benefits of judges, and the *administrativization* of courts' internal operations.¹² It mainly manifests itself via administrative intervention from the outside or, in other words, replacing evidentiary adjudication with administrative orders. Although the court is the judicial subject in name, it does not enjoy the power of independent judicature; similarly, the judge does not have an independent judicial personality, despite the fact that he or she is nominally the interpreter of the law.

Administrativization of justice has led to a series of cases in which people were unjustly, falsely or wrongly charged or sentenced. The "Xianglin She" Case in 1994, "Peiwu Du" Case in 1998, "Jing Huang" Case in 2003, "Yingying Gao" Case in 2006, and the "Zuohai Zhao" Case in 2010 show that the problem of judicial unfairness is grounded on defects in the evidence system. The unjust case of Zuohai Zhao in Henan Province is a prototypical case of judicial unfairness and a stain on

⁹ Ronald J. Allen, "The Theoretical Foundations and Implications of Evidence", Vol. 18 of *Evidence Science*, No. 4 (2010).

¹⁰ Wenxian Zhang, "Theory and Practice of China's Judicial Reform--Mainly Focus on the Reform of People's Court". *2010 Collection of Papers for Annual Conference by Legal Department of Social Science Council in Ministry of Education and for 9+1 Meeting of Directors of Key Research Institute of Humanities and Social Sciences (Law) in Ministry of Education and Seminar of China's Judicial Reform*.

¹¹ Guangzhong Chen, "Some Issues in Reform of Criminal Justice", *Legal Works by Guangzhong Chen*, (vol.1), Press of China University of Political Science & Law, 2010, p0492.

¹² Guangmu Xu, "The President Dealing with Big and Important Cases in Person Reflecting the Administrative Justice", Resource: China 2007-06-13:

the judicial history of mankind.¹³ The final decision in this case was made by the Council of Commission of Politics and Law (an Executive branch organization), and carried out by court. Throughout the decision-making process of this case, there was no attempt to apply the principles of presumption of innocence or evidentiary adjudication, which are the most fundamental concepts in modern trials. One reflection of this case is that in order to “establish a socialist judicial system with fairness, efficiency and authority,” the deepening of judicial reform should follow two aspects.

First and foremost, the principle of judicial independence must be adhered to, while the *administrativization* of justice must be eliminated. “The Principle of Judicial Independence is a basic legal concept which is recognized and established by most modern countries ruled by law; it is also the inherent requirement of the judiciary. The core requirement of this principle is that throughout the process of judicial judgment, judges shall only follow the requirements of the law and their conscience. Judges should weigh up all evidence and facts objectively without being interfered and/or controlled internally and/or externally. . . . Judicial independence can guarantee the realization of fair trials, and it is the cornerstone of judicial authority.”¹⁴ The Principle of Judicial Independence is, in theory, established according to Article 123 (“*The People’s Courts of the People’s Republic of China are the judicial authority of the State*”) and Article 126 (“*The People’s Courts exercise judicial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative authority, public organization or individual*”) of the Constitution of the People’s Republic of China. However, courts in China often confuse themselves with the executive branch in judicial practice, and they do not exercise judicial power independently in accordance with the provisions of the law or hear cases by adhering to the principle of evidentiary adjudication. Instead, they handle cases by obeying instructions from higher courts. This type of behavior not only violates the principle of judicial independence, but also undermines the power hierarchy in China, which is composed of People’s Congresses, People’s Governments, People’s Courts and People’s Procuratorates. Therefore, in order to “establish a socialist judicial system with fairness, efficiency and authority,” China’s judicial reform must clear away all ideological obstacles that interfere with its judicial independence, especially the present tendency of *administrativization* of justice.

Secondly, the principle of evidentiary adjudication must be adhered to, and the evidence system must be perfected. The trial process involves two stages: fact-finding and application of the law. Accurate fact-finding is the prerequisite for realizing fair trials. As the legal norm regulating fact-finding, evidence law performs a key function in promoting discovery of the truth. Evidence law

¹³ See Yu Shi, “The Promoted Misjudged Case”, *Southern Metropolis Daily (Depth Weekly)*, May 19th 2010. For lack of evidence, the case of Zuohai Zhao was returned to the police for three times by the Procuratorate of Shangqiu city in accordance with law. However, the Politics and Law Committee of Shangqiu city made a decision after several meetings, requiring that the Procuratorate of Shangqiu city file the lawsuit within 20 days, and requiring the Intermediate People’s Court of Shangqiu city to have expedited trial. The case was submitted to the judicial committee for review after the collegiate penal discussion. Although there were many doubtful points in evidence, the judicial committee finally confirmed the “fact” that Zuohai Zhao killed Zhenshang Zhao due to the revelation of his adultery. On December 5th 2002, the Intermediate Court of Shangqiu city convicted Zuohai Zhao for intentional homicide and sentenced him with suspended death penalty. On February 13th 2003, for the case of Zuohai Zhao, the original judgment was affirmed after reviewed by the Supreme People’s Court of Henan province.

¹⁴ Guangzhong Chen, “Discussion on Several Problems of Judicial Authority”, *2010 Collection of Papers for Annual Meeting by Legal Department of Social Science Council in Ministry of Education and for 9+1 Meeting of Directors of Key Research Institute of Humanities and Social Sciences (Law) in Ministry of Education and Seminar of China’s Judicial Reform*.



contains many legal norms which can increase the accuracy of fact-finding, such as the relevancy rule, the principle of directness and verbalism, the character and propensity rules, the rule of opinion evidence, the hearsay rule, the rule of authentication and identification, the rule of cross-examination and confrontation, and more. These norms help fact-finders avoid the risk of error when rational judgment is replaced by moods, prejudices and willfulness. Trial procedures that do not conform to those evidence norms cannot ensure the accuracy of fact-finding, and will inevitably result in “judicial unfairness.” Consequently, if China does not begin with the improvement of the evidence system, China’s judicial reform program risks not accomplishing its goal of fair trials.

B. Abuse of Discretion Leads to “Judicial Corruption”

In recent years, the phenomenon of judicial corruption shows a trend of deterioration. Even some chief judges of Higher People’s Courts are involved in cases of corruption. The Chief Judges of the Higher People’s Courts of Liaoning Province and Guangdong Province were involved in bribery cases in 2003, as was the Chief Judge of the Higher People’s Court of Hunan Province, and the Vice Chief Justice of the Supreme People’s Court of China, Songyou Huang, in 2008. The “judicial dishonesty” behind all of those cases directly points to imperfections in the evidence system.

The problem of “judicial dishonesty” cannot be solved through administrative prohibitions or an inspection system, since the exercise of adjudication by judges is different from the exercise of examination and approval authority by administrative officials. Adjudication has two characteristics: firstly, trial judges manage evidentiary issues. This type of adjudication is mainly reflected in “being entitled to admit and exclude certain evidences in accordance with the provisions of law during the procedures of presentation, confirmation and identification of evidence”.¹⁵ Therefore, the exercise of discretion by judges means that they have the authority to admit and exclude evidence. Secondly, whether in common law or civil law countries, in a “judge trial” adjudicated without a jury, “the Judge acts not only as the decision maker on points of law and admission or exclusion of evidence, but also as the sole fact finder, weighing the evidence”.¹⁶ As the adjudicator of evidence or fact-finder, the judge may appropriately exercise their discretion but may also abuse it. For example, a judgment may differ substantially if a bribed judge excludes important evidence. As such, building judicial integrity should rely not on administrative prohibitions but on the exercise of evidence rules. The corruption of judges can only be addressed through the establishment of a perfect evidence system, as well as strengthening regulations at every step of the fact-finding process by implementing comprehensive evidence rules.

The anti-corruption function of the evidence system can be carried out by the rule of “effect of erroneous ruling.” If the substantive rights of litigants are negatively affected because of a judge’s decision to admit or exclude a piece of evidence, then such adjudication is a wrongful one, and therefore it should become the basis for appeal. In the United States, this is known as the “Preservation of Error for Appeal” or “Preservation of Evidentiary Issues for Appeal.”¹⁷ In particular, the wrongful exclusion of evidence is an error in the application of law, and the appellate

¹⁵ See Baosheng Zhang (ed.), *Proposal for Judicial Interpretations and Drafting Commentary of “Uniform Provisions of Evidence of the People’s Court”*, Press of China University of Political Science and Law, 2008, p131.

¹⁶ Ronald J. Allen, Richard B. Kuhns, Eleanor Swift, and David S. Schwartz, *Evidence, Text, Problems, and Cases*, Aspen Publishers (2006), p.79.

¹⁷ *Federal Rules of Evidence* of the United States 103, See [16] Allan’s book, pp.97-99.

court may revoke the original ruling and remand for retrial. In contrast, higher courts in China often forget to review such decisions of lower courts with regard to admission or exclusion of evidence. As it stands, appellate courts turn a blind eye when some trial judges randomly or arbitrarily exclude evidence or even make logical mistakes. This unfettered abuse of discretion is the underlying cause for judicial corruption.

The scope of a judge's discretion is usually defined by the law of evidence. The *administrativization* of justice in China limits the development of the evidence system, resulting in lax rules and judges' weak sense of obligation to following evidence rules, which leaves a lot of room for abuse of discretion. Therefore, the court should stop attempting to prevent judicial corruption simply through administrative means, and should instead improve the rules of evidence, make rules concerning "the result of wrongful identification of evidence," and impose the necessary obligations on judges while still delegating to them power to admit or exclude evidence. These should include, firstly, that the wrongful admission or exclusion of evidence affecting the substantive rights of the parties shall be regarded as a main cause for appeals by the parties or by the procuratorate, as well as a main cause for the appellate court to change the original judgment or to revoke the original adjudication and remand for retrial.¹⁸ Secondly, the court's "verdict and adjudication shall list all objections on evidence raised by the parties and the corresponding authentication process/reasons provided by judges to support or reject such evidence."¹⁹ The principle of evidence adjudication requires that judges provide legal reasons for excluding evidence, which is the core of governance under evidence rules and a mandatory obligation that judges must comply with the rules. Escaping from this obligation will lead to judicial corruption.

NEW DEVELOPMENTS IN THE CRIMINAL EVIDENCE SYSTEM

After ten plus years of judicial reform, the development of rules of evidence in China has achieved some notable progress. For example, in 2002, the *Provisions on Evidence in Civil Procedure by the Supreme People's Court* (hereinafter referred to as *Provisions on Evidence in Civil Procedure*) and *Provisions on Evidence in Administrative Procedure by the Supreme People's Court* (hereinafter referred to as *Provisions on Evidence in Administrative Procedure*) were promulgated. A number of local rules of evidence have been promulgated as well. However, rules of criminal evidence are still unclear, and the chapter on evidence rules in the current *Criminal Procedure Law* consists of only eight provisions, and most of the rules are general in nature, which complicates evidence adjudication in criminal proceedings.

¹⁸ See [15], Baosheng Zhang's book, Article 9 (Consequences of identification), pp.134-136. See Guangzhong Chen (ed.), *Criminal Evidence Law of the People's Republic of China*, Press of China University of Political Science and Law, 2004, p.609. He argues that: "the second instance is only a relief proceeding, the relief involving relieving the misjudgment of evidence made by the court of the first instance; and the provision involves the adjudication of the misjudged evidence disadvantageous to the defendant."

¹⁹ See [15], Baosheng Zhang's book, Article 10 (Account of Appraisal Reason for Evidence). See "Some Provisions of the Supreme People's Court on Evidence in Civil Procedure", Article 79, "People's court should explain in the adjudication documents the reason why the evidence is adopted or not. In regard of evidence with no disputes among parties involved, the reason why the evidence is adopted or not is not necessary to be explained in adjudication documents." "Provisions of the Supreme People's Court on Several Issues concerning Evidence in Administrative Procedure. Article 72: "...people's court should explain in adjudication documents the reason why the evidence is adopted or not."



A. Two New Provisions on Criminal Evidence and Their Significance

In May 2010, the Supreme People's Court and the Supreme People's Procuratorate, together with the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice jointly issued the *Provisions on Several Issues Concerning the Review of Evidence in Death Penalty Cases* (hereinafter referred to as *Provisions on Evidence in Death Penalty Cases*) and the *Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Criminal Cases* (hereinafter referred to as *Provisions on the Exclusion of Illegal Evidence*). These are the latest changes of the rules of criminal evidence.

The enactment of these two new provisions on criminal evidence has at least four meanings.²⁰ Firstly, they established the Principle of Evidence Adjudication, which requires that "Case facts must be verified based on evidence."²¹ Pronouncement of the principle increases judicial officers' awareness of evidence and lays a solid foundation for China's rules of evidence. Secondly, it improved the standard of proof for death penalty cases, which requires that: (i) "All evidence used to determine the case has been verified through legal procedures"; (ii) "between and among every piece of admitted evidence, as well as between evidence and facts, there is no contradiction or the contradiction can be excluded beyond reasonable doubt"; (iii) "conclusion can only be deducted from admitted evidence";²² and (iv) "conclusion deducted from facts found by circumstantial evidence must be the sole one and must be beyond a reasonable doubt."²³ Thirdly, it established the Rule of Witness to Testify in Court. In death penalty cases, if the procuratorate, the defendant or his attorney have objections to the testimony of a witness or the testimony of witnesses has a significant impact on conviction and sentencing, the witness should testify in court.²⁴ When lawfully noticed, questioning staff (investigators) should also testify in court.²⁵ Fourthly, it improved the rules on exclusion of illegal evidence.

B. Defects in the Two New Provisions of Criminal Evidence

The issuance of the *Provisions on Evidence in Death Penalty Cases* and the *Provisions on the Exclusion of Illegal Evidence* marks a major step forward in China's reform of an evidence system. However, in terms of the goal of "establishing a socialist judicial system with fairness, efficiency and authority," this is only an initial step, and the following problems still exist.

First, the *Provisions on Evidence in Death Penalty Cases* have not yet been made applicable to all types of criminal cases.²⁶ This means that, in the wide field of criminal proceedings except death

²⁰ See Guangzhong Chen, "Great Achievement of Reforming and Improving Criminal Procedural System", Dongfangfayan: <http://www.dffy.com/faxuejieti/ss/201005/20100531160553.htm>; Meng Du, "Interpretation by Chongyi Fan of *Provisions on Evidence in Death Sentence Cases* and *Provisions on the Exclusion of Illegal Evidence*". Dongfangfayan: <http://www.dffy.com/fazhixinwen/lifa/201005/20100530153708.htm>; Jiaguo Cui, "My Opinions on *Provisions on Evidence in Death Sentence Cases* and *Provisions on the Exclusion of Illegal Evidence*". Dongfangfayan: <http://www.dffy.com/faxuejieti/ss/201006/20100601194631.htm>

²¹ *Provisions on Evidence in Death Sentence Cases*, Article 2.

²² *Provisions on Evidence in Death Sentence Cases*, Article 5.

²³ *Provisions on Evidence in Death Sentence Cases*, Article 33.

²⁴ *Provisions on Evidence in Death Sentence Cases*, Article 15.

²⁵ *Provisions on the Exclusion of Illegal Evidence*, Article 7.

²⁶ In *Notice of the Supreme People's Court, the Supreme People's Procuratorates, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice on Issuing "the Provisions on Several Issues Concerning the Review of Evidence in Death Penalty Cases" and "the Provisions on Several Issues Concerning the Exclusion of Illegal*

penalty cases, there is still a long way to establish a comprehensive evidence system. According to the standard of proof in criminal proceedings, “the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.”²⁷ This standard assigns prosecutors a duty of doubtlessly proving the guilt of the accused person, which in return reduces the risk of wrongful conviction against innocent citizens and prevents abuse of discretion by the government. Unfortunately, only when trials for all criminal cases strictly follow the reasonable doubt standard can the Principle of the Presumption of Innocence be implemented and the ultimate goal of judicial reform to safeguard people's legitimate rights and interests be realized.

Second, these two newly issued provisions on criminal evidence have a strong taste of *administrativization*. Whether in terms of formality or validity, these two new provisions are neither laws nor judicial interpretation nor administrative regulations.²⁸ Instead, they are more like executive orders. Executive orders in current judicial practice in China are still more authoritative and effective than laws and judicial interpretations, which highlights that China's rule of law is not perfect and officials are still used to ruling the country through administrative orders.

Third, the two new provisions on criminal evidence represent a “patch” approach to the reform of the evidence system. By not issuing a separate “*Provisions on Evidence in Criminal Procedure*” similar to “*Provisions on Evidence in Civil Procedure*” or “*Provisions on Evidence in Administrative Procedure*”, this approach may result in conflicts between different provisions of evidence. The approach may also make new provisions subject to being questioned for their correctness, reasonableness and feasibility. For example, Article 9 of the *Provisions on Evidence in Death Penalty Cases* contradicts Article 6 of the same *Provisions* and violates the Best Evidence Rule. “The Best Evidence Rule creates a requirement for the production of originals. The requirement may be excused, and other ‘secondary’ evidence of the contents may be admitted if the absence of the original is explained or justified.”²⁹ However, what Article 9 provides as “to correct the error or offer a reasonable explanation” refers to a situation where there is “no signature by investigators, item holders and witnesses” on the original material evidence, documentary evidence, all transcripts, and list of detention, or “the duplicate is not indicated in accordance with the original, or there is no date or the signature (or seal) of the investigated person (or entity)” or “no explanation note provided by the producer about the production process or where the original is deposited, or no signature in the note”. This definition is completely different from the meaning of the Best Evidence Rule. The Best Evidence Rule “guarded against incomplete or fraudulent proof. By requiring the possessor of the original to produce it, the rule prevented the introduction of altered copies and the withholding of originals.”³⁰ Therefore, by violating the Best Evidence Rule, Article 9 of *Provisions on Evidence in Death Penalty Cases* not only fails to play the role of “preventing incomplete or fraudulent proof,” but actually gives the green light to “fraudulent proof” by allowing falsification of the original and the duplicate.

Evidence in Criminal Cases” is mentioned that “Other criminal cases shall be analogically governed by the *Provisions on Several Issues Concerning the Review of Evidence in Death Penalty Cases*.” “Analogically”, however, is not “compulsorily” after all.

²⁷ See [16], Allen's book, p.714.

²⁸ See “*The Legislation Law of the People's Republic of China*”, Chapter 3: Administrative Regulations.

²⁹ See [16], Allen's book, p.198.

³⁰ *Seiler v. Lucas film, LTD.*, 808 F.2d 1316, 1319 (9th Cir. 1986) , See Quoted from Ronald J. Allen, Richard B. Kuhns, and Eleanor Swift, *Evidence, Text, Problems, and Cases*, Aspen Law & Business (2002), p.693.



Fourth, the scientificity of the concept of "correction" has been called into question. In the two new Provisions on Criminal Evidence, five articles refer to the concept of "correction." According to the *Modern Chinese Dictionary*, the definition of "correction" is "to add and correct (the omission and error of text)."³¹ According to this definition, the second paragraph of Article 9 of the *Provisions on Evidence in Death Penalty Cases*, which provides four circumstances where "even if the procedure or method of collecting physical evidence, documentary evidence has defects, it can be corrected or reasonably explained by the investigators," in particular "if there is no signature of investigators, items holders, and witnesses for physical evidence, documentary evidence, transcripts or list, the court could allow the evidentiary material to be sent back for correction (to add a signature)," is actually to allow the falsification of evidence. Article 14 of the same *Provisions* also provides four circumstances where "even if the procedure and method of collecting the testimony of witnesses have the following defects, it can be corrected or reasonably explained by the investigators," in particular when: (i) the signature of the investigators and recorders, the time period and place of investigation, and the place of interrogating witnesses do not conform to the law; or (ii) the record shows that an investigator was interviewing different witnesses at the same time, investigators may still add or modify such document. This is also equal to allowing the fabrication of evidence. Article 21 of the same *Provisions* provides three circumstances where "even if the interrogation transcripts has defects, it can be corrected or reasonably explained by the investigators," in particular when there are mistakes or contradictions in the transcripts about interrogation time, investigators, or recorders, or there is no signature of the interrogator, investigators may still add or modify such document. Again, this is equal to allowing the fabrication of evidence. In addition, Article 30 of the *Provisions on Evidence in Death Penalty Cases* and Article 14 of *Provisions on the Exclusion of Illegal Evidence* also have the same problem. If investigators can randomly correct physical and documentary evidence that is obtained in apparent violation of the law and which may affect a fair trial, then what *is* illegal evidence? Can't all illegally obtained evidence be made legal simply by "correcting" it? In short, the concept of "correction" in the aforementioned five provisions is a serious legislative error, which violates the basic principles of evidence law. The danger here is that it turns the five provisions into a tool for fraud and perjury. Thus the requirement of the Best Evidence Rule, namely, to "prevent incomplete or fraudulent evidence" and to "prevent producing altered evidence," is violated.

Fifth, the new provisions codify an imbalance of rights between the prosecutor and the accused. Section 1, Article 7 of the *Provisions on the Exclusion of Illegal Evidence* provides that: "after investigation, if the court has any doubt on the legality of obtaining the defendant's pre-trial statement, then the prosecutor should provide the interrogation transcripts to the court, as well as the original audio and video recording of interrogation, or other evidence. In addition, the prosecutor should call the court to notify other persons who were present at the interrogation or notify other witnesses to take the stand. If the prosecutor still cannot exclude the suspicion of torture, he or she should call the court to notify the interrogator to take the stand so as to prove the legitimacy in obtaining the statement." The above provisions vest "the right to request interrogators to take the stand" only to the prosecution, yet the defendant has no right to request the interrogators to take the stand. This imbalance conflicts with the Principle of Equal Rights for both parties. In criminal proceedings, this kind of imbalance of rights between the parties results in highly unreasonable inequality between governmental power and individual rights.

³¹ *The Contemporary Chinese Dictionary* (2002 supplement), The Commercial Press, 2002, p.101.

Sixth, the new provisions stance on written testimony and confirmation demonstrate a fundamental misunderstanding of evidence law. Article 15 of the *Provisions on Evidence in Death Penalty Cases* provides that “the written testimony of witnesses who do not testify after being notified by law cannot be confirmed by confirmation”. Actually, the above-mentioned situation is only a hypothetical one and will never occur in reality. “Confirmation is an activity in which the parties challenge each other's evidence to achieve their purpose, and cross-examination and confrontation are the main methods of confirmation.”³² If the witness who provides written testimony does not appear in court, then there is no target for cross-examination, so confirmation cannot happen. Therefore, the provision for written testimony on confirmation is a fundamental mistake due to lack of understanding of the basic principles of Evidence Law.

C. The Implementation of the Two New Provisions on Criminal Evidence

After the issuance and enforcement of the two new Provisions on Criminal Evidence, ten provincial high courts issued their opinions on their implementation.³³ A few cases are cited below to illustrate problems with the Exclusion Procedures of Illegal Evidence.

(1) Two cases that have triggered the Exclusion Procedures of Illegal Evidence

Since the implementation of the two new Provisions on Criminal Evidence on July 1, 2011, upon request of litigants, courts at all levels have implemented the Exclusion Procedures of Illegal Evidence in a number of criminal proceedings. For example, in the “Tailin Chen” bribery case, upon the request of one of the parties, the Intermediate People's Court in Baiyin City, Gansu Province used the Exclusion Procedures of Illegal Evidence. Nonetheless, the final verdict of the Intermediate Court stated that: “with regard to the issues raised by the appellant and his counsel about i) the procuratorate’s implementation of threat, enticement, torture and other illegal means against Tailin Shen before coercive measures were taken, ii) the Exclusion Procedures of Illegal Evidence not triggered in the first trial, iii) the relevant witnesses not taking the stand, and iv) procedural errors in the first trial, we affirmed that the procuratorate’s interrogation of Tailin Shen after criminal detention was in compliance with the law, and is in accordance with the interrogation transcripts, after the synchronized audio and video recording of the defendant Tailin Shen in the second trial was reviewed.”³⁴

As another example, in the corruption case of “Deyong Ren and other people,” the Intermediate People's Court of Xuzhou City, Jiangsu Province also used the Exclusion Procedures of Illegal Evidence. However, the final verdict of the Intermediate Court stated that: “with regard to the assertion of the defendant that ‘the prosecutor interrogated Deyong Ren up to 16 times within one week, and part of the interrogation was conducted at midnight, thus the defendant’s statement shall belong to illegal evidence which couldn't be admitted as the basis of the court decision’, we

³² Baosheng Zhang, *Evidence Law*, Press of China University of Political Science and Law, 2009, p.357.

³³ Journalist Shuming Yang: “Survey of Nationwide Courts Implementing ‘The Two Provisions’”, *People’s Court Daily*, April 19th 2011, quoted from Supreme People’s Court:

http://www.court.gov.cn/xwzx/yw/201104/t20110419_19642.htm. Issue time: 08:57:00, 2011-04-19.

³⁴ No.5 Criminal Court Verdict by the Intermediate People’s Court of Baiyin City in Gansu Province, quoted from Peking University Law Information: <http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=fnl&gid=117826398>. The last time to login: 16:00, September 4th 2011.



conclude that such prosecutor's interrogation is not illegal and the interrogatory record shall not be treated as illegal evidence because, according to the review of the court, during the time period the defendant alleged, the time of interrogation record showed . . . each interrogation had a reasonably long interval, some up to over ten hours . . . thus according to the present evidence, the conclusion that Deyong Ren was deprived of sleeping cannot be reached. The law also does not stipulate that late night interrogations should be excluded as illegal evidence. The defendant's submission that the interrogation record was illegal evidence was not in compliance with what the evidence showed."³⁵

In the above two cases, even though the Exclusion Procedures of Illegal Evidence were triggered, both courts eventually reaffirmed the legitimacy of the process through which prosecutors obtained evidence. One of the reasons probably is that for cases that are investigated independently by the procuratorate, including corruption and bribery, the whole interrogation process is recorded with audio and video. Thus torture as a method of interrogation is eliminated to a certain degree. The legality of the procuratorate's investigation has been proved with the audio and video. However, audio and video recording is still not required during interrogations for many other types of crimes, and so new supportive measures are urgently needed to ensure the implementation of the Exclusion Rules of Illegal Evidence in the two new Provisions on Criminal Evidence.

(2) Qihang Fan gangster-related case

In the case of "Qihang Fan," a suspect involved in organizing and leading crime syndicates, the defendant was found guilty and sentenced to death at trial. On June 1, 2010, Chongqing Higher People's Court affirmed the death sentence. Afterwards, the case was submitted to the Supreme People's Court for death penalty review. During the review period, Qi Hang Fan's lawyer mailed copies of certain video materials to the Chief Justice of the Supreme People's Court, Mr. Shengjun Wang, and the Chair of No. 4 Criminal Tribunal of the Supreme People's Court who was responsible for Chongqing's death penalty review. The video showed Qihang Fan dressed in a red prison uniform, facing the camera from behind an iron fence, stating that the police in Chongqing tortured him to force his confession. According to Qihang Fan, he was hung up with handcuffs with his toes barely touching the ground. He was not allowed to eat for six consecutive days and was deprived of sleep for over ten consecutive days. He was handcuffed for so long that the handcuffs became embedded into his flesh and it took the police more than an hour to take them off. Unable to withstand the abuse, he attempted suicide twice by running against the wall, by biting off the tip of his own tongue, and so on. The video was taken when Qihang Fan met with his lawyer in jail, unbeknownst to the police. It shows that Qihang Fan had obvious injuries on several parts of his body. Despite this, the record for Qihang Fan's health checkup conducted on June 6, 2009, and issued by the Chongqing Jiangbei District Detention Center, declared that: "no injury on the surface of the body after inspection." On the other hand, upon his lawyer's request, the procuratorate once issued a written injury note for Qihang Fan, in which the medical staff indicated that while "in custody, Qihang Fan had once struck his head and bit his tongue for self-injury and self-mutilation. He was sent to the People's Liberation Army 324 Hospital, and the first branch of the Red Cross hospital in Chongqing to have treatment." On December 4, 2009, the Chongqing First Intermediate People's Court, Chongqing Municipal Procuratorate Prison, Chongqing Municipal Procuratorate

³⁵ No. 23 Criminal Court Verdict by the Intermediate People's Court of Xuzhou City in Jiangsu Province, quoted from Peking University Law Information: <http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=fnl&gid=117795276>. The last time to login: 17:00, September 4th 2011.

Technology Department jointly issued the *Injury Inspection of Gangmo Gong and Five Other People*, which indicated that "The wrists of both hands have deep marks of pigmentation. The wrist has healed with scars, with no dysfunction of the hands or wrists. The Achilles tendon of both the lower limbs has healed scars, but no dysfunction of either lower limb. He [Qihang Fan] recounted by himself that he had a paroxysmal pain on the right side of the abdomen."³⁶

According to Article 6 of the *Provisions on the Exclusion of Illegal Evidence*, "if the defendant and his counsel asserted that the defendant's pre-trial statement was illegally obtained, the court shall then require them to provide the name(s) of the personnel who is suspected of illegally obtaining the evidence, and the time, place, method, content and any other relevant clues or evidence." That is exactly what Qihang Fan's lawyer has done, by providing relevant video, health check registration form, injury notes, *the Injury Inspection of Gangmo Gong and Other Five People* and injury photos of Qihang Fan. All of the aforementioned evidence showed that Qihang Fan was very likely to have suffered torture. Under this circumstance, rather than affirming the death penalty, the Supreme People's Court should have sent the case back for retrial during which the Exclusion Procedures of Illegal Evidence would be triggered.³⁷ However, in reality, the Supreme People's Court affirmed the death penalty for Qihang Fan, and the execution was eventually carried out. Some scholars criticized this by stating that: "since the Supreme People's Court has a way to establish its own provisions, it also has another way to evade such provisions, which presented a different kind of judicial reality supporting the use of torture to coerce a statement."³⁸ In this case, by not triggering the Exclusion Procedures of Illegal Evidence after the defendant had provided evidence of the investigators illegally obtaining evidence, the Supreme People's Court did not uphold the Principle of Judicial Independence nor strictly enforced the two new Provisions on Criminal Evidence.

(3) Guoxi Zhang bribery case

In 2011, the Ningbo Yinzhou District People's Court of Zhejiang Province issued its judgment in the Guoxi Zhang bribery case. According to the court, evidence submitted by the procuratorate was insufficient to convince the court that it used legal methods for obtaining the defendant's pre-trial

³⁶ Journalist Heyan Wang & Xin He, "The Case of Fan Qihang Entering Death Penalty Review, Lawyers Meeting Videos Revealed", recorded in Caixin.cn, quoted from Sina.com: <http://finance.sina.com.cn/roll/20100728/11118378450.shtml>. Issue time: 11:11, July 28th 2010.

³⁷ Consequently, lawyers and citizens issued a jointly signed open letter—"An Open Letter of Sincerely Asking the Supreme People's Court to Start the Exclusion Procedures of Illegal Evidence", asking the Supreme People's Court to Start the Exclusion Procedures of Illegal Evidence for the case of Qihang Fan. Quoted from the lawyer Yang Jinzhu's blog of law: <http://yjz560922.fyfz.cn/art/713060.htm>. The last time to login: 18:00, September 4th 2011. Additionally, on behalf of the Criminal Committee of National Lawyer's Association, the secretary general of the committee, the lawyer Jiayi Han, states in *The Criminal Committee of National Lawyer's Association* published on August 22nd that "directors are of the opinion that the lawyer Mingyong Zhu's methods of obtaining evidence violate neither legal rules nor requirements of *Regulations for Lawyers Handling Criminal Cases* issued by National Lawyer's Association. Those evidences should be paid great attention to by the court undertaking the case, and their truthfulness and relevance should be further reviewed by the Supreme Court. Based on all the materials provided by the lawyer Mingyong Zhu, the Criminal Committee will report the facts to all the relevant departments and units including National Lawyer's Association, hoping the case handled fairly. Quoted from 110 Law Consultant: <http://www.110.com/ziliao/article-175906.html>. The last time to login: 19:00, September 4th 2011.

³⁸ Mintao Tan, "The Supreme People's Court Getting Castrated by Himself in the Case of Hangqi Fan", recorded in Peking University Law Information: <http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=art&gid=335600999>. The last time to login: 18:00, September 4th 2011



confession. This is the first criminal case in China that refers to the two new Provisions on Criminal Evidence in a written judgment and actually excludes the procuratorate's evidence against the defendant. As for the disputes between the procuratorate and the defendant, the Yinzhou District People's Court, regarding procedure, referred to Article 7 and Article 11 of *Provisions on Evidence in Death Penalty Cases*, as well as Article 23 of *Notice of the Supreme People's Procuratorate on Issuing the Guiding Opinions on the Application of the "Provisions on Several Issues Concerning the Review of Evidence in Death Penalty Cases" and the "Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Criminal Cases,"* and stated that: "the People's Procuratorate should submit the entire record of pre-trial interrogation of the Accused, Guoxi Zhang, for the purpose of cross-examination and should notify the interrogators to take the stand so as to prove that the pre-trial confession was legally obtained". Mr. Xudong Feng, the Chief Judge in this case, stated that: "evidence submitted by the procuratorate was not sufficient to prove the legitimacy of the guilty confession of the accused obtained before trial. Thus, such pre-trial guilty confession could not be used as a basis for final judgment."³⁹ Nonetheless, rather than release the defendant without any charge, Guoxi Zhang was still charged with the crime of bribery. The court recognized Zhang's acceptance of RMB 6,000 as bribery. After the trial verdict was made, both the People's Procuratorate and Guoxi Zhang appealed.

To sum up, although the two new Provisions on Criminal Evidence made certain progress in reforming China's evidence system, they are only the first step and there is still a long way to go for the establishment of a socialist judicial system operating with fairness, efficiency, and authority.

WHY AND HOW TO RECONSTRUCT THE CRIMINAL EVIDENCE SYSTEM

A. The Evidence System Has Become the Bottleneck for Judicial Reform in China.

In order to achieve the goal of establishing a socialist judicial system with fairness, efficiency and authority, China's current evidence system still has a long way to go and it has the following two major problems.

The first problem is that a comprehensive evidence system has not yet been formed. Some scholars point out that: "on one hand, from the perspective of legislation, laws and rules on evidence are too abstract and too difficult to apply; on the other hand, most of the time there are insufficient restrictions on the power and scope of investigation of judicial officers. Therefore, clear guidelines on the admissibility, competence, probative force, presentation, confirmation and identification of evidence are still not in place."⁴⁰ Other scholars note that: "generally speaking, the development of

³⁹ Journalists Dongsheng Chen & Chun Wang, "The First Emergence of 'Exclusion of Evidence Provided by the Prosecutor' in Zhejiang — the appliance of provisions on the exclusion of illegal evidence still needs the guarantee of coordinating mechanism", Law.cn:

http://www.legaldaily.com.cn/index_article/content/2011-08/24/content_2896677.htm. Issue time: 07:59:16, 2011-08-24. In the report, "the defender of Guoxi Zhang, Jiangaog Jiang, told the reporter of *Legal Daily* that he had applied to the court repeatedly for the provision of the whole trial video of Guoxi Zhang by the prosecutor as the evidence, only replied with "as the trial video is classified, it is unfavorable for confidence to play the video in court, and it is not to be submitted to the court." He then applied to the court for the court appearance of the investigators, and the prosecutor again refused to appear in court, only submitting to court accounts of handling the case legally and no violating activities like inquisition by torture, eliciting confession, etc., which are stamped by the investigation department and investigating personnel.

⁴⁰ Jianlin Bian & Li Yao, "Reflection on Establishment and Improvement of China's Evidence Rules", *Studies in Law and Business*, 1999 (5).

China's evidence system is far behind other related law subjects, which lacks integrity and systematicness, the two features any scientific system should have."⁴¹ According to Professor Guangzhong Chen, evidence is the prerequisite and basis for courts' rulings, so a comprehensive system of evidence rules is indispensable in order to ensure fair trials. The existing evidence system in China, with too general provisions and too abstract content, is far from forming a comprehensive and logical system, which is shocking considering the important role the evidence system plays in the whole legal system.⁴²

The second problem is that current evidence rules contain too many problems, such as deficiency of idea, repetition of content, logical fallacies, incongruent application, and so on. Deficiency of idea means that there are no clear regulations on the relevance, admissibility and probative force of evidence, which holds judges, prosecutors and lawyers back from grasping the general principles of evidence law.⁴³ Repetition of content refers to the fact that there are substantial overlaps of evidence rules within the three principle codes of procedural laws and related judicial interpretations.⁴⁴ Also, some provisions are confusing in logic or internally contradict with each other. For example, Article 77 of *Provisions on Evidence in Civil Procedure by the Supreme People's Court* requires that "(b) Physical evidence, archive files, authentication conclusions, onsite recordings of interrogations and documentary evidence that has been notarized or registered are, as a general rule, more forceful than other documentary evidence, audio-visual materials and testimonies; . . . (d) Direct evidence is, as a general rule, more forceful than circumstantial evidences." There are at least two mistakes within this provision. One mistake lies in the content of the latter part of the provision, and the other is the logical error in the latter part that negates the preceding part. Last but not least, incongruent application means that local evidence rules issued by many provincial higher courts or even municipal level judiciaries contain numerous errors such as confusing concepts, logical contradiction and poor scientificity, which hinders the unified use of evidence law on the national level.⁴⁵

Undoubtedly, the aforementioned problems have become a bottleneck for China's judicial reform and an important reason for China to reconstruct the whole evidence system and particularly the criminal evidence system. Mr. Deyong Shen, the Vice Chief Justice of the Supreme People's Court, believes that "due to problems of inconsistency and disorder between and among existing laws, regulations and judicial interpretations, to some extent, the application of evidence rules in daily judicial practices is confusing. For example, it happens quite often that a witness does not appear in court; the introduction of electronic evidence is based on no laws or regulations. Therefore, reform

⁴¹ Hongyao Wu, "Imperative: China's Legislation of Evidence", *People's Court Daily*, December 11th 2000, P.3.

⁴² See Baosheng Zhang, *Proposal for Judicial Interpretations and Drafting Commentary of "Uniform Provisions of Evidence of the People's Court"*, Press of China University of Political Science and Law, 2008, p.429.

⁴³ For example, without any account of the basic concept and principle of evidence law, in the beginning of *Some Provisions of the Supreme People's Court on Evidence in Civil Procedure* is provided that "the litigant should supply evidence".

⁴⁴ See Baosheng Zhao, "Value Basis and Theoretical System of Evidence Rules", *Chinese Journal of Law*, 2008(2). According to this article, in the three kinds of procedure laws there are 36 articles of evidence rules, among which 10 articles are similar or identical, accounting for 27.8%, and 6 articles are partly similar or identical, accounting for 17%. In the above, the similar and identical parts account for 44.8%. In regard of "The Two Evidence Provisions" of the Supreme People's Court, eliminating 152 articles in supplementary provisions, 95 articles are similar or identical, accounting for 62.5%."

⁴⁵ See Baoguo Fang, "The Reality is there — On China's Local Rules on Criminal Evidence", *Tribune of Political Science and Law*, 2007(3).



and improvement of the evidence system has become a significant and urgent task for China's judicial reform."⁴⁶ Only when the construction of an evidence system is considered a top priority in China judicial reform, will the principle of "taking facts as the basis, and laws as the criterion" be truly implemented and the goal of judicial reform finally achieved.

B. Reconstruction of the Criminal Evidence System in the Process of Rebuilding the Whole Evidence System

The reconstruction of China's criminal evidence system cannot proceed separately from the reconstruction of the whole evidence system. On one hand, the fact-finding approaches for each of the three major categories of litigation activities have some similarities with each other; on the other hand, the reconstruction of the criminal evidence system can neither be accomplished aside from the overall design of the evidence system, nor can violate the basic principles of evidence law. The reality is that in China today not only the criminal evidence rules, but the whole evidence system, have fallen behind the rest of the world. Moreover, in China, it's not just theoretical research on criminal evidence that is falling behind, but all types of research on the science of evidence. That is why the reconstruction of China's criminal evidence system must be carried out as part of a process for reconstructing China's entire evidence system. Specifically speaking, the following measures should be put in place.

(1) To Strengthen Studies on Theoretical Research of Evidence Law

(a) To strengthen studies on epistemological foundations of evidence law

The reason evidence law can help find the fact and truth lies in its compliance of the epistemological discipline of fact-finding. In other words, "The law of evidence is in fact the law's epistemology"⁴⁷ "Evidence law is a system of rules that regulates information providing for the fact-finder in legal proceedings. A better definition for this is 'court epistemology'."⁴⁸ The epistemological foundations of the evidence law mainly include three aspects.

First, fact-finding must be based on evidence. That is to say, evidence is the indispensable condition for the fact-finder. On one hand, without evidence, the fact cannot be found, and this is the epistemological foundation of the Principle of Evidentiary Adjudication. On the other hand, even with evidence, fact-finders may still not be able to determine facts without errors because different kinds of evidence differ in relevancy, authenticity and probative force. Therefore, one purpose of having evidence rules is to make sure fact-finders get relevant, authentic, truthful and reliable evidence. In particular, evidentiary rules on relevancy, authenticity, identification, cross-examination and confrontation are extremely helpful in keeping and increasing the reliability of the sources of documentary evidence, physical evidences and witness testimony while reducing the risk of mistaken adjudication and promoting fact/truth -finding.

⁴⁶ See "The Chief Judge Xiao Yang: China Keeps Strengthening the Reform of Evidence System", resource: Xinhua News, May 30th 2006:

http://big5.gov.cn/gate/big5/www.gov.cn/jrzg/2006-05/30/content_295901.htm.

⁴⁷ Ronald J. Allen, "The Theoretical Foundations and Implications of Evidence", Vol. 18 of Evidence Science, No. 4 (2010).

⁴⁸ David Bergland, "Value Analysis of Evidence Law", Baosheng Zhang & Lintao Zheng (trans.), *Forum of Evidence* (vol.13), Jiahong He (edit.), Law Press. 2007.

Second, fact-finding is a process of experience corollary. “‘Evidence’ is something which enables us (a) to hold as true propositions about the present; and (b) to infer from these, propositions about the past.”⁴⁹ During trial proceedings, through presentation and cross-examination the prosecution and defense persuade the fact-finder to believe their respective factual claims and to refute the ones of the other party. At the same time, the fact-finder needs to apply his or her empirical knowledge to decide or process the evidence.

Third, the conclusions from experience corollary contain probability. “In the United States, there is data indicating that the error rate of felony trials is somewhere between 3.5% and 5.0% in convictions of capital rape-murders at trial.”⁵⁰ It is this inevitable error rate that decides the criminal proceedings to obey the Principle of Presumption of Innocence in the case of insufficient evidence, which is a safety valve to prevent wrongful conviction. There’s a saying in Chinese judicial practice, “neither wrong a good man, nor let off a bad guy!”⁵¹ Another saying states that courts must “ensure that the processing of every criminal case can withstand the test of law and history.”⁵² For investigations, this slogan can be explained as “the murder case must be solved.” In addition to solving cases and rendering meritorious service, “the elimination system of the lowest rate of solving crimes is carried out in some places, which means that every year the police officer with the lowest rate of solving crimes will lose his or her job.”⁵³ In fact, this slogan violates the basic principles of epistemology. Its fallacy lies in that it requires that fact-finding accuracy reach 100%, and does not allow even 1% of errors to occur. Thus, one possible reason for frequent miscarriages of justice in China, such as the illegal obtention of confessions by torture, is due to a lack of understanding of the probabilistic nature of fact-finding.

(b) The integration of the pursuit of truth and the pursuit of righteousness in the construction of criminal evidence system

The probabilistic nature of fact-finding forces us to distinguish between wrongful conviction and wrongful acquittal. “A mistake-free legal system is not possible. It is critically important to recognize that two types of errors can be made—a wrongful verdict for a plaintiff (including a conviction of an innocent person), which we call a Type I or false positive error, and a wrongful verdict for a defendant (including an acquittal of a guilty person), which we call a Type II or false negative error—and resource allocation and other decisions will affect the relationship between these

⁴⁹ Neil MacCormick, *Legal Reasoning and Legal Theory*, Clarendon Press·Oxford, 1978 edition, p.88.

⁵⁰ Ronald J. Allen, “The Relationships among Evidence Law, Procedural Law and Substantive Law”, Vol. 18 of *Evidence Science*, No. 6 (2010).

⁵¹ For example, “the most rigorous responsibility system of case-handling must be implemented to achieve no misjudge, no negligence, no injustice and no indulgence. See Meng Du, “Interpretation by Fan Chongyi of *Provisions on Evidence in Death Sentence Cases and Provisions on the Exclusion of Illegal Evidence*”. Dongfangfayan: <http://www.dffy.com/fazhixinwen/lifa/201005/20100530153708.htm>

⁵² Notice of the Supreme People’s Court, the Supreme People’s Procuratorates, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice on Issuing “*the Provisions on Several Issues Concerning the Review of Evidence in Death Penalty Cases*” and “*the Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Criminal Cases*”.

⁵³ See Xiaowen Wang, “Those “Murderers” Given Death Sentences with a Reprieve”, *Oriental Outlook*. 2010(28).



two types of errors.”⁵⁴ All legal systems have to make a value choice between these two types of error.

From the perspective of combining epistemological and axiological theories, the relevancy and the admissibility rules of evidence law are the very embodiment of the integration of the pursuit of truth and righteousness. “The purpose of pursuing truth competes with other purposes like economy, protecting certain confidence, promoting certain activities, and protecting some constitutional regulations.”⁵⁵ When making a choice between the two types of errors the American criminal justice system observes the principle that “it is better that ten guilty persons escape than one innocent suffer.” Based on Michael D. Bayles’ “Principle of Moral Costs,” in the two possible mistaken decisions of convicting the innocent (CI) and not convicting the guilty (CG), the first is worse than the second, because it infringes on the right not to be convicted if innocent (the principle of innocence). Such violations of rights are moral harms or costs. Concerning the consequence of a verdict, the conviction of an innocent person will result in economic cost and moral cost; while non-conviction for a guilty person only generates economic cost. Therefore, we always give negative evaluation to the cases in which innocent persons are convicted, so as to prevent more CI errors.⁵⁶

China’s judicial reform also faces the question of balancing wrongful convictions and wrongful acquittals. Based on the demand of “establishing a socialist judicial system with fairness, efficiency and authority,” “the investigation system for responsibilities in misjudged cases”⁵⁷ should be upgraded in the judicial reform. Instead of continuing to follow the wrongful principle “neither convicting an innocent person nor sparing a guilty one,” the strongly recommended guideline should be “it is better that one (guilty) person escape than one (innocent) suffers”. Under the guidance of such principle, when evaluating investigators, prosecutors and judges, a small range of CG errors (3-5%) should be allowed while each and every CI case should be investigated deeply and closely.

(2) Breaking through the “absence of evidence code” tradition in civil law system

China needs to overcome certain theoretical barriers in the civil law system if it expects to see any major breakthrough in the reconstruction of its evidence system. Since the Reform and Opening Up, China’s laws have absorbed a good deal of excellent legal norms from other countries, in particular the 1996 amendments to criminal procedure law introducing the Adversary System and Adversary Trial Model into China. Therefore, the Chinese court system already contains elements from both

⁵⁴ Ronald J. Allen, “The Theoretical Foundations and Implications of Evidence”, Vol. 18 of *Evidence Science*, No. 4 (2010).

⁵⁵ Richard A. Posner, *The Problems of Jurisprudence*, Su Li (trans.), Press of China University of Political Science and Law, 1994, p.261.

⁵⁶ See Michael D. Bayles, *Principles of Law (A Normative Analysis)*, D. Reidel Publishing Company, 1987 edition, pp.24-28.

⁵⁷ In the 1998 Work Report of the Supreme People’s Court in the First Session of the Ninth National People’s Congress is proposed to “progressively establish and improve responsibility investigation system for unjust and misjudged cases in court.” In the 1998 Work Report of the Supreme People’s Procuratorates in the First Session of the Ninth National People’s Congress is proposed to “perfect and implement the accountability system of handling cases, the investigation system of misjudged cases and the compensation system”.

civil law and common law systems.⁵⁸ By observing judicial reforms in western countries, it is easy to observe that there is a worldwide trend toward the integration of the two legal systems (common law and civil law). “Reform and coordination are blurring boundaries between litigation procedures in common law system and in civil law system. The old categorizing model has become something irrelevant to real life dispute resolution. In both of the legal systems, the roles of parties involved (judges, lawyers and witnesses) are all changing. Shared value, mixed control and the jurisdiction in transition all demonstrate the limited role of traditional disparity in future dispute resolution process.”⁵⁹ Tradition is just something “acknowledged and accepted by people, and only plays the role of habit and convention”.⁶⁰ What we really should care about is the demand from China’s practitioners and particularly the fact that numerous judges in China are lacking integrity, which calls for the guidance of an evidence system.⁶¹ Thus, we need to have some breakthrough in the construction of the evidence system and pave a way for the development of evidence law.

(3) Potential Routes for Innovation in China’s Evidence System

Since the evidence system is the common basis for the three major litigation fields, it would be ideal in the long run for the legislature to promulgate a unified code of evidence law. In the meantime, it should also be anticipated that coordinating the relation between the evidence law and the three major procedure laws is an extremely difficult task. In the short term, the most feasible compromise is to have the Supreme People's Court promulgate *People’s Court provisions on Evidence* for the following reasons.

First, as the collective judicial interpretation of evidence rules in the three major procedure laws and in substantive law, the validity of *People’s Court provisions on Evidence* would not be questioned. If it made evidence rules systematic and avoided repetition, its reasonableness would surely be upheld.

Second, no matter in *Provisions on Evidence in Civil Procedure* and *Provisions on Evidence in Administrative Procedure* promulgated a decade ago by the Supreme People’s Court, or in the two

⁵⁸ See Xinjian Li, *Construction of Criminal Procedure*, Press of China University of Political Science and Law, 1991, p.1. He argues that the system of procedure can be categorized into adversarial system in common law system and inquisitorial system in civil law system, and the procedure mode combining the two pursued by Japan, Italy, etc..

⁵⁹ Janet Walker & Oscar G. Chase, *Common Law, Civil Law and the Future of Categories*, LexisNexis Canada Inc: 2010, p.li.

⁶⁰ David M. Walkker, *The Oxford Companion to Law*, Shuangyuan Li (trans.), Law Press, 2003, p.1114.

⁶¹ In accordance with “Annual Report on Work of People’s Court(2010)” issued by the Supreme People’s Court on May 25th 2011. (http://www.court.gov.cn/qwfb/sfsj/201105/t20110525_100996.htm , the last time to login : May 25th 2011) . The number of judges in China has reached 193,000. Many scholars make a comparative study of the number of judges, the efficiency of handling cases, the quality of handling cases, etc. in China and in developed countries, concluding that judges in China is not only great in the number, but accounts a large part in the national population. The more evident is that the gap between the efficiency and quality of handling cases in China and in those developed countries is huge. As for this, factors like trial system do have their impact, but the personal quality of judges is an urgently important factor. Consequently, in most courts exists the phenomenon that there are a great number of judges with a small number of talents in works. See Tong Gao: “Study on Judge-Allocating System”, *Journal of China Three Gorges University (Humanity and Social Science)*, 2011 (1); Wenxing Chen, “Comparative Analysis of System of Judges' Specified Number of Personnel”, *Journal of Tianjin University (Social Science)*, 2008 (4); Jianfeng Pan, “The System of High Salary: the Basic Guarantee of Fair Judgment, Incorruption and High Quality of the Judge”, *Tribune of Political Science and Law*, 2001 (6); and so on.



new Provision on Criminal Evidence that were jointly promulgated by the Supreme People's Court, Supreme People's Procuratorate, together with Ministry of Public Security, Ministry of State Security and Ministry of Justice, many legislative problems have already emerged and need to be fixed. Under this circumstance, the Supreme People's Court, on the basis of summing up past experience, should adopt the method of "upgrading the software" to sort out and reorganize the existing evidence rules in light of the basic theories of evidence law, compiling the evidence rules that have common effects into general principles and separate special evidence rules in criminal, civil and administrative litigation proceedings into specific categories. In this way, we can construct a systematic framework that cleans up the current conflicts in logic, removes repetitions by merging similar terms, and eliminates noticeable errors by reviewing everything from the bottom-up. After repeated iterations through test courts, we believe that a unified *People's Court provisions on Evidence* will dramatically improve the evidence system in China, as well as on promote judicial fairness and reform of legal education. In the meantime, it will also contribute to the reconstruction of the Chinese criminal evidence system.

(4) The Reconstruction of China's Evidence System and the Reform of Legal Science Education

When imputing judicial unfairness and misjudged cases to the deficiency of China's evidence system and judges' ignorance on issues of evidence, we should also take a look at problems in legal education.

From the very beginning, China's legal education has been maintaining a noble academic integrity, which is very rare in a society that is fulfilled with materialistic desires. However, in the ivory tower of law schools, there is still not enough intellectual support for our future legal professionals. Professor Chongyi Fan once mentioned "Evidence is an independent category of science, but probably eight or nine in ten Chinese have no idea about it, including those undergraduates with a law major. In the team of public defense and judges, many judicial officials never did thorough research on it."⁶² Professor Wenxian Zhang responded to this observation from the perspective of judicial practice. He said that in the process of a trial, the guiding principle that judge's should "take facts as the basis, laws as the criterion, and policies as direction" requires judges to be equipped with three different categories of knowledge: knowledge in evidence science, knowledge in legal science, and knowledge in policy science. However, many law schools have not launched any courses related to evidence law, not even to mention courses specialized in forensic science, which leads to the conundrum that most Chinese judges know very little about evidence rules. Thus, within the three categories of knowledge, knowledge in evidence science is under most serious shortage.⁶³

It should be noted that, despite the idea that "engaging in a lawsuit means engaging in evidence" has a deep root in China, law schools in China never seem think about whether their students would

⁶² Meng Du, "Interpretation by Chongyi Fan of *Provisions on Evidence in Death Sentence Cases and Provisions on the Exclusion of Illegal Evidence*", Dongfangfayan:

<http://www.dffy.com/fazhixinwen/lifa/201005/20100530153708.htm>.

⁶³ See Leilei Dai & Hongyan Jiao, "Absence of Judges Mastering Evidence Science in Court Resulting in Misjudged Cases: Possibility of Promoting the Talents Training Model—Jilin Supreme Court Coordinating with China University of Political Science and Law to Bring up Experts of Evidence Science", *Legal Daily (weekend)*, May 20th 2010, p.7.

be ready to do judicial work after school, despite never having been systematically trained on the rules of evidence. In China today, evidence law is not included in the list of sixteen core courses that every law student must take.⁶⁴ And courses on evidence science that relate to the key principles of fact-findings are almost never seen in any law school's curriculum. Professor Wenxian Zhang once mentioned: "overall, current legal science education in China is far from the demands of daily legal practice. Training for the purpose of legal practice is in serious shortage. If such dilemma cannot be fixed and if law students cannot get enough basic trainings on evidence science, it will be hard to meet with the demand for fair and efficient trials."⁶⁵

The absence of evidence science education not only results in a distorted knowledge structure among law school students, but also leads to obvious incompetence in future legal professionals. Therefore, setting up evidence science courses like evidence law and forensic science can remedy the legal professionals' deficiency in expertise knowledge and professional skills. Also, such courses have a methodological significance in training law students' capacity in critical thinking. So, from the perspective of preparing future leaders in the legal field, improvement of the evidence system depends on the development of evidence science educations. So far, the required foundations for evidence science courses, that is, theoretical research, textbooks, and faculty are still far short of what is needed for an evidence system and judicial reform in China. Thus, it is an important mission for the construction of an evidence system that we start with the reform of legal education by improving teaching, scientific research and the training of professionals in evidence science.

⁶⁴ In universities of China, required courses of law school are mainly core courses fixed by ministry of education. The 14 traditional core courses of legal undergraduates are constitution of China, jurisprudence, civil law, criminal law, civil procedure law, administrative law and administrative procedure law, criminal procedure law, history of Chinese legal system, introduction to economic law, introduction to commercial law, intellectual property law, international law, international private law, and introduction to international economic law. After 2007, "labor and social security law" and "environment and resources law" were also included into those courses so that the core courses of legal undergraduates reach 16.

⁶⁵ See Hongyan Jiao & Jingqing Mo, "Prequel to Evidence Science Judge: The Unique Class in China for Jurist Master of Forensic Science Begins", *Legal Daily (weekend)*, Sept. 17th 2009, p.16.



ASIAN CRIMINOLOGICAL SOCIETY

PART 7

MARITIME LAW ENFORCEMENT AND POLICING





JUMPING OUT OF THE “VICIOUS CYCLE” AND FORGING EFFECTIVE POLICING STRATEGIES OVER UNDERGROUND “MARK SIX” IN MAINLAND CHINA

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Underground “Mark Six” (UMS) has flourished in mainland China in the past decade regardless of numerous police crackdowns. The resilience of UMS relates not only to its sophisticated operation, but also the ineffective law-enforcement practice. Combining the analyses of fieldwork observations, in-depth individual interviews, legal documents, and media cases, this paper presents the problems in current policing practice over UMS, including barriers in bureaucratic procedures, periodicity of campaigns, public distrusts of the police, low morale in the police, and misconduct of some police officers. It further points out that at least four factors has impeded the effective law-enforcement on UMS, including the legislative weakness (the lack of legal basis), administrative obstacles (the lack of priorities in policing agenda) and supervisory loopholes (the ineffectiveness in monitoring mechanisms). This article suggests that the police should strengthen internal anti-corruption efforts to eliminate collusion with gambling syndicates, resist interference in policing from Party or government officials, and forge collaboration with community citizens to jointly combat the intractable UMS.

BACKGROUND

Underground “Mark Six” (UMS, 地下六合彩) is an illegal gambling activity, which was first discovered in Chaoyang city (潮陽市) in Guangdong in 1998, and then quickly spread from the southeast region into the vast inland of mainland China. During the decade since its birth, UMS has partly imitated Hong Kong “Mark Six”. Specifically, individuals in mainland China utilize the draw results of Hong Kong “Mark Six” to illegally operate the betting money. There are several important roles in operating UMS, mainly including bettors¹, bet collectors², bet bookies³, and material sellers⁴. The basic operation of UMS is similar to an illegal “pyramid” selling, in which bet collectors and bet bookies could be interchangeable in practice. A bet collector could become a bet bookie, if he or she is able to operate the betting money independently and develop his or her own bet collectors vertically.

The spread and rampancy of UMS activities have greatly affected the law and order. They not only make numerous families and individuals fall into serious financial problems, but also engender many deviances and crimes, such as frauds, thefts, robberies, assaults and homicides (China Network Television, 2010). What is more, the participation in UMS activities contaminates the general social atmosphere and further impairs the social order potentially. To fight UMS becomes an important policing task, and the operators of UMS are the major targets of the law-enforcement departments. There is a large number of news reporting that numerous illegal UMS dens and outlets were shut down by the police in mainland China (Guangxi Daily, 2004, 2010; Legal Daily, 2005;

¹ The “bettors” (彩民) refer to persons who purchase UMS numbers or lottery tickets from bet collectors or bet bookies.

² The “bet collectors” (接單人 or 跟單人 or 寫單人) refer to persons who assist bet bookies to promote and sell UMS numbers or lottery tickets to bettors, and get approximately 10 per cent of the betting money as commission fees from bet bookies.

³ The “bet bookies” (莊家) refer to persons who reap illicit gains by setting up and operating UMS, and organizing people to engage in UMS activities.

⁴ The “material sellers” (資料銷售者) refer to persons who reap illicit gains by printing, retailing, or wholesaling the relevant materials to promote UMS.

Nanning Daily, 2007; People's Daily, 2004; Shenzhen Special Zone Daily, 2011; Southern Daily, 2010, 2011).

However, it is difficult for the police and other law-enforcement officers to eradicate the sophisticated UMS, considering its covert operation and stable network. Concerning the nature of UMS, the police and other law-enforcement departments have adopted various countermeasures to fight UMS. During a series of crackdown campaigns featured with swiftness and severity (Trevaskes, 2007), thousands of illegal materials were confiscated and numerous law-breakers were arrested by public security organs (Xinhua News Agency, 2006 & Office of Eliminating Pornography and Illegal Publications, 2009). However, the campaign-style police crackdowns do not present their effectiveness to wipe out the UMS, but even propel its sophisticated operations, which still unscrupulously flourish in the original places, and continue to spread to wider areas. The intractable UMS shows the ineffectiveness of current policing practice and presents great challenges for the law-enforcement departments. Concerning the stubbornness of UMS problems upon the repeated police crackdowns, this study aims to 1) introduce the background of the policing strategies on controlling UMS, 2) present the current policing difficulties, and 3) identify the reasons behind the ineffectiveness of policing UMS. The researchers use the data collected from legal documents, mass media reports, fieldwork observation and individual interviews to elaborate the above issues and propose related suggestions to combat the intractable UMS effectively.

Policing strategies

The promulgation of the People's Police Law in 1995 is one of the significant events in Chinese policing history and indicates the importance of building a professional and modern police force in mainland China (Ma, 1997). There have been discrepant analyses of the development of policing strategies in the mainland. For example, Wong (2002) divided the policing since the economic reform by stressing the birth of People's Police Law in 1995 as a cutoff point, while Dutton (2000) disagreed with him by outlining three overlapping stages (i.e. 1978 – 1990, 1990 – 1995, and 1995 – present) of the Chinese policing in the reform era. Nevertheless, most of us still consider the contemporary policing strategies in mainland China are featured with both campaign-style policing and community policing. The campaign-style policing was institutionalized by the National People's Congress in 1983, and became a permanent feature of the Chinese policing since then (Dai, 2008). Trevaskes (2003) also examined a few recent policing strategies in the anti-crime campaign of 2001, and pointed out that the "Strike Hard" (*yanda*) strategy, tinted with severity and swiftness, usually focused on certain kinds of crimes (e.g. street crime, prostitution, pornography, drug offenses, gambling, superstitious practices, corruption, etc.), within certain areas and during certain periods (Dutton & Lee, 1993). Fu (1994) stated that the campaign-style policing was closely related to the political strategies from Chinese Communist Party and governments at various administrative levels. The frequent changes of the strategies in campaign-style policing reflected the alterations of different political concerns of the local party committees and governments. Additionally, a few studies commented that campaign-style policing was not effective to reduce the crime rates (Trevaskes, 2003; Liang, 2005). It is also interesting to find the progress of arrest closely correlates with the offense type, and the offenders of economic crimes are less likely to be arrested than property offenders (Zhang & Liu, 2004). This can partly explicate why the UMS is prevalent and it is hard for the police to eradicate its operations when comparing other crimes.

Police-citizen relationship



The importance of the close cooperation with people has been emphasized in the Chinese policing, and many studies have regarded mass line as a dominant principle of the policing (Bracey, 1989; Dai & Huang, 1993; Wong, 2001a; Wong, 2001b; Zhang, Zhou, Messner, et al., 1996). This principle can be reflected in both previous and current policing practice. First, the mass line was stressed legitimately in the People's Police Law in 1995 and it required the police officers to "rely on the masses, keep close ties to them, listen attentively to their comments and suggestions, accept their supervision, safeguard their interests, and serve them wholeheartedly" (Dai, 2008, p213). Second, the two major grass-root organizations (i.e. public security committees and neighborhood mediation committees) in charge of the maintenance of social order are both mass organizations and they exert informal social control in residential communities. An empirical research showed that the community structure featured with mass line is an effective social control mechanism in mainland China (Zhang, Zhou, Messner, et al., 1996). Third, though household registration requires laborious efforts of the police (Dai, 1993), it can help the police officers be familiar with the detailed information of the residents (Chen, 2002) and support a better control of population mobility and social order (Dutton, 1992). Fourth, police officers devoted substantial time and energies to the service for the people. The popular saying of "Please turn to the police if you are in trouble." (有困難, 找警察) informs us that the police officers should be responsible for a wide range of situations which trouble the people. There are numerous news reports showing that the police officers should deal with a lot of problems for the people (e.g. buying things for the senior citizens, guiding passage for the visually impaired person, delivering aids to orphans and childless couples, etc.) apart from their busy policing mission. In addition, one important objective of establishing the "110 emergency number system" is to enable the citizens to report the police more conveniently (Fu, 1990).

Though the police officers enjoyed wide respects from the citizens who usually viewed the police as a role model for the youths, the police-citizen relationship has changed greatly over time (Fu, 2001) due to the several reasons as discussed by Du (1997): 1) the increased distance between the public and the police in law-enforcement activities; 2) the impairment on the police image affected by local political control; 3) the distance engendered by the social change during the economic reform; 4) the police maladaptation to the rapid social transformation; 5) the increased police misconducts. Compared with the American police, the Chinese police are perceived as more moderate to express and neutral to respond. They get used to the privilege social status and are inclined to behave in a more authoritarian way (Jiao, 2001). The abovementioned studies can contribute to the discussion on the dynamic relationship between the police and citizens in the mainland.

Leadership of police system

The police system in mainland China is not centralized, even more decentralized than its American counterpart, though it has a centralized model (Fu, 2006; Jiao, 1997; Ma, 1997). The police departments are operated under the dual leadership of the Ministry of Public Security (MPS) and local governments (Fu, 2005; Ma, 1997; Jiao, 2001). The MPS is in charge of the supervision on local police agencies and the provision of minimum standards regarding recruitment, training, and promotion, while local governments are responsible for the administration and management of local agencies. This dual relationship actually enables local governments to exert substantial influences on many important issues in police departments, such as police budget and personnel management (Fu, 1994, 2005; Tanner & Eric, 2007). Dai (2009) pointed out that local governments could use their autonomies to determine their own priorities in policing, and the decentralized policing engendered negative impacts on the police professionalism and intelligence-sharing, and further brought about the police predation (Tanner & Eric, 2007). A few studies in mainland China

analyzed that the police malpractice was attributable to this leadership system (Luan & Huang, 2004). Dutton (2000) showed that some local governments refused to fully fund the police stations, which forced many indigent police departments to collect fines and other penalty fees to fill their budgetary gaps by themselves. Dutton (2000) further presented that police usually imposed fines to replace other controlling approaches (e.g. detention, arrest, etc.) when dealing with the case of gambling, prostitution, and traffic offense. Fu (2005) observed that fines served as the primary means to source the budget, and worked as the principal income for police departments in the 1990s.

Police misconduct and accountability

In the few past years, more and more cases concerning police misconduct were publicized and drew mounting attentions in a series of phenomenon relevant to police misbehaviors, such as police corruption, abuse of power, dereliction of duties, etc. For example, the cases of Sun Zhigang, Li Siyi and Yangjia sparked heated discussions and aroused the public anger nationwide toward the police (Wong, 2004; Fu, 2005; Guo, 2010). Though Wong (2004) classified different types of police misbehaviors in his studies, (e.g. use of power for individual gain, use of torture for confessions, disregard of human life, disrespect to citizens, fraud, and corruption of personal life, etc.), the studies on police misbehaviors were still spotty and sketchy (e.g. Zhou, 2003; Ren, 2007; Liu, 2006; Lin & Yu, 2002; Li & Chen, 2007). Ma (1997) used his data to indicate that the primary litigations initiated against the police were associated with the police decisions of administrative sanctions. Besides, it is noteworthy that the individual official status is negatively correlated with the swiftness of arrest, and the friend's official status has an interactive and negative effect on the swiftness of arrest (Zhang & Liu, 2004). The findings are useful to explain the difficulties in solving those UMS cases involving police officers, government officials, and their collusions with gambling syndicates.

Various supervisory mechanisms have been established to monitor the behaviors of police departments and individuals, and prevent the police misconducts and the influence by politics (Fu, 2005). Generally, local police are subject to internal supervision, administrative supervision, procuratorate supervision, citizen supervision and supervision of the people's congresses at the national and the local level (Dai, 2008). There are other two major examinations on the police accountability system focusing on the context of legal reform of the supervisory mechanism. Ma⁵ (1997) summarized the new police supervisory system consolidated by the police law and Wong⁶ (2004) analyzed four supervisory systems of police and discussed their supervisory effects on the police duties and behaviors respectively. Apart from the supervisory laws, administrative departments formulated internal disciplines to further control the police misconducts, such as the five prohibitions with dismissal being the mandatory penalty for serious cases to prevent the police misbehaviors as follows: gambling, illegal use of firearms, drinking while armed, drinking on duty and drunk driving (Fu, 2005). Furthermore, Jiao (2001) introduced an innovative supervision form by publicizing all rules and regulations, working procedures and supervisory measures to the public unless prohibited by law. There still exist many problems in the transparency of policing managements and law-enforcement activities.

⁵ Ma (1997) summarized that "the police are subject to the procuratorate supervision, administrative supervision by the Ministry of Supervision and its subordinate agencies, internal supervision by higher-level police agencies, and citizen supervision through citizen recommendations, complaints, and lawsuits." (Dai, 2008, p221)

⁶ Wong analyzed that there were four supervisory systems of the police, including "National People's Congress (NPC) supervision, media supervision, procuratorate supervision, and police internal supervision." (Dai, 2008, p221)



Previous studies usually relied on the secondary data to illustrate the policing problems in a descriptive and introductory style. However, this study uses the first-hand data collected in the fieldwork to identify the reasons behind the ineffectiveness in policing deviances and crimes related with UMS, which could serve as the backdrop for a combined discussion of a series of policing topics, such as the policing strategies featured with campaign-style, the leadership of police system, the police-citizen relationship, police misconduct and police supervision. Concerning this, the study might generate multiple contributions by: 1) offering valuable experience of policing UMS based on empirical data; 2) providing insightful suggestions for the adjustment of policing strategies and the improvement of administrative supervision; 3) facilitating the legislative progress in various areas including gambling, lottery, public security punishment, criminal justice, etc.; and 4) enriching the academic discussion on important fields in criminology, such as gambling deviances, “Strike Hard” policing, community policing in mainland China.

DATA COLLECTION

The study adopted a combined technique of fieldwork observations, in-depth individual interviews, and analysis of legal documents as well as media cases to investigate the problems in current policing practice on UMS. Both the fieldwork observations and in-depth individual interviews were conducted in 2010 in Liuzhou, a major city centrally located in Guangxi. The choice of the research field lies in that: first, purchasing UMS is prevalent in Liuzhou, which provides easy access to observe the UMS activities. As a vital industrial center and transportation hub in Guangxi, Liuzhou has a higher mobility of population and renders favorable conditions to the rapid spread of UMS. Second, Liuzhou is a typical place, where the UMS has flourished over one decade, and showed its intractability in confrontation of the repeated policing efforts. Third, the investigator could approach the targeted places and interviewees with substantial supports from local informants as well as local law-enforcement departments. For the fieldwork observations, the researcher approached a community ridden with UMS activities and perceived the operation of local UMS outlets. For the individual interviews⁷, the researcher approached four UMS participants and four local police officers via the social network and the assistance from local informants, to get the picture of policing policies, law-enforcement practices as well as policing difficulties on UMS. All individual interviews were carried out in a semi-structured style varying from 1 to 1.5 hours, with the necessary anonymous and confidential measures being taken throughout the interviews.

FINDINGS

Bureaucratic procedure

Bureaucratic policing procedure is one of the most obvious features which impede the timely response of police departments and thus affect the effective law-enforcement on UMS activities. The most obvious reason for the laggard police mobilization we identify is the bureaucratic rationality claimed in the official illustrations: first, the mobilization of police force is a serious action that requires cautious consideration and implementation; second, the deployment of police force may cost a huge manpower, financial resources and materials, and it should be performed with more prudence.

“It is not easy to deploy the police to crackdown the UMS, since it requires much time to go

⁷ Detailed information on the eight interviewees can be referred in the appendix.

through complicated procedures in police departments.” (Interviewee F)

“Generally, a large-scale police deployment requires dozens of police officers and more than 10 police vehicles. This would cost a great deal of human and material resources.”
(Interviewee H)

We also find that the regulations in laws in mobilizing the police further slow down the police response toward the illegal UMS. The stipulation⁸ in Article 17 of Chapter 2 in the People’s Police Law indicates that the dispatch of police should obtain the approval from not only the superior police department but also the local government at the same level. The involvement of authorities at both vertical and horizontal levels actually prolongs the decision-making process, creates more space for external administrative interventions, and thus increases the possibility that the police action may be rejected. The procrastination of police mobilization is also associated with the joint law-enforcement practice in mainland China. The participations of other law-enforcement departments in crackdown action require a meticulous cooperation among various departments and a series of preparatory arrangements before the large-scale deployments.

“Since the UMS cases involve illegal publications and illegal marketing activities, we need the tax bureau, the industrial and commercial bureau, and the press and publication administration to assist our law-enforcement.” (Interviewee G)

Periodicity of campaigns

The periodicity of crackdown campaigns also impairs the effectiveness of law-enforcement over UMS. We find in our fieldwork observations that the police do not patrol routinely around the areas ridden with UMS activities, which actually encourages the unscrupulous operations and the prevalent participations of UMS. Besides, the invisibility of police or other law-enforcement officers surrounding the UMS outlets further indicates the lack of persistent monitoring over UMS. Though the police crackdowns can obtain an immediate effect, they cannot maintain the policing fruit in the long-term. In fact, the fluctuant policing efforts devoted to fighting UMS has weakened the law-enforcement strength and many UMS activities revive and continue to spread during the cease of policing crackdowns. The crackdown actions are operated like “specific battles” (專項整治 or 專項鬥爭), designed to fight certain kinds of crime or illegal behaviors (e.g. drug, gambling, illegal publication, pornography) within a very limited period (e.g. Spring Festival, National Day). Similar to the “Strike Hard” actions during the campaign policing era, the intermittency of crackdowns on UMS generates many policing loopholes which are utilized by UMS operators to avoid the police punishment or restore their structure.

We further find that the campaign-style policing is manipulated by a few police officers to show their administrative performance and even to shield for the UMS syndicates. The “political achievement”(政績) has served as a general criterion for the personal promotion, and thus is seriously considered and prevalently committed by the police officers in mainland China (Ni & Fu, 2008; Wang, 2006; Yan, 2005). The number of the cases solved and the criminals arrested in each

⁸ Article 17 of Chapter 2 in the People’s Police Law stipulates that “the public security organs of the people’s governments at or above the county level may, with the approval of the public security organs at higher levels and the people’s governments at the corresponding levels and in light of the specific circumstances, exercise on-the-spot control over emergent events that seriously endanger public order”.



assessment period are treated as the important measurements to evaluate the performance of police departments as well as police individuals. To preserve the policing achievement and keep a steady policing progress during a prolonged period, the police officers do not exhaust their efforts to eradicate the UMS activities within their policing areas; otherwise the number of available cases to be solved and potential criminals to be arrested would decrease substantially in the following assessment period. The campaign-style policing is to some extent utilized by some police officers to frame the policing strategies and adjust their administrative progresses. Some criminal remnants are thus preserved to be tackled in the next campaign to demonstrate the cumulative policing achievements. The intractability of UMS for nearly one decade in Liuzhou reflects the bureaucratic intention behind the consideration of “political achievement” among the upper echelons of local police departments in mainland China.

“A few police officers intentionally let some UMS operators off during police crackdowns, because they want to ‘throw a long line to catch a big fish’”. (Interviewee E)

“I think if they arrest all the bet bookies and bet collectors at one time, there is none to be arrested next time. It also shows that you do not have any policing achievement next time or you cannot make any policing progress in the future”. (Interviewee B)

Public distrusts of the police

The effective and smooth policing work requires a close cooperation with the public (e.g. offering the information leading to their arrests, providing proofs or evidences during adjudications, etc.). The cooperation between police and citizens is perceived as one important factor for the effective policing in mainland China due to both the earlier policing practice and the respectable status of the police among the public. On the one hand, the police have accumulated valuable law-enforcement experiences during the era of mass campaigns policing, and realized the importance of mass participation in maintaining the public security; on the other hand, the positive image of police established conventionally in the public makes citizens more cooperative during the police law-enforcement activities. Operated as a mass activity, UMS cannot exist for a long period without a huge mass base. However, we find that UMS is an open secret in the observed community, and the local residents do not report the UMS activities surrounding them the police. The revival and prevalence of UMS activities in Liuzhou have indicated the public distrusts of the police as follow: first, some citizens, especially those at the grassroots level, have benefited via purchasing UMS number or selling UMS newsletters, thus they are reluctant to report to the police, or would like to hide the information related to UMS, to maintain their interests to the greatest extent. Second, the police tolerance toward UMS activities in previous policing practice delivered a wrong message to the public that UMS was not so serious to affect the public security as claimed earlier by the police. Third, the police corruptions and collusions with UMS organizations have disappointed the public. The low public trusts in the police consolidate the mass base for UMS and increase many law-enforcement obstacles for policing the UMS.

“Some citizens do not understand our work and it is one of the difficulties we met in our law-enforcement.” (Interviewee G)

“We think UMS is not a serious crime comparing with those violent crimes, such as homicide, rape, robbery.” (Interviewee H)

“I cannot understand why the police department did not make great efforts to eradicate the UMS; even it is so obviously prevalent in our community.” (Interviewee A)

“You cannot count on the police to eradicate the UMS since many police officers participate into the UMS activities themselves.” (Interviewee C)

Low morale in the police

The low morale among the police officers further accounts for the ineffectiveness of policing practice on the UMS activities. The regulation⁹ in Article 40 in the People’s Police Law confirms that police officers can enjoy the benefits of civil servants. However, the stable wage system has to some extent lowered the police morale to fight UMS activities. On the one hand, the extra efforts devoted into work cannot directly transform into visible benefits or rewards; on the other hand, their wages or benefits will not be affected if they do not have too much policing achievement. Especially when the UMS is not placed in the priority of current policing strategy, the motivation to control UMS is lower when comparing with other policing missions. Many police officers just passively wait for the mission assigned by their superiors only with the working credo of avoiding inviting troubles and making mistakes. Lack of an effective performance-based bonus mechanism as a working incentive, the police officers are less motivated in their attitudes as well as behaviors in policing practice.

“According to the previous practice, I consider the police will not have much energy or time to control UMS seriously.” (Interviewee D)

“Police officers generally are reluctant to do the extra-work because they think that the less trouble the better.” (Interviewee E)

“Sometimes, we cannot devote too much work on UMS if we are short of manpower, or if particularly we have other more emergent missions to perform, we have to set aside the mission on the UMS temporarily.” (Interviewee F)

The low morale of police is also associated with the officialism prevalent in police departments. In accordance with Article 32 in the People’s Police Law, a people’s police “may not suspend or alter the implementation of the decision or order” of their superior authorities, and “if his suggestions are not adopted, he must obey the decision or order”. Police officers usually feel that they do not have enough power to speak against the authoritative orders or commands, if this stipulation is abused by their superior authorities. Considering the lack of internal democratic atmosphere in police departments, police officers are reluctant to challenge their superior authorities and avoid causing troubles, which actually in turn propel the prevalence of officialism and the bureaucratic rationality in the long-term.

“If you dare to say no to your superior officers, you cannot expect to stay longer in the police department, not to mention you can get a promotion.” (Interviewee E)

“We just do what the higher authorities require us to do, and why they make such policy or

⁹ In accordance with Article 40 in the People’s Police Law, “the people’s police shall practice the wage system of the State public servants, enjoy the police-rank allowances and other allowances and subsidies, as well as the insurance and welfare benefits as prescribed by the State”.



decision is none of our business.” (Interviewee F)

Police misconduct

The police misconduct is an important factor which should not be ignored when discussing the ineffectiveness of policing UMS activities. Without the external environmental supports (i.e. protection from law-enforcement departments), it is difficult for the UMS to spread for a long periods. The incomplete eradication of UMS has reflected a certain tolerance of a few police officers for the law-breakers. We cannot deny that a few gambling syndicates have invaded into the law-enforcement system and a few police officers have formed close relationships with those UMS operators (e.g. participating in UMS activities, providing “protective umbrella”¹⁰ to UMS, acting as bet bookies, etc.). Thus some police crackdowns are manipulated by police officers to provide protections for the illegal UMS operations to maintain their interests from the UMS. Thus the collusions between UMS operators and certain police officers have weakened the policing strengths and decreased the crackdown effectiveness.

“In fact, some police officers leak information or give hint to UMS operators by telling them when the next police spot check will be implemented”. (Interviewee C)

“The higher level of the bet bookies is, the closer connections with the police or law-enforcement officers they have.” (Interviewee B)

“It depends on whether the police would like to fight it (the UMS), not on whether they can fight it.” (Interviewee E)

“Those corrupted police officers would not “kill the goose that lays the golden eggs.” (Interviewee G)

DISCUSSION

Since UMS is a new style of illegal gambling activity emerged in the past decade, there is not any particular or comprehensive law in mainland China to control UMS. The scantiness of the concrete legal liabilities of the UMS law-breakers presents legal obstacles for the professional policing. Without explicit laws and regulations, the police cannot arrest or punish the law-breakers timely. Besides, the fragmentation¹¹ of the legal liabilities of law-breakers in different laws and regulations increases the difficulties in performing law-enforcement. Furthermore, the law-enforcement is usually implemented without concrete eligibilities or detailed penalty standards to apply. For example, it is hard to differentiate between the light bet collectors and the heavy ones, and also difficult to judge how much the light offenders should be fined or how long they should be detained. The legislative weakness offers more space for a few police officers to use their discretion to

¹⁰ “Protective umbrella” is a Chinese phrase, which refers to the illegal protection for the offenders provided by certain law-enforcement officers.

¹¹ The laws and regulations associated with the participation and operation of UMS activities generally involve Article 225 and 303 in the Criminal Law, Article 70 of the Law on Public Security Administration Punishments, Article 1 and 6 of the Interpretation of the Supreme People’s Court and Supreme People’s Procuratorate about Some Issues Concerning the Application of Law in Gambling Criminal Cases (最高人民法院、最高人民檢察院關於辦理賭博刑事案件具體應用法律若干問題的解釋), Article 3 and 38 of Lottery Regulations (彩票管理條例), and Article 61 of the Regulation on the Administration of Publication (出版管理條例).

manipulate the law-enforcement or utilize the legal vacancy to shield for the UMS operators.

The abovementioned problems associated with the ineffectiveness of policing UMS are germane to the dual leadership system in police departments. The dual leadership analyzed by Tanner and Eric (2007)¹² results in an intension between the central officials and local officials to compete for the controlling power over the police. Though the MPS practises the “unified leadership” and provides professional guidance to the nationwide public security work, local governments and officials exert substantial political impacts over the police by interpreting and implementing the police policies within their respective administrative areas. Article 3 in the Regulation of Organization and Management in Public Security Organs (ROMPSO, 公安機關組織管理條例) has confirmed that the horizontal leadership is more influential on the police departments in mainland China by regulating that only the “Ministry of Public Security is under the leadership of the State Council”, while “the other public security organs above county level are under the leadership of local people’s governments at the same level”. As formulated in Article 21 of ROMPSO, local governments at provincial level can apply to the State Council to adjust the organizational structure and personnel of the local police departments within their administrative areas. Besides, Article 25 of ROMPSO states that the recruitment of police officers at local governments should be managed by the local departments at the corresponding level.

The financial control on the police by local governments can be confirmed in Article 23 of ROMPSO which stipulates that the financial expense of public security organs should be listed in and fully guaranteed by the fiscal budget of the local governments above county level. The decentralized budgetary arrangement not only reinforces the horizontal control from local governments on police departments, but also engenders substantial financial problems which affect the professional operation of police departments. If the governmental funding is insufficient, the police departments should seek other revenues to cover its expenditure. As reported in many news reports (People’s Daily, 2007; Legal Daily, 2008, 2009), some police departments tried to alleviate their financial tension by imposing more traffic fines or other administrative fees. The financial problems even push a few police officers to collect money via illegal rent-seeking behaviors. In our study, the collision with gambling syndicate is performed as an important approach to lighten the financial burden in the police departments or to satisfy the monetary desire of the police individuals.

The decentralization of leadership not only affects the police budgets, but also presents many administrative obstacles in policing strategies. The diversity in police crackdown activities in various places has indicated that the motives of controlling UMS are subject to the political intentions of different local governments. It is not easy for the UMS to get much policing attention if the local governments regard fighting other crimes (e.g. drug trafficking or organized crime) can more easily exhibit their administrative competencies and governing responsibilities. Likewise, it is impossible to place UMS as the priority of policing agenda if the police departments consider the completions of other policing missions are more laudable. The police thus perform law-enforcement based on the consideration of administrative performance rather than the urgency or imperativeness of certain crime or deviance. The administrative obstacles in policing is highly associated with the political and financial control from local governments at discussed by previous studies (Liang, 2005; Trevaskes, 2003). The continual prevalence and intractability of UMS activities in Liuzhou inform

¹² Tanner and Eric (2007) has pointed out that the police leadership system in mainland China is featured with “unified leadership with management divided by levels” (統一領導, 分級管理) and “combining vertical and local leadership, with local leadership as the main part” (條塊結合, 以塊為主).



us of the complicated political considerations when performing law-enforcement.

The corruption of police officers and their collusions with gambling syndicates have reflected the loopholes of supervision mechanism. For the People's Police Law, Chapter 6 has formulated that the police should receive not only the external supervision from the people's procuratorate, the Ministry of Supervision and its subordinate agencies (Article 42), and citizen supervision through exposure and accusation (Article 46), but also the internal supervision by high-level police agencies (Article 43) and the supervisory system established within the police department (Article 47). However, these regulations do not explicate in detail how the internal supervision should be performed to ensure their uprightness and impartiality with a transparency in law-enforcement.

For the Law on Administrative Supervision (行政監察法), Article 11 does not point out who is qualified to appoint or dismiss the chief or deputy chief of a supervisory organ of a local people's government at or above the county level before the decision is submitted for approval. This regulation might be abused by local governments to affect the personnel as well as the decision-making process within supervisory organs at the same level. Furthermore, Article 35 does not mention explicitly whom the supervisory organs should follow if the decisions of local governments at the same level go against those of the supervisory organs at the higher level. This inexplicit regulation is a legal loophole for local governments to manipulate the decision of the supervisory organs at the same level.

For the Sanction Regulations of Civil Servants in Administrative Organs (SRCSAO, 行政機關公務員處分條例), Article 37 states that the sanction given to the principal leaders in local governments should be decided by the local governments at the same level. In contrast with the regulations in Article 36 of SRCSAO, the sanction decisions made by local governments at the same level might lack of prudence and strictness without the supervision at the higher level. Furthermore, though Article 39 of SRCSAO formulates it is the organs in charge of appointment and dismissal that to deal with the investigation of the civil servants violating laws, regulations and disciplines, it does not illustrate in detail what is the concrete department of the "organs in charge of appointment and dismissal" (任免機關). This regulation might be utilized by a few local governments to manipulate the whole process of investigation. Meanwhile, Clause 6 of Article 39 of SRCSAO does not stipulate clearly to what extent or within what range the sanction decision is open. This regulation concerns about the supervisory transparency.

Apart from the aforementioned lapses in the supervisory regulations, the internal supervision within police departments usually fails to work since it lacks of the transparency and external monitoring. Besides, the investigation procedure on the police officers is different between the party members and non-party members. If the police officer is a party member, he or she should be investigated first by the discipline inspection organs under the Chinese Communist Party. The discrepancy in dealing with party member and non-party member might affect the fairness and impartiality in the supervision.

CONCLUSION

Considering the abovementioned problems in policing the UMS activities, this article proposes a few policing countermeasures as follows for the consideration and discussion of related law-enforcement departments and experts. First of all, legislative departments should timely formulate and improve laws and regulations focusing on UMS, and provide a favorable legal environment to

facilitate the law-enforcement and smooth the police investigation. In particular, the legislators should tease out the scattered regulations relevant to UMS in various regulations and establish a comprehensive law specializing in gambling or lottery to draw clear line for many blurs, such as the distinction between gambling and lottery activities, heavy and light UMS offenders, criminal liability and non-criminal liability, etc. A series of concrete eligibilities and penalty standards should be prescribed to support the fair and reasonable judgments and decisions in policing.

Second, many efforts should be devoted to resist the interference in policing from local governments or officials. The MPS should strengthen the “vertical control” to stop the decentralized trends of leadership over police departments. The state treasury may consider allocating certain amount of funding to subsidize the police departments with financial burden and prevent them over-relying on the local governments. The central funding could also be used as the incentives for outstanding performances to promote the working passion of police officers. The police officers should be granted more rights to express their opinions to their superior authorities. Police departments need to enhance the cultural construction to facilitate effective communications between superiors and subordinates.

Third, the improvement in current supervisory system is essential to remove all monitoring loopholes. We should amend the current laws and regulations on administrative supervision to make it more transparent to the public and more impartial between party members and non-party members. It is also important to enhance the vertical supervision at different levels to avoid the failure of horizontal supervision by local officials at the same level. The information obtained from other relevant criminal cases (e.g. UMS newsletter smuggling, money laundering, gang activities, and cross-border Internet gambling, etc) can serve as an effective supervisory conduit to prevent and eradicate the police collusion with gambling syndicates.

Last not the least, the reinforcement of cooperating with citizens are essential to successfully fight UMS. It requires both the purification within the police departments and improvement of the public awareness to maintain law and order. The police should seriously incorporate policing UMS into the community policing, which may help the law-enforcement officers obtain useful information and collecting valid evidence when investigating the UMS cases. The close relationship with community citizens can further raise the police morale and remind them to prevent the police misconducts and the abuses of police power.

There might be more difficulties presenting before us on the path of fighting UMS, and we still need more time to evaluate the long-term policing effects via various assessment methods. The problems identified and the suggestions proposed accordingly in this article may shed light on the future policing practice. Law-enforcement departments should explore more policing strategies and increase policing strength to jointly combat the intractable UMS, especially when challenged by the trends of operative covertness, networking, systematization and cross-border nature of UMS.

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Appendix A

Table 1. Detailed Information of Eight Interviewees

Interviewee No.	Gender	Age	Level of Education	Occupation type	Role
A	Female	71	Primary School	Retired	Bettor
B	Female	38	Senior High School	Public institution- employed	Bettor
C	Female	44	Senior High School	Self-employed	Bettor
D	Male	45	Junior High School	Temporary-employed	Bettor
E	Male	-	-	Auxiliary police officer (協警)	Law-enforcement personnel
F	Male	-	-	Police officer from a public security section (治安科科員)	Law-enforcement personnel
G	Male	-	-	Deputy director of general office of the local public security organ (當地公安機關 辦公室副主任)	Law-enforcement personnel
H	Male	-	-	Political commissar in the local public security department (當 地公安部門政委)	Law-enforcement personnel



POLITICAL CULTURE AND COMMUNITY POLICING IN ASIAN COUNTRIES

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Many Asian countries including Bangladesh, India, Nepal, Pakistan, and Sri Lanka, are trying to reform their age old policing by adopting some features of the “Community Policing” in their practice manuals. The police forces of these countries do not have enough resources to serve effectively at the same time people do not have the confidence on the force thus they stay away from reporting crimes. It is believed that “pro-active policing and problem solving” policies would move these countries one-step forward towards community policing. Involving citizens in prevention and problem solving would make community policing effective. Policing, the most visible display of government authority, is highly reflective of the political culture of the respective country. The political culture of a country would determine the character of the policing of that country. Because of colonial past, the age old system in place is not conducive to the “community-oriented-policing” philosophy. The philosophy of “community-policing” emerged from a political culture which has had a long democratic tradition. The political cultures of many Asian countries are quite different from the Western democracy where the philosophy of “Community Policing” developed. This paper would analyze these incompatibilities of these two concepts: political culture of Asian countries and the philosophy of community policing and would suggest some solutions.

INTRODUCTION

Many Western countries have inspired and on many occasions, some have provided financial and technical assistance to many Third World countries of Asia to adopt the model of Community Policing (CP) or Community Oriented Policing (COP) in their law enforcement practices. Specially, countries like Bangladesh, India, Pakistan, and Sri Lanka are involved in incorporating certain characteristics of CP/COP into their policing as a part of greater reform and economic development (Shahjahan, 2007; Commonwealth Human Rights Initiative, 2007). This type of diffusion of Western ideas and technology to third world countries is quite common and there developed host of literatures on ‘diffusion of innovation’ and ‘technology transfer’ to determine the effects of diffusion and technology transfer. Similar historical background of these four countries provides a unique opportunity to examine whether diffusion or technology transfer really assist the recipient countries.

Due to long British Colonial rule, many institutions developed including the criminal justice agencies with distinct interests of keeping its people under control and perpetuating colonial exploitation. The political dynamics that took place in these countries was substantially different in nature and practice from political dynamics of mainland England. British rule in Indian sub-continent was so different that while they championed the right to self determination for European nations they denied the same right to their Colonial subjects. This right of self determination was not granted until the last phase of the raj and only when British were forced to do so under the impact of the anti-imperialist struggles of the subject population (Guha, 1987). Institutions introduced in Indian sub-continent by the Colonial rulers to deal with different aspects of the government worked differently than institutions developed in mainland. As these institutions were established for distinct purposes, the ways of handling governance were substantially different too. These Colonial ways of handling issues became a pattern and part of local cultures. Though the English education and the English customs became the dominant culture of the rich and powerful in the colonies and culture of the majority remain unchanged. The English educated colonists formed

the elite class whereas the masses were acculturated by some peculiar combination of the unchanged indigenous cultural elements and the imposed traits of British customs. The masses never had any influence over the dynamics of the political processes, except time to time taking parts in anti-British protest movements.

The colonies eventually liberated themselves from the colonial shackles but did not change much in character. In essence, post-independence governments have retained archaic policing laws that perpetuate the ills of colonial policing towards their own ends and to maintain their own power...” (Commonwealth Human Rights Initiative, 2007, 6). Character of the government of these countries remained same because most of the institutions established by the Colonial rulers to maintain their control over the land remain structurally unchanged. In terms of criminal justice system, these countries have retained archaic policing laws, court procedures and corrections system of the Colonial government because it helped the party or person in power to maintain its political control. This paper argues that the success of the diffusion of model of Community Policing (interchangeable with Community Oriented Policing) depends upon the nature and character of democratic governance of the society—in other words on the political culture of the country. This paper reviews political cultures of Bangladesh, India, Pakistan and Sri Lanka to make a point that the existing political cultures of these countries are not conducive for successful implementation of the model of Community Policing or Community Oriented Policing that emerged in a very different political cultural environment. This paper begins with a brief description of the political culture paradigm, the prevailing definition of the idea of Community Policing as it emerged in relation to the political culture of the United States. It will also explain nature and character of the political cultures of these countries, the steps and measures taken by these Asian countries to introduce community policing. Finally it will provide concluding remarks about the fundamental problems which exist in the collaboration where developed countries intend to assist developing countries in their efforts to elevate their pressing problems—in this case law and order situation.

POLITICAL CULTURE: A PARADIGM

It is possible to argue that cultural analyses are among the oldest works of political analysis but those works are limited in use of cultural variables and neither theoretically significant nor well developed. However, with time approaches emerged to study politics “that give a central role to the concept of culture” (Ross, 2000, 49). Concept of culture has been with us for a long time and with time, its meaning has become diverse and broad. In recent years, people use the concept culture without providing any definition as they assume that readers know the meaning of the concept. Writers assume that readers know the meaning of the concept culture—total way of life. “Knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by individual as a member of society” (Tylor, 1888) is culture and in recent years it can be used to refer micro-groups and also macro-nations. It can also be used in global context. At micro level, we use ‘family-culture’ to understand family dynamics; we use, ‘elite culture’ to explain customs of rich and famous and at macro level we use ‘global culture’ to comprehend global changes. Wherever there are differences or diversities among a population, are recognized as products of “culture”. However, culture is a product of a group, a community or a society. Even though “[C]ulture as a rule has no designers but neither do they add whatever new things comes along” (Hiningmann, 1963, 309). New elements or practices which members of a society bring in, may gradually be adopted by the social system. Thus the culture of a society is changing, especially in today’s world due to high-tech and internet diffusions of cultural elements and they are quite substantial and powerful.



The concept “culture” has become a very powerful word in our vocabulary, life-discourse, politics, and even in war against terrorism. Ordinary people and scholarly writers, both are using the concept culture in their discourse and writings in such a manner as if there is a commonly accepted definition of the culture. But in reality, there is not one clear and consistent definition. Anthropologists have been using the term culture for long time to refer tribal societies which are different from the industrial societies. There are also variations among the anthropologists; however, for early anthropologists culture largely is learned behavior (Frazer 1961, Morgan 1964, Malinowski 1992 and Mead 1969). Though Tylorian meaning of culture dominated the field of anthropology for a long time, however; overtime the concept of culture became very broad and for some it became vague also. But its domination never shrank. One political scientist even wrote. “...the term culture, unfortunately has no precise, settled meaning in the social science” (Eckstein, 1988, 801). There may not be any “precise, settled meaning in the social science” of the concept ‘culture’ as Eckstein (1988) pointed out, but overtime its power of explanation rather expanded. “[It] denotes an historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about attitudes toward life” (Geertz, 1973, 89). Power of the concept culture has expanded so much so that we have a distinct paradigm called “political culture” to provide explanations to complex politics of a society or types of political systems.

Scholars of politics and especially of comparative politics intended to comprehend why newly independent countries of Asia and Africa had to struggle so hard to keep democratic institutions alive. Moreover, many of these countries started with democratic system of governance but overtime, many lost their democratic characters and moved towards authoritative systems of governance. For many scholars, it is not the institutions but more about the attitudes of people that shape the nature of the political system of a country. What are the important factors for maintaining a form of governance in a nation state? To answer these questions scholars also started using the cultural variables. The emerging nation-states in Africa after 1950s generated anthropological examinations of diverse political environments and that renewed interests of scholars to employ culture to comprehend diversities in political systems. Application of cultural aspects for comprehending social dynamics has had been a long tradition in social science. Montesquieu considered “law as a web of habits, customs and folk-themes common to a people” (Pye, 1972, 285) of a society. Though Marx’s emphasis on economic structure reduces the importance of culture for social changes, but he understood the power of culture; which is why he wrote, “Religion is the opium of masses” (Marx ???). Max Weber never tried to discard Marx’s ideas, rather repeatedly showed the importance of cultural attitudes and beliefs in hindering or enabling progress (Weber, Religion of India; Protestant Ethics and Spirit of Capitalism ???).

More and more political scientists choose to use the concept culture to explain political aspects of a country. Thus, “political culture” has turned into a theoretical paradigm in explaining the political environment of a country. Primarily two American scholars, Gabriel Almond and Sidney Verba were considered the pioneers of the paradigm “political culture”. To link the public and the government they developed three types of political culture—deference, consensus, and homogeneity. In *The Civic Cultures* (1963), Almond and Verba quantified democratic ideals and undertook a comparative cross-national survey of five operating democratic systems: the US, UK, Germany, Italy and Mexico (1963). They ranked these five countries on three specific issues—interpersonal trust, pride in their political institutions, and feelings of political competence. Almond and Verba’s work produced one of the most influential understandings of political culture in terms of ‘orientations, toward the political system,’ whereby some populations had civic ‘cultures’ and others did not (Wedeen, 2002). According to Almond “[P]olitical culture theory imputes some

importance to political attitudes, beliefs and emotions in the explanation of political, structural, and behavioral phenomena—national cohesion, patterns of political cleavage, modes of dealing with political conflict, the extent and character of participation in politics, and compliance with authority” (1983, 127). According to the political culture paradigm sheer rise of democratic institutions are not enough for the success of democracy, attitudinal changes are needed. Why many newly independent countries’ aspirations for democracy are not succeeding has become a theoretical question of many scholars. The concept of political culture provides an explanation for the rise of military rules in many newly independent countries. Thus the idea of political culture turned into a frame of analysis. The use of concept of culture has become a dominant trend among scholars of politics (Steger, 2000; Emmerson, 2000; Inglehart and Carballo, 2000). Political culture is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as member of a society and used to shape, change, or hold power of governance. The acquired traits of people are constantly changing with time and experience and also passed on to next generation. Thus political culture of a group is dynamic and changes over time.

Researchers who try to use this paradigm to explain the nature and dynamics of day-to-day political activities of a society are faced with the question about what exactly constitutes a culture? Some scholars opined that the use of culture to comprehend the dynamics of politics has been with social sciences for long time. “Both Parsons and Habermas correctly understood the importance of political culture in mediating between state and market/society” (Somers, 1995, 114). One political scientist writes. “...the term culture, unfortunately has no precise, settled meaning in the social science” (Eckstein, 1988, 801). However, whether there is one accepted definition of the concept culture or not, the proliferation of the concept continues. According to some the proliferation of the use of concept culture has some negative implications too. “Since 1970s, the idea of culture has become a powerful lens for scrutinizing society, equally effective at helping and, as has become clear recently, hindering our understanding of human thought and action” (Limerick, 2000, 71). Huntington's thesis outlines a future where the "great divisions among humankind and the dominating source of conflict will be cultural” (Huntington 1993:22). Though Huntington refers to a “clashes of civilization” but in a sense he was referring to cultural elements of a society. Primarily, he was referring to “cultural-conflicts” that became visible in a post-communist era. To comprehend day to day politics of a country, the political culture paradigm provides a powerful insight as “politics...occur in a cultural context that links individual and collective identities, defines the boundaries between groups and organized actions within and between them, provides a framework for interpreting the actions and motives of others, and provides resources for political organization and mobilization” (Ross, 2000, 65).

Theory of political culture is slanted towards psychological traits of individuals and groups to make it more a behavioral approach. Thus the structure of political cultures may also vary from group to group as culture of rulers or power holders are substantially different from the culture of masses, whether they are merely parochial subjects or participating citizens (Pye, 1965). This type of variation may be observed among similar democratic states because of different historical pasts and contemporary socioeconomic conditions. Distinctive characteristics of citizens are also being considered as cultural elements of politics in understanding governance of a state. People’s attitudes, perceptions of reality, values and living standards all have been considered as part of political culture of a country. How people view their political system and political authorities also constitute the political culture of a country. Moreover “...cultural patterns are not uniformly distributed throughout society: all members of society do not have equal leverage in determining dominant



cultural patterns, nor do all groups subscribe to these patterns equally” (Dittmer, 1977, 555). As the concept of political culture “provides a useful basis for examining the links between social and economic factors and political performance” (Pye, 1965, 10) similarly it can provide a useful basis for examining the links between criminal justice factors within the political performance.

The emergent political culture paradigm initially showed “interest in policy initiatives intended to reproduce the conditions of Western democratization abroad” (Wedeen, 2002, 713), but later it recognized the diversities of political systems emerged due to the different socialization processes the leaders and the followers go through. However, there are some common trends which are observable among the diversities and they are; (1) trust and its opposite distrust and suspicion, (2) hierarchy and its opposite equality, (3) liberty and its converse coercion, and (4) level of loyalty and commitment (Pye, 1965). This paper intends to use the above mentioned four themes as a guiding outline of analysis of the political cultures of the four Asian countries named earlier. It is also important to know the historical factors behind the rise of the community policing model in America and see what political cultures helped the growth of community policing model.

Community Policing: A New Model of Law Enforcement

The policing strategies in United States have passed through many phases but according to experts the long history of policing could be divided in to three periods. In early period it was typically followed the London types, where ‘foot patrol’ was the dominant mode of operation and the police personnel were staying in the same neighborhood where they were patrolling. This era had community policing elements but was notoriously famous for the influence of local politics and politicians; thus it was known as “the Political-Era --Cop on the Beat” Model of Policing” (Robin, 2000). This phase covered most of the 19th century and corruption among the rank and file was rampant. In 1930s reform ideas were initiated and Chicago police superintendent O.W. Wilson with the assistance of FBI head J. Edger Hoover succeeded in establishing the professional model of policing. This phase of professional model continued until 1970s when the idea of community oriented policing started taking hold among police departments. Specially, the 1960s civil disorder and riots forced the country to re-evaluate the roles of police and was critical about its focus on “high visibility and low response time” (Goldstein, 1990) approach. To understand the growth of community policing model, one needs to know the history of the progression of the institution; however, to comprehend American law enforcement one needs to understand it in reference to its three-tier system; federal, state and local. This policing operates at local level in hundreds of cities and countries. The political nature of divisions of the jurisdictions of power of federal, state and local law enforcement officers and other criminal justice agencies are the most dominant factors in determining the character of the local policing of the country. Local policing in American cities/counties is quite independent and mostly shaped by local political cultures. Though in recent decades the process of federalization has infringed on the power of local law enforcement agencies but still their basic independence remained intact (Shahidullah, 2008). The total area of United States includes 3,006 counties; 14 boroughs and 11 census areas in Alaska; the District of Columbia; 64 parishes in Louisiana; Baltimore city, Maryland; St. Louis city, Missouri; that part of Yellowstone National Park in Montana; Carson City, Nevada; and 41 independent cities in Virginia (www.census.gov/geo/www/GARM/ch4GARM.pdf, visited Aug 11, 2011). These units have their own law enforcement force under county/city/parish administration. American policing has changed along with its political culture. Vietnam War and the civil rights movement forced the country to re-evaluate the traditional roles of the policing in an ethnically diverse inner cities. The traditional idea of a ‘command-and-control’ mechanism had been criticized and people oriented approaches were demanded. In response to the changing political culture and people’s demand different ideas began

to surface and of these ideas; the problem solving, community-oriented policing and community policing emerged as the most innovative.

During 1980s and 1990s the idea of community policing gained tremendous popularity in United States and United Kingdom. Especially a large literature began to explode in mid-1980s with the publication of Greene and Mastrofski's (1988) *Community Policing: Rhetoric or Reality*. Following this publication there came out couple of very powerful works (Goldstein, 1990, Sparrow, Trojanowicz & Bucqueroux, 1989, Toch & Grant, 1991) to advance the idea of community policing. This CP model of CP is a "departure from the professional police-as-expert model of public safety that had dominated previous decades" (Morabito, 2010, 564). For many this model has emerged as an alternative to traditional policing practices (McEwen, 1995; Thurman & Reisig, 1996; Weisheit, Wells, & Falcone, 1994). During 1960s and early 1970s, the police forces of US faced criticism for not being community oriented rather they were viewed as hostile to minority communities. In such an environment, the law enforcement agencies viewed the CP or COP as a means of improving police relations with minority groups (Eck and Rosenbaum, 1994; Skogan et al., 1999). "The roots of community policing are found in Herman Goldstein's call for problem-oriented policing (COP) approach to improve services, performance and the police enterprise, which he first presented in a seminal article in the April 1979 issue of *Crime & Delinquency* and was expanded in his book *Problem-Oriented Policing* (Robin, 2000, 15-16). James Q. Wilson and George L. Kelling's paper "Broken Window" also influenced the development of the ideas of community policing. There were other public concerns regarding the function of policing that helped significant roles in fostering new ideas of community policing. People were asking "a number of things of policing" (Rosenbaum, 1994, 5). First people asked the police to be effective. Second; the services should be equitably distributed, and finally these services should be cost effective (Rosenbaum, 1994). To make the police service effective, equitable, and efficient, a large numbers of police professionals emphasized community policing. Thus, this new approach emerged to increase the involvement of the community as an equal partner in crime related problem solving process.

The concept of community policing turned into a strong political ideology for local politicians and by late 1990s "[M]ore than 90% of American police agencies serving populations larger than 25,000 reported adopting COP activities and strategies" (Morabito, 2010, 565). The major expansion of this practice took place because it became so popular among the politicians, city managers, and the general public that few police chiefs wanted to be caught without an initiative they could point to (Skogan, 2006). However, it was not just public pressures the progressive police professionals also realized that the internal organizational changes would "benefit police personnel as well" (Rosenbaum, 1994, 16). Responding to public and professional demands in late 1990, the Bureau of Justice Assistance (BJA) awarded funds to eight jurisdictions to implement Innovative Neighborhood Oriented Policing (INOP) programs. The purpose of INOP was to provide police departments with funds to implement community policing approaches to demand drug reduction and the administrators of INOP sites came to the conclusion that community policing represented their last, best hope (Sadd and Grinc, 1994). Moreover, a large number of professionals within the police departments realized that the success of policing was very dependent on the cooperation of private citizens (Rosenbaum and Lurigio, 1994). By mid-1990s this approach became very popular and received tremendous momentum due to the Crime Act of 1994 which funded 100, 000 CoP officers across the United States. This kind of federal support for local law enforcement was unprecedented and according to some the scope and scale of this act exceeded "the scope and scale of the Law Enforcement Assistance Act of 1965 (LEAA)" (He , Zhao and Lovrich, 2005, 296). The community policing is a philosophy without one set criterion for implementing the approach. Rather,



police agencies are expected and encouraged to apply the community policing philosophy in ways that meet the specific needs of their locality (Morabito, 2010, 564).

Thus city after city adopted the radical innovation, but there still is no one acceptable definition of the concept-community policing. In 1983, the NYPD instituted the Community Policing Orientation Program, nicknamed “COPS,” in some selected police stations. Receiving strong public accolades, the NYPD through 1985 expanded the CPOP program to all 75 police stations throughout New York City (Albrecht, 2011). In Chicago, CAPS (Chicago Alternative Policing Strategy) turned into Chicago’s community-policing initiative in April 1993 with three distinct features: 1) administrative decentralization, 2) community engagement, and 3) broad-ranging problem solving (Skogan, 2016) and many other cities’ community policing strategies remained diverse as their changes mostly were dictated by their unique needs. The professional model functioned like a “hierarchical paramilitary organization with leadership vested in a centralized chain of command at the helm” (Robin, 2000, 5). In this model order flows from top-to-down and because of the hierarchy, it took a longer time to achieve the expected outcomes. This hierarchical bureaucratic structure suffered from “means over ends syndrome” but the community policing stresses the need to focus on the end product of police work—taking care of the members of the community who are being bothered by multitude of situations and community problems that are mostly non-criminal in nature that fall into the categories of order maintenance and social services. Previous policing was an organization prepared to respond to the call of the community, it was not a part of the community, but the community policing ventured to involve the members of the community in addressing their problems. Participation of the community is the central focus of the community policing; thus it adopts strategies to improve community engagement in policing by improving the relationship between the public and police (Goldstein, 1987). These are structural components of community policing but there are also identified distinct values which are essential features of community policing. They are; (1) shared responsibilities, (2) prevention, and (3) increased officers discretion (Adams, Rohe and Arcury, 2002). Theorists and practitioners may not agree on the precise definition of community policing, but “one element common to all definitions is the idea that the police and the community must work in concert both to define and to develop solutions to problems affecting the community” (Sadd and Grinc, 1994, 42).

POLITICAL CULTURE VIS-À-VIS COMMUNITY POLICING: AMERICAN EXPERIENCE

Characteristics of American law enforcement are basically determined by the American Constitution which allows each state and its jurisdictions to have their independent law enforcement agencies. Thus, America has three-tiers of law enforcement; federal, state and local and they all have their specific jurisdictions, responsibilities, and duties. The federal and state authority may supersede the local authorities, however; pronounced goals of these three authorities are only to serve the citizens. Any conflict over jurisdictions and power areas are resolved by the courts. City and state agencies should not violate the rights of citizens guaranteed by the Constitution of the country. From the Fourth to Eighth Constitution Amendments were instituted due to legal challenges made by citizens about specific actions taken by the members of criminal justice agency which the Supreme Court found to be in violation of the rights guaranteed by the US Constitution. The model of community policing is only relevant as the word ‘community’ refers to a city or a county within a state—in or as a population in a geographical area. The American Constitution and its political culture play a significant role in shaping its local institutions including its law enforcement agencies. Moreover, policy-making in criminal justice has been a major preoccupation of politics and governance of United States because it is a domain of governance that is vital for

social order and stability (Shahidullah, 2008). Crime and justice in America historically began as a local system and is still trying hard to retain local characteristics under heavy onslaught of federalization processes, where the increasing expansion of federal criminal codes and expanding federal control on crime and justice have curbed power of local criminal justice agencies. In the view of some scholars; but urban growth and urban problems kept local law enforcement agencies busy. The kind of local participation one views in American cities, whether in education (school system) or in law enforcement are mostly determined by local political culture of the country. A city police organization operates within the city administration and the politics of the city mayoral race and other city politics directly influence the character of city police administration. Each city has its own police department to look after the security and safety of its citizens and the department is financed by the local taxes. It also receives federal and state funding for specific program activities; but these programs in return are required to adhere certain federal requirements. The major intervention of federal government started with the report produced by the Wickersham Commission, set up by American President Herbert Hoover, which presented a blue print of ideas about the architecture of a modern criminal justice system. One of the most significant programs of this Commission was the Law Enforcement Education Program (LEEP) which provided grants and scholarships to both in-service and pre-service people to attend colleges (Radelet and Carter, 1994). Political climate in Washington also plays a significant role in determining the direction and roles of local police administrations. President Reagan's obsession against use of illicit drugs created an environment which emboldened local police to response to symptom of drug abuse rather than to address the causes of abuse. As a result prison population soared, families were destroyed and drug abuse problems continued to expand.

City police administrations have always been autonomous and the autonomy comes from the structure of American democratic political system which emerged since its independence. As the political culture was not always aligned to the true spirit of the Constitution, the US had slavery and discrimination for a long time. However, due to different rulings of Supreme Court the political culture has changed across the country. Even the local administrations have always been autonomous but they were not always respectful to all its citizens, for example women did not have voting rights until 1920 and Afro-Americans received their voting rights through XV Amendment in 1870. Some used it right away, electing state and federal senators and representatives but for all practical purposes, however, as poll taxes and literacy tests--and Klansmen--denied blacks that fundamental right. President Johnson's Civil Rights Act of 1964 was the true turning point in the USA's history when blacks gained full citizenship with equal rights. Until 1960s local law enforcement agencies were at odds with the minorities. As sixties changed the political culture of the country thus changed the character of the local policing. As was mentioned earlier the model of community policing emerged with the changes of political culture of the country. The autonomous character of local police department helped it adopt changes in its business practices to make the organization more people oriented and decentralized. The issue of decentralization is always within one single police department, if it is big like LAPD or NYPD, might have multiple beats, sectors, precincts or a small department with only one unit, for example Pearishburg police department of Virginia with 7 officers and 1 civilian officer there is one structure of administrative hierarchy and the central command is easily accessible to all its members irrespective of their positions. Before the emergence of the concept of community policing there had been a serious effort "to move the police organization toward strictly centralized organization utilizing key management concept such as chain of command, unity of command, and span of control" (Oliver, 2008, 183). Movement towards centralization was to curb and reduce corruption among the rank and file of the force; whereas movement towards decentralization emerged to provide discretionary power to the foot



patrols that actually interact with the members of the community on a daily basis. Thus when political culture changed and demand increased, it became easy for police departments to adopt different mechanisms to provide more power to the street level officers. Some departments abolished the rank of captain from the hierarchies and tried to flatten the organizational structure of the police department in response to the demand for decentralization (Skogan and Susan, 1997).

Another interesting feature of American policing, which has helped the concept of community policing to advance, is the right to organize union. Police unions were originally established to address concerns over basic interests of police officers, such as wages, hours, benefits, and retirement (Guyot, 1991). Police unions played a significant role in initiating changes in management structure but sometimes they were not that supportive about the idea of implementing civilian review boards. But for the success of organizational changes, stakeholders' support is crucial and according to Polzin the employees are the stakeholder group most critical to the initiative's success. Unionized police departments have a unique opportunity to make the use of the workforce's knowledge and expertise through the collective voice of the union. A joint labor-management committee using a systematic approach offers the greatest opportunity of community policing success (Polzin, 2011).

THE POLITICAL CULTURES OF ASIAN COUNTRIES: NOT VERY CONDUCTIVE FOR COMMUNITY POLICING

It is pertinent that we investigate the political cultures of the Asian countries in the context of their respective Constitutions and practices that are being followed since their independence to determine whether a model which emerged in the political culture of America can be transferred successfully to a very different environment. The gradual expansion of community policing in United States has encouraged many developed and developing countries across the world to adopt the model in their respective policing systems. In Asia, countries like Bangladesh, India, Pakistan, and Sri Lanka initiated the process and some instances already instituted features of community policing model in their law enforcement system. Successes of these initiatives are closely tied to the political cultures of these countries. As we have seen this innovative model itself emerged due to the political culture of America. These four countries, due to their common experience, have similar historical past and the past political cultures still play a vital role in shaping their institutions including their criminal justice system. Due to their common British colonial experience, they have developed democratic political systems which are different in nature and practice. In India the central power has been transferred quite routinely since its adoption of the Constitution, but the Central Government occasionally intervened at the state level governance through the emergency power provided by the Constitution. The Indian Constitution is not only regarded as Federal or Unitary in the strict sense of the terms; it is often defined to be quasi-federal in nature also. Throughout the Constitution, emphasis is placed on the fact that India is a single united nation. India is described as a Union of States and is constituted into a sovereign, secular, socialist, democratic republic.

The political history of Pakistan could be divided into two phases; first one could be called—United Period, starting from 1947 till 1971 when the Eastern part turned into an independent Bangladesh. The second phase began in 1971 and could be called—Truncated Pakistan because a major part of original Pakistan has been cut off. Both United and Truncated periods have been known for the constant tug-of-war between the civil and the military powers. The major portion of these combined periods has been dominated either by direct military rule or military disguised as civil administrators. Peoples' rights have been routinely curtailed and religious fundamentalism has been

nurtured by the ruling elites. Bangladesh which has inherited all of the vices of colonial administrations of the British period and also inherited some of the traits of military superiority attitudes of United Pakistan period is also facing the struggles of two forces—force in support of democracy and force in support of autocracy. The political parties that support democracy as their party goal in reality are highly autocratic in character. This autocratic character of the party is being expressed as a dynasty party. However, the majority the Bangladesh people are committed to democracy, whenever these parties moved towards autocracy the military could easily step in as a force to restore democracy. This trend becomes more complicated as Islamic fundamentalism enters into political culture of the country. Sri Lanka like India, Pakistan and Bangladesh, has had colonial experience since 1796 and in 1948 it became independence but soon it entered into an internal power struggle where Liberation of Tigers of Tamil Eelam (LTTE) wanted to carve out a portion of Sri Lanka as a Tamil state. This struggle continued until the LTTE was defeated in 2009. As a result, uncertainty prevailed for a long time in its political culture. All four countries, irrespective of their sizes do have... “a psychological state rooted in earlier forms of social consciousness” and also represent a certain cultural continuity and carry “a cultural baggage” (Nandy, 1982, 197) inherited from its colonial past. With these backdrops I will discuss the political cultures of these four countries and examine how the political cultural trends are not appropriate for the growth and progress of community policing model.

Political Culture of India: India, though known to world as one of the largest democracy of the world, has a federal system with Westminster type of parliamentary form of government with a central government which is extremely powerful and often demonstrated its power by taking over states’ administrations whenever it felt it necessary. Its democratic practices evolved gradually during its colonial period when English educated Indian upper class politicians and they routinely negotiated with the British rulers to share power. According to many, its colonial legal system was built on the Dharmashastra laws of twice-born castes and its point of reference in social matters was the brahminical culture. Both favored upper-caste elements (Nandy, 1970) and allowed for the dominance of religion. The political culture of India routinely helped to hold its elections at the central. Though overtime one-party dominance seemed to decline but power of influential family members remained visible. However, corruption spread across different institutions including police department due to colonial mentality and practices perpetuated even after independence (Verma, 1999). Local administration remained in the hands of the same bureaucratic system developed by the British rule to perpetuate its control over the masses. After sixty-four years of democratic politics at the central government and in states through a routine elections, this could not guarantee the people’s participation at the local level because local administrations remained in the hands of bureaucrats who are the backbones of government. Even the law enforcements at the local levels are managed by members of Indian Police Service (IPS) who are trained at the National Police Academy at Hyderabad. Community level participation of ordinary citizens is very minimal due to the prevalence of the same colonial administration mechanisms which are maintained without major structural changes. Most of the reforms did not change the colonial frame of reference inherited by the state.

Political Culture of Pakistan: Political culture of Pakistan is highly fluid. In ordinary society Islamic fundamentalism is on rise, but at national government level its Western allegiance is very dominant. At national level, the forces aligned to the Western values and cultures are still in control but at local levels, Islamic fundamentalists seem to be winning. The earlier tug-of-war between military and civil powers changed into a tug-of-war between Western values and values of radical Islamic fundamentalists. In the end, it has become a very fluid situation. As the political culture



changes over time, it is hard to determine whether the fundamentalists or Westernists will be victorious. However, Pakistan's four provinces: Punjab, Sindh, North West Frontier and Balochistan do enjoy substantial autonomy and the political cultures of these states are different due to the autonomy. However, tensions between the earlier mentioned forces are visible in all provinces. Pakistan also could not move away from the administrative structures it inherited from its colonial past but community level participation of citizens in decision making remain very low. The fluid political culture of Pakistan makes the future direction of politics more unpredictable. Islamic fundamentalists are trying to bring back early sixth century Islamic jurisprudence and life style where as the Westernists are working hard to bring a balance between Islam and today's dominant value system.

Political Culture of Bangladesh: Bangladesh is a tiny land with a huge population making it a one of the most densely populated countries of the world. Its political culture is also unstable due to its constant struggles between democratic and autocratic forces. Corruption has had a cascading effect on all organs of the State resulting in a systemic degeneration of institutions and departments. If not based on rule of law, democracy gradually shrinks into a self-serving oligarchy, which in turn converts resources and power of the State to instruments which serve the vested interests of the ruling group. Process of democratization had been hampered many times during its short history. In 1974, the ruling party abolished all political parties and established one party rule. However, that practice would not last long due to the assassination of its first President and the Father of the Nation. A military rule was established by Ziaur Rahman. President Ziaur Rahman stepped down from army and formed a political party to re-start the process of democratization. He was also assassinated and another army officer, Mohammed Ershad became President of the country. President Ershad also had to float a political party to initiate the process of democratization. However, Ershad's rule was halted by public pressure and democratic process began again. Eventually party politics was restored in Bangladesh where two political parties—Bangladesh Awami League (BAL) and Bangladesh Nationalist Party (BNP) emerged as most powerful parties of the country. But political corruption became so rampant and pervasive for all political parties that a new feature known as Care-Taker government to be the interim-administration to conduct national election without any influence of the political parties. This Care-Taker Government was suppose to be formed with neutral people but within ten years country ran out of any neutral individuals to hold the office of Care-Taker Government, as a result, the military stepped in to form a military-backed government. However, as usual this military-backed government realized that people would not accept them, so they allowed election to held. Democratic process again began with Awami League (AL) in power. But AL decided to abandon the Care-Taker Government as an interim administration to held election. But the major opposition party BNP decided not to accept election under any methods other than the Care-Taker Government system. The country may run into another crisis where some other force might have to step in to resolve the disputes and save the country from another interruption of democratization.

Political Culture of Sri Lanka: Sri Lanka succeeded in overcoming a couple of major internal insurgencies and finally it ventured to reconcile its internal differences to create a society free from ethnic, economic, and political exploitations. The new journey toward democracy will be quite challenging for both politicians and its people. People and politicians both will have to remain vigilant to succeed. Current political leaders need to move forward without bringing up the past.

Reviews of political cultures of these four countries would suggest that democratic values have not taken a good hold in the states governance rather, except India; these countries are having

difficulties maintaining a steady democratic system in place. Moreover, local community level administrations are very autocratic in nature without much ability for local people to participate. Local administrations including the policing are done by a very centralized service, far away from the communities. This primarily following the age old procedures developed by the British rule to maintain its control over the colonies. Due to this historical nature of police forces in these four countries, the Commonwealth Human Rights Initiative has branded the police forces of these countries as “Feudal Forces” (2007). Trying to transform the local police organizations by importing the idea of community policing from the West without addressing the issues related to the political cultures will be a great challenge for these countries.

COMMUNITY POLICING IN ASIAN COUNTRIES

The need for police reform has been recognized in all these four countries and the respective governments of these countries have constituted specific commissions or committees to examine policing and suggest reforms. According to one study, “Prior to 2000, committee report after committee report was completed ...only to sit, gathering dust on public service shelves, with no chance of implementation” (The Commonwealth Human Rights Initiative, 2007, 36). The political cultures of these countries never took an opportunity to implement recommendations of these reports; thus archaic policing remained in place. However, in 2002 central government of Pakistan passed a Police Order to curb political interference with police functioning but that order was compromised in 2004 due to pressures from the provinces. Sri Lanka’s 17th amendment created a provision of the Council and the National Police Commission as a central authority to reduce local political influences and that worked for couple of years but later on, a stalemate developed due to the political culture where the process of appointing IGP was by-passed to avoid the stalemate. Due to this measure the Commissions have lost much of their credibility. The history of Indian police reforms is no different, as commission after commission was formed and reports were compiled but the recommendations of these reports have not seen the light of day. The Bangladesh police force is still governed by Acts passed during colonial period with some modifications. The United Nations Development Programme (UNDP) in Bangladesh initiated a 5-year project called Strengthening Bangladesh Police jointly with the Department for International Development (DID) and the Government of Bangladesh. It is yet to be seen whether at the end of the project a radical paradigm shift will take place and Bangladesh police will be transformed from a “force” to a “service” delivery organization (Shahjhan, 2006).

Political and social realities have forced the governments to try some policies to bring changes to their old police practices. Thus governments of these countries are accepting some measures to implement ideas of community policing at least on an experimental basis. In India, in 2002, community policing project was introduced in the newly formed state of Chhattisgarh. Many other police departments have followed different schemes towards the implementation of Community Policing. Here are some examples: Neighborhood Watch Scheme, Eyes and Ears Scheme, Community Liaison Group, Mahalla Ekata Committee, and Gram Suraksha Dal. These efforts are only as good as the individual in charge of implementation. Like the political culture it is putting all emphasis on individuals without changing the old policy and procedures. Recently in Pakistan’s Swat area, a new move to establish Community Policing had a set back as the new facility was bombed and it was believed that one of the new recruits had done it. Recently the Asia Foundation launched a Community-Oriented Policing in Bogra, Jessore, and Madaripur districts of Bangladesh in collaboration with the government agencies and local NGOs. But before that in 1993, only one individual police officer developed a Town Defense Party to mobilize local community



participation in security measures, but that never being institutionalized. The Asia Foundation initiatives are making a difference in three districts. It is expected that program sites may increase in future; however, overall success will depend on the changing political culture of the country

CRITICAL VIEWS OF CURRENT PATTERN OF COLLABORATION

After the Second World War, the nature and dynamics of world politics started changing dramatically as many colonial countries of different continents started gaining independence. Though colonial powers lost control but they were not willing to give-up their influence over their old territories. Post-colonial nature of the influences of the erstwhile masters took different shapes. The concepts of “modernization” and “development” became the slogans of the West and economic penetrations took different turns. Partnerships and bilateral collaborations started to emerge. Foreign aid and loans for economic development became new tools for collaborations. Partnerships grew between unequal states; obviously, the developed countries benefited most from these relationships. The International Monetary Fund (IMF), the World Bank and many other international agencies became the key players. The mainstream force of the developed countries remained very much in line with controlling weak economies through different means, but a critical perspective also emerged to expose the mainstream economies. The literature related to “dependency” and “world system” started growing. Ideas related to “hegemony” grew forcefully. The concept of “globalization” and “new economic order” started taking hold. With all these changes the nature of world politics also started changing. Then came 9/11; the dynamics of international politics changed drastically. The focus of collaboration moved from economics to “securities” and “terrorism”. Emphasis on security and terrorism obviously brings into question the role of police and law enforcement authorities. It is felt by experts of security that archaic policing of many third world countries must be reformed and one idea became quite appealing to the third world country’s authorities. The idea of community policing sounds very democratic and attractive to both local and foreign agencies as a way to bring reforms in age-old policing systems of many Asian countries. Many ideas of economic development of fifties and sixties that were taken to many Asian countries as a way to progress and growth, and latter it was discovered that they were not so beneficial for the people of those countries. Currently, Community Policing has become a very attractive tool for “improvement of human rights and security standards which eventually will play an important role in stimulating economic growth, reducing poverty, and enhancing a sense of national identity and genuine voice in public affairs among the poor” (The Asia Foundation, Community Oriented Policing Bangladesh Report).

In recent years, the move to adopt CP/COP features are also understood as an adaptation to an innovation—CP/COP. Applying ‘innovation’ in a field for specific change has been with us for a long time. In agricultural and industrial sectors application of an innovation is the key to success and growth. In recent years Third World countries started trying innovations in many areas of life. The World Bank and IMF have created special consortiums for different countries to consider requesting funds for Annual Development Plans. In many situations the donor countries tied loans and aid to use of some ‘innovations’. In 1960s US and World Bank funded many Third World countries’ family planning policies to use newly innovated “Contraceptives”. One of the most popular feature of CP has been the participation of members of community at the grievance committee where the citizens are reviewing complains against members of police force. The rise and growth of CP is tied with the movement for increased transparency of police department. But question remains; how does a country whose political culture does not support true transparency will succeed in bringing transparency in its most powerful institution—the police—the ruling power

needs most to retain its power? For a success of CP, one should try to make country's so-called democratic system, democratic in every spheres of life. One national election by itself is not evidence of a true democratic country. Are the political parties democratic in character? Do they follow democratic procedures to select their own leaders? Weak democracies seem to have authoritarian forces ready to takeover political power and control. Pakistan, Bangladesh and Sri Lanka seem to be in that kind of state. In India elections are taking place routinely but the local communities are under direct control of the administrators put in place by the Colonial system. Major structural changes are needed to create an environment for the success of Community Policing in these four countries. The idea of CP is a powerful tool to implement for true involvement of the community members in addressing crimes and many other social problems members face routinely, but one must remember this idea was developed in very different political culture compared to the political cultures currently prevailing in these four countries. Therefore, "[U]nless a regime is dedicated to becoming democratic, there is little that reform of the police can accomplish on its own to bring about democracy" (Bayley, 1995, 59).

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BEYOND WORDS ? EVALUATING VERBAL BEHAVIOR TO ASSESS THE FEASIBILITY OF “PRE-POLYGRAPH EXAMINATION SCREENING INSTRUMENT”

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In the last few years, there has been a resurgence of interest in behavior language, both in research relevant to psychotherapy, and in the development of psychotherapeutic techniques which emphasize this mode of behavior. Most research has shown that the kind of information which can be gleaned from the patient's words — i.e. information about affects, attitudes, interpersonal styles, and psycho-dynamics — can also be derived from his concomitant of this mode of behavior. (Ekem & Friesen, 1969) Based on this concept, this study attempts to design a “Screening Question Set”. By evaluating verbal behavior, in which the author has attempted to access the feasibility of a “Pre-Polygraph Examination Screening Instrument (P.E.S.I.)” and to determine its degree of accuracy. The result has shown that the score of the “P.E.S.I” in the “Deception Indicated group” (0.13) was significantly lower than that of the “Non-Deception Indicated group” (0.52) which means that the “P.E.S.I” really can distinguish the truth from lies. After that, by using the 「Receiver Operating Characteristic Curve」, it is shown that the optimal cut-off value of the score is 0.32456, and the predictability expressed as the area under the curve (AUC) of the receiver operator characteristic curve (ROC) was 0.901. In Supposed comparison with the polygraph conclusion, the total consistency rate was 83.65% and the positive and negative predictive values were 82% and 85.2%. In addition, every single question in the “P.E.S.I” contributed to a different degree of discrimination. Thus, it could be implied that the “P.E.S.I.” can be optimized by choosing 「Good」 questions. Finally, this study also showed that the differences between gender, age, education and status did not affect the results.

INTRODUCTION

Issues on Polygraph

The reason that honesty is considered a universal virtue is because lying is a universal phenomenon. People may lie or cheat for different reasons. However, if someone told a lie during an investigation or in the court room, it is not acceptable by law. So an objective and reliable instrument for detecting lies would be useful and particularly important. The current studies to detect lies mostly focus on physiological aspects, such as polygraph, pupil response, brain waves and fMRI. Contrarily, there are few systematic analysis and research based on verbal behavior. Nevertheless, detecting lies by physiological clues still has its limitations. A result not only from the huge cost of equipment, but also from the training of professionals contributes to a multitude of obstacles in its development.

Furthermore, polygraph has been controversial for a long time, including its accuracy, violation of human rights, evidence suitability and application scope. (Tzeng, 2008) Yet because other lie detecting technologies were still in their experimental stage, the polygraph was still used in practice and was deemed necessary and is still to this day difficult to substitute. Recently, the number of polygraph examinations in Taiwan was roughly around 2500-3500 cases per year.¹ And as result

¹ Acquired from the Judicial Yuan of the R.O.C. Law and Regulations Retrieving System, there are at least 408 cases up to 569 cases from 2004 to 2009 in the high courts related to the polygraph. Taking the high courts are the secondary court into consideration, a lot of cases that investigated by military, police and prosecution are omitted from the data. Thus the real number of the cases that related to the “polygraph” estimated three or four times more than what we know. If we assumed two persons were involved in one case, the number of the subjects that had undergone polygraph in Taiwan recently was 2500-3500 per year.

huge caseloads are postponed each year. This delay in proficiency will indirectly affect the trial effectiveness and result in compromise on the general and specific deterrence that resulted from the punishment. It, moreover, took more time and human resources doing polygraphs than other analyses.² Under this situation, urgent and serious cases can not get the immediacy and assistance they often require. Additionally, the polygraph examiners are often placed under excessively high burden by the situation on both mentally and physically

Based on the situation, the author tried to establish the Pre-Polygraph Examination Screening Instrument [P.E.S.I.]. By using behavior provoking questions, we can initially determine if the subject is telling a lie or not on specific issues according his verbal behaviors. After that, we can use these conclusions to set up an order of priorities for investigations. Furthermore, using the P.E.S.I. the investigators require only simple fundamental trainings, and benefit by requiring no more expensive equipment. Because the P.E.S.I. is a standardized instrument, the conclusion that can be reached can become a new reference for the judiciary.

The Nature of Lie

The act of deliberately providing or omitting information with the intention of misleading. The most critical element of the definition is the intention of the information provider. With no intent, deception does not take place regardless of the accuracy of the information being conveyed. (Krapohl & Sturm, 2002)

According to this definition, we know that the intention of misleading is related to the conclusions of the polygraph. Beside this, Zuckerman · DePaulo & Rosenthal (1981) considered that the act of deception is trying to make others believe some information that the teller already knows is wrong. The opinion of the deception Ekman (1985) rendered is that a true liar is already lying as soon as he can choose not to lie; and he surely knows the difference between each. Furthermore, Gordon & Fleisher (2002) in their book, *Effective Interviewing and Interrogation Techniques*, stated that how we perceive things affects our recollection of the event. Perception is influenced by internal factors such as age, health, cultural back ground, acuity of the senses and preoccupations. External factors which affect perception includes: where we stand, how much light there is, etc. What we perceive is what we believe to be true. Therefore if we want to judge if the individual told the truth or not, we should define clearly what "truth" is. The definition of the truth is: the deliberate, complete and objective communication (whether verbal, written or by gesture) of recollection of person, place, thing and/or event, which the communicator believes to exist, have existed or occurred. Conversely, a lie is (Gordon & Fleisher, 2002) :

- a. the deliberate communication to another, either verbal, written or by gesture, of something that the communicator knows or suspects is not the case.
- b. the presentation or omission of information, with the deliberate intent to deceive and mislead someone who is requesting the truth.

² Based on the data that were gathered by the polygraph section in CIB, 87 examinees had undergone polygraph in July 2010. The examination spent 189.27 minutes (3 hours and 9.27 minutes) averagely, between 439 minutes (7 hours and 19 minutes) to 91 minutes (an hour and 31minutes). The medium and standard deviation of the sample were 175 minutes and 60.53 minutes.



In sum, the author considered that the deception is the deliberate communication for some kind of purpose, either verbal, written or by gesture, of something that is false. The most critical element is intention. Therefore, every liar does perceive telling a lie. It will result that the liar will act totally different from others based on emotional, cognitive and behavioral performances.

Behavior Analysis Interview

Albert Mehrabian, a pioneer researcher of body language in the 1950s, found that the total impact of a message is about 7% verbal (words only) , 38% vocal (including tone of voice, inflection and other sounds) and 55% non-verbal. (Pease A. & Pease B., 2007)

Study shows that there is fewer research that is based on real-life setting (field study) than research that is laboratory based (analog study). Although research that is not laboratory based is sparse, there are however, five reports that shed light on the behavioral differences between truthful and deceptive persons in real-life settings. In order to make an evaluation of behavior symptoms, Reid & Arther (1953) spent five years collecting 486 verified guilty and 323 verified innocent subjects who were suspected of various criminal offenses. These subjects were closely observed and immediately written into case files. This study was undertaken at the lab of John E. Reid and Associates. The study showed that when under going polygraph, liars tended to exhibit certain mannerisms such as, poor eye contact, nervousness, etc., not generally display by truth-tellers. These observations were supported by Horvath who in 1973 tabulated verbal and nonverbal behaviors of a sample of 100 suspects who had undergone polygraph. The behaviors of the deceptive suspects were in general significantly different from those of truthful suspects. Unfortunately, in both of these studies there was a reliance on information collected impressionistically and, while the data was certainly suggestive of behavioral differences between truthful and lying suspects, there was reason to be cautious in generalizing from them.

A third field study was reported by Barland (1975) as part of a large project to determine the validity of polygraph. Barland found that 87% of his behavior-based assessments correctly predicted test outcomes on guilty (deceptive) suspects whereas only 50% of the assessments on innocent (truthful) suspects were predictive of the polygraph outcomes. The fourth field study by Horvath and Jayne (1990) investigated the relative contribution of different sources of behavioral data derived from structured interviews of persons suspected of theft. Four trained evaluators made judgments of 14 confession-verified deceptive and six confession-verified truthful suspects' behavioral responses to a set of standard interview questions. These judgments were made under four different conditions.

- a. The judgments were made solely by reviewing of a written transcript of the question/response segments.
- b. The judgments were made by reviewing of an audio recording of the question/response segments.
- c. The judgments were made by reviewing of an audiovisual recording of the question/response segment
- d. The judgments were made by reviewing of question/response segments in the context in which they actually occurred.

Under the first three conditions, the accuracy of the decisions made by the evaluators exceeded chance levels but was not exceptionally high. However, when evaluators made judgments in the

fourth condition, the accuracy of the decisions was in excess of 90% on both truthful and deceptive suspects. Nevertheless, the sample of this study was too small, and the subjects were all confession-verified. The representation of the sample was doubtful.

The most recently field study was reported by Horvath (1994). This study required the analysis of behaviors drawn from real-life settings. Between November 1 1989 and November 15, 1991 110 subjects were collected and underwent the behavior analysis interview which consisted of a 30 to 45 minute non-accusatory, structured forensic interview designed to elicit verbal and nonverbal behaviors and attitudinal characteristics of the suspect being questioned. Five different interviewers administered these BAIs, each specifically trained in behavior analysis techniques. The study showed that 78% of the judgments on actually truthful suspects were "truthful" decisions. On deceptive suspects, the evaluators' averaged 66% "deceptive" decisions. On the other side, the false positive and negative rates were 8% and 17%. Thus, there were generally more errors made on the deceptive suspects, than on the truthful suspects.

However, the research related to the behavioral analysis did not always perform so well. The most critical study is reported by Ekman and O'Sullivan (1991). They selected ten 1-minute videotapes of woman who was instructed to either lie or tell the truth about her feelings concerning a view of a traumatic event. The videotapes were evaluated by members of various groups who have a professional interest in detecting deception, including the U.S. Secret Service, federal polygraph examiners, police officers, judges, and psychiatrists. Of whom only the Secret Service agents were able to identify truth and deception above chance levels (64%), while the results of the other groups (around 55%) were equal only to that of the university students (52%). Ekman and O'Sullivan believed that not everyone can make such accurate judgments and neither age nor the sex of the observer was related to accuracy.

Unlike laboratory studies, in field settings it is extremely difficult to develop an adequate measure of ground truth. Even when reviewing the research, the author concluded that in laboratory environments it is often difficult to replicate the emotionality, the motivation and the psychological orientation that would be expected in real-life circumstances. When one's reputation, employment, or the possibility of arrest and prosecution are at stake, behavioral indicators of deception may differ from those that are observed in an artificially constructed laboratory setting. That is the main reason this study required data drawn from real-life settings.

STUDY DESIGN AND INSTRUMENT

Study Design

As soon as the subject agrees to be questioned concerning an issue under investigation, he has already formed an attitude toward the interview and investigator that often reflects the subject's underlying guilt or innocence.³ Thus, based on the concept of "Fear of Detection", and "Conditioning", a guilty subject when questioned by P.E.S.I. will be guarded, unhelpful, unconcerned, and uncooperative upon answering questions. Furthermore, the concept of the "Psychological Set" stated that a person's fears, anxieties and apprehensions are channeled toward the situation that holds the greatest threat to his or her self-preservation and generally well being.

³ While the personality is fairly rigid and inflexible traits that are not condition specific, the attitude is a predisposed expectation toward a situation or event. (Inbau et al., 2005)



Thus the subject when questioned by P.E.S.I. would accord to the perception of his own guilt or innocence could feel differently depending on the extent of threat to the comparison and relevant questions brought fourth by the P.E.S.I. As a result, there will be a difference in the verbal behaviors between the innocent and the guilty subjects.

Specifics in the procedure of this study are as follows:

- a. Sample Selection: Between December 1, 2010 and February 28, 2011, the subjects had undergone polygraph examinations at the Criminal Investigation Bureau (C.I.B.) in Taiwan.
- b. Core of Study: Based on the subject's underlying guilt or innocence, he/she would be spontaneously truthful or deceptive depending on the issue under investigation.
- c. Dependent Variables: The contexts in which the subjects responded to P.E.S.I. have been evaluated by the polygraph examiner. The conclusion represented the degree of the subject truthfulness that would be present by number. In other words, the author made truthfulness that is unable to measure present by number.
- d. Control Variables:
 - i. the interviewer: There are seven different interviewers that administered these interviews. All of them had been trained by the polygraph school validated by the American Polygraph Association (APA) and the Criminal Investigation Bureau in Taiwan. The experience of these interviewers administering polygraph averaged eight years, in a range of from 4 to 12 years.
 - ii. the criteria of environment: the room that is to be administered polygraph is tidy, quiet and non- visual disturbance.
- e. Interference Factors:
 - i. The subject's gender, age, education and status.
 - ii. Case Context.

The context that the subjects who had undergone polygraph in C.I.B. responded to the P.E.S.I. during the pre-test interview that would be drawn by this study. After that, the author would obtain this data on the promise of C.I.B. in Taiwan and the data would be analyzed systematically. The interviewers that administered this project shall be trained in advance, including instruction, for the specific way to question, the criteria to construct comparison and relevant questions, and how to choose different editions of questioning according to the subject's status.

The context that the subjects responded to the P.E.S.I. have been evaluated by the polygraph examiner to distinguish three types of behaviors, including deceptive verbal behaviors, non-deceptive verbal behaviors, and inconclusive behaviors and have subsequently been scored. (-1 for deceptive verbal behaviors; +1 for non- deceptive verbal behaviors; and 0 for inconclusive behaviors)

In regards to research ethics, the subjects' personal profiles, contexts and the conclusions to P.E.S.I. of this study are confidential. And the data that was drawn from this study cannot be reported to the judiciary and used as evidence.

Pre-Polygraph Examination Screening Instrument **【P.E.S.I.】**

Adapted from a set of the behavior provoking questions compiled by Gorden & Fleisher (2002), the P.E.S.I. includes four kinds of questions. There are 3 irrelevant questions (such as: where do you work?), 3 relevant questions (such as: did you steal the wallet from that drawer?), 3 comparison questions (such as: did you ever tell a lie to get out of trouble?), and fourteen projective questions (such as: did you tell anyone about what happened and that you have to be interviewed?). The comparison and relevant questions should be adjusted according to the case context. Taking a sexual crime for example, the relevant question should be formulated as follows: “did you have sexual intercourse with her” and the comparison question would be “have you ever done anything for which you are ashamed”. Furthermore, according to the status of the subject, such as the suspects, victims, and other persons related to the crime, the author expended the P.E.S.I. into three further editions based on original meanings to fit each subject.

Data Analysis and Discussion

Subjects

135 interviews were collected in this study. Of these 135 interviews, 91 (67.41%) were commissioned by the district procurators offices, 30(22.22%) commissioned by the district courts and 1 (0.74%) commissioned by the supreme prosecutors office. Note, the majority of the subjects were male, age between 31 to 40 years old, with a high school education, and non-deception indicated conclusions that be rendered by the polygraph. Referring to the statistics of criminal offenders reported by the Ministry of the Interior, the distribution of the subjects was similar in demographics to the domestic criminal’s population structure. Additionally, in comparing the ratio of the polygraph conclusions from last year at the C.I.B., there was no significant difference (χ^2 : 3.089; df 2; $p=0.213>0.05$) in the statistical analysis. Thus, the author concluded that the subjects from this study were somehow representative.

“P.E.S.I” Score

The Initial contexts that the subjects responded to the P.E.S.I. have been evaluated and scored by the polygraph examiner, and have become a continuous and interval variables. The variables were then divided by the number of questions the subject was actually to be questioned and would later become new variables called “average score”. This “average score” would then be used in the following analyses. As illustrated in figure 1: The distributions of the variables were in a range of 1.45, with the variable classified into fifteen frequency distributions, of average score in 0.1 interval.

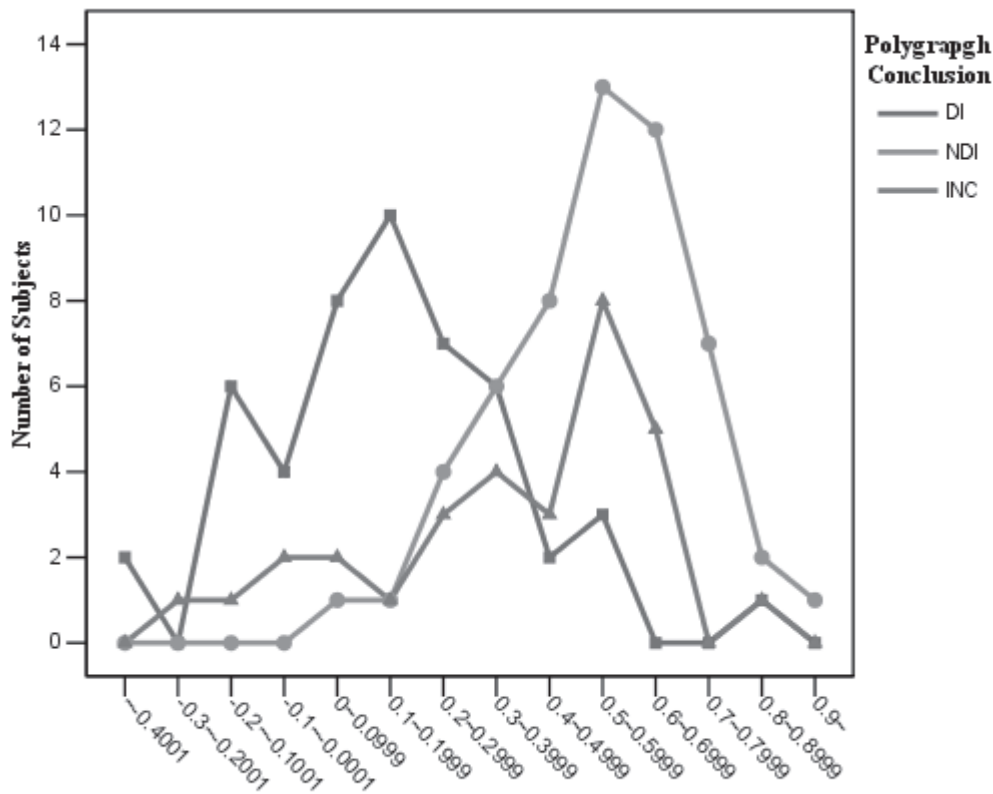


Figure 1 Frequency Distributions of "average score"

Figure 1 presents a frequency distribution graph of 135 subjects' scores classified in an equal "average score". In the subjects that belonged to the "non-deception indicated group" there was a frequency distribution score of 「0.5~0.5999」 in which there was no extreme bias. However, in comparison with the distribution of the "deception indicated group" there was more platykurtic, and two biases were presented in a class of 「~-0.4001」 and 「0.8~0.8999」. Additionally, the distribution of the "inconclusive group" was relatively higher at a class of 「0.5~0.5999」 and 「0.3~0.3999」. Therefore, the author's conclusion based on this data suggests that as long as the inconclusive results were rendered by polygraph, the probability of truthfulness is higher than that of deception. Moreover, a subject who polygraph was hard to judge in his truthfulness, the P.E.S.I would be hard to judge as well.

The primary issue of this study was to prove that the contexts in which the truthful and deceptive subjects responded to the P.E.S.I. were different. According to the t-test, that estimated the means of the non-deception indicated and deception indicated groups, the score of the P.E.S.I in the "deception indicated group" (0.13) was significantly lower than that of the "non-deception indicated group" (0.52). ($t: -9.176; p: 0.000 < 0.05$) which meant that the P.E.S.I really can distinguish the truth from lies. (Table 1)

Table 1 the T-test on the Means of "Non-Deception Indicated" and "Deception Indicated" Groups

	Polygraph Conclusion	N	Mean	STDEV	T	df	p-value
Average Score	Deception Indicated	49	0.13	0.25	-9.176	102	0.000*
	Non-Deception Indicated	55	0.52	0.19			
Levene's Test for Equality of Variance : $F = 2.938, p = 0.090$							

Receiver Operating Characteristic Curve and Accuracy

Based on the above analyses, we learned that the P.E.S.I is able to distinguish the difference between truthful and deceptive subjects. In order to find the optimal cut-off value of the score, the author used a "Receiver Operating Characteristic Curve" to determine the diagnostic cut-off point and evaluate predictive ability. See: Figure 2. The area under the curve (AUC) of the Receiver Operating Characteristic function, the plot of "1-specificity" (probability of the P.E.S.I wrong predicting a lie) vs. "sensitivity" (probability of the P.E.S.I correctly predicting a lie) was used to evaluate predictive ability. The results showed that the AUC was 0.901. Referenced to a standard that was rendered by Fischer etc. (2003), the P.E.S.I. was proven to be an instrument of great predictive ability.⁴ Additionally, by using the Youden index⁵ ($J = \text{maximum} \{ \text{sensitivity} + \text{specificity} - 1 \}$), the optimal cut-off value of the P.E.S.I. was 0.32456. (Table 2) In the other words, if the "average score" would be lower than 0.32456, which means that if the subject were deceptive to a specific issue; it would be higher or equal to the cut-off value, that and illustrates that the subject was truthful.

⁴ Fischer et al. (2003) stated that if the area under the curve (AUC) of the Receiver Operating Characteristic function is over 0.9, it can present the instrument of great accuracy; if that is between 0.7-0.9, it means the instrument of acceptable accuracy; if that is between 0.5-0.7, it implies the instrument of poor accuracy. If the area under the curve (AUC) is below to 0.5, the outcomes that rendered by the instrument were meaningless, whether it was correct or not. Furthermore, the estimates that obtained from the ROC function including the AUC, need to be noted by confidence interval.

⁵ This index was addressed by Youden W. J in 1950 and is a single statistic that captures the performance of a diagnostic test. The use of such a single index is "not generally to be recommended". It is equal to the risk difference for a dichotomous test. (Perkins & Schisterman, 2006)

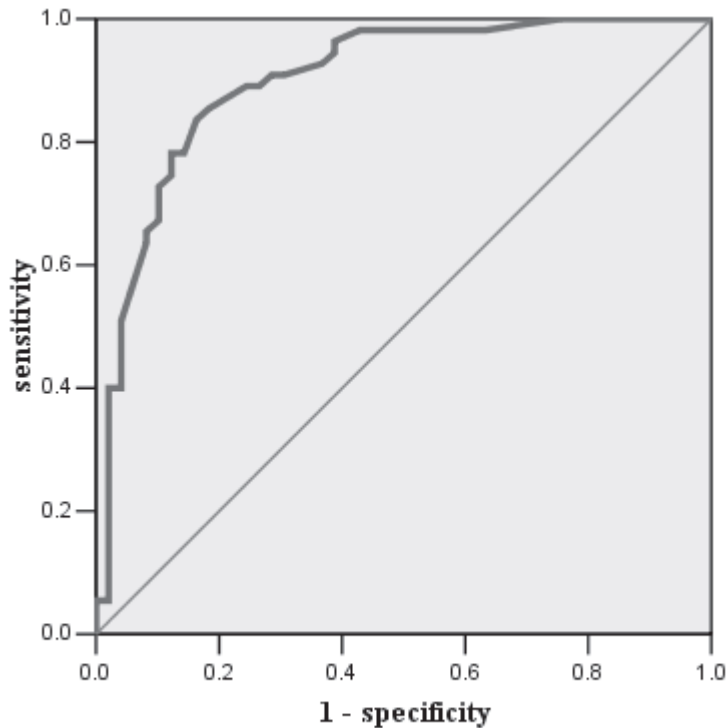


Figure2 Receiver Operating Characteristic Curve

the Area	0.901
the 95% Confidence Interval for ACU	0.84-0.96
the Optimal Cut-Off Value	0.32456

In supposed comparison with the polygraph conclusion, the sensitive and specific rates of the P.E.S.I. were 83.67%, 83.64%, and the total consistency rate was 83.65%. From these results it could be inferred that there was no reflection on whether the subjects lied or not. On the contrary, the positive and negative predictive values of the P.E.S.I. were 82% and 85.2% (Table 3), which means we could be relatively confident of the non-deception indicated conclusions rendered by P.E.S.I. Thus, the P.E.S.I is suitable as a pre-polygraph screening instrument.

Table 3 the Polygraph Conclusion & P.E.S.I's Outcome for Cross Validation

		P.E.S.I's Outcome			
			Deception Indicated	Non-Deception Indicated	Total
Polygraph Conclusion	Deception Indicated	N	41	8	49
		Sensitivity / False Negative	83.67%	16.33%	100%
		Positive Predictive Value (PV+)	82.00%		
	Non-Deception Indicated	N	9	46	55
		False Positive / Specificity	16.36%	83.64%	100%
		Negative Predictive Value(PV-)		85.20%	
	Total		50	54	104
Youden index (YI)		0.6731			
Total consistent rate		83.65%			

Additionally, the study examined the consistency between the evaluation of the P.E.S.I. and the conclusion of the polygraph with the test of independence, coefficient phi-value and Cohen's kappa statistic. The results showed that the test of independence was χ^2 : 47.03, p : 0.00<0.05; phi-value was 0.67⁶, p =0.00<0.05 and Cohen's kappa statistic (κ) was 0.672 which was substantial consistency according to the standard by Landis & Koch⁷ (1977).

Reliability and Item Analysis

Presentation of coefficient alpha as an index of the internal consistency or reliability of psychological measures has become routine practice in virtually all psychological and social research in which multiple-item measures of a construct is used. To realize the internal consistency and the reliability of the P.E.S.I., the study practiced the alpha index by SPSS and 0.691 was obtained. According to the standard that be compiled by Wu (1984), the P.E.S.I was not a perfect instrument but was still reliable.⁸ Additionally, the author found q6, q9 and q21 can't be as consistent as the other questions. If these three questions had been eliminated from the P.E.S.I., the alpha index would climb to 0.714. Under the identical standard, the instrument could become substantial reliable and the alpha index was above the lowest threshold addressed by Hsu (2004) in exploratory research.

⁶ The phi-value varies from 0 to 1. The more the value is close to 1, the more correlative the two variables are.

⁷ Cohen's kappa coefficient that was published by Jacob Cohen in 1960 is a statistical measure of inter-rater agreement or inter-annotator agreement for qualitative (categorical) items. If the raters are in complete agreement then $\kappa = 1$. If there is no agreement among the raters other than what would be expected by chance, $\kappa = 0$.

⁸ Theoretically, Cronbach's alpha varies from zero to 1. Higher values of alpha are more desirable. However, the appropriate degree of reliability depends upon the use of the instrument. Some professionals as a rule of thumb, require a reliability of 0.70 or higher and reject a reliability of 0.35 or lower.



However, every single question in P.E.S.I contributed to a different degree of discrimination. This study practiced the item discrimination index⁹ and critical ratio¹⁰ to explain the “quality” of every single question. The result showed that at item discrimination index q4、q5、q9、q11、q12、q13、q14、q16、q17、q18、q20、q21、q22 performed well, based on the standard reported by Ebel & Frisbie (1991). On the other hand, the q6、q7、q8、q10、q15、q23 belonged to the “poor” questions that needed to be abandoned or modified thoroughly.

Furthermore, if the author practiced the t-test of every single question in P.E.S.I, the results showed that the means of q4、q5、q11、q12、q13、q14、q16、q17、q18、q20、q21、q22 were significant different between the “Deception Indicated group” and the “Non-Deception Indicated group”. The other means of the questions were not different between each group. These results implied that the other questions were not helpful in distinguishing weather the subject lied or not. Comparing the result of the item discrimination index, excluding q9 that be evaluated as “good” question, these two types of analyses concluded in the same outcomes.

「P.E.S.I」 is a General Instrument

In the end, this study practiced the t-test and the one-way ANOVA to study the effects that bore on the subject’s gender, age, education and status on the P.E.S.I. The results presented “average score” between gender, age and education that were not significant different, and inferred that there was no inflection that was caused by the above variables on the P.E.S.I. It is worth noting, that according to the one-way ANOVA, the “average score” of the victim group was greater than that of the suspect group. In order to figure out the explanation of this outcome, the author went further to check the relationship between the polygraph conclusions and the subject’s status. The author found that there were more deceptive examinees in suspect group than those in victim group, and supposed this is the reason that resulted in the difference between these two groups.

Moreover, this study practiced the two-way ANOVA to analyze if the subject’s gender, age, education and status affected the accuracy of the P.E.S.I. The results showed that the “average score” between gender, age, education and status were not significantly different, and concluded that there was no inflection that was caused by the above variables on the accuracy of the P.E.S.I.

CONCLUSION

This study proved that it was feasible to detect lies by evaluating the contexts in which the subjects responded to the P.E.S.I. The P.E.S.I.’s outcomes were substantially consistent with the conclusions of the polygraph based on the test of independence, coefficient phi-value and Cohen’s

⁹ The item discrimination index can determined the discrimination of the question. The first step is to array the examinees form high scores to low scores. The second step is to separate the first and the last 25% examinees and calculate the rate of the correct answer in these two groups, as PH and PL. The item discrimination index is $PH - PL$, and varies from -1 to 1. The bigger the index is, the more discriminative the question is. Adapted from this index, the sample of this study was separated into the “non-deception indicated” and “deception indicated” groups. Instead of focusing on “average score”, the author emphasizes on the evaluation of every question in P.E.S.I. The “+1” would be viewed as correct answer, while the “-1” and “0” would be viewed as wrong answer. At last the difference between “non-deception indicated” and “deception indicated” would be analyzed.

¹⁰ The critical ratio is an index for evaluating the discrimination. This method hypothesized that the score between “non-deception indicated” and “deception indicated” groups should be significant different if the question is discriminative. Thus, the means of every question between these two groups can be evaluated by t-test.

kappa statistic. Furthermore, it has been verified that the accuracy of the P.E.S.I. performed well. In addition, every single question in the P.E.S.I. contributed to a different degree of discrimination. It could be implied that the P.E.S.I. can be optimized by choosing “Good” questions. And finally, the research also showed that the differences between gender, age, education and status did not affect the results.

However, there were still some obstacles on the procedure of this study. Because the subjects collected in this study had undergone polygraph in CIB, not every subject was able to fit every question of the P.E.S.I. Consequently, the data analysis confronted a lot of difficulties due to the missing data. And, because the data of this study was drawn from real-life settings (field study), the ground truth was hard established. As the result, the accuracy of the P.E.S.I. judged by the conclusions of the polygraph can not apply to real life scenarios. And lastly, this study was not held in random sampled criminal cases around the nation, the users of the P.E.S.I. should keep these limitations in mind when considering these findings in practice.

The study suggested that in conjunction with a carefully controlled procedure, the P.E.S.I. could be used to prioritize suspects. It assists to relieve the heavy workload of polygraph examination. Additionally, because there are a lot of unpredictable factors in the polygraph examination, we should be more cautious and careful on interpreting the conclusions of the polygraph. The author believed that it is helpful to polygraph examiners in observing and evaluating the verbal behaviors of subjects by using the P.E.S.I. as an assistant instrument. Furthermore, there will be more valuable verbal behaviors that are provoked by the P.E.S.I. and those behaviors will be helpful to know the actual feelings of the subjects and monitor the situations of the interviews. Thus, the subjective behaviors assessments will transform to the objective and standard procedure to help the polygraph examiner notice wider aspects of the polygraph examination itself, avoiding unnecessary errors.

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HOLISTIC ORIENTED POLICING: INTRODUCING A NEW GANG MODEL

Fredrik Leinfelt, Stockholm County Police, Sweden

Amir Rostami, Stockholm County Police, Sweden

This presentation will consist of a brief overview of the Stockholm Gang Intervention and Prevention Project (SGIP), currently in its last year of operation. We will introduce the working components of the PANTHER gang model – a new holistic approach towards gang crime, gang recruitment and desistance from crime.

PANTHER is constructed around the community-based and problem-oriented policing paradigms, but is also designed to address issues such as social unrest. This presentation will also explore the various problems surrounding the implementation of a gang model and some practical examples of how the model is currently being used by the Stockholm County Police in Sweden. Policy implications will be discussed.



MARITIME LAW ENFORCEMENT AND CLAMP DOWN COASTAL OIL BARGE IN TAIWAN WATER

Shih-Chang Lin, National Coast Guard Administration, Taiwan

Yi-Che Shih, National Coast Guard Administration, Taiwan

The duties of Taiwan Coast Guard are maritime law enforcement, maritime services and maritime affairs. The former duties focus on seizing illegal firearms and drugs, illegal immigration, smuggling and illegal fishing. Now we find the number of fishing vessels operating in Taiwan waters especially during China fishing moratorium become more common. Chinese fishing vessels extend their fishing grounds and have thus been encroaching Taiwanese waters more and more frequently. A kind of “on-sea convenient store” has been created to provide efficient back-up supplies to Chinese fishing vessels. These “stores” are essentially oil fuel and material supply vessels, and are cargos or large vessels that have been converted into oil tankers and transshipment cargos. These vessels trade fuel oils, general supplies, and even staff, as well as handling the transshipment of fuel oil and various hazardous materials on offshore waters of Taiwan. The issue of oil barge in Taiwan water remains a major concern and continues to be a threat to Taiwan marine environment and resources. This paper analyzes the reasons for the oil barge and provides potential strategies to prevent future incidents.

As the number of China fishing vessels become superabundant, resources in their fishing grounds become increasingly scarce. Further, as the enforcement of measures such as fishing moratorium become more common, Chinese fishing vessels extend their fishing grounds and have thus been encroaching Taiwanese waters more and more frequently. A kind of “on-sea convenient store” has been created to provide efficient back-up supplies to Chinese fishing vessels. These “stores” are essentially oil fuel and material supply vessels. These vessels trade fuel oils, general supplies, and even staff, as well as handling the transshipment of fuel oil and various hazardous materials on offshore waters of Taiwan. Not only does this increase the risk of spillage leading to contamination, it also prolongs the time fishing vessels stay at sea and operate. The activities described, along with the fact that fishing vessels often adopt gillnetting and use roller type trawlers for fishing, put the already scarce marine resources under an immense amount of pressure.

ILLEGAL ENCROACHMENT OF TAIWAN WATERS FOR FISHING ACTIVITIES

The most commonly seen Chinese fishing vessels encroaching Taiwan’s offshore waters are wooden vessels up to 50 tons, and metal vessels between 100 and 200 tons in weight. These vessels cannot stay at sea for prolonged periods due to the limitations imposed by their oil tank size, water container volume, storage size for catch, the design of onboard freezers, the number of crew, and the fatigue level in crew members. The average number of days at sea for such vessels is 5–7 days and, after deducting the time taken to travel in and out of the ports, the actual time spent in Taiwan offshore waters is around 3–5 days. The most common fishery types by fishing methods include 1) small otter trawler fisheries; 2) bull trawler fisheries (roller type trawler); 3) torch light net fisheries; 4) bream and coarse fish long-line fisheries; and 5) gillnetting fisheries.

According to the statistics compiled by the Taiwan Coast Guard in 2010, the case of Chinese vessels caught and deterred by TCG (Taiwan Coast Guard) rapid increases year after year. (CGA, 2011)

Year	2007	2008	2009	2010
Case				
Fishing vessels caught by TCG	811	1348	1899	2859
Fishing vessels Deterred by TCG	4266	5183	5621	6407

ANALYSIS OF THE REASONS FOR ENCROACHMENT BY CHINESE FISHING VESSELS

2.1. Resource scarcity in offshore fishing grounds in China

Despite the enforcement of fishing moratorium over the past decade to help protect marine resources in fishing grounds and to give the habitats time to recover, pollution from land has still greatly affected the marine ecosystem in Chinese offshore waters¹. The majority of fishing methods adopted by Chinese fishing vessels are traditional methods (such as roller type trawlers and three-layer gill nets). Such methods are extremely harmful to the corals, marine creature habitats, and fishing resources. Catch obtained from offshore waters has been deteriorating over the past decade or so. For this reason, fishermen operating in those areas were forced to expand their operation to nearby fishing grounds containing richer resources. Taiwan's unique geographical location and its abundant marine resources are the reasons why Chinese fishermen chose to advance further east, and encroach the waters to conduct fishing activities.

2.2. The enforcement of fishing moratorium in China

To protect its marine and fisheries resources in its fishing grounds, the Chinese government has established an important conservation and protection policy based on the Fisheries Law of the Peoples Republic of China: the China's Summer Fishing Moratorium. This policy was implemented in 1995 and every year, the fishing moratorium lasts between 2 to 3 months in China. Since its implementation, the fishing grounds and moratorium period control have been undergoing constant adjustments and improvement. According to the Chinese government's stringent law enforcement and measures, the policy has, since its implementation, generated good ecological, economic, and social benefits². However, to avoid investigations by officials, some Chinese fishing vessels leave home ports before the moratorium begins, then begin to operate in waters in nearby countries.

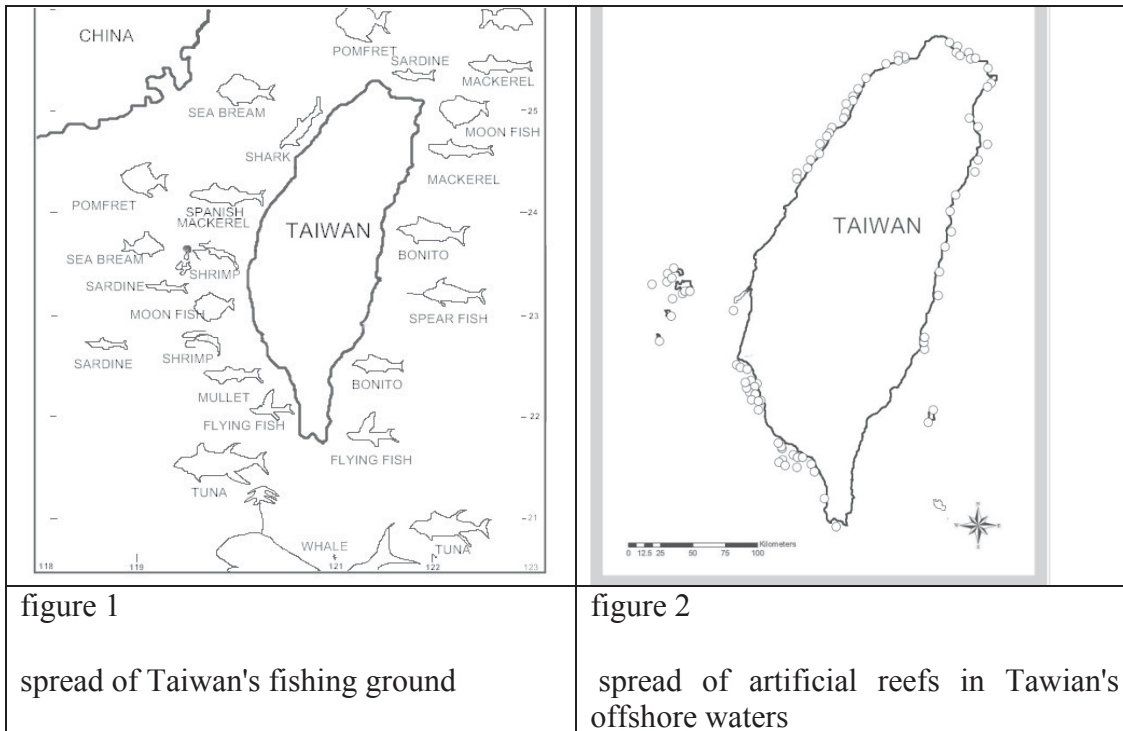
2.3. Geographical advantages and abundant in marine resources

Geographically speaking, Taiwan and China are connected by the Taiwan Strait and the two countries are merely 70 nautical miles apart at the narrowest part of the strait. It takes Chinese fishing vessels less fuel to reach fishing grounds in Taiwan's offshore waters than to high seas 200 nautical miles away. Further, Taiwan's fishing grounds are located over a large area (as illustrated in Figure 1), so the benefits from a wide range of economically important species. Artificial reefs increased both fish abundance and have been demonstrated to be a potential tool (Walker et al., 2002; Lin et al., 2003; Lan & Hsui, 2006). Coupled with this, with great efforts invested by the Taiwanese government into building artificial reefs over the past decade, Taiwan now has 88 artificial reefs in its offshore waters (spread of reefs illustrated in Figure 2; figure provided by

¹ communiqué of ocean environment quality of 2011, State Oceanic Administration People's Republic of China. Retrieved August 2, 2011, from <http://www.soa.gov.cn/soa/hygb/hjgb/webinfo/2010/06/1305507673142596.htm>

² announcement of China's Summer Fishing Moratorium by Ministry of Agriculture of People's Republic of China, 2009/2/27. Retrieved July 1, 2011, from http://202.127.45.50:82/gate/big5/www.moa.gov.cn/sjzz/yuyeju/fagui/201006/t20100606_1538589.htm.

Fisheries Agency, Council of Agriculture, writer reedited). The fish resources within the protected areas also have time to recover owing to regulations in place banning any fisheries activities in waters 1000 meters from the protected areas, as well as in waters within 3 nautical miles to shore. Such regulations are strictly enforced and fines are issued for any breach of the law.



2.4. Common cultural background and understanding of Taiwanese fishing grounds

The long historic relationship between Taiwan and China has resulted in the two countries sharing high homogeneity in their languages, cultures, religions, and beliefs. Because of the undesirable working conditions, low pay for crews, and hazardous and taxing tasks associated with the fisheries industry, younger generations are less willing to work at sea. Therefore, the fisheries industry is dominated by an older generation of workers. To overcome this worsening trend, Taiwanese fisheries have had to turn to recruiting foreign crew members (Shih et al., 2010). When recruiting crew, in addition to considering the level of wage and experience gained with relevant background knowledge, many captions will use language ability as their priority recruitment criteria; this puts Chinese people in an advantageous position, hence why many foreign crew members on fishing vessels tend to be of the Chinese nationality.

Upon completing their work contracts (each contract lasts between 2 to 4 years), Chinese fishermen usually return to China, while some remain working in the industry and at sea. Given they are familiar with the Taiwanese fishing grounds and swayed by the fact that the industry in China is experiencing poor profits, many of these fishermen decide to encroach and operate in Taiwan's offshore waters.

2.5. Law enforcement at sea and clamp down on crimes

Chinese fishing vessels encroaching waters to conduct fishing activities are punished and fined according to the Enforcement Rules for the Act Governing the Relations between the People of the Taiwan Area and the People of the Mainland China Area. This set of enforcement rules imposes stern penalties for Chinese fishing vessels breaking the law (such as seizure or detainment of vessels and personnel and, in hostile situations, permit firing to destroy the vessels if necessary). However, in reality, due to limited patrol capacity and the difficulties in making arrangement for detained personnel, berth management, and pursuing fines, the most common actions taken by the Taiwan Coast Guard (TCG) on encroaching Chinese fishing vessels are in fact, onboard inspection followed by denial of access, or generating broadcasts to ask the vessels to turn away. Depending on the situation, Chinese fishing vessels encroaching the territorial seas may be taken back to Taiwan and the vessels then deterred, not before the equipment is detained and the catch is confiscated.

Chinese fishing vessels operating in Taiwan's offshore waters tend to spread over different regions (illustrated in Figure 3). The rendezvous points of Chinese fishing vessels also vary according to their port of registry. Generally speaking, according to the statistics on average, 50 to 80 Chinese fishing vessels operating for every 12 nautical miles within the rendezvous point at the same time, only 5%-8% Chinese fishing vessels under the risk of being caught and punished by TCG.

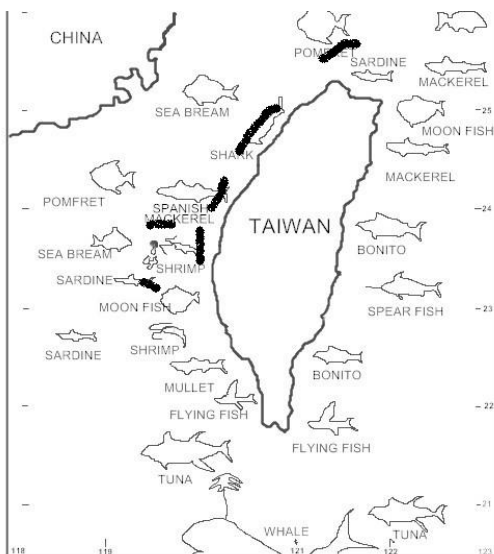


figure 3 spread of Chinese fishing vessels in Taiwan's offshore waters

2.6. Frequent trading on sea

In order to increase profit by minimizing the amount of fuel used, some Taiwanese fishermen radio Chinese fishing vessels to meet and conduct fish catch trading on sea. Essentially, the Taiwanese fishermen ask Chinese fishing vessels to enter and operate in certain fishing grounds in Taiwan offshore waters whilst they stay at port. Then, once the Chinese vessel's catch reaches the requirement set by the Taiwanese buyers, the Taiwanese vessels leave port to meet the Chinese vessels at the prearranged rendezvous point to conduct trading businesses. These Taiwanese fishermen buy catch from Chinese fishermen at a low price, and then sell the catch on ports back in Taiwan. In essence, the vessels typically used as operating fishing vessels are turning into transshipment cargos. The reasons why Taiwanese vessel owners approve of this method is because



they can save on fuel cost, reduce time of operation at sea, and the cost of labor. Whilst there are regulations stating that ‘no trading on sea is permitted’, in reality, it is difficult to define illegal trading of fish catch at sea, owing to the need for officers to verify the relationship between the equipment onboard and the catch species, as well as the need to collect a range of data and imagery evidence of the vessel’s tracks, fuel use, operating days, catch amount, trading receipts, and catch and processing equipment.

CHALLENGES

3.1. The impact of fisheries activities by Chinese vessels on marine resources in Taiwan’s offshore waters

3.1.1. Regulation of Taiwan’s Fisheries Act

According to the Fisheries Act of Taiwan, trawlers less than 50 tons are prohibited from operating in waters 3 nautical miles from shore, and trawlers over 50 tons are prohibited from operating in waters 12 nautical miles from shore. The Act also states that restrictions and further conditions may be enforced by the responsible government bodies when granting permissions for fishery operators to start operating. This is to protect the interest of resource conservation and the public. In addition, for the purpose of resource management and adjusting the structure of the fisheries industry, the responsible bodies should announce the permitted fishing equipment, the permitted fishing methods, and the prohibited activities. Various restrictions are imposed upon Taiwanese fishing vessels in order to ensure the sustainability of marine resources. For example, vessels can only operate in non-protected areas (including waters exterior to the boundaries of national parks, waters 3 or 12 nautical miles to shore, and waters within 1000 meters from artificial reefs) using the permitted fishing methods, and they must adhere to the catch quota for specific species.

3.1.2. Damaged caused by Chinese fishing vessels

The main fishing methods and types of vessels adopted in China are roller type trawlers and three-layer gill nets. Because the depths of waters in western Taiwan tend to be shallow, roller type trawlers cause severe damage to the benthic ecosystem. On the other hand, three-layer gill nets catch fish of large and small size, which means young fish are caught before reaching full size and maturity, incurring costs to fisheries resources quality in Taiwan.

3.2. The impact of oil barges on the marine environment of Taiwan water

The environmental impacts generated by shipping operations have increasingly become an important research topic, where its pollutants often pose negative externalities to natural habitats and economic losses to coastal areas (Ng, et al., 2010).

The oil barges operating in Taiwan’s offshore waters tend to have been converted from single-hull vessels or general large metal vessels that are over 15 years old (illustrated in Figure 4, 5 and 6). The purpose of these vessels is for making profits from trading fuel oils. Therefore, vessel owners tend to overlook the quality or standard of equipment onboard or the standard of vessel parts, such as the type of main and auxiliary engine, design of the bulkheads, and protective equipment. Vessel

owners also typically register these vessels from countries that tend not to have stringent vessel safety inspection standards, for example, Panama.



Currently, there are over 10 private oil barges converted from small cargos anchored or stopping in waters within 12–20 nautical miles to shore Mideast of Taiwan. When transferring oil fuel to buyer vessels, the pipeline is often secured to the tanker in a way that it can be disconnected again quickly (illustrated in Figure 7); this way, sellers can react quickly to avoid investigation by patrol officers. However, to do so, oil booms are not positioned around tankers, and the pipeline is subjected to high pressure to transfer the oil to minimize transfer time, increasing the risk of oil spills occurring, which often leads to pollution of surrounding water or other foreign country water (Anderson, et al., 2000) . But oil barge still occur all over the world (Peacock et al., 2007) .



figure 7 equipment and oil pipe of oil tank

Furthermore, oil barges store standard diesel oil, the sludge of which accumulates at the bottom of the tanker. Oil barge crews often dispose of the sludge directly into the sea, depositing a film of oil on the water surface, which is then carried and spread by sea currents. This type of ocean pollution is often detected and the TCG has already caught and prosecuted many people for this offence.

3.3. The impact of sea supply by transshipment cargos

Currently, the majority of Chinese vessels operating in Taiwanese waters work in teams. This team approach has the added advantage of division of labor among vessels, and is disparate to the operation, transportation, and selling methods of traditional single vessels. Fishing vessels working in a team conduct fishing activities within a designated area appointed by the vessel owner. Once a vessel reaches the required catch quota, it uses a preset frequency to radio the carrying vessel to rendezvous. The carrying vessel then ships the catch back to a port in China, or to a designated



location to conduct trading business at sea. This teamwork method has been devised based on the operating mode of distant water vessels. The carrying vessels of the team also act as suppliers to other vessels, supplying these vessels with fresh water, general supplies, and food, and sometimes even transportation favors for vessel crews.

The establishment of a streamlined supply process of fuel oil, water, food, and supplies, together with a streamlined operation line of transferring fish catch, effectively reduces the fuel cost of travelling back and forth between ports and fishing grounds, and effectively increases the amount of available time fishing vessels can remain in fishing grounds. This approach has brought Chinese fishing vessels greater economic benefits, hence why more and more Chinese fishing vessels wish to join and operate within a team.

DISCUSSION OF STRATEGIES

4.1. Vessel and coastal Automatic Identification System (AIS)

TCG uses coastal monitoring radar systems and radar equipment onboard patrol vessels to identify objects at sea. The coastal monitoring radar system is located on a high point on the coast, which can only effectively detect objects within 12–16 nautical miles to shore. The system can detect suspicious vessels from open seas (such as high-speed vessels, vessels that continuously change course, suspicion of two vessels rendezvousing, and suspicion of a team of vessels operating at sea), which can then be used to inform patrol vessels.

The search range of the radar systems onboard the patrol vessels (x-band and s-band radars) is dependent on the radar altitude, marine weather, and climate. The 30-meter long main patrol vessel has radar systems that are able to provide accurate echo radar of objects up to 16 nautical miles away. When an object is identified by the radar systems, its location, the amount of echo radar, its course and speed, and the movement of its surrounding objects are identified by the system to determine if the object in question is suspicious.

However, due to insufficient information, the TCG often misidentifies Taiwanese fishing vessels as Chinese fishing vessels encroaching Taiwanese waters, or as illegal oil barges.

In order to better identify international commercial cargos entering and leaving ports, apart from the basic radar and radio equipments, international signal towers use AIS receivers to receive corresponding signals sent from the cargos, so they can clearly identify the location and relevant information about the vessel (such as vessel name, its speed and course). The use of AIS supports Vehicle Traffic Management Systems (VTMS) (Chang, 2011; FAO, 2007; Gulin, 2005) in that it helps with the arrangement of berth, point of anchorage, and the order of entry and exit of ports. The majority of Chinese fishing vessels are now equipped with AIS integrated into their electronic navigation systems. The use of AIS on fishing vessels allow them to identify the location of other vessels; this way, carrying vessels can more quickly find their catch suppliers, and fishing vessels can reach oil barges more quickly to receive fuel. This system effectively saves time and costs on fuel for vessels.

If the TCG can add an additional AIS receiver to its coastal radar system and patrol vessel, it is believed that the TCG will become more efficient, and better able to identify the locations of commercial cargos, Chinese fishing vessels, and oil barges within its jurisdiction.

4.2. Increase the penalty

Despite increased efforts by Taiwanese authorities to clamp down on vessels that engage in fishing encroachment, violate innocent passage regulations, engage in illegal stay, and oil barges that cause marine pollution, the deterrence effect is actually quite limited. This is due to several reasons: 1) penalties for violating regulations are only enforced by the Taiwanese government; 2) rate of recorded incidents engaged by Chinese fishing vessels or by oil barges is low (approximately 5–8%); and 3) small fines and penalties (penalties for fishing encroachments include the confiscation of catch and fishing equipment, but not the vessel).

To resolve issues caused by ineffective deterrence, a number of suggestions have been made: 1) increase the administrative penalties imposed on violating vessels, in addition to confiscating the catch and fishing equipment (involved navigational equipment should also be confiscated); 2) increase the days of detention and confiscate the vessel if the owner is a repeat offender; 3) issue a substantial fine to illegal small oil barges and confiscate its fuel stocks; and 4) collect evidence on marine pollution by oil barges, then report the incidence and issue a substantial fine.

4.3. Aids for conducting patrol duties and law enforcement

The collection of evidence in the case of illegal oil barging activities between vessels is, in practice, extremely difficult; it is therefore difficult for the TCG patrol vessels to clamp down on such crimes in offshore waters. Oil barges take careful precautions to avoid being caught by patrol vessels: they only use two ropes to secure the front and rear of the vessels; they monitor surrounding vessels using radar systems; and only allow buyer vessels to park beside them for oil transfer when they are certain there are no other suspicious vessels or objects nearby.

The Environmental Protection Administration Executive Yuan is currently using unmanned aerial vehicles to conduct research on the monitoring of marine environments in offshore waters. Using the locating and monitoring radio receiver and signaling devices, the unmanned vehicles can send images, location and time data back to the control tower. The TCG should take advantage of such vehicles, which are well concealed, highly mobile, present low risk, and cost little energy to operate. If the TCG manages to simplify and integrate the operating methods of unmanned aerial vehicles, they can be effectively applied to the monitoring of activities at sea.

4.4 Reinforcing Port State Control Functions

4.4.1 Current situation

When oil barges run low on fuel stock or when their vessels require maintenance work, they apply to enter international ports in Taiwan. Once these tasks are completed, the oil barges leave the ports and travel to the rendezvous points designated by their vessel owner to conduct fuel oil trading businesses. Current port state control merely oversees the order in which the vessels enter and leave ports, along with various security related issues.

4.4.2 Feasible measures for the future

It is recommended that when oil barges apply to enter a port, the local harbor bureau inspects all the vessels twice over, or inspects the vessels by random selection. The list of items for inspection



should include the crews' certificate of competency, certificate of classification for the vessel, radio certificate, fuel log, equipment for prevention of oil pollution, and rescue and firefighting equipment. The harbor bureau should restrict vessels deemed unfit to sail from entering or leaving ports. Furthermore, they should administer appropriate punishment to owners whose vessels are not equipped with mandatory equipment as required by the conventions.

In addition, when conducting boarding inspection on oil barges at sea, the TCG is advised to conduct their inspection using the criteria described above and collect evidence on vessels that do not conform to regulations, or are deemed unfit to sail. The evidence collected can then assist the appropriate authoritative bodies in regulating control.

4.5 The provision of tangible jurisdiction power

With over 160 vessels of various sizes and models, the TCG is, after the ROC Navy, the civil service unit equipped with the largest number of vessels within international ports and large fishing ports. Despite its abundant vessel resources, the TCG is merely a unit equipped with law-enforcing equipment and tools, rather than a unit that has real authoritative power.

It is important to make necessary adjustments to the tasks and duties of authoritative bodies whilst providing the TCG with more authority, making ocean management more professional by designating such responsibilities to a single authoritative body, and making more globalized and comprehensive plans for ocean and coastal management policies and implementation strategies.

IMPLEMENTATION DIFFICULTIES

5.1. Difficulties in collecting evidence of illegal oil transfer activities

As mentioned above, collection of evidence of illegal oil barging activities presents difficulties in practice; even when the required evidence is collected, the oil sample still needs to be submitted for oil fingerprinting. In addition, other important pieces of evidence must be collected, including the shipping order on the vessel, fuel records in the engine room, crew member interview records and testimonies, and records of boarding inspection time and location (on territorial seas, contiguous zones, or EEZ waters).

When these oil barges are caught (24 nautical miles inside of Taiwan's territorial baselines) undertaking illegal activity, some claim they are acting out of 'moral conscience', and acting for emergency assistance and rescue reasons to save Chinese fishing vessels from potential disaster due to a lack of fuel. They also argue that the quick oil transfer is not a prearranged deal. On the other hand, the most common reasons given by oil barges and transshipment cargos for violating the innocent passage regulation in waters where anchorage is not permitted is that they are experiencing machinery malfunction. In response to this excuse, the Taiwan Coast Guard can only refer the case to the responsible harbor bureau, as the vessel in question is anchored in a restricted area; the bureau is left to decide if any administrative sanction is to be imposed.

5.2. Poor deterrence towards Chinese fishing vessels

Chinese vessels engaging in encroachment fishing are only punished by having their equipment and catch confiscated, then being deterred once the case is closed. This level of punishment and penalty

is relatively low for Chinese vessel team owners and vessel teams established by joint venture shareholders, as the loss incurred is relatively minimal compared with the overall profit.

5.3. Detention area and safety management

The TCG try to adopt a number of measures to better deter encroaching Chinese fishing vessels, including 1) extending the detention period to 3-5 days for an investigation to be conducted; 2) confiscating and dismantling the fish finder and net hauler, as well as confiscating standard equipment and catch; and 3) restricting vessel crew activities so that they must remain onboard during investigation. These newly adopted measures are more effective in deterring fishing encroachment incidents in a number of waters.

The response to greater results achieved through more stringent measures by patrol officers is more resistance from Chinese vessel crews. Therefore, the TCG is faced with the challenge of implementing effective strategy planning to utilize its limited officer resources to lead and manage the whole administration sanction procedure so that deterrence cases are well monitored and managed.

5.4. Seasonal climate and adverse sea weather are responsible for difficulties in management of patrol and law-enforcing activities

If patrol officers insist on boarding troublesome vessels under severe weather conditions (Beaufort Scale is above 6 grade), vessel collision may occur. In serious cases, the vessel may become unable to remain watertight, which may jeopardize the safety of the personnel; in such cases, officers or vessel crews may sustain injuries as a result. For these reasons, patrol vessel officers tend to adopt a more passive approach by simply attempting to deter the encroaching fishing vessels through broadcast warnings. However, this method often achieves poor results.

5.5. Understanding discrepancies between Taiwan and China in the definition of exclusive waters

The topic of exclusivity in water territory is a political topic due to China regarding Taiwan as part of China, thus not deeming Chinese fishing vessels operating in Taiwanese waters as inappropriate behavior or a violation of the law. On the contrary, Taiwan regards itself as an independent country, and a separate political entity from China. Therefore, the Taiwanese government feels the upmost responsibility to protect its fisheries resources from the exploitation by other countries. For China, claiming the waters west of the Taiwan Strait central line are EEZ waters belonging to Taiwan would, indirectly, confirm that Taiwan is an independent country. For this reason, the Chinese government itself does not pay much attention to cases of encroaching Chinese fishing vessels penalized by Taiwanese authorities.

CURRENT PROGRESS OF LAW ENFORCEMENT EFFORTS BY THE TCG TO CLAMP DOWN ON ILLEGALLY CONVERTED OIL BARGES AND ENCROACHING CHINESE FISHING VESSELS

6.1 Current progress of law enforcement efforts by the TCG to clamp down on illegally converted oil barges

1) Statistics

From 2008 up until now, the TCG has filed 23 cases of illegal fuel oil trading activities (location illustrated in figure 8 marked). However, if inadequate evidence is available to detain and prosecute the oil barge, the TCG is only able to fine the vessel owner according to the penalties set out in the Marine Pollution Control Act, or deter the vessels out of the restricted waters.



figure 8 location of illegal oil trading activities caught by CGA

2) Standard operating procedure for law enforcement

According to current laws in Taiwan regarding illegal oil barging activities, to prosecute such illegal acts, there must be evidence of an oil barge and buying vessel (actors), and of the engagement in oil barging activities. Therefore, when collecting evidence, TCG officers try to record evidence of the personnel involved, location and time of oil barging, names of the two vessels involved, and the actual oil barging process. Once they have this information on record, they then conduct boarding inspection, collect the oil sample, then send it off for oil fingerprinting. In the meantime, the patrol officers will interview the vessel crews and make a deposition, then search for other documentation that may serve as evidence, such as the shipping order and fuel record in the engine room.

3) Difficulties encountered

In order to dodge inspection, some oil barges rendezvous with buyers outside of contiguous zone to conduct oil transfer. In the event they are caught engaging in such activities within Taiwan's jurisdiction and within Taiwanese waters, the two involved parties conspire with one another and claim to patrol officers the fishing vessel is running out of fuel and that it is a case of emergency; crews of the oil barge argue they are only transferring a small amount of fuel to the fishing vessels out of 'moral conscience', and for 'emergency assistance and rescue' reasons. Therefore, their act is not a prearranged one. For this reason, it is harder for courts or authoritative bodies to prosecute the parties involved when dealing with such cases.

6.2. Current progress of law enforcement efforts to clamp down on encroaching Chinese fishing vessels

1) Statistics

Table 1 shows the statistics on the cases of encroaching Chinese fishing vessels caught by the TCG in the past 5 years. Unfortunately, even with reinforced equipment and an expansive patrol area, the

TCG cannot effectively deter encroaching Chinese fishing vessels, and the illegal fishing activities of these vessels are posing serious threats to Taiwan's fisheries resources, while at the same time making it more difficult for Taiwanese fishermen to make a living working in our waters.

2) Standard procedure

According to the TCG's documented standard operation procedure, the following are the procedures of law enforcement and clamp down of encroaching Chinese fishing vessels:

1. Procedure for dealing with Chinese vessels encroaching Taiwanese waters without permission:
 - a. Chinese vessels found in restricted waters should be deterred; vessels found in prohibited waters must be forced to leave
 - b. Any vessel deemed suspicious must be inspected; should a vessel refuse to leave and is suspected to be involved in smuggling or illegal fishing activities in prohibited waters, their vessel, possessions and crew should be detained.
 - c. Subjects who violate the law, such as by conducting fishing activities in restricted or prohibited waters, their vessel, possessions, and crew should be detained.
 - d. If, following investigation, the detained vessel is proved to have engaged in illegal activity, including weapon possession, smuggling, illegal fisheries activities, illegal transfer of passengers from Taiwan and China, or threatening action towards patrol vessels, the vessel will be confiscated. If, following investigation, the detained vessel is proved to have engaged in fishing activities, or has been detained more than twice before, the vessel will be confiscated.
2. According to the document of follow-up tasks concerning Chinese vessels entering restricted or prohibited waters without permission, the following are definitions of ineffective banishment: (CGA, 2007)
 - a. Subjects who ignore orders, and refuse to leave the spot and continue to remain in the area after the orders are given.
 - b. Subjects who refuse boarding inspection.
 - c. It is evident that when the order to leave is given, the subject is obviously using net hauling as an excuse to linger on and not leave immediately.
 - d. Following banishment to 12 or 24 nautical-mile areas, the subject in question returns.
 - e. Following banishment, the subject in question returns on the same day.
 - f. Subjects who have been banished twice already.
 - g. Subjects who do not cooperate with orders or use threatening actions.



h. According to the situation, the banishment order continues to be ignored following orders given by other authoritative bodies.

3) Difficulties encountered

The most often encountered issues in enforcing encroaching Chinese vessel clamp down operations include 1) safety concerns for law-enforcing officers when encountering a group of 50 to 80 illegal vessels (according to the rules set out, each illegal vessel needs to be escorted and guided by two patrol vessels). Therefore, in the case of large group of illegal vessels, the patrol officers can only select a few vessels to manage at one time; 2) once patrol officers are onboard and have secured their rights of control, they begin to verify the identity of the vessel and its crew. However, the majority of Chinese crew members either do not have their identity documentation on their person when fishing or claim those documents are with their vessel owners. This means patrol officers cannot authenticate the identity and information provided by the crew members; 3) to avoid detention in instances where their catch and equipment may be confiscated, some vessels refuse boarding inspection by swerving their vessels, and even risk the safety of their crew by suggesting crew members climb onto the side rails of the vessel to fend off approaching patrol vessels. Under such circumstances, considering the principle of proportionality, the patrol officers tend to adopt verbal orders to banish the vessels; 4) in some situations, some crews try to threaten and even viciously attack patrol officers with weapons, such as knives and bats. Because forced boarding inspection means only one to two officers can board the Chinese fishing vessel at one time, it is very dangerous to leave the outnumbered officers in the presence of potentially 15 to 18 crew members on a rocking vessel that has many blind spots, as they cannot effectively assess the situation they are in. However, the patrol vessels also potentially face questioning by higher authorities for the timing and need to employ such extreme measures, should they choose to employ lethal weapon action; 5) Higher authorities do not wish front-line patrol officers resort to the use of lethal weapons when confronted with Chinese fishermen attempting to provoke or attack officers, despite in many instances the life and safety of patrol officers have been under serious threat. Therefore, patrol officers are only equipped with the use of non-lethal weapons. However, in reality, non-lethal weapons, such as tear gas, are ineffective when used in the large open space at sea, while stun guns are only effective in detaining one to two persons at a given time; 6) on the whole, patrol officers have not been joined by new recruits for over ten years. The average age of existing patrol officers in the Maritime Patrol Directorate General is 40, which means, whilst well experienced, the overall physical strength of officers is in decline. The large age gap in age is presenting a serious issue for the TCG; 7) there have been incidents in the past where forced boarding inspection resulted in the Chinese vessels initially pretending to cooperate, then once one or two patrol officers are onboard their vessel, they immediately start their vessels and swerve their way back towards China. In these incidents, some of the more alert officers, or those with a vantage point, have managed to defend themselves with weapons or escape by jumping over board. However, there have also been unfortunate cases where some officers were overpowered by the vessel's crew and used as hostages to help the Chinese vessel escape back to China; and 8) despite standard procedure stating that detained vessels proved to have engaged in illegal fisheries activities or have been detained more than twice before will be confiscated, in truth, the TCG struggles to offer locations to house the detained vessels. In addition, the auction process for the confiscated vessels is complex; it is also complicated, time-consuming, and expensive to arrange transportation for the detained crew members to be taken back. Furthermore, the TCG must bear in mind principles such as equal status across the strait and the mutually beneficial relationship maintained between Taiwan and

China. Because of these implications, up until now, no Chinese fishing vessel has actually been confiscated having been detained twice or more before for illegal fisheries activities.

CONCLUSIONS

Direct and severe impacts on the marine ecosystem and fisheries resources are clearly evident due to increasing Chinese fishing vessels operating in Taiwan's offshore waters in groups, and due to the unfriendly fishing methods they tend to adopt, such as three-layer gill nets and roller type trawlers. The number of fish is evidently decreasing, making it increasingly more difficult for Taiwanese fishermen to make a living from fishing. Furthermore, more and more oil barges converted from fishing vessels or obsolete oil tankers, as well as carrying vessels, are supplying oil fuel and everyday supplies to Chinese fishing vessels operating in Taiwan's offshore waters. These types of supply vessels usually lack appropriate safety equipment and measures, meaning when they engage in oil barging at sea, they are increasing the risk of polluting ocean waters, as well as violating regulations. Single-hull vessels that are old and obsolete cannot respond quickly and appropriately in emergencies and adverse weather conditions. For instance, under adverse weather conditions and northeasterly winds, such vessels are likely to suffer from structural damage. Should oil leaks occur, such vessels are most likely unable to stop the leak, stop or contain the spillage, recycle the oil, or burn the fuel on the spot.

It has become apparent that by merely conducting more patrols is ineffective in deterring encroaching Chinese fishing vessels and illegal oil barging activities. In order to deal with the increasing risk Chinese fishing vessels and converted oil barges have on the marine environment and resources, it is suggested that more effective and feasible strategies are adopted. Such strategies include the use of AIS equipments to better locate suspicious gatherings of fishing vessels; assigning better enforced patrol networks; the use unmanned aerial vehicles to help collect evidence; increasing fines, penalties and administrative penalties; and enhanced cross-strait communications on relevant issues.

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PUBLIC EVALUATIONS OF POLICE IN TAIWAN

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This study examines Taiwanese perceptions of police image and satisfaction with law and order. We propose a comprehensive model that consists of six groups of predictors, including demographic characteristics, experience with police, attitudes toward the government and legal system, the media, neighborhood structural and organizational characteristics, and locality. Survey data were collected from 2289 citizens residing within Taipei City, Taichung City, Kaohsiung City, Yunlin County and Taidong County. Public perceptions of police image and law and order are influenced mainly by individual-level predictors rather than neighborhood- and city/county-level predictors. Factors shaping perceptions of law and order include fear of crime, satisfaction with local government performance, and negative media reports of police. Gender, age, fear of crime, satisfaction with government performance and the criminal justice system, and known of and belief in negative media reports about police are linked to perceptions of police image.



ASIAN CRIMINOLOGICAL SOCIETY

PART 8

PROPERTY CRIME



A PRELIMINARY STUDY OF PREDICTIVE MODELS TO DETECT FRAUD ON ARSON-FOR-PROFIT IN FIRE INSURANCE

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The aim of this paper is to establish a model to aid law enforcement and fire department in their decision making to fight against fraud crime. Arson-for-profit is a major issue in this modern society, includes Taiwan; however, the pattern of this certain type of crime has not been identified yet. In which, based on the data-mining techniques, this article collects and integrates all the data from fire department, insurance department and criminal records to tag the pattern and characteristic of fraud crime in fire insurance. Concurrently, a data-mining based predictive model and warning system has been built for evaluating the possibility of crime incident of arson for profit from insurance deceit. In order to achieve the goal of anomaly detection, this paper conducts two calculi to evaluate the risk value of each case; moreover, to ensure the practicability of this model, a case study will also be introduced in this article.

INTRODUCTION

Arson has recently become an essential issue to social safety, besides causing the direct threaten to the public; also, disturbing social orders. According to the fire department in Taiwan, the fire incident records show a significant decrease from 2003 to 2010. In Taiwan, the average cases of fire incidents are approximately 4,803 ever year, and about 13 cases a day. Every year, the fire incidents result about 141 deaths, 474 injured and 31,516,000 dollars property lost; more, it costs 142,346,000 dollars per year. Overall, on the list of fire causes, the top three causes are a) electrical-rated, b) cigarette butt and c) arson and d) unknown (figure 1). Based on the fire department data, the negative approach of arson crime has showed since 2003 (figure 2), however, though arson-rated incidents had been decayed annual, it still causes 493 incidents per year; precisely, arson occurs 1~2 times every day.

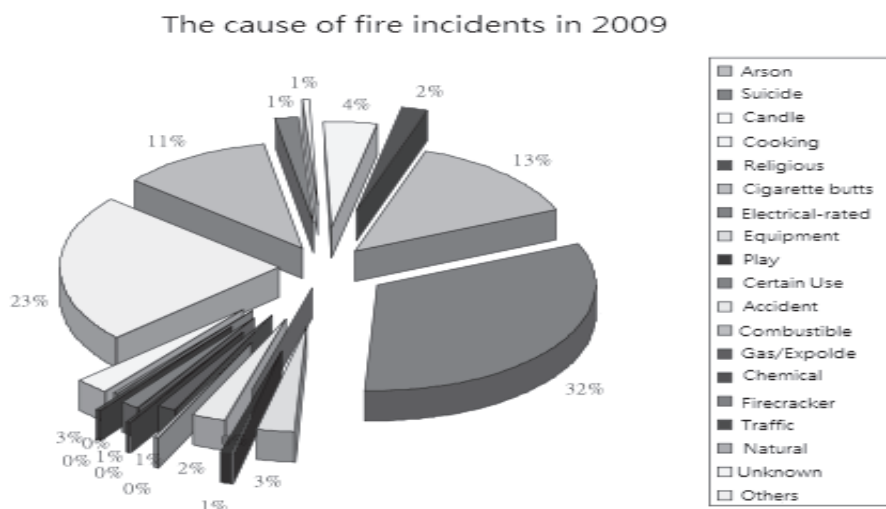


Figure 1. The pie chart of the cause of fire incidents in 2009.

The approach of Arson from 2003 to 2009

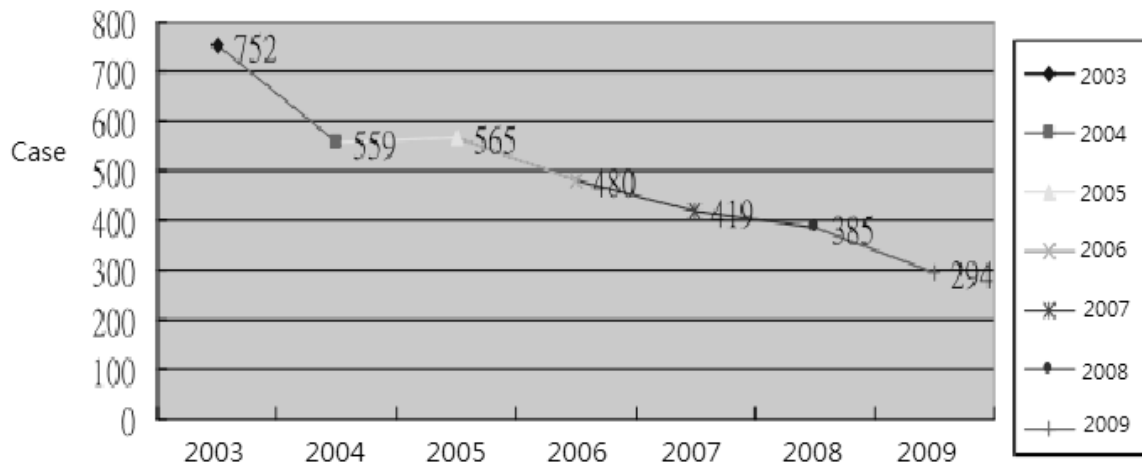


Figure 2. The approach of Arson from 2003 to 2009.

Precisely, arson-for profit is one of the particular arson types, which in this paper, particularly looking for the fraud in fire insurance that the ultimate goal for those fraudsters is to claim the insurance by setting fires. Due to the differences between this special type of fraud crime and the general fraud, adopting data-mining skills could help to identify the pattern and develop the intervention toward this type of crime. Specifically, the main concept of this detective model is to adopt early intervention to fraud in fire insurance.

By accessing the Arson Investigation and Prevention Database of Central Police University, Taiwan, this paper collects all the fire insurance data and fire incidents history. In which, it allows us to distinguish the correlation between each data; meanwhile, through reviewing literature and applying data-mining technique, this article expects to establish a predictive model that could be able to evaluate the possibility of fraud crime in fire insurance. In hence, supporting decision-makers from justice department and fire department to predict and prevent the crime.

LITERATURE REVIEW

According to Federal Bureau of Investigation, arson is one of the serious crimes in fire incidents, which can be categorized to several types: (1) vandalism; (2) revenge; (3) excitement; (4) crime concealment; (5) mixed; (6) mentally disordered and (7) profit (BATF and FBI cited in Rossmo, 2000). Profit-motivated arson is one beneficial crime that is aiming to be benefited through direct or indirect way, which is less emotional than other types of arson. Precisely, profited-motivated arson could be identified as fraud (insurance fraud, discharge fraud, hidden asset fraud and all other kinds of fraud), arson that authorized by others, products lost arson, business competition. In particular, Jou and Heberton (2007) identify several characteristics of fraudsters, for instance, they indicate that the offenders are usually be the owner of the business, the insured properties had usually been rented, the fraudsters would not wait for more than one year to commit the crime; also, they show less concert of lost and unable to provide the properties' proof of purchase.



Annually, Fraud crime results hundreds and thousands amount lost around the world; therefore, it is important to develop an intervention to reduce frauds. The intervention that particularly to fraud crime can be divided into fraud prevention and fraud detection (Bolton and Hand, 2002). The concept of detecting fraud is to automatize the process of monitoring fraud behavior in order to coop with law enforcement duty, which concludes the knowledge of Artificial Intelligence, Audit, Database, Computation, Specialized System, Fuzzy Logic, Gene Calculation, Mechanical Education, Artificial Neural Network, Statistic...etc.; hence, the application covers credit cards, electronic business, insurance, retail business and communication industry.

Many researches indicate the successful application of data-mining in predicting fraud crime. Data-mining focuses on certain types of fraud like money laundering, card fraud, phone fraud...etc. Also, it has been adapted in car insurance fraud and medical insurance fraud; however, this technique has not been applied to the area of fraud in fire insurance yet. Thus, in this paper, a predictive model would be introduced to calculate the possibility of fire insurance fraud. Briefly, Data-mining skills in fraud detection can be classified into two ways: a) supervised mode and b) unsupervised mode; which supervised mode clearly identifies fraud and non-fraud crime and produce an output model that has the ability to be applied by other cases. On the other hand, unsupervised mode is trying to detect the anomaly from the general data. An essential rule of adapting data-mining in detecting fraud is to ensure the data could be explicitly categorized as fraud. As in supervised methods, it includes linear discriminant analysis, logistic discrimination, neural networks, Rule-based methods, tree-based classification or the combination of all above methods; dissimilarly, the unsupervised methods mix the profiling and outlier detecting method up to categorize all data. Consequently, the result shows a positive correlation between suspicion score and the possibility of fraud, which provides an opportunity to prioritize data based on the potential of cases.

In 2004, Cahill et al (2004) indicate several methods especially for fraud detection, such as threshold-based detection, customer behavior tracking, signature detection and calculation to evaluate the possibility of fraud. Similarly, Yin (2008) adapts supervised mode to detect auction online. By accessing the data and history of each trade, she identifies the key factor and establishes a detection model. In hence, based on credit card records, Hand and Bolton (2008) use the unsupervised method to monitor the unusual change or trade; though not all results are consequently fraud, it still provides the opportunity to prioritize the potential fraud cases. Unfortunately, all these techniques focus on fraud of medical and car insurance, none of any article is especially demonstrate the fire insurance fraud so far.

METHODOLOGY

To fulfill the purpose of this paper, the tool conducts the professional opinions from insurance company, fire department and police detecting department. In which, it can be classified into four major parts: a) target, b) insurance, c) fire science and d) financial strength rating (see Figure 3). Also, based on the arson sources and data, several factors are defined especially for detecting model of fraud in fire insurance (Table 1). Due to the unique characteristic of fraud in fire insurance, profiling information allows us to identify this certain type of crime. Generally, accessing supervised mode of data-mining is necessary to classify history data and establish the standard model of classification first; in addition, verifying the accuracy of this model by adapting cases after to ensure the model is well-adjusted. However, when detecting fraud with unsupervised mode, it processes the technique of monitoring anomaly that could be able to pick out the "outliers" of general cases.

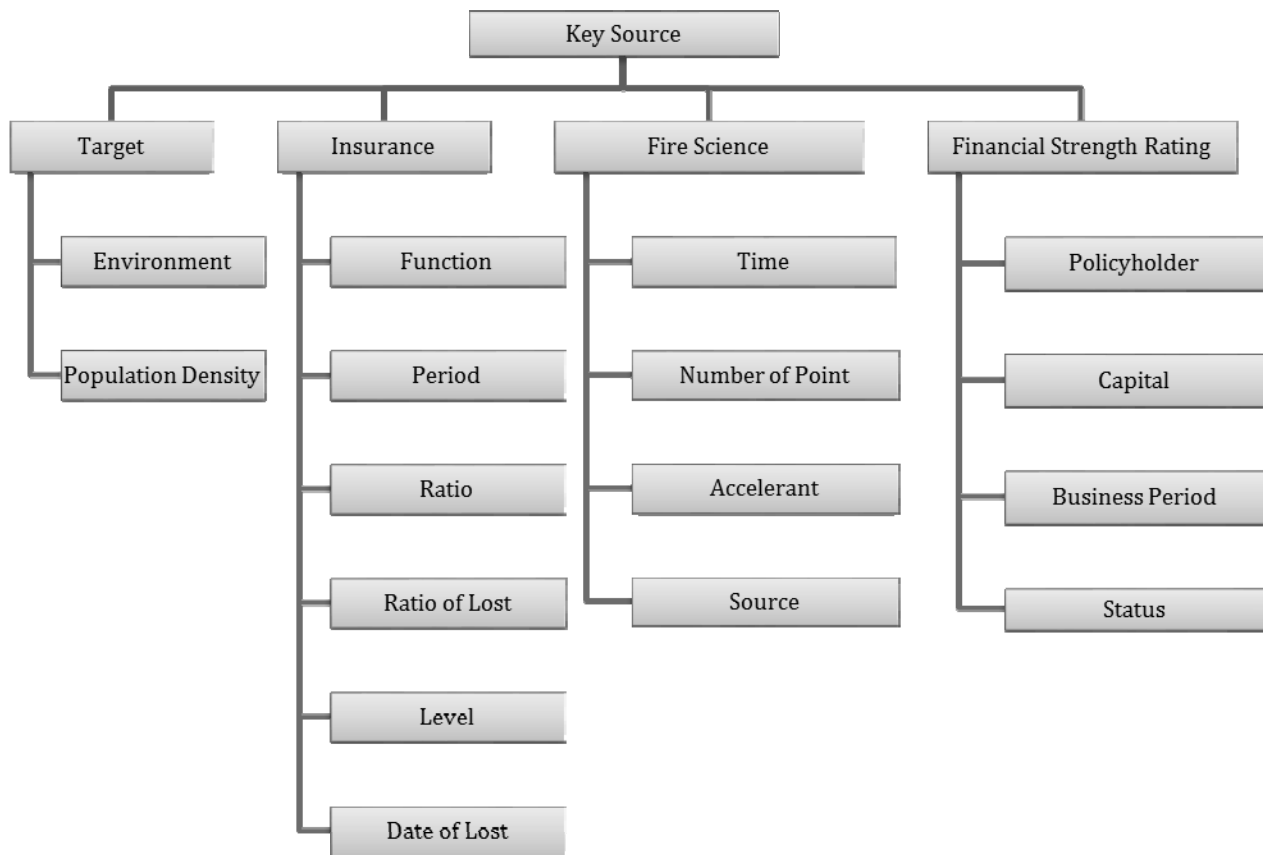


Figure 3. The key source of fraud in arson

No.	Factors	Definition	Type	Reference
1	Source	The source of fire incidents, authenticated by firefighters.	Category	Electronic-related fire incident, unexpected fire, potential arson.
2	Incident Time	The time fire incident happened.	Integer	0-24
3	Criminal record	The criminal record of policyholder.	Category	None, fraud, insurance fraud, arson, others
4	Function	The function of the building.	Category	Classified by insurance data.
5	Ratio of movable property	The ratio between movable property and company value.	Real number	Proportion.
6	Ratio of lost	The ratio between real lost and movable property value.	Real number	Proportion.
7	Period	Days between the incident and insured	Integer	



		day.		
8	Time	Days of policyholder apply for the indemnity after the incident.	Integer	
9	Records	Times of being compensated.	Integer	
10	Business Type	Public-owned or private.	Category	Public-owned or private.

Table 1. The factors of detecting arson fraud.

Anomaly detection can be achieved through the foundation of statistical theory, mechanic learning or data mining techniques. In this paper, we apply the proximity-based outlier detection method to target the anomaly. Specifically, the method detects anomaly outcomes by counting the dissimilarity between cases (Tan et al., 2005); which can also be seen as the “distance” from the process of counting the attribution between data. Meanwhile, to eliminate the effects that caused by large sources of data, imputing data reduction method should be done.

Dissimilarity is the foundation of many of data-mining and mechanical learning calculation, for instance, clustering analysis, nearest neighbor classification, anomaly detection and other evaluation that based on counting dissimilarity. Precisely, these calculi would imply different methods based on different attribution scale, which include interval scale, binary scale, nominal scale, ordinal scale and ratio scale. To develop the calculus, first, assuming that there are N cases in fire insurance; and profiling each of the case to get p attributes. Then, defining the cases that are consisted of p attributes as the data; which conduct the concept that if there are N fire insurance cases and contribute into X sets, it could be presented as an n-by-p matrix. Third, assigning the dissimilarity between data as $d(i,j)$, which i and j indicate two random data. Considering of the symmetry, the calculus of $d(i, j)$ would be $d(i, j) = d(j, i)$; meanwhile, same data would appear no distance which would be presented as $d(i, i) = 0$.

In this article, we provide two calculi that based on theories to detect fraud in fire insurance:

A. Calculus One: Counting the average dissimilarity of each case in general cases group and compare the results with the testing case group. Following by calculating the Mean and the standard deviation (SD) based on the general group, which can be defined as a standard for testing group to identify the dangerous coefficient (Figure 4).

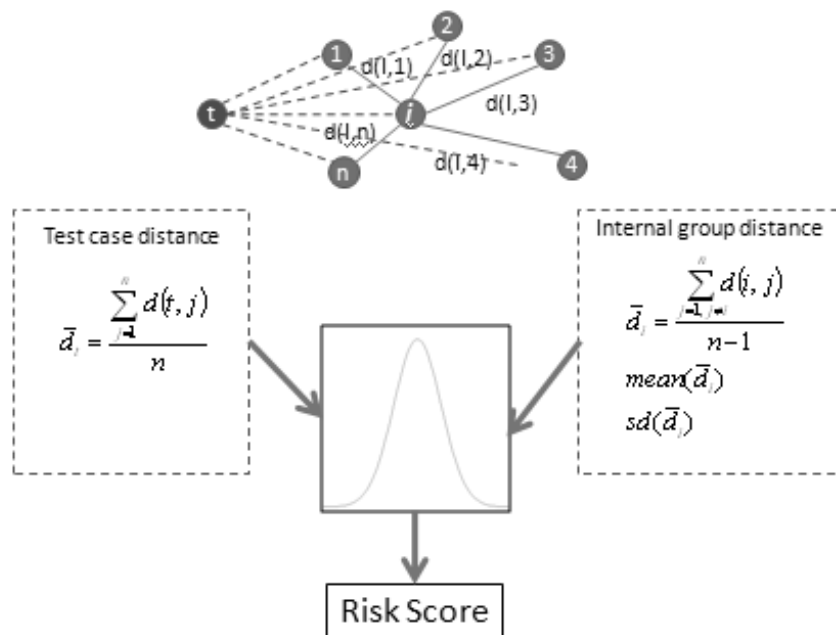


Figure 4. The concept of calculation one.

As knowing the general case sets comprise N data and p factors, a p dimension formula: $x_i = (x_{i1}, x_{i2}, \dots, x_{ip})$, $i = 1$ to N can be produced. Additionally, every key factor (x_i) could share different scale. Take general cases set as an example, assuming that there is a test case: $y_t = (x_{t1}, x_{t2}, \dots, x_{tp})$, the following step:

- (A) Importing N general data and the testing case.
- (B) Hypothesize that if $N < 50$,

1. Counting the dissimilarly and average distance between each data.

- (1) $d(i, j), i \neq j$
- (2)
$$\bar{d}_i = \frac{\sum_{j=1, j \neq i}^n d(i, j)}{n-1}, i \neq j$$

2. Counting total distance Mean and total distance standard deviation (SD).

- (1)
$$\bar{d} = \frac{\sum_{i=1}^n \bar{d}_i}{n}$$
- (2)
$$s_d = \sqrt{\frac{\sum (\bar{d}_i - \bar{d})^2}{n-1}}$$



3. Counting the average distance (\bar{d}_t) between test case and general set.
4. On the other hand, if $N > 30$, taking \bar{d} and s_d to produce normal distribution.

Else, taking \bar{d} and s_d to produce student-t distribution.

5. Counting risk coefficient by the dissimilarity of test cases.

(C) Hypothesized that if $N > 50$,

1. Randomly select 50 set from general cases and each of set has 30 cases.
2. For each selecting case:
 - (1) Counting the average dissimilarity \bar{d}_t^j of each case.
 - (2) Counting the average dissimilarity d_t^j of test case.
 - (3) Counting total distance Mean and total distance standard deviation (SD).
 - (4) By the results of mean and SD to produce normal distribution.
 - (5) Based on the average dissimilarity d_t^j of test case to count risk score, that is $rs(j)$.
3. Establishing the risk score set.
 - (1) Counting average risk value/ score.
 - (2) Counting the confidence interval of average risk value/ score.

By processing the calculus above, the risk level of a certain testing case can be identified; which allows a further investigation to it and also achieve a successful detection system.

B. Calculus Two: Counting the dissimilarity of every case and identifying the nearest case based on the results. Meanwhile, the difference threshold values in this calculus would be the standard deviation (SD) of the distance. Therefore, the less near of the cases, the large the dissimilarity is (Figure 5).

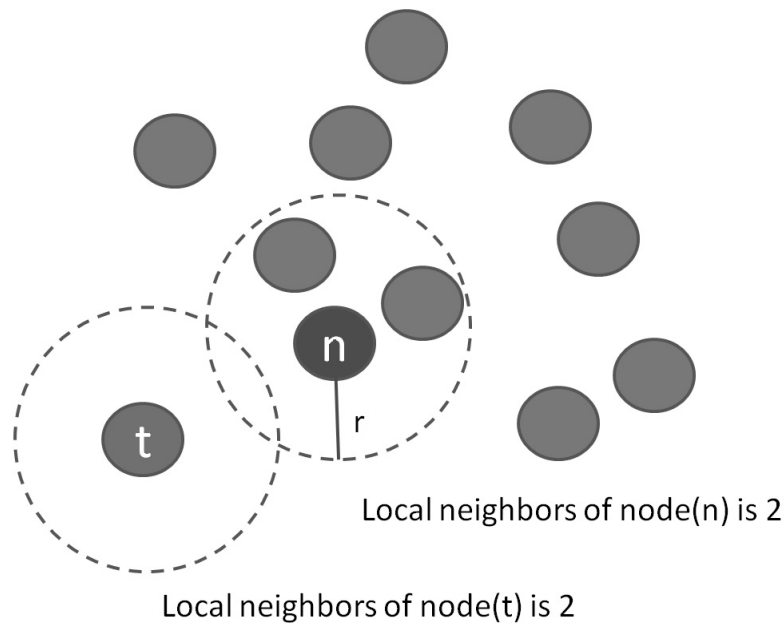


Figure 5. The concept of calculating risk factors.

- A. Randomly select N data from general cases, also, add in test cases.
- B. Counting the distance, Mean and standard deviation (SD) between data.

$$d_i = d(x_i, x_j), i \neq j$$

$$(1) \text{mean}(d) = \frac{\sum_{i=1}^{n+1} d_i}{n+1}$$

$$sd(d)$$

- C. Based on the Mean and the difference threshold values to calculate the nearest cases data, count ($d_i < sd(d)$).
- D. The results allow the calculus to build a normal distribution and produce the risk value of each case.

Case Study

An empirical case of fraud in fire insurance is Peng's case in Taiwan. During decades, Peng and his clan committed 18 fraud crimes since 1999; which located all over Taiwan. The certain crime pattern of Peng is by taking over the failing business or factories and claimed the fine status of the company to get insured with large amount; afterwards, setting the property on fire to claim for the compensation. Table 2 indicates the certain information about Peng's case that includes the type of business, the insured period, the amount he claimed compare to the insured amount; also, the source of fire incident that authenticated by fire department.

	Business Type	New Client	Insured period	Compensation minus Insured amount	Source
Case 1	Karaoke	Unknown	Around 8 months	+ 1,320,000	Unknown
Case 2	Internet Cafe	Yes	Around 2 months	- 4,490,000	Accelerant
Case 3	Karaoke	Yes	Around 2 months	- 11,800,000	Electric wire-related
Case 4	Factory	Yes	Around 3 months	- 1.14 Billion	Arson
Case 5	Factory	Yes	Around 4 months	+ 9,710,000	Arson
Case 6	Store	Yes	Around 2 months	+ 5,540,000	Unknown
Case 7	Restaurant	Unknown	Around 3 months	None	Electric wire-related
Case 8	Warehouse	Yes	Around 4 months	+1,370,000	Arson
Case 9	Factory	Unknown	Around 9 months	None	Accident
Case 10	Store	Yes	Around 1 month	+12,040,000	Electric wire-related
Case 11	Sauna	Yes	Around 2 months	- 673,300,000	Arson
Case 12	Restaurant	Yes	Around 5 months	- 8,870,000	Unknown
Case 13	Karaoke	Yes	Around 1 month	None	Unknown
Case 14	Factory	Yes	Around 6 months	+ 2.98 Billion	Arson
Case 15	Restaurant	Unknown	Around 1 month	- 5,100,000	Electric wire-related
Case 16	Restaurant	Unknown	Around 1 month	- 9,100,000	Religious-related
Case 17	Restaurant	Unknown	Around 1 month	+ 8,130,000	Arson
Case 18	Store	Unknown	Around 2 months	- 1,000,000	Unknown

Table 2. The table of the characteristics of Peng's cases.

According to the table, the result indicates certain characteristics of fire insurance fraud:

- A. The type of business: as data shows, the main types of the business are commercial and entertainment, which allows the offender set low-quality interior of the scene and charge for high-amount insurance, aiming to be profited after the incidents.
- B. New client to insurance company: as Peng's data, over half of the cases were the new client to the different insurance companies, which can be identified that fraudsters in fire insurance are usually new client to the insurance company to get insured easily.
- C. Period of days between the incident and insured day: according to the result, the period usually less than 3 months (Figure 6). As Jou and Heberton (2007) indicate, the fraudsters would wait no more than a year to commit the crime, which in this case, Peng and his clan mostly could only wait for 3 months before committing crimes.

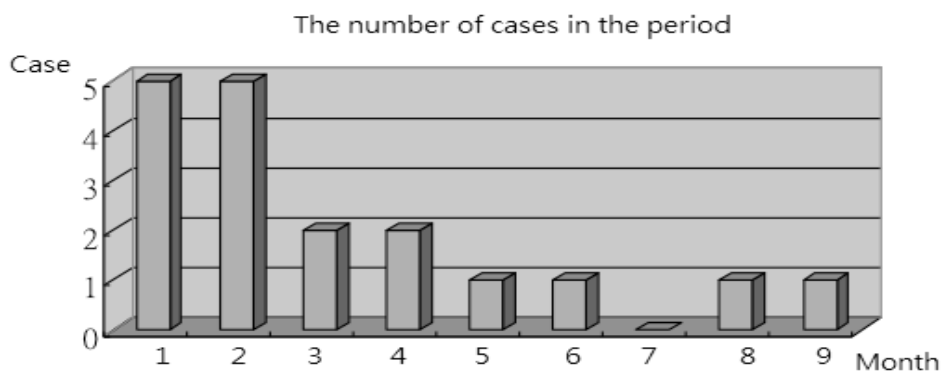


Figure 6. The period of days between the incident and insured day in Peng's case.

RESULT

To ensure the quality and the validity of the calculi, Peng's case has been applied. After selecting valid data that based on the classification of each business type, the outcomes classify all types into 6 sets in and identify 17 valid data (Table 3), which would be the sample of this test.

Case	Insurance Number	Type of Business	Insured Amount	Moveable Property Amount	Insured Period	Ratio
1	931093xxxxxxx	N1302A7	34,060,000	31,260,000	79	0.92
2	0091RCxxxxxxx	N1310L7	53,500,000	46,000,000	191	0.86
3	2091G0xxxxxxx	G0006A6	7,200,000	6,200,000	68	0.86
4	2091G0xxxxxxx	G0006A6	3,000,000	2,375,000	30	0.79
5	91O000xxxxxxx	G0006A6	3,000,000	1,375,000	30	0.46
6	89O001xxxxxxx	N1302A7	38,100,000	38,100,000	83	1.00
7	92SO00xxxxxxx	G0005A9	14,000,000	8,000,000	38	0.57
8	90A000xxxxxxx	C5001A8	828,000	528,000	90	0.64
9	91F000xxxxxxx	G0006A6	5,400,000	750,000	68	0.14
10	0487ZMxxxxxxx	G0006A6	29,700,000	8,700,000	275	0.29

11	89FGP0xxxxxx	G0006A6	10,950,000	4,650,000	54	0.42
12	91FZP0xxxxxx	G0006A6	5,400,000	750,000	68	0.14
13	90FZP0xxxxxx	C1301C2	12,400,000	7,200,000	46	0.58
14	90G90xxxxxx	G0005A9	38,000,000	30,000,000	185	0.79
15	91A00xxxxxx	N1310L7	53,500,000	46,000,000	191	0.86
16	92FGP0xxxxxx	G0005A9	20,000,000	8,000,000	48	0.40
17	310393xxxxxx	C1301C2	32,000,000	0	76	0.00

Table 3. The sample of the test, Peng's case.

Importing the data into the two calculi this paper conduct, the purpose is to count the risk value of each case to verify the validity of the calculi. By analysing Peng's data, two main factors are specifically targeted as its positive correlation with the risk value. One is the Period of days between the incident and insured day, which in Peng's case, the clan were less patient to wait over 3 months to commit arson, as a results, the factor can be identified as one of the high correlation factor in counting risks; meanwhile, another factor is the ratio of moveable property that indicates the "gambling" attitude of the offenders, also, it shows an unusual motives to claim more money than the insured properties. Thus, put the identified factors into the calculations, the results show as Table 4 and 5.

Case	Insurance Number	Type of Business	Period	Ratio	Risk Value	
1	931093xxxxxx	N1302A7	79	0.92	39.90	46.01
2	0091RCxxxxxx	N1310L7	191	0.86	25.77	31.33
3	2091G0xxxxxx	G0006A6	68	0.86	47.54	
4	2091G0xxxxxx	G0006A6	30	0.79	74.26	
5	91O000xxxxxx	G0006A6	30	0.46	62.81	
6	89O001xxxxxx	N1302A7	83	1.00	39.51	45.93
7	92SO00xxxxxx	G0005A9	38	0.57	59.81	66.03
8	90A000xxxxxx	C5001A8	90	0.64	36.88	43.87
9	91F000xxxxxx	G0006A6	68	0.14	28.27	
10	0487ZMxxxxxx	G0006A6	275	0.29	44.07	
11	89FGP0xxxxxx	G0006A6	54	0.42	38.69	
12	91FZP0xxxxxx	G0006A6	68	0.14	28.27	
13	90FZP0xxxxxx	C1301C2	46	0.58	33.64	
14	90G90xxxxxx	G0005A9	185	0.79	30.54	37.15
15	91A00xxxxxx	N1310L7	191	0.86	25.77	31.33
16	92FGP0xxxxxx	G0005A9	48	0.40	51.54	58.15
17	310393xxxxxx	C1301C2	76	0.00	19.00	

Table 4. The application of peng's case in calculus one.

Case	Insurance Number	Type of Business	Period	Ratio	Risk Value
1	931093xxxxxx	N1302A7	79	0.92	39.85
2	0091RCxxxxxx	N1310L7	191	0.86	24.63
3	2091G0xxxxxx	G0006A6	68	0.86	45.59
4	2091G0xxxxxx	G0006A6	30	0.79	92.91
5	91O000xxxxxx	G0006A6	30	0.46	92.91
6	89O001xxxxxx	N1302A7	83	1.00	60.57
7	92SO00xxxxxx	G0005A9	38	0.57	62.22
8	90A000xxxxxx	C5001A8	90	0.64	72.79
9	91F000xxxxxx	G0006A6	68	0.14	22.99
10	0487ZMxxxxxx	G0006A6	275	0.29	69.00
11	89FGP0xxxxxx	G0006A6	54	0.42	76.04
12	91FZP0xxxxxx	G0006A6	68	0.14	22.99
13	90FZP0xxxxxx	C1301C2	46	0.58	78.87
14	90G90xxxxxx	G0005A9	185	0.79	92.67
15	91A00xxxxxx	N1310L7	191	0.86	24.63
16	92FGP0xxxxxx	G0005A9	48	0.40	26.85
17	310393xxxxxx	C1301C2	76	0.00	56.31

Table 5. The application of peng’s case in calculus two.

As the result shows, the calculi show the availability in detecting the high-risk cases. The risk data indicates the high possibility of fraud while the value achieves 60; in which, compare the calculus one to calculus two, a significant success appears in the application of calculus two (9 out of 17). This outcome demonstrates the validity and the accessibility of the calculi that allows us to believe the possibility of this predictive model to detecting the fraud in fire insurance.

CONCLUSION

This study is aiming to establish a prototype of detective model in fire insurance fraud by reviewing profit-motivated arson and applying data-mining technique. The purpose of this model is to use dissimilarity as the foundation of anomaly detection, which by importing general fire incidents data profiling and the analysis of targeted cases; it resulted a risk value/ score that allows the law enforcement for detecting insurance fraud. In this case, considering the cases normally attached with the information from criminal department, fire department and insurance company, which relate to the confidentiality, some of the case information have been blocked.

Consequently, the result of applying the case into calculi indicates the availability of this model. However, in the future, this study would focus on a higher verifiability and adaptability of the model; for instance, to improve the model by asymmetrical distribution. Meanwhile, expecting to set up one arson investigation and prevention database by integrating data of fire insurance, history and criminal records to support the detection model.

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AN EMPIRICAL STUDY ON ASSIGNMENT OF EMERGING CRIMINAL FRAUD GROUP: CASES STUDY IN TAIWAN

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With the mass-use of cell phone, ATMs, Internet, and other communication technology recently, these new forms of information exchange have also allowed criminals to find new hiding places that are transnational, often very difficult to uncover, and also given rapid rise to fraudulent activity which has become a major concern for both law enforcement officials and the general public alike. Professional criminal fraud groups employ a vast array of techniques to cheat ignorant victims of their money, and are constantly innovating and finding new ways into others' wallets. The study involved methods including "Document Review", "In-Depth Interviewing", and "Panel Discussions" to take aim at rising cases of emerging criminal fraud in Taiwan in order to empirically document the links among techniques, assignment, the main procedure, and other crime/victim contexts of emerging criminal fraud.

INTRODUCTION

Rapid growth in both quantity and quality of crime causes heavy property loss to society in Taiwan. Statistics clearly show that cases of emerging criminal fraud have been growing steadily over the past few years. Despite the central government of Taiwan "declaring war" on criminal fraud in April of 2004, and launched an anti-fraud crackdown a almost 1000 cases¹, a total of more than 12,000 individuals were arrested in the period. From the above numbers, we can see that the police investigative work is definitely improving as more cases were discovered, but there still were more than 260,000 cases and the penetration and fraudulent fund transfers in financial, telecom and information database systems exceeded 5 million millions Taiwan dollars², equal to 1100 hundreds million USD from the year of 2004 to 2010. But of course, this doesn't take into consideration the large amount of fraudulent activity that goes unreported, and actual total cases may actually far surpass the official statistics, thus posing a serious threat to the overall social order. Therefore, there is currently an urgent need to address the problem head on and bring the growing problem under control.

Level and social status of targeted victims wide; criminal activity not limited by time, space or distance

We can determine that the principle characteristic of emerging criminal fraud is that it is now dominated by manipulation of information available via Internet usage, ATMs and cell phones. And due to the often indirect attacks made via these means, not only are more people negatively impacted, but often those are outside the criminal's original target zone. So the victim pool is growing, and people in all strata of society are at risk as there are no safe neighborhoods from this new type of criminal fraud.

Despite more legislation, police still facing greater challenges

Although recent anti-fraud legislation includes Criminal Laws: Nos. 339, 339-1, 339-2, and 339-3, all of which complement current laws on the books targeting counterfeit documentation and money laundering activities, false asset declarations led to the reform and passing of No. 341 which made it

¹ Scale of cases are those involving criminal groups with 3 or more members, and victims per case of at least 10.

²National Police Agency. *Statistic lists*. Retrieved Sep.29th,2010,from <http://www.npa.gov.tw>.



easier to sentence fines and penalties on fraudulent activity committed within the past five years, and streamlined the process of bringing to justice perpetrators of criminal fraud, electronic hacking, and general breaches of contract from 2001 onward in Taiwan.

Due to the difficulty of jailing perpetrators of criminal fraud, law enforcement officials are currently bearing the brunt of the investigative burden in Taiwan tracking down criminally fraudulent practices. And given the limited resources of police for both investigation and prosecution, and the growing platforms for criminal activity, professional fraudsters are having a heyday.

Academic circles do not pay enough attention to the study of criminal fraud organization

There are only a limited number of comprehensive academic studies in Taiwan today which take an in-depth look at the growing criminal fraud problem on the island, and most study of such topics is particularly restricted within the areas of the technique and history of criminal fraud, as well as breaking down statistics, not only to show the different levels and scales of fraud but also to offer comparative analysis. Also, such studies make it hard for readers to determine exact motives, incentives and strategies of criminal fraudsters and organizations. There is also little knowing about how fraudsters get started in their “trade,” what sort of risk management measures they take, and the mental decision process they go through when committing crimes.

“Emerging criminal fraud ” is much differ from “traditional crime” in many areas where research has not produced enough case examples to make for meaningful or statistically-accurate analysis and data, and therefore the timely implementation of necessary preventative and protective measures to fight this societal scourge remain a thing of the future.

METHOD

The main purpose of the study is not only to empirically document the links among schemes of criminal fraud, and the main crime Assignment of criminal fraud organizations, and other crime/victim contexts of emerging criminal fraud, but also to combine the above findings with proper criminology theory. Further, this study report hopes to broaden the understanding of the breadth and methodology of criminal fraud on Taiwan, and hopes to provide a starting point or even a direction for new preventative policy and legislation going forward. The main data of the study were collected through the qualitative approach of case study, and there are three major sources of data on emerging criminal fraud group – document review, in-depth interviews, and panel discussions – to take aim at rising cases of emerging criminal fraud in Taiwan.

In order to comprehend the amount of damage, the breadth and methodology, and other information on criminal fraud group in Taiwan, document review was conducted within various data including official documents, police statistics, investigation reports, academic paper, newspaper, and etc. In addition to document review, in-depth interviews were conducted to obtain the primary data of the study. The interviews included twelve members from different two criminal fraud groups, and twenty victims of different fraud types, totally thirty-two interviewees. An interview schedule was constructed for the purpose of making the interviews as uniform as possible. The schedule consisted of interviewee’s background, details of criminal/victimized experience, interviewee’s self-control, opportunity structure for crime/victim, key point of being criminals/victims, suggestion for law enforcement agencies, and etc. All interviews were at last sixty minutes and all subjects were

interviewed once. To obtain information and opinions from scholars and police personnel, two panel discussions were held.

RESULTS

With regard to “emerging criminal fraud group”, this research uses the following definition: “Groups taking any nefarious activity including electronic invasion, breach of contract, false information issuance, or other means that result in the illegal and unfair gaining of funds.” This research report hopes to broaden the understanding of criminal fraud groups in Taiwan, and to provide a starting point or even a direction for new preventative policy and legislation going forward.

1. Frequent fraud schemes

According to statistical data from the Central Investigation Bureau in Taiwan, there are more than 70 fraud schemes used by criminal fraud groups constantly and repeatedly. And, most common 10 are analyzed below:

(1) Tax reimbursement/refund fraud

Criminals posing as National Tax Bureau officials, Labor Ministry officials, or National Health Insurance representatives make telephone calls to unsuspecting individuals, targeting the elderly and retirees in particular. They claim the government will return a sum of money that was overpaid by the victim as tax or other fees, and financial account information is requested. Victims often readily provide it if the caller sounds authentic. The distraction that offers of money provide also causes many victims to be less vigilant and suspicious than they normally would. Victims are even told they need to go to an ATM to collect their refunds, following their disclosing account information to the caller, only to find their ATM accounts sucked dry when they arrive at the machines.

(2) Shopping fraud

Criminals place ads in print or broadcast media, or send by SMS, and when victims call the numbers provided, the scammers ask for – and are often given – vital financial account information in the guise of needing it to pay for and ship purchased merchandise. Shoddy goods, or no goods at all are ultimately delivered, and the victim’s bank account has been raided.

(3) Credit card/loan agency fraud

Criminals often put ads in newspapers and magazines for unrealistically-low interest credit cards or emergency loans. They target desperate victims in financial distress or on the verge of bankruptcy. Victims are asked to call a toll-free number, and after describing their predicament to a voice on the other end, they are asked to send specific financial details so that the credit card issuer or hardship loan provider can better serve their needs. But these details are above and beyond what a legitimate card issuer would request, and the privileged information is often quickly used for illegal financial gain before anything is suspected. Meanwhile, during the application process, the applicant might be asked to provide legal fees, processing fees, agent fees, or other fees to “provide for any future possibilities.” In the process, the criminal gains access to a whole range of financial information



from the victim, often including bank account information. Emergency loans might be promised in the form of account transfers – almost all of which are bogus and not recognized by the victim's bank. When the credit companies or loan agencies receive faxed applications rich with the victim's sensitive information, the fraud and theft is free to begin in an unbridled fashion. Often the victim might receive a phone call from someone claiming to be a bank and/or loan/credit official saying that transactions related to the borrowing or credit can be conducted over the phone, automatically – including bank/ATM fund transfers. A computerized voice might be employed which gives the appearance of more legitimacy, and rules out any revealing question/answer sessions or nervousness in the voice of the criminal.

(4) Police officer impersonation fraud

Criminals gather sensitive personal information about a potential victim, claiming to have found their lost ATM card, or caught someone in the act of unlawfully using the victim's money in some way. Police ask the victim to verify card numbers and even passwords, and the rest is history.

(5) "Guess who I am?" fraud

Tricksters surreptitiously collect basic information about an intended victim such as ID card numbers, date of birth, and telephone numbers. They call the victim and ask to "guess who I am?" The victim takes the caller for a friend playing a bit of friendly mischief, and suggest a few names. The criminal pretends to be one of the guesses, then claims to be in some trouble and in need of immediate financial assistance. Financial account/ATM information is given, and the deed is done.

(6) Lottery ticket scams

Criminal fraud groups and scam artists also create bogus companies which in turn distribute scratch-and-win lottery tickets which reveal winnings and prizes after victims scratch off the gray areas. When the victim tries to collect the prize, many fees are first asked to be paid before collection of the prize money or gift is possible, including: legal fees, taxes, agent fees, company membership fees, currency exchange differential fees, or even requirements that the "prizewinner" join the Hong Kong Jockey Club and pay all the related fees. As all these transactions are requested to be sent electronically, the process is quick and impersonal, and the victim – often distracted by the excitement of winning – suspects no foul play before it's too late.

Criminal groups are very savvy, and often put pictures of missing children or telephone numbers of charitable organizations seeking donations at the bottom of their bogus lottery publicity posters to try to look more legitimate and above board. Some even are cheeky enough to take out advertising space in well-known respectable magazines and newspapers and print fake winner's list to build confidence in their operations. For example, Hong Kong-related ads once used pictures of former HK leader Tong Cheng-hwa to further boost authenticity. No matter whether rich or poor, young or old.. all are potential victims in this mass-media-based assault for ill-got gains.

(7) Job application/search fraud

Job offers, especially in the fields of live-in maid work, service sector, telemarketers, switchboard operator, accounting, public relations and modeling – are advertised. When often desperate unemployed victims call, they are promised a month's salary if they accept various offers, being

told that the money will be electronically transferred to their account if they provide the requested information. They might find soon after that their bank accounts or ATM account has been raided.

(8) Fraudulent ATM theft

For the purposes of this study, it refers to any activity wherein a group or individual gains access to a victim's ATM card, or produces a counterfeit version, with such access against the wishes of the cardholder or without his/her knowledge, and illegally procure funds from the account. Once gaining access to the account, criminals can either directly withdraw funds, or transfer money to a third party account. Sometimes a pin-hole/concealed camera might be illegally installed at or around an ATM machine which allows criminals to gain access to vital data input information including bank balances, card numbers, and of course passwords. Concealed cameras might be installed in high-traffic areas that can gain a great deal of unauthorized information in a very short period. These cameras are installed in increasingly sophisticated ways and are nearly impossible to detect to the untrained eye.

(9) Extortion telephone call fraud

Criminals not only take advantage of victims' desire for wealth and cheaper products, but also seek to capitalize on their lapse of judgment in times of panic or distress. They make calls pretending to be a friend or family member in distress in desperate need of immediate funds, eg: being kidnapped or involved in a traffic accident where the relatives of the "injured or dead party" are seeking immediate compensation and are threatening to give a violent settlement to the matter if they are not promptly paid. The criminal may do some preliminary research into the victim and may know in advance the names of the victim's family members or friends in illegal ways, and claim to be such a person. During these distress calls, the criminal will often scream and speak so quickly that the victim cannot clearly make out that the caller is not who he says he is. Another trick is to pose as a bank official and claim the victim's credit card or ATM card is at that very moment being misused by a thief, and financial details of the victim's account are needed immediately to put a stop order on the card.

(10) Cell phone short-message fraud

Fraudsters often use any form of media to promote the sale of merchandise at ridiculously low prices, or use automated computer networks to mass-distribute short messages (SMS) via potential victims' cell phones. When victims call the numbers on the phone displays asking about products, prices, and delivery, they are asked to call with bank account information – or asked to provide it via SMS – to make the sale and delivery happen. Criminals take advantage of the populace's lack of knowledge on the proper way electronic money transfers are supposed to proceed. If actual products are available, they are not sold for the originally-stated prices, and funds far in excess are deducted from the victim's account. Sometimes, a disturbing message might be sent by someone posing as a friend claiming they've been kidnapped and need ransom immediately, or a criminal might pose as a bank official saying there is a problem with the victim's account and crucial data is needed immediately.

According to frequent crime schemes analysis, the study generalize crime schemes procedure as Figure 1.

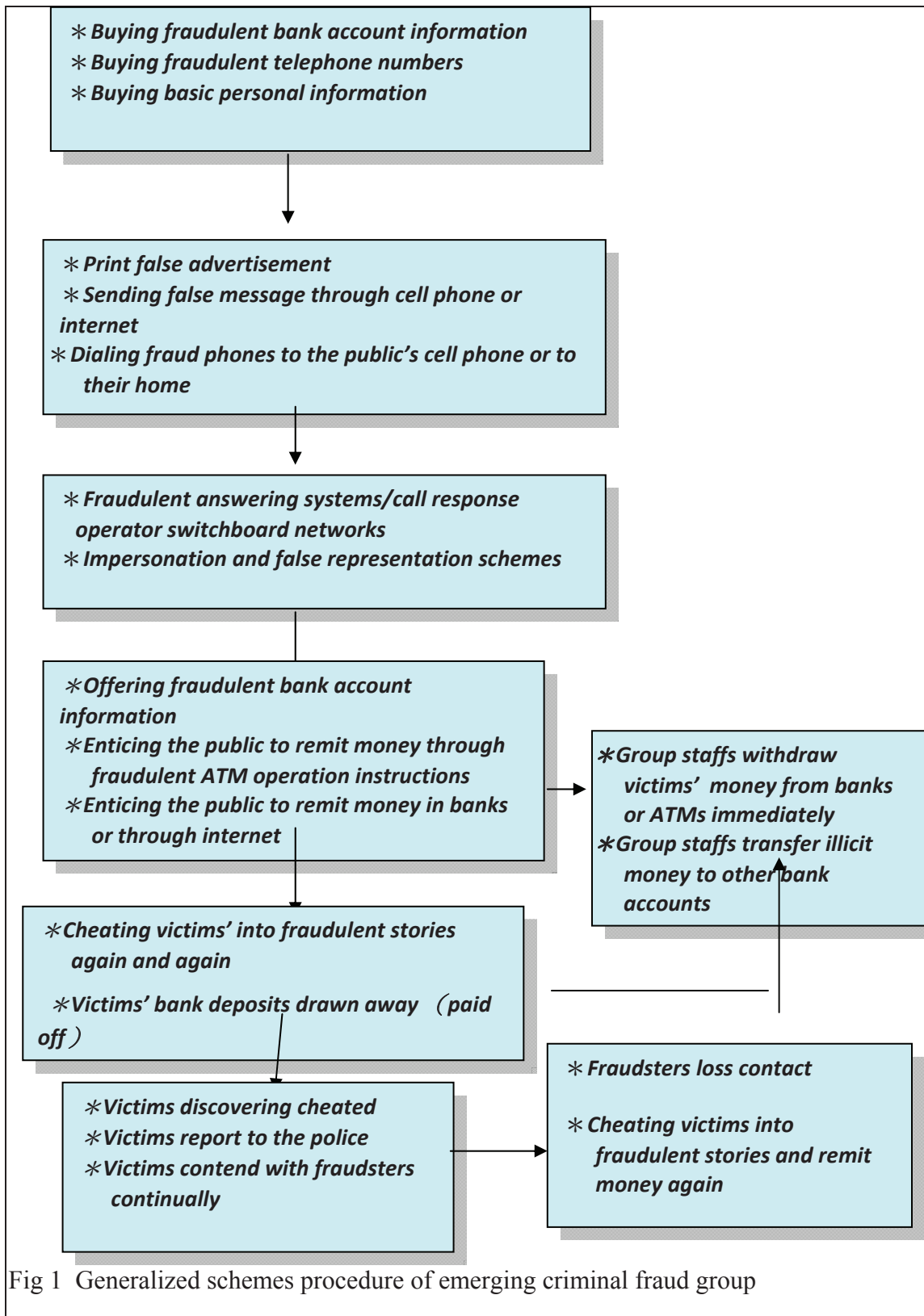


Fig 1 Generalized schemes procedure of emerging criminal fraud group

2. Crime/ Victim procedure of emerging criminal fraud

Professional criminal fraud groups employ a vast array of techniques to cheat ignorant victims of their money, and are constantly innovating and finding new ways into others' wallets. In Figure 2, we can see the procedure of how fraudsters characteristically take advantage of victims' ignorance of scheme techniques, unfamiliarity with financial systems and electronic money withdrawal/transfer particulars, the general public's general ignorance about the authenticity of stated identities and how to verify truth from deception in this area, and other defects. Usually, criminals also expertly fully take advantage of people's natural greed, as well as innocence and naiveté, to lure their prey while not raising alarm bells. It is obvious that preventative measures against fraudsters' evolving techniques are sorely lacking, society is generally inexperienced with the threat of fraud, and people are often swindled without their even knowing it due to ignorance and lack of vigilance.

In addition, "Emerging criminal fraud" shows fraudsters attempt to swindle anyone and everyone, and don't discriminate on the basis of age, gender, educational background or social status. Every scheme and scam can snare any number of victims – from a single unfortunate soul, to hundreds. The effect can be local, or spread across an entire country. However, the victim is alone in his fight -- often ignorant of the mere existence of the fight in the first place until it's too late -- as the criminal groups are experienced and often well-organized, while the victims are isolated and often unsuspecting, and seldom put up any defense.

Further, fraudsters take advantage of all the myriad weaknesses of human nature to snare their prey, and custom-pattern, adjust, fine tune, and edit their scheme processes to best attack each victim's particular Achilles' heel. Criminals ensnare their victims one by one thus avoiding the danger of victim solidarity and unified vigilance or heightened suspicion. These qualities, refined by swindlers, allow the practice to mushroom unhindered. Fraudsters have the distinct advantage of also "knowing" their victim via stolen identities and privileged information, while the victims know nothing of their assailants, other than, perhaps, the sound of their voices over the telephone. If capable guardian appeared, or people's vigilance and education into fraudulent techniques is raised, the practice would certainly begin to taper off.

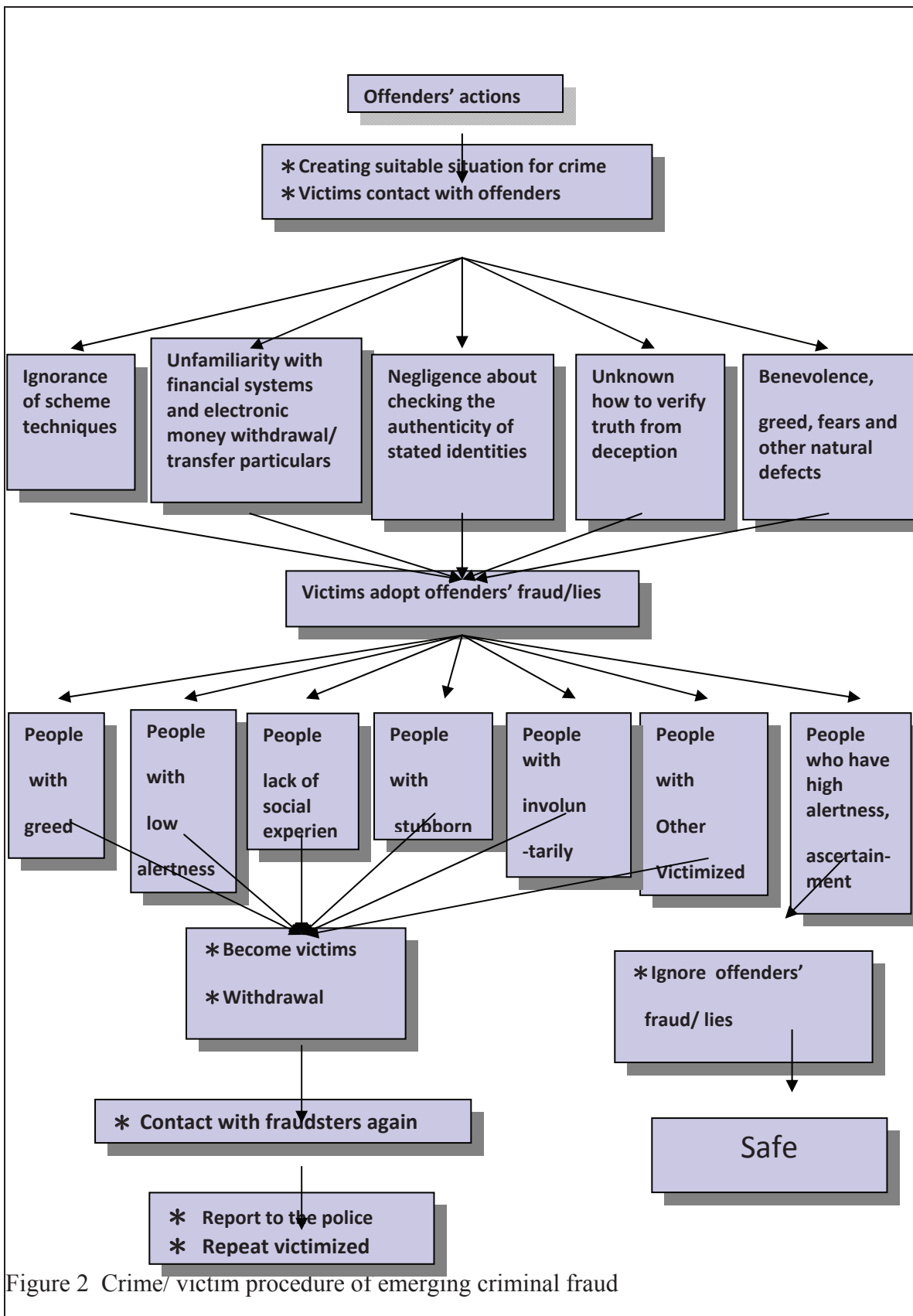


Figure 2 Crime/ victim procedure of emerging criminal fraud

3. Criminal groups organizational structure

Based on all the materials provided by law enforcement including “fraud handbooks of professional criminal groups”, the accumulated data and in-depth interview of case studies have given a backdrop and been beneficial in conducting analysis of the problem, and have shed some light on how crime groups are formed, how they are structured and their chains of command, as well as revealing their support bodies, fraud methodology, and motives for their fraud activities. The four basic portions are better understood today, and other organizational structures and personnel outlays can be better explained as follows (Figure 3) .

(1) Organizational nerve centers

The main purpose of the nerve centers is to raise and allocate funds to support places of operation where criminal activity can be carried out, along with providing the necessary computers, cell phones, a variety of SIM cards that can be changed often to keep investigators at arm’s length, fixed line telephones, and even toll free telephone services. They also might provide bogus bank accounts, personal information of a variety of potential victims, Internet connections and servers, mass-media printing equipment (for posters, flyers), false business licensing documentation, and fees to cover other overhead expenses.

In addition, they are responsible for keeping accurate information on everyone involved in the organization, with clearly delineated roles and levels. They pay large amounts of money and higher-ups are handsomely rewarded for their services. In order to minimize all risk, prevent detection and avoid arrested, members of the organization prefer to use direct “secure” lines for all intra-organizational communication when face-to-face meetings are not possible or feasible. But except for communication between the highest-level members, criminals within the group are often amateurish in the way of communicating with one another, in order to prevent giving away the identity or location of their headquarters in moments of carelessness or neglect.

(2) Rear supply teams

Those affiliated with rear supply groups for major criminal organizations also have their own roles and contribute in different ways to the organization’s operations. Four major areas of concern in this report regarding these rear supply systems are: Training, buying/selling of personal bank account information, buying/selling potential victims’ contact telephone numbers, and personal identity theft.

A. Training

In order for criminal groups to attract new “talent”, they use all manner and means necessary to advertise in legitimate media portals in search of new blood to fill various positions – often using language that cleverly disguises the true nature of their business. When a new employee is brought on, he is soon thrust into nefarious activities headfirst. They are often given handbooks full of successful scam cases out in the past to encourage emulation. They might soon be handed a telephone and asked to call an affiliate organization on Mainland China while pretending to pose as a lawyer, accountant, notary public, tech firm manager, government official, or even the chairman of the Hong Kong racetrack or the Hong Kong lottery authority.



It builds confidence within the rookies, and old stagers in the office, while giving the caller valuable practice time posing in a wide range of identities. The rookies also grow less and less nervous after expanding their acting “repertoire,” and may soon forget the original purpose why they replied to the Help Wanted ad. Promising new recruits might be quickly given more lucrative work of criminal fraud if they perform well in the initial stages of orientation and training.

B. Buying/selling of borrowed bank account information

In order to find a safe hiding place for illicit money and avoid police detection, criminal fraud groups arm their drones with a vast array and variety of stolen bank account Ids and numbers to stay one step ahead of the detectives, and achieve their objective, which is often related to money laundering activities.

C. Buying/selling borrowed telephone numbers

In order to confuse authorities and foil attempts by investigators to track down criminal fraud groups, these organizations buy and sell telephone numbers behind which criminals can hide. Further, Rear supply staffs represent main organization members in applying for new phone lines to keep the later identities and investigation.

D. Buying/selling of basic personal information

To maximize their reach across Taiwan and increase their victim lists, while also adding to various identities behind which to conceal various activities, criminal fraud groups buy and sell stolen basic personal information gleaned from a wide variety ways. After getting such valuable information, fraudsters can contact with the public directly and obtained their trust easier, and also cheated them more effortless.

(3) Carrying out fraud teams

The actual act of carrying out fraud is, naturally, the chief function and at the heart of a crime organization’s operations. Are the acts successful? Has the victim fallen for the fraud? Is the perpetrator skilled at using the tools and tricks available for the crime? And was everything conducted with the highest level of secrecy and anonymity? These are the questions asked after every act of fraud, regardless of its scale. This report will now examine four areas of fraud: False print advertising; false SMS claims; fraudulent answering systems/call response networks; and false impersonation of a wide range.

A. Print false advertisement

A wide variety of fraudulent posters can be found across the island promoting bogus scratch-off lottery tickets, phony loan organizations, and other criminal frauds .

B. Sending false message through cell phone or internet

Following the current explosion of the information age, cell phones are now used more and more by fraudsters seeking to ride the wave of SMS usage. SMS has the potential to reach all strata of society anywhere and anytime, and it is very economical and convenient to mass-send such

messages. It is even fair to say that this method is quickly replacing the former fraud scheme vector of the printed poster. Criminals use any means or identity imaginable to find legitimate excuses to send SMS to unsuspecting cell phone users, and can make these excuses general-scale enough to justify sending out hundreds, even thousands of such messages without raising the general public's suspicion levels.

Recently, a practice growing in popularity is sending SMSs directing the victim to the nearest ATM to input vital account information for one reason or another. Even though this may have a low success rate, all it takes are a few gullible citizens to comply, and the harvest for fraudsters can be very great indeed. And the more personal the information the criminal can send to the victim, the more authentic the communication seems.

C. Fraudulent answering systems/call response operator switchboard networks

Manning telephones and answering incoming calls from unsuspecting victims is one of the most critical operations of a criminal fraud organization. These key staff must endure non-stop training to refine and perfect their smooth-talking scheming methodology and work out all the kinks in their routine. One of the key chapters in these crime organizations "Training Strategy Handbooks" is how to attract, train, perfect and retain "skilled" telephone answering staff.

D. Impersonation and false representation schemes

In order to attract the largest potential victim pool from the general population, criminal groups must practice taking on a variety of bogus roles and identities to lure as many people into their trap as possible. For each project, tricksters are given specific names and roles to play for the duration of the scheme. The good ones lose themselves in these temporary roles like professional actors. They carefully note down every victim, and chronicle all vital information, including how far along the scheme process the victim was led. As much information gathered from each caller so that if the scheme at hand is unsuccessful, the data can be archived for future criminal operations.

(4) Swift-nimble fund withdrawal teams

Staff charged with orchestrating fund withdrawal operations are faced with three tasks: 1) procuring victim's names, passbook account numbers, necessary ink chops to, and then submitting them make false ID to withdraw victim's money from the respective financial institution(s); 2) possessing fraudulent ATM cards to withdraw victim's money from ATM (s); 3) carrying out the illegal withdrawals of themselves.

With the range of false ID and shifting personas available to the perpetrator, police/bank detection can be slowed, frustrated, or even prevented outright. Often to prevent raising suspicion, small amounts are withdrawn during each individual intrusion swiftly. This also prevents premature freezing of the account by victims if their suspicion is aroused. By the time the accumulated thefts are detected, the paper/electronic trail is often so convoluted that investigators sometimes have no solid concrete leads to build upon.

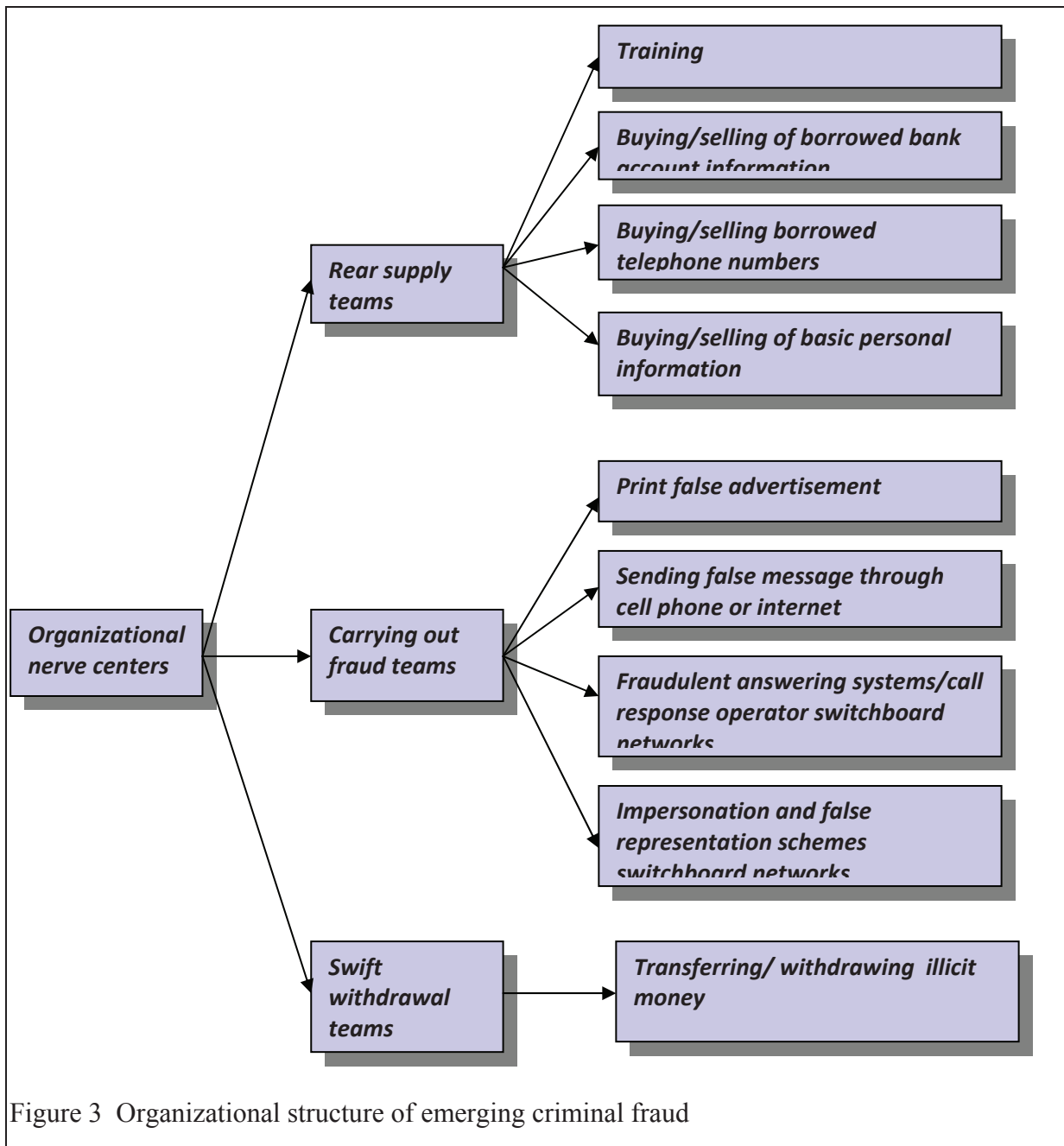


Figure 3 Organizational structure of emerging criminal fraud

4. Common specialties of criminal groups

(1) Anonymity/secretcy

In order to find more “friendly, approachable” fraud schemes less likely to arouse suspicion at the outset, a variety of communication devices are utilized to give a more intimate, friendly feel when sending scheme “hook” messages, and also serving to keep police from raising an alarm. These include cell phone card pirating business, using tech-modified cellular phone ID, IEMI (International Mobile Equipment Identity), mobile phone numbers themselves, channel frequency options, using personal photographs to mass produce fake ID cards to apply for fixed lines, toll-free lines, or cell phone services. Or using communication convenience services like caller ID,

automated redial services and extension-transfer functions, etc, to draw victims into the fraudster's traps – real or virtual. Often, communications are programmed to switch back and forth from associated criminal syndicates on either side of the Taiwan Strait to confuse authorities and maximize anonymity.

(2) *Indirectness*

Experienced fraudsters rely on a high level of indirect communications to protect themselves from detection and prosecution. They seldom meet face-to-face with potential victims to avoid possible positive identification, and utilize a variety of roles to confuse police and fit the nature of each individual scheme, as well as gain the trust of the target.

(3) *Randomness*

They are not at all constrained by time or geographic limitations, and can launch schemes or attacks at any time from any location, and can disappear off the radar screen just as quickly and readily.

(4) *Embedded*

Crime groups have infiltrated all strata and corners of society and the economy, and their breadth makes their uninvited collection of our most personal and confidential data all the easier.

(5) *Professional organizational structure*

Criminal groups are often very professionally-run, efficient operations with members given clearly defined roles to maximize the “harvest” of victims’ funds and property.

(6) *Closely intimate groups*

According to accumulated police data, criminal groups at the highest levels are often related by blood or at the very least enjoy long, close friendships with one another, and close ties are fostered at all levels to boost loyalty and maintain secrecy

(7) *Regionalism/territoriality*

Police data reveals that criminal groups are highly territorial, and protect their turf jealously. In their “risk assessment” studies before beginning a new fraud scheme campaign, they are very careful in choosing which extra-regional groups to cooperate with, or notify – if at all – in order to maximize the success rate of the operation and minimize the possibility of detection. It is believed that every “region” or “district” along China’s seaboard had an average of just more than 50 criminal fraud organizations, thus displaying the territoriality of these groups (Hung Han-zhou,2003) .

(8) *Logical thought*

In order to fully understand the logical thought processes that motivate and dictate the moves of these groups, this study first looks at the “monetary crime groups” in studying how they operate and



better understanding their structure. The basic identity and “Choice-structuring” characteristics offered by Clarke and Cornish (1986) are critical to better understanding each one’s unique characteristics, and for authorities to formulate efficient strategies to fight them. Most “monetary crime groups” can be categorized as having a somewhat limited orchestrated logical structural composition and overall scale or scope. Their level of planning and professional organizational structure varies greatly with the assets and human resources at their avail.

CONCLUSION

Methods for obtaining personal data as major fraud tools

(1) Borrowed person bank account information

Criminal fraud groups should offer borrowed person bank accounts to victims for remitting their money in fraud procedure. In order to find a safe hiding place for illicit money and avoid police detection, they often get borrowed person bank account information through major methods below before conducting their fraud behaviors.

- A. Establishing new bank accounts by using counterfeit identity cards or commercial licenses made by certificate forging groups.
- B. Establishing new bank accounts by using incorrect identity cards or commercial licenses gathered/ bought from “irregular banks/ loan offices” or other specific places.
- C. Buying advertising space in media with offers of bank account establishment services with requests for personal information to attract people who in need of money such as unemployed people, vagrants, insolvent selling their bank accounts, identity, ATM card, passwords, and other access information.

(2) Borrowed telephone numbers

In order to confuse authorities and foil attempts by investigators to track down criminal fraud groups, these organizations buy and sell borrowed telephone numbers behind which criminals can hide. They often get borrowed telephone numbers through major methods below.

- A. Criminal fraud group members provide fake or stolen personal Ids to telephone companies in application for a new phone line.
- B. Buying advertising space in media with offers of telephone numbers to attract people who in need of money selling their telephone numbers and other access information. Then rear guard support staffs switched and switched the numbers through a third party line/station to offer callers options to be put through to “legal departments” or “main switchboard” to give the further appearance of likely/ misunderstanding legitimacy.

(3) Basic personal information

Typical sources for harvesting basic personal information from unsuspecting citizens include city-sponsored census documents, financial firms, telecom customer registrars, school class books, master lists of supermarkets, bookstores, magazine subscription, Internet service providers, and even hospital patient registries obtained from unworthy staffs or through various loopholes of data storage.

Major reasons for rampant fraud group activities

Citing related research data, given “emerging criminal fraud group activity,” no one can provide with great accuracy or logic precise details on the groups location, secret movements, indirect communication, technological processes, randomness, adeptness at personal information and identity theft and collection, relative professional organization on a structural level, level of non-violent criminal intelligence, or strategies for coordinated attacks at any time/any place. These great unknowns make the task of law enforcement extremely difficult for police, and raise the level of risk for society as a whole.

Based on the principles of positive incentives, indirect harm, the ease of personal information retrieval, the growing number of fraudulent bank accounts and individual cell phone subscriptions, the use of mass-media’s speed/omnipresence/anonymity by criminals to commit fraud, improved organizational abilities of crime groups, growing gaps in financial institutions’ security networks, low detection/prosecution rates thus giving positive reinforcement to swindlers to increase their ranks and commit more and larger-scale schemes – among several other factors and preexisting conditions – all have been shown to contribute to an increase in fraudulent criminal activity in any given society if left unremarked.

Alienation tendency of Victims toward emerging criminal fraud

With all the information available, it is possible to see many more parallels and correlations between “a lifestyle /exposure model of personal victimization” and rates of victimization (Hindelang, 1978). Incidences of victimization and everyday lifestyle practices bore a close association with one another. Victimization rates were shown to be not all that random across society. In particular, the research showed that those growing up in “unsafe, unstable, dangerous” settings were much more like to be victimized by criminals (Huang, F.Y., Van, K. Y., and Chang, P. W., 2004 : 153-159).

However, our study had shown that there were variety differences between victimization of general crime and emerging criminal fraud. Firstly, techniques used in these settings were different than the norm, and centered around the conveying of “hook-line” fraudulent messages via posters, telephone, cell phone and other mass media options. Secondly, “A lifestyle /exposure model of personal victimization” emphasized that personal victimization risk was closely linked to the relative “safety” of an environment, or neighborhood. While also saying the “environment” of the victimizer was much less facile to categorize or analyze, let alone collect data on, given the obvious unwillingness of criminals to contribute to academic research and surveys, and victims in “unsafe” settings – living simple unsophisticated lives -- were even more ignorant of criminal groups’ existence or identity. The simplistic, basic lives of the victims in these areas lent itself to less educated, informed assessment of the potential risk that fraudsters represented. Also, the social alienation of people in these areas prevented their learning of such dangers through interaction with “outsiders.” Further, their higher levels of naiveté, isolation, and simplicity made them easier



targeted for victimization than their more wary, educated peers outside their environment. Only when society at large fully senses the crisis, and they act in concert with businesses and law enforcement in the cooperative exchange of information and advice, can criminal fraud begin to face a true unified resistance.

Future development of emerging criminal fraud group

From June of 2004, the government organized cross-departments of law enforcement, finance, telecommunication, education, and declared the war to emerging criminal fraud group. Currently, Taiwan authorities had carried out various anti-fraud strategies including crackdown criminal fraud group, strengthened risk management of software-hardware facilities for internet, banking, ATM s, and telecommunication operations, educated the public to avoid victimized, and etc. However, there still were many criminal reported fraud cases, and many people victimized. Further, under the constantly economic depression status, criminal fraud groups will continue to employ a vast array of schemes to cheat the public's money, and to find new ways into others' wallets behind hiding places that are difficult to discover, and even cross-regional.

According to the research data, we can predict that future development of emerging criminal fraud groups will move forward to 2 major directions.

(1) Refinement of criminal techniques

As the research mentioned above, the emerging criminal fraud have characteristics of "level and social status of targeted victims wide; criminal activity not limited by time, space or distance", and there are more than 70 fraud schemes used by criminal fraud groups. With the mass-use of Internet, and other communication technology recently, we believe that criminal fraud group will constantly change or repeat fraud schemes to cheat the publics' money. In particular, some high level or well organized fraud groups will go steps further to refine criminal techniques with higher technology equipments for continual switch and meticulous cheating stories.

(2) Transferring of criminal targets

Besides refinement of criminal techniques, facing the various anti-fraud strategies held by cross-departments of the government, fraud groups will also transfer criminal targets from ATM, telecommunications, and other traditional channels to blind side of emerging financial services such as voice/ internet transfer account system, KIOSK public service system, fake debt but real civil law injunction, falsification of precise official seal and document, public/ personal computer invasion, and etc. Therefore, it's worthwhile for conducting further research.

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JOURNEY TO CRIME: A STUDY OF MOBILITY OF PROPERTY OFFENDERS IN CHENNAI CITY

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Understanding the spatial pattern of crime helps a lot to the law enforcement agencies to develop new strategies for effective crime prevention. The present research made an attempt to understand the pattern of mobility of offenders, occurrences of property crimes particularly theft and house- burglary in various places at Chennai. Data relating to offenders charged with property offenders have been collected from 81 police stations in Chennai city and analyzed using Geographic Information System (GIS) technique. The results revealed useful findings and it is proposed to present the valuable results and suggestions for future criminologists to enrich such studies.

PART 9

PSYCHOLOGICAL AND FAMILY FACTORS AND CRIME





JUVENILE PROBATIONERS ADJUDICATED OF VIOLENT AND NONVIOLENT OFFENSES IN HONG KONG: ARE THEY PSYCHOLOGICALLY DIFFERENT?

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Limited is known about Hong Kong juvenile offenders who are put on probation. This study consists of 109 male juveniles (aged 14-20 years) who served their probation sentence in a community transitional housing. Of the sample, 34 juveniles are adjudicated for committing a violent offense, while the remaining 75 juveniles are found guilty of a nonviolent offense. Six psychometric measures assessing eight psychological correlates (self-esteem, life satisfaction, social bond, positive affect, negative affect, impulsivity, pro-offending attitudes, and self-perceived life problems) are administered. Four offending history variables (onset age of delinquent behavior, age of first adjudication, number of prior adjudication, and frequency of self-reported delinquency in the past 12 month) are also studied. For exploratory purpose, univariate and bivariate analyses of these two groups (juvenile violent and nonviolent probationers) are first computed. Ordinary Least Square (OLS) regression analyses indicate that several static (offending history) and dynamic (psychological correlates) risk factors are predictors of the juvenile violent and nonviolent probationers' self-anticipated re-offending risk. Limitations of the study are outlined.

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INTRODUCTION

- The annual juvenile and youth crime arrest rate in Hong Kong has been in an upsurge trend since more than 3 decades ago with its peak in the late 1980s and early 1990s.
- However, a steady decline is evidenced in the past 10 years (Hong Kong Census and Statistics Department, 2010).
- Nonetheless, not all arrested and subsequent adjudicated juvenile offenders were placed in closed detention facilities in Hong Kong.
- A proportion of these juveniles, mostly committed less severe offenses, were adjudicated to serve on a probation order.

The Probation System in Hong Kong

- The probation service has been a widely used noncustodial sentencing option in Hong Kong for juvenile offenders aged 10 and above who are adjudicated for committing less severe offenses (Chui, 2008; Chui & Chan, 2011a, 2011b).
- The operational key objective of the probation service is to reduce the offenders' recidivism risk and to facilitate their community reintegration process upon the completion of the probation order (Chui, 2006).
- Juvenile offenders are targeted for this noncustodial sentencing option since the inception of the *Juvenile Offenders Ordinance of 1933*, which was later superseded by the *Probation of Offenders Ordinance of 1956* to extend the probation service to adult offenders (Chan, 1996).

- To date, the *Probation of Offenders Ordinance* (Chapter 298) is the existing legislation that requires adjudicated juvenile offenders aged 10 and above to be placed under statutory community supervision of an assigned probation officer for a period of 1 to 3 years depending on their index crime severity.
- A violation of probation order conditions (e.g., work and residence, submission of a urine sample for drug tests) can result in caution, fine imposed, or re-sentence of the index crime.

PRESENT STUDY

- This study is among the first few in Hong Kong to investigate the relationship between the offending history and psychological properties of juvenile probationers who were adjudicated of a violent and nonviolent offense.
- According to Hong Kong criminal law, violent delinquent/criminal behavior classified in this study includes crime of robbery, serious assault, indecent assault, police assault, wounding, and blackmail.
- In contrast, nonviolent delinquent/criminal behavior includes property crimes such as burglary, snatching, pickpocket, shop theft, criminal damage, and deception; and other non-property crimes like vice/brothel keeping, sexual procurement/abduction, illegal sexual activity, fighting, illegal possession of weapons, illegal possession of illegal drugs, resistance to police arrest, admission of being a member of a triad society, a member of a triad society, violation of probation order, use of other's identity, and public disorderly conduct.
- In addition to descriptive statistics and bivariate analyses of juvenile probationers by their index crime, this study further aims to use a multivariate statistical approach to explore the effect of different offending history and psychological correlates in predicting the juvenile probationers' self-anticipated propensity to reoffend.

METHOD

Participants and Procedure

- The participants recruited for this study were 109 juvenile male probationers aged 14 to 20 years ($M = 16.97$, $SD = 1.44$) who were serving their probation order in a juvenile residential home.
- A 90% of participation response rate was documented.
- For the purpose of this study, these juvenile probationers were divided into 2 subgroups: juvenile who were adjudicated of a violent offense (termed as juvenile violent probationers; $N = 34$; 31%) and those who were found guilty of a nonviolent offense (termed as juvenile nonviolent probationers; $N = 75$; 69%).

---- INSERT TABLE 1 ABOUT HERE ----

Measures

Self-Esteem

- The Rosenberg's Self-Esteem Scale (RSES; Rosenberg, 1965) was used to assess participants' self-acceptance and perception of self-value.



- Based on a 4-point response format (1 = *strongly disagree*, 4 = *strongly agree*), this scale contains 10 items (total score ranged from 10 to 40) with higher score indicates higher self-esteem.

Life Satisfaction

- The Satisfaction with Life Scale (SWLS; Diener, Emmons, Larsen, & Griffin, 1985) was utilized to measure the participants' cognitive evaluation of quality of life.
- This 5-item scale was measured on a 7-point response format (1 = *strongly disagree*, 7 = *strongly agree*), whereby the overall score was determined by the summed of all items scores (ranged from 5 to 35).
- High SWLS score indicates more positive self-evaluation of subjective well-being.

Social Bond

- Based on Hirschi's (1969) social bonding theory, the 24-item Social Bonding Scale (SBC; Chapple, McQuillan, & Berdahl, 2005) was adopted to measure the participants' conventional social bond with attachment to parents, peers, school, and the society; and also their self-reported delinquent conducts.
- Out of the 24 scale items, 6 items of the self-reported delinquent conducts (3 items each for theft and violent delinquency) were measured on a 4-point Likert scale (1 = *never*, 4 = *many times*).
- An overall score for each delinquency domain (ranged from 1 to 12) was obtained with higher score denotes greater delinquency rate.
- Aside from the SBC-T and SBC-VC items, the remaining 18 items were developed to assess five social bond elements (SBC-SB) on either a 4-point (two items; 1 = *never*, 4 = *many times*) or 5-point (16 items; 1 = *strongly agree*, 5 = *strongly disagree*) response format.
- The scores for these 18 items were subsequent summed (total score ranges from 17 to 88), with higher value signifies greater social bond.

Affect

- The positive affect (PA) and negative affect (NA) subscales of the 20-item Positive and Negative Affect Scales (PANAS; Watson, Clark, & Tellegen, 1988) were used to assess the participants' positive and negative emotions based on common mood descriptors.
- The PA and NA subscales each consists of 10 items that allows the participants to rate their affective feeling on a 5-point Likert scale (1 = *very slightly or not at all*, 5 = *extremely*).
- The overall score of each subscale was determined by summing the scores of all PA and NA items, independently (ranged from 10 to 50 for each subscale), with higher PA and NA scores denote higher positive and negative affective feelings, respectively.

Impulsivity

- The Impulsiveness Scale-Short Form (IS-SF; Li, Ko, Weng, Liao, & Lu, 2002) was adopted to measure the motor impulsiveness of the participants.
- Modeled after the Barratt Impulsivity Scale (BIS-10; Patton, Stanford, & Barratt, 1995), this 15-item impulsivity measure was scored on a 4-point response format (1 = *very few*; 4 = *almost always*).

- The overall impulsivity score was the summed of all 15 items (ranged from 15 to 60), with higher score indicates higher impulsivity.

Pro-Offending Attitudes and Self-Perceived Life Problems

- The CRIME-PICS II (Frude, Honess, & Maguire, 2008) that is widely used in the UK probation services consists of 4 attitude scales (20 items) and a problem inventory (15 items), was used in this study.
- The 4 attitude scales were measured on a 5-point Likert response format (1 = *strongly agree*; 5 = *strongly disagree*) to assess the participants' general attitudes toward offending: (a) general attitude to offending (scale G), (b) anticipation of re-offending (scale A), (c) victim hurt denial (scale V), and evaluation of crime as worthwhile (scale E).
- On the other hand, the problem inventory (scale P) was scored on a 4-point Likert scale (1 = *big problem*; 4 = *no problem at all*) to assess the participants' perception of their current life problems.
- Items for each subscale were summed to obtain the overall score for each attitude domain and the inventory on perceived problem areas (scale G ranged from 17 to 85; scale A ranged from 6 to 30; scale V ranged from 3 to 15; scale E ranged from 4 to 20; scale P ranged from 15 to 60).
- For the purpose of this study, 20 pro-offending attitude items and 15 problem inventory items were subsequent totaled to obtain a single pro-offending attitudes score (ranged from 20 to 100) and self-perceived life problems score (ranged from 15 to 60), independently.
- Higher pro-offending attitudes score denotes higher favorable attitudes toward offending, whereas higher self-perceived life problems score indicates that the participants have life problems in many areas.

RESULTS

Psychological Characteristics of Juvenile Violent and Nonviolent Probationers

- Juvenile violent probationers were found to have significantly higher level of self-esteem (RSES; $t = 2.385, p < .05$), life satisfaction (SWLS; $t = 1.698, p < .10$), and positive affect (PAS; $t = 1.384, p < .10$) than their nonviolent counterparts.
- Juvenile nonviolent probationers, in contrast, were reported to differ significantly from those who were adjudicated of a violent offense by having higher level of self-reported theft delinquency (SBS-T; $t = -2.004, p < .05$) and tendency of victim hurt denial (CRIME-PICS II-Scale V; $t = -4.162, p < .001$).

---- INSERT TABLE 2 ABOUT HERE ----

Self-Reported Offending History of Juvenile Violent and Nonviolent Probationers

- Nearly half (48%) of the juvenile probationers admitted to have involved in both violent and nonviolent delinquency, followed by those who reported to have committed only nonviolent conducts (43%).
- Interestingly, more than half (59%) of juvenile nonviolent probationers were admitted to have committed only nonviolent delinquency in the past year.



- Juvenile violent probationers, conversely, were mostly involved in both violent and nonviolent delinquency (77%).
- These findings were significant ($\chi^2 = 23.70, p < .001$) and the model effect size was considerably strong (Cramer's $V = .47$).

---- INSERT TABLE 3 ABOUT HERE ----

Interrelationship of Static Factors of Juvenile Violent and Nonviolent Probationers

- As opposed to dynamic factors (i.e., attributes that are amenable to change through rehabilitative and therapeutic interventions; van der Put, Stams, Hoeve, Deković, Spanjaard, van der Laan, et al., 2011), static factors in this study were referred to variables that are historic and cannot be changed (van der Put, Deković, Stams, van der Laan, Hoeve, & van Amelsfort, 2011), such as onset age of delinquent behavior, age of first adjudication, number of prior adjudication, and frequency of self-reported past year delinquency.
- As expected, juvenile violent probationers' onset age of delinquent behavior was positively correlated with their age of first adjudication ($r = .626, p < .01$) and was negatively associated with their frequency of self-reported past year delinquency ($r = -.595, p < .01$).
- Similarly, the onset age of delinquent behavior of juvenile nonviolent probationers was positively related to their age of first adjudication ($r = .395, p < .01$), but was negatively correlated with their number of previous adjudication ($r = -.272, p < .05$) and frequency of self-reported past year delinquency ($r = -.285, p < .05$).
- Juvenile nonviolent probationers' number of prior adjudication was also found to positively correlate with their frequency of self-reported past year delinquency ($r = .462, p < .01$).

---- INSERT TABLE 4 ABOUT HERE ----

Self-Anticipated Reoffending Risk of Juvenile Violent and Nonviolent Probationers

- In terms of the juvenile violent probationers' static risk factors, early onset age of delinquent behavior ($B = -.346, SE = .175, p < .05$) and early age of first adjudication ($B = -.453, SE = .296, p < .10$) were found to be significant predictors of future offending behavior.
- Frequency of self-reported past delinquency ($B = .258, SE = .124, p < .05$) was significantly regressed on the juvenile violent probationers' self-anticipated re-offending risk.
- With regard to the dynamic risk factors, juvenile violent probationers who were less socially bonded ($B = -.124, SE = .067, p < .05$) and more impulsive ($B = .135, SE = .066, p < .05$) were significantly more likely to involve in future delinquent acts.
- Pertaining to juvenile nonviolent probationers, number of previous adjudication ($B = .364, SE = .148, p < .01$) and frequency of self-reported past delinquency ($B = .108, SE = .063, p < .05$) were found to be significantly regressed on their self-anticipated risk of recidivism.
- Additionally, juvenile nonviolent probationers who have lesser positive affect ($B = -.071, SE = .050, p < .10$) were more likely to engage in future offending behavior.

---- INSERT TABLE 5 ABOUT HERE ----

DISCUSSION

- The nature of the delinquency/crime and etiological history of the offender can vary greatly (Gerstein & Briggs, 1993). The findings of this study suggest that juvenile violent probationers were having more confidence, satisfaction with their current quality of life, and positive emotionality than nonviolent probationers. Juvenile nonviolent probationers, conversely, were having higher victim hurt denial tendency than their violent counterparts. Juvenile nonviolent probationers were also found to engage more theft conducts in the past year than violent probationers. Overall, these findings appear to indicate that juvenile violent probationers were having higher level of positive self-perception and emotionality than their nonviolent counterparts.
- In this study, findings show that juvenile nonviolent probationers were largely specialists (59% involved in only nonviolent delinquency in the past year) whereas juvenile violent probationers were mostly generalists (77% engaged in both violent and nonviolent delinquency in the past year) in their offending patterns. Consistent with previous findings reported in regards to the specialization in nonviolent offending trend, repeated involvement in similar offenses was found in the categories of property crime (Kempf, 1987) and status offense (Rojek & Erickson, 1982).
- Consistent with previous findings (e.g., Bacon, Paternoster, & Brame, 2009), early age of initial involvement in delinquent behavior was related to higher frequency of delinquency involvement for both juvenile violent and nonviolent probationers. In addition, early onset age of delinquent behavior was also found to relate to early age of first adjudication for both types of juvenile probationers, and higher number of prior adjudication for nonviolent probationers. Juvenile nonviolent probationers who reported to have engaged in more delinquent conducts in the past year were likely to have more prior adjudications.
- High frequency of self-reported past year delinquency was found to be a strong predictor of both juvenile violent and nonviolent probationers' perceived high recidivism risk. Early onset age of delinquent behavior and early age of first adjudication were significant predicting factors of self-anticipated re-offending risk for juvenile violent probationers, whereas higher number of previous adjudication was a robust self-perceived recidivism risk factor for juvenile nonviolent probationers. These findings were consistent with previous studies where criminal recidivism was found to be significantly predicted by the juveniles' onset age of delinquent behavior, age of first adjudication, number of prior adjudication, and self-reported frequency of delinquent conducts (e.g., Ang & Huan, 2008; Cottle, Lee, & Heilbrun, 2001; Mulder, Brand, Bullens, & van Marle, 2011).
- Consistent with previous studies (e.g., Ge, Donnellan, & Wenk, 2003), findings in this study indicate that social bond and impulsivity correlates were the only two significant re-offending risk factors for juvenile violent probationers. In contrast, the positive emotionality of juvenile nonviolent probationers, consistent with past findings (e.g., Caspi, Moffitt, Stouthamer-Loeber, Krueger, & Schmutte, 1994), was found to be the only significant predictor for their self-anticipated recidivism risk.

LIMITATIONS

- First, this study only sampled juvenile probationers who served their probation order in a residential home. Juvenile probationers who were not mandated to serve in the probation home were not included in this study.



- Besides, juvenile offenders put on probation were generally found guilty of nonviolent offenses. Even some of these juveniles were adjudicated for committing offenses classified as violent crimes, the nature of these offenses were considered less severe to imminently threaten the societal social stability.
- With regard to the predictability of the tested offending history variables and psychological correlates, the effects of these risk factors were limited by the use of self-reported data. Juvenile offenders have the tendency to underreport their delinquent behavior and to normalize their perceptions regarding delinquency (Breuk, Clauser, Stams, Slot, & Doreleijers, 2007). Nevertheless, the use of official data as the benchmark for the recidivism rate also involves the inherent risk of underestimating the actual nature of the juveniles' delinquency involvement, which is usually under-registered in the official systems (van der Put, Stams, et al., 2011).
- Furthermore, the present study was cross-sectional, and as such, presents difficulties in examining the short- and long-term reoffending risk for these juvenile probationers.

CONCLUSION

- Regardless of the limitations, the present study nevertheless has offered an important step to better understand juvenile probationers in Hong Kong, collectively and separately according to the nature of their offense.

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Legislation Cited

Probation of Offender Ordinance (Chapter 298)

Table 1. Demographic characteristics of Hong Kong male juvenile probationers by index crime ($N = 109$)

Variables	Violent Crime ($N = 34$)		Nonviolent Crime ($N = 75$)	
	Number of Cases	Percentage (100%)	Number of Cases	Percentage (100%)
Age	($N = 34$)		($N = 75$)	
14	-	-	1	1.3%
15	5	14.7%	7	9.3%
16	14	41.2%	21	28.0%
17	8	23.5%	23	30.7%
18	4	11.8%	5	6.7%
19	3	8.8%	10	13.3%
20	-	-	8	10.7%
Length of Probation Order	($N = 34$)		($N = 74$)	
12 months and below	10	29.4%	32	43.2%
13 – 24 months	21	61.8%	41	55.4%
25 months and above	3	8.8%	1	1.4%
Self-Reported Onset Age of Delinquent Behavior	($N = 33$)		($N = 74$)	
Age 12 and below	7	21.2%	20	27.0%
13 – 15 years	18	54.5%	31	41.9%
16 – 18 years	7	21.2%	20	27.0%
19 – 20 years	1	3.1%	3	4.1%
Age of First Adjudication	($N = 34$)		($N = 75$)	
Age 12 and below	3	8.8%	2	2.7%
13 – 15 years	17	50.0%	30	40.0%
16 – 18 years	13	38.2%	33	44.0%
19 – 20 years	1	3.0%	10	13.3%
Number of Previous Adjudication	($N = 34$)		($N = 75$)	
None	4	11.8%	20	26.7%
1 or 2	19	55.9%	31	41.3%
3 and above	11	32.3%	24	32.0%
Frequency of Self-Reported Delinquency in the Past 12 Months	($N = 34$)		($N = 70$)	
1 to 5 times	28	82.4%	51	72.9%
6 times or above	6	17.6%	19	27.1%

Table 2. Means and standard deviations for the observed variables of juvenile probationers by index crime (N = 109)

Psychometric Scale	Violent Crime (N = 34)		Nonviolent Crime (N = 75)	
	Mean	Std. Dev.	Mean	Std. Dev.
Rosenberg Self-Esteem Scale (RSES)	28.64**	4.64	26.16	5.18
Satisfaction with Life Scale (SWLS)	22.47*	5.31	20.37	7.22
Social Bonding Scale – Social Bonds (SBS-SB)	50.38	7.20	52.48	8.46
Social Bonding Scale – Theft (SBS-T)	1.94	1.91	2.89**	2.45
Social Bonding Scale – Violent Crime (SBS-VC)	3.76	2.35	3.08	2.45
Positive Affect Scale (PAS)	32.94*	6.53	30.90	8.16
Negative Affect Scale (NAS)	26.91	7.94	28.92	8.84
Impulsiveness Scale – Short-Form (IS-SF)	37.82	7.31	36.27	8.25
CRIME-PICS II – General Attitude to Offending (Scale G)	41.32	7.08	43.03	8.15
CRIME-PICS II – Anticipation of Re-Offending (Scale A)	13.85	2.88	13.99	3.45
CRIME-PICS II – Victim Hurt Denial (Scale V)	6.24	2.22	8.41***	3.12
CRIME-PICS II – Evaluation of Crime as Worthwhile (Scale E)	9.50	2.43	10.23	3.03
CRIME-PICS II – Problem Inventory (Scale P)	30.91	9.61	33.75	9.38

* $p < .10$, ** $p < .05$, *** $p < .001$

Table 3. Self-reported offending history in the past 12 months of juvenile probationers by index crime (N = 109)

Offending History	Violent Crime (N = 34)		Nonviolent Crime (N = 75)		Total (Percentage)	
Violent delinquency only	5		5		10	
Column percentage	14.7%		6.7%		9.2%	
Nonviolent delinquency only	3		44		47	
Column percentage	8.8%		58.7%		43.1%	
Violent and nonviolent delinquency	26		26		52	
Column percentage	76.5%		34.7%		47.7%	
Total	34		75		109	
Column percentage	100.0%		100.0%		100.0%	

$\chi^2(2) = 23.70$, Cramer's $V = .47$, $p < .001$

Table 4. Pearson correlations among static factors of juvenile probationers by index crime ($N = 109$)

Index Crime: Violent Crime ($N = 34$)						
Static Factors	Onset Age of Delinquent Behavior	Age of Adjudication	First Adjudication	Number of Adjudication	Prior Adjudication	Frequency of Self-Reported Delinquency
Onset Age of Criminal Behavior	1.00					
Age of First Conviction	.626**	1.00				
Number of Previous Conviction	.092	.004	1.00			
Frequency of Self-Reported Delinquency	-.595**	-.146	-.092	1.00		
Index Crime: Nonviolent Crime ($N = 75$)						
Static Factors	Onset Age of Delinquent Behavior	Age of Adjudication	First Adjudication	Number of Adjudication	Prior Adjudication	Frequency of Self-Reported Delinquency
Onset Age of Criminal Behavior	1.00					
Age of First Conviction	.395**	1.00				
Number of Previous Conviction	-.272*	-.187	1.00			
Frequency of Self-Reported Delinquency	-.285*	-.086	.462**	1.00		

* $p < .05$, ** $p < .01$

Table 5. OLS regressions of self-anticipated re-offending risk of juvenile probationers by index crime ($N = 109$)

Predictor	Violent Crime		Nonviolent Crime	
	B	SE	B	SE
Onset age of criminal behavior	-.346**	.175	.023	.150
Age of first conviction	-.453*	.296	-.320	.211
Number of previous conviction	.279	.277	.364***	.148
Self-reported delinquency frequency	.258**	.124	.108**	.063
Social bond	-.124**	.067	-.036	.048
Positive affect	.061	.077	-.071*	.050
Impulsivity	.135**	.066	.026	.049
Adjusted R ²	.160		.308	
VIF	1.174 – 3.687		1.417 – 1.843	
N	34		75	

Note: No significant findings were yielded for self-esteem, life satisfaction, negative affect, and self-perceived life problems.

* $p < .10$, ** $p < .05$, *** $p < .01$



A STUDY ON TAIWAN'S TEENAGER CRIMINAL MODEL BY COMBINING CONTROL THEORIES --- TAKE THE DATA FROM 14,022 TEENAGERS IN 2002 AS AN EXAMPLE

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In Taiwan, police and education department are currently facing new challenges because teenager's criminal became heavier day by day, and most parents and families are beset by the same problems. Though Taiwan's government had promoted the cooperation for several years among police, school and parents, the solutions seems not so effective. This research try to combine with some control theories, such as 'Social Control Theory' and 'General Crime Theory', and restructure their variables for finding and explaining the best teenager criminal model by using SPSS and LISREL system to test the second hand data which was collected from 14,022 teenagers by professor Wu-jing in 2002. Results of the best teenager criminal model showed that the delinquency rate was influenced on one independent variable: family, and three intermediate variables school, self-control and delinquent peers, and all paths can be explained by control theory. To conclude, this study may be of importance in explaining why school and family must be connected tightly for preventing teenager crime, and family is still the most important roll to influent others variables effectively.

1. INTRODUCTION

1.1 background

When we talk about criminology, we also talk about crime prevention policy application. To find such application, someone will try to understand why do criminal offend, and another one will try to understand why non-criminal don't offend. It seems to be the same problem, with just a little linguistic game to describe it, like white horse and horse white. But it is not. When social control theory starts research on why some people will not offend, it gives us some explanations that never occur before in criminology. We can agree or disagree, however, we can estimate that the theory is clear enough or feel that the variables need to be organized by different ways, but what we cannot deny is that the theory on social inner and outer controls are measurable, and those controls' statistical work better than many of others measurable theories (Travis).

Nevertheless, what about "*social bond has significant importance*" and "*self-control is a decisive variable*" in term of crime prevention policy application? So, we believe that social control theory variables, including the earliest development on social bonds and the later evolution on self-control, must be tested in different way to find a better applicability.

1.2 Research's objectives

Our first objective is to focus on teenager's delinquency, from 10 years old to 18 years old. Someone can protest that the range is too large, and that developmental psychology will separate the population into two categories: the pre-adolescent (10-13 years old) and the adolescent (14-18 years old). But in fact, as table 1 show us, the pre-test we operate prove that for 14014 available self reports on deviance and violence (including crime and delinquency), the teenager from 10 to 18's Pearson correlation test prove that there are no significant relation nor evolution.

Table 1 · Age/Delinquency crosstable

		Deviance	Violence
Age (10 to 18)	Pearson v.	<u>-. 016</u>	<u>-. 007</u>
	Chi square	<u>. 436</u>	<u>. 407</u>
	Evolution	<u>Non significant</u>	<u>Non significant</u>

In term of violence and deviant behaviours, the teenagers are in fact one single population, and only the kind or typology of violence and delinquency will change, not the fact. The general theory points out that the existence of crime, deviance or violence cares, and not the kind of crime, deviance or violence. And if we follow Hirshi's theory, just focus on the existence of deviance and violence (and exclude consideration on typology), so the teenager's delinquency, from 10 years old to 18 years old may be remove in one single category. On other way, it will be positive for general theory to analyze what characteristics (variable) will change, evaluate or freeze in a (non-) delinquent stable population.

Our second objective is to focus on adolescent basic life domain: the family, the school and the delinquent peers, in addition to the basic inner containment: the self-control. Which variables will have the stronger influence on the other variables?

Our two last objectives are to understand the direct effect of each variable, but also to develop a complete model including direct and indirect effect (SEM).

2. LITERATURE REVIEW

2.1 Reckless, general social control

Walter Reckless is not the first scientist including self-control, attachment and involvement in his analysis; it was first a traditional domain of psychology sciences research in which John Bowlby (1979) is an important figure. But, *A New Theory of Delinquency and Crime* (1961) was for sure one of the first research that unified self-control concept and social control concept inside a single research structure, and was also one of the first that make a direct connection between these concepts and crime making.

In Walter Reckless Containment theory, crime making is the union of three different variables: the inner containment, the outer containment, and the internal pushes, and their relations are showed as Figure 1.

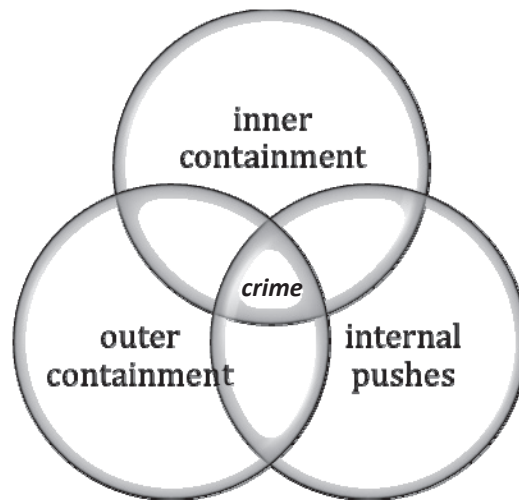


Figure 1, Reckless containment theory

The inner containment includes six characteristics that are self-control, self-estimation, the capacity to face frustration, goal orientation, capacity to find substitution, and capacity to increase strain. The outer containment is the belief, attachment, commitment and involvement to the society and social environment, it includes six characteristics that are stability of moral and value, clear social rule and responsibility, efficient training and surveillance, way for activity, opportunity (including opportunity to attachment and to acceptance) and social expectation and goal. If low inner containment and low outer containment are connected to internal pushes (like: hate, revenge, internal dilemma...), crime and delinquency will happen.

Walter Reckless containment theory was a general view about self-control capacity and social indirect control; maybe, the domain was too large for full statistical application. But it is in history of criminology's theory the beginning of a long serial discussion that will provide the final orientation for our research.

2.2 Hirshi, detailed social control

Though the researches of Travis Hirshi included the both conceptions of outer containment and inner containment, but it was develop through the concept of "control". The second difference with earliest researches is that these two discussions were included in two different serial researches. The first one starts in 1969, with the *Causes of delinquency*, in which he first develop the concept of social bond. Four principal relations with outside social environment constitute the social bond: the attachments that are about affectional attach to family, school, peers, community; the commitments that are about concrete expectation, like school success, work success; the involvements that are about time spending in social activities, like sport, religious activities...; the believes that are about moral, like patriotism, honesty, ethic...

Stronger is someone social bond, and weaker will be his probability to commit crime.

The second step starts in 1990, with *A General Theory of Crime* co-writing by Michael Gottfredson and Travis Hirshi. In this theory, the authors point out that even if crime types are different, but the characteristics are common. That's why they called it the "general theory": a theory on common point for every type of crime making. One of the main focuses is about the self-control of the criminals, which is lower than non-criminals self-control.

But even if Hirshi develop something near from Walter Reckless' containment theory (inner variable and outer variable), it was in fact still different in five points:

- a. Reorganization of the both concepts. Hirshi reorganizes separately the two concepts, and work on the conceptualization of control principle through these two basic concepts of inner and outer.
- b. Statistical applicability for the both concepts. Hirshi makes the two concepts become statistically measurable. For example, the concept of self-control is constituted by eight specificities that can be measured.
- c. Unification of the both concepts inside the same logic. The two concepts are not independent each other. Point is not about social control on one side and self-control on the other side, and that both will separately influence crime making. The interdependency of the two controls is one of the most important evolutions of inner/outer discussion. Stronger is someone social control, stronger will be his self-control.
- d. Research on process. If the two concepts are inter-dependent, which one comes first? This is one of the more important discussions. For Hirshi, the social control formats and decides someone degree of self-control. Adult good self-control genesis comes from childhood good social bond.
- e. The second one is the final reason of crime making. Because of social control will determine somebody self-control, the self-control is the particularity that directly influence the crime making.

2.3 Agnew, a review of social control

Agnew(2005) esearches belong to the strain theory school (1992, 1997), but in 2005, he publishes the book: *Why do criminal offend? A General Theory of Crime and Delinquency*. Just by reading the topic, we can feel that Robert Agnew tries to challenge control theory and to penetrate inside Hirshi's territory. He uses life course principle and separates life domain influence on crime into three steps: the Childhood years, the adolescent years and the adult years. One of the main schemas of his "general theory" is the following one (Figure 2-4) about the relative effect of the life domains on crime during three life's steps:

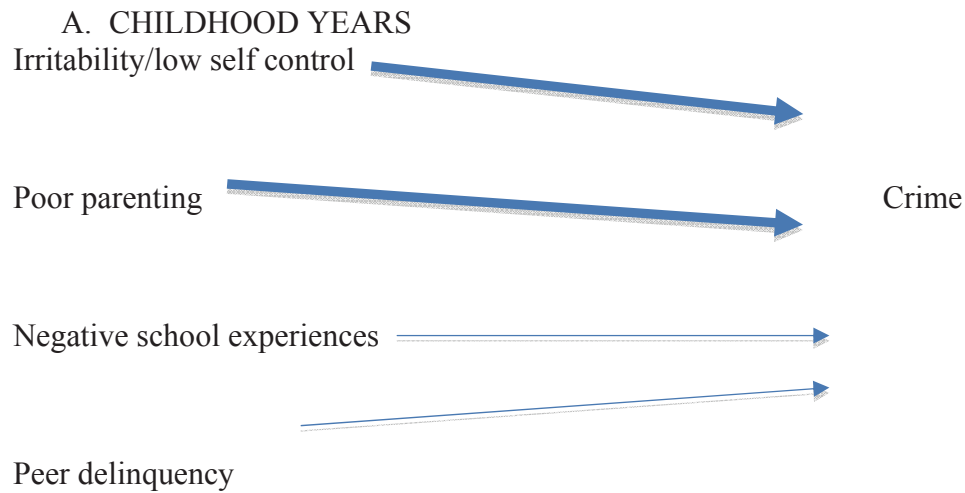


Figure 2, Childhood years crime genesis (Agnew, 2005)

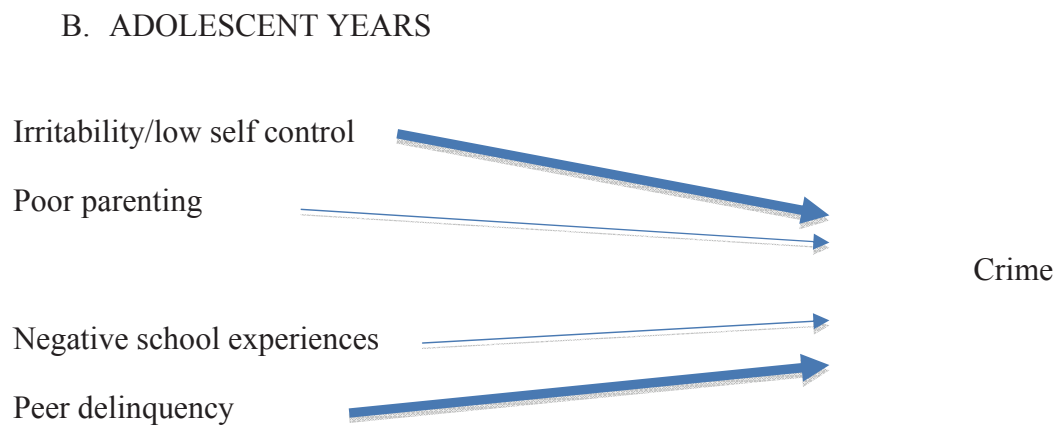


Figure 3, adolescent years crime genesis (Agnew, 2005)

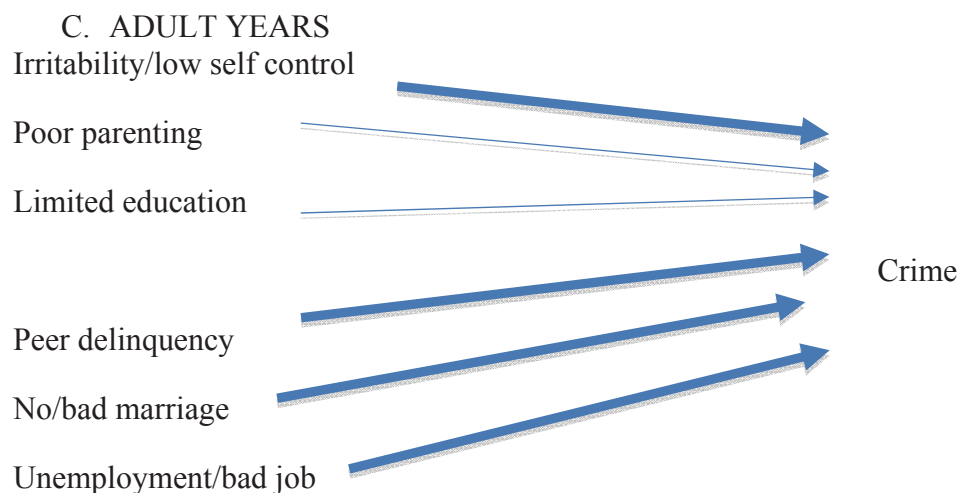


Figure 4, adult years crime genesis (Agnew, 2005)

In this schema, the thick lines represent relatively large effects.

So, Robert Agnew limited the outer (social environment) positive influence to parents and school (adds marriage and job for adult), and the inner to irritability and self-control. But the real challenge to earliest social control theory is about peer delinquency. Hirshi consider that if the attachment to peers is really strong, whatever this peers are or are not delinquent boys, it will be a social bond that can prevent delinquency. Robert Agnew believes that delinquent peers are the negative forces that will drop crime-making probability.

2.4 Literature conclusion

The relative theories on “control theory” are numerous and complex. But for our present research, Walter Reckless, Travis Hirshi theory and Robert Agnew adaptation are enough to develop the basis of our statistical analysis.

There are inner forces and outer forces controlling human behaviours. During adolescent years, the main inner force is the self-control, and the main positive outer forces are coming from school attachment and family attachment.

As Walter Reckless and Travis Hirshi argue, we believe that the attachment to family and the attachment to school must be measure on the positive way. It means that measuring the attachment to parents (+) is more explainable for crime prevention analysis than measuring the poor parenting (-). This was in fact the very foundation of social control theory: analysing “what’s work”, and not analyzing “what don’t work”.

Family and school attachments are positive control forces that directly influence adolescent self-control. Stronger are the adolescent attachments, and stronger will be his self-control.

In other way, we don’t understand the delinquent peers as a social positive control forces. As Robert Agnew argues, delinquent peers have negative influence to adolescent social behaviours, and the absence of delinquent peers is one of the keys for crime prevention.

In fact, the forces controlling delinquent peers relationship is the same than the one developing adolescents self-control: the family attachment and the school attachment. A parent or a teacher caring about his children will pay more attention on his peers “quality”, and if the children have enough attachment, he will follow the adults’ advice. So, stronger are the adolescent attachments, and less will be his delinquent peers relation.

That’s why, in theory, low self-control adolescent will have more delinquent peers than high self-control adolescents: it belongs to the same social control forces.

As a conclusion, and as hypothesis for our provisory structure research model, the first step of our research state that: *the delinquency low rate is the result of adolescent high attachment to family and high attachment to school that develop high self-control and control the absence of delinquent peers.*

The provisory schema of present theory (primary hypothesis)is as figure 5 show us:

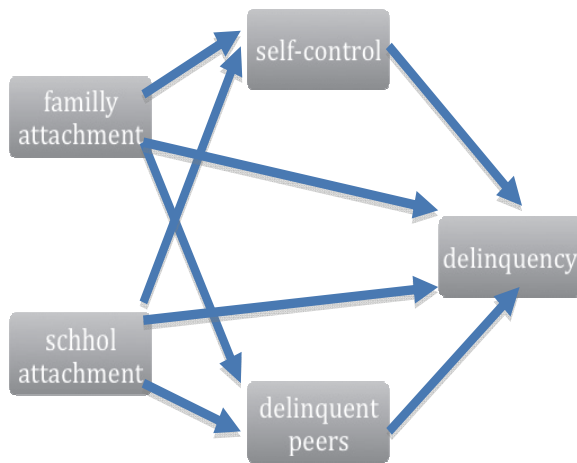


Figure 5, theoretic hypothetical schema

3. METHODOLOGY

After pre-test (we already do), the first step was to build a provisory research structure model according to the literature review. The second step is a statistical test for this provisory model for finding his weakness and his forces, and as conclusion to this step, we will adapt and ameliorate the original provisory research structure model and build a better research model. In the third step, we will test the research model with advanced statistic (SEM) and find the best model that will be the definitive one. The fourth and last step will be a discussion about the definitive model. This discussion will include the applicability of a policy orientation

3.1 Research structure

According to the theory, the prevention of adolescent delinquent behaviours must be understand through five variables:

1. Two independent variables: high attachment to family, high attachment to school
2. Two intermediate variables: high self-control, absence of delinquent peers
3. One dependent variable: delinquency low rate

3.2 Statistical analysis

For testing this provisory model, we will use correlation and multi regression. The legal computer program SPSS provide by police academy will be used to test the Pearson correlation and the regression.

For the second test, we will use SEM correlative model. The legal LISREL computer program we personally detain will be used to test the full model direct and indirect effect, but also, through X^2 , P-value, RMSEA and RMSEA P-value, we will test the availability of the model.

3.3 Sample

Last year, we receive data that was a great opportunity to work on this topic. Ex-minister of the education, Wujin make a survey on more than 14022 adolescents. He used sociology (but not criminology) to elaborate more than 300 questions, and in fact, large part of these questions contents was identical to criminology social control and self-control theory. Wujin own research was published in 2002, and we obtain the database legally, and also the right to use this database in our own researches. The quantity and the quality of the survey that we detain is the greatest opportunity to test theories and all variables in a very large sample.

The research's sample include about 14022 teenager dispatched in the whole country. All were school's student, as local law state on for this range of age, but some comes from traditional scholarship, and some come professional school. Wujin respect the repartition between Taiwanese adolescent normal school students and professional school students.

The teacher from all district ethically help for the research, and that's the reason for high positive response from teenagers. For the five variables we test, the available self-rapport repartition and basic data is the following:

3.4 Adaptation of original Survey into present theory

The five variables we analyze are the family attachment, the school attachment, the delinquent peers, the self-control and the delinquency. For the third first variable, we directly use Wujin table, because the question he asked in the survey is identical to the one we used to ask in criminology social control theory.

For the last two variables (self control and delinquency), the concept of Wujin was still different from the criminology sciences concerns, and we need to adapted the set of item by excluding some questions and including questions he originally ask in different tables.

Table 2, basic data on research variable

	Family attachment	School attachment	Self control	Delinquent peers	Devianc	Violenc
N	12922	13576	13325	13726	13687	14014
Missing	1100	446	697	296	335	8
μ	2.79	2.946	2.856	3.124	3.164	0.87
S^2	0.281	0.227	0.315	0.367	0.231	0.025

For example, the self-control set of question was only focusing on the capacity of facing frustration and the moral concept for some behaviour. The original table didn't include the immediacy (I want it and I want it now), nor the tendency for danger like extreme sports. Fortunately, these questions were included in other tables of the research questionnaire, and so we manipulate the original variables and add or reject some non-adapted questions for criminology research.

For delinquency, we first readapt two variables (add and reject questions), the first one is deviant behaviours, and the second one is violent behaviours. We first selected questions, particularly about violence. We chose a set of violence against peers, against adult, against public material, racket, menace and other violence implicating legal responsibility. Every level of violence was included, and in other part, we excluded questions that overemphasized school bully. School bully is part of violence variable, but cannot over dominate the orientation of the survey.

The deviance table is low (Cronbach's Alpha value 0.653), and after analysis, we find that the problem comes from the first item, about cigarette, because, maybe, smoking is more determined by age than other deviant behaviour. However, according to the KMO value (0.752), the Bartlett value (18197,5) and the P value ($p= 0.000$), we decided to conserve the smoking item.

But on other way, the “delinquency” we will analyze in our research is the association of the deviant behaviours and the violent behaviours. And the confidentiality of “delinquency” (addition of the earliest deviance and violence) is 0.818 for the Standardized Cronbach's Alpha (Table 3).

Table 3, Delinquency Cronbach's' Alpha value

	Cronbach's value	Standardized Cronbach's Alpha	Item
Deviance	. 653	. 542	6
Violence	. 815	. 832	17
Delinquency	. 771	. 818	23

After readapting the two concepts of deviance and violence, we united them in a single variable: the delinquency. The confidentiality of every questions set was high:

Table 4, Five variables Cronbach's' Alpha value

	Cronbach's value	Standardized Cronbach's Alpha	Item	Confidentiality
Family attachment	.934	.934	20	High
School attachment	.796	.802	12	Medium
Self control	.890	.891	18	High
Absence delinquent peers	.773	.782	7	Medium
Delinquency	.771	.818	23	High

4. SURVEY ANALYSIS

4.1 Teenager's years evolution

The data tend to prove that the adolescent from 10 to 18 tend to develop some independence regarding his family attachment and school attachment, and develop his

own social network. As table 5 shows us, detachment with family is a little more important than school.

Table 5, correlation Age/five variable

	Family attachment	School attachment	Self-control	Absence delinquent pe	Non-deviance	Non-violence
Age Pearson v.	-.302***	-.290***	.036***	-.104***	-.016	-.007
(10 Chi square	.00	.000	.000	.00	.436	.407
18) Evolution	Negative	Negative	Positive	Negative	Non significant	Non signific

If we observe the evolution of the (pre-) adolescents, the evolution of the adolescent age is in positive correlation for self-control. Even if the relation is weak (, 036), but we still can confirm that adolescent will have better self-control years after years. The delinquency and violence correlations with age variable is not significant ($p = .436$; $.436 > .05$; and $p = .407$; $.407 > .05$), so delinquency is a stable problem during adolescent years, we don't need to separate population into two different groups. By the way, the ranges of ages we examine in present paper belong to a stable social fact regarding the violence and the delinquency in Taiwan.

The correlative data that are really significant about age of teenagers are for family, school and peers. The family attachment is in negative correlation (-, 302) meaning that attachment to family become weaker years after years; the school attachment is also in negative correlation (-, 290) meaning that attachment to family become weaker years after years; and the absence of delinquent peers is also in negative correlation (-, 104), meaning that adolescent will have more delinquent peers years after years.

4.2 Adolescent's basic life domain

Our second objective is to focus on adolescent basic life domain: the family, the school and the delinquent peers, in addition to the basic inner containment: the self-control. Table 6 shows us the Pearson's correlation of every variable.

Table 6, Correlation five variables

	Family attachment	School attachment	Self-control	Absence delinquent peer
School attachme Pearson value	.314**			
P-value	.000			
Self- control Pearson value	.219**	.427**		
P-value	.000	.000		
Absence delinquent peers Pearson value	.149**	.394**	.444**	
P-value	.000	.000	.000	
Non-delinquenc Pearson value	.188**	.372**	.408**	.532**
P-value	.000	.000	.000	.000

Note: All correlations are significant, ($p < 0.01$), but the levels of relation are quite different (Peers vs. Delinquency = 0.532; Family vs. Peers = 0.149).



According to this first lecture, the family influence is weak regarding peers quality, delinquency and self-control, but is still medium regarding the school attachment. The hypothesis providing by such lecture is:

“Stronger is the family attachment, so stronger will be the school attachment. In next step, the school attachment will influence absence of delinquent peers and self- control. In the last step, school attachment, absence of delinquent peers and self- control will positively influence the delinquency of the teenager. But on other way, family attachment direct influence on peers quality, delinquency and self control are not so important than original control theory affirm about adolescent”.

And the conclusion of such hypothesis may be that family attachment is in fact important to reinforce the attachment to institution that will be able to control adolescent delinquency. There are two main solutions to read correlation’s level difference such as Table 7. If we use the first lecture, the correlation result is showed on Table 8. With the second lecture, the result is listed on Table 9.

Table 7, Interpretation of Pearson’s Correlation Result

Interpretation of Pearson’s Correlation Result	First Lecture	Second Lecture
Total		$P_{xy} = 1.0$
High	$1.0 \geq P_{xy} > 0.7$	$1.0 \geq P_{xy} > 0.7$
Medium	$0.7 \geq P_{xy} > 0.3$	$0.7 \geq P_{xy} > 0.4$
Low	$0.3 > P_{xy} > 0.0$	$0.4 \geq P_{xy} > 0.1$
Inexitant		$0.1 > P_{xy}$

Table 8, Correlation First Lecture

High	Medium	Low
No	Family vs. school ($P_{xy} = 0,314$)	Family vs. delinquent peers ($P_{xy} = 0,149$)
	School vs. delinquent behaviour ($P_{xy} = 0,372$)	
	School vs. delinquent peers ($P_{xy} = 0,394$)	Family vs. delinquent behaviour ($P_{xy} = 0,188$)
	Self-control vs. delinquent behaviour ($P_{xy} = 0,408$)	
	School vs. self-control ($P_{xy} = 0,427$)	
	Self control vs. delinquent peers ($P_{xy} = 0,444$)	Family vs. self-control ($P_{xy} = 0,219$)
	Delinquent peers vs. delinquent behaviour ($P_{xy}=0,532$)	

Table 9, Correlation Second Lecture

Total/high	Medium	Low
No	Self-control vs. delinquent behaviour (0,408)	Family vs. delinquent peers (0,149)
		Family vs. delinquent behaviour (0,188)
	School vs. self-control (0,427)	Family vs. self-control (0,219)
	Self control vs. delinquent peers (0,444)	Family vs. school (0,314)
		School vs. delinquent behaviour (0,372)
	Delinquent peers vs. delinquent behaviour (0,532)	School vs. delinquent peers (0,394)

The result of the second lecture is that, even if the correlation are significant with every variable, meaning that every variable have influence, but the family attachment and the school attachment have weakest influence on delinquency than self control and delinquent peers.

In every situation, the direct impact of school attachment on adolescent is at least more than two times stronger than the impact of the family attachment (0.427 vs. 0.219 for self control; 0.149 vs. 0.394 for delinquent peers; 0.372 vs. 0.188 for delinquent behaviour).

It doesn't mean that family impact is not important for the structural model: in fact, school attachment needs the impact of family. If family doesn't influence the attachment to school (0.314), so school will not have possibility to influence self-control, delinquent peers and delinquent behaviours as she do in present model. And by interaction's consequence, the family attachment impact will also be stronger if it crosses the school indirect effect.

In other words: the family attachment influences the school attachment; the school attachment influences the self-control and peers relation; and self-control, peers relation influence the delinquent behaviours.

In other way, this is the main process. And in fact, family direct impact to self-control and delinquency and school direct impact on delinquency are lower but still important. Family is stronger through school, but in fact cannot just reinforce school; she also has to care on others variable, even if the influence is weak. Same as school, even if his impact on peers and self-control is the most important, but she cannot abandon his direct control work on adolescent delinquency.

The real problem for theory is: why school attachment is more influent than family attachment on peers relation quality, self-control quality and delinquency during adolescent years?

In fact, in developmental psychology, we use to say that the teenager is a "rebellion age" (Su Jian-wen, 1998). We can easily conclude that during rebellion period, teenagers

temporarily reject the familial attachment, and so, outsider's control (social institutions) will be more powerful than insider's control (family). But it will just explain why school attachment may be stronger than family attachment in teenage period, and in case of plain attachment to the both entities, it will not explain why school attachment is more powerful than familial attachment to control teenager's peer relationship and delinquent behaviours. And that's the very problem developed in our survey.

Actually, we strongly believe that the discussion is more about the level of identity.

If we agree Durkheim (2004) argument on individual ethic (as an intra-rule individual admittance), different entities will provide different ethics, and more important, will ask for different personalities. At work, this man will be a "policeman", including police ethic admittance and interaction's professional model; when he go home, he will be a father and an husband, with familial ethic and familial interaction model; and when he go to the bar with peers, he will be a friend with friendship ethic and interaction model. The same person will develop different personality tendencies according to his different identities. In fact, he has different level of identity.

The teenager, at minima, must face and build three dominant personalities and identities: the individual one (self-status and individualism), the familial one, and the social one. The individual one is the one he tends to develop by and for himself (this is my body, my existence, my decision, my rights). The familial one is the one about respect of intimate environment, like familial piety, protection of younger (the famous "take care of our little sister")... In other words, it is developed by and for the family. And the social one is the one about delimitation between social and antisocial behaviours out of intimate environment's consideration.

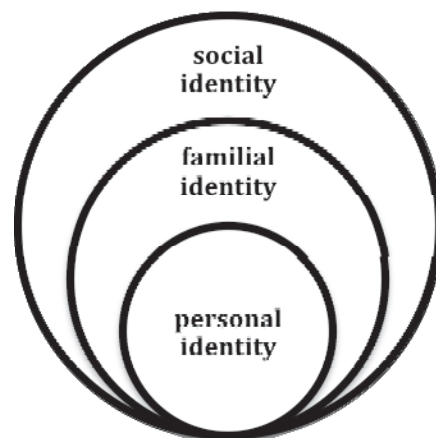


Figure 5, identity construction

As table 5 showed us, the teenager familial detachment is more important year after year than school one, but delinquent peers are more and more numerous. And according table 6, 7 and 8, the influence of familial attachment on self-control, peers and delinquency are the weakest one. This data all tend to prove that teenagers are busy to build their social identity. School is one of the most important social centres for adolescent: they are ten hours a day in school, and they meet important part of their friend in school. It may explain why school is more influent than family on adolescent direct social control.

4.3 Direct effect of each variable on delinquency

The multi-regression is a way to understand the effect of multiple independent variables that we put together in a same model. By this method, we can just understand the influence of different origin. Pearson correlation was for understanding the relation between every variable, calculated one by one, but multi-regression can give us the percentage of explanatory capacity for addition of all direct effect of independent variables we include, as table 10 shows us. If we have an very high percentage of explanatory capacity, it means that we don't need to include indirect effect, but if we are not satisfy enough by the percentage, we need to complete the model with indirect effect (SEM)

Table 10, Regression analysis

	Non-standardized		Standardized	t	P
	B evaluation	S	Beta repartition		
1 (Constant)	.930	.037		24.931	.000
Family att.	.048	.010	.082	4.679	.000
Self-control	.103	.011	.194	9.561	.000
Del. peers	.199	.009	.445	22.618	.000
School att.	.079	.012	.125	6.324	.000
R	R=.649		R ² =.421	standardized R ² =.419	
Anova	F=364.651		P=.000 ^a		

Note: a is delinquency

If we understand the model as a simple multi-variables linear regression, the capacity of explanation for the matrices is only 42,1% (R²=.421). And the formula to explain the regression line is (y= a+b₁x₁+ b₂x₂+ b₃x₃+ b₄x₄):

$$\text{Non-delinquency} = 0.93 + 0.048 \text{ family attachment} + 0.079 \text{ school attachment} + 0.103 \text{ self-control} + 0.199 \text{ absence of delinquent peers.}$$

According to the second lecture of regression model, just as Robert Agnew (2005) argues, during adolescence years, the self-control (0.199) and the delinquent peers (0.199) are more influent than family (0.048) and school (0.079). So, if we just consider the direct effect of four independent variables (self-control, family, school and peers) on one single dependent variable (delinquency), so the data confirm the theory's figure of Agnew on Figure 6:

D. ADOLESCENT YEARS

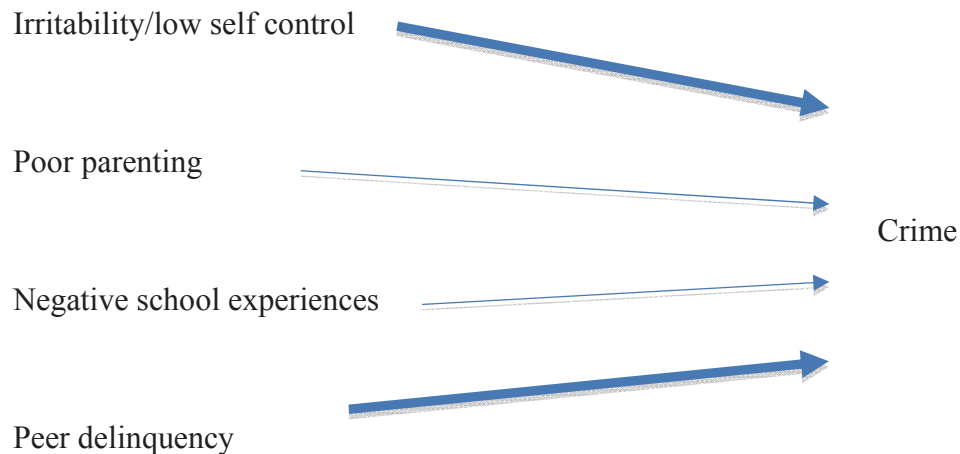


Figure 6, Confirm Theory of Agnew

But this model only explain 42,1% of the matrices. It has high explanation power, but can't be called "*A General Theory of Crime and Delinquency*" as Agnew pretend, because a "general fact" with 57,9% of exceptions seems to be misunderstanding the basic definition of word "general".

And if we consider a more complex figure including indirect effect and intermediate variable, we need a deeper lecture of the present data. We can't miss that there are two correlations that are particularly low, the family attachment to the absence of delinquent peers, and the family attachment to the delinquent behaviours. The family attachment to the absence of delinquent peers is under 0.15, showing a particular low correlation value.

4.4 Construction of structural model including direct and indirect effect (SEM)

According the earliest result, we believe that the original research structure is not ideal, and need to be transformed according data's specificity.

- a. The family attachment stronger correlation is about the school attachment and the self-control, but particularly the school attachment. The family attachment must be considerate as the dependant variable that is directly connected to the school attachment.
- b. The family attachment's correlation with delinquent behaviour is weak, but still can be significant in a general structure because is included in the first half of the low category (first lecture: 0 to 0.3 = 0.15; second lecture 0.1 to 0.4= 0.15, and 0.188 > 0.15), but the particular low correlation value between family attachment quality of delinquent peers (0.149 < 0.15) is still a problem. For a strong general research structure, we conclude that the direct effect between family and peers can be excluding, but the direct effect between family and delinquency is still applicable.
- c. School attachment can be good explanation to self-control, delinquent peers rate and delinquent behaviour rate. This is the reason why we believe that the school attachment may be considerate as the first intermediate variable, just after the independent variable (the family attachment)

- d. Self-control and delinquent peers' correlation are pretty high, just like delinquent peers and behaviours' correlation. This is important relation between variable.

By adjustment of the earliest research structure, according the correlation's result, we now understand that the family must be adjusted as the independent variable, school attachment as the first intermediate variable, the high self-control and the absence of delinquent peers are the second level of intermediate variable, and the delinquent behaviour is the dependent variable. Their relations are showed on Figure 7.

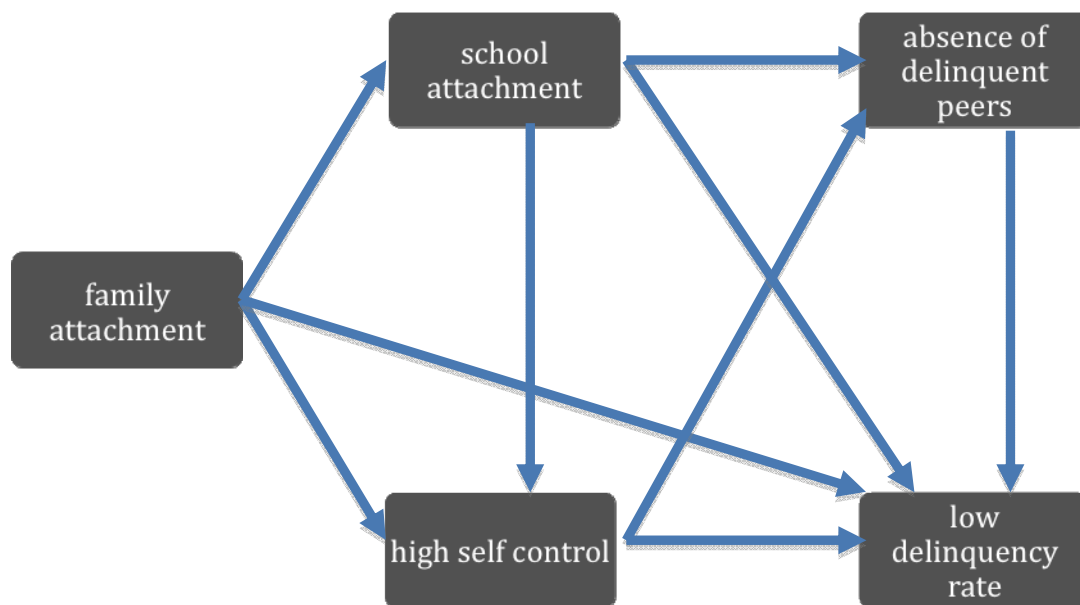


Figure 7, Research Definitive Model

The new research structure implicates direct effect and indirect effect. A simple regression will not test such a complicate structure, and we need to use SEM to test it before we conclude our research. After testing SEM models, we find that the model has the highest availability, as figure 8 and table 11 shows us:

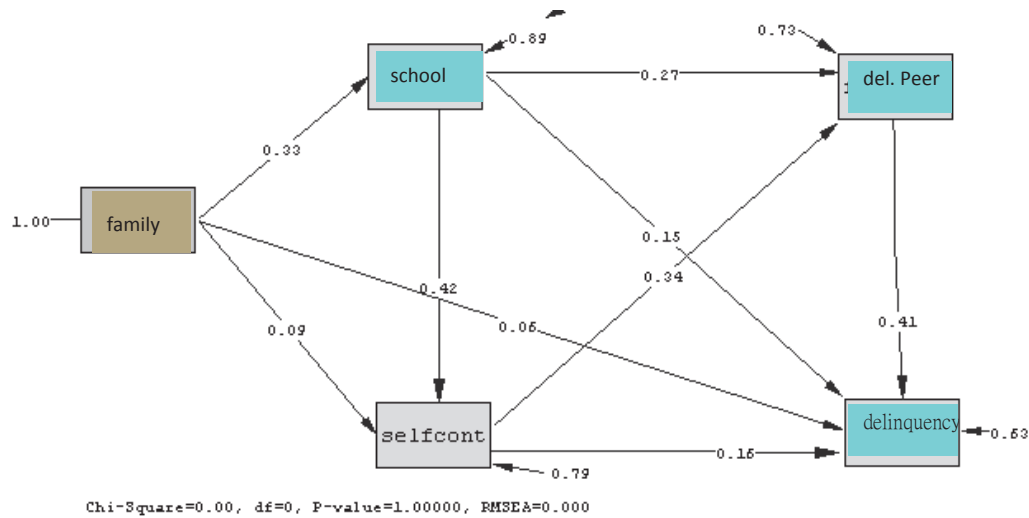


Figure 8, research definitive model SEM analysis
(Original data was transferred in French and Chinese version)

Table 11, model availability analysis

Test	Norms	Model val	Model	Objective
X ²	SMALLER	0.00	Perfect	Influence of the sample on explicability of the statistical data
P-value X ²	>.05	1	Perfect	
RMSEA	<.05	0.0	Perfect	Influence of instability of sample on data
P-value RMSEA	>.90	1	Perfect	

The table 11 test's objective is to analyze the stability of relation between data result and sample complexity. What we want increase is the: "it depend on", like: "in general, the model is available, but in fact it depend on sample other characteristics". Using other words, we test the stability of the model regarding with the sample complexity.

In table 12, we can see the direct and indirect effect of every variable. Because of inclusion of two kind of effect, the result differs a little with earliest correlation and regression values, but the repartition of different variables is still the same. For example, family's effect is the lowest one, and delinquent peers' effect is the stronger one.

The distance between direct effect of family attachment and school attachment is higher than in simple correlation and regression result. School direct effect become at least more than two times stronger for delinquent behaviour (0.06 vs. 0.15) and more than three times stronger than family for self-control (0.09 vs. 0.42). But by including indirect effect, the result is near from simple correlation and regression result, meaning twice (0.23 vs. 0.42 for self-control and 0.21 vs. 0.39 for delinquent behaviours).

Table 12, Direct and Indirect Effect

Variable	Effect	School attachment	Self-control	Delinquent peers	Delinquent behaviours
Family attachment	Direct	0.33***(T=39.32)	0.09***(T=11.18)		0.06***(T=7.42)
	Indirect		0.14***(T=31.17)	0.17***(T=19.13)	0.15***(T=27.56)
	Total	0.33***(T=39.29)	0.23***(T=26.77)	0.17***(T=19.13)	0.21***(T=24.43)
School attachment	Direct		0.42***(T=50.92)	0.27***(T=11.17)	0.15***(T=17.92)
	Indirect			0.14***(T=31.89)	0.24***(T=22.38)
	Total		0.42***(T=50.87)	0.41***(T=17.49)	0.39***(T=31.46)
Self-control	Direct			0.34***(T=40.86)	0.16***(T=19.94)
	Indirect				0.14***(T=31.99)
	Total			0.34***(T=40.82)	0.30***(T=35.93)
Delinquent peers	Direct				0.41***(T=51.34)
	Indirect				
	Total				0.41***(T=51.29)

In comparison with other variable, the family attachment’s effect has the lower direct effect on behaviours and peers (0.09 and 0.06), and in fact the direct effect seems to be non-significant regarding the other. But in addition with school indirect effect, it seems to have better impact on the adolescent (0.23 and 0.21).

Of course, the family tries to make interference in the social identity construction and want to control its development through self-control and behaviours control, and as the surveys still prove that it works inside some limits. But the deeper social identity process is build by and for the society, and so, by the social institutions for the social environment.

Crime and delinquency is about antisocial behaviours and behaviours against social common norms (law). As Hobbes argued (2005), it is the rules of society to format people according these social norms that society created. And according Confucius and Hanfeizi, it is a fact that family will conform the “social education” of the children according the interest of the family, or, at least, will conform the social education of the children to the social norms when they are not against the familial interest. Just as two thousand years ago the Chinese philosophers argue: what parents will hope that his own children denunciate family members to the police in case of crime making? This is the must concrete limits of social education by the family. There is some degree of relativity in social education by family, and by reaction, a teenager will be more refractive to a parental social domination like: “I don’t like your friend, he is not a good peer for you, never see him again”, the reaction will be “it’s my friend, my choice, my social life, I didn’t do anything bad, don’t interfere”.



So, because of the essence of the family and his close relationship with teenager's familial personality, the control power of familial attachment on teenager's peer quality and on other (anti-) social behaviours exists, but is limited* .

On other side, school is a pure social institution; the conflicts of intra-interest are restricted, the ideological orientation of the institution is clear for everybody (Meyer, 1977). One of his main rule and goal is to insure the social development of the children according to the needs and to the rules of the society. The essence of the school makes national education more powerful in social control of teenagers social behaviours (0.39) self-control (0.42) and peers (0.41), because the status of the institution will not (easily) change because of some non-social nor micro-social interests (like personal interests or familial interests), there is no relativity about the orientation, no way to "drift out", as Matza said.

The question that can be asked about our analysis system is: on the way to find the stronger SEM model, we eliminate the lowest correlation value. Originally, there were two values particularly low: the family attachment/delinquent peers (Pearson correlation: $0.149 < 0.2$), and the family attachment/delinquent behaviour (Pearson correlation: $0.188 < 0.2$). But in the final model, we just eliminate the first one and conserve the second one. In final model, the family attachment/delinquent behaviour relation is statistically significant, but become "over-weak" ($=0.06$) and seems by the way to lost largest part of his importance.

Someone can ask: why do you conserve this weak direct effect? Is that about philosophical believe or social conception? And according to the correlation and the regression statistical results, we can honestly ask: "may parent controls adolescents delinquency only through school intermediate, or do we need that parent continues to try directly to control adolescent behaviours?"

The answer is that there are no philosophical believe nor social conception in the reason leading us to conserve this direct effect. This is a pure statistical reason. Without family attachment direct effect on adolescent delinquency, the SEM model will be as follow:

* It is perhaps one of the greatest difference between teenagers and adults. According R. Sampson and J. Laub (1994), the influence of family (wife, husband, children) on adult recidivism is one of the more powerful social control power. Maybe because adult family process (marriage) is a social process more than a familial process: an individual choice in social environment. But for the teenager, family is still a state of passive situation, not a social choice.

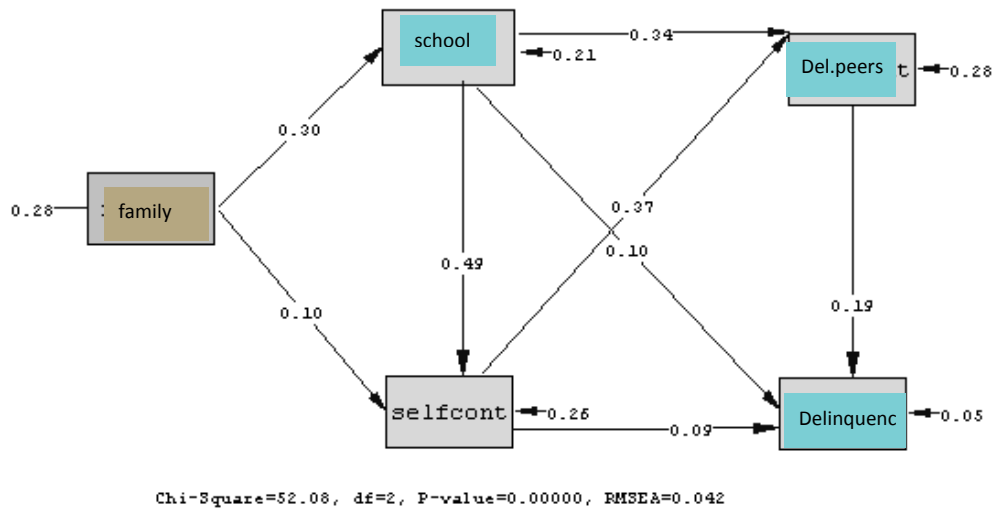


Figure 7, model without family direct effect SEM analysis
 (Original data was translated in French and Chinese version)

As we can see on Table 12, by excluding family direct effect on adolescent delinquency, the values change, and the school importance proportionally grow up in every case. For example, it become the second more important direct effect on delinquency, but was the third in the last model; But in fact, this model is not available. X^2 , P-value and RMSEA P-value are all unavailable.

Table 12, model availability analysis

Test	Norms	Model value	Model
X^2	SMALLER	52.08	Too high
P-value X^2	>.05	0.000	Unavailable
RMSEA	<.05	0.042	Limit
P-value RMSEA	>.90	0.89	Unavailable

This SEM model without family attachment direct effect on adolescent delinquency behaviour is not available. X^2 must be as small as possible, but from original model $X^2=0$, the model without family attachment direct control power on delinquent behaviour drops to 52.08. From original model P-value $X^2=1$ ($1>.05$), it increases to 0. The original RMSEA 0 ($0<.05$), drop to 0.042, and even if it is inside acceptable limits ($0.042<.05$), the original model is still better. The P-value RMSEA =0.89 is just out of the acceptable limit ($0.89<.90$)

The difference between LISREL including family attachment direct effect on delinquency and without family attachment direct effect is clear: without family attachment and familial control, the crime prevention process is statistically not available; and with family attachment effect on delinquency (however weak it is), the control process is strongly available. The adolescent delinquency prevention process can't work, or at least is incomplete without the family. Maybe this is one lesson on relativity: a weak effect may sometime be indispensable.



5. CONCLUSION AND RECOMMENDATION

All results lead us to think the original theory in another way, and to understand the “non-delinquency” genesis through another logic.

Human beings are dispatched between different identities, like individual identity, familial identity and social identity². Each identity is about control and power: do my behaviours belong to me, to my family or to my society, who control it. Of course, there never have simple answers: all response is about degree of repartition and priority. Someone who puts priority on individual identity power is called an individualist, egocentric; priority on family identity is called familial personality; and priority on social identity is called a social personality, a socialist. Sometime, the collision between some of the three powers will create dilemma, and two thousand years ago, the dialectic Confucius-Hanfeizi already discuss this problem³ but also Durkheim in his research on moral and ethic (2005).

When we talk about crime control and prophylaxis, it is about prevention of anti-social behaviour and prevention of behaviours against social norms (law); it means that we are focusing on the social personality of the teenagers. It seems to be still a very logical conclusion that the best control of teenagers’ social identity is provided by social institution and social entities (like school). And in fact, we must remember that it was the real objective of national education foundation. For example, Jules Ferry, father of French modern national education system, insisted clearly in the 1880 law content and parliamentary discussion about the fact that the main objective of public school is to teach children the social norms and social moral, and to give everybody common knowledge; and that it’s only on that way, people living in the same country can become “common citizen”.

But in real world, as surveys prove, national education control power can’t work well without integration of familial control power. First, school needs family to drop adolescent school attachment. Second, the full model need that family directly care on adolescent social behaviour to be an available model.

In fact, the philosophical problem on the ground is more complicated. Create and develop a social identity can’t work without the development of familial identity. That’s why, if family don’t work on adolescent familial identity, the school can’t create easily the social identity of the adolescent. And even if our research didn’t find statistical database on the question, we believe that the social identity and the familial identity constructions both can’t work well without a good individual identity construction. Crime prevention needs a rational reunification between school and family control’s powers to give teenagers a right way to build his three basic identities in inter-harmony.

But when we talk about reunification between school and family, it doesn’t mean that the family can interfere in the school educational process. Lot of parents lost control on their own teenagers, and school still has some control power. How can peoples who already lost large part of control’s power

² Of course, there is a lot of entities’ identity, as ideological entities will create particular identity, like religious identity, political identity etc... or as economical entities, like enterprise identity etc..., and all this entities will control individu personality through different ethic and rule, making them become some particular identity(Durkheim, 2004). Just remember that “identity” is only an “id” inside an “entity” (id-entity). But our research just focus on individu, family and school.

³ Cf. note n. X

decide the orientation for a school system that still have some control power. It's a logical nonsense; we can't make crime prevention inside a nonsense social system, and the power's priority must be clear, because we can't run one kilometre if we walk on our hands: feet must be down and hands must be up, not in the inverse way. The error of actual national education system orientation is that we try to individualize and adapt national education according teenager's individual familial environment, and more, we let the family make interference in education professional work process. Many professionals of education, like Henri Pena-Ruiz, point out this problem again and again (2005) without audience. We must listen to them.

The point is for school to control teenager's social identity formation, and to reintegrate family and familial control power. Ivan Illich the famous catholic priest author of *Deschooling Society* (1971) makes experiences in Mexico during 70th about how school can develop the children's family attachment for dropping school educational capacity. This is a way to understand social control theory applicability in crime prevention policy.

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UNRAVELING PERSONALITY TRAITS OF JUVENILE DELINQUENTS IN KOLKATA, INDIA: EYSENCKIAN ANALYSIS.

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Revised EPQ was administered to a group of 100 officially labeled delinquents and a comparison sample of 100 non-delinquents matched in terms of socio-economic status, age and sex, to identify the personality traits of juvenile delinquents in Kolkata, India. Results from MANOVA reveals that both the groups differ in terms of Psychoticism (P), Extraversion (E), and Lie scale (L). linear regression analysis, further represent that personality variables taken together successfully predict overall deviancy, but interestingly personality of the individual does not have a significant relationship with type of crime committed. The results demonstrate the cross- cultural applicability of the Eysenckian theory. The theoretical and practical implications of the findings were discussed.

INTRODUCTION

The term personality is one of the most debated terms in psychology. In its most basic form, personality refers to relatively stable characteristics of a person that make their behavior consistent across situations (but many other definitions are possible depending on the approach being taken). Personality factors have for a long time occupied an important role in research on antisocial behavior (Arbuthnot, Gordon & Jurkovic, 1987; Tennenbaum, 1977). For almost 30 years, most of the studies have focused on testing hypotheses derived from Eysenck's (1964). Hans Eysenck (1964) put forward a theory of criminal behavior based on a very influential theory of personality he had earlier devised and which he continued to develop throughout his career. Although his theory is usually referred to as a personality theory of offending, it is important to appreciate that Eysenck's theory conceives of criminal behavior as the outcome of interactions between various biological, social and individual processes.

Eysenck's Theory

Eysenck's theory which is also known as a control theory, incorporates biological, social and individual factors. The basis of the theory is that through genetic endowment some individuals are born with cortical and autonomic nervous systems which affect their ability to learn from, or more properly to condition to, environmental stimuli. In 1959, Eysenck defined two dimensions of personality - extraversion and neuroticism. Later in 1968, Eysenck and Eysenck added a third dimension, that is, psychoticism. The theory is sometimes referred to as a 3-factor model of personality. Each of these dimensions is conceived as a continuum with most people falling in the middle range, and with comparatively few people at the extremes of each scale. According to Eysenck's theory, the three personality dimensions are associated with delinquent behavior.

The Extraversion (E) runs from high (extravert) to low (introvert). The extravert is considered as cortically under aroused and therefore is continually seeking stimulation to maintain cortical arousal at an optimal level, thus the extravert is impulsive and seeks excitement. The introvert is cortically over aroused and therefore tries to avoid stimulation to keep arousal levels down to a comfortable, optimal level, introverts are therefore characterized by a quiet, reserved demeanor. Eysenck stated that a person high on the E trait has a low basal arousal level and does not condition easily or produce anxiety based constraints as compare to person with high basal arousal,

that is low E. Research had evident that introverts (low E) and extraverts (high E) respond differently to stimulant and sedative drugs (Claridge, 1995).

Neuroticism trait (N), sometimes called emotionality, is related to the functioning of the autonomic nervous system (ANS). Individuals at the high extreme of this continuum are characterized by a strong reaction to any unpleasant or painful stimuli. High N individuals display mood swings and anxiety. Low N individuals on the other hand display calm, even-tempered behavior even under stressful condition. As with E, N is also linked with conditionability. High N leads to poor conditioning because of the vitiating effects of anxiety; low N leads to efficient conditioning.

In 1976, Eysenck further suggested that stable introverts (low N- low E) will condition best, that is they would be most likely to develop effective inhibitions measure. On the other hand, stable extraverts (low N- high E) and neurotic introverts (high N – low E) will be at some mid-point. Whereas, neurotic extravert (high N – high E) will condition least well. Initially, the third personality dimension, Psychoticism (P), was not formulated so well as E and N. While maintaining a genetic basis for P, its biological basis has not been described in detail (Eysenck & Eysenck, 1968; 1976). After various descriptions of P, it was suggested that P might better denote psychopathy than psychoticism (Eysenck & Eysenck, 1972). It is also a bipolar trait that assesses attributes such as preference for solitude, a lack of feeling for others, sensation-seeking, tough – mindedness and aggression at the high end.

In Eysenck's view, children learn to control antisocial behavior through the development of a "conscience"; this conscience is a set of conditioned emotional responses to environmental events associated with the antisocial behavior. This conditioning will mainly depend upon individual's personality in terms of E and N. Individuals with high E – high N is least likely to learn social control and will be overrepresented in the delinquents or offender populations. The remaining two combinations are spread in both delinquent and non-delinquent populations. The dimension P, is also argued to be strongly related to offending, especially with interpersonal crimes. According to Eysenck, person with strong antisocial inclinations to have high P, high E and high N scores.

Finally, antisocial individuals typically score lower than others on the Eysenck Personality Questionnaire's Lie (L) scale (Eysenck & Gudjonsson, 1989). The L scale is a measure of the degree to which one is disposed to give socially expected responses. A high score on this scale suggests that the respondent is in a process of impression management by continuously giving "yes" responses to items showing socially desirable behavior (Eysenck & Eysenck, 1994). A low score suggests indifference to social expectations and is usually interpreted as an indication of weak socialization. The strongest form of Eysenck's ASB hypothesis would be high P, E and N with low L.

Results from studies testing this hypothesis have obtained mixed result with regard to extraversion and neuroticism. However, support has been found for the hypothesis of a relationship between psychoticism and juvenile delinquency (Eysenck & Gudjonsson, 1989; Perez, 1986; Rutter & Giller, 1983). Rushton & Chrisjohn (1980) found a positive relationship between delinquency and psychoticism and extraversion, whereas no relationship could be established between neuroticism and delinquency across diverse samples. One of the studies conducted by Gabrys et al., (1988) on conduct- disordered children obtained a full support for Eysenck's theory. On the other hand,



Furnham & Thompson (1991), found a positive correlation between psychoticism and delinquency; whereas the correlation between extraversion and neuroticism with delinquency was non-significant (Levine & Jackson, 2004). Similarly, Farrington, Biron & Leblanc (1982) and Perez (1986) have extensively tested his theories on crime and delinquency, leading to opposite conclusions.

Till date, there is a mixed support on Eysenck's theory and especially the evidence based on behavior deviance and personality dimensions is very limited in Indian context. Few studies were conducted to test the cross-cultural applicability of Eysenck's theory. Lodhi & Thakur (1993) found a high P and N score; whereas low E and L score among the heroin addicts. Sahasi et al., (1990) found high P, N and L score; whereas a low E scores among the heroin addicts. Nishith et al., (1994) found high P, N and L score among the hallucinogen abusers; whereas no significant relationship with extraversion scores has been reported by them. Gupta, Sethi & Gupta (1976) established a positive correlation between extraversion and neuroticism with that of smoking practices.

The present study examined Eysenck's Anti Social Behavior hypothesis in an Asian country. This hypothesis proposes that the interaction of P, E and N when all are high and combined with low L will create the greatest susceptibility to the development of antisocial behavior.

METHOD

Sample

The data have been collected from two groups of adolescents living in the city of Kolkata, India. Kolkata is the commercial capital of Eastern India, located on the east bank of the Hooghly River. At present the population of the city is 4.4 million (Census Report, 2011). The first group of adolescents consisted of 100 delinquent boys, residing in a Remand Home located in the city of Kolkata. The age range was from 11 to 18 ($M = 15.52$ years; $SD = 1.62$). In terms of academic level, 32% had no education, 40% had primary education, 25% had middle school education and only 2% had high school education. With regard to religious affiliation, 57% were from Hindu families and remaining 43% were from Muslim families. The participants in the study were from low socioeconomic background, with an average income of 4820 INR per month. In terms of family structure, all of the adolescents had been residing with both biological parents. The average number of children in the home was 3. The vast majority of the participants were dependent on substance, that is, 94% and only 6% were not taking any kind of substance.

The second group of sample consisted of 100 adolescents ranging in age from 11 to 18 ($M = 16.13$ years; $SD = 1.93$). Participants were selected from grades 6 to 9 of various government schools located in Kolkata. 18% of the participants were in grade 6, 33% in grade 7, 39% in grade 8 and the remaining 10% of the participants were in grade 9. In this sample, 71% of the participants belong to Hindu families and the remaining 29% belong to Muslim families. As participants were from low socioeconomic background, so the average monthly income of the families were 6500 INR per month. The adolescents were residing with both their parents and the average number of children per family was 2.

The education level as well as employment status of the parents were examined. In the delinquent sample; 32% of the fathers were illiterate, 56% had primary education, and 12% had high school education. Whereas, 69% of the mothers were illiterate, and remaining 31% had only primary school education. With regard to employment status, fathers employment rate were 100%; 73% of the mothers were working and remaining 27% were homemakers only. But the job type was low in profile. In the non-delinquent sample, the literacy rate of the parents was better; 24% of the fathers had primary school education, 45% had mid school education, and remaining 31% had high school education. Mother education level was also high; 16% of the mothers were illiterate, 42% had primary school education, 33% had mid school education and the rest 9% had high school education. Father employment rate was 100% in this group of sample as well, but only 22% of the mothers were working and the remaining 78% were housewife only.

Procedure

The procedure of the study was divided into two stages. In the first stage, the Superintendent of the Remand Home was contacted by one of the author concerning the purpose of the study and seeking his permission to visit the home. After getting the permission a tentative time schedule was developed in discussion with the staff of the Home. Both the measures, i.e. Eysenck Personality Questionnaire (EPQ) and Behavior Deviance Scale, were administered directly to the delinquent participants using interview method under close supervision by the staff of Home authorities. The first author in the present study administered the questionnaires, to those participants who gave their consent. The researcher spent two days for approximately half-an-hour daily to collect the response from each of the participants. Initially a rapport was established with each of the participant and that both the questionnaires, which were close end in nature, were administered. The questionnaires were adapted to the local spoken language of the participants (Bengali). The reliability of the adapted scale had been provided later in the measures.

In the next phase of the study, the first author contacted the school administrators concerning the purpose of the study. Only Eysenck Personality Questionnaire was directly administered to the non-delinquent participants in the school environment by one of the authors and under the close supervision by the teachers of that grade. In order to maintain the parity with the other group of sample, instructions were provided in Bengali language to this group as well. Consent was taken from each of the students before initiating the procedure.

Measures

Independent Variable Eysenck Personality Questionnaire (1975) assesses 4 independent dimensions of personality, namely Psychoticism (P), Extraversion (E), Neuroticism (N) and Lie scale (L). In the present study, Bengali adaptation of EPQ (Basu & Basu, 1996) was used. Item total correlation- coefficients for each item of all the 4 sub- scales of EPQ were significant at .01 level. The Cronbach Alpha coefficients of all the 4 scales of EPQ were; for P it was .83, E it was .84, N it was .79 and for L it was .80. Scoring of each of the item was dichotomous and contains either 'yes' or 'no' responses. For some of the items, 'yes' markings get '1' score and for some, no markings get '1' scores. Total score were summed up for each dimensions of personality.



Dependent Variable Behavior Deviance Scale was developed Chauhan & Aurora (1989), is a 30-item scale designed to understand behavioral deviance of an individual. This measure was completed by two persons(for each juvenile) who know the adolescents very well. In this study, it was completed by two other delinquents, who know the participant (under the study) closely. Items are arranged in a 5-point Likert format, from very high =5; high =4; moderate =3; low =2; and very low =1. The final score is the mean scores obtained out of the score item scores given by the adolescents. High score indicates higher deviance. Examples of items are: “to steal, to be disloyal, to form company with bad people etc.” Its Cronbach’s Alpha reliability was .79 and the validity of the scale was .88.

RESULT

Statistical analysis was done using the Statistical Package for the Social Sciences (SPSS, Version 17.0). The first analysis was on the descriptive statistics of the sample and has been presented in Table 1, given below. The mean for the delinquent adolescents on P and E scale was quite high (M = 10.88 ; M = 17.66) as compared to their counterparts (M = 4.13; M = 11.68). Whereas on N and L scale, the score was low in the delinquents (M = 5.66; M = 8.67) as compared to the non-delinquent adolescents (M = 12.43; M = 11.18).

Table 1 Means and standard deviations for each variable in each of the two sample groups

	Group	Mean	SD	N
Psychoticism	G1	10.88	3.86	100
	G2	4.13	2.98	100
Extraversion	G1	17.66	3.95	100
	G2	11.68	3.91	100
Neuroticism	G1	5.66	2.39	100
	G2	12.43	3.27	100
Lie Score	G1	8.67	2.99	100
	G2	11.18	2.69	100

Note. Group 1 = Delinquent Adolescents; Group 2 = Non- Delinquent Adolescents.

A MANOVA based on the four dependent variables of Eysenck’s personality traits revealed a significant Multivariate main effect on the groups, Wilk’s Lambda value was $F(4, 195) = 8.477, p = .00$. The follow-up Univariate F tests revealed significant differences between the groups for P ($F(1, 198) = 6.978, p = .009$), for E ($F = 3.370 (1, 198), p = .05$), and for L ($F(1, 198) = 16.764, p = .00$). With respect to the type of crime on the personality traits revealed no significant multivariate main effect, Wilk’s Lambda was $F(8, 190) = 1.073, p = .384$. The follow up Univariate F tests did not obtain any significant differences as well.

Table 2 MANOVA representing between group differences (Group and Type of crime) among four dependent personality variables

Source	DV	F	Sig.
Group1Group2	P	6.978	.009
	E	3.370	.05
	N	0.411	.522
	L	16.764	.000
Type	P	1.067	.348
	E	.341	.712
	N	.359	.700
	L	1.373	.258

Note. Wilk's Lambda (Gr1Gr2): $F(4, 195) = 8.477, p = .000$; Wilk's Lambda (Type) $F(8, 190) = 1.073, p = .384$

The third step in data analysis explored the bivariate relationships between the independent variables and the dependent variable, and also among the independent variables. It was found that Psychoticism and Extraversion were positively associated with delinquency. Neuroticism was also positively associated with delinquency but the relation was not significant in nature. Lastly, lie score was negatively relatively correlated with delinquency. Although the inter-correlation among the independent variables were not significant in nature, except Psychoticism – Extraversion. The findings were presented in Table 3, given below.

Table 3 Multiple Correlation matrix

Variables	1	2	3	4
1.Psychoticism	-			
2.Extraversion	.26**	-		
3.Neuroticism	.17	-.16	-	
4.Lie	.18	-.15	.12	-
5.Delinquency	.46**	.41**	.08	-.18

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

The final analysis was a regression analysis using the four scales of the EPQ, as predictor variables, on the dependent variable (delinquency). This yielded a model that was highly significant ($F = 8.433, p < 0.001$). The R square for this model was 0.262. The two scales from the EPQ retained in the model and their respective standardized Betas were mentioned in Table 4.

Table 4 Multiple regression analysis

Variables	Beta	t- value
1.Psychoticism	.332	3.236 **
2.Extraversion	.232	2.275**
3.Neuroticism	.019	0.211
4.Lie	-.094	- 1.039

$R = .512$; $R^2 = .262$; Adjusted $R^2 = .231$; $F = 8.433$; $p = 0.000$



DISCUSSION

The purpose of the study was to examine prediction derived from Eysenck's hypothesis on antisocial behavior in samples of delinquent and non-delinquent adolescents. Moreover, the study attempted to determine the personality predictors of delinquent behavior, and also investigated whether the sample, when classified according to the type of crime committed differed in their personality pattern. The study found personality differences between delinquent and non-delinquent adolescents.

It was found that there was a strong support for Eysenck's hypothesis that high score on the P scale were related to delinquent behavior. The score of the delinquent adolescents were high on the P scale in the present sample as well, compared to the non-delinquent adolescents. This result was consistent with regard to the Eysenckian model of psychopathy (Eysenck & Eysenck, 1978), so it can be concluded that the sample of the juvenile delinquents was, to some extent, similar to the offenders in the Eysenck and Eysenck (1975) study. Delinquent adolescents were significantly high on the E scale than the non-delinquent adolescents. This result was in line with Eysenck's (1997) suggestion that E was more likely to be associated with antisocial behavior in youth (Center et al., 2005). Although this finding was contrary to a number of previous studies (Center & Kemp, 2002; Porrata, 1991, 1997), which may be due to the fact that these studies have used sample of special education students, unlike the actual delinquents, who were the participant of the present study (Berman & Paisley, 1984; Gabrys, 1983; Saklofske & Eysenck, 1980).

This study did not find support for the predicted elevation of N scores in delinquent sample. Although it was in line with the study conducted by Ruston & Chrisjohn (1980), but it was in contrary to major previous findings. This may be explained due to the nature of the sample. The principal assumption is that children learn to control antisocial behavior through the development of a 'conscience', this conscience, Eysenck maintains, is a set of conditioned emotional responses to environmental events associated with the antisocial behavior. For example, the child who misbehaves incurs parental wrath; the fear and pain this brings is associated with the antisocial act and through conditioning process the child becomes socialized. As in the present study the sample is from a socioeconomically disadvantaged family and also as the number of offspring was high in number in the delinquent families, as a result the parents were not able to spend quality time with their children or perhaps they might not be aware of the importance of the same leading to also lack of consistent disciplining.

The analysis further found that a moderate socialization was present among the delinquent adolescents, which was quite contrary to earlier findings (Kemp & Center, 2003). This might be explained by the fact that as the data were collected after the delinquents have been convicted and put in the correction home and during this entire period they had already gone through a lot of social and judicial humiliation and harassment and as a result they were more keen to give socially acceptable response. Another interesting explanation for their moderate Lie score was that, as the researcher was a quiet, soft spoken and kind natured female, so it was out of a tendency of the delinquents to present a good social image of them in order to get acceptance from the researcher, as they were aware of the fact that now they were stigmatized in the society, so to gain acceptance they were trying to portray a better self image.

The results of the analysis didn't obtain any significant relationship with regard to type of crime committed and on the personality traits of the delinquents. So, it can be said that personality traits

are not related to specific types of delinquency, rather it was more strongly associated with general delinquency and the result supported Eysenck's analysis as well as McEwan and Knowles (1984).

Finally the regression analysis in this study relating the scores comprising personality traits to the dependent variables helped to delineate the contribution of each to the delinquent outcome. The regression analysis showed that Psychoticism (P) was by far the strongest predictor of delinquency (Furnham, 1984; Heaven, 1993). The second predictor of delinquent behavior was E in the present study, and this result is consistent with Eysenck's (1997) suggestion that E was more likely than N to be associated with antisocial behavior in youth. The regression analysis further showed that N did not play a significant role in the delinquent behavior; this is quite in contrary to the previous research (Kemp & Center, 2003). This had already been explained on the basis of the nature of the sample in the present study. Although the result of the present study confirmed Eysenck's belief that E made a greater contribution in youth than did N. so, overall it can be said that psychoticism appears to be a more important predictor of delinquency and that it may be the mechanism through which hostility, venturesome and impulsiveness channels their influence on delinquent behavior. High score on the psychoticism scale, in combination with high impulsivity, sensation-seeking describe the group of delinquents in the present study (Hare, McPherson & Forth, 1988).

As with any other study, the present study has also certain limitations. First, more studies are needed that employ personality traits to explain delinquent behavior from various categories of socioeconomic background and that too especially in non- western countries. Second, due to unavailability of female delinquents the findings of the study cannot be generalized to female population. Third, the result of the study was limited by an inability to control for intellectual differences across the samples.

Despite of its limitation, the study is first of its kind to use personality traits as an independent variable to study the outcome variable, delinquency, in a non-western country. Moreover, it has been able to delineate those predictor variables which are supposed to exert strong influence upon the development of delinquent behavior.

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EXAMINATION OF IMPULSIVENESS SCALE: DOES COGNITIVE IMPULSIVITY REALLY EXIST

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The main purposes of this study were to examine the factor structure of Impulsiveness Scale (IS) which developed based on Barratt Impulsivity Scale-10(BIS-10) and Eysenck Impulsiveness Scale and its psychometric properties. Using random sampling, the study included 200 prisoners of Taiyuan Skill Training Institute and 200 adults from internet users as participants. The researchers first used 200 participants (prisoners) in the pretest to conduct exploratory factor analysis and reliability analysis. Three factors-planning impulsiveness, motor impulsiveness, and impulsive decision-making – were extracted. The Cronbach's coefficient of the IS was .832 (19 items). The researchers then used the sample of 200 adults (normal controls) to conduct confirmatory factor analysis. The results suggest that the IS has good goodness-of-fit. Moreover, the three factors have good composite reliability and average variance extracted. The IS therefore has good reliability and validity. This study found that the age group of 18-20 years and 21-25 years performed high impulsive decision-making than the group of 26-30 in normal controls, but no significant differences were found among the sample of prisoners. The results also found that there were significant differences in planning impulsiveness, impulsive decision-making, and overall impulsiveness between prisoners' educational attainment, but no significant differences were found among the sample of the normal controls.

INTRA- AND EXTRA-FAMILY SOCIAL CAPITAL AND INTERNET MISUSE AMONG CHINESE ADOLESCENTS

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Internet addiction has become an increasing youth problem in modern societies. Among the limited studies on this new social phenomenon, almost all of them focus on psychological causes instead of social forces. From a sociological perspective, this project is designed to examine Internet addiction among young adolescents in mainland China that has shown great concerns toward this problem. By conducting surveys in Beijing (500 students and 500 matching parents) and then analyzing data through both descriptive techniques and regression models, the purpose of the present research is (1) to examine and compare the extent and patterns of teenage Internet use and misuse in Beijing, and (2) to test risk and protective factors of teenage Internet addiction, with an emphasis on social relational aspects pertaining to the social capital approach. Specifically, we find that the intergenerational view alignment on Internet is a contingent mechanism in protecting youth from negative consequences of the excessive online use. This study contains great policy implications in preventing Internet addiction among teenagers.



ASIAN CRIMINOLOGICAL SOCIETY

PART *10*

RESEARCH, TEACHING, AND TRAINING





CRIMINAL JUSTICE PEDAGOGY TO CHINESE STUDENTS: ACTIVE LEARNING FOR DISCOVERY AND INNOVATION

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Whereas a great deal of literature based upon the context of Western societies has concluded criminology is an ideal discipline for active learning approach (see, e.g., Payne, et al., 2003; Robinson, 2000; Rockell, 2009), it remains uncertain if this learning approach is applicable to the Chinese students in criminology discipline. This article discusses, describes and provides evidence of the benefits of using active learning approach in a criminology class in Hong Kong. Using quantitative and qualitative data collected from a sample of 146 college student participants through the pre and post tests comparisons, focus group meetings, and content analysis of student assignments over a three year period (from 2008 to 2011), it suggests that the active learning strategies not only can assist Chinese students in achieving the course intended outcomes but also can advance their attitude, knowledge and skills of learning. The paper ends up with proposing “care and challenge”, “self-discovery of knowledge” and “innovation and creativity” are the three key elements for implementing active learning in criminal justice pedagogy to Hong Kong Chinese students.

INTRODUCTION

Active learning refers to “instructional activities [that involve] students in doing things and thinking about what they are doing” (Bonwell & Eison 1991 cited in Monk-Turner & Payne, 2005:166). Active learning involves the comprehensive use of activities to engage students in the learning process, including “class discussion, collaborative learning activities, extra-curricular events (ride-alongs, tour), guest speakers, brainstorming, case studies, role playing and demonstrations” (Payne et al., 2003: 328) as well as “jail tour and film review” (Rockell, 2009). Robinson (2000) listed 25 examples of using active learning strategies organized into five categories: (1) enhancing lecturing, (2) questioning and testing, (3) pair/group discussion, (4) controversial topics, and (5) generating ideas. In active learning, the instructor’s role is “to guide, probe, and support student efforts to learn, and not to provide easy answers. A major goal is to get students to take responsibility for their own learning, and that requires instructors to yield degrees of authority in the classroom” (Sims, 2006: 343).

The strengths and limitations of active learning strategies have been articulated in previous literature. First, the use of active learning can accommodate the learning needs of most students. Because active learning involves a great variety of learning tasks, it can be well suited to students with different learning styles, ranging from “innovative learners,” “analytic learners,” “common sense learners,” and “dynamic learners” (Payne et al., 2003). Second, this learning strategy can help students achieve higher level of knowledge acquisition, because, in active learning, students do more than merely absorb information; instead, they take information, interpret it, and are able to articulate a response to it (Schomberg, 1988; Sims, 2006). Finally, active learning emphasizes joint intellectual efforts by students, or by students and teachers together (Smith & MacGregor, 1992), which makes students more accountable for their learning.

Specifically, active learning strategies and criminal justice programmes are regarded as a perfect match. First, learning criminal justice involves dealing with some complicated and controversial issues, and students who use active learning strategies will develop their own judgmental ability while learning.

Such active learning strategy as “group discussion” can facilitate their use of individual judgment (Robinson, 2000). Second, jobs obtained by criminal justice graduates require them to work well with others and to have good communication skills. Active learning strategies usually help students in developing these essential job skills (Robinsons, 2000). Finally, there are many misinterpretations and distortions about crime, criminals, or the criminal justice system. The real-world contacts offered by active learning strategies can help students to correct their media-imposed misconceptions (Rockell, 2009).

However, active learning is not completely free from drawbacks. Previous literature indicated that developing and implementing active learning techniques require additional time and effort and are even somewhat burdensome for the instructor (Sims, 2006). For instance, the instructors have to deal with some logistic issues, like group size, assigning students in each group to best facilitate collaborative learning, and conducting site visits before students have their service learning activities (Sims, 2006). Some instructors may struggle between trying new techniques or using the old teaching materials that seem to be acceptable to students, especially under the pressure of student evaluation of teaching (Sims, 2006).

It is clear from the above literature that active learning is helpful for criminal justice education. Despite this, it remain uncertain whether active learning strategies can be transplanted to Chinese societies, where students’ learning style, teacher–student relationship, and teachers’ image and lecturing style are not identical to those in the West. In fact, empirical studies assessing the use of active learning in teaching Chinese students criminal justice are lacking. This paper is intended to fill this gap by having a case study of a series of learning projects conducted in Hong Kong from 2008–2011. Hopefully, the discussions can shed some light on how to put the principle of active learning into practice in Chinese undergraduate students and help determine the extent to which this strategy can achieve the specific teaching and learning objectives of criminal justice programmes. This topic is important for two reasons. First, criminal justice programmes are a developing discipline in Hong Kong; any wisdom with respect to teaching practice of criminology in the local context is of great value. Second, empirical studies on using active learning are lacking, at least in criminology courses; any empirical support for its effectiveness will be a good reference for educators in this field.

THE HONG KONG CONTEXT

Hong Kong is a Chinese coastal city that was under the colonial rule of the British government for 100 years until 1997. Hong Kong society has been influenced by both Eastern and Western cultures. However, in Hong Kong, among the total population (7 million in 2009), 95% were of Chinese descent (Hong Kong Government, 2010). It is reasonable to assume, despite this cultural diversity, that most Hong Kong citizens keep the traditional Confucian beliefs.

Some previous work has outlined the characteristics of Chinese learners cultivated by Chinese traditional philosophy. One study asserted that teaching and learning strategies in Chinese societies are nurtured by the Chinese philosophy of “vernacular Confucianism” (Chang, 2000). These beliefs, such as “children are spoiled if praised,” “scolding builds character,” “failure is the results of laziness,” and “no pain, no gain,” which are still prevalent in Hong Kong, run counter to the optimal learning



environment as indicated by the Western researchers (Watkins & Biggs, 2001). Under such social environments, a good teacher is expected to “provide clear guidance for students rather than letting them flounder when exploring themselves” (Chan, 2001: 183). Understandably, students in this system are inclined to be rote and passive learners. Similarly, in Chan and Chan’s (2005) description of teaching and learning in Chinese culture, the teacher–student relationship is hierarchically determined, and students never question what they are told by the teacher. Chinese students tend to avoid taking risk, to blindly follow their teachers’ instructions, and prefer recalling text instead of making analyses on their own. Therefore, students received inadequate respect for their creativity and innovation in the classroom.

The culture and environment in Hong Kong seem incompatible with the Western style of learning and teaching, including active learning, which requires students to be more participatory and self-motivated. However, on the other hand, active learning strategies may help Chinese students in Hong Kong to improve their creativity, innovation, and accountability of learning. In fact, tertiary education in Hong Kong in recent years has placed increasing emphasis on nurturing students’ creativity and innovation. For instance, in 2011, City University of Hong Kong used the transition to a 4-year degree structure to introduce a unique Discovery-enriched Curriculum (DEC) that will prepare students for a highly globalized, high-tech world. CityU’s provost, Professor Arthur Ellis, said, “Students will learn what it means to create new knowledge, communicate it, curate it, and cultivate it to benefit society” (CityU News Centre, 30 March 2011). Obviously, integrating the elements of self-discovery and innovation into teaching is an important part of tertiary education.

In recent years, criminology in Asia has grown considerably although it still lags behind North American and Europe (Liu, 2010). The development of criminology programmes in Hong Kong has reached a promising stage in recent years. For example, two or three of the eight universities offer full-time undergraduate degree training for criminal justice or criminology. In 2005, CityU started a government-funded top-up degree programme in criminology for sub-degree graduates. This programme has clearly been well received by young people, because demand has increased year after year. For example, the number of applicants to this course jumped from approximately 600 in 2009 to almost 700 in 2010 to almost 800 cases in 2011. Now is the right moment to explore and draw conclusions about the best teaching methods, especially for criminal justice courses.

THE PROJECTS: FROM COURSE INTENDED OUTCOMES TO DISCOVERY AND INNOVATION

In view of the need for an innovative teaching and learning strategy specifically for criminology students, the author attempted to apply the concepts of “active learning” into her course teaching beginning in 2008. With the financial support of the University’s Teaching and Development Grant (TDG), three projects “Crime Issues,” “Crime Prevention,” and “Teaching Crime Prevention in Everyday Life” were implemented between 2008 and 2011. These projects were attended by 146 students from four cohorts. In alignment with the principle of active learning, these projects covered a wide range of teaching and learning activities inside and outside the classroom, such as online surveys, field visits, guest seminars, newsletter production, community education, and a forum that aimed to cultivate students’ discovery and innovation abilities, critical thinking skills, and accountability for learning. Most of the participants are Criminology students, and the rest come from Psychology,

Applied Sociology, Translation, Accounting, Electronic Engineering, and Law. The results so far indicate that students have benefited from joining these projects. In addition to achieving the courses' intended outcomes, it was found that students learned to enjoy the process of discovery and innovation while learning about criminology.

Online Surveys and Online Community Education

In Hong Kong, like in many cities around the world, people are obsessed with electronic devices, online communication, and Internet activities. Going online is part of daily life for many Hong Kong citizens. In line with this tendency, the project principal investigator (PI) attempted to integrate criminology education with technology by involving students in conducting an online survey and inviting them to educate our community about crime prevention by using the Internet as their platform. For the online survey, students teamed up in five working groups to conduct a study called "Risk and Fear of Crime among Hong Kong Citizens." The study was conducted in five venues, the railway stations, school, housing estate, student residence, and entertainment venues. Through this exercise, in addition to getting acquainted with the key component of crime prevention, "fear of crime," the project participants learned to conduct investigations and to present their empirical data with the assistance of technology. To facilitate the participants' collaboration in a team, they were provided with operation guidelines on their team's tasks/assignments. Conducting community education about crime prevention was definitely a favourite of the students. It gave them the opportunity to fully use their creativity and knowledge of Internet communications. For example, two groups of students took advantage of YouTube to broadcast their messages ("Fighting Against Family Violence" and "Preventing Setting Fire in Public Places") via self-produced video clips. Another group started an Internet discussion forum in the "Facebook", collecting and responding to the general public view about "Preventing Auction Fraud." By interacting with others through these platforms and sharing information about crime prevention, they were convinced that their knowledge in this area was recognized by the general public.

Field Visits

Field trips present students with an "alternative educational environment" (Rockell, 2009: 84). In these projects, participants visited several places, namely to Ziteng (an organization advocating the basic human rights of sex workers in Hong Kong) to explore issues related to social stigma and police power; to Hong Kong Jockey Club Drug Information Centre to learn more about drug and crime; and to Castle Peak Hospital to increase their understanding about workplace violence. During these field visits, students collected data for their report in the newsletter and the forum. In addition, students got to speak with criminal justice practitioners and became excited to learn more about the career market and the job culture in these related fields. All this exposure is significant for and valued by students.

Guest Speakers

Using guest speakers is a common teaching strategies adopted by teachers of social sciences, such as social work, sociology, and criminology. In fact, "the use of guest speakers is an effective way to bring the world into the classroom" (Payne et al., 2003: 336). Truly, undergraduate students have limited



chances to connect with those who are out of their social circle (e.g., criminal offenders and drug abusers). In these projects, several guest seminars were organized to deliver lecturers on various contemporary crime issues. Speakers included former gangsters, ex-offenders, experienced social workers, and community leaders. Topics included various contemporary crime issues and their prevention. The guests' life stories are far more accurate than the information portrayed in the mass media and textbooks. Through these seminars, students widened their perspective on problems of crime and the corresponding prevention measures. In those sessions, students were provided with some exercises and discussion guidelines so as to facilitate their thoughts and reflections on the issues of crime in contemporary society and the corresponding prevention methods. This is believed to cultivate the students' reflective and critical thinking.

Forum

In the presentation forum, students had an opportunity to demonstrate their creativity and critical thinking on a criminological issue of their choice. Over the years, students have done presentations on some highly controversial topics, such as "fraud against the elderly," "compensated dating," "voyeuristic photography," "throwing objects from heights," "Internet auction fraud," "Internet theft," and "driving under the influence of drugs." Interestingly, the topics they chose were uncommon in the syllabi of the criminology courses. In these projects, students appreciated the autonomy to decide which topic to explore. Moreover, this is in line with the principle of self-discovery in learning. In addition, students learned how to deal with the challenge and to work under pressure. During the students' presentation, people from criminal justice-related professions offered students critical and insightful feedback.

Newsletter

Students need ways to share their knowledge and discoveries with other people. Knowledge sharing is believed to help students develop a strong identification with the discipline they belong to and gain a sense of achievement. In these projects, students, in their roles as journalists and editorial board members, were encouraged to conduct interviews and surveys and make observations on a particular crime problem and its prevention before finalizing their information for reporting. Their written reports, as noted previously, were published in a self-edited bilingual newsletter in both online and print versions. These were made available for readers in the University and in the community. The online newsletter was also published on the departmental Web site since 2010 and was sent to both local and overseas universities (teachers, students, and alumni from the Department, etc.). The students find it encouraging to receive positive feedback from other universities on their work.

METHODS

Design

Feedbacks from participants were collected via multiple sources, including surveys, student self-reflection on different activities, and focus group meetings. In addition, the on-site observation and

reflections of the project PI help to consolidate the experience of applying active learning for innovation with reference to the local context.

Participants

Over the past 4 years, the projects “Crime Issues,” “Crime Prevention,” and “Teaching Crime Prevention in Everyday Life” have involved a total of 146 participants. Of these, 32, 39, 35, and 40 students were recruited from 2008 to 2011, respectively (see Table 1). The student participants included 54 boys (37%), and 92 girls (63%). These learning projects attracted students from many disciplines and programmes, such as Criminology, Psychology, Applied Sociology, and Law. Criminology students have been the dominant group among participants in the past 4 years, comprising 76% of the total.

RESULTS

Survey

Outcome variables

Student participants were expected to achieve the following course intended outcomes after participating in the project activities. Data were collected from the participants with a self-administered questionnaire during the first and the last sessions of the project. Students were asked to rate their level of accomplishment of the following competences (ILO1 to 5) on a 10-point scale, ranging from “very poor” (0) to “excellent” (10).

- 1 able to describe the nature and implications of a number of key issues of criminology that are chosen for the course (ILO1);
- 2 able to articulate the complex social and organizational factors that underlie crime reduction efforts for the selected issues (ILO2);
- 3 able debate key issues in the disciplines of criminology and social science (ILO3);
- 4 able demonstrate an advanced knowledge of relevant public discourse, research literature and theoretical foundations of the issue under study (ILO4); and
- 5 able communicate ideas and arguments in debates through oral presentation and in writing (ILO5).

A comparison of the data collected before and after the projects has showed improvement in learning among the 146 participants (see Table 2). In general, the mean score of all the 5 ILOs in the post-test has been higher than in the pre-test. The mean score of the 5 ILOs has ranged from 6.35 to 6.79 in the pre-test, compared with 7.56 to 7.83 in the post-test. The greatest difference between the pre-test and post-test was observed in ILO3 (+1.37). These findings demonstrate that these learning projects are effective in enhancing students’ knowledge of crime-related issues at an advanced level. The level of satisfaction towards ‘field visit’, ‘newsletter production’ and ‘group presentation’ was rated by 146 project participants, with the mean values of 8.62, 8.14 and 8.29 respectively (out of 10 marks in total; see Table 3). This shows that participants are satisfied with these three activities.



Content analysis of students' writing

Project impacts can be easily observed in the qualitative responses directly collected from participants. All of the key participants of the project were invited to write down their feelings and reflections based on their direct experience of every learning opportunity they encountered. Their responses were analyzed, categorized, and thematically coded by the project's PI with the assistance of a research assistant using the computer software-Nvivo. The results validate the project contents' capacity to help students accomplish personal development in "attitudes", "skills", and "knowledge".

Attitude

Through real encounters with ex-offenders and former gangsters, other than obtaining first-hand data that differed from the information in their textbooks students were led to cultivate a caring attitude to those socially disadvantaged groups. Their fear of and prejudice to some particular populations were also replaced by acceptance and empathy.

"Learn more from the sharing of guests-exoffenders." (Case-10087)

"I learn that ex-offender need to be respect and help to reintegrate into society." (Case-10088)

Skills

In addition to enhancing the students' knowledge about contemporary crime issues in society, the project also advanced students' skills for communicating and collaborating with others. For example:

"[I learned] how to organize the information and make them to be systematically presented." (Case-10073)

"Adequate knowledge and preparation are needed to answer question or give response to questions immediately." (Case-10073)

"I learned how to work with my groupmates to do the crime newsletter and presentation." (Case-10092)

As well as interpersonal skills, students participating in the project improved their learning skills. These skills will be transferable to their learning in other subjects.

"I learnt to be more sensitive and have critical thinking to the current social phenomenon and crime issues." (Case-10094)

"Use my own language to describe what I would like to present to audience rather than just present a pile of information." (Case-10103)

“More advanced skills on presentation including contents of presentation and application of theory.” (Case-10104)

Knowledge

In contemporary societies, the nature and patterns of crime are ever changing. In line with these changes, students must be equipped with up-to-date knowledge of criminology. According to many of the participants, the very current information that they came across in the project really opened their eyes.

“[I] learn more about the legal aspect of drug driving.” (Case-10089)

“I learn more deeply about the routine activity theory and elderly fraud.” (Case-10092)

“This project allowed me to have an in-depth study towards the crime issue of drug driving.” (Case-10094)

Focus Group Meetings

Students were invited to take part in focus group meetings in 2008, 2009, 2010, and 2011. A total of 30 students voluntarily attended the meetings facilitated by the project PI, where they expressed their views regarding the project’s delivery and contents. They were invited to spell out their individual ideas first and then to take part in discussions in an interactive manner. Positive feedback, concerns, and critical comments were collected as follow:

1. Guest lecture topics were interesting and informational. It was fruitful to know more about the real life situations of offenders.
2. A majority of students achieved an advanced understanding of various key issues of criminology through their participation in different in-class and out-of-classroom learning opportunities. All these can help students to gain a deeper understanding about the application of theories to practical situations.
3. Most participants developed a sense of efficacy through the programme, especially when they were able to present their views in front of criminal justice experts in a forum and share their observations with fellow students on campus. Students regarded this formal presentation as a motivation to strive for a better performance, in which they could develop critical thinking and learn more.
4. The bilingual version of the newsletter was a great idea. The content was easy to understand and it could arouse more readers’ attention. Also, the newsletter was useful for students to demonstrate to their potential employers what they had learnt from the criminology programme offered by CityU.
5. Regarding areas for improvement, few participants suggested that the Q&A session can be lengthen, so that students could have more chance to answer the challenging questions from commentators. Also, students hope to have other chance to communicate with guests or scholars.



Naturally, feedback collected through focus group meetings is consistent with the findings from the survey and qualitative data—active learning strategies, such as guest speakers, the presentation forum, and editing a newsletter, were viewed by students as helpful to their learning. Although they showed their appreciation for the project, students could also be critical of the project and provide suggestions for improving its implementation. In observation, one or two silent members were motivated during their interaction with other group members to speak up and express their view points.

DISCUSSION

Both quantitative data and qualitative reflections by participants provided the PI with valuable insights about the key elements of active learning for innovation and discovery. Three key letters: “C,” “S,” and “I,” are used to conclude the basic elements of using active learning strategies on Chinese students doing criminology coursework. They are described below.

Challenges and Caring

The project presents students with many challenges. For example, groups of participants were required to give a presentation on a selected topic for criticism by a forum that contained experts on the criminal justice system. However, the more challenging the task, the greater the sense of achievement gained by the individual students. The students have been very willing to take on the challenges and to commit to the project. Another key part of the project is to orchestrate face-to-face contact between students and ex-offenders, drug abusers, former gangsters, sex workers, and social workers. These interactions teach the students to care for and be concerned for socially disadvantaged populations. Finally, providing students with the chance to use their creativity during class exercises is essential.

Self-Discovery of Knowledge

The project encourages students to take the initiative to acquire new knowledge and to generate insights. In preparing their presentations, students picked a topic for investigation and conducted interviews, field observation, and data analysis on their own. A group of students also offered to help with the editing work for several issues of the project newsletter. In their journey of searching and analyzing information, making analytical conclusions, and sharing their view points with others, students experienced what we call self-discovery learning. In the process, they were no longer passive receivers of knowledge. Instead, they were offered the chance to create, accumulate, and share their knowledge. More importantly, their talent for self-discovery would be recognized by others.

Innovation and Creativity

Students in these projects made good use of their creativity and their Internet knowledge and skills to educate the community on crime prevention. Through the use of online platforms, students had conversations with many other people, outside the campus or even outside Hong Kong, on their areas of expertise. Students were excited to apply their innovative ideas to present what they learned from the textbooks in a down-to-earth and interesting manner. Their unusual ideas about teaching crime

prevention in everyday life from the youth perspective have impressed some overseas visitors who are experts in this field.

For future study, it worth considering the use of a more rigorous design (see, for example, Sherman et al., 1998), such as control and comparison group design, to determine the effectiveness of active learning strategies on Chinese students. Also, it could be interesting to compare the effects of active learning on students from different programmes (i.e., social work vs. psychology vs. criminology), disciplines (i.e., social sciences vs. sciences), as well as cultures (i.e., Chinese students vs. American students).

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Table 1. Description of Sample (N=146)

Items	N	(%)
Gender		
Male	54	37.0
Female	92	63.0
Total	146	100.0
Programme		
BSSCRIM	111	76.0
BSSPSY	8	5.5
BSSAS	11	7.5
BACH	1	0.7
BBAAC	2	1.4
BBACB	2	1.4
LLB	5	3.4
BBASOM	1	0.7
BEELTM	1	0.7
BSCCM	1	0.7
EXFB	1	0.7
EXGB	1	0.7
BBAF	1	0.7
Total	146	100.0
Year of study		
2008	32	21.9
2009	39	26.7
2010	35	24.0
2011	40	27.4
Total	146	100.0

Table 2. Level of Achievement of the Course Intended Outcomes (N=146)

Variables	Pre-test (N=146)			Post-test (N=146)			Difference		
	Mean	SD	Range	Mean	SD	Range	Mean	SD	Range
Competence in describing nature and implication of those crime issues. (ILO1)	6.75	1.25	3-10	7.83	1.02	3-10	1.08	1.57	-7-5
Competence in articulating the factors that underlie those crime issues. (ILO2)	6.79	1.29	3-10	7.83	1.04	3-10	1.03	1.52	-7-5
Competence in demonstrating an advanced knowledge of those crime issues. (ILO3)	6.35	1.36	3-10	7.72	1.12	3-10	1.37	1.68	-7-6
Competence in communicating and debating those crime issues through oral presentation. (ILO4)	6.42	1.33	3-10	7.56	1.17	2-10	1.14	1.55	-7-5
Competence in communicating and debating those crime issues in writing. (ILO5)	6.60	1.39	3-10	7.65	1.18	3-10	1.05	1.56	-7-5

Table 3. Level of Satisfaction towards Different Programmes (N=146)

Variables	M	SD	Range
Field visit	8.62	1.13	4-10
Newsletter production	8.14	1.37	3-10
Group presentation in a forum	8.29	1.25	3-10

NEGOTIATING THE ETHICAL MINEFIELD: FIELDWORK EXPERIENCES OF RESEARCHING DANGEROUS SUBJECTS.

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This article looks at the various challenges and methodological issues encountered while researching what many academics would classify as dangerous subjects. In an environment where increasingly there is a risk-averse culture in academia for approving such research, it also highlights methodological framework adopted by circumstances rather than higher ideal due to resistance from various quarters and false starts, the intricate negotiations and safety protocols established when undertaking fieldwork overseas. More importantly, it discusses the practical, ethical and emotional dilemmas experienced by the author while conducting life history interviews with an active and successful Triad gang member whose criminal vocation is kidnap for ransom and specialist law enforcement officials charged with investigating such offences. The article also examines the significance of understanding cultural factors when conducting research in the East. Key issues examined include: access, data collection process and data safety, rapport with subjects, privacy, need for objectivity and safeguarding of participants' confidentiality and consent.

INTRODUCTION

Research about successful and active career criminals - particularly insights on the relatively neglected but highly important intersections between serious crime, business owners, and the official agencies and social processes that regulate and influence them is very few and far between. Some argue that this is due to an environment where increasingly there is a risk-averse culture in academia and over-zealous research and ethics committees opting for a "safe option". This is despite the many arguments academics make about the crucial qualitative differences between researching so-called "captive audiences", for examples those in prison or incarcerated and those at large and in their natural environment. Sutherland and Cressey (1970, cited in Jacobs, 1998; 167) point out that researchers "who have had intimate contacts with criminals 'in the open' know that criminals are not 'natural' in police stations, courts, and prisons and that they must be studied in their everyday life...if they are to be understood". Many other criminologists have long argued about the unique utility and significance of researching active criminals (Decker and Winkle, 1996; Jacobs and Wright, 2006; Miller, 2001; Topali, 2005). However, access to criminals who are successful can be problematic, as Mack (1972: 50) points out that "[s]uccessful criminals are by definition inaccessible.

I am heavily inspired by Klockars' (1974: 198) argument that: '...criminology needs information about crime from successful criminals...'. If Klockar's successful criminal is defined as someone who materially benefits from criminal acts while largely evading criminal sanctions or other negative consequences, I had come into contact with many such individuals during two decades of service as a Customs officer in Malaysia. Several willing contacts were approached, all of whom could have formed the basis for a fascinating case-study, before the main research subject (Alohan) emerged as, possibly, the most extreme and complex case as he is not only a gang boss, with Triad connections, who specialises in kidnap for ransom but that he also runs legitimate businesses and is, at the same time, an active police and customs informant. Hence, Alohan's willingness to take part in this academic study provided a valuable opportunity to explore a 'revelatory case' involving one type of



criminal usually inaccessible to criminological research (see Yin, 1984: 44, cited in Bryman 2004: 51).

The project had the potential to be an ethical minefield. The ethical basis for the research could not be an afterthought and each step of the way would need to be carefully considered and structured in order to reduce risks to the researcher, the research participants and the sponsoring institution. Kidnappers are dangerous people and kidnap is seen as a particularly heinous activity. Few academic institutions are keen to expose their researchers to such obvious risk. My own sponsoring institution was initially very reluctant to approve the project, until it was reassured that every possible safety protocol had been put into place. Some members of my Postgraduate Research Degree Committee (PGRDC) felt that interaction with a kidnapper as a research participant was unthinkable on moral grounds. One of the reasons was that the possible penalty for kidnap in Malaysia is the death sentence and I might put Alohan at risk of a hangman's noose. There is also likely to be opposition from law enforcement authorities, who might be worried about a researcher interfering in a highly sensitive operational area.

This article looks step by step at the various ethical challenges and methodological issues I encountered, and the protocols and measures that I had to formulate and the tactical manoeuvring instigated for the successful completion of the project. It is hoped that one of the contributions of this insight will better inform and equip future researchers in similar endeavours.

METHODOLOGICAL FRAMEWORK

Advocates of the linear approach to research process generally advise researchers to follow a well-trodden path: firstly, decide upon a broad area; secondly, select a narrower topic within the area; thirdly, choose an appropriate methodology (Bryman, 2004; Henn et al. 2006; Maxwell, 2005). A common piece of advice from supervisors and fellow research students is to beware of letting the 'tail wag the dog'. In other words, the nature of the research questions should guide the choice of methods, not vice-versa. Unfortunately, the real world rarely flows along in a neat, sequential manner and the research faced several false starts, roadblocks and dead-ends before circumstance, rather than any higher ideal, eventually dictated the research design.

In this case, the intended methodological framework was ethnographical and the methods that promised the richest and most authentic data were observation in the field combined with conversational interviews. One of the research questions revolved around the integration of legitimate and illegitimate behaviour and it would have been better to have observed as much as possible of this at first hand, in the participants' natural environment. However, this approach was forbidden by the sponsoring institution's PGRDC, on ethical and safety grounds. Another early suggestion that Alohan be asked to keep a diary was also ruled out completely because of the danger that such a document might fall into law enforcement hands and be construed as a confession.

The best option then was to adopt a case-study design, using life-history interviews with Alohan and supporting semi-structured interviews with other participants, which were subjected, respectively, to narrative and thematic analysis. Fourteen tape hours of interviews were collected from Alohan,

although this does not represent the total amount of time spent with him, as at least the same amount of time again was spent simply relaxing and chatting. These interviews took place over a period of three months, in Malaysia. A further four months was filled by interviews with specialist police anti-kidnap personnel based at the Kuala Lumpur headquarters. Twelve police officers and one former unit chief were interviewed for between one and four hours each about their experiences as police specialists in kidnap and abduction. Officers from the Customs Preventive Unit were also interviewed about the handling of informers and working in a multi-cultural, multi-ethnic environment. Two interviews were conducted with local, ethnic Chinese businessmen and one final interview took place with a close gang associate of the main research participant, Alohan.

Because of fears about researcher safety, interviews with Alohan and his fellow gang member were carried out in safe houses. Unfortunately, this placed heavy constraints upon the type of information it was possible to gather. To appease major concerns expressed by some senior academic staff at my University, who were not criminologists, the opportunity for a more ethnographic style of research, using stronger observational elements, was denied. Had I not reworked my proposal, the research would not have been 'green-lit' to proceed. This had an inevitable effect upon the type of data that could be collected, the analysis that was possible and, eventually, the type of knowledge that could be produced.

THE ISSUE OF ACCESS

The starting point for this project was that access to Alohan already existed. All that was needed was for the additional participants to come on board and for the university's PGRDC to approve the research design. At least, that was the theory. For the sake of Alohan's personal safety, no other interviews could take place until his interviews had been completed. For instance, had the interviews with law enforcement personnel, especially the Specialist Police Kidnap Unit (SPKU) been conducted first, this might have inadvertently led them to Alohan and his gang.

Access to the SPKU was achieved through a gatekeeper, a high-ranking police officer and a close friend who negotiated with the Head of the Police Public Relations Department at National Police Headquarters. In addition to the letter of introduction that I carried from the Director General of Royal Malaysian Customs (RMC), he asked for a letter of introduction from the sponsoring University, signed by the Director of Studies. This is duly submitted along with the written outline of the approved research project and a summary of the methods that would be used. At the meeting with the Director of Criminal Investigations Department (CID), I was asked to prepare a definitive list of interview questions for vetting. I explained that I had hoped to conduct semi-structured interviews, based on the themes I wished to cover rather than on a fixed schedule of questions. I was advised that, without the list, there was no chance that access would be approved. I had no choice but to comply with this request.

The project was also able to take advantage of a special connection between me and my former employers, RMC. There was a direct personal connection with the incumbent Director General (DG) of RMC, as I had been a 'preventive' officer (in the dedicated anti-smuggling division) under his command during his tenure as a State Director. It was possible, therefore, to present the case for



research and negotiate access by going straight to the top. An official letter was sent by the DG's office to selected State Directors, asking them to extend full co-operation.

Unfortunately, it was at this level that serious resistance was first encountered. During the first meeting with a State Director and his Deputy in Charge of Preventive Division, several areas of disquiet were discussed. They began by talking about academic research that had been previously conducted with the police and that customs were approached for such cooperation far less often and usually only after access to the police had been denied. According to one of the officers present at this meeting, the police were now far less willing to grant access to researchers after suffering from negative criticism as a consequence of taking part. Natural anxiety about the possibility of reputational damage was evident and this seemed to hinge partly on their inexperience with academic research and how they should go about managing it. There was further concern that the proposed research might compromise the identity of informers, or give away special operational procedures and other sensitive information.

Finally, despite carrying letters of introduction from my university, there was no mention of me as a researcher on the University's web pages and, therefore, my authenticity as a researcher could not be instantly verified. However, the issue of researcher authenticity proved to be minor, as the Director General had vouched for me. However, the problem was reported to my supervisory team and to the Head of Graduate Studies, so that they could take steps to remedy this for the benefit of future researchers, especially for those conducting fieldwork overseas.

THE MATTER OF QUALITY CONTROL

The question that needs to be answered for every piece of research is 'how do we know it is true?' (Bryman, 2004; Pole and Lampard 2002: 206). This refers to the ever thorny issues of validity and reliability. One could argue that qualitative projects cannot and probably should not aspire to the same measures of quality that are applied to quantitative data collection and analysis. It is very unlikely that this piece of research will ever be replicated and, even if it were possible, no two researchers will interpret and analyse the data the same way. However, that does not mean that what is contained here is unreliable or untrue. Some researchers feel that narrative interviews are particularly strong with regard to internal validity (Elliott 2005; Polkinghorne 2007). They give rich and authentic detail and a coherent storyline is especially effective in transmitting as nearly as possible the meaning and emotional content that the individual has attached to the happenings described. For thematic narrative analysis, it is important to remember that facts are, if anything, subordinate to the sense that has been made of them. Lindhe (1993 cited in Elliott 2005: 24) makes the point that, although stories might have been produced for the interview, many of them will already have been told to another person or group of people, for a completely different purpose: '... in the case of the life-story, interview data can be used because the life-story, as a major means of self presentation, occurs naturally in a wide variety of different contexts (including interviews) and is therefore quite robust'.

McCracken (1988: 32) fears that: 'deep and long-lived familiarity with the culture under study has, potentially, the grave effect of dulling the investigator's powers of observation and analysis ... [b]ut it

also has the advantage of giving the investigator an extraordinarily intimate acquaintance with the object of study'. He advises the researcher to manufacture distance. By this he does not mean that the researcher should disavow his or her embeddedness in a particular culture or disown existing relationships with participants but, rather, a good solution would be to 'go off into another culture for an extended period of time and then return to one's own' (McCracken 1988: 32). This was a reassuring piece of counsel, as it was precisely what had happened in this case. I had left the country six years earlier as a Malaysian customs officer and returned as a partially (never entirely) Westernised academic criminologist. This did enable me to view the research as a homecoming, but also with a fresh pair of eyes that made it possible, in McCracken's (1988: 24) words, to 'see familiar data in unfamiliar ways'.

Other conditions forced by circumstance had similarly happy outcomes for increased validity. The constant change of safe-house (where interviews took place), necessitated by security concerns, and the time pressures that called for many interviews of variable length with Alohan, rather than a few very long ones, meant Arksey and Knight's (1999: 52) ideal stipulation that 'respondents should be interviewed more than once, with the setting changing' was automatically met.

DATA PROCESSING ISSUES

Atkinson (1998: 54) did not exaggerate when he wrote: 'To transform hours of taped interviews, which may seem like a complex mass of confusing data, into a readable narrative ... is a daunting task'. The majority of the interviews were conducted in the Malay language, although this was complicated somewhat by the participants' use of idiomatic expressions, street slang and 'cop-talk'. To begin with, it seemed to make most sense to adopt a two-step process: Step one, transcribe the recording into Malay; step two, translate this transcript into an English transcription. At first, I was careful to observe the Mergenthaler and Stinson (1992 cited in McLellan, MacQueen and Neidig. 2003) protocols, including the preservation of morphologic naturalness, but quickly noted that something very odd was beginning to affect the translation.

While the transcription into written Malay (if time consuming) was no problem, I discovered that during the written translation from Malay into English my transcripts mysteriously acquired a law-enforcement flavour that no doubt was seasoned by my earlier life as a Malaysian customs officer, thinking, talking and writing in Malay. The tone was stilted and read more like a confession or a case report than a life-history narrative. I was disturbed to find that my own experience and background was colouring the data. Not surprisingly, this was a phenomenon that no research methods text-book had warned me about.

For the last ten years, I had lived and studied in the UK and the English language had become identified in my mind with the process of academic writing. I tried, therefore, to translate directly from the recordings not into my native tongue but into an English transcription instead. The result was faster, more fluid and, surprisingly, conveyed the flavour and meaning of the interview material far better. There had been a danger that meaning could have been lost in what I originally felt was the most comfortable translation and transcription process. As the units of analysis were comprised of the themes revealed by the storyline (rather than the style or manner of delivery, as in conversation



analysis), the aim was to produce a flowing written narrative, that retained as many of the nuances of the original speech as possible, yet cut out all the ‘ums’ and ‘ers’ and grammatical inconsistencies that detracted from the story and made it difficult to read (Reisman, 1993). This is a process often referred to as ‘cleaning up’ the transcript (Elliott 2005: 52; McLellan, MacQueen and Neidig, 2003).

This was, of course, not a job that could be sub-contracted to professional translators, if confidentiality was to be preserved. As I conducted the transcribing and translation on my own, the development of rules that could be shared between researchers was not an issue. However, it is worth noting that, for future overseas projects where more than one researcher is engaged in the work involving translation, a great deal of attention would need to be given to shared standards covering translation and transcription performed as one combined, rather than two separate, tasks.

The other surprising advantage of transcribing directly into English was the significant time-saving. One hour of tape, as has already been stated, took approximately seven hours to transcribe in Malay. It took at least another eight hours to translate and transcribe the same hour’s worth of text into English. Thus, a massive 15 hours of work was reduced by a third, to 10 hours for each hour of interview.

Research that will be written up in English but that is conducted in a different language can create a lot of work. For example, there was still a need to translate back into Malay, so that the relevant participants could read the final draft and be given the opportunity to confirm its essential accuracy, and exercise their editorial insights or rights of veto. However, it was a much simpler task to translate one final draft, after the data had been reduced, the analysis performed and the thesis written up and near completion. Atkinson (1998) believes that this should be centred on fairness, honesty, clarity and straightforwardness. Spradley (1979) states that it is the duty of the researcher to focus on the subject’s interest, rights and privacy above all else. He feels that the aims, objectives, agenda and purpose of the researcher should be made explicit and clear from the start.

INFORMED CONSENT AND THE BALANCE OF POWER

The project was a long time in the formation. After the initial idea was floated to Alohan, he was consulted by phone continuously as the research proposal was drafted. During my annual visit to Malaysia, we met and held a long conference, where we thrashed out some details of method and the probable time commitment involved. Here, Alohan was given the opportunity to ask any questions of me that he liked. I gave Alohan a copy of the original project proposal and also translated a copy of it into Malay for him, so that he could see for himself what the aims and objectives of the research were. On the basis of this, he was asked to read and sign a consent form which advised him, amongst other things, of his right to withdraw from the project at any point. Alohan was offered a copy of the future final draft thesis prior to submission and given the right of veto over any part of it that endangered or misrepresented him. Any articles for publication involving him were also subject to this veto power. He was promised copies of the completed thesis and any other publications that were based upon his story. In addition, he was told who would have access to the transcripts, how they would be used and where the data would be securely archived. Although this process did resemble what Hagan (2006: 47) calls a researcher’s Miranda warning, I was under no illusion that

this represented a satisfactory discharge of my ethical duties. Consent would be 'a continual process dependent on mutual learning and evolution' (Hagan 2006: 48). Alohan is a highly intelligent person and very successful not only in his criminal undertakings but also in several legitimate enterprises. He is a shrewd judge of character and has remained safe for an astonishingly long time because he has a highly developed sense of self-preservation and an expert nose for detecting insincerity and subterfuge.

Usually, in any research project, there is an issue over the balance of power between the researcher and the participant (Opie, 1992). As an expert in his field, the researcher is often seen as having power over his research 'subjects' which needs to be carefully negotiated so that the subject neither feels nor is in fact exploited (Adelman, Jenkins and Kemmis, 1976). The power dynamics in this case were very curious indeed. A relationship already existed, but this was between a customs officer and his informant. The customs officer is a figure of authority but in most cases the informant has dealings with him very much on his own terms. There may be other reasons than monetary rewards why an informer might come forward and offer his services, for instance, to settle a grudge against a rival person or gang by laying information and triggering a raid. There are cases, too, where an informant will try to protect his own smuggling business by making himself indispensable to his local customs investigators at the expense of his competition. Alohan was a trusted confidential informant, who came to me during my time as a customs officer, at his own discretion; I did not seek him out. In his own circle, Alohan is a well-respected person and some people have very good reason to fear him. Our former relationship was one of mutual convenience (Settle, 1995) with, if the truth be known, a measure of exploitation on both sides. In fairness, we came together in the first place because each had something that the other wanted and this lent certain equilibrium to the balance of power between us. Alohan remained my informant over many years because he knew that, provided he stayed within certain agreed bounds, he could rely on me to do him no harm.

The power balance shifted significantly immediately after the research began, as the customs officer became the researcher and, in effect, a petitioner. At no point was it ever suggested that there would be a direct financial incentive for participating in the research. The utility of the relationship to Alohan was something, therefore, that he had to rethink for himself – a task that he was very well able to do. Eventually it all boiled down to the notion of legacy. I could tell his story and this was something that clearly appealed to Alohan. He knew that I was genuinely seeking an understanding of the forces that had shaped his life and criminal career and that, as someone from the opposite side of the fence but also someone with whom he had been able to deal with successfully in the past, I could be trusted not to rush to crude judgement on his behaviour and life choices.

There is a danger that the above might give the impression that the transition was easy; it was decidedly not. The first few interviews were quite stilted until Alohan realised that he was in control. One example of the power that he naturally took for himself was in relation to the length of the interview. Most interviews took place in the late evening because of Alohan's busy daily schedule. I did not feel that it was appropriate to request that he turn off his mobile phone and interviews would be regularly punctuated by telephone calls. Alohan started out by saying how long he thought that night's interview would go on for. This could be anything from as little as 10 minutes or as long as three hours; he would look at the clock and say that tonight we would only have until 10pm or, on good days, we might have until three in the morning. The usual reason for cutting proceedings short



was that he had too many things on his mind to be able to concentrate. On more than one occasion, as we reached the allotted time and I asked Alohan if he would like to draw the interview to a close, he would motion to carry on because he was in full flow and did not want to stop just then. Some of our best interviews went on well into the small hours, with both of us caught up in the story-telling.

DILEMMAS AND DISCLOSURE ISSUES

As the heaviest burden of care was towards Alohan's safety and wellbeing, this came into conflict with the desire to fully inform other research participants of the aims and objectives of the research. It had already been decided that none of the enforcement agency interviews should take place until the interview schedule with Alohan was complete because, for instance, if the police had been told of my full objectives they might have decided to place me under surveillance, thus jeopardising Alohan's security. Clearly, this involved a realistic need to compromise the ideal of disclosing everything about the project to police participants – a choice not covered by textbooks on research.

It was not possible to give anything more than a vague outline in a bid to convince gatekeepers of the potential value of such research. Undoubtedly, my former status as a trained enforcement officer was a major factor in gaining support for the project from senior police and customs officers, despite the sketchy details. Their openness and willingness to trust my judgement only increased my obligation to provide them with a sensitive, constructive and informative final product, even if I could not do so safely at the outset. The enforcement participants were told about the main purpose of their contribution to the research and were also advised about measures taken to ensure confidentiality, anonymisation, secure data storage and transmission. They, too, were advised that they had the right to refuse to contribute (without this being disclosed to their superior officers), to selectively refuse to answer certain questions or to withdraw at any point.

Although the enforcement agency interviews were allocated about an hour each, several of them did overrun because I did not want to control how much was said and, although the interviews were semi-structured (as explained above, this was a condition of access), the officers needed no encouragement to go off script and I was happy to follow where they led. There was a distinct sense that officers were using the interviews to highlight some problematic areas of their work, for instance, the shortcomings of their equipment and the lack of interagency co-operation. I believe that one of the reasons that I was successful in gaining access and given such generous co-operation was because I was a fellow enforcement agent from the ranks rather than from further up the command ladder. I still speak the same professional language as they do and share their mindset, concerns and experiences (Reiner, 2000).

This leads to a curious point made by Finch, where she says, of her interviews with other women, that:

The moral dilemmas which I have experienced in relation to the use of the data thus created have emerged precisely because the situation of a woman interviewing women is special, and is easy only because my identity as a woman makes it so. I have, in other words, traded on that identity. I have also emerged from interviews with the feeling that my interviewees need to know how to protect themselves from people like me (Finch and Hammersley 1993: 173).

In my case, my identity as a former law-enforcement officer was also a good part of the reason why I had both gained access and achieved rapport, but I perceive no moral dilemma here. Yes, if a researcher is malicious, careless or inept, insider status could give him or her great power to harm or exploit. But the opposite is also true. I was a skilled and painstaking customs investigator and am now, I hope, a scrupulous and conscientious social science researcher and criminologist. My identity is the best guarantee that these officers have that their contributions will be treated with gratitude, respect, insight and fairness.

THE ISSUE OF PERSONAL SAFETY

One issue that needed to be settled before there could be any chance of PGRDC approval was my personal safety. The Committee had to be satisfied that I would come to no harm. The reassurance provided by over 20 years of experience in handling serious criminals and informants and over 15 years of close acquaintance and contact with this person in particular were persuasive but insufficient. My Director of Studies informed me of the fear expressed in the meetings of the Committee was that they might end up reading a newspaper headline: 'Kidnap Researcher Kidnapped, University to pay Ransom'.

From a data quality point of view, it would have been far preferable to meet up with Alohan on his own territory and environment where he felt secure and at ease (Lowies, 1953). In addition to the interview recordings, the account could have been strengthened by observations of his surroundings and interactions with others in his various milieus. As a customs officer, I had often met with Alohan at food stalls – the ubiquitous 'warungs' with which Malaysia is blessed. His men were all around while deals were done over food and drink, as was the local custom. I had been to his business premises where I was able to see him at his legitimate work, comparing and contrasting the different behaviours and styles that he adopted depending upon his setting. I had been to his home before, where I was able to observe him as a husband and father. However, I had to reluctantly recognise that I was no longer a law enforcement officer or even a free agent and that my sponsor, the University, had a moral and legal responsibility for my wellbeing.

The problem for criminological research is that criminal behaviour, offenders and victims are central to the subject but they all need to be approached with caution, particularly by novice researchers. There are, indeed, some research topics, subjects or methods that are effectively ruled out of bounds if the sponsoring institution does not consider the potential rewards worth the undoubted risks. Rawlinson notes (2000: 353), that: 'There are, to my knowledge few, if any, academics ... who have met with serious physical threats or harm in their investigations of organized crime. Unlike the journalist ... the academic is given more time and required to take a measured stance to his or her subject, and to that extent is less vulnerable'. However, this was my first project in the field, I was an untried researcher working on an 'alarming' research topic and I could not blame the University staff for their caution. I acknowledged that not only did the University have a duty to protect my hide, but I also had an obligation to protect the University's reputation (and liability insurance). Thus, there were several physical risks that needed to be recognised and minimised.



I was never at any reasonable risk of kidnap myself. I did not fit the victim profile that will be described later in this thesis. However, there was a risk posed by close contact with a potentially violent research subject; the interviews were in-depth and could dredge up powerful emotions for the subject. There was a possibility that Alohan might become angry or frustrated and target that anger at me, the researcher who was the cause of his distress. Additionally, if Alohan inadvertently gave away sensitive information during an interview or in casual conversation I might be perceived as a threat to him or the security of other members of his gang. Alohan, by virtue of his lifestyle, has many enemies. Anyone regularly seen in his company might be at secondary risk from reprisal attacks. I, for example, might also get 'caught in the real crossfire' in any dispute with rival gangs. Ironically, the greatest risk was probably from the Malaysian police rather than the criminal fraternity. Alohan was 'one of the usual suspects' who the police would attempt to round up after any kidnapping that fit his modus operandi. The Malaysian police are armed and, on some occasions, operate a shoot to kill policy. Therefore, it was decided that the best solution was to use a safe-house as a venue for the interviews. Not only would this be a more secure environment, it would also forestall any problems of researcher entanglement in criminal activity and the ever present threat for me, the field-worker, 'going native'.

Fortunately, it was possible to gain the Customs Department's support for the project; in broad principle and without revealing the identity of the interviewee. The Malaysian enforcement authorities are familiar with the moral dilemmas involved in recruiting informers from the very gangs and syndicates that they are fighting. In order to cope with this problem, they operate a strict code of conduct which requires a commitment to complete anonymity and confidentiality. Informants are given numbers and names are never used. The fact that Alohan was already registered as an informant made things simpler.

The situation needed to be explained with great care to Alohan, as his acceptance of the arrangement was vital. It was difficult for him to understand the reasons why he had to be put to such high levels of inconvenience at first, because the working relationship that had in the past existed between us was based on a deep mutual trust, built over years, that neither would cause the other harm. As it was agreed that Alohan was a skilled enough operator, the route to and from the safe-house was best left to him to organise. And so it was.

Other measures were also put into place, primarily to ease the anxiety of my family, colleagues and friends. My supervisory team and my wife back in the UK were sent secure emails, informing them of scheduled interviews. In any case, daily contact was the rule. If I was out of touch for longer than 24 hours, my wife had instructions on what to do and who to contact. Fortunately, one of my closest friends was a high ranking Malaysian police officer (since retired) who could be counted on, once in possession of the facts, to set all the necessary wheels in motion. Thankfully, he was never called upon to do so.

HARM TO RESEARCH PARTICIPANTS

A researcher has a duty to avoid causing physical, emotional, or reputational harm to research participants. A major advantage to the project was previous knowledge of the main research

participant and of running confidential informants. This meant that I was not a naive researcher; I was aware of the dangers involved, well-equipped to minimise them and to avoid 'dangerous methods', i.e. data collection techniques that compel a researcher to assume moral and physical risks (Lyng et al. 1998: 251-252). Yet, Alohan was also no stranger to rough and ready risk assessment.

A major part of Alohan's basic calculation of risk combines an assessment of the strengths and weaknesses of his allies and adversaries together with an appraisal of the place, the time and the cost-benefit analysis. He soon made it obvious that he put considerable faith in my ability to keep him safe and, after the reasoning behind some of the more inconvenient arrangements were explained to him, he appeared very relaxed and willing to trust my judgement. This put the onus even more squarely upon me to anticipate and work through, as painstakingly as possible, the very real dangers that Alohan might face as a result of taking part in the research. My duty was to reduce any such risks to acceptable levels.

A big advantage of having a law-enforcement background was an awareness of the harms that might be suffered by the other key participants from the police and customs services. The proposed interview schedule posed no threat of physical injury, but there were anxieties around the more psychological aspects, including a possible element of coercion from or conflict with superior officers (both customs and police) that needed to be guarded against, in addition to duty of care to protect institutional reputations. I set out to interview these participants purely in the spirit of investigation, and had no desire to produce an exposé-style thesis. Any information obtained had to be sensitively handled with an objective, critical but constructive intent. I was the first to be allowed access to certain groups of officers; I certainly did not want to be the last. Although it was never made explicit, there was a sense of what Bryman (2004: 518) calls 'the research bargain', with access granted in the hope of a useful research output. It would be unethical not to attempt to fulfil that unspoken promise.

PSYCHOLOGICAL HARM TO PARTICIPANTS

It might seem odd to those unfamiliar with the social science research process that academics might be concerned about the psychological welfare of a career kidnapper but, ethically, this was a possible harm that needed to be addressed. From my previous acquaintance with Alohan, I was aware already of several traumatic events in his life that he might have to confront in the course of the proposed in-depth interviews. He was warned that emotional and psychological distress were real possibilities and relatively common in this type of research even for the strongest personalities. The name and address of counselling services in his locale were provided as part of the consent procedure.

And so it was explained to Alohan that reliving some of his experiences might be painful and that he should have no hesitation in asking for breaks or to stop interviews altogether if strong emotions were aroused; the reins were entirely in his hands. He was also warned that I might ask some challenging questions from time to time, but that these were not intended as any form of judgement upon him and were simply seeking information. He did not have to answer any particular questions if he chose not to and did not have to give any reasons for such refusals. His decisions about what to answer or how much to say on any subject would be totally respected and were at his discretion.



The concept of debriefing sessions were carefully explained to Alohan and time was set aside for these at critical points, especially where the subject matter of interviews might cause psychological turmoil, for instance when he made revelations about his criminality or bereavements he had suffered. At the end of each session, limitless time was allowed for a kind of mutual debriefing, where the tape was switched off and we reviewed anything that had been said. Generally, this was also a time to relax together and chat about any topic under the sun, from current affairs to philosophical musings.

Some interviewers (Dickson-Swift, James, Kippen & Liamputtong. 2007) have mentioned the difficulty of withdrawal from the research participant, when they come to the end of a research project and depart, having taken what they want and leaving the subject high and dry. This was never going to be a problem in this case. I have known Alohan for a long time and am not going to sever contact at the conclusion of this project.

Back in the UK, I telephoned Alohan every few weeks to enquire after him, just as any friend would. Four more annual holidays were taken in Malaysia and each time we were able to meet, outside the confines of the research project, in our old warung haunts – although any supplementary interviews for this project, as before, took place in safe-houses when the formal research protocols were observed. Finally, I knew that Alohan had a very close relationship with his spiritual advisor and recommended that he discuss the project with his ‘Sifu’ (teacher), to ensure extra support if necessary.

Arrest counts as both physical and mental harm as it entails the loss of freedom of movement and exposure to the privations and pains of prison life. To a serious crime suspect, the act of arrest by armed police also represents a significant hazard to life and limb. It was imperative that the project should not put Alohan at any increased risk of arrest.

A preparatory task, high on the list of priorities, was to check with Alohan himself and with other confidential sources within the Malaysian criminal justice system to ensure that there were no outstanding arrest warrants either for him or for members of his immediate circle. Fortunately, this could be achieved with very little risk to Alohan himself, as he was already an informant to another high ranking Malaysian police officer, who is a close friend of mine and who, many years ago, introduced Alohan to me in the first place. Without his clearance, the project could not be given the go-ahead. He was able to confirm the fact that Alohan was not, at least for the present, on any wanted or watch lists.

It was important not only to check Alohan’s legal status at the beginning of the research but at frequent intervals throughout the fieldwork period. At one point, several months into the interview schedule, a high profile kidnap took place that had a similar modus operandi to Alohan’s group. Alohan contacted me by telephone to let me know that he had no part in the case but that he needed to make himself scarce for a while, to avoid being hauled in as ‘one of the usual suspects’. There had always been an understanding that this might happen and a protocol had been decided in advance to deal with such situations. No attempt would be made to contact him and no requests for information would be made through our police contact in case this aroused unwanted attention. Alohan would get back in touch only once he deemed it was safe to do so. Meanwhile, I stayed in Malaysia and waited.

The fear that Alohan might, inadvertently, put himself at risk of arrest had to be guarded against. Decker and Winkle (1996: 52-53) argue that one main worry when conducting research on subjects who are criminally active is the uncovering of past and future crimes as well as those criminal acts that have not been solved. In order to solve this problem, they suggest that the research subject should be informed that fore-knowledge of a crime is not wanted and there will be no guarantee of confidentiality if such information was revealed. An agreement was, therefore, included in the release form warning that Alohan should not reveal any information about crimes he had committed for which he had not yet been charged or about any criminal act that he was planning to commit in the future, otherwise I might be obliged to report what he told me to the relevant authorities. He was told that, for his own welfare, if it looked as though he was about to make an incriminating statement then I would have had no choice but to halt the interview immediately and seek advice from my supervisory team.

Nevertheless, it was incumbent upon myself to safeguard all materials that might conceivably fall into the wrong hands. Stringent data security and encryption was practiced. A digital hand-held voice recorder was used to capture interviews. Of course, it was necessary to work on the encrypted files to translate and transcribe them and in order to conduct a cursory analysis of the data they contained to ensure they could be used to inform the project, and possibly, future interviews (Richards, 2005). A protocol of daily file transfers was observed so that a minimum of working material was kept on site. The general rule of thumb was that working data should consist only of the quantity of interview script that I was able to process in one working day.

Professional ethical guidelines place great store on the importance of maintaining confidentiality but, as many criminologists realise, this is a standard that is often difficult for them to uphold: 'Changing the names of respondents is not enough in this context; it is difficult to disguise the identity of some informants or organizations without changing the meaning of their roles' (Hancock et al. 2000: 380). Alohan is, of course, a pseudonym. But this is a life-history of someone engaged in a specialised line of criminal enterprise. There cannot be many career kidnappers active in Malaysia at this time and simply by reporting his attitudes and some of the landmarks of his life, however disguised, there are some people who might be able to guess his identity. For their part in supporting the research, the Royal Malaysian Customs and the SPKU were promised a copy of the final thesis. The latter are the very people best equipped to jump to the right conclusion. This presents another dilemma that textbooks on research methods do not cover.

In this context, I am reminded of Klockars (1974: 225) who claimed that he was 'convinced that from the evidence in the text Vincent's [his research participant] true identity cannot be established'. This depends very much upon what Klockars means by 'established'. Knowing the enforcement grapevine as I do, I am equally convinced that sufficient detail was given in the narrative for the police in Vincent's neighbourhood to nudge each other and gossip about their local celebrity. But he may be correct that the evidence was not established to the level that would stand up in court. I am sure, in my turn, that the evidence in this text is sufficiently disguised to deter any notions of prosecution. Alohan declares himself satisfied with this degree of anonymity; provided that all a strictly limited number of people can do is guess, he is content.



Of course, there is no ethical guideline about the other side of the confidentiality coin. By this I mean that there is nothing to stop Alohán from using the finished thesis to actually enhance his reputation (or notoriety). It is entirely up to him who he tells about his participation, what he says about the experience and with what purpose. Along with Klockars (1974), I have a sneaking suspicion that my participant has strong ideas about the actor he would like to see playing his character in the film. Shaffir et al (2003: 11) draw attention to the possibility of 'the researcher's failure to moralize, when accompanied by an intense interest in deviant life styles, as encouragement subtle of the subject's deviant behavior'. I was keen to avoid this possibility. Alohán knows that I most definitely do not approve of his kidnapping enterprise but he also knows that I have, in the past, taken a nuanced view of his criminal activities because of what I know about his victim pool, his rationale and his modus operandi. During the interviews, I was able to differentiate between affirmation and validation. Affirmation was about: 'respectfully listening to someone's story without comment; it's about listening to them and affirming the story by the listening' (Dickson-Swift, James, Kippen & Liamputtong. 2007: 331). Validation, on the other hand, entails gestures of agreement and other signs of endorsement that I was not prepared to extend.

In effect, my morality where Alohán is concerned has always been compromised, through the pragmatism forced upon me by my former job. What follows is as much an account of our readjustments to new roles as an investigation of Alohán's life-history. Our relationship is part of the story and, I believe, herein lies part of its fascination. I admit that my initial forlorn hope was that during the course of the research Alohán would be forced to confront his moral choices to date and decide to live his life differently. Many will equate disapproval with judgementalism; this is not necessarily the case. I found it quite possible to heartily dislike what Alohán did yet like him very much as a human being. I even found myself rooting for him while I listened to his stories. During the course of the interviews, my informant was reaffirmed as a friend, someone whose interests I care deeply about. I was afraid for him when he went into hiding during the project and my relief when he re-contacted me was genuine and not pure self-interest for the progress of the research project.

This raised the spectre of overrapport, as discussed by Miller (1952 cited in van Maanen and Pogrebin 2003: 372), with: 'the idea that the researcher may be so closely related to the observed that his investigations are impeded'. As Kvale (1996, cited in Dickson-Swift, James, Kippen & Liamputtong. 2007: 331) points out, there are dangers in developing the level of rapport that facilitates disclosure and the 'interviewer should also be aware that the openness and the intimacy of the interview may be seductive and lead subjects to disclose information that they may later regret'. This was a recognised issue and I was always alert and ready to prevent such disclosures. There were some peculiar features of this research, particularly related to my shifted relationships with both Alohán and the law enforcement officers. This is one of the issues that might be familiar to the type of researcher referred to by Brown (1996) as the outside insider, or the ex-law enforcement officer who returns to conduct research on his or her familiar territory. Reiner (2000: 221) comments that once officers have 'left the force, their previous inside experience still presents unique advantages and problems compared to complete outsiders'. Because Brown and Reiner are focusing upon police research they do not specifically discuss the problems and advantages of a former officer who conducts research on his or her close contacts within the criminal fraternity. As a customs officer, I associated on a daily basis with people who could be described as underworld characters; like Alohán, several became confidential informers and, to some extent, friends or at least working associates. The

phrase 'being' native versus 'going native' (Kanuha 2000) seems to encapsulate the situation. I had been a native of this world, so to go back as an outsider, under outsider conditions was, frankly, a rather unsettling experience. For instance, the safety protocols that had to be drawn up and rigidly followed seemed particularly strange, when Alohan was someone I was accustomed, before the research formally began, to meeting in cafes, restaurants and even at his own home. Alohan, too, found some of the measures ridiculous and it was possible, although he never said so, that he might even have felt offended by them. This is a compromise I have to live with.

Although I did not force myself into homes or invade favourite bars, there is no doubt that I invaded privacy for the sake of this project. The SPKU's offices were a fairly private place, previously uncontaminated by social science researchers. I trespassed heavily on Alohan's time and goodwill and into some of the more private places in his memory. I do not see how it might be possible to conduct good quality, non-trivial qualitative criminology without being invasive to a greater or lesser degree. I do not regret wangling invitations into these spaces and would do it again in a heartbeat. But, because of the sensitive nature of the data that I planned to collect, this was an issue that troubled me. It is interesting that most recent criminological texts that I have studied on research methods, omit privacy as a concern. Of the more popular general sociological research primers, both Bryman (2004: 59) and Hagan (2006: 59) cite the Association of Social Anthropologists of the UK and Commonwealth (ASA) Codes of Ethics, which advises that: 'Criminologists should take culturally appropriate steps to ... avoid invasions of privacy'. This of course, begs the question of the precise cultural factors that it is appropriate to take into account.

Boiled down, the imperative to respect privacy appears to be very closely related to the need to obtain informed consent in order to seek to counter power imbalances. My participants were encouraged to consider the boundaries around what they were prepared to discuss and what was off limits. My main commitment to privacy entailed backing off when told to do so, without hesitation or question.

CONCLUSION

This article has ranged over the many methodological challenges presented, problems solved and opportunities grasped when one undertakes research on subjects classified as dangerous and successful criminals. The problems are amplified by the increased risk-averse culture within academia when it comes to approving such endeavour. However, as this article has argued, research of this nature can still be carried out if one can put in place the necessary protocols that will satisfy institutional sponsors' justifiable concerns. I have elaborated, in a number of instances, how resistance and suspicion can come from the least expected quarters and the importance of flexible manoeuvring to avoid fieldwork potholes.

It is hoped that as a result of the successful conclusion of my research project and, particularly, in view of the careful risk management and lack of incident, it ought to be possible for potential and new researchers and fieldworkers to convince sponsors and stakeholders in future to support more ethnographic, observational research with organised crime groups and successful criminal entrepreneurs, especially within Asia. Asia, in general and Southeast Asia in particular is a hub for other serious crimes, such as drugs and people trafficking, counterfeiting, smuggling and extortion.



The extraordinary access possessed by current and ex-law enforcement officers, along with their specialised training and experience, is a resource that has so far been under-utilised by criminology and could be harnessed for projects of international importance within the region.

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ONLINE MENTAL DISABILITY LAW EDUCATION, A DISABILITY RIGHTS TRIBUNAL, AND THE CREATION OF AN ASIAN DISABILITY LAW DATABASE: THEIR IMPACT ON RESEARCH, TRAINING AND TEACHING OF CRIMINOLOGY AND CRIMINAL JUSTICE IN ASIA

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INTRODUCTION

The authors of this paper are currently involved in two initiatives that, we believe, have the potential to have a major impact on the study of criminology and the study and practice of criminal justice in Asia. We – two professors at New York Law School (NYLS) (MLP & HEC) and the director of the Tokyo Advocacy Law Office (YI) – are engaged in (1) the creation of a Disability Rights Tribunal for Asia and the Pacific (DRTAP), and (2) the expansion of NYLS's online, distance learning mental disability law program to add multiple Asian venues. We believe that, together, these initiatives will have a significant influence on all of the Asian Criminology Society's main missions.

The DRTAP project seeks to create a sub-regional body (first as a Commission, and eventually as a Court) to hear cases involving violations of the UN's Convention on the Rights of Persons with Disabilities (CRPD), a task that will explicitly involve questions of significance to criminology/criminal justice scholars: the treatment of forensic patients, the relationship between mental disability and enforcement of the criminal law, the connection between mental disability and criminal procedure.

The NYLS online program offers 13 courses in mental disability law, and sections of two courses have been taught in Japan, and new partnerships are being planned in China and other Asian nations in the future. These courses are of great value to criminologists, and criminal justice scholars and researchers worldwide.

NYLS is now hosting the Information Center of DRTAP, a project that makes available on the Internet important disability rights developments (case law, statutes, regulations, research, academic papers) from ten nations in the Asia/Pacific region. This project connects DRTAP and NYLS's mental disability law program and is, we believe, also of great value to those whose work involves the relationship between criminal justice and mental disability law.

Our paper will first discuss the development of distance learning, online legal education in this context, will next describe the NYLS courses and the DRTAP project, and will then explain their significance to the Asian criminology/criminal justice community, and will ultimately show how these ventures can foster new research, training and teaching initiatives in this area. I. Why distance learning in mental disability law.



A. Introduction

Through the technology of the Internet-based education, one of the authors (MLP, a full-time professor at New York Law School) (NYLS)¹ has created a program of on-line mental disability law courses for attorneys, activists, advocates, important stakeholder groups (consisting of consumers and users of psychiatric services, sometimes referred to as “survivor groups”), mental health professionals and governmental officials in an effort to both teach participants the bases of mental disability law and to encourage and support the creation and expansion of grass-roots advocacy movements that may optimally lead to lasting, progressive change in this area. Another author (HEC) is an adjunct professor in this program who teaches *Criminal Law and Mental Disability* and two other courses, and who has also contributed lectures and simulations to a number of other courses. The other author (YI) partnered with NYLS in 2002 and 2004, and through that partnership, NYLS taught two sections of its courses – one of *Survey of Mental Disability Law* and one of *The Americans with Disabilities Act* – to a cohort of lawyers, mental health professionals, academics, governmental officials and journalists in Japan. We believe that the creation and expansion of this program is especially timely in light of recent research demonstrating how the Internet has already become an important provider of advocacy services and advocacy information to many persons with disabilities,² and how inaccessible most current websites are to many persons with disabilities.

B. Distance learning in law schools³

Distance learning is generally defined as “communication which connects instructors and students who are separated by geography and, often, by time,” or as “the electronic connection of multiple classrooms.”⁴ Distance learning courses enable students to share different perspectives, and provide an new environment for teaching law students to collaborate with other types of professionals,⁵ a characteristic “increasingly essential to the effective practice of law.”⁶ Distance learning – the use of

¹ The full online mental disability law program was developed at the suggestion and urging of Dean Richard A. Matasar, an early visionary in computer-based legal education. See e.g., Richard A. & Rosemary Shiels, *Electronic Law Students: Repercussions On Legal Education*, 29 VALAPARAISSO L. REV. 909 (1995); Richard A. Matasar, *Private Publics, Public Privates: An Essay On Convergence In Higher Education*, 10 U. FLA. J. L. & PUB. POL’Y 5 (1998); Richard A. Matasar, *Legal Education Skills And Values Education: Debate About The Continuum Continues*. 46 N.Y.L.SCH. L. REV. 395 (2002-03).

² See e.g., Peter Blanck et al., *Technology For Independence: A Community-Based Resource Center*, 21 BEHAV. SCI. & L. 51 (2003); Heather Ritchie & Peter Blanck, *The Promise Of The Internet For Disability: A Study Of On-Line Services And Web-Site Accessibility At Centers For Independent Living*, 23 BEHAV. SCI. & L. 5 (2003).

³ See generally, Michael L. Perlin, *Online, Distance Legal Education As An Agent Of Social Change*, 24 PACIFIC MCGEORGE GLOBAL BUSINESS & DEVEL. L.J. (in press); Michael L. Perlin, “*They Keep It All Hid*”: *The Ghettoization Of Mental Disability Law And Its Implications For Legal Education*, 54 ST.L.U.L.J. 857 (2010) (Perlin, “*Keep It All Hid*”).

⁴ Helen Leskovic, *Distance Learning In Legal Education: Implications Of Frame Relay Videoconferencing*, 8 ALB. L. J. SCI. & TECHNOL. 305, 309 (1998).

⁵ Paula Berg, *Using Distance Learning To Enhance Cross-Listed Interdisciplinary Law School Courses*, RUTGERS U. COMPUT. & TECHNOL. L.J. 33 (2003).

⁶ *Id.* at 34.

computers, telecommunications, and digital networking to permit learning outside the boundaries of the classroom – “holds the potential to expand the availability of cross-listed courses by reducing these barriers ... [and] can provide professors of cross-listed courses with pedagogical tools for enhancing interdisciplinary communication and collaboration, and circumventing some of the problems inherent in teaching students from different disciplines”.⁷ This is a pivotal development in the history of American legal education, and it is essential that it be acknowledged by those committed to social change (especially in the context of the relationship between the methodologies of legal education and the substance of what is being taught). It is mandatory that we look to new means for providing legal education – in economic, efficient and interdisciplinary ways – to our students in innovative ways that demonstrate the linkage between education and social change.

Self-evidently, distance learning has great implications for international legal education as well as for domestic legal education. A report in the Fletcher Forum of World Affairs concluded: “[T]here is no doubt that ICTs [Information and Communication Technologies], if properly adopted and implemented, can bring economic and cultural opportunities to developing countries. Education facilities may be greatly improved through distance learning and Internet access.”⁸

1. The special implications of distance learning education for persons with disabilities.⁹

One of the specific challenges in creating a distance learning pedagogy in mental disability law is the need to provide a program that can also be meaningfully accessed by persons with disabilities. By way of example, a recent study by the UK-based Disability Rights Commission showed that 81% of British websites are inaccessible to persons with disabilities.¹⁰ Scholars have begun to explore how the Internet can provide individuals with disabilities the tools to enable them to live independently and “to gain greater independence and social integration,”¹¹ and have thus begun to call for a

⁷ *Id.* at 36.

⁸ Peter Cukor & Lee McKnight, *Knowledge, Networks, The Internet, And Development*, 35 FLETCHER F. WORLD AFFS. 43, 47 (2001).

⁹ This section is largely adapted from Michael L. Perlin, *An Internet-based Mental Disability Law Program: Implications for Social Change in Nations with Developing Economies*, 40 FORDHAM INT'L L.J. 435 (2007).

¹⁰ See <http://www.drc-gb.org/newsroom/newsdetails.asp?id=805§ion=4>. See also, Axel Schmetzke, *Online Distance Education - "Anytime, Anywhere" but Not for Everyone*, manuscript at 12, available online at <http://www.rit.edu/~easi/itd/itdv07n2/axel.htm> (in a study of the 24 most highly ranked schools of library and information science, only 59% of main campus library web pages were accessible).

¹¹ H. Stephen Kaye, Ph.D., *Computer and Internet Use Among Persons with Disabilities*, 2000 Disability Stat. Rep. 13, 13, dsc.ucsf.edu/pdf/report13.pdf (last accessed, May 16, 2010); Robert Rich et al., *Critical Legal and Policy Issues for People with Disabilities*, 6 DEPAUL J. HEALTH CARE L. 1 (2002).



coordinated program of study to examine the extent to which Internet sites are accessible to persons with disabilities.¹² A study of 200 websites affiliated with Centers for Independent Living concluded:

Accessible technology for persons with disabilities has the potential to enhance independence in life. Its future development holds promise for a wide range of persons with disability...

The commitment to digital equality as a civil right must be founded in policy that incorporates accessibility and universal design in public and private programs providing technological access to all.¹³

2. The courses offered

NYLS created the first Internet-based mental disability law courses in an attempt to disseminate the core universal principles of mental disability law to the full range of activists, advocates, professionals and stakeholders described above.¹⁴ The pedagogy includes these elements:

- § 14 hours of video¹⁵
- § weekly reading assignments
- § detailed web pages, including learning objectives and directed study questions
- § on-going, threaded, on-line asynchronous discussion boards;
- § a weekly, moderated on-line chat room; and
- § two live day-long seminars, one soon after the course begins, and one at the course's conclusion.¹⁶

One of us (MLP) has written as clearly as possible about his view of this teaching methodology: AI believe that the single most important pedagogic development since I entered law school (nearly 40 years ago) has been the creation of online distance learning programs as part of the law school

¹² See generally, Peter D. Blanck & Leonard A. Sandler, *ADA Title III and the Internet: Technology and Civil Rights*, 24 MENTAL & PHYSICAL DISABILITY L. REP. 855, 857 (2000).

¹³ Ritchie & Blanck, *supra* note 2, at 24. See Peter Blanck & Helen Schartz, *Towards Reaching a National Employment Policy for Persons with Disabilities, in Emerging Workforce Issues: W.I.A., Ticket to Work, and Partnerships 1* (R. McConnell ed., 2001), available at <http://eric.ed.gov/>; Heidi Berven & Peter D. Blanck, *Assistive Technology Patenting Trends and the Americans with Disabilities Act*, 17 BEHAV. SCI. & L. 47 (1999).

¹⁴ See Joseph A. Rosenberg, *Confronting Clichés In Online Instruction: Using A Hybrid Model To Teach Lawyering Skills*, 12 SMU SCI. & TECHNOL. L. REV. 19, 23 n. 13 (2008), discussing the NYLS's program's "transformative success."

¹⁵ These are mostly Atalking heads@ and powerpoints, but there are also several simulated trials, simulated interviewing and counseling exercises, and roundtable discussions.

¹⁶ See Michael L. Perlin, "Ain't No Goin' Back": *Teaching Mental Disability Law Courses On Line*, 51 N.Y.L. SCH. L. REV. 991, 996 (2006).

curriculum.¹⁷

We currently offer thirteen courses:

- *Survey of Mental Disability Law,*
- *The Americans with Disabilities Act: Law, Policy and Practice,*
- *International Human Rights Law and Mental Disability Law,*
- *Advocacy Skills in Cases Involving Persons with Mental Disabilities: The Role of Lawyers and Expert Witnesses;*
- *Mental Health Issues in Jails and Prisons;*
- *Custody Evaluations, Juvenile and Family Law and Mental Disability,*
- *Criminal Law and Mental Disability;*
- *Sex Offenders;*
- *Race, Gender, Class, Culture and Mental Disability*
- *Mental Illness, Dangerousness, Risk Assessment and the Police Power,*
- *Therapeutic Jurisprudence, and*
- *Trauma and Mental Disability Law.*¹⁸

3. The Masters and Advanced Certificate programs.

In January 2009, NYLS created the first masters in mental disability law studies to be offered at any US-based law school. To qualify for the degree, students must successfully complete nine of the online, distance learning program's courses and write a significant paper. Students may also apply for the Advanced Certificate program that requires five courses. Those enrolled include lawyers, , psychologists, psychiatrists , advocates, a judge, and community health workers.¹⁹ Many of the psychologists have backgrounds in criminal justice or work in a criminal justice setting.

C. Courses related to criminal justice and criminology

1. Introduction

Mental disability law cannot fully be understood absent the consideration and understanding of the intersection of the criminal justice system and the mental health system. This intersection not only has an impact on the areas of the law that have traditionally been highlighted in criminal law such as death penalty eligibility, insanity pleas and incompetency to stand trial status, but is also a crucial aspect of pretrial and arrest procedures such as rights at initial arrest, waiving *Miranda* rights, plea bargaining, self-incrimination, self-representation, competency to waive jury trials, competency to

¹⁷ *Id.* at 992.

¹⁸ *Id.*. See also, Perlin, *supra* note 9; www.nyls.edu/mdl.

¹⁹ The first six students to earn an M.A. degree include a social worker, an educational psychologist, a patient's advocate with an MBA degree, a forensic psychiatrist, a disability rights attorney and a forensic psychologist. This semester, the degree will be awarded to a housing court advocate for persons with mental disabilities and a state-level judge.



waive counsel, forensic civil commitment, involuntary medication in pre-trial phases and in prison settings, conditions of confinement, sentencing, parole and probation.²⁰

At least five of the courses offered in the NYLS program are of special interest to professionals in criminal justice and criminology: *Mental Health Issues in Jails and Prisons; Forensic Reports, the Role of Experts, and Forensic Ethics; Mental Illness, Dangerousness, Risk Assessment and the Police Power, Sex Offenders, and in Criminal Law and Mental Disability.*

2. The *Criminal Law and Mental Disability* course

In this paper, we will discuss only the course in *Criminal Law and Mental Disability*. That course addresses the various “hidden” stages of criminal law²¹ in order to give students a complete understanding of the impact of mental disability in each and every phase of the criminal process, and an understanding of the “blurring” that often occurs at the borderline between the two.²² In order to achieve these goals, the course provides students with a comprehensive overview of criminal law procedure and details how each step affects individuals suffering from mental disabilities. Additionally, the course seeks to give students both substantive knowledge of these issues and actual advocacy tools so that future litigators will develop effective strategies in court, have the skills to recognize and address these complex issues and institute compassion when representing clients thus instilling in them the importance of the equal access to justice regardless of the individual’s mental health or criminal act.²³

Another important aspect of this course is teaching students about the importance of the access and barriers to justice for individuals with mental disabilities and how these barriers are heightened when a mentally ill individual is involved in the criminal law process. The Sixth Amendment right to counsel is an especially critical right for individuals in this area, and the consequences of inadequate counsel can be dire and irreversible. Unfortunately, obtaining qualified counsel with the extensive knowledge necessary to effectively represent persons with mental illness charged with crime is often difficult, and the result can be misrepresentation, misidentification of the issues and -- inevitably --

²⁰ See generally, 4 MICHAEL L. PERLIN, *MENTAL DISABILITY LAW: CIVIL AND CRIMINAL* (2d ed. 2002), and MICHAEL L. PERLIN & HEATHER ELLIS CUCOLO, *MENTAL DISABILITY LAW: CIVIL AND CRIMINAL* (2010 Cum. Supp.) (discussing each of these topics).

²¹ On the ways that so much of mental disability law remains hidden from view, see MICHAEL L. PERLIN, *THE HIDDEN PREJUDICE: MENTAL DISABILITY ON TRIAL* (2000).

²² See Michael L. Perlin & Heather E. Cucolo, *On Desolation Row: The Blurring of the Borders Between Civil and Criminal Mental Disability Law, and What It Means For All of Us* (manuscript in process); Jana McCreary, *Not Guilty ... Until Recommitment: The Misuse of Evidence of the Underlying Crime in NGRI Recommitment Hearings*, 2009 UTAH L. REV. 1253, 1255-56.

²³ On the need to integrate lawyering skills with substantive mental disability law knowledge, see MICHAEL L. PERLIN ET AL., *LAWYERING SKILLS IN THE REPRESENTATION OF PERSONS WITH MENTAL DISABILITIES: CASES AND MATERIALS* (2006).

ineffective assistance of counsel.²⁴ This ineffectiveness²⁵ -- combined with reluctance to take on representation of individuals with mental disabilities because of stigma and sanism,²⁶ among other related issues²⁷ such as political pressures, fear of media repercussions, insufficient financial gain, complexity of issues and amount of time spent on “one” case -- contributes to the undermining of Sixth Amendment protections.

Society’s belief that “mad and bad”²⁸ go hand in hand add an additional barrier that practitioners must overcome. The course focuses on the preconceived opinions of the judicial system as well as how political and social pressures can affect the outcome of cases. Pretextuality²⁹ can run rampant in this emotionally-charged area of the law . it infiltrates the entire judicial system. Neither judges,

²⁴ On questions related to competency of counsel in insanity defense cases, see 4 PERLIN, *supra* note 20, § 9A-7, at 235-41; PERLIN & CUCOLO, *supra* note 20, § 9A-7, at 81-83.

²⁵ See Michael L. Perlin, *AI Might Need a Good Lawyer, Could Be Your Funeral, My Trial@: A Global Perspective on the Right to Counsel in Civil Commitment Cases, and Its Implications for Clinical Legal Education*, 28 WASH. U. J. L. & SOC=L POL=Y 241 (2008).

²⁶ I define “sanism” as an irrational prejudice of the same quality and character as other irrational prejudices that cause and are reflected in prevailing social attitudes of racism, sexism, homophobia, and ethnic bigotry²⁶ that permeates all aspects of mental disability law and affects all participants in the mental disability law system: litigants, fact finders, counsel, and expert and lay witnesses. The word “sanism” was, to the best of my knowledge, coined by Dr. Morton Birnbaum. See Morton Birnbaum, *The Right to Treatment: Some Comments on Its Development*, in MEDICAL, MORAL AND LEGAL ISSUES IN HEALTH CARE 97, 105 (Frank Ayd ed., 1974); see also *Koe v. Califano*, 573 F.2d 761, 764 n.12 (2d Cir. 1978). I have relied on it constantly for the past twenty years to explain the roots of our attitudes towards persons with mental disabilities. See e.g., Michael L. Perlin, *A Half-Wracked Prejudice Leaped Forth@: Sanism, Pretextuality, and Why and How Mental Disability Law Developed As It Did*, 10 J. CONTEMP. LEG. ISS. 3(1999) (Perlin, *Half-Wracked*); Michael L. Perlin, *On Sanism*, 46 SMU L. REV. 373 (1992).

²⁷ See Michael L. Perlin, *A You Have Discussed Lepers and Crooks@: Sanism in Clinical Teaching*, 9 CLINICAL L. REV. 683 (2003).

²⁸ George Gerbner, *George Images that Hurt: Mental Illness in the Mass Media*, 4 J. CAL. ALLIANCE FOR THE MENTALLY ILL 17 (1993); Peter Margulies, *The "Pandemonium Between the Mad and the Bad": Procedures for the Commitment and Release of Insanity Acquittes After Jones v. United States*, 36 RUTGERS L. REV. 793 (1984). The phrase in question is found in *Benham v. Edwards*, 501 F. Supp. 1050, 1076 (D. Ga. 1980). For a consideration of how this is construed in modern popular culture, see R.M. Gans & C. Wardle, *Mad or Bad? Negotiating the Boundaries of Mental Illness on Law & Order*, (paper presented at the annual meeting of the International Communication Association), accessible at http://www.allacademic.com/meta/p112159_index.html.

²⁹ “Pretextuality” means that courts accept (either implicitly or explicitly) testimonial dishonesty and engage similarly in dishonest (frequently meretricious) decision-making, specifically where witnesses, especially expert witnesses, show a “high propensity to purposely distort their testimony in order to achieve desired ends.” This pretextuality is poisonous; it infects all participants in the judicial system, breeds cynicism and disrespect for the law, demeans participants, and reinforces shoddy lawyering, blasè judging, and, at times, perjurious and/or corrupt testifying. See PERLIN,, *supra* note 21, at 59-75.



juries nor attorneys are immune,³⁰. Controversial public opinion regarding incompetency to stand trial, insanity pleas and death penalty -eligible crimes have contributed to the myth that the criminal defendant is “getting a lighter sentence” or not receiving due punishment for the crime committed.³¹

When the decks, already stacked against individuals with mental disabilities seeking justice, are further compounded by society’s disgust and abhorrence at the commission of a criminal act, the results can be mistreatment by the system, further deterioration in a correctional setting or a potential violation of the Eighth Amendment protection against cruel and unusual punishment when the ultimate punishment of death is carried out.³²

3. Topics Covered In the Criminal Law and Mental Disability course

The *Criminal Law and Mental Disability* class covers a comprehensive array of topics. Following an introductory overview class, students are introduced to all aspects of the criminal incompetency status including: trial, plea, counsel waiver, other pre-trial, trial and post-trial stages, the insanity defense; institutionalization and release policies governing individuals found permanently incompetent to stand trial and those found not guilty by reason of insanity, the right of forensic patients to refuse antipsychotic medications, the role of mental disability evidence in other aspects of criminal trial and pre-trial proceedings (including confessions and privilege against self-incrimination matters), sentencing, and the death penalty. The students are taught an overview of sanism and pretextuality and are introduced to issues that surround questions of adequacy of counsel. Specifically, the first five weeks of the course focus on criminal incompetency questions -- substantive and procedural standards; the interplay with the Americans with Disabilities Act; treatment and confinement during an incompetency to stand trial period; competency issues involving the ability to plead guilty and waive counsel; and the repercussions and significance of each stage in the process where incompetency may be raised and needs to be considered.

The class then considers substantive issues related to the insanity defense,, looking at the defense’s historical roots, and recent alternatives to the defense such as the Guilty but Mentally Ill verdict . A subsequent class is devoted to procedural issues, with an emphasis on the major social and behavioral myths that underlie insanity defense jurisprudence and consequently lead to legislative developments. Areas of study specifically include burden of proof, informing jurors of the consequence of an insanity acquittal, the right to an expert, a defendant’s right to refuse to plead insanity, and the role of counsel. An important focus of this section within the course, is the ability to recognize the major social and behavioral myths that commonly underlie insanity defense jurisprudence, and understand how such myths have informed (or, better, *misinformed*) legislative developments.

³⁰ E.g., Perlin, “*Half-Wracked*,”*supra* note 26

³¹ On myths in the insanity defense process, see MICHAEL L. PERLIN, *THE JURISPRUDENCE OF THE INSANITY DEFENSE* (1995); Michael L. Perlin, “*The Borderline Which Separates You from Me*”: *The Insanity Defense, the Authoritarian Spirit, the Fear of Faking, and the Culture of Punishment*, 82 IOWA L. REV. 1375, 1410 (1997).

³² For one of the most notorious cases, see *Rector v. Bryant*, 501 U.S. 1239, 1240 (1991) (Marshall, J., dissenting from denial of certiorari), discussed in, inter alia, Christopher Seeds, *The Afterlife of Ford and Panetti: Execution Competence and the Capacity to Assist Counsel*, 53 ST. LOUIS U. L.J. 309, 326-27 (2009).

The course continues with a practical focus by incorporating simulated examples of client interviewing and counseling. Students are introduced to the concept of therapeutic jurisprudence and how it can play a role in the representation of incompetency and insanity cases. An entire lecture is devoted to the right to refuse medication in the forensic context, and how that right changes depending on the litigational status of the subject's case (is he awaiting trial, has he been found to be incompetent, is he proffering an insanity defense, is he an incarcerated prisoner?). Trial and sentencing matters are fleshed out, focusing primarily on the defense attorney's obligations and role in advising clients throughout the trial process, preserving issues and rights, and mastering trial strategies. The sentencing class lays out the Federal Sentencing Guidelines, mitigation concepts and how to overcome myths, sanism and general misconceptions during the sentencing phase.

The remainder of the course covers mentally disabled defendants facing the death penalty and how competency to be executed has been dealt with in the courts. Core concepts of expert testimony, mitigation factors and counsel's proficiency in this area are strongly emphasized. A mock trial, covering the most salient aspects of the course, is viewed in the course's penultimate week. The final class is devoted entirely to the issue of adequacy of counsel, emphasizing the need for counsel to be skilled and sensitive when representing individuals with mental disabilities throughout every stage in the criminal trial process.

IV. The Disability Rights Tribunal for Asia and the Pacific³³

A. Introduction

Asia and the Pacific is the only area of the world that does not have a regional human rights court or commission. Europe established a European Court of Human Rights in 1956 that was renewed in 1998. The Inter-American Court of Human Rights was established in 1980. Africa established The African Court of Human Rights and People's Rights in 2006.³⁴ It is well known that the European Court has been at the forefront of regional human rights protection; its precedents are relied on

³³ See generally, e.g., Michael L. Perlin, *The Convention on the Rights of Persons with Disabilities, the Disability Rights Tribunal for Asia and the Pacific, and the Future of Online Legal Education in Chinese Schools as a Means of Training Lawyers to Represent Persons with Disabilities*, NYLS Legal Studies Research Paper No. 10/11 #16. Available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1743730; Michael L. Perlin & Yoshikazu Ikehara, *Creation of a Disability Rights Tribunal for Asia and the Pacific: Its Impact on China?* NYLS Legal Studies Research Paper No. 10/11 #19. Available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1744196&; Yoshikazu Ikehara, *What is DRTAP and its Future?* Paper presented to the International Conference on Disability Rights Tribunal in Asia & the Pacific (Oct. 22, 2010), powerpoint slides accessible at, http://tokyo-advocacy.com/drtapeng/conference_bangkok.html (discussing all statutes); Michael L. Perlin, *Why a Regional Tribunal is Needed to Implement the CRPD* (January 20, 2011). NYLS Legal Studies Research Paper No. 10/11 #18. Available at SSRN: <http://ssrn.com/abstract=1744157>;

³⁴ MICHAEL L. PERLIN ET AL, INTERNATIONAL HUMAN RIGHTS AND MENTAL DISABILITY LAW: CASES AND MATERIALS 249-83 (2006). See generally, Olufemi Amao, *The African Regional Human Rights System*, in INTERNATIONAL HUMAN RIGHTS LAW: SIX DECADES AFTER THE UDHR AND BEYOND 235 (Mashood A. Baderin & Manisuli Ssenyojo, eds. 2010) (SIX DECADES).



regularly as a basis for the interpretation of international human rights law.³⁵ The Inter-American Court of Human Rights has played a similar role for its region and international society. Its greatest contribution to the inter-American system has been in de-legitimizing nondemocratic governments by means of the monitoring conducted during its on-site visits, and as a result of the presentation of its country reports to the OAS political organs and to hemispheric public opinion in general.³⁶ These country reports are presented to the political organs and have dominated the agendas of the OAS General Assemblies for many years. The documentation presented by an intergovernmental organization of human rights violations committed by states against their own populations has a credibility not achieved by reports issued by nongovernmental organizations, and every state will fight not to be censured by its peers.³⁷ In summary, Prof. Goldman has concluded that “The Inter-American system has contributed significantly to the development of human rights in the region as well as to broader democratic values.”³⁸

The United Nations has adopted many human rights treaties so far,³⁹ the most important of which (for the purposes of persons with disabilities) is the Convention on the Rights of Persons with Disabilities.⁴⁰ Those treaties are expected to have a great influence on national/domestic law and policies of member states. However without a regional judiciary, it is far more likely that these treaties will not have a sufficient impact on member states. It is more likely that an arbitrary interpretation of human rights treaties by a member state would be corrected only by a regional human rights mechanism. Such a tribunal/court is an indispensable mechanism to effectuate international human rights treaties among member states in Asia and the Pacific. A Disability Rights

³⁵ Lawrence R. Helfer, *Redesigning the European Court Of Human Rights: Embeddedness As A Deep Structural Principle Of The European Human Rights Regime*, 19 EUR. J. INT’L L. 125 (2008); Lawrence R. Helfer & Erik Voeten, *Do European Court of Human Rights Judgments Promote Legal and Policy Change?*, accessible at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3025&context=faculty_scholarship. See generally, Alastair Mowbray, *The European Convention on Human Rights*, in SIX DECADES, *supra* note 34, at 271.

³⁶ See Christina Cerna, *The Inter-American System for the Protection of Human Rights*, 16 FLA. J. INT’L L. 195, 201 (2004). See generally, Jo M. Pasqualucci, *The Inter-American Regional Human Rights System*, in SIX DECADES, *supra* note 34, at 253.

³⁷ Cerna, *supra* note 36, at 201. See also, Alexandra Huneus, *Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights*, 44 CORNELL INT’L L.J. – (2011) (in press), accessible at <http://ssrn.com/abstract=1911383>; Lea Shaver, *The Inter-American Human Rights System: An Effective Institution for Regional Rights Protection?* 9 WASH. U. GLOBAL STUD. L. REV. 639 (2010); Diego-Garcia-Sayán, *The Inter-American Court and Constitutionalism in Latin-America*, 89 TEX. L. REV. 1835 (2011).

³⁸ Robert K. Goldman, *History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights*, 31 HUM. RTS. Q. 856, 882 (2009)

³⁹ See MICHAEL L. PERLIN, *INTERNATIONAL HUMAN RIGHTS AND MENTAL DISABILITY LAW: WHEN THE SILENCED ARE HEARD* (2011); MICHAEL L. PERLIN ET AL, *INTERNATIONAL HUMAN RIGHTS LAW AND COMPARATIVE MENTAL DISABILITY LAW: DOCUMENTS SUPPLEMENT* (2006).

⁴⁰ See Michael L. Perlin & Eva Szeli, *Mental Health Law and Human Rights: Evolution, Challenges and the Promise of the New Convention*, in UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: MULTIDISCIPLINARY PERSPECTIVES 241 (Jukka Kumpuvuori & Martin Scheninen, eds. 2010).

Tribunal for Asia and the Pacific (DRTAP) aims at opening the door to the world that “recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family”.⁴¹

B What is DRTAP?

DRTAP will be a quasi-judicial body that adjudicates individual cases involved with disability rights and is composed of persons with disabilities, lawyers and representatives of the general public. First, it is not a conventional court but a tribunal to better insure the presence of persons with disabilities (who will likely be more familiar with the underlying issues than might many judges).⁴² Second, it deals with just disability rights issues. It does not deal with human rights issues at large. Third, persons with disabilities must be core a member of its mechanism to give life to the slogan -- “Nothing about us without us” – that motivated advocates to seek ratification of the CRPD.⁴³ Fourth, because of the geographic vastness of the Asia/Pacific area, it will be necessary to launch the DRTAP as a subregional body, but optimally, it will eventually extend to all nations in the region. Its initial functions will be investigation and adjudication, and when the necessary regional treaty is signed, there will then be a regional judiciary with binding power.⁴⁴

C. Why do we need a DRTAP?

The United Nations expects member states to establish a three-layered system for protection and promotion of human rights. A domestic judiciary and a national human rights committee are required in a national level. The Human Rights Council operates at an international level, as do the optional

⁴¹ Convention on the Rights of Persons with Disabilities (CRPD), preamble, para. (a).

⁴² Professor Terry Carney and his colleagues have pointed out that a conventional court is more conservative than a tribunal, comparing court decisions with tribunal one in terms of hospitalization for persons with mental disabilities. TERRY CARNEY ET AL, ADULT GUARDIANSHIP TRIBUNALS (1997).

⁴³ See e.g., Rosemary Kayess & Phillip French, *Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities*, 8 HUM. RTS. L. REV. 1, 4 n.15 (2008):

See, for example, Statement by Hon Ruth Dyson, Minister for Disability Issues, New Zealand Mission to the UN, for Formal Ceremony at the Signing of the Convention on the Rights of Persons with Disability, 30 March 2007: "Just as the Convention itself is the product of a remarkable partnership between governments and civil society, effective implementation will require a continuation of that partnership." The negotiating slogan 'Nothing about us without us' was adopted by the International Disability Caucus, available at: http://www.un.org/esa/socdev/enable/documents/Stat_Conv/nzam.doc [last accessed 13 November 2007].

⁴⁴ Its initial functions will be investigation and adjudication, and when the necessary regional treaty is signed, there will then be a regional judiciary with binding power.



protocols that accompany the human rights treaties. And a regional judiciary is required at the regional level.⁴⁵ All regions except for Asia and the Pacific fulfill this three-layered system.⁴⁶

Currently-existing UN Human Rights mechanisms are not always useful for persons with disabilities, and domestic human rights mechanisms have severe limitations.⁴⁷

Thus there is a grave missing-link in human rights mechanisms in Asia and the Pacific, making it very difficult for people in this region to correct a domestic legal system and policies that do not accord with international human rights norms, and robbing them of the enjoyment of human rights protection under the international rule of law. The

DRTAP project is an attempt to complete the link in human rights mechanisms in this region.

D. Progress of DRTAP and its future

The Toyota Foundation granted an initial subsidy to organize the DRTAP project in 2008. Local meetings to discuss DRTAP were held in Tokyo, Bangkok, Seoul and Melbourne from 2009 to 2010, as well as a "side-event" as a luncheon session of Social Development Committee at UNESCAP in 2010. The concluding international conference for the project's first stage was held in Bangkok in 2010.⁴⁸ UNESCAP has expressed interest in DRTAP, pointing out the necessity of a regional human rights mechanism in its "Report of the Committee on Social Development on its second session 2010".⁴⁹

⁴⁵ This frame is shown in "VIENNA DECLARATION AND PROGRAMME OF ACTION(1993)", that is, "The World Conference on Human Rights also encourages the strengthening of cooperation between national institutions for the promotion and protection of human rights, particularly through exchanges of information and experience, as well as cooperation with regional organizations and the United Nations." (II para85)

⁴⁶ Although it is true that people in Asia and the Pacific can use some international human rights instruments, such as universal periodical review, special procedure, a report by a state party and its consideration (see CRPD, Arts.35 &36), those systems have their limitations. By way of example, there were only 1,812 applications to individual communication of optional protocol under ICCPR from 1976 to 2008. There were 57,100 applications to ECHR in 2009 alone.

⁴⁷ Although persons with disabilities can demand that their lawmakers support legislation in accordance with CRPD, the fact that this will be a minority position advanced by a relatively politically-powerless cohort makes it less likely these demands will be met. Affirmative litigation is always an option, but the judiciaries of this region generally take a strong "judicial self-restraint" stand and are reluctant to embrace relatively new legal concepts/right such as disability rights/discrimination. Domestic judges are also usually indifferent toward international human rights. In some nations, National Human Rights Commissions serve an important role in this context, but not all countries have such Commissions, and their functions vary across nations.

⁴⁸ See, <http://tokyo-advocacy.com/drtapeng/>.

⁴⁹ One non-governmental organization has highlighted the need for the regional disability rights mechanism to underpin more effective implementation of the Convention on the Rights of Persons with Disabilities at the national level.

The Project is at its second stage now. A Disability Rights Information Center in the Asia-Pacific region will be established (housed at New York Law School⁵⁰, and more organizational meetings will be held: a side-event during the “High-level Intergovernmental Meeting on the Final Review of the Implementation of the Asian and Pacific Decade on Disabled Persons, 2003-2012, sponsored by UN ESCAP, to be held in Incheon, South Korea, in late 2012, sub-regional conferences with DPOs, human rights NGOs and national human rights commissions, and then a concluding international conference will be held in 2013 when the new decade for persons with disabilities in AP starts.

It is our hope and expectation that member states of UNESCAP will adopt DRTAP project as one of main projects for the new decade, and we expect that DRTAP will be established until the end of the new decade for persons with disabilities in AP.

The creation of DRTAP will open the way to establish a regional general human rights judiciary in AP, in large part because it will be easier to build a consensus to establish a regional disability rights judiciary than a general human rights one, as disability issues are often far less “political” than are other human rights issues. Persons with disabilities will play a great role in this effort, and we hope that this will lead to such individuals being, finally, regarded as indispensable members of society.

V. The significance of the underlying criminal justice issues to Asia and to Asian criminology/criminal justice scholars

A. Introduction

“The issues surrounding the legal responsibility of caring for and maintaining a person with a mental illness go back almost 2500 years.”⁵¹ Similarly, so has the concept of criminal justice and its intersection with mental illness.

Mental disability and criminal justice issues are universal, spanning every nation, region and area of the world. Although, each society deals with these issues differently, depending on the needs and culture of the community, the commonalities are vast. In order to study, analyze and progress in this area, it is necessary to obtain knowledge that encompasses rigorous collaboration of research and studies while taking into account the unique nature of each community identified.

Advancement in technology and science, specifically with regard to the use of psychotropic medications as a modality of treatment of persons with serious mental disabilities, as well as the scrutiny and consideration of the treatment of persons with mental illness in prisons and hospitals has been the source of legal and scholarly debate. Within the past few decades, this debate had been

⁵⁰ One of the co-authors of this paper (HEC) will be the director of this project at NYLS.

⁵¹ Fischer, *A Comparative Look at the Right to Refuse Treatment for Involuntarily Hospitalized Persons with a Mental Illness*, 29 HASTINGS INT'L & COMP. L. REV. 153 (2006) (“The Romans asked questions that reverberate today: ‘What was the legal status of a mentally disabled person during his lucid moments? Was he still under the protection of a guardian? If not, was it necessary to name a new guardian each time the illness returned?’”)



confined mostly to North America and Western Europe but more recently has been spotlighted in Asia and the Pacific as well.⁵² “Statistics released by the Chinese Center for Disease Control and Prevention in 2009 showed that over 100 million people affected by mental illness, with 16 million listed as severely ill, in China”⁵³

One example explores the differences between forensic psychiatry in the People's Republic of China (PRC) and the United States. In the United States, psychiatrists and psychologists often work at the interface between mental health and criminal, civil, family, correctional, and law enforcement matters. In China, forensic roles have only recently expanded from the criminal law context. Forensic psychiatrists are almost always government agents/employees, and evaluations usually address only criminal responsibility.⁵⁴

Below, we shall briefly identify events in certain Asian/ Pacific regions that highlight issues of mental illness and criminal justice, in order to further illuminate the significance of these issues, thus furthering our mission to educate and inform scholars, practitioners and legal advocates in this area of the law.

B.China

Interest in both criminal law and mental disability law in China has exploded in both the legislature and media in recent years. In the 1980's, China proposed a mental health law that purported to increase the rights for individuals subject to mental health screenings. The legislative process for the proposed law was launched in 1985, lasted 26 years and has undergone 10 revisions. This unusual long period of time was due to the inconsistency of views among various advocates who were unable to establish a legal basis for the medical treatment and protection of rights for mentally challenged people.⁵⁵ The law detailed that in certain circumstances, a hospital could be subject to criminal penalties if its employees diagnose someone with a mental illness against his or her will or committed a person who is in fact found to be sane.⁵⁶ China's draft of the Mental Health Law of China seeks to

⁵² *Id.* at 153 (discussing concerns about how patients were treated in mental hospitals, along with the serious side effects that came with the use of the new medications, led advocates for persons with mental illnesses to raise questions about involuntary hospitalization and treatment. Who should be involuntarily hospitalized? Once hospitalized, should these persons have a right to consent or refuse to take medications?)

⁵³ **english.news.cn 6/10/2011 (discussing how China is poised to outlaw compulsory mental health check ups);** X. Wang et al, *Reassessing the Aftercare Treatment of Individuals Found Not Guilty Due to a Mental Disability in Hunan, China: Supplemental Study into the Disposition of Mentally Ill Offenders After Forensic Psychiatric Assessment.* 41 AUST N Z J PSYCHIATRY 337 (2007).

⁵⁴ See http://www.chinadaily.com.cn/opinion/2011-09/21/content_13745891.htm. Several new forensic concepts have been applied to Kangning Hospital in the coastal city of Shenzhen. Many of those concepts have changed forensic procedures in the Guangdong region and are spreading more broadly in China.

⁵⁵ *Id.*

⁵⁶ Fischer, *supra* note 51, at 160.

outlaw compulsory mental health checkups, requiring instead that checkups be performed at the request of the patient or guardian. It also states that it is the responsibility of civil affairs authorities to send homeless people, suspected of suffering from mental disorders to mental health institutions. On paper, at least, the draft law significantly provides the rights of mental health patients, including the right to education, work, medical insurance, privacy and social assistance.⁵⁷ Yet this legislation has been scrutinized and debates have developed surrounding certain legal areas such as the right of China's police to forcibly send people to psychiatric wards against their will. Documented cases have highlighted concerns that Chinese authorities are using mental asylums as a way to silence dissent by claiming that an individual is "endangering public security" or "disturbing public order".⁵⁸ A recent article by an American expert on Chinese law warns that the new code could be used as a vehicle to legalize "residential surveillance" that could be used as a tool against political dissidents.⁵⁹

Recently, a high profile criminal case in China stirred public concerns for the mental health of their country's elderly population. An elderly woman suffering from depression, leading to intermittent hospital stays and ongoing psychotropic medications, confessed to the murder of her granddaughter. Psychiatrist's reviewing the case confirmed an increase of violent attacks by elderly citizens.⁶⁰ It is suggested that economic backgrounds and a transformation in the traditional family structure, along with a lack of care from children and reduced communication with the outside world, are to blame for the mental health issues currently facing senior citizens.⁶¹

Chinese legislation has recognized that someone unable to acknowledge or control his misconduct requires the exemption from criminal responsibility and warrants the reduction of punishment in cases of partial mental capacity. Recently, a fairly high-profile case came to light involving mental illness and the death penalty. A British businessman, Akmal Shaikh, was convicted and executed in China after he was found with heroin in his luggage. A Chinese organization argued on his behalf (and against his wishes) claiming that he suffered from mental illness and should not be subject to the death penalty. The Court refused to allow an evaluation of mental illness because past records did not exist to document a history of mental illness and sentenced Shaikh to be executed. Yet the Supreme People's Court has not always ruled in this manner and has allowed for the investigation and admission of psychiatric examinations. Several years ago in Beijing, an American killed his Chinese

⁵⁷ *Id.*, n.3.

⁵⁸ He Bolin, *Mental health law requires details*, chinadaily.com.cn, 9/21/2001 Law professor Dai Qingkang from China's Southeast University says the proposed law is vague and could be abused: "For example, the risk of endangering public security or disturbing public order is enough reason to force someone to psychiatric care. We think that the term 'public order' is unclear, and many experts believe this cannot be a reason to forcibly admit someone. The decision should be made by a qualified psychiatrist."

⁵⁹ Leonard Orland, *Chinese Law and Political Oppression*, NAT'L L.J. (Oct. 10, 2011).

⁶⁰ *Infanticide Tragedy Highlights Elderly Mental Health Care Issues*, English.news.cn, 2011-07-24

⁶¹ *Id.* "The mental health issues surrounding the elderly population need to be addressed not only by senior citizens and their families, but also through comprehensive measures put in place by the government and society," (comment made by Yang Fangru, a psychology professor at Central South University of China).



wife because of the delusion that she was poisoning him. The trial court called for a thorough examination by experts at a local mental hospital and the man was diagnosed as a paranoid-schizophrenic. The Court bypassed a verdict of not guilty by reason of insanity but reduced what would otherwise have been a death sentence, to a prison term of 15 years.⁶²

These issues, cases, advocacy of rights and rights concerns are not unique when compared with the rest of the world. The study of China's approach and legal struggles in dealing with persons with mental illness (and the concomitant concerns about issues of civil rights and liberties) will give other nations the ability to apply these concepts to an analysis of their own laws (or lack thereof) dealing with the treatment of such individuals.⁶³

C. India

Recent high profile cases and questions regarding the constitutionality of persons with mental disabilities have not spared India. As in China, India has also debated the ethics of executing someone who is mentally incompetent. In the 2011 trial of a Khalistan Liberation Front (KLF) operative, attorneys and advocates against executing persons with mental disabilities claim that the defendant's mental state "renders him unfit for execution and the death sentence should be commuted to a life term". Citing constitutional safeguards, the representing attorney declared, "His execution will be unconstitutional and in-executable, according to the jurisprudence of humanism." According to settled laws in India, if a death convict's mental state is certified as unsound by a competent medical authority then he cannot be executed.⁶⁴

Issues involving India's criminal justice laws in relation to mental illness were recently brought to light by the Dehli High Court and India's mental health advocates. In response to a high number of cases and concerns, the Delhi High Court requested a review of the Indian Penal Code (IPC) that prescribes punishment for those who attempt suicide.⁶⁵ The 42nd Law Commission report

⁶² Jerome Cohen, *Mental Illness and Criminal Justice in China*, cited in *China Times (Taiwan)* (December 24, 2009) (additionally questioning whether these types of cases will spur criminal justice reform in China).

⁶³ L. Jeevanandam *Perspectives of Intellectual Disability in Asia: Epidemiology, Policy, and Services for Children and Adults.*, 2009 Sep;22(5):462-8. 22 CURR. OPIN. PSYCHIATRY 462 (2009):

The prevalence of intellectual disability across Asia appears to be consistent with western estimates at 0.06-1.3%, with the exception being China at 6.68%. In the only two studies of mental health conducted in Asia, the prevalence ranged from 4.4 to 48.3%. Some of the common physical health problems among Singaporean adults with intellectual disability are obesity, high blood pressure, and high blood cholesterol. All Asian countries/territories have at least one law or policy that promotes the well being of persons with disabilities, with Japan being the only country that has a law specifically enacted for persons with intellectual disability. Although there is an array of services being offered for children and adults with intellectual disability across south-east Asia, there is also a variation in the proportion of countries that offer these services.

⁶⁴ Abhishek Sharan *Lawyer Pleads Leniency for Bhullar on Medical Grounds*, HINDUSTAN TIMES (New Delhi) (June 07, 2011).

⁶⁵ *Delhi High Court Queries Govt on India's Anti-Suicide Law* DAILY NEWS & ANALYSIS (May 12, 2011). The International Association for Suicide Prevention has said that approximately one million people have died by committing suicide so far during this millennium.

conclusively determined that provisions of Section 309 were harsh and unjustified and must be repealed. “Individuals who attempt suicide need to be helped. Imprisonment makes their condition grave and worse. As part of its endeavor to promote and achieve effective prevention,” the petition stated, adding that the present section was vague and undefined as it failed to appreciate the sensitivity and compassion that was required to deal with individuals who have already suffered much trauma in life and have to undergo another round of suffering.⁶⁶

D. Japan

Japan has undergone a number of mental health law reforms since the 1980’s. Those reforms have been the subject of extensive debate as to the extent to which they afford its citizens full civil and forensic rights. The legislature has addressed the intersection between mental illness and serious crimes as well as protection of the general mentally ill population. New forensic units have been legislatively mandated to house individuals with mental disabilities charged with crime. Scrutiny and scholarly attention has focused on and considered ways to prevent warehousing mentally ill offenders in jails, recommend effective and culturally sensitive techniques through which to deal with low-risk populations and suggest policies to avoid the improper placement of juveniles, violent patients and the developmentally handicapped. Continued efforts seek to make sure that the appropriate individuals are placed in the new forensic units established by the legislation.⁶⁷

Even with these advancements, one legal scholar astutely identifies that “it is only through contemplating unintended outcomes of the legislation that the Japanese government will be able to avoid the ongoing stigmatization and prolonged institutionalization of mentally ill populations”.⁶⁸

Yet in 2009, Amnesty International voiced concerns that Japan was still executing mentally ill prisoners. Although Japan has embraced international standards that prohibit the death penalty for those with a serious mental illness, questions exist as to whether those standards are being upheld. Not unlike other nations who house inmates for extended periods of time on death row, inmates in Japan are also at risk of developing a serious mental illness while on death row.⁶⁹

Despite apparent cultural differences, the international community seeking to uphold human rights and require the necessary safeguards to protect them, must continue to vigorously study, debate and question the authoritative powers on both sides of the coin. This scrutiny must exist in the forensic context, as well as throughout the mental health system at large.⁷⁰ This can only be accomplished through the collaboration and sharing of knowledge across borders, nations and cultural divides.

CONCLUSION

⁶⁶ *Id.*

⁶⁷ David N. Weisstub & Terry Carney, *Forensic Mental Health Law Reform in Japan: From Criminal Warehousing to Broad-Spectrum Specialist Services?* 29 *INT’L J.L. & PSYCHIATRY* 86 (2006).

⁶⁸ *Id.*, n. 11

⁶⁹ Amnesty International, *Japan Continues to Execute Mentally Ill Prisoners* (September 10, 2009).

⁷⁰ Weisstub & Carney, *supra*_note 67, at n. 16.



In a recent article, one of us (MLP) discusses the “ghettoization” of mental disability law and the way that this topic is absent in traditional courses in civil rights law, federal courts law, criminal procedure and constitutional law. Mental disability law has been ghettoized in good part because of socially-acceptable unthinking (perhaps, at times, unconscious) sanism. This sanism renders invisible both its subject matter and the individuals who are the subject of its caselaw. Because of this ghettoization, many law schools offer no course in this subject matter, or offer one sporadically by an occasional adjunct. As a result, our biases and prejudices about persons with mental disabilities (and those so perceived) remain hidden in the academy.⁷¹

New York Law School created its online mental disability law program, in significant part, because of this gap in legal education. Our robust curriculum and our global reach were designed, in large part, to help ameliorate this situation.

The work being done to create a DRTAP (including the creation of an Internet-based information center) makes the expansion of this sort of program even more time-urgent. Recent criminal justice/mental disability law developments in Asia heighten this urgency. We believe that, by teaching the concepts in the NYLS program through this specific pedagogical approach, we will reach a greater audience and have a better chance of producing informed, compassionate and knowledgeable advocates dedicated to furthering the rights of persons with mental disabilities throughout every phase of the legal system.

⁷¹ Perlin, *Keep It All Hid@*, *supra* note 5, at 860-61, 876.

BETWEEN EASTERN CIVILIZATIONS AND WESTERN DEVELOPMENT: CRIME, DEVIANCE, AND SOCIAL CONTROL IN ASIA AND THE PACIFIC

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This paper compares and contrasts different approaches taken by Eastern civilizations and Western development toward crime, deviance, and social control. The salient emphasis on family, human relationship, and communal interdependence in Eastern civilizations serves as a collective surveillance over individuals and a public deterrence against deviant or criminal behaviors. When conflicts and victimization occur, people embedded in their closely-knit community tend to resolve disputes and carry out appropriate compensation plans by themselves. Toward offenders, there seems to be a clear public preference for reforming them with positive thoughts and useful skills rather than casting them further into criminality by way of sheer punishment. Western development, in contrast, has led to a declining family and community, growing individualism and alienation, rising social tension and conflict, and increasing criminality and deviancy. The adversarial legal system pits offenders against morality, authority, and the social establishment. The prison network paradoxically serves as a school base for training career criminals rather than as a correctional facility for bringing inmates back to the mainstream population. Although professional groups and the middle class have emerged to bridge the remote state with a citizenry of self-interest, there are still many individuals caught in between, with neither adequate communal attachment nor proper social regulation. While they each face and fosters specific deviances, crimes, and social problems, Eastern civilizations and Western development share common concerns and challenges. Across Asia and the Pacific, it is most inspiring to see how developing societies in Eastern civilizations keep their cultural heritages to curb rising deviance and crime in their pursuit of a Western-style development, as well as how developed countries in Western traditions apply characteristic Eastern ideas and measures of social control to contain challenging social problems in their continuing drive toward material prosperity.



TEACHING CYBER CRIMINOLOGY: INDIAN EXPERIENCES AND CHALLENGES

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This paper presents the challenges faced during the past five years in designing and teaching a masters course in cyber criminology. Right from design to implementation of the pedagogic process, the unique nature of this subject that needed combining of different disciplines posed different difficult questions at various stages in the life cycle of the program. The necessity to combine the best of breed information and communication technology, legal process and information security theory within a strong conceptual foundation of criminology presented significant challenges, each of which were addressed using different approaches to education and training. Various learning and instructional design frameworks were evaluated and given that the program equally emphasized both class room education and hands-on work at digital forensic lab, it was decided to adapt some of the principles found in IBSTPI competencies. Structuring a program that will be good balance between creation of pioneering skills and skills that can be readily understood by those employing graduates from this program had to be considered. This balancing was perhaps the biggest challenge in the earlier stages and over the past years, our experience has enabled us to fine tune our response to this challenge.

PART *11*

RESTORATIVE JUSTICE





PARTICIPATING IN RJ CONFERENCING: THE IMPEDIMENTS AND ATTRACTIONS FOR AUSTRALIANS AND JAPANESE WHO HAVE BEEN VICTIMS OR OFFENDERS

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Restorative justice conferencing requires coordination of many actors. It needs support from the legal-criminal system, from professionals who serve as conference facilitators, from offenders, victims, and offenders' and victims' communities of support. Much of what is known about building cooperation among these groups is anecdotal, passed around practitioners' networks and political activist networks. This paper draws on survey responses from people who have been victims or relatives of victims of violent crime and offenders. The sample comprises Japanese and Australian respondents who have answered questions on their relationships with their communities, the needs of victims and offenders, interest in participating in a restorative justice conference and hope for benefits. Among the questions asked are: Does distrust in the legal system attract people to restorative justice, do offenders and victims agree to a restorative justice conference because they think it will meet their needs, are offenders and victims reluctant to get involved if they are socially distant from their communities? Is participation driven by personal or social factors? Data are taken from the Cross National Comparative Study: Australian and Japanese Attitudes to Crime to produce structural equation models of how relationships with community and institutions shape perceptions of the needs of victims and offenders, and how all these factor shape perceptions of benefits of restorative justice and willingness to participate.

THE CURRENT SITUATION AND PROSPECTS OF TAIWAN'S INITIATIVE IN RESTORATIVE JUSTICE

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INTRODUCTION

Recently in Taiwan, there have been large-scale amendments in the Code of Criminal Procedure, particularly in regard to protection of victims' procedural rights. These amendments grant victims rights to express their opinions and to be accompanied at court. As a legal litigant, victims are entitled to appoint legal representatives, who can review, transcribe, or photocopy relevant documents and evidence on behalf of victims. Victims' participation and rights also have been included in deferred prosecution and legal consultation processes. However, some victims still think existing criminal procedures are in favour of the accused. Such dissatisfaction seems to show that in the criminal justice system, more attentions need to be paid to victims' rights.

To the Ministry of Justice, it is an important task to find out why victims still feel dissatisfied with the Code of Criminal Procedure (amended). Indeed, in the existing Code of Criminal Procedure, there are more emphases on punishments of offenders rather than on the feelings and needs of victims. Accordingly, on one hand, victims may neither receive any forms of reparations nor feel that justice is realized even offenders have been punished; on the other hand, families of offenders could also face adversities such as loss of family finance source and estrangement between parent and child. This way of dealing with crime could not win the trust and satisfaction of all stakeholders; instead, it may create further social problems. These observations seem to say that addressing crimes shall not simply focus on punishment but also on assisting affected parties to heal harms, to restore balance and to repair broken relationships. Justice could be realized in the pursuit of the truth, respect, consolation, responsibility and restoration. Restorative Justice (RJ) appears to be the alternative way, complementing what is lost in the current criminal justice system in Taiwan. Thus, since May of 2008, the Ministry of Justice in Taiwan have included restorative justice as one of its important policies, promoting restorative justice (RJ) in four main dimensions: 'Advocacy for RJ Ideas', 'Establishment of RJ Theories', 'Practical Trials of RJ' and 'Application of RJ in Schools'.

PREPARATION AND DESIGN OF RESTORATIVE JUSTICE PILOT

Advocacy for restorative justice was the primary goal in the preparatory stage of restorative justice pilot in Taiwan for there was a lack of understanding of restorative justice among the general public. A number of activities, including literature reviews on practices of restorative justice in other countries and some lectures, training and workshops, were conducted to establish common perception of restorative justice among relevant practitioners and also to educate the general public.

In order to build up a pragmatic program of restorative justice, which could fit the national character of Taiwan congenially and meet the needs of the public precisely, the Ministry of Justice consulted with academics and specialists in this field, studied different practical models of other countries and discussed with district prosecutors offices. With these efforts, some details including applicable scopes, suitable offence type and operational procedure were settled; the restorative justice pilot was initiated in June of 2010.



CHARACTERISTICS OF RESTORATIVE JUSTICE PILOT IN TAIWAN

A. Named as Restorative Justice Pilot

Generally, restorative justice programs conducted in a wide range of criminal justice systems, including the police, the prosecution offices, court systems and prisons are named with 'Restorative Justice'; programs with the ideas of restorative justice applied in schools, business and social welfare are named with 'Restorative Practice'. For the purposes and the design of this restorative justice pilot were mainly designed for criminal justice systems, it was named as '修復式司法' in Chinese, distinguishing from other programs applied in other fields, which would be named as '修復式正義' in Chinese, for the sake of propaganda.

B. Applied at all stages of criminal justice procedures

According to the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters¹ published by UN (2002), it is suggested that restorative practices shall be available at all stages of criminal justice procedures. Similarly, in this pilot, under the premise of voluntary participation of both parties (victims and offenders), restorative justice practices were available at all stages of criminal justice procedure. The referred cases could be under investigation, prior to trial, after sentencing, under probation or after imprisonment. In addition, there was a wide range of offence types selected and decided respectively by eight cooperative prosecution offices after their own assessment of local conditions and resources.

C. Adopting VOM (Victim Offender Mediation) Model

Victim offender mediation is one of the most common practices of restorative justice. With the assistance of facilitators, victims and offenders could meet each other in a safe environment. In the mediation process, victims would have opportunities to express feelings and ask questions; offenders could understand the consequences of their offence in the hope that offenders would take responsibility for their behaviour and make substantial or emotional reparations to victims. Lack of practical experiences of restorative justice, the Ministry of Justice chose to adopt this basic model, VOM.

D. District prosecutors offices as the core implementing force in the initial stage

In other countries, restorative justice programs have been implemented or sponsored by the police department, the department of general attorney or the courts and also could be initiated by non-governmental organisations. Learning from New Zealand's experiences in developing restorative justice models: its VOM model was implemented by the courts, the Ministry of Justice in Taiwan, with prudent considerations, chose district prosecutors offices as the core implementing force. Being governmental institutions, district prosecutors offices were capable of managing its own personnel and networking with diverse resources providers such as other practitioners in law, counselling, social work, crime prevention, victim protection, offender rehabilitation and other community services.

¹ United Nations Economic and Social Council (2002)

E. Proceeding under the existing criminal procedures

In the initial period, the restorative justice pilot was undertaken under the existing criminal procedures, with no further amendments to laws. As victims and offenders participated in the restorative justice process, the cases they were involved were not suspended and continued proceeding in the criminal justice procedures. Under existing mechanisms including civil mediation, deferred prosecution and plea bargaining, the agreements achieved by both parties such as monetary compensation, apologies, community services and voluntary work were able to be carried out. The agreements could be backed up by laws or taken as important reference in the deferred prosecution or plea bargaining.

F. Establishing incentives mechanism

In order to encourage prosecutors to adopt restorative justice in their original working pattern, the guideline for this restorative justice pilot clearly demonstrated that cases referred to the restorative justice pilot still shall be processed under existing criminal processes including investigation, sentencing, execution and probation. Criminal cases referred to the restorative justice pilot probably could not be finalised in due time, but with the general attorney's permit, these referral cases could be reported under a status of temporary closure for three months

G. Evaluating this pilot with more focus on quality than quantity

The aim of this pilot was to establish a restorative justice model which can fit Taiwanese social and cultural values and meet the needs of victims as well. The evaluation of this pilot was conducted for the sake of future policy-making. Neither the number of completed cases nor the proportion of achieved agreements was taken seriously in the evaluation. The problems and experiences shared by participants, judicial officials and facilitators were the focus of this evaluation.

H. Directed by the central authorities and implemented by the local jurisdictions

This pilot was undertaken with the strategy of 'Directed by the central authorities and implemented by the local jurisdictions'. The Ministry of Justice was responsible for directing the pilot, collecting data and providing resources. For example, The Ministry of Justice invited the specialists from the Centre for Restoration of Human Relationships in Hong Kong to deliver the training courses for facilitators. The courses, which were approved by IIRP (International Institute for Restorative Practices), consisted of lectures, movies, discussions and role-playing in order to cover the main issues: the procedures of restorative justice meetings, preparatory work, and practical skills. The Ministry of Justice also sponsored an empirical study conducted by academics, namely, 'A study on the Application of Restorative Justice in the Criminal Justice System'². To district prosecutors offices, the major tasks were to connect local resources, to establish an executive unit, to design a pragmatic model, to decide applicable offence types, to organise working conferences, to appoint suitable facilitators and to provide relevant resources.

THE IMPLEMENTATION OF RESTORATIVE JUSTICE PILOT

² Huang, Lanying, Chuen-Jim Sheu & Cui-wen Huang. (2011). A study on the Application of Restorative Justice in the Criminal Justice System. The Ministry of Justice, Taiwan.



The Restorative Justice Pilot was officially initiated in June of 2010 with eight district prosecutors offices joined, including Shilin, Banqiao, Miaoli, Taichung, Tainan, Kaohsiung, Yilan and Penghu. In September of 2010, the Minister Zeng announced the restorative justice pilot is commenced in a media press.

A. The selection of applicable offence types

The applicable offence types³ selected in the pilot were decided respectively by district prosecutors offices, shown as table 1.

Table 1 Offence Types Selected by District Prosecutors Offices

Prosecutors offices	Offence types
Shilin	offences of causing bodily harm, manslaughter, (serious) assault, offences against property, youth crimes, other minor offences and other cases evaluated as appropriate
Banqiao	offences under Article 376 of the Code of Criminal Procedure (excluding cases without victims)
Miaoli	offences against the person, offences under Article 376 of the Code of Criminal Procedure (excluding offences without victims) and other cases evaluated as appropriate
Taichung	offences under Article 376 of the Code of Criminal Procedure (excluding offences without victims), youth crimes, serious crimes and other cases evaluated as appropriate
Tainan	cases evaluated as appropriate
Kaohsiung	traffic accidents and other cases evaluated as appropriate
Yilan	manslaughter, assault and other cases evaluated as appropriate
Penghu	offences under Article 376 of the Code of Criminal Procedure (excluding offences without victims), youth crimes, other cases evaluated as appropriate

Source: Jointed District Prosecutors Offices, made by Department of Prevention, Rehabilitation and Protection, Ministry of Justice

B. Executive models

Five out of eight District Prosecutors Offices assigned original judicial officials to consist of the executive unit. The rest three prosecution offices including Tainan, Kaohsiung and Miaoli closely

³ In addition to the offence types listed in the Table 1, offences against sexual autonomy (only for cases when young couples whose sexual behaviour was based on mutual consent but they were under 18 years old) regulated under Article 227 of the Code of Criminal Procedure and the Domestic Violence Prevention Act were included in Miaoli District Prosecutors Office; criminal cases deviated from conflicts in marital or family relationships were included in Tainan District Prosecutors Office; offences against Domestic Violence Prevention Act (such as family violence cases and breach of a Protection Order but excluding child abuse cases or cases involving other serious offences) were included in Kaohsiung District Prosecutors Office. Due to the sensitive nature of these offence types, the Ministry of Justice consulted with academics, specialists, Domestic Violence and Sexual Assault Prevention Committee, Ministry of Interior, Centres for Prevention of Domestic Violence and Sexual Assault at the level of local governments and other non-governmental organisations. It was concluded that these special cases could enter restorative justice process only after initial evaluations made by and approval received from Centres for Prevention of Domestic Violence and Sexual Assault of local governments.

co-worked with non-governmental organisations, which were Tainan Association for the Promotion of Women's Rights in Tainan, Shih-Li Lih Memorial Foundation in Kaohsiung, and Modern Women's Foundation in Miaoli. In Miaoli, the project coordinator was also a social worker at the Victim Protection Unit of the local prosecution office, which was run by Modern Women's Foundation.

C. The use of facilitators

Facilitators were selected and assigned by district prosecutors offices in accord with the nature of their own projects and local resources. Most facilitators were professionals such as lawyers, psychologists, social workers, psychiatrists, mediators or other experienced practitioners in the fields of victim protection or ex-offenders' rehabilitation.

In Shilin, Miaoli, Taichung and Penghu prosecution offices, a two-facilitator model was adopted. Two facilitators co-worked on a case; for example, one facilitator had a background in law and the other in psychology. Two facilitators of different professions could complement each other. This model was particularly important for cases involving a large number of participants or cases interwoven with complicated issues. In other prosecution offices, a case was handled by one facilitator except in some special cases.

D. The use of accompanying person

Most joined prosecution offices set up a position called 'accompanying person' whose work was to establish relationships with victims and offenders in the initial stage, to confirm their willingness of participation in restorative justice processes, to assist the work of facilitators, and to follow up participants after case closure. Most accompanying persons were voluntary workers who were current or past volunteers in After-Care Association, Association for Victim Support or other social groups.

THE OUTCOMES OF THE RESTORATIVE JUSTICE PILOT

In order to understand the real implementation of individual prosecution offices and the feedback of the participants of restorative justice, the Ministry of Justice sponsored Professor Lanying Huang to conduct an evaluation report, 'A study on the Application of Restorative Justice in the Criminal Justice System'.

A. Implementation

By the end of June in 2011, a total of 173 cases had been referred to the restorative justice process; out of 173 cases, 136 cases (78%) were accepted after initial assessments⁴. In 136 accepted cases, 62 cases (46%) entered the final stage of dialogues; 32 cases (24%) were withdrawn⁵; 42 cases

⁴ Cases applied or referred to the restorative justice pilot would be evaluated by the restorative justice executive units of district prosecutors offices. Initial assessments were conducted to assure the nature of offences and the character of offenders in accord with the predetermined conditions of individual district prosecutors offices. If necessary, face-to-face interviews would be applied. Most cases, which were dropped here, were cases evaluated as inappropriate by the executive units.

⁵ Most cases were withdrawn due to the unwillingness of victims.

(30%) were still being processed. Out of 62 finalised cases, 37 cases (60%) were settled with agreement, 25 cases (40%) were closed without any agreement. See Table 2 for details⁶.

Cases entering the final stage of dialogues mostly came from Tainan District Prosecutors Office (15 cases), Shilin District Prosecutors Office (10 cases), and Penghu District Prosecutors Office (4 cases). Based on preliminary observations, such achievement in Tainan District Prosecutors Office could be attributed to its well preparation for it started much earlier than other Prosecutors Offices. In Shilin District Prosecutors Office, the participation of experienced mediators and the use of mediation were the possible factors contributing to such achievement. In Penghu District Prosecutors Office, located at an off-shore island, was lack of human resources, but the local conditions unexpectedly benefited the implementation of restorative justice. Most cases there were minor offences and the residents knew one another quite well; thus, affected parties by crime were more willing to repair their broken relationships. An opposite example was in Taichung District Prosecutors Office, where there were the most cases being processed but with a relatively fewer cases entering the final stage of dialogues. It might be because the cases dealt with in Taichung District Prosecutors Office were serious offences and the nature of these serious offences was much more complicated. However, more analyses will be needed in order to uncover the underlying factors determining whether cases would enter the stage of dialogues or not.

Table 2 Implementation of Restorative Justice in Eight District Prosecutors Offices from December 2010 to June 2011

Prosecutors offices	Total (A=B+C)	Dropped Cases(B)	Accepted cases (C=D+I)	Finalised cases (D=E+H)			Being processed
				Dialogues(E=F+G)		Withdrawn	
				Agreement	No agreement		
Shilin	23	0	23	10	3	3	7
Banqiao	12	6	6	2	3	0	1
Miaoli	18	9	9	0	0	6	3
Taichung	30	12	18	1	1	7	9
Tainan	30	2	28	3	0	8	17
Kaohsiung	20	0	20	15	0	3	2
Yilan	27	1	26	2	16	5	3
Penghu	13	7	6	4	2	0	0
Total	173	37	136	37	25	32	42

Source: Jointed District Prosecutors Offices, made by Department of Prevention, Rehabilitation and Protection, Ministry of Justice

B. Participants' feedback

According to a follow-up survey⁷ of thirteen victims and twelve offenders, most victims 'felt the agreement is accord with what s/he expects' (1 victim strongly agreed, 8 victims agreed, and 3 victims disagreed) and also 'felt justice has been realised' (3 victims strongly agreed, 6 victims

⁶ Data were collected from eight District Prosecutors Offices.

⁷ Huang, Lanying, Chuen-Jim Sheu & Cui-wen Huang. (2011). A study on the Application of Restorative Justice in the Criminal Justice System. The Ministry of Justice, Taiwan. pp.348-350.

agreed, 3 victims disagreed and 1 victim strongly disagreed). As to offenders, most of them agreed that 'how agreement is completed is just like what s/he expects' (5 offenders strongly agreed, 4 offenders agreed and 2 offenders disagreed). However, all offenders agreed that 'they would avoid committing a similar offence' (10 offenders strongly agreed and 2 offenders agreed).

PROSPECTS FOR THE FUTURE

A. Continuing the experiment

The restorative justice pilot in Taiwan has been conducted for more than a year since September of 2010. In the evaluation report 'A study on the application of restorative justice in the criminal justice systems', there were 12 points listed in the section of 'Difficulties and challenges in the practice', 12 remarks made in the section of 'A review of the restorative justice pilot', and 18 advices offered in the section of 'Future development of restorative justice in criminal justice system'. The suggestions in this report, including setting up practical guidelines and rules of professional conduct, establishing evaluation tools, compiling operational Manuel, and holding personnel training and campaigns, are set to be taken seriously. The Minister Zeng also has instructed that the restorative justice pilot shall be continued and that restorative justice shall be listed as one of important criminal justice polices for the next 10 years.

B. Continuing advocacy for and education of restorative justice

The ideas of restorative justice are still new and unfamiliar to criminal justice personnel such as prosecutors, judges, the police, probation officers and prison officers and also to the general public. In order to deepen the construction of restorative justice practices, the ideas of restorative justice will be planned to promote in the way which restorative justice can be adopted in daily life.

It is planned to offer training courses to potential practitioners of restorative justice practices such as prosecutors, judges, the police, probation officers and prison officers, lawyers, mediators, and volunteers in After-Care Association, Association for Victim Support, religion groups or non-profit organisations. More practically, relevant courses are planned to be included in the on-the-job training for the judicial officials mentioned above. It is also suggested that relevant courses could be provided at universities, such as at the department of law, social work, or psychology. In addition, the quality of facilitators' work needs to be enhanced for facilitators are the key person in the restorative justice process. Different levels of training are necessary; compiling a local operational Manuel is also important.

C. Strengthening and working with existing mediation systems

In order to ensure the completion of the agreement in restorative justice process, some existing legal mechanism are indispensable, such as mediation, deferred prosecution and plea bargaining. Probably, a prospective model of restorative justice practices could be built up on the existing mediation systems with experienced mediators, who will be selected by the district prosecutors offices and further equipped with restorative justice training.



D. Adopting restorative justice in schools

The ideas of restorative justice have been shown helpful when dealing with conflicts. Restorative justice shall also be useful for addressing bullying or conflicts in schools for the original aim of student counselling and disciplines is not to punish students but to help them heal harms and learn how to resolve conflicts. Therefore, the Ministry of Justice has appointed a few teachers to compile the guidelines for the use of restorative justice in schools and also initiated a trial project on the use of restorative justice in school bullying. This trial project is currently operated by Tainan District Prosecutors Office, Bureau of Education under Tainan City Government, schools and non-governmental associations.

E. Encouraging NGO' cooperation in restorative justice practices

Community participation is one of the core values of restorative justice. From other countries' experiences, non-governmental organizations (NGO) play a significant role in the construction of restorative justice practices. Different organisations can function in different ways, including advocating ideas of restorative justice, offering training and education, convening restorative justice meetings and providing other supporting services. The lack of participation of non-governmental organisation in Taiwan restorative justice pilot has been noticed and will be addressed by governments' advocacy and other incentives mechanism.

F. Adopting restorative justice in youth correction institutions

In other countries, it is very common to apply restorative justice in dealing with youth crimes, probably because such application is more acceptable to the general public and is more likely to produce better outcomes on offenders' rehabilitation. Therefore, the Ministry of Justice will also start a restorative justice trial project in youth correction institutions in the hope that young offenders would learn to take responsibility, to understand victims' feelings and to perceive the consequences of the offence. Hopefully, restorative justice would be effective in reducing recidivism and enhancing rehabilitation of young offenders.

G. Developing evaluation tools

In order to examine the effectiveness of restorative justice practices, there is a need to continue evaluation studies which should be undertaken by academic institutes. Evaluation studies shall focus on the experiences of participants and practitioners, best with a mix of qualitative data and quantitative data. Data including satisfaction of victims and offenders, general public's attitudes toward restorative justice, the ratio of recidivism and the completion of agreement are also important issues in the evaluation. If it is possible, comparative studies and follow-up surveys are the preferable options to be undertaken in the future.

H. Working with universities or research institutes

Universities and academic institutes have been considered as one of the indispensable community resources, which can introduce international experiences to the local, advocate basic ideas and cultivate human resources in this field. Thus, it is planned to set up a restorative justice research centre in Taiwan in order to establish restorative justice more firmly. The centre might be set up in

cooperation with academic institutes, which can offer courses, conduct research and build up databases.

CONCLUSION

Though being at the initial stage of implementing restorative justice, the Ministry of Justice in Taiwan has determined to continue this work. It is expected to build up a well-designed platform for restorative justice practices through networking with other governmental institutions, non-governmental organisations and academic institutes. The ultimate aim is to offer another option for victims and offenders in the hope that conflicts between victims and offenders could be dealt with in a more humanistic way.



COMMUNITARIAN MODELS OF RESTORATIVE & TRANSFORMATIVE JUSTICE FOR ADULT OFFENDERS IN METROPOLITAN AND RURAL MAGISTRATES' COURTS

Dot Goulding, The Asia Pacific Forum for Restorative Justice, Australia

The researchers present findings from two pieces of previous research that came from a pilot project of the development and delivery of a Communitarian Model of Restorative & Transformative Justice. The paper looks at the application of the models in both Metro and among Aboriginal communities, showing the results, achievements, downfalls and safeguards to protect the integrity of communitarian models that can be subjected to bureaucratic control.

A CONTRADICTION AND AN ALLIANCE AMONG RESTORATIVE JUSTICE THEORIES, FEMINISM AND CONFUCIANISM: FROM TAIWAN EXPERIENCE

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This paper aims to discuss a theoretical contradiction and to explore a possible alliance among restorative justice theories, feminism and Confucianism, with a focus on restorative justice practice in family violence cases. In addition to drawing on literature, this paper will undertake qualitative analyses on the interviews with six facilitators in Taiwan Restorative Justice Pilot. An important contradiction among these three theories is shown in the literature, referring to the roles of and the relationship among three key players: individuals, community (including family), and the state. This paper will elaborate three elements of this contradiction: (1) The nature of the relationship among these three players (2) Who is the key player in dealing with family violence? (3) What are the principles on which the key players are operating? Further through Taiwanese facilitators' interpretation of restorative justice, a possible alliance of these three theories will be drawn out, demonstrating what the roles of and relationships among key players would be. However, this alliance is likely formed at the expense of certain vital aspects of each theory. Accountability for wrongdoing could be compromised in restorative justice theory, women's obedience in Confucianism, and intervention of the state in feminism.

INTRODUCTION

Prior to assessing how well restorative justice functions, it is important to reveal more on how restorative justice practices are interpreted and operated. From previous studies, restorative justice has been considered to be consistent with Confucian ideas on harmony and also believed to be congruously applied in current Confucian societies (Braithwaite, 2002a; Liu & Palermo, 2009). However, these studies seemed to have fewer considerations for the possible influence of Confucianism on restorative justice practice, above and beyond the compatibilities they captured between restorative justice and Confucianism.

With interest in the interpretation of restorative justice practice in a present Confucian society, the way in which restorative justice has been applied to family violence has particular significance. This is because this particular application clearly brings out some important elements of restorative justice and Confucianism: not only the way of identifying and dealing with crime but also the understanding of a relationship among individuals, families (communities) and the state. A number of feminists have criticised both restorative justice and Confucianism for how they conceive these elements, due to their failure to curb the occurrence of, even escalation of family violence (Coker, 2002; Daly & Stubbs, 2006). Accordingly, some space should be reserved for feminism to take its sceptical and influential postures in the discussion of the application of restorative justice to family violence in Confucian societies. Feminism could either offer a critical view on restorative justice and Confucianism, or it could be examined through asking how feminist influence can be realised in restorative justice practice.

A contradiction among restorative justice theories, Confucianism and feminism

There have been many debates between pairs of these three theories, restorative justice, Confucianism, and feminism, exposing an important contradiction among all three theories in the way they conceive roles and relationships among individuals, families (communities) and the state.



A. the nature of the relationship among three players: individuals, families (communities) and the state

It is generally regarded that there is significant consistency between restorative justice and Confucianism in how they conceive the nature of the relationship among individuals, families (communities) and the state. According to restorative justice theories, the state shall be distanced from the centre of dealing with crime in order to return the space and power to victims, offenders and communities¹ who are more relevant to the offence (Braithwaite, 2002a). The position that the state should be placed in the periphery is also endorsed by Confucianism for it frowns on lawsuits and praises harmonious relationships in order to construct an exemplary society. In Confucianism, imprudently lodging cases to the court often has an implication for an individual's immaturity in self-cultivation, which indicates s/he is incapable of establishing a proper relationship with others or lacks wisdom to address his/her own misconduct or disputes with others (Huang, 2006). The occurrence of crime constructed in Confucianism is in the realm of individuals and families (communities²); as is its primary treatment, moral education, deemed to tackle individuals' deeds within the realm of community. Therefore, the state's intervention in Confucianism is taken as the last resort to addressing crimes or conflicts.

By way of contrast, on this theme, feminism has a much different view, particularly because its arguments build on the idea that family violence is not just as a dispute or conflict. In order to verify and combat the criminal nature of violence in the family, feminists are more inclined to employ the authority and intervention of the state (Schneider, 2002). Feminists also doubt the abilities of families and communities on other fronts: families and communities may invalidate the violence, fail to provide for victims' safety and resist transformation of gender norms that increase the vulnerability of women and children. Such doubts are clearly demonstrated in their critiques of restorative justice (Hopkins, Koss, & Bachar, 2004; Stubbs, 2007). At a later stage of the development of feminist theory, some feminists do express concern that the intervention of the state would deprive women of choices and rights (Mills, 2003), but most feminists still favour the state over families and communities in dealing with family violence.

B. the key player in dealing with family violence

Based on the nature of the relationships among individuals, families (communities) and the state, it becomes clear who would be the key players in actively coping with family violence in each theory. In restorative justice theories, families and communities act as supporters and resources providers, and individuals at the centre of violence are considered the major players in the conference. As can be seen in most restorative justice literature, practices would be criticised should individuals' rights and interests be neglected or compromised. Bringing families and communities into the conference is a way of making sure rights and interests are not overlooked (Acorn, 2004; Gerkin, 2009).

While sharing some similarity with restorative justice in how the relationships among individuals, families (communities) and the state are conceived, Confucianism has a different expectation of how to cope with family violence. It relies more on families and communities instead of victims

¹ In restorative justice discussions, family members and other significant others are most commonly regarded as communities that are important to victims and offenders.

² In traditional Chinese societies, communities are composed of kindred families and clans; therefore communities are the expansion of families.

and offenders themselves. In Confucianism, individuals are persons of relational self. Such a conception of relational self does not simply mean that personal characters are built up in relational networks; more importantly it points out that relational ethics is the way of making humans human. Confucian relational ethics mainly consists of Ren (differentiated benevolence)³, Yi (maximizing appropriateness)⁴ and Li (proper conduct)⁵. Such a conception presumes individuals live up to their hierarchical role expectations and obligations in a family through lifelong self-cultivation. It also shapes Confucian personhood in a moral and interdependent sense, with no necessity of a distinct boundary between self and others, particularly their families (Ho, 1995; Hwang, 1999). Therefore, when it comes to the resolution of crimes or conflicts, individuals are not independently present; family hierarchy and inseparable family connection means that the collective would be the major players at a conference and that they would not be relegated to the roles of supporter and providers of resources to victims and offenders. When individuals are conceived as a relational self, solely independent determination is considered out of the scope of ideal dispute resolution. Families and communities are entitled to more educational functions and dominant roles, guiding individuals and leveraging the whole process (Lu, 2008).

Lastly, from a feminist perspective, the state is regarded as indispensable in addressing family violence because power imbalance within the family is regarded as a fundamentally structural problem, rather than a psychological one. The state is expected to stand up for battered women, validating the nature of violence in the family and the harm it causes, and also providing protection and resources to women (Krieger, 2001; Schneider, 2002). The state functions to protect and empower battered women and to represent their rights. Therefore, it may be argued that feminism has put individuals' interests in the centre of its arguments. However, it has been argued the role of the state is more the focus of attention than the role of victims or offenders due to its structural explanation for family violence and its advocacy in legal reform (Schneider, 2002). The state is the active player while victims and offenders are passive recipients of what the state offers.

C. the principles on which the key player is operating

Given that the key player in each theory has been identified, the prioritised principles in each theory can now be more easily recognised. In restorative justice theories, victims and offenders are identified as the key players; therefore, principles such as participation, empowerment, responsibility, and restoration are stressed more to ensure that individual's rights are respected and individuals have opportunities to actively repair the harm they have done or experienced. Enacting these principles might not simply be achieved by victims and offenders themselves in the restorative justice process, probably they will need the assistance of other players, families or communities, and they will be helped through the design of the process (Braithwaite, 2002b; Zehr, 2002). Even so, such principles as participation, responsibility and restoration are meant to create space for individuals to operate and act themselves to heal the harm.

³ Ren, differentiated benevolence, means everyone should love his/her family first, then relatives, friends, and lastly strangers.

⁴ Yi means respecting hierarchy in relationships, stressing respect for someone who is an elder or holding a higher position in a relationship.

⁵ Li means acting properly according to social norms and rites, which are basically constructed on the principles of Ren and Yi.



Different from restorative justice theories, Confucianism focuses on relational ethics and principles such as Ren, Yi and Li. These principles guide families in the process of re-educating individuals and showing individuals to the way forward to self-cultivate. More importantly, the moral re-education process is used to underpin and to realise the ultimate principle: maintaining harmonious relationships (Huang, 2006). Therefore, in terms of its ultimate principle-maintaining harmonious relationships, Confucianism could fit in with restorative justice theories quite comfortably. But in Confucianism, restoration on relationships is the core pillar, which might not always be the case in restorative justice theories.

Diverging from the former two theories, feminism offers principles that flow from its position that the state is the key actor for addressing harm. Feminists are more concerned about principles such as validation of violence, legal intervention, legal protection and the realisation of gender equality through structural changes and consciousness. Feminism relies on the state's authority to deal with the harms of family violence. Hence, restoration of relationships would not be the aim of feminism nor of what it would expect from the functions of the state.

METHODS

In this paper, the application of restorative justice to family violence in a present Confucian society will be explored through an empirical analysis of Taiwanese experiences. Since 2010, Taiwan has been running a one year restorative justice pilot with eight prosecution offices operating individual programs under the supervision of the Ministry of Justice in Taiwan. This paper draws on the experiences and views of six facilitators, who were mediators affiliated with a non-government organisation. The organisation joined the pilot after being recruited to prepare and convene conferences for cases of family violence, which were referred by a district prosecutor office.

Interviews were conducted from January 2011 to March 2011. A qualitative research method was adopted to explore how restorative justice was understood by these facilitators and further how their understanding affected their preference for certain operating principles over others. Based on the qualitative analyses, there may be some hypotheses that will emerge to explain how restorative justice, Confucianism, and feminism cooperate or compete with each other in settling family violence.

Cases of family violence here are not confined to spouse violence, broadly including violence between wife-husband, father-son, mother (father)-daughter in law, brothers and sisters in law, and siblings. However, 80 % of cases were spousal violence. The cases were selected by the appointed prosecutors. Facilitators would then mostly contact the victims, offenders and their families to invite them to the conference, or if contact had already been made, to further confirm the willingness and appropriateness of potential participants. Before interviews were conducted, these facilitators had run about 20 cases in total in the previous 10 months.

The interviewed facilitators were four females and two males with tertiary education-all of them with university degrees, two of them with doctoral degrees, and three with master's degrees. Half of them were aged between 30 to 40, and the other half in or near the 50 to 60 age bracket. Five out of six facilitators were experienced mediators in the family court system or social workers for family violence cases. The pilot was designed as a mediation model between victims and offenders, but most of the conferences were convened with family members present. In the few

cases where victims and offenders participated in conferences on their own, there appeared to be lack of support or lack of contact with their families in their daily life.

Limitations

The views of the facilitators cannot be separated from the institutional context in which they performed their duties as facilitators. Cases selection and referred processes might be the institutional factors that influence how these facilitators understood and operated in their roles. The interpretations presented in this paper therefore could be restricted by these practical settings. The cases the facilitators received were referred by the prosecutors and these might not be representative of family violence cases in Taiwan. Under their discretion, a certain proportion of referred cases could be regarded minor in terms of seriousness of violence. Furthermore, once referred to the restorative justice pilot, the decision making of the conferences was not autonomous. Agreements and other suggestions from conferences were reported to the prosecutors, who have the authority to follow or overthrow the suggestions, particularly on matters relating to the treatment of offenders or conditions of an indictment. These are some of the institutional factors that may influence how the facilitators perceive the importance of the roles and opinions of victims and offenders.

RESULTS

Facilitators interpreted restorative justice practice as an alliance of Confucianism, restorative justice theories and feminism. The theme of Confucianism is fundamental, but it is interwoven with ideas from restorative justice theories and feminism. To portray this alliance, it is useful to begin with the profile of victims and offenders. To these facilitators, victims and offenders were considered as individuals with a relational self. In this way, the facilitators drew upon original Confucian ideas but they abandoned the element of male superiority. Victims and offenders were also thought to be assisted best by their families and communities, rather than by the state, in order to resolve the problem of family violence. More specifically, the facilitators believed that the termination of family violence was best achieved through re-establishing a harmonious relationship in the family or community rather than through forming an adversarial relationship in the formal justice system.

‘Couples of this kind always come to file lawsuits against each other’, a chief prosecutor said to me. Particularly because the younger prosecutors are unexperienced in dealing with family affairs, another legal occasion is very likely to be created where the couples simply come to scold each other. As a result, nothing useful will be done except in making a decision to prosecute or not. I do believe family affairs must be resolved some time or other. Those who have children together, even divorced, would definitely meet each other quite often. It is not right to leave their relationship so hostile. I think they should calm down and discuss how to work out the problem. (Af1-002)

A. restoring broken relationships: the main goal

To these facilitators, the main goal of restorative justice meetings is to restore broken relationships, which could result in either a continuing marital/ familial relationship or a peacefully separated relationship. Having a goal of restoring a relationship doesn't indicate that these facilitators were ignorant of the nature of violence or afraid of fierce conflicts occurring in a



meeting. Instead, through restoring a broken relationship, they expected to invoke some outcomes, which can be served as vital mechanisms to stop family violence reoccurring. For example, emotional burdens might be relieved; conflicts could be subdued; a possible solution might come out; a peaceful ending could emerge; therefore, victims' safety could be secured not just at that moment but also in the future when the family is outside the surveillance of the state's intervention.

I suppose the ultimate goal of this pilot is to restore a relationship, no matter whether it is broken up or made up. Just to repair a relationship. (Af3-017)

I think more importantly, we should offer dialogue to family violence cases. If you don't let the offender speak up about why he did such things and try to deal with his problems, he will become more psychologically morbid. You know, there are many offenders finding out where their ex-wives are, even after ten or twenty year separation. I just saw another similar story on the news this morning: a man killed his ex-wife, who has remarried and given birth to kids by her new husband, who was also killed. I think the offender's inner anger has never been relieved because no one had a talk with him. That is also why I found these offenders were very glad to have me to hear their voices when I contacted them. (Af1-009)

However, in order to realise the goal of restoring a relationship, some restorative justice principles were intentionally sidelined. For instance, recognising the wrongdoing and revealing the truth were regarded as unnecessary requirements by these facilitators. This is because, on one hand, there could be no absolute truth. Different versions of the same event could vary according to different angles from which a person looked at things. The approach was to accept these versions as all possible at the one time, providing the different versions did not violate relational ethics. On the other hand, even there was an absolute truth, facilitators thought that sometimes there was little to be gained by truth-telling. Forcing people to acknowledge the wrong or trying to discover the truth would threaten the preservation of participants' face and further destroy the formation of a harmonious atmosphere.

Usually the families we encounter are those living in severe conflicts with each other and they could not resolve problems by themselves. We are not worried about conflicts emerging (in a conference), but we certainly stress the importance of relationship building. From my perspective, restoring a relationship is not a faraway goal, contrast to acknowledgement of one's wrongdoing. We do believe acknowledgement of wrongness is important, but because of the speciality of family violence, both parties might insist on their own interpretations, it is not realistic to expect them to recognise their fault on the spot. They are more likely to seek excuses. I also believe family is a place about love, not about righteousness; thus, what is right or wrong is not our focus. (Af4-039)

I would say to them: 'I couldn't know what happened in the past, so I believe what (both of) you say to me'. To me, how to settle down the consensus is more important. I would not tear down their lies because we never know what the truth is and everyone is speaking from his/her own perspective'. (Af1-068)

A problem would not be resolved because of a word, so I would place more weight on whether admission of wrongdoing or apology would humiliate the accused because the couple would still live together back home after this conference.I am more worried about the accused

becoming inflamed because the victim demanded an apology in a conference. (Af5-015-016)

Such indifference toward acknowledgement of wrongdoing and truth-telling, at odds with principles of restorative justice, manifests the importance of protecting participants' face in the interests of promoting a harmonious atmosphere, which in turn prompts relationship restoration. This reasoning put forward by facilitators is understandable from a Confucian perspective of truth and face (Ames, 2010; Huang, 2006). By upholding the principle of protecting face, tactful talking skills and indirect communication were of substantial importance in practical operation. Yet the value of remorse was not undermined. It was seen as an indicator of individuals' progress in self-cultivation, though it could be only present before facilitators without victims, to preserve the offenders' face.

In a conference, I might not ask participants to say their feelings and thoughts again before the other party if I have talked to them separately. I would just focus on how to settle down their arguments. Because everyone is very keen on face-saving, they might not tell the truth. I learnt the way used in the US or Australia, when I was in the facilitator training course, but I think it is very odd for our national character. A sense of remorse is more important rather than saying anything. What can be spoken out is often quite superficial. Of course, I would guide the father-in-law [offender] to ponder if he should adjust his behaviour, but definitely I would not say it before the daughter-in-law [victim]. By all means, I would save the face of the father-in-law. (Af6-019-021)

B. addressing relational self: to achieve the main goal

Backing up the legitimacy of the goal of restoring relationships, is the underpinning concept of the relational self. Explanations put forth for family violence, such as personal emotional or behavioural problems or interactional problems, are understood in the context of the relational self, further strengthening the goal of restoring relationships. While patriarchy ideology was acknowledged by most facilitators as a culprit for family violence, all facilitators were attuned to other factors as possible explanations. They were inclined to the view that patriarchy ideology could be dealt with at the interpersonal level. The notion of relational self was apparent when facilitators described victims and offenders, assessed victims' and offenders' needs, judged the responsibility of the offence or evaluated the roles of families in a conference. The relational self was intertwined through all of these processes and shaped the way in which relationships were restored.

1. Added component of relational self

The conception of relational self in present Taiwan has altered and differs from the classic Confucian view of relational self. Supposedly because of the influence of feminism, the facilitators had injected the idea of gender equality into the notion of relational self. Facilitators recognised patriarchy ideology as a cause of family violence and intended to instil notions of female autonomy and female rights in thinking and actions of victims, offenders and their families. Facilitators wished to achieve greater gender equality. Nevertheless, these facilitators acknowledged that the traditional idea of male superiority still exists in the minds of victims, offenders, or their families; and with the goal of restoring relationships, they seemed reluctant to severely or directly oppose those who still possessed gender biases. They would rather persuade people of gender equality and equal respect for women in a softer and gentler manner.



I assume that telling them what they should change directly will just provoke their resistance to it (gender equality). Changing traditional ideology is not that easy, so we just try to start encouraging them to accommodate a little bit of these ideas, like giving voice to women and equally respecting women. Perhaps, as they gradually learn of these ideas, they might slowly have some changes in their minds. If you want to impose all these ideas on them at once, they definitely would be reluctant to listen to you. In their communities, the idea of male superiority is just so dominant, so our pressure for change should not be too harsh. If we are harsh, they will think: 'What the hell are you doing now? Are you going to lead my wife astray?' Such a response is quite common, so at least we want them to feel that we, though frail women, are quite sensible and wise, and then probably they would start accepting what we say. (Af2-011)

2. Retained components of relational self

Elements of classic Confucian relational self were retained in the thinking of facilitators. They can be seen from the ways facilitators spoke of ideas of self-cultivation, hierarchical ethics, and inseparable connection with family.

(1) Self-cultivation

Facilitators viewed most victims and offenders⁶ who were plunged into the misery of family violence as immature in self-cultivation, rendering them incapable of building and nurturing a relationship. Immaturity in self-cultivation was expressed by facilitators in the following words: lack of skills to communicate with each other, unable to solve problems on their own, or lack of education. The extent to which victims or offenders were judged responsible for family violence also depended on how well the person met his/her role-based obligations in the family. Therefore, these facilitators, regarding themselves as helpers in such settings, put considerable effort into providing teachings on proper family relationship building and on easing tensions within relationships. All these efforts were to assist victims, offenders, and their families to cultivate their moral qualities.

I would like to help them find out why this has happened. Because of the extent of violence, they get into this situation being here; other couples might have the same problems without resulting in being here. I would help both of them perceive the reasons for the violence, sometimes even the victim doesn't know why this has happened. (Af3-014)

As the proverb says, 'Judging family affairs is hard even to an upright judicial officer.' But in some cases, I think it is clear enough to discern what is right or wrong, which should not be distorted. For instance, a person should be condemned if s/he is indulging in gambling, mistaking family finance management, acting violently, or having extra-marital affairs. Even if you are not having an affair with others, you should not become too close to someone except your spouse. You shall be blamed if your inappropriate interaction with others induces misunderstanding. The social consensual norms I mention should be re-affirmed. (Af5-013)

Even divorced couples should act as cooperative parents. I said to that wife: 'these three

⁶ A few of them might suffer financial or physical disadvantages, but this is omitted from discussion here for this is less relevant to how theoretical ideas from Confucianism, feminism and restorative justice are balanced and aligned.

children are used to being looked after by you. You leave home only for your own good. Your (ex) husband is a businessman, and his relationship with these children is not intimate though he loves them. You are just like a gardener, so you need to hand your parenting work over to your (ex) husband. Your kids are in their teen age years; they are very likely to go astray. It is not right to walk away immediately from your children. Two of you should work together and become relay parents. Otherwise, these three children you two have produced could be afflicted just because you failed to manage your marriage.’ (Af1-024-025)

As facilitators assessed victims and offenders incapable of dealing with their problems and regarded themselves competent in assisting and guiding solutions, they would sometimes uphold what they believed, which was to restore relationships, at the expense of other principles, such as empowerment, though this seemed unintentional.

When we are facilitating a conference, though we are aware that forgiveness can’t be forced, we do hope the case could be finalised peacefully. We believe revenge is not the right way. We intend to suggest to victims be ‘merry gathering and happy parting’ or to have mercy on the other party [offender], so that ‘you can sleep at ease’. To some extent, this is a kind of threat to victims. Also victims’ desire for retribution might be neglected here. If the victim is eager to take revenge, we would not let the case enter a restorative justice process. In my opinion, restorative justice probably could not be helpful to those who are unwilling to restore their relationships. (Af4-027)

A sense of remorse was valued as mentioned earlier; rehabilitation was also stressed by the facilitators when they introduced restorative justice to potential participants, because these two values demonstrate improvement in self-cultivation. In the way in which facilitators conduct their practice, restorative justice ideas were adopted to rehabilitate offenders, to offer less punitive treatments to offenders, to find a solution to family violence, and to stop law suits. But, the term, restorative justice, was rarely used.

We rarely use the term, restorative justice, when we introduce restorative justice to them. Instead, we usually say: the state doesn’t like to put people into jail, so if you are willing to change, everything is resolved. (Af6-039)

I would emphasise to the offenders that ‘this opportunity is provided because our criminal justice system has mercy on you, but it also depends on whether you can show your sincere remorse’. (Af3-031)

I would say to them, ‘Participating in this meeting is to seek possible reconciliation, but it is different from civil mediation. We wish to assist you to understand your legal responsibility. If the process is just for the outcome of a verdict, there is no benefit for either of you.’ We hope both parties can understand what the other party thinks. If the offender knows what the victim wants, he could make up for his error. If an agreement is achieved, the penalty on offenders might be reduced to some degree. (Af4-048)

(2) Hierarchical ethics

Hierarchical ethics here means respecting elders. When family violence occurred in a senior-junior relationship, hierarchical ethics were involved. Facilitators adopted the position that they



would educate participants to abide by customs of hierarchical ethics. Victimized women, suffering at the hands of their parents-in-law, could still be advised not to blame or shame their parents-in-law publicly. Female offenders would also be urged to follow customs of hierarchical ethics for this was regarded as the way to resolve family violence.

In the beginning, the daughter-in-law [offender] said: 'It is impossible to ask me to do this or that.' I said: 'It is all right, but at least, as you meet your mother-in-law, you do not put on a long face, and you give your greeting first because you are a junior to her.' She replied, 'I don't want to do this.' I said: 'Fine. But can you start with nodding your head when you see her? As you gradually get used to it, then you can lift both corners of your mouth. You know, as you smile, you look pretty and cute, but if you pull down your face, you become less attractive.' Hearing this, she laughed as well. (Af2-010, female)

(3) Indistinct boundary between individuals and their families

Indistinct boundary between individuals and their families was the key factor determining the process of decision-making. Often family members thought they had active responsibility for their family members' matters. Particularly, elder family members were very likely to exercise their authority to intervene in the process of decision-making directly or influence victims' or offenders' thinking indirectly. This point of view was also recognised or accepted by the facilitators. Therefore, the roles and opinions of victims' and offenders' families were taken seriously by facilitators and sometimes prevailed over individuals' feelings and thoughts.

We went to visit the mother-in-law [victim]. In that family interview, we found that actually the elder brother-in-law is the person who is steering the situation. (Af2-010)

This is how Taiwan differs from the West. In the West, family are just supporters, the victims can make their own decisions. But in Taiwanese culture, fathers always speak for their daughters. From our experiences, even when fathers do not join the meetings; after the meetings, fathers still have very strong influence on the settled agreement. Therefore, we hope that fathers do come to the meetings; at least, if their opinions are different, the facilitators can negotiate with them. (Af4-058)

C. The negative image of the state: against the main goal

The role of the state was put to one side in the facilitators' practices for the state's image was against the goal of restoring relationships and the principles of self-cultivation. The image of state intervention through the eyes of facilitators, particularly the court system was one of ineffectiveness in terms of resolution of family violence. The court system was also seen as resource intensive in time, energy and money. For example, family violence was not likely to stop with prosecution or even sentencing; more cases could be lodged by litigants in order to argue which party was right in a dispute past; and marital problems and children-raising issues might not be resolved through adversarial criminal justice processes. All these arguments were made by the facilitators who believed that legal ideology and legal systems could not sort problems out in relation to family violence. It is also important to note that facilitators' rejection of state intervention and legal interpretation of family violence can lead to their neglecting important other principles, such as accountability and acknowledgement of wrongdoing.

Acknowledgment of wrongdoing is a very important part of restorative justice, but in our practice, we do not put much stress on it because we consider it is very hard to say what is right or wrong in a family. Therefore, to us, the focus of a meeting is how to close this criminal case and its associated civil cases. By ending the control of the criminal justice system on a family, this family might run well again by itself. To some extent, we believe they [victims and offenders] have the capacity to resolve their own problems. (Af4-028)

DISCUSSIONS

The relationship among individuals, families (communities) and the state in Confucian society

Based on interviews with experienced facilitators in Taiwan, the interpretation of the restorative justice pilot has shifted the focus from the state as the key player in presenting family violence to victims, offenders and their families (communities). Facilitators endorsed the primary goal of the pilot as restoring relationships through principles of relational ethics which brought together ideas from Confucianism, feminism and restorative justice. Probably it could be concluded that families are the key player in the restorative justice pilot rather than individuals. This preferred approach is based on the rationale that the family's role is to stand up for their family member, who either is the one being hurt or the one hurting others; such a rationale fits in with Confucian ethics fairly well. The emphasis on families is unanimous in the practices of facilitators, but the influence of families can be either positive or negative. When the impact of families was positive, there seemed to be realisation of restorative justice claims of emotional and substantial support and reintegration; when the impact of families was negative, there was evidence of feminists' concerns such as denial and tolerance of violence.

The relationship among principles of restorative justice, Confucianism and feminism in practice

Interviews with facilitators revealed that in their practice they prioritised different principles from restorative justice, Confucianism and feminism. In so doing, they practised through an alliance among the three theories. There were also contradictions. The emphasis was placed on relationship restoration. As such, Confucianism seemed to be quite compatible with restorative justice, but the restorative justice principle of restoration, was interpreted here with the emphasis on relationship restoration. Another restorative justice principle, reintegration of victims and offenders, in theory fitted well with Confucianism; yet it wasn't given much attention by the facilitators. The most likely explanation is that reintegration or tolerance of family members is taken for granted in Confucian societies. Accepting and protecting one's own family member against others is Ren; even when s/he does something wrong, covering up the error is also acceptable as Yi in Confucianism (Hwang, 1998). Therefore, facilitators saw it unnecessary to stress reintegration more, but the downside was that it accompanied a norm of covering-up in Confucianism which had negative effects. Family violence was tolerated. This was incompatible with restorative justice principles of accepting responsibility, acknowledging wrongdoing and seeing reintegrated as a person while the act of violence was condemned in no uncertain terms. Feminism also would openly condemn violence and expect acknowledgment that violence was a wrongful act.

Feminism is more in accord with restorative justice with regard to active participation and empowerment of individuals. Facilitators devalued empowerment in their practice. Certainly, individuals were invited to the conferences and entitled to make their own decisions; however,



individuals were vulnerable to loss of autonomy to their families' thoughts, to their own role obligations and to indirect communication patterns, all of which were favoured by the facilitators. This does not mean that the facilitators thought the principle of empowerment was of no value; instead, other principles favoured by the facilitators often outweighed the principle of empowerment in real practice. This prioritising is interpreted as a manifestation of underlying Confucian relational ethics. Nevertheless, when the principle of empowerment was adopted, it was done in a way that was still partly consistent with how restorative justice and feminism. Either people were encouraged privately or acts of violence were challenged in front of others.

From interviews with facilitators about their practice, it became clear how restorative justice principles competed with and facilitated each other. Relationship restoration was prioritised over truth-revealing, acknowledgement of wrongdoing and empowerment; rehabilitation and remorse were valued because they could facilitate the fundamental goal of restoring relationships. More importantly, the order in terms of priority of restorative justice principles seemed to give preference to Confucianism. As such, there was some influence of Confucianism on the interpretation of restorative justice practice, not just practice that aligned compatible principles from these two theories.

Lastly, facilitators conducted their practice in such a way as to be responsive to some feminist criticisms of restorative justice and Confucianism. The facilitators in this practice, though bearing Confucian ethics, accommodated the principle of gender equality and paid attentions to women's safety, both principles of central importance in feminism. Two other feminist principles were not met in the facilitators' implementation of the restorative justice pilot- the empowerment of women which would compromise a Confucian belief in the relational self, and the failure to confront violence, which was in accord with the theoretical ideas that was observed in the facilitators' account of how they perceived Confucian belief in harmony and relationship restoration. The alliance is quite similar to what Rosenlee (2006) proposed at philosophical level. She urged that an alliance between Confucianism and feminism was possible and that most elements of the relational self in Confucianism should be retained. She regarded the family hierarchy and relational ethics as the roots of Confucianism and as such, hard to alter. But, she urged, equal respect can be added to marital relationships of a hierarchical form. Male superiority can be abandoned in the nature of equal respect and there is no need to return to Confucianism to challenge some of its less gender-neutral tenets.

It is important to point out that the preference for restoring a relationship endorsed by Taiwanese facilitators is contrary to western feminists' ideals. Feminists are critical of restorative justice practice in so far so it does not present a clear-cut answer to ensure the protection and empowerment of battered women. In fact, from some anecdotes, the Domestic Violence and Sexual Assault Protection Committee (DVSAPC) of the Ministry of Interior in Taiwan and other feminist scholars also raised similar doubts about the appropriateness of restorative justice for cases of family violence in the same way as western feminists. Perhaps, the different points of views between DVSAPC and facilitators from this particular organisation are due to different institutional postures. DVSAPC's function is primary to secure victims' safety on behalf of the state, whereas facilitators in a non-government organisation, which does not carry such a burden, were more likely to see family violence from a holist perspective, resulting in their openness to restorative justice. The factor drawing these facilitators apart from local and western feminists' points of view was their level of belief in Confucian relational ethics. It was this commitment to

Confucianism rather than a rejection of feminism. Some of the facilitators claimed themselves as feminists.

CONCLUSION

This study draws on the experiences of facilitators from Taiwan to explore what a restorative justice application to family violence in a present day Confucian society can look like. Theories including restorative justice, Confucianism and feminism can work together, but the principles of restorative justice and feminism seem to be realised under an umbrella of Confucianism in a reformed or restricted form. This means that implementing ideas from restorative justice and feminism are not the same as they would be in western societies. Nevertheless, a possible alliance among restorative justice theories, Confucianism and feminism can be drawn out from this practice, discerned in the accounts of facilitators engaged in the restorative justice pilot in Taiwan. The points of compromise were also evident. Acknowledgement of wrongdoing in restorative justice theories was compromised for Confucian principles. Women's obedience in Confucianism was compromised for restorative justice and feminist theories. And finally, intervention of the state in feminism was compromised for restorative justice and Confucian principles.

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WHAT MAKES RESTORATIVE JUSTICE WORK? AN APPLICATION OF PRESSER AND VAN VOORHIS'S PROCESS MODEL

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Process is the core element of restorative justice that ensures the quality of restorative justice practices. Studies evaluating restorative justice programs have consistently found positive outcomes. Specially, offenders who participated in restorative justice processes were more likely to achieve restitution requirements and less likely to recidivate than those who did not. Moreover, both offenders and victims who engaged in restorative justice activities reported a higher level of satisfaction than those who did not. What dynamic processes that lead to positive reactions of restorative justice programs, however, have been understudied and not been completely understood. This study sought to investigate the procedural elements contributing to the success of restorative justice with an application of Van Voorhis's (2002) theoretical model, including the processes of dialogue, relationship building, and communication of moral values. The data used in this study was originally collected by Sherman, Braithwaite, Strang, and Barnes (1999) for their Reintegrative Shaming Experiments (RISE) in Canberra, Australia, 1995-1999. Based upon the findings, this study provided policy implications and suggestions for future studies.



RESTORATIVE JUSTICE INITIATIVES FOR SPOUSE BATTERING: ITS IMPLICATION TO CHINESE COMMUNITIES

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Different restorative justice practices have been used for tackling various types of crime all over the world. The use of restorative justice in domestic violence or spouse battering has been developed from western jurisdictions and spreading to other parts of the world. However, using restorative approach for spouse battering cases can be dangerous to victims if safeguarding issues are not mentioned in the practices. Thus this paper aims at examining whether restorative justice from the west could bring its implication to the east, in particular the Chinese communities for spouse battering and the paper is divided into three parts. Firstly, the concept of restorative initiatives and family functioning will be described for handling spouse battering cases. Secondly, the potential dangers and safeguarding issue would be investigated. Thirdly, its implication to Chinese communities will be discussed with regard to their cultural and traditional values.

INTRODUCTION

Spouse battering has been an alarming problem in the past few decades in different Chinese communities such as Hong Kong, Mainland China and Taiwan. A number of policies and programmes were developed in different areas for combating the problem of spouse battering and domestic violence. With the spreading of restorative justice around the world, many debates have been carried out between different scholars and practitioners in the appropriateness of employing restorative approach into domestic or intimate violence. In Chinese communities, the family bonding between members was strong and the concept of family functioning was important to each of the member within the family. By making the theoretical connection between restorative justice and family functioning, this paper is going to investigate the potential impacts by using the restorative initiatives for spouse battering and its implications to Chinese communities. The paper will be divided into four main parts and the situation of spouse battering and current practices for combating the incidents will be described briefly in the part one. Part two will discuss about the use of restorative justice with respect to family functioning. Then the potential dangers and the safeguarding issue will be examined in part three. Lastly, the implications of using restorative initiatives for spouse battering to Chinese communities will be explored in part four.

PART I. THE SPOUSE BATTERING IN CHINESE COMMUNITIES

(a) Situation of spouse battering in Hong Kong, Mainland China and Taiwan

Like many other cities or countries in the world, spouse battering has been regarded as a serious problem in Hong Kong, Mainland China and Taiwan. By summing up the term “spouse battering” from the academics or the government authority from Mainland China, Taiwan and Hong Kong, spouse battering or intimate partner violence is regarded as a kind of domestic violence that use violence or the threat of using violence, physical or psychological harm to control the partners by one individual over another (Social Welfare Department, 2011a). It covers incidents of physical attack, when it may take the form of physical and sexual violations, such as pinching, spitting, kicking, hitting, punching, choking, burning, throwing boiling water or acid and setting on fire as well as spouse being forced to be involved in sex or undesirable sexual acts. It also includes psychological abuse, which can consist of repeated verbal abuse, harassment, confinement and deprivation of physical, financial, personal resources and social activities, etc (Domestic Violence

and Sexual Assault Prevention Committee, 2007; Social Welfare Department, 2011a; Zhuang, 2010;).

In Hong Kong, the Social Welfare Department is one of the local government agencies which record the official statistic of domestic violence incidents. According to the Statistics on cases captured by the Central Information System on Battered Spouse Cases of the department, the total number of newly reported spouse battering cases increased in a stable trend throughout 2001 to 2010, i.e. from 2433 cases to 3163 cases, with the peak of 6843 cases in 2008. The sudden increment in 2007 may be due to the new referral mechanism which established in 2006 and some unrecorded cases were passed to the department for central handling. From the perspective of victims, although the number of male victims is far less than the females, the percentage of male victims has a sharply increased from 2001 (7.4%) to 2010 (16.4%) (Social Welfare Department, 2011b).

In Mainland China, there was also an increase in spouse battering cases and victims over the past decades (Wang and Qu, 2009; Zhuang, 2010). According to a study conducted by All-China Women's Federation, nearly 30% of families in Mainland China have faced the problem of spouse battering and over 90% of the victims were females (Feng, 2011; Xu, 2010). The statistics from the judiciary also shown that around 100,000 families were suffered from domestic violence every year and leading to divorces (Cu, 2010; Wang, 2010).

Similarly in Taiwan, the number of spouse battering cases keeps increasing from 2002 to 2010. As shown in the statistic from the Domestic Violence and Sexual Assault Prevention Committee in Taiwan, around 26,000 cases were recorded in 2002 and the number of cases has been increased to nearly 60,000 in 2010 (Domestic Violence and Sexual Assault Prevention Committee, 2011a). Among the spouse battering cases, the percentage of male victims was going up gradually from 7% to 10% over the past five years (Executive Yuen, 2010).

Hence, the number of spouse battering cases was increased over the past decade in the three regions and both of them have developed different kinds of tackling strategies for domestic violence and spouse battering. The following paragraphs will described some of the key practices adopted by Hong Kong, Mainland China and Taiwan.

(b) Legal and social measures for combating spouse battering

Spouse battering is regarded as criminal offences to a certain extents in Hong Kong, Mainland China and Taiwan. Various criminal ordinances and laws may be employed for the states to prosecute the abusers. Besides prosecuting the abusers, some ordinances or regulations were developed, enacted and revised recently so as to address the problem of spouse battering by different means. For instance, Domestic and Cohabitation Relationships Violence Ordinance (2010) (former Domestic Violence Ordinance) is to provide civil remedies for survivors from spouse battering incidences in Hong Kong. The judge may issue injunction order to prohibit the abusers from contacting the survivors or order the abusers to participate into some behavioral modification programme.

In mainland China, over 25 provinces have enacted the provincial regulations and ordinances which specifically prevent and prohibit the domestic violence incidences (Zhang and Zhao, 2009). Those ordinances have stipulated different roles for the police, people's courts, hospitals and all



other related organizations and listed out the proper procedures when handling the spouse battering incidents (Chen, 2010; Liu, 2011). Likewise, the Domestic Violence Prevention Act was implemented from 1998 in Taiwan in order to guide and coordinate different agencies in coping with the incidents such as protecting the survivors and educating the abusers (Domestic Violence and Sexual Assault Prevention Committee, 2008).

Apart from the legislation perspective, the three regions have developed many programmes for tackling the spouse battering. Some programmes were used to protect and support survivors like Shelter houses, crisis management services, victim support programmes, hotline services and community-based preventive programmes (Li and Li, 2010; Social Welfare Department, 2011c). Besides providing services for the survivors, other programmes were designed to help abusers in correcting their abusive behavior such as batterer intervention programme and cognitive therapy groups. Moreover, a risk classification mechanism has been adopted in some cities in Taiwan which contribute in finding the most suitable measures for abusers through professional assessment (Lin and Cai, 2009). Though lots of measures were developed and implemented recently, prosecution and imprisonment in criminal justice systems are still being the major form of actions for spouse battering in Chinese communities. Nevertheless, the criminal justice systems are often found not to be useful enough for addressing the problem, especially in the manner of improving the relationships and preventing re-abusive behavior between couples (Cameron, 2005; Jahan, 2005). Other failures such as re-victimizing the survivors, passive participation between the parties, putting abusers and survivors into totally opposite direction, and destroy the normal functioning within the family were often existed in the retributive practices in the system (Curtis-Fawley and Daly, 2005; Dissel and Ngubeni, 2003; Hudson, 2002; Mauer, 2005; Milne, 2004; Wemmers, 1996). Spouse battering is complicated in nature and the problem often vests with different social norms and values. It is therefore worthwhile to investigate the use of restorative justice initiatives for spouse battering with respect to the cultural and traditional characteristics in Chinese communities.

PART II. FAMILY FUNCTIONING AND RESTORATIVE INITIATIVES

Obviously the retributive criminal justice practices are far away from perfect and it may not able to address the needs of both victims and offenders (Cameron, 2005). Literatures found that protection and safety assurance, seeking accountability, being empowered and maintaining normal and peaceful family functioning are common and fundamental needs from the perspective of survivors (Lewis, Dobash, Dobash, and Cavanagh, 2000; Living Well Counseling and Consulting, 2008; McGillivray and Comasky, 1999; Minaker, 2001; Russell, 2002; Strang, 2002;). Whereas the chances of apologies, taking up the responsibilities and re-establishing the family function with the survivors are found from the perspective of abusers (Block and Lichti, 2002; Edward and Sharpe, 2004; Social Welfare Department, 2008). In Chinese communities, some traditional values in maintaining family functions like continuing the family relationship and parenting are particularly important under the cultural influences of tight family bonding and mutual dependence of the couples (Hsu, 1970). Thus, the concept of family functioning is used in this paper in analyzing its relationship with restorative initiatives. The following paragraphs will summarize their theoretical connections and the potential outcomes that bring by restorative practices.

Restorative initiatives doubtlessly can promote the empowerment of victim and enhance the accountability to some extents (Braithwaite and Daly, 1994). However, not much literature

focused on the restoration the family functions. Indeed, family can be regarded as the most fundamental and strongest bonding (Diversicare, 2006) and family functioning for its members and family support are always emphasized in the Chinese community (Hynie, Lalonde, and Lee, 2006; Xu, Xie, Liu, Xia, and Liu, 2007). Therefore the paper attempted to explore the concept of family functioning and see if restorative approach is able to address on its factors and in turns contribute to the area of spouse battering.

(a) The four factors in good family functioning

In reviewing the concept of family functioning, a lot of work was done on its effect on adolescent and quality parenting (Beavers & Hampson, 2000; Henderson, Dakof, Schwartz, and Liddle, 2006; Sawant & Jethwani, 2010) and not much related to domestic violence or spouse battering. The paper hence goes beyond those researches and explores the underlying elements of family functioning. Silburn et al.(2006) quoted the work from McCubbin and McCubbin (1996) in the book chapter talking about family function and identified nine important factors for a good family functioning including accord, celebration, communication, hardiness, financial management, etc (Silburn et al., 2006). As a result, four factors have been picked up for investigating their relationship with restorative justice. The first factor is communication. It is originally referred as the sharing of belief and emotions with one another and the factors is being emphasized on the way that family members exchange information and caring with each other (McCubbin and McCubbin, 1996). The communication is found to be effective when it is in two-way manner with respective listening and sharing. In a sense of domestic violence incidents, misunderstandings or conflicts between couple which is regarded as one initiative for spouse battering could be solved and eliminated with effective communication.

The second factor is acceptance. It is originally referred as the tolerance of family member traits, behavior, personality, general outlook and dependability (McCubbin and McCubbin, 1996). However, in a sense of domestic violence, the abusive behavior should not be accepted and tolerated. Nevertheless, mutual acceptance which emphasized on accepting the one's wrongdoing in the past after the accountability taken by the abusers and accepting the weakness of each other may help the couple to address more on the spouse battering cases. Apologies from abusers being accepted by survivors can strengthen the family function in the future.

The third factor is accord. It is referred as the balanced interrelationship among family members that allow them to resolve conflicts and reduce chronic strain (McCubbin and McCubbin, 1996). Accord is emphasized when the family members get together more closely in both good and hard time and able to rebuild the relationship after hurting one another. In a sense under domestic violence, harmonious accord, which relies on the abusers to change or stop the violence acts, to rebuild the relationship, and to live together harmoniously, is an important function within the family after the incident.

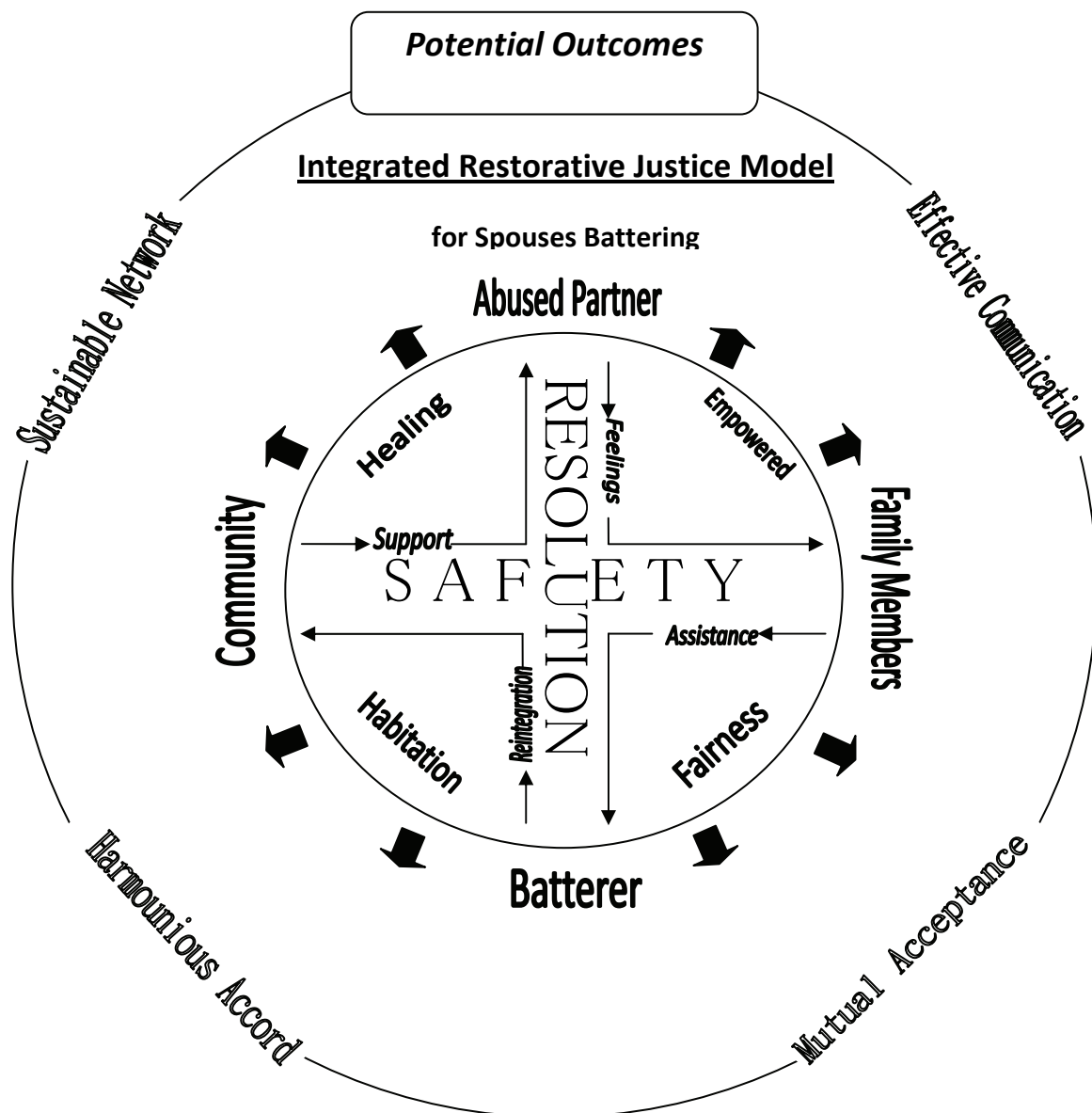
The last factor picked up by the author is network. It is original referred as the positive and supportive aspect of relationship with our partners, in-laws, relatives and friends (McCubbin and McCubbin, 1996). The networking is important in family functioning as they provide support and sometimes resources for family members. In a sense of domestic violence, the protection and the healing processes for the survivors maybe achieved more easily with the sustainable network which includes continuous and positive support is needed within the family members. To sum up, a good family functioning which composed of effective communication, mutual acceptance,



harmonious accord and sustainable network might address on spouse battering to some extent and the violent behavior may have a chance to be reduced or ultimately be stopped.

(b) Integrating family functioning with restorative approach

With the core values of restorative initiatives developed in the past few decades, Restorative approach is found to be useful in many ways such as empowering the victims and offenders , holding the offenders accountable for their wrongdoings, repairing the harm done for victims, restoring the relationship between parties, etc. (Bazemore, 1994; Galway and Hudson, 1996, Umbreit, 1994; Zher, 1990). Apart from those advantages, the four protective factors of good family functioning that mentioned above are proposed to be other outcomes of an effective restorative practice. The proposed restorative model for spouse battering is drawn as follow with reference to the restorative justice model developed by Daniel VanNess (1996).



(Adapted from Van Ness (1996))

The inner circle of the model is the proposed restorative practice while the outer circle is the potential outcomes of the restorative initiatives with regard to the family functioning. In the proposed practice, family members and the community maybe invited to the restorative circle sessions apart from the couples in the battering incident. Family members refer to the elder parents, relatives or siblings of the couple in which they can share their views and support the survivors and assist the abuser to take up the responsibility. Under the influence of traditional Chinese values, sometimes the abusers are more eager to listen to their partners or elder relatives, the presence of the family members may widen the road for the abusers to step forward. Community refers to the professional and community-based resources and programmes such as counseling and batterer intervention programme and the presence of community contributes to the rehabilitation for abusers and their partners. Community and family members also take an important role to ensure the safety of the survivors after the resolution between the couple.

From the proposed model, the four potential advantages of restorative initiatives (empowered,



fairness, habitation and healing) are embedded within the circle. The survivors will be empowered and able to share their own feelings, family members can view the incidents more objectively and maintain the fairness and assist the abusers to take up responsibilities, suitable abusers can rehabilitate back to the community and family with participation in some programme, community healing can be done to the survivors to support them in the recovering process. The “cross” in the inner circle is the core element of the restorative practice. The safety issue is the most fundamental concept and must be addressed and assured before any restorative practices take place. Resolution is one of the possible outcomes of restorative practice, however, it is not regarded as ‘must’ to be achieved or otherwise the survivors will be in danger. Restorative initiatives are believed to bring some positive outcomes to the survivors, abusers and also the communities in addressing the problem of spouse battering. However, some safeguarding measures are necessary and it will be examined in the next part.

PART III. DANGERS AND SAFEGUARDS OF USING RESTORATIVE APPROACH

Restorative justice is not totally perfect and definitely not all the cases in spouse battering are suitable to handle with restorative practices. Practitioners should be able to identify the sources of potential dangers and avoid them in causing harm to the participants in restorative practices.

(a) Imbalance of power between the couple

As mentioned earlier in this paper, one potential danger of using restorative approach in spouse battering is the power imbalances in an abusive relationship (Girdner, 1990; Kruk, 1994; Rubin, 2003). This would prevent the survivors from negotiate freely with the abusers (Hooper and Busch, 1996). Research found that abused women were less able to assert their interests and felt their abusers had more decision-making powers in regards to finances and sexual relationship (Brush, Robertson, and Lapsley, 1992). This imbalance of power would contaminate the whole restorative practices as the participants are not able to voice out their thoughts, feeling and show the impacts imposed to them freely. Sometimes the survivors may feel unsafe to present any kind of challenges to the abusers (Edward and Sharpe, 2004) and they were frightened by the retaliation of abusers afterward (Koss, 2000; Wolf, 2003). In order to safeguard the dangerous, professional protocol and individual pre-meetings should be adopted to empower the survivors. Sometimes the supporters, neighbours, relatives and friends could be invited to make the supportive network stronger.

(b) Putting the survivors into violence after the reconciliation

The second potential danger that many scholars concerned about is ineffectiveness to deal with issue of safety and risk by the use of restorative approach (Coward, 2000). Fake promise and apology would create danger for the survivors and abusive behavior could be continued after the restorative practices (Barnet, Cindy, and Robin, 1997; Edward and Sharpe, 2004). To safeguard the issue, some follow-up procedure and community resources such as batterer intervention programme could be adopted in conjunction with the restorative practices. Some screening mechanism should be set up for selecting suitable abusers and lower the chance of generating danger for the survivors.

(c) Involuntary participation in the process

One of the most basic principles of using restorative approach is the voluntary participation of both parties (Braithwaite and Strang, 2001; Edward and Sharpe, 2004; Zher and Mika, 1997). However, participants from previous restorative practices felt pressure to participate into the process (Coker, 1999; Couture, Ted, Ruth, and Patti, 2000; Rubin, 2003; Steward, Huntley, and Blaney, 2001). Due to the complex nature of the relationship and the feelings of attachment to the abusers, the partners sometimes cannot make their own choice easily and freely (Frederick and Lizdas, 2003; Griffing et al., 2002;). Thus it become a potential danger to assume the survivor to have the freedom to choose whether or not to participate, to voice out their own thought or to agree the outcome (Crnkovich, 1995; Frederick and Lizdas, 2003; Stubbs, 2002). To safeguard this dangerous, some assessment tools might be used by restorative justice practitioners to evaluate against the view and the readiness of the survivors. At the same time, restorative justice should not be one and the only means to tackle the problem for the survivors.

(d) Re-victimization of survivors by the process

Re-victimization of survivors has been identified as one of failure of traditional justice system (Curtis-Fawley and Daly, 2005). The potential danger of re-victimization can also be happened in restorative practices (Hooper and Busch, 1996). The abusers may blame the survivors in the process, finding excuses , intimidating and continuing the abusive behaviors if the case are not handled properly (Astor, 1994; Lerman, 1984). To prevent the survivors being re-victimized, screening procedure and special assessment and technique regarding to the victimization contents are needed so that the process could be terminated if the interest of survivors are being threatened.

The four key dangers of adopting restorative approach in spouse battering have been mentioned above and the possible safeguards have been suggested by the author. Yet, lots of the effective restorative practices for spouse battering have been carried over the world. Some implication could be borrowed from those practices for Chinese communities to develop their own form of cultural sensitive restorative practices.

PART IV. ITS IMPLICATION TO CHINESE COMMUNITIES

The idea of restorative justice is spreading rapidly and over twenty restorative practices in spouse battering or domestic violence have been identified all over the world (Liebmann and Wootton, 2010). Although not all the practices demonstrated their benefits to abusers and their partners, lessons could be learned from each single practice. By reviewing the literatures, five necessary conditions are identified to make the programme become effective.

(a) Essential conditions for developing restorative practices

First of all, restorative practice could be one of the practice in the justice system but cannot be the solely approach in handling spouse battering. It is not the panacea and suitable for handling all cases and the restorative practice should be amalgamated with the traditional criminal justice system to tackle the problem (Nancarrow, 2003). The data collected from the practitioners in spouse battering indicated that the majority of practitioners were showing positive attitude toward restorative approach and regarded restorative approach may create more options for the survivors (Curtis-Fawley and Daly, 2005). It should not be treated as a solely diversionary scheme and the



programme itself should be able to denounce the abusive behavior (Daly, 2002; Hudson, 1998). Thus, restorative justice could be seen as one option available in the state (Mills, 2003; Yellott, 1990).

The second condition relies on the basic principle and values of the restorative justice, i.e. the voluntary participation in all parties and the balance of power in the practice. All the participants should be informed well about their willingness and decision in participating in the programme and bias from practitioners must be prohibited (Coker, 1999). Individual sessions before the restorative practices should be carried out to investigate whether the survivor is being coerced to join the programme. Furthermore, the balance of power must be maintained for the whole process so that each of the parties has the opportunities to speak on an equal basis (Dissel, 2003). Giving the survivor decision-making authority and being empowered could contribute to the effective restorative practices (Curtis-Fawley and Daly, 2005).

The third condition is the presence of entry and exit mechanisms embedded with restorative practices. Definitely not all the cases of spouse battering could be handled by a restorative approach (Nancarrow, 2003) and an entry selection should exist and help the practitioners to select suitable couples. As spouse abuse is a diverse phenomenon with complex dynamics (Kelly, 2002), the couple with the power imbalance, serious violent abusers, the one who denies his or her own fault are regarded as non-suitable cases (Chandler, 1990). Besides, the survivor's sense of safety and the genuineness of voluntary participation will also be assessed in the entry mechanism (Edwards and Haslett, 2003). A panel could be formed to perform the intake interview and assess the risk and safety issue for victims. (Grauwiler, Pezold, and Mills, 2006) and the participants should be invited only through the screening and case development before the dialogue in order to maximize the protection to the survivors (Edwards and Haslett, 2003). Apart from the entry screening mechanism, the exit mechanism should also exist in the process. The practitioner should be aware of the process and the participants should be free to end the procedure if they feel uncomfortable and threatened (Mitchell, 2006).

Besides, one crucial condition for effective restorative practice is vested with the training, skill and experience of the practitioners (Dissel and Ngunbeni, 2003). Extensive trainings should be given to them so that they are able to monitor and capable to interrupt the abusive dynamic that may emerge from time to time in the reconciliation process (Coward, 2000). Apart from the trainings, detailed and careful planning and preparation for the restorative practices such as number of sessions, number of pre-meetings, contingency plans should be done by well-trained practitioners to ensure the restorative process could be done properly (Grauwiler et al., 2006; Stubbs, 2004).

The last condition being identified for effective restorative practices in spouse battering is to have adequate on-going and post-restorative protection. In the restorative process, participants should be able to speak freely in a well-protected and controlled setting (Yellott, 1990). Some physical settings such as separated rooms with locks, alarm and police-calling device should be installed in case of emergency. The presence of staff for backing up is important if the abusers are out of control during the restorative process. (Lai, 2009). Moreover, ongoing risk assessment should be conducted if necessary to prevent the survivors from future violence (Pennell and Francis, 2005). After the restorative process, follow-up measures are important to ensure the post-restorative practice safety for the survivors (Graueiler et al., 2006; Mills, 2003). Besides the follow-up visit or conferences, community members or family members could be invited as safety monitors to

maintain constant contact with the couple for monitoring and support the survivors on an ongoing basis (Graueiler et al., 2006). To sum up, the above conditions were identified to be necessary in order to have an effective restorative practice for spouse battering. The potential dangers could be eliminated and the benefits to the participation could be enhanced.

(b) The Way ahead: Using Hong Kong as an example

The practices of mediation have long been used in traditional Chinese communities for disputes resolution. Some values such as forgiveness, peace and harmony are emphasized by Chinese through religious and cultural influences. Such values are basically coincided with the values of restorative initiatives and provide grounds for further develop the practices for spouse battering. Currently, practices which employed little or some elements of restorative initiatives have been found in the three regions such as the community intervention in Mainland China, reconciliation conferences in Taiwan and family mediation in Hong Kong. Though not all the practices are specifically designed for spouse battering, the use of restorative justice is becoming more familiar among different stakeholders in the communities. Within the three regions, Hong Kong is lagging behind in the development of restorative justice for spouse battering as the family mediation programmes deal only with the dispute and custody matters. However, Hong Kong has a rigid legal framework and lots of professionals in providing a variety of family services such as counseling, behavioral training, group intervention and supportive programme for survivors. It is believed that the use of restorative practices could be placed in the latter stage as a supplement during the intervention with a set of conditions mentioned above being stipulated and safeguarded. For instances, the Batterer Intervention Programme in Hong Kong has been proved to be useful in changing the perception of abusers in the misuse of violence during the quarrel with their partners (Social Welfare Department, 2009). The abusers wish to take up the responsibilities in repairing the harm done and re-establish a harmony family after the programme (Social Welfare Department, 2008) Restorative practices may then being used in conjunction with such programme and aimed at helping the parties to reconcile in the future. Lastly, the consensus from the practitioners, potential users and the community should be seek before the introducing the ideas of propose a new practices. The positioning of the practices, entry and exit mechanism and the safeguarding issues must be studied and a further investigation is needed.

CONCLUSION

The paper examined the situation of spouse battering and related measures in Hong Kong, Mainland China and Taiwan. It further elaborated the concept of restorative practices for spouse battering. The value of family functioning is being emphasized in Chinese Communities and the four protective factors have been proposed as potential outcomes of restorative practice with spouse battering. Although restorative justice has not been formally incorporated into the criminal justice system in Chinese communities, some programmes with restorative elements have been practicing and provide the community with some tastes of using restorative justice. By studying overseas experiences in both theoretical and practical manners, some conditions for effective practices have been identified and those implications could be learned by our own communities. Further investigation is necessary to collect the opinion from the potential users and the community before the planning, developing and implementing restorative practices for spouse battering.



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INNOVATIVE WAY OF THINKING: TREATMENT OF THE OFFENDER AND MOVING FROM RETRIBUTIVE TO RESTORATIVE JUSTICE IN THE CRIMINAL JUSTICE SYSTEM IN SRI LANKA

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Within the framework of retributive justice, crime is understood as an offence against the State and defined as a violation of law. It represents the punitive approach of reaction to crime, where the offenders are considered as an unwanted group who should be punished. However, with the development of criminology, offenders are identified as the persons, needing rehabilitation and reintegration into the society as law abiding citizens. This novel thinking leads to establish the concept of restorative justice where crime is understood to be an infringement on man and human relationship. It involves reintegration of both offender and victim within the community. The restorative justice principle could be found in community service orders, probation, parole and other non-custodial measures as alternatives to the traditional incarceration, victim offender mediation, sentencing, peace-making and healing circles, police cautions and active participation of victim in the criminal justice process etc. This paper evaluates Sri Lanka's transformation from retributive justice to restorative justice by incorporating the above mentioned means and methods to the criminal justice system. Further, it examines how these innovations have affected the crime rate in Sri Lanka.

1. INTRODUCTION

The Criminal Justice system in Sri Lanka has undergone transformation in the last five decades. The early traditional method of the administration of criminal justice is no more limited to punishing the perpetrator with a punitive approach to satisfy the victim. The (recent) history of the criminal justice system in Sri Lanka shows us that the philosophy of the primeval administration of criminal justice is based primarily on the retributive/punitive concept is being replaced by the restorative concept; a process which involves the reintegration of both offender and victim within the community. Today, the wrongdoer of a criminal offence is not considered (only) as an enemy of the society who should be treated harshly by imposing severe punishment but as a person who needs treatment to overcome his/her status of criminality in order to reintegrate into the society as a law abiding citizen. Further, the victim of crime is also being looked upon as a person who needs support to recover from physical, mental, economical and other losses that have occurred due to the crime committed by the offender, in addition to rehabilitation and reintegration to society in order to be free from the victimized mentality. New methods have been introduced to the criminal justice system to deter crime, sanction the perpetrators, rehabilitate the offenders, support the victims of crime, develop the victim offender mediation, and finally to control the human behavior and protect the society from crimes and criminals.

This paper will focus on such new methods and the transformation from retributive to restorative justice in the criminal justice system in Sri Lanka with a special focus on treatment of offenders. Further, the study will examine whether these means and methods have affected the crime rate in Sri Lanka. The full paper contains three main parts including response to crime and retributive theory of justice, the history of criminal justice system and retributive justice and the concept of restorative justice, its practices and new methods of treating the offender.



2. RESPONSE TO CRIME AND RETRIBUTIVE JUSTICE

Reaction or response to crime has been diverse at different periods of human civilization. Even at a particular time they have been different in various societies. Certainly, there is a necessity of reaction to crime in order to control certain unlawful human behaviour and to protect law abiding people from crimes¹ and criminals. People show their denunciation towards crime by reacting against it either in a formal or informal manner. Institutions such as family, schools, peer groups, organized religions, and other organized bodies like factories, companies have their own sets of rules based on social norms to react against the member of those institutions for violating those norms in an informal manner. Some informal responses are labeling, ignoring, warning, inflicting mild corporal punishments and terminating of jobs which are based only on retributive concept. Similarly, if a person violates (criminal) law,² the society may file an action against the perpetrator (in the name of the State) where the court has the power to impose formal punishment on the offender according to the law. Thus, societies justify the reaction to crime for moral reasons which reflect the attitude towards crime, criminal and the basic values of a particular society at a particular time.

The formal reaction to crime is carried-out by the criminal justice system which has the main goals of upholding social control, deterring crimes, sanctioning those who violates criminal laws with punishment, rehabilitating and reintegrating them into the society as law abiding citizens. There are three types of application of laws in relation to the criminal behavior of a person (criminal justice); retributive justice based on punishment, distributive justice based on therapeutic treatment of offenders and restorative justice based on restitution.³

Retributive justice is a theory of justice which considers that punishment is a morally acceptable response to crime, with an eye to the satisfaction and physiological benefit bestowed to the aggrieved party and society.⁴ It is probably the most ancient justification of reaction to crime.⁵ Under retributive justice, crime is an individual act where the responsibility defines as punishment. The criminal responsibility/punishment is imposed only on the particular perpetrator according to the magnitude of the offence committed by the perpetrator. This idea was expressed by the biblical dictum: eye for an eye and the tooth for a tooth.⁶ In primitive societies/tribal societies where the concept of retributive justice was well established, the offender was regarded as an enemy of the tribe and he/she was punished with the same severity of the offence in order to get the revenge from him/her. This notion was present in the Hebrew Doctrine of Divine Sanction which was subjected to the will of Jehovah and Mosaic Law. Further, the Code of Hammurabi, the oldest written ancient penal practice, accepted that the punishment imposed on the offender should be equal to the weight

¹ According to the general meaning of crime, it is an act that subjects the wrongdoer to punishment; it is the commission or omission of an act specifically forbidden by public law; criminal law. Refer Marckwardt Albert, Cassidy Frederic and McMillan James, Webster Comprehensive Dictionary, International edition, Vol. I Pioneer House, London, p. 360; For more see Thompson Della, (1995), The concise Oxford Dictionary of Current English, Oxford University Press, New York, p. 318.

² Criminal Law is a treat to the guilty and a separate branch of public law where crimes are corresponded punishments is prescribed. *Ibid.*

³ See Daniel Van Ness and Strong Keren, (1997), *Restorative justice*, Anderson Publication, Cincinnati, p. 106.

⁴ en.wikipedia.org/wiki/**Retributive_justice-**

⁵ See, Gobert James and Dine Janet, (1993), *Cases and Materials on Criminal Law*, London, Blackstone Press Ltd. P. 22.

⁶ *Ibid.*

of the crime as literally as possible.⁷ However, even today, retributive justice is appreciated in 'just deserts' (proportionally) principle in many parts of the world.

As one of its main characteristics, retributive justice focuses on establishing guilt on the past behaviour of the wrongdoer and the offender is perhaps considered as an unwanted group of people who deserve to suffer due to wrongful behavior. In other words retributive justice is a process of backward-looking and punishment that is warranted as a response to a past event of injustice or wrongdoing. It acts to reinforce rules that have been broken by the offender and balance the scales of justice. Therefore, the main purpose of the retributive justice is that the offender is to be punished simply due to the commission of crime. It is clear in the philosophy established by the retributive advocates such as Mabbott,⁸ Murphy,⁹ Hegal,¹⁰ Moberly¹¹ and Emmanuel Kant.¹² According to these retributive advocates the rationale behind retributive justice is that a good deed deserves to be crowned with a reward whereas a bad deed should be meted out with a bad reaction namely suffering without considering the consequences. Their suffering should be of the same magnitude as that of their victims. The inherent threats/sufferings of punishment may deter crime and sometimes, change the behavior of the offender as to a better person.

Under the retributive justice, crime is understood as an offence against the State and defined as a violation of the law. Another feature of the retributive justice, emphasizes the adversarial relationship between the accused and the State, and the victims of crime are peripheral to the justice process and represented abstractly by the State. According to the general feature of the adversary system,¹³ in the traditional and conventional model of judicial system of trial, the State has all the rights to conduct the prosecution and impose punishment on the offender. Therefore, when a crime is reported, the State starts to discharge its responsibility assuming the State as a party of the criminal case while placing the victim in the category of a mere witness. The main agencies in the criminal justice system pay whole attention only to the offender to punish or otherwise rehabilitate him/her and the victim is regarded as a mere witness in the battle between the State and the accused.¹⁴

⁷ Dyneley Prince, Review: (2010) *The Code of Hammurabi*, (1904) American Journal of Theology, Vol. 8 No 3 (July), The University of Chicago Press, pp. 601-609, <http://www.jstor.org/stable/3153895> ; Packer Herbert, (1968), *The Limits of the Criminal Sanction*, Stanford, Stanford University Press, pp.37-38.

⁸ Mabbott J.D., 'Punishment', in (ed.) Action H.B., (1969) *The Philosophy of punishment: A collection of Papers*, London, Macmillan Co., pp.39-64 and 178.

⁹ Murphy J.G., *Marxism and Retribution* in (ed.) Duff Antony and Garland, (1994), *A Reader on Punishment*, New York, Oxford University press, pp. 44-70.

¹⁰ See Ahmad Siddique, (1997), *Criminology: Problems and Perspectives*, Lucknow, Eastern Book Co., p.111.

¹¹ Moberly Walter, 'The Ethics of Punishment' (1968) p.144 in Paranjape N.V., (1996), *Criminology and Penology*, Allahabad, Central Law Publications, p. 145.

¹² See Ahmad Siddique, 1997, *Criminology: Problems and Perspectives*, op.cit. 112.

¹³ Judicial system of trial in English legal system (practiced in Great Britain, most commonwealth countries, and the US except the US State of Louisiana, and Canada's Quebec province). In this system, a case is argued by two opposing sides who have the primary responsibility for finding and presenting facts. The prosecutor tries to prove the defendant is guilty, and the defendant's attorney argues for the defendant's acquittal. The case is then decided by a judge (or a jury) who does not investigate the facts but acts as an umpire.

¹⁴ Barrett John, (2001), *Balancing Charter Interests: Victims' Rights and Third Party Remedies*, Toronto Carswell, pp. 1-2; Further see Hogg Peter, 1992, *Constitutional Law of Canada*, 3rd Edition Toronto Carswell, p. 836.



2.1. History of criminal justice system and retributive justice in Sri Lanka

In examining the history of criminal justice system in Sri Lanka, there are five main distinct periods could be identified according to chronological order, namely: period before the European powers occupied the island (before 1505 A.D), period during the Portuguese occupation (1505A.D. - 1656A.D.), period during the Dutch occupation (1656 A.D.-1796A.D.), period during the British occupation (1796A.D. -1947 A.D.) and post-independence period (1947 A.D. – to-date).

During the reign of Kings in ancient Ceylon, the King was the top of the hierarchy of Courts and the source of all justice.¹⁵ With regard to the criminal justice system during this period, the hierarchy of Courts made it possible to appeal from a judgment of the lowest Court, i.e. *Gansabhawa*,¹⁶ to the King.¹⁷ History shows us that the retributive justice was the dominant theory adopted by the criminal justice system in ancient Ceylon as well. Literature of the legal history of the country reveals some important information of punishment (*danda*). There were four main types of *danda* based on the retributive concept: They were *kayadanda* (corporal punishments), *vachidanda* (verbal punishments), *dhanadanda* (financial punishment) and *manodanda* (mental punishment).

Death, mutilation, flogging, whipping by cane, banishment, downgrading to the *Rhodiyas*,¹⁸ putting into jail (*dangage/maha hirage*) and cutting off hair were the modes of corporal punishment. Death, mutilation and flogging were imposed on offenders for serious offences such as murder, conspiracy against King etc. Reprimand was a verbal punishment imposed for minor offences to show anger and disapproval of crime in the Sinhalese law.¹⁹ Being cursed was represented *manodanda* inflicted for minor offences. Confiscation of properties was the common mode represented in *dhanadanda*.

The Portuguese arrived in Ceylon in 1505 A. D.²⁰ By the *Malwana* Convention,²¹ an Ordinary and a Supreme Tribunal (General's Court) were established to hear minor criminal matters and serious offences respectively. By the same convention the Portuguese agreed to administer the laws of the Sinhalese in the coastal areas where they were settled and in power.²² Therefore, they did not

¹⁵ Tambiah H.W., (1977), *The Judicature Of Sri Lanka In Its Historical Setting*, Colombo, M.D. Gunasena & Co. Ltd., p.1.

¹⁶ *Gansabhawa* was the lowest Court (council) which had both civil and criminal jurisdiction in cases of petty offences and in boundary disputes. For more see, Hayley F.A., *The Laws and Customs of the Sinhalese or Kandyan Law*, New Delhi, Navrang Publishers, p. 59-62.

¹⁷ Hayley F. A., *The Laws and Customs of the Sinhalese or Kandyan Law*, *op. cit.* pp. 58-73

¹⁸ *Ibid.*

¹⁹ Sinhalese Law – today more commonly referred to as Kandyan Law – which comprised of Buddhist law, Hindu law, *Tesawalamai* law, Islamic law and Mukkuwar law. See Cooray L.J.M., (1971), *Introduction to Legal System in Ceylon*, Colombo, Lake House Investment Ltd., p. 3.

²⁰ Cooray L.J.M., *Introduction to Legal System in Ceylon*, *op. cit.* p. 4.

²¹ This Convention came into operation in 1597.

²² Tambiah H.W., *The Judicature of Sri Lanka In Its Historical Setting*, Colombo, M. D Gunasena & Co. Ltd *op. cit.* p. 3.

introduce their own system of law to Ceylon.²³ Thus, the laws relating to punishment during the period of the Portuguese occupation appears to have been the Sinhalese laws.²⁴

The Dutch occupied Ceylon in 1656 A. D. They ruled the Maritime Provinces (Costal Areas) from 1656 – 1796²⁵, and introduced their law²⁶, the Roman Dutch Law, to Ceylon²⁷. Criminal justice was administered in Radd van Justitie (the High Court of Justice) in the case of serious criminal offences. Further, judicial power was exercised by certain European officials such as the fiscal, the chief residents and some military officers, and the local chiefs such as disavanis and korala (local officials who had the power to hear minor criminal matters over local persons). Dutch also continued to impose the same modes of punishments used by the Portuguese.

The British occupation of Ceylon is reported as of 1796 A. D. They captured all parts of the Maritime Provinces which were under Dutch power. By introducing a number of reforms to the law operating in the Maritime Provinces, the British developed the administration of justice. British rulers issued several important Proclamations to reform the existing penal system at that time. By the Proclamation of 23rd of September 1799, torture and all kinds of inhuman and barbarous forms of punishment (specially the public execution) were abolished. A uniform system of Court procedure and a uniform system for execution (hanging) were introduced by the Proclamation of March 23rd 1826. All degrading and inhuman modes of punishment were prohibited by the Proclamation of 04th October 1799. By regulation No 04 of 1820, all kinds of mutilation were prohibited. The classification of crimes and establishment of a new Supreme Court of criminal justice consisting of the Chief Justice were introduced by the Charter of 18th April 1801. The formation of a uniform system of justice throughout the Island was introduced by the Charter of 1833 on the recommendation of the Colebrook Cameron report. The whole Kandyan criminal law (criminal law which applied to locals) was abolished and the 'Law of the Maritime Provinces' was substituted by Ordinance No. 5 of 1852. The Penal Code Ordinance No 2 of 1883, a model of the Indian Penal Code of 1860 which was based on English Law Principles was introduced in 1883. Section 3 of the Penal Code expressly abolished the Roman Dutch criminal law in order to settle the uncertainties in the general law. The Criminal Procedure Code of Ceylon was introduced in 1882 to govern the procedure relating to criminal matters in the country. It was replaced by the Criminal Procedure Code No. 15 of 1898 which was remained until 1973.

Sri Lanka gained independence in 1948, and for the purpose of this study the intervening period up to the present time will be discussed. Sri Lanka has been governed by various political parties elected by Sri Lankan citizens. Although these governments introduced numerous laws under their legislative powers, there was no significant alteration in either the substantive criminal law or the law of criminal procedure, except for a few amendments. With regard to the Penal Code, some significant amendments have been introduced where punishment is concerned e.g. the Penal Code (Amendment) Act, No. 22 of 1995 and the Penal Code (Amendment) Act, No. 29 of 1998. Two

²³ Tambiah H.W., *The Judicature of Sri Lanka In Its Historical Setting*, *op. cit.* p. 4.

²⁴ Cooray L.J.M., *Introduction to Legal System in Ceylon*, *op. cit.* p. 5.

²⁵ Nadaraja T., (1972), *The Legal System of Ceylon In Its Historical Setting*, Leiden, E. J., Brill Ltd., p. 5; For more see, Cooray L.J.M., *Introduction to Legal System in Ceylon*, *op. cit.* p. 194; Tambiah H.W., *The Judicature Of Sri Lanka In Its Historical Setting*, *op. cit.* pp. 3,4.

²⁷ Ibid

²⁸ Ibid.



very important changes were made to the criminal procedure namely, the Administration of Justice Law No. 44 of 1973 and the Code of Criminal Procedure Act No. 15 of 1979. Furthermore, recently a few amendments were introduced to the Code of Criminal Procedure Act. Among them the Code of Criminal Procedure (Amendment) Act, No. 17 of 1997, the Code of Criminal Procedure (Amendment) Act, No. 47 of 1999 and the Community Based Correction Act, No. 46 of 1999 are most important for the purpose of the present study.

2.2 Present criminal justice system and retributive theory of justice

Similar to the other countries, until recently, the criminal justice in Sri Lanka has been dominated by retributive justice based on punishment. The State maintains law and order, ensures conformity with its rules and prosecutes and punishes those who violate it. The Police, the Court and the Prison and other Correctional Centres function as main State Institutions in this process. The Penal Code Ordinance No. 2 of 1883 and the Code of Criminal Procedure Act No 15 of 1979 are the main Acts which set out the legal provisions for dealing with criminal matters in Sri Lanka.

The existing procedural law relating to criminal cases are set out in the Code of Criminal Procedure Act (CPC) enacted in 1979. The rules relating to police investigation, arresting the suspect, searching the premises, releasing suspect/accused on bail, instituting the proceedings, conducting trials and appeal are laid down in this legal code. Further, the provisions (sec. 13 and 14) in the CPC permit the Magistrate's Court and the High Court in First Instance to hear criminal cases, and to impose punishments on the convicted offender under the provisions of the Penal Code or any other written law which prescribes any act as a criminal offence.

The substantive criminal law of Sri Lanka is embodied primarily in the Penal Code and other Statutes which prescribe some human behaviour as criminal offences corresponding with punishment. The legal system in Sri Lanka provides penal provisions such as the death penalty, rigorous and simple imprisonment, forfeiture of property, fine and whipping.²⁸ This structure of the modes of punishment in the Penal Code confirms the retributive approach in responding crimes. The dominated view of 'just deserts' compelled the criminal justice system to prosecute in the name of the State and punish the wrongdoers more commonly with imprisonment or fine according to the magnitude of the criminal offence. Death and forfeiture of property are the other two modes of punishment inflicted on perpetrators in Sri Lanka under this compelling notion of just deserts. However, until 2005 whipping was a permissible mode of punishment and was repealed by the Corporal Punishment (Amendment) Act enacted in 2005.

The death penalty is a classic example for the application of retributive theory of punishment. In Sri Lanka, the death penalty has been imposed for few crimes such as murder, treason and drug offences under the criminal law of the country. Like the other countries, imposing the death penalty as a punishment has been a subject of controversy over many years in Sri Lanka. Though there is a public outcry to re-implement the death penalty in Sri Lanka, it is an abolitionist in practice that has not executed any offender during the past 34 years and established a practice of not carrying out executions. The State has also paid attention to the implementation of the death penalty by appointing law reform commissions such as 'Morris Commission'²⁹ to examine the practical utility of capital punishment, especially as a better mode of punishment in reducing the crime rate. The

²⁸ Section 52 of the Penal code

²⁹ The four member commission appointed by the Governor General, after the assassination case of Prime Minister S.W.R.D. Bandaranayake, to report the practical utility of the death penalty.

conclusion of the report has revealed no observable relationship between the homicide death rate and the practice of executing offenders for murder. Since Buddhism is declared as the official religion in the country, offenders cannot be executed without violating the First Precept which prohibits killing of any live object.

As far as the prisons in Sri Lanka are concerned, at present the Department of Prisons is functioning under the Ministry of Prison and Rehabilitation of Sri Lanka. The Department of Prisons constitutes the Prison Headquarters, Centre for Research and Training in Corrections, Closed Prisons,³⁰ Remand Prisons,³¹ Work Camps,³² Open Prison Camps,³³ Training Schools,³⁴ and Correctional Centres for Youthful Offenders,³⁵ Work Release Centres³⁶ and Lock-ups.³⁷ The prison system of Sri Lanka consists of 4,325 prison officials of Uniformed Staff and 180 of Non-Uniformed Staff. In the year 2010 the percentage of the un-convicted prisoners was 66% (approximately) and the convicted prisoners' percentage is 33%³⁸ Ratio of convicted to un-convicted prisoners in the year 2010 was 1:3. In such a situation the present prison system in Sri Lanka is far behind in achieving its main goal concerning the rehabilitation of prisoners.

The prison statistics reveal that the number of direct admissions of both convicted and remand prisoners has considerably increased during the last decade.³⁹ In the year 2010, the number of direct admissions of both convicted and remand prisons was 1,32,619 and the number who were discharged from prison was 31,442.⁴⁰ This shows that 1,01,177 prisoners were kept in our prisons

³⁰ There are three closed prisons in Sri Lanka namely Welikada, Bogambara, and Mahara. Welikada Closed Prison is for the first offenders, who had been admitted to prison for the first time, Bogambara Closed Prison is for the reconvicted prisoners those who had been admitted to the prison for the second time. Mahara Closed Prison is for the recidivists, who had been convicted and admitted to prison more than twice.

³¹ There are Seventeen Remand Prisons in Sri Lanka. Those prisons are situated in Cololmbo, Kandy, Tangalle, Jaffna, Anuradhapura, Batticaloa, Badulla, Galle, Matara, Negombo, New Magazine, Kegalle, Tricomalee and Kalutara. There are fourteen Remand Prisons in Sri Lanka. Those prisons are situated in Cololmbo, Kandy, Tangalle, Jaffna, Anuradhapura, Batticaloa, Badulla, Galle, Matara, Negombo, New Magazine, Kegalle, Tricomalee and Kalutara

³² Work camps are prisons without a perimeter wall where prisoners sentenced with short term (less than two years) or medium term (2 years to 5 years) of imprisonment and the offenders are detained under minimum security conditions. The eight work camps are in Watereka, Meethirigala, Navodawa, Weeravila, Anuradhapura Kuruwita, Wariyapola, and Kandewatta.

³³ There are two Open Prison Camps in Sri Lanka namely at Pallekelle and in Anuradhapura.

³⁴ Two Training Schools attached to our prison system for the youthful offenders and situated in Pallansena and Ambepussa.

³⁵ There are two Correctional Centres for Youthful Offenders in Pallansena and Taldena. Offenders between the ages of 16 and 22 are sent to these correctional/rehabilitation centres. The Taldena correctional centre is an open camp and Pallansena Correctional centre has both a closed prison and an open camp.

³⁶ Sri Lanka has only one Work Release Centre.

³⁷ There are 28 Lock-ups in Sri Lanka in Ampara, Avissawella, Balangoda, Balapitiya, Chilaw, Elpitiya, Embilipitiya, Gampaha, Gampola, Hambantota, Hatton, Kalmunai, Kalutara, Kilinochchi, Kuliyaipitiya, Kurunegala, Maho, Mannar, Matale, Mullaitivu, Nuwara ELLiya, Panadura, Point Pedro, Puttalam, and Vavuniya

³⁸ Source, Prison Statistics of Sri Lanka Published by the Statistics Division, Prison Headquarters Sri Lanka in 2010.

³⁹ The number of the direct admissions of both convicted and un-convicted prisons from year 2000 to 2007 are as follows: 2000- 89,325, 2001- 95,725, 2002-107,210, 2003-116,216, 2004-114,354, 2005-129,014, 2006-117,922, 2007-130,819, 2008- 135,820, 2009-146,760, 2010-132,619. See Prison Statistics of Sri Lanka Published by the Statistics Division, Prison Headquarters Sri Lanka 2010 p. 24.

⁴⁰ Discharge on bail 294, on punishment 18,644 on payment of fines 9,326, on special occasions 2,978 *Ibid* p. 45.



in 2010. From the year 2000 the reconvicted and recidivism rate has gradually increased⁴¹ and in the year 2007 the number of the direct admission of reconvicted prisoners and recidivists was higher than the first offenders.⁴² Thus the above said figures reveal that the crime wave continues to be high in Sri Lanka and the statistics further disclose the failure of retributive justice in the country.

An effective policing system is necessarily important in controlling the crime statistic (crime rate). The police force is primarily responsible for assuring the security of the people and their properties in the country. They are to act as the effective law enforcing agency to maintain law and order in the country. However, in the present scenario in Sri Lanka, the police are required to engage in many non-police work which are not within the parameters of the main objectives of police, i.e. prevention and detection of crimes.

The above discussion shows us that retribution is not a proper answer to the crime problem in the country. It further reveals that retributive theory fails to control the crime rate, keep society safe, rehabilitate prisoners and reintegrate them to the society as law abiding citizens.

3. RESTORATIVE JUSTICE AND NEW MEANS OF TREATING THE OFFENDER

Restorative justice (reparative justice) is an approach to justice where by all the parties with a stake in a particular offence come together to resolve collectively how to deal with the consequences of the offence and its implications for the future.⁴³ This approach of justice focuses on the needs of both parties of the case i.e. needs of victim and offender as well as the needs of the community instead of satisfying the hard legal principles and punishing the offender. Unlike retributive justice, restorative justice observes crime as a violation of human relationship⁴⁴ and crime is an offence against the individual and community rather than the State.⁴⁵ Under this theory, justice means an exploration of solutions which encourage and support restoration, mediation/reconciliation agreeing by victim, offender and the community where victims of crime take an active role in process.⁴⁶ Restorative justice requires an offender to take responsibility for his/her offence to take steps for restitution of the victim,⁴⁷ promoting the maximum involvement of the two parties in the process at the highest level of victim satisfaction and offender accountability.⁴⁸ Since restorative justice maintains that increased crime is an overall failure of society, it provides an opportunity for the offender to meet his/her personal needs, rehabilitate offenders, help rebuild their life and reintegrate them into better persons. Restorative justice principle mainly aims at four key values. They are; giving opportunity for the encounter of parties (where the victim, offender and the others in the community involved in the crime meet), compelling the offender to take necessary steps to repair the harm caused from the crime, helping the restoration of both parties (this includes third person

⁴¹ Reconvicted and recidivism number together; 2000- 8,160, 2001-10,300, 2002-11,303, 2003-12833, 2004-12925, 2005-16408, 2006-13,618, 2007-16430, 2008-16,401, 2009-18,596, 2010-12597. These statistics were obtained from the Prison Statistics of Sri Lanka Published by the Statistics Division, Prison Headquarters Sri Lanka. See 2010 Issue

⁴² First offenders -14,876, reconvicted prisoners- 6670, recidivism – 6760. These statistics were obtained from the Prison Statistics of Sri Lanka Published by the Statistics Division, Prison Headquarters Sri Lanka. See 2010 Issue.

⁴³ Marshall T., (2000), *Handbook on Restorative Justice*, 10th UN Congress on the Prevention of Crime and the Treatment of Offenders, April, p.2.

⁴⁴ Zehr Howard., (1990), *Change Lenses: A New Focus for Criminal Justice*, Herald Press, Pennsylvania, p. 35.

⁴⁵ Marty Price J.D., Fall (2001), *Personalizing Crime: Mediation Produces Restorative Justice for Victim and Offenders*, *Dispute Resolution Magazine*, Published by the American Bar Association, p.1. (<http://www.vorp.com>)

⁴⁶ Braithwaite John (2002), *Restorative Justice and Responsive Regulation*, Oxford university Press, p. 249

⁴⁷ Daniel Van Ness and Strong Keren, *Restoring Justice*, op.cit . p. 106.

⁴⁸ Sharman Lawrence W., and Strang Heather, 2007, *Restorative Justice : The evidence*, Smith Institute, London, p.36.

who involved in the crime initially), and opening the opportunity for both parties to participate in finding a resolution/decision. Restorative justice could be found in victim offender mediation, restorative or family conferencing, healing/sentencing/peacemaking circles, victim/ex-offender assistance, restitution, police cautions and non custodial measures such as probation, conditional discharge, suspended sentencing, and community based corrections.

Among those methods, the justice system of Sri Lanka adopts only a few, i.e. victim offender mediation, restitution (compensation to the victim), probation, conditional discharge, suspended sentencing and community based correction. Although the programmes relating to ex-offender assistance (after care service) are not institutionalized or implemented in a proper manner, some religious and social service groups help the ex-prisoners to overcome the economical and social problems which they come across after being released from prison.

3.1 Victim offender mediation

In Sri Lanka the police are involved in the amicable settlement of minor (criminal and civil) disputes. Their efforts towards settlement of minor disputes have begun to arise from statutory duty stipulated on them to prevent crime and maintain law and order in the country. In the 1950s the process of settling minor criminal disputes was officially entrusted by way of administrative direction. In 1998, the Mediation Boards Act No. 72 of 1998 was passed by Parliament, having the objective of providing the people in the country an opportunity to follow a less cost effective mechanism to settle their minor disputes with the agreement of both parties. Therefore, the Act provides for the legal framework for institutionalizing Mediation Boards, which are empowered to resolve by the process of mediation, all disputes referred to it by disputing parties, as well as in by Courts certain instances. At present the Mediation Board has the criminal jurisdiction over affray, causing hurt, causing grievous hurt, wrongful restraint, wrongful confinement, force, criminal force, assault criminal misappropriation, criminal trespass, house trespass, insult and criminal intimidation. A large number of the disputes handled by the Boards relate to these criminal offences. Under this process the mediator encourages the parties towards negotiation by coordinating the large number of people involved in the matter, improving communication, helping them to generate options, and to assess alternatives to agreement bring such agreements to closure.

3.2 Compensation to the victim

Section 17 of the Code of Criminal Procedure Act No 15 of 1979 provides necessary legal provisions for the court in order to compensate the victims of a crime or their dependants. Through compensation order Courts may direct the offender to repair the loss or damages caused to the victim. Usually, compensation is recovered from the fine (as an ancillary order), which is imposed for an offence⁴⁹ as decided by the Court in the decision of *Rabo v James*.⁵⁰ But the Penal Code (Amendment) Ordinance, No 22 of 1995⁵¹ enables Courts to impose a compensation order as a

⁴⁹ Section 17(6) of the Code of Criminal Procedure Act, No 15 of 1979.

⁵⁰ 32 NLR 91, see the statement of His Lordship Maartensz A J in the judgment.

⁵¹ Section 364 of the Penal Code (Amendment) Ordinance, No 22 of 1995 says that whoever commits rape shall, except in the cases provided for in subsection (2) (3), be punished with rigorous imprisonment for a term not exceeding twenty years and with a fine, shall in addition be ordered to pay compensation of an amount determined by the court, to the person in respect of whom the offence was committed for the injuries caused to such person. For more see, sec. 364(2) (g) of Penal Code (Amendment) Ordinance, section 365 as amended by the Penal Code (Amendment) Ordinance, No 22 of 1995.



mandatory punishment⁵² with imprisonment for sexual offences⁵³ and offences dealing with cruelty to children.⁵⁴ However, except the offences stated above, under that particular amendment, the Sri Lankan legislature does not provide for legal provisions, which empowers the Court to order compensation as an integral part of punishment. Thus far, the Sri Lankan Courts have not tendered a compensation order on the State or otherwise Sri Lanka does not have any other alternative mechanism such as 'State Compensation Board' where the offender is unable to pay the compensation. This situation shows us that the offender is disregarded under the present law relating to compensation to the victim.

3.3 Community based corrections

Community based correction is a permissible mode of punishment in Sri Lanka. As an alternative to prison sentence, the Magistrate Court may order community task on an offender, for a number of hours stipulated by the Court within a certain period of time. If the offender fails to carry-out the work assigned on him, he will be dealt with by the Court by imposing any other appropriate punishment. The present law relating to Community Service Orders was first introduced in Sri Lanka by the Administration of Justice Law No. 44 of 1973. Section 18(1) of the Code of Criminal Procedure Act 15 of 1979 as amended by the Code of Criminal Procedure (Amendment) Act No 49 of 1985 has stipulated the relevant provisions relating to Community Service today. These provisions were repealed and enacted the Community Based Corrections Orders Act No 46 of 1999 which presently lays down legal provision for unpaid community service orders in Sri Lanka. According to the law prescribed by the said Act, unpaid community service order may be issued *inlieu* of fine which is less than three thousand rupees or *inlieu* of imprisonment which is less than two years,⁵⁵ taking into consideration various factors including the nature offence and the character of the offender.⁵⁶ Community based correction orders are a step away from a prison sentence, and are a more successful form of punishment for minor offences from the corrective aspect, and a cheaper alternative to short term imprisonment.

There are three ways (types) of serving under the unpaid community based corrections namely, community work corrections; special rehabilitation (programme) for drug offenders and work under trained supervisors. Since these programmes are not residential, offenders may participate in the activities while staying in the community.

Factors or criterion such as age, social history and background, medical and psychiatric history, educational background, employment history, previous convictions, financial circumstances special needs, family background and other income of the offender, courses, programmes, treatment or other assistance that could be made available to the offender and benefit that he may gain from the assigned work are considered under this programme. Lack of counseling, excluding women and children from the process could be marked as demerits of the Sri Lankan system.

⁵² H/C7710/96 (Colombo) Court of Appeal Case No.90/97,S.C.Leave to appeal No.30/2000 (*Inoka Gallage v Addaraarachchige Gulendra Kamal Alias Addaraarachchi*)

⁵³ Sections 364 (1) and (2), 365 A of the Penal Code (Amendment) Ordinance, No 22 of 1995.

⁵⁴ Sec.303 (A) (2)of the Penal Code (Amendment) Ordinance, No 22 of 1995.

⁵⁵ Section 5 (1) of Community Based Corrections Act No 46 of 1999.

⁵⁶ Section 5 (2) of Community Based Corrections Act No 46 of 1999. The facts that the court should consider are the nature and the gravity of the offence, age of the offender and the other relevant circumstances relating to the offence and the offender, the pre-sentence report and the facilities available for implementing such order.

3.4 Probation

Correctional programme and treatment of offenders in Sri Lanka started functioning in the form of Probation in 1956 through the promulgation of Probation of Offenders Ordinance No. 42 of 1956 for both adults and the children. In 1960 the probation system has been extended by appointing Probation Officers to all judicial districts in the country. However, today probation is ordered only against the juvenile delinquents.

3.5 Conditional discharge

Conditional discharge is one of the non-custodial measures implemented on the offenders in Sri Lanka. Section 306 (1) of the Code of Criminal Procedure Act, No. 15 of 1979 lays down the legal provisions for conditional discharge. The Court may order conditional discharge after taking into account various factors, including the good character of the offender,⁵⁷ the age of the offender,⁵⁸ and the nature of the offence (whether the offence is a trivial offence).⁵⁹ However, the Sri Lankan judiciary imposes a conditional discharge on adult offenders only for trivial offences.⁶⁰

3.6 Suspended sentencing

As a result of the important proposals of the Law Commission in 1970, suspended sentence of imprisonment was introduced into our penal law in 1973, and section 239 of the Administration of Justice Law laid down the provisions relating to suspended sentencing for the first time. Section 303(1) of the Code of Criminal Procedure Act, No. 15 of 1979 which provided for suspended sentences has been amended twice in 1995 and 1998. Section 303 of the Code of Criminal Procedure Act, No. 15 of 1979 as amended by the Code of Criminal Procedure (Amendment) Act, No. 47 of 1999, lays down the existing provision for suspended sentences of imprisonment in Sri Lanka. Before the amendment of the Code of Criminal Procedure Act, No. 20 of 1995 came into operation, suspended sentencing of imprisonment had been restricted to cases where the sentence of imprisonment was more than two years⁶¹ or where persons were convicted for grave crimes. Under section 2 of the Code of Criminal Procedure Act, No. 20 of 1995, although it was applicable to cases where imprisonment is for less than two years, yet, if the statute provided that a particular sentence of imprisonment is mandatory, the offender was not entitled to a suspended sentence. This provision was amended by section 2 of the Code of Criminal Procedure (Amendment) Act, No. 19 of 1999.⁶² At present, a suspended sentence is imposed under this Act for cases where the sentence

⁵⁷ *Peter* (1945) 47 NLR 23; *Fernando v Excise Inspector, Wennappuwa* (1949) 4 CLW 41.

⁵⁸ *Jayasena* (1950) 52 NLR 183.

⁵⁹ *Gunasekara v Solomon* (1923) 25 NLR 474; *Appuhamy v Wijesinghe* (1945) 46 NLR 189; *Krishnan v Sittampalam* (1952) 54 NLR 19; *Gomas v Leelaratne* (1964) 66 NLR 233; *Podiappuhamy v Food and Price Control Inspector, Kandy* 1968 71 NLR 93.

⁶⁰ *Gunasekara v Soloman* (1923) 25 NLR 474. In *Appuhamy v Wijesinghe* (1945) 46 NLR 189 the court did not justify a conditional discharge where the offence was accompanied by the use of violence. Further see *R. v Peter* (1945) 47 NLR 23.

⁶¹ Section 303 (1) of the Code of Criminal Procedure Act No. 15 of 1979 says that 'A Court which imposes a sentence of imprisonment on an offender for a term not exceeding two years for an offence may order that the sentence shall not take effect unless, during a period specified in order, being not less than five years from the date of the order (hereinafter referred to as the 'operational period') such offender commits another offence punishable with imprisonment (hereinafter referred to as 'subsequent offence').

⁶² According to section 2 of the Code of Criminal Procedure (Amendment) Act, No. 19 of 1999 'a mandatory sentence of imprisonment was changed to a mandatory minimum sentence of imprisonment'.



of imprisonment is for not more than two years,⁶³ where the law does not provide a mandatory minimum imprisonment,⁶⁴ where the offender committed the offence while he or she was not on a probation order, conditional release or discharge,⁶⁵ or where the offender is serving a term of imprisonment or is yet to serve the term of imprisonment which has not been suspended.⁶⁶

According to the statutory provisions, Courts may suspend the sentence of imprisonment wholly or partly.⁶⁷ Frequently, Sri Lankan Courts (both Magistrate's Courts and High Courts) prefer to suspend the whole term of imprisonment, especially where there is a plea of guilty. But there is considerable doubt whether the Sri Lankan courts in practice utilize the partly suspended sentence as a form of punishment where the accused has pleaded guilty. Even in severe crimes such as culpable homicide not amounting to murder, rape, etc, the Sri Lankan Courts suspend the sentence of imprisonment wholly. For example, in the following High Court orders⁶⁸ the Court suspended the whole term of imprisonment after it had taken into account the plea of guilt. At this point one may argue that in such cases the court should not impose a suspended sentence by considering the plea of guilt as the only sentencing factor. Moreover, according to sec. 303 (1) (b) of the Code of Criminal Procedure (Amendment) Act, No. 47 of 1999, the Court should consider the nature and gravity of the offence. In considering the cases of murder, rape and robbery they are crimes severe in nature, and for these crimes suspended sentence may not be the appropriate type of punishment. Therefore, especially when a person convicted for a heinous crime such as rape, robbery and culpable homicide not amounting to murder the Court should carefully exercise its discretion in the imposition of a suspended sentence on plea-bargaining. This may be a reason that the legislature introduced the mandatory minimum sentencing rule in 1995.

3.7 After-Care service

In considering the after-care service in Sri Lanka, it is hard to find any public agency which undertakes this as an organized group. But with the assistance of Sri Lanka Prison Department some individuals including Buddhist Monks, Catholic Priests and Nuns help the ex-prisoners those who need assistance according to their capacity. They provide counseling service, food and clothing, help them to find job opportunities etc. According to prison representatives, lack of a proper after-care service system is one of the reasons for the increase in the reconvicted/recidivist rate.⁶⁹ Therefore, Sri Lanka should introduce these after-care service programmes to assist ex-prisoners who really need society's help, to re-start their lives after they return to society. Therefore, Sri Lanka should pay attention to enacting necessary statutory provisions to institutionalize this service. However, what is most needed is the provision of increased opportunities for public participation in practical correctional work through community volunteering efforts. Industry, labour organizations,

⁶³ Section 303 (2) (d) of the Code of Criminal Procedure (Amendment) Act, No. 47 of 1999.

⁶⁴ Section 303(2) (a) of the Code of Criminal Procedure (Amendment) Act, No. 47 of 1999.

⁶⁵ Section 303(2) (c) of the Code of Criminal Procedure (Amendment) Act, No. 47 of 1999.

⁶⁶ Section 303 (2) (b) of the Code of Criminal Procedure (Amendment) Act, No. 47 of 1999.

⁶⁷ Section 303 (1) of the Code of Criminal Procedure (Amendment) Act, No. 47 of 1999.

⁶⁸ In some murder cases where an accused pleaded guilty to the offence of culpable homicide not amounting to murder, two years imprisonment was suspended for five years by High Court. - Kurunegala H.C. 85/95 (murder; Kurunegala H.C. 89/95 (murder); Negombo H.C. 675/87 (murder)

In some rape cases where an accused pleaded guilty, two years rigorous imprisonment was suspended for five years by High Court. - Kurunegala H.C. 99/95(rape) ; Kandy H.C. jury 1226/92(rape).

⁶⁹ See, the Annual Prison Statistic Reports published by the Department of Prison –Sri Lanka.

and other civil organizations such as religious centers may formally organize and actively play a significant role in such social defence programmes

4. CONCLUSION

The criminal justice system and criminal law in Sri Lanka have been transformed from retributive justice to restorative justice due to the decisions taken by the Parliament and the Court. However, the attitude of the public towards punishment is still influenced by traditional retributive thoughts where the offender should be treated harshly with severe punishments through punitive approach. The recidivism rate of country reflects upon this public thought and it further tells us the failure of the treatment (reform) of the offender and retributive concept. Since the phenomenon of treatment of the offender is a complex exercise, it is a strenuous procedure particularly in a developing country like Sri Lanka with limited resources and lacking the update and new technologies. Though Sri Lanka has introduced some restorative justice practices to the criminal justice system, those practices are not sufficient to meet the treatment of the offenders and crime problem. Therefore, the criminal justice system of Sri Lanka pays her attention to introducing new methods of restorative justice such as circles and conferencing. Further, existing mechanism such as probation, community based correction and mediation should be strengthened to meet treatment of the offender in a productive manner.



RESTORATIVE JUSTICE IN THE ASIA PACIFIC REGION: ACTING FAIRLY, BEING JUST

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This paper will examine the various ways in which researchers, activists, facilitators and their NFP organizations, Institutions and Services are able to engage with each other. It explores the regional expertise and experience as we all attempt to maintain local identity, cultural context, and traditional teachings. It follows that these notions can parallel and adequately support the underpinning process of RJ. The paper will then address the possible colonization of local agencies through a lack of safeguarding their own 'vernacular' stance, as 'International Best Practice Models' permeate and displace each unique identity. This has already happened with the British and American courts of Law, criminal codes and Policing practices.

A CRITICAL ANALYSIS OF EVOLUTION AND PRACTICES OF RESTORATIVE JUSTICE IN PEOPLE'S REPUBLIC OF CHINA

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The paper provides an overview of how the criminal justice system operates for juvenile offenders and discusses evolution of restorative justice in the mainland China. The article offers a window into the specific developments of a range of restorative practices within China and argues that the Chinese informal model of social control has its roots in both the Confucian philosophy and the traditional Chinese culture which has similarities with the model of restorative justice. This restorative model of delinquency control is combatable to the mass line ideology which welcomes involvement of indigenous community leaders in China. The article discusses a detailed analysis of the role of restorative justice at different stages within the Chinese criminal justice process, and offers cautionary notes about the rapid expansion of restorative justice.



ASIAN CRIMINOLOGICAL SOCIETY

PART *12*

SPECIAL POPULATION, CRIME, AND CRIME PREVENTION





DISSENTING VOICES ON JIHAD: A DIFFERENT VIEW FROM AL-QAEDA

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The Islamic concept of Jihad (the Holy War) has been a moot point in the academic circles of scholars and theologians in Islam. Some of its meanings are over-stretched by a few vested interests to their ulterior motives, and a thrust of ideas-export takes place in case some of its meanings are accepted, which otherwise cause ripples, fears and concerns in the opposite schools of thought. The internal scholastic discrepancies and contradictions often lead to skirmishes, fights, distortions and destructions in the real battle-field and practical life. However, contrary to the views of Al-Qaeda and Pan-Islamic movements, some scholars have strong reservations on the offensive fight aspect of Jihad and rather preach and propagate the soft and defensive aspect of the Holy War. These dissenting voices, though very few and feeble, have a strong academic support, credible reasons and rational justification for their completely different viewpoint on the subject. A critical review of this dissenting view is to be presented in this paper.

THE ELDER CRIME: LOGISTIC REGRESSION ANALYSIS ON THE FIRST OFFENSE AND RECIDIVISM

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Why do the elder commit crime? For a first offender's long life, they never become criminals until they are over fifty years old. What kind of reasons do they turn out to be criminals? For an old recidivist, what kinds of differences do the first offenders and recidivists have? In the beginning, because of figuring out the issue, we may discuss from those three parts of criminology's perspective including Age-graded Informal Social Control Theory of Criminal Behavior, Social Bonding Theory, Social Control Theory, and A General Theory of Crime. In addition, in order to distinguish the characteristics of two groups, by choosing the statistic tool of logistic regression, the study apparently discovers the differences between older offenders including the first offense and recidivism. More reasons and details are shed light on in the following sentences.



SPORTS CRIME IN CHINA

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With the further development of the neoteric society, sports career is becoming increasingly prosperous. However, sports crime is coming up in the modern society at the same time. This article, from the angle of criminology principle and research on sports crime, can help us to realize the regular pattern and genius of sports crime and find out the prevention measure.

INTRODUCTION

Criminology is the basic discipline in criminal science, its development provides potent support for the national's criminal policy, criminal legislation and evolution of the judicial practice.

With the development of sports globalization, marketization and industrialization, interests, especially the financial interests, occupies an important proportion in sports increasingly. Eager to acquire more interests, some illegal behaviors and criminal behaviors have appeared in the sports field one after another, these behaviors can be regarded as sports crime.

The appearance of sports crimes is very dangerous to the well-being and harmonious development of sports. Now, with the justice intervening sports fields mightily, research of sports crime had become an important component part in sports fields and even in the whole society. And the outcome of the study can provide strong theoretical and practice support for disputing settlement of sports conflict. Therefore, the research on sports crimes is of great significance for maintaining and defending the order and spirit of sports.

1. The definition of Sports Crime

There are three theories about sports crime, including: expanding the crime theory, equaling crime theory, and contain legal crime theory¹.

(a) Expanding Crime Theory.

Under this theory, sports crimes almost have no explicit intention and extension. All illegal behaviors and moral problems are integrated into the category of sports crime, making the particularity of crime with visible on the infinite expansion situation; In addition, for the classification of the sports crime types, it's easy to make all almost unfair sports behavior to be buckled on a sports crime hat. This is really an extreme view.

(b) Equaling Crime Theory.

As the criminal law is set and enforced by the state legislature, and a set of standard explanation for program has been formed, the basic category of the object defined by its crime cause analysis can make the sports crime extension of conception boundary more determined. But as the substantial meaning and significance of sports crime will be deeply discussed from the criminology sense of sports crime, In comparison with the sports crime from the field of criminal jurisprudence, a way to prevent and control

¹ Kang Jun-xin, Summary of sports crimes in China, Journal of Wuhan Institute of Physical Education, Apr. 2010, p.1.

crimes will be found through the criminal law. And different research focal points and research perspectives will lead to different points between criminology and punishment law at theoretical level.

(c) Contain Legal Crime Theory.

In the sports field, the criminal offence which the criminal law has conferred and the deviant behaviors which may cause serious social problems are integrated into the research field of sports crime, legal factors and social factors will be paid equal attention to. The criminology research vision is greatly broadened; theoretical basis for crime is also provided to define behaviors to be crimes. Therefore, this theory represents a new trend and developmental direction for the research of sports crime.

So, as for the definition of sports crime, the authors believe that the sports crime is the floorboard of all criminal behaviors and serious deviant behaviors related to sports.

2. The phenomenon of Sports Crime

At present, sports crimes are mainly represented as follows:

(a) Doping

As it is known to all, the doping is very harmful to either the athletes' health and image or the national's sports reputation. Since 1968, Olympic Games started to apply the Doping Control. Over forty years, the use of all kinds of dopings in sports has not been decreased, but surprisingly becomes even worse.

Marion Jones and Tim Montgomery, the world superstars in track and field, were both sent to prison due to dopings (their behaviors has something related with doping, but the real reasons were perjury² and drug trafficking³). Because of the doping, their past magnificence was also overshadowed, and honors even turned into the scandals.

In China, some athletes also abuse dopings in order to acquire the recognition, and there is no exception for some famous athletes (such as our country's middle-distance runner—Ying-jie Sun). These detected athletes were punished by related sports administrations. But, in Chinese criminal law, there is no regulation about doping, it is a great shortcoming.

Throughout the world, the behaviors of abused doping are illegalized in some countries such as Italy. According to Italian law, athletes who carry and use dopings will commit the crime. And the justice authority shall have the right to directly arrest and survey the athletes who abused doping⁴.

In addition, with the progress of science and technology, some athletes and coaches used doping by other measures, such as the use of gene doping or methods of pharmacology, physics, and chemistry to improve exercise capacities. These measures are more concealed and more dangerous to human body, so we have to pay more attention to this problem.

(b) Gambling

² <http://baike.baidu.com/view/1825924.htm>

³ <http://baike.soso.com/v10876987.htm>

⁴ Kang Jun-xin & Xia Jing, Outline of sports crime, Journal of Henan Public Security Academy, Feb. 2009, p.29.



At present, gambling is illegal in China. But according to statistics, only in the year of 2006, there are more than 600 billion funds using to and participating in illegal sports gambling. This case of illegal sports gambling (especially the football gambling) has scattered widely, the impact is very wretched and serious damage to the healthy development of the sports industry in China. At the same time, illegal sports gambling has also destroyed the good and stable social environment⁵.

In American sports circle, illegal gambling also has been a serious problem. In the end of 2007, Tim Donaghy, an NBA's experienced referee, was under investigation by FBI⁶. 29th June 2008, Tim had been convicted of gambling and match-fixing, and has been jailed for 15 months⁷. So far, in the four professional league (soccer, baseball, basketball and hockey) histories, Tim is the first referee for gambling and match-fixing who has investigated and convicted. In order to keep players away from the gambling, NBA invited Franco, who belonged to an influential gambling group, to help players' with ideological work. And NBA commissioner David Stern also refused to let any NBA team locate in Las Vegas.

At present, there is a folk spontaneous association, aiming to crack down gambling, named "anti-gambling alliance" in China. But now, football gambling (especially network football gambling) technique is more covert, and the harmfulness to society is more significant too, only depending on a folk organization's power is not enough to give a destructive blow to the sports gambling. Therefore, the government should also be established a relevant administration, according to the criminal law for severely punish football gambling, efforts to create a good social environment of sports.

(c) Violence

1996, Michael Tyson against Holyfield in the "World Boxing Championship". The famous "century bite", Tyson bit at Holyfield's ear, that surely nobody has forgotten. But Tyson was lucky; he had bit a small flesh of Holyfield's ear but not the whole one. If so, Tyson would have been punished by American criminal law for the serious hurt.

On 1st September, 2003, during the football match between China and Haiti. Haiti players deliberately injured Chinese players through the foul way. The Chinese player Jin-yu Lee's cruciate ligament has been seriously injured. Confronted with such a cruel behavior, we cannot find any related article to penalize, even in Chinese criminal law.

About the sports injury, we can't rule it out of the criminal behaviors because it seems like being under the veil of "proper business behavior". What we have to do is to uncover the layer veil, distinguish between legal damage behavior (also namely the proper business behavior) and illegal damage behavior. For the legal damage behavior, we should proceed from the legitimacy of business and the legitimacy of the behavior to control its range strictly. For serious illegal damage behavior, it should be taken as a criminal behavior and given severe blow.

(d) "Soccer fraud" and "black whistle"

⁵ Xia Jing, Zhao Yun, Online ballgame gambling crimes, Journal of Wuhan Institute of Physical Education, Apr. 2010, p.13.

⁶ Lester Munson · Donaghy's guilty pleas don't answer all the questions · http://sports.espn.go.com/nba/columns/story?columnist=munson_lester&id=2976241

⁷ <http://www.cctv.com/program/qqzxb/20080730/103812.shtml>

In China, at the end of 2009, football circle has blew up an antigambling blitz, this event throw "soccer fraud" and "black whistle" into the teeth of storm. A lot of players, coaches and even government officials were investigated by judicial department; even some officials were punished fit the crime. In fact, as early as in 2003, Jian-ping Gong, football referee, has been put to prison because of bribery.

Generally speaking, as for the problems of "soccer fraud" and "black whistle", various countries' sports administrations tend to bypass the judicial department, and through the industry's discipline or administrative intervention to sanctions. For example, Brazil, Italy and other football power nation operated like this way.

However, as for "soccer fraud" and "black whistle", most of the countries are ashamed of bribery. These illegal behavior in sports fields, not only affects the competition result, destroy the fair competition sports spirit, but also seriously damage the public interests. So, these kinds of behaviors inveigle beyond the scope of the self-discipline, and judicial department has got involved.

In addition, for the problem of "bribery" in sports field, most countries think this type of behavior has brought seriously harm to the society. This behavior, if it is not regulated by national's criminal law, will give a negative cue to the whole society. In other words, someone would think that ignoring the fair and justice could escape the legal sanctions in some of the special fields of society. As for this matter, some countries such as the United States have made the related rules in its criminal law to regulated sports activities, such as "bribery".

3. The Reasons of Sports Crime

Sports circle is the microcosm of the society, and various legal problems, in the big society, will reflect back through different ways into the sports circle and influence this especially small society.

Sports has strong competitive inherently, and the instability which has been derived by itself. In addition, each group (the state, the nation, different races, organizations, and individuals), which takes part in the sports, pursuits for the interest, so they will inevitably produce various conflicts from interest distribution. Thus, the existence of the sports crime is an inevitable social phenomenon.

At present, China is in the period of social transition, all kinds of new ideas have been formed during this period. At the same time, some unhealthy or illegal things also grow out. If we want to solve the problem of sports crime, we must find the real causes of the especially crime.

(a)Objective Reasons

i . Over commercialize

With the further development of commercial operation in sports circle, the power and wealth have been concentrating in few people's hands. In a sense, sports must obey the need of commercial benefits to a certain degree. In other words, under the commercial's control, you must win by all means, and must lose even when it seems unreasonable. In this situation, sports descend to a game which can cheat the public and be manipulated by the minority. Some coaches and players found it difficult to resist the temptation from the sports' benefits, so they used illegal ways to achieve this purpose.



Besides, both at home and abroad, the development of commercialize and professionalism of sports, leads to a gap between the super stars and common person among coaches and players. Bao-shan Wang, the reference of Shenzhen football club, claimed that some players involved in football gambling stemmed from helpless⁸. These players must earn enough money during their limited career life, or they cannot guarantee themselves' life after retirement. And the super stars can get a large sum of money in commercial activities. So some coaches and players used criminal measures willingly to obtain the money and reputation.

ii . Over politicize

In order to let one's own sports team get good grades in the match, and to consolidate achievement or gain the capital of promotion, some officers of sports administration or government hinted at their teams used the unfairly measures in the field, orb connived them to use doping or bribe referees or someone (maybe coaches or players) in opposite side obviously or sneakingly. For example, Fu-ming Sun, accepted her coach's order to show a false wrestling perform in order to lose the match deliberately⁹. Without doubt, this behavior not only injured sports' fairness doctrine , but also hoodwinked audiences. In contrast, those officials whose aim was consolidate their political achievement, mentioned in the text, gained illegal benefits. Tremendous harm is what over politicizing has brought to sports.

iii . Management system and legal system didn't sane

First of all, regard to the sports management system. In China, sports management system have caught out a certain extent reform, but the problem of management conflicts still don't have been effectively resolved. For example, General Administration of Sports of China guides all the subordinate sport departments, and each lower level sport departments not only need to accept the management from General Administration of Sports of China, but also need to response to People's government at the proper level. When the interests conflict between nation and local governments, how to effectively exercise sports authority will become a problem. The problem is not only cause the area sports conflict, but also cause the sports crime.

Secondly, as for the legal system, in China, sports crimes haven't been strictly attacked because of the lack of current legislation and judicial. Take the example of Anti-doping, both Criminal and sports law couldn't provide related articles. Inversely, sports organizations punishments instead of law. This is the blank of law or defects of system?

In order to prevent similar events, it is surely to improve the sports legal system. Besides, how to implement the efficient punishments is a severe challenge.

(b)Subjective Reasons

i . Twisted outlook on life and values

⁸ Southern Metropolis Daily, Bao-shan Wang: lowliness and gambling, http://gb.cri.cn/2945/2006/03/28/1785@966539_1.htm

⁹ http://www.hq.xinhuanet.com/tbgz/2005-10/14/content_5345803.htm

Due to the influence of currently sports system and over politicize, competitive sports be favored by government, and it increasing density of the center, formed an independent system, and formed an independent social system. In the situation of lost the support from the school sports and social sports, competitive sports' external environment was seriously destroyed.

Some athletes and coaches' outlook on life and core value were seriously twisted; they throw their sports ethics away, aiming at only the triumph and considered that only the golden medals or silver medals could show their values. Therefore, in order to achieve the objective, they used the unfair means even to commit crime in the match.

ii . Ignorance of law consciousness

In China, because athletes' professional age started too early; some of them couldn't receive education adequately, and whole sports circle generally ignored this education too. In addition, sports administration and education department neglected their duties in the work of popularize law. As a result, some athletes and coaches have no notion of their basic rights and obligations at all; they frequently get out of line or break the law in the match.

For example, technical fouls often appear in the match, and are made on purpose to make the opponent's personal injury, It has not only contravene the rule of competition, but also violate the law. So, we know those were rooted by the athletes and coaches' ignorance of law consciousness.

iii . Rising individualism and the money worship

The vague of normal sense and the lack of sports ethics made some athletes and coaches departure from the value of competitive sports, and infatuated dispirited lifestyle. The events of strike, killing time in a bar, assaulting or attacking the referee occasionally happened, these behaviors seriously damaged the athletes and coaches' images and sportsmanship.

For example, in the 15th Asian games, because of personal grievance, Meng-meng Zhou, the Chinese snooker player, ignored the national interest and fight with her teammate, even given up the match arbitrarily, the thinking of individualism was showed thoroughly. So, individualism and money worship in competitive sports field were common phenomenon, which looks like a hotbed for sports crime.

iv . Weakening of fair competition consciousness

The core element of moral standard of Competitive sports is fair competition principle. As we knew, the traditional sports moral education has made indispensable contribution for progress of our country sports course. But, in fact this educational mode, such as athletes' duties are win glory for the country or collective, existed biased.

As the development of the change of our country economic system, people's moral value and core value have exchanged fundamentally. These phenomena have led to many blanks and anomies were left because of the alternation of new or old moral value.

The function of social moral shrinking, ideological education work has been weakened, even from one extreme to another, which made some athletes and coaches failed to know the essence of sports and sportsmanship sufficiently, they threw the indomitable fighting spirit and "fairness, justice and



openness” principle away and aiming only at victory. For example, the fake qualification and match were the most obvious representation of the weakening of the fair competition consciousness.

4. The Prevention and Control Measures of Sports Crime

(a) Legislation——To improve the sports law and corresponding law and rules

In accordance with the principle of “lex specialis derogate legi general”, the related articles of chapter seven of sports law laid a foundation for the punishments of illegal sports behaviors. In consideration of lighter sentences in current laws and rules as well as excessive principle and lacking maneuverability, it is necessary to amend the related articles of chapter seven of sports law, improve its enforcement, define the body of sports crime, prescribe specialized persons’ duties in the progress of criminal justice and solve the problems of procedural justice and forensics. Only in this way, the color, Chinese Sports Law is a soft law, could be receded, and Chinese Sports Law could function. In addition, it is very necessary to learn from overseas legislation experience.

(b) Justices——To establish the mechanism of judicial intervention

Industry autonomy is aimed at sports disputes, and judicial intervention is directed at sports crime. Therefore, judicial authority should strengthen judicial supervision, get involved ahead of time in sports circle to prevent and attack sports crime.

However, the judicial intervention is not to put all the disputes in the field of sports field to the courts, but to set up law consciousness, to simplify affair procedures, to perfect the procedure of administrative execution of sports according to the sports laws, to join administration of physical education, sports arbitration and judicial system, and to guarantee the justice and order of sports.

If we are to perfect judicial intervention mechanism, we must apply the spirit of law to sports activities. Not considering these behaviors’ particularity, the criminal behaviors will be all handed over to the judicial authority, and solved through criminal judicial procedures. In this respect, the processing and method of phonegate scandal in Italy are worth our reference and study.

(c) Sports Management System

i . Prevent sports excessive politicization

In the post-Olympics era, the political achievement assessment index of sports administrative departments and officials in our country needs to be reformed. Only in this way, our can completely eradicate the problem of sports excessive politicization to improve the healthy and sustainable development of sports.

ii . Reform competition system

Perfect competition system can fully promote the resource allocation and can meet the needs of the country, the collective and the individual. So, to distinguish between the professional match and normal match could not only promote the development of sports industry in our country, but also lighten the state financial burden. At same time, a more fairness competitive environment can be created.

iii . Reform of the reward system of sports

The temptation of material benefits and reputation easily trigger sports crime. So we should reduce financial incentives, carry out the principle of “spiritual rewards first, material rewards second” in all dimensions, and appropriately increase the allowances of training and industrial grade of sports and the amount of the aftercare of ex-service athletes , so as to effectively solve the social security problems after they are out of service.

iv . Establishment of the control files on sports crime

In China, we can learn from England’s management and supervision method for “football hooligans”, and establish our own control files to supervise and precaution illegal behaviors of athletes, coaches, referees and fans.

v . To strengthen the attention and research of sports crime

Experts in the sports circle and criminal law circle should pay more attention to sports crime, focus on social harm and criminal illegality of sports crime, and make a thorough research with the assist of sports ethics.

(d) Ideology and Ethics

This section consists of two parts:

Firstly, improve the disciplines of professional ethics. We should continue to strengthen the education for athletes and coaches, make the spirit of fair competition pretty well understood. And establish a sports ethics committee to play the supervision function and make a good internal competition environment for national sports.

Secondly, improve the enforcement of law dissemination. In accordance with premise of legal support, we should combine the social forces, such as law schools or law offices, teach athletes and coaches laws and rules on sports, and educate them with real cases.



LOOKING INSIDE THE IVORY TOWER: “ACADEMIC CRIMES” AMONG ACADEMICS IN MALAYSIA

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The study of criminal behaviour has always been the portfolio of academics. However, academics have not studied as much on crimes in their community. Academics are also human beings trying to build a good life for themselves. As such, they are also prone to temptations, for example, they may use illegal ways to help them secure their promotions. This paper intends to scrutinize the ivory tower in Malaysia and investigate the extent such deviant behaviour is being practised among the academics. Individual and group discussions were used in this study. The paper will conclude that deviant behaviour is rather rampant in Malaysia and has become part of the academic culture. These academics are the ‘white collar criminals’ in the ivory tower.

INTRODUCTION

The study of criminal behaviour has always been the portfolio of academics. However, academics, particularly criminologists, have not paid much attention on “academic crimes” in their community. “Academic crimes” in this paper refers to unethical behaviours that could compromise the quality and reputation of the academia, and where meritocracy is not practised accordingly. The authors chose to call them “academic crimes” although, in most cases, they are generally referred to as misdeeds or deviations (Resnik, 2010), because these behaviours will have direct impact on the education system of the country where tertiary students will obtain substandard education. Indirectly, the social and economic well-being of the country will also be affected in the long run.

In the literature search on journal articles and the internet on academic wrongdoings, it was found that little has been done to highlight “academic crimes” in the academia. Similar concerns have also been brought up by Price, Dake and Islam (2001) who examined ethical issues and health education. Most articles from the West discussed mainly on plagiarism, cheating and copying during exams among tertiary students (for examples, Ogilvie and Stewart, 2010; Spain and Robles, 2011; Okoro, 2011; Dufresne, 2004; Chapman et al., 2004; Payan, Reardon and McCorkle, 2010). The few articles on academic wrongdoings by academics discussed mainly on violation of research ethics, plagiarism (for examples, Price, Dake and Islam, 2001; Montgomery and Oliver, 2009), non-committal in their teachings, meddling with students’ results, unfair treatment of students (for example, Jaeger and Thornton, 2007), sexually harrassing their students and having sexual relationships with them (for example, Gordon and Sork, 2001). In Malaysia, these issues are only a few of the many wrongdoings among its academic members.

Malaysia currently has 20 public universities, 23 private universities and 21 college universities (Department of Higher Education, 2011; Ministry of Higher Education, 2011). The top four public universities, i.e. University of Malaya, Universiti Sains Malaysia, Universiti Kebangsaan Malaysia and Universiti Putra Malaysia, have been given the status of research universities. University of Malaya, the oldest university in Malaysia, was one of the top universities in Asia in the 1960s and 1970s. At present, this is no longer so. The QS world university rankings of these four top universities out of 700 universities for the past five years are as follows (Table 1):

Table 1: The QS world university rankings for the top four Malaysian universities from 2007 to 2011

Universities	2011	2010	2009	2008	2007
University of Malaya	167	207	180	230	246
Universiti Sains Malaysia	335	309	314	313	307
Universiti Kebangsaan Malaysia	279	263	291	250	309
Universiti Putra Malaysia	358	319	345	320	364

In the 2011 QS Asian University Rankings, out of 200 universities, University of Malaya was ranked 39, Universiti Sains Malaysia was ranked 54, Universiti Kebangsaan Malaysia was ranked 53, and Universiti Putra Malaysia was ranked 57. In the 2011-2012 Times Higher Education World University Rankings, none of the Malaysian universities made it to the top 400 list.

In comparison, the National University of Singapore, which is the oldest university from the neighbouring state of Singapore that was established around the same time as University of Malaya, was ranked 28 in the 2011 QS World University Rankings, 31 in 2010, 30 in 2009, 30 in 2008 and 33 in 2007. In the 2011 QS Asian University Rankings, National University of Singapore was ranked third. In the 2011-2012 Times Higher Education World University Rankings, National University of Singapore was ranked number 40 in the list. The contrast between the public universities in Malaysia and those of Singapore is rather obvious.

It cannot be denied that the quality of tertiary education in Malaysia has been declining over the years. The matter has been acknowledged and debated in the Parliament, by professional bodies, among the academics and the Malaysian society. For example, on 11 March 2006, Azmi Sharom, a law lecturer wrote an open letter in the daily newspapers, *The Star*, to the then newly appointed Minister of Higher Education, Mustapha Mohamed, stating that “much that is wrong with our universities and much that can be done by the Ministry to put things right”. One of the main problems that Azmi lamented was the decline in the quality of local universities. His observation was supported by a member of Parliament, Lim Kit Siang. In his speech in Parliament (Royal Address Motion) in March 2006, he highlighted the fact that there were 67,000 unemployed graduates in the country at that time; many of whom had graduated between 2000 and March 2004 (Lim, 2006). About 93% of these unemployed graduates were from public universities, as opposed to only 5.3% from private institutions. One of the main reasons for this problem was attributed to the declining quality of teaching in public universities. The decline in the quality of teaching in public universities, in turn, had been linked to the poor quality and volume of research by lecturers in these institutions. Lim also referred to Azmi Sharom’s article and highlighted other reasons that had led to the decline in quality of Malaysian public universities.

On 6 February 2011, Roger Tan, the head of the Bar Council’s evaluation team appointed by the Qualifying Board to assess the Bachelor of Law degree of Universiti Utara Malaysia and Multimedia University to determine if their graduates should be exempted from the Certificate in Legal Practice examination, wrote to the *Sunday Star* (Malaysian newspapers) that the quality and standard of lawyers had declined significantly since the 1980s (Tan 2011, February 6). He went on to say that there was a common feeling among senior legal practitioners that there was an “abject absence of rudimentary legal skills” among the new entrants. He also quoted a senior judge who in 2008 lamented on the poor quality of locally trained lawyers, describing their standard as ranging



from the “good to the grotesque”. Some senior lawyers had also opined that the learned judge’s assessment applied equally to the quality of judges since the 1980s.

Due to the outcry of the declining quality of local universities by the different sectors of the society, the Malaysian government, particularly the Ministry of Higher Education, has introduced the National Higher Education Action Plan 2007-2010 in August 2007 in its attempt to raise the quality and marketability of graduands. The Ministry of Higher Education has outlined its focus on seven strategic thrusts which are (p.9):

1. widening access and enhancing equity;
2. improving the quality of teaching and learning;
3. enhancing research and innovation;
4. strengthening institutions of higher education;
5. intensifying internationalisation;
6. enculturation of lifelong learning;
7. reinforcing the higher education ministry’s delivery system.

Where the academia is concerned, one approach taken to achieve the objectives of the National Higher Education Action Plan of attaining world-class status for the local universities is the establishment of one or two Apex Universities. An Apex University is a “conceptual construct that in due time will stand atop the pyramid of institutions” (p.34). The Apex Universities will be the nation’s centres of academic distinction. Another target of the government is to raise the number of PhD (Doctor of Philosophy) holders or of equivalent qualifications in the local universities from 25% (of about 20,000 lecturers) in 2006 to 60% by 2010 (p.24). The figure has since been revised to 18,000 PhD holders by 2015 and 60,000 by 2023 (Economic Planning Unit, 2010; 228). These efforts are mainly covered in the R&D Pillar and MyBrain15 program. In the MyBrain15 program, policies and strategies have been put in place to produce, at the doctoral level, quality human capital in the areas of science and technology (Ministry of Higher Education, 2007; 37). A pool of up to 100,000 high quality graduates with doctoral degrees will be created within the next 15 years to assist in the levelling-up process pursued by the National Higher Education Action Plan. The desired outcomes are:

1. 60 per cent doctorates in science, technology and medicine;
2. 20 per cent doctorates in the humanities and applied literature;
3. 20 per cent doctorates in other professional fields.

Besides these, other initiatives that have been identified include instilling a greater professional culture among academic staff at public higher education institutes, due recognition, value and reward in the form of career advancement opportunities given to the best performers, and academics have to publish regularly in recognised/agreed upon international high-impact and refereed journals (p.25) .

In order to achieve the objectives of the National Higher Education Action Plan, the public universities have been given the task by the Ministry of Higher Education to come up with their own Key Performance Indicators (KPI) to ensure the quality of their education and their academic staff. In the past few years, major restructuring exercise has taken place in many public universities to try to meet these objectives. Unfortunately, the quality and ranking of these universities continued to decline. What went wrong?

METHODOLOGY

Informal individual and group discussions took place with nine senior peers at the authors' university as well as with 11 professors invited to the workshops for evaluating proposals for the 2011 FRGS (Fundamental Research Grant Scheme) and ERGS (Exploratory Research Grant Scheme) grants organised by the Department of Higher Education, Ministry of Higher Education. At the 2011 FRGS and ERGS workshops, over 100 Professors from different fields and from different public universities all over the country were invited to help evaluate proposals sent in by academics vying for the two grants. Those involved in the individual and group discussions were from the Social Science as well as from the Science field.

LIMITATION OF THE STUDY

A study by academics on "academic crimes" among the academics themselves has not been an easy task. Firstly, academics who have been committing these wrongdoings would not own up. Secondly, some academics, particularly those who were sitting on the fence, did not want to get involved in the discussions with the authors who questioned the integrity of fellow academics as they were considered as trouble-makers to be avoided. Thirdly, some academics wanted to voice out their grievances, but only on a private basis and not in a group setting. Those who participated in the group discussions were usually those who were vocal and like-minded. Fourthly, the conclusion of this paper is based solely on the feedback from academics who were willing to speak openly to the authors, whether on a private basis or in a group setting.

FINDINGS

1. "Academic crimes" among Malaysian academics

From the discussions with the nine senior peers at the authors' university and the 11 professors at the FRGS and ERGS grants workshops, it was unanimously agreed that academic wrongdoings among Malaysian academics are rampant and six of the respondents also suggested that it has become a culture among majority of the academics, i.e. it has become normal practice. The following are labels for academics who have committed "academic crimes" or wrongdoings that were brought up in the discussions. All the terms are coined by the authors except where specified:

1. Plagiarist – Plagiarism has been defined by R.M. Pigg (1994) as "inappropriate and unauthorized use of the 'intellectual property' of others. Plagiarism is to intellectual property what burglary is to physical property." (Price, Dake and Islam, 2001; 52). Rosamond (2002; 169) defines it as using the work of others as if it were one's own. There have been blatant cases where the academics plagiarised foreign authors' work in their local reports and articles believing that they would not be caught by their fellow academics. Many academics in Malaysia will also publish their papers locally in the Malay language. When they translate an English



article into the Malay language and used it in their work without acknowledging the original writer, it is difficult to pinpoint that they have committed plagiarism.

2. **Academic Freeloader** – One person does the research or writes the article, but has to put another person's name in the research report or article. This refers to both senior and junior academics who will ask for a free ride from their colleagues. In Malaysia, the present trend is working in a group where each group member will write a paper and put all the other members' names in the paper so that eventually all of them will have a few papers to their names although each of them has written only one paper.
3. **Academic Parasite** – This term refers to those seniors who asked for a free ride from their juniors, i.e. to include their names in the juniors' research reports or articles. The juniors will comply as they are afraid of the seniors who could make their working life miserable in the faculties, particularly when they are in the position to influence their promotion outcomes.
4. **Academic Mule** – This term refers mainly to junior academics who carry out the orders of their seniors and helping the seniors to inflate their curriculum vitae. For example, a senior did a substandard piece of research, but asked a junior to present the research in a conference. During question time, the junior had to defend his presentation although the research was never his effort. In this case, the junior can also be called an Academic Freeloader besides being an Academic Mule.
5. **Academic Thief** – This term refers to academics who take students' projects as their own and publishing students' project papers as their own without acknowledging the students.
6. **Academic Predator** – These are seniors who will volunteer to help the juniors in publishing their research. The juniors will willingly let the seniors help them thinking that the seniors are so helpful. The seniors may help the juniors do some editing work, but later insist that their names be included in the articles.
7. **Academic Subcontractor** – This term refers to academics who give their research proposals to potential graduate students so that they could apply for their postgraduate studies. This is so that the graduate students will carry out the research projects for the academics. Junior academics have also learned this trade and subcontracted their research to the postgraduate students. This phenomenon has led to some academics supervising 10 or more postgraduate students so that all their research projects are being subcontracted to their students. On average, most credible universities will allow up to only five postgraduate students for each academic staff member.
8. **Academic Multilevel Marketing** – This term refers to cases where the seniors asked the juniors to do the research on their behalf and the juniors, in turn, get their postgraduate students to do the job for them.
9. **Academic Impersonator** – This term refers to academics who are trained in one field, but lecturing in another field. They have no experience in that area, but pretending that they have. For example, there are vast differences between teaching defence management and business management.
10. **Academic Magician** – This term refers to academics, both seniors and juniors, who vanish from work, i.e. they do not turn up to work and do not go to classes, but give their students an A-grade to keep them from complaining about them. These are also the ones who will get their colleagues to clock in for them to register their attendance at work.
11. **Profesor Kangkung** (Water Spinach Professor) – This is a Malay term introduced by the late Syed Hussein Alattas, a sociologist, who was referring to "half-baked" professors who obtained their promotion through apple-polishing, but in actual fact were not qualified for the position. He coined this term when he was a professor at University of Malaya to refer to a group of unqualified academics who obtained their promotion to professorship. They were called *Profesor Kangkung* because *kangkung* is a type of plant or vegetable that has a sturdy stem, but

is hollow inside. The implication is that these professors look good outside, but in actual fact have no substance.

12. *Kaki Bodek* (apple polish) – *Kaki bodek* is a Malay term that refers to those who apple polish to get their promotions and whatever they want from the higher authorities.
13. Academic Tourist – This term refers to academics who are given scholarships to do their PhDs, either overseas or locally, but have no intention to try to obtain them. It has been pointed out and is a well-known fact among academics that in Malaysia, about 60% of academic staff members who were sent to do their PhD overseas failed to come back with one. Each of them who were sent overseas would cost the government more than half a million Malaysian ringgit. There were cases where some of these academics took up the scholarships as paid holidays and to earn extra income overseas by either working there or regularly shipping back goods to sell in Malaysia. There were also cases where these academics fraudulently obtained their PhDs by paying others to do them on their behalf.

With all these “academic crimes” rampantly happening in Malaysian universities, it is not difficult to figure out why the rankings of Malaysian universities keep on dropping. In the discussions with the 20 respondents, six respondents mentioned that these “academic crimes” or wrongdoings have become a norm and are being practised by majority of the academics in Malaysia. Those who are academically upright are few and usually not well accepted by their colleagues. The conclusion among the respondents is that the minority is going against a very strong tide to turn Malaysian public universities around as these wrongdoings have become part of the academic culture in these universities.

DISCUSSION AND CONCLUSION

In the discussions carried out by the authors as well as comments by academics published in the daily newspapers on the issue of declining quality of the academia in Malaysia, a few factors have been identified.

Firstly, the KPI dilemma as discussed in The Sunday Star on 26 September 2010 (Hariati, Lim and Loh 2010, September 26). It was pointed out that the pressure to publish research papers to facilitate the race to be counted in international ranking tables and also for promotion purposes was creating an unhealthy intellectual culture. As mentioned by P. Raveendran that academics are finding unethical ways to “beat the system” in order for them to fulfill their KPI requirement. Raveendran’s observation supports those of the authors that hitching on other academics’ papers without any contribution is very rampant. Another academic, Ibrahim Komoo, who supports this observation, added that besides plagiarising work, there are also those who demand money for their papers or paying to get them published. Kurunathan Ratnavelu disagreed that the problems are due the KPI or rankings. He pinpointed the problem to the quality of our academia which is “not there yet”. This is the problem that leads to “cutting corner” attempts like multiple authorship or publishing in low ranked journals. The authors observed that this KPI or more specifically publish or perish phenomenon is not unique to Malaysia. It was also reported by Price, Dake and Islam (2001;52) that “the publish or perish issue, in which job advancement through tenure, promotion, and increased salary is often based on the quantity rather than the quality of publications, is part of that pressure. Sometimes egocentrism, through a need to enhance reputation, can result in researchers’ taking shortcuts in an attempt to increase the number of professional publications on their curriculum vitae”. Resnik (2010) has also listed in his paper some “deviations” from acceptable research practices in the United States which are similar to those in Malaysia. They



include: “Including a colleague as an author on a paper in return for a favor even though the colleague did not make a serious contribution to the paper; giving the same research project to two graduate students in order to see who can do it the fastest; and overworking, neglecting, or exploiting graduate or post-doctoral students”. However, unlike Malaysia, Resnik concluded that misconduct in the United States is a very rare occurrence in research, which has been estimated to be as low as 0.01% of researchers per year (based on confirmed cases of misconduct in federally funded research) to as high as 1% of researchers per year (based on self-reports of misconduct on anonymous surveys).

Besides the “publish or perish” issue, another KPI that academics have to meet is producing 60,000 PhD holders by 2023. Academics have turned this task to their advantage by “killing two birds with one stone”. They now make use of their PhD students as well as their Masters students by subcontracting their research projects to them. These students will carry out these research projects for their PhDs and Masters. When they have graduated, they will then be pushed to publish articles from their theses, putting their supervisors as their co-authors. This will help the academics to achieve their KPI. The trend in Malaysia at present among many academics is to have as many PhD and Masters students as possible. Some even have more than 10 students at one time compared to credible international universities where each academics have not more than five students at a time. This raises doubts as to the quality of the research and reports of these students. This situation is also observed by Mohamad Tajuddin Mohamad Rasdi (2011, October 10) who said that, “Every academic would treat their postgraduate students as a paper churning individual to add to their multiple authored journal papers. The supervisors of PhD and Masters no longer care about nurturing a budding scholar, but treat them as slaves to organise seminars, write papers, chase data and treat them like lab technicians”. As for the junior academics, Mohamad Tajuddin said that “Five of them would sign a pact that if any one of them or any one of their postgraduate students publishes a journal paper, all must make sure that their names would appear on all the papers. In this way, the young scholars would fill up their CV's with many papers, 75% of which has nothing much to do with their areas of expertise”. It cannot be denied that multiple authorship is more common today than it was two decades ago (Price, Dake and Islam, 2001 52). However, in established universities in other countries, they have research and publication ethics, rules and guidelines in place, such as the Harvard Medical School guidelines for authorship, which Malaysian universities or the Ministry of Higher Education have not established. It should also be pointed out that besides not having research and publication ethics, rules and guidelines in place, faculties in Malaysia also do not have a faculty code of conduct like most universities in the United States. As such, it is difficult to take disciplinary action against academics who have committed academic wrongdoings.

Secondly, political interference is another factor that has led to the decline in Malaysian public universities. On 11 March 2006, Azmi Sharom wrote an open letter to the then Minister of Higher Education, Mustapa Mohamed, in *The Star* newspapers pleading the Minister to bring changes to public universities so that they could be on par with other world class universities. One of the important changes he suggested was to stop political interference in the administration of the universities. Azmi pleaded to have an open selection process for Vice-Chancellors of universities based on merits and not patronage. Lim (2006) also mentioned that the government, particularly the ruling party United Malay National Organisation (UMNO), interfered too much in the running of the universities. When the appointments of Vice-Chancellor and Deputy Vice-Chancellor are being carried out by the Minister of Higher Education, abuses have taken place where the Minister has appointed people who are not chosen by the universities' selection committees. Even though the

selection committees comprised of members of the Board of Directors of the universities (the highest administrative level of the universities), the Minister can overrule their decisions. A number of the Minister's choices of Vice-Chancellor and Deputy Vice-Chancellor have not been known to be capable or credible, both academically and administratively, to run the universities. These Vice-Chancellors and Deputy Vice-Chancellors, in return, will appoint their people without evaluation to key positions in the universities, such as Deans, Department Heads, Directors of Centres as well as professors, to help them maintain their power and position. When the leaders of the universities are not credible, with integrity and good role models, it cannot be expected that the people that they lead will be able to upkeep the quality and integrity of the universities, particularly when they know that the rule of the game is to apple-polish to get their promotions and not based on the principle of meritocracy. Moreover, when the quality of the university has been lowered, academics have the right to demand to be evaluated on the same low quality as those people brought in by the Vice-Chancellor and Deputy Vice-Chancellor. There are also known cases where the Vice-Chancellors and Deputy Vice-Chancellors appointed themselves as professors to increase their salary and prestige. All these mediocre senior academics will not be able to be good role models to the junior academics. This contention is supported by Syed Farid Alattas who said that the real problems confronting local institutions lie in poor administration run by inefficient staff (Loone 2011, July 19). Syed Farid went on to suggest that "a total overhaul" is needed for local institutions or else they would never be ready no matter how long it takes. Syed Husin Ali (2008, February 4) contended that the decline of the local universities has worsened after the establishment of the Ministry of Higher Education. He went on to say that the ministry, especially the Minister, has increasingly interfered with not only the administration of the university, but also insisted on having the final say over the introduction of academic courses and even in the drawing up of their curricula. Mohamad Tajuddin (2011) observed that many academics and scholars are beholden to the powers that be including the National Council of Professors. As Mohamad Tajuddin said, "the National Council of Professors seems to be a timid and curry favouring entity that brings utter shame to the idealism of a moralistic academia. The professors are supposed to be the conscience of knowledge for the betterment of the people en masse, but they, too, seek favours, titles, projects and grants". The recent fiasco committed by the National Council of Professors is when a group of them came out to criticize a member of the opposition party who spoke on freedom fighters of Malaysia during the colonial days. This group of professors, which included a Vice-Chancellor and a Deputy Vice-Chancellor, declared at a press conference on 10 September 2011 that Malaysia was never colonized (The Borneo Post 2011, September 10). Their comments generated a lot of heated debates and have greatly tarnished the image of the professors in the country, particularly when the Deputy Prime Minister came out and disputed their contention and reiterated that Malaysia was once colonized by the British (New Straits Times 2011, October 6).

To be fair to the academics, interference of the government on students intake should also be blamed for the decline in the quality of public universities besides the questionable integrity of academics. The issue here is that in Malaysia, there are two different university entrance examinations, the *Sijil Tinggi Persekolahan Malaysia* (High School Certificate) and the matriculation certificate. Matriculation system is mainly for the *Bumiputera* (indigenous) students. It has been widely known that the matriculation qualification is of standard quality than the High School Certificate. When university admission is not based on one meritocratic system for all students, academic excellence will be compromised. Moreover, the policy of the government to have as many graduates as possible in the country has led to a compromise on the entrance quality of the students. It can be safely said that both the intake of students that is not based on meritocracy



and the wrongdoings of academics, as well as political interference, contributed to the decline in the quality of Malaysian universities.

Sulaiman (2011, October 10) sums up the problems facing Malaysian public universities as: “The country is suffering from the stagnation and decay of intellectualism which in turn is reflected in the poor showing of Malaysian universities in the Times Higher Education survey. We see the products and symptoms of this stagnation and decay every day.... Incompetence instead of professionalism in the public workplace. The ratio of civil servants to the population is among the highest in the world....Intellectual dishonesty instead of personal integrity. A Judge for example is under public suspicion for plagiarising a judgment. The breaking down of the rule of law and the rise in corruption are other illustrations”.

Why do academics commit “academic crimes”? Price, Dake and Islam (2001;60) suggested that ethical lapses are caused by both external factors (e.g., publication pressures, professional competition, job security, lack of formal mentoring, unclear guidelines, no penalties, little chance of getting caught, and bad examples from mentors) and internal factors (e.g., ego or vanity, personal financial gain, or psychiatric illness). They believed that the ability to reduce some of these factors, such as formal mentoring, is much easier to address compared with other factors, such as professional competition (a universal environmental factor).

Smith (2001), in his study on fraudulent behaviour among college students using Michael Gottfredson and Travis Hirschi’s General Theory of Crime, he concluded that the theory of low self-control is predictive of many forms of deviant behavior, including academic dishonesty. His results also empirically support Gottfredson and Hirschi’s contention that when individuals with low self-control are given an opportunity to commit crime they just might do so (p.557). However, he cautioned that his results showed that low self-control explained very little variation in the dependent variable (academic dishonesty), which suggests that other untested alternative explanations may possess more explanatory power, for example, Agnew’s (1992) general strain theory could provide an intuitive explanation (p.558).

It cannot be denied that academics who commit “academic crimes” are the white-collar criminals of the academia. White collar crimes have been empirically explained by several criminological theories that include Sutherland’s differential association theory, Matza and Sykes’ neutralization theory, Hirschi’s control theory, Gottfredson and Hirschi’s general theory of crime, rational-choice framework and Wheeler’s fear of falling explanation (Piquero, 2011; 2-4). In the Malaysian context, three pertinent factors that could be safely said to allow “academic crimes” to flourish rampantly are:

1. the seniors are practicing them and the juniors are learning from them;
2. wrongdoers see “academic crimes” as part of the culture of the academia and they believe that it is justifiable to commit these “crimes”;
3. there are no social controls such as faculty code of conduct and research ethics in place in the Malaysian public universities. As such there are ample opportunities to commit these wrongdoings.

The first pertinent factor could be explained using Sutherland’s differential association theory. As explained earlier that wrongdoings in the academia starts from the highest level, i.e. the Ministry of Higher Education and specifically the Minister himself who personally appoints unsuitable Vice-

Chancellors and Deputy Vice-Chancellors for the public universities and, thereby, ignoring the choices of the universities' select committees. These "cronies" of the Minister will appoint and promote their own "cronies" through unfair means to help them maintain their power and status in the universities. Other academics, both seniors and juniors, will learn that the rule of the game is to apple-polish to get their promotions and not based on the simple principle of meritocracy. They also learn that if they do not apple-polish and tow the line, they will be bypassed for promotions as well as not being given their rights and perks. Some juniors have also learned that if they are admonished by an upright senior for "academic crimes", they can turn to these "crony academics" who hold administrative positions to overrule the upright senior. These "crony academics" are more than willing to help these juniors so that they could "buy" them to their side and make use of them. This reinforces the learning experience of the juniors that it is acceptable to commit "academic crimes". Sutherland's differential association theory, which stresses that acquiring a criminal behaviour is an active social learning process whereby skills and motives conducive to crime are learned as a result of contacts with pro crime values, attitudes and, definitions and other patterns of criminal behaviour (Siegel, 2009; 203), is appropriate to explain "academic crimes" in the Malaysian context.

The second pertinent factor concerns the wrongdoers seeing "academic crimes" as part of the culture of the academia and they believe that it is justifiable to commit these "crimes". This factor is related to Matza and Sykes' neutralization theory that views the process of becoming a criminal as a learning experience in which potential delinquents and criminals master techniques that enable them to counterbalance or neutralize conventional values and drift back and forth between illegitimate and conventional behavior (Siegel, 2009; 207). Out of the five techniques of neutralization or justification presented by Matza and Sykes, i.e. denial of responsibility, denial of injury, denial of the victim, condemnation of the condemners and appeal to higher loyalties, condemnation of the condemners has frequently been used by "academic criminals" in Malaysia. Among the justifications normally given "criminal academics" are:

1. Everybody, including the Minister, is doing it. Why not me?;
2. The higher authority allows it;
3. Our culture is different from other countries.

White (2008; 39) contended that the neutralisation analytical framework has been used quite effectively and usefully to interrogate the actions and denials of white-collar and corporate criminals as well as instances of state crime.

The third pertinent factor is that there are no social controls such as faculty code of conduct and research ethics in place to control "academic crimes" in the Malaysian academia. As such there are ample opportunities to commit these wrongdoings. In this aspect, Smith's (2001) study using Michael Gottfredson and Travis Hirschi's General Theory of Crime should be considered. Smith concluded that the theory of low self-control is predictive of many forms of deviant behavior, including academic dishonesty and that when individuals with low self-control are given an opportunity to commit crime they just might do so (p.557). More so among academics in Malaysia as there is no formal social control to regulate their behavior and they know that they will get away with it since it has become a norm and part of the culture of the academia.

With these rampant "academic crimes" being committed regularly, including by higher authorities and seniors who should be role models and regulating them, it is not difficult to understand why even with the National Higher Education Action Plan, the rankings of the public universities



continue to decline. The rot has already sets in and has become part of the culture of the academia. To try to turn things around is certainly a colossal task and an uphill battle that will need lots of strong will power.

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A SYSTEM'S APPROACH TO CRIME PREVENTION: THE CASE OF MACAU

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Macao has the world's largest casino industry and represents a unique political, social, and cultural system that differs significantly from Western societies. The overall crime rate in Macao is relatively low. Scholarly knowledge about crime and crime prevention in Macao, however, is very limited. This paper first reviews crime prevention theories, typologies, and various strategies in Western societies followed by an introduction and discussion of crime prevention practices in Macao. Crime prevention strategies in Macao may be characterized as a tripod structure with three major supporting legs: traditional criminal justice practices, social prevention beyond the criminal justice system, and situational crime prevention measures. The paper then discusses the factors that may contribute to the low level of crime in Macao and points out the direction for future research in Macao.

PART *13*

STATE, CORPORATE, AND ORGANIZED CRIME





CORPORATE CRIME IN THE PHARMACEUTICAL INDUSTRY REVISITED

John Braithwaite, Australian National University, Australia

This presentation describes a project with Graham Dukes and James Maloney to update and rethink my 1984 book, *Corporate Crime in the Pharmaceutical Industry*. This was the work that discovered a species of executive called the 'Vice President Responsible for Going to Jail'. During the 1980s I formed the view that law observance and ethical standards in the international pharmaceutical industry were improving, and I still think they were in that period. But today our research suggests that the problems are as deep as ever. In the United States, the False Claims Act has become a major tool against pharmaceutical industry fraud. The paper argues that this is a promising development toward crafting a web of controls that might in future again reduce the depth and breadth of corporate crime in the pharmaceutical industry.

WRONGFUL CONVICTION AND EXONERATION IN JAPAN: PAST, PRESENT AND FUTURE

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The criminally accused in Japan face tremendous hurdles. Police use all means to extract confessions, the conviction rate hovers at 99.7%; the media pulverize those arrested, and penal populism is ever increasing. Yet, over the last decade, numerous cases of wrongful arrest and conviction have gained sympathy and notoriety. As a result, popular television shows, mass circulation magazines and even a movie championing the rights of the criminally accused have captured the public's imagination. This presentation will focus on the reasons public consciousness has changed so dramatically, including the newly introduced saiban-in system. It will also examine the continuing problem of constitutional violation vis-à-vis double jeopardy.



THE CIA CRIME IN ASIA

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U.S. covert action in Asia is not only dirty tricks, but also notorious International crimes. As “trump cards” of the American government during the Cold War, the CIA ‘s covert action in Asia involved in the Tibet's revolt against China, the Phoenix Program to remove Vietnam communist party during the Vietnam War, the plot to overturn Sukarno regime in Indonesia and the coup that overthrew Iranian Prime Minister Mohammed Mossadeq in August 1953.

The CIA mission is to protect national security of America, and its main task is on obtaining and analyzing intelligence to provide advanced warning or prevent an act from occurring. The CIA had been engaged in covert activities since 1948, and these activities included working with reactionary forces in Asia, monitoring Soviet trend within the country, and most important, implementing a large-scale propaganda and disruption operation in other countries. Under the guise of financial aid and military assistance, the CIA launched covert operation to retain the power of American imperialism in the East. The thesis will analyze the crime committed by the CIA in Asia.

I. OPERATION 'AJAX'

Iran has a longer and stronger nationalistic history. In 1951, Muhammad Musaddiq ran for the office of Prime Minister with just one campaign promise: to free Iran from the British imperial domination. With strong nationalistic pride felt by so many Iranians, Musaddiq won an easy victory. On May Day 1951 shortly after assuming office, he announced that the Majlis had passed the Nationalization Act, effectively controlled the Anglo-Iranian Oil Company (AIOC) from the British. By October of that same year, all British subjects had been expelled from the country. The reform in Iran was apparently of nationalism.

Thinking about the effect the crisis might have on both world oil markets and existing American oil concessions in neighboring countries, the Truman administration were quickly anxious to play the part of a neutral mediator, Musaddiq saw US participation as an opportunity to convince the Americans to see things his way.

Was Musaddiq a communist? Paul Nitze, who as head of the Policy Planning Staff played a large role in drafting the joint Anglo-American proposals in September 1952 and January 1953, described Musaddiq as “a well educated elitist”. He had a great contempt for his fellow Iranians. He had no inclination whatsoever toward Communists. He just miscalculated. He thought he could get a better deal from Eisenhower's administration^[1]. Why was Musaddiq toughly termed as a communist by American administration? “Coupled with their fears about Communism, the three principal figures in the new administration - the President, John Foster Dulles and Allen Dulles, the new head of the CIA - all had prior interest in and familiarity with the region. Allen Dulles developed an interest in the region while serving as Chief of the State Department's Division of Near Eastern Affairs from 1922 until 1925. Many years later in the spring of 1949, as part of a larger tour of the whole area, he spent a considerable amount of time in Iran, coming away with the feeling that the area 'was not sure where it stands in the political program of the West to prevent the onward march of communism .. . Much depends on us'.”^[2] American politician always think the USA is on the historical mission of leading the world, and in other words, any country must accept American leadership.

“John Foster Dulles also had 'a personal interest in this matter. He considered it one of the major problems facing the Administration ... because it wasn't merely a matter of oil ... plenty of oil was coming from other sources. The problem was what would happen to Iran without the oil revenue. If Iran should become bankrupt and go into chaos ... the whole Middle East would be in danger.’”^[3] John Foster Dulles cared about Iran and regional situation as the pretext, and lined reality of the interference.

The Iranian oil nationalization crisis began in 1951 when Prime Minister Muhammad Musaddiq nationalized the Anglo-Iranian Oil Company (AIOC), and it reached climax in August 1953 with the CIA assisted overthrow of Musaddiq. Eisenhower had been closely following events in Iran prior to assuming office. As early as June 1951, just after the AIOC was nationalized, Eisenhower wrote to a friend: “As to Iran, I think the whole thing is tragic... [some sources] attach as much blame to Western stupidity as to Iranian fanaticism and Communist intrigue in bringing about all the trouble. Frankly, I have gotten to the point that I am concerned primarily, and almost solely, in some scheme or plan that will permit that oil to keep flowing to the westward ... The situation there has not yet gotten into as bad a position as China, but sometimes I think it stands at the same place that China did only a very few years ago. Now we have completely lost the latter nation ... I most certainly hope that this calamity is not repeated in the case of Iran.”^[4]

The Americans were ready to do something drastic if necessary, in order to prevent Iran from being taken over by Communists, and they made a plan. The plan to overthrow Musaddiq involved three agencies: the CIA, State, and Defense.

On 31 May 1953 Henderson left Iran, ostensibly for a long awaited personal leave. On 17 June Dulles convened a top secret meeting in his office to discuss Operation 'Ajax'. Those present, in addition to himself and Kermit Roosevelt, who was to present the CIA's plan, included Walter Bedell Smith, Henry Byroade, Secretary of Defense Charles Wilson, Allen Dulles, and Henderson. The two Dulles brothers were strongly in favor of the plan.

In August 1953 American agents covertly assisted a coup to depose the Iranian Prime Minister, Muhammad Mosadeq, and paved the way for his country to become one US clients.

Operation Ajax cost the American taxpayer one million dollars, a fantastic bargain considering the advantages of the new dispensation: cheap secure oil, massive contracts, stability and safeguard of American interests in the Middle East for a quarter of a century. ^[5] However, Iran lost their independence and natural resources.

The CIA's covert operation in Iran was successful, but it to a sovereign state had committed a crime to keep American dominant position on strategy. Iranian should kick the Americans out, and any of nations did not allow a group of spies posing as advisors to undermine their country and train a band of traitors in an attempt to rob them of their independence and natural resources.

II. THE PLOT TO OVERTURN SUKARNO REGIME IN INDONESIA

As a journalist has worked closely with Sukarno, President Kennedy, got Sukarno right, Mr. Isak said: "He understood that Sukarno was a nationalist, and not a communist."^[6]



Why did American administration impose on Sukarno's communist party member's label? "The Indonesian Communist Party has prospered for several years by posing as a patriotic, nationalistic party rendering strong support to Sukarno and his policies. Sukarno sees in the party a large, disciplined group willing and able to give him its political support and to work to implement his programs. Sukarno's order banning the Masjumi and Socialist parties has significantly undermined political opposition to the Communists. The Communists are now strongly represented in every important body of the central government except the cabinet, and bringing them into his cabinet appears to be an objective of many of Sukarno's political maneuvers."^[7] This was only the CIA's intelligence estimate, not the truth.

"Although Sukarno was nominally still in charge in late 1965, the Indonesian army, with US military aid and CIA support, and the direct participation of a host of paramilitary Muslim youth groups, turned on the PKI and its supporters, in what the US ambassador described at the time as 'wholesale killings'. By mid-1966 the CIA and the US State Department were estimating that anywhere between 250 000 and 500 000 alleged PKI members had been killed (in mid-1965 the PKI was reckoned to have three million members as well as 12 million people in associated organisations). Other estimates put the figure at over a million, and some estimates range as high as one and a half million dead. The official Indonesian figures released in the mid-1970s were 450 000 to 500 000 dead. At the same time at least 200 000 people were imprisoned, with about 55 000 of them still in jail a decade later."^[8] It was a miserable age of the bloodshed, which Sukarno made under the CIA's support.

Suharto took power in 1965, with Washington's strong support and assistance. Army-led massacres wiped out the PKI (the Communist Party) and devastated its mass base in one of the worst mass murders of the twentieth century, comparable to the atrocities of Hitler, it became certainly one of the most significant events of the twentieth century. America achieved its goal to designate agent in Indonesia, but the CIA in this process had committed a crime.

III. THE PHOENIX PROGRAM IN VIETNAM

Since 1946, the School of the Americas has instructed Latin American military officers in the art of counter-insurgency warfare. The United States was engaged in a war against "Communism" throughout all of Indochina, siding with the governments in Saigon, Phnom Penh, and Vientiane against a Communist threat that in each case did involve an element of North Vietnamese "aggression", but also importantly involved Communist elements (Viet Cong, Khmer Rouge, and Pathet Lao) that were indigenous to the country involved.

Joseph A. Blair is a retired U.S. Army major. He taught at the School of the Americas and was a high-level officer in the CIA-led Operation Phoenix program in Vietnam (which resulted in the deaths of more than 40,000 Vietnamese). Blair retired in 1989. In 1993, he publicly criticized the school and called for its closure. Since then, he has been a vocal opponent of the School of the Americas and of U.S. foreign and military policy.^[9]

In the Phoenix Program, Valentine creates an expose of a United States Central Intelligence Agency (CIA) operation in Vietnam. The Phoenix Program was designed to stop Vietnamese civilians from aiding the enemy: the North Vietnamese, or Vietcong. The program was established to deal with a very real threat to America's military personnel. As Valentine argues, however, the program became a savage and reckless instrument of murder, leading to the deaths of an estimated 40,000

Vietnamese, most of them civilians, and the imprisonment and torture of countless others. Valentine substantiates his claims with a wealth of statistics, as well as scores of interviews with participants in the program. This abundance of factual evidence, however, was not uniformly viewed as an asset by all critics. Writing in *New York Times Book Review*, Morley Safer, coeditor of television's *60 Minutes*, suggested that Valentine may have had more material than he could effectively handle. Safer criticized a lack of editing and organization in the book and complained that "the words don't inform; they simply take up space." Despite this criticism, response to the book did, in most cases, support Valentine's findings. Reviewers were largely impressed by his exhaustive research, citing the Phoenix Program as a valuable investigation of a particularly ugly side of the Vietnam War.^[10]

The CIA for Phoenix Program should be accused, but it was not used to prosecuting a war in public and did not see what purpose would be served by doing so. We have also noted that the CIA appeared to have been used because the presence of armed forces was illegal under the 1962 Geneva Accords.

The declassified documents on the Vietnam war have further embarrassed the CIA, the prime American intelligence agency. While supporters of CIA have formed 'critic groups' and are calling for a revamp of the agency, this should also provide an opportunity to question the role and responsibilities of any intelligence agency, especially in war.

Since 1951, Tibetan insurgents continued to receive airdropped supplies from Chinese Nationalist missions mounted from Taiwan and Thailand under direction of the Central Intelligence Agency. The problem will be researched in another dissertation.

The first covert operation of the newly created CIA in 1947 was pumping some \$10 million into Italy for propaganda, bribes and support of the Christian Democrats against the Communists. When the Communists rose once again in 1953, the CIA extinguished them through its "outside agent".

The recent revelations of American intervention by the CIA may provide the basis for such studies that go beyond the notorious American interventions in China since 1951, Iran in 1953, Indonesia in 1965, Vietnam in the period from 1968 to 1971, and nearly everywhere since then. In exceptional circumstances, the USA and other western military training programs have also backfired in that a dominant sector of the armed forces, has turned moderately 'nationalist' against the "imperial power" and that individual trainees have reacted by becoming nationalists or even revolutionaries. By and large, however, the western and particularly the USA military training and 'assistance' programs have been eminently successful in introducing an armed fifth column to defend 'western values' within the societies of the Third World.

The USA strategic posture after the end of World War II has been dominated by the strategy of 'containment', and it is hardly necessary to document its application through overt military and covert CIA actions in the substantially but not entirely successful repression of national liberation movements and indeed of the most elemental progressive political developments all around the Third World.

The fine line consists of the distinction between the more or less 'passive' involvement in a coming pro-American coup, and 'active' involvement in its promotion. In the covert actions organised against Mao Zedong, Mossadegh, Sukarno, Ho Chi Minh, Lumumba and others, the active



organisation of coup or assassination plans were centrally organised, promoted and controlled by American intelligence. The CIA believed, to carry out the assassination, which would be followed up by a coup organised by other operatives.

Hardly surprising is a fact that a number of contradictions between State Department and CIA sources emerge from our research into the coup. Proclamations of nonintervention are no more than empty rhetoric without specific acts of implementation. Only concrete measures can give proof of a genuine shift in America's foreign policy direction. The only right way must begin by eliminating the CIA's mandate for covert operations, as well as staff college training and assistance programs in counterinsurgency warfare for foreign military officers; pursuing a policy of reconciliation : normalizing diplomatic relations with nations of the Third World, resuming trade, permitting access to the United Nations, and delivering pledged reconstruction aid.

American people disliked the CIA's covert operation in Asia and other places in the world. The Hughes-Ryan amendment to the Foreign Assistance Act of 1961 was passed requiring the reporting of the nature and scope of all CIA operations to "appropriate committees" of the US Congress. To further monitor and control the activities of the entire intelligence establishment, the Congress eventually created Select Committees on Intelligence in both houses. These committees had their oversight functions significantly. These procedural intrusions were followed by direct involvement in the day-to-day management of diplomatic and security affairs: amendment of the Defense Appropriations Act of 1976 to end CIA covert activities in Angola, the Harkin amendment to stop assistance to any country which engaged in a consistent pattern of gross violations of internationally recognized human rights.

To what point should the CIA finance anticommunism activity? That is, how far involved should American hand be in Iran (China, Indonesia, Vietnam) and how best to cover up its involvement? This rapidly leads to the use of lying as a part of foreign policy, called it by a good name of "credibility gap" when in reality it is a more sophisticated version of the Big Lie.

Yet, the operational requirements of success required these to grow. This meant more of everything: more CIA officers, more visible in the foreign land, more need for airfields or training bases, more meetings in Washington, more channels for passing money in foreign capitals, more propaganda assets. And that, in turn, the CIA's covert operations have made American diplomacy embarrassed, and even made American external image notorious.

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Notes:

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FAIR OR UNFAIR FOR POLITICAL CONTRIBUTIONS IN DEMOCRATIC SOCIETY: HIDDEN CRIME OF CORRUPTION

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“Political participation” is the right for citizens in democracy, people can involve in “political contributions” to show that power is no longer a top-down design. The Political Donations Act passed and with several amendments to avoid the perception of timocracy politics and lead into the concept of control. This study bases on theories of Chinese disparate layout and Western power elites to build the model, discussing the relation networks in a pluralistic society by political contributions. Exploring different actors to shape social networks through political contributions and convert into unequal accumulation of political capital to affect politicians. This article discusses the concepts, thus collects the empirical data for analysis and finally confirms the significant influence of Chinese culture in politics. The findings stand for the effect of disparate layout is from far and wide; contributions can predict the event of election; the network construction connects political and economic elites by contributions; groups are the extensions of special business interests, and networks of political contributions emerge the hidden economic unfair in democratic society.

INTRODUCTION

“Political contributions” have provided the groups with economic power by using money to influence politics, so many countries have made laws to prescribe from the perspectives of political donations, such as ‘Federal Election Campaign Act’ (FECA) in the US; ‘Party Law’ (Gesetz über die Politischen Parteien, PartG) in Germany; ‘Political Funds Control Law’ (せいじしきんきせいほう) in Japan; ‘Political Fund Act’ (정치자금에 관한 법률) in South Korea; ‘Political Donations Act’ in Singapore, and ‘Political Donations Act’ (政治獻金法) in Taiwan (ROC) (Guo, 2011a).

More enterprises use political contributions to build up the relationship with political elites because there are four factors that political rulers need cooperate with them: (1) consortia can provide huge campaign contributions for elections; (2) power elites feel the need to have a significant social impact from consortia to declare their support to consolidate stability in power; (3) rulers are subject to consortia because consortiums have the power to affect domestic economy; (4) the final factor is psychological, whoever with high power always makes friends with others in power; besides politics, it is belonging to the most powerful consortia (Chiu, 2007:182).

“Relationship” (guan-xi) is not independent from the concept of real being (Cassirer, 1980; Emirbayer, 1997:283); when analyzing the relationship, firstly we must consider how to define it from different culture (Hwang, 2001:3). The Chinese society does not emphasize equity but is based on the unequal status (Fei, 1991), so it brings up a strong incentive for constructing relationship. “Power elites” try to display the ability to conduct relations from advantage (Mills, 1956). The relationship between Politicians and entrepreneurs is the interaction in political and economic markets, the most likely way is based on power brings interest or from money to rights and leading to political and economic integration eventually (De Jouvenel, 1955; Jang, 2005:155); political contributions is so called the behaviors building up the relationship by money.

When the bills related to political contributions in American society changed from history of progress constantly with time, what is the practical effect of implementation after the pass of *Political Donations Act* in Taiwan (ROC)? What does emphasize more for the relations deep-rooted in the Chinese culture with the context of thinking, because the bill comes into force, the fact totally

changed that the original transaction from under the table, turning into laws and regulations and must be included in the system of monitoring to operate, the question appears that if there are different phenomena arising from the eastern and western culture? What is the influence of political contributions collected by candidates in elections? If there's been connected with the election? In the building process of relationship, whether the conduct of such way has led to social injustice implied result of the democratic development, which is the goal of issue this article hope to explore.

RESEARCH METHODS

This is an empirical study basing on theories of disparate layout and Western power elites to build up the model, discussing the relation networks by political contributions to create a new thinking for social sciences. The subjects are candidates for the Seventh Legislators, Taiwan and contribution donators, enterprises, in election campaign, 2008. Subjects of donators are from independent samples of individuals (13,431), firms (4,430), and civil groups (640) that donate political contributions to 2008 legislative candidates in Taiwan. Candidates are the people who belong to 2 major political parties (KMT & DDP) in top 10 largest cities of Taiwan go for the 7th legislative campaign in 2008.

Materials and Procedures are shown as below, Materials: (1) Political Donations Act, and (2) Candidates Political Contributions Account of the 7th Legislators. Procedures: (1) Literature Survey and Hermeneutic Methods, and (2) PASW Statistics v18, such as simple and semi-log regression.

Can Numbers Talk? The Measurement of Corruption

When discussing political contributions of influence to the national political development, first we must understand the relative investigation and comparison of the national corruption. Corruption means the abuse of public office for private gain. Transparency International (TI) is a non-governmental organization that monitors and publicizes corporate and political corruption in international development. It publishes an annual (1) Corruption Perceptions Index (CPI), a comparative listing of corruption worldwide; (2) Bribe Payers Index (BPI), a measure of how willing a nation appears to comply with demands for corrupt business practices, and (3) Global Corruption Barometer (GCB), a survey that assesses general public attitudes toward, and experience of, corruption in dozens of countries around the world (Transparency International, 2011). These indicators can be used to analyze and compare different countries around the world about the situation of crime and corruption hidden behind, and the global ranking in shown as Table 1.

Table 1 Corruption Perceptions Index (CPI) 2010

Rank	Country / Territory	CPI Score	Rank	Country / Territory	CPI Score	Rank	Country / Territory	CPI Score
1	Denmark	9.3	59	Tunisia	4.3	116	Tanzania	2.7
	New Zealand		62	Croatia	4.1		Vietnam	
	Singapore			FYR Macedonia		123	Armenia	
4	Finland	9.2	Ghana	4.0			Eritrea	2.6
	Sweden		Samoa		Madagascar			
6	Canada	8.9	66	Rwanda	4.0	Niger		
7	Netherlands	8.8	67	Italy	3.9	127	Belarus	2.5
8	Australia	8.7	68	Georgia	3.8		Ecuador	
	Switzerland		69	Brazil	3.7		Lebanon	
10	Norway	8.6		Cuba			Nicaragua	
11	Iceland	8.5		Montenegro			Romania	
	Luxembourg		Romania	Timor-Leste				
13	Hong Kong	8.4	73	Bulgaria	3.6		Uganda	
14	Ireland	8.0		El Salvador		134	Azerbaijan	2.4
15	Austria	7.9		Panama			Bangladesh	
	Germany			Trinidad and Tobago			Honduras	
17	Barbados	7.8		Vanuatu		3.5	Nigeria	
	Japan		China	Philippines				
19	Qatar	7.7	Colombia	Sierra Leone				
20	United Kingdom	7.6	Greece	78	Togo			
21	Chile	7.2	Lesotho		143	Ukraine	2.3	
	Belgium		Peru			Maldives		
22	United States	7.1	Serbia	85		Mauritania		
24	Uruguay	6.9	Thailand		3.4	Pakistan		
	France		6.8	Malawi		146	Cameroon	2.2
25	France	6.8	Morocco	87	Côte d'Ivoire			
26	Estonia	6.5	Albania		3.3		Haiti	
27	Slovenia	6.4	India	3.3		Iran		
	Cyprus		Jamaica					
28	United Arab Emirates	6.3	87	Liberia	3.2	Libya		
	Israel					91	Bosnia and Herzegovina	Nepal
30	Spain	6.1	91	Bosnia and Herzegovina	3.2			

32	Portugal	6.0		Djibouti			Paraguay	
33	Botswana	5.8	98	Gambia	3.1	154	Yemen	2.1
	Puerto Rico			Guatemala			Cambodia	
	Taiwan			Kiribati			Central African Republic	
36	Bhutan	5.7		Sri Lanka			Comoros	
37	Malta	5.6		Swaziland			Congo-Brazzaville	
38	Brunei	5.5	98	Burkina Faso	3.1	154	Guinea-Bissau	2.1
39	South Korea	5.4		Egypt			Kenya	
	Mauritius			Mexico	Laos			
41	Costa Rica	5.3	101	Dominican Republic	3.0	154	Papua New Guinea	2.1
	Oman			Sao Tome & Principe			Russia	
	Poland			Tonga			Tajikistan	
44	Dominica	5.2		Zambia		164	Democratic Republic of the Congo	2.0
45	Cape Verde	5.1	105	Algeria	2.9		Guinea	
46	Lithuania	5.0		Argentina			Kyrgyzstan	
	Macau			Kazakhstan		Venezuela		
48	Bahrain	4.9		Moldova		168	Angola	1.9
49	Seychelles	4.8		Senegal			Equatorial Guinea	
50	Hungary	4.7	110	Benin	2.8	170	Burundi	1.8
	Jordan			Bolivia		171	Chad	1.7
	Saudi Arabia			Gabon			Sudan	
53	Czech Republic	4.6		Indonesia		172	Turkmenistan	1.6
54	Kuwait	4.5		Kosovo		175	Uzbekistan	1.5
	South Africa		Solomon Islands	Iraq				
56	Malaysia	4.4	116	Ethiopia	2.7	176	Afghanistan	1.4
	Namibia			Guyana			Myanmar	
	Turkey			Mali		178	Somalia	1.1
59	Latvia	4.3		Mongolia				
	Slovakia		Mozambique					

Source: Transparency International (2010a).

In the survey of 178 countries, Taiwan was ranked 33, the whole system is relatively sound basically, but there are still many aspects designed for regulations of law, which may lead to some problems insist legally. If we further re-examine the public perception of corruption index from ordinary people, and perhaps that may be more close to the hidden crime problem in the description of social dimensions, as shown in Table 2, Taiwan's scores and rankings over the years.

Table 2 Corruption Perceptions Index (CPI) of Taiwan

Year	2010	2009	2008	2007	2006	2005	2004
Score	5.8	5.6	5.7	5.7	5.9	5.9	5.6
Rank	33/178	37/180	39/180	34/179	34/163	32/158	35/145
Year	2003	2002	2001	2000	1999	1998	
Score	5.7	5.6	5.9	5.5	5.6	5.3	
Rank	30/133	29/102	27/91	28/90	28/99	29/85	

Source: Corruption Perceptions Index (Transparency International, 2010a).

From the scores above show that although the rankings ups and downs; generally, people in Taiwan do not feel corruption significantly in differences, and the overall rankings are similar with the those of Corruption Perceptions Index, showing that the macro and micro perspectives of the rankings are almost same. However, if we turn to discuss the relationship between political and economic elites that is not easy to contact by general people, the perception is a little different as shown in Table 3.

Table 3 Bribe Payers Index (BPI) 2008

Rank	Country/Territory	BPI 2008 Score	Standard Deviation	Confidence Interval 95%	
				Lower Bound	Upper Bound
1	Belgium	8.8	2.00	8.5	9.0
1	Canada	8.8	1.80	8.5	9.0
3	Netherlands	8.7	1.98	8.4	8.9
3	Switzerland	8.7	1.98	8.4	8.9
5	Germany	8.6	2.14	8.4	8.8
5	Japan	8.6	2.11	8.3	8.8
5	United Kingdom	8.6	2.10	8.4	8.7
8	Australia	8.5	2.23	8.2	8.7
9	France	8.1	2.48	7.9	8.3
9	Singapore	8.1	2.60	7.8	8.4
9	United states	8.1	2.43	7.9	8.3
12	Spain	7.9	2.49	7.6	8.1
13	Hong Kong	7.6	2.67	7.3	7.9
14	South Africa	7.5	2.78	7.1	8.0
14	South Korea	7.5	2.79	7.1	7.8

14	Taiwan	7.5	2.76	7.1	7.8
17	Brazil	7.4	2.78	7.0	7.7
17	Italy	7.4	2.89	7.1	7.7
19	India	6.8	3.31	6.4	7.3
20	Mexico	6.6	2.97	6.1	7.2
21	China	6.5	3.35	6.2	6.8
22	Russia	5.9	3.66	5.2	6.6

Source: Bribe Payers Survey (Transparency International, 2008).

Scores range from 0 to 10, indicating the likelihood of firms headquartered in these countries to bribe when operating abroad. The higher the score for the country, the lower the likelihood of companies from this country to engage in bribery when doing business abroad. Belgium and Canada shared first place in the 2008 BPI with a score of 8.8 out of a very clean 10, indicating that Belgian and Canadian firms are seen as least likely to bribe abroad. The Netherlands and Switzerland shared third place on the index, each with a score of 8.7. At the other end of the spectrum, Russia ranked last with a score of 5.9, just below China (6.5), Mexico (6.6) and India (6.8). Taiwan was ranked in 14 with a score of 7.5 sharing the same place with South Africa and South Korea.

The BPI also shows public works and construction companies to be the most corruption-prone when dealing with the public sector, and most likely to exert undue influence on the policies, decisions and practices of governments (Transparency International, 2008). Here comes a question to ask “what extent do you perceive the following institutions in this country to be affected by corruption (1 – not at all corrupt, 5 – extremely corrupt)?” as shown in table 4.

Table 4 Ranking of Institutions in Taiwan Affected by Corruption

Score	Institution	Score	Institution
3.9	Police	3.3	Judiciary
3.8	Parliament, Public Officials	3.2	Media, Education
3.5	Political Parties, Business	2.9	Religious Bodies
3.4	Military	2.8	NGOs

Source: 2010 Global Corruption Barometer Report (Transparency International, 2010b).

Legislators and Public Officials are the second highest on the ranking, and it seems that the result indicates people consider the public can be affected by money in political action. This situation generated from such perception, at the root of the cultural department, also shows the pattern of relationships constructed from different culture system may affect the allocation of resources that lead to possibility of appearance from the result of relationship built up by money.

The Different Society Layouts

Exploring the social network, although it is the analysis of a relationship existing in the group, it still involves about “private” issue and is shaped as the boundary of “group-self,” and “others-I.” As the Chinese tradition differs from the Western; so that, when analyzing the concept, the entire



social structure must be considered to reflect the whole pattern (Fei, 1993:23), especially the basic concepts of the western world and Chinese society that are from different starting points; thus, when thinking about the context, this difference should be considered, so that the whole images can be depicted more delicate and precise.

If the specific description of social relations is concrete, “human relations” in social life can be seen as a “layout” to form a number of guidelines for interaction and thus constructs some of the moral meanings of social implications. As shown in Table 5, it can be found that the description of Western and Chinese societies, in fact, both still exist many differences.

Table 5 The Comparison of layouts in the Western and Chinese

	Western	Chinese
Layout	group layout	disparate layout
Organization	defined clearly that who is in group or not in	no clearance of inners in group, the limitation can be arranged
Analogy	different bundles of firewood	circles of ripple from far to near
Limits	ranges of boundaries are distinct	ranges of boundaries are retractable
Constraint	others	self
Characteristics	extraversion	introversion
Interpersonal	individual relation	private relation
Qualification	rights and obligations	build up relationship and friendship
Ethics	construction of moral values in the relationship between groups and individuals	moral system to self-constraint, self-centered control as the starting point
maintain power	religion: 1) equality of man in front of God 2) God is fair with all people	benevolence: 1) build up in private relation 2) including filial piety, fraternal duty, loyalty and faith
Concept	love is more consistent	love with the difference

Source: Arrange and analyze from Xiao-Tong Fei (1991:25-40) and Xing-Fa Qi (2008:673).

System is an abstract pattern or category of related concepts, and “relationship” is to make “individual” and “system” of associated links. Chinese society is based on “kinship” to construct the social network, while the range depends on the size of a center (individual) showing up the power. The relation system discussed here that the intention to stay in one group, the individual must have certain qualifications, if who is disqualified, the individual should be out of the group. However, unlike the relationship in the Western society linked by “right” and “obligations,” the Chinese relationship is built up “relationship” and concerned about “friendship” (Fei, 1991:29).

Building up Relations: Becoming Familiar for Resources

Further description of Chinese culture, such relationship expresses in the system of “relatives,” people could see more on the strengths are always on the run, like “appellation of relatives” can even be used on someone who is not a relative; for example, when encountering father’s friends, we must respectfully called out “uncle.” By calling, the relationship with someone turns to be more

familiar, expending the level of relationship, such form also shapes a significant meaning of “courtesy” (Fei, 2008:222-223). The description of relation system, if to be sorted, the social network derived from Chinese culture is based on “Self” as the center to develop and produce a ripple, and its image is described by Xiao-Tong Fei:

“Self” is the center, like throwing a stone into the water to connect the others building up the social relationship; not like a member in group standing on the same platform, but like the ripple to launch from a circle one by one away; the further it pushes, the less depth it becomes (Fei, 1991:29).

If extending this description, it can be imagined that there are two stones dumped into the water at the same time, there will be two ripple sets, and each has its own center; finally, the ripples intersect with each other. Supposing a point (person) putting in the second wave of the first ripple and in the fourth wave of the second ripple, the relation of this person with the visual center of first one is closer than the second one. It is like the most sophisticated Confucian “human relations,” the explanation of “relations (lun)” is from individual to the occurrence of social relations with the group of people that are rolling in a round of disparate in the ripples.¹ Although the concept of disparate layout mode from Xiao-Tong Fei has undergone through six decades, it is still a deep culture and can not be abandoned for the study of Chinese society. As Rong Ma (2007:142) stated:

The root of disparate layout is stuck in Chinese society so deep, so even the branches on the ground floor are cut off; its root is still there, as long as the suitable weather appears, it will continue to spawn new buds. Every major social change could make the dominant values and norms attacked and faded away, and under such environment, the foundation of traditional values with thousands of years will sprout out to affect people’s behaviors imperceptibly.

This illustrates the basic characteristics of Chinese social structure, the social relationship is a gradual release from an individual to another, is the increase in personal contacts, and social context is a section constituted by a network of personal contacts. The network of social relations is based on kinship to compose, and the relationship is in the light of fertility and marriage that social relations occur from birth and getting married. The network could include the infinite people, covering the past, present and future others, and the network is like the net around and around, which has a center called the “self” (Jiang, 2007:42), then it can be extrapolated to form a different shape from the Western society that is known as “individualism,” but so-called “egoism.”

The structure of this circle, the most central is the “self;” outside the self ring is the “family;” outside the family ring is the “acquaintances;” then the outer ring is the “strangers.” Surrounding the self is “family circle,” following the “rule of need,” which means family members are equal, you must meet what I need, as I’ll do the same for you; “acquaintance circle” follows the “rule of equality;” in acquaintance circle, everyone has an account to repay, the morality of acquaintances is to repay, no breach of trust. A more familiar person is one of “fraternity,” like the “quasi family,” your business is my thing, no talking about everyone’s interest but always being accompany with the exchange of human loyalty; only “stranger circle” goes for “rule of fairness,” emphasizing on honesty and fair exchange (Xiao, Luo & Li, 2008:8-9), such inconsistency can be seen in Table 6 to

¹ In the basic social structure of the Chinese traditional concept of this network, which is constituted by discipline between people, that is “disparate,” or “relations (lun)” (Fei, 1991:29-30) to form. construction made.



show up differences one another. However, from this perspective, it not only depicts the behavioral prototype of the Chinese society, but also explains the general major models of social interaction, especially for the emphasis on collectivist culture.

Table 6 The Rules of Interpersonal Need, Equality and Fairness

Rule	Need	Equality	Fairness
key concept	profit, results and other distributions of benefit should meet the reasonable needs of the recipients, regardless of the measurement of individual contributions	regardless of the measurement that individual contributes, everyone equally shares the profit and cost	individuals should receive considerable contributions according to their effort by proportion
acceptable range	intimate social group, members are interested in promoting the welfare and developed scenarios	emphasis on division of labor, unity and harmony of the situation	the main objective is economic interests of productivity-oriented context
relationship of members	have deep personal feelings and a close relationship with others	harmony and unity with each other is important that the individual is seen as a “human being,” rather than a particular occupier of social status	complete the work efficiently with each other, only consider the role played to each other in relationship

Source: The author arranges and analyzes from different perspectives (Deutsch, 1975:143-6; Leventhal, 1976:216-8; Lerner, 1977; Greenberg & Cohen, 1982:437-466).

For that, showing in Chinese society there is a relation-based, human relationship does play an important role to impact in all aspects of society (Qi, 2008:670), so to keep building up relations with people and making friendship. But how to determine the relationship of the distance, the key point is, there are usually derived from an invisible mode between the actors; what is paradox, only the relationship disappears will it exist to be “seen” (Burt, 1992: 181), which means “no interaction” is the result.

Political Contributions: Hidden Gifts of Corruption in Democracy

David Easton has pointed out that the so-called “politics” is a political system in society as the process to have authoritative allocation of values (Easton, 1965:129). Government’s work lies in the formulation and implementation of the policy value of the distribution, in which the power must be involved in the formation, distribution and use, and there are always some people who have more power or capability than others, like leaders (Ger, 2007), who have right of arbitrary distribution for the value within the national system, these people are so-called “elite,” regardless of their fields belonging to political or economic areas. Combing with the concept of disparate layout, the patterns of relationships established from such culture, the political contributions may change

the horizontal differences of interpersonal distance into the practically vertical differences of hierarchical interests, as shown in figure 1.

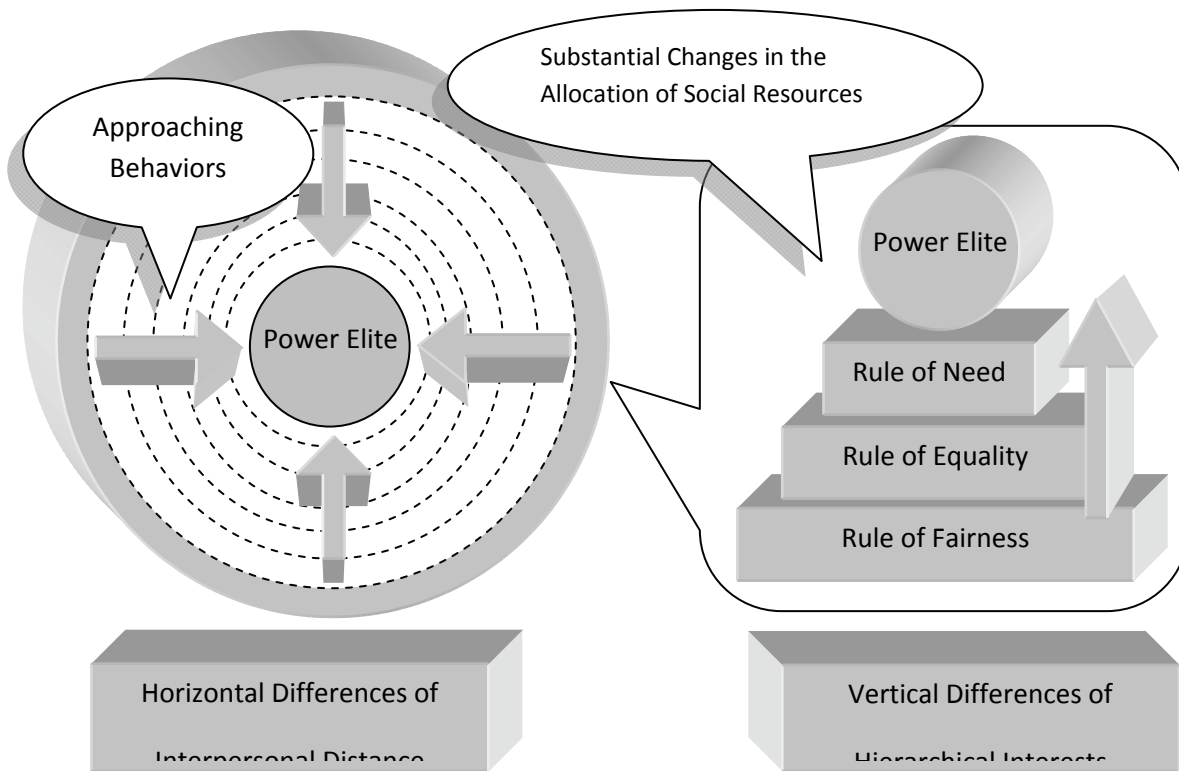


Figure 1 Changes from Horizontal to Vertical Differences

Source: Created by the author based on disparate layout theory.

In the past, Americans have been heavily influenced and did not want to be the disturbed from ethics of political and economic problems, and thus attached to a so-called “theory of balance,” the idea comes from, the government is an automatic machine, it is operated through balance of each other competing interests (Mills, 1956:242). Such equilibrium, theory of balance, points out the main object of interest for the Congress of the United States, the protagonist the Congressmen (Mills, 1956:248). Although Congressmen have many similar backgrounds chasing the same goals, one thing should not be overlooked; in the era of democracy, the election is a key point to decide whether to extend the political life. However, campaign is a waste of money, so that the fact of contemporary costs; obviously, it is the bound that tie up members of Congress who are not good in collecting political contributions (Mills, 1956:250-251), collecting political contributions becomes an important cost, due to be born of this pipeline is the emergence of political contributions, which also created a different area of the capital on the conversion.

FINDINGS AND DISCUSSION

1. Political Donations Act

Political Donations Act involves the resources of politician, which connected with the honest in politics from the consortium or particular groups about the control by money, as well as political



parties, to be equal competition between candidates; it also involves donors political participation, freedom to express their opinions and property disposal. The political contributions from firms and civil unions are another issue about internal staff involved in the freedom of the difference (Huang, 2003:34). In the past, the political contributions in Taiwan, before passed and published of the *Political Donations Act*, the ideas scattered in *Civil Associations Act*, *Civil Servants Election And Recall Act*, and *Presidential and Vice Presidential Election and Recall Act*, as well as related to the foregoing penalty provisions of the law, but implementation of the results, defects cluster, the criticism appears and can not meet the current expectation of timocracy politics (Du , Chen, & Huang, 2006:1). After the pass of Political Donations Act, we can see the amount of political contribution is clearly defined, as table 7.

Table 7 The Limitation of Donating Political Contributions (\$ NTD)

Receiver Donator	Same Candidate		Different Candidates	
	Same Year	Different Years	Same Year	Different Years
Individual	100,000	200,000	200,000	400,000
Firm	1,000,000	2,000,000	2,000,000	4,000,000
Civil Group	500,000	1,000,000	1,000,000	2,000,000
Political Party	No limitation	No limitation	No limitation	No limitation
Nominator	10,000	10,000	10,000	10,000

Source: Created by the author based on *Political Donations Act*.

2. Political Contributions in Election

Traditionally, if members of Congress want to win a successful election, they need to collect a lot of money; in legislative election of Taiwan's empirical study also support for this result. Therefore, the design of an effective fundraising strategy is good to electoral victory. According to the article written by Benjamin A. Katz and Mark Rackers, "Political Campaign Fundraising: What You Need to Know to Start a Successful Campaign," the candidates must take some aspects into account: "who to ask," "who should be asking," and "how to ask" (Katz & Rackers, 2005).

If political contributions can be simplified into a rope in the most direct relationship, then those who can donate the most, building up the relationship between the networks, are relatively higher than those are able to accumulate political capital. According to *Political Donations Act*, the maximum amount of limitation is different for individuals, firms, and civil groups, and the way makes the economic elites have the opportunity to maximize their total donations to build up more relations, shown in Table 8.

Table 8 Process and Maximum of Donating (Per Unit of \$ NTD)

Original Donator	Intervene Organization	Final Receiver
		Candidate & Political Party
Individual	\$ 100,000	\$ 5,400,000
	Firm \$ 3,000,000	
	Political Party	
	Civil Group \$ 2,000,000	
	Political Party	
	Political Party \$300,000	
Firm	\$ 1,000,000	\$ 4,000,000
	Political Party \$ 3,000,000	
Civil Group	\$ 500,000	\$ 2,500,000
	Political Party \$ 2,000,000	
Political Party	∞	\$ 2,000,000 ~ ∞
	Political Party \$2,000,000	

Source: Created by the author based on *Political Donations Act*.

Individuals are the subjects of behavior, from the table above, we can see economic elites own the profit-seeking enterprise can expand 54 times than an individuals. When it comes to some evidential research of regression, semi-log regression and simple regression predicted that the political contributions do affect some subtle but crucial difference in election.

Semi-log Regression

$$\ln \text{ Amount of Political Contributions} = 15.962 + 0.615 \text{ Incumbent (1)}$$

$$(P = .000) (P = .002)$$

First to analysis if the incumbents have advantage to collect political contributions and find out that $R^2 = .114$, which means 11.4% of political contributions caused from the advantage of incumbents

Simple Regression

$$\text{Elected} = -1.587 + 0.01 \text{ Amount of Political Contributions (2)}$$

$$(P = .003) (P = .001)$$

The correlation coefficient for political contributions (independent variable) and elected (dependent variable) is significant and positive, with a confidence level of $\alpha = .01$. This means that higher political contributions for a candidate are associated with higher possibility in election. To break



the negative plight in election, candidates at least have to collect more than \$ 15,870,000 NTD that can make the elected rate become positive, and then further to talk the chance to win in campaign. If collecting more than \$ 25,870,000 NTD.

3. Discussion and Further Consideration

Starting to explore the institutional level from *Political Donations Act*, system of relations between actors and networks are the evolution of U.S. bills related to political contributions, influence and controversy, highlighting it for different control as “hard money” and “soft money” in circulation. Article 14 of *Political Donations Act* does not only fail to completely solve the serious criticisms of political contributions under the table, but also open legal ways, so that political contributions can be formed by the similar situation to the U.S., legally unregulated “soft money” donated for candidates.

In addition, after the relevant test and found incumbents have fundraising advantages, on the aspects of relationship building up, donations sometimes hide a crime of bribery of the risk because the disparate layout of society, building up social relations with others is very important, the relation between contributions and election has a significant positive correlation, which means that if there is no money as the aid, the candidates can not have any opportunities to be elected. Starting from the study, this includes some worth considering further questions.

(1) When Ability of Raising Political Contributions Suggest Election Possibility, who will want more money and how to increase it? (2) Are political and economic elite networks like the role-play of world system? Who is the core and who is the periphery? (3) What is the meaning behind the election game for individuals who eager to build up relationships by political contributions? (4) Who is in charge of allocation of resources in democratic society? (5) To prevent corruption, money or tickets, which talks louder? After hearing the voice, do we have the ability to change? Political contributions are necessary in democratic society, revealing the many relationships are constructed from the context of the risk in criminal, and the way of use from entire system may be adjusted; gradually, so that each individual can participate in politics with equality of more prominent.

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GAIN ETHICS: ENFORCING SOCIAL BEHAVIOR IN THE YAKUZA JAPANESE ORGANIZED CRIME GROUPS

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INTRODUCTION

Among the first groups to offer substantial assistance to the victims of the 2011 devastating earthquake and tsunami in Japan were the Japanese organized crime groups widely known as the Yakuza (Jones, Reuters 25.3.2001). This was not the first time that these groups have provided aid to civilians. Such philanthropy seems to run counter to the common image attached to these organizations. After the 2011 tsunami and earthquake disaster in Japan, many questions have risen with regards to what the motives were behind the organizations' seemingly altruistic acts. In this context, this study consists of a review and analysis of the Yakuza ethical code and the organizational functions it fulfills. One of the questions this study addresses is "Can an ethical code or ethics in general, which usually function as a complementary aid value system to legal prohibitions in areas where the law is silent or is subjected to varied interpretations, exist in an area that is defined as criminal?". If such a code exists, what is its inner logic and what functions does it serve?

From the dawn of literal societies, philosophers from different cultures tried to define and enforce the boundaries between 'right and 'wrong'. However, ethics are not simply a philosophical matter but rather a key component in maintaining social order by instituting laws and defining modes of conduct to which the individual must adhere to. This is clearly defined by Grcic (2006: 33) that "socialization or internalization of basic values and beliefs are the necessary condition for social functioning at any level".

Every society aspires for social order, regardless to the profession, class, ethnic or geographic background of its members (although various professions can have ethical codes of their own). A person cannot achieve her/his goals, nor the goals of his organization, without a certain level of security and predictability, both of which derive from the existence of order in the social context. Specific rules of order are based on restrictions instituted by law (Grcic, 2006). Thus, even in illegitimate institutions, a quasi-legal framework is bound to exist, in order to regulate the activities of its members and their dealings with other individuals, organizations and the legal system.

This study examines the ethical code of the Yakuza and analyzes the functions served by this code. The hypothesis suggested here, is that the ethical system governing the yakuza is what will be referred to as "Gain Ethics". "Gain Ethics" is a system of internal values that resembles in its appearance an ethical code, but is not derived from universal notions of good and evil or right and wrong, it is rather a system based on practical principles that are geared to maximize the material and economic well being of the group, while promoting its inner social stability and organizational survivability. Therefore, the code changes in accordance to cost versus benefit considerations that aim at maximizing material gains, primarily economic ones, rather than promoting a philosophical notion of human good. The study consists of five parts, the first of which discusses ethics and the social functions they serve. The second part focuses on the definition of organized crime, while the third part presents a brief history of the Yakuza organizations and the changes the organizations have undergone over the years. Then the organization's ethical code, ceremonies, symbols and customs that accompany the code, as well as the sanctions and punishments imposed on violators of the code are described in the fourth part. The final part will concentrate on the code's objective, as a



means of ensuring the material and economic well being of the group, while promoting its inner social stability and organizational survivability.

ETHICS

Ethics is the philosophical study of morality. The term is commonly used interchangeably with 'morality' to either refer to the study itself or more narrowly to define the moral principles of a particular tradition, group or individual (Deigh, 1999). The subject can be divided into six, namely: the general study of goodness, the study of right action, applied ethics, meta-ethics, moral psychology, and the metaphysics of moral responsibility. This division is not clear cut and the first two parts which are the general study of goodness and the general study of right action constitute the main subject of ethics (Deigh, 1999).

Goodness and the question of ends— are divided into two approaches: the first deals with the components that make up a good life, and the second with what is 'goodness in itself'. The first approach posits that we naturally seek a good life, and therefore the components that will bring about this goal, relative to our desire for such a life, are ones which we should pursue (Deigh, 1999). It is important to note that an action should be carried out only if it maximizes the level of pleasure of all the groups affected by the action. Thus, for example, various crimes which cause pleasure and benefit to the lives of the members of the executing group, but harm a targeted group, cannot be considered moral (Gold, et al., 1991). The second approach rests on the assumption that whatever is good in itself is worth pursuing (Deigh, 1999). The first approach is identified with the classical concept of 'hedonism' and the utilitarian theory of philosopher, J.S. Mill. While the second approach, is identified with the view of perfectionism which is advocated by the philosopher Nietzsche (Deigh, 1999).

Research about the 'right action' deals primarily with the fundamental principles of 'right' and 'wrong' that govern one's choices and aspirations. In modern ethics, these principles have been endowed with a judicial conception, and are understood to constitute a moral code which defines the obligations of members of a group (Deigh, 1999). One should note that we are talking about a general ethical and moral code that obligates all members of society. However, every ethnic or similar group has its own moral ethical code which sometimes runs counter to the rules of society at large and even violates its laws, as in the case of "family honor killings" (Sellin, 1938). The concept of the 'right action' also includes deontological ethics (associated with the philosopher Kant), which discusses the motives of an action, in contrast to utilitarian ethics which focuses on the morality of an action by its result (Deigh, 1999).

The key function of ethical systems is to provide a basic set of principles which enables us to distinguish between right and wrong. Most of us do not think about these systems in a conscious manner but rather use them in order to make moral judgments. All ethical systems produce moral laws and most systems possess a practical structure that allows the individual to adhere to them relatively easily (Pollock, 1998). Ethical systems have the following characteristics as described by Pollock (1998):

1. They are prescriptive in a manner that certain behavior is demanded or proscribed.
2. They are authoritative; from the moment an ethical system is established it is not open to question, although rebels may cast doubt on the validity of ethical rules in general or specific rules.

3. The moral considerations which arise from these systems are, for the most part, impartial or universal, so that within the ethical system itself there is no room for relativism. But, even this is debatable, since there is a need to recognize the special legitimate moral codes related to religions or professions that do not violate legitimate codes or the laws of society.
4. They are not self serving. What is right will be right for all, not only to the individual.

What underlines most ethical systems is that every decision governing an individual's behavior is made within a system of values and a specific value scale (Amir, 1999). This scale or its principles may vary from one ethical system to another, but all systems basically aim to provide the same guidance, i.e. how to behave within the framework of groups, institutions and within a society at large (Amir, 1999). It should be noted that most philosophers who discuss ethics speak of a 'legitimate society' and ignore the fact that deviant groups also have codes which define the desired, the necessary, the 'right' and 'wrong'. Therefore the existence of a group devoid of rules of behavior that govern the lives of its members is impossible, thus, social order is determined by the existence of rules and laws.

THE FUNCTIONS OF AN ETHICAL CODE

According to, John Kleinig (1996), the function of an ethical code is largely to mediate the formal relations between providers of goods and services and their public recipients. Davis, as quoted by Kleinig (1996), claims that the function served by a code is first and foremost an internal document representing a set of morally binding conventions which cater to the members of the profession, and aim to regulate and govern the way the members of the organization carry out their professional activities (Kleinig, 1996). In my view the function of a code combines both aspects, in that it mediates externally between service providers and recipients, and also acts as an internal document that outlines the mode of behavior of members of an organization. A code therefore possesses both internal and external functions as detailed below.

External Functions

1. Assurance of the potential client. The code mediates between service providers and recipients, so that the recipients know what can be expected from the service providers (Kleinig, 1996).
2. Public relations via the promulgation of a code of ethics improves the organization's public image and increases their clientele as the existence of a code speaks of self governance, autonomy and dedication. Acquisition of professional status is extremely important for social acceptance of the organization. As such, every organization that wishes to elevate its social and economic standing will aspire to adopt an ethical code (Kleinig, 1996).
3. Liability limitation under organizational code of ethics sets out certain standards that are to operate in the provisions of the organizations' services, It may be viewed as constituting a constraint on excessive and unreasonable demands and in certain cases acts as a hedge against liabilities for failures the organization might be charged (Kleinig, 1996).

Internal functions

1. Personal standard of an ethical code. This sets a standard of behavior which recipients of a service may demand, a commitment to which the service provider must adhere (Kleinig,



1996). In many cases, we shall see that organizations hold oath-taking ceremonies during which members pledge loyalty to the ethical code. The oath-taking process means acceptance of the regulatory and punitive role of the ethical code in order to safeguard the internal unity of the group (Amir, 1999). Thus, the ceremony does not only authorize entry into the organization, but also ensures a desired standard in the quality of the members and the execution of their tasks, their acceptance of the goals of the organization, and their obedience to the rules governing the relations between members of the group and their customers (Amir, 1999).

2. An organizational ethos since codes are organizational constructs they try to unify service providers through the creation of an organizational ethos that promotes the services to be provided. The creation of organizational unity requires some sort of a shared culture or ethos and a code of ethics is frequently used to help foster such a shared way of being.
3. Educational role played by the ethical code not only by setting the organizations' goals and standards of task performance, but also as learning tool for new and old members (Amir, 1999).
4. Acknowledgment of and commitment to the rules. The acknowledgment, validation and commitment to the rules regarding what is prohibited, necessary, desirable, and proper, in order to safeguard and promote all the other functions of the ethical code (Amir, 1999).

The importance of an ethical code is seen primarily in situations where authoritative professional responsibilities are numerous and bear a critical influence on the lives of potential customers. The more decision-making during the execution of a task obligates value-judgments, and the more the danger of violating normative professional norms is high, the greater the need for a clear ethical code that guides the members of a group (Amir, 1999).

Organized Crime

Research presenting numerous arguments and differentiations regarding the definition of organized crime abound (Hill, 2006). This study focuses on Menacham Amir's definition which views criminal organizations' as a form of organized criminality characterized by an ongoing organizational system, with no specific social-political ideology, with the exception of its connecting to a political terrorist organization, of criminal or legitimate businesses (Amir, 2001). These groups of organized crime, set limitations on the recruitment of members and the selection of desirable members is based on ethnicity, religion, ecology, shared life experience including jail, or desirable personality characteristics of the recruited, as well as consideration of prior skills. These groups operate on a system of hierarchy and division of labor which is based on areas of specializations. The main goal of the organization is to bring in regular, immediate substantial profits and amass political and economic clout in order to ensure control of markets or economic opportunities and advantages from special businesses. Organized crime is a form of organized criminality where the important component is the attempt to achieve a monopoly over businesses and territories (Amir, 2001).

The sources of income of organized crime are: extortion and protection rackets, supply of products and services to illegal markets which emerge as a result of tax or rationing policies (such as the prohibition on the sale of alcohol in the 1920s in the U.S.), supply of requested or forced mediation services that are difficult to access, such as money, manpower and industrial tranquility, legitimate or forced supply of produce to legitimate markets, and profits from regular criminal activities such as robbery, fraud, etc.

Organized crime aspires to control businesses or territories. It perpetuates and preserves its existence through the rational and systematic use of violence and extortion. The goal of using this form of power is to neutralize and silence the forces of various organizations, including branches of government, supervisory institutions of labor organizations and the business world, politicians and rival organizations. The aim is to influence the decisions of these organizations regarding organized crime, its members and businesses and even conducting business with the mentioned institutions on terms set by the crime organization (Amir, 2001).

The researchers Varese and Gambetta, like Amir in his definition of organized crime, note that one of the main markets of organized crime, and what characterizes an organized criminal group as a mafia group is the imposition of protection money (Varese, 2005; Gambetta, 1993). This market is found in businesses which are unstable and where trust between the players is sensitive and rare. In these cases, those involved in the business find that it is worth while paying a certain percentage to a third party, mediator, rather than remain in a position where they risk losing their entire business (Gambetta, 1993).

Defense is a unique product, even when it is accorded by the most legitimate institution. It is, in general, a potential product, measured only when an event that requires its operation occurs. Thus the quality of such services will be determined by the reputation of the business which supplies it (Gambetta, 1993).

A HISTORICAL INTRODUCTION OF THE YAKUZA ORGANIZATION

The origins of the Yakuza can be traced back as early as the sixteenth century Japan. However, the current Yakuza have only emerged in the mid of the 18th century. They were divided into two groups: the *Bakuto*, traditional gamblers, and the *Tekiya*, street peddlers. Presently, each group still has its own membership registration, with its own origin, territories and boss. The ranks of both groups were filled with people sharing similar social profiles which include the poor, the landless, the delinquents and groups subjected to social deprivation such as the *Burakumin*, Koreans, etc. So distinctive were the habits of the two groups that the Japanese police tends to classify them as either *Bakuto* or *Tekiya* (Kaplan & Dubro, 2003).

The first gambling gangs were recruited by government officials and local bosses who under the Tokugawa regime, were responsible for construction and irrigation projects. As these projects required the recruitment of extensive labor and resources, the employers used gamblers with the intention of funneling the workers' salaries back into their pockets (Kaplan & Dubro, 2003). The employed gamblers drew people from varied ranks of the population and organized themselves into groups which settled alongside the main thoroughfares of the country. In these thoroughfares, the gamblers began to use the word "Yakuza," which originates in the *Hanafuda* card game and stands for the combination of numbers 8-9-3 (Ya = 8, Ku =9, Za =3, in Japanese), representing the worst score of 20 which one can get in this card game. The term "Yakuza" was first used by the gamblers to denote something useless, and was later applied to the gamblers themselves to highlight the lack of benefit they brought to society (Kaplan & Dubro, 2003). At the beginning of the 20th century, the term "Yakuza" came to be seen by the public as a term that covered the *Bakuto*, *Tekiya* and all the other gangs associated with organized crime in Japan. It should be noted that *Bakuto* groups, like *Tekiya*, established a strict system of rules which included a code of silence, obedience and



hierarchy. The *Bakuto* resemble the *Teikiya* also at the level of organizational structure (Kaplan & Dubro, 2003).

However, the gangs, during this period, focused on providing construction labor and recruiting workers as longshoremen for ports. From the mid 19th century onwards, the Yakuza extended itself beyond gambling businesses and labor trading and began to demand protection money from prostitution, entertainment and construction industries (Hill, 2003). Similar to the services provided by the Sicilian mafia to the authorities of East coast cities in the U.S., such as New York and Philadelphia. Despite the new ventures, gambling remained the main occupation of members of the *Bakuto*. Likewise, members of the *Teikiya* pursued their traditional street peddling. During this period, many Yakuza chiefs began to develop legitimate businesses as covers for their criminal operations and bribed police officers and government officials in order to protect their activities. This is similar to the cases in the U.S., Colombia and other places where organized crime operated. The gangs enjoyed government support, at least in terms of being free from police raids. They viewed collaboration with the government and the police in maintaining social order and fighting “regular” crime, as the basis for establishing this type of relationship (Kaplan & Dubro, 2003).

During WWII, the power of the Yakuza declined temporarily but immediately reasserted itself after the war. At the end of WWII, Japan was devastated economically, socially and politically. The black market flourished in tandem with the Yakuza’s operations. During this period, the *Teikiya* and *Bakuto* criminal groups acquired the additional group named *Gurentai*, which included a large number of Koreans, Chinese and Taiwanese who had been brought to Japan during the war for forced labor. These migrants held aggressive feelings towards Japanese society and some sought revenge in violent outbursts. This period marks the transition of the Yakuza to mafia-style organized crime. Ironically, the change was supported by the government, for it sought to increase its revenues by taking over gambling activities, a policy which put pressure on the *Bakuto* and forced them to vary their operations in order to make up for lost revenue (Hill, 2003).

The Japanese economy began to revive in the 1950s and construction projects proliferated, with most of the labor in the construction industry controlled by Yakuza groups who made substantial profits from the economic revival. The economic boom led to a flourishing entertainment industry which included “Pachinko” (slot machines), an industry controlled by the Yakuza until today. This industry is highly developed and its yearly turnover can reach up to 300 billion dollars, which in comparison is twice the size of the Japanese car industry (Glenny, 2009). In addition, the Yakuza continued collecting protection revenues from bars, restaurants and prostitution (Hill, 2003). During the 1970s, as the syndicates extended their geographic operations in Japan and abroad, their legal and criminal activities broadened. They began to organize gambling trips, extortions of corporations (*sokaiya*), and started involvement in the sale of amphetamine drugs as well as strengthening their political involvement by funding and establishing social and political movements, from the right wing realm of the political spectrum (Hill, 2003).

As a result of the economic boom of the 1980s, the Yakuza became heavily involved in real estate and stock market speculations. Another change which took place, during this period, was the emergence of the lucrative business of *Jiage* (land raising), in which members of the organization expel citizens who refuse to sell their properties to real estate corporations (Hill, 2003). *Jiage* comes under the category of *Minbo*, literally the violent intervention in civil affairs and refers to the set of activities the yakuza are engaged in using their group's reputation for violence to gain some financial advantage usually in civil disputes (Hill, 2005). This practice had not existed before,

particularly in light of the Robin Hood ethos articulated in the strict internal codes which characterized the Yakuza till today.

Today, Yakuza members manage legal and sophisticated businesses in Japan and abroad. In addition to their traditional businesses, they deal in real estate, transport, illegal disposal of industrial waste, construction, bankruptcy management, money lending, amphetamine dealings, 'crisis management' (typically resolving disputes out of court), communications, internet scams, and protecting companies involved in these various industries (Hill 2003, 2005). However, in the wake of their repeated attacks against "ordinary people," the *boryokudan* countermeasure law (*boryokudan taisaku ho- Botaiho*) was drawn up in 1991 and came into effect in 1992. It restricted the operations and abilities of the gangs (Bozono 1998). In recent years the Yakuza has changed as a result of the entry of small organizations into the large syndicates and the retirement of some of the members from the crime world in general. In spite of this, the Yakuza continues to survive due to its ability to adapt to changes and move to new areas of operation, as well as to its members' close connections with the political elite (Gragert, 1997). After the recent disaster of 2011, Yakuza organizations donated a lot of material aid to the victims (Jones, Reuters, 25.3.2011).

The ability of the Yakuza to adapt to a changing environment is connected to its ability to ensure internal discipline, loyalty and self sacrifice on the part of its members in times of crisis. They do this by instituting and maintaining internal-organizational rules of conduct.

THE ETHICAL CODE OF THE YAKUZA

As a self-governing entity operating in a hostile environment, Yakuza and organized crime in general must create and enforce their rules (Hill, 2003). The eight basic rules which have not undergone any fundamental changes for centuries are

1. Never disobey or cause nuisance to your superiors
2. Never reveal The secrets of the organization
3. Never betray the organization or its members
4. Do not quarrel with fellow members or disrupt the harmony of the gang
5. Do not misappropriate the funds of the organization
6. Never violate the wife or children of a fellow member
7. Personal involvement with narcotics is strictly prohibited
8. Do not appeal to the police or the law (Hill, 2003; Kaplan & Dubro, 2003).

These unwritten laws bear a close similarity to those of Sicilian, Russian and Chinese mafia groups. This demonstrates that the groups, despite the difference in ethnicity and areas of operations of the groups, face the same sort of pressures and that these structural condition transcend the cultural differences (Hill, 2003).

Consequently, the most important principle of the ethical code of the Yakuza and of mafia organizations, in general, is complete obedience on the part of members to the rules, even in cases where obedience seems to run counter to logic. An illustration to such obedience can be found in the *Migawari* custom, where one of the *kumi-in* (gang members) volunteers to hand himself to the police and admit to crimes committed by his superior. The incentive of the soldier draws from the assumption that the task will be highly rewarded, and while his incarceration, maintenance will be paid to his dependents (Hill, 2003). The concern shown on the part of the gang to the imprisoned soldier is imperative both at the ceremonial level of strengthening and exhibiting the feelings of



belonging and loyalty of the gang to the imprisoned member, as well as at the practical level. Failure by the gang to adhere to this obligation will greatly harm the gang harmony and the relations between its members (Hill, 2003). This type of arrangement can also be found among various Italian mafias in Italy and the U.S. In this type of arrangement, the organization functions as a “social service” by giving assistance to “victims,” members of the organization or their families.

RITUALS OF THE YAKUZA

The organization’s ethical norms are strengthened and supported by numerous rituals and customs. These rituals aim to solidify and demonstrate the personal commitment of the members to the organization and its members. Sociologist, Emile Durkheim and many others, such as Erving Goffman, noted that rituals help to create solidarity and allegiance to an organization and its culture (Durkheim, 1997; Goffman, 1969).

Sakazuk

The ritual of initiation into the yakuza is performed through the *sakazuki* ritual which centers on the symbolism of family. The recruit's new yakuza family (*ikka*) and his new father (*oyabun*). During the ceremony, the father says to the new son.

*By drinking this cup
you become the kobun of O-oyabun,
Please drink!
Chivalrous and cold-hearted
Polish your manhood
Hit the road of wandering,
know the inside and outside of
the troubles of this world of men
turn your back to the spring of Man
Chivalry, Chivalry
this word boils the blood in my heart
Even when your wife and child are in famine,
without hesitation throw away your life
for the family, for your oyabun.
(Raz, 2009: p. 107)*

Hearing these words while offering him the cup of sake, the novice drinks from it, and then replies:

"I am honored to speak to this honorable row of gentlemen. This cup that I drink in front of the elders is an extraordinary cup. I am honored to taste this cup, following my elders, becoming the humble son of this family. In order to become a man worthy of the name, I am honored to drink now (Raz, 2009: p. 107)."

The oath taken by the new recruit and his pledge to uphold total loyalty over all other obligations in his life, even his nuclear family, represent acceptance of the regulatory and punitive role of the code. The fact that the ritual is public stresses and endorses the rules of the group and the members’ loyalty to their criminal family. It also involves an audience of witnesses who can testify to the oath.

The ceremony is not only an initiation ceremony for young recruits. It serves as a way of indicating the social position of the “brothers” of the family. This is done by pouring a quantity of sake according to rank (Hill, 2003). The ceremony also serves as a way of resolving disputes between gangs, with a third party acting as a mediator. The role of the mediator also involves conciliation. The fact that the ceremony is public represents an additional means of enforcing an agreement. The assumption is that since the event is witnessed by a large group of people, the chances of violating the agreement grow slim (Hill, 2003). The ceremony is carried out also for events marking the merger of a number of gangs into a syndicate and on the appointment of a new boss (Hill, 2003). In all the different cases in which the ceremony is performed, it serves to demonstrate obedience and loyalty to the organization or to a common goal, acceptance of the regulatory function of the code, and be as public as possible in order to increase supervision through witnesses who will be able to testify to any violation of the oath.

Girikake

This term covers a group of rituals, including rituals to establish father-son and brotherhood bonds and leadership succession, jail release ceremonies, New Year ceremonies, funerals etc. They serve a number of functions, the first being to strengthen the individuals' sense of belonging to a group with traditions, history, social bonds and a specific identity. One effect of this sense of historic continuity is the desire of the members of the group to view themselves as more than just organized criminals (Hill, 2003). This, as discussed earlier, also contributes to the creation of an “organizational ethos” which strengthens the relation between the members of the gang. *Girikake* rituals emphasize the social standing of the individual in relation to the organization (Hill, 2003).

Another function which accompanies these various rituals is of public relations, since the rituals emphasize the strength and size of the group in the presence of an audience of clients, other gangs and legitimate society. One of the ways of implementing public relations is by placing a large floral sheet outside the entrance door of a particular event, bearing the names of contributors to the event. This custom is quite common in Japanese society and can be found at weddings, funerals and private events. A Yakuza event accompanied by sheets bearing the names of important politicians, senior business figures, or well-known bosses from the underworld, indicates the gang's social network and helps increase its prestige (Hill, 2003).

Apprenticeship

Apprenticeship to the Yakuza represents an important process of internalizing the values of the group by the new recruits. The length of the apprenticeship can last for a period of between six months to three years, during which the apprentice carries out various tasks. In the first phase the new trainees usually carry out domestic chores before gradually advancing in the organization. The method of learning during the apprenticeship is learning by looking. The apprentice is accorded to a big brother and he is supposed to grasp the secrets of the profession by observing the operations of his superiors (Hill, 2003).

THE IREZUMI PRINCIPLE AS A SYMBOL OF IDENTITY

To a great extent, the tattoo, known as *Irezumi*, serve as a powerful means by which one's identity as a yakuza can be established. The tattoo is also a symbol of masculinity and toughness because of



the traditionally painful procedure of inserting by hand a needle with ink into exposed skin. The tattoo symbolizes both economic commitment (due to the high cost of carrying out this form of tattoo in the traditional manner) and social commitment, due to the stigmatization and signaling function it bears. Hence the tattoo has a dual significance: on the one hand, it is a test of strength, bravery and masculinity and on the other hand it served to differentiate forever Yakuza members from legitimate society (Kaplan & Dubro, 2003). The ultimate price of the tattoo is its permanent nature. By wrapping a tattoo around him, the individual is declaring to society that he is not and never will be part of it (Hill, 2003).

*“This is the path of no return,
Until the of my death, I shall not be able to erase
The tattoos, that on my skin rest.”
(Osaka prison songs) (Raz, 2004: 17).
Giri-Ninjo: Yakuza Legend and Values*

The aggressive yet compassionate outlaw who is useless to society but willing and ready to defend the ordinary man, constituted an important element of the Yakuza legend (Kaplan & Dubro, 2003). Like other mafia organizations, Yakuza members do not like to view themselves as simple infringers of the law. They prefer to see themselves as Robin Hoods willing to fight the strong and defend the weak (Raz, 1989).

The Yakuza associated itself particularly with the values embodied in “Bushido” the code of conduct of the samurai. Yakuza members, like the samurai warriors, prove their masculinity by demonstrating endurance to pain, hunger and incarceration. This set of values, which was developed by the first Yakuza groups, survived primarily due to the combination of two main principles, *Giri* and *Ninjo* (Kaplan & Dubro, 2003). *Giri* loosely means obligation or a strong sense of duty, notions tied up in traditional Japanese values of loyalty, gratitude and moral debt. This is a unique characteristic of Japanese culture which is not found in any other place. The commitment, which is implicit in *Giri*, covers gratitude, kindness, and the obligation of man to take revenge. In a sense, *Giri* is the social cloth that binds much of Japan together (Kaplan & Dubro, 2003).

Ninjo roughly refers to “human feelings” or “emotions” among its various interpretations is generosity or sympathy for the weak and empathy for the other (Kaplan & Dubro, 2003).

The tension that arises from the two themes of obligation versus compassion constitutes a central theme in Japanese literature. By adopting *Giri-Ninjo* the Yakuza elevated their standing in Japanese society. The Yakuza showed that, like the samurai, they could combine compassion and kindness with their martial skills (Kaplan & Dubro, 2003).

The legend of the Yakuza as a Robin Hood organization operates on two levels: firstly, it elevates the standing of the organization both among the legitimate society and among its own members and secondly, the ability to maintain good relations with the *katagi* (ordinary citizens), enables the organization to enjoy freedom of action. Thus, as long as the *Katagi* is not harmed, the latter will not call for restrictions on the Yakuza, and the organization will be able to operate with relative freedom. Nevertheless, as a result of changes in the areas of operation and the entry of various groups into the real-estate market, the development of more sophisticated forms of extortion also involving ordinary citizens (*Minobo* etc.), and the occurrence inter-group disputes leading to street wars involving harm to innocent citizens led to the waning of these values. This process has also

been accentuated by inter-generational quarrels between veteran and young members, who constantly push to increase their share of the profits and view traditional values with less seriousness and devotion. In addition, the entry of Yakuza groups into the international arena and their wars with outside elements such as Chinese triads (Chinese organized crime) who penetrate their territory, have forced the Yakuza to adopt more aggressive measures (Glenny, 2009).

The frequent and violent aggression among Yakuza groups which ended up harming and disrupting the lives of ordinary citizens led to a response by the judiciary with the introduction, of the 1992 anti gang laws, restricting the operations of the gangs which, until then, operated relatively freely publicizing their offices, with large neon signs bearing the names of the gangs, their location and branch. This went counter to the secrecy which traditionally marks criminal organizations, and indicated the acceptance of the organizations by citizens and the police up to that time (Raz, 1992).

Enforcement of the Code: The Stick and the Carrot

Enforcement of the code plays a key element in maintaining control and order within the organization. Enforcement of the rules follows the stick and carrot approach, the carrot realized, in most cases, in the form of money and promotion, and the stick in the form punishments that vary in accordance to the severity of the offense. Minor offences will include punishments such as shaving off hair, confinement, fines and temporary excommunication from home. More serious offences warrant punishments such as beatings, *yubitsume* (cutting off a finger), *Hamon* (excommunication from the *ikka* or nuclear gang), and *zetsuen* irreversible excommunication from all links to the organization. The maximum sentence for an offence is death (Hill, 2003).

OBJECTIVE OF THE YAKUZA'S ETHICAL CODE

The objective of safeguarding reputation and enabling control, even monopoly, of its turfs, led to the existence an ethical code which can also build reputation within mafia groups. The fact that a criminal organization has an ethical code, which regulates the relations between the organization and its clientele, elevates the organizations' stand and consequently its reputation among existing and potential customers. As the main commodity provided by mafia type organizations', "protection" rests on two elements; the first, being the lack of trust among ordinary people, and the second being the organization's ability to resolve disputes and serve as a guarantor for the side it is protecting (Gambetta, 1993). The organization's consistency and devotion to the external ethical code is thus essential for its survival and its business success.

The Ethical Code and the Turfs it aims to Protect

The table below sets out briefly the rules of the organization together with an analysis of the areas each rule aims to defend. This analysis will enable us to better understand the role of the code and its source, in what I believe, can be called Gain ethics.



Table 1: The Code and the Areas it Defends

Code	Defense against external hostility							
	Police	External economic institutions	External criminal organizations	Internal unity	Preserving internal social order	The organization's reputation	Preserving the organization's business monopoly or geographic territory	Maintaining regular and, ideally, high profits
never disobey or cause nuisance your superiors	+	+	+	+	+	+	+	+
never betray the organization or its members	+	+	+	+	+	+	+	+
Do not quarrel with fellow members or disrupt the harmony of the gang				+	+	+		
Do not misappropriate the funds of the organization				+	+	+	+	+
One must never reveal the organization's secrets	+	+	+	+	+	+	+	+
Never violate the wife or children of a fellow members				+	+			
Personal involvement with narcotics is strictly prohibited	+				+			+
Do not appeal to the police or the law	+			+	+	+	+	+

As seen from the table above, each rule serves various functions. Some of the rules, as in the case of obedience, the code of silence, and prohibition against betrayal, cover all areas and provide protections from external and internal threats. The code regulates relations and actions in a way that enables the organization to maintain its ability to produce steady economic profits. While disputes among members or an “affair” between a male gang member and a wife of another, may not seem to have a direct economic impact, it will most likely harm internal unity and social order within the gang. Naturally, such state of affairs will damage the gang's ability in carrying out its operations, hence its ability to generate profits. In this respect, even rules that initially do not seem to be driven by a direct economic motive comprise defense of this area. This notion clearly applies to the prohibition of personal involvement in narcotics. Even though narcotics trade can yield enormous revenues, the Yakuza does not allow its members to deal with drugs. This is mainly due to the heavy punishment imposed by the law. The use of drugs by members of the organization is especially unwanted, as it raises the chances of making judgment errors and the probability of getting caught by police forces. This risk, coupled with the probability of high imprisonment terms for narcotic offences, raises the risk that a gang member could turn to be a state witness, an occurrence that can cause enormous harm to the organization, due to possible revelation of the organization's secrets. Furthermore, involvement in narcotics may also harm the organization's reputation. This is especially true in the Japanese case, as Japanese society condemns gangs who deal in drugs (Hill, 2003). However, in spite of the stringent prohibition, Yakuza members are still involved in narcotics, primarily because of the enormous profits generated by this trade. Ultimately, what motivates Yakuza members are cost versus profit considerations and, in this case, it seems that the economic benefits override the high risks involved.

As discussed earlier, reputation plays a key role in the ability of the organization to protect its areas of control, otherwise known as 'turfs'. Maintaining and elevating the organization's reputation is important in all levels of interaction of the organization with existing and future clientele, ordinary citizens and among the members themselves. One of the ways the organization can elevate its stand is by an occasional and exceptional benevolent gestures. The Yakuza did this by providing relief aid in, the Kobe earthquake of 1995 and the Tohoku earthquake and tsunami of 2011. Such benevolent acts, help the Yakuza organizations to raise its public image among ordinary citizens and also among themselves, as such acts goes hand in hand with the values of the *Giri-ninjo* and the Robin Hood legend the Yakuza like to associate themselves with. Moreover, it contributes to the creation of an organizational ethos that binds the members together and enhances their sense of belongingness. Although these functions do not bear a strictly economic incentive, such acts contribute more to the survivability of the organization, allowing it to have relative freedom of operation, and strengthen solidarity among its members. Thus, such acts can result in a strictly economic benefit, as shown by the experience of the Kobe's earthquake where the Yakuza seized the opportunity to elevate their reputation in the city hall to acquire more construction contracts (Kristof, *New York Times*, 6.6.1995).

It can be concluded that the Yakuza's ethical code constitutes of three parts. First, there are the eight unwritten rules which underline the fundamental basis of the code and generate the rituals, apprenticeships and the groups' organizational ethos. These activities, in turn, serve to uphold the identity of the group's members and the organization's specific qualities, as well as stress and reconfirm the validity of the rules. They also serve to enhance and reinforce obedience by the members through public oaths and various actions which reflect on the unquestionable commitment of the individual to the organization (*migawari*, tattoos, *sakazuki*, etc.). Through these rituals, the individual expresses his acceptance of the regulatory and punitive role of the code. Secondly, there



are the rituals whose function is to reaffirm and strengthen the rules constituting of the code, while endorsing the organizations identity and special attributes. The endorsement of the group's identity is therefore achieved by the creation of an organizational ethos which consists primarily of the code as well as Yakuza legends, benevolent acts and *girikake* rituals. The rules of the code, the rituals, symbols and customs also serve the additional function of strengthening the feeling of belonging to the group. This sense of belonging is a vital element among Yakuza groups, especially in light of the socio-economic background of most of their members, who often come from socially-deprived, ostracized groups, and broken homes. The existence of a fictitious family with noble values of loyalty and reciprocity is an attractive factor for most of the recruits (Hill, 2003). And finally, the third aspect of the code is its ability to impose sanctions and punishments on those who violate the rules. The imposition of sanctions is a vital educational tool for the enforcement of the code for, beyond the fact that the individual accepts the regulatory role of the code; he must also understand that violation of the code engenders very severe sanctions. The more complex the decision-making process, and the more the danger of violating professional and normative norms is high in the execution of the duty, the greater the importance of a clear ethical code that guides the members of the group (Amir, 1999). As demonstrated, the mere existence of a code implies that the temptations to violate it are high. Thus, enforcement of the code and its deterrent "see and beware" power, are highly important. By demonstrating, celebrating (rituals) and enforcing the code, the gangs succeed in maintaining internal order and mediating between the, sometimes contrary, desires of the individuals who make up their ranks. Since the rules are constantly stressed and endorsed by various rituals, they facilitate the work of the members and their ability to adhere to the demands of the organization. They also enable continued economic control and a clear domination of the markets in which the groups are active.

CONCLUSION

The Yakuza is undergoing a process of continuous change. This is due to structural changes resulting from inter-generational differences and disputes, the influence of globalization, and changes in the law, all of which are forcing the Yakuza to diversify its areas of operation. These changes, in turn, impact the ethical code which guides the lives of the individuals in the different groups. Rules which, in the past, were considered inviolable and those who violated them were subjected to severe punishment, are violated frequently, and the sanctions governing them are hardly applied. Two of the rules of the code which are violated periodically are the prohibition against the use of drugs and the prohibition against harming the *katagi* (ordinary citizens).

The repeated violation of these rules, and in particular acts of aggression against *katagi*, indicates that the Yakuza's ethical code is, a flexible, utilitarian system which seeks to produce economic gain. As the almost routine violation of the code is being performed in accordance to cost-versus-profit (mostly economic) considerations, rather than on a basis notion of 'good' and 'evil' as can be found in conventional social morals of legitimate ethical system. Yakuza members themselves regard harming ordinary citizens and dealing with narcotics as fundamentally evil or wrong actions. In both, the case of narcotic-related crimes, and in the case of harming *katagi*, the existence of prohibitions stems not solely from the moral reasons of legitimate society, but also from the practical reasons of organizational survival. It can be concluded that the economic benefits accrued from such violations outweigh the cost of the code, thus making these practices worthwhile. This leads to the assertion that the Yakuza's ethical system, in contrast to other ethical systems, does not presume to provide a law that differentiates between 'good' and 'evil' as in legitimate society, but offers a system of values, defined here as Gain ethics, which tries to maintain internal social order

within the organization, provide a clear, efficient framework of operation for its individuals while ensuring organizational survivability as well as its monopoly over territories of operation. As stated, ensuring regular and if possible high, economic gains is the principle which holds the ethical code. Thus, any new examination of the code will always be based on benefit-versus-cost considerations.

The Yakuza's ethical system by its nature and role is an ad-hoc ethical system, driven by profitability and organizational survivability objectives. It uses numerous arrangements, which include psychological and sociological components, in order to serve its objectives and harness the members of the organization to its common goals. The system works at three levels: the first level adheres to the code itself, the second is celebration and endorsement of the code through rituals, customs and symbols, and the third is enforcement of the code through heavy sanctions imposed on violators of the code. Through these three functions, the ethical code has succeeded in ensuring the survivability of the organization while maintaining the giant economic enterprise that has been dominated by the Yakuza through the years. We have also pointed out the weakening of the code towards the organization's members and its forms of operations.

As dubiously moral and evil the actions of the organization may seem, one must note that, ultimately, this is economic enterprise seeking material gains, often in a similar manner to the one executed by highly capitalistic legitimate economic corporation as was revealed by the recent economic crisis. Legislation, globalization, and technological development greatly impact the organization and the areas in which it operates. Changes in its areas of operation may also result in changes, and ultimately lead to the weakening, even neglect of the internal code that guides the members of the criminal organization. Sometimes such changes, as in the case of harming the katagi, can cause great harm to the lives of innocent people. It is, therefore, important for authorities, when calculating what measures to take against criminal organizations, to consider how law enforcement can influence the daily operation of the organizations and perhaps drive them to use more violent and dangerous means of action. Thus, in contrast to wide held beliefs, these are not disperse gangs of thugs who seek pleasure through violence but rather an economic enterprise trying to maintain and enlarge its economical profits both in the legitimate and un-legitimate world while preserving its survivability as an organization and solidarity among its members. In other words, what differentiates the ethical code of the Yakuza from conventional ethical codes is the fact that most ethical codes known to us, try to establish a moral line in areas where there are no legal prohibitions. Yakuza members mostly operate in the criminal economic arena, namely, an arena defined by society as prohibited. The objective of the ethical code is to help ensure the organization survivability and its economic success, without consideration of universal moral judgment values (in terms of 'good' and 'evil') as found in the ethic systems of the legitimate society.



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ASIAN CRIMINOLOGICAL SOCIETY

PART *14*

VICTIM AND VICTIMOLOGY





PROTECTION OF VICTIMS' RIGHTS UNDER RESTORATIVE JUSTICE PATTERN

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Currently the keeping up crime rate has troubles every country. A flood of multiple cases have dazzled people. The early theories (e.g. Ferri's theory of saturation of crime¹) and the contemporary criminology theories² all demonstrate such an indisputable fact that no society is free from crime. Just as human being could not avoid the encroachment of disease he is unable to exterminate crime phenomenon either. Since crime and society are back to back. Under this situation, human being has to update his ideas, he has gradually recognized that the only thing he could do is to seek ways to solve crime problems. Renewing of conceptions will inevitably lead to the reform of system. At present, the traditional judicature pattern is confronting challenges from the pattern of restorative justice. Under this pattern, victims reserve a top priority and their due rights gain more protection.

I. Victim

Crime victim in criminology refers to "a sufferer from dangerous consequences of crime"³, which means a natural person who has suffered from harm, including physical or mental damage, emotional suffering or economic losses or substantial impairment of their rights through acts or omissions that are in violation of criminal law of a State.

Some scholars classified victims into two levels: principal victims and secondary victims. The principal victims are those who have suffered from the direct effects of violence. The secondary victims are the family members, friends, eyewitnesses, criminal judicial officials and communities etc.⁴

For crime not only affects the direct victim but also other relative persons and society. For this reason, victim in theory is a broad conception. There is a victim in every crime. Thus restorative justice can be applied to all kinds of crime. In judicial practice, however, restorative justice may mainly focus on the principal (direct) victims of cases. The cases of secondary (indirect) victims are treated by negotiated justice pattern.

II. Three Kinds of Justice Patterns

There are three kinds of justice patterns in the academic circles. I summarize them as State justice, restorative justice and negotiated justice. Some western countries (e.g. Britain, America, Italy, Germany, Australia etc.) use these three kinds of pattern together. The State justice pattern constitutes a substantial part in Chinese judicial practice. Restorative justice and negotiated justice

¹ Ferri considered that every society had its own crimes, which resulted from natural and social conditions. And the quality and quantity of crimes were proportionate to social collective development. In order to demonstrate his theory of saturation of crimes, ferri cited the old dictum from Emetleter to support his viewpoint, "crime also had year-end balance. Increase and decrease of crimes were more regular than that of income and expense of national economy". To facilitate to understand his viewpoint, we can discover a certain number of crimes under a certain natural and social environment as we can discover that a certain amount of water will dissolve into a certain amount of chemical material rather than increase and decrease of atomies. See Enrico Ferri, *The Positive School of Criminology*, translated by Guo Jian'an, Publishing House of Chinese People's Public Security University, 2004, pp.157-163.

² See Wu Zongxian, *Western Criminology*, Law Press, 2006, pp.323-448.

³ See Wang Mu, *New Criminology*, Higher Education Press, 2005, p.200.

⁴ Cite from Chen Xiaoming, *Theory and Practice of Restorative Justice*, Law Press, 2006, p.8.

have drawn widely attention of domestic scholars since the end of last century. At the beginning of this century, some judicial bodies started to grope for using these two patterns and luckily obtained good effects.⁵

State justice pattern focuses on State's solution of crime problems. The dominant power of criminal justice is held by a State, which is the so called State justice. This criminal justice is based on State's claiming of a monopoly on the right of prosecution.⁶ Under this definition, a crime is the infringement of State and social orders. Crime is a struggle between isolated individuals and the ruling class. Thus the criminal jurisdiction should be monopolized by a State and it is the State instead of victims taking litigant's procedural status. Penalty, regardless of retributive penalty or educative penalty, focuses on State and offenders. Just as the Norwegian criminologist Nils Christie had said, the State stole controversies between direct adversarial parties, took away victim's direct compensation and deprived victims and community of opportunities to participate in solution of crimes and understand crimes through judges, procurators and lawyers.⁷

The core target of State justice system is to declare offenders guilty in public and punish their behaviors forbidden by criminal law. Judicial officers especially procurators represent State to prosecute a crime, and their basic position is to protect State's and public interests. The interests of victims and offenders are secondary to that of the former. These obvious features determine the basic differences between criminal justice, civil justice and administrative justice. Every stage among registration, investigation, prosecution, trial and execution of judgment is controlled by State organs. This pattern must manifest the authority of public powers. By comparison, the rights of victims and offenders, especially the victims' rights, cannot realize fully.

Restorative justice is different from State justice. Although there's a wide spectrum of opinions on definition of restorative justice, in essence, its core lies in settling criminal cases through dialogue and consultation between offenders and victims. According to the draft declaration of *Basic Principles on Use of Restorative Justice Programs in Criminal Matters* by the ECOSOC, restorative justice program means any program that uses restorative processes and seeks to achieve restorative outcomes. Restorative outcome means an agreement reached as a result of a restorative process. The outcomes include responses and programs such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender. Restorative process means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a person whose role is to facilitate in a fair and impartial manner. The processes may include mediation, reconciliation, conferencing and sentencing circles.

The draft of declaration requests that restorative justice programs may be used at any stage of the criminal justice system when there is voluntary consent of the victim and the offender. The victim

⁵ Some specific cases were quoted from the compilation of materials and typical cases concerning implementation of criminal policy on Combination of Leniency and Harshness of public sector department of the prosecution authorities of Beijing (interior materials), and the compilation of theses on Symposium of criminal policy on combination of leniency and harshness of law school of Zhengzhou University and the people's procuratorate of Zhengzhou.

⁶ Fang Baoguo, From Revenge to Reconciliation—Research on Victims of Restorative Justice, <http://www.lawyee.cn/redirect/index.asp?url=http://law.chinalawinfo.com/newlaw2002/slc/slc.asp?db=art&gid=335571946,2008-02-20>.

⁷ Ibid.



and the offender should be able to withdraw such consent at any time during the process. Where restorative processes are not suitable or possible, criminal justice officials should endeavor to encourage the offender to take responsibility vis-avis the victim and affected communities, and support the reintegration of the victim and the offender into community. Meanwhile, the draft of ECOSOC didn't deny the role of Member States in restorative justice. The draft asked Member States to consider establishing guidelines and standards, with legislative authority when necessary, that governs the use of restorative justice programs. Such guidelines and standards should include the conditions for the referral of cases to restorative justice programs, the handling of cases following a restorative process, the qualifications, training and assessment of facilitators, the administration of restorative justice programs, standards of competence and rules of conduct governing the operation of restorative justice programs etc.⁸

From above, we can see a State only plays a complementary role in the implementation process of restorative justice except establishing and perfecting institutions. The first consideration of restorative justice is victim's wishes. It will settle the case according to victim's wishes. In a broad sense, community belongs to the victim category. Only when the victim is reluctant to negotiate with the offender can State settle the case. It isn't States ignore crime but the application of penalty power by States takes a secondary place. Criminal disputes, no less than civil disputes, should grant parties free right to choose dispute mechanism on the basis of will autonomy. To start the state's penalty power or not is the rights and freedom of victims. Compared with State justice, in the implementation process of restorative justice, the dominant power shifts from a State to parties including the victim and the offender, of course victims have the priority.

Negotiated justice means a kind of justice pattern which settles criminal disputes through dialogue and consultation by litigation subject.⁹The system of plea bargaining, testify exemption of tainted witness, criminal reconciliation and criminal mediation system and so on are examples of it. Negotiated justice was derived from State justice pattern. The main reason of its existence is to release the pressure from cases and enhance efficiency in case handling. This justice pattern is not the main point of this essay, so I will not sustain more demonstrations here.

III · Differences between Restorative Justice and State Justice

i. Different philosophical origins

The fundamental difference between restorative justice and State justice lies in that the former takes every affected individual seriously. The philosophy foundation of it is humanism and its contemporary expression in China is "people first". The evolvement of individual's status in the area of criminal law is as follows: the establishment of human's main-body status; protection of offender's rights; protection of victim's rights.

Human's main-body status was established in the period of Renaissance. After the dark and long period Medieval days, human's self-consciousness came to wake and gradually recognized that the world was not God-centered but people-centered. Human nature started to draw people's attentions and develop since the period of Renaissance and fully developed in western institutional

⁸ Cite from Liang Genlin, "Interpretation of Criminal Policy", in Chen Xingliang ed., *Criminal Law Review*, Chinese Political and Law Science University Press, 2002.

⁹ See Chen Xingliang, *Research on Criminal Policy of Combination of Leniency and Harshness*, Chinese People's University Press, 2007, p.341.

government movements. All these movements were under the banner of protection of human rights and conveyed humanistic spirit of individual-centered. And this spirit continues to this very day.

The protection of offender's rights originated from the developments of criminal classical schools, whose aspect lies in the establishment of modern criminal justice system in countries all over the world. The modern criminal justice system is a human rights centered system. And it gradually formed into a standard. That was judging the level of civility of criminal actions by standard of degrees of safeguarding procedural rights of suspects and defendants and its advancing the civility of criminal actions. The inferior position suspects and defendants took in the struggle against public power aroused people's sympathy and the notice of justice. A series of modern criminal justice systems(e.g. the due process system, privilege against compulsory self-incrimination, attorney present right, exclusive of illegal evidence, privilege against unlawful search and malicious arrest and so on) took protection of the rights of suspects and defendants as chief task, and even at the expenses of case justness and substantial justness. It is obvious that modern criminal system is defendant-centered and the base line of the exercise of the criminal jurisdiction is the protection of defendant's rights. Beyond this base line, the adverse consequences such as evidence exclusion and procedural sanction will be imposed. In this process, victims as the common witnesses of little importance become marginalized and even may be totally forgotten. The great suffering of victims couldn't be healed. Victims seen as merely a tool starting the prosecution process may probably be re-victimized.

It wasn't until 1950s that the theory of crime victims which derived from criminology was booming. Some scholars on criminology started to rethink the criminal prevention system and criminal justice system which existed for centuries. They focused their research scope on victims and this way exercised a positive influence upon criminal justice. It is the restorative justice that put victims as the core of judicial system, emphasizes the victim's procedural chief status, safeguards the sanctity of victim. The victim became the party that reserved the right of choice and determination in settling cases instead of a common witness of little importance.

Protection of victim's human rights which is an inner meaning of human rights protection was unfortunately ignored for several centuries. In the process of restorative justice, the exercise of criminal jurisdiction no longer merely focuses on defendant's rights, but is more concerned on victim's self-determination and the restoration of the relationship between offender and victim. It will become the secondary resort to safeguard victim's interests. Criminal justice system diverts its focus from defendants to victims.

ii. Different views of criminality

The view of criminality refers to people's opinion and idea about crimes. Traditionally, a crime was regarded as the violation of public rules or abstract orders of morality. It is now seen as damage to victims, threat to the peace and safety of community and challenge to public order. The reaction of crime should aim at alleviating such damage, threat and challenge. The pure retributive reaction is neither able to lessen gross social losses nor effectively meet the victim's need of compensation or promote to resolving community conflicts. It will not advance public safety and security either. Therefore, restorative justice advocates settling crime by preventative and restorative ways instead of punitive or retributive ways on the basis of recalling offender's sense of duty and obligation. Its contents also fully manifest the spirit of people first. Whatever place, whatever time and under what



situations, human being is the core. Humanity's subjective perception and initiative should be fully developed. That is an inexorable law governing humanity's rational development.

In ancient China, there were no differences between criminal law and civil law. In modern history, law was divided into public law and private law and each had its own spectrum and played its own part. Today, however, we move ourselves all in turn, the idea of unification of criminal and civil law is manifested in restorative justice. The essence of civil law lies in the expression of citizen's free will being recognized by law. Because civil torts always harm the interests of citizens, even though they may infringe legal rights of other civil subjects, civil subjects have priority to how to settle disputes. Whose interests were harmed by a crime on earth? Is it the interests of the State, of society or of citizens? It is safe to say that some crimes harm the interests of the State (e.g. crime of jeopardizing state security, crime of jeopardizing interests of national defense and so on) while others infringe the interests of society (e.g. some accusations under the crime of disrupting the order of social administration). Most crimes, however, harm the interests of citizens. A crime is the behavior that an individual in one community harms other individuals in other communities. Meanwhile, because crime was committed in a specific place, mostly in a community, so the occurring of crimes always affects sense of safety and security of community members and their relationships. For the above reasons, crimes should be settled by the victim, the offender and the community. This settlement is very similar to the handling of civil torts in the aspect of real parties charging the disputes. This will avoid the victim's marginal position in modern criminal procedure. In the modern criminal substantial law, the criminal liability of an offender nearly has nothing to do with victim's needs except partly satisfying victim's thirst for revenge. The compensation to victims is considered as a civil problem. Compared to the variety rights enjoyed by defendants in criminal procedure, victims don't have litigious right in many cases. They have no right to participate in the criminal procedure and have no influence on verdict and judgment, therefore, their status in litigation is much like the common evidence providers. According to the traditional view, it was granted that crime cases should be settled by the State. Transformation from this traditional view to the modern one unifies the criminal law and civil law. The outcome of this unification is that the victim and the offender charge the harms caused by crime on the basis of equality.

1. Differences of operating patterns

Firstly, advocating autonomy of the parties' will and equal consultation, restorative justice opposes to power's cutting across right. This basic ideal determines that the procedural pattern of restorative justice is different from the procedural pattern of criminal justice. However; it possesses much more characteristics of civil procedural pattern. Restorative justice concentrates on interests of victims, restoration of relationship between the parties and restoration of peace of community. However, crime is different from civil disputation after all. Not only personal interests but also public interests are involved in the criminal conflicts. The complete devolution of powers will necessarily result in complete overindulgence of crime. It is just based on this point that as a distinct judicature pattern, restorative justice which is not only different from criminal justice but also different from civil procedure can emerge because of demand. So some scholars call it "the civil pattern in the public law".¹⁰ To a great degree, crime is treated as tort according to restorative justice.

¹⁰ John Bullard, *Community Mediation, Criminal Justice and Restorative Justice*, translated by Rao Yuhe, *3Journal of Beijing College of Politics and Law*(2006).

Secondly, they work in two frameworks respectively so that there are no so-called mutual conflicts and respective crises. It is impossible to compare one's advantage with the other's disadvantage because of incomparability. For example, it is emphasized that the principle of a legally prescribed punishment for a specified crime, principle of suiting punishment to crime, equality before the law, presumption of innocence, right to silence and so on are most important for the traditional criminal justice. So some scholars doubt that whether fairness and just will survive when applying restorative justice. If they survive, then where are they? Is there much more characteristics of utilitarianism with the new challenge to traditional justice? It is impossible for restorative justice to maintain the value orientation of State justice. Under this judicature pattern, the society, state, scholars and common people pay more attention to each specific individual. Restorative justice takes individual's existence, feeling, perception and happiness of life as essentials. Accordingly, restorative justice emphasizes separation of powers or devolution of powers. State power is a kind of political coercive power which has specific standards and criteria. Power generally finds expression in state power which can be divided into legislative power, judicial power, and administrative power and so on. Power is a kind of political force which derives from right and safeguards right. And it is a kind of free will of humans, as well. Penalty power belongs to judicial power. Initially, penalty power exercised by individuals had been transferred to state. Now, having regained penalty power, individuals possess more rights when coping with problems concerning themselves. Each one can exercise or abdicate the power. In order to safeguard peace and order of society and maintain individuals to live regularly in a good order, the power will be exercised by state again when individuals abdicate penalty power.

Thirdly, for a long while, the two kinds of judicature patterns can not only coexist but thrive together. The manifestation of strength and weakness of the two judicature patterns shows the trend of dynamic state development. In the first stage, restorative justice pattern is weak. Traditional justice pattern is strong. In the second stage, they appear to be balanced and equal each other. In the third stage, restorative justice is strong, nevertheless traditional justice is weak. The time three stages last depends on the situation of the social economic development, the degree of advancement of reform of political system, education level of people, ideology of the public and so on.

2. Differences in subjects of application of law

Court is the main subject of application of law under state justice pattern. Based on the prescription of law and scenarios of case, court specifies criminal responsibility of offenders. Victims and communities who consult with offenders to reach a consensus are the subjects of restorative justice. The will of victim and society plays a decisive part in consultation. As a result, offenders respond for the outcomes against victim resulted from actus reus really and make satisfactory compensation to victim basing on the consensus. So this is a dual responsibility based on two parties' will.

IV. Protection of Rights of Victims

Although volunteer participation is a critical element for restorative justice, how to set up the procedure of restorative justice also need requirement of law. The power of rule of law can be found everywhere almost in the global scope, especially in the western developed countries. The reasons why people choose rule of law is because of its reliability and insurability rather than its correctness. In a comparative sense, rule of law protects each citizen's legitimate rights and interests to the greatest extent possible. By virtue of requirement of law, rights of victims can be protected. The requirement of law protecting victim's rights is as follows:



1. Applicable cases

As mentioned above, restorative justice can be applied in three stages. The applicable cases in which restorative justice can operate in the first stage are as follows: cases through private prosecution, misdemeanor cases through public prosecution, some minor crime cases and some cases of negligent crimes. Besides the cases above, some serious crime cases including cases of endangering state security and public security and cases of crime by taking advantage of duty, can apply restorative justice in the second stage. In the third stage, restorative justice can be applied to all kinds of criminal cases. The scope of application of restorative justice will enlarge increasingly, from minor crimes to adult crimes, from minor offences to serious crimes, from property crimes to violent crimes. And finally all kinds of crimes can apply restorative justice.

2. Premise of application

Victims and offenders consent to restorative justice. Firstly, victims consent to restorative justice. Restorative justice should not be applied to some cases victim discontent to or which should apply to normal judicial procedure basing on some justifications. Secondly, offenders also consent to it. When Offenders consider that conditions victims propose are too harsh for them to consent to restorative justice by weighing the advantages and disadvantages, restorative justice can not be applied.

3. Process of application

The normal judicial procedure consists of registration, investigation, prosecution, trial and execution of judgment. In the author's opinion, either victims or offenders can apply to suspend the ongoing normal judicial procedure and apply to restorative justice in any stage before the appearance of valid judgment. Similarly, either victims or offenders can apply for suspending restorative justice to apply to normal judicial procedure.

The following process constitutes the procedure of application of restorative justice: 1.meeting, creating opportunities for victims, offenders and community of will to discuss outcome from crime.2.compensation, expecting offenders to take measures to restore harm resulting from crimes.3.reintergration, seeking to reintegrate victims and offenders into integrated community members.4.specifying contents to providing definite opportunities for all parties of specific crimes to participate in resolution of crime.

Restorative justice not only pays attention to restoration of losses of victims but also focuses on restoration of rights of victims. It is victims and other persons or community affected by crimes that know what their losses are, what they need to restore, and what kind of compensation can restore mental balance after appearance of crimes to the initial mental state before crimes. They should be provided opportunities to fully participate in the reaction to crimes. Laws should define the scope of autonomy of will of all parties. By virtue of legal system, victims are entitled to rights by state. Judicial authorities still possess powers against crimes when victims are incompetent for exercising powers against crimes or reluctant to exercise the powers above.

4. Overlapping of both

On the one hand, restorative justice advocates negotiation between offenders and victims. On the other hand, it can not avoid recessive influence of substantial inequality of money or status on parties. Some conducts severely in violation of value of fairness and justice, such as coercion, intimidation and crime-redeeming, may take place. Therefore, restorative justice could not operate on its own without supervision and safeguarding from criminal judicial power.

Firstly, restorative justice does not exclude exercising of power of criminal jurisdiction. Penalty power is the last defensive line to safeguard interests of citizens. Once victims and offenders could not reach a consensus, the procuratorate still possesses power to start prosecution for offenders with regard to the same criminal cases to proceed to normal judicial procedure. State does not monopolize powers against crimes rather than remain powers against crimes. Criminal jurisdiction plays a supplemental role in prosecuting crimes. Concerning this point, professor Braithwaite put forward a pyramid model the bottom of which restorative justice lies in. it means that one can appeal to rational justice when failing to appeal to restorative justice, although it is not a good measure to appeal to rational justice.

Secondly, restorative justice could not proceed on it own without supervision and safeguarding of criminal jurisdiction.

By supporting, promoting and reinforcing restorative agreement, judicial system is to guarantee the accused to fulfill his obligations, compensate for damage and agony he has inflicted on victims and community. Criminal judicial authorities, especially the procuratorate, neither constitute the participator and dominant player nor the agent of either party. However, they should perform duties of supervision and guarantee with regard to time limit of restorative justice, process, result and execution of agreement, and so on.

V.Limitations of Restorative Justice

Should we overcorrect the wrong? With respect to traditional state judicature pattern, there are some limitations on restorative justice, which may not provide due guarantee for rights of victims. The main manifestations of limitations are as follows:

Firstly, the nature of restorative justice determines that this judicature pattern depends too much on victims and the accused.

All parties can have the right to self-determination with regard to initialization of procedure, autonomy of parties' will on contents and withdrawal from restorative justice to apply to state justice, and so on. However, if victims are forced to participate in restorative justice, the tragedy of second or even many times victimization will inevitably take place.

Wherever there is someone, there are disadvantaged groups. Rights of disadvantaged group have either been neglected or trampled on casually. Therefore, once one party belongs to disadvantaged groups, it is very hard for them to be on an equal footing. For example, the procedure of restorative justice may be under control of advantaged groups such as polices, communities or very wealthy interest groups. Degree of functioning of community participation mainly depends on other social policies separated from criminal justice. To a comparative extent, it has to do with development of society, education, population, social service and environmental quality of community, and so on.



Secondly, scope of application is limited.

Theoretically, restorative justice can be applied to all kinds of criminal cases because victims consist of direct victims and indirect victims. However, it is hard to apply restorative justice to crimes of infringing on state's legal interests and most crimes of infringing on public legal interests in judicial practice. On the contrary, restorative justice is limited on cases concerning crime of infringing on individual legal interests. Even so, operation of restorative justice also depends on will of all parties. Once one party is reluctant to participate in the procedure, and then it is impossible to proceed. So, there would be few cases to which restorative justice can apply finally. Accordingly, few victims would benefit from restorative justice.

Besides restorative justice, negotiated justice can apply to cases to which restorative justice can not apply. For example, apart from state justice, negotiated justice is mainly adopted in criminal cases concerning victimless crimes and especially severe crimes.

Thirdly, restorative justice lacks concern and protection of due process

With a distinctive feature of individualization, restorative justice makes use of informal procedure such as coordination and conservation to cope with crimes. However, it lacks normativeness and systematicness. Without uniform pattern, due process or corresponding guarantee of system, restorative justice may infringe parties' rights and have negative impact. On the one hand, restorative justice may operate as an instrument of compelling or soliciting parties to make confession. When the counterpart is powerful, the accused may self-incriminate because of fear, or confess against his will for fear of proceeding with state justice procedure. On the other hand, as far as victims are concerned, they may make some concession for powerfulness of counterpart so that their rights will be prejudiced to a greater extent.

With respect to state justice, restorative justice has taken a huge leap forward in terms of protection of rights of victims. Victims in criminal cases have been considered as leading role which contributes to deal with problems. Restorative justice has got a qualitative change on protection of rights of victims. However, people also have a little worry that how restorative justice protects victims from second or even many times psychic injury, how restorative justice deals with problems of keeping secret and privacy, how to define community, and so on. Currently, restorative justice is usually applied to crimes of minor assault and battery and crimes of property. Application of restorative justice to violent group crimes has nearly been excluded. The scope of application has been limited greatly because of stringency of application of restorative justice. Apart from this, operation of restorative justice calls for cooperation of procedural regulations. Without doubt, for today at least, it is our goal that we do not misconstrue the core value of restorative justice and address both the symptoms and root causes to restore undermined relationship between both parties to some extent.

WORKING WITH AMBIGUITY: HUMAN TRAFFICKING VICTIMS IN TAIWAN

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INTRODUCTION

Located some 150 kilometers off the southeast coast of China, the island of Taiwan occupies a key geographical position. To the west lies the Taiwan Strait and mainland China, and to the east is the Pacific Ocean. Thus Taiwan has long been an important hub for shipping and transportation, as well as a center for the smuggling of various types of contraband, especially weapons and drugs. Following its defeat by the Communists in the Chinese Civil War, in 1949 the government of the ROC (Republic of China) retreated to Taiwan and made the island its redoubt. For the next four decades Taiwan was under martial law, which included a ban on any form of contact with mainland China. With substantial US assistance, it was during this period that Taiwan rapidly industrialized. The restrictions on cross-strait communication and travel only came to an end with the lifting of martial law in the 1980s, and today most Taiwanese are allowed to freely travel, work, or do business on the mainland. Legally travelling in the other direction, however, was at first very limited, leading many mainland Chinese to enter Taiwan illegally in search of economic opportunities, typically on small boats operated by human smugglers. Seeing the potential to make huge profits, organized crime syndicates soon became involved, many of which exploit or deceive potential illegal immigrants, turning the problem of illegal immigration into one of modern-day slavery. Although the once-tight restrictions on mainland Chinese visiting Taiwan are being gradually relaxed, at present very few mainland Chinese are allowed to work in Taiwan, and the tide of illegal immigrants from the mainland continues unabated.

Despite Taiwan's *de facto* status as an independent nation, it occupies a rather awkward and ambiguous position in the international arena. The ROC managed to hold onto the China seat in the UN until 1971, when it was transferred to the PRC (People's Republic of China). Since then, Taiwan faces difficulties whenever it would like to sign an international treaty or convention. Yet, with regard to human trafficking, inaction is not an option, since such issues are a matter of human rights. When the US Congress enacted the Trafficking Victims Protection Act (TVPA) in 2000, it authorized the US Department of State to conduct evaluations of the anti-trafficking efforts being made by nations around the world and issue a report, and Taiwan was included in the evaluation, despite its ambiguous international standing. Titled the Trafficking in Persons Report, in the 2001 edition Taiwan was ranked as a Tier 1 nation (i.e., a nation with effective anti-trafficking policies and measures), but in 2005 its ranking fell to Tier 2, largely as a result of two incidents which generated media coverage worldwide: the drowning in 2002 of six mainland Chinese women being smuggled to Taiwan who were thrown overboard by smugglers attempting to evade the Taiwanese Coast Guard; and a riot in 2005 by foreign laborers working on the Gaoxiong (Kaohsiung) mass transit system. Concerned about the possibility of its ranking dropping even further, the ROC government began to implement sweeping reforms in its anti-trafficking policies.

On April 8, 2011, the US Department of State submitted to Congress the 2010 Country Reports on Human Rights Practices. With detailed evaluations of 194 countries, this was the 35th such report. The report indicates that the main human rights issues in Taiwan are corruption, violence against



women and children, human trafficking, and the poor treatment of foreign workers (Human Rights Reports, 2010). The focus of the Trafficking in Persons Report is evaluating and rating each country's anti-human-trafficking efforts, and this is carried out in accordance with the three principles of the TVPA: protection, prevention, and prosecution. In the 2010 Trafficking in Persons Report Taiwan was reinstated to the status of Tier 1, after having been ranked as Tier 2 between 2007 and 2009. These reports issued annually by the US Department of State demonstrate that human trafficking is a serious issue around the world. Combating human trafficking and protecting the rights of its victims are two of the major challenges facing all nations in the twenty-first century, and Taiwan is one of the key players.

INTERNATIONAL TRENDS IN THE BATTLE AGAINST HUMAN TRAFFICKING

Seeing that human trafficking was increasingly being dominated by international organized crime syndicates attracted by the huge profits to be made, the UN began to give serious attention to the matter. As a result, on November 15, 2000 the UN adopted the Convention against Transnational Organized Crime. The Convention's Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children went into effect on December 25, 2003, indicating that anti-trafficking measures had become a world-wide concern. In March 2007 the UN Office on Drugs and Crime (UNODC) launched The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), representing another major step forward in the international anti-trafficking effort.

In the US, anti-trafficking measures were implemented relatively early. A major milestone came in October, 2000 when President Clinton signed into law the Trafficking Victims Protection Act (TVPA), based on the three principles of prevention, prosecution, and protection. Similar anti-human-trafficking strategies and policies have been adopted by the EU, Australia, New Zealand, and other nations. The main distinguishing feature of the US anti-trafficking legislation is that it authorizes the Department of State to conduct an annual evaluation of the anti-trafficking efforts being made by other nations, and the standards used for the purposes of this evaluation have become a key reference used by other nations when establishing their own anti-trafficking legislation. The Trafficking in Persons Report evaluates each nation on the criteria of prevention, criminal prosecution, and victim protection, based on which each nation is assigned a ranking: Tier 1, Tier 2, Tier 2 Watch List, or Tier 3 (from best to worst). A ranking of Tier 3 indicates that the nation in question is not making an active effort to combat human trafficking, and will result in economic sanctions being imposed by the US.

In theory, this annual evaluation made by the US Department of State encourages nations to review their anti-trafficking strategy. Yet, its effectiveness is open to debate, as illustrated by an interview which appeared in the March 15, 2004 issue of the *CQ Researcher* with Rep. Christopher H. Smith (R-NJ), Chairman of the US Helsinki Commission, and Tommy Calvert, Jr., Chief of External Operations of the American Anti-Slavery Group. Smith sees the TVPA as an important piece of legislation and believes that its related evaluations are a boon to international anti-trafficking efforts. He explains that shortly after the Act was passed in 2000 the Trafficking in Persons Report rated 23 nations as Tier 3. Sensing the seriousness of the warning and wishing to avoid economic sanctions, these nations promptly began to take measures to improve their anti-trafficking efforts. In the 2003 TVPA Report only 15 of these 23 nations were still ranked as Tier 3, indicating that the TVPA Report does have a positive impact.

Calvert, however, criticizes the TVPA as having a biased approach to the problem, in that it gives importance only to government actions and policies, without deeply considering their results or investigating the overall situation. Taking South Korea as an example, he asserts that some 15,000 human trafficking incidents occur in the country every year, yet South Korea is ranked as Tier 1. In Calvert's view, then, the TVPA has a blind spot, in that it gives too much credence to a nation's official policies, without evaluating the actual situation. Calvert also has some doubts about the effectiveness of the TVPA, citing the cases of Brazil and Saudi Arabia, both of which were rated as Tier 3 in the 2003 Report. Brazil responded by making a concerted effort to improve its anti-trafficking measures. Saudi Arabia, however, doesn't even have related anti-trafficking legislation, so prosecution of human traffickers is entirely out of the question. In Calvert's view, the reforms implemented in response to the TVPA reports are often merely perfunctory, and if the problem remains unaddressed it will further compromise the Report's credibility (Masci, 2004). Thus it is clear that there are very different perspectives on current anti-trafficking measures. This is especially true of the TVPA evaluations, the value of which could probably be increased by making the investigations more detailed and comparing the effectiveness of a nation's anti-trafficking measures before and after the evaluation.

The current international trend in policies relating to human trafficking is to crack down on the perpetrators while striving to ensure the rights of the victims. However, in light of concerns such as those brought up in the above-mentioned interview in the *CQ Researcher*, academics have begun to investigate the suitability of the anti-trafficking strategies and programs being implemented by various nations, especially their effectiveness in protecting the victims and suppressing the organized crime organizations which are the main perpetrators. In 2010 a substantial report by Peter H. van der Lann et al. titled "Cross-border Trafficking in Human Beings: Prevention and Intervention Strategies for Reducing Sexual Exploitation" was released. Sponsored by Holland's Ministry of Justice and the Campbell Collaboration, a Norway based international research network, the report reviews past research on human trafficking for the purpose of prostitution and sexual exploitation. The report points out several anti-trafficking strategies which are actually harmful to victims or run counter to a nation's overall anti-trafficking policies, and can be used as a reference to help legislators and policy makers select the most suitable and effective approach to dealing with the problem.

The report reviews relevant papers written in the main Western European languages since the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was adopted on November 15, 2000. Each paper examined in the report was evaluated in such key areas as intervention characteristics, study characteristics, evaluation, methodology, outcome measures, quality assessment, and eligibility status. Moreover, there is a plan to update the report every five years. The overall aim of the project is to provide a systematic review of the policies being implemented around the world for suppressing human trafficking for the purpose of sexual exploitation.

In sum, the focus of the research on human trafficking conducted over the past decade has been slowly shifting from probing into the phenomenon itself and how to suppress it, to evaluating the results of the strategies which have been adopted for dealing with the problem. Moreover, in order to enhance the effectiveness of these strategies, it will be necessary to increase our understanding of the considerable overlap which exists between human smuggling and human trafficking.



THE DEVELOPMENT OF MEASURES FOR PROTECTING THE HUMAN TRAFFICKING VICTIMS IN TAIWAN

The steadily increasing pace of globalization is influencing all spheres of activity, and organized crime is no exception. As a result, human trafficking is becoming more complex and sophisticated, increasing the importance of international cooperation in suppressing it. As mentioned above, much attention is being given to the issue, and the various measures being implemented to suppress human trafficking are being increasingly discussed and evaluated. In light of these trends, it is necessary to investigate whether the measures implemented in Taiwan to protect the victims of human trafficking are addressing the root of the problem or merely treating the symptoms.

A. The current policies on safeguarding the victims of human trafficking

In examining human trafficking cases in Taiwan, we only go back to 2007, since this was the year in which the Ministry of the Interior's National Immigration Agency first implemented a system for identifying victims of human trafficking. For a case to be classified as human trafficking, it must be established that the purpose was exploitation and that it involved illegal means and the transportation of the person; all cases involving a person under the age of 18 are classified as human trafficking. Prior to 2007, all such cases were classified as human smuggling or illegal immigration, so there are no earlier statistics on human trafficking cases.

Official statistics on human trafficking cases only began to be compiled in 2007. Of course, the problem goes back much further, but prior to 2007 more attention was given to human smuggling and illegal immigration than to human trafficking. Illegal immigrants apprehended in Taiwan are held in detention centers, and while awaiting deportation may appear in court to testify in the trials of smugglers or traffickers who are being prosecuted. All of this requires sufficient judicial resources, and during the detention period it's very important that due attention be given to the handling and human rights of the detainees. These issues have been given close attention by the relevant authorities all along, but following the drowning of six mainland women attempting to illegally enter Taiwan, how to suppress snakehead gangs and deal with illegal immigrants who have been apprehended suddenly became topics of wide concern. It was also at this time that academics began to shift the focus of discussion from human smuggling to human trafficking.

Following the drowning of six women being smuggled into Taiwan from mainland China in 2003¹, human trafficking suddenly became a topic of widespread interest in Taiwan. The incident also led to US authorities conducting an in-depth review of Taiwan's procedures and facilities for dealing with illegal immigrants. Due to its location and relative prosperity, Taiwan has long been a favored destination for would-be illegal immigrants from mainland China and Southeast Asia. Prior to the passage of the Human Trafficking Prevention Act in 2009, the legal basis used by the judiciary and law enforcement officials for dealing with cases of illegal immigration was provided by a variety of statutes relating to immigration, mainly the Immigration Act, the Act Governing Relations between the People of the Taiwan Area and the Mainland Area, and the National Security Act. In addition to

¹ Shortly after midnight on August 26, 2003, in the open waters of the Taiwan Strait, 26 women from mainland China were transferred from a mainland Chinese fishing boat to two speed boats operated by four Taiwanese nationals. Upon being spotted near the coast of Miaoli County by a Taiwanese Coast Guard patrol ship, the speed boats fled the scene. While speeding away the smugglers ordered the women to jump into the water; those who hesitated were pushed or thrown overboard.

the Criminal Code, other relevant laws are the Employment Services Act and the Child and Youth Sexual Transaction Prevention Act.

In the investigations which followed the 2003 drowning incident, US authorities found that Taiwan lacked systematic procedures for differentiating cases of human trafficking from other types of illegal immigration, such that all such cases were handled in essentially the same manner, leading to punishment incommensurate with the severity of the crime. As a result, in the 2005 TVPA Report Taiwan's ranking dropped from Tier 1 to Tier 2. To make matters worse, in August 2005 a major riot by guest workers² garnered international attention and brought the rights of foreign laborers in Taiwan into the spotlight. A US investigation of the matter found widespread mistreatment of Taiwan's foreign laborers, and a number of reports by NGOs revealed various ways in which foreign workers are exploited. As a result, the 2006 TVPA Report lowered Taiwan's rank to Tier 2 Watch List, the implication being that if these problems continue to go unaddressed, economic sanctions might be imposed.

Concerned that Taiwan's TVPA rating might drop even further, in November 2006 the Executive Yuan formulated the Human Trafficking Prevention Plan, which was designed to integrate the resources of various governmental agencies based on the principles of prosecution, protection, and prevention. With respect to prosecution, in line with the importance given to human rights by the international community, the Plan stipulated stiff penalties for human traffickers; with respect to protection, the Plan detailed the measures to be taken to protect trafficking victims; with respect to prevention, the Plan included provisions for raising public awareness of the problem by such means as education, public policy advocacy, and the media. Having indicated its determination to address the problem of human trafficking, Taiwan's ranking in the 2007 TVPA report went back to Tier 2, a ranking it retained for the following two years. With the passage of the Human Trafficking Prevention Act in 2009, Taiwan demonstrated its commitment to actively uphold the rights of human-trafficking victims, and in the 2010 TVPA Report Taiwan was finally reinstated to Tier 1 status.

International organized crime is on the increase, and due to the huge potential profits, cross-border human trafficking is no exception. As snakehead gangs become increasingly sophisticated in their efforts to lure young women into prostitution, it's becoming even more difficult to clearly determine whether such women come to Taiwan by force or willingly. As shown above, even before the issue of human trafficking came to the fore in Taiwan, anti-human-smuggling policies were grappling with the culpability of the victims and whether holding them in detention constitutes a violation of their human rights. In sum, there is still a need for greater clarification of Taiwan's human trafficking policies, and this will be the focus of the following section.

(1) The difficulties in identifying the victims of human trafficking

In addition to showing that the criminal penalties for human trafficking stipulated by the Human Trafficking Prevention Act are much too lenient, studies conducted by Taiwanese researchers have also pointed out the inappropriateness of completely mitigating the administrative or criminal

² On August 21, 2005 Thai nationals working on the Gaoxiong (Kaohsiung) mass transit system rioted at their dormitory in Gangshan Township to protest against poor working and living conditions. Negotiations broke down when the employer failed to assent to the demands put forth by representatives of the foreign workers. In addition to exposing improper practices on the part of labor brokers, the incident also brought to light misconduct on the part of public officials, delayed the construction work, and tarnished Taiwan's international image.



punishment of the victims. These studies also advocate that the detention of victims should be carried out by the National Immigration Agency in accordance with the relevant statutes (not simply in according to visa type), and that the Household Service Act should be drawn up and instituted in a timely manner so as to help prevent the exploitation of foreign maids and caregivers (Zhou, 2009). In short, these studies indicate that the most essential criteria for classifying someone as a victim of human trafficking is whether or not the person willingly participated in the illegal entry into Taiwan. If it can be established that the person did in fact willingly enter Taiwan, then she should be held responsible. Of course, such a position is bound to come into conflict with the current “victim-centered” point of view, but in the end the crux of the issue remains the difficulty in differentiating the real victims from those who are merely claiming to be so.

As shown by the related literature, classifying a given smuggling case as “human trafficking” or determining that a smuggled person is a “victim of human trafficking” is highly problematic, mainly due to the lack of a precise definition of “human trafficking” and the extremely complex criteria for determining that a smuggled person is a “victim of human trafficking.” With such a lack of standardized and precise criteria, it becomes very difficult to argue that a person classified as a victim of human trafficking was actually a willing participant, due to the difficulty of proving the degree of participation. Making such determinations, then, involves a delicate balance of objective and subjective factors, and the way in which they are interpreted has major implications for the human rights of those being classified (Chen, 2009. Lin, 2008. Zhou, 2009). At present, “victim of human trafficking” is defined rather broadly, such that all foreign nationals subjected to sexual exploitation in Taiwan are classified as victims of human trafficking, even if they willingly entered Taiwan using a false pretext (such as marriage to a Taiwanese citizen) with the intention to engage in prostitution; i.e., it was only *after* entering Taiwan that the exploitation began. No doubt, human rights considerations are behind the current situation, but whether all the victims are completely free of guilt and whether victim protection is being extended to those who need it most are both dubious matters.

(2) Integrating resources for protecting human trafficking victims

As one of the main proponents of the rights and interests of human-trafficking victims, NGOs have carried out a number of related studies in Taiwan. In light of recent trends, a number of studies point out the influence globalization and global governance have on such spheres as politics, economics, culture, society, and technology. These studies indicate that human trafficking is on the increase around the globe, and that effectively dealing with the problem requires prompt government action, and that NGOs need to urge government agencies to make use of the extensive experience NGOs have in international relations, cross-straits relations, and judicial reviews. They also point out the importance of cooperation between NGOs (Diao, 2007).

In addition to reaffirming the “victim-centered” government policy for dealing with cases of human trafficking, these studies agree that an effective anti-trafficking strategy requires a cooperative effort on the part of the government, industry, and NGOs. This research also points out that there is still an inadequacy with respect to six key needs of trafficking victims: interpretation and translation; counseling; medical care; economic assistance; legal advice; and safe repatriation. Another important point brought out by this research is that the investigation and prosecution of a human trafficking case can be greatly assisted by enlisting the cooperation of one of the traffickers, and that the most effective way of doing so is to establish an effective recruitment system based on reduced punishment or exemption from prosecution.

It has also been pointed out that cooperation between different organizations results in a more efficient use of financial and administrative resources. Moreover, the most important contribution NGOs have to make in the fight against human trafficking is that their neutral role allows them to more easily circumvent delicate political issues which often lead to the sacrifice of human rights (Guo, 2009). Research has also pointed out that due to the highly clandestine nature of such activities, many of the victims of human trafficking remain invisible, and are thus unlikely to benefit by any policies or services implemented by the government for protecting trafficking victims. Take, for example, a foreign worker who leaves her original place of work without authorization and goes underground. If she falls victim to labor or sexual exploitation and is afterwards apprehended, because she has been classified by immigration authorities as “whereabouts unknown,” it is quite possible that the exploitation will be overlooked and that she will not be recognized as a victim of human trafficking. As stipulated by the Human Trafficking Prevention Act, the government has the responsibility to assist victims, but in practice such assistance can only be provided to victims who have already been apprehended by law enforcement authorities. For current protection measures to reach more of the victims they are designed to protect, it will thus be necessary to find ways to extend these benefits to victims who are still “invisible.”

Although Taiwan has already been reinstated to Tier 1 in the annual TVPA evaluation, this merely indicates that Taiwan’s anti-trafficking policies are in line with the principles set forth by the TVPA, and it is still unclear to what extent this reflects any real improvement in protecting the rights of trafficking victims.

B. Future policy trends

All nations agree on the importance of respecting human rights, and thus strongly condemn crimes which violate personal liberty. In its efforts to increase international awareness and encourage other nations to make a concerted effort to stem human trafficking, over the past decade the US has been conducting annual evaluations of the anti-trafficking efforts of governments around the world. Ever since it was first placed on the TVPA Watch List in 2002, the ROC government has been making extensive revisions to its anti-trafficking policies and strategies, culminating in the passage of the Human Trafficking Prevention Act in 2009. Still, it is important to thoroughly evaluate the effectiveness of any new policy or program, especially if it involves criminal justice issues, since the results of the evaluations can serve as a valuable reference for legislators. As emphasized by Dottridge, M.(2007),

In the case of every substantial initiative to prevent trafficking, therefore, it is important that it should be evaluated. Whenever possible, the lessons from the evaluation should be published or made available to others conducting similar work. The fastest way of circulating information of this sort at the moment is to put it on a website, ensuring the title mentions “evaluation” or “impact assessment” (of efforts to prevent child trafficking), so that this is picked up by Internet search engines.

In 2009 there was released a major report titled “Cross-border Trafficking in Human Beings: Prevention and Intervention Strategies for Reducing Sexual Exploitation.” Sponsored by Holland’s Ministry of Justice and the Campbell Collaboration, a Norway based international research network, the report reviews past empirical research on human trafficking for the purpose of prostitution and sexual exploitation. The report points out several anti-trafficking strategies which are actually



harmful to victims or run counter to a nation's overall anti-trafficking policies, and can be used as a reference to help legislators and policy makers select the most suitable and effective approach to dealing with the problem. Moreover, there is a plan to update the report every five years (van der Laan et al., 2010). The overall aim of the project is to provide a systematic review of the policies being implemented around the world aimed at suppressing human trafficking for the purpose of sexual exploitation. Even a cursory glance at this report makes clear the great importance which is being given to evaluating the effectiveness of policies and programs intended to protect the victims of human trafficking, and this is precisely what Taiwan needs to focus on in its future anti-trafficking efforts.

The provisions made for assisting the victims of human trafficking in Taiwan's Human Trafficking Prevention Act are based on Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Moreover, in accordance with the plan for protecting trafficking victims announced by the Executive Yuan in 2007, government departments responsible for dealing with the issue began to adopt a "victim-centered" approach. This resulted in the setting up of an integrated service network staffed by professionals in various fields, in recognition of the differing needs of different victims. These services are grouped into six categories: case management (victim assessment, rights advocacy, etc.); interpretation and translation; practical needs and counseling (shelter, security, daily necessities, visa assistance, psychological support and counseling); medical care (assistance visiting the hospital for medical exams, etc.); economic and vocational support (petty cash, financial assistance, work opportunities); legal assistance (legal counseling and support (assistance making court appearances); and safe repatriation (travel documents, repatriation safety assessment, referral to trafficking-victim support agencies in home country, and measures to reduce the chances of being revictimized.

In the course of providing these services, special emphasis is given to three key principles: solving problems by making use of a resource network consisting of various professional services; a "victim-centered" approach in which priority is given to self-determination and safeguarding the victim's rights; and cooperation within the service network, including the sharing of information, resources, and decision-making authority. It can thus be seen that Taiwan's present anti-trafficking policy is clearly based on protecting the victims and ensuring their rights.

Secondary research conducted by Newburn indicates that crime victims require considerable assistance, not just short-term counseling (Newburn, 1993). Thus, in addition to a victim's present needs, contemporary counseling and related forms of intervention emphasize the importance of long-term follow-up support (Marandos & Perry, 2002). For example, women's support networks give relatively greater emphasis to reestablishing relationships, a process which requires counseling, determination, and empowerment (Regehr, Alaggia, Saini, 2009). Such specialized services help increase self-awareness and self-confidence, giving victims the courage to press for legal reforms and the prosecution of human traffickers.

With its emphasis on providing individualized assistance in a timely manner, the victim-centered approach is no doubt worthy of approval. Yet, research has found that recovering from such a traumatic experience as sex-slavery can take years, or even a lifetime. Moreover, although the victim and her family have already been traumatized by the ordeal of being trafficked and exploited, the process of appearing in court can reopen old psychological wounds and make recovery all the more difficult. As such, if a victim is to regain trust in herself and others, and thus have a chance to be reintegrated into society, then "victim protection," necessary as it may be, is only the start, and

must be supplemented with a range of medium- and long-term support for both the victim and her family. Thus the ultimate goal is “victim empowerment,” the regaining of the life skills and self-confidence necessary for a positive and stable reintegration into society.

To sum up, in reviewing its policies for combating human trafficking, based on the three key areas of protection, prevention, and prosecution, the government of Taiwan needs to address the following issues: the extent to which the Human Trafficking Prevention Act is known to the public at large; the extent to which the passage of the Act has assisted prosecution of human traffickers; the extent to which the human rights of the victims are being protected; the extent to which Taiwan’s anti-trafficking laws respond to the actual needs of the victims; how the criteria for prosecution are determined, and whether the strictness with which these are determined has an effect on the identification of victims; and how to prevent victims from being revictimized or even eventually victimizing others.

CONCLUSION

In making a comprehensive survey of Taiwan’s anti-human-trafficking policies, it is clear that these are mainly based on those of the US, and that this is due to Taiwan’s ambiguous international status. Although the various issues touched on may appear to be separate, they are in fact closely interrelated, and demonstrate the need to go beyond the mere protection of human rights, and empower trafficking victims in such a way that they have the ability to actively reintegrate with society. With respect to society, a strict classification mechanism and the aggressive prosecution of traffickers will help to increase public awareness of the severity of the problem. Finally, by clarifying Taiwan’s present and future policies for protecting the victims of human trafficking, it can be seen that there are a number of issues relating to both human smuggling and human trafficking which need to be considered together, for only by doing so will it be possible to establish a fully integrated system for protecting and assisting the victims. Such clarification will help to shift the emphasis from the passive concept of victim protection to the more positive and active concept of victim empowerment.

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A LEGAL SYSTEM AND CULTURE BASED ON THE UNIVERSAL VALUES EXPECTED BY CRIME VICTIMS

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Why are the perspectives of crime victims adopted in this paper? People may get sued a number of times in their lifetimes but most crime victims have only few chances to seek the justice they deserve. The rights and interests of crime victims are therefore far more significant than those of the defendants; otherwise, it would be impossible to protect people's freedom from fear, not to mention the fulfillment of the four major objectives set forth in Article 23 of the Constitution (the most often cited article by grand judges,) and the judiciary of the country would have no reason to exist. Hence, for crime victims and the people, such rights and interests do have their extraordinary significance and value. The victims referred to in this paper are not limited to victims in criminal and civil cases but also include those fallen prey to the practices of civil servants exercising their government authority (such as the plaintiffs in administrative litigation and state compensation cases.) Compared to defendants, convicts and perpetrators who have inflicted harm on others and are normally tried in court and placed under supervision together, crime victims spread in various corners of the society and are the disadvantaged. It is therefore all the more necessary to reform the legal system and culture from the perspectives of crime victims. As precisely stated in the preface to the Constitution, the primary objective of the Constitution is to "consolidate the authority of the State, safeguard the rights of the people..." Being the guardians of the Constitution, judges and prosecutors naturally have the responsibility to protect crime victims under a legal system and culture that is in line with the perspectives of crime victims and universal values.

To begin with, Lu Jin-de's pursuit of justice for his murdered child Lu Zheng and the Supreme Court's repeated overruling of the High Court's exoneration of Su Jian-he and the two other suspects of the robbery and murder case have been the manifestation of application of the human reasoning faculty to the extreme. While definitely worthy of affirmation and applause, they also prove that the justice relatives of crime victims are seeking can be realized only when the perpetrators are given the punishments they deserve. It was exactly this strong conviction that enabled Lu Jin-de to attend the trial of the murderers of Lu Zheng that took 23 years to reach conclusion. Therefore, it is necessary to make changes to the legal system to allow crime victims and their relatives to appear in court and express their opinions to convince the judges. Since the Fair and Speedy Criminal Trials Act entitles defendants to appeal over convictions achieved after repeated remandment, victims and prosecutors shall never be deprived of the right to appeal to the Supreme Court by any means. I hope if the father of the Ms. Luo who fell from a building and died as a result of the attempted rape by the sales manager who interviewed her on Oct. 6 2001 can contact the Taiwan Victim Human Rights Association and stand up against the court verdict that was apparently in favor of the defendant and in violation of the principle of equality of arms set forth in Article 7 of the Constitution.

Secondly, since becoming a prosecutor at the end of 1989, I have always been deeply convinced that universal values (not only legal theories but also including reasoning, philosophy, physics, mathematics, psychology, common sense, the circumstances, logic, and medical theories) must be applied in the judiciary. If law enforcement has to be based on "support for the disadvantaged," criminal law enforcement all the more should never fail its responsibility to serve justice as a result of negligence or foolishness. In my college days, whenever I heard judges and prosecutors being accused as "swatting the flies but not touching the tigers," I would get very upset. Now I am more



open-minded and my response to such accusations will be: “At least the social order of the flies can be sustained first.” To put it more directly and precisely, if a judge or prosecutor regards no one as a “tiger,” even high-ranking government officials can also be considered “flies.” Due to the supremacy of the judicature, temporarily not touching the substantive legal interests of “tigers (those with powerful status)” should no longer be a norm of practice when issues related to the legal interests of people mortally injured or severely hurt need to be addressed (such practice is stated in Article 467 of the Code of Criminal Procedure as suspension of execution.) To achieve this, it will be required to build a new system and culture that enables judges and prosecutors who do not pursue promotions to carry out their duties to the max. The recent “White Roses” protest attended by ten thousand people was the first step taken to prevent and eliminate the morbid culture in the judicature as a result of anachronous decisions, indifference, inexperience, aggressiveness, and corruption of certain judges and prosecutors. Presently, the Judges Act has been enacted to set the guidelines for regular evaluation and elimination of inept judges. However, as the Fair and Speedy Trials Act took effect recently (interpreted by some as having been enacted for the benefit of Tsao (Robert) Hsing-cheng when he was tried,) several serious cases that had remained unsettled for years were concluded, as a result of the application of the Fair and Speedy Trials Act, to the advantage of the defendants without any consideration for the feelings of the victims. Even after the Supreme Court had remanded some of the said cases, the offenders were acquitted at the second trial and the victims and prosecutors were prohibited from appealing to the High Court. With cases of compulsion, acquittal is final. Yet when the offenders were found guilty as charged at the second trial, they were allowed to appeal to the High Court. Meanwhile, the stipulation that detention of suspects during the trial process can never exceed eight years is apparently in favor of defendants.

This month the Judicial Yuan approved the system of trial observation by private citizens, which to some extent is similar to the jury systems in some foreign countries. It seems like the judicial sector is growing more open-minded and accepting the public to participate in the decision-making process. The design of the said system still calls for perfection, yet, from the perspectives of crime victims throughout the country, it will break the false concept that the justice crime victims are after has to be at the mercy of the state. In subsequence, the judicial system will really become a system for the people and win the faith of the public. In turn, the people will be able to enjoy freedom from fear and this will be the first step toward reform and elimination of anachronous decisions, indifference, inexperience, aggressiveness, and corruption among certain judges and prosecutors. However, the four following complementary measures are still required to perfect the system. Under all circumstances, judges and prosecutors will be reminded that they have the obligation to advise the complainants their right to attend trials and express their opinions throughout the entire process.

The following measures are required to perfect the public trial observation system: 1) In addition to the observers’ intellectual capacity and protection, the system should allow defendants and victims, like judges and prosecutors, to present evidence for evaluation and thus form external supervision. 2) As the current legal system appears to be advantageous to defendants (as suggested in the Code of Criminal Procedure and the Fair and Speedy Trials Act,) the protection of the human rights of crime victims must be stepped up (through the Code of Criminal Procedure and the Fair and Speedy Trials Act) and victims have to be allowed to participate throughout the litigation process with equal rights to present their views to enable the observers to hear the stories from the both sides and to stop anachronous, indifferent, inexperienced, aggressive, and corrupt judges and prosecutors from making decisions on their own. 3) The budget for and the number of observers in comparison with the number of judges (including both the judges and prosecutors for the trial and present in the court

in public prosecution cases) must be accurately calculated and established in advance; otherwise, it will be a disaster for the judiciary and the public. 4) Besides applying the public trial observation system up to second trials, the practice of gender equality committee in schools for achieving decisions on sex offense incidents should be adopted; in other words, when the decision of five observers coincide with the evaluation of three judges, the higher courts (including the Supreme Court) should respect such decisions.

Finally, I have always believed putting down the remedial measures in black and white is the fairest approach. They should be transparent and include equality of arms and equitable remedies objectively conforming to universal values (such as cross-examination, full participation of crime victims and interrogatories by their attorneys to facilitate clarification of facts through questioning and defense, and both sides allowed to appeal to the Supreme Court.) I also hope that this public observation system can really improve the conservative authoritarian culture in the judiciary, prevent and eliminate anachronous, indifferent, inexperienced, aggressive, and corrupt judges and prosecutors, and set a new milestone in Taiwan's judiciary. Moreover, large property interests (those of owners of businesses, for instance) and collective corruption of civil servants that are likely to lure judges and prosecutors into corruption, etc. must also be taken into account. Taiwan Victim Human Rights Association will give full support in the Legislative Yuan for these measures as long as they are designed to ensure justice for all. It takes real strength to help the disadvantaged and all the judges have to be fair to boost the faith of the public in government authority. Only then will Taiwan be able to enjoy full democracy and rule of law as set forth in the Constitution. True justice for crime victims and exoneration of defendants should not happen as a result of the mercy of the state; they have to come forth through debate through litigation procedures in which both parties are allowed to participate to clarify facts. This has long been practiced in most parts of the world and now Taiwan is finally going on the right track. Hopefully, the legislation can be completed while the public support is strong.

Based on the above, I believe the system and culture the judicial reform ought to achieve should be: "Regardless of judicial independence, there exists a set of basic criteria – the laws, experience, normal circumstances, and reasoning and common sense based on logic. On top of these, evidence is always required. Reason and facts are applied to settle disputes and deliver justice. Power and social status have no place here. A system for regular evaluation on judges and prosecutors by private professional organizations should be established and only the ones passing the evaluation can continue to accumulate their seniority and receive pay adjustments while those failing the evaluation each year will be referred to the Court of Judicial Discipline for assessment. Such a setup will be able to eliminate judges who fail to pass the evaluation and the existing performance evaluation and grade level systems should be abolished so that "promotions and pecuniary gains" will not be used to control judges. The seniority system will be kept and through independent personnel administration, lengths of service and the results of the evaluation by private professional organizations are applied as the basis of pay scale. When rank and grade promotions are no longer the sole ambition in the judicial system, it will be the day when all judges and prosecutors gain their self-confidence and self-esteem and become self-motivated to really devote themselves to their work. There will be no more corruption.

In other words, the majority of the panel evaluating judges and prosecutors has to be private and just individuals. Eventually, it will be possible to develop a new system and culture in which judges are committed to their responsibility to the people, devoting themselves to their posts as life-long careers, and treating corruption with contempt. Only then will it be possible to fully prevent



corruption and build a justice-for-the-people culture in which judges and prosecutors deem it their obligation to deliver justice or clear the names of those who are not guilty.” In addition to the relevant legal theories, reasoning, philosophy, physics, mathematics, psychology, common sense, circumstances, logic, and medical theories, the cause and effect of all cases as well as humanity must also be taken into consideration because of their significant and deep impact on democracy and rule of law, human rights and the formation and contents of objective universal values.

1. Establishment of the system and culture for judicial and police agencies to conduct correct investigations and collect evidence when inconsistencies occur in the statements of the informers, witnesses or victims or there are discrepancies between the statements of the informers, witnesses and victims or when the informer is the only witness:

A. When inconsistencies occur in the statements of the informers, witnesses or victims or there are discrepancies between the statements of the informers, witnesses and victims, the court may still apply discretionary evaluation of evidence to assess their validity. A statement need not be discarded as invalid just because of partial inconsistency or contradiction. In particular, informers’ descriptions of the characteristics of perpetrators, motives, methods and outcomes may contain inconsistencies due to factors like time and memory or appear exaggerated sometimes. However, if a statement is basically true, it has to be admitted. If the court has indicated in its ruling the parts of evidence admitted or rejected and the corresponding reasons, such a ruling should not be criticized as unconstitutional by any party (see Supreme Court 1985 Tai-Shang-Zi No. 1599 Precedent, 1997 Tai-Shang-Zi No. 6212, 1997 Tai-Shang-Zi No. 806, 1993 Tai-Shang-Zi No. 3847, and 1956 Tai-Shang-Zi No. 45 Decisions.)

B. If the charges filed by the complainant are intended to place the defendant under criminal procedure and the statement is consistent with the confessions of the defendant and accomplices and the legal theory as described in the preceding paragraph applies, it is still necessary to examine other evidence before the conclusion is reached (see Supreme Court 1941 Shang-Zi No. 816 Precedent and 1963 Tai-Shang-Zi No. 1300 Decision.” The “other positive evidence” here refers to corroborating evidence, including indirect evidence such as experience, normal circumstances, objective conditions, and contradictions between the defendant’s witnesses’ statements. Therefore, when the charges filed by the complainant are intended to place the defendant under criminal procedure, the statement requires corroborating evidence to ensure its authenticity. The corroborating evidence here means, in addition to the complainant’s statement, other evidence capable of supporting the authenticity of the said statement (Supreme Court 1998 Tai-Shang-Zi No. 2060 Decision as reference.”

C. It does not require all the evidence to prove a crime has been committed. As long as the statement of the complainant can be proven authentic, it is sufficient. Evidence that cannot be applied as direct proof of the defendant’s commitment of the crime but can be combined with the statement of the complainant to establish the fact of crime, it is regarded corroborating evidence (see Supreme Court 1984 Tai-Shang-Zi No. 5638 Decision) It is unjustifiable to overturn the statement of the complainant based on some insignificant elements. Experience and logic should still be applied when judging the validity of such statements (see Supreme Court 1998 Tai-Shang-Zi No. 679 Decision) In other words, instead of invalidating the entire statement due to partial inconsistency with reality, as long as part of the statement is authentic, it can be admitted to support the decision (see Supreme Court 1984 Tai-Shang-Zi No. 5874 Decision.) There are no restrictions in the Code of Criminal Procedure on the types of corroborating evidence. Therefore, other than

direct evidence, indirect evidence or facts are circumstantial evidence and can be regarded corroborating evidence (see Supreme Court 1992 Tai-Shang-Zi No. 402 Decision.) Corroborating evidence is to reinforce the authenticity of the complainant's statement and does not have to be totally consistent with the statement. What it proves may be part or all of the fact of crime and it is valid so long as it can convince the court of the authenticity of the charges of the complainant (see Supreme Court 1992 Tai-Shang-Zi No. 5004 Decision.)

D. If the informer has passed a lie detector test conducted by the Bureau of Investigation (BOI) of the Ministry of Justice. His or her statement can be admitted as complementary evidence for that of the victim who has also passed a similar test. Hence, when the complainant accuses the defendant of sexual offense and passed the BOI's lie detector test, the statement from the victim can be admitted as complementary evidence for the aforesaid evidence.

E. According to Rule 803 of the US Federal Rules of Evidence, records of regular documents and data conducted from witnesses are the hearsay exceptions and may serve as evidence. Such evidence may be admitted as corroborating evidence of crimes informers accuse as having taken place. As most criminal acts are covert actions, posterior objective conditions, expert appraisals (such as special investigations and forensic accounting, etc.,) and scientific verification (such as lie detector tests) may be required as corroborating evidence (regarded as indirect evidence) to establish the fact of crime. If the suspect denies all corroborating evidence that has been confirmed as true, it shows the suspect's defense is groundless and cannot be accepted as reasonable. If the suspect refuses to take lie detector tests, it can only be interpreted as an attempt of self-exculpation. In cases where the suspect has committed the crime alone, once the statement of the suspect is proven fabricated and the abovementioned evidence is established, all the posterior indirect evidence (including witnesses, material evidence, documentary evidence, partial confession) can be admitted to complement each other, while other related circumstantial evidence, including lie detector test results, can also be accepted to establish the fact of crime according to experience and logical reasoning.

F. The rules of experience and logic stated in Article 155 of the Code of Criminal Procedure must not be contradicted: Can rules of experience and logic be applied as corroborating evidence to strengthen direct evidence (see Supreme Court 1995 Tai-Shang-Zi No. 726 Decision)? The answer is yes. If there is a way to turn a case around, it is by application of rules of experience and logic. For example, subjective criminal intents are important in frauds and breaches of trust but are difficult to prove. As a result, judges of the first instance who are inexperienced sometimes are unable to express the reasoning from beginning to end in the verdict according to rule of experience and thus declare the suspect innocent. As a result, the chances that the verdicts of fraud and breach of trust cases get overturned at the second trial have been rather high. In other words, it is not final if the perpetrators of such cases are declared innocent at the first trial because chances are high that they might be found guilty at the second trial. The chances of having opposite rulings for sex offenders, murderers, and arsonists are relatively lower because the principal concern with such types objective behavior is whether there is evidence. However, whether there exists the subjective intent from the beginning to cheat and harm the victim, it is the basis of the thinking and handling of a fraud or breach of trust case. Under such circumstances, when the judge writes up the decision with the correct knowledge, background, experience, and thinking mode, suspects who have been considered innocent because of lack of direct evidence may just become guilty. All theories have their pitfalls and only judges with practical experience know where the pitfalls are.



2. Righteous prosecutors can promise justice in judicial cases and have significant effects on the justice for all crime victims: Prosecutors are in charge at the beginning of judicial cases. Therefore, having a righteous chief prosecutor means justice will be served in judicial cases and righteous prosecutors will deliver it. At present, the average indictment rate nationwide is about 12 to 16 percent, while the acquittal rate lies between 15 and 5 percent. It means the impact of prosecutors on justice in all cases achieves over 90 percent and this is why it is considered in Germany, Japan and France that prosecutors should be given quasi-judge status – because judges require prosecutors to initiate cases to deliver justice. Unfortunately, the legislative positioning of the independence of prosecutors in Taiwan, as well as the rest of the world, is still immature and unsettled. Public interest and transparency limits that are part of the prosecution system are still being adapted for a win-win and so is the relationship with the supervisory Ministry of Justice. Nevertheless, the recent addition of prosecution personnel autonomy to the Court Organization Law and the appointment of the prosecutor general by the congress suggest that prosecutors are responsible to the entire country and the Constitution. This indicates that, as the legal system varies in different countries, the special political circumstances in Taiwan have made the people believe that prosecutors are judicial officials not to be subject to interference from the administrative branch. Prosecution system integration has been a result of the principle of prosecution independence (see Article 60 of the Court Organization Law and Grand Justice Shi-Zi No. 325 Interpretation.) Otherwise, the regulation of absolute obedience to orders from supervisors in Article 2 of the Public Functionary Service Act could easily be applied and there would be no need to define the approaches and scope of prosecution system integration in the Court Organization Law. Furthermore, Article 13 of the State Compensation Law apparently points out the constitutionality of prosecutors: Same as court judges, prosecutors confirm facts and apply laws and are not to be interfered in their duties. Although this is not entirely the same as the “public functionary” stated in the Article 24 of the Constitution, the Shi-Zi No. 228 Interpretation released on June 17 1988 clearly explains that this regulation specially designed in line with the particular features of prosecutorial duties has not usurped the legislative power or contradicted the Constitution. This indicates the substantiality of the function of prosecutors as judicial officials. In reality, whoever controls prosecutors controls judicial justice. AT this point, the prosecution system needs reform more important than the court judges. With deferred prosecution and community service as options, prosecutors now control over 90 percent of judicial justice. With activeness and mobility, prosecutors have the capacity to play the role of pre-trial judges in criminal cases and therefore should be placed under regular evaluation by external agencies like court judges.

3. Judicial independence may not depart from the sovereignty of the people and posterior evaluation of judicial investigations, trials and execution of cases cannot contradict the constitutional principle of judicial independence: In short, judicial independence should only stand up against the government to deliver justice for the people, not to oppose to the consolidated will of the people, which is the objective standard of law. This is exactly the reason behind the restriction set forth in Article 80 of the Constitution that everything has to be conducted according to law and, therefore, judges in Taiwan do not have the right to announce any law as unconstitutional. The Constitution endows this right to the grand justices and yet majority attendance and the strictest procedure are still required, similar to those applied in the past for the National Assembly to revise the Constitution. This is one of the fundamental spirits of the Constitution. However, to prevent usurpation of the will of the people by the independence of judges, the objective standard of law, it is stated clearly in the preface to the Constitution that the primary objective of the Constitution is to “consolidate the authority of the State and safeguard the rights of the people,” which is the responsibility of judges and prosecutors. Hence, placing the independent judicial system under

evaluation does not violate the principle of trial independence. To ensure the appropriateness of such evaluation, the elimination mechanism ensuing the posterior evaluation of judges and prosecutors is exactly the balance to ensure confirmation of facts without external influence as well as to protect the authority to apply law from interference. Such evaluation not only complies with the spirit of judges and prosecutors being responsible to the people but is also a professional, comprehensive and integrated approach that is by all means feasible.

4. Besides the main duties of investigation, trial, and execution, judges and prosecutors also have subordinated obligations: These include (1) statutory subordinated obligations – as set forth in the handbooks of judges and prosecutors, the Court Organization Law, the Public Functionary Service Act, the Civil Code, the Criminal Law, and the Anti-corruption Statute, judges and prosecutors have the responsibility to uphold the constitutional system and maintain social order and may never be exempted from such responsibility by claiming their unawareness of the law; (2) Agreed subordinated obligations: judges and prosecutors are also required to comply with the regulations regarding the drafts, formats, important notices, letters of consent, and meeting minutes designed by courts of various levels and the prosecutors offices, as well as the duty to obey and execute payments; (3) Subordinated obligations based on the principle of good faith: With matters that are insignificant burdens to judges and prosecutors but involve foreseeable and preventable harm to the life, physical, health and litigative interests of the concerned parties, judges and prosecutors have the responsibility to disclose to the said parties in accordance with the principle of good faith. By establishing a set of criteria for evaluation of these three types of subordinated obligations, it will be possible to promote quality justice and make judges and prosecutors adhere to professional standards and execution of their duties when conducting trials and investigations. In other words, academic theories, science, culture, human dignity, and humanitarianism have to be integrated for the work of judges and prosecutors to achieve its optimal effect. Under the ethic guidelines of the law, judges and prosecutors need to make good use of humanity sciences, philosophy, legal theories, psychology, reason, emotional factors, and culture to serve litigation parties, settle disputes, and establish objective standards of universal values to educate the people in the country.

5. When the judge and prosecutor evaluation system is enforced, it should be able to immediately improve the present unhealthy judicial environment: It is known to all that the present unhealthy judicial environment has an effect on the quality of the work of judges and prosecutors. Some judges and prosecutors do not try hard to protect and bring justice for crime victims simply because they are too eager to close cases to make it easier to write up the reports. It is a pity. Therefore, the evaluation and elimination system has to be enforced and prosecutors, like judges, also should be placed under the same evaluation system as such practice complies with the will of the people, the objective standard of law, and will ensure there is counterbalance against the power of judges and prosecutors to confirm facts and apply laws. Moreover, as prosecutors are substantially judicial officials that participate, supervise, and execute throughout the criminal procedure to deliver complete and final justice, it is extremely necessary to establish a judge and prosecutor law as well as an external evaluation system for comprehensive and regular assessment of unfit judges and prosecutors.

6. Judicial ethics are the core of constitutional democracies: The abovementioned reform is to establish a judicial system centering on the interests of the people. Presently, public support is strong and the legislation can be passed. Hopefully, it will not be just empty talk or become aborted. Efforts should be made to overcome all obstacles to legislate the judge law or judge and prosecutor law as well as the system of external evaluation conducted annually to eliminate unfit judges and



prosecutors. Unless such a system is established, judges and prosecutors will continue to worry about their performance evaluation and whether their grade promotion will come through each year and continue to work in accordance with the intents of their supervisors. They won't be able to devote themselves fully to their duties, act professionally, keep on studying to handle cases properly, and enjoy and recognize their jobs as their life-long careers. The trust of the people will not be cherished. Only if the said system is in place, will the people truly believe in the integrity of the judges and prosecutors. Above all, since people are not given the choice to decide which judge or prosecutor is to work on their cases, there is no reason for people to put up with having a second-rate judge or prosecutor to handle their cases. Plus, this is even in violation of Article 7 of the Constitution which stipulates that all citizens of the ROC are equal before the law. As prosecutors are substantially judicial officials that participate, supervise, and execute throughout the criminal procedure to deliver complete and final justice, a judge and prosecutor law as well as an external evaluation system for comprehensive and regular assessment of unfit judges and prosecutors should be established. Judges and prosecutors must not serve merely as tools for closing cases. They have to value the justice in each individual case and devote themselves to justice and the mission to guard justice for the benefit of the people.

7. What most crime victims ask for is a system of evaluation of all judges and prosecutors and each individual case. On the other hand, to protect judges and prosecutors from easily arising blames, all interference and pressure must be ruled out: It is necessary to maintain the quality of living and the integrity of the work environment for judges and prosecutors to stimulate their morale to achieve the spirit and goal of justice through good application of wisdom and legal regulations and thus reinforce their confidence and esteem so that they can regard their jobs as life-long careers and treat corruption with contempt. What crime victims are after is not much yet it appears to be a luxurious demand in Taiwan. They only hope for a strong legal system to protect them from powerful criminal gangs and political evils, a system that places judges and prosecutors under evaluation and ensure justice for crime victims. In particular, prosecutors, being frontline legal workers, have the most tremendous impact on crime victims. Such a system will also provide the protection, evaluation and supervision of judges and prosecutors to prevent interference, procrastination, corruption, and abuse of power. Innocent crime victims also require protection from all judges and prosecutors. They can't wait to be given the right to request for evaluation and removal of unfit judges and prosecutors. This comprehensive and regular judge and prosecutor evaluation system should take effect within five years and this is what the people really want. Include prosecutors in the external evaluation system and abolish the existing performance evaluation system so that judges and prosecutors can cease to be merely tools for closing cases and value the justice in each case. The grade system must also be removed to stop the mentality and culture of "getting promotions and becoming rich" among judges and prosecutors so that they can devote to justice with a sense of mission. It will be the true fortune of the people. As for the independence of prosecutors from judges, it requires consensus in the future. At the moment, address the urgent demand of all crime victims first.

8. During investigations, prosecutors ought to request judges to include banning criminal suspects from leaving the country in the main text of their decisions to ensure thorough justice.

A. Over the years, fines imposed on juristic persons or proclaimed confiscation of their gains from illegal activities have all been to no avail as these juristic persons suspended their businesses, declared bankrupt, went into liquidation or dismissed their operations. Little has been collected. Only with natural persons, when they are unable to pay up, the fines are converted to labor service

and the execution is not entirely fruitless. When the defendant is a natural person and fails to pay any of the fine at all, the plaintiff may request the executive prosecutor or the executive prosecutor may accept the plaintiff's request or decide out of his or her own volition to assess the circumstances and deem the defendant as showing no remorse and intending to enjoy the illegal gains after serving the sentence and thus notify the prison incarcerating the said defendant to regard the remorselessness and the intention to enjoy the illegal gains after serving the sentence as the grounds for not granting the defendant parole or disallowing the defendant his or her inmate performance point accumulation. This then makes the execution a little fruitful.

B. Based on the above, if a prosecutor wishes to indict an incorporated company and the person in charge (for tax evasion, sales of counterfeits or illegal drugs, violation against the Government Procurement Act or the Regulations Governing Waste Management, etc.) at the onset of the investigation conducted with judicial police, it is necessary to freeze (prohibit transfer or disposal of property) part of the assets of the said incorporated company to make sure that there will be property for disposal even if the company should resort to fraudulent conveyance when the court decision is finalized and a fine is imposed on the company or the company's gains from illegal activities are to be confiscated. The basis of such action is the newly amended Subparagraph 3, Article 38 of the Criminal Law in which it is prescribed that properties derived or gained from "criminal acts" belonging to the defendant, an incorporated company or the person in charge, may be confiscated. Also according to Article 133 of the Code of Criminal Procedure, "A thing which can be used as evidence or is subject to confiscation may be seized." Such "things subject to confiscation" naturally include contents of bank accounts reasonably considered as derived or gained from illegal acts (see the prerequisites for searches stipulated in Paragraph 2, Article 122 of the Code of Criminal Procedure.) In other words, since the contents of the bank accounts can serve as future evidence as bases of confirmation of the fact of crime and sentencing or this assumption has achieved the justifiable probability rate, such accounts naturally should be frozen or seized. The so-called justifiable probability rate means most people would believe so. The judicial agencies in the UK, the US, Germany, Japan, and France have worked out when the probability achieves 46 to 50 percent, it is necessary to prevent companies that are taken to court from making fraudulent conveyance before the court decision is released and the defendants from enjoying the money and other properties gained from illegal activities. Otherwise, it is almost impossible to execute the confiscation of any property of the company or collection of fine (according to Article 10 of the Anti-corruption Statute, Article 19 of the Statute for Narcotics Hazard Prevention and Control, Article 7 of the Organized Crime Prevention Act, and Article 14 of the Money Laundering Control Act, prosecutors, if necessary, may seize the property of convicted offenders through confiscation or collection of owed amounts or taxes.)

C. Over the years, proclaimed confiscation of illegally gained property or collection of owed amounts or taxes from natural persons has usually been nearly fruitless since the offenders often resorted to fraudulent conveyance and there was no basis for increase of sentence or conversion to labor service. In such cases, the executive prosecutor may assess the circumstances and deem the defendant as showing no remorse and intending to enjoy the illegal gains after serving the sentence and thus notify the prison incarcerating the said defendant to regard the remorselessness and the intention to enjoy the illegal gains after serving the sentence as considerations for not granting the defendant parole or disallowing the defendant his or her inmate performance point accumulation. This legal and necessary approach sometimes can make defendants willingly turn in the pecuniary amounts and property that are to be confiscated and court execution is thus able to achieve certain results.



D. The authority of prosecutors and courts to impose sanctions can be applied to fulfill the legislative purpose of ensuring that criminal offenders are unable to enjoy any of their criminal profits. If before the seizure of their illegal gains and criminal profits, the defendants or convicts employ fraudulent conveyance, concealment or any other measures (such as making purchases with their illegal gains, which can be interpreted by stretching the definition given in Grand Justice Shi-Zi No. 612, 586 without contradicting the principle of punishment by law as including all of the defendant's profits from legal and natural means through which the illegal gains have been applied and thus all of the defendant's possessions that have resulted from the said illegal gains through value conversion can be regarded as "derivatives from criminal acts," a subparagraph phrase that has been added to Article 38 of the Criminal Law. This is a good example of flexible application and interpretation of laws since all money and property obtained from criminal acts are normally mingled up and appear in new forms. Hence, illegally obtained objects that are proclaimed to be confiscated may have already been turned into different objects of value and become untraceable. Under such circumstances, prosecutors, with their responsibility to safeguard public interest, ought to suggest the abovementioned flexible measure to the court to eliminate the possibility of allowing defendants or convicts to enjoy the criminal profits) to avoid seizure of large amounts of property. As a countermeasure, during the investigation, trial, or execution, it is a necessity to ban defendants from leaving the country to enjoy their illegal gains and criminal profits. This is a step that should not to be omitted simply because the defendant has turned up at the court each time he or she is required to. Above all, it is absolutely necessary to impose the ban when the trial is still not concluded especially if the crime involves large profits and the defendant can be reasonably regarded as likely to escape, conceal the criminal profits, and destroy the evidence. Such defendants possess large criminal profits and are financially able to reside overseas for an extended period to escape punishments from the ROC government. Without banning them from leaving the country, the investigation, trial, or execution may be difficult. Detention may not be required at the time, but ordering the ban and securing the illegal gains are definitely needed. Although such a measure may cause the defendant certain inconvenience, it can ensure the power of criminal punishment is executed and the interests of the victims are protected. Moreover, defendants' enjoyment of their illegal gains is not encouraged. The purpose is to reinstate the facts and deliver justice. Therefore, it is necessary to take such a measure which does not depart from the principle of proportionality. Meanwhile, the measure also complies with current regulations on people leaving the country and the Code of Criminal Procedure. The defendant is part of the evidence. Banning the defendant from leaving the country is to secure this part of evidence which may be irreplaceably lost if the defendant leaves the country. Hence, the said measure is by all means legitimate and essential to ensuing investigations, trials and execution. Once the defendant leaves the country and the illegal gains have not been seized, it is quite likely that the court will be unable to summon or apprehend the defendant who chooses to remain at large. In fact, the abovementioned considerations for deeming defendants as likely to escape and without a fixed residence are the conditions stated in Paragraph 2, Article 469 of the Code of Criminal Procedure for prosecutors to apprehend suspected perpetrators.

E. According to Grand Justice Shi-Zi Interpretations 586 and Statements of Reasons for No. 612 and 643 Interpretations, the "other appropriate measures" in Subparagraph 6 of Article 116 of the Code of Criminal Procedure is explained, in compliance with the legislative purpose and not exceeding the possible range of the meaning of the context, as including electronic surveillance. Interpretation No. 3 also clearly points out that the principle of "expression of one thing is the exclusion of another" shall not apply to any law with room for further interpretation. Therefore, according to the abovementioned Statements of Reasons for No. 586 and 612 Interpretations,

electronic surveillance equipment unequivocally belongs to “other appropriate measures approved by the court” as prescribed in Subparagraph 4, Article 116-4 and prosecutors can recommend the court to adopt electronic surveillance equipment to prevent defendants who have been released from detention from escaping. The cases of Wan Xuan-ren and Huang Zong-hong being released on bail for over NT\$3.5 million but still jumping bail are two good examples. The justice department exists for concerned parties. In the broad sense, prosecutors are judicial officials who participate and supervise throughout the entire criminal procedure. Therefore, it is only right that the court should notify and seek advice from prosecutors before releasing any defendants on bail.

F. Allow crime victims to attend throughout the litigation procedure: The rights and status of crime victims have been overlooked and seldom are their standpoints taken into consideration. Reform is needed to change the practices and culture in the judiciary. In the future, related measures should be drafted one after another to allow victims to apply for evaluation of judges and prosecutors as well as to request against suspension of execution, conversion of penalties to fines, or parole for their perpetrators, and to request for execution of death sentence.

(1) Law, reason and humanity are three important considerations in Taiwan’s criminal procedure system. It is the obligation of judicial agencies to value the status of crime victims and deliver complete justice. From the aspect of law, it is unseemly that the victims or complainants of cases involving crimes subject to public prosecution are not regarded subjects in the litigation procedure. In particular, in cases where the victims have been murdered or seriously injured and unable to speak, their relatives file the charges but are disallowed to attend trials as witnesses and present their statements. When providing their legal counseling service, the volunteers at Association for Victims Support, including myself, have often been told of such unfair treatment. One of the most common types is professional negligence leading to death or serious injury and the relatives of the victims, acting as complainants, often ask with incredibility: “Why didn’t we receive any notifications from the prosecutor or the judge when hearings were to be conducted? We found out the final oral debate had been concluded without our knowledge only when we called in or received the indictment or verdict.” The hearings conducted are chiefly concentrated on advising the parties to achieve reconciliation and asking whether reconciliation has been achieved. After that, the case seems to be of no concern to anyone. The indictment or the summary judgment does not even carry information regarding the name, date of birth, etc. of the complainant and no one informs the complainant that the case is already under trial procedure. Hence, further protection for complainants to file for supplementary civil action is, needless to say, impossible. In my experience, when attending court trials for public prosecution, I have not always been able to convince every judge to notify the complainant to appear in court to present his or her statement as reference for assessing the post-crime attitude of the defendant as well as to give the defendant and the complainant the opportunity to achieve reconciliation and settle their dispute.

(2) Once the defendant are convicted, regarding whether the sentence can be converted into fines, whether the fines can be paid by installments, whether the defendants can be granted parole, or whether the punishment is to be executed, the complainants are very rarely summoned to appear in court to express their opinions. Why are crime victims and complainants so underrated by law? Only in non-prosecutorial dispositions and statements of deferred prosecution is the basic personal information of the complainant clearly indicated to protect the right of the complainant to apply for reconsideration of the ruling. Criminal procedure systems that focus on the interests of defendants such as this one have long been anachronous. It is imperative to design a new criminal procedure system with the focus set equally on the interests of both the complainant and the defendant to



promote social security, social order, and public interest. This is also the objective of the legislation of the Crime Victim Protection Act, as set forth in Article 1. Hopefully, a criminal law system and related policies for protection of crime victims can be established; otherwise, there will never be real justice. Therefore, the right of complainants to participate in the litigation process has to be guaranteed through legislation to ensure that judges and prosecutors value this right. The design in the German Criminal Procedure Law to allow the complainants of certain crimes to participate throughout the litigation process is a good practice that can be introduced.

9. Judicial and police agencies should be good at collecting seven types of evidence to support the execution of government authority. It requires rationality and good communication skills to apply evidence to prove details of crimes that cannot be reenacted. There are seven types of evidence, namely witnesses, material evidence, documentary evidence, scientifically verifiable aspects, contradictions in statements, partial confessions (easily attainable through confrontations,) and circumstantial evidence (personal character, escape to avoid punishment, etc.) They all have their advantages and disadvantages and therefore should be combined to complement each other to break psychological defense of defendants, expose the lies of suspects and enable judges and prosecutors to achieve confirmation beyond reasonable doubts. Any inconsistency or incompleteness found in recorded data and statements must be immediately corrected or added with the reasons attached (among all, site maps, inspection records and check list are the most important.) When all these are carried out, government authority will never become public violence.

10. Defendants who are not detained during investigations or remain on bail during trials can still be taken into custody if they are found to have violated laws, failed to appear in court as summoned, or retracted their testimonies more than once or twice. Unjustifiable retractions may be regarded as possibly leading to or resulted from collusion. Presently, US federal judges concur that the probability of credibility only needs to achieve at least 46 percent when it is considered there are enough reasons to support the credibility. In line with this view, possibilities of collusion and destruction of evidence are deemed likely when the probability is lower than 50 percent. If the probability is over 46 percent, prosecutors, who represent public interest, will just have to work for this over-46 percent possibility. In other words, they only need to achieve such probability, not 100 percent.

11. Establishment of objective standards for confirmation of facts and application of laws

A. The discretionary evaluation of evidence by judges and prosecutors must come under the rein of rules of evidence, experience and logic: The discretionary evaluation of evidence by judges and prosecutors must not contradict the rules of evidence, experience and logic. Many people think prosecutors and judges are powerful because they can make decisions in accordance with their discretionary evaluation of evidence. In reality, however, such discretion is not without limits. Evidence must be confirmed before judgment of whether someone is guilty or not guilty can be made. The so-called "discretion" simply means judges can objectively assess, reason, and apply laws according to their free will to convince the parties. If the evidence and reasons are insufficient or before they are confirmed, no conclusion can be made. In other words, discretionary evaluation of evidence is constrained by the evidence collected and reason. Since discretionary evaluation of evidence instead of legal evidence is adopted, the range of objects and materials that can be regarded as evidence is therefore large, and this is an advantage of discretionary evaluation of evidence.

B. Thoughts “that cannot be seen or heard,” inferences based on social experience, and normal circumstances can also be adopted as evidence: Evidence is proof. Besides tangible witnesses, material evidence and documentary evidence, thoughts that cannot be seen or heard, inferences based on social experience, normal circumstances, and common sense can also be evidence. Probability is an important factor in assessment of evidence. Objectively speaking, is it reasonable? Is there any contradiction? Is the statement provider reliable? Are the facts to be proven reliable concrete details or just abstract objects? All these have to be taken into account and this is why discretionary evaluation of evidence is adopted in Taiwan.

C. Judgment requires identification of contradictions between the statements of both parties: Defendants in criminal cases only need to present questions or evidence to convince most people of their innocence and free themselves from criminal responsibility. When this is achieved, the court should declare their innocence. On the other hand, when a victim wants the defendant to take the criminal responsibility he or she has to prove the possibility that the criminal act did exist is greater than the possibility that it did not (overwhelmingly so beyond doubts) in order to support the truthfulness of his or her statement and have the perpetrator, the defendant, convicted. It is rather difficult for both sides to find evidence to prove they are telling the truth, yet to prove the statement of the other party is lies is relatively easier. Hence, finding contradictions in the statement of the other party is the quickest way to win a lawsuit. After all, there are often big lies behind little lies.

D. Decisions of whether illegal evidence should be excluded are made after weighing the advantages and disadvantages: Undoubtedly, it is an objective of the criminal procedure to uncover physical evidence. The methods have to be legal, justifiable, reliable, clear-cut, and necessary in order to protect the human rights of the defendant. If the aforesaid principle is violated when the suspect is questioned, whether or not the statement thus obtained can still serve as evidence will depend on the subjective intent of the judicial police officer responsible, the objective circumstances, the seriousness of the violation of the interests of the suspect, the seriousness of the disadvantages thus incurred to the defense of the suspect during trial, the harm resulted from the crime in question, the effect on illegal collection of evidence if the said fact is disallowed to be used as evidence, and whether the judicial police officer would have uncovered the same evidence by following the due procedure. All these should be taken into consideration while human rights protection and social security maintenance should also be balanced in accordance with the principle of proportionality.

E. Judicial officials should, as upheld in criminal psychology, employ the right approaches at the right time to create circumstances for suspects and crime victims to become impulsive and tell the truth: Lying is not part of human nature. Therefore, especially when interrogating, judicial officials can create circumstances for defendants to become impulsive and confess the crimes, as long as the measures implemented do not involve tortures, threats, enticement or anything illegal. Interrogation with what appears to be unreasonable questions, presentation of related witnesses, material evidence, or documentary evidence to create the circumstances to make defendants realize they are in the wrong, or remind defendants of the irrationality and untrustworthiness of their statements are all legal questioning skills. At the same time, defendants are less likely to weigh their personal interests during the initial questioning by judicial police and it is therefore easier to break their psychological defense through interrogation, explanation and presentation of evidence and obtain more reasonable statements. This so-called creation of circumstances in criminal psychology is to make suspects become impulsive and confess their crimes. Such statements are not illegally obtained, so they can be admitted as evidence. Since they are acquired through transparent approaches and rational



communication in compliance with constitutional principles and also established in the official format under the witness of law enforcement officials and the defendant, they are legitimate and reliable.

F. Attitude is a consideration: The objective of interrogation or questioning is to obtain honest answers from defendants. If defendants are found to be lying on purpose, their statements should not be accepted as evidence. Normally, “there are often big lies behind little lies.” Such statements cannot be regarded as reasonable defense since reasonable doubts exist. Generally, attitude is a subconscious reaction of character. It is usually related to a person’s past experience and such experience can intensify as a result of normalization and differentiation.

G. The nature of the judiciary is to make reasonable, reliable, clear-cut, necessary, and reformative decisions to deliver justice and mend social defects: I have been a prosecutor at Taipei Prosecutors Office for more than 18 years. I have always highly affirmed court decisions that are the results of reasonable thinking (the argument stated in the repeated revocation and remandment of the High Court’s acquittal of Su Jian-he et al by the Supreme Court are some good examples.” It is my hope that this paper can serve as an overview of collection of evidence, actual practices, discretionary evaluation of evidence, and assessment of evidence for the people in Taiwan as well as education in law enforcement and help all law enforcement personnel to understand the various evidence types and collection approaches, and the essence of assertion of violation of legal interests and protection of legal interests under the Criminal Law.

H. Evidence collection and discretionary evaluation of evidence includes comparison of capacity, prospects, significance of protection, and numbers of people, instead of petty immediate gains. Therefore, it is necessary to learn to be reasonable and raise questions, and the reasons and evidence presented must comply with social experience, logic and objectivity. They must have solid bases (being reasonable and without contradictions, and coming from reliable sources.) These are the core values in judicial protection of the people.

I. It is necessary to establish how discretion and rules of evidence should be applied (including collection and recognition of relevant and necessary evidence):

(1) Relevant evidence is evidence that can prove the defendant’s commitment of the crime (see A Discourse on Criminal Evidence Law by Cai Dun-ming, 1st edition, pp. 400~403, published in Dec. 1997 and Rule 401 of the US Federal Rules of Evidence that took effect on Dec. 1 2002: ‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.’) By definition, evidence that has influence on the confirmation of the truthfulness of disputed facts is relevant. Such evidence, along with the previously mentioned indirect evidence, is considered positive evidence of relevance and is assessed in accordance with rules of experience and logic to ascertain whether the original discretion is still sound.

(2) With criminal cases, judicial discretion, the basis of conviction, only needs to be beyond reasonable doubts. The crime does not have to be reenacted 100 percent.

(a) The most frequently cited precedent for acquittal decisions is the 1987 Supreme Court Tai-Shang-Zi No. 4986 Decision in which the criteria for conviction and acquittal are clearly stated. Whether direct or indirect evidence is adopted, it has to be beyond normal doubts, which means

according to common sense, social experience and logic, the general public will not have any reasonable doubt about the validity and reliability of the direct or indirect evidence. Otherwise, the decision of whether the defendant is guilty or not should not be concluded. In the said Supreme Court precedent, it is pointed out that the court only needs to prove all the doubts presented by the defendant and the defense lawyer as lacking reasonable bases to make the conviction justifiable (see last section of the Statement of Reasons for the Grand Justice Shi-Zi No. 588 Interpretation.)

(b) The Code of Criminal Procedure of the ROC does not set any limit on types of evidence. Therefore, all direct evidence, indirect evidence and facts are regarded circumstantial evidence and can be adopted as evidence (see 1992 Supreme Court Tai-Shang-Zi No. 402 Decision.)

(3) With civil and administrative cases, the discretion of judges will suffice.

(4) With all types of cases, there are seven aspects and types of evidence. The reliability and application of all relevant indirect facts and evidence are closely associated with the experience, background, knowledge and thinking of judges as well as the dependability of evidence providers, the concreteness of the details and the number of objective contradictions (also called rationality of logical experience.) Above all, the senses of seeing, smell and touch and knowledgeableness of friendly witnesses as well as the reliability and concreteness of the details of their statements must be carefully scrutinized.

(a) Witnesses: Witnesses may be the most unreliable but they can also be the most effective and direct evidence with continuity. Memory includes emotional memory that exists whole life long without “homogeneous interference” (see the text of speech by Hong Lan on the Relations between Emotional Pressure and Behavior (second half), pp. 111~112, 4th Issue, the Police Magazine, published by the National Police Agency, Jan. 2005;) declarative memory; and non-declarative memory. Memory is not an individual mental function. Declarative memory and non-declarative memory are the two basic forms run through different nervous systems and stored separately. Each has its own conscious and subconscious effects (see Nature of Memory, Just Be Reasonable 2: Open up the Science Book, by Hong Lan, p. 106.)

(b) Material evidence: The appearance and characteristics of objects are used as proof but they have to be “specific” to be evidentially valuable. The pronoun “this” should be used to indicate the specificity. The drawback is most of such objects can only serve as indirect proof. Very few can be direct proof.

(c) Documentary evidence: The appearance, characteristics and contents of documents are used as proof but they have to be “specific” and reliable to be evidentially valuable. These include sound or image materials on audiotapes, videotapes, and compact disks. Besides using the pronoun “this” to indicate the specificity, the sources of such materials must be legal. Documentary evidence can serve as indirect or direct proof in court. For example, first of all, “the police officer recorded the conversation with the defendant before identifying his or her identity. The recording was obtained before the police officer exercised his or her authority as a judicial police officer. Hence, there was no need to read the defendant the rights set forth in the Code of Criminal Procedure in advance. At the same time, as the recording was the conversation between the police office and the defendant, there was no violation of secrecy (see Subparagraph 3, Article 29 of the Communication Security and Surveillance Act in which it is stipulated that recording of a conversation between a law enforcement official and a suspect for collection of evidence is not illegal) and such a recording can



still serve as evidence (Taiwan Supreme Court 2003 Shang-Su-Zi No. 224 Decision and Taipei District Court 2002 Su-Zi No. 560 Decision.)” Secondly, according to Rule 803 of the US Federal Rules of Evidence: “A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition” is a hearsay exception, and certificates of diagnosis or related documents can be adopted as evidence or corroborating evidence.”

(d) Common circumstances, reasoning and experience: When the statement of one of the parties appears, according to scientific empiricism or the judgment of the judge, to support that the fact is more likely than not to have existed, this is considered compliant to rules of experience. The dependability of evidence providers, the concreteness of the details and the number of objective contradictions (also called rationality of logical experience) are principal factors in the decision of the possibility of existence of the fact. Take perpendicular collision of two cars for example. Which car has passed the centerline first can be adopted to determine if the defendant has run the red light or tried to beat the flashing yellow light. The degree of probability (exceeding 50 percent) leads to obvious difference in reliability. It is experience like this that accumulates to become referential criteria for decision-making.

(e) Logic: “All things have their beginning and end and their priorities; knowing the sequence is understanding the Tao,” as stated in the Great Learning, is a scientific concept that can be referred to. For example, when the statements of the complainant and witnesses are partially inconsistent or contradictory, it is up to the court to apply its discretion and decide what to adopt, instead of rejecting all of the statement because of such partial inconsistency or contradiction. In particular, witnesses’ descriptions of the suspect’s characteristics (the color of or design on his or her clothing, for instance) or their testimonies may appear inconsistent as a result of fading memory over time or exaggeration. However, as long as the basic details are consistent with the facts, such descriptions or testimonies should still be adopted (see Supreme Court 1985 Tai-Shang-Zi No. 1559 Decision.)

(f) Various objective circumstances: These include all the objective circumstantial evidence from before, during and after the commitment of the crime. For example, “In light of all the circumstantial evidence, such as the defendant’s impelling criminal motive, vengeful character, his warning through a third party to the complainant’s brother, his disappearance after the arson, his inhabitation in the restaurant for a year, and his alibi proven a lie, it is logical and compliant with experience to establish that the defendant committed the crime out of the intention to given the victim a lesson.”

(g) Partial confession from defendants: In addition to confession to the crime, this includes conditional confession (such as admitting whenever a detail is pointed out during the initial interrogation,” contradictory confession, and confession outside the court. The confession rules currently practiced can be cited to reinforce the value of evidence that is difficult to obtain.

(h) Judges and prosecutors ought to consolidate the reasons and bases of their decisions: Justice should be comprehensive comparison of capacity, prospects, and significance, instead of petty immediate gains. Therefore, it is necessary to be reasonable and well supported, and the reasons presented must have solid bases and comply with social experience, logic and objectivity. For example, “Based on the above facts and their inter-verifiability, the witnesses and the complainant are apparently to be trusted. Their statements are reliable, with credible concrete

details, and compliant with objective rationality regarding the circumstances before, during and after the crime. The defense of the defendant and the defense lawyer is unreasonable and groundless. Therefore, the fact that the defendant has committed the arson is beyond all reasonable doubts by normal people.)

(5) Educators should make efforts to extend the scope of relevant facts and evidence so that reasons and bases can be built up quantitatively to upgrade the quality of evidence and thus increase the capacity of judges and prosecutors to prove the relevant facts and evidence presented by defendants and their lawyers as unjustifiable. The more the evidence materials, the more likely it will be to recover the truth.

(6) Corroborating evidence is mostly indirect evidence and there is no need to prove such evidence is absolutely beyond reasonable doubts as long as the truthfulness of the statements obtained can be guaranteed. Such evidence is sufficient inasmuch as it can be consolidated with the charges of the complainant or the confession of co-defendants or the defendant to support the conviction (the reasons and bases are built up to a level beyond reasonable doubts.)

(a) Although the defendant makes no confession, if a co-perpetrator's statement suffices in proving the defendant's involvement in the criminal act, such a statement can still be admitted as evidence of the defendant's crime (see Supreme Court 1952 Tai-Shang-Zi No. 338 Decision.) Admission of statements from co-perpetrators that are disadvantageous to the defendant, according to Paragraph 2, Article 156 of the Code of Criminal procedure, still requires examination of other necessary evidence for conformity to the facts. The purpose is to apply corroborating evidence to ensure the truthfulness of such statements. The so-called corroborating evidence here refers to other evidence with the capacity to prove just the truthfulness of the said statements from co-perpetrators (see Supreme Court 1998 Tai-Shang-Zi No. 2060 Decision) and not to prove whether all the elements of the crime are true. Evidence is sufficient as long as it can prove the crime confessed is true and this truthfulness is confirmed. Moreover, evidence that is insufficient for direct inference of the defendant's criminal conduct but is able to achieve such a result when combined with the confession of the defendant is still regarded corroborating evidence (see Supreme Court 1984 Tai-Shang-Zi No. 5638 Decision." The confession of co-defendants may not be overthrown because of certain insignificant points in such statements; however, the judgment made based on such confession is still subject to rules of experience and logic (see Supreme Court 1998 Tai-Shang-Zi No. 679 Decision.) In other words, such statements can be adopted as bases of decisions as long as part of them is true; not that part of them fails to comply with the facts and the entire statements are discarded (see Supreme Court 1984 Tai-Shang-Zi No. 5874 Decision.) There are no restrictions stipulated in the Code of Criminal Procedure on types of corroborating evidence. Therefore, all direct evidence, indirect evidence and indirect facts can serve as corroborating evidence (Supreme Court 1992 Tai-Shang-Zi No. 402 Decision.) Corroborating evidence is to reinforce the authenticity of the complainant's statement and does not have to be totally consistent with the statement. What it proves may be part or all of the fact of crime and it is valid as long as it can convince the court of the truthfulness of the defendant's confession (see Supreme Court 1992 Tai-Shang-Zi No. 5004 Decision.)

(b) Co-perpetrators generally make their confession as a result of their free will since they usually hold no grudges against the defendant. They provide at the onset witnesses and reasonable and reliable material and documentary evidence and describe various objective circumstances and details and point out the contradictions in the defendant's statement. After making the defendant



admit to have committed the crime, the material and documentary evidence is already admitted as corroborating evidence, with positive and objective reasons, to examine the truthfulness of the defendant's confession and the fact of the defendant's crime commitment.

(7) Examination of colluded testimonies from witnesses: Experience shows that colluded testimonies from witnesses questioned under segregation normally have the four following patterns:

(a) As collusion over expectable core questions may be achieved in advance, the general outlines can appear consistent, but sometimes the testimony may even seem beyond what normal human memory can remember and is thus unreasonable.

(b) Witnesses purposely conceal their close relations with the defendant and the number or situations of their contact to increase the reliability of their statements.

(c) Since it is impossible to collude on issues outside expectable core questions, sometimes the parties in concern claim they are unable to remember or give contradictory statements.

(d) When collusion over expectable core questions is achieved in advance, the parties in concern have to adhere to the colluded statements which can easily appear unreasonable and doubtful or even contradictory when they are compared with other evidence, normal circumstances, and experience.

(e) If any of the four abovementioned patterns is detected in the statement of a suspect or witness during questioning or interrogation, the statement is obviously untrue.

(8) Establishment of the system and culture under which crime suspects have the responsibility to rebut positive evidence:

(a) According to the ROC criminal procedure system, a prosecutor acts as the plaintiff and has the responsibility to present evidence against the defendant whereas a criminal defendant does not have the obligation to prove his or her innocence. However, as the offense and defense automatically come on during any litigation process as soon as the procedure commences, the defendant's subjective "necessity to present evidence" therefore arises (see Supreme Court 1996 Shang-Yi-Zi No. 7382 Decision, pp. 7~8.)

(b) When the prosecutor presents evidence to prove the defendant's presence at the crime scene and the defendant provides an alibi against the evidence and claims a third party has been the perpetrator (or the object of crime is something else,) the defendant may be held liable for infringement of the interests of the third party and libeling. Cases of false accusation are such examples. As set forth in Article 172 of the Code of Criminal Procedure, the defendant may be innocent until proven guilty but as the plaintiff continues to present evidence disadvantageous to the defendant, such as when a prosecutor is in court and doing so to execute public prosecution, the defendant has no choice but to rebut to protect his or her own interests. Under such circumstances, whoever provides any evidence is responsible for the truthfulness of the evidence and this is the second responsibility after the burden of evidence. Both the prosecutor and the defendant have this responsibility (see A Discourse on Criminal Evidence Law by Cai Dun-ming, 1st edition, pp. 315~316, published in Dec. 1997.)

(c) In short, the prosecutor has presented evidence (whether direct or indirect) to prove the fact of crime committed by the defendant and the court can act on existing evidence or experience to determine if the defendant is guilty. If the defendant does not choose to exercise the right to remain silent and, instead, actively defends himself or herself by rebutting, the rebuttal has to have reasonable bases, comply with rules of experience generally accepted by the public, and convince the court of his her innocence before the rebuttal can be considered sustained and the evidence the prosecutor has presented now comes under reasonable doubts. At this point, if the prosecutor disagrees with the rebuttal, he or she has the responsibility to present more evidence to clear the doubts as prescribed in Article 161 of the Code of Criminal Procedure.

(d) On the other hand, if the defensive rebuttal from the defendant lacks reasonable bases and fails to comply with rules of experience generally accepted by the public or with logic, it will not convince the court of the defendant's innocence. Under such circumstances, the defense will not be legally considered rebuttal and the prosecutor does not have the responsibility to present further evidence and the court will maintain the original conviction decision. This is because integrity is the most important factor during the questioning process in court. When the defendant provides untruthful statements on purpose, whether such statements are reasonable or not, they will not be taken into consideration.

(e) Hence, if the crime victim has already presented witnesses, material evidence and documentary evidence as positive evidence and the suspect is unable to rebut, according to rational reasoning and social experience and common practices as well as the said evidence that is disadvantageous to the suspect, there is no doubt that the suspect has committed the crime out of subjective intention.

(9) It is always a necessity to record all the official statements from witnesses to establish their legitimacy: If the statement from a witness is full of contradictions and falsehood and proven fabricated instead of a consequence of erroneous memory, depending on the circumstances, the said witness may be requested to take a lie detector test. The test questions must be carefully designed and scientifically verified to minimize possible errors. The result of the test can be directly relevant to the case. Furthermore, both the Supreme Court's 1988 Tai-Shang-Zi No. 3928 Decision and 1999 Tai-Shang-Zi No. 2936 Decision confirm that lie detector test results, whether advantageous or disadvantageous to the defendant, can serve as evidence but not the only evidence. If the efforts made during investigations fail to expose the lies of a suspect, it may be necessary to consult a polygraph evaluator to design specific questions based on his or her expertise to run administer a lie detector test on the suspect. Along with the charges filed by the informer, the lie detector test result can be applied to complement other evidence.

(10) The grand justice interpretation of the constitutional principle of "rational communication" should be adopted to rid of the practice of judges' decision based on their personal feelings and standpoints (the unwillingness to rule defendants as guilty without direct evidence.) Instead, judges should act in accordance with established reasons and other bases to make their decisions.

(11) Legislative purposes should be extended (to focus on violation against legal interests) and the definitions of important elements of crimes as well as the likely scope such definitions may cover should be broadened.



(12) Other laws, constitutional interpretations and legislative purposes can be applied to develop the possibility for establishment of other possible constituent elements of crime, especially those regarding subjective constituent elements of crime and confirmation of co-perpetrators – the types of roles played by the members of a criminal group as con-conspirators or co-perpetrators, for instance.

(13) Investigative approaches to be applied against witnesses' intentional lies with regard to the main relevant fact:

(a) The objective of interrogation or questioning is to obtain honest answers from defendants. If defendants are suspected of lying on purpose, their statements should not be adopted as the bases of evaluation of evidence. Normally, "there are often big lies behind little lies." Such statements cannot be regarded as reasonable defense.

(b) If the statement from a witness is full of contradictions and falsehood and proven fabricated instead of a consequence erroneous memory, depending on the circumstances, the said witness may be requested to take a lie detector test. The test questions must be carefully designed and scientifically verified to minimize possible errors. The result of the test can be directly relevant to the case. Furthermore, both the Supreme Court's 1988 Tai-Shang-Zi No. 3928 Decision and 1999 Tai-Shang-Zi No. 2936 Decision confirm that lie detector test results, whether advantageous or disadvantageous to the defendant, can serve as evidence but not the only evidence. If the efforts made during investigations fail to expose the lies of a suspect, it may be necessary to consult a polygraph evaluator to design specific questions based on his or her expertise to administer a lie detector test on the suspect. Along with the charges filed by the informer, the lie detector test result can be applied to complement other evidence.

(c) Generally, attitude is a subconscious reaction of character. It is usually related to a person's past experience and such experience can intensify as a result of normalization and differentiation (see A Discourse on the Criminal Evidence Act by Cai Dun-ming, 1st edition, p. 401, published in Dec. 1997.) It may be obvious what a crime suspect knows during questioning. However, when the issue is disadvantageous to him or her, the answer will be "I don't remember" or "I'm not sure" to evade the question. Sometimes, crime suspects will deny every accusation during the initial question. Yet when recordings or other evidence is presented, they will admit having committed the crime. Apparently, crime suspects know that answering the questions honestly will be incriminating and therefore choose to deny. Such attitudinal relevance usually shows their crime commitment has been intentional and they are aware of the illegality of the conduct; therefore, it may be considered circumstantial evidence.

(14) Establishment of the status and function of evidence collection approaches in rules of evidence

(a) First of all, the different between "admissibility of evidence" and "probative value of evidence" must be clarified. The former refers to whether any fact is qualified to be presented in court as evidence. Once the evidence is deemed admissible, the presenter is still required to prove its probative value before the judge exercises his or her discretion. Therefore, law teachers have the obligation to elaborate on the significance of admissibility and how each piece of evidence is regarded admissible. Any evidence lacking admissibility should not be allowed to muddle the judge's discretion and lead to waste of time or delay in the litigation procedure. For this reason, it is

stipulated in Paragraph 2, Article 155 of the Code of Criminal Procedure that “Evidence inadmissible, having not been lawfully investigated, shall not form the basis of a decision.”

(b) Inadmissible evidence cannot serve as evidence. However, in the current Code of Criminal Procedure there are only six articles containing definition of the type of evidence to be regarded inadmissible. These include Paragraph 1 of Article 156 which states “Confession of an accused not extracted by violence, threat, inducement, fraud, exhausting interrogation, unlawful detention or other improper means and consistent with facts may be admitted as evidence”; Article 159: “unless otherwise provided by law, oral or written statements made out of trial by a person other than the accused, shall not be admitted as evidence (this in fact is the same as the hearsay rule practiced in the UK and the US and when the Code of Criminal Procedure was amended in Feb. 6 2003, it was clearly indicated that Article 159 was the hearsay rule and exceptions were defined in Articles 159-1 to 159-4); Article 160: “personal opinion or speculation of a witness shall not be admitted as evidence, unless it is based on his personal experience (similar to the opinion rule practiced in the UK and the US)”; Article 100-1: “if there is an inconsistency between the content of the record and that of the audio or video record regarding the statements made by the accused, the said portion of the statement shall not be used as evidence”; first section of Paragraph 1 of Article 158-2: “any confession or other unfavorable statements obtained from the accused or suspect in violation of the provisions of section II of Article 93-1 or section I of Article 100-3 shall not be admitted as evidence” and Paragraph 2 of the same article: “The provision of the preceding section shall apply mutatis mutandis to the case where the public prosecuting affairs official, judicial police officer, or judicial policeman violates the provisions of Items II and III of Article 95 in interrogating an accused or suspect arrested with or without a warrant”; and Article 158-3: “if a witness or expert witness fails to sign an affidavit to tell the truth, as required by law, his testimony or expert opinion shall not be admitted as evidence.” Other than these, there is not any stipulation regarding the definition of which types of evidence are not admissible and definition of the admissibility of any evidence outside the four above types of evidence calls for theoretical discussion.

(c) Since admissibility and the strength of probative value of evidence are not well defined in the ROC Code of Criminal Procedure, the appropriate legal procedure illustrated in the Statement of Reasons for the Grand Justice Shi-Zi No. 384 Interpretation and the clause of “when related provisions are incomplete or fail to cover” in the Shi-Zi No.3 Interpretation may be referred to for conceptual supplementation and the definitions of relevance, witness and appraiser, besides hearsay, in Rules 401, 402, 403, 602, 701, 702, 703, 801, 802, 803, 804, and 807 of the US Federal Rules of Evidence (currently the most rigorous rules of evidence in the world) can all serve as references. In addition, Paragraphs 1 and 2 of Article 156 of the Japanese Code of Criminal Procedure and Paragraphs 1 and 2 of the German Code of Criminal Procedure can also be referred to for their similar principle. Other regulations regarding expert evidence proven as coming from reliable sources, non-hearsay, or hearsay exceptions can also be adopted for theoretical supplementation.

(d) In principle, evidence obtained through illegal measures is not admissible. Regarding this, when the ROC Code of Criminal Procedure was amended on Feb. 6 2003, Article 158-4 was added: “The admissibility of the evidence, obtained in violation of the procedure prescribed by the law by an official in execution of criminal procedure, shall be determined by balancing the protection of human rights and the preservation of public interests, unless otherwise provided by law.”

(e) Issues related to the exclusionary rule that was established against illegally obtained evidence have drawn ardent discussion on court decisions and in academic publications in Japan



and the US. In recent years, the academic circle in Taiwan has also elaborated on such issues, an indication of their growing significance. Compared to the heated discussion in the academic circle, in practice, despite that the Grand Justice Council has never given any official interpretation, in its Shi-Zi No. 384, 396 and 418 Interpretations, however, it is expressed that the people shall have the right to petition, lodge complaints, or institute legal proceedings to protect their personal freedom.

(f) Based on this, the Supreme Court therefore upheld that “The objective of the criminal procedure is to uncover truth to maintain social security. The approaches should be legal and fair to protect human rights. When evidence has not been obtained through legal measures and the court allows such evidence to be adopted as the basis of confirmation of crime, it is in violation of Article 8 and 16 of the Constitution (see Grand Justice Council Shi-Zi No. 384, 396 and 418 Interpretations.) Such evidence therefore must be regarded inadmissible. Furthermore, to reduce illegal obtainment of evidence, it is deemed inappropriate to adopt such evidence and, therefore, such evidence should be discarded (see Supreme Court 1998 Tai-Shang-Zi No. 4025 Decision.)

(15) Types of personal opinions of witnesses and crime victims to be accepted as evidence:

(a) As set forth in Article 160 of the Code of Criminal Procedure, the personal opinion or speculation of a witness shall not be admitted as evidence. However, this is referring only to unsupported personal opinion and speculation not based on personal experience. Hence, statements from witnesses that are based on their personal experience or are not alternative opinions or pure speculations should be regarded as legitimate and admissible testimonies and the said article shall not apply (see Supreme Court 1993 Tai-Shang-Zi No. 3398 Decision.).

(b) The amended Article 160 of the Code of Criminal Procedure clearly stipulates: “Personal opinion or speculation of a witness shall not be admitted as evidence, unless it is based on his personal experience,” while in the reasons for amendment it is also indicated: “In Rule 701 of Article VII of the US Federal Rules of Evidence – Opinion Testimony by Lay Witnesses, it is regulated: ‘If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue...’” Paragraph 1, Article 156 of the Japanese Code of Criminal Procedure and Paragraphs 1 and 2 of the German Code of Criminal Procedure allow witnesses to state in accordance with their speculations based on their actual experience and such statements are considered admissible. To solve the confusion in distinguishing facts and opinions in a witness’ testimony, the aforesaid regulations can be consulted for revision of related regulations to allow personal opinions and speculations based on the personal experience of witnesses to be admitted as evidence to extend the scope of evidence admissibility. However, witnesses’ personal opinions not based on personal experience or pure speculations shall remain inadmissible for sake of fairness (see the amended text of Article 160 of the Code of Criminal Procedure and the reasons for amendment.)

(c) Personal experience can be adopted as the basis of whether a statement is to be admitted as evidence in order to solve the confusion in distinguishing facts and opinions in a witness’ testimony. This is consistent with the aforesaid Supreme Court decision as well as the substantive legal procedure described in the Statement of Reasons for the Grand Justice Council Shi-Zi No. 384 Interpretation (this is also the principle stated in the Fifth Amendment to the US Constitution.) This means evidence is a prerequisite in confirmation of crimes (see the Statement of Reasons for the

Grand Justice Council Shi-Zi No. 384 Interpretation.) The said evidence refers to rules of evidence and the rules of evidence of the ROC have been developed and improved in accordance with the court decisions and precedents established over the years.

(d) The US Federal Rules of Evidence that entered into force on Dec. 1 2002 is considered the most rigorous rules of evidence in the world and substantively compliant with related legal principles. Rule 602 clearly stipulates: “A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony.” Rule 701 also regulates: “If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” (See US Federal Rules of Evidence in the appendix from p. 669 onward, *Litigation Techniques*, by Cai Qiu-ming.)

(e) Regulations regarding witnesses may apply when questioning individuals who have obtained knowledge of past facts with their expertise. This is clearly stated in Article 210 of the Code of Criminal Procedure.

(f) From the above explanations, it is clear that reliable and reasonable opinions or inferences based on the personal knowledge of witnesses and experts may be admitted as positive evidence. They should not be discarded on the grounds that such testimonies are based on personal past experience. Knowledge and opinions of witnesses and experts based on their personal experience should be admitted as evidence as long as they are considered reasonable. There is a difference between such evidence and unsupported personal opinions or speculations from witnesses. Plus, statements from witnesses or experts based on their personal senses of seeing, smell and touch and knowledgeableness apparently have their probative status and are therefore admissible.

(16) Requirement of crime suspects to provide rebutting evidence against negative facts when direct evidence is lacking but relevant and indirect facts and evidence exist in abundance:

(a) In justice, it is a necessity to “combine various indirect evidence, based on reason, to confirm facts of crime beyond all reasonable doubts and support the conviction.” The aforesaid indirect evidence includes witnesses, material evidence, documentary evidence, the defendant's partial confession, experience and normal considerations, logical reasoning, different objective circumstances and facts, as well as the contradictions between the defendant's statement, witnesses' statements and material evidence. Although indirect evidence, unlike direct evidence, cannot directly prove the existence of the crime, it can prove indirect facts which can then be used to substantiate direct facts. Nevertheless, such indirect evidence must be relevant to indirect facts and indirect facts must be relevant to direct facts. In other words, as long as indirect facts are proven as factually relevant, they can serve as the bases to infer and confirm the direct facts and the crime in concern as existent (see *A Discourse on Criminal Evidence Act* by Cai Dun-ming, 1st edition, p. 404, 1997.)

(b) Recognition of the so-called “factual relevance” can be divided into cause-effect relevance and logical relevance and both are recognized in practical decisions. Cause-effect relevance means the cause-and-effect relation is adopted as the criterion for recognition of factual relevance. If a later



fact can be deemed the subsequential result of an earlier fact, the latter is then the cause and the former the effect and there is relevance in between. Logical relevance, on the other hand, is relevance established through reasoning. For instance, although indirect evidence can only prove the existence of other facts, if these other facts can serve as the bases of reasoning to establish the existence of necessary evidence, there is factual relevance. Such relevance includes conduct relevance, attitudinal relevance, weapon relevance, stolen property relevance, indirect fact relevance, and criminal record relevance. The indirect facts applied to infer direct facts based on indirect fact relevance include presence, possession, placement, contact, and injury (see *A Discourse on Criminal Evidence Act* by Cai Dun-ming, 1st edition, pp. 400~404, 1997.)

(c) According to the ROC criminal procedure system, a prosecutor acts as the plaintiff and has the responsibility to present evidence against the defendant whereas a criminal defendant does not have the obligation to prove his or her innocence. However, as the offense and defense automatically come on during any litigation process as soon as the procedure commences, the defendant's subjective "necessity to present evidence" therefore arises (see Supreme Court 1996 Shang-Yi-Zi No. 7382 Decision, pp. 7~8.) When the prosecutor presents evidence to prove the defendant's presence at the crime scene and the defendant provides an alibi against the evidence and claims a third party has been the perpetrator (or the object of crime is something else,) the defendant may be held liable for infringement of the interests of the third party and libeling. Cases of false accusation are such examples. As set forth in Article 172 of the Code of Criminal Procedure, the defendant may be innocent until proven guilty but as the plaintiff continues to present evidence disadvantageous to the defendant, such as when a prosecutor is in court and doing so to execute public prosecution, the defendant has no choice but to rebut to protect his or her own interests. Under such circumstances, whoever provides any evidence is responsible for the truthfulness of the evidence and this is the second responsibility after the burden of evidence. Both the prosecutor and the defendant have this responsibility (see *A Discourse on Criminal Evidence Law* by Cai Dun-ming, 1st edition, pp. 315~316, published in Dec. 1997.)

(d) In short, the prosecutor has presented evidence (whether direct or indirect) to prove the fact of crime committed by the defendant and the court can act on existing evidence or experience to determine if the defendant is guilty. If the defendant does not choose to exercise the right to remain silent and, instead, actively defends himself or herself by rebutting, the rebuttal has to have reasonable bases, comply with rules of experience generally accepted by the public, and convince the court of his her innocence before the rebuttal can be considered sustained and the evidence the prosecutor has presented now comes under reasonable doubts. At this point, if the prosecutor disagrees with the rebuttal, he or she has the responsibility to present more evidence to clear the doubts as prescribed in Article 161 of the Code of Criminal Procedure. On the other hand, if the defensive rebuttal of the defendant lacks reasonable bases and fails to comply with rules of experience generally accepted by the public or with logic, it will not convince the court of the defendant's innocence. Under such circumstances, the defense will not be legally considered rebuttal and the prosecutor does not have the responsibility to present further evidence and the court will maintain the original conviction decision. This is because integrity is the most important factor during the questioning process in court. When the defendant provides untruthful statements on purpose, whether such statements are reasonable or not, they will not be taken into consideration.

(e) Recordings of conversations between the victim and the crime suspect and between a police office and the suspect, if involving no violation of secrecy (see Subparagraph 3, Article 29 of the Communication Security and Surveillance Act,) can still be admitted as evidence (see Taiwan

Supreme Court 2003 Shang-Su-Zi No. 224 Decision and Taipei District Court 2002 Su-Zi No. 560 Decision.)

(f) The reason why comprehensive collection of evidence is necessary: The evidence as explained earlier can be admitted as relevant evidence to prove the defendant's crime (see *A Discourse on Criminal Evidence Law* by Cai Dun-ming, 1st edition, pp. 400~403, published in Dec. 1997 and Rule 401 of the US Federal Rules of Evidence that took effect on Dec. 1 2002: "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.") By definition, evidence that has influence on the confirmation of the truthfulness of disputed facts is relevant. Such evidence, along with the previously mentioned indirect evidence, is considered positive evidence of relevance and is assessed in accordance with rules of experience and logic to ascertain whether the original discretion is still sound.

(17) To prevent acquittal decisions by mistake and potential criminals from taking chances, other appropriate law articles may be applied against suspects (such as accomplices with indeterminate intent) based on confirmed indirect facts as set for in Article 300 of the Code of Criminal Procedure: "if the facts warrant, the charge brought by the public prosecutor may be changed to an appropriate article of the law," which means the court has the discretion to rule that the defendant has indeed committed the crime as charged as long as the decision does not exceed the scope of the stipulated punishment for the crime. The decision does not have to be entirely consistent with the fact against which charges have been filed (see Supreme Court 1987 Tai-Shang-Zi 1160 Decision.) Since an indictment is to determine the concrete punishment for the offender, the court, when exercising its discretion, shall determine whether the facts to be evaluated are those filed as reasons for the charges and whether the goal of the indictment is in line with the content of the criminal act (Supreme Court 1992 Tai-Shang-Zi No. 2039 Decision.) In other words, the court may exercise its discretion to ascertain the facts of crime in line with the charges filed by the plaintiff without expanding or reducing any single legal interest. Theft, embezzlement and fraud, for example, are non-violent taking of the property of another for the perpetrator's or a third party's keeping. If the perpetrator is charged with one of the said crimes, the evaluation of evidence by the court shall be in line with the content of the violation of the legal interests of the victim (regarded as the same fact.) If the crime has been carried out in an approach different from what is stated in the indictment, the court may apply one of the other two crimes as the crime the perpetrator is to be indicted for (Supreme Court 1992 Tai-Fei-Zi No. 423 Decision.)

In Article 92 of the Copyright Act, public broadcast, public presentation, leasing, and etc., of audio-visual material without the authorization of the copyright owners are listed as copyright infringement. The approaches may differ but the purpose of public entertainment is the same and so is the nature of the crimes and the discretion of the court to apply the regulation against continued leasing for public entertainment on all such approaches therefore is line with the basic identity of facts of crime to be addressed (Supreme Court 1995 Tai-Fei-Zi No. 120 Decision.) In spite of the difference in degree or process, such illegal acts to be addressed with judicial punishments involve the same fact of crime. Under normal circumstances, these crimes are achieved through various stages and the criminal act of each stage is statutorily stipulated as punishable by law. Even though the corresponding punishment as prescribed in related regulations varies, the acts are facts of crime of the same nature according to the Code of Criminal Procedure (Supreme Court 1995 Tai-Fei-Zi No. 164 Decision.) The so-called "identity of facts" may be an offense in fact, an offense in substance, or an offense in law, as determined by the court. The criminal acts at different stages or



different parts are inseparable. The difference between someone preparing to commit a crime, an attempted offender, and someone completing a crime in the same criminal offense is only the stage of the act. There is no dissimilarity in nature and the facts of crime of these three stages or types share the same identity (Supreme Court 1998 Tai-Shang-Zi No. 645 Decision.) Since crimes are acts of infringement of legal interests, they are therefore social facts of violation that constitute the crimes defined in the Criminal Law. The so-called “identity” shall be determined in accordance with whether there is similarity between the contents of the infringements and if there is commonality (shared concept) between the constituent elements of crime. Hence, identity is established when the constituent elements of two crimes achieve a certain degree of similarity and there is no difference in the nature of crime. Under the same principle, the crime of taking possession of property separated from the owner is similar to that of theft. Both are obtainment of property of through illegal means. The principal facts of the objective constituent elements are similar and illegal obtainment for oneself or a third party in both crimes is the subjective element. The property of another is the object in both crimes that are infringement of the property interest of another. There is no difference in the nature of crime and identity should be considered existent (Supreme Court 1997 Tai-Fei-Zi No. 187 Decision and 1999 Tai-Shang-Zi No. 832, 347, and 350 Decisions.) Consequently, when a trial court establishes the facts of crime according to the result of investigation, even if the said facts are not totally consistent with the charges but identity exists in the interests and victims of the crime, the stages and commonality of the act of infringement, as well as the causes and nature of the crime, the basic social fact is still the same and different law articles can be applied despite that the means and stages of criminal act are different from the charges filed. The court may therefore exercise its discretion to make its decision based on the facts of the crime that are not entirely those stated in the indictment, instead of ruling the defendant as innocent because of the lack total consistency of the facts established with the facts of crime stated in the indictment, while bearing in mind the principle of reduction of litigation cost and protection of the defense right of the defendant (Supreme Court 1998 Tai-Shang-Zi No. 3220 Decision.) Acting in line with the current Criminal Law, the Supreme Court has defined the difference between perpetrator and accomplice according to the subjective intent and the objective act of crime. Those acting on their own criminal intent and committing a crime are deemed perpetrators regardless of whether their actions are constituent elements of the crime, while those taking part in a crime to help another commit the crime and the participation is a constituent element of the crime are also considered perpetrators. Only those taking part in a crime to help another commit the crime and the participation is not a constituent element of the crime are regarded accomplices (see Supreme Court 1936 Shang-Zi No. 2253 Decision.)

(18) The discretionary evaluation of evidence by judges and prosecutors must not contradict the rules of evidence, experience and logic. Many people think prosecutors and judges are powerful because they can make decisions in accordance with their discretionary evaluation of evidence. In reality, however, the discretion is not without limits. Evidence must be confirmed before judgment of whether someone is guilty or not guilty can be made. The so-called “discretion” simply means judges can objectively assess, reason and apply laws according to their free will to convince the parties. If the evidence and reasons are insufficient or before they are confirmed, no conclusion can be made. In other words, discretionary evaluation of evidence is constrained by the evidence collected and reason. Since discretionary evaluation of evidence instead of legal evidence is adopted, the range of objects and materials that can be regarded as evidence is therefore large.

(19) Evidence is proof. Besides tangible witnesses, material evidence and documentary evidence, thoughts that cannot be seen or heard, inferences based on social experience, normal circumstances,

and common sense can also be evidence. Probability is an important factor in assessment of evidence. Objectively speaking, is it reasonable? Is there any contradiction? Is the statement provider reliable? Are the facts to be proven reliable concrete details or just abstract objects? All these have to be taken into account and this is why discretionary evaluation of evidence is adopted in Taiwan.

(20) Defendants in criminal cases need to present questions or evidence to convince most people of their innocence and free themselves from criminal responsibility. When this is achieved, the court should declare their innocence. On the other hand, the victim wants the defendant to take the criminal responsibility and has to prove the possibility that the criminal act did exist is greater than the possibility that it did not (overwhelmingly so beyond doubt) in order to support the truthfulness of his or her statement and have the perpetrator, the defendant, convicted. It is rather difficult for both sides to find evidence to prove they are telling the truth, yet to prove the statement of the other party is lies is relatively easier. Hence, finding contradictions in the statement of the other party is the quickest way to win a lawsuit. After all, there are often big lies behind little lies.

(21) “Corroborating evidence” means all evidence other than the co-defendants’ and the victim’s statements that is capable of supporting the authenticity of the said statements (Supreme Court Tai-Shang-Zi No. 2060 Decision as reference” and it doesn’t have to be evidence capable of proving the crime has been committed. As long as the statement of the plaintiff can be proven authentic, it is sufficient. Such evidence, however, is still regarded corroborating evidence (see Supreme Court 1984 Tai-Shang-Zi No. 5638 Decision) and it is unjustifiable to overturn the statement of a co-defendant based on some insignificant elements. Experience and logic should still be applied when judging the validity of such statements (see Supreme Court 1998 Tai-Shang-Zi No. 679 Decision) In other words, instead of invalidating the entire statement due to partial inconsistency with reality, as long as part of the statement is authentic, it can be adopted to support the decision (see Supreme Court 1984 Tai-Shang-Zi No. 5874 Decision.) There are no restrictions in the Code of Criminal Procedure on types of corroborating evidence. Therefore, all direct evidence, circumstantial evidence and indirect facts can be corroborating evidence (see Supreme Court 1992 Tai-Shang-Zi No. 402 Decision.) Corroborating evidence is to reinforce the authenticity of the defendant’s statement and does not have to be totally consistent with the statement. What it proves may be part or all of the fact of crime and it is valid as long as it can convince the court of the authenticity of the confession of the defendant (see Supreme Court 1992 Tai-Shang-Zi No. 5004 Decision.)

(22) In confirmation of co-perpetrators, “involvement” and not just “execution” should be taken into consideration. Co-perpetrators are people who have committed a crime together and, under a joint intention, each has conducted part of the criminal act and is relied on to achieve the objective of the crime which does not call for the participation of every co-perpetrator to be deemed illegal conduct. Only those who have actually carried out the criminal act are regarded the co-perpetrators. Such acts include origination of the criminal intent as well as participation in the premeditation of the crime to be executed by others and co-perpetrators are responsible for the consequences of such acts (see Statement of Reasons for Grand Justice Council Shi-Zi No. 109 Interpretation.) In other words, all those who, under a joint intent, share a part of the criminal act and mutually utilize the conduct of others to achieve the criminal objective can be considered co-perpetrators regardless of whether they participate in the actual commitment of the crime. At the same time, those who participate according to their own intent to be part of a joint crime in acts other than the actual execution of the crime or are part of the premeditation which leads to the execution of the crime by some of the participants shall also be deemed co-perpetrators and held responsible for their share of



the result of the criminal act (see the Statement of Reasons for Grand Justice Council Shi-Zi No. 109 Interpretation.) Communication of intention between co-perpetrators is not limited to direct contact but also includes indirect communication. For example, if A contacted B and C to commit a crime, despite that B and C never had any direct communication with regard to the crime committed, they are still considered co-perpetrators (see Supreme Court 1988 Tai-Shang-Zi No. 2135 Decision.) In the crime of abduction for ransom, commitment of abduction is established once the victim is kidnapped, yet the crime of asking for a ransom is not considered established before the act is actually carried out and the abductee is released. An individual who has not participate in the abduction of another but is the person asking for the ransom therefore has to be considered a co-perpetrator (see Supreme Court 1939 Shang-Zi No. 2397 Decision) Therefore, all those taking part during the process of a criminal act or making indirect communication with regard to the crime are deemed co-perpetrators. This means the considerations for confirmation of co-perpetrators is not limited to whether the individuals in concern knew each other but whether they were aware of “their role in the entire criminal scheme” and that “their undertakings were contributing to the accomplishment of the crime intended.” Consequently, even if the co-perpetrators did not know each other and had never met or held any conversations, as long as certain “communication channel (through other co-perpetrators or special communications equipment)” existed, division of labor to execute the criminal scheme could still be achieved. Subjectively, confirmation of co-perpetrators therefore is based on whether there has existed the mutual intention to “use the result of the undertakings of each other to carry out the criminal scheme” (see Supreme Court 1996 Shang-Yi-Zi 7382 Decision, p. 8.) Furthermore, communication of intention between co-perpetrators is not limited to agreement beforehand. Those who, through their acquaintance with each other or certain “communication channel,” have participated during the criminal act to carry out their mutual intent are also considered co-perpetrators (see Supreme Court 1984 Tai-Shang-Zi No. 1886 Decision.) Therefore, the mutual intent before commitment of crime is not necessary in determination of co-perpetrators. It can take place during the criminal act. This in jurisprudence is referred to as “successive co-perpetrators” (see Taipei District Court 2002 Su-Zi 836 Decision.) Meanwhile, communication of intention is not limited to what is conducted before the criminal act. It can also be communication that takes place only during the criminal act and the expression of intention does not have to be explicit. Taciturn agreements are also included (see Supreme Court 1984 Tai-Shang-Zi No. 2364 Decision.) Meanwhile, co-perpetrators’ undertakings of part of the criminal act do not have to be throughout the entire act. For example, Party A confessed having taken and confined Party B in an apartment and the confession was confirmed by Party B. Although Party A did not participate in other parts of the abduction, he is still considered a co-perpetrator (see Supreme Court 1985 Tai-Shang-Zi 7321 Decision.)

(23) A court trying a case has the obligation to scrutinize all the evidence against the defendant to establish the facts. The testimonies of the witnesses may not be sufficient enough to prove all the facts of crime; but as long as they complement each other, the court should take all indirect evidence into consideration and exercise its discretion as well as experience and normal circumstances to make the decision in compliance with the spirit of fact finding. Before reaching such a decision, every piece of the complementary evidence should already be individually examined for its relation to the crime and the practice of the discretionary evaluation of evidence should be in line with rules of evidence and the principle of fact finding. The evidence needed for establishment of the facts of crime is not limited to direct evidence. Indirect evidence confirmed through inference as beyond reasonable doubts can also be established as the basis for establishment of the facts of the crime (see Supreme Court 1938 Hu-Shang-Zi No. 64 Decision, 1955 Tai-Shang-Zi No. 702 Precedent, and 1995 Tai-Shang-Zi No. 5060 Decision.) In particular, if the defendant

has committed the crime surreptitiously and quickly, establishment of the facts of crime usually has to rely on various posterior available indirect evidence as well as all the circumstantial evidence before, during and after the crime was committed (including witnesses, material evidence, documentary evidence, partial confession, indirect facts to be proven, and untruthful statements from the defendant with regard to essential facts of relevance.) Reasoning and complementarity come into play and the court makes the decision by referring to other indirect evidence, experience and the normal circumstances. If during the investigation, other evidence is uncovered and found complementary and relevant to other indirect evidence, such evidence should be individually examined for their connection to the crime. Acquittal rulings concluded without investigations are against rules of evidence and the spirit of fact finding.

(24) The evidence needed for establishment of the facts of crime is not limited to direct evidence. Indirect evidence confirmed through inference as beyond reasonable doubts can also be established as the basis for establishment of the facts of the crime (see Supreme Court 1938 Hu-Shang-Zi No. 64 Decision, 1955 Tai-Shang-Zi No. 702 Precedent, and 1995 Tai-Shang-Zi No. 5060 Decision.) The Code of Criminal Procedure of the ROC does not set any limit on types of evidence. Therefore, direct evidence, indirect evidence or circumstantial facts are all regarded circumstantial evidence and can be adopted as evidence (see 1992 Supreme Court Tai-Shang-Zi No. 402 Decision.) The so-called “indirect evidence beyond reasonable doubts” includes various facts and proof, such as witnesses, material evidence, documentary evidence, the defendant’s partial confession, experience and normal circumstances, logic and reasoning, different objective situations and facts, as well as the contradictions between the statements of the defendant and the witnesses and the material evidence. In justice, it is a necessity to “combine various indirect evidence, based on reason, to confirm facts of crimes beyond all reasonable doubts and support the conviction.” The aforesaid indirect evidence includes witnesses, material evidence, documentary evidence, the defendant’s partial confession, experience and normal considerations, logical reasoning, different object circumstances and facts, as well as the contradictions between the defendant’s statement, witnesses’ statements and material evidence. Although indirect evidence, unlike direct evidence, cannot directly prove the existence of the crime, it can prove indirect facts which can then be used to substantiate direct facts. Nevertheless, such indirect evidence must be relevant to indirect facts and indirect facts must be relevant to direct facts. In other words, as long as indirect facts are proven as factually relevant, they can serve as the bases to infer and confirm the direct facts and the crime in concern as existent. Recognition of the so-called “factual relevance” can be divided into cause-effect relevance and logical relevance and both are recognized in practical decisions. Cause-effect relevance means the cause-and-effect relation is adopted as the criterion for recognition of factual relevance. If a later fact can be deemed the subsequential result of an earlier fact, the latter is then the cause and the former the effect and there is relevance in between. Logical relevance, on the other hand, is relevance established through reasoning. For instance, although indirect evidence can only prove the existence of other facts, but if these other facts can serve as the bases of reasoning to establish the existence of necessary evidence, there is factual relevance. Such relevance includes conduct relevance, attitudinal relevance, weapon relevance, stolen property relevance, indirect fact relevance, and criminal record relevance. The indirect facts applied to infer direct facts based on indirect fact relevance include presence, possession, placement, contact, and injury.

(25) The objective of criminal procedure is to uncover physical evidence. The methods have to be legal, justifiable, reliable, clear-cut, and necessary in order to protect the human rights of the defendant. If the aforesaid principle is violated when the suspect is questioned, whether or not the statement thus obtained can still serve as evidence will depend on the subjective intent of the



judicial police officer is concerned, the objective circumstances, the seriousness of the violation of the interests of the suspect, the degree of the disadvantage thus incurred to the defense of the suspect during trial, the harm resulted from the crime in question, the effect on illegal collection of evidence if the said statement is disallowed to be used as evidence, and whether the judicial police officer would have uncovered the same evidence by following the due procedure. All these should be taken into consideration while human rights protection and social security maintenance should also be balanced in accordance with the principle of proportionality.

(26) With most people, lying is not part of their nature, especially when they are under interrogation. Therefore, creation of circumstances for defendants to become impulsive and confess their crimes must exclude tortures, threats, enticements, or any illegal measures. Interrogation with what appears to be unreasonable questions, presentation of related witnesses, material evidence or documentary evidence to create the circumstances to make defendants realize they are in the wrong, or remind defendants of the irrationality and untrustworthiness of their statements are all legal questioning skills. At the same time, defendants are less likely to weigh their personal interests during the initial questioning by judicial police and it is therefore easier to break their psychological defense through interrogation, explanation and presentation of evidence and obtain more reasonable statements. This is the so-called creation of circumstances in criminal psychology to make suspects become impulsive and confess their crimes and defendants are less likely to find excuses under such circumstances and their statements are more reasonable and reliable.

(27) The objective of interrogation or questioning is to obtain honest answers from defendants. If defendants are suspected of lying on purpose, their statements should not be adopted as the bases of evaluation of evidence. Normally, "there are often big lies behind little lies." Such statements cannot be regarded as reasonable defense. Generally, attitude is a subconscious reaction of character. It is usually related to a person's past experience and such experience can intensify as a result of normalization and differentiation.

(28) Conclusions: All in all, the judiciary must never misjudge the situation (such as mistaking that the defendant has admitted to the crime) and, as a consequence, fail to carry out the responsibility to uncover the truth and deliver justice. Reason, the circumstances, authority, and tactics should be applied (in other words, using these four communicative and reformative measures to look into the causes and nature of the crime.) "Reason" (including legal theories, logic, semantics, common sense and psychology) means detection of ungrounded statements and disclosure of truth by having a firm grasp of the connotation of every single word applied in relation to each constituent element of crime (to achieve this, different dictionaries and encyclopedias can be referred to) and keeping track of the key subject of conduct and the interests involved. "Circumstances" means utilization of the statement regarding the objective of the indictment, the surroundings, resourcefulness and reaction to reveal to the defendant that his or her weakness is the key point of the case, consolidation of all the evidence disadvantageous to the defendant, and application of cognitive theories, educational principles, ethnology, neurology, biology, cerebrology, criminology, and victimology to compare the reasons, importance, substantive interests, size of interest, evidence, and probability in line with the Constitutional principle of equality and other regulations to establish the motivation, intent, approach and profit of the defendant in order to make the defendant aware of his or her wrongdoing and admit to the crime. "Authority" means the right of request, right of supervision, right to objection, right of questioning, right of investigation, right to speech, group rights, right to participation in decision-making, right of summoning, right to viewing of records, right of choice, right to petition, right to information request, right to assistance request, right to presentation of

charges, right to appeal, and right to recommendation. “Tactics” means skillful practice of the above rights to achieve the three major objectives of public prosecution: to create the circumstances for the defendant to feel he or she is in the wrong and have the impulse to confess, to supplement for what is lacking in the indictment, and to counteract against the quibbling of the defendant. It should be transparent and exercised through rational communication to emotionally move and educate defendants and victims, and even judicial, legislative and administrative personnel. The experience with individual cases should be integrated, combined with logical reasoning, and in line with the Constitutional principles (such as legality, clarity, substantive equality, principle of proportionality, necessity, rationality, reliability, social propriety, principle of legal reservation, or rules of evidence.) Meanwhile, the appropriate legal procedure illustrated in the Statement of Reasons for the Grand Justice Shi-Zi No. 384 Interpretation and the clause of “when related provisions are incomplete or fail to cover” in the Shi-Zi No.3 Interpretation may be referred to for conceptual supplementation. The definitions of relevance, witness and, appraiser, besides hearsay, in Rules 401, 402, 403, 602, 701, 702, 703, 801, 802, 803, 804, and 807 of the US Federal Rules of Evidence (currently the most rigorous rules of evidence in the world) can all serve as references when needed. In addition, Paragraphs 1 and 2 of Article 156 of the Japanese Code of Criminal Procedure and Paragraphs 1 and 2 of the German Code of Criminal Procedure can also be referred to for their similar principle. Other regulations regarding expert evidence proven as coming from reliable sources, non-hearsay, and hearsay exceptions can also be adopted for theoretical supplementation for questions and arguments from the court to be convincing, comprehensive, authoritative, technically sound, and effective when creating the circumstances to make the defendant feel he or she is in the wrong and during the debate. Above all, the defendant has to be assumed as an opposing witness so that his or her defense can be rebutted as unreasonable and unreliable and questions based on reason and resourcefulness can be contrived and presented to seek victory in court. Then, when the statement regarding the objective of the indictment is presented, the surroundings, resourcefulness and reaction are applied to reveal to the defendant that his or her weakness is the key point of the case, consolidation of all the evidence disadvantageous to the defendant and use of different educative approaches will be able to break the psychological defense of irrational defendants.

12. Establishment of the core concepts and system of crime prevention

Concept 1: Increase the difficulty, cost and risk of crime, reduce the opportunities for crime, lower possible illegal gains (including invisible spiritual satisfaction,) and eliminate excuses of crime to cut down the number of criminal events.

Concept 2: Crime victims can try to arouse the empathy of the perpetrator to make the perpetrator understand his or her intended (or already harmed) victim is a human not an object in order to prevent harm from happening or intensifying.

Concept 3: Teach the public the severity of the consequences of criminal conduct (including legal and non-legal sanctions) to prevent people from committing crimes.

Concept 4: It is the responsibility of the government (including administrative, legislative, judicial, examination and control agencies) that the public are unwilling, afraid and unable to stand up together against domestic violence and sexual offenses.



Concept 5: The conviction rate has to be improved to prevent people from taking chances to commit similar crimes.

Concept 6: Consolidate the power of the police, prosecutors, social workers, medical institutions and scientific approaches to upgrade their legal and social (especially public opinion) status and improve the psychological construction for crime victims in order to fight against perpetrators (especially organized crime.)

Concept 7: The earlier the victims get over their pain and readjust their mentality, the faster it will be to collect solid evidence rationally to sanction the perpetrators.

Concept 8: Victims should never give up on themselves. They should stand up against their perpetrators and help prevent similar crimes from happening again.

Concept 9: There are many types of sanctions and they should be imposed on crime perpetrators according to the nature of the crime. Labor (such as community service) and physical penalties (such as injection of chemicals to reduce biological urges) may be applied if deemed necessary.

Concept 10: The more severe the sentence, the stricter the judges' examination of evidence, the lower the conviction rate, and the longer the trial. Heavy penalties are not necessarily the best. They should be administered according to the nature of the crime.

Concept 11: People who are more cautious in their choice of friends and associates are less likely to get hurt. Normally, the closer the relationship, the more likely the chances of getting hurt and the heavier the responsibility (including moral responsibility, criticisms and legal responsibility.)

Concept 12: It is the joint responsibility of the government and the society when organized crime perpetrators refuse to cooperate and provide information for the government to break the syndicates. (Protection, work, counseling, therapies, and sentence reduction should be provided to make them talk.)

13. Conclusions – establishment of reasonable, reliable, distinct, necessary and reformative law enforcement practices to deliver justice and upgrade the status of crime victims:

A. The law exists for the disadvantaged: Initially, it should be established that the victim or the defendant of a case is the disadvantaged and every reason that helps define either of the parties as the disadvantaged should be pointed out clearly. Every litigation case is an experience and sets up a precedent. The said reasons may be for justice, public interest or legality, and everything must comply with law and justice. Thus, the thinking will not be confined to a certain category. Article 23 of the Constitution expressly stipulates four primary objectives. Preventing endangerment to the freedom of others is preventing people from becoming the victims of criminal acts. Therefore, once prosecutors are told their work is for nothing but legality; every effort they make has its solid basis. Even though the direct evidence in a case may be insufficient, the judge can still adopt an abundance of indirect evidence and not declare the suspects innocent. Why did the Supreme Court and High Court judges choose to sentence the three suspects in the Su Jian-he case to death penalty? The fourth suspect, being a soldier, had already been sentenced to death by court martial. The main reason of the death penalty sentence for all four of them was because the victims, being totally innocent, had been absolutely the disadvantaged. The perpetrators had brutally taken the lives and

property of the disadvantaged. When Su Jian-he and the other two suspects were acquitted during a retrial, the Supreme Court immediately remanded the case more than once. It was done at such speed that had been unheard of. The verdicts, dozens of pages in length, were so well thought out and written, citing a large number of precedents all of which were based on the perspectives of crime victims. The reasons were given to let the public know the decision was objective and rational and nothing was conjectured. As a rule of thumb, the initial statement is the most valued. The cases between 1994 and 1998 are good examples, because the conflict of interest between the defendant and the witnesses is minimum (see Supreme Court 1994 Tai-Shang-Zi No. 3243 and 1998 Tai-Shang-Zi No. 1585 Decisions.) Unfortunately, after the Judicial Reform Foundation, a private organization, proposed in 1999 that only court trial records could be admitted as evidence, prosecutors' capacity to present evidence came under question and the initial statements lost their significance. However, this significance has continued to exist for some of the courts in the Supreme Court because it is the product of criminal psychology. People may ask what exactly criminal psychology is about. It includes how to create the circumstances for defendants and perpetrators to become impulsive, confess their crimes, and admit their wrongdoing. Nevertheless, as the authorities are not supposed to entice, deceive, or threaten witnesses and defendants, it takes communication skills to create such circumstances and the Supreme Court is currently working out the corresponding rules. For instance, experience shows that witnesses and concerned parties are less likely to weigh their personal gain and loss or come under external influence right after the incident and the statements made then are normally more reliable. Unless the initial statements are proven untruthful or inconsistent with facts, they should not be discarded at whim (see Supreme Court 1994 Tai-Shang-Zi No. 3243 and 1998 Tai-Shang-Zi No. 1585 Decisions.) With most people, lying is not part of their nature, especially when they are under interrogation. Therefore, creation of circumstances for defendants to become impulsive and confess their crimes must exclude tortures, threats, enticements, or any illegal measures. Interrogation with what appears to be unreasonable questions, presentation of related witnesses, material evidence or documentary evidence to create the circumstances to make defendants realize they are in the wrong, or remind defendants of the irrationality and untrustworthiness of their statements are all legal questioning skills. At the same time, defendants are less likely to weigh their personal interests during the initial questioning by judicial police and it is therefore easier to break their psychological defense through interrogation, explanation and presentation of evidence and obtain more reasonable statements. This is the so-called creation of circumstances in criminal psychology to make suspects become impulsive and confess their crimes and defendants are less likely to find excuses under such circumstances and their statements are more reliable.

B. Legal principles most often applied: Co-perpetrators are people who have committed crime together and, under a joint intention, each has conducted part of the criminal act and is relied on to achieve the objective of the crime which does not call for the participation of every co-perpetrator to be deemed illegal conduct. Only those who have actually carried out the criminal conduct are regarded the co-perpetrators. Such conduct includes origination of the criminal intent as well as participation in the premeditation of the crime to be executed by others and co-perpetrators are responsible for the consequences of such conduct (see Statement of Reasons for Grand Justice Council Shi-Zi No. 109 Interpretation.) Meanwhile, communication of intention between co-perpetrators is not limited to direct contact but also includes indirect communication. For example, if A contacted B and C to commit a crime, despite that B and C never had any direct communication with regard to the crime committed, they are still considered co-perpetrators (see Supreme Court 1988 Tai-Shang-Zi No. 2135 Decision for reference.) In the crime of abduction for ransom, commitment of abduction is established once the victim is kidnapped, yet the crime of



asking for a ransom is not considered established before the act is actually carried out and the abductee is released. An individual who has not participate in the abduction of another but is the person asking for the ransom therefore has to be considered a co-perpetrator (see Supreme Court 1939 Shang-Zi No. 2397 Decision.) Hence, all those taking part during the process of a criminal activity or making indirect communication with regard to the crime are deemed co-perpetrators. This means the considerations for confirmation of co-perpetrators is not limited to whether these individuals knew each other but whether they were aware of “their role in the entire criminal scheme” and that “their undertakings were contributing to the accomplishment of the crime intended.” Consequently, even if the co-perpetrators did not know each other and had never met or held any conversations, as long as certain “communication channel (through other co-perpetrators or special communications equipment)” existed, division of labor to execute the criminal scheme could still be achieved. Subjectively, confirmation of co-perpetrators therefore is based on whether there existed the mutual intention to “use the result of the undertakings of each other to carry out the criminal scheme” (see Supreme Court 1996 Shang-Yi-Zi 7382 Decision, p. 8.) Furthermore, communication of intention between co-perpetrators is not limited to agreement beforehand. Those who, through their acquaintance with each other or certain “communication channel,” have participated during the criminal act to carry out their mutual intent are also considered co-perpetrators (see Supreme Court 1984 Tai-Shang-Zi No. 1886 Decision.) Therefore, the mutual intent before commitment of crime is not necessary in determination of co-perpetrators. It can take place during the criminal act. This in jurisprudence is referred to as “successive co-perpetrators” (see Taipei District Court 2002 Su-Zi 836 Decision.) Meanwhile, communication of intention is not limited to what is conducted before the criminal act. It can also be communication that takes place only during the criminal act and the expression of intention does not have to be explicit. Taciturn agreements are also included (see Supreme Court 1984 Tai-Shang-Zi No. 2346 Decision.) Meanwhile, co-perpetrators’ undertakings of part of the criminal act do not have to be throughout the entire act. For example, Party A confessed having taken and confined Party B in an apartment and the confession was confirmed by Party B. Although Party A did not participate in other parts of the abduction, he is still considered a co-perpetrator (see Supreme Court 1985 Tai-Shang-Zi 7321 Decision.)

C. In my career as a prosecutor at the Taipei Prosecutors Office for over two decades, I have always highly affirmed decisions that were the results of reasonable thinking (the argument stated in the repeated revocation and remandment of the High Court’s acquittal of Su Jian-he et al by the Supreme Court were some good examples.” It is my hope that this paper can serve as an overview of collection of evidence, actual practices, discretionary evaluation of evidence, and assessment of evidence for the people in Taiwan as well as education in law enforcement and help all law enforcement personnel to understand the various evidence types and collection approaches, and the essence of assertion of violation of legal interests and protection of legal interests under the Criminal Law. From all the above, it is clear that comparison of evidence collection and discretionary evaluation of evidence includes comparison of capacity, prospects, and significance, instead of petty immediate gains. Therefore, it is necessary to learn to be reasonable and raise questions, and the reasons and evidence presented must have solid bases and comply with social experience, logic and objectivity. These are the core values in judicial protection of the people (especially crime victims.) If everyone can make efforts in accordance with these values, it will be the fortune of the society and the people.

PUSHOVER NO LONGER: EXPERIMENTS IN VICTIMOLOGY IN INDIA

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The Criminal Justice System comes into play the moment a person is made victim of a crime. More often than not, however, the voice of the aggrieved is lost on account of the convention, and therefore ensuing practice, that the State is solely responsible for prosecuting an Accused. In the last few years, however, several 'high profile' cases in India have created a perception of abuse of process both at the level of investigation as well as prosecution, and the Victim is just made to suffer injustice repeatedly with no effective representation in these proceedings. Through recent decisions of Courts as well as amendments to the Code of Criminal Procedure, the Indian Criminal Justice System has sought to allow for the victim, or their next-of-kin, to play a role beyond that of a mere witness, and the experimental stage of these changes make for an interesting viewpoint on the present state of the Indian Criminal Justice System and where it may go from here. This paper seeks to examine these recent developments, while using illustrations from ongoing cases which the presenter has personally been involved in, to examine the effectiveness of the same.



EMPIRICAL CASE STUDY ON THE CRIMINAL HOMICIDE CASE OF COUPLE WU M-H, AND YEH, YING-TANG IN YEAR 1991, HSICHIH DISTRICT

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The definition for crime victims means whoever has suffered personal legal rights infringed directly by the injuring parties. Under heavenly universe ideology or worldwide humane laws, the individual life, health, physical, health, personality, and property of the people shall be entitled to be protected by law without prejudice to the nation and jurisdiction under any circumstance. Whereby, the legal authorities have been sticking to performing the criminal accusation, conviction, and punishment in accordance with the laws with duly care and attention, the crime victims can't enjoy legal protection and justice in equality, on the contrary.

Following the world's first "Criminal Injuries Compensation Scheme" implemented by New Zealand in year 1964, the U. K., U. S., Germany, France and Japan have also followed subsequently. "The Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power" has also been adopted by the United Nations in the 96th Plenary Meeting, on November 29th, 1985.

In pace with the latest worldwide trend and prevalence, Taiwan "Crime Victim Protection Act" has also been promulgated in May, year 1988 whereby the Article 1 specifies that the victim protection objects shall be inclusive of two categories as below:

The 1st Category: The priority sequences for compensation for legal heirs of deceased victims caused by criminal commitments are (1) Parents, spouse, and children; (2) Grandparents; (3) Grandsons and granddaughters; (4) Brothers and sisters.

The other category is: The crime victims suffering serious injury as to criminal behaviors; where the definition of severe injury herein referred to the regulations as stated in the Paragraph 4, Article 10 of the Criminal Code.

Moreover, the Article 29 of the "Crime Victim Protection Act" specifies that the for the purposes of assisting crime victims or legal heirs of deceased victims as to illegality, the MOJ and MOI shall be in full responsibility of establishing "Crime Victim Protection and Fostering Institutes" jointly.

Following May, 2009, This Act has been amended with annexes by addition of more crime victim objects into in the Article 1 and Paragraph 2, Article 30; and addition of 6 types of crime protection objects inclusive of sexual-assault, domestic-violence, human-trafficking, children and juvenile, and foreign spouses and foreign labors inclusive of the districts of mainland China, Hong Kong and Macao and an incremental compensation item of mental relief compensation for the purpose of compensation coverage expansion.

Distinctively, the current Taiwan criminal codes are more advantageous to the protection of human rights of defendants with significant negligence of crime victim right and protection. Should the partial and excessive protection for human rights of the convicted not be doubted by social public as constituting right deprivation and infringement of crime victims? Should the jurisdiction actually protect either the evil criminals or crime victim of legitimacy?

Whereby criminal facts are extremely distorted by completely chaotic criminal jurisdiction, should it not be extreme sadness and regret for crime victims beyond descriptions? Therefore, for the purpose of crime victim human dignity protection, demanding “Truth and Clarity” about everything that has happened shall be dispensable for improvement of fair legal statuses and treatments crime victims and achievement of reforming the improper Code of Criminal Act and litigation procedures?

For validating the seriousness of the aforesaid facts, this essay has thus cited the brutal criminal homicide case, Couple Wu Ming-han and Yeh Y-L, occurred in year 1991, Hsichih District for evaluation and analysis and improvement regarding crime victim protection dilemma and impairment nowadays.

Actual Criminal Cases

1. Late Arrival of the God’s Justice

In analysis of the criminal case “Hsichih Trio,” Su C-H, Liu Bin-lang and Chuang L-H” being accused of kidnaping, homicide, and body-dump, from the trail of the first instance to third instance, there have spanned 14 trials and nearly 23 years until the finalized death sentences by the supreme court as of July 28th, 2011. What jurisdiction ridiculousness constitutes such a “Late Arrival of the God’s Justice”?

The convicted, Chiu Ho-Shun, kidnapped a school boy, Lu Cheng from a private learning center Lian-Mei located at Beidah Road, Hsinchu at about 6:00 pm on December 21st, 1987 and killed the victim, and dumped the deceased victim in seashore area of Chiding, Chunan, Miaoli County and then succeeded in obtaining the ransom of NT\$ 1 million from the family members of the deceased victim. Prior to the homicide of Lu Cheng case occurred on Nov. 24th, 1987, Chiu, HO-Shun and others ever made an appointment with the victim “Ke-Hung, Yu-Lan” who ever being employed in Chunan Branch of Cathay Insurance Company and dealt in illegal lottery; and murdered the victim and dismembered the deceased body after failing to obtain NT\$ 500,000 with threat in the meeting; and dumped the dismembered body pieces into the cliff next to the “Huei-Huang Ranch” in Chunan Town, Miaoli County and shared with accomplice the cash NT\$130,000 gotten from the female deceased victim’s wallet. Whereby the body of the deceased victim Lu Cheng has never been retrieved, and Chiu Ho Shun and other convicted alleged their confessions were forced by torture, the criminal procedure of this case has spanned nearly 23 years disappointedly when the main suspect, Chiu, Ho-Shun, was sentenced to death by the Supreme Court on July 28th, 2011. From the trial of the 1st instance to 3rd instance, there have appointed trail judges for examining the Case of Lu Cheng for up to 99 times experiencing 14 retrials. The main suspected Chiu, Ho-Shun was imposed 2 death sentences and annulment of civil rights for life in which 1 death penalty shall be executed. The accomplices, Lin Kun-ming and Wu Shu-chen, Chiu's girlfriend, were sentenced imprisonment terms of 17 years and 10 years, respectively. Extreme protection for legal rights of defendants constitutes a ridiculous contrast with achieving the justice for so long. Should the legal protection for victims be in equality and fairness?

2. Unfulfilled Justice

For Couple Homicide of Wu, the trail for 1 of the convicted, Wang W-H has already been finalized on December 24th, 19991 and executed for his part by on January 11th, 1992, respectively by military judicial authority. The Supreme has finalized the death sentences imposed on other Trio



convicted Su C-H, as stated in Court No. No. 84-NTSZ-485 on February 9th, 1995 in accordance with the Subparagraph 1, Article 398 of The Code of Criminal Procedure after upholding the physical evidence adopted by the High Court in the retrials, without further investigations. Although being lagged for another 4 years, this case has been demonstrated quicker pace if compared with the Case of Lu Cheng lasting nearly 23 years.

The criminal of the Trio Convicted Su-C-H have been experienced many retrials and extraordinary appeals that were all rejected by the Supreme Court and indicated that all remedy procedures have already been depleted. Meanwhile, the High Court judges began to consider physical evidence in the following retrials endless after the Supreme Court Order No. 88(1)-13 issued on May 19th, 2000. Considering this case has thus been been retrials for more than 10 years until nowadays, should the “God’s Justice” not arrive simply because of the jurisdiction ridicule mechanism? Should the jurisdiction system not be suspected and frustrated by social public obsessed with unduly legal protection for the accused for why and how?

As to the couple homicide of Wu occurring in Hsichih in year 1991, the military jurisdiction authority has finalized the trial of 1 of the convicted Wang W-C and imposed a death sentence on him with annulment of personal civil right for life and confiscation of all the each 1 straight knife, 1 fruit knife, and 1 extendable electronic baton”, with upholding his accomplice in “conjoint robbery and intentional homicide” on October 24th, 1991, and imposed a death sentence for his part in conjoint sexual assault on female with annulment of personal civil rights for life and confiscation of confiscation of each 1 straight knife, 1 fruit knife, and 1 extendable electronic baton” provided with that the capital punishment shall be executed. After the MOD issued an order No. 80-FKCMT-11 for approval of executing the His death sentence following reviewing on December 24th, 1991, such the death capital punishment has been executed on January 11th, 1992. The finalized Court Order No. 84-NDTST-485 by the Supreme Court stated that “according to Subparagraph 1, Article 398 of The Code of Criminal Procedure, whereby all facts adjudicated with physical evidence the other 3 convicted, Su C-H, and upholding the physical evidences collected by the high court, the High Court imposed death sentences against the “Hsichih Trio” for the third time without further investigation on February 9th, 2005 for their parts in “conjoint robbery and rape, ...and also death sentence on each of them for their parts in conjoint homicide.....for finalization.” Compared with the Case of Lu Cheng spanning nearly 23 years, this case for only 4 years should be definitely upheld by the whole nation as rationality, wisdom and efficiency without any prejudice.

This criminal case of Trio convicted Su, C-H has experienced numerous retrials and extraordinary appeals but were all rejected by the Supreme Court. As stipulated by the Article 461 of The Code of Criminal Procedure, the capital punishment shall be approved by the Minister of justice and be executed within 3 days after receiving such approval; provided that the executive prosecutor may contact the highest judicial authority for a review in 3 days if causes for a retrial or extraordinary appeal exist. However the prestige and efficiency of jurisdiction has been deteriorated significantly by that the MOJ has failed to approve and execute the capital punishments of Su C-H Trios until nowadays.

3. Although being the highest judicial administration organ, the MOJ is not allowed to have the privilege to overstep the judicial power

In consideration that once after executing capital punishment, criminals’ lives could not be retrieved for eternity, Taiwan criminal jurisdiction has thus adopted legislation mechanism endowed with

utmost prudence for criminal case examinations. The major concerns arise from that if any mistake or discrepancy in the jurisdiction would deprive the accused legal entitlement and therefore there have always been applied the most caution and endeavor for carefully reexamining any justification of retrial, extraordinary appeal, special amnesty, or penalty abatement as the final resorts for seeking judicial remedy prior to the approval and execution of the capital punishment. Vice versa, in case of depletion of all possibility for appeal for retrial, extraordinary appeal, special amnesty, penalty abatement, the MOJ still failing to approve of and execute the same would simply overstep the privilege and authority of the jurisdiction power in favor of offering gratitude to legal right protection of criminals with prejudice to the legal protection due for crime victims in equality?

The criminal case of the “Hsichih Trios” Su C-H has spanned nearly 10 years since its occurrence on May 19th of year 2000. The retrial order No. 88-NDSCC(1)-13 issued by Taiwan High Court states that the retrial appeal of “Hsichih Trio” is hereby granted. That court order mainly states: the female wallet stolen by the convicted from the crime scene in the previous sentences that occurred on March 24th, 1991 was cited from the Criminal Investigation Report (hereinafter briefed as CI Report) of Hsichih Police Station on August 15th, 1991. In that CI Report states: the convicted “Wang W-H” ever invaded into the home of the couple victims of Mr. and Mrs. Wu stealing. According to the “Booty Custody Receipt” attached to that report, the confiscated booty are 1 pair of scissors, 1 key ring-chain, and 1 small leather wallet, respectively, which are partial of the whole facts. Meanwhile, according to the CI Report submitted by Hsichih Police Station to the Shi-Lin District Prosecutors Office on August 19th, 1991 states that it can falsify “Comprehensive evidence investigation for the 1 key ring-chain, 1 kitchen knife, 1 police baton, and 1 pair of scissors, and stolen cash of NT\$24, respectively”, thus causing denial of previously validated comments. The court of previous instance failed to adopt the aforesaid 2 validated facts stated in the CR Report, possibly because of detecting new evidences then that leading to the retrials of this persisting until now. Where the prosecutor filed an appeal following the Taiwan High Court Written Order No. 89-NCT-4 issued on January 13th, 2003 stating that “Hsichih Trios convicted as “Not Guilty”; Following the Taiwan Supreme Court No. 92-NTS-4387 on August 8th, 2003 for rejection of the aforesaid sentence and revocation of retrial; Furthered by Taiwan High Court Order No. 92-NKCC(1)-1 on June 29th, 2007. The most substantial and intolerable jurisdiction absurdity shall be following Trio Convicted inclusive of S, C-H appealing and the Taiwan Supreme Court Order No. 96-TAZ-5856, rejection with settlement for retrial; Coupled by Taiwan Supreme Court Order No. 96-NKK(2)-1 sentencing the Trio “Not Guilty” on Nov. 12th, 2011; Continued by the Prosecutor appealing; Jointed by endless absurdity of the Taiwan Supreme Court Order No. TSZ-1837 with revocation and settlement for retrial on April 21st, 2011; Endless for more than 10 years until nowadays following Taiwan High Court No. NKCK(3)-1.

After the finalizing the 3 convicted death sentences , this criminal has been lagging for more than 10 years and nearly 20 year since its occurrence. If without heaven justice, should the jurisdiction system should not be free of any condemnation?

4. The Trial Court in Full Charge of Facts Validation and Evidences Consideration by Adoption of Physical Evidences

Su C-H Trios of 3 convicted and the brothers Wang W-H, Wang W-C who were serviced soldiers (Thanks to the “God’s Justice, the trails of the two brothers have both been finalized; the capital punishment of Wang W-H was executed finally). This criminal case scenario is briefed as below: as the accused Wang W-H owed gamble debts of about NT\$ 30,000 (the same currency hereinafter)



to unknown an electric-game gang dealer, and had been frequently urged by the debtor; and the other 4 convicted all crazed for money, at about 23 o'clock, March 23rd, 1991, the five convicted all agreed with Wang W-H's suggestion stealing from the residence of the couple of Wu and Yeh which is located opposite to the building where Wang W-H resided. Wang W-C kept alert outdoors, and each of the other 3 convicted Su C-H, held 1 straight knife, 1 police baton and 1 fruit knife respectively snaked into the residence of the couple Mr. and Mrs. Wu. Wang W-H obtained 1 fruit knife from the kitchen at the crime scene. After the 4 convicted failed to search any valuables, they then invaded into the bedroom of the Couple Wu robbing financial properties. Upon invading into the bedroom of the couple, each of Wu, Wang W-H and Su C-H, held 1 kitchen knife and 1 straight knife, respectively, tied the female victim Yeh, Ying-Tang up, and Chuang L-H caught male Wu restraining the 2 victims fighting back. The convicted, Liu B-L, ransacking whole closets, boxes indoor searching properties and the other convicted, Chuang L-H, also joined the former rummage. After Wang W-H held the female victim Yeh, the 2 robbers Liu B-L, and Chuang L-H plundered cash about NT\$6,000, 4 pieces of gold rings. Afterwards, as the criminal, Wang W-H, became lustful due to the beauty of the female victim, Yeh, the 3 criminals, Wang W-H, and, Su C-H and Chuang L-H thus raped the female victim Yeh jointly that Wang W-H tied the female victim Yeh up with forcing the female victim depriving off her pajama and underwear. Upon vision of their raping, the male victim Wu tried to fight back causing the criminal Wang W-H, cutting Wu's head fiercely. The other criminals, Liu B-L, Chuang L-H, and Su C-H further cut and battered cruelly the victim Wu by means of 1 stick and 1 knife 1 after 1 causing the victim Wu falling down on ground due to severe injuries. The criminals, Wang W-H and Liu B-L then succeeded in raping the female victim 1 by one. While Chuang L-H was raping, the female victim implored for terminating their raping repetitively. While the criminal Su C-H was raping the female victim, Wang W-H and Chuang L-H chopping cruelly the female victim's head without further raping due to her bursting into tears and yelling afterwards. For extinguishing their criminal behaviors, Wang W-H suggested killing the victims and the 4 criminals then thus did not stop chopping on the heads, chests and limbs of both the 2 victims, Wu and Yeh until the two victim dead (Chopping Wu 42 times and the female Yeh 37 times in total with extreme cruelty). The 4 convicted then showered themselves in the bathroom at the crime scene also cleansing knives. Afterwards, the convicted Wang W-H tried to eliminate all fingerprints and criminal scene evidences and retrieved the kitchen knife back to the original position. The criminal Liu B-L recovered back the female victim's clothes after raping trying to void their raping and also locking up the bedroom door and then escaping via the front door. Afterwards, the criminal, Su C-H, then threw the straight knife and fruit knife into Keelung Harbor where he resided nearby. Each of the 4 criminals dumped away the clothes filled with bloody stains respectively and shared the robbery cash. The robbery gold ring was pledged into cash by Wang W-H in a pawn shop. Not until August 13th, 1991 did the police have discovered their criminal behaviors after investigation. This extremely brutal homicide criminal case is synonymous to the "Etymology" hated and reviled by both the humans and divines. The 4 criminals of absolutely cruelty and evil without any compassion and sympathy leave no tolerance for evasion of their punishment.

5. Taiwan Code of Criminal Procedure Subscribes to Principle of Evidentiary Adjudication In Substitution of Oral Confessionism

Although the Trios convicted inclusive of Su plead that their testimony made out of torture during police interviewing investigation and prosecutors' examination and thus rejected the factuality of the testimony, all other remaining evidences recorded in the police investigation report are still uninfluenced. Another a discrepancy is that the convicted Su, Liu B-L confessed guilty during the

police interviewing investigation but pleaded innocent during the prosecutors' examination and interrogation; In contrast, the convicted Chuang L-H and Liu B-L both pleaded innocent during the prosecutors' cross examination and investigations and still insisted on denials repetitively in the court retrials and pleading that their testimonies were made out of torture during both the police interviewing interrogation and police investigation.

The Taiwan Code of Criminal Procedure subscribes to the "Principle of Evidentiary Adjudication" in substitution of the "Oral Confessionism" in which the Article 154 specifies that "An accused shall be presumed to be innocent prior to a final conviction through trial"; and "The facts of an offense shall be constituted of and established by evidence and shall not be established in the absence of evidence validated."; "The facts of an accused shall not be limited to only the self-confession of a convicted and even the self-confession of a convicted shall be adopted as the sole basis of adjudicating the conviction.

This criminal case of trios Su C-H Liu B-L and Chuang L-H and Wang W-H accused of conjoint homicide were finalized with death sentence after retrials by 40 judges and appeals for countless times and extraordinary appeals which were all rejected, thanks to the "God's Justice still exists". On behalf the social public, the author hereby restraint oneself from doubting: "Why does the Taiwan jurisdiction system remain in state of absurdity and chaos?"

In consideration of the valuableness of human life, all the court judges have devoted to examination with uttermost caution in each court trial for avoidance of prejudice to legal justice. If not with such extreme cruelty lacking any human sympathy and compassion, how could this case end up with death sentences without leaving any opportunity for survival? The most stunning is on the 4th day prior to executing the gunshot capital punishment of Wang W-H approved and ordered by the military jurisdiction authority, the court trial judge of the first instance, the honorable "Judge TANG, MEI-YU" ever visited the military detention institute and inquired the convicted Wang who always replied that he himself and all other convicted Su C-H et al are all guilty without any innocence. Especially after the defense lawyer of the criminal Huang repeated the inquiries like the Judge, the convicted Huang still replied with the same. "Not only until confront the death could a human speak with full truth and faith; "Even a bird could not restrain itself from whining with sadness upon vision of the death incoming". If without any cruelty of the 2 brothers, how could the convicted Wang W-H reply with full truth and faith? All those have evidenced "Heavenly principles are clear and transparent; and "The laws of the universe have always been true and impartial; "Nothing escapes the net of justice".

Especially, in view of the ridicule that the accused Su C-H claimed that the police investigation report was established on torture but didn't assert innocent during the police interrogation, the accused's oral confession, "Being tortured during the police interrogation" is simply proven false out of the accused's discrepancy. Further, the accused Su self-confessed no torture in reply to the prosecutor's interrogation, and also self-confessed actual involvement in the criminal behaviors in response to the prosecutor's interrogation, respectively, all can prove his criminal behaviors are irrefutable simply attributable to his own slippery but discrepancy manipulation. That the other two accused, Liu B-L and Chuang L-H confessed orally having been tortured can further be adjudicated as fabrication. The mutually-detrimental statements made by the in that the Trios accused Su C-H and the accused Wang W-H whose death sentence was finally shall constitute an direct evidence each of those convicted is the eyewitness against each other on the crime scene. The "Institute of Forensic Medicine", MOJ, concluded that (1) the injury conditions of deceased



corpse were injured by some different knives without the possibility of only 1 type of knife; (2) the cut extensions and directions on the deceased corpse authenticate the physical injuries were chopped by at least 3 different knives.

Unbelievably, the world-famous expert, Ph.D. Henry Chang-Yu Lee concluded that: (1) By appraising the actual circumstance, indoor free-activity space, sharp injuries and blunt injuries and injury sites and comparing killing with the knives and batons used in the criminal scene with the hand lengths and the front mid-armholes of the criminals involved, the injury directions, of the convicted, it can deduce that criminal scene is pretty narrow. The possibility is very low for that the 4 convicted cut and chopped the knives and batons simultaneously, based on the reasons of visibility at the timing at the scene (at around 4 o'clock a.m.) and comparing the lengths of all different knives with the arm lengths of the convicted. (2) With the only 1 piece of finger print and shoe-blood imprints, and the scientific criminal scene reconstruction, this criminal case was highly possibly committed by only the convicted Wang W-H individually. Thus it can prove the aforesaid Conclusion No. 1 shall be very disputable that: As the free-activity space in the criminal scene is pretty narrow in scale of width, it shall be significantly impossible that the 4 convicted cut and battered with knives and batons on the two victims simultaneously. On the contrary, thanks to the God, a report of really logic and scientific conclusions were made by the "Institute of Forensic Medicine", MOJ, that (1) the injury conditions of deceased corpse were injured by some different knives without limiting to 1 type of knife on the scene; (2) the cuts on the deceased corpse authenticate the physical injuries were chopped by at least 3 different knives.

The Taiwan Supreme Court Order No. 96-NKCK(2)-1 states that while the criminal scene reconstruction made on June 20th, 2008, the staffs of "Institute of Forensic Medicine", the defendants, the defense lawyers, prosecutors, the litigation agents who have ever attended at the scene all expressed no double concerning the conclusions that criminal scene is spacious enough for the convicted Su C-H and other 3 convicted and also the finalized death sentence on Wang W-H jointed in the homicide but settled the case of Trios convicted inclusive of Su C-H with upholding the claims filed by their agents of complaints. "Institute of Forensic Medicine" of MOJ Correspondence No. 0970003078 issued on April 21st, 2009 stated that "For the issue of validating the any possibility of conjoint criminals committing the homicide, the Institute thus concludes that in scale of the host bedroom dimensions, while the Ph.D. Henry Chang-Yu Lee performed the criminal scene reconstruction in the morning of June 20th, 2008, in addition to Ph. D Lee, there were 4 assistants and 1 photographer, and two pieces of models, and judges, prosecutors and lawyers who visited there, it can thus be validated that the host bedroom is spacious enough for the 4 convicted killing the two 2 victims simultaneously". On the contrary, , Ph.D. Henry Chang-Yu Lee concluded that "by reasons of the criminal scene pretty narrow in width, low visibility at the timing of the criminal homicide occurrence (at around 4 o'clock a.m.) and the lengths of different knives, the structures of different knives, it is significantly impossible that the 4 convicted could chop and batter with knives and batons simultaneous on the two victims. Subsequently, The Taiwan Supreme Court Order No. 100-TSTD-1837 adopted and upheld the conclusions made by the Institute proving unaccepted regarding to Ph. D. Lee's appraisals. In Doctor Lee's Report, the 2nd Point stated that "With the only 1 piece of finger print and shoe-blood imprints, and the criminal scene reconstruction methodology, this criminal case was highly possibly committed by only the convicted Wang W-H individually". This conclusion can be simply be proven unscientific as there are more than 70 cutting injuries on the two victims of Couple W, and the criminal scene was fully chaotic, filled with blood stains, messy and opened boxes, counters and closets, the fingerprints and shoe-blood imprints on the criminal scene shall be validated that there are more than 1 criminal on

the scene. Even a child can understand that having discovered only 1 piece of fingerprint and 1 shoe-blood imprint are simply because of being wiped off by the criminals and regretfully being ignored by foreign investigators who shall take more thorough search. Another absurdity is that there have detected many other pieces of fingerprints and shoe-blood stains and imprints afterwards, but the Doctor Lee is still obsessed with all homicide cuttings were made by only 1 criminal without any logic reasoning. Thanks to God, any scientific appraisal logic can simply overthrow and make it more difficult to accept Dr. Lee's conclusions that with detecting only 1 piece of fingerprint and shoe-blood imprint, it is significantly possible there is only 1 criminal.

Endless Taiwan jurisdiction disappoint arises from Taiwan Supreme Court Order No. 88-(1)TD-13 granting the retrial appeal simply based on "1 key-ring chain and a small leather wallet", resulting this severe homicide criminal case lagging for more than 10 years. By when could the Taiwan jurisdiction achieve judicial justice and fairness without further frustrating the social public?

Three. Analysis For Judicial Procedures Regarding the Trio Homicide Case of Couple Wu M-H, and Yeh, YingTang :

1. It is highly disputable that MOJ has not yet approved of and executed the order of capital punishment

According to the Article 461 of the Code of Criminal Procedure, "the capital punishment shall be approved by the Minister of justice and be executed within 3 days after receiving such approval; provided that the executive prosecutor may appeal to the highest judicial authority for a review in 3 days if causes for a retrial or extraordinary appeal exist". Whereby once after the capital punish has been executed, the human life could not be retrieved for eternality, especially if there exists any judicial mistreatment or defect, our national jurisdiction legislation mechanism has stick to uttermost caution for examining any justification for the retrial of the previous instance, extraordinary appeal, special amnesty or penalty abatement all for as the last resorts for judicial remedy prior to the execution of capital punishment. The criminal case concerning the 3 convicted inclusive of Su C-H has been experienced countless petitions for retrial and filing three extraordinary appeal to the Chief Prosecutor that were all rejected in that the all the justifications for retrial, extraordinary, special amnesty or penalty abatement have already extinguished. However it is significantly disputable in that the prestige and efficiency of jurisdiction seemingly has prejudiced significantly as the MOJ has failed to approve and execute the capital punishments of Su C-H Trios until nowadays without any justifiable concerns and reasonable interpretation to the social public

2. That a single criminal case resulting in thousands of people, or so-called "Human Right Groups" amassing on streets tying yellow ribbons for rally in support of the "Hsichih Trio," Su C-H, Liu Bin-lang and Chuang L-H"; should have how many case-handling supervisors have examined this case carefully?; should have all the particulars of this case has been fully grasped to what extent? Why should this case end up with chaos? Should this case not deserve Taiwan legal authority taking in-depth self-reviewing?
3. The retrial supervision and judicial judgment of this criminal case conducted by the same judge shall definitely be disputable.

(1) Even with Subparagraph 1, Article 435 of The Code of Criminal Procedure specifies that "the court shall pronounce a ruling for retrial if the motion is meritorious"; and Article 436 specifying



that “in the event that the ruling for retrial is final, the court shall set a case for trial on regular procedure”, regretfully that “the court considers the appeal for retrial is justifiable, the court shall make a sentence for retrial” should have always been carried out by the courts in formal examination without executing the substantive examination accordingly. Subsequently, injustice and unfairness could result from that the court judge who presides in the substantive trial on a criminal case resentenced following a ruling for formal examination previously shall seemingly be suspected of predisposition in favor of something with prejudice.

(2) Whereby the “Standards of Separate Trial of Criminal and Civil Cross-Cases” promulgated by the Judicial Yuan, (Article 13) states the appeal for retrial is separate into codes of “S/C/T” and (Article 14) states that the executing retrial cases are coded with “C” and Article 69 regulates the appeal cases shall not be summarized until after being granted an approval”all can validate if the court pronounces a ruling granting the retrial of an appeal, the appeal case shall be summarized and the appeal case with intention for demanding being returned to be treated with formal trial procedures shall be assigned by sortation for the purpose of judicial fairness and avoidance of inappropriateness. Amid soundness and justification, that this criminal case, following being granted for summarization upon completion of the judicial retrial, was trial again the both two same Judge “Yueh, Teng-Duang” and Judge “Chiang, Kuo-Hua” who have previous granted for the appeal of being summarized after completion of retrial should raise curiosity and suspicion of possible predisposition in favor of something with prejudice to some extent.

(3) Most disputable should be this criminal has been treated by secondary sortation for reappointment of the retrial judges.

4. In this criminal case, the victims have not been treated in equal legal positions.

This Act has been endowed with the legislation of complaint, agent of the complainant, report, private prosecutor, a motion for review of a decision, setting the case for trial, the Part ancillary with civil action in conjunction with that the Article 248-1 specifying that while a victim is examined during the stage of investigation, the victim’s statutory agent, spouse, lineal blood relative, collateral blood relative within the third degree of kinship, family head, family member may be present and state their opinion therein; the same rule shall apply to the examination conducted by a judicial police officer or judicial policeman. The Subparagraph 2, Article 271 also specifies that “the court shall summon the victim or the family member of the victim for providing them provide them opportunities for state their opinions, unless those parties fail to be present at the court after being legally summoned, without good reason, or stating their unwillingness to be present, or that the court considers it is not appropriate to do so”. And the Subparagraph 1, Article 271-1 also specifies that “the Complainant may retain an agent to make statements at trial without personal presence in the court, except as otherwise provided that the court may consider it is necessary to summon the accused to be present in the court”. Should the aforesaid regulations have been carried out exactly as stipulated or up to each trial judge’s discretion in random?

The stipulation that after the investigation of evidence has been completed by the trial court and the oral arguments of the parties are being made, the victims or the agents of the plaintiffs shall be provided with opportunities for stating their own opinions should be seemly not meaningful, especially the victims have not been treated in equality in the litigations generally.

For enhancement of legal status of victims and protection their rights and the court's discovery of facts, the trial court shall provide the plaintiffs or agents of plaintiffs opportunities for stating their own opinions whenever upon completion of investigation of each individual evidence for the purpose of discovery of facts.

5. The "Criminal Appropriate and Speedy Trial Law" Seems to be Unfair in Terms of Protecting Victims and Against the Constitution

The Article 8 of This Act specifies that "if a case has spanned more than years and has been ordered by the Supreme Court for setting to retrial for more than 3 times and the trail court of the 2nd instance still maintain the judicial judgment of as innocence adjudicated by the trail court of the 1st instance or if such the judicial judgment of as innocence of retrial court has been sentenced as not guilty by the retrial court of the same instance for more than 2 times, the filing an appeal to the Supreme court is not entitled". Should the judicial judgment of as innocence be prejudiced by how many times have the retrials amounted to? The accused shall be retrial after the appeal in accordance with the law regardless of how many times retrials have been. Should the facts have been discovered exactly after being sentenced as not guilty? That under the aforesaid circumstance the prosecutors are not entitled to appeal shall have already deprived of the legal rights for appeal of retrial and apparently be disadvantageous to the victims with prejudice. Whereby the criminal case of the 3 convicted inclusive of Su C-H have been sentenced as not guilty twice in accordance with the Taiwan Supreme Court Order No. 89-CT-4 as of January 13th, year 2003, and No. 96-NKCK(2)-1 publicized on November 12th, year 2010, amid with the Taiwan Supreme Court Order No. 100-TST-1837 on April 21st, year 2011 directing revocation and retrial and the subsequent proceeding retrial according to the Taiwan High Court Order No. KCK(3)-1, if the 3 convicted inclusive of Su C-H are further sentenced not guilty following the Order No. KCK(3)-1, the Article 8 of That Act specifying that "upon the finalized judicial sentence of as innocence, the prosecutor is not entitled to appeal and in the event of being sentenced as guilty finalization, the 3 convicted inclusive of Su C-H are entitled to file appeal to the Supreme court, should the jurisdiction be suspected of lacking any legal justice and fariness and violation against the Constitution of the national? Further thorough consideration shall be necessary. With the most sincere appreciation for the "God's Justice", the author hereby advises with humility and regret that putting an innocent person to death will run the risk of jurisdiction negligence or mistaken treatment shall be less preferential than the aspiration for prevention of the victims crying with tremendous sadness and the absolute objection against the evil free of law nature and laughing scornfully.



ASIAN CRIMINOLOGICAL SOCIETY

PART *15*

VIOLENCE AGAINST WOMEN AND ELDERLY





HELP-SEEKING AND REVICTIMIZATION OF FEMALE IPV VICTIMS: A FOLLOW-UP SURVEY IN TAO-YUAN COUNTY

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This study explores subsequent help-seeking behavior among repeat IPV victims in Tao-Yuan County. Drawing from the cohort sample of women who registered at least one incident in year 2007, we completed 81 follow-up surveys to female victims who had multiple registration during 2007 to 2009. The interviews were intended to explore women's experience with the front line helpers, namely the police, medical practitioners, and social workers, and how their experience might relate to subsequent help-seeking behavior.

INTRODUCTION

In the last decade (2000-2009), registered DV incidents have grown from 21,405 to 89,253 in Taiwan. On average, over 50,000 victims reported DV incidents to local authorities per annum over the period. In yet another way, the number of registered DV cases per day rose from 59 in 2000 to 245 in 2009. Among them, over 80 % involved female victims who suffered from violence by their male partners (Executive Yuan 2010). It shows that intimate partner violence (IPV) has become a major form of violence against women in Taiwan society.

The prevalence of IPV has caused immense social cost in Taiwan. Existing research papers state that these victimized females usually suffer from severe physical and psychological abuse, causing post traumatic stress, psycho-physiological symptoms, and even depressive disorder (Hou, Wang, and Chung 2005; Hsieh, Feng, and Shu 2009). Femicide, though lack of official statistics, is one of the repeated themes in newspapers. In sum, there is a growing need to examine the status of female IPV victims under current legislation.

Although IPV continues to be a serious social problem, little is known about IPV victims' help seeking behavior in Asian countries (Naved et al. 2006). This study aims to identify the determinants of subsequent help-seeking behaviors by registered intimate partner violence female victims. It is hoped that the research findings will help lift the barriers of victims reporting the incidence. It is also hoped that the study will help agencies on assessing the needs of the victims of IPV.

THEORIES

Akers and Kaukinen (2009) identified three theoretical framework on explaining the abused women's reporting behavior. Firstly, Donald Black's behavior of law suggests that IPV is less likely to be handled by the police because of the intimate relationship and the social attributes of the victim. Secondly, the victim will assess the benefits (e.g. stop the violence) and the cost (e.g. material loss, privacy breach) and make their decisions of notifying the police. From the feminist perspective, the barriers for reporting IPV is based on the patriarchal power in both public and private spheres. In the private sphere, the inequality can be measured by women's dependence on marriage, lack of educational and financial resources, and responsibility for children. In the public sphere, the inequality can be understood by the negative official responses to abused women such as bias and blaming.

Determinants of seeking help

Drawing from previous studies, we divided three groups of determinants of help-seeking behavior. We will review the three groups in order: social demographic factors, interactional factors, and prior help seeking experience factors.

Social demographic factors

From feminist perspectives, the social demographic factors of abused women reflect the inequality with women's status in their relationship (Akers and Kaukinen 2009). Therefore, the more the inequality of the intimate partners, the less often the abused women would seek help.

Ethnics (minority status)

Whether minority groups are more likely to report IPV to the police remains an open question. This question should be considered in terms of the contextual factors of the status of different ethnics in the society. Some scholars argued that minority status prevent the victims from reporting the cases since lack of resources or information (Xie et al. 2006). However, there are also empirical evidence which suggested that minority status increased reporting behavior (Akers and Kaukinen 2009). Using agency samples, Fleury and colleagues (1998) found no relationship between race and contact with the police.

Age

Although it was found that younger victims were less likely to report crimes to the police, the effect of age might be different for IPV victims. The elder the victims, the less chances they would report IPV incidents. Elder victims might have been in an abusive relationship for a period of time and have learned to cope with their own way (Lu 2011). However, some research papers showed no effect of age on disclosure of violence (Naved et al. 2006). Using agency data, there are also evidence supporting higher reporting rate and older victims (Yoshioka et al. 2003; Xie et al. 2006).

Marriage status

A survey in Australia found that victims of IPV are more likely to seek formal help when married to the abusive partner (Meyer 2010).

Education

In a telephone survey to 556 women and men in South Carolina, it was found that people with higher education level had more help seeking behavior (Coker et al. 2000). A survey in rural Bangladesh found that women with a higher education were more likely to talk about IPV experience (Naved et al. 2006). Using victimization survey data, Akers and Kaukinen (2009) found no significant effect between education and help-seeking.

Employment

Lu (2011) found that unemployment increased the chances of subsequent report to the agencies. It might be an indicator of unequal status of the spouses in their relationship. Using victimization



survey data, Akers and Kaukinen (2009) found no significant effect between employment and help-seeking.

Interactional factors

The nature, extent and duration of abuse between intimate partners are correlated with women's help seeking behavior. Some research argued that interactional consequences of IPV is more important than social-demographic factors on affecting help seeking patterns (Vatnar and Bjorkly 2009).

Cohabitation

Using survey data on Canadian women, Akers and Kaukinen (2009) found that the victims who contact the police often lived in a cohabiting relationship and with children.

Relationship status

A survey to 137 women in shelters found that women who reported no need for the police were more likely to be involved (married, cohabitation, or dating) with the aggressor at the time of violence (Fleury et al. 1998).

Severity of physical abuse

Previous research papers confirmed the correlations between the violence severity and help-seeking responses (Goodman et al. 2003; Meyer 2010; Podana 2010; Naved et al. 2006; Coker et al. 2000).

It is to be noted that the effect of forced sex between intimate partners, although was rarely the focus of the study due to rare cases, might be worth exploring in cultural perspective. Sexual violence was not correlated with reporting behavior of Prague women (Podana 2010). Another survey of 157 abused women in Norway showed that none of the women called the police after sexual abuse (Vatnar and Bjorkly 2009). Both men and women were less likely to report sexual assaults by their acquaintances (Felson and Pare 2005).

Perceived mortal danger

Victims' perception of danger or life-threatening could increase the likelihood of formal help seeking (Meyer 2010).

Psychological abuse

A survey in Prague identified that threat or aggression is correlated with reporting behavior of female victims (Podana 2010).

Prior help seeking experience

Female victims' prior contact with service agencies might influence their subsequent seeking for assistance. IPV victims might change reporting patterns over time (Felson and Pare 2005). For example, Lu (2011) found that nearly 40 percent of IPV victims changed their sources of support

during 2008 and 2009. Lu also found that 14.6% of IPV victims reported that the severity of physical assault reduced in the last two years, indicating that they might change the sources of agency as a result of less physical harm caused.

Needs were met in last contact with agencies

Females with protection orders were less likely to report re-victimization. The reduction might be the result of deter effect of protection orders to the offenders or the reluctance of reporting of the victims out of fear of mandatory prosecution.

Various needs expressed

The IPV victims' needs might influence their choice of support. For example, women with emotional needs would seek out informal support (Goodman et al. 2003). In the US, African American victims more frequently sought protection through law enforcement sources than family violence center services (Hollenshead et al. 2006). Lu's study (2011) pointed out that repeat report was more likely to happen in women who had expressed emotional needs.

Experience and evaluation with previous contact with agencies

Females in shelters reported that they did not report the incident because of previous negative experience with the police (Fleury et al. 1998).

Problem recognition and definition

Apart from previous factors, scholars also pointed an important stage as 'problem recognition and definition' during the help-seeking process (Liang et al. 2005). IPV victims' recognition of the problem will decide whether and from whom to seek help. Their recognition of violence, however, is influenced by individual, relational, and sociocultural influences. If an abused woman disagrees with the main stream construction of domestic violence, she might find the help providers useless or even stressful.

Research questions

- (1) Do socio-demographic factors predict whether repeat IPV victims seek subsequent help through registering the case?
- (2) Do interactional factors (with alleged abusers) predict whether repeat IPV victims seek subsequent help through registering the case?
- (3) Do prior help seeking behavior with different agencies predict whether repeat IPV victims seek subsequent help through registering the case?

METHODS

The data were collected from structured questionnaire survey conducted by social workers and postgraduate students. All of the social workers already had extensive experience on assisting abused women. The graduate students were from departments of social work or criminology. All of



the interviewers were given 4 hours' training on interview skills and research ethics before conducting face-to-face interviews.

The questionnaire have seven sections. The first section includes demographic information of the female and her intimate partner. The second section collects information on the type, frequency, outcome, and coping strategy of interpersonal violence (including physical assault, forced sex, and threat) between females and their partners. The third section asks about control between females and their partners. The fourth section measures physical and psychological outcomes of abusive relationship and coping strategy. The fifth section collects information of help-seeking behaviors including medical, social work, and police agencies. The sixth section asked their contact experience and evaluation of the agency members.

The sample

The current study employs follow-up survey to repeat female victims of IPV in 2008. First of all, we collected all of the domestic violence case investigation reports (DVCIR) in year 2008 to 2010. We identified 2,737 victims and 4,631 incidents. Among the 2,737 victims, 659 of them reported twice or more in the period of study. Therefore, the 659 females were our sampling frame.

The initial plan was to interview a total number of 100 females. Unfortunately, we only collected 81 cases until the paper was written. Therefore, our provisional findings are based on the 81 cases. Their average age is 41.49. The majority of the females interviewed are non-aboriginal natives (65.43%). Mainlander-Chinese, who immigrated through marriage after 1949, composes 16.05% of the sample. Foreigners and aboriginal natives are less than 10% (9.88% and 8.64% respectively) (see Table 1).

About half of the females have high school education. Only 6.41% have college or higher degree. Most of them are employed full time or part time (55.56% and 20.99%) at the time of interview. In terms of marriage status, the percentage of married females (56.79%) are more than single or divorced females (43.21%). The percentage of females with children is very high (95.06%) (see Table 1).

Table 1. Descriptive statistics (N = 81)

Independent Variable	Category	Frequency/Mean (S.D.)
Age		41.49 (8.19)
Ethnicity	Non-aboriginal natives	53(65.43%)
	Foreigners	8(9.88%)
	Mainlander-Chinese	13(16.05%)
	Aboriginal natives	7(8.64%)
Education	Elementary school or less	12 (15.38%)
	Middle school	11 (14.10%)
	High school	41 (52.56%)
	College or above	5 (6.41%)
Employment	Full-time employed	54(55.56%)
	Part-time employed	17(20.99%)
	Unemployed or retired	4(4.94%)
	Housewife	13(16.05%)
Marital Status	Married	46 (56.79%)
	Single/Divorced	35 (43.21%)
Children	No	4(4.94%)
	Yes	77(95.06%)
subsequent help-seeking	Yes	40(49.38%)
	No	41(50.62%)

Sample structure and hypothesis

The dependent variable

Among the 81 females, 40 of them claimed subsequent victimization during 2009 and 2010 also sought help through registering the case. The rest 41 females claimed subsequent victimization but failed to register the case.

The independent variables

According the previous findings, the independent variables were divided into three groups. In terms of the social-demographic variables, we hypothesized that subsequent help seeking could be predicted by social demographic factors, interactional factors, and previous help seeking behaviors. Females who are younger, less educated, unemployed, or as marriage immigrants will increase the likelihood of subsequent help seeking. However, if they are still married to the alleged abuse, they might be less likely to report the case due to emotional affection.



In terms of the interactional variables, we also hypothesized that the cohabitation, severe and frequent physical assault, emotional abuse with threat, or female's perception of mortal danger will increase the chances of subsequent help seeking.

We expected that the more times abused female contacted formal agency for assistance, the more likely they adopt subsequent actions in later incidents. We also hypothesize that the more satisfied they are with previous help seeking experience, the more they will make later contact.

FINDINGS

The cross tabulation of the variables is shown as Table 2.

Table 2. Cross-tabulation

		Subsequent help-seeking		Total
		Yes	No	
		Mean(S.E), %	Mean(S.E.), %	
social-demographic variables				
Age		40.23(1.06)	42.73(1.46)	81
Ethnicity	Non-aboriginal natives	46.15%	53.85%	13
	Foreigners	62.50%	37.50%	8
	Mainlander-Chinese	42.86%	57.14%	7
	Aboriginal natives	49.06%	50.94%	53
Marital Status	Married	39.13%	60.87%	46
	Single/Divorced	62.86%	37.14%	35
Employment	Full-time employed	62.22%	37.78%	45
	Part-time employed	41.18%	58.82%	17
	Unemployed or retired	50.00%	50.00%	4
	Housewife	15.38%	84.62%	13
Interactional variables				
Intimate relationship with the alleged abuser	Ongoing	40.48%	59.52%	42
	Try to end	44.44%	55.56%	9
	Ended already	60.71%	39.29%	28
Assaulted with Weapon	No	47.62%	52.38%	42
	Yes	50.00%	50.00%	38
Forced sex experience	No	64.58%	35.42%	48
	Yes	25.00%	75.00%	32
Mortal danger perception	No	55.56%	44.44%	45
	Yes	40.00%	60.00%	35
Victimization frequency	Never	100.00%	0.00%	1
	Once a Month or less	45.83%	54.17%	48

		Subsequent help-seeking		
		Yes	No	
		Mean(S.E), %	Mean(S.E.), %	Total
	twice a Month	16.67%	83.33%	6
	Once a Week	44.44%	55.56%	9
	Several times a Week	75.00%	25.00%	4
	Almost everyday	33.33%	66.67%	6
Victimization	before twice or less	70.59%	29.41%	17
calling social workers	Three or more	41.94%	58.06%	62
Protection orders	Been issued at least once	51.11%	48.89%	45
	Never Issued	47.22%	52.78%	36
Prior help seeking experience				
assistance received from each agency (0~1)	Medical agency	0.66(0.04)	0.64(0.05)	74
	Social worker	0.63(0.05)	0.50(0.06)	75
	Police agency	0.68(0.04)	0.60(0.04)	78
Satisfactory with assistance (1~5)	Medical agency	3.69(0.17)	3.70 (0.11)	70
	Social worker	4.61(0.06)	4.59(0.05)	73
	Police agency	4.14(0.14)	3.98(0.13)	73

It is found that none of the socio-demographic variables is significant in the model. Two variables stand out on explaining subsequent help seeking. If the victim was assaulted with weapon, she was more likely to seek help when encountered subsequent violence. However, forced sex reduced the likelihood of seeking subsequent help. We also found that satisfactory with the agencies did not have impact on subsequent help seeking. If the victim received more assistance from police agency according to her needs, she will more likely to seek subsequent help. Nevertheless, the more help received from medical assistance reduced subsequent behavior. Overall, our data showed that interactional variables and help-seeking experience are more important indicators than demographic variables on explaining subsequent help-seeking behavior (Table 3).

Table 3. Logistic regression model for case attrition (no subsequent help-seeking)

	B	Odds Ratio
Married	1.425	4.157
Full time employed		
Part time employed	1.151	3.161
Unemployed or retired	15.914	8155100.434
Housewife	1.906	6.727
Assaulted with Weapon	-2.127 *	.119



Mortal danger perception	1.741		5.702
Forced sex experience	2.834	**	17.020
Victimization before calling social worker	.791		2.205
Medical assistance received	4.256	*	70.512
Social worker assistance received	-1.448		.235
Police assistance received	-5.549	*	.004
Satisfaction of medical agency	.016		1.016
Satisfaction of social worker	2.900		18.175
Satisfaction of police agency	-.044		.956
<i>-2LL</i>	47.939		
Pseudo R^2	.520		
<i>N</i>	56		

DISCUSSIONS

IPV victims rate formal support strategies as more helpful than private strategies (Goodman et al, 2003). Therefore, it is important to understand IPV victims' help seeking behavior in a chronic violence relationship. However, our findings must be viewed with caution. Since the refusal rate is high, victims involved in this study might have been more open and secured than those victims who declined to participate. Those victims we failed to track down might be more isolated and therefore suffered from higher risk of re-abuse in the relationship.

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THE STUDY FOR THE POSSIBILITY OF ESTABLISHING THE VISITING WORKERS FOR DOMESTIC VIOLENCE ABUSERS

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Taiwan passed Domestic Violence Prevention Law over 10 years. This law almost only emphasize on protecting the victims and supervising and banning the abuser. Moreover, the treatment order is not for all abusers but 15% of the abusers. The study was to ask the practitioners their ideas about adding the social workers or visiting workers to provide the abuser caring visitation and contact to encourage the abusers changing their behavior and to improve the relapse prevention efficacy. Totally 56 practitioners was requested to fill the questionnaire. Among them, there were 52 (93%) practitioner agree this idea, and most of whom agree this idea can improve the efficacy. Moreover, regarding the gender of visiting workers, most of them thought the male would be more appropriate, because of the safety reason and better communication. The majority also suggested the visiting workers should have the enough knowledge of law, probation, counseling, crime prevention, and domestic violence etc. The suggestion for future implementation is also presented.

A STUDY ON VIOLENCE AGAINST ELDERLY WOMEN IN CHENNAI CITY: WITH SPECIAL REFERENCE TO GERONTICIDE

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Elder abuse is an important problem that manifests itself in both rich and poor countries. The older persons are being perceived by their children as burden. Elderly individuals are exposed to physical, psychological, sexual or financial abuse. Most of the abusers are the children, spouses, relatives or caregivers of elderly individuals. Neglect is the most common type of elder abuse. This study makes an attempt to understand the nature, extent and cause of abuse of elderly women. Women above the age of 60 years who resides in Chennai, the capital city of Tamil Nadu in India are the population of the study. Out of 1,77,364 elderly women residing in Chennai, 1800 were selected as sample for the study. Chi-square and binary logistic regression techniques were used to analyse the data. The logistic regression analysis revealed that certain variables like age, education, marital status and place of residence have positive relationship with verbal abuse. 70 - 79 age group and 80-89 age group were more vulnerable to become victims of verbal abuse. Surprisingly, the research also found that the Geronticide- killing of elderly, voluntarily or involuntarily, has been a practice in some parts of Tamil Nadu.



VALIDATION OF TAIWAN INTIMATE PARTNER VIOLENCE DANGER ASSESSMENT (TIPVDA)

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The TIPVDA is an instrument designed to assess the likelihood of lethality or near lethality occurring in a case of intimate partner violence. This article describes the development, psychometric validation, and suggestions for use for the TIPVDA. Based on reviewing literature, exited danger assessment instruments, and archival information of 80 femicide and attempted femicide cases, and discussing with practitioners and scholars, this study constructed a pool of potential predictors, and formed a questionnaire. The samples (N=773) are intimate partner victims who asked for help from police precincts and hospitals in 22 cities and counties in Taiwan. As a result of empirical analyses, a 15 items scale was constructed and named Taiwan Intimate Partner Violence Danger Assessment (TIPVDA). This instrument was then tested with an independent sample of intimate partner violence victims (N=572). The empirical results suggest that the TIPVDA was administered reliably, and they provide significant evidence of the concurrent, discriminant, and criterion-related validity of this instrument. Implications for future research and utilization of the TIPVDA are discussed.

THE FEASIBILITY TO PREDICT SEX OFFENDER TRAITS FROM THE CRIME CHARACTERISTICS OF SEXUAL ASSAULTS

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A sample of stranger rape cases (n = 215) registered in Taipei and Kaohsiung Prison, Agency of Corrections, Ministry of Justice was studied with the objective of developing predicting models, which were used to estimate the feasibility to predict sex offender traits from the crime characteristics of sexual assault cases. Crime characteristics, including victim characteristics, crime behavior characteristics, and crime scene characteristics were selected from the cases data. Among the three categories of crime characteristics, the researcher designed 16 items. Offender characteristics were selected based on the usefulness for the investigators in narrowing the scope of a criminal investigation. Age, education level, marriage situations, and crime records of the offenders were selected. The Homology Assumption, one assumption of Criminal Profiling, was used to construct the predicting models. The researcher found that some items among the three categories of crime characteristics could be used to predict the age, education level, marriage situations, and crime records of the offenders. By the results of Discriminant analysis, the predicting accuracy of education level below the elementary school, education level over the junior college, crime records, sexual assaults records, violent offences, and theft records were over 70%. However, for a further understanding of the relationship between the crime characteristics and offender characteristics, the data about victims should be shared properly and the establishment of the database of the sexual assault cases is urgently necessary.

INTRODUCTION

Sexual assaults could be classified stranger cases and non-stranger cases based on their relationship. About the stranger cases, how to find the probable suspect is important, and this is also the aim of the study. Experienced detectives know that in investigations of serious crimes, an effective gathering of information during the first 24/48 hours is of crucial importance (Beek et al., 2009). The instinct knowledge only based on the experience usually could not afford the need of criminal investigation (Bayley & Bittner, 1984). It will waste time to search the suspect without any range. Therefore, for having a distinct way to investigate, a suitable and practiced investigation skill which could help narrow down the range of probable suspects should be developed. In the domain of Criminal Profiling, statistical model is also able to be used to narrow down the probable range. Even though the accuracy is not 100%, at least it isn't based on the experience and instinct. The study used Criminal Profiling technique to analyze the relationship between the sex offender traits and the crime characteristics of sexual assault cases. Constructing the statistical models and evaluating the predicting ability of these models.

The brief history about criminal profiling

During the World War II, the Office of Strategic Service used profiling technique to predict the behaviors and habits of the enemy's leaders. The Office of Strategic Service hired Walter Langer, a psychiatrist, to profile Hitler (Brain Innes, 2005). In 1950s, James A. Brussel, a psychiatrist in U.S.A., profiled the serial bomb cases happened during the period between 1940 and 1950. The result of his profiling led to the successful arrest of George Meteky, the suspect. Brussel also attended the profiling about the serial strangling cases happened in the Boston (Brain Innes, 2005). In 1970s, as to the number of violent crimes, most committed by the strangers, were rising in America, Criminal profiling technique was becoming more and more important. The FBI established Behavioral Science Unit (then change the name "Behavioral Analysis Unit"). In 1980s,



the concept about the criminal investigative analysis gradually matured in U.S.A. They establish the National Center for the Analysis of Violent Crime (NCAVC) in 1984 to assist criminal profiling (adopted from the website : All about Forensic Psychology).

In Canada, they establish ViCLAS, like the NCAVC. They require the experts who use ViCLAS should have at least 5 years experience about criminal investigation, the background of humanities, and proficient in computer. In Netherlands, the criminal profiling unit is under the National Intelligence Agency. The profiling unit should be formed by the forensic psychologists and officers trained by FBI. The unit has to open their research results to be surveyed and criticized by the science communities. In France, Criminal Profiling is usually asked by the judges. The judges would ask psychologists or psychiatrists to view the documents and reports about the crime, and form some evaluation about the cases (Brain Innes, 2005).

Above this, Criminal Profiling had been used in many countries. There are not many studies discussing about predicting the offender traits in Taiwan. The study would develop statistical models and assess the feasibility of predicting the offender traits.

Assumption of criminal profiling

Several assumptions as follows can be made regarding criminal profiling (Holmes & Holmes, 1996) :

1. The Offender Will Not Change His Personality.
2. The Crime Scene Reflects the Personality.
3. The Method of Operation Remains Similar.
4. The Signature Will Remain the Same.

The personality means characteristic thought, feeling, and behaviors which can be distinguished from others. It's persistent in different time and situations. (Phares, 1991).

The crime scene reflects offender's personality and state. Personality, life style, and developing experiences will express in the way of offender's behaviors in the crime scene (Liao, 2006). Some behaviors of the offender will occur repeatedly in different cases because of his personality. Therefore, the evidence about the behaviors occurred in the crime scene has some relationships with the offender state.

Each one offender has his own method of operation, which consists of their habit of behaviors, skills, and features. The offender method of operation has some kind level of stability, but it usually changes as growing up. When the offender becomes more skillful, he will remain the successful way and exclude the failures (Turvey, 2002).

A Signature is a unique manner in which a certain offender will commit a crime. It may be the manner in which he will kill, certain words he will use in the rape, or a certain way in which he will leave something at the crime scene (Holmes & Holmes, 2009).

However, the victim characteristics are also important. Farrington & Lambert (2007) defined that Offender profiling is a psychological technique designed to assist in the identification and detection of offenders. Its aim is to predict the characteristics of the offender in a particular case from the characteristics of the offense, the victim characteristics, and from reports by victims and witnesses about features of the offender. The objective is to narrow down the range of people who could possibly be the offender by specifying a combination of characteristics that an offender is likely to possess. Douglas & Olshaker (1999) defined that Offender profiling is a technique which analyzes the data collecting from the crime scene, the crime style, and victim characteristics to finding the offender traits. Turvey(2008) proposed the concept of behavioral evidence analysis. He regarded that the way of the offender profiling should include the examination of the physical evidence, victimology, and crime scene characteristics. All the definitions above mention about the examination of victim characteristics. For this reason, Criminal Profiling should not only emphasize the discussion of the method of operation, signature, and the crime scene. We define criminal profiling as a crime investigation technique which can narrow down the scope of probable offenders by predicting the offender traits through the victim characteristics, crime behavior characteristics, and crime scene characteristics.

Homology assumption

In the domain of criminal profiling, there are two assumptions exploring the prediction about the offenders. One is behavioral consistency assumption, and the other one is homology assumption. In this study, we use homology assumption to discuss the feasibility of predicting the offender traits. Homology assumption means *the degree of similarity in the offence behavior of any two perpetrators from a given category of crime will match the degree of similarity in their characteristics*. Despite some people criticized this assumption, Beek, Eshof, & Mali (2009) regards that homology assumption may be work if combing instinct crime scene characteristics and offender characteristics. A sample of stranger rape offences (n = 271) registered in the Dutch Violence Crime Linkage Analysis System database in the Netherlands between 1997 and 2007 was studied with the objective of developing statistical models, which give an indication of the probability of basic offender characteristics. Observable crime characteristics concerning the modus operandi, interaction between the offender and the victim, violence, precautionary measures, and sexual behaviors were selected in the database. Offender characteristics were selected based on their usefulness for the police organization in narrowing the scope of a criminal investigation. Spatial behavior, criminal history, and living situation of the offender were selected. The accuracy of predicting offender spatial behavior, living situation, violence crime, rape, and theft is 70.8%, 75.5%, 71.7%, 77.9, and 67.7% in order. The result supports that “crime characteristics can be used to predict the probable offenders”. Could we get the same results in Taiwan? Which crime characteristic is able to used to predict the probable offenders? For answering these questions, the aim of the study will find the crime characteristics could be used to predict and structure predicting models.

METHOD

For the research requirement to get real sexual assaults, the study used sentenced cases from the courts in Taiwan and the offenders were serving a sentence for their last sexual assaults in Taipei and Kaohsiung Prison, Agency of Corrections, Ministry of Justice. The standard about the cases used in the study are as follows :



1. Sentenced by the courts in Taiwan, and serving a sentence in Taipei and Kaohsiung Prison, Agency of Corrections, Ministry of Justice for their last sexual assaults.
2. One offender by one victim, excluding many offenders in one case. Accomplices are recorded only when they did non-sexual intercourse assaults, such as helping the prime offender to accomplish sexual intercourse, controlling the victim, or only using obscene behaviors.
3. The victim should be a female.
4. The victim should still survive after the assault.
5. The relationship between the offender and the victim was stranger.
6. The behavior of the offender should be a rape.

125 offenders were selected from 805 persons serving their sentence for the sexual assaults in Taipei Prison, and 90 offenders were selected from 645 persons serving their sentence for the sexual assaults in Kaohsiung Prison. The totally number of collected offenders were 215, and the number of collected cases were also 215. The relationship between crime characteristics, including victim characteristics, crime behavior characteristics, and crime scene characteristics, and offender traits were documented. Victim characteristics contained age, education, and physical-mental disability. Crime behavior characteristics contained the measures of controlling victims, plan level (from level 0 to level 7), disguise and precaution, crime site change, choosing victims easily assaulted, aggression level (from level 0 to level 5), sexual behavior used, talking with victims, the special behavior accompanying with the sexual behaviors, and misdeed during the assault. Crime scene characteristics contained the site sexual behavior occurred, leaving evidence identifying the offenders, and anything taken from the crime scene. The offender traits contained age, education level, marriage situation, and crime records.

Kruskal-Wallis Test (K-W Test) and regression analysis were used to predict the offender age. Chi-square test and Goodman & Kruskal's Tau value were used to predict the offender education level and marriage situation. Contingency table were used to explain the relationship between crime characteristics and the offender crime records. Furthermore, Discriminant Analysis was used to predict offender education level, marriage situation, and crime records. For a further explanation of the statistical procedure mentioned above, the reader is referred to statistical manuals.

RESULTS

Offender age

The youngest offender is 18 years old and the oldest one is 71 years old. The average age of these offenders is 33.96 ($s=10.38$). The youngest victim is 3 years old and the oldest one is 78 years old. The average age of these offenders is 23.74 ($s=13.73$). Referring the results of K-W Test and the concentrated level of the offenders age distribution respond to each crime characteristic, we structured the offender age predicting model as table 4-1.

Table 4-1 offender age predicting model

Crime characteristics	Variables	Average(SD)
Victim characteristics	education	
	Below elementary	38.02 (9.88)
	Above junior college	31.52 (8.83)

	physical-mental disability	No physical-mental disability	32.11 (8.98)
		physical-mental disability	44.53 (11.58)
	the measure of controlling victims	Using tape	26.71 (6.71)
		Using weapons	31.17 (7.86)
	Only one kind of measure	Using weapons	27.00 (5.38)
		Cheating	48.00 (14.21)
	Two kinds of measure	Threatening and using weapons	29.73 (7.84)
		Unarmed and using weapons	34.79 (7.58)
	crime site change	No change	31.72 (9.89)
		Over one time change	36.18 (9.79)
	choosing victims easily assaulted	No	31.17 (8.21)
		Yes	38.96 (11.92)
	aggression level 2	Using weapon and no victims harmed	30.14 (7.23)
Crime behavior characteristics	talking with victims	Cheating	37.43 (10.863)
		Others	31.00 (8.745)
	One way of talking	Threatening	31.24 (8.32)
		Cheating	38.76 (12.93)
		Others	29.73 (7.71)
	sexual behavior used	Suck the nipple	31.71 (8.36)
		Fellatio	30.90 (7.84)
		Sexual intercourse and fellatio	31.52 (8.12)
	misdeed during the assault.	Burglary	28.75 (5.99)
		Robbery	28.20 (6.94)
	Stalking	27.53 (8.60)	
Only one kind of misdeed	Burglary	30.17 (6.04)	
	Robbery	28.42 (7.31)	
	Stalking	27.30 (7.92)	
Crime scene characteristics	The site sexual behavior occurred	Staircase	25.64 (6.70)
	anything taken from the crime scene	Yes	28.99 (7.214)

Regression analysis was used to predict these offenders age when combining each crime characteristic which has the ability to predict the offender age. The result revealed that these crime characteristics can be combining to predict the offender age ($F = 5.028, p < .05$). Besides, the result also says the regression model could explain 24.6% amount of variation of the offender age ($R^2 = .226$). *Physical-mental disability* is significant in this model. As table 4-2 reveals.



Table 4-2 Regression of crime characteristics to offender age

crime characteristics	parameter
Victim education	-.692
Victim physical-mental disability	8.333*
Cheating	.699
Weapon	-1.019
crime site change	2.307
choosing victims easily assaulted	.766
talking with victims	-1.934
Sexual intercourse	-1.338
misdeed during the assault	-2.434
anything taken from the crime scene	-1.834
Constant	34.949

$F = 5.028, p < .05, R^2 = .226, *t = 3.228, p < .05$

Offender education level

The study discusses three education levels of these offenders : below elementary, junior high school, and above senior high school. The predicting model is as table 4-3.

Table 4-3 offenders' education predicting model

Crime characteristics	variables	offenders' education			
		below (%)	elementary junior high school (%)	high above school (%)	senior high school (%)
Victim characteristics	physical-mental disability yes	41.90%	19.40%	38.70%	
Crime behavior characteristics	choosing victims easily assaulted yes	32.00%	28.00%	40.00%	
	misdeed during the assault	Yes	25.8%	31.3%	43.0%
No		10.6%	49.4%	40.0%	
Crime scene the site sexual behavior occurred	Offender's house	38.50%	34.60%	26.90%	
	Victim's house	13.60%	50.00%	36.40%	
	Indoor others	16.10%	31.20%	52.70%	

	Outdoors	22.00%	44.00%	34.00%
anything taken from the crime scene	Yes	24.9%	33.1%	42.0%
	no	8.8%	50.0%	41.2%

Ps. The offender education level distribution of the sample in this study is as follows :

41.4% above senior high school, 38.14% junior high school, and 17.21% below elementary.

Offender marriage situation

According to the results of Chi-square test and Contingency table, the predicting model is as table 4-4.

Table 4-4 offenders' marriage predicting model

Crime characteristics		variables	offenders' marriage (%)		
			Single	divorce	married
Victim characteristics	physical-mental disability	yes	62.00%	20.10%	25.00%
		no	40.00%	16.70%	43.30%
Crime behavior characteristics	misdeed during the assault	yes	50.40%	21.60%	28.00%
		no	71.40%	16.70%	11.90%
Crime scene characteristics	anything taken from the crime scene	yes	51.1%	25.5%	23.4%
		no	75.0%	13.2%	11.8%

Ps : The offender marriage situation distribution of the sample in this study from high to low is as follows : 57.2% single, 20.9% married, and 19.1% divorce.



Offender crime records

More than half stranger sexual assaults in the sample of the study were committed by the offenders with crime records. Most of these offenders with crime records have sexual crime records. The predicting model is as follows :

1. The proportion of offenders with crime records and no crime records is 2 to 1.
2. The probability offenders with crime records is over 70% in the situations as follows :
 - A. Victim education level is above junior college.
 - B. **The measure of controlling victim** are threatening, cheating, or using weapons.
 - C. Aggression level is 2 or above 3.
 - D. The styles of **talking with victims** are threatening or cheating.
 - E. Only threatening.
 - F. Taking anything from the crime scene.
 - G. Sexual intercourse outdoor.
3. **when the victim has physical-mental disability**, the probability of the offenders with no crime records is 64.71%.
4. the probability of offenders with sexual assault records is over 70% in the situations as follows :
 - A. Victim education level is above junior college.
 - B. Offender plan level is over 4.

Discriminant analysis

In the study, we divide offenders into five groups according their education level when using discriminant analysis to construct the predicting model of the offender education level. Below elementary, junior high school, senior high school, below junior high school or above senior high school, and junior college are discussed. The offender marriage situation is divided into “ never having marriage” and “ now or used having marriage” when using discriminant analysis to construct the predicting model. As to the offender crime records, we examined two things. First, we tried to use discriminant analysis to divide the offenders with crime records or on crime records. Second, among these offenders with crime records, we use discriminant analysis to predict what kind of crime records they had. By the results of discriminant analysis, the predicting accuracy of education level below the elementary school, education level over the junior college, crime records, sexual assaults records, violent offences, and theft records were over 70%.

DISCUSSION

The result of the study reveals that it is possible to predict the offender traits from the crime characteristics. There are 11 items of crime characteristics could be used to predict the offender age. The Regression Analysis also shows that the crime characteristics with the ability to predict the offender age could be combined to predict the offender age. In the real case, usually we would have not only one crime characteristics. The result of the Regression Analysis shows the application of the predicting model in the real case is feasible.

A research about 6,155 sexual offenders from 1999 to 2002 in Taiwan indicated that 41.7% offenders education level is junior high school, 31.2% offenders is senior high school, and 14.9% is elementary school (Kao, 2002). Table 4-3 shows the offender education level distribution of the

sample in this study is 41.4% above senior high school, 38.14% junior high school, and 17.21% below elementary. The results indicate that the education level of the stranger sexual offenders most concentrates on junior or senior high school. Table 4-3 also reveals that five items of the crime characteristics could be used to predict the offenders' education. The Discriminant Analysis reveals that we can get better predicting accuracy as the predicted offenders' education level is "below elementary school" and "above junior college". Lung & Huang (2004) found incest offenders years of receiving education (6.23 years) is less than other kinds of sexual offenders (8.25 years). This research seems to mean that the offenders with lower education level would choose victims easily assaulted. However, table 4-3 shows that the sexual offenders with lower education level not inevitably choose victims easily assaulted. Therefore, it is not suitable to judge the offenders' victim selection only by their education level.

As to predict the offender marriage situation, table 4-4 does not provide a good predicting probability. Most offenders' marriage situation are single. Nevertheless, if we divide the situation of offender marriage situation into "never having marriage" and "now or used having marriage", we would get a good predicting accuracy from Discriminant Analysis. The result of Discriminant Analysis shows that the predicting accuracy of the offenders whose marriage situation is "never having marriage" is 63.2%, and that the predicting accuracy of the offenders whose marriage situation is "now or used having marriage" is 71.4%. Clearly, the result of Discriminant Analysis shows a better predicting accuracy than the table 4-4.

The data of the study renders that most offenders have crime records. Beek et al. (2009) found that 51% offenders had violence crime records, 29% offenders had rape crime records, and 54% offenders had theft crime records. By the model Beek et al. mentioned, the predicting accuracy of the offenders with violence, rape, or theft crime records is 71.7%, 77.9%, and 67.7% in order. The result of Discriminant analysis of the study finds the predicting accuracy of crime records, sexual assaults records, violent offences, and theft records are over 70%. Although the study did not reproduce the research performed by Beek et al., the result shows the high possibility to predict the offender crime records from the crime characteristics.

Since the offender characteristics could be predicted, the following issues would become important. First, the "Dynamic" database of sexual assaults cases in Taiwan should be constructed immediately. "Dynamic" means the database is able to update in time. The relationship between crime characteristics and the offender characteristics today may be different in the future. If we always use the old database to understand the sexual offenders, some mistakes would occur. Second, the data of the victims should be shared for the aim of researches or investigation. One of the difficulties in the study is the data of the victims protected by the government. However, the importance that the data of the victims in the field of criminal profiling was mentioned by many researchers (Shiu, 2003 ; Hou, Chou, Wu, & Lin , 2000). If we can get more detail victim characteristics, more information could be used to predict the offender characteristics. Finally, a better predicting model should be structured urgently. The study just tried to estimate the feasibility to predict the offender characteristics form the crime characteristics, and the results are better than just guess by instinct knowledge. However, in the real cases, we would have more detail information about these cases. These information also need better models to explain their relationships. Therefore, a better predicting model is urgently needed.

The results of the study reveal that the predicting model could aid detectives in making decisions and narrow down the investigative scope. In the future, further development and revision of the



predicting models and database will be of significant value for criminal investigation and the further research.

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PART *16*

VIOLENT CRIME AND HUMAN TRAFFICKING





QUALITATIVE AND QUANTITATIVE ANALYSES OF CHINESE SERIAL MURDERS AND MASS MURDERS

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This study is a large-scale empirical study of serial murders and mass murders in China in the most recent decade. Through qualitative and quantitative analyses of several hundred serial murder and mass murder cases, this study seeks to identify the patterns and characteristics of these cases, formulate a classification system to categorize the violent behaviors, and develop psychological-, social and cultural-based profiles of mass murderers and serial killers who perpetrated the offenses. The study also reviews the psychological and criminological theories commonly used in violence research and assesses their relative usefulness in explaining the behaviors of mass murderers and serial killers in the Chinese society. Lastly, the study reviews the strategies adopted by law enforcement agencies to deal with these types of violence and evaluates their relative effectiveness.

ADJUDICATION AND SENTENCING DIFFERENTIALS FOR OFFENDERS WHO KILL CHILDREN

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Reports of child homicide regularly make front page news and evoke strong public sentiment. However, scholarly research on child homicide has been primarily confined within forensic and public health literature. Recently, several US media reports have drawn attention to the inadequacy of the sentencing practices of the courts when examining cases of child homicide. This paper, using data from a sample of homicide defendants from the 75 largest U.S. counties, seeks to fill the gap in our understanding about the differentials that exist in the application of the law (e.g. decisions to prosecute, probability of conviction for offenders, sentences received) for those who kill children compared to those who kill adults. While no disparities were found in terms of conviction outcomes, offenders who have taken a child's life, especially those biologically related to them, received significantly shorter sentences.

INTRODUCTION

In our modern culture, we are obsessed and extremely protective of our children. Children's rights, wellbeing, and safety are regarded as issues of primary importance. The paternalistic, excessively protective attitude towards children in the United States did not become widespread until the nineteenth century. Slowly, through legal regulations and social practice the difference between children and adults was carved out, stressing the multitude of risks that children face, and devising a number of prohibitions to shield them from these dangers. Under this cultural orientation "the violent death of any one child is one death too many" (Stroud & Pritchard, 2001, p. 251).

According to the Uniform Crime Reports, 663 children ages 0-12 were victims of homicide in 2005 (Fox & Zawitz, 2007). Although the number of homicides of children under age 5 increased through the mid 1990's, the rate has declined recently. These numbers might not seem alarming by themselves. However, it is well known that there are significant limitations in the ability of official statistics to adequately delineate levels of actual crime. Scholars examining the child homicide problem have traditionally pointed out that these statistics are underreported (Lyman et al., 2003; Pritchard & Butler, 2003; Unnithan, 1994; Wilczynski, 1997).

Although child abuse was the first form of violence within the family to be recognized as a social problem in American society (Finkelhor, 1997), very little research attention has been devoted to examining the degree of law applied to cases of homicide against children. Meanwhile, several research studies and media reports have drawn attention to the inadequacy of the sentencing practices of the courts when examining cases of child homicide. The purpose of the current research is to provide a contemporary analysis of the factors that predict adjudication outcomes in a representative national sample of homicide cases.

LEGAL PROCESSING OF CHILD HOMICIDE CASES

Research alleging inconsistent treatment of child homicide cases

One of the most prominent themes in the child homicide research deals with the staggering discrepancy in how child-killers are treated by the criminal justice system across and within state boundaries (Barton, 1998; Bookwalter, 1998; Collins, 2007; Fazio & Comito, 1999; Finkel et al., 2000; Gena, 2007; Gordan, 1998; Kohm, 2002; Meyer & Oberman, 2001; Oberman, 2002, 2004;



Rapaport, 2006; Reece, 1991; Richards, 2000; Schwartz & Isser, 2000). These works, among others, illuminate the disparity in charges filed against persons accused of killing a child, the absence of uniform practices of how these types of cases are addressed within a particular jurisdiction, and compare the adjudication outcomes across types of homicide.

Because of the methodological weaknesses inherent in much of this research, however, the conclusions therein need to be assessed with caution. The overwhelming majority of this research does not have as their core objective the examination of criminal justice processing of child homicide cases. Moreover, the bulk of these studies do not deal with a heterogeneous pool of child homicide offenses. Rather, they focus more narrowly on categories of neonaticide or infanticide (more narrowly - maternal infanticide). Furthermore, the majority of research either utilizes small samples to draw their conclusions or assumes a strategy of comparing and contrasting isolated, factually similar cases, which tend to yield dramatically different sentencing outcomes.

One example of this type of research was performed by Shwartz and Isser (2000), who analyzed a total of 86 cases of neonaticide, which were identified through the media. They concluded that “there are a few patterns to be found either in the charges against the neonaticidal parents or the sentences imposed” (Shwartz & Isser, 2000, p. 85). A similar tendency of “broadly ranging dispositions of the cases, what reflects America’s confused response to neonaticide” (p. 23) is repeated in Oberman’s study that was based on a dataset of neonaticide and infanticide cases collected via searching the Lexis Nexis database and news reports for the time period of 1988-1995.

Another cohort of studies presents evidence that lenient treatment of these offenses is not uniform, but is often contrasted with extremely harsh court verdicts (Gordan, 1998; Kohm, 2002; Collins, 2007). These scholars argue that even in factually similar circumstances with comparable jurisdictional provisions, juries and judges can arrive at strikingly different decisions. For example Barton (1998) extensively illustrates the leniency-harshness continuum in adjudication outcomes of infanticide cases. On one end of the spectrum she discusses cases such as Melissa Seaner’s, a seventeen year old from Pennsylvania, who suffocated her baby and hid it in her gym bag after giving birth. Seaner, who pleaded guilty to manslaughter, was sentenced to four years in prison. On the other end of the spectrum, in *State v. Holden*¹, the Supreme Court of North Carolina upheld a conviction for second-degree murder for the killing of a baby by a 17-year old mother. Despite strong mitigating factors such as the defendant’s immaturity and limited mental capacity, she was sentenced to life imprisonment. Fazio and Comito (1999) maintain that when it comes to infanticide cases, the age of the defendant does not automatically evoke the court’s sympathy. Instead, teenage mothers are often at risk of facing quite harsh penalties².

Sentencing defendants who Kill Children

Although, no research has systematically explored how various offender and case characteristics might influence the sentencing process of a child homicide case, there is one study that examined the factors various legal and law enforcement officials perceived as affecting the “career” of child homicide cases through the American criminal justice system. Unnithan (1994) conducted face-to-

¹ *State v. Holden*, 365 S.E.2d 626, 631 (N.C. 1988)

² *People v. Doss* (547 N.E.2d 806 III App. Ct. 1991) – a 15-year-old’s conviction of first degree murder and 20 year prison sentence affirmed; *Moffit v. Arkansas* (No. CACR 92-444, 1993 Ark. App LEXIS 171 Ark. CT. App. 1993) – a 17-year-old’s conviction of manslaughter and 10 year prison sentence affirmed; *State v. Hopfer* (679 N.E.2d Ohio Ct. App. 1996) – a 17-year old’s conviction of murder and 15 year prison sentence affirmed.

face or telephone interviews with district judges, attorneys in the respective DA offices, police chiefs, sheriffs, and other officials. He found that these officials were not in agreement on how child homicide cases should be treated. A large portion of the DA office personnel expressed preference for treating the offense as manslaughter rather than murder in legal terms. Judges took the middle ground, emphasizing their personal anger at the crime but noting at the same time that this was tempered by realization that offenders often were in difficult circumstances. These observations combined with the perceived shift towards harsher treatment of child homicide assailants leads to the first hypothesis of the study: [H1] *Defendants who have killed a child will be treated more harshly by the courts compared to those who kill others: they will be more likely to be convicted, convicted of murder, they will receive longer prison sentences.*

Prior research has rarely identified the relationship between the offender and the victim as an important factor in shaping the sentencing decisions of the courts (Dawson, 2004), aside from including it as a control variable. The victim-offender relationship taps the relational distance or the degree of intimacy that exists between the two (or more) individuals involved in the offense. According to Black's (1976) classic formulation, the closer the relational distance is between the parties, the less law (probability of arrest, conviction, or longer sentence) there is going to be applied to their conflict.

Despite the media attention and public hysteria that these types of cases often attract, less than 10% of child homicides are actually committed by strangers (Alvarez & Bachman, 2003; Smithey, 1998). In Unnithan's study (1994) all respondents unanimously reported that "stranger" child homicides were treated more seriously by the criminal justice system. Besides the fact that stranger-committed crimes "engender the most intense feeling of vulnerability and fear" (Sampson in Alvarez & Bachman, 2003, p.47) other factors might be presented to explain their harsher treatment by the criminal justice system. When parents or guardians are the perpetrators of a child homicide, the case might be burdened with evidentiary problems (as discussed in previous section of this review). Furthermore, in the case of stranger child homicides, parents may be very vocal about the crime and the reaction of the criminal justice system, producing a media reaction, which cannot be ignored by judicial actors. Given these research findings, the present study hypothesizes that: [H2] *In cases of child homicide, defendants who are parents will be treated more leniently by the courts than defendants who fall into more distant relationship categories.*

The extant literature reveals considerable disagreement regarding the role of gender in sentencing disparity. Theoretical explanations for the difference in treatment of men and women have gone in several directions. Gender differences in sentencing outcomes have been explained by paternalism of the society (e.g. Nagel & Hagan, 1982), court chivalry, attributions of men's and women's criminality, and the practical problem of incarcerating women with children (Daly, 1987; 1994), and by arguing that since women have more informal social control in their lives than men, they will be subject to a lower degree of formal social control (Kruttschnitt in Daly, 1987).

Another common frame of reference for explaining the gender-based disparities in sentencing is that of an "evil woman" hypothesis. The latter posits that women, whose crimes are "unfeminine," may receive equal or even more severe sanctions than men convicted of similar crimes (Belknap, 2001; Daly, 1989). When Daly (1989) interviewed judges about their criteria for sentencing men and women, the majority confessed to using sex-based reasoning in their decisions, but they were more concerned with protecting children and families than with protecting women. This logic



tentatively suggests that women who kill their children might not receive as lenient of treatment compared to other women who have committed murder.

Unnithan (1994) reported that according to the respondents in his study, male perpetrators were perceived to be treated more severely than female perpetrators. There was also some interaction between gender of the offender and the relationship with the victim. The perpetrators who were perceived to be treated most seriously were mothers' live-in companions and non-biological fathers of child victims. Offenders perceived to receive the most lenient treatment were mothers. Some judges expressed the sentiment that many juries found it difficult to believe mothers could kill their children.

An English study conducted by Wilczynski (1997) explored 48 cases of filicide and noted a markedly different perception and legal treatment of men and women who killed their children, concluding that "men are bad and normal, women are mad and abnormal." Thus, men received treatment consistent with what have been termed the "legal" or "punishment" model of child abuse, and women were treated in accordance with the "welfare" or "treatment" model. Women were less likely than men to be prosecuted in general or prosecuted for murder specifically, they were also less likely to be convicted of murder than men. At the sentencing stage, women usually received psychiatric disposals such as hospital orders or non-custodial supervisory sentences such as probation orders. Drawing from the above research the following hypothesis is advanced: [H3] *Female defendants who have killed their own children (mothers) will be treated more leniently by the courts compared to females who kill other children or men who kill their own and other children. Mothers who kill their own children will be less likely to be convicted, convicted of murder, will receive lesser prison sentences.*

METHODOLOGY

The data for this research came from a Bureau of Justice Statistics study titled "Murder in Large Urban Counties, 1988" which was part of the Prosecution of Felony Arrests project. This dataset provides extensive information on murderers, their victims, the circumstances in which they came in contact with one another, and the justice system's handling of those arrested for this most serious crime. The 33 counties surveyed in the study were chosen to represent the 75 largest counties in the United States. A total of 2,539 murder cases were sampled, which provided data on 3,119 defendants and 2,655 victims. A sub-sample (N=129) of strictly child homicide cases (victim 12 years old or younger) was drawn from the larger sample for the second stage of analysis.

There are three judicial outcomes of interest in this study: (1) whether defendant is convicted; (2) whether defendant is convicted of murder; (3) length of incarceration. Both *Conviction* and *Murder Conviction* variables are dichotomous variables with values of 1 assigned when defendant was respectively convicted of any offense or convicted of murder, and a value of 0 assigned when these outcomes did not follow.

The *Sentence Length* variable is the term of confinement ordered by the sentencing judge measured in months. The original sentence length variable has been recoded because of presence in the data of life without parole and death sentences. It was deemed important to retain these cases as the

upper limit of sentence length³. Thus an interval-based scale was retained for the sentence length variable with life without parole and death sentences coded at the highest point. Following the lead of prior research (Bushway & Piehl, 2001; Ulmer & Bradley, 2006) the sentence length variable is logged to reduce the positive skew in its distribution and to allow for a more straightforward interpretation of the results as the percentage change in the dependent variable caused by changes in the independent variable.

A number of legally prescribed, offender- and victim-related, and case-processing factors are used as explanatory or control variables in this study. Victim's age is a key variable of interest for this study. *Child Victim* is a dummy coded variable capturing whether the victim was 12 years old or younger (coded 1). Cases with older victims were coded as 0. The rationale for this age cutoff is twofold. First, it is done in an attempt to insure a relative homogeneity of cases examined by the courts. Research has shown that homicide offenses perpetrated against teenagers and older children are different on a number of dimensions from offenses perpetrated against younger children (Finkelhor and Ormrod, 2001). Second, with limiting the age of the victim to 12 years or younger, the symbolic properties of childhood (such as helplessness, vulnerability, purity, naïveté, being seen as dependent, and in need of protection) are less likely to be diluted or tainted in the eyes of the criminal justice community or public at large.

Two binary variables were used to identify the relationship between the victim and the offender. One was coded 1 if the included in the analyses defendant was accused of killing their own biological child. Another was coded 1 if defendants were accused of killing children who were not immediately related to them. Defendants who were accused of killing victims older than 12 years of age served as a reference category. Finally, an interaction effects variable – *Mother* - was created targeting the interaction of gender and victim-offender relationship. Females who were alleged to have murdered their own children were coded 1.

The legally relevant factors that will be included in the analyses are the defendant's role in the killing, the severity of the offense, and the criminal history of the defendant. Some of the incidents involved multiple offenders. Previous research has shown that the role the defendant played in the incident is relevant to various court outcomes (Steffensmeier, Ulmer & Kramer, 1998). If the defendant was a follower during the offense rather than an organizer or a leader, he or she might be perceived as less blameworthy. Thus, a dummy variable *Primary Defendant* distinguishes between secondary defendants (coded as 0) and sole and primary defendants (coded as 1).

Two variables will be used to capture the severity of the offense. First, *Multiple Victims*, a dichotomous variable that accounts for a number of victims in the incident is included in the analysis. Defendants who have allegedly killed one person are assigned a code of 0, defendants accused of killing more than one person are coded as 1. In addition, the type of weapon used in the murder was also controlled. While use of a firearm is more likely to be interpreted as an aggravating circumstance for offenses other than murder, use of a weapon carries particular significance for cases of child homicide. Since a large proportion of child homicide cases suffer from evidentiary problems and are not characterized by weapon use, employing a gun to kill a child may be interpreted as an indicator of defendant's resolute intent to harm the victim. *Gun Use* is a dichotomous measure coded 1 when a firearm was used to commit the killing, and 0 when no

³ Separate analyses were executed excluding defendants who received life without parole and death sentences. This exclusion did not substantively influence findings from previous analysis in terms of magnitude, direction & significance of effects.



firearm was employed. Finally, a dichotomous variable of defendant's prior convictions was chosen to measure a defendants' prior criminal history.

Several other case, defendant, and victim characteristics that have been shown to affect the processing of criminal cases were included in the analysis. Demographic characteristics of the defendant included are age, gender, and race. Defendant's *Gender* is coded 1 for male defendants and 0 for female defendants. Male defendants comprise the majority of the sample (89.6%). In the child homicide sample proportion of female defendants comprises 55%. *Defendant's Age* is included as a control variable, and is measured in years. Since there were 128 cases that involved multiple victims, the victim race was operationalized as "one or more minority (or non-white) victims."⁴ *Minority Victim* is a dichotomous measure coded as 1 if at least one of the victims was a racial or ethnic minority; and coded 0 if all victims were white.

To account for potential case processing differences in conviction and sentencing decisions, a dummy-coded variable distinguishing between offenders convicted through trial and those convicted through guilty plea has been created. *Plea* is coded 1 if the defendant plead guilty and 0 if the case went to trial.

Since the data is clustered by counties located in different states, there exists a risk of confounding the jurisdictional differences in the processing of cases. Jurisdictions may differ in terms of state laws regulating definitions of offenses, proscribed punishments, and extent of discretion afforded to judges; they may also differ in terms of organizational factors characterizing the judiciary, as well as in terms of other social and cultural forces that may have an effect on judicial outcomes (Britt, 2000; Schlesinger, 2005). To alleviate the bias stemming from omitted these factors, a series of dummy variables controlling for the effects of the 33 individual counties are included in the analyses.

RESULTS

Bivariate Comparisons between Defendants who have Killed Children and Defendants with Older Victims

Table 1 presents descriptive statistics on the whole sample of defendants and on just those defendants who have killed a child. Comparing the latter group to defendants with older victims, reveals several differences and similarities - personal or offense related - between the two groups. The trial versus plea ratio was similar for those who killed children compared to those who killed adults: 48.2 percent of defendants accused of killing an older victim and 46.8 percent of defendants in child homicide cases plead guilty. Of those defendants whose case was not rejected or dismissed, a similar proportion across the two comparison groups were convicted of some offense (a little over 90%). About half of defendants in both groups were convicted of murder.

⁴ Examination of the data revealed that in all but 18 cases multiple victims were of the same race/ethnicity.

Table 1 Descriptive Statistics for Variables

Variables	Full Sample (N=2596)				Child Victim Sample (N=124)			
	Mean	SD	Min	Max	Mean	SD	Min	Max
<i>Dependent variable</i>								
Convicted (of any crime)	.90	.30	0	1	.92	.27	0	1
Convicted of murder	.50	.50	0	1	.44	.50	0	1
Sentence length (months)	306.6	428	.0	1295.1	244.9	379.2	0	1278.7
<i>Independent variables</i>								
Victim Characteristics								
Child victim	.05	.21	0	0				
Killed own child	.03	.16	0	1	.46	.50	0	1
Killed other child	.03	.17	0	1	.54	.50	0	1
Minority victim	.71	.45	0	1	.71	.45	0	1
Defendant Characteristics								
Age	29.7	10.5	14	88	27.1	8.7	14	71
Gender	.90	.31	0	1	.65	.48	0	1
White	.22	.41	0	1	.30	.46	0	1
Black	.60	.49	0	1	.58	.50	0	1
Hispanic	.16	.37	0	1	.11	.32	0	1
Other	.02	.14	0	1	.01	.09	0	1
Prior convictions	.32	.47	0	1	.16	.37	0	1
Family	.15	.36	0	1	.62	.49	0	1
Acquaintance	.62	.49	0	1	.26	.44	0	1
Stranger	.23	.42	0	1	.13	.34	0	1
Mother					.30	.46	0	1
Offense Characteristics								
Multiple victims	.04	.19	0	1	.10	.30	0	1
Gun used	.57	.50	0	1	.18	.38	0	1
Primary defendant	.95	.22	0	1	.95	.22	0	1
Plea	.48	.50	0	1	.46	.50	0	1

Several statistically significant differences between the two groups of defendants are observed in terms of the circumstances and characteristics of the offense. First, cases of child homicide are less likely to involve a weapon compared to cases with older victims. A firearm was used three times more often by defendants who have killed an older victim than by perpetrators of child homicide (58.9% and 17.7% respectively). Second, perpetrators of child homicide were somewhat more likely to be involved in incidents that produced multiple victims (10.5%) compared to defendants who were charged with murdering an older victim (3.6%). Finally, the victim-offender relationship is vastly different for cases of child homicide compared to cases involving older victims. Whereas



defendants who have killed an older person were most likely to be friends or acquaintances with their victim (63.2%) than to be related to him or her (12.7%), perpetrators of child homicide were much more likely to be a member of the victim's family (62.1%) than to be acquainted with the child (25.8%) or not know the victim at all (12.1%).

Examining the personal characteristics of defendants comprising the two groups illuminates two statistically significant differences. First, females were overrepresented among defendants who allegedly killed a child (35%) compared to the group of defendants with older victims (9%). Second, a larger proportion of child homicide defendants (almost 84%) had no prior convictions compared to those who have killed an older victim (67.1%).

Multivariate Results

Binary logistic regression is used to examine whether killing a child affects the odds of being convicted and the odds of being convicted of murder and results are presented in Table 2. Analysis is performed only on the sample of defendants who have gone to trial as opposed to pleading guilty. Contrary to the proposed hypotheses the young age of the victim did not affect the likelihood of conviction nor the likelihood of being convicted of murder. Neither killing one's own child nor killing a child who is not biologically related has an effect on either conviction outcome. Several defendant and offense characteristics, however, do have a significant effect on the probability of conviction. Age significantly affects the conviction outcome, with an increase of one year decreasing the odds of being convicted by 3%. Gender effects are also evident. The odds of being convicted (of any offense) are 58% higher for male defendants than for females. Having prior convictions also increases the odds of being convicted by 74%. Finally, having acted alone or being the primary defendant in a case almost quadruples the odds of being convicted.

Table 2: Binary Logistic Regressions predicting conviction (of any crime) & murder conviction⁵

	Convicted			Convicted of Murder		
	b	Odds ratio	S.E.	b	Odds ratio	S.E.
<i>Victim Characteristics</i>						
Killed own child	.72	2.10	.49	.25	1.29	.37
Killed other child	.30	1.35	.64	.35	1.43	.34
Minority victim	-.25	.776	.19	-.28	.75*	.15
<i>Defendant Characteristics</i>						
Age	-.01	.97*	.01	-.02	.98**	.01
Gender (Male=1)	.45	1.58*	.24	.34	1.40	.21
Prior convictions	.55	1.72**	.18	.55	1.74***	.13
<i>Offense Characteristics</i>						
Multiple victims	.69	1.99	.42	.91	2.49**	.31
Gun used	.03	1.03	.16	.14	1.15	.13
Primary defendant	1.57	4.78***	.36	1.20	3.33**	.39
N		1323			1323	
Nagelkerke R ²		.16			.13	
-2 Log likelihood		1150.58			1675.36	

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

⁵ In both models counties were controlled to account for jurisdictional fluctuations in the administration of the law.

The probability of being convicted of murder is similarly affected by defendant's gender and prior criminal history. Defendants with prior convictions have 74% higher odds of being convicted of murder than defendants with no prior criminal history. While the victim's age proved to have no effect on the probability of being convicted of murder, the victim's racial/ethnic identity surfaced as a significant predictor. Taking the life of an individual who is a racial or ethnic minority decreases the odds of being convicted of murder by 25%. Additionally, two offense characteristics influence the likelihood of a murder conviction. Committing the crime alone, without accomplices, or having the lead role in the offense more than doubles the odds of a murder conviction. Also, being accused of killing more than one person increases the odds of a murder conviction by 150%.

Table 3 presents results of two sets of Tobit regressions estimating the effect of various victim, offender and offense characteristics of the length of incarceration term. The first model includes the variable of Child Victim as a predictor while the second model decomposes the latter variable depending on the victim offender relationship. Proportional interpretation of sentence length is possible by examining the antilog of the predictors' coefficients. In line with the first hypothesis of this study, killing a child who is 12 years old or younger is associated with a substantial reduction in the length of imprisonment. Offenders with child victims receive sentences that are on average 44% shorter than those of offenders with older victims.

Table 3 Tobit Regression modeling natural log of sentence length

	Model 1		Model 2		Model 3	
	b	S.E.	b	S.E.	b	S.E.
<i>Victim Characteristics</i>						
Killed child (≤12yo)	.37**	.19	--	--	--	--
Killed own child (≤12yo)	--	--	-.35*	.27	--	--
Killed other child (≤12yo)	--	--	-.37*	.24	--	--
Minority victim	-.32**	.09	-.31**	.09	-.65	.46
<i>Offender Characteristics</i>						
Age	-.02***	.14	-.01***	.01	--	--
Gender	.72***	.14	.71***	.13	--	--
Prior convictions	.35***	.08	.35***	.08	-.18	.56
Convicted of murder	1.96***	.08	1.95***	.08	2.21***	.42
Family	.08	.14	--	--	--	--
Acquaintance	.05	.09	--	--	--	--
Mother					-.73*	.46
<i>Offense Characteristics</i>						
Multiple victims	.57**	.20	.56**	.20	--	--
Gun used	-.09	.08	-.09	.08	--	--
Primary defendant	1.10***	.18	1.10***	.17	-.14	.81
Plea	-.80***	.08	-.80***	.08	--	--
<i>Counties⁶</i>						
Philadelphia	-1.03*	.45	-1.04*	.45	--	--
Orange County	-1.16*	.48	-1.17*	.48	--	--
Rochester	-1.15*	.53	-1.15*	.53	--	--

⁶ All counties were controlled to account for jurisdictional fluctuations in the administration of the law.



Oklahoma	1.41**	.52	1.39**	.52	--	--
<i>Constant</i>	3.50***	.51	3.54***	.51	--	--
N	2300		2300		113	
Uncensored Observations	1780		1780		90	
Standard error (sigma)	1.73	.03	1.73	.03	2.13	.17
Pseudo R ²	0.12		0.12		0.06	
LR χ^2	1113.66		1113.26		29.09	
Log likelihood	-4050.97		-4051.16		-223.23	

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

Disaggregating the Child victim variable depending on the relationship between the offender and the child victim in Model 2 yields additional statistically significant findings. Both killing a biological child and killing a non-related child are associated with a decrease in mean sentence length. Analysis in Model 3 is based on a sample of strictly child homicide cases. Due to small sample size, only selected predictors were included as controls. It reveals that those female defendants who have killed their biological children receive sentences about 2 times shorter than other females and male offenders.

Apart from victim's age, victim's racial or ethnic status has a negative effect on sentence length. Taking the life of a person who is a racial or ethnic minority is associated with approximately 38% reduction in mean sentence length.

Several offender characteristics have an effect on sentence length. Offenders' age is significantly and negatively related to sentence length. Each year of age is associated with approximately 2% decrease in mean sentence length. Gender also has an effect on sentence length among serious violent offenders. Males receive incarceration sentences that are on average double the length of females'. Offender's criminal history also has a significant effect on the incarceration term. Having been previously convicted of a crime increases mean sentence length by 42%. Trials result in significantly longer sentences than guilty pleas. On average, those offenders who were found guilty by a judge or jury receive sentences double the length of those who plead guilty.

Being the sole or primary defendant in the case and being convicted of murder at current trial are both associated with significantly longer sentences. Offenders who carried out a clearly secondary role during the offense received sentences on average three times shorter than offenders who were the sole or primary perpetrators. Offenders who were convicted of murder at current trial are sentenced to terms approximately seven times longer than offenders who were convicted of another offense. Finally, taking the life of multiple victims during a single offense is associated with roughly a 75% increase in sentence length.

DISCUSSION

Michelle Oberman argues that in child homicide cases we are bound to encounter a “dialectic of condemnation and mercy” (Oberman, 2004, p.21) As a society, we have come to allocate our utmost indignation for predator strangers who sexually prey on children. Beyond that embodiment of evil, the judgment vectors get somewhat more blurry.

The hypotheses of this study are partially supported by the data. Multivariate analyses revealed that killing a child does not appear to be an aggravating circumstance for conviction decisions of the courts. However, offenders who have killed a child are given shorter prison sentences compared to those convicted of killing older persons. These findings provide mixed support for the principle that the courts regard public protection as an overriding sentencing principle. It is difficult to argue that court decisions should necessarily carry within themselves an element of denunciation to mark the public abhorrence of such heinous behavior as the killing of a child. However, it is not unreasonable to expect a strong emphasis on punishment and deterrence.

Arguably, child homicide cases are among the hardest cases to prosecute. Several studies have pointed out the difficulties of qualifying child homicide as murder (Alvarez & Bachman, 2003; Lyman et al., 2003). This category of cases is also among the most difficult ones for forensic pathologists. Accidental explanations are often offered in incidents of child deaths. Moreover, the events are usually not witnessed, and when they are witnessed, it is usually by family members or friends of the family who may be reluctant to incriminate their friends or relatives. Undoubtedly, these factors have an impact on conviction and sentencing practices of the courts. An insufficient evidentiary base may not provide sufficient grounds for a murder conviction.

Killing one's own child is negatively related to sentence length. Furthermore, being a mother-offender exudes a significant influence over the sentencing decisions of the courts. A consistent thread that runs through filicide research is that the public (and judges and juries) find it difficult to believe that a parent can hurt his or her own child (Bookwalter, 1998; Collins, 2007; Kohm, 2002; Perlin, 2003; Rapaport, 2006) because "the innocence and vulnerability of children... typically arouse instincts of nurturance and protectiveness on universal level" (Crimmins et al., 1997, p. 49). Death of a son or a daughter may be viewed more in tragic terms with the parent-offender deserving compassion rather than condemnation.

The findings of the present study, although insightful, should be treated with caution. There are a number of limitations to the data and the subsequent analyses. First, the data set, although focused on cases of murder, is comprised of a very heterogeneous body of offenses. Furthermore, certain contextual factors that have been paid recent attention in the sentencing literature (e.g. judge, court and county-level characteristics) could not be accounted for due to the national nature of the dataset. Finally, a number of variables that would have arguably yielded better predictive power to our models were not available. Prior abuse of the victim, for example, might be seen as an aggravating circumstance in cases of child homicide.

One of the paradoxes that tentatively emerges from the study is that killing a child is not perceived in the same way as killing an adult. The roots of this puzzle are not easily detangled. Could it be that the legacy of children being seen as property still reverberates through the modern criminal justice system? Could it be that children, being different from adults, are perceived as being entitled to less protection from the criminal justice system? One prosecutor in an interview said, "Juries don't see this child as a real live human being... That's a huge forgiveness factor" (Teichroeb, 2002). Or is it that with all the varieties of violence existing, child homicide does not stir up fear in the general public since the crime is most often restricted to the family circle of the perpetrator (Rapaport, 2006).



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ASIAN HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION - CHALLENGES TO CRIMINAL JUSTICE PROFESSIONALS

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INTRODUCTION

It is estimated that today there are twenty-seven million slaves around the world. The criminal act of human trafficking has notably expanded throughout the years, and has become the second largest illegal money making industry in the world. The International Labor Office (ILO) suspects that this criminal industry has generated close to thirty-two billion dollars annually in revenue, and if continued will far surpass the sale of illegal drugs and arms trafficking (Batstone, 2007, pp. 1-6).

The United Nations has reported that sex trafficking and sexual exploitation has become the leading formation in human trafficking today. In fact, the majority of human trafficking that occurs throughout the world is done for the purpose of sex trafficking and sexual exploitation (U.S. Department of State, 2009). The United Nations estimates that one million men, women, and children are trafficked for the sole purpose of sexual exploitation per year, and that the sex industry alone profits anywhere from seven to fifty-two billion dollars a year (United Nations Office on Drugs and Crime, 2009). The sex industry gains its revenue through: prostitution, pornography, sex tourism, trafficking, early marriage, child sex tourism, and child prostitution.

The world of sexual exploitation has become a transnational practice where the overwhelming majority of the population is focused on the prostitution and pornography of women and children (Hughes, 2000, p. 3). Out of this population, only a small percentage of them are males, the majority is women and young girls (Renton, 2005, p. 1).

On the continent of Asia, it has been reported that close to 800,000 men, women, and children have been trafficked in and out of the continent (Väyrynen, 2003). The trafficking of human beings; men, women, and children into the sex industry has become Asia's most profitable market (Ahmed, 2005). The sex industry however is not an uncommon one to Asia, and its people. The sex industry is embedded in the culture and into the financial assets of the continent (Kristrof, 2010). The population of prostitutes and victims used for the purpose of sexual exploitation varies among Asian countries, however, it is estimated that they are young girls averaging in ages from eighteen or less. Regrettably, the average age has been reportedly much less than this (Hughes, Sporcic, Mendelsohn, Chirgwin, 1999, p. 1).

The current study intends to examine this pressing issue of transnational crime and its challenges to criminal justice professionals in Asia. Its outcome may help expand the knowledge base of existing scholarship on this topic and carry important policy implications for decision makers in criminal justice.

LITERATURE REVIEW

Economic globalization and advancement of technology had expanded the transnational sex industry that had become a major concern of the Interpol and authorities in many Asian countries (Oxman-Martinez, Martinez, & Hanley, 2001; Väyrynen, 2003; Shrink & Webber, 2004; Mameli,

2008; McCabe, 2010; Morse, 2010). And the current financial crisis in the world might have allowed men, women, and children to be more susceptible and vulnerable to the exploitation of the trafficking world (United Nations Office on Drugs and Crime, 2009).

After victims are brought into the business, they are owned by the traffickers and must work off their debt (Hughes, Sporicic, Mendelsohn, & Chirgwin, pp. 1-2, 1999; Viano, 2003). If traffickers are not re-compensated by the victims, then members of the trafficking organization have said to go after family members (Oxman-Martinez, Martinez, & Hanley, 2001).

Weak legislations, lack of supervision around countries' borders, authoritative corruption, and organized crime have also been cited as challenges (Väyrynen, 2003).

Laws combatting human trafficking exist in Asia, however, criminal justice professionals in different countries seemed to have implemented these laws with various degrees of success. (Bunis, 2010). To fight against something that has been embedded in their culture for centuries is a challenge (Hughes, Sporicic, Mendelsohn, & Chirgwin, 1999, pp.1-2; Batstone, 2007; Kristof, 2010).

It was speculated that a symbiotic relationship existed between trafficking organizations and corrupt political and law enforcement officials. (Hughes, Sporicic, Mendelsohn, & Chirgwin, 1999; pp. 1-2; Väyrynen, 2003; Batstone, 2007; Grinberg, 2010). Many maintained, however, there were no known profiles for traffickers of sexual exploitation ((Mameli, 2008; David, 2008; United States Department of State, 2009).

Women, children and men are trafficked or smuggled out of the country of origin under false pretensions (Shrink & Webber, 2004; Jain, 2010), usually by car or van, across a country's borders (Oxman-Martinez, Martinez, Hanley, 2001). The trafficker takes the victim's possessions (McCabe, 2010) and legal documentation (Oxman-Martinez, Martinez, & Hanley, 2001) and manipulates the victim's illegal immigrant status (Jain, 2010) to force or lure them into sex industry (Miller, 2008). The trafficker may also offer families of the victims the opportunity to advance financially or the opportunity to get rid of existing debt (Jain, 2010).

METHODOLOGY

The methodology used for this study to obtain background information on human trafficking for the purpose of sexual exploitation was focused on statistics, reports, articles, books, and websites. Specifically, the data included information on the causes, organization, operation, and control of Asian human trafficking for sexual exploitation. The articles and reports gathered for the purpose of this study included scholarly articles and transnational reports.

A snow-ball sampling procedure composed of a set of nine open-ended questions was utilized for data gathering. We interviewed 19 criminal justice professionals and 5 law school students in following five different regions - Taiwan, Cambodia (indirectly), Hong Kong, China and Micronesia. They were selected for their knowledge on human trafficking. The professionals that participated in this study were legal advisors, law enforcement agents, social workers, military personnel, anti-human trafficking organizations, and advocates for the prevention and awareness of human trafficking.



Admittedly this is a convenient sample of face-to-face and electronic interviews, and hopefully the information gathered has enhanced our understanding on the transnational crime of human trafficking.

In efforts to ensure the reliability and protect the confidentiality of these participants, the Institutional Review Board at Buffalo State College was presented with a proposal of the study and allowed the research to take place.

FINDINGS

This study directed its efforts on four main relevant issues related to human trafficking. These four issues are: cause, organization, operation, and control. The findings, by no means, are conclusive, but they may provide some leads into future research.

Causes

The push-pull factors helped explain the causes of human trafficking for sexual exploitation. The majority of the interviewees revealed that human trafficking occurred because of lucrative incentives for the traffickers to profit from victims' financial vulnerability. Traffickers use promises of employment and false visions of a better life in a foreign country to lure their prey. While some victims might be aware of the possibility of having to work in the sex-related entertainment places, most of them met their final destiny under hopeless and helpless circumstances. Voluntarily or not, there is money to be made for both victims and traffickers.

The second push-pull factor is the inadequate legislation and lax law enforcement in source, transit and destination countries. Participants in the study have reported that human trafficking occurred because it was not infeasible to transport victims across international borders. Most participants believed that it did not take much to smuggle out of their countries or regions by sea, by air or by land. There always exists in the host country an illegal market for their service. With inadequate awareness of the public, it is hard for law enforcement to effectively enforce the law against human trafficking, even if host country is serious about addressing such an issue in their country. Many interviewees indicated that law enforcement in the area they lives was not very serious about sexual exploitation against trafficked victims, the women from foreign countries, in their mist.

Economic imbalance between the rich and poor countries is another factor. Poverty oftentimes is associated with lack of education, which, in turn, affects victims' assessment of the chance of success in fulfilling their dreams in a foreign land. The need to achieve financial stability by going to work in a foreign country and the host country's need for service provided by these victims blur the public's views on the seriousness of this issue.

The traditional practice of discrimination against women has also been cited as one of the main contributions to the emergence of human trafficking for sexual exploitation. Though changes have been underway, many interviewees pointed out that gender and employment discrimination against women is prevalent in Asia. When women suffered limited access to join the regular work forces, some of them may become candidates for human trafficking.

Once a source and transit nation, Taiwan has become one of the preferred destinations of human trafficking for sexual exploitation. The elevation of women's status in Taiwanese society takes

place because of their access to and achievement in education and job markets. As a result, the supply of domestic women for the sex industry in Taiwan dwindles. Importing women from countries which tolerate gender and job discrimination against women becomes necessary to fill the void in the illegal market in Taiwan. For the same token, some of the prosperous coastal cities in mainland China are also becoming viable candidates for women trafficked from poor countries in Asia.

Elevated socioeconomic status of women in Asia has inadvertently provided an opportunity for human traffickers. Women with heightened status understandably expect more from their potential male partners. Women of this elevated status would normally consider their partners with a similar social economic status, leaving men with lower status with few suitable women to marry. This social change in some Asian countries might have led to a greater need for the import of foreign women. This particular social change among some Asian women might have helped human traffickers opportunities to provide “foreign workers” to needed regions in Asia. In recent years, fake marriages as a disguise have become a conduit for human trafficking for the purpose of sexual exploitation. Some of these women are being brought to the host country as needed supply for the sex industry.

Organization and Operation

Human traffickers ran their operations through what seemed to be a networking collaboration instead of by one specific organized crime group. The networking collaboration requires collaborators at various stages. Its operation may need help from traditional organized crime groups, but they may not be organized crime itself. In other words, the collaboration might just be one time deal and the collaborators might not have formed a continuing criminal enterprise, as traditional organized crime did.

Interviewees in the study indicated that human trafficking is usually run by a group of people in the international and domestic community. They often involve local acquaintances, friends, relatives, family members, police and other public officials, travel agencies, foreign laborers, brokers, and immigration and other lawyers who provide protections for traffickers and their illegal activities. It takes a collaboration of networking participants in different closely-knit organizations at different stages of the operation, with multiple divisions of labor, at both source and destination countries in order to recruit, transport, harbor, distribute and exploit victims.

Several interviewees reported that traffickers in their regions started the networking collaboration of human trafficking locally, with the help of local criminal groups and other collaborators who were interested in human trafficking. After the initial stage of operations, the traffickers would expand internationally. We found that traffickers may recruit members within local areas and cities, and establish an initial collaboration of network of people. Once the collaboration is established locally, they begin to seek assistance from overseas. In some source countries, business people, legal professionals, brokerage firms, local recruiters, traffickers and perhaps law enforcement, customs, and coast guards would have to offer help or turn a blind eye in order for the human traffickers to carry out their activities at various stages of the operation. The division of labor within the multistage, international network seemed to be based on the characteristics of the area or region in which the service is needed.



We found that traffickers within these networks maintain contact with at least their next stage collaboration in source and destination countries. This is necessary to make sure their commodities, the victims, are complying with the traffickers and also making sure that the victims reach their final destinations. It is not uncommon that traffickers utilize advanced communication technology such as internet and other electronic media to stay in contact with one another.

Some interviewees reported that victims might have been deceived, coerced, forced and/ or persuaded into the sex industry in order to enhance the profits of the traffickers and their networks. Victims may go through an interview process by the local recruiters. When the victims are selected and joined the journey, their identifications might have been “kept” together by traffickers. Once they reached their destination countries, victims would have a hard time to freely go back to their country of origin without the documentations. They don’t know the language and are afraid to contact authorities in the destination country for fear of being put into jail or retaliation by the traffickers against themselves or their families in the source country. Victims then become forced to stay within the industry, work long hours, with little or no contact with their families. It is not uncommon for them to be physically and emotionally abused. Victims may not be released from the control of the traffickers, and are kept in the sex industry to try to repay their “debt” that they have accumulated from previous “transportation fees”, and cost of housing and food.

Human trafficking involves an international network of supply and demand completed by organizations of wholesale, middlemen and retail outlets. Traffickers may work in collaborations with members from the same organization or with the cooperation of other affiliations. Regardless, it is done in a tightly knit manner with strategic divisions of labor where the actions are preplanned before the trafficking takes place. Subjects in this study reported that traffickers planned trafficking operations by taking advantage of the lack of control surrounding specific border and customs locations, or by bribing customs or coast guards officials to allow the smuggling of victim to occur.

A main finding of this study is that human trafficking is run by networking collaborations that are divided by sophisticated division of labor. Throughout this study different interviewees pointed out that there are different levels or “rings” within a networking collaboration that makes up the “organization.” Each person of the ring or level is responsible for completing the task that is given to him or her. Subjects have identified that the first level or “ring” to an organization within human trafficking consists of offenders that are responsible for the deception, inducement, and proctoring of victims. After this task is completed by the first level or “ring” then the victims are sold onto the next level or “ring.” The second ring, also known as the “middleman” would be in charge of the transportation of the victims to the next ring. This may or may not entail transporting the victims internationally, however, once the victims have reached the next ring (the third ring), they are sold to the third ring by their traffickers for yet another profit. The third ring is responsible for sending the victims abroad for an even bigger profit margin than the previous two rings.

Other subjects have reported a similar structure of human trafficking network. Instead of the previously identified three stages or “rings”, participants have noted two levels of traffickers within their regions. The first level is similar to the first ring mentioned earlier - the trafficker is responsible for recruiting the victims to traffic. However, this level is organized with people who know the area and the culture within the region, and who are capable of coercing, forcing, and transporting the recruits out of that particular area. The second level then is occupied by traffickers who know where the demands are, and who are responsible for selling or delivering the commodities (victims). This level finds the buyers that will buy and keep the victims. Our subjects

stated that these two levels of the networking collaboration have a relatively stable relationship and cooperation with each other as well as with public authorities.

It has become apparent throughout this study that human traffickers need to recruit, transport, smuggle, harbor, and deliver victims in order to maintain a successful criminal enterprise. However, it has become evident that at each level, stage, or ring, illegal profits are being made by the offenders that are participating in this illegal activity. It has also been recognized that public officials, criminal offenders, local elites, businesses, brokerage firms for foreign laborers, travel agencies, etc. may provide the “front” for these transactions to take place and for the criminal enterprise of human trafficking to prevail.

As reported earlier, subjects have mentioned that human trafficking offers a lucrative business opportunity to those that engage in the criminal industry. Traffickers have been recognized as using the victims that they have recruited to enhance other businesses that they have opened. For example, victims may be used at local bars to serve alcoholic beverage to customers, while the commission is being held by the “owner” of the victim. Traffickers collect the profit, while the victim provides services to the customers. Victims that work in these places are advertised by the networking collaboration as “new arrivals” or “fresh meat.” The victims are usually disguised under their pseudonyms and their true identities are rarely known by their customers.

Subjects have also reported that human traffickers oftentimes keep separate books trying to prevent victims from being aware of whether they have paid off their “debt” or not. Victims gain no freedom from this “bondage” until they have fully met their debt obligations. Until then, the victims have little chance to “escape” from their traffickers’ grips and are forced to remain in the industry. In hope of getting out of traffickers control over their lives, victims may be forced or persuaded to encourage and recruit even more her countrywomen working at the host country as foreign laborers to join the business. In these situations it has been reported that victims do and will engage in this recruitment behavior because they believe or are told that it is a way to get out of the business, and they may do so out of their reluctant sense of “loyalty” to their employer: a sign of victims’ emotional and psychological misplacement.

It is also reported that once the victims are held by the traffickers and begin the process of being transported across national borders, fees may either be collected from the victims or victims’ families or from the previous ring in the collaboration. It is in this phase that victims are greeted by their “owner” and “co-workers.” This is where the reality sets in. At this point, there may be a full body examination, followed by a sordid journey of transportation abroad, and eventually work at the sex industry. Victims are forced to stay with the trafficker in the sex industry until their debt is paid off. This is often referred to as “debt bondage.”

Control

For this particular study, interviewees were asked the following two questions:

- (1) What challenges does law enforcement in your area face in controlling such a transnational activity?
- (2) What measures can law enforcement in your area take to minimize human trafficking for sexual exploitation?



In order to understand the challenges criminal justice professionals face in enforcing laws against human trafficking, we need to understand the causes, organization and operation of this activity. The previous sections attempted to do just that. Here are the challenges we found.

1. Victims' cooperation

If victims of human trafficking are being criminally accused of voluntarily participating in human trafficking, sexual exploitation, and prostitution as if they were actually perpetrators, it is not hard to understand why this particular type of victims are afraid of cooperating with local law enforcement. Without victims' cooperation, it is difficult to prosecute human traffickers. In order to avoid this, the police and prosecutors should make the victims who come forward with information feel comfortable talking to them. Our subjects suggest that in order to reduce human trafficking and penalize the true criminals, criminal justice professionals need to be able to relate to victims, listen to them, and gain their trust.

2. Conflicts between prosecutors and judges

Inconsistent assessment of evidence of crime by prosecutors and judges has happened. If the law against human trafficking is in its infant stage of implementation, it is not uncommon to detect perceptual differences among law enforcement, prosecutors and judges on evidential value of victims' statement of their dilemma in which they are be physically unrestrained but mentally confined.

Usually victims are not physically restrained and confined to where traffickers keep them. Traffickers use coercion and mental control to keep the victim in place (David, F. 2008). Due to the fact that the victims are not physically restrained, it makes it difficult for prosecutors to prove that it was the traffickers that made the victim stay, and to bring charges of slavery or kidnapping against them (David, 2008). One of the main issues with prosecution in Australia was and has been the meaning of slavery within the country's criminal code (David, 2008).

In January 2011, one of the authors attended the workshop given by the Judicial Department of Taiwan to train their immigration agents, prosecutors and judges to be more acclimated to the applications of the 2009 Human Trafficking Prevention Act. The workshop was highly informational and exposed the different perceptions between judges and prosecutors regarding the probative values of victims' statements of their predicaments. Such training workshops need to be done on a regular basis to build a stronger mutual understanding of the substantive and procedural requirements to effectively implement the law.

3. Conflicting jurisdictions, lack of extradition agreements, and reluctant cooperation among countries.

Mameli (2008) urged that the Interpol and the Europol should encourage international governmental and non-governmental organizations to work together to raise the level of public awareness of human trafficking. In cases no extradition treaties are available between countries affected by the same crime of human trafficking, how to make arrangements to successfully bring traffickers and other criminals to justice through some other forms of mutual judicial assistance becomes a challenge.

For example, Taiwan authorities face great challenges in pursuing human traffickers through international extradition treaties. This is due to Taiwan's peculiar status within the international community. As a destination and sometimes source country of human trafficking, how to gain international mutual legal assistance and extradition to fight this crime is a challenge to Taiwan. The limitations of Taiwan's judicial powers in the international arena may force other Asian countries to face an uphill battle to combat crimes related to human trafficking.

Taiwan is not alone in this. It is reported that law enforcement in Hong Kong also looks forwards to more collaboration with China, with whom Hong Kong shares its border, to fight this international crime.

We also found that unfamiliarity with the variations of law, regulations, and procedures can make it difficult to reduce the international cooperation in fighting the crime of human trafficking in Asia. Differences in criminal procedures make it problematic for law enforcement agents to effectively investigate human trafficking cases. A country's law enforcement may not be able to collect or utilize essential evidence in order to prosecute the criminal for the crime, when the evidence is only available outside the jurisdictional boundary, and when the probative value of the evidence is in question. If traffickers got away as a result of jurisdictional differences, it might hurt the future cooperation of law enforcement agencies in countries affected by the same crime.

Political conflicts and ideological differences in regard to this activity between nations would make cooperation between countries a challenge also. Intelligence sharing, which is of utmost importance in terms of international cooperation, has always been an issue to combat transnational crimes, including human trafficking.

4. Language and legal barriers

The language barriers may affect the correct interpretation and communication of laws, regulations and procedures of a different country. Substantive and procedural differences of related laws might not always be adequately conveyed to one another working on the same task in different legal traditions. In addition, laws against human trafficking remained incomplete in many Asian countries until recently (David, 2008). Many argued that the correct response to human trafficking should be an expansion of the legal framework that will hold traffickers criminally liable for a range of offenses related to this transnational crime (David, 2008)

5. Budget and resources allocation

Many interviewees reported that human trafficking for sexual exploitation assumes a not very high priority in a country's law enforcement budget and resource allocation. The activities involved are mostly "crimes without victims," other than the exploitation of indefensible foreign women who are making a living by providing services to the illegal market that exists in practically every society. This explains why there are concerns about the limited efforts in training law enforcement to investigate and prosecute and judges to use the laws against human trafficking more effectively. If the professionals are not properly trained and equipped with necessary resources, it is hard to expect the general public to have a heightened awareness of this activity that does not always affect their lives.



Further, if the scandals of the collusion between government officials and traffickers broke out, it would be next to impossible to convince the people that the government was serious about this issue, not to mention the lack of trust of public officials. A subject from this study even described an incident where their own governor was involved in an incident related to human trafficking.

6. Innovated modus operandi of human traffickers

The subjects in the study also reported that human traffickers are becoming more experienced nowadays than in the past in transporting their victims and avoiding border interdiction. Traffickers have begun to recruit younger victims who are less likely to defend themselves. These younger victims reportedly are easier to be persuaded to join the activity for a promise of a better life in the future. When the traffickers are arrested, which is a challenge in itself, traffickers become resistant to release the whereabouts of their recruits and identify their associates in the trafficking network.

DISCUSSION

The legal counsel at the American Institute in Taiwan reported that human trafficking was defined as any conduct involved in “compelling or coercing a person’s labor, services, or commercial sex acts” (U.S. Department of Justice, 2011). According to this definition, coercion can either be subtle or overt, physical or psychological. The definition may also include the commercial sexual exploitation of a minor, and it does not need to include smuggling or movement of a person to be legally considered as human trafficking (U.S. Department of Justice, 2011). This international criminal activity generates several billions of dollars each year and continues to expand (International Association of Chief of Police, 2006). Traffickers make a consistent, large profit by selling and reselling victims repeatedly at the victim’s expense and seem to maintain a favorable socio-economic status in certain sections of the international and domestic community.

We examined some issues related to human trafficking for the purpose of sexual exploitation in Taiwan, Cambodia (indirectly) Hong Kong, China and Micronesia. We found that there was no specified profile for those that engaged in human trafficking. Though not conclusive, one of the main findings revealed that human trafficking was carried out through interconnected rings of networking collaboration. This observation challenged our previous speculations that human trafficking was done through hierarchal, multi-national organized crime groups where the members or affiliates of the group involved were delegated to one specific job, and the big boss of the group would dictate and coordinate how things were to be done. Based on the information we received, a successful human trafficking required the participation of local and international offenders who might not be members of the same organization nor organized crime. Profits were being made at each level, and those involved collaborated with another to accomplish the task at hand.

Geopolitical situations in certain part of Asia preclude productive cooperation between countries and jurisdictions. Variations in procedures, laws and regulations in the countries involved further exacerbate the challenge of effectively curbing this transnational criminal activity. For example, Taiwan is a country in Asia that has an ambiguous diplomatic status in the international community. Though situations of mutual legal assistance have improved over the years, its political conflict with China discourages Taiwan from gaining full legal status that is conducive to receive more international assistance, including extradition agreements with other countries in combating human

trafficking. A concerted international effort in combating these cross-border offenses is needed before any appreciable impact can be made in controlling human trafficking in Asia.

Efforts have been made in regards to increasing awareness, education, prevention and establishing new laws in respect to human trafficking. Much more effort is needed. Communication and cooperation among regions, countries, and jurisdictions on creating mutual-assistance agreements against human trafficking is essential to deter human trafficking.

It is encouraging that early this year Taiwan's Judicial Department held a workshop to familiarize law enforcement and immigration agents, prosecutors, and judges, along with workers at various NGOs, with the laws against human trafficking. The legal counsel and other representatives from the American Institute in Taiwan were present to offer their perspectives and experiences of fighting human trafficking in the United States. Research institutes in the United States have also offered fellowships to recruit Asian scholars to conduct research on this issue. Internationally, the cross-national exchange of knowledge and experience in fighting human trafficking needs to continue. More stake holders in countries of the Pacific Rim need to participate in regional and international cooperation. Domestically, education about how to investigate this crime and collect criminal evidence thereof should also continue.

We also found in our study that there was a call for decriminalization of sex industry as a means to eliminate the exploitation of women working at sex-related industry. Decriminalization may help the victims of human trafficking receive many protections. At its minimum, decriminalization may encourage them to stand up against exploitation by their "owners." Legislatures in some Asian countries have been contemplating such a change of their criminal codes against women who work in the sex-related industry.

In this study most of our interviewees did not know whether human trafficking for sex exploitation is on the rise or decline - perhaps a testimony to the "victimless" nature of this crime and the "not our own people as victims" mentality. Respect for human rights requires each government to educate its own people about the inhumane nature of human trafficking. Without heightened awareness, the public might not be as enthusiastic about helping law enforcement in the fight against human trafficking.

It is inevitable that human trafficking for the purpose of sexual exploitation is not going to go away for a while. If efforts to combat these criminal endeavors were not promoted and adequately implemented, the illegal profit of human trafficking may soon exceed that of illegal markets of drugs. Countries, governments and public officials need to continue to work together to combat the sexual exploitation of human trafficking and enact clear legislations in countries involved. These legislations need to include precise and consistent definitions of sexual exploitation of human trafficking.

We interviewed neither victims nor traffickers. We don't know who the traffickers are. It is apparent that this study was conducted with many methodological limitations related to our own constraints. We simply hope our preliminary efforts may instigate a dialogue among criminal justice academics and practitioners.



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CHILD HOMICIDE AND COMMUNITY CONTEXT

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Among serious crimes, child homicide is a rather rare event. However, the killing of children stirs up a special type of emotion in society that pales other criminal acts. This study examines the relevancy of five possible explanations for child homicide extracted from extant literature. The weakened state thesis attributes child homicide to the state's reduced capacity to mitigate collective conflict. The "unwanted child" thesis associates child homicide with the increasing number of abortions in the US, which subsequently reduces the number of unwanted children from unprepared would-be parents. The social deprivation hypothesis posits that child homicide results from lack of resources in communities. The female empowerment hypothesis argues that a higher female status translates into a higher level of capability to protect their offspring. Finally, the social isolation hypothesis regards child homicide as a result of lack of social support. Child homicide data, aggregated by Zipcode in the state of California from 1990 to 1999, were analyzed with a negative binomial regression. Asian victims (Chinese, Koreans, Japanese, Filipinos, Vietnamese, Indians, and Pacific Islanders) were separated from others to test whether race interacts with the macro social dynamics. Among five hypotheses, only social deprivation shows a consistent correlation with child homicide. The comparison between Asian and non-Asian victims yields a somewhat nuanced result.

INTRODUCITON

Among serious crimes, killing of children stirs up a special type of anger, horror and anxiety in society that pale other criminal acts (Danson and Soothill, 1996; Strang, 1996; Stroud, 2008; Wilczynski, 1997). Recent high profile cases and subsequent media coverage in various regions of the US attest to the arousing nature of social reaction toward child homicide. In spite of heightened reaction from the media and the general public, the occurrence of child homicide is actually rather rare. According to the statistics from US Department of Justice (2001), fewer than 2% of all homicides in a given year can be classified as child homicide involving victims 11 years old and younger.

According to a study conducted by Friedman, Horwitz and Resnick (2005), United States, as compared to other developed nations such as Canada and England, has the highest child homicide rates of with the ratio of 8/100,000 for infants, 2.5/100,000 for toddlers (age 1-4) and 1.5/100,000 for children of school age (age 5-14). Child homicide also exhibits a lower volatility compared to adult homicide in that frequency of child homicide does not fluctuate precariously to the same degree as young adults.

Researchers also have noted that the risk of child homicide declines with age as dependency and physical vulnerability of children are reduced. In contrast, older children are also more independent than their younger counterparts, and are thus more capable of protecting themselves from potential offenders. Homicides involving very younger children (3 and under) often result from abuse and are predominantly committed by family members (Lee et al., 2010). Nevertheless, the true extend of child homicide is difficult to document because many child deaths resemble accident cases and other non-criminal causes.

Most studies dealing with child homicide are oriented toward an individual-level explanation. That is, there is a substantial body of knowledge about the characteristics of victims and offenders. A fundamental sociological question lingers among various pieces of empirical evidence: under what

social circumstances are child homicides more likely to occur? Specifically, neighborhood-level explanations are needed to further our understanding of the social context of child homicide.

Extant literature indicates that five different explanations can be used to account for why and how child homicide takes places.

COMPETING EXPLANATIONS

The “weakened state” thesis: A recent historical perspective regarding the fluctuation of homicide in the US asserts that the view toward the state affects how people resolve interpersonal dispute. When the state’s role is viewed as diminished, individuals are more likely to resort to violent solutions to handle conflicts. “...by factors that seem on the face of it to be impossibly remote, like the feelings that people have toward their government, the degree to which they identify with members of their own communities, and the opportunities they have to earn respect without resorting to violence. History holds the key to understanding why the United States is so homicidal today.” (page 3, Roth 2009). According to this view, child homicide can be considered as a result of a reduced capacity on the part of the state to mitigate collective and interpersonal conflict. This historical perspective on homicide is interesting in theory but impossible to test at the empirical level. What “weakened state” mean at the micro level is not spelled out in this perspective. What state? Federal, state, or local municipalities?

The “unwanted child” thesis (Levitt, 2001): This maverick economic thesis posits that the decline of crime, including homicide, in the US is attributed to the legalization of abortion since the early 70’s. The increasing number of abortion subsequently reduces the supply of would-be offenders who lack the nurturing environment to be properly socialized. The increasing number of abortion in the US also reduces the number of unwanted children from unwilling and unprepared would-be parents, thus reducing the number of children murdered by their own parents and care-takers. The somewhat novel idea about how crime fluctuates in the American society grossly neglects the non-linear trend in crime including homicide. The sharp peak of violent crime in the late 80’s and early 90’s was mainly attributed to the over-involvement of young black men in the urban crack trade (Blumberg, 2002). The validity of the “unwanted child” thesis is further challenged by the speculation that increased number of abortion may also bring up the number of child homicide as the former behavior reflects a devalued attitude toward children’s lives, therefore, resulting in a greater extent of child homicide. Sorenson et al. (2002) applied an interrupted time series analysis to test the “unwanted child” thesis and found no significant association between legalized abortion and the homicide of infants, but found a statistically significant association for toddlers. The methodology used in their study as well as findings are somewhat peculiar in that no control variable was used and the results are also conflicting. If the existence of “unwanted child” dilutes parents’ tangible and intangible resources and capitals, birth rate in the US and actual measurement of parental resources, to name just a couple, are crucial and necessary control variables. “We do not, however, claim that we have definitely demonstrated a causal relationship between the legalization of abortion and the subsequent reduction in the homicide of 1-to-4 year-olds.” (Sorenson et al., 2002: p 253.)

Besides the two theses examined above, three sociological explanations can be found in recent studies:



Female empowerment thesis (Hunnicut, 2007): Higher female status, obtained through educational achievement and economic advancement, translates into a higher level of independence and capability to safeguard their wellbeing and protect their offspring. A higher degree of female empowerment, thus, will reduce the level of child homicide.

Social deprivation: Previous literature indicates that causes of homicide are closely tied to social deprivation in communities. The social deprivation index is constructed as the average standardized scores of the following indicators: percentage of adults sixteen and older who are unemployed, percentage of adults over twenty-five who do not have a high school degree, the percentage of the population that is black, the percentage of households headed by females, and the percentage of households living in poverty (Mears & Bhati, 2006). Higher scores on this scale indicate a higher degree of social deprivation, thus higher level of child homicide.

Social isolation: Studies linking child abuse and the degree of social isolation, generated by the lack of support network and community apathy, can be extended to explanation child homicide since it can be interpreted as an extreme form of child abuse.

This study examines the three competing sociological explanations: women's empowerment (increasing woman's status leads to better protection of children, and lower child homicide), social deprivation (greater extent of social deprivation, higher extent of child homicide), and social isolation (greater extent of isolation, less support and protective network, higher child homicide).

METHOD

Data

Data for this study are from the "California Vital Statistics and Homicide Data, 1990-1999" file, which combines offenders' information reported by the police and victims' information recorded by the medical examiners. This study only examines homicide victimization data as they provide more information on victims' race as compared to offenders'. The ten-year pooled data contain less than 10% of offenders' race reported by the police, but the race of over 90% of the victim is identified by medical examiners. Also, previous studies (Wolfgang, 1958; Lauritsen, Sampson, & Laub, 1991; Brody, Daday, Crandal, Sklar, & Jost, 2006) show that there is a significant overlap between homicide victimization and offending in terms of structural and behavioral risk factors. A total of 34,542 cases were included in the dataset, 93% (N=32,103) of which victims' race/ethnicity were known.

Measurement

Dependent variable: Child homicide in this study included homicide victims who are 11 years old and under. Because the number of child homicides is relatively rare compared to that of other type of homicide, to ensure a number high enough for a multivariate analysis, a pooled count of child homicides from 1990 to 1999 is used in this study. Specifically, the dependent variable refers to the pooled count of child homicides in each ZIP code area in the state of California. The child homicide count aggregated by ZIP code area is further generated for two age groups: three and under and four to 11 years old. This is to enable the analysis to examine whether infants and toddlers are subjected to different social dynamics than their older counterparts. The use of ZIP code area in this study is a pragmatic choice. Further, previous studies that use metropolitan areas, counties, and ZIP codes,

show that findings tend to converge among studies using different macro units of analysis (see for example, Lee and Bartkowski, 2004).

Control variables: Previous literature suggests the following at risk factors as key control variables to examine the community dynamics within which homicide takes place. First, the percentage of the population aged between 15 to 29, the most crime-prone age group, is used as a control variable. Community mobility is measured by the percentage of households that reside in the same location in 1995. In addition, median household income and percentage of adults who are divorced are also used as control variables in this study. Finally, it is possible that family strain may be further exacerbated in neighborhoods plagued by a serious crime problem. To control this potential reciprocal effect between crime and family strain, a lagged homicide variable based on homicide count in each ZIP code area in 1990 was constructed and used as a control variable.

Social deprivation: Previous literature indicates that causes of homicide are closely tied to social deprivation in communities. The social deprivation index is constructed as the average standardized scores of the following indicators: percentage of adults sixteen and older who are unemployed, percentage of adults over twenty-five who do not have a high school degree, the percentage of the population that is black, the percentage of households headed by females, and the percentage of households living in poverty (Mears & Bhati, 2006). Higher scores on this scale indicate a higher degree of social deprivation.

Empowerment: Previous literature indicates that as females' social status increases, their achievement increase the level of resources that are both empowering and protective. Following the example from previous studies, two indicators are used to measure the degree of female empowerment. First, female labor force participation rate which is measured by the percentage of females sixteen years and older who are employed in the civilian labor force. The second indicator is the percentage of females employed in the professional sector. Both indicators are available in the census. Higher percentage of employed females and higher percentage of professional females in a work force reflect a higher degree of female achievement, hence, a higher level of empowerment. The empowerment scale is composed of the average standardized score of these two variables. As suggested in the previous literature, women with better resources and higher status are more capable of protecting both themselves and their offspring, hence, a lower degree of child homicide.

Social isolation: Recent studies that test the impact of social isolation use individuals as unit of analysis because the concept entails an attitudinal dimension. Because the unit of analysis in this study is the ZIP code areas, no such attitudinal measurement can be found in various sources. Instead, this study employs a proxy measure of social isolation by focusing on structural factors that inhibit the degree of collective efficacy. The social isolation scale is composed of the average standardized score of the following indicators: percentage of foreign-born residents, percentage of linguistic isolation, and the percentage of renters in an area. Higher scores on this scale indicate greater degree of social isolation.

Statistics

Descriptive statistics are used to create a basic profile and a negative binomial regression is used to analyze the effects of various aggregate indicators on homicide variables. The use of a negative binomial regression instead of the commonly used ordinary least square (OLS) regression is based on the following characteristics of the data. First, child homicide is a rare event. To construct an



intimate homicide rate based on rarity would make the dependent variable unstable. The actual intimate homicide count would be used. Therefore, a Poisson regression is better suited to deal with count data instead of OLS regression. Second, a prognosis test detects an overdispersion in the dependent variables used in this study. The assumption of using Poisson estimation is violated as the mean and the variance of dependent variables are not equal. Negative binomial regression is used to correct such a violation (Cameron and Trivedi, 1998).

As has been well documented in previous studies involving aggregate data, some independent variables in the analytical model tend to have a high degree of correlation which causes the multicollinearity problem². Analytical models plagued by the multicollinearity problem produce misleading results. To avoid the complications caused by the multicollinearity problem, an ordinary least-square regression is applied to all models to obtain the variance inflation factors (VIF). Following Allison's (1999) recommendations, variables which produce VIF scores greater than 2.5 should be removed from the analysis because they pose the potential problem of multicollinearity (also see Maume and Lee, 2003; Lee and Bartkowski, 2004). No variable in the analysis exceeds the threshold suggested by Allison.

DATA ANALYSIS

---- Insert Tables 1A, 1B, 1C, 1D, 1E, and 1F here ----

Between 1990 and 1999, there were 1,422 cases of child homicide, which accounts for about 4.1% of all homicide (N = 34,113) in California in the 90's. Of all child homicide, one in three are infants (N = 434) and 2 out of 3 are children three years old and younger (N = 988). Slightly over half of the child homicide victims were boys (55.3%, N = 624), whereas there were 505 (44.7%) girls murdered during the ten-year span. The generally even split between boys and girls stands as a sharp contrast with older homicide victims where 80.1 percent of all homicide victims involved boys older than 12 and men. The somewhat crude racial comparison shows that there is not a disproportional involvement of minority children. White victims account for about 67.1% (N = 7582) of child homicide cases and 32.9% (N = 371) involves non-white children. This racial comparison is similar to the racial breakdown statewide based on the average of 1990 and 2000 census data.

Children were less likely to be killed by strangers than their older counterparts. Only 7.7 (N = 115) percent of child homicide was committed by strangers. In contrast, about 27.2 percent of homicides involving victims older than 12 was committed by strangers. 55.5% of child homicides were committed by parents including stepparents and other family members accounted for another 4.4 percent. In other words, family members committed about 69% of child homicide. The domestic nature of the child homicide is also reflected in the location where homicide took place. A great majority (84.9%) of the child homicide took place at either victim's or the offender's residence. This compares only about 33% of older victims who were murdered at homes. More than half of the cases (56.4%, N = 847) were judged to be results of child abuse. The abusive nature of many of the child homicide is associated with how the offense was committed. The three most common type of homicide weapons used in committing child homicide are personal weapons (hands, feet, teeth, etc) (39%), hand-guns (15.7%), and asphyxiation (8.2%). As a contrast, for victims older than 12, handguns accounted for 62.6% of homicide cases, followed by knife and blunt instruments (12.7%) and long guns (rifles and shotguns) (8.5%).

Negative binomial regression.

---- Insert Tables 2 and 3 here ----

This study employs a negative binomial regression technique to test the competing hypotheses concerning occurrence of child homicide at the Zipcode level. Results from Table 3 clearly indicate that of all independent and control variables, social deprivation factor has a significant impact on the child homicide count after controlling all other variables. Communities that are high in social deprivation have higher child homicide count than neighborhoods that are low in social deprivation. Specifically, one standard deprivation increase in social deprivation results in a 23% increase in child homicide¹. Female labor force participation has a significant but minimal impact on the occurrence of child homicide. Communities with a higher female labor force participation rate are associated with a slightly higher child homicide count. Specifically, one standard deviation increase in female labor force participation rate results in only about 4% increase in child homicide. It is also noteworthy to point out that the direction of the association between female labor force participation and child homicide is opposite of the gist of the tested hypothesis. Social isolation factor is not significantly related to child homicide as Table 3 demonstrates. The same analytical process was repeated for homicide involving children 3 years and under and the same patterned just discussed was also repeated. That is, social deprivation is a better indicator to explain child homicide than female labor force participation and social isolation (table not included).

CONCLUSIONS

Social deprivation trumps all other variables in explaining child homicide at the macro level. Female labor force participation explains very little of child homicide. Plus, results from the negative binomial regression indicates that it is the communities with a higher, not lower, degree of female labor force participation that have higher count of child homicide. This is just the opposite of what previous studies suggest. Although, the correlation between female labor force participation and child homicide is rather tenuous, the contradictory finding may suggest other dynamics, not yet studied in the literature, that account of the correlation. For example, it could very well be that it is not the sheer act of working that empowers women and extends their protective capability. Working women, especially those in the low-skilled and low pay sectors of the economy, may experience an attenuation of economic resources due to the need of child care. Communities with many overly extended women may experience a reduced level of protection of children who are either under-supervised and/or under the care of untrained and even dangerous individuals. This study is limited by the lack of information that reveals the type of work that employs these women. Social isolation is not a significant factor in the analysis. Again, this study is limited by the lack of measurement that taps into the extensiveness of social network at the community level. Previous studies have demonstrated that the level of social capital is directly related to the ability of resolving collectively identified problems at the neighborhood level, i.e. preventing child homicide. Finally, the social deprivation factor which is a composite measurement consisting of five specific census level variables that have been shown in previous studies as strong predictors of crime. This study confirms the positive relation between social deprivation and crime and specifies that a strong correlation also exists between level of social deprivation and child homicide. Children in socially deprived communities are at a higher risk of being murdered than their counterparts in well-to-do neighborhoods.

Footnotes:



1. White victims may also include Hispanics who are whites.
2. The formula used to convert the coefficient into percentage change is: $((ebk*sk) - 1) * 100$.

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1-A. Age Distribution of Homicide Victims in California: 1990-1999

		Valid	N = 34,113	
		Missing	429	
		Frequency	Percent	Valid Percent
Valid	11 and under	1,422	4.1	4.2
	12 and older	32,691	94.6	95.8
	Total	34,113	98.8	100.0
Missing	System	429	1.2	
Total		34,542	100.0	

1-B. Cross-tabulation of Age and Sex of Victims

		Sex of Victims		
		Male	Female	Total
Age	11 and under	624 2.4% (55.3%)	505 9.2% (44.7%)	1,129 3.5% (100.0%)
	12 and older	25,818 97.6% (83.7%)	8,835 90.8% (16.3%)	30,830 96.5% (100.0%)
Total		26,442 100.0% (82.7%)	5,517 100.0% (17.3%)	31,959 100.0% (100.0%)
Chi-Square	value	618.199 ^a		
	DF	1		
	Asump. Sig. (2-sided)	.000		

(N=34542, missing=2583) (P<.05)

* Rows percentage for each variable is in parenthesis

1-C. Cross-tabulation of Age and Race of Victims

		Whites	Blacks	Others	Total
Age	11 and under	758 3.6% (67.1%)	273 3.0% (24.2%)	98 4.9% (8.7%)	1,129 3.5% (100.0%)
	12 and older	20,096 96.4% (65.2%)	8,835 97.0% (28.7%)	1,899 95.1% (6.2%)	3,0830 96.5% (100.0%)
Total		20,854 100.0% (65.3%)	9,108 100.0% (28.5%)	1,997 100.0% (6.2%)	31,959 100.0% (100.0%)
Chi-Square	value	19.371 ^a			
	DF	2			
	Asump. Sig. (2-sided)	.000			

(N=34542, Missing=2583) (P<.05)

1-D. Relationship between Offenders and Victims: Family Members vs. Non-family

		Family	Family non-family	Total
Age	11 and under	912 27.9% (69.2%)	406 1.9% (30.8%)	1,318 5.3% (100.0%)
	12 and older	2,358 72.1% (10.0%)	21,286 98.1% (90.0%)	23,644 94.7% (100.0%)
Total		3,270 100.0% (13.1%)	21,692 100.0% (86.9%)	24,962 100.0% (100.0%)
Chi-Square	value	3846.330 ^a		
	DF	1		
	Asump. Sig. (2-sided)	.000		

(N=34542, missing=9580) (P<.05)



1-E. Location of Homicides

		Home	Other Locations	Total
Age	11 and under	1,185 10.1% (84.9%)	210 1.0% (15.1%)	1,395 4.1% (100.0%)
	12 and older	10,501 89.9% (32.5%)	21,762 99.0% (67.5%)	32,263 95.9% (100.0%)
Total		11,686 100.0% (34.7%)	21,972 100.0% (65.3%)	33,658 100.0% (100.0%)
Chi-Square	value	1619.807 ^a		
	DF	1		
	Asump. Sig. (2-sided)	.000		

(N=34542, missing=884) (P<.05)

1-F. Methods of Homicides

		Firearms	Other Weapons	Total
Age	11 and under	254 1.0% (18.3%)	1,133 12.5% (81.7%)	1,387 4.1% (100.0%)
	12 and older	24,517 99.0% (75.5%)	7,952 87.5% (24.5%)	32,468 95.9% (100.0%)
Total		24,771 100.0% (73.2%)	9,084 100.0% (26.8%)	33,855 100.0% (100.0%)
Chi-Square	value	2216.672 ^a		
	DF	1		
	Asump. Sig. (2-sided)	.000		

(N=34542, missing=687) (P<.05)

Table 2: Descriptive Statistics for the ZIP-code level variables (N = 1,678)

Variables	Mean	Standard deviation
Child homicide (11 and under)	.6498	1.331
Social disadvantage index	-.0014	.6771
Percentage in poverty	.1461	.1061
Adults without HS degree	.2184	.1670
Adults unemployed	.0475	.0391
Percentage blacks	.0437	.0847
Percentage female household	.3714	.1161
Acculturation	.09	.57
Linguistic isolation	.0980	.5669
Population aged 15-29	.1943	.0744
Homicide 1990	1.94	4.78
Percentage Divorced Adults	.1070	.0590
Social cohesion	.0189	2.588
Medium household income	47.26 (in thousand)	21.23
Female Labor force	26.875	6.568



Table 3: Negative Binomial Regression Models Predicting Child Homicide Victimization

Variables	
Social Deprivation	.2887*** (.4334)
Social Isolation	.023 (.0632)
Female labor force participation	.026** (.0099)
Population 15-29	.046*** (.0107)
Homicide 1990	.110*** (.0134)
Median Income	.051 (.0363)
Divorce rate	-.001 (.0128)
Linguistic Isolation	.109 (.2727)
Goodness of Fit	409.87***
*P < .05, **P < .01, ***P < .001	

IS JAPANESE SYSTEM OF FOREIGN TRAINEES HUMAN TRAFFICKING

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I would like to analyze the trainee system in Japan from the historical viewpoint. In 1981 the trainee (Kenshusei) system was introduced in order to give a chance for youngsters in neighboring countries to learn the high technology within one year in Japan. In 1990 the total number of foreign trainees invited by the governmental organizations and the private organizations amounted to 10,000 and 27,000 respectively. Trainees came from China, Thailand, Korea, Malaysia and so on. From April, 1993, even owners of a small-sized corporation could accept foreign trainees and trained workers. Then, troubles between the former and the latter increased. Knowing troubles concerning the system of trainees and trained workers, recently many international organizations regard it as the formal system of human trafficking. Law enforcement agencies never arrest trainers or employers as traffickers. On December 12, 2009, the Ministers' Conference to Cope with Crimes published the New Action Plan to Cope with Trafficking in Persons, in which the cruel treatment and the exploration of foreign trainees and trained workers are for the first time recognized as a kind of human trafficking in response to pressures from western countries and NGOs. In reality the labor power of foreign youngsters are necessary for the aged society in Japan. We should think about how the system of foreign trainees and trained workers should be improved.

