

Transferring Restorative Justice to the Field of Domestic Violence in Taiwan

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A thesis submitted for the degree of
Doctor of Philosophy of
The Australian National University

May 2015

Declaration

This thesis is the product of my own work. Except where acknowledged, all remaining work is my original production and has not been submitted in whole or part for a degree in any university

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28 May 2015

Acknowledgment

I would like to express my gratitude and thanks to many people who have offered support and advice without which this thesis could not have been completed. First of all, I thank my supervisor Professor Valerie Braithwaite who has been a constant and invaluable source of encouragement and inspiration throughout the process. Many thanks are due to my supervising panel of Professor John Braithwaite and Dr. Nathan Harris for their constructive advice and thoughtful comments. I am very grateful for the privilege to learn from all of them.

I also wish to offer my sincere thanks to all the staff and students of the Regulatory Institutions Network. I have been very fortunate to undertake doctoral research in such an intellectual and warm academic environment. In particular, I thank Professor Peter Grabosky, Ms. Monika Reinhart, Ms. Paulina Piira, Ms. Mary Ivec, Dr. Ibolya (Ibi) Losoncz, Dr. Yao-Chung (Lennon) Chang, Dr. Robyn Holder, Dr. Budi Hernawan, and Mr. Sekti Widihartanto for their continuing warmth, help, and support through the journey of my research.

I thank my interviewees. They kindly gave their time and thoughts that provided important empirical data on which this thesis relies. I also owe a special debt to Professor Chuen-Jim Sheu who offered great assistance in my fieldwork in Taiwan.

Finally, my greatest thanks go to my family, husband, and church friends. Without their love, patience, and prayers, I could not have completed this thesis.

Abstract

This thesis contributes to a deeper understanding of the application of restorative justice to domestic violence in a society with remnants of Confucian thinking. Domestic violence cases in local projects A and B, which are part of Taiwan's Restorative Justice Initiative, are investigated through a case study methodology. The translation of restorative justice in theory and practice is addressed, with particular attention given to the influence and effectiveness of the implementation networks on the translation process.

This thesis makes a comparison of western, Confucian, and feminist interpretations of restorative justice, to develop an analytic and argumentative base for this thesis. Five core principles are identified from western theories of restorative justice: accountability, active participation, reintegration, rehabilitation, and restoration. Confucian and feminist values that correspond to the five restorative justice principles are also recognised, such as 'role-bearing persons', 'relational appropriateness', 'harmony', and 'face' in Confucianism, and from feminism 'validation of wrongness of violence', 'power and control', 'cycle of violence', 'gender equality', and 'consciousness-raising'. These values shape restorative justice as practised in Confucian and feminist contexts.

Through official documentation, qualitative interviews, and meeting observations, western, Confucian, and feminist versions of restorative justice were all found to carry some weight with implementers and participants. First at the institutional level, implementation institutions (the Ministry of Justice and the District Prosecutors Offices and NGOs in Projects A and B) all comprehensively accepted, but differentially favoured, western, Confucian, and feminist versions of restorative justice. The Ministry's support for Confucian and western versions of restorative justice were

respectively bolstered by the legacy of Chinese mediation, and by the legitimization of restorative justice through the United Nations, mediated by an international restorative justice NGO and Taiwan's restorative justice scholars.

As the state adopted a steering role, local institutions had opportunity to implement restorative justice programs in their own fashion. In Project A, the NGO's speciality in family mediation nurtured Confucian interpretations of restorative justice. In Project B, feminist interpretations of restorative justice were developed, based on the mental health profession and feminist commitment, and strengthened by a highly networked feminist community in Taiwan. The key difference between the overall approach of Projects A and B was the strength of the implementation team's connection with a pro-feminist external network. In Sally Engle Merry's (2006b) terms, the implementers and actors in the external network who were imbued in Confucian or feminist discourses, appeared adept at vernacularising them into other discourses, including restorative justice.

At the level of interpretation of individual implementers (criminal justice officers and practitioners), nine practice goals were set up, reflecting an amalgamation of and also competition among western, Confucian and feminist interpretations of restorative justice. The implementers variously privileged western, Confucian or feminist values. . This generated different logics of orderings of the nine goals (and thereby the five principles) of restorative justice. 'Acknowledgment of wrongdoing' was a watershed goal. Implementers favouring Confucian values of 'face' and 'harmony' considered this goal unnecessary and prioritised 'reduction of punishment on offenders' and 'relationship restoration'. Those adopting a feminist interpretation reversed these priorities.

The multiple expectations and needs of victims and offenders in Project A also

manifested coexistence and diverse prioritisation of western, Confucian, and feminist ideas. The parties' satisfaction with restorative justice processes was closely related to how practitioners responded to their expectations and needs. Victim discontent or hurt most often accompanied practitioners valuing their own professional opinions or family views over victims' voices; or pursuing relationship restoration by consolidating family hierarchy, while failing to attend to the wrongfulness of violence.

Victim and offender voices and feedback supported the proposition that western, Confucian, and feminist interpretations of restorative justice may collectively, but not solely, meet the needs and expectations of victims and offenders of domestic violence in Taiwan. These research findings suggest that for Taiwan's practitioners, an interpretation of restorative justice that is responsive to parties' expectations and needs is a necessity.

This thesis proposes hybridity of emotional, cultural, and political intelligence in vernacularisation of restorative justice. Implementers need to embark on a sharp learning curve to achieve this outcome. Devolved governance and management approaches such as double-loop learning and the logic of mutual causality are of critical importance to the revised vernacularisation model that is proposed in this thesis.

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Chapter 1

Introduction

1.1 Research background

Restorative justice has recently revived in the west and is being transferred and applied extensively to non-western countries and to a wide range of circumstances. The popularity of restorative justice is based on two sources of support. First, the outcomes of restorative justice programs in many western countries have had positive reviews (Maxwell & Morris, 2006; Strang et al., 2006; Strang, Sherman, Mayo-Wilson, Woods, & Ariel, 2013), even though restorative justice rarely becomes the mainstream of the criminal justice systems in these countries (London, 2003; M. S. Umbreit, Coates, & Vos, 2004; Wright, 2009). The other source of support comes from the United Nations. The use of restorative justice is endorsed and promoted by the United Nations through its official statements and documents (Marshall, 1999; United Nations Economic and Social Council (ECOSOC), 2002), in Asia through UNAFEI. Buttressed by these legitimizing supports, restorative justice has attracted increasing attention around the world and is gradually being applied to a wide range of problems in different contexts and cultures.

In the revival of restorative justice practices, the product to be transferred is the western interpretation of restorative justice. Particularly in regard to theorisation and conceptualisation, the restorative justice package is heavily westernised. This does not deny that restorative justice shares some resemblances to processes for conflict resolution in certain non-western cultures, such as African and East Asian cultural traditions, and aboriginal cultures in Australia, Canada, the US, and New Zealand (H.

Bowen, Boyack, & Calder-Watson, 2012; Braithwaite, 2002a; Griffiths & Hamilton, 1996; J. Liu & Palermo, 2009; Louw, 2006).

The transfer of restorative justice is occurring in two ways. The first is from one culture to another, described as cross-societal. One form of this transfer is translating a predominantly westernised version of restorative justice to non-western societies. This often occurs with recognition that similar restorative justice values might already exist in traditional forms in local societies (Griffiths & Hamilton, 1996; Louw, 2006). Traditional restorative features within non-western cultures are often used to legitimise the decision to adopt formally a restorative justice program in these societies. The western interpretation of restorative justice is usually delivered to non-western societies as a reference point or benchmark while establishing or evaluating local practices of restorative justice. This type of transfer often involves debates on how much local projects should “imitate” the western and the United Nations’ paradigms or alternatively, depart from the confines of western thinking and embed more local societal elements into restorative justice practices (Marchetti & Daly, 2004; Maxwell & Hayes, 2006; Saade, 2008).

The second way of transferring restorative justice is problem specific, from one form of harm to another. This type of transfer is translating ideas of restorative justice to different forms of misconduct, such as gender-related crimes, war crimes, child protection, or corporate regulation. Under this type of transfer, other needs concerning the harm caused by the specific misconduct are usually addressed, in addition to the values and goals that are proposed in the original conception of restorative justice. In other words, this type of transfer is fine-tuned to features of different kinds of harm (Curtis-Fawley & Daly, 2005; N. Harris, 2008; McEvoy & Mika, 2002; Morris, 2002).

A concurrent transfer of restorative justice may be undertaken as well, involving both

these types of transfer at one time. A concurrent transfer brings a western model of restorative justice to a non-western society in order to deal with a particular form of harm. In such a transfer, the issues concerning both types of transfer are interwoven, such as cultures and social contexts of a society and attributes of a particular harm. For example, Truth and Reconciliation Commissions are a demonstration of how restorative justice has been transferred to a number of transitional countries to address post-conflict peace-building (Hayner, 2002; Ratuva, 2010). Different Truth Commissions have exercised ideas of restorative justice in ways that are contingent on the interaction between the issues of war crime and the social, cultural, and political circumstances of the society.

Importantly, all kinds of transfers of restorative justice involve an interpretation of restorative justice; this can be advantageous but also problematic. In the transfer process, restorative justice is often defined differently to meet the needs of people who are harmed in different circumstances; but various interpretations of restorative justice may clash and compete. In the past two decades, many studies have examined how restorative justice is defined and translated to achieve its healing aims (Braithwaite, Braithwaite, Cookson, & Dunn, 2010; Coker, 2006; Daly & Stubbs, 2006a; Milner, 2012).

The transfer of restorative justice to a new geographical and cultural field (East Asia) and to a new field of harm (domestic violence against women) is intriguing to scholars. Yet, both kinds of transfer of restorative justice have been the subject of only limited empirical data. The cultural traditions of East Asia, for example Confucianism, are often referenced as local origins of restorative justice, but seldom examined in a scientific and systematic way (W.-C. Chan, 2013; Hosoi & Nishimura, 1999; S. C.-K. Lee, 2007; Saade, 2008). The transfer of restorative justice to domestic violence

generates fiery debate, but is deficient in practical evidence, partly because fears that victims' interests cannot be protected in restorative justice practices hamper its use in domestic violence (Aziz, 2010; Hopkins, Koss, & Bachar, 2004a; Nancarrow, 2006). This thesis fills this gap in the literature through collecting data on restorative justice practices in relation to domestic violence cases in East Asia. Further, it bypasses definitional debate over restorative justice by interrogating a range of theoretical arguments that may underpin applications of restorative justice to domestic violence in East Asia.

In sum, this thesis examines a concurrent transfer of restorative justice to East Asia and domestic violence. The aim is to enrich the interpretation of restorative justice by seeing it through these lenses.

1.2 Aim of the research

The aim is to achieve an adequate understanding of how and how well the westernised conception of restorative justice is transferred to an East Asian society in addressing domestic violence and in serving its victims and offenders. A framework to guide the translation of restorative justice in domestic violence in East Asia is developed. Ultimately, the research attempts to improve the prospects for victims and offenders benefitting from restorative justice practices, and offer generic suggestions about the interpretation of restorative justice.

Given these overall aims, three sub-aims motivate the research. The first is to show the studied transfer through an ideological lens. The interplay between western theories of restorative justice, Confucianism, and feminism will be examined, in regard to the transfer process and outcome. Confucianism and feminism are considered along with restorative justice theories for they have potential to influence the concurrent transfer

to East Asia and to domestic violence.

The second sub-aim is to show the studied transfer through a lens of transmission. This research intends to discover how the above three theories are accepted, disseminated, or blocked in the implementation process. One key proposition tested is that identifying the contexts and channels for transmission is important because they leave an imprint on the ideological dimension of the restorative justice transfer.

The third sub-aim is to analyse the transfer in a reflective light. The focus is to investigate what victims and offenders expected and needed. Then, from this perspective, the thesis examines the usefulness and applicability of western theories of restorative justice, Confucianism, and feminism, along with implementers' interpretations of restorative justice in their local contexts.

To investigate the concurrent transfer of restorative justice, this research uses part of the Taiwan Restorative Justice Initiative as a case study. Taiwan represents one kind of East Asian society, as it still possesses some elements of Confucian tradition while embracing capitalist modernization. The Taiwan Restorative Justice Initiative (referred to as the Initiative) contained two local projects handling domestic violence cases. The researcher was permitted access to both in order to collect the data.

1.3 Thesis structure

The next three chapters (Chapters 2 to 4) focus on theories that potentially are useful in explaining why and how restorative justice has been transferred in different ways in Taiwan.

Chapter 2 proposes an analytic framework for the transfer of restorative justice to Taiwan in the field of domestic violence. This framework builds on previous studies

related to networked governance and the transfer of restorative justice and gender-related policies (Hayner, 2002; Merry, 2006a; Provan & Kenis, 2008; Shearing & Wood, 2003). The proposed framework has two vital dimensions – a transmission dimension and an ideological dimension. The transmission dimension indicates the contexts and networks through which ideas of restorative justice were passed on and reframed in the Initiative. The ideological dimension includes three theories that were evident in the way restorative justice was discussed in Taiwan and that mattered to the interpretation of restorative justice in the Initiative – theories of restorative justice, Confucianism, and feminism.

Chapter 3 discusses the imported package for the studied case, westernised restorative justice theories. This chapter summarises the ideas of restorative justice in the western literature under five clustered principles. These are: accountability, active participation, reintegration, rehabilitation, and restoration. The western version of restorative justice has been theorised in an inclusive manner, with principles ordered in terms of their priority for achievement. First to be secured are the principles of accountability and active participation. Then efforts are made to secure the remaining three principles, without compromising the execution of the first two principles.

Chapter 4 further elaborates the theoretical basis of this research, through uncovering Confucian and feminist interpretations of restorative justice. The chapter opens with evidence of the significance of Confucianism and feminism in Taiwan in regard to cultural and gender issues. Using the five principles of restorative justice identified in Chapter 3, the theoretical relations between theories of restorative justice, Confucianism, and feminism are elucidated. Confucian and feminist versions of restorative justice are discussed and compared with western versions of restorative justice.

With the theoretical foundations of the research laid out and an analysis of the intersections of western restorative justice, Confucianism and feminism complete, Chapter 5 shifts attention to the data analytic method used in this research. A single-case study design with two embedded units is adopted. The Taiwan Restorative Justice Initiative and the two local projects (Projects A and B) represent the case and the embedded units respectively. The validity of this research is assisted by triangulation of data sources. The primary materials for the analysis are official documents on Taiwan's restorative justice practices and interviews with the criminal justice officers, restorative justice practitioners, and victims and offenders of domestic violence. Meeting observations and participant observations provided other sources of data to supplement interviews and documentation and challenge or corroborate research findings.

Chapter 6 turns to the results. This chapter focuses on the transmission dimension of the transfer: the effects of the transmission on the interpretation of restorative justice. Mainly, the emergence of the interpretive preferences of the implementation institutions is explained, that is, the Ministry of Justice, and the District Prosecutors Offices and NGOs in Projects A and B. The contexts and setting of the Initiative and the political networks of the local implementation institutions gave rise to (1) the coexistence and ascendancy of the western, Confucian, and feminist interpretations of restorative justice and (2) the absence of an inspection and improvement mechanism for interpretations of restorative justice. Lessons learnt from the implementation of Projects A and B are lastly proposed as possible enhancement strategies to implementation networks.

Chapter 7 addresses the ideological dimension of the transfer. The analysis presented in this chapter relies on the practice goals of the individual implementers (criminal justice

officers and restorative justice practitioners). Through examining these practice goals, this chapter shows that ideas from western theories of restorative justice, Confucianism, and feminism coexisted, complementing each other and competing with each other.

Chapter 8 provides the perspectives of victims and offenders of domestic violence to examine the interpretation of restorative justice. Only the voices of the victims and offenders in Project A are available and presented. This chapter discusses (1) the extent to which the western, Confucian, and feminist interpretations of restorative justice correspond to what the victims and offenders expected and needed, and (2) where the implementation of Project A succeeded or failed to fulfil the expectations and needs of the victims and offenders. Through the voices of the victims and offenders, this chapter suggests that the western, Confucian, and feminist interpretations of restorative justice could not individually, but might collectively account for the expectations and needs of victims and offenders. In view of the disappointments of the victims and offenders, this chapter further warns of the vulnerabilities created when the expectations and needs of victims and offenders are neglected by practitioners.

Chapter 9 proposes that effective implementation might best be sought through hybridity. This hybridity would comprise emotional, cultural, and political intelligence around restorative justice. This is proposed as a better answer to the application of restorative justice to domestic violence in East Asia than adversarial debates around settling on a single definition of restorative justice. This chapter suggests that hybridity of emotional, cultural, and political intelligence of restorative justice can be achieved through establishing a reflexive and learning vernacularisation model, encouraging a continuing review process, and welcoming modifications of interpretation of restorative justice in practice.

Chapter 2

A framework for the transfer of RJ to Taiwan in the domain of domestic violence

This chapter proposes an analytic framework for transferring restorative justice to Taiwan for domestic violence. The framework synthesises findings and arguments from previous studies, particularly those related to policy transfer, network analytical perspectives, discourses of networked governance, transfer of restorative justice, and transplant of global standards for gender equality. The proposed framework will be used to evaluate the focused transfer in aspects of restorative justice processes, outcomes, and effects.

This chapter is divided into two parts. The first section develops and explains the proposed framework. The second section discusses its application to the case under study.

2.1 A proposal of a transfer framework

The framework for this research is built upon the conception of policy transfer, which concerns ‘the process by which knowledge about policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system’ (Dolowitz & Marsh, 2000, p. 5). By this definition, the transferred package, engaged actors, and transfer processes and outcomes are all given weight in policy transfers in which emulation is somewhat embedded (Stone, 2004; Studlar, 2007).

In accordance with the conception of policy transfer, an analytic framework is proposed with two vital dimensions – a transmission and an ideological dimension. These are closely connected. The transmission dimension comprises the backbone and structure of the framework. The ideological dimension is more concerned with the flesh of the framework. The ideological dimension represents the integration or amalgamation of sets of ideologies that may sit comfortably alongside each other or collide in disruptive ways. Either way, some corporate narrative forms to give meaning to the ideas that are put into practice. The transmission dimension provides the channels through which the ideologies pass. As ideologies journey along these channels they are reframed by and frame the thinking of actors and networks occupying those sites. The elements of the transmission dimension, to some extent, will twist or mould the shape of the ideologies.

2.1.1 The transmission dimension

The transmission dimension incorporates two clusters of variables: structural factors and qualities of networks consisting of a range of actors. The transmission dimension is framed in accordance with analysis of policy transfer and network discourse in the literature. Policy transfer is investigated at both macro and micro levels. The macro-level of analysis is concerned with broader structural issues and events external to involved actors, like political and economic power and public belief in the society. The micro-level of analysis focuses on the roles and interests of and interactions between actors (M. Evans & Davies, 1999; Sabatier, 1988; Weible, Sabatier, & McQueen, 2009). As both structural forces and actors' agency are recognised to carry some weight with policy transfer (Dolowitz & Marsh, 2000), network analysis becomes attractive for it can settle debates between structure-oriented and agent-centred policy transfer approaches by considering both structures and agents

(Stone, 2004). Hence, the transmission dimension, set to examine structural factors, actors, and networks, echoes the discourse of policy transfer and network perspectives.

The two clusters of variables in the transmission dimension are not completely independent (Sabatier, 1986). In the process of transfer, the actors in the networks could bring about structural changes that may enhance or impede the transfer of the imported ideas. The process could work in the reverse direction as well. The structural factors could constrain or ameliorate the influence and performance of networks or actors (Braithwaite, Braithwaite, et al., 2010; Hayner, 2002).

2.1.1.1 Structural factors of a recipient society

The structural factors of a recipient society are not assumed to be static. Sabatier (1988) recognised that external factors to a policy subsystem (actors who are involved in a public policy) could be relatively stable parameters (such as basic social and cultural structures and natural resources) or dynamic system events (such as system changes over years in socio-economic conditions, technology, and political coalition). Nevertheless, structural factors provide a relatively steady and broad background for the transfer.

Cross-societal transfer studies report that the dissemination of the imported ideas or practices is somewhat confined by the structural factors of the recipient society. In many transfer studies of restorative justice and gender equality, of particular relevance are historical, economic and political conditions of the recipient society (Hayner, 2002; Merry, 2006b).

Sally Engle Merry's (2006b) study offered a striking example of the influence of economic conditions on the scope of transplanted practices. The wealth of the Hong Kong government was regarded as an important contributor to a large scale roll-out of

social services for domestic violence in Hong Kong. In contrast, the relatively poor provinces of China in Merry's study had scarce social resources for domestic violence prevention, which accounted for limited progress of the prevention movement. Merry concluded that, in spite of similar cultural context and concerns about domestic violence in both sites, the big difference in their economic strengths led to disparate outcomes. The success of domestic violence campaigns in Hong Kong outstripped achievements in the selected provinces in China.

Wing Lo (2012) studied the transfer of restorative justice in Hong Kong and uncovered the influence of political background on local people's acceptance of a transferred policy. He argued that fear of 'mainlandization' in criminal justice has erected barriers to the dissemination of restorative justice in Hong Kong. The explanation offered by Wing Lo (2012) is that the rule of law is absent to some extent in restorative justice practices, and this leaves room for the violation of offenders' rights. Much of the Hong Kong public distrusted China's commitment to human rights. They harboured fears that restorative justice could be misused under China's regime and that Hong Kong's criminal justice system may become vulnerable, very likely losing its autonomy and credibility of fair and impartial adjudication should it embrace restorative justice. Against this political background, the introduction of restorative justice was resisted in Hong Kong. Such resistance is a reflection of local political sensitivities, and is not purely about restorative justice itself.

There are a number of other examples of the transfer of restorative justice being influenced by structural factors or critical juncture in the recipient society. Political settlement to a war, corruption problems, fragile or ineffective criminal justice systems, policing reforms, and reform of the criminal justice system have, in some instances, paved the way for the implementation of restorative justice and attracted local people

to trust in the use of restorative practices (Dinnen, 2010; Hayner, 2002; McEvoy & Mika, 2002; D. S. W. Wong, 2011).

2.1.1.2 Qualities of networks

In addition to structural factors in the transmission dimension of the proposed transfer framework are qualities of networks. Network perspectives enrich discourses of policy transfer by elaborating interactions among actors and networked governance over quality of transfer.

Network perspectives

From numerous descriptions of the term ‘network’, the definition adopted for the purposes of this thesis is that networks entail connections among a number of individuals or/and organisations who have collective objectives in addition to their own intentions. This definition distinguishes networks from individuals’ social capital or an assembly of a bunch of people, and highlights objectives as a vital element in the formation of networks (Provan, Fish, & Sydow, 2007; Provan & Kenis, 2008). The ties between network members (nodes) are broadly recognised, established through informal or formal agreements, bound by social or legal contracts, and formed on a temporary or permanent basis. Various types of ties are included, such as direct joint ventures, strategic alliances, adversary connections, and regulatory or supervisory relationships (Provan et al., 2007; Shearing & Wood, 2003).

Network analytical perspectives seek to portray network structures, explain the development of ties between actors in the network, and reveal governance issues like effectiveness and regulation of networks (Brass, Galaskiewicz, Greve, & Tsai, 2004; Provan & Kenis, 2008). Analysis of the structures of networks often involves establishing whether connections are present or absent, dense or thin, or centralised or

fragmented. Research on the development of networks commonly focuses on identifying catalysts for the emergence and properties of ties and entire networks, such as past partnerships, power and resources of actors, legitimacy of the objectives or actors, and the nature of ties between actors (Acevedo & Common, 2006; Human & Provan, 2000; Provan, Isett, & Milward, 2004). Understanding structures and the development of networks is an indispensable step toward considering the governance of networks. Discussions on networked governance turn attention to who and how to govern the performance of individual actors and networks (Burris, Drahos, & Shearing, 2005; Crawford, 2006; Provan & Kenis, 2008).

In the governance of networks, the role of the state is given a great deal of attention (Crawford, 2006). Nodal governance, which is used in the appraisal of plural policing, argues against state-centrism. Nodal governance takes seriously varying relationships between state and non-state nodes but recognises that the state is a weighty governing actor in certain situations (Johnston & Shearing, 2003; Shearing & Wood, 2003). The central proposition put forward by proponents of nodal governance is that in situations involving crime, disorder, and conflicts, the function of governance should no longer be the province of the state only, but should be carried out also by various non-state actors in the network (Ayling, Grabosky, & Shearing, 2009; Shearing & Johnston, 2010).

Lastly, the performance of actors and networks is considered to be partly intertwined due to the complex influence of the relationships between actors and networks. Provan, Fish, and Sydow (2007) illuminated the complexity of influence by pointing out that individual actors' attributes could explain other actors' actions in the network or/and the outcomes of the entire network. Moreover, the qualities of networks may account for the overall performance of networks or/and individual actors' philosophical and

behavioural changes. Understanding the dynamics of influence from actors to networks and vice versa is analytically important.

Network perspectives in studies of policy transfer

The above discussion of the arguments and analytical elements around networks are key elements of empirical studies on policy transfer. First, in policy transfer, actors are the agents, many and varied, which may include individuals, groups, and organizations of different backgrounds and at different levels: international, national or local. Actors could be from state agencies or non-state groups, like international organizations, interest groups, non-governmental organizations, thinktanks, and banks. State actors are considered to be vital in ‘hard’ transfers, like tools, programmes, and implementation, and non-state actors in ‘soft’ transfers, like ideas, concepts, and norms (Dolowitz & Marsh, 2000; Stone, 2004). For instance, in peacekeeping work in post-conflict countries or work preventing gender discrimination or gender violence, the transfer process often involves actors from different professional fields and from different geographical areas. The international actors include the United Nations, World Bank, international NGOs or media, international scholars, and lawyers; the national actors include, agencies of the state, national associations, political parties, public servants, and the national media; the local actors were local committees, village leaders, and community and religious groups (Hayner, 2002; Kapur, 2002; McEvoy & Eriksson, 2006).

In transfer studies of restorative justice and gender equality, actors are often the focus of the analysis because of their role in delivering and packaging the imported ideas or practices. The actors could be those who instil their own beliefs into the translation process or those who harness the imported ideas or practices. The former role entails ideological changes in the meaning of the imported ideas, which is more connected to

the ideological dimension of the framework (see the discussion in the next section). The latter role is more in keeping with the idea of transmissive channels or valves, which control or lead the direction of the dissemination with little change in the core conception of the imported ideas.

Actors who act as the means for transmission of a policy idea are not neutral, but with different motivations (Dolowitz & Marsh, 2000). They act to channel or regulate valves of information flow, and in doing so bring their inclinations and prejudices into the processes of guiding the direction of the transfer process and reshaping the scope of the imported ideas or practices (De Jong & Edelenbos, 2007). A study of India's gender movement compares three organisations, all with the same goal of disseminating and translating global women's rights to the local, but exercising their own decision making processes to set up their own focus on baby sex selection policies, rights of lesbians, and empowerment of women respectively (Levitt & Merry, 2009). This example reveals different actors channelling the transfer process in different directions. Actors may be the more variable element in a transfer process, and considerably more variable than the structural factors of a recipient society.

The weight of different actors varies with whether a top-down or a bottom-up approach is adopted in a policy transfer. In a top-down transfer model, (central) governmental officials are highly concerned. With greater commitment and abilities, they supposedly set up clearer objectives, develop smoother implementation processes, and show better leadership and communication skills in the implementation network that can lead to successful policy transfer. But in a bottom-up approach, actors from the private sector, implementing officials from local authorities, and community members are appreciated. The perspectives, abilities, and networking techniques of local actors from both the public and private sectors are deemed to be imperative to properly transfer universal

norms and ideas to different contexts (Kalipeni & Zulu, 2002; Sabatier, 1986).

In addition, attributes of individual actors can shape operation and governance of the whole network, as discourses of networks suggest (Provan et al., 2007). The implicit idea here is that not every actor has equal importance in the network. Hierarchies among actors may be supported for the sake of acquiring technology, knowledge, and political convenience (Sissenich, 2008). Some actors more than others may play a more pivotal role at certain times in the network, affecting the quality of the network (eg cooperative, adversarial), transfer outcomes, and governance of the network (Burris et al., 2005).

In studies on transfer of restorative justice and gender equality, the degree of influence of actors in the transfer process is commonly found in relation to their positions, power and their ties with other actors (Braithwaite, Braithwaite, et al., 2010; Jolly, 2010; McEvoy & Eriksson, 2006). In general, actors' influence is related to the seniority of their positions and their power. Actors are often influential if they have economic power, political status, hold high office or are highly educated. For instance, political actors can be particularly powerful in transitional countries. In the practice of the Truth and Reconciliation Committees in El Salvador, amnesty was quickly legislated by the president and parliament at that time. Under the enactment of amnesty, prosecution of some high-level officials became impossible (Hayner, 2002).

Actors' influence is not only about the position they hold in society but also is shaped by the degree to which their positions and power are recognised in local contexts: Are they respected and trusted, based on kinship, religion, profession, regional, or tribal tradition? Examples from Maluku and Bougainville illustrate how the influence of actors was subject to local recognition. The local leaders, traditional healers or church leaders earned more trust and respect from the villagers. They showed greater

leadership than any other NGOs or state officials in the process of reconciliation (Braithwaite, Braithwaite, et al., 2010; Braithwaite, Charlesworth, Reddy, & Dunn, 2010). Hence, actors' influence in the transfer of an idea cannot be divorced from contexts of the recipient society through which the power and positions of the actors are being weighted and measured.

Braithwaite and Drahos (2000) identified powerful actors in webs of influence, powerful because they control the mechanisms through which ideas are circulated and can convincingly argue the case for the social principles that underpin the policy idea. This supposition is agreed by Sissenich (2008) who likewise regarded 'intermediaries' to be powerful for they are in control of communications among other actors in the network. For instance, the success of reconciliation in Maluku received little support from the central government. The contribution of NGOs was not prominent either, because the NGOs were not respected by the villages. Instead, reconciliation work substantially relied on local wisdom and associated cooperative networks. The key persons were the local leaders, who were held in high esteem among the villagers and acted to partner with the two major local religious groups, Christians and Muslims. Then the positive connection between the local leaders and the two religious groups became the firm base for the work of reconciliation (Braithwaite, Braithwaite, et al., 2010). The contribution of the key players here exemplifies the potential of key actors in creating and maintaining a cooperative network, which may further lead to positive outcomes in the transfer process.

Ties between actors that constitute part of the entire network can be an important factor for policy transmission. Actors can build alliances or form cliques or coalitions, based on shared beliefs or problem perceptions, and defect from a coalition over time. More than one coalition may emerge in the policy transfer network, which means different

sets of values could be upheld and possibly contest one another. Hence, different ties among actors can produce diverse effects on the qualities of the entire transmission and the final product of transfer (Sabatier, 1986; Stone, 2004; Weible et al., 2009). In other words, the final product may be connected to the qualities of the entire network, which reflect results of interactions and connections between various actors: who the dominant actors in the coalition are, or which are the key ties that have emerged, and how actors relate to each other, cooperatively or adversely, tightly or loosely.

For example, the study on peacebuilding work in West Papua found that the contribution of NGOs in Papua was substantial. These NGOs had fairly strong connections to each other and also formed a forum called FOKER to advance their work. Tight networks were shown to be helpful for the delivery of the imported ideas and practices (Braithwaite, Braithwaite, et al., 2010). Also, in South Africa, the successful implementation of the Truth and Reconciliation Commission was partly attributed to the sensible working relationship between national and international actors. Domestic actors worked closely, but also wisely with the international actors. The international assistance was brought in through international conferences that involved discussions on the ideas of accountability and truth seeking and on the formation of the Commission (Hayner, 2002).

Through networking, more distant actors' intentions can be executed by other actors. More distant actors thereby indirectly have a greater impact on the transfer outcomes, such as the direction, pace, and effectiveness of the transfer, than might appear on the surface (Sissenich, 2008). In a case study in China, the way in which organisations advocated for women's rights varied, according to their connections with the government. For organisations close to the government, the channel for transferring women's rights was in keeping with the interests of the Chinese government, which

were to promote social stability or the good of the whole society. With support from the state, the organisations disseminated the imported ideas more effectively and faster, but the depth to which the imported ideas could challenge the society to change was limited. The organisation that was financially supported by international funding, by contrast, attained a channel that was more open to a range of women's rights and had the initiative to set their advocacy goals. But without the state's assistance, the organisation made slow progress in their campaign (Levitt & Merry, 2009). Thus, the state and international organisations in neither case directly participated in the transfer. But as the funding sources in the network, they had an effect.

The role of the state and ties with the state are heatedly debated in regard to the appropriateness and effectiveness of transfer flows. Three types of approaches have been considered: top-down, bottom-up, and middle-out. The top-down approach refers to a transfer process that is activated, led, and governed by an official authority (eg the government). This approach is preoccupied with officially-ratified objectives, fulfilment of the objectives, measurement of policy performance, and improvement on policy execution. The strengths of this approach lie in support of governmental funding and legislation structures in which the imported package may be more efficiently delivered. But, overemphasis on governmental programs and central official agencies possibly causes lack of appreciation of local contexts and dynamics of interaction among actors (Sabatier, 1986).

The bottom-up approach, by contrast, denotes a transfer mainly driven by policy problems instead of launched laws or policy decisions, and proceeded under influence of the networking of actors from both public and private sectors instead of the state's directives. The advantages of this approach are in mobilising people to partake in communication and participation in the transfer, and in accommodating local needs,

beliefs, and practices. Yet, this approach may possibly fall short of support from the legislative or other authorities (Kalipeni & Zulu, 2002; Sabatier, 1986; Timms, 2011).

The third approach, the middle-out approach, relies on organisations that are well situated and can build bridges between the state and the local. Some have argued that these approaches should not be either/or: A useful strategy is to jointly apply the three approaches in a policy transfer to increase the effectiveness of the transfer (Braithwaite, Charlesworth, et al., 2010; Lederach, 2005; McEvoy & Eriksson, 2006). Positioning the state in relation to other actors in the network is a critical and tricky task in policy transfer exercises. How it is done will surely influence the content, scope, and pace of the policy transfer.

As discourses of networked governance suggests, networks as a whole can channel actors' thinking and actions, often through structures of collaboration, resource control mechanisms, assessment protocols, and regulatory guidelines (Burris et al., 2005; Provan et al., 2007; Provan & Kenis, 2008). Networks, as a mode of governance, are similarly utilised in policy transfer to monitor and facilitate the quality of transfer, through attending to various forms of connections, cooperation or conflicts among actors. In cross-national policy transfer, governance in the networks is multi-level, dealing with actors not just at the national and local levels but also at the international level (M. Evans & Davies, 1999; Stone, 2004).

Network perspectives discuss learning among actors and elaborate learning as tools for governance over quality of policy transfer (Stone, 2004). Learning in policy transfer networks is no longer suggested as one-way learning of the borrower from the lender, but a multilateral learning between the borrower and the lender and among all actors in the transfer network (De Jong & Edelenbos, 2007).

Learning is portrayed as a process of building up consensual understanding in a coalition and exchanging perspectives and setting debates across coalitions (Sabatier, 1988; Stone, 2004). But learning among actors in a transfer network is clarified to be neither even nor perfect. Actors have different learning capacities and intentions, like pursuing their political interests or increasing their discernment in regard to policy problems and solutions. Actors attain different levels of learning such as superficial learning (for strategic reasons) or deeper learning (for solutions to social problems) (Stone, 2004). As Sabatier and his colleagues revealed, actors' policy implementing values are more readily adjusted through network learning, compared to actors' normative worldviews and perceptions of social problems and solutions (Sabatier, 1988; Weible et al., 2009). Learning is more likely to occur within coalitions than between coalitions; professionals trained in different disciplinary backgrounds are seldom ready to be convinced by one another to change their standpoints (Stone, 2004; Weible et al., 2009).

Nevertheless, learning in the network can bring out policy action that contains a certain degree of reflection on policy transfer and lead to policy modification (M. Evans & Davies, 1999). Actors may learn from successes and failures in policy transfer and cross-coalitional communication, negotiation, and settlement over disagreements. Internal feedback loops and cross-coalition learning are of great importance for they can lead to quality improvement of policy transfer in the network without requiring external changes (like new information or technologies) emerging in the society (Sabatier, 1988; Weible et al., 2009).

In sum, the transmission dimension in the proposed framework consists of two groups of variables: the structural factors of a recipient society and the qualities of the networks in the transfer. The structural factors give insights into the broad context of

the transfer – economic and political conditions for example. The qualities of the networks provide a close-up view of who acts with or against whom with what effect. Networks in the framework are analysed with the aid of a set of analytic elements discussed above. Included are attributes of the actors (for example, status, credibility, and legitimacy of the actors' position and power), the configuration of the networks (for example, the density and centralisation of the connections among the actors), and the development and governance of the networks (including the role of the state, its relationships with other nodes of transmission, and learning across actors in the network).

2.1.2 The ideological dimension

The ideological dimension describes the encounters between imported values and other values, beliefs, philosophies, norms, customs and rituals that are embedded in transactions at the local level.

2.1.2.1 Ideological encounters

Ideological encounters lead to a final version of translation of the imported ideas or practices, which is processed within the architecture of the transmission dimension. The original imported package at some point collides with the beliefs, philosophies, norms, customs and rituals that are prized in the recipient society or believed by the actors. The purpose of analysing the ideological dimension is to uncover how the recipient society, particularly domestic actors, handles the ideological intersection between the imported package and existing values and customs and how they resolve points of contention.

Discourses of ideological encounters have been imaginatively theorised by Sally Engle

Merry through her concept of vernacularisation¹. Vernacularisation was borrowed by Merry from the field of language use. Having observed how formal words are transformed into common parlance to reach more people, she saw how western ideas (for example, human rights) could similarly be transformed in new non-western contexts to be made meaningful to local people. Merry explains vernacularisation as ideas extracted from transnational sources or universal standards, detached and despatched, traveling from their original contexts to new contexts, and then being adapted (or/and reframed) in the recipient nations or regions (Levitt & Merry, 2009; Merry, 2006b).

In Merry's conception of vernacularisation, the role of actors and organizations engaging in the transfer are stressed, for they are the translators, situated in the middle, potentially bringing local criticism up to the international discourse and imported ideas down to the local discourse. They are the managers of ideological encounters. As such, they are powerful in steering the interpretation of imported ideas, but vulnerable in being loyal and committed to global standards or local voices (Merry, 2006b). With Merry's conception of vernacularisation, the actors are more than channels and valves, shaping the delivery path and scope of the imported package. Additionally, the actors can serve as 'vernacularisers', who may directly modify the content of the imported package, changing the meaning of imported ideas.

The ideological dimension proposed in this thesis includes two types of ideological encounters. First, the ideological dimension concerns the localisation of imported ideas and practices, that is, the communication between foreign and local voices. Second, actors' professions, their other values or newly-received philosophies, which are

¹ The term 'vernacularise' means to translate something into the natural speech peculiar to a people. See <http://dictionary.reference.com/browse/vernacularize>.

unrelated to local culture or tradition, can affect how the imported package is received ideologically. The two types of ideological encounter correspond to Merry's conception of vernacularisation (Levitt & Merry, 2009; Merry, 2006a) and also appear in studies of policy transfer (Dinnen, 2010; Merry, 2006a; Nyamu, 2000; Van Wormer, 2008).

Levitt and Merry (2009) identified two dilemmas of vernacularisation, one relating to ideological encounters between local belief 'demands' and universal ideas, the other relating to ideological encounters between other belief 'demands' and international ideas. A resonance dilemma occurs when translators sway between localisation of and universality of the imported ideas. An appeal to localisation could increase local acceptance, yet possibly cost global support, whereas an appeal to universality may secure global political support, but neglect local perspectives. An advocacy dilemma refers to the situation in which a translator must decide whether strategically to imbue the imported idea with ongoing practices to enhance its acceptability and attractiveness or alternatively stay true to the imported idea. The strategic alignment entails the imported ideas and practices that are already functioning in the recipient society, which differs from respecting local traditions and customs. Advocacy based on operative practices can smooth the transfer process but fall short in bringing changes to the recipient society.

The dilemmas of resonance and advocacy in ideological encounters are evident in studies of the practices of Truth and Reconciliation Commissions. The following discussion is presented with the purpose of showing how and why the ideas of 'truth', 'justice', and 'reconciliation' were translated differently in recipient societies.

The resonance problem of imported ideas 'bumping' into local cultural beliefs and practices, and finally being reframed with adapted content and architecture, has been

identified in studies of peace building in Bougainville and Indonesia. In Bougainville, reconciliation was implemented in alignment with local views, which underlined admission of wrongdoing, compensation, apologies, and possibly reciprocal forgiveness. There were Christian ceremonies before the cross with the perpetrators admitting wrongdoing and seeking forgiveness from victims or their families. There were also traditional rituals with reciprocation which allowed perpetrators to make reparation to victims and their families who, in turn, offered forgiveness (Braithwaite, Charlesworth, et al., 2010).

But, in Indonesia, values were prioritised differently: the values of truth and acknowledgment of wrongdoing were not rated as highly or considered so central to reconciliation as they were in Bougainville. In some regions of Indonesia, admission of wrongdoing was thought to worsen existing conflicts. To seek community harmony, acknowledgment or blame for wrongdoing was not necessary; the truth that might uncover the wrongdoing was not seriously sought. Reconciliation in Indonesia was generated, at the time of the study, through a more superficial peace, reciprocation of kindness, without recognition of truth and responsibility (Braithwaite, Braithwaite, et al., 2010).

In these two examples, the final products of the imported package were primarily reconstructed based on local values and rituals. As a result, the products were different, even contrary to one another, in spite of the fact that both societies expressed the same preference for reconciliation.

Sri Lanka's Truth Commissions illustrates the advocacy dilemma in ideological encounters: imported ideas colliding with the value priorities of actors that are distinct from the above mentioned local cultural elements. Sri Lanka put into practice their version of Truth Commissions in three districts with three different interpretations of

what ‘truth’ was: identification of perpetrators and recommendation for prosecution, financial reparation for the victims and their families, and reconciliation and national healing. The differences have been attributed not to local community customs and expectations, but rather to the personalities and preferences (and possibly agendas) of local leaders responsible for their implementation (Hayner, 2002). Local leaders’ value priorities for these events were irrelevant to either national or local traditions, history, culture, and religion. Nevertheless, they were influential in bringing about ideological transformation.

2.1.2.2 Analyses of ideological encounters

In analysing these two types of ideological encounter in the present study, the expectation is that there will be instances of integration and of contradiction among competing values, beliefs and priorities. Integration or contradiction of values is a useful analytic approach, pointing out where ideological collision occurs and what subsequent effects are. For instance, in Bougainville, integration of values was found to expedite the transfer while at the same time reinforcing decaying values. Prayers and the belief of forgiveness in Christianity and indigenous reconciliation rituals were all integrated into Bougainville’s peacebuilding process. Integration advanced the peacebuilding operation and in the meantime strengthened a traditional belief, women’s leadership role in reconciliation (Braithwaite, Charlesworth, et al., 2010).

In contrast, ideological contradictions brought challenges to arrive at new interpretations to transplant ideas of gender equality in Fiji and restorative justice in Hong Kong. When considering ‘reconciliation’ and ‘responsibility’, the emphasis shifted from individuals to communities because Hong Kong and Fiji, like other non-western societies, hold beliefs that bring greater coherence between individual self, family, and honour than western societies (Louw, 2006; Merry, 2006b; Ratuva, 2010).

Ideological encounters can be further analysed to assess the extent to which local values or rituals are retained or utilised in the translation of the imported ideas or practices. In other words, an analysis can be conducted of the degree to which the content and forms of the imported ideas and practices are reframed by the local tradition. Sally Engle Merry and her colleague propose a continuum of vernacularisation from replication at one end to hybridization at the other. Replication is defined as vernacularisation that involves a superficial localisation with little change in the imported package, except in the way in which the imported ideas are put to use. By contrast, hybridity is vernacularisation that involves more communicative exchanges between traditions and new ideas. The local symbols, beliefs, and practical forms are more integrated into the translation of the imported package. The ideological interaction and contestation are far livelier in the case of hybridity than replication (Levitt & Merry, 2009). This continuum provides a way of describing and explaining variation in localisation in different places.

Lastly, in considering the analysis of localisation, two issues require further clarification. First, distinguishing local and foreign values may be useful, but it is important to note that this distinction does not imply that these two value systems are absolutely opposite, separated, and fixed. Local culture and traditions change over time, and local experiences can alter the global conceptualization (Levitt & Merry, 2009; Saade, 2008). In addition, discussions on localisation do not aim to judge local values as advanced or backward. The purpose of an analysis including localisation is to acknowledge local values as a plausible schema in a recipient society or in the minds of domestic actors. Experiences of localisation denote the possibility of the local amending global discourses. For this reason, localisation is generally deemed as an indispensable aspect of an analysis of policy transfer (Kapur, 2002; Louw, 2006; Nyamu, 2000; Van Wormer, 2008).

In sum, the proposed ideological dimension can shed light on multiple possible interactions involving different values in policy transfers. Two kinds of ideological encounters are examined: First, between the imported package and local values and second, between the imported package and the actors' professional values and value priorities related to the targeted policy. In order to uncover ideological encounters, attention focuses on identifying where and how values contradict. Also of interest are instances of value integration.

2.1.3 The functions of the proposed transfer framework

The proposed transfer framework assists with two functions: observation and evaluation, based on which suggestions can be made for Taiwan's use of restorative justice practices in domestic violence. As other studies imply, there is no one-size-fits-all practice model. Better transplantation to satisfy the needs of the recipient society requires thorough observation and evaluation of transfers (Dinnen, 2010; Hayner, 2002; Jolly, 2010).

The proposed framework provides nuts-and-bolts observation through analysing the transmission and ideological dimensions of the transfer. Variables relating to structural conditions and qualities of networks represent the transmissive dimension, while variables relating to encounters between imported ideas and local beliefs or actors' other beliefs represent the ideological dimension.

The proposed framework is expected to prove useful in detecting the strengths and weaknesses of the transmission and ideological dimensions of the studied transfer. The strengths and weaknesses of the transmission and ideological dimensions could be further examined to see whether and how they become contributors to the final results of the transfer. The identified strengths (or weaknesses) of the transmission and

ideological dimensions are not always positively (or negatively) associated with the final outcomes of the transfer. For instance, the value of community harmony could facilitate the use of reconciliation on one hand; on the other hand, it could increase the likelihood of the interests of communities dominating the rights of individuals (Ratuva, 2010). Similarly, a dysfunctional government might simultaneously, cooperate with local NGOs and use informal local rituals but at the same time impede the spread or supervision of these informal practices (Braithwaite, Charlesworth, et al., 2010; Dinnen, 2010). The aggregate effect needs to be monitored. Thus, an integral assessment will be adopted. It will observe the complex effects of the strengths and weaknesses of the transmission and ideological dimensions on the transfer outcomes, and subsequently seek to generate prudent suggestions for further improvement.

To conclude, the proposed analytic framework for policy transfer comprises a transmission and an ideological dimension, which are closely linked. Ideological encounters, between the imported package and cultural values or other culturally unrelated ideas in local contexts, are shaped by the elements of the transmission dimension to certain degrees. The features of the transmission dimension account for the quality and direction of policy transfers. The ideological dimension elaborates the content of the transfer.

Through these two dimensions, the framework is able to provide ways of observing and assessing the studied transfer and to discern key variables that shape transfer outcomes. Through understandings obtained with the application of this framework, better delivery and translation of the imported package can be developed to meet the needs of the recipient society.

2.2 The application of the proposed framework to the studied case

This section explains how the proposed framework will be employed in the case under study: the Taiwan Restorative Justice Initiative, with focus on its first-year implementation in domestic violence cases.

2.2.1 The imported package

The imported package was the ideas and practices of restorative justice that have been mainly conceptualised in western scholarship. It was officially introduced by the Ministry of Justice, Taiwan, in 2009 and will be discussed in Chapter 3.

2.2.2 The transmission dimension

The transmission dimension includes the transfer approach of the Taiwan Restorative Justice Initiative, contextual factors in Taiwan, and the actors and networks involved in the transfer. The following discussion briefly reviews the elements elaborated in Chapter 6 as having practical effects on the policy transfer.

The first element is the transfer approach designed by the Ministry of Justice, which was a top-down devolution style. A top-down devolution style means that the Initiative was launched by the state, which had a hold over local projects through offering finance, implementation guidance, and evaluation; but at the same time granted liberty to the local implementers in order to learn from experiences of local projects. Under this transfer approach, two out of the eight participating District Prosecutors Offices, at their discretion, chose to apply restorative justice to domestic violence, and subsequently developed their own operational schemes.

The second element of importance in transmission relates to the contextual factors in Taiwan. Recent reforms of Taiwan's criminal justice system and the development of

domestic violence policies and practices in Taiwan set the background to the introduction of the Initiative. Thus, the two contextual factors are given consideration in the analysis.

Lastly, the components and qualities of the networks in the two local projects are closely investigated. The networks were the major channels through which the translation of restorative justice occurred in these two projects.

Each of the networks showed connections between local implementation team members, the international actors, the supervisory actors at the state level, and the external alliance. The Ministry of Justice was the key actor at the national level. The key international actor was the Centre for Restoration of Human Relationships in Hong Kong, which was invited to deliver restorative justice training. Each of the local implementation teams consisted of two organisations – the District Prosecutors Office and the cooperative NGO, and their recruits for the project – criminal justice officers (prosecutors and probation officers) and practitioners (facilitators, a supervisor, and a case manager).

In addition to the implementation teams, there was an external alliance formed in response to the work of Taiwan's Restorative Justice Initiative on domestic violence. The external alliance was not directly involved in the transfer process, but was considered as a significant force that impacted on the translation of restorative justice. The external alliance raised concerns about the use of restorative justice in domestic violence. The actors in this alliance came from universities, specifically a group of academics specialising in domestic violence, women's groups, two local Centres for Prevention of Domestic Violence and Sexual Assault, and the Domestic Violence and Sexual Assault Prevention Committee.

All of these elements comprising the transmission dimension will be used individually and collectively to show how transfer channels shaped the transfer. In terms of the transmission dimension, Taiwan's Restorative Justice pilot scheme will be evaluated in terms of the sources, flow, and governance of the translation of restorative justice in the field of domestic violence.

2.2.3 The ideological dimension

The ideological dimension of the studied transfer contains two types of ideological encounter. The first type of ideological encounter, between the imported package and cultural values, was between western ideas of restorative justice and Confucian values. The second type of ideological encounter, between the imported package and the actors' professions and value priorities, was between westernised restorative justice and feminist ideas, first and foremost, and also legal and helping professions.

The ideological dimension will be theoretically elucidated in Chapter 4, which shows the prominence of Confucianism and feminism in Taiwan and the relationship of Confucianism and feminism to ideas of restorative justice. The ideological dimension will be practically investigated in Chapters 7 and 8, respectively uncovering the implementers' vernacularisation of restorative justice and the victims' and offenders' perceptions of restorative justice. The perspectives of the parties will be further used to review the appropriateness and effectiveness of the implementers' vernacularisation, forming evidence-based suggestions for the contemporary restorative justice approaches to domestic violence cases in Taiwan.

2.3 Conclusion

Like other policy transfers, the transfer of restorative justice to Taiwan in domestic violence cases could involve numerous variables affecting its outcomes. In building an

analytical framework for this kind of concurrent transfer, previous studies of policy transfer on restorative justice and gender equality are found valuable, demonstrating substantial practical lessons. In addition, policy transfer theories, network analytic perspectives, discourses of networked governance, and Sally Engle Merry's conception of vernacularisation contribute to creating a theoretical base for the analytical framework of this research.

Based on the contribution of empirical findings and theoretical arguments in the above fields, this thesis proposes a framework of two dimensions: a transmission and an ideological dimension. The two dimensions will be used to portray and evaluate the process and outcomes of the studied transfer. With the use of the framework, this thesis seeks more thoughtful implementation and translation of restorative justice in the field of domestic violence in Taiwan and beyond.

Chapter 3

Westernised restorative justice theories

This chapter discusses the imported package of the studied transfer, western conception of restorative justice, which is being disseminated globally. Through elaborating the imported package, this chapter paves the way for further discussion of ideological encounters between westernised restorative justice, Confucianism, and feminism in the transfer, presented in Chapter 4.

This chapter is divided into three parts: (a) the revival of restorative justice in western societies; (b) the key values and goals in westernised restorative justice theories; and (c) the order of priority of values in this western version of restorative justice theories. The discussion in the first part shows victims, offenders, and communities as the three affected parties that are the focus of western theorisation of restorative justice. In the second part of this chapter, the discussion expounds the values and goals in westernised restorative justice theories that are proposed as necessary for meeting the needs of the three affected parties. Lastly, this chapter considers the order of priority in restorative justice values and goals that has been subject to debate and contestation in western theorisation of restorative justice.

3.1 Revival of restorative justice in the West

3.1.1 Focus shift to victims, offenders, and communities in RJ theories

Restorative justice has some traditional roots as beliefs and customs embedded in certain aboriginal societies and ancient traditions have been recognised as analogous to the ideas and practices of restorative justice. Yet, restorative justice theorising has not

grown out of traditional practices, whose corresponding ideas are frequently identified after a revival of restorative justice. Instead, restorative justice has been conceptualised or theorised in a western fashion. The recent evolution of restorative justice took place in western countries in the 1970's, against the background that state justice and retributive justice were found harmful and ineffective. The revival of restorative justice acts as a response to criticisms of state justice and retributive justice which principally characterises the criminal justice system in the West (Christie, 1977; Roach, 2000; Weitekamp, 2003; Zehr, 2003).

Criticisms of state justice and retributive justice primarily regard neglect and misinterpretation of victims', offenders', and communities' voices and interests. First, the criticism made is that victims are either left behind or misunderstood in the current criminal justice system. The role of victims is stolen by the state, and the expectations of victims are commonly construed as sheer retaliation to support retributive justice. Little effort is made to satisfy the needs of victims, such as space of expression, participation, compensation, sense of case closure, or interaction with offenders. Second, censure on state justice and retributive justice involves deprivation of offenders' opportunities to be empowered, reintegrated, or transformed. Although offenders may receive more attention than victims in the discourses of state justice and retributive justice, this attention is directed toward the public's good, not offender or victim benefits. Lastly, blame on state justice and retributive justice also relates to removal of the rights of communities to participate in resolving community problems of safety and security. The functions of communities in conciliating parties, supporting or vindicating victims, and overseeing, rehabilitating, or reintegrating offenders are largely replaced (Ashworth, 2002; Bazemore, 2005; Clear, 2006; Strang, 2002; Weitekamp, 2003; Zehr, 2003). In a nutshell, state justice and retributive justice are criticised for doing more harm than good to victims, offenders, and communities, and

for having little impact on crime prevention.

Restorative justice is proposed by its advocates as the solution to the above criticisms. Victims, offenders, and communities, the most neglected parties in state justice and retributive justice, are theorised in restorative justice as the most affected parties whose needs and rights are seriously taken care of. By comparison, the role and function of the state and of legal measures are much less highlighted in restorative justice theories (Braithwaite, 2002a; Zehr, 2002).

Tony Marshall's (1999) diagram, shown in Figure 3.1, well illustrates that victims, offenders, and communities are the key persons whom restorative justice cares about. That said, justice agencies are not completely overlooked in restorative justice practices, maintaining a regulatory role.

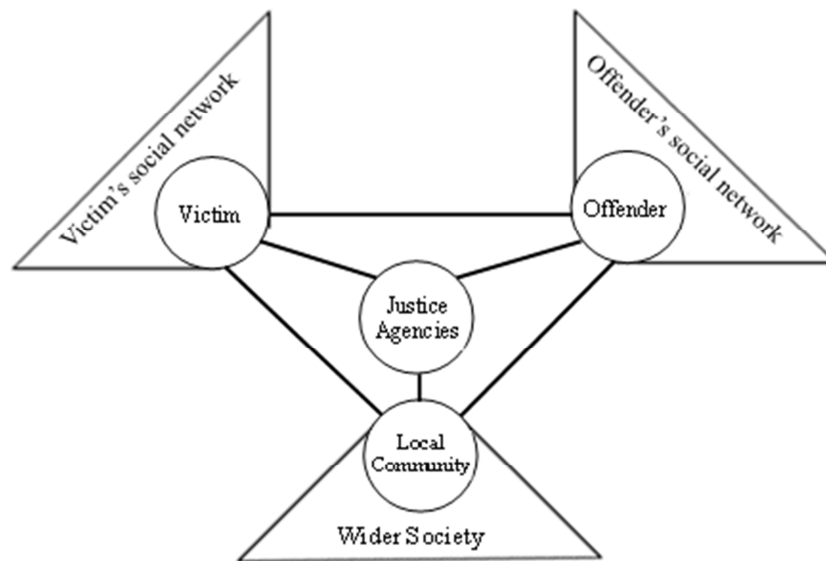


Figure 3.1 Marshall's diagram of the restorative justice system

Source: Marshall (1999, p. 5)

In identifying the three affected parties – victims, offenders, and local communities - there appears to be little confusion about who are victims or offenders. The restorative

justice event arises out of a clear statement of who is the offender and who is victim in a specific offence, while offenders' past victimisation experiences could be taken into account in the meeting.

Communities as parties, by contrast, have been interpreted in western discourse in several ways, creating some ambiguity. First, communities are argued as specific groups sharing the same characteristics with the victims, such as gender, race, religion, or sexual orientation. This interpretation makes the party of communities broad and strategic, but intangible and rarely heeded in practices of restorative justice. Two other interpretations of communities are more commonly employed. Communities are construed as community members, as with 'local community' in Marshall's (1999) diagram. Communities are also understood as friends, families, or other professional or non-professional persons who associate with victims and offenders. This appears as 'social network' in Marshall's diagram; social networks of victims and social networks of offenders. Under these two interpretations, communities could be treated as secondary victims because crimes may damage the security or harmony of the whole community and affect the lives of the family members or close friends of victims and offenders. More often, communities are regarded as the party who are obligated to assist victims and offenders in the restorative justice process (Ashworth, 2002; Braithwaite, 2002a; McCold & Wachtel, 2003a; Wright, 2002).

When victims, offenders and communities are focused as key players in the theorisation of restorative justice, it is worthy of note that the state is no longer regarded as a dominant party, but becomes of limited prominence in dealing with crimes. The state, nevertheless, retains some functions in restorative justice practices. Many restorative justice theorists expect the state to fulfil the role of safeguarding fair treatment and outcomes, and respect for human rights in the restorative justice process.

This refers to limiting the maximum sanction that can be imposed on offenders and ensuring no burdens or dominations are imposed on victims. In doing so, restorative justice is backed up by state agencies that can reaffirm the legitimacy of restorative justice or complement restorative justice when it fails (Braithwaite, 2002a; Dignan, 2003; Roach, 2000; Shapland, 2003). Hence, as in Figure 3.1, justice agencies are still an important part of the configuration of a restorative justice system.

3.1.2 Inclusive theorisation of restorative justice

In its recent western revival, restorative justice has been conceptualised in an inclusive manner. As restorative justice attends to the three affected parties - victims, offenders, and communities, - many ideas and practices concerning the needs and interests of these three parties are largely accommodated in theories of restorative justice and in campaigns to promote it.

Such inclusive conceptions of restorative justice can be understood through and McCold and Wachtel's (2003b) term, 'restorativeness', and their typology of restorative justice, shown in Figure 3.2. Ideas and practices reflecting one, two, or three affected parties' needs and interests could all be 'restorative' but to various degrees. The practices in the central zone of this typology diagram are perceived to be fully restorative, such as family group conferencing and peace circles, in which the three parties' needs and interests are taken care of. Other practices in the typology diagram that focus on one or two of the three parties are seen as partly restorative or mostly restorative. For instance, crime compensation, only satisfying victims' needs in reparation, is viewed as partly restorative. Victim support circles, requiring involvement from victims and communities but not offenders, are deemed as mostly restorative.

Types and Degrees of Restorative Justice Practice

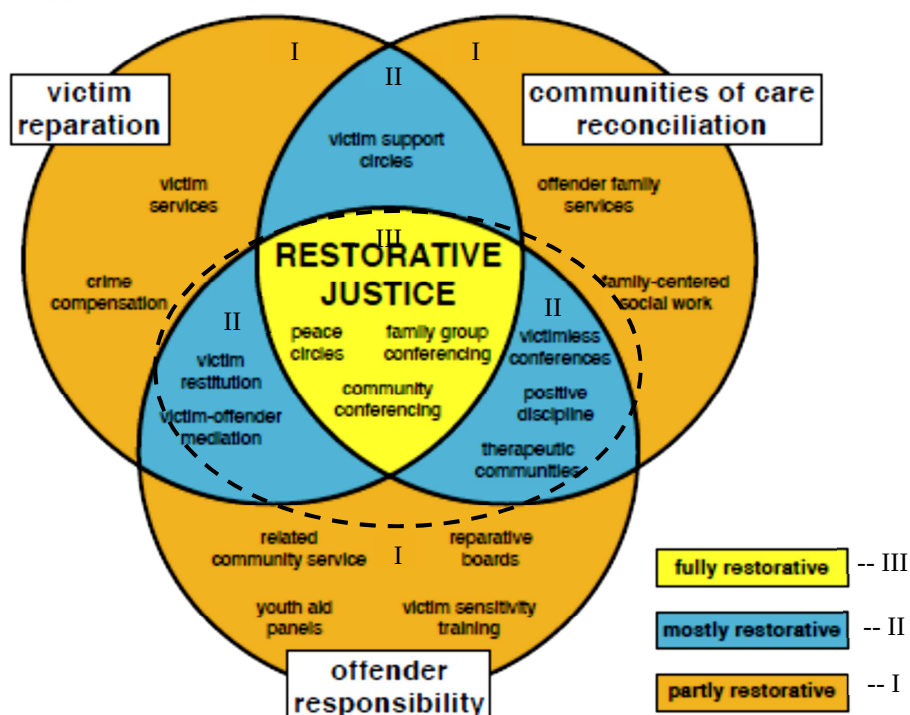


Figure 3.2 McCold and Wachtel's restorative practices typology

Source: McCold and Wachtel (2003b, p. 3)

According to McCold and Wachtel (2003b), regardless of degrees of 'restorativeness', different types of restorative justice practices all have a place in the discourse of restorative justice. In the literature, most attention is directed toward practices involving all three parties (Marshall, 1999; McCold, 2006; Wright, 2002). The inclination to align restorative justice to three parties can be demonstrated by the dotted circle in Figure 3.2, which covers some 'mostly restorative' zones and the 'fully restorative' zone. This seems to imply that better restorative outcomes may require at least some engagement of and interaction between offenders and victims or between offenders and communities in the restorative justice practices.

In sum, restorative justice has been construed in such a way as to give back rights and voice to the neglected but most affected parties - victims, offenders, and communities. For this reason, western theories of restorative justice accommodate other ideas or

practices concerning the interests and needs of only one or two of the three parties affected. Yet ideally, restorative justice is envisaged to bring together the three affected parties in the process of dealing with crimes. It is believed that the more the affected parties are engaged in such a process, the more restorative outcomes will be.

3.2 Key values and goals in the western theorisation of restorative justice

Restorative justice encompasses a different set of values and goals in comparison with state justice and retributive justice. The ultimate goal in the handling of crimes is redefined as restoration in westernised theories of restorative justice. It is believed that harm caused by crimes needs to be removed and former wellbeing restored as much as possible, rather than simply administering punishment to offenders as a form of pay-back. In the western discourse, these numerous values and goals have been described as involvement of the parties, voluntary participation, responsibility, empowerment, whole truth, remorse, forgiveness, apologies, restoration, reintegration, rehabilitation, balance of interests, dialogue or problem-solving (Braithwaite, 2002a; N. Harris, 2003; Johnstone, 2002; McCold, 2006; Presser & Van Voorhis, 2002; Van Ness, 2003; Zehr & Mika, 2003).

The distinction between these restorative values and goals is not clear-cut. The meanings of these values and goals overlap with one another. Clarifying the value domain, five clustered key principles are identified in this chapter, which are accountability, active participation, reintegration, rehabilitation, and restoration. Each clustered key principle contains more than one meaning as Table 3.1 shows. In particular, the last principle is not distinctly different from the others, reflecting more of the ultimate goal of restorative justice. Collectively, the five principles illustrate how restorative justice is constructed in western theorising.

The first principle, accountability, refers to offenders' acknowledgment of wrongdoing and willingness to take responsibility for what has happened. In westernised theories, an emphasis is put on encouraging and assisting offenders to face up to their misconduct. This principle distinguishes westernised restorative justice from more punitive remedies and no-fault mediation. Punishment is decentred since it can induce denial for one's misconduct and erode responsibility to repair the harm (Bazemore, 1998; Zehr, 2002).

Table 3.1 Principles of restorative justice in a western interpretation

Five clustered principles of RJ	Western interpretation
Accountability	* Offenders to acknowledge wrongdoing * Offenders to take responsibility
Active participation	* Voluntary participation * Sharing/listening/discussion/decision-making * Solution-seeking/whole truth/empowerment/reintegrative shaming
Reintegration	* To be reintegrated to their own families or communities
Rehabilitation	* To help offenders change * To avoid future crimes * Punishment as the last resort
Restoration	* Material, emotional, and relational restoration * Apology and forgiveness where the parties choose it

The second principle, active participation, expresses a more practical aspect of western theorising of restorative justice. This principle rejects the idea of seeing the most affected parties as passive receivers. In western theories, active participation is constructed as reflecting the voluntariness of the affected parties to attend and meet to discuss the harm done. Affected parties are allowed to get involved in a variety of forms of participation, such as sharing, listening, story-telling, discussion, and

decision-making.

Basically, the various forms of participation are meant to bring some constructive meanings to the affected parties, such as creating direct or indirect dialogue, increasing mutual understanding, producing effects of empowerment and reintegrative shaming, and discovering truth and solutions. Preparations for the parties' participation in restorative justice conferences ensure the parties feel empowered to make choices and have the capacity to pursue what they need and want after crimes. Through sharing or listening, the affected parties could have their needs satisfied for knowing the whole truth about what happened. Some educative or reintegrative shaming effects over the wrongdoing may be generated as well. Then, the parties might possibly come up with solutions that they desire and can all agree to. It is worth noting that reintegrative shaming effects produced under the principle of active participation are considered integral to principles of restorative justice such as accountability, reintegration, and restoration (Braithwaite, 2002a; Dignan, 2003; Strang, 2002; Zehr, 2002).

The third principle is reintegration. In the western discourse of restorative justice, reintegration denotes assisting, accepting, and supporting victims and offenders to be connected to their communities, typically including their families, friends, and neighbourhoods, in the hope of addressing victims' and offenders' issues of social isolation or estrangement after the crime. Reintegrative shaming differentiated from negative stigma, segregation, and unconditional tolerance for wrongdoing. On the basis of reintegrative shaming, which entails acknowledging wrongdoing and feeling ashamed, the principle of reintegration reconnect victims and offenders with the community on a path of rehabilitation and redemption. Thus, potentially, the principle of reintegration may facilitate the satisfaction of other principles, like rehabilitation and restoration (Ahmed, Harris, Braithwaite, & Braithwaite, 2001; Bazemore, 1998;

Braithwaite, 2002a).

The fourth principle is rehabilitation. This principle primarily refers to offenders, who are regarded in need of behavioural reformation and supervision rather than punishment, used as the last resort. In practice, some intervention or decisions coming out of restorative justice meetings may produce similar effects to punishment, such as shaming, behavioural constraints, or compulsory voluntary work. But, these seemingly punitive measures are not put in place to impose harm on offenders, but to create more restorative outcomes for offenders, victims, and communities, such as relationship building, financial reparation, or behavioural change (Bazemore, 1998; Roach, 2000; Rossner, 2008; Rossner & Tait, 2011; Ward & Langlands, 2009).

In addition, rehabilitation in restorative justice theories is not solely focussed on offenders. The principle of rehabilitation requires involvement of victims and communities. Victims are involved in the way that amending their crime-related injuries is a crucial element of offenders' rehabilitation. Communities' involvement takes place in offering positive relationships and social control to offenders in a bid to assist offender rehabilitation. Accordingly, rehabilitation is expected to happen in the community rather than in institutions, in natural circumstances more than in clinical settings. These relational qualities make rehabilitation in restorative justice theories distinctive from expectations within theories of rehabilitation, which tend to simply focus on offenders (Bazemore, 1998; Ward & Langlands, 2009).

The fifth principle is restoration. This principle signifies the ultimate goal in western theories of restorative justice. Restoration is defined more as healing outcomes for the affected parties, achieved through the implementation of the above four principles, accountability, active participation, reintegration, and rehabilitation, which serve as healing methods. Restoration can be material, such as financial compensation for the

loss or repair work for the destruction caused by the offence. Restoration could be emotional as well, such as the parties' feeling relieved, safe, or empowered. Relational restoration is also possible, as in apologies from offenders and forgiveness or mercy from victims. Forgiveness, mercy, remorse, and sincere apology are regarded as therapeutic elements in the principle of restoration. These values have a spiritual component, recognised as ideal outcomes, but not anticipated or forced to emerge (Braithwaite, 2002a; N. Harris, 2003; Zehr, 2002).

In brief, the five clustered principles – responsibility, active participation, reintegration, rehabilitation, and restoration – constitute the essence of western theorisation of restorative justice. The five principles also set restorative justice apart from sheer mediation, rehabilitation, and compensation, all of which resemble certain segments of restorative justice practices, but actually do not share the same understanding of the relationships between needs of victims, offenders, and communities.

3.3 Order of priority in restorative justice theories

The ideal in western restorative justice theories is that all affected parties are given appropriate attention, the interests of affected parties are balanced, and the clustered principles strengthen one another to achieve the final goal: restoration. However, the affected parties and the principles are not always found to work together in a symbiotic way. They may conflict, dominate, or compromise one another (Ashworth, 2002; Braithwaite, 2002b; Dignan, 2003; Roach, 2000; Wright, 2002). Unsurprisingly, in western discourse of restorative justice, the affected parties and the clustered principles have been proposed in various orderings.

3.3.1 Order of priority of affected parties

Equal concern and commitment for all affected parties are advanced by some scholars,

so as to enable the voices of all stakeholders to be equally respected in the criminal justice process (Braithwaite, 2002b; M. Umbreit, Vos, Coates, & Lightfoot, 2005). Yet with regard to affected parties, privilege is given in accordance with harm experienced. Victims and offenders are often heeded most for they are affected directly by crimes, in comparison with communities who are usually harmed indirectly as secondary victims or supporters of victims and offenders. The interests of victims are sometimes given precedence over the interests of offenders, provided that the rights of offenders are not violated. As a number of western theorists of restorative justice have claimed, victims' restoration should be ensured prior to offenders' rehabilitation (Bazemore, 1998; Presser & Lowenkamp, 1999; Roach, 2000; Zehr, 2002).

It is worth noting that even if victims' interests are prioritised in the western theorising of restorative justice, considerations for offenders' and communities' interests are not abandoned. As long as harm is primarily in focus, all parties' interests are deliberated. As Zehr (2002, p. 23) puts restorative justice in this way, 'While our first concern must be the harm experienced by victims, the focus on harm implies that we also need to be concerned about harm experienced by offenders and communities.'

3.3.2 Order of priority in the clustered principles of restorative justice

Similarly, the clustered principles of restorative justice are prioritised in western theories. Prioritisation relies on classification which identifies what values or goals must be secured, what values or goals ought to be promoted, and what should not be forced on participants in restorative justice practices. The priority is given first to what must be secured, and then to what ought to be promoted and what should not be forced. Between the values and goals that ought to be promoted but not forced, there is no preferred priority sequence in abstract terms.

The above classification and order of priorities are supported by many western restorative justice scholars. The values and goals that must be secured signal the minimal standards for restorative justice practices to safeguard the nature of informality in restorative justice. The values and goals that ought to be promoted include wide-ranging benefits of restorative justice practices to affected parties. The values and goals that should not be forced on participants denote the ideal outcomes of restorative justice practices which will become meaningless if they are achieved through force (Bazemore, 1998; N. Harris, 2003; Hudson, 2003b; McEvoy, Mika, & Hudson, 2002; Roach, 2000; Zehr, 2002).

The logic of the classification and prioritisation has been elucidated clearly by John Braithwaite's (2002b) model encompassing all the key values and goals of restorative justice and relationships among them. Braithwaite's model proposes three types of standards for restorative justice values and goals. The first is 'constraining standards', such as non-domination, empowerment, respectful listening, equal concerns for all stakeholders, accountability, respect for human rights, and legally specified upper limits on sanctions. The second type is 'maximizing standards', such as restoration of human dignity, restoration of property loss, emotional restoration, provision of social support, restoration of compassion, and prevention of future injustice. The third type is 'emergent standards', including remorse over injustice, apology, censure of the act, forgiveness of the person, and mercy.

According to Braithwaite's (2002b) model, constraining standards are essential principles to be secured in all circumstances to protect human rights. Maximising standards, unlike constraining standards, are set to be greatly encouraged but only under the premise that the value of empowerment is secured. Lastly, emergent standards are deemed as therapeutic components of restorative justice, which, it is

suggested, appear depending on the willingness of the parties. Parties must not be pressured to realise emergent standards. Key examples of emergent standards are remorse, apology, and forgiveness. It is not that these are necessarily less important than constraining values in Braithwaite's theory. It is just that constraining values must always be honoured; we ethically tie our hands to always honour respect for human rights and respectful listening. In contrast we simply support emergent standards as strongly as we can when the parties choose them. It is clear that in Braithwaite's model, constraining standards are given precedence over maximising standards and emergent standards.

The logic of prioritisation discussed above can be applied to the five clustered principles of restorative justice grouped in this chapter, which are accountability, active participation, reintegration, rehabilitation, and restoration. The principles of accountability and active participation would be given the first priority, as they comprise the values and goals that are thought to be secured above all else in the western discourse of restorative justice. These two principles entail protection of the basic rights and needs of affected parties. They are to guarantee in the first place that there is no force but choices, no evasion of responsibility but acknowledgment of wrongdoing, and no deprivation of rights and voice but provision of space and empowerment.

According to the logic of prioritisation in western discourse, the other three clustered principles in this chapter, reintegration, rehabilitation, and restoration can be classified as the values and goals that ought to be promoted in restorative justice practices. These three principles should be actively pursued without compromise of the execution of the principles of accountability and active participation. Relational healing in the principle of restoration is better to be set apart, as it reflects the value and goal that should not be

compelled in restorative justice practices.

It is important to note that prioritisation is highly contested and neither renders restorative justice theories utterly victim-centred nor ranks the importance of the five clustered principles. The participation of offenders and communities remains important in restorative justice even though victims may take the first priority in assuring that harms be restored. Also, restoration is still the ultimate goal in the theories of restorative justice despite not being secured first.

3.4 Conclusion

Restorative justice is very much theorised in a western fashion. This can be seen from the form of its revival, its understanding of concerned parties, its interpretation of key values and goals, and also in its prioritisation of parties, and values and goals. The recent revival of restorative justice was largely framed by western scholars' interests in and endeavours to conceptualise practices of restorative justice in response to problems of existing criminal justice systems in western societies. In the articulation of the western scholars, voices and needs of victims, offenders, and communities are emphasised and deemed to be safeguarded by a state which is shifted away from the centre of the process of handling crime. Principles of accountability, active participation, reintegration, rehabilitation, and restoration are advocated to best meet the needs of the three most affected parties. With fundamental concern for protection for human rights of the affected parties, the fulfilment of the first two principles is set to be guaranteed prior to the pursuit of the latter three principles. In these ways, theories of restorative justice have been constructed following a western logic and philosophy that may be different from the logic and philosophy of other 'restorative' ideas and practices in ancient or aboriginal traditions.

Importantly, the westernised theories of restorative justice, holding the features discussed in this chapter, become the imported package that is widely transferred to other places in the world, including the focus of this thesis: Taiwan. Also, as we will see in Table 4.1, the westernness of the version of RJ described in this chapter is manifest in its neglect of certain values related to cultures and forms of harm in the transfer, which in this research are Confucian role ethics and feminist insights into gendered violence.

Chapter 4

Confucian and feminist interpretations of restorative justice

In preceding chapters, developments in theories of restorative justice have been identified with western academic traditions. This chapter introduces other theoretical insights to develop a comprehensive theoretical foundation for the application of restorative justice to domestic violence in East Asia, societies of Confucian background, and specifically Taiwan. Using Taiwan as the example, this chapter explores possible alternatives in the translation of restorative justice. It argues that westernised theories of restorative justice, presented in Chapter 3, could be reframed by key cultural and gendered codes in Taiwan, which are nurtured by two philosophies: Confucianism and feminism. Thus, there could be three significant versions of restorative justice – the western version, a Confucian version and a feminist version, each of which provides a unique lens for understanding the application of restorative justice to domestic violence in this thesis.

In order to elucidate the elements of the Confucian and feminist versions of restorative justice, as well as their potential for dealing with domestic violence in Taiwan, this chapter comprises two sections. The first shows that Confucianism and feminism take a significant role in shaping the codes of morality, gender relations, and family relationships in Taiwan. The second section demonstrates how Confucianism and feminism relate to western theories of restorative justice and what the Confucian or feminist versions of restorative justice might look like. Through these two sections, this chapter proposes that the Confucian and feminist versions of restorative justice could be of equal value to the western version of restorative justice in the case of Taiwan.

4.1 Significance of Confucianism and feminism in Taiwan

Taiwan is one of a number of East Asian societies with a long history of Confucian traditions². Like other East Asian countries, Taiwan has undergone globalisation and westernisation, and now has strong links to both traditional cultures and western ideas. Confucianism and feminism represent traditional and western philosophies respectively in terms of the transfer of restorative justice.

In recent decades, feminism has been introduced to East Asia. Feminism is bringing substantial social changes around gender issues (Hester, 2004; Lyons, 2000; Shim, 2001). At the same time Confucianism has lost absolute power as the dominant doctrine in East Asia. Yet, Confucianism remains a strong influence particularly in the domain of interpersonal relationships; it does not show signs of entirely vanishing (A. C.-K. Chan & Young, 2012; Hwang, 1988; C. S.-K. Tang, Wong, & Cheung, 2002; Y.-B. Zhang, Lin, Nonaka, & Beom, 2005).

Taiwan society manifests the inspiration of feminism and Confucianism. Both have impacted other East Asian societies similarly. This makes Taiwan a very suitable case for understanding how restorative justice transfers to domestic violence in East Asian societies. The significant influences of Confucianism and feminism in Taiwan are elaborated as follows.

4.1.1 Significance of Confucian influences in Taiwan

Confucianism is dominant in certain domains of contemporary Taiwan society: family relationships, interpersonal relationships, and the legal field. Such dominance of Confucianism can be explained by the historical development of Taiwan and the

² East Asian countries under Confucian cultural influence include Japan, Korea, Singapore, Vietnam, China, Hong Kong, and Taiwan (Tu, 2000).

content of Confucian doctrine. The following discussion will first show why Confucianism has been the dominant doctrine in these domains. Then, Confucian ideas that continue to function in these domains in Taiwan will be reviewed.

4.1.1.1 Dominance of Confucianism in Taiwan

The dominance of Confucianism in family relationships, interpersonal relationships, and the legal field reflects the historical development of Taiwan. Under the governance of the late Ming Dynasty (since 1662 A.D., by Zheng Chenggong), the Qing Dynasty (1684 to 1895 A.D.), and the Chinese Kuomintang Party (since 1949 A.D.), Confucianism was the official and main doctrine disseminated. Early Han Chinese immigrants to Taiwan were also transmitters of Confucianism. Most ancient Taiwanese were immigrants from the south-eastern provinces of China (Fukien and Guangdong). These early Chinese immigrants were poor farmers or businesspeople, who came to Taiwan for business exploration or resettlement. They were not intellectuals equipped with great knowledge and visions of Confucianism. Yet, they were nurtured by the simple Confucian norms and rituals that were concerned with family and interpersonal relationships. They continued exercising these norms and rituals in their daily life as they settled in Taiwan. Thus, Taiwan was influenced more by the Confucian teachings of family and social life, than the greater vision or the whole package of Confucianism (M.-C. Li, 2004; D. Lin, 2002).

In the latest period of Japanese colonisation (1895-1945 A.D.), the most influential colonisation in Taiwan³, some Confucian norms and practices, reflecting family values

³ Taiwan experienced several eras of colonisation by the Netherlands (1624-1662 A.D.), Spain (1626-1642 A.D.) and Japan (1895-1945 A.D.). The Japanese regime had a large impact on contemporary Taiwan's social, economic, and legal development. For instance, western policing practices were introduced in this era.

and ways of handling conflict and crime, were intentionally preserved for the sake of effective governance. For example, the Bao-jai (保甲) system which relied on families and communities was used in crime control. Family and community mediations were retained to deal with civil matters. The rights of succession were kept and executed in a Confucian way (M.-C. Li, 2004; D. Lin, 2002).

There are two main reasons for the dominance of Confucianism over other philosophies and religions in Taiwan – Taoism (道家), Legalism (Fa-Jia 法家), and Buddhism. First, the content of Confucianism provides broad coverage of family ethics, social connections, and moral rules, which are only partially the focus of Taoism, Legalism (Fa-Jia), and Buddhism. Taoism and Buddhism have prominence in religious and spiritual matters, but they offer little guidance for interpreting legal systems in Taiwan. Legalism (Fa-Jia) may be relevant to Taiwan's jurisprudence but scarcely contributes to shaping family and interpersonal relationships (Ames, 2006; G. Chen, 1996; Z.-L. Zhang, 1996).

The second reason for the dominance of Confucianism in Taiwan is that Confucianism is not only associated but integrated with three other philosophies and religions in the history of China or Taiwan⁴. Confucianism infiltrates and outweighs these three philosophies, Taoism, Legalism (Fa-Jia), and Buddhism, in the domains of family relationships, interpersonal relationships, and the legal field. For instance, the Buddhist teachings on family relationships in Ancient China or current Taiwan are substantially borrowed from or associated with Confucianism⁵, particularly in the concept of filial

⁴ For example, it is believed that Confucianism absorbs the cosmology of Taoism into its own theory, which is based on ethics of interpersonal relations. In terms of self-cultivation, an exemplary person (junzi) in Confucianism is also deemed to be congruous to a genuine man (zhenren) in Taoism.

⁵ Buddhism preaches that both men and women can be saved spiritually, which may be regarded as praise of gender equality. But, as Buddhism tried to evolve in ancient China, it mostly adapted

piety (D. Lin, 2006; Peng, 2008; Yan, 2002). Legalism (Fa-Jia) was both being influenced by and influencing the Confucian legal tradition⁶. Yet, Confucian ethics still constitute the body of ancient Chinese legal thought, which has become the base for Taiwan's legal system (Ames, 2010; D. Lin, 2002; Shi, 2008; K.-S. Yang, 2002; Yu, 1998; Z.-L. Zhang, 1996).

4.1.1.2 Current Confucian influences in Taiwan

Confucian influences in family relationships

With regard to family relationships, studies show that due to western modernisation, the younger generation in Taiwan has more individualistic views compared to the older generation. The younger generation values self-expression, self-interest, ability and independence. The older generation pays more limited heed to these values. Also in terms of gender relations, gender equality is much more important to the younger generation. To the younger generation, husbands and wives are deemed more as equal partners in a marriage (C. Y. C. Chu & Yu, 2010; Hwang, 2009; M.-C. Li, 2004; L. Lu, 2007; C.-F. Yang, 1988).

In spite of the invasion of western ideas in Taiwan, some beliefs about family

Confucian teachings on family relationships, such as women's submission to husbands and filial piety.

⁶ There are some different opinions on the connection between Legalism (Fa-jia) and Confucianism and their impacts on Chinese legal systems. (1) Xunzi (荀子), an important Confucian scholar, who clarified the use of li (禮) and fa (法), was also influenced by Legalism. But according to Xunzi, li (禮) refers to moral education, which should be applied prior to fa (法), legal sanction. (2) Chinese legal systems were built on Confucianism, not Legalism. The Confucian concept - li (禮) already includes fa (法), the theme of Legalism. The key legalist scholar, Hanfeizi (韓非子), was inspired by his teacher, Xunzi (荀子), an important Confucian scholar. (3) It is argued that Confucianism is the cover umbrella of Chinese legal systems and that Legalism is the essence of Chinese legal systems. Many rulers in Imperial Chinese dynasties endorsed Confucian role ethics in order to develop control over people's minds and at the same time to disguise their fondness for the Legalist idea of punishment against political rebellion and serious crimes.

relationships deriving from Confucianism stay alive. First, the conception of personhood is much less affected by western ideas. Individuals see themselves as an inseparable part of their families and are obligated to filial piety to their parents. Also, when considering family relationships, individuals to some extent still value family harmony and pursue family interests above individual interests. Similarly, Confucian family hierarchy is not readily compromised. The elderly and one's parents remain on top of the hierarchy (C. Y. C. Chu & Yu, 2010; Y.-W. Wang, Chen, & Hwang, 2006; K.-S. Yang, 2002; Y.-Y. Yang, 2000).

Some Confucian ideas, such as role-related duties, filial piety, harmony, and face protection, are useful in understanding the dynamics of domestic violence or family relationships in current Chinese societies, including Taiwan (K.-L. Chan, 2002, 2009; P.-H. Chen & You, 2001). These Confucian ideas can be transformed into strategies applied to cases of family disputes or domestic violence. For instance, inseparability between individuals and their families is repeatedly suggested to be observed carefully and addressed sensibly in couples/family counselling and family mediation in Taiwan. Encouraging abused wives to be 'a good mother' is considered as an effective method in Taiwan to motivate these women to manage domestic violence or to leave their abusive partners (Irving, 2002; Y.-M. Lai, 2009; C.-L. J. Liu & Regehr, 2008; C. S.-K. Tang, Cheung, Chen, & Sun, 2002).

Hence, individuals in contemporary Taiwan may be transformed in some ways in considering family relationships and gender relations, but there could still be struggles as individuals encounter the clash between old and new ideas. Such clashes in ideas seem to be clearly seen in conflicts between spouses or between parents and their children or children-in-law. The conflicts are a result of the collision of the old Confucian and new western ideas about family hierarchy, boundary between self and

family, and gender equality (L.-L. Huang, 2001, 2006; Kung, 2001; M.-Y. Wang, Lin, & Wang, 2010).

Confucian influences in interpersonal relationships

A number of studies also point out that the Confucian style of relationship-building continues to be prevalent in Taiwan, either between friends, colleagues, business partners, or strangers. Within such a Confucian style of relationship-building, ‘differentiated benevolence’ (等差之愛) is the key element. Through ‘differentiated benevolence’, people are taught to apply different principles to showing kindness to others, and these differences are defined by relational intimacy. As Confucianism advises, the beliefs of harmony and face work are still commonly employed between acquaintances and friends in current Taiwan. Between strangers, deliberation of fairness and benefits takes the place of beliefs in harmony and face. To upgrade a relationship from strangers to friends, Taiwanese often rely on the tactics of face work. These Confucian rules of relationship-building remain workable and popular in Taiwan (Hwang, 1987, 1999a; M.-C. Li, 2004; Y.-W. Wang et al., 2006; K.-S. Yang, 2002; Y.-Y. Yang, 2000).

Based on evidence regarding the Confucian influences on family and interpersonal relationships in Taiwan, individuals’ social boundaries can be portrayed more definitively too. A clear distinction is drawn between family members and non-family members. In addition, a clear distinction is made between friends and strangers (M.-C. Li, 2004; Y.-W. Wang et al., 2006; K.-S. Yang, 2002; Y.-Y. Yang, 2000). The evidence on patterns of interaction suggests that individuals’ social boundaries in Taiwan still accord with Confucian teachings.

The Confucian influences in family and interpersonal relationships have been

questioned on the grounds that similar social networking tactics and relational ripples appear in western societies. Cross-national comparative studies show that Chinese and Taiwanese approved of family partiality much more than Americans when asked to judge wrongdoing. Moreover, the relational ripples in western societies are interpreted as a manifestation of affective bonds, whereas in societies of Confucian background, differentiated benevolence is a manifestation of prioritising familial duties over other good deeds (M.-C. Li, 1993; C.-L. Wang, 2007; Y.-W. Wang et al., 2006; Wei C.-F. & Hwang, 1998). Hence, family and interpersonal relationships in Taiwan are shaped more by family partiality and duties deriving from Confucian teachings, and less from universal values associated with social bonds and kindness.

Confucian influences in the legal field

Lastly, Confucian influences have left their mark in current Taiwan criminal laws⁷ and the mediation system. The current legal system in Taiwan has undergone considerable change from its very traditional Confucian version. Still, there is evidence of Confucian remnants in the legal system. Such evidence is found in Articles 272, 167, 237, and 239 of the Criminal Code of the Republic of China (Taiwan). First, Article 272⁸ in Chapter 22 ‘Offenses of Homicide’ deals with murder of lineal blood ascendants. In comparing this Article with other Articles relating to homicide in other circumstances, murdering parents or grandparents is set aside by the law as punishable by death or life imprisonment, and judges have no discretion to mitigate the penalty.

⁷ Confucianism also influences the civil and family laws in Taiwan. These Confucian remnants in the laws regarding gender relations are often criticised as oppressive of women and have been altered gradually through feminist legal reforms (Kuo, 2007; H.-T. Wang, 2006), which are to be discussed in a later section. Here, the focus is placed on criminal laws in Taiwan.

⁸ Article 272: A person who takes the life of his lineal blood ascendant shall be sentenced to death or life imprisonment. An attempt to commit this specific offense is punishable. A person who prepares to commit this offense shall be sentenced to imprisonment for not more than three years.

This special Article reflects detestation of descendants' disobedience in Confucianism. Article 272 is a modern manifestation of ancient Chinese laws, which used to be dominated by Confucian family ideology. It imposes the fiercest punishment in response to offences against one's lineal blood ascendants⁹.

Another example is from Article 167¹⁰ in Chapter 9 'Offenses of Concealment of Offenders and Destruction of Evidence'. In this Article, the law gives special tolerance for family concealment of crime, compared to the concealment made by non-family members, which is regulated in Articles 164 and 165. The lenience may imply that the partiality and protection for one's family is granted even at the expense of universal fairness. This Article again can be traced to Confucianism and its embodiment, the Chinese ancient laws¹¹.

Confucian influences can also be found in Articles 237 and 239¹² in Chapter 17 'Offenses against Marriage and Family'. These two Articles criminalise the acts of

⁹ The ancient Chinese laws will be further elaborated at footnote 16.

¹⁰ Article 167: A spouse, relative by blood within the fifth degree of relationships, or relative by marriage within the third degree of relationships who commits an offense specified in Article 164 or 165 for the benefit of an offender or a person legally arrested or taken into custody who escapes from custody shall have his punishment reduced or remitted. (Article 164: A person who conceals or causes the concealment of an offender or a person who escapes from legal arrest or custody shall be sentenced to imprisonment for not more than two years, short-term imprisonment, or a fine of not more than five hundred yuan. A person who with the intention to commit an offense specified in the preceding sentence impersonates an offender shall be subject to the same punishment. Article 165: A person who forges, alters, destroys, or conceals evidence in the criminal case of another or makes use of such forged or altered evidence shall be sentenced to imprisonment for not more than two years, short-term imprisonment, or a fine of not more than five hundred yuan.)

¹¹ See footnote 23 for an example.

¹² Article 237: A person who has a spouse and marries again or who marries two or more persons at the same time shall be sentenced to imprisonment for not more than five years; the other party to such a marriage shall be subject to the same punishment. Article 239: A married person who commits adultery with another shall be sentenced to imprisonment for not more than one year; the other party to the adultery shall be subject to the same punishment.

marital betrayal and marital destruction, denoting the lawful protection for holiness of marriage. Often, these two Articles are regarded as a legacy of Confucian patriarchy. In the last ten years, many women's groups have called for the abolition of these Articles, which are deemed an impediment to gender equality and female sexual autonomy. These women's groups argue that the laws judge women rather than men; as a result, only unfaithful wives are blamed and disloyal husbands are spared (Foundation for Women's Rights Promotion and Development, 2011; Jian, 2010). The debates on the abolition of these Articles are heated, but the abolition has not eventuated. To some extent, the existence of these Articles seems to signify that values about family and marriage constructed in Confucianism are still upheld.

Besides the Articles in the Criminal Code, Taiwan's mediation system is a living legal mechanism and commonly believed to be another legacy of Confucian influences in legal practice. The mediation system is passed down from ancient China and framed by Confucian values of harmony and family involvement. Even today, the mediation system is frequently endorsed in Taiwan in order to lower the heavy caseload of the court. This endorsement is also supported by the preference of a large number of Taiwanese who favour harmony over antagonism, mediation over courts (D. Lin, 1998; C.-K. Wang, 2004).

In sum, Confucian influences are weakened to some extent by globalisation and westernisation. At the same time, Confucianism continues to play a dominant role in shaping family relationships, interpersonal relationships, and legal practices in Taiwan.

4.1.2 Significance of feminist influences in Taiwan

4.1.2.1 Feminist influences in legal reforms

The most noticeable feminist achievement in Taiwan's law is in regulations to secure

women's rights and interests. The feminist achievement includes equal pay between women and men in labour law, property management and child custody in civil law, and protection against sexual harassment, assault, and domestic violence in criminal or other specific laws¹³ (Kuo, 2007; Y.-C. Lee, 1999; Pan, 2003). These legal reforms reflect the collective contribution of NGOs, lawyers, scholars, and government officials of different interests and perspectives, not exclusively feminist individual advocates and groups. Nevertheless, it is feminist ideology that has set the direction for policies and practices on gender issues in Taiwan (S.-C. Lin, Chen, Sun, & Chou, 2007).

4.1.2.2 Feminist influences in the issue of domestic violence

The policies and practices for handling domestic violence in Taiwan are strongly influenced by feminism. Patriarchy and power domination are argued by feminism to be the cause of domestic violence. This feminist insight is widely recognised by practicing professionals and the relevant authorities in Taiwan. Such feminist methods as power-control explanations for violence, the victim-centred approach, and the Duluth model to prevent domestic abuse (Pence, 1983) are commonly applied¹⁴. In governmental campaigns, abused women are regarded as innocent victims; they are not

¹³ For example, the Act of Gender Equality in Employment (性別工作平等法) has taken effect in 2002. Sexual Assault Crime Prevention Act (性侵害犯罪防治法) was enacted in 1997; Domestic Violence Prevention Act (家庭暴力防治法) was made in 1998; Sexual Harassment Prevention Act (性騷擾防治法) was announced in 2005. Also, several changes in civil laws were made in 1985, 1996, 1998, 2002 and 2007, respectively regarding the distribution of the property between divorced couples, the exercise of parental rights in a marriage or after divorce, the customs of changing women's surnames and living places after marriage, the management of property and the affirmation of the value of house work in a marriage, and the children's surname inheritance. However, Taiwanese women's voting rights, granted in the Constitution of the Republic of China in 1949 when the Kuomintang fled to Taiwan, are rarely acknowledged in academic discussion on western feminist influence on Taiwan.

¹⁴ Discussions on these feminist methods can be seen on pages 98 to 100.

held to account for domestic violence. The needs of victims of domestic violence for physical, economic, and psychological security are also put forward as the primary objectives for legal, social, and psychological practitioners to satisfy first (Jou-Juo Chu & Wu, 2005; Domestic Violence and Sexual Assault Prevention Committee, Ministry of Interior, 2007). Hence, feminism acts as a directional force in understanding and addressing domestic violence in Taiwan, both at the policy and practical levels.

Feminism is dominant in analyses of domestic violence in Taiwan, but feminism is still competing or working with other perspectives in existence in Taiwan. For instance, in relevant courses and training in universities and workplaces, feminist principles and concerns are strongly emphasised. Other psychological and sociological explanations and therapies (such as family systems theories) are also advocated and may be applied in parallel as remedies for domestic violence. Furthermore, feminist perspectives are not always given precedence in practice. Empirical studies show that a certain proportion of legal professionals, like judges and prosecutors, retain their patriarchal postures toward domestic violence. A significant number of social workers and counsellors continue using the explanation of relationship problems to deal with domestic violence despite the fact that they endorse feminist explanations as well (Jou-Juo Chu & Wu, 2005; S.-C. Lin et al., 2007; Pan, 2003; M.-Y. Wang et al., 2010).

Hence, in general, feminist ideas make a significant contribution to the changes in gender issues in Taiwan. In regard to domestic violence, feminist ideas are substantially employed, at least in the relevant university courses, training models, and government information and media releases. At the same time, these feminist approaches continue to compete with and complement other theories and perspectives. Thus, in general, feminist influences are dominant, but at the individual level, the degree of feminist influence could vary from person to person and from profession to

profession.

4.2 Confucianism and feminism in relation to restorative justice

As discussed above, Confucianism and feminism, to certain degrees, shape legal systems, family and interpersonal relationships, and gender relations in current Taiwan. Presumably, the influences of Confucianism and feminism could further alter the translation of restorative justice in the Taiwan Restorative Justice Initiative. The following discussion will elaborate how Confucianism and feminism relate to westernised theories of restorative justice so as to offer a solid theoretical foundation for the studied case.

In Chapter 3, westernised theories of restorative justice were summarised in terms of five core principles – accountability, active participation, reintegration, rehabilitation, and restoration. In relation to these five principles, a number of Confucian and feminist ideas can be identified. These ideas are possibly able to re-mould the principles of restorative justice and produce Confucian and feminist versions of it.

Table 4.1 displays a comparison between the western translation of restorative justice and the Confucian and feminist interpretations of restorative justice. This comparison is an extension of Table 3.1 in Chapter 3, which presents only the western version of restorative justice. The comparison provides a parallel analysis of how the principles of restorative justice could be framed from three different angles. Westernised theories of restorative justice have primary concerns about the way of dealing with crimes and conflicts. Confucianism focuses on the cultivation and governance of an ideal society. Feminism is dedicated to gender issues. The comparison between these three interpretations of restorative justice is meant to reveal the fundamental divergences between these three interpretations and to elaborate the diverse contributions of these

three interpretations.

More importantly, this comparison, shown in Table 4.1, draws upon certain influential elements in Confucianism and feminism that are able to affect translation of restorative justice. This means in compiling this comparison that attention is given to the relevant and prominent ideas in Confucianism and feminism that reflect the five principles. Both Confucianism and feminism include a number of clearly-defined strands. Confucianism is more than just the teaching of Confucius and can be distinguished as Classical Confucianism (Pre-Qing Confucianism, Tang-Song Confucianism), Neo-Confucianism, and twentieth century New Confucianism. Feminism similarly may be classified into strands as liberal feminism, cultural feminism, radical feminism, critical race feminism, and post-modern feminism (Daly & Stubbs, 2006b; Tu, 2000), but the difference in the strands does not interfere with the present purpose. The strands and their differences in each of the two big theories – Confucianism and feminism are of less importance for the purposes of the current analysis than the contemporary significance of each of the theories in relation to restorative justice.

The Confucian version of restorative justice is framed by several Confucian values that offer explanations and resolutions for crimes, conflicts, and immoralities. The feminist version of restorative justice is shaped by some feminist ideas that explain why gendered violence occurs and how it should be managed.

Table 4.1 The western, Confucian, and feminist interpretations of restorative justice

RJ principles	Western interpretation	Confucian interpretation	Feminist interpretation
Accountability	*offenders to acknowledge wrongdoing *offenders to take responsibility	*face protection *family hierarchy *relational appropriateness (義 yi) *inner repentance	*to validate the wrongness of violence and domination *offenders to take responsibility *structural accountability of patriarchy
Active participation	*voluntary participation *sharing/listening/discussion/decision-making *solution-seeking/whole truth/empowerment/reintegrative shaming	*limited empowerment of the parties *families to replace the parties in discussion, sharing, and decision making *family's moral lecturing	*women's empowerment and self-consciousness *no excuses from men *danger of power and control *a story of power and domination
Reintegration	*offenders to be re-integrated to their own families or communities	*family reintegration and tolerance of the party's misconduct *family's full support the party and enmity toward the other party	*reintegration for both parties or victims only *transform patriarchal families and communities
Rehabilitation	*to help offenders change *to avoid future crimes *punishment as last resort	*moral education and self-cultivation *punishment as last resort and for 'bad guys'	*offender rehabilitation for victim safety *caution about state's intervention and punishment
Restoration	*material, emotional, and relational restoration *apology and forgiveness where the parties choose it	*material compensation *harmony restoration *encouraging both genuine and superficial reconciliation	*material and emotional restoration for women *dangers of promoting apology and forgiveness *caution about relational restoration

4.2.1 Confucian interpretation of restorative justice

Confucianism mainly proposes knowledge and methods of cultivating and governing an ideal society. Accordingly, Confucianism relates to restorative justice through suggesting not only the ways of handling the aftermath of crimes and conflicts, but also the ways of nurturing morality. The five principles of western restorative justice could be differently construed in Confucianism through the Confucian explanations and resolution of immoralities, conflicts, or crimes. These relevant Confucian ideas and the Confucian version of the five principles of restorative justice are expounded as follows.

4.2.1.1 Confucian view of immoralities, conflicts, or crimes

In Confucianism, failing the task of self-cultivation is regarded as the root of immoralities, conflicts, or crimes. The notion, ‘self-cultivation’, is used as the rationale for and answer to all these different levels of wrongdoing. Thus, the notion of ‘self-cultivation’ leads to constructs that might be expected to underpin a Confucian version of the five principles of restorative justice.

The nature of self-cultivation: virtuosity and lifelong learning

The notion of ‘self-cultivation’ is comprehensive in Confucianism. It connotes learning virtues all through one’s lifetime (Tu, 1999). Roger Ames (2011) explains that virtues take on the meaning of ‘virtuosity’ in Confucianism, which turns Confucian virtues into fluid and expedient means and ends, with great attention paid to particularity. In other words, ‘virtuosity’ implies that the Confucian virtues are full of flexibility and creativity. Confucian virtues are not established as abstract, universal, and fixed principles, like ‘virtues in themselves’. The pursuit of ‘virtuosity’ means that individuals should devote themselves to optimizing their morality and etiquette in each

specific social context where their manners and deeds shall be role-based, relationally defined, and situation bounded (Ames & Hall, 2001; K. Lai, 2006). Correspondingly, ‘failing the task of self-cultivation’ is thought to be the reason that individuals become involved in crimes, conflicts or immoralities. Such failure indicates that people have not been well nurtured to properly apply Confucian virtues to particular relational and contextual situations.

The other important attribute of ‘self-cultivation’ is learning, which can be elaborated as ‘learning as personal growth’ (xue 學) (Tu, 1999). Xue (學) indicates a lifelong journey of getting knowledge and behaving oneself and also a way of becoming human and distancing oneself from the status of beasts. Confucianism presumes that individuals are ‘human becomings’ not born as ‘human beings’. Based on such understanding, a morally mature person termed as ‘an exemplary person’ (junzi 君子) is praised, whereas those who withdraw from role-based moral cultivation are viewed as petty persons (xiaoren 小人) or even worse as beasts. Therefore, on the one hand, xue (學) highlights the importance of moral education. On the other, xue (學) implies possible social exclusion and harshness of punishment on individuals, for individuals could be beasts not human beings, especially when there is violation of essential virtues against elderly members of one’s own family (Bakken, 2000; Hwang, 2009; Yu, 1998).

The content of self-cultivation

According to Confucianism, included in the task of ‘self-cultivation’ for a person are a wide range of virtues. But when the focus is narrowed to virtues that are implicated by their absence in relation to immoralities, conflicts, crimes, and domestic violence (the focus of this thesis), the major themes in the task of ‘self-cultivation’ might also be narrowed. The themes considered most important are – family hierarchy, role-bearing

persons, and five essential interwoven virtues, which are elaborated below.

(1) Family hierarchy

In Confucianism, a hierarchical family structure is considered as an ideal skeleton used to give different roles to members in the family and to nurture the virtues corresponding to these family roles. Understanding and complying with the Confucian family hierarchy is considered as an important element in cultivating oneself (Ames, 2011; Ames & Rosement, 1999; Yu, 1998).

The Confucian family hierarchy is mainly featured with men and the elderly as highly esteemed and with a distinction clearly drawn between the superior and the inferior. The principle of reciprocity also applies in Confucian family hierarchy. This principle denotes that the ideal of family hierarchy is two players in a relationship properly fulfilling their role-related virtues toward each other. ‘Optimal appropriateness’ (人義), in the Book of Rites (Liji 禮記) is an evident demonstration of the hierarchical and reciprocal natures of the Confucian family hierarchy (Ames, 2011). The principle of reciprocity functions to balance the hierarchical nature of Confucianism to some extent (Brennan & Fan, 2007). The excerpt explaining ‘optimal appropriateness’ (人義) is as follows:

What is ‘optimal appropriateness’, the things which men consider right? Kindness on the part of the father, and filial duty on that of the son; gentleness on the part of the elder brother, and obedience on that of the younger; righteousness on the part of the husband, and submission on that of the wife; kindness on the part of elders, and deference on that of juniors; with benevolence on the part of the ruler, and loyalty on that of the minister – these ten are the things which men consider to be right¹⁵.

¹⁵ 禮記，禮運篇 18 何謂人義？父慈、子孝、兄良、弟弟、夫義、婦聽、長惠、幼順、君仁、臣忠十者，謂之人義。The English version of this excerpt is translated by James Legge (2003).

Nevertheless, the hierarchical aspect generally appears to be dominant in family relationships over the principle of reciprocity. If the superior one in a reciprocal familial relationship (like a father) does not perform his/her duty, the inferior one (like a son) remains obligated to carry out his/her role-related virtues. Gentle remonstrance to the superior is allowed, but vehement opposition or rebellion is prohibited (Hwang, 1999b; Yu, 1998). Hence, the principle of reciprocity is utilised to nurture and maintain the relationships of hierarchy, and hierarchy is expected to sustain rules in a bid to preserve peace and avoid any immoralities, conflicts, and crimes in the family.

The Confucian family hierarchy is also applied to gender relations to discipline individuals. Confucianism is being defended as no sexist ideology. It is argued that Confucius himself did not judge women as inferior and that the principle of reciprocity in Confucianism had positive impacts on keeping misery of women at the time from getting worse. Purportedly, the principle of reciprocity, to some extent, can prevent and alleviate the damages and restraints of the Confucian family hierarchy on women (Hall & Ames, 2000; X. Jiang, 2009; P. Lee, 2000; Patt-Shamir, 2009; Rosenlee, 2006, 2010). However practically in accordance of Confucianism, men are usually granted more power over women. Confucianism shows more interest in satisfaction of role-related duties and hierarchical etiquette than protection of rights and choices. As a result, the hierarchical nature of Confucianism rather than its reciprocal nature often prevails in gender relations in the family (Dalmiya, 2009; Ebrey, 2003; Herr, 2003; X. Jiang, 2009; Kupperman, 2000; Woo, 1999).

The most crucial determinant of downgrading women's position, is the norm called 'the three cardinal guides and the five constant virtues' (San Gang Wu Chang 三綱五常¹⁶), which was not proposed by Confucius, but by a Confucian politician Dong

¹⁶ According to Dong Zhongshu, 'the three cardinal guides' are three exemplary relationships as ruler

Zhongshu (董仲舒, 179-104 B.C.), an influential prime minister in the Han Dynasty. In his proposal, ‘the three cardinal guides’ denotes three Confucian exemplary relationships, as ruler guides subject; father guides son; husband guides wife. This exemplary relationship between husband and wife was later connected to the theory of ‘yin and yang’ (陰陽), which exacerbated women’s inferior and submissive position to men. Thus, the norm of ‘the three cardinal guides and the five constant virtues’ is often considered as the culprit that stuffs Confucianism with sexist doctrines (Ebrey, 2003; X. Jiang, 2009; C. Li, 1994; Rosenlee, 2006).

In Confucianism, age is another hierarchical parameter separate from maleness. As a woman grows old, she is supposed to gain more respect and power in the family. This explains in some circumstances how older women are granted authority over their children and those who are younger to them (Hall & Ames, 2000; X. Jiang, 2009; Peng, 2008).

In sum, the Confucian family hierarchy provides a skeleton for assigning different roles in the family. These roles require their holders to perform their role-related virtues and duties without ethical violation. Maleness and age are two factors that determine one’s status in the family hierarchy. Gender relations are also regulated under this family hierarchy.

(2) Role-bearing persons

‘Role-bearing persons’ is an essential concept in Confucianism. This concept is rooted in the role-based doctrine of Confucianism. ‘Role-bearing persons’ reflects the requirements in the Confucian family hierarchy and the role-related virtues, which are

guides subject; father guides son; husband guides wife, and ‘the five constant virtues’ are ren (仁), yi (義), li (禮), zhi (智), and xin (信).

concisely captured in the above excerpt of ‘optimal appropriateness’ (人義).

The concept of ‘role-bearing persons’ reveals the Confucian perspective on an individual’s self-identification. This Confucian concept defines individuals as interdependent persons rather than independent persons. Individuals are not viewed as independent persons or judged apart from their familial roles, but primarily identified by and tightly bound to their roles in the family. Thus, the Confucian family hierarchy and the role-related virtues become the way of identifying and guiding oneself. The ‘self’ of individuals is regarded as inseparable from their families and from their roles in the family, particularly the three essential family relations: father and son, husband and wife, elder and younger siblings (Ames, 2011; Brennan & Fan, 2007; Hwang, 2009; Patt-Shamir, 2009).

(3) Five essential virtues

Five Confucian virtues were selected here as they are relevant to crimes, conflicts, immoralities, or domestic violence. These are ren (仁), yi (義), li (禮), xiao (孝), and he (和). Ren (仁), yi (義), and li (禮) are three of ‘the five constant virtues’ (五常) that feature in the Classic Confucian teachings. They are also considered as the core virtues in the Confucian value framework developed by Kuang-Kuo Hwang (1988, 2009), who uses textual analysis to clarify the Confucian classics through a socio-psychological lens. The fourth virtue, xiao (孝), is the root of essential relationships. The fifth virtue, he (和) is the most relevant virtue to resolution of conflicts or crimes (Ames, 2010; L.-L. Huang, 2006; K.-S. Yang, 2002). These five virtues are enacted in contexts that reflect individuals as role-bearing persons and reveal the hierarchical and reciprocal features in family and interpersonal relationships.

According to Hwang (1988, 2009), ren (仁), yi (義) and li (禮) are the means and ends

of the ‘way of humanity’ (ren-dao 仁道), the optimal pathway for a person to become an exemplary person (junzi 君子). These three virtues also provide ways of maintaining harmonious relationships or resolving conflicts and crimes when things have gone wrong. They therefore keep individuals from circumstances of immorality, conflict or crime.

In Hwang’s interpretation, ren (仁) can be summarised as differentiated benevolence (親親原則/等差之愛) that everyone should show benevolence toward one’s family first, then relatives, friends, and lastly strangers. Ren (仁) is contrary to universal love (jianai 兼愛), which is undifferentiated kindness toward recipients in various relationships.

Yi (義) is defined with more hierarchical meanings. Yi (義) upholds the principle that respect should be paid to someone who is elder or holding a higher position in a relationship (尊尊原則). The example of ‘optimal appropriateness’ (人義) mentioned earlier has showed different kinds of esteem should be paid in five cardinal relationships (wulun 五倫)¹⁷. Yi (義) does not convey universal righteousness. Instead, yi (義) means proper contextual judgments made on whether one’s roles and duties in relation to the other are adequately and sensibly performed.

Li (禮) is closely connected to ren (仁) and yi (義). Li (禮) signifies norms and rites that are used to instruct individuals to act properly in line with ren (仁) and yi (義). In this sense, li (禮) is more than superficial demeanour or fixed rules for behaviour. Li (禮) is the way that individuals learn to carry out virtues and act with proper manners. Thus, li (禮) denotes that Confucianism believes individuals could be changed through

¹⁷ ‘Five cardinal relationships’ (wulun 五倫) include relationships between father and son, husband and wife, elder and younger siblings, ruler and subject, and friends. The first four cardinal relationships are basically built on a clear distinction of the superior and the inferior.

a process of moral cultivation. Fa (法), punishment is only employed when moral education fails or when family virtues are severely damaged¹⁸ (Yu, 1998).

Hence, based on the three virtues of ren (仁), yi (義) and li (禮), it becomes clear that there is no basis for assigning value to notions of universal fairness and kindness in Confucianism. Instead, the ideal is ‘appropriateness’. Particularly in deliberating immoralities, conflicts or crimes, an appropriate judgment is an assessment of ‘virtuosity’ to see whether individuals properly play with the virtues of ren (仁), yi (義) and li (禮) in response to specific relational contexts (Chiu, 1991; Ho, 1995; Hwang, 1987, 1999a; D. Lin, 2002; Mao, 1997; Yu, 1998).

The fourth virtue is xiao (孝), familial reverence, which basically refers to the relationship between father and son. Xiao (孝) is explained by Roger Ames (2011) as ‘deference and respect children owe to their elders’ (p.185). Xiao (孝) carries both hierarchical and reciprocal qualities; it entails filial piety and obedience as well as remonstrance (jian 諫). A child is allowed to offer advice but in a deferential manner. It is forbidden for a child to censure his/her parents or the elder family members (Hwang, 1999b).

Xiao (孝) has focal standing in Confucianism for two main reasons. First, xiao (孝) breeds two other virtues—ti (悌), fraternal deference, and you (友), mentorship, respectively for relationships between siblings and friends (Ames, 2011). This makes

¹⁸ The Tang Code (唐律) was the paradigm of laws, being imitated by many subsequent Chinese imperial dynasties. According to the ten most depraved crimes in the Tang Code, four out of the ten were related to family ethics. The fourth and the eighth were murder of the lineal or elder relatives and siblings; the seventh was failing to perform filial piety; the tenth was adultery with the spouse of elder family members. The rest of the ten depraved crimes were rather conventional, such as murder or disobedience of or rebellion against the ruler. (唐律十惡：一曰謀反；二曰謀大逆；三曰謀叛；四曰惡逆；五曰不道；六曰大不敬；七曰不孝；八曰不睦；九曰不義；十曰內亂。)

xiao (孝) the foundation of three out of five cardinal relationships (wulun 五倫) – father-son, elder and younger siblings, and friends. Xiao (孝) is vital in Confucianism also because Confucian cosmology is rooted in the relationship between father and son, instead of an external creator, God. A child is taken as continuance of his/her parents, and the parent-children relationship is a symbol of the origin and circle of life (Ames, 2011; Bakken, 2000; Hwang, 1999b; Tu, 1999). Hence, in Confucianism, xiao (孝) appears to be the paramount concern when individuals weigh up their multiple roles or mull over competing moral demands (Hwang, 1999b; M.-C. Li, 1993; Pang-White, 2009). Moreover, xiao (孝) could transcend its worldly meaning and be added with cosmological significance.

The fifth virtue is he (和), harmony. He (和) represents the ideal outcome of personhood, relationships, or societies in Confucianism (Ames, 2011; L.-L. Huang, 2006). The preciousness of harmony (he 和) is commonly perceived in a comparison between exemplary persons (junzi 君子) and petty persons (xiaoren 小人) in Confucian teachings. Exemplary persons are portrayed as those who dedicate themselves to manage harmonious relationships, and petty persons are those who bring about arguments with others (Z.-Z. Chen, 1989). Two excerpts below illustrate the emphasis on he (和), harmony, in the comparison between exemplary persons and petty persons.

The Analects, Zilu 23: The Master said: ‘Exemplary people seek harmony, not sameness; petty persons, then, are the opposite.’¹⁹

The Analects, WeiLingGong 21: The Master said, ‘What the superior man seeks is in himself. What the mean man seeks is in others.’²⁰

¹⁹ 倫語，子路 23：君子合而不同，小人同而不合。The English version of this excerpt is translated by Ames & Rosement (1999).

²⁰ 倫語，衛靈公 21：子曰：「君子求諸己，小人求諸人。」The English version of this excerpt is translated by James Legge (2009).

The endorsement of he (和) also makes the fact clearer that Confucianism aims to establish an orderly family and then possibly an orderly society. Confucianism condemns immoralities and arguments and also despises crimes and litigation (R.-L. Chu, 1990; L.-L. Huang, 2006). Analects YanYuan 13 documents that Confucius himself preferred no lawsuit at all.

The Master said, ‘In hearing litigations, I am like any other body. What is necessary, however, is to cause the people to have no litigations.’²¹

To sum up, self-cultivation in Confucianism is an art and a life-long task for individuals. Confucianism regards he (和), harmony, as the ideal achievement of self-cultivation. Through the ideas of ‘family hierarchy’ and ‘role-bearing persons’ and four other essential virtues – ren (仁), yi (義), li (禮), xiao (孝), harmony in the family is first aimed, secured, and restored; then harmony in the public domain is possibly achieved.

4.2.1.2 Confucian version of the principles of accountability and rehabilitation

From the Confucian perspective, the principles of accountability and rehabilitation are very much connected. These two principles are constructed upon self-cultivation, particularly reflecting the ideas of role-bearing persons, family hierarchy, learning (xue 學), and the virtues – relational appropriateness (yi 義) and proper conduct (li 禮).

Principle of accountability

In the Confucian version, the principle of accountability would contain essentials like face protection, family hierarchy, relational appropriateness (義), and inner repentance, as Table 4.2 shows.

²¹ 倫語，顏淵 13：子曰：「聽訟，吾猶人也，必也使無訟乎！」 The English version of this excerpt is translated by James Legge (2009).

Table 4.2 The Confucian version of the principle of accountability

RJ principle	Confucian interpretation
Accountability	*face protection *family hierarchy *relational appropriateness (義 yi) *inner repentance
Note: This table is an extract from Table 4.1.	

In the Confucian version of this principle, yi (義), relational appropriateness, is used to determine what is immoral and inappropriate and who is responsible for the wrongness. Through yi (義), investigation of wrongness and responsibility in the Confucian version of the principle of accountability could be a mixed judgment of moral culpability and criminal culpability. In accord with the Confucian ideas of ‘role-bearing persons’ and family hierarchy, yi (義) assesses wrongness by examining whether individuals violate Confucian virtues or fail to perform their role-related duties. Thus, there is no straightforward answer to the inquiry ‘who is responsible for the wrongdoing’. The answer is contingent on the relationship between the two relevant parties, not just the facts about the deeds.

The following excerpt from Xuzi (朱熹), an influential Confucian scholar (1130-1200 A.D.), illustrates how judgment is made in a crime scenario from the Confucian perspective. This excerpt reveals that relational appropriateness and moral ethics could be the primary concern rather than the deeds and criminal liability.

In making a judgment in criminal cases, the first priority is to make an assessment in the relationship between two parties, such as superior-inferior, superordinate-subordinate, elder-younger, and closer-farther. Afterwards,

listen to the fact of wickedness or uprightness²².

Besides, in the Confucian interpretation of the principle of accountability, repentance for wrongdoing is regarded as important, basically due to the great interests in morality in Confucianism. From the Confucian perspective, a more delicate rather than a direct approach of acknowledgment of wrongdoing would be suggested – inner repentance. Inner repentance is favoured because it ensures that the responsible party feels sorry for his/her failing and also that face protection would be aptly employed to avoid violation of li (禮) and he (和) – proper conduct and harmony.

Thus, in the Confucian interpretation of the principle of accountability, clarifying wrongness and responsibility is through the virtue – yi (義), which could result in a mingled judgment of moral and criminal liability. Also, the way of conveying acknowledgment of wrongdoing is not straightforward but often delicate in order to secure genuineness of recognition of wrongdoing and harmony of relationships.

Principle of rehabilitation

The Confucian version of the principle of rehabilitation reflects the ideas of ‘role-bearing persons’, learning (xue 學), and proper conduct (li 禮), which set this principle on high appreciation of moral education/self-cultivation and a strong belief in punishment as last resort and for bad guys, as Table 4-3 displays.

²² 凡有獄訟，先必論其尊卑上下長幼親疏之分，而后，聽其曲直之詞。The English version of this excerpt is translated by the author.

Table 4.3 The Confucian version of the principle of rehabilitation

RJ principle	Confucian interpretation
Rehabilitation	*moral education and self-cultivation *punishment as last resort and for ‘bad guys’
Note: This table is an extract from Table 4.1.	

In considering rehabilitation, Confucianism gives precedence to moral education over punishment. The basic materials of moral education would be role-related virtues. Particularly, the role-related virtues would perfectly fit in when immoralities, conflicts, or crimes occur in the family. Also, punishment is thought to be served only to those who are regarded as incurable through moral education and to those who commit flagrant violation against one’s own elder family members. These two types of people are both classified as the ‘bad guys’ and deemed to deserve cruel punishment. Thus, the principle of rehabilitation in the Confucian interpretation would be in favour of moral cultivation to discipline and to transform delinquents and support the use of harsh punishment only to depraved people and rebellious and unfilial family members (X.-M. Jiang & He, 2006; S. C.-K. Lee, 2007; J. Liu & Palermo, 2009; H. Lu, Zhang, & Miethe, 2002).

4.2.1.3 Confucian version of the principles of active participation and reintegration

Both of the principles of active participation and reintegration under the Confucian interpretation exhibit the importance of familial love in Confucianism. The parties’ families in place of the parties in the incident are considered as the key player in exercising these two principles. These two principles in the Confucian version mainly derive from the Confucian concepts of role-bearing persons, family hierarchy, and differentiated benevolence (ren 仁).

First, in the sense of existence, individuals are inseparable from their familial roles and family relationships. The individuality of a person²³ is somehow depreciated and replaced by the collectivity of a family (Ames, 2011; Brennan & Fan, 2007; L. Lu, 2007).

Also, family is the foremost means for preventing and dealing with individual moral issues and interpersonal problems. Family is regarded as the primary place for everyone to learn and perform virtues and to become human. Also, family members or those who are superior in the Confucian family hierarchy are granted the power and duty to discipline the subordinate and to decide or act on behalf of the subordinate (Di, 2008; H. Lu et al., 2002; Z.-F. Lu, 2008; Pang-White, 2009; Yu, 1998).

Lastly, Confucian ‘status ethics’ justifies that family interests can be the only concern for ordinary people. Confucian ‘status ethics’ requires officials (shi 士) to have higher moral standards. Officials (shi 士) are asked to perform ren (仁), yi (義), and li (禮) not just to their families and friends but also to broader communities and the state. To ordinary people, families can be the sole place to perform benevolence. They are not demanded to carry out virtues like ren (仁), yi (義), and li (禮) toward strangers (Hwang, 1988, 1998).

Hence, based on the Confucian ideas of role-bearing persons, family hierarchy, and familial benevolence, the Confucian version of the principles of active participation and reintegration would contain a strong sense of family solidarity. Consequently, individuals’ roles in the exercise of these two principles are downplayed. The Confucian version of the principles of active participation and reintegration unfold as follows.

²³ This doesn’t deny the autonomy of individuals in Confucianism but the autonomy is shaped with the Confucian relational concerns.

Principle of active participation

The Confucian interpretation of the principle of active participation has a pro-family focus that is clearly summed up in Table 4.4. Instead of the parties themselves, family members of the parties are granted the task of active participation in dealing with immoralities, conflicts or crimes. The boundaries between individual parties and their families are vague. Elder family members, usually males, are entitled to take a dominant role in delivering a statement or a decision, taking the place of their involved family member.

Table 4.4 The Confucian version of the principle of active participation

RJ principle	Confucian interpretation
Active participation	*limited empowerment of the parties *families to replace the parties in discussion, sharing, and decision-making *family's moral lecturing
Note: This table is an extract from Table 4.1.	

Family members are also expected to show moral leadership and give a lecture to their own misbehaving members (H. Lu et al., 2002). Consequently, when families of the parties take over the task of active participation, there is little attention paid to empowerment of the parties. The voice and space of the involved parties are constrained²⁴ (Cui, 2007; Di, 2009; Z.-F. Lu, 2008).

Principle of reintegration

Based on 'role-bearing persons' and differentiated benevolence (ren 仁), the Confucian version of the principle of reintegration could produce quite opposite outcomes, as

²⁴ The parties could have their own say but should obey the family elder.

Table 4.5 reveals.

Table 4.5 The Confucian version of the principle of reintegration

RJ principle	Confucian interpretation
Reintegration	*family reintegration and tolerance of the party's misconduct *family's fully support for the party and enmity toward the other party
Note: This table is an extract from Table 4.1.	

On one hand, Confucianism approves the family's full support to the member involved in immoralities, conflicts or crimes. On the other hand, Confucian familial love legitimises the family's tolerance and concealment of misconduct for the errant family member. Also some hostile deeds are endorsed, such as taking revenge upon or holding enmity toward the other party.

The famous example of 'a son covering for his father' (父子相隱)²⁵ in Confucius' teaching reveals the Confucian rationale of concealment of misconduct. In this example, praise is given to a son who covers his father's crimes and to a father who covers his son's crimes. To Confucius, this is not a question of how to seek justice but a question of how a person satisfies his/her role virtues such as familial benevolence (ren 仁) and relational appropriateness (yi 義), in a bid to maintain familial harmony²⁶ (Chiu, 1991; Yu, 1998). The covering-up of father and son is also believed to provide space for private remonstrance in the family, which could truly address misconduct

²⁵ Analects 13:18 The Governor of She in conversation with Confucius said. "In our village there is this 'True Goody.' When his father took a sheep on the sly, he reported his father to the authorities." Confucius replied, "Those who are 'true' (zhi 直) in my village conduct themselves differently. A father will cover for his son, and a son will cover for his father. And being 'true' lies in doing so." (The English version of this excerpt is translated by Roger Ames (2011, p. 163).)

²⁶ When the crime is against the ruler, like treason, Confucius considered the son should bring his father to justice (Yu, 1998).

(Ames, 2011; Pang-White, 2009). However, cover-ups may put individuals into thorny moral dilemmas and give rise to partiality, false testimony, and tolerance of wrongdoing which is committed by one's family members (Q. Liu, 2003; Wei C.-F. & Hwang, 1998; C.-F. Yang, 1996).

Confucian texts approve of a family's hostility or retaliation toward those who are responsible for the injury of their family member. The following excerpts in Confucian classics reveal that private reconciliation with the perpetrator is condemned and deemed as cruel toward one's harmed family member. The laws in ancient China showed support for no reconciliation with the perpetrators of harm to one's family member. According to the Tang Code²⁷ (in Tang Dynasty, 618-907 A.D.), an influential legal code in Imperial China, legal punishment is entailed for such private reconciliation.

Gongyang Zhuan, the 11th Year of YinGong: When a king is slain, his substitute who sends no punitive expedition against the enemy is not a true substitute; when a father is killed, a son who takes no revenge against the killer is not a true son²⁸.

The Book of Rites, Li Chi 70: With the enemy who has slain his father, one should not live under the same heaven. With the enemy who has slain his brother, one should never wait to seek vengeance until he gets his sword from home. With the enemy who has slain his intimate friend, one should not live in the same state (without seeking to slay him)²⁹.

The Tang Code: Theft 260: One who privately reconciles with the murderer of one's grandparents, parents, or husband should be exiled two thousand

²⁷ The Tang Code, compiled on the basis of Confucian ethics, strengthened the role of Confucianism in the law of Imperial China (Yu, 1998).

²⁸ 春秋公羊傳，隱公十一年：君弑，臣不討賊，非臣也；父弑，子不復仇，非子也。 The English version of this excerpt is translated by the author.

²⁹ 禮記，曲禮 70：父之仇，弗與共戴天；兄弟之仇，不反兵；交遊之仇，不同國。 The English version of this excerpt is translated by James Legge (2003) and further edited by the author.

miles away from home; one who reconciles with the murderer of close relatives should be sentenced to two and half years imprisonment³⁰.

To sum up, the Confucian interpretation of the principle of reintegration embodies Confucian familial benevolence. The Confucian version of this principle safeguards the harmony and closeness between individuals and their families. But to a certain extent, such familial benevolence may impede confrontation of wrongdoing and incite malevolence toward those who caused the harm to the involved family member.

4.2.1.4 Confucian version of the principle of restoration

The Confucian version of the principle of restoration is constructed upon two Confucian virtues – li (禮) and he (和), proper conduct and harmony. Under the influence of these two virtues, restoration is interpreted with more emphasis on material and relational repair, as Table 4.6 presents. Individual emotional repair is of little concern as Confucianism shows concern for collective (family) interests more than individual interests.

Table 4.6 The Confucian version of the principle of restoration

RJ principle	Confucian interpretation
Restoration	*material compensation *harmony restoration *encouraging both genuine and superficial reconciliation
Note: This table is an extract from Table 4.1.	

From the Confucian perspective, the principle of restoration can be achieved at two different levels – genuine and superficial reconciliation. The ideal harmony in

³⁰ 唐律，竊盜 260：諸祖父母、母及夫為人所殺，私和者，流二千里；期親，徒二年半。The English version of this excerpt is translated by the author.

Confucianism would be genuine reconciliation which includes the perpetrator's sincere repentance for the wrongdoing. But, superficial harmony is also acceptable.

Superficial harmony denotes an intervention outcome that helps the conflicting parties restore their relationship but does not contain settlement of conflicts or admission of misconduct. Face protection, material compensation, and superficial apologies and forgiveness could help achieve the surface requirements of proper conduct (li 禮) or harmony (he 和) and create surface outcomes of proper manner and harmony (Hwang, 1999b; Wen, 1990; Yu, 1998).

The Confucian version of the principle of restoration can be seen and demonstrated in the practices of the Chinese mediation system, which is passed down from Imperial China. The Chinese mediation system was formed in opposition to the formal court system. This system embodies the virtue – he (和), the fondness of harmony and the abhorrence of litigation. At most, the Chinese mediation system is expected to end conflicts for the sake of society's harmony. At least, this system is set up in the hope that through the processes, family solidarity is confirmed, surface harmony is secured, and people are able to avoid arguing in the court or being regarded as petty men (X.-M. Jiang & He, 2006; S. C.-K. Lee, 2007; J. Liu & Palermo, 2009; D. S.-W. Wong & Mok, 2011).

In brief, the principle of restoration from the Confucian perspective is regarded as the ultimate and ideal outcome in dealing with immoralities, conflicts or crimes. The Confucian version of this principle suggests restoration be made at material and relational levels and reconciliation be accepted at genuine and surface levels.

4.2.1.5 Summary and discussion

To conclude, 'self-cultivation' in Confucianism is the key to reshaping the principles of

restorative justice to give them meaning in the context of Taiwan. In Confucianism, ‘self-cultivation’ is exercised through the Confucian ideas of family hierarchy and role-bearing persons, and five Confucian virtues – differentiated benevolence (ren 仁), relational appropriateness (yi 義), proper conduct (li 禮), familial reverence (xiao 孝), and harmony (he 和).

The Confucian version of restorative justice bears a certain resemblance to the western version of restorative justice, especially in the principles of rehabilitation and restoration. The similarities between these two versions can be shown in their preference for education over punishment, their trust in functions of families and communities rather than the state, and their fondness for relational restoration. There could be some tensions between these two versions in the principle of rehabilitation in one respect. ‘Just deserts’ and harsh punishment is arguably more acceptable in extremis in the Confucian version than in the western version, as the appropriate way of dealing with those who severely violate family ethics or commit horrible crimes. This is consistent with John Braithwaite’s interpretation of Japanese punishment and society – overwhelmingly reintegrative in most circumstances, yet stigmatizing toward people who do not grab the opportunity to be reintegrated (Braithwaite, 2002a).

The Confucian version of restorative justice is different from the western version in terms of three other principles of restorative justice – accountability, active participation, and reintegration. The Confucian version is constructed with strong moral concerns and family-centred interests, whereas the western version is shaped in response to conflicts and crimes and in a more individualistic manner. Regarding the principle of accountability, the Confucian version incorporates moral judgment into criminal liability. Concerning the principles of active participation and reintegration, the Confucian version promotes family hierarchy and familial love. Hence, the

constraints on the empowerment of the parties, the family's tolerance of one's misconduct, and family hostility to the other party in the Confucian version are not typically endorsed so openly in the western version.

In short, in the Confucian version of restorative justice, role-related virtues and a family-centred approach are essential, which is not the case in the western version of restorative justice.

4.2.2 Feminist interpretation of restorative justice

The feminist interpretation of restorative justice will be discussed through feminist arguments on domestic violence, including violence between family members and intimate partners. Different strands of feminism have offered viewpoints on why domestic violence occurs and how it can be stopped. Their viewpoints of domestic violence reframe westernised principles of restorative justice with more gendered concerns, mostly drawing on liberal, radical, critical race, and post-modern feminism that are of contemporary influence in practices of domestic violence³¹ (Nancarrow, 2006; Seymore, 1995). The relevant feminist ideas and the feminist translation of the five principles of restorative justice are discussed below³².

³¹ Cultural feminism is less focused here for it is less influential in the field of domestic violence. The main achievement of cultural feminism is the ethics of care, which incorporates notions of partiality and sense of duty to care. But to other feminists, in the ethics of care, the nature of partiality is thought to incur tolerance of sexism and racism, and the duty-based manner is deemed to discourage women's autonomy (Mullally, 2006).

³² In this section, feminist writers and researchers can be found on both the supportive side and the critical side of using restorative justice in cases of domestic violence. This review does not cover all perspectives and in some ways underplays the diversity of views. The review is selective in addressing criticism that is relevant to why restorative justice may be inapplicable to the Taiwanese context of dealing with domestic violence.

4.2.2.1 Feminist view of domestic violence

Roots of gender inequality: Construction of gender relations

To feminists, deciphering unequal gender relations contributes largely to understanding domestic violence. Feminist theory sees gender relations as socially constructed and causing subordination of women.

First a major strand of feminist theorising distinguishes gender, constructed through social, cultural, and psychological means, from sex, capturing physiological attributes such as genitalia or chromosomes. Sex refers to a biological binary classification between men and women³³, sometimes acknowledging an intersex category, while gender exhibits cultural overlay on the biological features of men and women as masculinity and femininity³⁴ (Case, 1995; Delphy, 1993).

With reflection on the link between sex and gender, many feminists warn that gendered qualities (masculinity and femininity) fixed to binary classification of sex (men and women) has served to exert control over individuals' appearances, hobbies, behaviour, and thinking, and to sustain gender stereotypes in the society (such as through job segregation and division of housework by gender). Men, more than women, are granted opportunities to occupy the top ranked positions in the workplace, and to act as superior breadwinners and decision-makers in the family (Case, 1995; Lorber, 1993; C. West & Zimmerman, 1987).

A range of feminists also challenged the conventional binary construction of sex,

³³ Sex is further argued as a social product. Similarities and differences between men and women are social exaggerations with purpose, not a plain presentation of natural facts (Flax, 1987; Lorber, 1993).

³⁴ Masculine qualities conventionally indicate traits like being aggressive, ambitious, analytical, assertive, independent, and strong. Feminine qualities normally refer to traits like being considerate, warm, gentle, deferential, sensitive, and devoted to others.

gender, and even sexual orientation (Bryson & Campling, 1999; Butler, 1985; Flax, 1987). Binary classification of sex (men and women) is problematic considering cases of androgynes, hermaphrodites, bisexuals and other hybridities (Delphy, 1993). The sex/gender binary is flawed as a combination of masculine and feminine qualities in men and women is actually common. Lastly, a heterosexual framework is argued to be adjusted with an understanding that individuals can be heterosexual, asexual, heterosexual, homosexual, or bio-sexual (Butler, 1988; Case, 1995; Ristock & Timbang, 2005). Feminists emphasised that gender relations have been conventionally established upon prejudice, discrimination, and disrespect for variety of identities.

Feminists mainly attribute gender inequality and prejudice to historical patriarchy and hierarchy that are collectively shared and socially constructed (Bryson & Campling, 1999; Delphy, 1993). According to Butler (1988), gender shall be no longer seen as a property of individuals, but as performative acts of individuals, constituted through interaction with others. Thus, in sharing similar cultural gender norms and experiences, individuals develop their own ways of 'doing' gender in response to pre-existing gender norms and proscriptions that have been executed by others. Gender is incessantly realised under social constraint but with individual agency (Butler, 1988; C. West & Zimmerman, 1987), which means structures but also individuals carry responsibility for gender inequality.

In sum, feminist theorising on gender relations includes criticism of conventional views of sex and gender, of binary classification of sex, gender, and sexual orientation, and of social and historical construction of gender domination. The feminist illumination of gender inequality provides the foundation on which feminists build arguments about causes of and solutions to domestic violence.

Causes of domestic violence: patriarchy, power and control

On the basis of above theorising, feminists further identified patriarchy as well as power and control in social, economic, and racial hierarchies as the major causes of domestic violence. First, most feminists regard patriarchy as the central cause of domestic violence, rather than one of many contributing factors to domestic violence (Bryson & Campling, 1999; Hunnicutt, 2009). Patriarchy is defined as social arrangements which are sustained and legitimised through structures and ideologies, privileging men as a group in control over women. Precisely speaking, male dominance is maintained through broader societal settings, such as cultures and institutions, and also in personal contexts by means of family values and rules. Patriarchy is also deemed to exist and vary across history, social space, and material conditions, continually reconstructed by social and historical changes (Hunnicutt, 2009; Kandiyoti, 1988; Smith, 1990).

Patriarchal beliefs are associated with violence as men perform, sustain or reinforce their mastery, supremacy, and authority over their female partners (Pence & Paymar, 1993; Smith, 1990). Under the influence of patriarchy, abusive men are found to reproduce gender stereotypes about themselves and their victims, including their use of violence: men's use of violence as rational and effective and women's as hysterical and weak (Anderson & Umberson, 2001). An increasing number of feminists are also convinced that patriarchy penetrating wider cultural, legal, and social contexts renders men a solid ground to sustain and justify their use of violence and shift the responsibility onto women who are abused for 'misbehaving' (Bui & Morash, 1999; R. E. Dobash, Dobash, & Cavanagh, 2009).

The influence of patriarchy on domestic violence has been further theorised through considering other sorts of oppression, which includes capitalism for social feminists, any type of male domination for radical feminists, and other systems of domination for

critical race and postmodern feminists (Volpp, 2001). Critical race and postmodern feminists in particular have enriched and advanced feminist theorising and policies on domestic violence. Ideas like intersectionality (Crenshaw, 1991) and varieties of patriarchy (Hunnicut, 2009) are proposed to modify feminist theories of patriarchy. In this line of reasoning, patriarchal systems intersect with or are bound up with other structural forms of domination, such as race, class, ability, sexual orientation, and age. The advanced theorising allows women's experiences of domestic violence to be varied, dependent on interactions between patriarchy and other types of domination (Einspahr, 2010; Sokoloff & Dupont, 2005; Young, 2003).

The heart of feminist theorising on the link between domestic violence and patriarchal and hierarchical systems can be clarified by the account of power and control (Hunnicut, 2009). The feminist account of power and control is a frame through which abused women in different contexts can relate their own experiences to others (Brandl, 2000; Pence & Dasgupta, 2006; Pope & Ferraro, 2006a).

Commonly, this account of power and control is used along with patriarchy and intersection between patriarchy and other forms of domination, so as to better illustrate the range of forms of domestic violence such as sibling violence, child abuse, violence in lgbtq³⁵ (lesbian/gay/bisexual/transgender/queer) partner violence, and women's use of violence (Einspahr, 2010; Hamby, 2000; King, 1988; Renzetti, 1994). For instance, sibling violence was directly linked to belief in conventional gender norms among both girls and boys. Boys were more tolerated when they used force to exhibit masculinity.

³⁵ Bisexual describes a person who is physically and emotionally attracted to both females and males and to people of all genders, including omnisexual people who identify themselves beyond binary gender categories of female and male. Transgender refers to a person whose gender identity does not match their biological sex. Queer is an umbrella term, embracing diverse sexual orientations and gender identities, such as intersex, transgender, asexual, pansexual, and etc. (Hester & Donovan, 2009; Ristock & Timbang, 2005).

Accordingly, boys more than girls engaged in physical fights in sibling arguments (Hoffman, Kiecolt, & Edwards, 2005).

Male-dominated family structure also well explained patterns of child sexual abuse. Since girls resided at the bottom of hierarchies of gender and age, girls rather than boys were the majority of victims. Adult females, mostly co-perpetrators with adult males, only became primary perpetrators when they took charge in a single parent family where male authority was absent (Solomon, 1992).

Similarly, binary construction of gender, patriarchy, and power and control were the essential and prominent features in lgbtq partner violence as they were in heterosexual relationship abuse. Compared to lesbians, gay men were found to be more likely to abuse their partners physically and sexually (Hester & Donovan, 2009). In lesbian relationships, abusive women like men were affected by patriarchy that reproduces the dynamics of dominance and subordination in all types of intimate relationships (Bird, 2004; Ristock & Timbang, 2005).

Importantly, the accounts of patriarchy and power and control are corroborated in feminist theorising of violent women in heterosexual intimate partner abuse. First, many feminists do not deny that women can be as aggressive as men, but they have asserted that women's violence is fundamentally different from men's violence, in terms of frequency, severity, motivation, contexts, impacts, and victim's sense of safety. Their studies found that women's violence commonly took a verbal form, demonstrated little intimidation or coercion, produced no consequential psychological impact on men, and achieved no power or control over men after the violent incidents. By contrast, men's violence often exerted physical and sexual force, attained

long-standing control over women, and generated persistent fear in women's life³⁶ (DeKeseredy & Dragiewicz, 2007; R. P. Dobash, Dobash, Wilson, & Daly, 1992; Pence & Dasgupta, 2006).

To be precise, women's use of violence is linked with suffering under power and control. Women's violence was mostly triggered by frustration that they had been victims of their partners (Miller & Meloy, 2006) and of the racial, cultural, and socioeconomic hierarchies (Swan & Snow, 2006) over a period of time in the past.

Specifically, women were found to act violently for reasons like self-defence, self-protection³⁷, saving other family members from harm, reclaiming lost self-respect, re-establishing self-identity, maintaining personal liberty, expressing anger, stress, or frustration, gaining control over immediate situations, and taking revenge and retaliation on their partners for prior abuse (R. P. Dobash & Dobash, 2004; Hamberger & Guse, 2002; Kernsmith, 2005; Miller & Meloy, 2006). Women turned to violence usually because there was no help from institutions, such as churches, social services, and health care systems (Dasgupta, 2002). Violent women (fighting back against their abusers) were often victims who developed more coping strategies and showed more autonomy in response to domestic violence than other abused women (Abel, 2001; Hamberger & Guse, 2002).

³⁶ Some domestic violence scholars like Murray Straus agree with feminists that the outcomes of assault by men and women are asymmetrical: Women are often harmed severely compared to men. But they disagree with feminists on the significance of the role of gender in the causes of intimate partner violence. On the basis of their research findings, they conclude that the role of gender is marginal because women can be just as violent as men, dominance by either men or women is positively related to occurrence of violence, and male dominance is only one of many causes of intimate partner physical violence (Straus, 2004, 2008; Winstok & Straus, 2014).

³⁷ Self-defence and self-protection were the reason why 65% of violent women used force for they had been victims of their partners' abuse (Miller & Meloy, 2006).

This evidence together suggests that women's violence can be very much explained by abused women's suffering under patriarchy. Women's use of violence is obviously in contrast to men's use of violence that contains signs of patriarchal thinking and long-standing power and control (Kernsmith, 2005). Yet importantly, the feminist accounts of patriarchy and power and control hold in cases of both men's and women's violence.

Lastly, many feminists acknowledge that domestic violence can be aggravated by other factors, but they maintain that patriarchy and power and control remain a necessary part of the explanation of domestic violence. Feminists consider secondary factors such as economic stresses, life events, substance use, social support, employment, and intimate relationship status (Hunnicutt, 2009; Pence & Dasgupta, 2006; Renzetti, 2009). For instance, Anderson's (1997) study found that domestic violence was more likely to happen in heterosexual couples when men deviated from typical male roles as breadwinners. Yet, low income and unemployment alone were not able to incite men to use force to demonstrate masculine qualities. The accounts of patriarchy and power and control are indispensable reasons for domestic violence.

In short, feminists closely tie patriarchy and power and control to many types of domestic violence, but particular attention has focused on heterosexual intimate partner violence, as this thesis does. At the same time, feminist theory has developed to take account of how heterosexual intimate partner abuse may be influenced by the intersectionality of patriarchy and other domination systems and of the interaction between patriarchy and other personal and interpersonal variables.

Ways of addressing domestic violence

To eliminate domestic violence, feminists propose a number of ways to attend to

perpetrators, victims, and structural systems. The following discussion draws on feminist literature on heterosexual intimate partner violence. Men are commonly regarded as perpetrators and abused women are the focus of attention. Promotion of victims' needs and interests and protection of victims' rights and choices are the main foci of feminist approaches to combating domestic violence.

(1) Structural interventions

As discussed above, patriarchal and hierarchical structures and ideologies are blamed for constructing gender inequality that leads to or intensifies domestic violence to women. Accordingly, to address domestic violence at the structural level, feminists have suggested and worked on transformation of existing patriarchal and hierarchical systems, including legal systems. Feminists have supported the launching of campaigns to raise public awareness of gender inequality in the family, education systems, workplace, media, ethics, religion, politics, and other institutions (Benhabib, 1992; Bryson & Campling, 1999; MacKinnon, 1989). They also urge regulations and policies, related to almost every aspect of women's lives. These campaigns and policies conceive women not simply as a homogenous group but of diverse identities, characteristics, and backgrounds (Fineman, 2005; Levit, 2000; Perry, 2010; R. West, 1988).

Numerous feminists level their criticism at legal mechanisms for not being neutral and objective as claimed, but as being constructed to serve male interests from a male standpoint (Fineman, 2005; Gelsthorpe & Sharpe, 2006). With a focus on domestic violence, for example, prior to feminist campaigns, domestic violence was not given much attention in the criminal justice system. Wife beating was taken as legitimate or regarded as a misdemeanour and police were hesitant to intervene in domestic violence incidents (Schulhofer, 1995).

Ethnic, racial, and economic inequalities have been part of the call for transformation of legal systems. Inequalities leave poor, coloured, and immigrant women in a far worse and vulnerable situation than white middle-class women when their cases of domestic violence are handled through white legal systems. Poor coloured and immigrant women are often reluctant or hesitant to look to white legal systems for help. Beneath poor coloured women's reluctance and hesitation are their economic concerns about living independently, worries about the public's racist labelling of their community and their men, and fear of the police's hostile intrusion and governmental scrutiny of the whole family and community. Immigrant abused women, furthermore, are likely to face language and cultural barriers, to fear loss of their legal status, and have limited access to existing social, legal and health resources for domestic violence (Crenshaw, 1991; Sokoloff & Dupont, 2005).

Some feminist interventions are directed to stopping violent acts, like police arrest, no-drop prosecution policies, promotion of incarceration of abusers, provision of offender rehabilitation programs, enactment of civil protection orders and domestic violence laws, and a plea of self-defence in the trial for abused women who kill their abusers. Other interventions provide legal assistance in meeting the needs of victimised women in matters of law, such as divorce, child custody, child support, child protection, or immigration (Bryson & Campling, 1999; Renzetti, 1994; Schneider, 2002).

The legal and policy reforms prompted or supported by feminists have not always turned out positively, and sometimes have backfired. For instance, there has been an increase in the number of police arrests of women who fight back against their abusers. Some abused women have been doubted and judged as unauthentic victims for actively defending their own safety and interests; others are blamed as uncooperative victims for refusing to press charges against their abusers. Victimised women have been given

legal solutions, but which can be limited and not responsive to need (Mills, 1996; Sack, 2004; Schneider, 2002).

Feminists have also reflected on the adverse effects of white feminist legal reforms on coloured or poor women who are put in greater jeopardy of state control. Compared to white middle-class women, poor coloured women were more likely to be arrested for violence, doubted with respect to their ability to protect their children, stripped of rights of child custody, or prosecuted for other illegal acts, like selling drugs or prostitution (Coker, 2001).

However, it is important to note that feminists keep reviewing and revising campaigns and strategies they once supported as they try to avoid setbacks for victims. Victimised women's participation and autonomy in the criminal justice process have become more highly valued, and criminal justice and social welfare workers are being required to develop feminist sensitivity to various needs of victims of domestic violence (Lewis, Dobash, Dobash, & Cavanagh, 2000; Sack, 2004). A number of feminists have been insistent that domestic violence policies and approaches would be much more effective if structural domination in disadvantaged communities were tackled at the same time (Sokoloff & Dupont, 2005).

In reviewing and revising legal systems and policies for domestic violence, many feminists have come to recognise that no single legal or policy solution such as 'no-drop arrest' or aggressive prosecution can satisfactorily answer all the different needs of abused women. The acknowledgment of women's diversity fosters the idea that choices and rights should be tailored and given to victimised women in different situations. At the same time, abused women of different identities may still unite to make a communal political appeal for protection of their safety and recognition of their voices (Lewis et al., 2000; Schneider, 1992), and to express their collective needs for

governments' denunciation and confrontation of domestic violence (Randall, 2009).

As discussed, total reliance on the state to diminish violence against women may be problematic: Such reliance may reproduce paternalism and systems of domination, which leave abused women in a powerless condition again (Hunnicut, 2009). Therefore, involvement of community and non-state procedures is welcomed along with the state's intervention in domestic violence. The state and community organisations are asked to provide services that can support abused women's lives, mostly after leaving their abusers, such as adequate shelter service, long-term housing, economic support, education programs, job training, and social welfare support (Pope & Ferraro, 2006a; Sack, 2004). Community organisations in particular take part in victim support and offender rehabilitation (Coker, 2001; Pence & McMahon, 1997). Transformation and re-education of families and communities of victims and offenders are advised as well before these families and communities can stop domestic violence (Renzetti, 1994).

(2) Interventions at the individual level

At the individual level, feminists attempt to transform abusers' controlling beliefs and abusive behavioural patterns and to empower victims and heal them from victimisation experiences. Importantly, victims' safety is usually given precedence over offender rehabilitation in feminist programs (Pence & McMahon, 1997).

Feminists consider that individual interventions in domestic violence are the responsibility of the state or communities. The transformative effects of individual treatment are intended to not only change individuals' lives but to spread to individuals' families and communities and the broader society (Pence & McMahon, 1997; Tseris, 2013).

The following discussion will mainly elaborate on feminist interventions and transformative approaches directed toward abusers and the abused in heterosexual relationships where men are generally regarded as abusers and women as the abused.

(A) Intervening with abusers

Feminists firmly hold abusers responsible, taking no excuses from men as justification for their violence. Feminists may empathise with some abusive men who suffer from oppression, such as racism, class stratification, and patriarchy, but they reject these considerations as excuses to exempt the perpetrator from responsibility (Bryson & Campling, 1999; K. M. Evans, Kincade, & Seem, 2010; Levit, 2000).

Many feminists favour community intervention or group educational programs in addition to legal actions of the state such as arrest, prosecution, sentencing, and protection orders, and social services from the state such as shelter provision. The Duluth Model illustrates this design. It is based on feminist ideologies, intended to increase the state's and also community's responsibility and capacity. Multiple government and non-government agencies were mobilised in the Duluth Model, working together to hold abusers accountable for their violence. Administering educational programs or group treatment became the activities through which some community organisations learned to take responsibility for reducing domestic violence within integrative intervention networks (Pence & McMahon, 1997; Tolman & Edleson, 1995).

In terms of program content, pro-feminist individual and group batterer treatment usually incorporates feminist beliefs and cognitive-behavioural approaches (Babcock, Green, & Robie, 2004; Tolman & Edleson, 1995). The programs are planned to assist abusive men to recognise in themselves patterns of controlling behaviour and to link

their use of violence to patriarchal ideologies, including the social construction of gender stereotypes and male privilege and domination over women. Men are confronted and further challenged to change their beliefs, attitudes, and behaviour toward women (Jewell & Wormith, 2010; Pence & Paymar, 1993).

For instance, the Power and Control Wheel used in the Duluth Model illustrates and addresses domestic violence that is viewed as part of a pattern of controlling actions of batterers. As the modified Power and Control Wheel shows in Figure 4.1, batterers' domination is exerted by means of intimidation, coercion, male privilege, isolation, and emotional and economic control and abuse. Batterers' use of violence is learned and strengthened under social, cultural, and institutional construction. In counselling and group treatment, the Wheel is applied to help male abusers identify the tactics they use and explore the beliefs that support their behaviour. The Power and Control Wheel is further applied together with an Equality Wheel to help abusers see and learn how to build egalitarian relationships with women without violence and control (Domestic Abuse Intervention Programs in Duluth, Minnesota, n.d.; Pence & Paymar, 1993; Pope & Ferraro, 2006b).

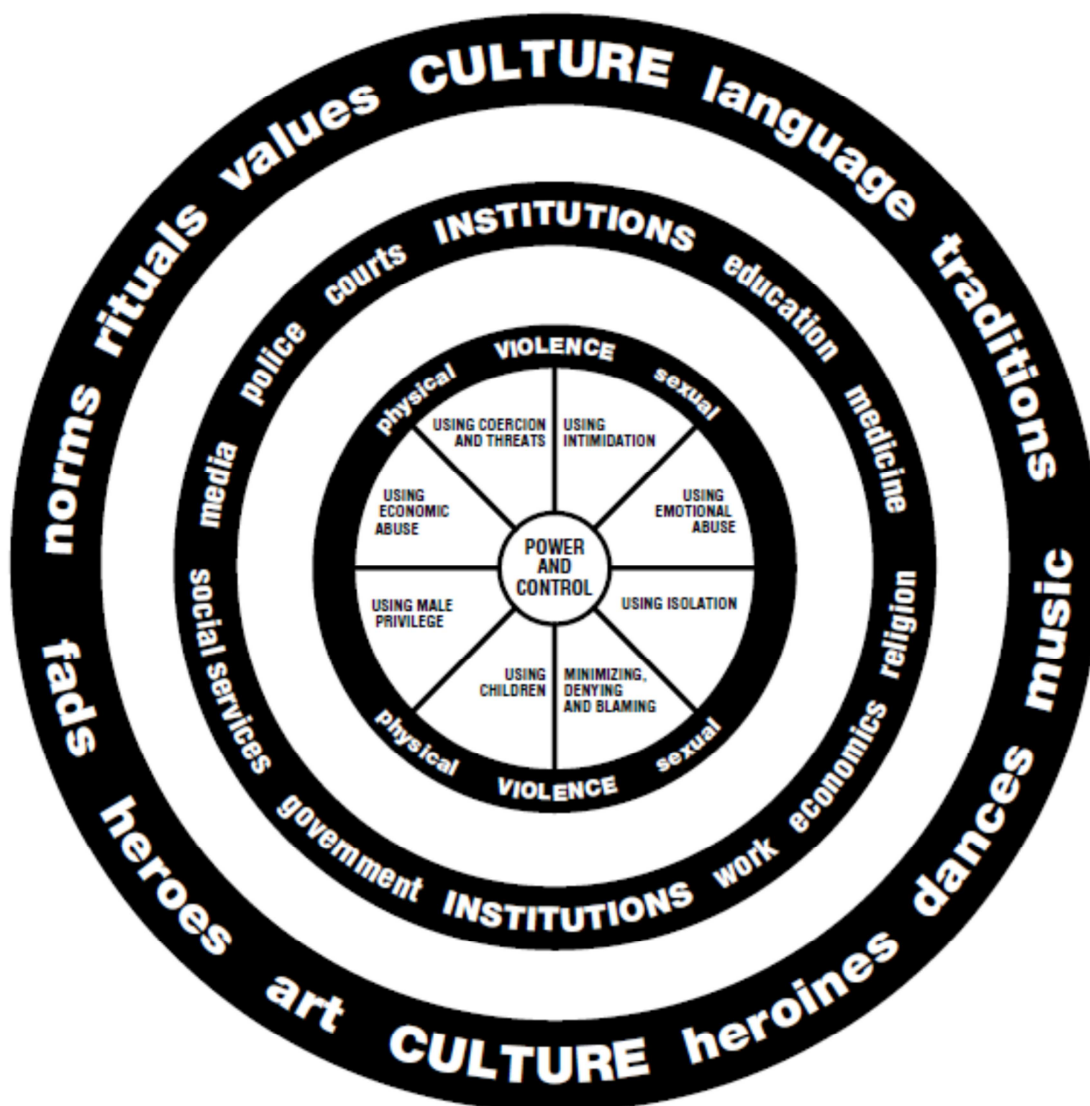


Figure 4.1 The Power and Control Wheel in institutional and cultural avenues

Source: Domestic Abuse Intervention Project in Duluth, Minnesota (n.d.)

Despite the fact this pro-feminist batterer treatment draws on a cognitive-behaviour model to some extent, feminists are basically opposed to a pure psychological cognitive-behaviour approach, which aims at abusers' learning of non-violent manners (for example, communication, social skills, and anger management). To feminists, such a psychological approach personalises and medicalises the occurrence of domestic violence, detracting from the acceptance of responsibility for domestic violence from abusers and society.

Under a similar logic, many feminists are hesitant about the use of couple counselling, which is very likely to be oriented to repairing abusers' relationships with their partners, and holding both parties accountable for violence. By comparison, group treatment and separate counselling are more welcomed by feminists for the focus is more likely fixated on confronting abusers' use of violence³⁸ (Pence & McMahon, 1997; Schmidt et al., 2007).

(B) Intervening with the abused

Feminists sturdily contend that victimised women by no means are responsible for violence, albeit some feminists admit women playing a role in maintaining patriarchy in general³⁹ (Benson, 2000). Straightforwardly put, abused women are viewed as victims or/and survivors of their partners' violence, in addition to the oppressed in patriarchal systems. To most contemporary feminists, being a victim or survivor is no longer an either-or role in domestic violence. Abused women's experiences could incorporate vulnerable responses, such as suffering from violence, being afraid of abuse, submitting to power, but also active responses, such as seeking resolutions, developing strategies, or even fighting back (Bograd, 1999; Hilsdon, 2007; Mahoney, 1994; Schneider, 2002).

The perception of abused women as victims or/and survivors is related to and buttressed by the celebration of differences and multiple identities of abused women,

³⁸ Other feminists, in light of the dynamics of intimate abuse and interwoven needs of victims and offenders, suggest bringing victims and offenders together and addressing their legal and treatment needs at the same time. These feminists consider that offender rehabilitation and victim's wellbeing may be better achieved in a program that is designed to engage victims and offenders and focus on healing and transformation of both parties (Mills, 2003; Mills, Grauwiler, & Pezold, 2006).

³⁹ Paul Benson (2000) argues that if women are deemed to be too dominated in patriarchy cultures to take part in maintaining patriarchy, women could also be viewed as lacking autonomous thinking. Thus, to Benson, regarding women as accomplices is the way of not depriving them of their autonomy.

which originally were highlighted by critical race feminism and post-modern feminism and supported by many contemporary feminists (Hilsdon, 2007; Hopkins, Koss, & Bachar, 2004b). This means that current day thinking around interventions recognises that the needs and interests of abused women will vary with their peculiar socio-economic status, racial and cultural backgrounds, and other contextual factors. Victimised women are less likely to be classified as one group or several sub-groups with the same experiences, same thoughts, and same needs and wants (Crenshaw, 1991; A. P. Harris, 1994).

Accordingly, feminists appreciate and respect abused women's varied views about their connections with their families and communities in handling domestic violence. Abused women may identify themselves to be more independent of or interdependent with their families and communities. Their sense of connection with family and community is generally taken into consideration by feminists when they design programs for abused women (Benhabib, 1992; Crenshaw, 1991; Hudson, 2006).

Common individual feminist treatments include individual counselling, therapy, and social work services; group treatments may take the form of educational programs and group therapy. These are formulated in a way diverging from traditional psychiatric diagnosis and psychological explanations for domestic violence that are fervently criticised by feminists (Brown, 2004; Carr, 2003).

Feminist practices of both individual and group treatments for abused women consist of similar components. For example, many educational program leaders, therapists, or social workers would aim to guide abused women to make practical safety plans. Pro-feminist practitioners would assist abused women to develop an understanding and consciousness of patriarchy and power and control, and of a cycle of intimate violence and post-traumatic stress disorder in their lives. It is expected that abused women could

make more sense of what happened to them, recover from violence, grow cognitive, emotional, and social strength to fight against violence, and develop strategies to prevent the occurrence of future domestic violence. But, this is not meant to hold abused women responsible for possible future violence against them (Carr, 2003; Enns, Campbell, & Courtois, 1997).

In pro-feminist group dialogue processes, abused women can share their experiences. They can be steered away from ascribing their victimisation to personal flaws and rather encouraged to construct their experience as a political problem, and be given opportunity to reinterpret their identities outside a patriarchal perspective (Carr, 2003; Sardenberg, 2008). Pro-feminist group programs can benefit abused women through creating opportunities of sharing resources, receiving group support and feedback, learning from peers, and practicing learned coping and social skills (Enns et al., 1997). The group setting is regarded as helpful for ending or lessening abused women's social isolation and sense of shame and loneliness (Carr, 2003; Sardenberg, 2008).

Besides patriarchy and power and control, ideas that underpin feminist treatments for abused women are cycle of violence, battered woman syndrome, post-traumatic stress disorder, empowerment and consciousness-raising, which are elaborated below.

Cycle of violence and battered woman syndrome: contentiously debated

The cycle of violence can be conceptualised in relation to learned helplessness, battered woman syndrome, and post-traumatic stress disorder. Lenore Walker's (1984, 2006) theoretical purpose with these concepts was to improve understanding of abused women's mental states and to strengthen a legal defence for those who kill their abusive husbands as they encounter extreme danger and have no one to turn to.

The theory of the cycle of violence recognises abusers' multi-sphere control and

abused women's inner conditions. A cycle of domestic violence has three phases: tension building up, acute battering incident, and honeymoon (loving-contrition). According to Walker (1984), the cycle of intimate violence often starts with abusers' demanding and controlling behaviour and women's attempts to keep peace and please their abusers. Abusers' behaviour then escalates to battering. At that time the abusers' physical and emotional abuse may go to extremes. The honeymoon phase comes next, characterised by the abusers' loving behaviour, in the form of remorse and apologies for their violence or sending gifts to victims. Walker (2006) modified the theory of the cycle of violence through acknowledging that the honeymoon phase might not exist and could be replaced instead by a temporary cessation of violence.

In Walker's (1984, 1991, 2006) theories, victims repeatedly experience a cycle of violence. Abusers' intertwining pattern of coercive and loving behaviour tends to create abused women's psychological dependency and learned helplessness, which leads to their inability to leave their abusers. On the basis of the cycle of violence, learned helplessness, and other forms of psychological distress, Walker conceptualised the battered woman syndrome, and considered it as a subcategory of post-traumatic stress disorder (PTSD). Battered woman syndrome includes several psychological indicators: disrupted interpersonal relationships, body image distortion or somatic concerns, sexual and intimacy problems, and also some features of PTSD⁴⁰. Battered women may believe violence is their fault, feel powerless, fear for their lives and their children's lives, and view their abuser as omnipresent and omniscient. Later Walker (2006) acknowledged that not every abused woman has battered woman syndrome and needs professional intervention to recover from traumatised experiences. Instead, some

⁴⁰ The features of PTSD associated with situations of victims of domestic violence include re-experiencing the battering, numbing of responsiveness (evasion of psychological impact of battering by avoiding activities, people, and emotions), and hyperarousal or hypervigilance.

women overcome the effects of domestic violence with good support systems and open access to relevant resources.

Psychological profiles of abused women have received both approval and critical questioning by feminists. Despite the fact that Walker's theories incorporate feminist arguments on patriarchy and power and control, normative and empirical critiques of the following kinds have been offered. The conception of the cycle of violence implies that abused women should take responsibility for monitoring or avoiding their abusers' violence (Scottish Women's Aid, 2008). Ideas of learned helplessness and battered woman syndrome can lead to (1) reinforcement of gender stereotypes, profiling abused women as weak, needy, and unable to live independently (Posch, 1997; Randall, 2009); (2) pathologisation of abused women, linking them to illness, insanity, irrationality or psychological instability (Posch, 1997; Schuller & Rzepa, 2002; Schuller & Vidmar, 1992); (3) ignorance of abused women's diverse abused experiences and survival capability (Randall, 2009; Schuller & Vidmar, 1992); and (4) failure to recognise and address the influence of structural inequality on abused women, like economic, racial, and religious constraints on women (Ferraro, 2003; Posch, 1997; K.-L. Tang, 2003).

Other critiques relate to the way in which widespread knowledge of the profile of learned helplessness and battered woman syndrome could sabotage the legal self-defence of abused women who do not fit the helpless victim profile, and cause termination of abused women's parental rights because they are judged to be unable to protect their children (Ferraro, 2003; Randall, 2009; K.-L. Tang, 2003).

On the other hand, battered woman syndrome testimony could be useful in mitigating sentences imposed on abused women who kill their partners when they fit the profile of helpless victims (Ferraro, 2003). But, it is not that battered woman syndrome testimony successfully justifies abused women's violent actions as legitimate use of

force in self-defence; it solely increases jurors' sympathy for women's victimised circumstances (Schuller & Rzepa, 2002).

Post-traumatic stress disorder: partly debated

Many feminist psychologists and therapists, including Lenore Walker (2006), have employed trauma treatment and the diagnosis of trauma as they work with abused women of intimate partner violence. These feminist scholars and therapists challenged rather than simply accepted the original definition of a trauma in the DSM III as 'outside of the range of usual human experiences', which took little account of abused women's experiences (Brown, 2004; Burstow, 2005). Brown (2004) argued that women's suffering is a kind of 'insidious trauma' that occurs on a daily basis, a result of living under oppressive conditions for years.

Moreover, to feminists who use the diagnosis of post-traumatic stress disorder (PTSD) on intimate partner violence, the focus is by no means on identifying an abused woman's inherent defects that trigger her reactions to harmful events. Instead the diagnosis is utilised to attract the public's attention and provoke legal responses to women's suffering. The diagnosis is also used to assist abused women to make sense of their experiences of victimization, to feel less blamed, and to positively reconsider the PTSD symptoms as part of their surviving strategies (Berg, 2002; Burstow, 2005).

In feminist trauma treatment, the primary goal is assisting women to grow their feminist consciousness that their suffering results from being dominated and harmed by patriarchal and hierarchal institutions. The ultimate aim is facilitating the development of action plans or strategies by abused women that could increase their access to resources and bring changes to their social, emotional, and political circumstances (Brown, 2004; Tseris, 2013). Empowerment is an essential element in

feminist trauma treatment, activating and driving abused women's healing process (Brown, 2004), which will be discussed more in the next section.

Adopting a trauma perspective, feminist counsellors, therapists, and social workers advocate that there is no one-size-fits-all treatment design. They underline the need for practitioner sensitivity to the reality of abused women's lives. A pro-feminist trauma treatment is expected to privilege women's diverse voices and victimisation experiences, which for instance may vary with women's ethnic and socio-economic backgrounds (Lilly & Graham-Bermann, 2009; Randall, 2009; Tseris, 2013).

However, disagreement arises among feminists over the application of the diagnosis of post-traumatic stress disorder (PTSD), just as it arises over the use of 'cycle of violence', 'learned helplessness', and 'battered woman syndrome'. The critiques of the use of the diagnosis of PTSD are that abused women rather than male perpetrators are once again being scrutinised and prejudicially perceived as psychologically dysfunctional on biological grounds. Also for political reasons, the diagnosis of PTSD steals the public attention away from structural inequality and diverts attention to pathologising abused women. At the individual level, abused women's feelings of helplessness could become much more ingrained (Berg, 2002; Burstow, 2005).

Feminists who have doubts about the use of psychological profiling (specifically learned helplessness, battered woman syndrome, and post-traumatic stress disorder) usually turn their efforts to transform existing social, cultural, and economic systems and to emphasise women's agency and survival capacity through educational campaigns to broader communities (Ferraro, 2003; Posch, 1997; K.-L. Tang, 2003). Other feminist ideas and methods, like consciousness-raising, group support, and advocacy, are alternatively embraced to help abused women free themselves from violence and break through the constraints of patriarchy (Berg, 2002).

Consciousness-raising and empowerment: widely endorsed

The ideas of consciousness-raising and empowerment are closely theorised and widely employed by feminist scholars and practitioners for victimised women of intimate partner violence. The ties between the two ideas can be demonstrated in relation to the conceptualisation of empowerment, which is termed a process and/or an outcome. First, individuals' critical feminist consciousness, developed through group discussion and reflection on individuals' experiences of oppression, can be incorporated as part of a developmental empowerment process. But at the same time, consciousness-raising is often deemed a fundamental catalyst to bring about positive empowerment outcomes (Brown, 2004; Carr, 2003).

Consciousness-raising is a shared objective among feminists. The practical focus of consciousness-raising is often on abused women's personal and political consciousness and the flow between them. In support of the assertion 'the person is political', consciousness-raising is deemed as a process whereby abused women come to perceive and realise their personal experiences very much as a manifestation of political reality and their victimisation as a consequence of gender inequality in sociocultural and political contexts (Brown, 2004; K. M. Evans et al., 2010). As a result, women's self-esteem and sense of control is given opportunity to grow. They may also adopt external attributions of blame, as a study of consciousness-raising groups has revealed (Weitz, 1982).

Raising abused women's consciousness can allow a certain level of personal healing to take place, at which point abused women may start to take action to make a difference, such as raising others' awareness of violence in the family, and getting involved in volunteer work or advocacy campaigns for other abused women. It is clear that personal change is never referred to as individual adaptation to social systems. Instead,

personal and social changes are conceptualised and promoted together. Personal change would be impeded if societal and environmental conditions were static (Brown, 2004; K. M. Evans et al., 2010; Frohmann, 2005).

Similarly, empowerment strategies are generally welcomed among feminists. In practice, feminist empowerment strategies basically involve recognition and attribution of external factors to women's victimisation. As abused women acquire a feminist consciousness, they build capacity to actively respond to any violence and domination that they encounter. Thus, empowerment for feminists is an approach to personal growth and development rather than an approach to ameliorating personal illness (K. M. Evans et al., 2010). Moreover, feminist empowerment treatments have evolved from simply addressing power and control to also attending to multicultural concerns and racial and economic hierarchies. With these gendered, social, racial, and political concerns, feminist empowerment treatments are distinctly different from traditional psychotherapy which greatly relies on cognitive-behaviour or interpersonal therapies (Díaz-Lázaro, Verdinelli, & Cohen, 2012; Sardenberg, 2008; Walker, 2006).

It is further contended that abused women's empowerment cannot be attained through passive conformity to compulsory legal solutions or to practitioners' authoritarian advice. Feminist practice requires understanding and appreciation of women's diversity and uncertainty, and a flexible working approach to accommodate and support women's decisions at their pace and on their initiative (Mills, 1996).

Summary

From feminist perspectives, domestic violence (particularly heterosexual intimate partner violence) is rooted in the historical, social, and cultural construction of gender relations that privilege men. Feminists hold patriarchal structures and ideologies

mainly accountable for domestic violence, but at the same time recognise women's experiences of domestic violence as varied with interactions between patriarchal systems and other systems of domination, such as race, class, ability, sexual orientation, and age. Power and control are considered as the essence of domestic violence.

Feminist approaches to combating domestic violence discussed above largely target heterosexual intimate partner violence, where men are mostly perceived as controlling abusers and women as suffering victims or/and persevering and self-defending survivors. Victims' agency is clearly demonstrated as well as victims' subordination. In line with feminist interpretations of causes of domestic violence, feminists suggest bringing about both structural and individual levels of transformation, in which first and foremost protection of abused women's safety is given precedence and their diversity and voices are to be honoured.

At the structural level, laws, legal systems, and social policies have been critically analysed and reform urged. The state's responsibility in condemning domestic violence and sponsoring domestic violence intervention is widely endorsed in the feminist literature, but the state's dominating power over abused women is a source of concern and needs to be guarded against.

Similarly in direct feminist treatment of male abusers and abused women, patriarchal ideologies and power and control features of domestic violence are tackled and victims' safety is prioritised. Abusers are held responsible without excuses, and steered toward recognising and changing their controlling patterns of behaviour and patriarchal ideologies. Abused women are commonly encouraged to grow a feminist consciousness about patriarchal and other forms of domination, to share their experiences and viewpoints, and to build connections with other women. Also, abused women may be cautiously guided to identify a cycle of violence, battered woman

syndrome, and post-traumatic stress disorder in their lives, without misjudging them as inherently irrational or helpless. All these strategies are hoped to benefit abused women's healing processes by helping them make more sense of their victimisation, end self-blame, develop capacity to respond to domestic violence, and take actions in eliminating patriarchal ideology in their families and communities.

Feminist views of causes of and solutions to domestic violence are distinctly opposed to narrowly psychological explanations for domestic violence. The feminist endeavour is meant to contest against family system theories and psychological perspectives that treat domestic violence as communication problems or individuals' personality defects, so as to certify the accounts of patriarchy and power and control centred in the interpretation of domestic violence (Anderson, 1997; DeKeseredy & Dragiewicz, 2007; R. P. Dobash et al., 1992; Pence & Dasgupta, 2006). Feminist suggestions of individual transformation may involve psychological profiling, individual counselling, and group therapy, which are typical psychological techniques and devices. But in a feminist worldview, these psychological methods have been converted to feminist styles, instilled with feminist structural concerns.

The next section returns to the five principles of restorative justice – accountability, active participation, reintegration, rehabilitation and restoration and examines how these principles engage with feminist theory.

4.2.2.2 Feminist version of the principle of accountability

Feminist views of the root causes of domestic violence (particularly heterosexual intimate partner violence) have an impact on how the principle of accountability in western theories of restorative justice is interpreted. The feminist version of the principle of accountability places emphasis on validation of the wrongness of violence

and domination, offenders' taking responsibility, and structural accountability of patriarchy, as Table 4.7 shows.

Table 4.7 The feminist version of the principle of accountability

RJ principle	Feminist interpretation
Accountability	*to validate the wrongness of violence and domination *offenders to take responsibility *structural accountability of patriarchy
Note: This table is an extract from Table 4.1.	

The elements in the feminist version of the principle of accountability manifest a feminist attempt to denounce societies and individual perpetrators responsible for domestic violence. As expected, the aim is to assist individual perpetrators recognise their use of violence and domination toward women as part of a set of patriarchal beliefs and controlling behaviours that are indisputably wrong and unjustifiable. Furthermore, such recognition includes open rejection of social, cultural, institutional, and familial support and tolerance for male use of violence at home (Mills, Maley, & Shy, 2009). In brief, the feminist version of the principle of accountability is about sending a loud and clear message that domestic violence is wrong (Behrens, 2005; Daly & Stubbs, 2006b) and that abusers and systems in support of patriarchy (Cook, 2006; Hopkins et al., 2004b) are responsible and warrant condemnation.

The feminist version of the principle of accountability means that feminists oppose the use of a 'no fault' assumption in mediation. Validation of wrongness of domestic violence is commonly a shared wish of abused women (Stubbs, 2007). But under a 'no fault' assumption, domestic violence is likely to be treated as a conflict rather than a crime, and problem-solving is likely to replace structural and individual responsibility for domestic violence as the preferred solution. Many feminists are worried that a 'no

fault' assumption could similarly lie in restorative justice practices as it does in mediation (Behrens, 2005; Daly & Stubbs, 2006b; Hooper & Busch, 1996).

Thus, on one hand, feminist concerns call into question the appropriateness of restorative justice practices in handling domestic violence. On the other hand, the feminist concerns reinforce the principle of accountability through demanding both structural accountability of patriarchy and abusers' responsibility in the restorative justice process (Daly & Stubbs, 2006a; Pranis, 2002).

In fulfilling the feminist version of the principle of accountability, feminists have suggested some practical strategies to ensure that there is no slippage into excuse-making and that the wrongness of domestic violence can be validated in the restorative justice process. More prudent and careful observation and examination are urged during the process to monitor the perpetrator, the facilitator, and other participants (family and community) for any signs of justification of violence and obscured responsibility. More specifically, patriarchal thinking, ongoing violence, a cycle of domestic violence, and relationship manipulation and domination are the signs to look for (Behrens, 2005; Hopkins et al., 2004b; Pennell & Burford, 2002).

Lastly, in order to hold patriarchal systems accountable for domestic violence, feminists have proposed alternative restorative justice models through which victims' and offenders' families and communities can be targeted, transformed and freed from the influence of patriarchy. Transformation of the parties' families and communities is very much connected to feminist interpretations of the principle of reintegration, which will be elaborated more below.

4.2.2.3 Feminist version of the principle of active participation

From feminist perspectives, the principle of active participation could be interpreted in

a way that reflects feminist understanding of abused women's victimisation experiences and feminist approaches to help abused women heal from traumatic experiences and exercise their agency. The feminist version of this principle develops strategies to enhance abused women's participation in handling domestic violence, and also precautionary measures to prevent dangers and threats to abused women's involvement, as shown in Table 4.8 below.

Generally, abused women's active participation in the process is favoured over abusive men's participation in the feminist version of this principle. The emphasis on abused women appears to corroborate feminists' primary interest, not in violent men, but rather in the women who are most likely to be the victims severely harmed in heterosexual intimate partner violence⁴¹.

Table 4.8 The feminist version of the principle of active participation

RJ principle	Feminist interpretation
Active participation	*women's empowerment and self-consciousness *no excuses from men *danger of power and control *a story of power and domination
Note: This table is an extract from Table 4.1.	

The principle of active participation in the feminist version is primarily designed to encourage abused women to develop their consciousness and agency and to empower them to take actions or make decisions or changes in their lives. This captures the essence of feminist propositions for healing victims of domestic violence. Abused

⁴¹ As discussed earlier, feminists argue that some women are mistakenly accused as offenders for their use of violence in self-defence and that women might use violence but do so differently, generally not in a controlling way and not causing long term and serious damages as occurs with male violence.

women are positioned in the centre of the whole process. Through voluntary participation, sharing, being listened to, and decision making in the restorative justice process, abused women have opportunity to exercise their autonomy or regain control of their lives, while abusers are held accountable and have opportunity to acquire a clear sense of responsibility for the prevention of violence. The use of discursive and non-domination processes is considered constructive and therefore welcomed in the feminist version (Hudson, 2002, 2003a; Van Wormer, 2009).

At the same time, a number of precautions are proposed to ensure positive outcomes from victims' active participation. These relate to securing a safe, respectful, and encouraging space so that abused women are comfortably engaged and empowered in the process. First is allowing no space for the perpetrator's excuses or other family or community members' justification for domestic violence (without prohibiting them from talking). Second is framing participants' accounts of domestic violence in terms of narratives of power and domination against women. It is warned that the discourse of domestic violence may be twisted by offenders or other family and community members as simply moral iniquity or communication problems. Last of all is attending to signs of coercion, domination, and manipulation from the offender or others. Such signs are expected to be detected, confronted, and tackled in the restorative justice process (Busch, 2002; Coker, 1999; Hooper & Busch, 1996; Stubbs, 2002).

These precautions derive from the feminist critique that restorative justice may resemble mediation in falsely assuming that victims and offenders have equal power to discuss and negotiate in the process⁴². It is contended that gender and ethnic inequality

⁴² Some restorative justice theorists defend the use of restorative justice in domestic violence from feminist critiques. In their defence, restorative justice would neither decriminalise men's violence nor remove men's responsibility. Instead, restorative processes can hold abusers accountable, validate wrongness of domestic violence, and attend to power imbalance between the parties, with assistance of

that exists in the society could not possibly disappear in the restorative justice process, but would be reproduced with risk of causing re-traumatisation of victims (Busch, 2002; Cook, 2006; Presser & Gaarder, 2000). From the feminist perspective, not acknowledging power imbalance between victims and offenders of domestic violence makes it difficult to discover that some victims' seemingly voluntary decisions and self-blaming behaviour in the restorative justice process is a result of victims' submission to offenders' threats and control (Hooper & Busch, 1996; Hopkins et al., 2004b). In addition, the relatively informal and private settings of restorative justice would become a breeding ground of victim-blaming or another situation that leaves violence unquestioned and places victims unprotected in the midst of patriarchal offenders, families, and communities (Behrens, 2005; Coker, 1999; Presser & Gaarder, 2000; Stubbs, 2002).

In short, the feminist version of the principle of active participation can be understood in two ways. The activities of participation are to provide abused women with opportunities to share, grow, and heal. The precautions in the participation process are to nurture abused women's participation through special efforts, and to safeguard the environment from possible patriarchal domination and control. The former is a direct approach to repairing harms and promoting agency of abused women. The latter is an indirect approach to repair and personal growth, by eliminating possible threats and damage along the way.

4.2.2.4 Feminist version of the principle of reintegration

In support of holding patriarchal society and abusers accountable for domestic violence, feminists adopt a critical and wide-angle lens when looking at reintegration issues in

facilitators and the parties' families and communities (Bazemore & Earle, 2002; Morris, 2002; Morris & Gelsthorpe, 2000).

domestic violence. The feminist version of the principle of reintegration means thought is not only given to abused women and violent men but also to the groups and social contexts that surround the parties. Table 4.9 sums up the feminist version of this principle.

Table 4.9 The feminist version of the principle of reintegration

RJ principle	Feminist interpretation
Reintegration	*reintegration for both parties or victims only *transform patriarchal families and communities
Note: This table is an extract from Table 4.1.	

In the feminist version, reintegration of abused women is certainly endorsed. Support from family, relatives, and friends is believed to be crucial to victims as they can benefit from others' assistance to recover from the damage of domestic violence in the social, economic, psychological, and legal aspects of their lives. This kind of reintegration might be particularly vital to victims who have been comprehensively controlled and isolated (Goel, 2005; Kohn, 2010). Abused women's reintegration into wider communities is also valued and deemed to be accomplished through fostering society's supportive and non-accusing attitudes toward victims of domestic violence. In the process of reintegrating abused women into communities, their needs for reintegration are thought to be carefully protected from being sacrificed by interests of a whole family or community, which may lie in community solidity or tradition maintenance (Coker, 2002; Pennell & Burford, 2002).

In addition to victim reintegration, the feminist version of the principle of reintegration incorporates different levels of endorsement of offender reintegration. Offender reintegration is sometimes overlooked because limited resources are assigned first to

victim reintegration (Goel, 2000). But offender reintegration receives almost equal attention as victim reintegration in other feminist studies. The feminist support for offender reintegration comes from recognition of the necessity of reintegrating offenders into community if offenders are to rehabilitate (Hudson, 2002). Such reintegration for an offender (hopefully rehabilitated) back into the community may be culturally desirable for a variety of reasons, such as showing respect for abused women's and participants' cultural mentality and legal situations. For instance, some ethnic (Amirthalingam, 2005) and indigenous women and communities (Coker, 1999; Loretta Kelly, 2002) highly value relational connections between victims, offenders, and their families and communities and deeply believe that both victims and offenders should be reintegrated to their families and communities.

Particularly in relation to indigenous groups, families and communities can play a crucial role in reintegration. They can provide support and guidance, standing up for abused women. Community elders can lead the way with moral guidance to violent men (Nancarrow, 2006; Pennell & Burford, 2002; Proietti-Scifoni & Daly, 2011). The advocacy for the important role that indigenous families and communities can play in reintegration is based on an understanding of indigenous women's and communities' distrust of and disgust at the western legal systems, which discriminates and maltreats their men and reject their traditional legal practices (Goel, 2000; Loretta Kelly, 2002).

Importantly, in feminist versions of the principle of reintegration, families and communities of victims and offenders are not unconditionally treated as trustworthy and helpful. They also require careful scrutiny and reinforcement to embrace the transformational agenda. Feminists have the reasonable concern that victims' and offenders' families and communities can readily slip into being part of omnipresent patriarchal systems. Patriarchal families and communities may continue propagating

male superiority and domination and tolerating domestic violence rather than functioning as a constructive mechanism of reintegration of victims or offenders in a changing social system (Hooper & Busch, 1996; Pranis, 2002). The changed system would involve families and communities being transformed in such a way that abused women would be empowered not blamed, abused women's interests would not be suppressed, and the role of women as leaders would be built up (Cameron, 2006; Coker, 2002; Goel, 2000).

Transformation of patriarchal families and communities is necessary from the viewpoint of feminists because of the informal nature of restorative justice and because restorative justice is embedded in community. The nature of restorative justice settings is met with scepticism for the same reason as the use of family/community⁴³ mediation and alternative dispute resolution (ADR) in domestic violence. The informal and community settings are seen as a fundamental defect of these practices for participating families' and communities' patriarchal ideologies cannot be effectively confronted (Coker, 1999; Stubbs, 2002), and may be even protected inadvertently.

In sum, the feminist version of the principle of reintegration features victim reintegration and transformation of patriarchal families and communities. Offender reintegration is not always viewed as imperative in the feminist version of this principle, but often advocated in response to abused women's or disadvantaged communities' cultural and legal concerns.

4.2.2.5 Feminist version of the principle of rehabilitation

The principle of rehabilitation in the feminist interpretation is concerned with stopping

⁴³ Women's grassroots groups are greatly endorsed and considered as valuable community resources. Such community resources are not 'the communities' that need to be transformed, but usually refer to NGO services in contrast to the state's interventions (Alexandre, 2011; MacKinnon, 1989).

violence against abused women and respecting abused women's choices of how to intervene in domestic violence, shown in Table 4.10. Again, interests of abused women, not of abusive men are the objectives of the feminist version of this principle.

Table 4.10 The feminist version of the principle of rehabilitation

RJ principle	Feminist interpretation
Rehabilitation	*offender rehabilitation for victim safety *caution about state's intervention and punishment
Note: This table is an extract from Table 4.1.	

The feminist version of the principle of rehabilitation follows the feminist argument that the first reason for offender rehabilitation is to ensure the victim's safety and after that, to achieve the offender's recovery. Once offenders stop using violence, greater protection is available to victims and they can feel greater safety. Victims are never asked to help offenders rehabilitate (Coker, 1999, 2006; Mills et al., 2009).

The feminist version of the principle of rehabilitation expects the state to commit to offender rehabilitation. The state is expected to assist or intervene in cases of dysfunctional families and communities of victims and offenders, where rehabilitation of offenders is not being carried out. For instance, the state's intervention in domestic violence may include official rehabilitation programs, or other legal actions like protection orders, arrests, prosecution, verdicts, and imprisonment. The state's legal intervention basically serves to better secure victims' safety (Coker, 2002; Daly & Stubbs, 2006b; Hampton, 1998).

State intervention is sometimes, but not always, suggested as being punitive. Research has shown a diversity of needs and expectations in abused women. Not all abused women want punishment imposed on their partners. Some abused women would rather

have more rehabilitation programs offered to their violent partners (Linda Kelly, 2002; Mills, 1999, 2003; Schneider, 2008).

The implementation of the feminist version of the principle of rehabilitation is performed with cautious collaboration with the state, but not complete reliance. An overpowering state is to be avoided because it can make matters worse for abused women. As police arrest and prosecution are mandatory, limited space can be left for the voices of women, and more control and monitoring can be imposed on women (Coker, 2002; Mills, 1999). Bumiller (2008) also has argued that under neo-liberal governance, 'the expansion of the regulatory functions of the state' (p.6) could result in an unhelpful alliance which produces a pro-professional and pro-punishment regime controlling abused women and violent men. Women are watched over and treated as incapable persons who cannot assess their situation nor decide for themselves. Offenders are simply punished. Professionals' power is penetrating everywhere through legal, medical, and psychological examinations and services.

In light of such concerns, some feminists have proposed a partnership between communities and governments to attend to offender rehabilitation in restorative justice projects, with a greater investment in time and resources. Communities are enabled in their action plans to provide professional resources for offenders' identified problems (like mental health and substance use), and monitor offenders' behaviour long term. Communities in this sense include professional service providers and community volunteers, representatives, or elders. At the same time, the state mainly offers protection for victims' safety through formal legal systems (Loretta Kelly, 2002; Pennell & Burford, 2002; Pranis, 2002; Stubbs, 2002).

Some feminists may hold more cautious or even resistant postures toward the state's punitive intervention in domestic violence occurrences in indigenous communities.

Feminist support here means to honour not just abused women's but also oppressed groups' wishes. Feminists have perceived that many indigenous women and groups would like self-governance: They favour resolving violence in their own cultural contexts and among their own community members, and rehabilitating offenders within their community (Coker, 2006; Loretta Kelly, 2002; Nancarrow, 2006). This does not negate the insistence of feminists that the state is responsible for assuring victims' safety and offering appropriate resources to indigenous communities for the purpose of offender rehabilitation (Goel, 2000; Pennell & Burford, 2002).

In sum, the feminist version of the principle of rehabilitation aims to bring an end to domestic violence to achieve the more important ultimate goal of ensuring the safety of victims. Many feminists propose a cautious approach to collaborating with the state. The state is asked to back up community-based rehabilitation plans and to create multiple options like deterrent interventions, punitive measures, and educational programs in answer to abused women's various expectations for offender rehabilitation. The state is also asked to restrain its punitive and authoritarian control over indigenous violent men because indigenous abused women and groups prefer protecting their men and rehabilitating them in their own cultural and community contexts.

4.2.2.6 Feminist version of the principle of restoration

The principle of restoration reflects feminist solutions to abused women's loss and suffering, and feminist concerns for abused women's recovery. In the feminist version of this principle, as shown in Table 4.11, material and emotional restoration for abused women meets with approval. Yet, abusers' apologies, abused women's forgiveness, and relational restoration between abusers and the abused give rise to serious reservations and heated debate.

Table 4.11 The feminist version of the principle of restoration

RJ principle	Feminist interpretation
Restoration	*material and emotional restoration for women *dangers of promoting apology and forgiveness *caution about relational restoration
Note: This table is an extract from Table 4.1.	

The feminist version of the principle of restoration takes abused women's emotional and material healing seriously. Feminists have a clear and in-depth understanding of how extensive the damage of domestic violence can be to abused women, in economic, physical, emotional, and social aspects of their lives (Sack, 2004).

But in the feminist version of this principle, offenders' apologies and victims' forgiveness are not welcomed unconditionally. They attract a warning flag. First, the feminist warning is against possible denial among abused women of their feelings of resentment. Such feelings may be positive signs of self-respect and self-protection. Feminists also refuse to put pressure on abused women to make peace with abusers. Second, feminists warn against abusers' insincere apologies that may be part of a cycle of violence between victims and offenders. The biggest concerns underpinning opposition to offenders' apologies and victims' forgiveness (Acorn, 2004; Hooper & Busch, 1996; Stubbs, 2007) are that the abused women may not be safe and violence may persist.

Thus, relational restoration between victims and offenders is not rejected, but it is pursued with great caution. Some feminists recognise that relationship repair may be appreciated by some abused women who do not like revenge but prefer forgiveness (Daly & Stubbs, 2006a). In the case of indigenous communities, relational restoration is promoted more widely because cultural norms support repairing relationships

between abused women and their abusers, and also families and communities. Even so, the promotion of relationship repair in indigenous communities is under prudent scrutiny to avoid turning offender apologies into cheap justice (Coker, 1999; Nancarrow, 2006).

4.2.2.7 Summary and discussion

The feminist version of the principles of accountability and active participation appears to work on questioning and improving the western version of these two principles. Some precautions are added in the feminist version to prevent abused women from being blamed, dominated or threatened in the restorative justice process. Attention is also drawn to holding not just offenders but also patriarchal ideologies and structures responsible, and to nurturing restorative justice processes to be supportive and empowering for abused women.

In regard to the principle of reintegration, the feminist version, similar to the western version, endorses reintegration of victims or/and offenders. But, the feminist version further emphasises the importance of transformation of patriarchal families and communities, which is needed to provide a sound ground for reintegration of victims and offenders.

Likewise, the feminist version of the principle of restoration partly resembles the western version of this principle in approving of material and emotional restoration of victims. In terms of relational restoration, offenders' apologies and victims' forgiveness, the feminist version expresses much less optimism and more discretion, compared to the western version of this principle.

The feminist version is more distinct from the western version in interpreting the principle of rehabilitation. Victims' safety and their expectations and considerations for

offender rehabilitation, instead of offenders' needs for rehabilitation, become the ultimate objectives in the feminist version. Accordingly, communities' and the state's involvement is considered important, but the use of the state's intervention should be responsive to voices of victims and at times of disadvantaged communities.

In brief, under a feminist interpretation, the five restorative justice principles have been reframed through a critical lens. The feminist version of restorative justice primarily attends to the causes of domestic violence, patriarchy and power and control, and carefully deals with abused women's diverse expectations, needs, and considerations. Abused women are placed in the centre of the feminist interpretation of restorative justice. The prioritisation of abused women's interests is a feature of the feminist version of restorative justice.

4.3 Conclusion

This chapter argues that the Confucian and feminist versions of restorative justice have contemporary significance for the practices of the Taiwan Restorative Justice Initiative in domestic violence. Support for their significance is that the codes of morality, gender relations, and family and interpersonal relationships in Taiwan have been largely influenced by Confucianism and feminism.

The Confucian version of restorative justice proposes a role-based, family-centred, and harmony-driven version of restorative justice. Familial role-related duties are promoted as the standards of right and wrong and the ways of righting the wrong. Families of the parties, instead of the parties, are given more attention and roles in the restorative justice process. Lastly, harmony is set to be the ultimate goal and a top priority, pursued and secured first in the family relationship and then in the relationships with others.

By comparison, the feminist version of restorative justice offers a victim-centred, protective, and transformative version of restorative justice. Abused women's safety and healing are highlighted and protected through addressing issues of patriarchy and power and control and prioritising abused women's voices in the restorative justice process. Accordingly, non-state and state engagement in the restorative justice practice are not fully supported without being responsive to abused women's willingness, assessment of patriarchal and hierarchal power in the community, and deliberations on the possible damage of state authority. Transformation of the parties, their patriarchal families and communities, and the wider community is held as a fundamental solution.

Contradictions between the Confucian and feminist versions of restorative justice are evident. For instance, Confucian beliefs in family and male patriarchy clearly contradict feminist commitment to eliminating patriarchal control and various forms of domination over women. Disagreement can be observed in the Confucian and feminist versions of the principles of active participation and reintegration. Also, taking role-related duties as ruling standards and covering up wrongs of loved ones in Confucianism are at odds with validation of wrongness of violence in feminism. This incompatibility is manifest in the Confucian and feminist interpretations of the principle of accountability. Last of all, the supreme Confucian aim of harmonious relationships is possibly in conflict with the uppermost feminist concern for abused women's interests. Divergence is seen in the Confucian and feminist versions of the five restorative justice principles, but is especially clear in the principle of restoration.

This chapter concludes that the Confucian and feminist versions of restorative justice stem from different value frameworks, deal with distinct concerns, and collide with each other to some extent. For this reason, the Confucian and feminist versions of restorative justice can provide cultural and gender insights into the practices of

Taiwan's restorative justice program for domestic violence, which go beyond the understandings obtained through the blueprint for the program, the western version of restorative justice. The similarities, compatibilities, differences, and disagreements between the western, Confucian, and feminist versions of restorative justice provide a thorough theoretical skeleton that can guide a detailed examination of the practices of the Taiwan Restorative Justice Initiative in domestic violence.

Chapter 5

Methodology

This thesis is situated within a post-positivist paradigm, believing and pursuing a reality, and recognising that the reality can never be perfectly attained for observations and theorising are potentially fallible (Creswell, 1997). A case study design is primarily adopted to capture an in-depth and holistic picture of the studied phenomenon: the transfer of restorative justice to domestic violence cases in a present day East Asian society. In this chapter, a number of issues are covered: the adoption of a single-case study design, an overview of the studied case, data collection, data analysis, and issues of the study's validity.

5.1 The adoption of a single-case study design

The aims of this research are to (1) show how restorative justice theories, Confucianism and feminism interplay with regard to the transfer process and policy outcomes, (2) discover how the above three theories are accepted, disseminated, or blocked in the transfer process, and (3) examine how well the transfer can work for victims and offenders of domestic violence. These aims which require research inquiry that is rooted in the context of restorative justice practice opens the analysis to a multitude of possible variables. This quality is compatible with what case study design can offer: the real-life context of cases, a 'bounded system', where programs or events are taking place, communities or organisations are functioning, and individuals are involved in action (Yin, 2003, p. 5). Moreover, case study design offers the advantage of being able to describe, explore or explain complex relationships among various variables, within the contextual conditions, a 'bounded system' (Creswell, 1997; Yin,

2003). A case study design therefore appears well situated for achieving the aims of this thesis.

This study employs a design template of a single case and two embedded analytic units (Yin, 2003). Yin suggests the use of embedded analytic units could increase sensitivity to research inquiry and possibilities for extensive analysis. The single case in this thesis is Taiwan's Restorative Justice Initiative, specifically its work in domestic violence cases. The two embedded analytic units are two local projects practically handling domestic violence cases.

The design of this single case and two embedded units renders possible comparisons in observing how western theories of restorative justice could be received and exercised in a society that retains some Confucian values and undergoes social change with the spread of feminism. Figure 5.1 demonstrates the relations between the studied single case and embedded units. Both units were rooted in the contexts of the case, supervised by the Ministry of Justice and developed under coexisting ideas of restorative justice theories, Confucianism, and feminism. Yet the practices in the two units evolved separately. They are distinguished in this thesis by the code names, Project A and Project B, which were respectively operated by District Prosecutors Office A and District Prosecutors Office B and their NGO partners.

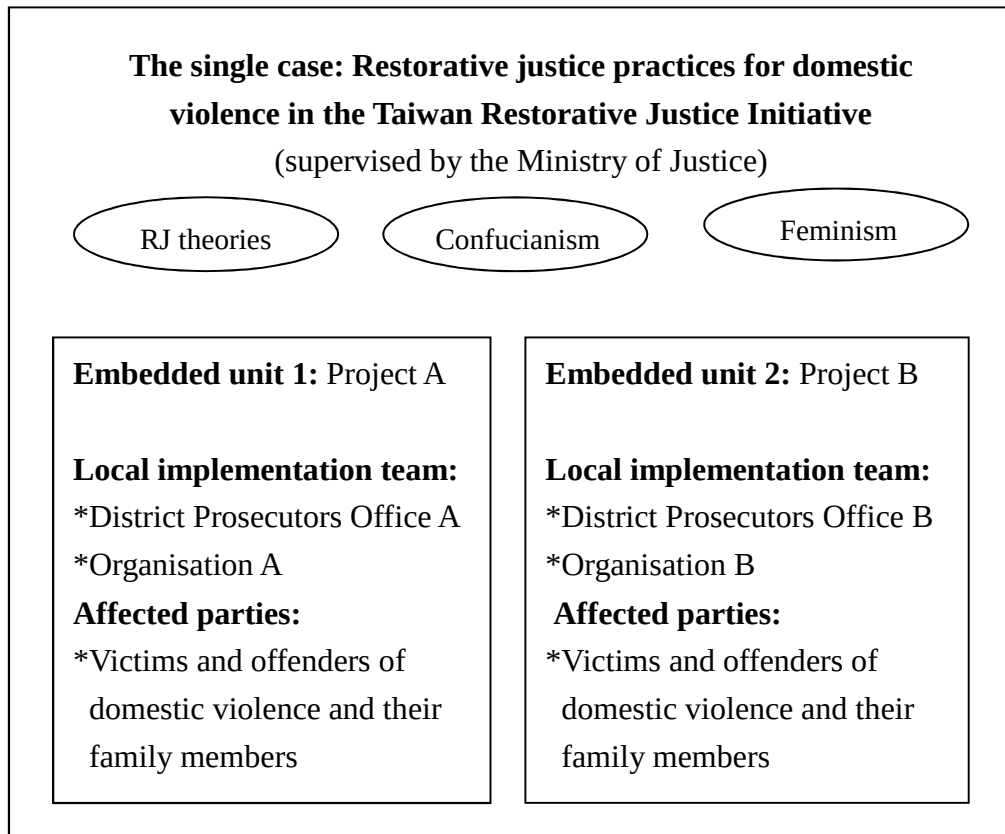


Figure 5.1 A single case design of two embedded units

5.1.1 The context of the studied case

Significant background information was collected about Taiwan’s Restorative Justice Initiative, including the political rhetoric of what restorative justice could offer at the ministerial level and the objectives and operation of the Ministry of Justice. These elements revealed how the Initiative was to be implemented as well as the perspective of the Ministry of Justice. Both shaped local restorative justice practices for domestic violence.

The Taiwan Restorative Justice Initiative was planned as a one-year experiment from June 2010 to May 2011, but has continued until the present day. The Initiative was directed by the Ministry of Justice Taiwan and implemented by eight District Prosecutors Offices. The District Prosecutors Offices were instructed to select cases of

offenders with minor offences and no serious criminal records in their local projects.

Although these eight cooperating District Prosecutors Offices were under the supervision of the Ministry of Justice, they were given ample discretion to design the operational scheme of their own local projects. As a result, two out of eight cooperating District Prosecutors Offices expressed interest in applying restorative justice to criminal cases arising from domestic conflicts or violence. The remaining six District Prosecutors Offices were mainly concerned with minor offences of up to a maximum three-year prison sentence⁴⁴.

In addition, the Taiwan Restorative Justice Initiative embodying the ideas of restorative justice, rubbed up against value systems that gave meaning to pre-existing notions of family relationships and domestic violence. As discussed in Chapter 4, these notions in Taiwan mainly stemmed from the ideologies of Confucianism and feminism. As a result, restorative justice theories, Confucianism, and feminism were sitting in the background, prompting thoughts and actions. They served as systems of understanding that enclosed the embedded units, Projects A and B, where the translation of restorative justice to domestic violence was fashioned, as shown in Figure 5.1.

5.1.2 The embedded analytic units

The embedded units, the two local projects, were the major sites for observing and analysing restorative justice practices for domestic violence, which are being studied at two levels: institutional and individual. At the institutional level, as shown in Figure 5.1, the District Prosecutors Office in each project took charge of the local operation of restorative justice practices through partnering with a NGO. These authorities provided

⁴⁴ Offences included larceny, offences causing bodily harm, offences of criminal conversion, fraud and extortion.

the institutional framework for the intervention. Importantly, the networking in each of these two projects, which flowed from the institutional framework, was to principally shape local translation of restorative justice.

The philosophy of restorative justice articulated at the institutional level was connected with restorative justice practices performed at the individual level. Observation of the connections between the institutional plan and individual actions and how they came about provided the data for the present analysis of the implementation of restorative justice practice in domestic violence. Criminal justice officers, restorative justice practitioners, victims, offenders, and families involved in the restorative justice process provided the researcher with different perspectives on the implementation of restorative justice.

Demographic information relating to the cases and the individuals were useful for revealing the factual aspects of practice, that is, the background description for the intervention. This information complemented data on the subjective experiences of the individuals involved in the Projects.

5.1.3 Timeframe for the case study

The official duration of the Restorative Justice Initiative in the first year was from June 2010 to May 2011. But these two selected jurisdictions started their practices at different times. Jurisdiction A began their actual practice in April 2010 and Jurisdiction B began in October 2010. This thesis looked at the first 10 months of practice in each jurisdiction. A 10-month operational period was the duration decided by the Ministry of Justice. Cooperating District Prosecutors Offices were required to submit their final report to the Ministry based on their first 10 months of practice. In Jurisdiction A, the observed practice of the first 10 months was from April 2010 to February 2011 and in

Jurisdiction B was from October 2010 to August 2011.

5.2 An overview of the studied case

The configurations of local implementation teams in both Projects A and B were alike, including a District Prosecutors Office and a contracted non-governmental organisation (NGO) that was responsible for implementing the restorative justice process. The NGOs recruited facilitators to run the restorative justice conferences. Facilitators were further endorsed by the District Prosecutors Offices. Each of the NGOs also assigned to one of their employees the role of case manager as well as liaison person between the District Prosecutors Office and the facilitators.

The restorative procedure in Projects A and B were similar. It started at the stage of criminal investigation with case referral by individual prosecutors⁴⁵ who were affiliated with the Section for the Protection of Women and Children in the District Prosecutors Office. After referral, cases were processed by the case manager for initial contact and evaluation. Next, facilitators did their preparatory work and convened a meeting⁴⁶. The cases had to be returned to the District Prosecutors Offices by the case managers or facilitators, in the event that the case was withdrawn or finalised. A recommendation report on case withdrawal or meeting agreement was required for

⁴⁵ In Project B, a case was only referred to the restorative justice process when the prosecutor got the consent from both the victim and the offender. But in Project A, a number of cases, not all of the cases, were referred to the restorative justice process prior to the prosecutors obtaining the victims' or the offenders' consent. This was because some of the prosecutors considered that the enquiry made by the judicial authority would impose inevitable pressures on the victim or the offender who would usually agree but with concealed reluctance. Thus, in some cases in Project A, the voluntary participation of the victim or the offender was first sought by the case manager or the facilitators.

⁴⁶ In Project A, the case manager sometimes referred a case immediately to the facilitators without contacting the victim or the offender first. Under such circumstances, all the restorative justice procedures were undertaken by the facilitators with the case manager being the assistant.

submission to the District Prosecutors Offices, where the probation officers collated all the paperwork of the referred cases and the prosecutors reviewed the recommendation report to make final decisions on the nature of charges. In the main this involved the treatment or conditions imposed on offenders. The procedures are shown in Figure 5.2.

It is worth noting that the two local implementation teams collaborated with the Centre for Prevention of Domestic Violence and Sexual Assault (CPDVSA) in each administrative region for the assessment of case suitability. Either through informal discussions and consultations or through establishing a formal cooperation mechanism, both District Prosecutors Offices worked with the CPDVSA.

The implemented RJ procedures and tasks

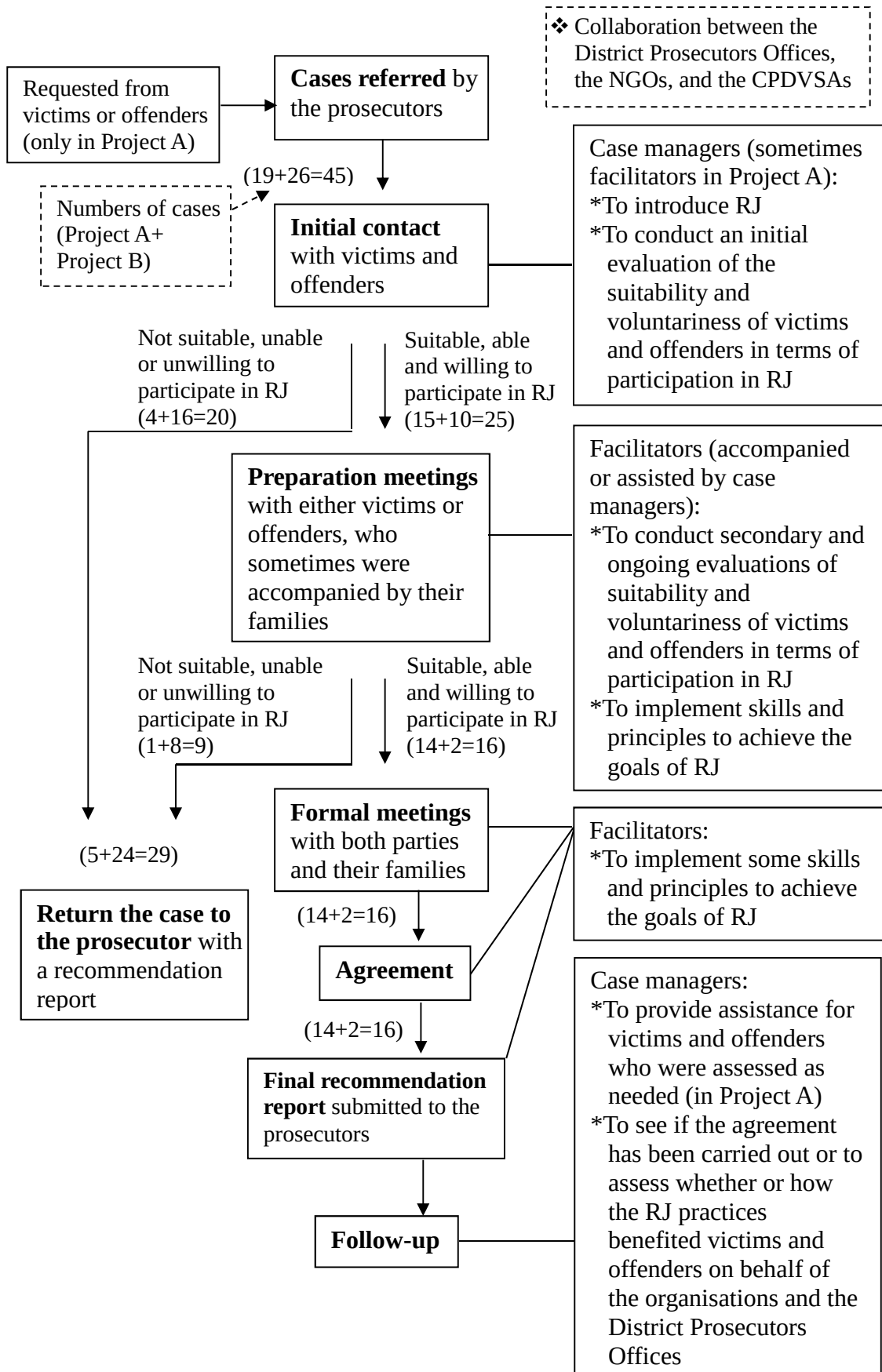


Figure 5.2 An overview of RJ procedures and tasks in Projects A and B

Under such procedures, these two jurisdictions respectively handled around twenty cases in their first 10-month experimental period. Not all were followed through using a restorative justice process. The referred cases were confined to criminal cases deriving from domestic conflicts or violence. Most of the cases were conflicts or violence between married couples and a few of the cases emerged among blood relatives or in-laws. Table 5.1 shows the numbers associated with case referral, case withdrawal, and case finalisation. The cases were withdrawn in the beginning or dropped after entering into the restorative justice preparatory stage mainly because the victims or the offenders were unwilling to participate in the restorative justice process anymore. In a few cases the case manager or the facilitators lodged notification of withdrawal because they considered the case was not appropriate for restorative justice processes. The case withdrawal rates and dropped rates were high in Project B, in comparison with Project A. Accordingly, more cases were finalised with agreement in Project A.

Table 5.1 Number of the cases relating domestic violence/conflicts in the RJ process

Project	Total of referred cases	Case withdrawal	Cases processed in the RJ process		
			Total	Cases dropped	Cases finalised with agreement
Project A	19 (15)	4 (4)	15 (11)	1 (0)	14 (11)
Project B	26 (17)	16 (14)	10 (3)	8 (1)	2 (2)
Note: The numbers in the brackets indicate the numbers of the cases occurring between married couples.					

5.3 Data collection

With the framework of the single-case design, a variety of qualitative data were collected, including observations, interviews and documentation. Among these three,

interviews are the main source of evidence in this thesis. An elaboration of data collection methods follows.

5.3.1 Observations

Observations were only undertaken in Project A due to the fact that consent was solely granted there. The observational work consisted of two types of activities: (1) restorative justice meeting observations and (2) voluntary work in Organisation A. From January 2011 to March 2011, observational work was carried out with interviews implemented in parallel.

5.3.1.1 Meeting observations - direct observations

Meeting observations involved participating in two final meetings and one preparatory meeting. Meeting observations were conducted after consent was received by the facilitators, and through the facilitators, approval was obtained from the participants⁴⁷. The aim of meeting observations was to immerse the researcher in the real-life context of restorative justice practice for domestic violence in Taiwan. Notes were taken to be used as a probe for modification of interview questions. They also served cross-validation purposes when listening to the subjective accounts of observed victims, offenders, and facilitators.

In this thesis, meeting observations had a number of foci, mainly based on the theories of restorative justice and expressions of the values of Confucianism and feminism: (1) what the victim and offender said or asked for, (2) the role of the victims' or offenders' family members, (3) the responses of the facilitator to the expression or requests of

⁴⁷ Before the meetings, the facilitators explained the research and the observation work of the researcher and asked the participants if they felt comfortable and okay with the researcher sitting and making observation in the meetings.

participants, and (4) the emotions of all participants.

5.3.1.2 Voluntary work - participant observation

The voluntary work was recommended by Organisation A to provide ‘real’ access to the victims and offenders. It was believed that without establishing relationships with the victims and offenders of domestic violence cases in advance, the interview invitation would be very likely declined by the victims and offenders. The voluntary work provided a meaningful avenue for rapport building with interviewees. One major part of the voluntary work was to gain insight into the wellbeing of the victims and the offenders and to learn of any conflict in the familial relationship that might have occurred after the restorative justice process. The other part was to conduct a brief satisfaction survey, on behalf of the research team which was commissioned by the Ministry of Justice, to seek the feedback of the victims and the offenders on the restorative justice practice in which they were involved. Except for the formatted survey, other relevant information was taken through research notes and utilised as one source of evidence. Sections of the notes that were useful to evaluate the need for further services were also provided to Organisation A.

Short notes were taken during the phone call and immediately expanded to more complete notes after the calls ended. The content of the notes included information and feedback given by the victims, offenders, and also by their family members. The family members were not the expected targets in the beginning of the research. The notes were being taken because the family members voluntarily offered their opinions when they picked up the follow-up phone call. It subsequently became clear that their opinions were of importance in understanding their perception of domestic violence and of the boundary between individual and family, even though some of them were not participating in the restorative justice process.

This voluntary work took the form of participant observation (Yin, 2003). The researcher collected data as a volunteer to the victims, offenders, and their families, and as a co-worker to the restorative justice practitioners in Organisation A. Through the voluntary work, the researcher had opportunities to cross-validate the data collected from interviews with the victims, offenders, and restorative justice practitioners in Project A.

5.3.2 Interviews

5.3.2.1 Recruitment of participants

In this case study, the potential interviewees were a small group of people. All potential interviewees were invited to participate. No sampling method was applied. The potential interviewees can be categorised into four groups who were involved in the restorative justice practice for domestic violence in the Initiative: (a) criminal justice officers: including officials at the Ministry of Justice (MOJ), and probation officers and prosecutors at the two District Prosecutors Offices; (b) restorative justice practitioners: including case managers, supervisors, and facilitators; (c) victims and (d) offenders.

The interview recruitment started from Project A from January 2011 to March 2011, involving the four groups of interviewees. In the second phase of data collection, from October 2011 to December 2011, the recruitment proceeded in Project B. In Project B only criminal justice officers and restorative justice practitioners were available for interview. This was because the policy of the Ministry of Justice was altered at the later time, forbidding other research⁴⁸ directly involving participation of victims and offenders involved in the Initiative. The Ministry's official declaration was explained

⁴⁸ With regard to the operation of the Taiwan Restorative Justice Initiative, the Ministry of Justice had commissioned the evaluation work to a research team composed of restorative justice scholars in Taiwan.

in terms of the need to protect privacy. Thus, there were no interviews with victims and offenders in Project B. In the third phase of data collection, in August 2012, the interview recruitment proceeded at the Ministry of Justice, where officials were invited to share their work and opinions with regard to Projects A and B.

Interviews with participants and practitioners were mainly invited by the researcher directly via phone or email. To the group of criminal justice officers, the invitation was mostly made through the head prosecutor of the Section for the Protection of Women and Children in two local jurisdictions. The recruitment had a fairly satisfactory outcome for the three groups of restorative justice practitioners, victims, and offenders⁴⁹. By comparison, in the group of criminal justice officers, there were fewer prosecutors willing to participate in the research, as seen in Table 5.2.

⁴⁹ The high response rate could be attributed to the endorsement of the justice agencies of this research and the researcher's voluntary work in Organisation A, which helped potential interviewees develop basic trust in this research and the researcher. While inviting potential interviewees to participate in this research, the researcher stressed that future restorative justice implementation desperately needs their thoughts and comments on the restorative justice processes they were involved in. Over half of the potential interviewees were happy to share their own experiences, either good or bad. Other potential interviewees were afraid that they might not have enough 'correct knowledge' of restorative justice to share. But such hesitation was all successfully resolved by the researcher's encouragement that what they thought and felt was more important to this research than what might be correct.

In the meantime, the researcher assured potential interviewees that participation in this research is voluntary and that their participation and information will be kept confidential and anonymous. Particularly to safeguard the voluntariness of victims' and offenders' participation, the researcher clarified that whether they participate in this research or not will not be known by others, including the justice agencies and practitioners. A few practitioners were worried about what they said in the interview may hurt their personal reputation or the reputation of their affiliated institution. In response to their concerns, recording was stopped for a period of time in the interview. An interview recording and an interview transcript were given to them afterwards. No further questions were raised.

Table 5.2 Recruitment of interview participants

		Number of expected interviews	Number of Completed interviews	Reasons for unsuccessful recruitment
Criminal justice officers	Officials at the MOJ	3	1	Unwillingness
	Prosecutors	22	4	Unwillingness
	Probation officers	3	3	-
RJ practitioners	Case managers	2	2	-
	Facilitators/supervisors	12	11	No response
Offenders in Project A		15 ^(a)	10	One offender declined the invitation; three offenders could not be reached; one offender was incapable of speaking due to inherent disabilities.
Victims in Project A		16 ^(b)	14	One victim declined the invitation; one victim could not be reached.
Total			45	
Note: (a) There were nineteen cases referred to Jurisdiction A during their first 10-month experiment. Fifteen cases entered the restorative justice process, with fourteen cases finalised with agreement and one case dropped (see Table 5.1). This dropped case was handled more intensively by the facilitator and was provided with subsequent services and long-term care by the case manager. For this reason, the dropped case was included in the expected interviews. (b) Within these expected fifteen cases (of sixteen interviewees), one case involved two accusations concerning three persons: a man was the victim of the first accusation and also the offender of the second. This man was identified as a victim here for two reasons: (1) He was physically harmed to a certain degree. (2) According to this man's victim, he scarcely hurt her. She reported that the accusation against him was made with the intention of forcing him to quash the first accusation, which was against her brother.				

5.3.2.2 Participants

There were a total of 45 participants in this research, including eight criminal justice officers, thirteen restorative justice practitioners from two local projects, and fourteen victims and ten offenders from Project A. The majority of participants were females. Among the group of offenders, most were men.

The group of criminal justice officers was concentrated in the age group from 30 to 50. Such a distribution was slightly different from the age distribution for the group of restorative justice practitioners, which was bimodal. There was a younger age group (30 to 40 years) and an older age group (50 to 60 years), with two case managers belonging to the younger age group and most facilitators belonging to the older age group. Victims and offenders were aged from 23 to 72. Within the oldest age group, domestic violence involved father and son or mother and daughter-in-law and did not occur in a marital relationship. Table 5.3 shows the details.

It also can be seen from Table 5.3 that before joining this Initiative, all these criminal justice officers and restorative justice practitioners had been working with victims or/and offenders of domestic violence cases. To the restorative justice practitioners, a certain portion of their previous work related to domestic violence while they acted as mediators in the family court, social workers or counsellors. It is also worth noting that within the most experienced group of restorative justice practitioners, five out of nine were deeply dedicated to working in the field of domestic violence.

Table 5.3 Demographics of interview participants

		Criminal justice officers	RJ practitioners	Victims	Offenders
Gender	Female	8	10	11	3
	Male	-	3	3	7
Age (years old)	20-30	-	-	2	1
	30-40	4	5	6	3
	40-50	4	1	2	4
	50-60	-	7	2	1
	> 60	-	-	2	1
Working with victims or/and offenders of domestic violence	< 1 year	-	1		
	2-5 years	5	3		
	> 5 years	3	9		
Note (a): Most of the interviewees were Taiwanese; but a number of victims and offenders were of other original nationalities. One female victim and one female offender were from Vietnam; two female victims were from Mainland China; and one male offender was from Thailand. All of these female interviewees of different nationalities first came to Taiwan for arranged marriages. A third wave of cross-national marriages in Taiwan started in 1990 and was an attractive option for certain groups of Taiwanese men, particularly those who were disadvantaged in the marriage ‘market’ by intellectual, physical, or economic conditions or by age. Note (b): All the RJ practitioners took restorative justice basic or/ and advanced training courses delivered by the Centre for Restoration of Human Relationships (CRHR) from Hong Kong.					

The interviewee groups of victims and offenders had a number of criminal accusations made against them, including offences of violation against a protection order, causing bodily harm, abandonment, offences against reputation and credit, abduction, and offences against public safety. The 14 victims who were interviewed came from 13 cases. Some cases contained more than one accusation so that accusations exceeded in number the cases involved in the study and victims interviewed. Table 5.4 shows the breakdown of offence type for the 18 accusations.

Table 5.4 Information of interview cases

Offence type	Number of accusations	Relationship between victim and offender
Violation of protection order	7	5 between married couples; 1 between father and son; 1 between mother and daughter-in-law
Causing bodily harm	5	4 between married couples; 1 between brothers in law
Abandonment	3	between married couples
Offences against reputation and credit	1	between mother and daughter-in-law
Abduction	1	between a married couple
Offences against public safety	1	between a married couple
Total	18	-

Only half of the victims (7/14) lodged their cases with the accusation of violation against a protection order. Through interviews, it was found that the other half of the victims included two victims whose protection orders had expired, three victims who had never experienced severe domestic violence in the past, and two victims who had filed cases with other accusations: one was the offence of abduction⁵⁰, and the other was the offence of damage to reputation and credit⁵¹. Most of the cases were between married couples. Even in the remaining cases where the offences happened between in-laws or blood relatives, spousal conflicts or violence were lurking in these families and sometimes incubating the offences between in-laws or blood relatives, according to interview findings.

⁵⁰ In the abduction case, the female offender was a victim of spousal violence in the past. Her husband had intermittent drinking problems and in order to have her children properly cared for while she was working away from home, she took her children back to Vietnam, leaving her husband angry.

⁵¹ The case of offenses against reputation and credit took place in a constant discordant relationship between mother and daughter-in-law.

5.3.2.3 Semi-structured interviews

Semi-structured interviews were conducted with four groups of interviewees: criminal justice officers, restorative justice practitioners, victims, and offenders. A core set of interview questions were put to all four groups. Themes included: (1) their perception of domestic violence, such as the explanation for domestic violence, depiction of victims and offenders (or depiction of themselves and the other party), and appropriate treatment or sanctions imposed on victims and offenders (or appropriate treatment or sanctions imposed on themselves and the other party); (2) personal information, such as age, gender, the information about the offence, length of domestic violence/conflicts that they were dealing with. Professionals were also asked about the length and extent of their work experiences in the field of domestic violence.

Two additional themes were introduced in interview questions for victims and offenders. These regarded victims' or offenders' participatory experiences of the restorative justice project, and their feedback on the process and outcome, and on the work of criminal justice officers and restorative justice practitioners.

Special interview themes with criminal justice officers and restorative justice practitioners were their work experiences in the restorative justice project, such as their working approaches, the principles or goals they valued, challenges faced, or expectations they had for restorative justice practices in domestic violence. As the interviews with these two groups of interviewees were being conducted, two new interview themes emerged. The groups of criminal justice officers and restorative justice practitioners were invited to share how they considered the similarities or differences between restorative justice and their previous working approaches for domestic violence. They were also asked about their partnership with other implementation team members, at the individual and institutional levels.

5.3.2.4 Procedures

Interviews were in both Chinese and Taiwanese because Taiwanese was a more common dialect used in the local communities⁵². The interviews with the criminal justice officers and restorative justice practitioners were mostly done at their work places; the interviews with the victims and offenders were half done at their home and half done elsewhere⁵³, depending on their preference. Sometimes, when the interview was conducted at the interviewees' home, the interviews involved other family members who had been invited to be present by the interviewees.

Due to variation in the processing of referred cases, victims and offenders were interviewed one to eight months after their cases were finalised. But victim(s) and offender(s) associated with the same case were interviewed within a couple of weeks of each other⁵⁴.

Most of the interviews were tape-recorded; two out of a total of 45 interviews relied on notes because these two victims doubted the protections for taped interview data. They were afraid that the recordings could become evidence against them in future lawsuits. Among these 45 interviews, the longest interview lasted two and half hours, the shortest half an hour, with an average interview length of 69 minutes.

5.3.3 Documentation

Published documents and website information were the main source of evidence for

⁵² Interviews in Chinese and Taiwanese were all translated and transcribed by the researcher.

⁵³ Interviews took place at coffee shops, McDonald's, parks, and interviewees' work places.

⁵⁴ All the interviewees were informed by the researcher that their participation will not be disclosed to others, including the other party in their cases. Still, it was possible that some of the interviewees may voluntarily discuss their participation in this research with the other party. Yet, the researcher never learned of this situation from the interviewees.

understanding restorative justice practices for domestic violence at the institutional level. A variety of sources of data were collected at two levels: (1) the ministerial level: the operational scheme of the whole Initiative, the propaganda for the Initiative, the evaluation report of the whole Initiative, and other official reports on the Initiative; (2) the local institutional level: the operational schemes of the District Prosecutors Offices, the evaluation reports of the local project submitted by the NGOs, and the website information and publications of the NGOs and the Centres for Prevention of Domestic Violence and Sexual Assault.

Apart from data concerning the institutions, there was one important document regarding restorative justice practices at the individual level. It was a report covering three prosecutors' observations in Jurisdiction A, based on their own experiences in referring cases to the restorative justice process. Due to the low response rate of the prosecutors to the invitation to be interviewed by the researcher, this report was collected as a vital primary source to understand the points of view of prosecutors.

5.4 Data analysis

Through the process of data collection, multiple sources of evidence were included: observations (direct observations and participant observation), interviews and documentation. Regarding direct observations (meeting observations), these data acted as additional information in this study in order to build up background knowledge for the studied cases and to cross-validate the interpretation drawn from other sources of data⁵⁵ (Creswell, 1997; Patton, 2002; Silverman, 2001; Yin, 2003).

⁵⁵ Direct observation (meeting observation) and participant observation (voluntary work) did not bring additional details to the research, but cross-validated the information given by practitioners, victims, and offenders in the interviews.

5.4.1 Analysis of interview data and participant observations

The theoretical propositions guided the research design and data collection. In the process of data analysis, however, this thesis was open to identifying competing theories and ideas. The thesis adopted an inductive approach in the first instance in order to be sensitive to the interview data and the context, and further to obtain indigenous codes, categories, and themes from the data (Miles & Huberman, 1994; Patton, 2002; Rubin & Rubin, 2005)

The coding process started by using a sentence or multi-sentence chunk as the unit of analysis, where more than one code was created so as to draw out the meanings completely (Miles & Huberman, 1994). This followed the strategy of ‘open coding’ suggested by Strauss and Corbin (1998), segmenting the data and keeping open the option of exploring meanings from the data. Descriptive codes were created during the first few reviews of the data. Interpretive codes were added when the manuscripts had been read thoroughly. In the meantime, these created codes were gradually converging to form a number of categories. Some of the codes were modified, developed, or collapsed into broader categories when categories and sub-categories were being built, but there were some codes left that did not belong to any categories.

Pattern coding was used in the last stage of data analysis. The major task here was to find themes, explanations, or relationships among the established codes and categories in the earlier inductive coding process (Miles & Huberman, 1994). Pattern matching and testing rival explanations are two essential strategies recommended by Yin (2003) for single-case studies to discover themes, patterns, inconsistency in a pattern, and competing explanations for a pattern. In doing so, case studies can offer accurate patterns and explanations for relationships between codes and categories. In this study, the strategies of pattern matching and testing rival explanations helped develop and

clarify (1) the relationships among the multiple goals of restorative justice set up by the criminal justice officers and restorative justice practitioners and (2) the connections between these multiple goals and values of restorative justice theories, Confucianism, and feminism. The outcomes are shown in the figures in Chapter 7.

5.4.2 Analysis of documentation

In this thesis, documentation was not simply taken as background information but was also the main source for analysing the phenomenon of the transfer process. Some information from the collected documents can best be described as facts, but other information implicated values and persuasive messages that institutions used for communication purposes. For this reason, the study adopted some analytic tactics suggested by ethnographic researchers who study organisational behaviour.

According to Atkinson and Coffey (2004), documents are ‘social facts’; they are active products, constructed, distributed and consumed for certain communication purposes. In other words, documents are not being produced to precisely reveal the actual operations of certain phenomena (Atkinson & Coffey, 2004; Hammersley & Atkinson, 2007; Prior, 2004). Adopting this perspective and following the suggestions of these researchers, this thesis employed two analytic strategies in the document analysis: (1) the authorship and readership of the document and (2) the self-defence, persuasion or the highlights of the document. These strategies provided insight into the implicit postures of the institutions.

5.5 Validity

A post-positivist perspective and validity measures of case studies were employed. From a post-positive perspective, objectivity can be obtained by diminishing effects of biases, yet recognising that the reality grasped is still imperfect and possibly flawed by

theories, contexts, knowledge or values of the researcher (Crotty, 1998; Guba & Lincoln, 1994). In case studies, one underpinning of research validity is triangulation in the research design and data analysis, in a bid to describe and interpret cases (Creswell, 1997; Yin, 2003). Triangulation was applied in this study in two different ways: (1) triangulation of data sources and (2) theory triangulation, as suggested by Michael Quinn Patton (2002) and Janet Chan (2013). Triangulation of data sources involved multiple sources that included meeting observation, voluntary work in the NGO, interviews, and documentation. Theory triangulation relied on the use of manifold theoretical perspectives: from theories of restorative justice, Confucianism, and feminism.

According to Yin (2003), strategies of triangulation should be applied in different phases of research for particular reasons. During research design, theories are of particular significance to seeing a single case study in multiple ways. During data collection multiple sources of evidence also promote validity. Finally, in data analysis, tactics of pattern matching, explanation building, and testing rival explanations were applied to build up the internal validity of the research. In this phase, two types of triangulation: triangulation of data sources and theory triangulation were employed to evaluate alternative interpretations or explanations of the data and check consistency of patterns.

Another validity issue is the researcher, for the researcher is a research instrument, possibly influencing the processes of data collection and analysis in either a positive or negative way. Under such circumstances, the credibility and the influences on the researcher should be pondered (Patton, 2002; Silverman, 2001). In this research, the researcher was born and grew up in Taiwan, learning and internalising both Confucian and western values through family and school education and experiences. Through

processes of triangulation and discussions with ANU Australian supervisors and Taiwanese scholars, the bias of the researcher's cultural assumption on interpretation of data, were challenged, recognised, and modified⁵⁶.

In addition, the researcher had a professional background in social work and one and half years of work experience in assisting foreign spouses living in Taiwan. These attributes helped the comprehension of the phenomenon of domestic violence and the cases involving cross-national marriages, and further enhanced the depth of conversation with the interviewees. On the negative side, the researcher's pre-conceptions about domestic violence and cross-national marriages, and the multiple roles played (as a volunteer and an external researcher) in the phase of data collection could cause biases in the processes of data collection and analysis. Triangulation of data sources and theory triangulation helped contest risks that analyses are affected by the researcher's pre-existing perceptions of domestic violence rather than the data itself.

Biases were found to be generated particularly through the researcher's relationship with Organization A. The researcher investigated Organisation A through interviews but also meeting observations and voluntary work. Due to these observations, the researcher generated extra understanding, but also hesitation about some of the practitioners' working approaches in Organisation A, such as offering direct advice to the parties or provoking the parties' sense of parental responsibility. In the early stage of coding the interview data of the practitioners in Organisation A, the researcher occasionally missed or exaggerated certain elements of the interviews, forming some

⁵⁶ Questions like whether 'face protection' and 'filial piety' only exist in Chinese culture were discussed with ANU supervisors. Such discussion pushed the researcher to further find out and confirm that the interviewees' accounts of 'face protection' and 'filial piety' were truly, in a Confucian sense, reflecting Confucian ideas of role-bearing persons and family hierarchy.

patterns among established codes that were found to be inaccurate latter. Processes of triangulation and revisiting early research notes gave opportunities for correction, sharing and discussing research notes in confidence with ANU supervisors, made the researcher aware of how such biases manifest themselves.

Of most assistance in this self-corrective process, were interviews with the practitioners in Organisation B. When coding the interview data of the practitioners in Organisation B, the researcher found that practitioners' practices bore both resemblances to and differences from practices in Organisation A. Thus, the earlier biases were reduced in comparing the interview data of the practitioners in Organizations A and B. The interview data of the criminal justice officers were later analysed together with the interview data of the practitioners in both organisations, in a bid further to improve the validity of data analysis.

5.6 Summary

This thesis adopts a single-case study design with two embedded units. Different types of qualitative data were collected, including meeting and participant observations, in-depth interviews, and documentation. A total of 45 interviews with criminal justice officers, restorative justice practitioners, and victims and offenders of domestic violence are the main source of data.

Validity was iteratively put to test through triangulation of data sources and theory triangulation (restorative justice theories, Confucianism, and feminism). The influence of the researcher in the process of data analysis was also opened to contestation in various, though limited, ways.

Chapter 6

The flow of vernacularisation in restorative justice

This chapter shows how the transmission dimensions of implementation fostered the flow of the vernacularisation of restorative justice in the domestic violence context. Chapter 7 shifts attention to analysing the ideological dimensions of implementation, explaining the vernacularisation of restorative justice in itself. Finally, Chapter 8 uncovers the expectations of victims and offenders of domestic violence, which contrasts with the vernacularisation of restorative justice by the implementers in Chapter 7.

Transmission dimensions of implementation incorporate the contexts, the setting, and networks through which the postures of the implementation institutions and the governance of the vernacularisation of restorative justice were shaped. In contrast, ideological dimensions denote the meanings of restorative justice which were individually vernacularised by the implementers. The two types of dimensions are necessarily related, but analytically and conceptually it is useful to separate them.

This chapter will be divided into three sections to reveal that the contexts and networks in the Taiwan Restorative Justice Initiative fostered a flowing, prospering, but little-governed vernacularisation of restorative justice. The first section identifies the contextual and implementation factors of the Initiative which prompted the coexistence and ascendancy of western, Confucian, and feminist interpretations of restorative justice at the state and local levels. The second section focuses on the postures of local implementation institutions for restorative justice that developed within local

networks⁵⁷ and led Projects A and B to very distinct directions. The third section discusses some implementation strategies of the state and the local implementation teams that advanced the execution of Projects A and B yet weakened the governance functions of the networks on the vernacularisation of restorative justice.

The chapter draws on interviews with criminal justice officers and restorative justice practitioners at the state and local levels. Other materials used are (1) official reports and documents on restorative justice published by the Ministry of Justice, (2) the implementation plans and evaluation reports on restorative justice compiled by the two local implementation teams, and (3) the website information and brochures about policies and services of domestic violence at the national and local levels.

6.1 The coexistence and ascendancy of the western, Confucian, and feminist interpretations of RJ

As they coexisted, the western, Confucian and feminist interpretations each displayed patterns of ascendancy at some point, along with points of low impact. At the state level, the western and Confucian interpretations were prevailing. At the local level, the Confucian and feminist interpretations were prospering. The key to the flow of the vernacularisation of restorative justice from the state level to the local level was the contexts and settings of the Initiative, which are elaborated below.

6.1.1 The state's pursuit of the western and Confucian interpretations of RJ

The vernacularisation of restorative justice in the Initiative started at the state level, where the western and Confucian interpretations were ascendant. Importantly, the state's endorsement of the western and Confucian interpretations of restorative justice

⁵⁷ The networks included local actors and actors from the state, overseas, and external groups.

followed on from recent reforms of criminal justice systems in Taiwan.

Reform of Taiwan's criminal justice systems occurred against a background of adherence to the suggestions of the White Book on Prosecution Reform in 1999, a polarised model of criminal justice policies. The polarised model was a hybrid of a lenient approach to minor offences and harsh treatment for serious offences. The introduction of the polarised model was set to address the three unresolved problems at the time: inefficiency in the use of criminal justice resources, prison overload, and a heavy caseload in the criminal justice system (Ministry of Justice, 1999).

Specifically, it was the promotion of a lenient approach in the polarised model that opened the door to state initiation of restorative justice and state vernacularisation of restorative justice. The state's interest in the western package of restorative justice was fostered in the state's endeavour to provide lenient criminal justice practices for offenders. The state's fondness for the Confucian interpretation of restorative justice stemmed from the its policy on expansion of the original lenient practices, the existing mediation system (Hsieh, 2004; Z.-N. Huang, 2003).

6.1.1.1 The western interpretation of RJ connected to a lenient criminal justice approach

The promotion of a lenient approach in the polarised model of criminal justice policies was the remote cause for the state's attraction to western ideas of restorative justice and to the Restorative Justice Initiative.

Deferred prosecution and suspended sentencing were the state's major innovations as part of the lenient approach, commencing in 2002 and 2005 respectively for offenders who commit minor offences⁵⁸. 'Restorative elements' in the two innovations were

⁵⁸ The prosecutor is entitled to exercise his/her discretion in deferring prosecution for an accused who commits an offence other than an offence punishable with the death penalty, life imprisonment, or with a

recognised. Yet, the ‘restorative elements’ were actually carried out under demands of prosecutors and judges who were allowed to order offenders to make apologies or make amends to victims, to grant opportunities for dialogue between victims and offenders, and to demand offenders undertake community service (She, 2011; Sheu et al., 2006; Tsai, 2010). Notwithstanding the demanding base of the ‘restorative elements’, the two innovations revealed the state’s interest in finding alternative ways to restore the parties in minor offences.

Years later, deferred prosecution and suspended sentencing directly connected the state’s interests in lenient practices in criminal justice with ideas of restorative justice. Promotion of restorative justice functioned as an extension of the state’s endorsement of deferred prosecution and suspended sentencing in the criminal justice reforms (Hsieh, 2004; Z.-N. Huang, 2003). In the promotion of restorative justice in 2008, suspended sentencing was officially counted as restorative justice practices⁵⁹. The Restorative Justice Initiative launched by the state in 2009 applied to minor offences. The state’s underlying intentions appeared unchanged: to reduce the burden on criminal justice systems and to soothe those who were not happy about the harsh criminal justice approach to offenders (Fei, 2011; L.-Y. Huang et al., 2011; H.-L. Wei, 2012).

The Restorative Justice Initiative realised the state’s interest in western ideas of

minimum period of imprisonment of not less than three years (Article 253-1 of the Code of Criminal Procedure). The judge is entitled to exercise his/her discretion in suspended sentencing for an offender who is sentenced to less than two years imprisonment, short-term imprisonment, or a fine (Article 74 of the Criminal Code). [Also see footnote 44, on page 131.](#)

⁵⁹ Restorative justice was promoted under the policies of victim protection by the Department of Prevention, Rehabilitation and Protection, the Ministry of Justice in 2008. Restorative justice was officially planned to be expanded in four dimensions: mediation systems, prison advertising, suspended sentencing, and victim participation in the parole board.

restorative justice to a large extent. The Ministry of Justice regarded the western version of restorative justice as the transfer package for implementation. Some academics in Taiwan who had been keen to translate and introduce the knowledge of western restorative justice to Taiwan were asked to compile a preparation report for this Initiative and be the evaluation team (L.-Y. Huang et al., 2011). The compiled western package incorporated a range of western scholars' propositions for restorative justice and particularly referred to the United Nation's 'Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters' (United Nations Economic and Social Council (ECOSOC), 2002) that the Ministry of Justice had utilised to support their campaign for restorative justice⁶⁰. The Ministry also invited the Centre for Restoration of Human Relationships in Hong Kong⁶¹, which adopted a western training manual, to deliver restorative justice training to practitioners in the Initiative. The Ministry of Justice were distinctive in acting as the hinge for the transfer of the western interpretation of restorative justice in the Initiative.

Consequently, the western package of restorative justice, described in Chapter 3, featured prominently in the national advertising of the Initiative. The propaganda of the Initiative contained references to the inclusive nature of restorative justice, concerns for all affected parties, and the five classified principles of restorative justice. Except for the prioritisation of restorative justice principles, other elements in the western package of restorative justice were advocated (L.-Y. Huang et al., 2011; Ministry of Justice, 2010).

⁶⁰ The Ministry of Justice attempted to catch up with the global standards for criminal justice even though Taiwan was not a member of the United Nations.

⁶¹ The training material that the Centre for Restoration of Human Relationships from Hong Kong used was the Chinese version of 'Conferencing Handbook' (O'Connell, Wachtel, & Wachtel, 1999). The training was authorised by the International Institute for Restorative Practices, IIRP.

6.1.1.2 The Confucian interpretation of RJ endorsed with emphasis on restoration

In addition to deferred prosecution and suspended sentencing, the state strengthened the use of the mediation system in Taiwan to expand lenient criminal justice practices (Hsieh, 2004). As the existing mediation system is a modern version of ancient Chinese mediation embedded in Confucian tradition (D. Lin, 2002), state encouragement of the use of mediation enabled state employment of the Confucian interpretation of restorative justice.

The mediation system was classified as one form of the lenient approach to criminal justice reform. Since 1999, the mediation system has been expected to share the caseload of criminal cases and to facilitate case closure⁶² (Ministry of Justice, 1999). The mediation practices had been confined to civil cases and some criminal cases⁶³. In the past ten years, the use of mediation in criminal cases has been increasing and already has exceeded its use in civil cases (Ministry of Interior, 2012).

The expansion of the mediation system into criminal justice cases made the mediation system in Taiwan more analogous to restorative justice practices. It had been argued that the Confucian ideas in the mediation system, such as face protection, moral teaching, harmony, restoration, and family involvement, echo the principles of restorative justice in the western package. The growing use of the mediation system in the criminal justice field rendered mediation a Confucian version of restorative justice practices that can handle criminal cases (Hsia, 2006; Z.-F. Lu, 2008; Sheu, Chen, & Huang, 2007).

⁶² With the 2005 amendment, the first trial courts were entitled to transfer criminal cases for mediation to settle a supplementary civil action (Article 12 of the Act on Mediation at Villages, Towns and Counties).

⁶³ Criminal cases here are those only chargeable when a complaint is launched by victims.

In the state's official promotion of restorative justice in 2008, the mediation system was formally listed as one of the focused fields (L.-Y. Huang et al., 2011). The incorporation of the mediation system into restorative justice practices gave the state's understanding of restorative justice a Confucian flavour. The state had implicitly or explicitly imbued restorative justice with an essence of Confucianism. For example, helping the parties reach a consensus, which had been emphasised in Taiwan's mediation system in favour of Confucian harmony values, was highlighted and became the starting point from which the state understood the aims of restorative justice practices.

I feel our mediation system is not very much different from restorative justice. Taiwan's mediation system aims to help the parties reach agreement, but more in the form of material reconciliation. Restorative justice also anticipates that the parties will come to a certain level of agreement. But the agreement here can be in any form. (Criminal justice officer at the Ministry of Justice, cj1_26)

Not surprisingly, the Confucian ideas embodied in the mediation system, already in place, were integrated into the newly formed vernacular of restorative justice. Foremost, the principal value of the mediation system – relational restoration was evidently demonstrated in the state's official statements about restorative justice from 2008 to 2010. The statements of the Ministry of Justice, as listed below, covered all the five principles of the western interpretation of restorative justice but showed that relational restoration was the paramount goal among the five principles. The Confucian vernacular of 'harmonious relationships and society' seemed to constitute the core of the state's perception of restorative justice, as shown by the boldfaced words in the two following statements.

The Ministry promotes restorative justice in the hope to resolve crimes in a more humanistic way. Restorative justice is a process in which victims,

offenders, and communities are placed in the centre. Under the premise of respecting voluntariness of the parties and creating a safe and warm dialogical environment, restorative justice creates possibilities that the parties may come up with their restoration plan collectively. **Restorative justice is led by the goal of relationship restoration**; by this goal, restorative justice provides victims and offenders with opportunities of reintegration into their families, which **accumulates more energy of restoration in the society**. (Ministry of Justice, 2010) [emphasis added]

Restorative justice is a process where victims and offenders are assisted to take part in handling their cases. Through negotiation and communication, restorative justice is able to **enhance reconciliation between two parties**, to turn enmity to mercy, to **make peaceful settlement possible and to create a harmonious society**. (L.-Y. Huang et al., 2011, p. 12) [emphasis added]

It is important to note that relational restoration was strongly endorsed at the state level despite the official wrapping of restorative justice in victim's rights. The official promotion of restorative justice was proposed under policy reforms on victim protection in 2008. Later in 2009, the Minister advanced this recommendation and launched the Taiwan Restorative Justice Initiative (Ministry of Justice, 2010).

The Initiative of Restorative Justice could be traced back to a directive of the Minister Ching-Feng Wang, made at her first ministerial meeting. She hoped to explore other options that could be offered to victims apart from what the Ministry had provided in the form of victim compensation and legal aid. Her concern may come from her past experiences as a lawyer. Even though she was able to help them to solve legal issues, in some situations, the circumstances of the crimes were a life-long torment to the parties. To my knowledge, she seemed to find other ways to help victims walk out of the shadow of past victimised experiences. (Criminal justice officer at the Ministry of Justice, cj1_2)

However, this victim orientation was not developed in depth at the state level. In the official campaign of restorative justice, victim's interests were incorporated into the interests of other stakeholders. As the above two listed official statements show, relational restoration was regarded as the antidote for victims that would enable them

to leave behind the harm caused by crime. The state drifted away from their original focus on victim interests and rights. The Confucian interpretation of restorative justice triumphed in the end.

In sum, the recent reforms of Taiwan's criminal justice systems, the promotion of a lenient approach for less serious crimes in particular, provided the backdrop for the Restorative Justice Initiative. Initially, the Initiative involved transferring the western interpretation of restorative justice and strong concerns for victim rights. But as the details of the Initiative were formulated, the Confucian interpretation of restorative justice prevailed, with the priorities on relational restoration and leniency for offenders who commit minor crimes.

6.1.2 The fertility of the Confucian and feminist interpretations of RJ at the local level

The vernacularisation of restorative justice flowed down to the local projects from the state, in a way that was neither continuous nor consistent. As the transfer of restorative justice moved to the local level, the western interpretation declined, though it did not vanish. The Confucian interpretation persisted in its popularity. Meanwhile, the feminist interpretation emerged and thrived to the point that it caught the state's attention.

6.1.2.1 The state's mode of devolved governance: An open gate for the Confucian and feminist interpretations

The top-down approach devised by the Ministry of Justice was defined by two elements: (a) a top-down transfer strategy and (b) provision of local discretion with regard to implementation that was devolved and reflexive in the sense of fostering actors' self-government and self-adjustment (Hobbs & Njoya, 2005; Marsden, 2013;

Meer, Visser, & Wilthagen, 2005). The top-down strategy allowed the Ministry of Justice to administer the Initiative. The Ministry of Justice was responsible for propagating ideas of restorative justice, providing practice guidance to local jurisdictions, and assessing the outcomes of the Initiative. The top-down strategy paved the way for the western interpretation of restorative justice to be delivered from the state level to the local level.

The Ministry of Justice compiled a Q & A sheet. What is written on the sheet is fairly clear. After I read the sheet, I almost understood what restorative justice is about, though I was not very sure about how to put it into practice. (RJ practitioner in Project B, bp1_5)

We followed the Restorative Justice Initiative Guidelines compiled by the Ministry of Justice to explain what restorative justice is to the parties. (Criminal justice officer in Project B, bj3_24)

The other element of the state's top-down approach – provision of local discretion for participation in and design of the local projects showed signs of devolved governance. Local jurisdictions were granted opportunity, first to decide whether to join the Initiative and second to create their own projects (Fei, 2011). Out of eight local jurisdictions, two devised their projects to deal with domestic violence. Such an application was beyond the expectations of the Ministry of Justice which had different pre-conceptions of which fields in Taiwan were most suitable for restorative justice. Indirectly, the provision of local discretion compromised the influence of the western package of restorative justice.

We were surprised that the District Prosecutors Offices would pick up such a difficult case type (domestic violence) in this tentative plan of restorative justice. Domestic violence is very hard to handle and often repetitive. If social work services could not prevent it from reoccurring, on what grounds can we assume that restorative justice could work? (Criminal justice officer at the Ministry of Justice, cj1_5-6)

The steering function of the state was weak as the western package transplanted by the Ministry of Justice could not provide specific guidelines for an application of restorative justice to domestic violence. The western package became an incomplete model for Projects A and B. The two jurisdictions sat in an awkward position: They had been given a western package, but they were looking for a better one that could guide them in implementing restorative justice in the context of domestic violence.

The training of restorative justice offered by the Ministry of Justice was helpful in some ways. It provides an established script for practitioners. But the training did not meet what we needed. The cases we deal with are special. I hoped the training would have more correspondence to the needs of our local project. (RJ practitioner in Project A, ap4_29)

The training provided by the centre from Hong Kong is of limited help to me. The instructor admitted that they did not include domestic violence in their practices of restorative justice in Hong Kong. Therefore, even though I learned the whole package of operation of restorative justice, we are still scratching an itch from outside one's boot. So, what we are doing is groping on our own, and we are building very local experiences. (Criminal justice officer in Project B, bj2_47)

However, the state's mode of devolved governance, through the state's provision of local discretion, undoubtedly granted liberty to the local jurisdictions to develop, operate, and self-govern their local projects in accord with their local situations. This means that the Ministry of Justice provided general training, supervision, and consultancy but declined to exercise tight control over local projects. Local jurisdictions were allowed to establish and manage their own working patterns, partnerships, and networks. The Ministry was willing to learn from local practices and expected that the projects could yield creative or more culturally appropriate restorative practices.

If the local jurisdictions felt that applying restorative justice to domestic violence is necessary, the Ministry respected their decision. If the application

to domestic violence does not work well, we can tell the public why it is inappropriate, based on our practical work. We need to consider any possibilities that restorative justice could turn out differently from what we have seen in other countries. Admittedly, our national and cultural conditions are very different from western countries'. (Criminal justice officer at the Ministry of Justice, cj1_7)

Under this operational design, there was substantial space at the local level, rendering Confucian and feminist interpretations of restorative justice likely to grow and thrive. As elaborated in Chapter 4, Confucianism and feminism had made their mark in setting up ideals of family and gendered relationships in Taiwan. The rise of the Confucian version of restorative justice was connected to the Confucian family ethics in Taiwanese everyday life and Taiwan's mediation system. The formation of the feminist version of restorative justice was closely linked to Taiwan's academic and clinical discourses of domestic violence⁶⁴. Thus, given the deficiencies of the western package in the local application to domestic violence and the ample space left for local design and operation, the local implementers, rather than the state, appeared particularly motivated to vernacularise restorative justice into a Confucian or/and a feminist version with the knowledge they already had.

On one hand, the western interpretation of restorative justice was able to be passed down from the state level to the local level. On the other hand, the influence of the western interpretation at the local level diminished because of local discretion. The schism between state and local restorative justice visions was anticipated to a degree because liberty was purposely granted to the local jurisdictions to see what designs they could come up with on their own initiative. The unanticipated development of restorative justice projects on domestic violence nevertheless caused the Ministry of

⁶⁴ It is worth noting that the Confucian and feminist interpretations of restorative justice, locally formed in Taiwan, received overseas influence separately from China and the west far before the commencement of the Initiative, as revealed in Chapter 4.

Justice difficulties in acting on their steering role in the vernacularisation of restorative justice.

6.1.2.2 Development of the policies and practices of domestic violence: A ground for the bloom of the feminist interpretation

In the wake of the local discretion granted by the state, the development of the policies and practices of domestic violence at the local level in Taiwan fostered the blossoming of a feminist interpretation of restorative justice. The provision of local discretion opened a gate for the existing feminist influence on domestic violence policy in Taiwan to influence the interpretation of restorative justice. No semblance of a feminist interpretation of restorative justice was introduced by the state.

The blossoming of the feminist interpretation of restorative justice was quite wide-ranging at the local level. As discussed in Chapter 4, feminist ideas were the most common philosophy penetrating university education and work-related trainings related to domestic violence in Taiwan (J.-J. Chu & Wu, 2005; Domestic Violence and Sexual Assault Prevention Committee, Ministry of Interior, 2007; H.-T. Wang, 2007). Thus, in both Projects A and B, many criminal justice officers and restorative justice practitioners had been exposed to feminist ideas, and some of them used feminist ideas without being able to recognise that the ideas had their origins in feminism.

I learned feminist perspectives on domestic violence as I studied in social work and worked as a social worker at a NGO. The professors in universities and my supervisor at work guided us to work with victims and perpetrators of domestic violence from feminist perspectives. (RJ practitioner in Project A, ap4_60)

What I was taught from my work training is that domestic violence is on account of power and domination. This is why we have to protect our victims and respect their willingness in restorative justice processes. I am not

sure if I was using feminist ideas in my work. (RJ practitioner in Project B, bp1_99-100, 160)

The blossoming of the feminist interpretation of restorative justice was especially prominent in the thinking of the restorative justice practitioners (case managers, facilitators, and supervisors). The practitioners rather than criminal justice officers appeared to be more actively engaged in developing a feminist interpretation of restorative justice at the local level. This was because most of the practitioners belonged to social work or mental health professions and had substantial exposure to feminist ideas in their university and on-the-job education.

The feminist interpretation of restorative justice at the local level had an influence that streamed back to the state level. The ‘bounce’ of the feminist interpretation could be attributed to an external alliance, which emerged spontaneously in opposition to the application of restorative justice to domestic violence in Projects A and B. The external alliance consisted of professionals who had already been profoundly influenced by feminist ideas. They included women’s groups, academics specializing in domestic violence, and two affiliated governmental authorities: the Domestic Violence and Sexual Assault Prevention Committee (DVSAPC, the Ministry of Interior) at the state level and the Centres for Prevention of Domestic Violence and Sexual Assault (CPDVSA) in Cities A and B. This external alliance adopted a pro-feminist posture, pleading for protection of victims’ (mostly abused women’s) rights and interests and warning of the danger of compromising victims’ psychological and physical security in restorative justice practices.

The criticism of the external alliance against the use of restorative justice in domestic violence succeeded in formally diffusing the feminist interpretation of restorative justice through the Initiative. The Ministry of Justice was urged to set up coordination

meetings with the external alliance. The Ministry came to learn of the feminist warnings and further instructed the District Prosecutors Offices in Projects A and B to collaborate with the CPDVSA's in case screening. Regardless of the impact of the coordination and cooperation on the practical implementation of restorative justice, the feminist interpretation of restorative justice gained the attention of the state.

The women's groups knew restorative justice was to be applied to domestic violence. They had some concerns regarding victims' safety, so we invited women's groups, the Domestic Violence and Sexual Assault Prevention Committee and some academics to discuss how to do restorative justice in domestic violence. After that, we strongly advised the two District Prosecutors Offices to pay attention to the willingness and safety of victims and to have discreet plans for victim's safety in and after the meetings of restorative justice. We also invited the District Prosecutors Offices and the Centres for Prevention of Domestic Violence and Sexual Assault to discuss the cooperative models between them. Since then, we continued sharing information, ideas and training opportunities with one another. (Criminal justice officer at the Ministry of Justice, cj1_7-8)

It is worth noting that the feminist interpretation of restorative justice was developed into a profession-oriented model. Feminist developments in the field of domestic violence in Taiwan were professionalised⁶⁵. In the past twenty years, the dissemination of these feminist ideas was somewhat confined to certain professions in Taiwan, mainly academics, social workers, and counsellors who were advocating for or working with victims and offenders of domestic violence. The grassroots women's groups gradually shrank and transformed into groups consisting of or led by professionals. The idea of empowerment was commonly employed by professionals working with clients, rather than exercised by grassroots groups themselves (Chang & Wu, 2002; Cheng, 2007; L.-L. Huang & Chang, 2006). As a result, the feminist interpretation of restorative justice formed locally in the Initiative had a professional

⁶⁵ Feminist ideas relating to domestic violence were introduced by Taiwanese elites from overseas.

quality, favouring professional examination for case referral, professional treatment, and professional evaluation.

Since meeting with these women's groups, I find that they are very much influenced by feminism. They strongly argue that the process of restorative justice could lead to oppression of victims. They make a very good point. But, I am thinking in our action to protect our victims, we might conversely constrain their abilities to a certain degree. On many occasions, our assessment results outweigh victims' own opinions on participation even though their aim to participate might be easy to achieve. (Criminal justice officer at the Ministry of Justice, cj1_57)

6.1.3 Summary

In the flow of the vernacularisation of restorative justice from the international to the state to the local level of the Initiative, the Confucian and feminist interpretations of restorative justice were growing, whereas the western restorative justice package was declining. The Ministry's devolved governance created opportunities for local jurisdictions to evolve Confucian and feminist interpretations, but unexpectedly the Ministry lost a guiding role in the local practice of restorative justice for domestic violence cases.

The ascendancy of the western interpretation of restorative justice in the Initiative was mediated by the Ministry of Justice. The Ministry brought in international perspectives, mostly western, directly through the Centre for Restoration of Human Relationships in Hong Kong, and indirectly from the International Institute for Restorative Practices, the United Nations, and many western theorists' writings. The key to the blossoming of the feminist interpretation of restorative justice was Taiwan's feminist academy and university education, through which feminist discourses developed to the point that many actors in local projects and in the external alliance became feminist vernacularisers to a degree. The rise of the Confucian interpretation of restorative

justice was not mediated by specific actors, but made its presence felt through the part it played in everyday life in Taiwan.

6.2 The institutional postures in Projects A and B towards interpretation of RJ

Under the flow of the vernacularisation of restorative justice, portrayed above, the postures of the implementation institutions in Projects A and B were formed. Yet key factors were the networks of these two local projects that seized local autonomy to steer the implementation institutions in Projects A and B respectively in favour of the Confucian and feminist interpretations of restorative justice.

The institutional postures in Projects A and B referred to the preferential interpretations of restorative justice structurally upheld in the projects, rather than perspectives of certain individual implementers. The institutional postures are worthy of focus because the postures of the implementation institutions surpassed the perceptions of the individual implementers, especially with regard to project design. Thus, a legal vernacular of restorative justice existing along with western, Confucian, and feminist vernaculars, particularly prospered among prosecutors but carried little weight with the overall implementation of Projects A and B.

Local implementation institutions is the term used to refer to multiple organisations (a District Prosecutors Office and a NGO in each local project), and their formal and informal rules and norms that shaped beliefs and actions of individual implementers⁶⁶. For analysis of the networks of the local implementation institutions, two of Morgan's

⁶⁶ Sources of institutionalisation are not just from external environments, like the state, religion, interest groups, and professions that hold certain normative standards, as well as from within organisations, like actions of individuals or organisational structures. Individual implementers are not passive receiver; they selectively employ institutional logics to meet their own interests (Scott, 1987; Zucker, 1987).

(2006) metaphors of organisations – organisations as cultures and organisations as systems of political activities are helpful lenses.

6.2.1 The institutional postures in Project A

The postures of the local implementation institutions in Project A were in favour of the Confucian interpretation of restorative justice and a life wisdom approach. The western and feminist interpretations of restorative justice also existed in Project A, but the local implementation team in Project A had fondness of the Confucian interpretation of restorative justice and a life wisdom approach, and showed resistance to the feminist interpretation of restorative justice and a professional approach. As discussed earlier, the dwindling influence of a western interpretation in Project A came about through the state distancing itself from local projects.

The networks of the implementation institutions in Project A are demonstrated in Figure 6.1. Shading is added to indicate the important actors in the local vernacularisation of restorative justice. In contrast are the unshaded actors, the International Institute for Restorative Practices (IIRP), the United Nations (UN), the Centre for Restoration of Human Relationships (CRHR) from Hong Kong, and the Ministry of Justice in Taiwan. They are unshaded in Figure 6.1 because they played relatively distant roles in shaping the postures of the local implementation institutions.

The local implementation organizations were the District Prosecutors Office (DPO) and the contracted NGO. The recruited restorative justice practitioners were affiliated to the NGO. Their relations are shown on the lower left side of the Figure.

The relevant actors in the networks of the local implementation institutions included the external alliance, shown on the right side of the Figure. In Project A, the influential actors in the external alliance were women's groups, academics specialising in

implementation team (the DPO and the NGO) were particularly dubious about the working approach of the CPDVSA in City A, which secured victims' interests at the expense of offenders' welfare. In contrast, the two implementation organisations regarded that life experiences and Chinese cultures are the key to attending to both victims and offenders of domestic violence in Taiwan.

I (prosecutor) work closely with the CPDVA and other women's groups. Of course, they know a lot about victims. But it is very sad to say all these groups in domestic violence in Taiwan are pro-victims. Many social workers are reluctant to work for offenders. I don't think criminal justice can resolve the problems. Putting offenders in custody can't guarantee the future safety of victims, but this is what the field of social work wants. Sometimes, I feel these social workers are quite irresponsible. They only consider the party they work with, which is victims, but they can't see what offenders have been going through. I am very tired of doing domestic violence in this way. We need some resources supporting offenders as well. (Criminal justice officer in Project A, aj4_52, 92)

The local implementation team's views on domestic violence practices in Project A were connected to the contracted NGO's organisational culture. The NGO started and prospered as a grassroots group rather than a professional group. Retired volunteers (mostly retired teachers)⁶⁷ were the main force behind the NGO. They were trained and serving as mediators in the family court for years and then mostly recruited as facilitators in Project A. The retired volunteers' life experiences and deep understanding of local family culture were highly valued over pro-feminist and professional knowledge of the social workers who were later hired to do second-line services for victims of domestic violence in the NGO. The grassroots power of the NGO was indifferent to western, feminist, or international discourses, but rather was embedded in discourses of the culture and of families such as Confucianism.

⁶⁷ The head of the NGO was also a retired teacher, joining the NGO at first as a volunteer.

In addition, the local implementation team's views on domestic violence practices in Project A were very much guided by the heads of the DPO and NGO. The heads of the DPO and NGO shared similar views about domestic violence: Life experiences and understanding of local family culture were the right approach to resolving domestic violence. They had substantial power and a decisive position in the network, so that their views steered the whole project, rather than other implementers' views, for instance the pro-feminist views of some facilitators whose backgrounds were in social work.

With recognition of life experiences and local family values, the head of the DPO chose to work with the NGO. The retired volunteers in the NGO, who possessed abundant life experiences and wisdom of dealing with family affairs in a Chinese cultural context, were trusted and considered competent to convene restorative justice meetings for parties of domestic violence.

Also under the leadership of the head of the NGO, the NGO's organisational postures toward domestic violence were not altered much by the feminist discourse in Taiwan. In handling family disputes, the retired volunteers, recruited as facilitators, were encouraged to keep relying on their life experiences and understanding of local family culture, rather than feminist philosophies that they later learnt from training.

To be honest, if facilitators are too young, it is impossible to see any outcomes. I see many young academics despise these old ladies. I also know the vulnerability of these old ladies: they have some unchangeable thoughts. But they have abundant experiences in family mediation. This makes them very good at establishing relationships with the parties. Regarding cultural issues, they know very well the local cultures, characteristics, languages and slangs. I believe in our region, language and age are the keys to success. (Criminal justice officer in Project A, aj4_90-91)

In short, in Project A, the views of the local implementation team on domestic violence

practices were shaped by the organisational culture of the NGO and the authoritarian views of the heads of the NGO and DPO. The local implementation organisations were inclined to address domestic violence with life experiences and cultural understanding of families. The Confucian vernacular of restorative justice and a life-wisdom approach were much more prominent than the feminist vernacular of restorative justice and a professional approach in Project A, even though most involved in Project A had exposure to these different perspectives.

(2) The supervision style

The supervision style in Project A, shaped by the organisational culture of the NGO and the politics of the networks of local implementation, also reflected the postures of the implementation institutions.

The supervision in Project A was uninformed by feminism or up-to-date professional standards. Supervision was solution-driven and lax, despite being espoused as involving peer supervision and professional consultation. The solution-driven style came from the NGO's conventional way of administering family mediation, namely a teamwork model. The NGO carried their teamwork model into their work on restorative justice. Supervision was practised as dialogue between two engaged facilitators in the same case⁶⁸. However, the NGO did not have a strong clinical or professional supervision culture. The teamwork model was primarily adopted to achieve reconciliation and manage conflicts between two parties. As a result, co-facilitation in Project A did not produce effects of peer supervision, but usually turned out to be solution-driven talks. In their so-called 'peer supervision', the facilitators seldom discussed or challenged the other on values issues emerging in the

⁶⁸ Co-facilitation in Project A involved two facilitators in a case; one was the leading facilitator and the other was the co-facilitator.

restorative justice process.

We continued our mediation strategy, teamwork, in practices of restorative justice. This strategy is to separate the parties if they have severe arguments. Two facilitators could talk to two parties respectively to cool down the debates. (RJ practitioner in Project A, ap1_1)

Once, the other facilitator and I had completely different views on a case that we were working on. I was not the primary facilitator in that case, so I did not try to change the direction the other facilitator was leading at the time. The primary facilitator was trying to reconcile the parties, but I felt there would be some danger if they stayed together. After the meeting, I only had a quite short discussion with the primary facilitator. Still, I was not convinced. (RJ practitioner in Project A, ap3_10-11)

The solution-driven and lax supervision style in Project A was associated with the politics of the networks of the local implementation institutions. The DPO granted the supervisor normative power over the interpretation and implementation of restorative justice. The supervisory focus was legal, not clinical. There were only irregular discussions when practitioners spontaneously raised issues with the supervisor. No regular group supervisory meetings were scheduled.

I (supervisor) do case consultancy in this project mostly via email or telephone with the NGO. I agree that we need to protect victims' safety, educate offenders, and offer opportunities for dialogue. The final aim here is to help both parties come out with some agreement that both of them are willing to accept. We can suggest that prosecutors offer deferred prosecution to offenders with certain conditions. Usually, we help them to compare what options they have and consider how much time and money they would spend on the criminal procedures. Deferred prosecution can be better than prosecution; even though it isn't the best option, it could be the second best. (RJ practitioner in Project A, ap5_4, 18)

The supervisor's way of providing consultation contained barely a trace of pro-feminist influence. Due to the legal background of the supervisor, the focus was on seeking solutions and providing legal advice. Little consideration was given to feminist worries

about dangers in the restorative justice process. The supervisor had been trained in and was researching the field of domestic violence, but his ability and sensitivity in handling domestic violence cases was doubted by some practitioners in Project A who were social workers with more feminist concerns. Nevertheless, it was the supervisor, not these social workers, who had the position and authority to deliver supervision.

While the supervisor had formal governing authority, the case manager exercised quality control over the facilitators' work in an implicit way. The case manager had no regulatory authority, but was in charge of case assignment. In the process, the case manager functioned as an 'underground overseer'. The case manager's power in controlling the flow of case referrals was a consequence of the implementation network structures. As Morgan (2006) pointed out, the organisational structure is one of the sources of power. In this case, the network structures configured the role of the case manager as a liaison between the DPO and individual facilitators. Cases and case information referred from the DPO were managed by the case manager. The network configuration knowingly gave the case manager the liberty to assign cases to specific facilitators. Unintentionally this made the case manager a quality control checkpoint.

The case manager in Project A had a social work background which had imbued her with feminist consciousness and sensibility. Further with the power granted through the network structures, the case manager was able to prevent serious domestic violence cases being allocated to facilitators with little feminist sensibility about domestic violence.

I found that the facilitator (also the supervisor) was not sensitive enough to domestic violence. To some extent, he is patient and listens, that makes him a good facilitator. But, he insisted on not punishing the husband and believing the husband can change. His insensitivity is why I did not refer more cases to him (RJ practitioner in Project A, ap4_21) [Note: The case manager held no

generally punitive stance toward offenders of domestic violence, according to other extracts of her interview data.]

Nonetheless, the monitoring function of the case manager was limited. First and importantly, the case manager did not hold a formal and legitimate position that would give her the power to deliver supervision that would bring about big changes at the institutional level. Besides, the case manager, as a member of the NGO, was influenced by the NGO's culture – the teamwork model where confrontation of co-facilitators was not regarded as the appropriate thing to do. The case manager carried out little peer supervision when she took on the role of a co-facilitator in restorative justice meetings. Thus, overall, there was no functioning supervisory mechanism to detect and address actions by facilitators that were possibly unethical or questionable in so far as they could compromise the parties' welfare.

I was co-facilitating that meeting. I found the leading facilitator was kind of blaming the victim. I did not stop her although I felt that is going wrong. After the meeting, I only talked to the victim: 'You can still stand by your position. That was just that facilitator's style'. (RJ practitioner in Project A, ap4_12)

In sum, the supervision style in Project A was lax and solution-driven. The conventional teamwork model of the NGO and the supervisor's professional background greatly contributed to the supervision style in Project A. Individual practitioners' expectations for pro-feminist and professional supervision appeared from time to time. Such practitioners, however, were not in powerful positions in the implementation networks to bring substantial changes at an institutional level. The manifest supervision style characterising the institutional postures in Project A were far from being pro-feminist and profession-oriented.

(3) The local implementation team's connections with the external alliance

Lastly, the relations with the external alliance were a manifestation of the political networks of the local implementation institutions. The political networks in Project A were narrow. The narrow networks shielded the local implementation team with preference for the Confucian interpretation of restorative justice and a life-wisdom approach from any challenge to practice that might be expected from the external alliance which favoured feminism and professionalism.

As shown in Figure 6.1, the only positive connection between the local implementation team (the District Prosecutors Office (DPO) and the NGO) and the external alliance in Project A was built between the DPO and the Centre for Prevention of Domestic Violence and Sexual Assault (CPDVSA) in City A. The positive connection acquired formality when the Ministry of Justice was persuaded by the external alliance to urge an official form of cooperation between these two types of governmental agencies in both Projects A and B⁶⁹.

After the connection between the DPO and the CPDVSA was formalised, the CPDVSA gained more leverage in the operation of Project A, particularly in relation to the feminist ideas on case screening. The CPDVSA assisted in case screening before a case was referred to the NGO and provided the NGO with relevant information and advice about a case if the victim received their services before.

Apart from the positive cooperation between the DPO and the CPDVSA, the links between the local implementation team and the external alliance were thin and conflicting. There were no other open channels through which the feminist interpretation of restorative justice could enter Project A, as Figure 6.1 shows. Closed

⁶⁹ It should be noted that like most jurisdictions in Taiwan, other forms of cooperation between District Prosecutors Office (DPO) and the Centre for Prevention of Domestic Violence and Sexual Assault (CPDVSA) in Jurisdiction A had been existing in the field of domestic violence.

recruitment of practitioners in Project A restrained the local implementation team from developing links with the external alliance. All the practitioners were nominated by the NGO and affiliated to it. Closed recruitment kept the external alliance in the dark about the work of Project A and opposed to the work of the NGO.

I was questioned by my friends, also social workers. They were worried about the mediation approach because of power imbalance between victims and offenders. I responded that we have already considered the issue of power imbalance in our mediation approach. But they still said that they don't know how restorative justice works and that they have their own positions against reconciliation. We keep adjusting the methods we use on this project and we accept the advice given by the Ministry of Justice. But still, we get a lot of criticism from the academics who are not involved in the Initiative and do not know what we are doing. (RJ practitioner in Project A, ap4_51)

The relationship between the NGO and the external alliance became pivotal in the local implementation networks, sadly which was tense and discordant. The discord between the NGOs and the external alliance was rooted in their divergent political appeals concerning domestic violence. The external alliance centred its attention on the protection of women's interests and ensuring their safety, rather than focused on mediation and reconciliation.

The CPDVSA in the external alliance had the most directly conflicting relationship with the NGO. The CPDVSA took a victim-centred feminist approach and appeared resistant to work with victims and offenders at the same time, in opposition to the work of the NGO⁷⁰.

The social workers at the CPDVA often say to us (regarding our work in

⁷⁰ The CPDVSA with its victim-centred feminist approach offered few services for men, even though the senior authority at the state level, the DVSAPC, had started attending to men's needs in the family since 2004.

family mediation, some of the cases involve domestic violence): ‘How can you work with both victims and offenders of domestic violence?’ They feel we are handling domestic violence in a very dangerous way. I often say to them: it is not true; victims and offenders arrange at first to come to us at different times. (RJ practitioner in Project A, ap1_9)

In contrast to the external alliance, the political appeal of the NGO was in supporting restoration of family values and functions by means of reconciliation. The NGO expected their work in restorative justice to be an extension of their work in family mediation. To the NGO, restorative justice was a way to help the parties peaceably deal with the conflicts and their criminal and civil lawsuits. The hope was to avoid the adverse effects of family dissonance on children, and restore family functioning.

One third of our work in family mediation has already involved domestic violence; what we have done is just like doing restorative justice. They are the same. Similarly, we talk to the parties based on ‘judgment of affection, reason and laws’⁷¹. We educate them and let them feel we care about them. This is what restorative justice is about. (RJ practitioner in Project A, ap1_12)

To us, family mediation and restorative justice shared the same goal. In both services, we wish to offer the parties the third or fourth way, not just divorce or reunion. We discuss with the parties about how to reduce conflicts or how to separate peaceably. (RJ practitioner in Project A, ap4_4)

Thus, although the CPDVSA was in the closest position to work with the NGO, the CPDVSA ended up having a very direct and confronting relationship with the NGO. There was distrust but no constructive communication between the NGO and the CPDVSA.

Based on the above, the political networks of the implementation team in Project A were weak at their connections with the external alliance. Poor connections were a

⁷¹ Judgment of affection, reason and laws (情理法) is the essential part of Chinese Mediation.

result of closed recruitment of restorative justice practitioners and discrepancies in the political appeals for domestic violence practices between the NGOs and the alliance. Because of the weak and adverse relations between the local implementation team and the external alliance, the work of Project A was not known by the external alliance. The external alliance's pro-feminist interpretation of restorative justice and a professional approach was not accessed by Project A.

To conclude, the institutional postures in Project A were in favour of the Confucian interpretation of restorative justice and a life-wisdom approach, and were far from being pro-feminist and profession-oriented. The institutional postures were collectively shaped by a number of factors in the networks: the grassroots nature of the NGO, the background of the NGO in family mediation, the power and views of the heads of the DPO and NGO, and the poor political networks of the local implementation team with the external alliance.

6.2.2 The institutional postures in Project B

The postures of the local implementation institutions in Project B were in favour of the feminist interpretation of restorative justice and a professional approach. In Project B, western and Confucian interpretations were present, but were disregarded at the institutional level.

Like Project A, Project B was run under the local jurisdiction's discretion, so the western interpretation was not channelled through to be transplanted in Project B. The prevalence of the feminist interpretation and constraints on the Confucian interpretation in Project B were related to the networks of the local implementation institutions in Project B, as illustrated in Figure 6.2.

As in Project A in Figure 6.1, shading indicates the actors most relevant to

implementation. In Project A, the roles of the Centre for Restoration of Human Relationships (CRHR) from Hong Kong, the International Institute for Restorative Practices (IIRP), the United Nations (UN), and the Ministry of Justice were relatively insignificant. This is also the case in Project B.

Like Figure 6.1, the right side of Figure 6.2 demonstrates the connections in City B with the external alliance, involving the Domestic Violence and Sexual Assault Prevention Committee (DVSAPC, the Ministry of Interior), the Centre for Prevention of Domestic Violence and Sexual Assault (CPDVSA), women's groups, and academics specialising in domestic violence. The lower left side of Figure 6.2 showed the connections between the local implementation team (the District Prosecutors Office (DPO) and the contracted NGO) and their recruited personnel.

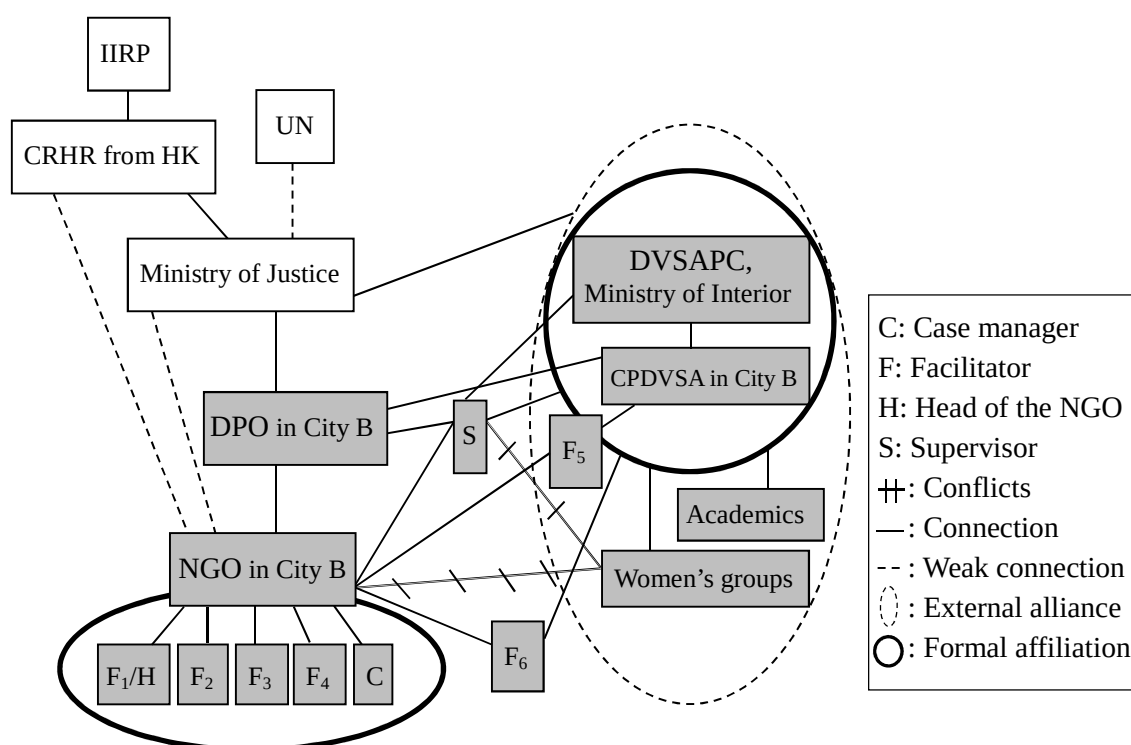


Figure 6.2 The networks of the local implementation institutions in Project B

The networks of the local implementation institutions in Project B can be analysed through the same lens as the networks of Project A: the organisational culture of the

NGO and the politics of the networks of local implementation institutions (Morgan, 2006). The networks in Project B are similarly examined in terms of (1) the local implementation team's views on domestic violence practices, (2) the supervision style, and (3) the local implementation team's connections with the external alliance. Through these three network characteristics, the institutional preferences in Project B for the feminist interpretation of restorative justice and a professional approach are elaborated. We can see from above that a key difference between Figure 6.2 and Figure 6.1 is a stronger connection to the external network in project B, and tighter channels for the external influences of feminist discourses to shape Project B implementation.

(1) The local implementation team's views on domestic violence practices

In Project B, the local implementation team's (the DPO and the NGO) views on domestic violence practices were consistent with the institutionalised mainstream in the field of domestic violence in Taiwan – pro-feminist and profession-oriented. The aim of the local implementation team was to extend the existing feminist influence and professional orientation in the field of domestic violence to the recently-commenced restorative justice practices. The evaluation report compiled by the NGO explicitly stated that feminist theories in domestic violence were considered when the NGO incorporated restorative justice processes.

The implementation team's views on domestic violence practices were at one with the views of powerful actors within the networks of local implementation institutions. In Project B, a probation officer was able to influence the whole implementation: She shaped institutional postures to be pro-feminist and professional. As Morgan (2006) explains 'control of boundaries' is a source of power, a coordinator's power can be spreading through his/her job of gathering information from others and sifting and transmitting information to others. In Project B, the probation officer had such a

vantage point, being the coordinator of the entire project and having control of boundaries between the DPO and the NGO.

The probation officer valued feminist ideas and professional skills for she was greatly influenced by the external supervisor of the probation office, a pro-feminist scholar and professional counsellor. The probation officer was in a relatively lower position at the DPO. But acting as a coordinator, the probation officer processed information, successfully convincing the head of the DPO to work with the NGO, a professional group, and with the external supervisor of probation office, a pro-feminist expert in the field of domestic violence.

We are doing restorative justice in a very cautious manner. This is why we choose to work with this NGO. Look at the backgrounds and reputations of those facilitators and our supervisor. I have to say they are more than competent. We hope we could use professional supervision to improve the ability of our facilitators. (Criminal justice officer in Project B, bj1_25)

The organisational culture of the NGO also contributed to the local implementation team's views on domestic violence practices. The NGO was a professional group consisting of counsellors. Since the NGO very much valued the professional quality of practitioners, facilitators were recruited with clear criteria of merit. Facilitators were not enlisted because of their former affiliation with the NGO, but because of their proven professional abilities and skills in the field of domestic violence.

Some of our facilitators are not affiliated counsellors of our organisation. We invited them to be facilitators because they are highly experienced in the field of domestic violence. If facilitators are trained or working in the field of domestic violence, they would not easily rationalise the use of violence of offenders. We discussed with the District Prosecutors Office about our recommended list of facilitators. I am confident that if the District Prosecutors Office say 'no' to the names we listed, there are no others they can say 'yes' to. (RJ practitioner in Project B, bp6_20-21)

Thus, at the institutional level, the DPO and the NGO in Project B had consistent views on handling domestic violence in a way that insisted on feminist values and professional competencies. Holding the position of coordinator gave the probation officer the leverage needed to convince the DPO to work with the NGO and the supervisor, both of which were pro-feminist and expert in the field of domestic violence. The NGO further ensured the professional quality of the work undertaken with victims and offenders of domestic violence, through recruitment of restorative justice practitioners.

(2) The supervision style

The institutional postures in Project B – a professional and pro-feminist version of restorative justice was apparent and reinforced through the supervision style. The supervision in Project B was conducted in an individual way between the supervisor and the case manager/facilitators and/or by regular group meetings presided over by the supervisor. In the meetings and consultation time, discussion was around skills, ethics, goals, and values that the practitioners should hold or should have pursued in the restorative justice process. The supervision meetings were robustly administered, as can be clearly seen in the content and minutes of the meetings in the evaluation report compiled by the NGO⁷². The supervision here was more like clinical supervision, aiming to deliver a high standard of professional services to victims and offenders in the restorative justice process.

⁷² According to the report, in addition to irregular and informal discussions between the supervisor and the facilitators and case manager, there was a supervision meeting held at least two hours every month. The meeting notes revealed that the supervision focused on values and ethical issues, such as the danger of facilitators' instilling their own beliefs into the parties, the needs to identify abusers' manipulation, what evaluation standards of cases should be set up, and the extent to which the parties' family should be restrained from speaking too much.

In our group supervision meetings, the supervisor discussed with us the roles and boundaries of being a facilitator and a supervisor, the extent to which we should push the process, and the goals of a restorative justice meeting. (RJ practitioner in Project B, bp6_80)

In our supervision meetings, we found that we as facilitators are unconsciously doing restorative justice based on our previous professional patterns and blinded by our own professional myths. For instance, social workers are often quick to evaluate and then decide for their clients. Counsellors often try to dig deeper and do counselling. (RJ practitioner in Project B, bp5_77)

The clinical and routine style of supervision was formed under the influence of the supervisor's counselling background and feminist beliefs and also the organisational culture of the NGO as a professional group. As the supervisor, the NGO, and the practitioners were recruited for their professional reputation in the field of domestic violence, they shared the recognition of the necessity of professional supervision. A clinical style of supervision with deep discussion on ethical and value issues on a regular basis was expected and accepted at the institutional level.

Moreover, the institutional preference for the feminist interpretation of restorative justice was consolidated through the power of the supervisor and the clinical and routine style of supervision. As the position gave the supervisor oversight and power, the supervisor had opportunity to instil feminist ideas into the head of the DPO. Also through clinical and regular supervision processes, individual practitioners with views conflicting with feminist ideas were identified, confronted, and discussed by the supervisor.

The following example illustrates how feminist ideas were strengthened through supervision. In a supervision meeting, a practitioner shared that she had handled a case by discussing with a party her personal thoughts about a wife's role-related duties. The

supervisor responded to the whole group: Sharing such thoughts with the victim was inappropriate and reminded all the practitioners to be aware not to impose any personal thoughts or traditional role-based constraints on the parties. Through the clinical and routine style of supervision, individual practitioners were guided and pro-Confucian values were stifled. The feminist interpretation of restorative justice was reinforced.

In a case, I felt the wife did not perform well in her role as a wife. She was supposed to be more engaged in her husband's family. I carried my standards of gender roles while I was doing restorative justice. But I was reminded by the supervisor at a supervision meeting, and I corrected the way I worked.
(RJ practitioner in Project B, bp2_96)

In short, supervision in Project B operated in a clinical and routine style. Moreover, it consolidated the local implementation institutional postures in support of a pro-feminist interpretation of restorative justice and a professional approach.

(3) The local implementation team's connections with the external alliance

Lastly, the political networks of the local implementation team (the DPO and the NGO) in Project B, particularly the connections with the external alliance, facilitated the flow and growth of the feminist interpretation of restorative justice in Project B. As Figure 6.2 shows, the built connections were many, and most were positive. This indicates there were multiple unhindered channels that allowed feminist ideas to move back and forth between the local implementation team and the external alliance.

One of the positive connections in Project B was between the District Prosecutors Office (DPO) and the Centre for Prevention of Domestic Violence and Sexual Assault (CPDVSA) in City B. As in Project A, the external alliance was successful in convincing the Ministry of Justice to foster official cooperation between the DPO and the CPDVSA in Project B. Through this positive connection, feminist influence over

case screening was realised with the assistance of the CPDVSA in Project B.

The official cooperation between the DPO and the CPDVSA created another channel for the flow of feminist ideas and practices between the NGO and the CPDVSA in Project B. The NGO's reputation in the field of domestic violence and the CPDVSA's postures toward domestic violence made their encounter positive, even though the CPDVSA was worried about the use of restorative justice in domestic violence. First, the NGO was trusted by the CPDVSA for its recognised professional capability. Second, the CPDVSA was not averse to working with offenders as well as victims, given that they had been providing hot-line services to men for years. Under the official cooperation between the DPO and the CPDVSA, the NGO and the CPDVSA had substantive knowledge of each other's expectations of doing restorative justice and maintained a cooperative working relationship. As a result, the pro-feminist interpretation of restorative justice was enhanced in Project B through the positive connection and communication between the NGO and the CPDVSA.

A few years ago, the men coming to us (the CPDVSA) were usually those who intended to disturb our workplace. They felt their grievance wasn't heard and we were only helping women and being biased. Of course, they came to complain, but we gradually found that we needed to extend our work to offenders. We started encouraging our colleagues to work with these men. Our social workers began working with offenders if victims expected us to do so, or if offenders came to us to seek help. (RJ practitioner in Project B, bp5_5)

We have fairly good cooperation with the CPDVSA. They do not question the quality of our work. I think this is because we share the same belief in victim protection. (RJ practitioner in Project B, bp1_96)

Apart from the official connections, the local implementation team of Project B had multiple informal connections with the external alliance. The multiple networks were mainly attributed to the open approach to recruitment of practitioners. These links

between the local implementation team and the external alliance were not all positive, but the positive links (to the DVSAPC and the CPDVSA) could mitigate the damage that the negative links (to women's groups) had caused. The positive links kept the communication between the local implementation team and the external alliance flowing with less hindrance.

The recruitment of practitioners in Project B was not restricted to those who were affiliated to the NGO, but actively included experts across the geographic region in the field of domestic violence. As a result, three practitioners were recruited without former affiliation with the NGO, coded as F₅, F₆, and S, in Figure 6.2, standing for the fifth and sixth facilitators and the supervisor. F₅ was a public social worker at the CPDVSA. F₆ was a committee member of the Assessment Team for Respondent (ATR) for cases of domestic violence⁷³. The supervisor was an academic, an external supervisor for the probation officers of the DPO in Project B, a committee member of the ATR, and worked closely with the DVSAPC.

The connections built through these three practitioners made the web-like networks of Project B more communicative and the work of the implementation team more transparent and trustworthy, at least to the DVSAPC and the CPDVSA. The positive connections built through the three practitioners' existing positions countered somewhat the hostility that came from women's groups toward the supervisor and the NGO. Project B was viewed with less scepticism than Project A in the field of domestic violence in Taiwan.

I (supervisor) think I have advantages as I am in this position. I am not just an academic. I am also involved with domestic violence cases in practice. I am respected in court systems and health systems. I could communicate with

⁷³ The Assessment Team for Respondent (相對人鑑定小組) was an official committee in each city, responsible for evaluating the risks posed by offenders of domestic violence.

them. This is the power I can use, and I think the use of such power is of value. (RJ practitioner in Project B, bp7_26)

Nevertheless, discord remained between women's groups and the NGO/the supervisor in Project B. As Figure 6.2 shows, there was a lack of positive connections between the local implementation team and women's groups. In contrast to Project A, women's groups trusted the professional ability of the NGO in Project B. But women's groups struggled to understand why one of their previous partner organizations undertook a project that they considered to be harmful to abused women's interests. Women's groups felt a sense of betrayal from the NGO and the supervisor since they all had been together advocating feminist ideas and women's interests, and devoted to policy advocacy, training, and coordination meetings related to domestic violence.

I think what worries most of the women's groups is that the victim's choices which enables them to resort to laws for justice could be taken away in the practices of restorative justice. But I feel it is a pity that these women's groups do not attempt to understand what restorative justice is about and how it is conducted. (RJ practitioner in Project B, bp6_16)

The whole system of domestic violence was highly suspicious of the application of restorative justice to domestic violence. I found myself in an awkward position because I had been always in the frontline of advocacy of domestic violence. I was questioned by the women's groups, even though I used to have very good connections with them and I was respected by them. They said: 'You are a practitioner with women's interests in the centre of your mind, how come now you go and undertake this project?' I don't think what I am doing is contradicting what I have always believed, but to them, there is a big inconsistency. (RJ practitioner in Project B, bp7_19)

Nevertheless, the political networks of Project B were multiple, mainly attributed to the open recruitment approach to practitioners and three practitioners' personal connections with the field of domestic violence. The multiple networks indicated more connections with the external alliance, which made the work of Project B transparent

and bolstered the local implementation team's preference for a professional and feminist interpretation of restorative justice. To a certain degree, the local implementation involved working with the external alliance, developing a feminist vernacular of restorative justice in Taiwan.

In summary, the postures of the local implementation institutions in Project B were in favour of the feminist interpretation of restorative justice and a professional approach, which were grounded through the professional capability of the NGO and the supervisor, and the multiplex political networks of Project B. Such institutional preferences were evident in the local implementation team's views on domestic violence practices and the clinical and routine supervision style they adopted. Through multiple positive connections between the local implementation team and the external alliance, the feminist interpretation of restorative justice was developed and strengthened in Project B.

6.2.3 Impacts of the institutional postures of local implementation

The institutional postures in Project A were in favour of the Confucian interpretation and a life-wisdom approach; the institutional postures in Project B were in support of the feminist interpretation and a professional approach. To some extent, their divergent institutional postures led to the distinctive implementation styles of these two projects.

The impact of the postures of local implementation was relatively small on individual implementers' interpretations of restorative justice. The implementers' interpretations were partly guided by the local institutions, via supervision or their affiliation to the organisations. Yet, their views and actions were not completely subject to the institutional postures that they were surrounded with. The implementers' interpretations of restorative justice were diverse. This is the subject of Chapter 7.

By contrast, the impact of the institutional postures of local implementation was comparatively great on aspects of project design that were mostly managed at the institutional level and had broad-spectrum effects. This included case selection, purposes of supervision, family participation, and provision of follow-up services, which are summarised below and outlined in Table 6.1 and Table 6.2.

6.2.3.1 The impacts of the institutional posture in Project A

The postures of the local implementation institutions in Project A impacted on four aspects of the project designs. In support of the Confucian interpretation and a life-wisdom approach and in resistance to the feminist interpretation and a professional approach, Project A was implemented with (1) a wide selection of cases, (2) supervision for solution-seeking, (3) encouragement of family participation, and (4) provision of follow-up social work services. These impacts are listed in Table 6.1.

Table 6.1 Impacts of institutional postures on the project designs of Project A

	Project A
Postures of the local implementation institutions	In support of the Confucian interpretation and a life-wisdom approach; in opposition to the feminist interpretation and a professional approach
Impacts of institutional postures on project designs	1. Wide selection of cases → exploring application and effects of RJ 2. Supervision for solution-seeking → neglect of danger of power and control 3. Encouragement of family involvement 4. Provision of follow-up services

There were *no strict case selection criteria* set up in Project A before the CPDVSA was involved in case screening. The heads of the DPO and NGO considered that the existing pro-feminist practices of domestic violence in Taiwan only focused on victims'

needs and failed to attend to offenders' problems and family's conflicts. Therefore, they adopted an open door policy to different types of domestic violence cases so as to explore the effects of restorative justice. Repeat offenders and serious offending were not excluded in Project A prior to the official decision to allow the CDVSA to assist with case screening. In particular, the head of the NGO in Project A highly valued harmony in relationships, so any cases that were transferred from the prosecutors were regarded as potentially workable in a restorative justice process.

The unlimited approach to various case types brought some advantages to Project A. It created opportunities to discover and test effects of restorative justice. For example, a repeat offender, even identified as high-risk, was given an opportunity to handle marriage and violence issues in the process of restorative justice. At last, he 'walked out' of his rage toward a friendly relationship with his wife after divorce.

The prosecutor was willing to try different types of cases. She did not push us to close cases successfully, but she wanted us to try and see what cases could or could not work. Sometimes, we got very surprising outcomes. Like the case of Mr. X, who violated the Protection Order several times. The prosecutor assumed that he was very violent and there was nothing we could help with. But things turned out differently. He changed. We also helped the wife organise her safety plan and arrange her living affairs. (RJ practitioner in Project A, ap4_2)

While opportunity to experiment advantaged Project A, *solution-seeking supervision and lack of clinical supervision* disadvantaged it, limiting opportunities to learn and fine tune practice as a result of the experimentation. Importantly, victims could be hurt in the process of restorative justice when practitioners were insensitive to power and control in domestic violence and were not corrected through supervision.

I know the worries of other women's groups. They are worried about a cycle of violence and the issue of power imbalance. I feel I can't guarantee that we facilitators can properly handle all these issues. (RJ practitioner in Project A,

ap4_5)

Family involvement was greatly encouraged in Project A. The NGO promoted family involvement in the process of restorative justice as the NGO continued to incorporate into its practice Confucian mediation perspectives. The NGO believed that families of the parties were the solution to domestic disputes and the key to restoring harmony in relationships. For this reason, the NGO put a lot of effort into inviting the parties' families to partake in the process of restorative justice even though the Ministry of Justice did not have high expectations of the role of the family and simply suggested a victim-offender mediation model in the first place.

We found some agreements made between the two parties were often overruled by their families after the parties went home. The arguments usually did not just concern the two parties, but all the family members of the two parties. We encourage their family to participate, so that the agreement could be executed more thoroughly. (RJ practitioner in Project A, ap1_71)

Lastly, *follow-up social work services* were taken seriously and provided by the NGO in Project A. The aim of such services remained achieving harmony in relationships. Through follow-ups, the NGO intended to detect signs of conflicts and prevent the possibility of future violence.

Follow-up work was not included in the first year plan of the District Prosecutors Office. Our organization sought for and gained the grant from another funding body to do such work. We hoped we could keep following how the family was going. If they have children, they might have problems regarding child-rearing, even if they divorce. (RJ practitioner in Project A, ap4_3, 43)

Evidently, the institutional preference for the Confucian interpretation and a life-wisdom approach was carried out in the four aspects of project design: wide selection of cases, supervision for solution-seeking, encouragement of family

involvement, and provision of follow-up services.

6.2.3.2 The impacts of the institutional posture in Project B

The institutional postures of the local implementation in Project B impacted on two aspects of the project design. In support of the feminist interpretation and a professional approach, the local implementation team running Project B adopted (1) strict selection of cases and (2) clinical and rigorous supervision. In contrast to Project A, Project B was run with much less consideration for family involvement and follow-up services, which were being used to restore relationships between the parties in Project A. The impacts of the institutional postures of Project B on project design are listed in Table 6.2.

Table 6.2 Impacts of institutional postures on the project design of Project B

	Project B
Postures of the local implementation institutions	In support of the feminist interpretation and a professional approach
Impacts of institutional postures on project designs	1. Strict case selection → securing victims' interests 2. Clinical and rigorous supervision → securing victims' interests (3. No encouragement of family involvement) (4. Simple follow-up only)

Strict case selection was considered important in Project B because the local implementation team endorsed pro-feminist and professional ideas. Under the feminist influence, case selection was intended to secure victims' interests first and foremost. In the process of case screening, the NGO actively sought professional advice and relevant information provided by the CDVSA to carefully preview the appropriateness

of cases in terms of entering restorative justice. Also, in confirming the parties' willingness to participate, the NGO gave precedence to victims' willingness for participation over offenders' in order to protect victims' interests.

The pro-feminist case selection to some extent compromised offenders' rights of participation. To eliminate any possible chances of putting victims at risk, offenders' opportunities to have their say in the matter of participation were sacrificed. If victims declined to participate or prohibited the case manager from contacting offenders, the offenders were not informed or granted any chances to express their thoughts about participation in restorative justice. The case manager disregarded the fact that offenders had been invited by the DPO to participate in restorative justice processes.

The victim's social worker never worked with the offender. Based on the social worker's advice and the victim's thoughts, I did not contact the offender. Even though my work is based on a request from the District Prosecutors Office, the offender might still feel this is his wife's idea to bring him into this project. I am standing in a position of victim protection. (RJ practitioner in Project B, bp1_111-114)

The postures of the local implementation institutions fostered *clinical and rigorous supervision* in Project B. The endorsement of clinical supervision reflected the local implementation team's commitment to delivering professional practices in domestic violence cases. Through the operation of clinical and rigorous supervision, the key message of protecting victims' interests could be monitored and reinforced.

I (supervisor) admit I participated in this project to secure the goal of victim protection to be fulfilled. If I declined to participate in this project, the project would still be undertaken. I would rather participate and observe the project and ensure the expectations and needs of victims are fulfilled. (RJ practitioner in Project B, bp7_19)

Thus, the divergent institutional postures of local implementation in Projects A and B

led their project designs in very different directions, which brought out some potential positive and negative effects. In Project A, there was on the positive side a higher possibility of exploring the effects of restorative justice on different cases and achieving harmony in relationships; while on the negative side, neglecting the danger of power and control to victims from offenders. In Project B, on the positive side, victims' interests were more likely protected; but on the negative side, at the expense of opportunities for offenders to participate in the restorative justice process.

6.2.4 An additional remark: a legal interpretation of restorative justice

Apart from the Confucian and feminist interpretations of restorative justice respectively prevailing in Projects A and B, there was a legal version of restorative justice mainly developed among prosecutors at the local level. The rise of the legal interpretation was not significantly related to the networks of the local implementation institutions, in the way the western, Confucian, and feminist interpretations were. Instead, the legal interpretation appeared to take hold simply because of the prosecutors' background in the legal profession.

The legal interpretation of restorative justice centred on the nature of the relationship between criminal justice and restorative justice. To the prosecutors at the local level, restorative justice was a supplementary aid to the criminal justice systems, in so far as it provided a means of easing the mental and interpersonal harms experienced by the parties that had been neglected by the laws, criminal justice systems, and prosecutors. But at the same time, the prosecutors considered restorative justice irrelevant to their primary work of prosecuting offenders through the examination and verification of physical evidence and witness statements⁷⁴.

⁷⁴ Some prosecutors recognised that facilitators' meeting notes and reports were sometimes accepted as

Restorative justice processes are more concerning civil issues like the parties' marital problems or reparation, which could be valuable for a judge's ruling but no use for my work in criminal investigation. Determining the criminal liability of the accused is rather simple, based on the presence or absence of criminal conduct. I think restorative justice puts victims in a better negotiating position, so if the parties are willing to talk, I am fine with this process given that it does not interfere with my job. (Criminal justice officer in Project A, aj3_21, 29)

From the prosecutors' perspectives, restorative justice provides little help for our job. Handling criminal cases is simple; we just examine if there was criminal conduct according to the laws. (Judicial Officer in Project A, aj4_32)

Thus, the legal interpretation of restorative justice denoted a territorial battle between criminal justice and restorative justice. Under the legal interpretation, restorative justice was confined to areas of emotional, material, and relational restoration of victims and offenders. In the views of the prosecutors, it was excluded from the domains concerning official rulings of accountability and rehabilitation of offenders which were deemed to be the territory of the criminal justice systems.

Importantly, the legal interpretation of prosecutors did not spread to the entire local implementation networks, due to the District Prosecutors Offices' strategy of the division of work by professions (see discussion in the next section). The legal interpretation constituted part of the vernacularisation of restorative justice at the local level, but basically carried weight with the stages of case referral and prosecution decision rather than with the entire restorative justice process of working with victims and offenders. These remained the domains of the Confucian and feminist interpretations. The institutional postures and the operation of Project A and B were the heartland of Confucian and feminist interpretations, buffered from the legal

a reference when they pondered whether to make a deferred prosecution or an application for a summary judgment.

interpretation.

6.3 Governance of the vernacularisation of restorative justice

Aside from the rise and decline of western, Confucian, and feminist vernaculars of restorative justice, the governance of the vernacularisation process was crucial to the flow of ideas about restorative justice. The state's provision of local discretion and the District Prosecutors Offices' decision on division of work by professions were in effect strategies of compartmentalization; the latter in addition led to professionalization of the implementation of the local projects. Strategies of compartmentalization actually expedited the execution of Projects A and B, yet tended to impair the governance functions of the implementation networks, leaving the interpretations of restorative justice little examined.

6.3.1 Provision of local discretion by the state

The provision of local discretion resulted in compartmentalization of duties and responsibility between the Ministry of Justice and the District Prosecutors Offices. The Ministry of Justice was obligated to administer an official campaign, provide training and consultancy, and conduct inspection visits. In the meantime, the Ministry allocated to District Prosecutors Offices (DPOs) some supervisory and executive power to closely oversee the local implementation of restorative justice.

This compartmentalization put the Ministry of Justice in a position that meant it had little appreciation of the work of the DPOs and NGOs and had only indirect and remote supervisory relationships with the NGOs. The Ministry's inspection visits were once or twice a year, offering little in the way of immediate or useful feedback, in light of the fact that the DPOs and NGOs were working on Projects A and B on a daily basis. What is more, the information gathered by the Ministry was usually sifted and

prepared by the DPOs and NGOs. The Ministry was unable to detect or respond to issues in the local vernacularisation of restorative justice promptly, and given their lack of in-depth knowledge about what was going on, with any kind of precision.

The cases closed in City B are very few, only two in their first year. So, I do not really know how they practice in Project B. For Project A, I found they needed some quality control over the practices of their facilitators. I detected this problem from a video that they gave to us. In that video, they simulated the process of restorative justice. The facilitator in that video gave too much teaching and instruction, and her body language made people quite uncomfortable. I remember the facilitator said to one party: 'Shouldn't you give the other party a hug?' Later, I talked to the NGO. They said they would try to improve. (Criminal justice officer at the Ministry of Justice, cj1_44-46)

The Ministry's provision of local discretion and compartmentalization of roles and responsibilities led to a passive form of supervision of the vernacularisation of restorative justice at the local level. The western package of restorative justice brought in by the Ministry was considered insufficient in dealing with cases of domestic violence by those implementing both Projects A and B. In response, the Ministry did not actively engage with local needs by offering knowledge, training, and procedural guidelines related to the use of restorative justice in domestic violence. The Ministry had no expertise and showed little interest in domestic violence. Thus, to the Ministry, it seemed to be the responsibility of local implementation teams to discover suitable interpretations of restorative justice to be used in domestic violence cases.

In contrast, a more active response was adopted by the Domestic Violence and Sexual Assault Prevention Committee (DVSAPC) and the Centres for Prevention of Domestic Violence and Sexual Assault (CPDVSA) in the external alliance. The two agencies assisted in setting up guidelines for practices in Project A and B, such as advising the DPOs to use the Danger Assessment Scale for case screening. The DVSAPC also started an online library about restorative justice practices in domestic violence at the

end of the first-year of implementation, introducing western feminist interpretations of restorative justice to Taiwan. This was a manifestation of the DVSAPC rather than the Ministry of Justice taking the lead in finding an alternative and suitable vernacular of restorative justice for domestic violence cases; in this case, a feminist interpretation of restorative justice.

An officer in the Ministry of Justice called me to ask why the successful rate of case closure in our project of restorative justice was so low. I explained to her the Domestic Violence Protection Act is against reconciliation between the parties involved in cases of domestic violence. To my surprise, the officer kept asking why reconciliation was inhibited in cases of domestic violence. Conversely, I became the one who told the officer the theory of power imbalance of domestic violence. Apparently, our superior authority did not know the nature of domestic violence and that it is different from other case types. (Criminal justice officer in Project B, bj2_22)

Because of compartmentalization in the governance arrangements, the granting of local discretion in the Initiative had disadvantages. The Ministry was insensitive of challenges and changes on the ground in implementation. The state meant to govern in a reflective way, facilitating mutual learning, communication, and cooperation within the implementation networks, through the provision of local discretion. Sadly, the state's withdrawal through compartmentalization undermined its steering and safeguarding roles in the vernacularisation of restorative justice. The state fell into belated consciousness of and responses to local needs in vernacularising restorative justice.

6.3.2 Division of work by professions at the local level

The division of work by professions resided in the relationships between the District Prosecutors Offices (DPOs) and NGOs and between the legal profession and helping professions (including family mediation, social work, and mental health professions).

The division of work, reflecting the idea of compartmentalization, was a rather reasonable decision of the DPOs, which allowed the involved professionals to serve in the areas of their competence.

The background to the division of work by professions was that the heads of the DPOs in Projects A and B held the view that re-occurrence of domestic violence would not cease simply through applying legal sanctions. The legal system was regarded as capable of deterring or stopping violence temporarily or occasionally, but not on a more enduring basis. For that to occur, the expertise of the helping professions who understood the complexity of domestic violence was needed. The DPOs' strategy of division of work by professions was later largely supported by the NGOs, and by criminal justice officers and restorative justice practitioners.

Prosecutors have got used to taking training courses regarding domestic violence. They have come to realise that they need to work with other professions, like social work. (Criminal justice officer at the Ministry of Justice cj1_9)

It is easy for us (prosecutors) to investigate if the accused violated the Protection Order. But I feel if we do nothing further to help the families, the families stay the same. In a case I was involved in, the accused had poor abilities of handling his emotions and was isolated from his kids. He was responsible for what he did and he deserved punishment, but I understood why he used violence in response. After the investigation, he committed suicide. This case led me to think that this man came in and out of the system so many times, but we, the judicial system, could not reach the core of the problem. (Criminal justice officer in Project B, bj3_6)

In the DPOs' strategy for the division of work, the two types of professions – legal profession and helping professions were expected to complement each other. The two professions had been working together in the field of domestic violence in Taiwan. But before the operation of the Restorative Justice Initiative, the helping professionals

(mostly social workers and counsellors) and the legal professions operated separately, the former attending to victims, the latter attending to offenders. Since restorative justice tries to bring victims and offenders together, the resources and perspectives of both professions had to be brought together in order to enhance the capabilities of Projects A and B to resolve and stop domestic violence. The Initiative provided opportunity to learn how to build a new model of cooperation between these two types of professions and agencies.

It is common that the prosecutors have very different points of view from us. To them, domestic violence is a minor offence; to us, domestic violence is an indicator of serious abuse. What we need is cross-profession communication to find some balance. I (supervisor) was strongly urged by the Ministry of Justice to establish a model that can designate the division of work and cooperation between the Ministry of Justice and the Ministry of Interior in regard to domestic violence services. (RJ practitioner in Project B, bp7_19, 26)

There were a few positive experiences demonstrating constructive bridging of the professions. To some extent, the understanding of and respect for the work and perspectives of the other was improved and moved to a higher level of cooperation. The vernacularisation of restorative justice was able to be examined, discussed, and transformed during communication between the two professions. For instance, in Project A, one prosecutor was a devotee of discussions with the practitioners about the case information and standpoints of looking at the cases. To these practitioners, such experiences were tremendously valuable for the views of two professions were exchanged and learnt. What restorative justice can be used to achieve was discussed.

Women's groups often consider most offenders are vicious and need to be imprisoned. The prosecutor discussed this viewpoint with us. She asked 'Do we really need to put heavy punishment on some offenders? If he is a good worker in his workplace, why should we stigmatise him and stain his reputation for his whole life?'The prosecutor gave me her cell phone

number. As long as I have something that needs to be discussed, I could easily find her. I really appreciate our interaction. (RJ practitioner in Project A, ap4_23, 36)

Regrettably, the division of work by professions more often created inherent barriers to deeper cooperation, resembling the downside of compartmentalization. To a degree, the strategy of the division of work chopped the tasks and processes of restorative justice into two disconnected phases – legal sanction and dialogue/treatment. Overall, the disconnection of work tended to encourage the two types of professionals, criminal justice officers and practitioners, to simply mind their own business.

I might not give a repeat offender a deferred prosecution, as facilitators may suggest. I think a recidivist deserves punishment. This is my duty to do proper investigative work and reduce offenders' recidivism, whereas the parties' psychological issues are the facilitators' business. (Criminal justice officer in Project A, aj4_86)

Consequently, the two types of professionals often 'cooperated' with each other without in-depth communication. There were few direct communication channels between criminal justice officers and facilitators⁷⁵. Many of the facilitators were disappointed that they had no idea about the responsible prosecutors for the cases and that they had few opportunities to discuss with the prosecutors what was known about the cases and the reasons why the prosecutors made a referral.

I did not have a chance to talk to the prosecutors of my cases, but I want to know their thoughts on the cases, such as reasons for why they referred the cases or their expectations for my work. (RJ practitioner in Project B, bp5_84)

Communication of professional perspectives was even less, notwithstanding some established communication platforms. For instance, in Project B, there were

⁷⁵ The case manager was the information link between criminal justice officers and facilitators.

semi-yearly meetings held for all local implementers, including the criminal justice officers and restorative justice practitioners. However, the meeting agendas were more about administrative affairs than providing opportunity to exchange professional perspectives.

Local implementers' respect for the other profession did not always entail willingness to learn from the perspectives of the other profession. The division of work by professions preserved the professional hegemony of the criminal justice officers and practitioners and hampered interdisciplinary learning within the implementation teams. Professionals' resistance to interdisciplinary learning similarly occur in other studies of policy transfer (Stone, 2004; Weible et al., 2009).

I don't think we need to have any interaction with the prosecutors. Clearly, the prosecutors and we, facilitators, have different professional perspectives. It is better that our perspectives would not be affected by each other. In previous meetings, I found some prosecutors retained the conception of mediation in their expectations of restorative justice. I usually disregard what they expect. If they want to cooperate with us, let us do our job in our way. We will not put our clients in a situation where they could be hurt. (RJ practitioner in Project B, bp6_61-65)

Lastly, the division of work by professions led the criminal justice officers to concede the vernacularisation of restorative justice to the practitioners. The local criminal justice officers granted most of the work of the vernacularisation of restorative justice to the practitioners on account of their trust and respect for the practitioners' professions⁷⁶. The vernacularisation of restorative justice was almost independently done by the practitioners. There were very few different opinions and influences from the legal profession.

⁷⁶ Some of the criminal justice officers held back from interpreting restorative justice in the hope that the parties would not feel they were subject to legal authority in making what was expected to be a voluntary decision on participation in a restorative justice process.

Thus, in terms of the governance arrangements for the vernacularisation of restorative justice, the professionals' recognition of the necessity of interdisciplinary interaction and learning was as crucial as the establishment of communication channels between different professions. But these hopes were undermined by the division of work by professions. As a strategy of compartmentalization, the division of work by professions gave rise to disconnection of tasks, little communication between legal and helping professions, and buttressing of the hegemony of the two professions independently. There were few opportunities or a conducive atmosphere for existing legal, Confucian, and feminist vernaculars of restorative justice to have a deeper level of engagement with each other that brought about either the direct collision of ideas or incorporation. There was therefore barely any refinement of the vernaculars of restorative justice by legal and helping professionals charged with implementation.

To conclude, under the District Prosecutors Offices' strategy of the division of work by professions, the tasks of local implementation were compartmentalised according to the professions of the criminal justice officers and practitioners. This meant that the capabilities of Projects A and B in dealing with domestic violence cases were increased, a positive effect overall. On occasions when the implementers' vernaculars of restorative justice were able to be examined, discussed, and revised, benefits accrued to all.

While opportunity for reaping benefits existed at the local level, governance of the vernacularisation of restorative justice was weakened in both Projects A and B. For the most part, the division of work by professions provoked disconnection in the work of the criminal justice officers and practitioners and conserved professional hegemony. The criminal justice officers and practitioners were shielded from being challenged by the other and as a result failed to learn from the knowledge and experience of the other

profession. The division of work often confined cross-profession cooperation to an executive level, as compartmentalization and professionalization of tasks were very much emphasised. The vernacularisation of restorative justice was left to the NGOs and practitioners, with blind trust, no assessment, and no governance from the District Prosecutors Offices and criminal justice officers.

6.3.3 Summary

Overall, the state and local strategies – provision of local discretion and division of work compartmentalised and professionalised the implementation of restorative justice. This partly undercut the quality of the governance of the vernacularisation of restorative justice: Various interpretations of restorative justice which were independently fashioned by the implementers were scarcely reviewed and refined.

The Ministry of Justice was slow and passive in developing, discovering, and responding to the vernacularisation and implementation of restorative justice in domestic violence. The DPOs, NGOs, criminal justice officers, and practitioners were separated and given few channels and little encouragement to review and refine the existing interpretations of restorative justice.

Lessons from the Initiative indicate a better path to vernacularisation through improvements in governance. The vernacularisation of restorative justice may be enhanced through an interdisciplinary learning atmosphere that encourages implementers of the legal and helping professions to exchange and reflect on each other's professional standpoints. This inference is derived from the positive results of cross-profession communications in Project A. Also, enhancement of communication channels among actors involved in the transfer may facilitate examination of vernacularisation. The lack of communication among the state and local implementers

and the external alliance in the Initiative lessened accountability and professional development. This occurred to a greater extent in Project A than Project B. Project A showed the effects of too little communication between the local implementers and the external alliance. The proposed improvements in governance very much correspond to discourses of networked governance, which promote communications and debates within and across coalitions over successes and failures in the transfer (Stone, 2004; Weible et al., 2009). In these ways, interpretations of restorative justice can be refined as needed.

6.4 Conclusion

The flow and governance of the vernacularisation of restorative justice in the Taiwan Restorative Justice Initiative varied with the context of implementing the Initiative.

The vernacularisation of restorative justice was multilayered. The western vernacular of restorative justice was mediated by the Ministry of Justice. This interpretation of restorative justice drew on international perspectives, in particular, ideas from western scholars, the United Nations, and the International Institute for Restorative Practices and its branch in Hong Kong (CRHR). The state's approach of passive steering of local implementation meant the imported western vernacular was sidelined in favour of more locally vibrant Confucian and feminist vernaculars.

In Project A, the dominance of the Confucian vernacular of restorative justice was exceptional, despite the Confucian vernacular being commonly shared among the state and local implementers. The dominance of the Confucian vernacular was mediated by the heads of the District Prosecutors Office (DPO) and NGO who believed in the use of cultural understandings of family relationships. It was bolstered through the DPO's and NGO's lack of connections with the pro-feminist external alliance. The head of the

DPO found confidence in the adoption of the Confucian vernacular and a life-wisdom approach through a sense of community and belief ‘in our region, language and age ...[as] the keys to success’.

Thus, Project A generally proceeded with indifference to rigorous supervision and instead embraced great enthusiasm about seeking family reconciliation through restorative justice for different types of cases of domestic violence. No provisions were made to safeguard against putting victims’ interests at stake.

By contrast, the feminist vernacular of restorative justice grew among local implementers with support from the external alliance which was well versed in the pro-feminist discourses of domestic violence. The ascendancy of the feminist vernacular was remarkable in Project B, in spite of widespread cultural familiarity with the Confucian vernacular. The institutional postures were actively promoted by the pro-feminist probation officer, supervisor, and NGO and strengthened through rigorous supervision and communication channels with the pro-feminist external alliance. Consequently, oversight of Project B implementation was meticulous in arguing for the feminist vernacular and a professional approach. Facilitators were given opportunity to discuss their cases to ensure that they did not impose their pro-Confucian gendered values on the parties. Careful case screening and supervision ensured that victims’ interests were secured, even if this was to the detriment of offenders.

The impact of the prominent vernaculars of restorative justice on implementation at the state and local levels was significant. The favoured vernaculars of restorative justice were seldom and belatedly reviewed and modified by the implementers. The state’s provision of local discretion and the DPOs’ division of work by professions had mixed effects. The rationale behind local discretion was to implement restorative justice through devolved governance and compartmentalization. But the strategies of

compartmentalization, to some extent, undermined the state's and local implementers' governance functions, such as steering, assessing, evaluating, and refining the vernacularisation of restorative justice.

The analysis of the vernacularisation in the Initiative suggests that proper governance could enhance implementation. First, more connections between the local implementation teams and the external alliance could increase the transparency of the work of the local projects. The local implementation institutions' preferences for certain interpretations of restorative justice were more likely to be discussed and reviewed when the external alliance was connected to what was happening in the day-to-day functioning of the project. Greater efforts in fulfilling the promises of devolved governance could result in the cultivation of a learning climate as communication channels were regularised and deepened. In these circumstances, the implementation networks might encourage and facilitate exchanges of professional perspectives between criminal justice officers and restorative justice practitioners. The vernacularisation of restorative justice could therefore evolve and undergo a systematic process of continuous improvement.

Chapter 7

Meanings of restorative justice to criminal justice officers and restorative justice practitioners

7.1 Introduction

The institutional postures of Projects A and B, elaborated in Chapter 6, do not provide a sufficiently rich understanding of how individual implementers were thinking and working as part of the implementation. Individual implementers were not entirely aligned with the institutional postures, but had their own sensibilities comprising sets of beliefs and practices that were embedded in their personal networks of support and influence. The institutional postures were important for the overall character of the implementation in Projects A and B, yet it was individual implementers who made contact with participants and dealt with their cases on a day-to-day basis. This chapter analyses the personal ideologies of the criminal justice officers and restorative justice practitioners in the Initiative with regard to how they thought restorative justice should operate and how it could be used to handle domestic violence.

The goals of the criminal justice officers and restorative justice practitioners

This chapter uses the practice goals expressed in the interviews by the criminal justice officers and restorative justice practitioners in Projects A and B to uncover what was vernacularised as restorative justice at the individual level. Goals are reflected in what criminal justice officers and practitioners were trying to achieve in performing their roles within the Initiative. Goals are less abstract than principles: they are more closely aligned with actions. As the criminal justice officers and practitioners articulated their understandings of the goals of restorative justice, their beliefs, attitudes, and ideological

dispositions came into play to make abstract principles of restorative justice workable in practice.

The goals of the criminal justice officers and practitioners were coded and grouped into nine categories: (1) empowerment of the parties; (2) education or educational discussions (on legal, gender, and virtue issues or family relationships); (3) acknowledgment of wrongdoing; (4) recognition of harm caused by violence; (5) violence to be reduced or stopped; (6) dialogue and mutual understanding between two parties; (7) case closure; (8) reduction of punishment of offenders; and (9) restoration.

Not all nine goals were sought by all the criminal justice officers and practitioners. But each of the criminal justice officers and practitioners expected multiple goals (at least more than four goals) to be realised in the restorative justice process.

The practice goals corresponding to the western, Confucian, and feminist versions of RJ

The goals articulated by the criminal justice officers and practitioners could be interpreted as manifestations of the five principles identified as underpinning the western version of restorative justice. It is important to emphasise that these goals were not simply translated from theories of restorative justice. They were goals imbued with cultural and gender concerns arising from the local contexts. In pursuit of some of the goals, a number of Confucian and feminist ideas were adopted by the criminal justice officers and practitioners. These Confucian and feminist ideas added cultural and gender sensibility to the vernacularisation of restorative justice.

Table 7.1 below demonstrates how the nine empirically generated goals can be linked with the five theoretical principles of restorative justice. Five of the goals embodied Confucian or/and feminist values and are indicated through the notations of ‘C’ and ‘F’ in Table 7.1. The goal of ‘education or educational discussion’ covered two domains –

‘legal, gender, and virtue issues’ and ‘family relationships’. Education in the domain of legal, gender and virtue issues was a goal that corresponded to principles of accountability and rehabilitation. Education in the domain of family relationships was a goal that corresponded to the principles of active participation and reintegration. The education goal therefore is divided into two types and listed twice in Table 7.1 one for each domain of reference. Of the six goals listed in Table 7.1, four carry both Confucian and feminist values, one reflected Confucian only values (family related education) and one reflected feminist only values (harm caused by violence).

Table 7.1 Interpretation of empirical goals in terms of the five theoretical principles of restorative justice

Principle	Principles of accountability and rehabilitation
Goals	- Education or educational discussions on legal, gender, and virtue issues (C+F) - Acknowledgment of wrongdoing (C+F) - Reduction of punishment of offenders - Violence to be reduced or stopped
Principle	Principles of active participation and reintegration
Goals	- Education or educational discussions on family relationships (C) - Empowerment of the parties (C+F) - Recognition of harm caused by violence (F) - Dialogue and mutual understanding between two parties
Principle	Principle of restoration
Goals	- Restoration (C+F) - Case closure
Note: ‘C’ stands for Confucian values; ‘F’ stands for feminist values. The content and significance of these Confucian and feminist values are elaborated later in this chapter.	

Organization of this chapter

This chapter starts with the criminal justice officers’ and practitioners’ perceptions of

restorative justice through the practice goals they developed, as exhibited in Table 7.1. Next, Sections 7.2 to 7.4 discuss the matching of goals to principles. Section 7.2 deals with how the principles of accountability and rehabilitation are addressed through sets of goals, 7.3 with the principles of active participation and reintegration, and 7.4 with the principle of restoration. Criminal justice officers and practitioners from Projects A and B are dealt with together in these sections, but the affiliation of individuals is recognised in the quotes used to illustrate goal implementation. Section 7.5 will reveal the priorities of the criminal justice officers and practitioners in regard to the five restorative justice principles. Section 7.6 will highlight the challenges arising in the criminal justice officers' and practitioners' translation of restorative justice.

7.2 Interpretation of the principles of accountability and rehabilitation

The criminal justice officers' and restorative justice practitioners' interpretations of the principles of accountability and rehabilitation are discussed together here in order to mirror the perspectives of the criminal justice officers and practitioners in the Initiative. Both groups considered these two principles to be closely related. The principles of accountability and rehabilitation were expressed in terms of four practice goals (shown in Table 7.2 below).

Table 7.2 Interpretation of the principles of accountability and rehabilitation

Principle	Principles of accountability and rehabilitation
Goals	- Education or educational discussions on legal, gender, and virtue issues (C+F) - Acknowledgment of wrongdoing (C+F) - Reduction of punishment of offenders - Violence to be reduced or stopped
Note: (1) ‘C’ stands for Confucian values; ‘F’ stands for feminist values. (2) The first and third goals listed here echoed both principles of accountability and rehabilitation. The second goal embodied the principle of accountability; the last goal the principle of rehabilitation. (3) This table is a segment of Table 7.1.	

7.2.1 Education or educational discussions on legal, gender, and virtue issues

The goal ‘education or educational discussions on legal, gender, and virtue issues’ was favoured by all the criminal justice officers and practitioners. These professionals expected that education or educational discussions could assist the parties to realise and tackle the causes and consequences of domestic violence.

In providing education on gender and virtue issues for the parties, the criminal justice officers and practitioners approached domestic violence with the view that the causes are likely to be social, economic, or mental factors associated with the parties. Yet, they understood education on gender and virtue issues mainly through the Confucian concept of ‘role-bearing persons’ or/and feminist considerations of ‘gender equality’, ‘power and control’ and ‘cycle of violence’. With these Confucian or/and feminist ideas, the criminal justice officers and practitioners administered very different sets of education and discussions. In other words, they translated the principles of accountability and rehabilitation very differently.

By way of contrast, the criminal justice officers and practitioners led legal education

and discussion through relying on what they knew of the law rather than their perception of domestic violence. The content of legal education or discussions offered little Confucian or feminist insight, but revealed the legal perspectives of the criminal justice officers and practitioners in terms of the principles of accountability and rehabilitation.

Figure 7.1 illustrates the links between the practice goal of ‘education or educational discussions on legal, gender, and virtue issues’, the supporting elements underneath the goal, and the principles of accountability and rehabilitation. Below, the four Confucian and feminist ideas and the criminal justice officers’ and practitioners’ legal perspectives are explicated, with regard to their contribution to the interpretation of the principles of accountability and rehabilitation.

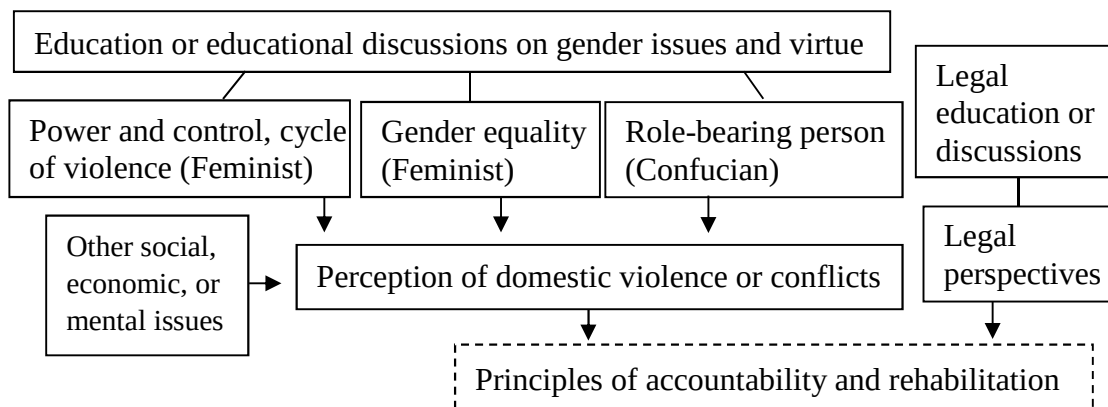


Figure 7.1 Education or educational discussions on legal, gender, and virtue issues

7.2.1.1 The Confucian concept of ‘role-bearing persons’

Around half of the criminal justice officers and practitioners endorsed the Confucian concept of ‘role-bearing persons’, when they expected the parties to be educated about the causes of domestic violence. They regarded accountability for domestic violence as relational and considered rehabilitation of offenders of domestic violence through moral reform.

First, the Confucian concept of ‘role-bearing persons’ was adopted in weighing up the parties’ liability for the violence or conflicts and in validating the identity of victims or offenders. The principle of accountability was accordingly interpreted in a way that culpability was not confined to offenders but expanded to victims or to the parties’ families. Victims were considered responsible as they did not carry out the expected ‘role-related’ virtues. For instance, the role-based virtues and duties of being a wife, husband, mother or father were referred by some criminal justice officers and practitioners as doing the house chores, being the bread-earner, caring for children, maintaining good relationships with their spouse’s family, having no extra-marital issues, having no gambling problems, and having no controversial jobs in escort services.

The rights and wrongs in some situations are clear, so we shouldn’t allow the justice to be twisted. For instance, wrong financial decisions, gambling, use of violence, or having extra-marital affairs should be rebuked. In one case, the husband disrespected his wife’s family but asked the wife to obey his parents. I helped him realise his wife’s feelings and the blind spot in his thinking. Even victims may have something to learn. (RJ practitioners in Project A, ap5_13)

Victims, who failed to perform their role-based duties, were not thought of as genuine victims. Instead, they were held responsible either for the violence or for the misfortune of their children who suffer from their parents’ unhappy marriages.

Nowadays, so many mothers leave their kids behind to get a divorce; this is not right. I said to her (the victim): ‘How could you suddenly leave your kids just for your own good? You brought three kids to the earth, but because your marriage didn’t work, they become collateral victims. You, like a gardener, should hand over your job to the next gardener - your husband.’ (RJ practitioners in Project A, ap1_25)

Culpability for domestic violence was possibly expanded to the parties’ families as well. The concept of ‘role-bearing persons’ indicates that being a person is inseparable from

being part of his/her family and that family's deep-engagement in their loved ones' marriages is acceptable. To some of the criminal justice officers and practitioners who recognised the influence of the concept of 'role-bearing persons' on the parties, they considered that violence within marriages might not relate to any unresolved issues of the couple, but to discord between the couple's families or over-involvement of the parents or elder family members of the couple in the marriage of the couple.

After I talked to both parties respectively, I found that this was not simply a communication problem between the couple but a problem related to some in-laws issues. (RJ practitioner in Project B, bp2_34)

In the tradition, the harm is not just between two parties but involving other relatives in the two families. Sometimes, the parties' aunts and uncles are all involved and lodge a number of cases against one another. If you want to solve the couple's marital problem, you have to disentangle their relationships; otherwise, you cannot move the case a bit. (RJ practitioner in Project A, ap1_1)

Moreover, the Confucian concept of 'role-bearing persons' was taken by some criminal justice officers and practitioners as a means for judging whether or not the parties were morally forgivable and remediable. To these implementers, the culpable party who has fulfilled his/her other 'role-related' duties earns opportunities for rehabilitation. The principle of rehabilitation was therefore translated by these implementers into recultivation of the morality of the individuals of good quality.

For instance, violent husbands, who may also have been loving fathers, were sometimes protected from falling into the category of 'bad guys'. Offenders' fulfilment of a father's duties could partially offset their wrongdoing to their partners/ex-partners. They were regarded as hopeful men who simply made mistakes and therefore deserved compassion and a second chance.

I find that once I brought up their kids' interests to the offenders, they became

soft. They were all willing to let go of grudges against their wives and make some changes. Quite a number of victims admitted that their violent husbands treated their kids nicely. I think offenders could be terrible husbands but good dads and they can be changed. (RJ practitioner in Project A, ap1_35)

Hence, as the criminal justice officers and practitioners adopted the Confucian concept of 'role-bearing persons', the principles of accountability and rehabilitation were interpreted not narrowly by considering only the violence itself but more broadly by considering the moral standards and family duties of the parties. The victims, offenders, and their families were possibly blamed, approved of, or provided with second chances, to different degrees, depending on how well they performed their various role-related duties.

7.2.1.2 The feminist ideas of 'power and control' and 'cycle of violence'

In implementing the goal of 'education or educational discussions on gender and virtue issues', a few of the criminal justice officers and over half of the practitioners employed the feminist ideas of 'power and control' and 'a cycle of violence' for domestic violence. The two feminist ideas seemed to prompt these criminal justice officers and practitioners to give emphasis to the recognition of violence and domination in the process of restorative justice. The principle of accountability was consequently interpreted by the criminal justice officers and practitioners in a way that offenders' recognition of wrongdoing was required and that any participant's justification of violence (including blaming the victim) was forbidden. The principle of rehabilitation was translated to mean that recognition of wrongdoing was an essential basis for offenders' behavioural change.

Offenders should be led to perceive the issue of power and control and to realise how they themselves and their families have been influenced by it. Victims need to identify in which way offenders control them and for what reason they tolerate offenders' domination. (RJ practitioner in Project B,

bp6_4, 48)

We have seen numerous victims and offenders of domestic violence who are living in a cycle of violence. Offenders may have used various ways to express their regret to victims in their daily life. Thus, in restorative justice, I would take a very careful look at offenders' recognition of wrongdoing. If an offender admits what he did but feels his violence was caused by his victim's behaviour, he wants to hold his victim as responsible as well. I would not attach any significance to this kind of recognition. (RJ practitioner in Project B, bp7_32)

Quite apparently, the interpretations of the principles of accountability and rehabilitation shaped by the feminist considerations of 'power and control' and 'cycle of violence' were different from the interpretations of these two principles framed by the Confucian concept of 'role-bearing persons'. Despite some of the criminal justice officers and practitioners were familiar with all these feminist and Confucian values, when judging accountability for violence or considering the path to rehabilitation, they either chose the two feminist considerations over the Confucian concept or vice versa. In the end, there was hardly any practical alliance between these two feminist considerations and the Confucian concept of 'role-bearing persons'.

As a feminist, I should hold the patriarchal system or abusers as responsible for domestic violence. But as I join this project, I find that it is hard to tell who is right and who is wrong. Perhaps, the problem is that the parties lack wisdom in managing their relationships. Sometimes, we found a husband, except for beating his wife, having a nice career and taking very good care of his kids. Criminal conviction may destroy his career and other aspects of his life. Do we need to impose such heavy punishment on this guy, destroying his life? (RJ practitioner in Project A, ap4_23)

7.2.1.3 The feminist idea of 'gender equality'

Lastly, the feminist idea of 'gender equality' also played a role in many criminal justice officers' and practitioners' goal of 'education or educational discussions on gender and

virtue issues'. These implementers expected that the idea of 'gender equality' could instil in the parties an understanding of women's independence and autonomy, raise offenders' awareness of their mindset of superiority with respect to their victims, and motivate offenders to adjust their thinking and provoke sympathy for their victims.

I think it is necessary to have a certain level of education about gender equality in the process of restorative justice, such as respect or division of family chores. (RJ practitioner in Project A, ap3_22)

The last generation may consider battering wives is no big deal, but things have changed. I feel cognitive education about equality and respect between men and women could be crucial to stop domestic violence. (Criminal justice officer in Project B, bj2_27)

It appeared that most of the criminal justice officers and practitioners had no difficulty in accepting the feminist idea of 'gender equality' along with either the feminist ideas of 'power and control' and 'cycle of violence' or the Confucian concept of 'role-bearing persons'. Moreover, the feminist idea of 'gender equality', compared to the two other feminist ideas of 'power and control' and 'cycle of violence', was more compatible with the Confucian concept of 'role-bearing persons' in the thinking of the criminal justice officers and practitioners.

However, in the criminal justice officers' and practitioners' hybrid thinking of 'gender equality' and 'role-bearing persons', there were limitations to pursuing pro-feminist interpretations of the principles of accountability and rehabilitation. For instance, some male offenders were profoundly nurtured in the Confucian tradition to be filial sons to their parents and heads to their own families, and these 'hybrid' practitioners showed more empathy with these men. To some degree these men's violent behaviour was exempted from severe condemnation. By the same token these men were still asked to adapt themselves to a modern society's demands for gender equality and women's

autonomy, but at a gradual pace not in a radical manner. Feminist appeals to validate the wrongness of violence and to transform patriarchy were deferred in order to accommodate the influence of Confucianism.

We quickly shove the idea of gender equality into our society and stressed that we are civilised, so we ask people to act in a civilised way. But our Chinese culture may be still prominent. Our male fellows haven't adapted themselves into this new ideology. What they were taught shapes who they are now. So, I tell those male abusers: 'This is the demand of the society that you need to comply with. It's fine that you are not up to the standard in some aspects, but you need to know where and how to improve.' Feminist ideas are generally right, but I would say they should be promoted slowly and mildly, not expected to make huge progress in a short time. (RJ practitioner in Project B, bp3_59)

It is not easy to reach ideological transformation, so you have to take a slow pace which enables them to accommodate your ideas bit by bit. I may say it like this: 'Women can have their voices now; you may need to respect women a little bit more.' in a soft and gentle way. As they have more chances to encounter these ideas, they may be gradually changed. If I confront them directly, I worsen the deadlocked atmosphere, rendering them more resistant to me and to the ideas I want to deliver. In their living environment, men are superior to women, so you must deliver such ideas mildly. (RJ practitioner in Project A, ap2_11)

7.2.1.4 Legal perspectives

The criminal justice officers' and practitioners' legal knowledge and perspectives were the foundation on which they delivered 'legal education or educational discussions'. Legal education or discussions denoted these implementers' legal vernacular of the principles of accountability and rehabilitation.

Legal education conveyed knowledge of laws, legal actions to the parties, and the effects of the use of legal systems. Specifically, the legal education or discussions covered current laws and regulation of domestic violence, criminal justice procedures,

legal systems, civil laws on divorce, parental guardianship, property division, and analysis of advantages and disadvantages of probable legal actions. The parties were often informed of the offender's legal liability and official punishment and rehabilitation options in regard to the offence they were involved in.

We endeavoured to provide sufficient and accurate information about criminal justice procedures, regulations on domestic violence protection orders, and possible legal options and consequences. With our illustration, the parties may make better choices for themselves. Of course, we cannot predict the decisions of judges. But, I would say to the parties: 'It would be better if you find a more effective way without involving criminal charges or fines. (RJ practitioner in Project A, ap5_8)

To conclude, criminal justice officers and practitioners addressed in part the principles of accountability and rehabilitation through the pursuit of educational goals around legal, gender, and virtue issues. The content of discussions with clients was around the ideas of 'role-bearing persons', 'gender equality', 'power and control', or 'cycle of violence'. Criminal justice officers and practitioners used various combinations of these ideas. Thus, their practice involved various amalgamations of western, Confucian, feminist, and legal vernaculars.

7.2.2 Acknowledgment of wrongdoing

The criminal justice officers and practitioners held three types of postures toward the goal of acknowledgment of wrongdoing, which revealed their thinking about the principle of accountability. There were a few practitioners who did not appreciate any kind of pursuit of acknowledgment of wrongdoing. Of those who did consider acknowledgment important, two approaches were evident: acknowledging one's wrongdoing before practitioners and acknowledging one's wrongdoing before the other party.

The three approaches to acknowledgment of wrongdoing by the criminal justice officers and practitioners were not simply manifestations of their perceptions that domestic violence is wrong, and someone (offenders, two parties or two parties' families) is responsible for violence. Another factor shaped the way in which criminal justice officers and practitioners actioned the principle of accountability. Belief in Confucian values of 'harmony', 'face', and 'inner repentance', or the western notion of 'recognition of wrongdoing', or the feminist idea of 'validation of wrongness of violence' were associated with whether acknowledgment of wrongdoing was considered relevant to accountability, whether it was to be privately shared with practitioners or more openly acknowledged. Figure 7.2 below illustrates the values bolstering the three approaches to the goal of acknowledgment of wrongdoing, which were related to how the principle of accountability was put into practice.

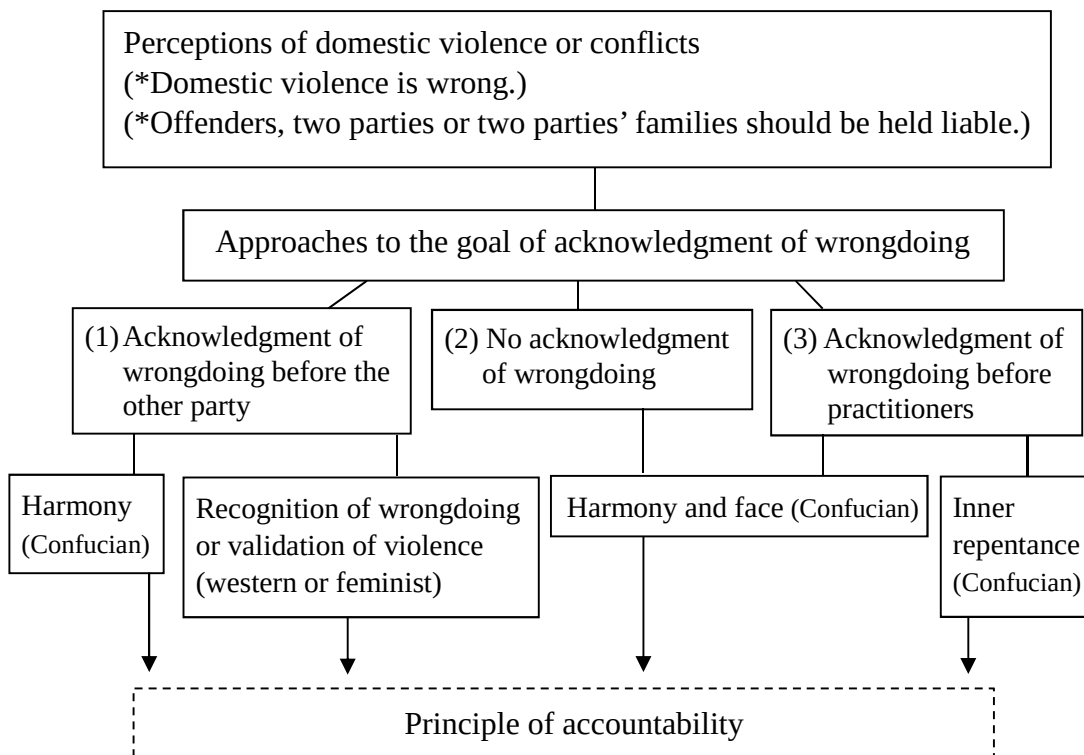


Figure 7.2 Underlying values related to the goal of acknowledgment of wrongdoing

7.2.2.1 Acknowledgment of wrongdoing before the other party

Many of the criminal justice officers and practitioners favoured pursuing acknowledgment of wrongdoing before the other party (either victims or offenders). Among these implementers, only one practitioner expressed the hope that doing so would reconstruct the Confucian value of 'harmony' in the relationship between the parties. The acknowledgment of wrongdoing in this particular case was not expected to be sincere: Harmony on the surface was the main purpose.

I don't care if offenders' recognition of wrongdoing is genuine. If they did something wrong, they have to admit they are wrong. Also, victims should accept offenders' apologies. I would persuade both parties to do so. I think this is the only way to end violence peacefully. They may be husband and wife no more, but they need to let go of grudges and bitterness. (RJ practitioner in Project A, ap1_49-52)

By contrast, other criminal justice officers and practitioners intended acknowledgment of wrongdoing to the other to serve as validation or/and recognition of the wrongness of violence. This majority view manifested the feminist and western interpretations of the principle of accountability. The wrongs referred to by this group of implementers were mainly offenders' violence.

Offenders often justify their violence and blame their victims. I would confront them. In one case, I even asked that husband to apologise to his wife. By acknowledging wrongdoing or making apologies, victims may be able to perceive the sincerity of offenders' remorse. (RJ practitioner in Project A, ap3_6)

But sometimes, the wrongs included both parties' virtue and duty-related issues. This was because the Confucian concept of 'role-bearing persons' was endorsed by some of the criminal justice officers and practitioners in perceiving domestic violence incidents, as discussed in 7.2.1. Thus, in pursuing 'acknowledgment of wrongdoing before the

other party', the expectations of this group of implementers did not definitely reflect a pure feminist or western version of the principle of accountability. In some cases, their expectations were a hybrid version of feminist, western, and Confucian interpretations of the principle of accountability.

I would consider if offenders' recognition of wrongdoing is genuine or if they try to reduce their liability for violence. But if I intend to point out some mistakes that they made, I would reveal both parties' errors. I told both of them what their personal problems are. (RJ practitioner in Project B, bp2_64, 67)

7.2.2.2 No acknowledgment of wrongdoing

A few practitioners did not expect any acknowledgment of wrongdoing from offenders. These practitioners had educational discussions with the parties about causes of and responsibility for violence, but they preferred no acknowledgment of wrongdoing. They considered that 'face' and 'harmony' had higher priority over 'acknowledgment of wrongdoing'. Acknowledgment of wrongdoing was deemed to be destructive to protection of face and to the maintenance of harmonious relationships.

You must not say anyone did something wrong. If you did, undoubtedly they would become very defensive. I often pull them together by declaring 'he wasn't wrong, and you weren't either.' I put a hypothesis of 'misunderstanding' in their relationship. By doing so, they would be more willing to resolve the problem together. (RJ practitioner in Project A, ap2_15)

7.2.2.3 Acknowledgment of wrongdoing before practitioners

Lastly, a number of criminal justice officers and practitioners preferred the parties' wrongdoing to be simply acknowledged before practitioners. They valued the ideas of 'harmony', 'face', and also 'inner repentance', as shown in Figure 7.2. They tried to safeguard the possibility of protecting parties' face and repairing the broken relationship

between parties. At the same time they attempted to assure the sincerity of a party's repentance.

Their adoption of the ideas of 'inner repentance', 'harmony', and 'face' echoed the three Confucian ideas for an individual's proper conduct and conflict resolution (refer to page 77 of thesis). This group of the implementers shaped the principle of accountability into a fairly Confucian mould.

I think admission of wrongdoing is important in restorative justice. I said to him: 'Do you see any problem in your relationship with your daughter-in-law? If you have better skills to handle the conflicts with her, she would not sue you.' I tried to guide him to reflect on himself. Of course, I only confronted him while his daughter in law was not present. I must save the man's face in front of his daughter-in-law. (RJ practitioner in Project A, ap6_16, 21)

To conclude, pursuit of the principle of accountability occurred through the goal of acknowledgment of wrongdoing for most criminal justice officers and practitioners. For some acknowledgment took place openly with other parties, for others acknowledgment was private with practitioners. A minority rejected the goal of acknowledgment.

The western idea of 'recognition of wrongdoing' and the feminist idea of 'validation of wrongness of violence' buttressed the approach of 'acknowledgment of wrongdoing before the other party'. By contrast, the Confucian ideas of 'face', 'harmony', and 'inner repentance' had a wider influence, buttressing the approaches of 'acknowledgment of wrongdoing before the other party', 'no acknowledgment of wrongdoing' and 'acknowledgment of wrongdoing before practitioners'.

7.2.3 Reduction of punishment of offenders

Criminal justice officers and practitioners who adopted the goal of reducing punishment of offenders were actioning both principles of accountability and rehabilitation in

restorative justice following a western understanding of the principles. There were no distinctly Confucian or feminist values influencing pursuit of this goal.

Less than half of the criminal justice officers and practitioners endorsed the goal of ‘reduction of punishment of offenders’. Those who endorsed the goal used the reduction of punishment as an incentive to motivate offenders to accept responsibility for their violence and harm done to their victims. They viewed the decision to reduce punishment in the restorative justice meetings as a way of avoiding the negative effects of stigma that the criminal justice system placed on offenders. This group of implementers saw reduction of punishment as an opportunity to enhance offenders’ accountability and rehabilitation.

I don’t see criminal conviction can do any good to either of the two parties. If offenders know how to make amends, they could satisfy what victims want and offenders themselves may be treated leniently. (RJ practitioner in Project A, ap4_48)

I said to the offenders ‘The government is not keen on putting people behind bars. So the point is whether you can reach some agreement or you are willing to change. It’s an exhausting job for the government to lock you up and feed you three meals a day.’ (RJ practitioner in Project A, ap6_39)

To the majority of criminal justice officers and practitioners, reduction of punishment was not welcomed as an enticement to enhance prospects of offenders’ accountability and rehabilitation. These implementers were not particularly in favour of punishment, but they expressed serious concerns about the quality of offenders’ accountability and rehabilitation. They worried that delivering the message of punishment reduction would create the wrong impression for offenders, suggesting that restorative justice was an easy path and simply required a fake acknowledgment of wrongdoing to evade legal sanction. Their intention was to ensure that offenders’ willingness to participate and admit wrongdoing was not a pretence but rather was genuine, with potential for positive

rehabilitation outcomes.

I don't want offenders to join restorative justice just because of likely reduction of penalty. If an offender comes with this intention, his admission of wrongdoing or apologies would be highly suspected. So, I would not propose any incentive. (Criminal justice officer at the Ministry of Justice, cj1_20-21)

In brief, some criminal justice officers and practitioners who were in favour of the goal of 'reduction of punishment' believed this would make offenders more likely to take responsibility for their violence. The principle of accountability was expected to be more easily achieved through the satisfaction of the principle of rehabilitation. But to the majority of criminal justice officers and practitioners who disapproved of the use of reduction of punishment as an incentive, reduction of punishment was seen as a means of discrediting restorative justice. They cared deeply about the quality and sincerity of offenders' acknowledgment of wrongdoing, which was assumed to lead to better outcomes of offender rehabilitation. The quality of the steps taken to action the principle of accountability was seen to affect implementation of the principle of rehabilitation.

7.2.4 Violence to be reduced or stopped

The goal of 'violence to be reduced or stopped' was another goal that embodied criminal justice officers' and practitioners' interpretations of the principle of rehabilitation. The goal was supported by most of the criminal justice officers and practitioners who expected restorative justice processes to bring about offenders' desistance from crime or at the very least, crime reduction.

The criminal justice officers and practitioners believed in different ways in the reduction or cessation of violence. Through realising other goals such as 'education or educational discussions', 'acknowledgment of wrongdoing', 'empowerment of the parties', or/and 'restoration', they anticipated accomplishing

the goal of ‘violence to be reduced or stopped’.

7.2.5 Summary

The four practice goals of the criminal justice officers and practitioners discussed above actioned the principles of accountability and rehabilitation in western theories of restorative justice. The four goals were ‘education or educational discussions on gender and virtue issues’, ‘acknowledgment of wrongdoing’, ‘reduction of punishment of offenders’, and ‘violence to be reduced or stopped’.

At the same time, the principles of accountability and rehabilitation in the western version were reframed by these implementers. This occurred through imbuing pursuit of the goals of ‘education or educational discussions on gender and virtue issues’ and ‘acknowledgment of wrongdoing’ with Confucian and feminist ideas. The principles of accountability and rehabilitation were translated in a more Confucian sense through the value placed on role-related responsibilities and concerns for harmony. The principles of accountability and rehabilitation were translated in a more feminist manner, through insistence that offenders take full responsibility for violence.

7.3 Interpretation of the principles of active participation and reintegration

This section elucidates the criminal justice officers’ and practitioners’ interpretations of the principles of active participation and reintegration together. The principles were connected for some though not all of the criminal justice officers and practitioners because both raised the issue of whether or not family involvement was desirable.

The goal addressing family involvement was ‘education or educational discussions on

family relationships’ (see Table 7.3 below). Three other goals in Table 7.3 articulated by criminal justice officers and practitioners connected only to the principle of active participation: ‘empowerment of the parties’; ‘dialogue and mutual understanding between two parties’; and ‘recognition of harm caused by violence’.

Two goals in Table 7.3 had cultural overlays, resulting in some departures from western conceptions. Confucian and feminist values influenced implementation of the goals of ‘education or educational discussions on family relationships’ and ‘recognition of harm caused by violence’.

Table 7.3 Interpretation of the principles of active participation and reintegration

Principle	Principles of active participation and reintegration
Goals	- Education or educational discussions on family relationships (C) - Empowerment of the parties (C+F) - Dialogue and mutual understanding between two parties - Recognition of harm caused by violence (F)
Note: (1) ‘C’ stands for Confucian values; ‘F’ stands for feminist values. (2) The first goal here related to both principles of active participation and reintegration. The latter three goals only embodied the principle of active participation. (3) This table is a segment of Table 7.1.	

7.3.1 Education or educational discussions on family relationships

Through pursuing the goal of ‘education or educational discussions on family relationships’, criminal justice officers and practitioners were able to action in part the principles of active participation and reintegration. Figure 7.3 illustrates that the Confucian concept of ‘role-bearing persons’ and the modern idea of ‘independent personhood’ informed the way in which the ‘education or educational discussions on family relationships’ was implemented. In circumstances where the idea of independent personhood did not accompany role-bearing persons in pursuit of the goal of ‘education

or educational discussions on family relationships’, the principle of reintegration was served without active participation.

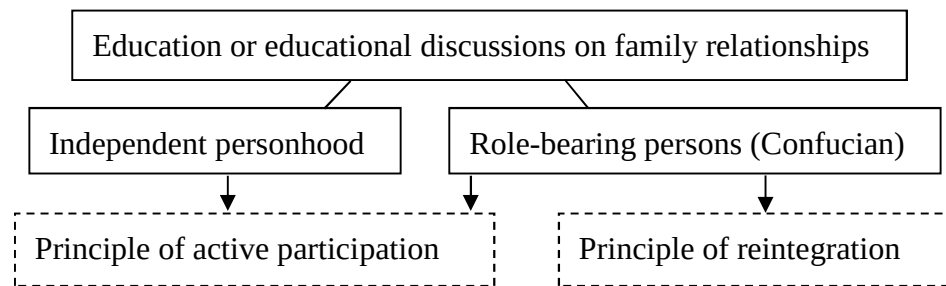


Figure 7.3 Education or educational discussions on family relationships

7.3.1.1 The Confucian concept of ‘role-bearing persons’

Most of the criminal justice officers and practitioners embraced the Confucian concept of ‘role-bearing persons’ in their implementation of the goal of ‘education or educational discussions on family relationships’. The concept of ‘role-bearing persons’ indicates the closeness and inseparability of family relationships. On one hand, strong family support for the parties demonstrated the positive results of the realisation of the concept of ‘role-bearing persons’ with respect to the principles of active participation and reintegration.

On the other hand, the downside of accepting the concept of ‘role-bearing persons’ in the ‘education or educational discussions on family relationships’ was observed by many criminal justice officers and practitioners. Strong support of families for their own member was commonly accompanied by blindness or tolerance of their wrongdoing and enmity toward the opposite party. Strong support of families also meant that the voice and views of the family were heard to the detriment of hearing the voice of the member.

The good thing is that family members would provide lots of support. But sometimes, family members were destroying the proceedings or procedure of the meeting. The parties might not feel that angry or unwilling to participate;

but their family talked a lot and showed strong enmity against the other party. The family was supposed to play a supporting role, yet they were taking a leading role in some cases. (RJ practitioner in Project B, bp1_84-86)

While criminal justice officers and practitioners noticed the influence of family on proceedings, they had no solution for dealing with family tolerance of wrongdoing and enmity toward the other party. The concept of 'role-bearing persons' dominated the parties' thinking of family relationships and the implementers' interpretations of the principles of active participation and reintegration.

7.3.1.2 The idea of 'independent personhood'

With regard to the more limited problem of families taking over the parties' role to speak, a number of criminal justice officers and practitioners responded with the idea of 'independent personhood' in the education or educational discussion on family relationships. The idea of 'independent personhood' provided another way of thinking of the role and function of families to the parties. This idea guided the principle of active participation in a more individualistic direction.

Over half the criminal justice officers and practitioners operated with the idea of 'independent personhood' along with the concept of 'role-bearing persons'. The idea of 'independent personhood' was to balance the negative effects that the concept of 'role-bearing persons' could generate. The idea of 'independent personhood' was not adopted to oppose family love or role-based duties, but put forth to draw a clear boundary between individuals and their families in the hope that the parties could be encouraged to make their own voice heard, take charge of their life decisions, and assume personal responsibility for their actions and future.

In one case, both parties' parents fully 'supported' their children to fight against the other. It seems much easier for people to make an impulsive

decision if they are backed up by others. They don't feel lonely as they fight against the other party. So, I reminded the wife of boundary and responsibility issues between her and her family: 'Families may take up your responsibility to bring up your children, but you will not learn to be a parent.' (RJ practitioner in Project B, bp4_70)

In sum, the criminal justice officers' and practitioners' goal of 'education or educational discussions on family relationships' was conducted through the ideas of 'role-bearing persons' or/and 'independent personhood'. The Confucian concept of 'role-bearing persons' produced practices in which the principles of reintegration and active participation were realised through the family's strong support and possibly over-engagement. The modern idea of 'independent personhood', by contrast, gave the principle of active participation a more individualistic focus, diminishing the possibility of a family's over-engagement and creating space for individuals to accept responsibility for their actions and their future.

7.3.2 Empowerment of the parties

'Empowerment of the parties' was another practice goal that showed how the criminal justice officers and practitioners translated the principle of active participation. Many criminal justice officers and practitioners adopted this goal with the intention of assisting the parties' personal development, in the sense that their abilities to deliberate, express, and decide for themselves would be enhanced. The goal could apply to both parties or to victims only. Empowerment of both parties or victims only was thought to be achieved through practitioners' encouraging words and compassion for the parties, or through practitioners' efforts to motivate offenders to acknowledge their wrongdoing before victims (also see discussion in 7.5.1).

In the beginning, he said to me: 'I am not good at expressing myself. I don't know what to say and how to say it.' I encourage him to say whatever comes up in his mind. After his sharing, I told him that he did a very good job and I

understood everything he said. He seemed encouraged; he said that was the first time he talked a lot before others. (RJ practitioner in Project B, bp5_32)

In principle, the implementers' intentions of empowering both parties or victims only corresponded to the western or feminist version of the principle of active participation. Interestingly, the goal of 'empowerment of the parties' was linked to the Confucian value of 'face protection' by some of the practitioners. In some cases, men were given support and compassion without their face being challenged and their justification for violence being confronted. This stemmed from practitioners' thinking that Taiwanese men, who might be incapable of expressing inner affections, or fear loss of face if they shared their marriage problems with others.

I understand quite a lot of men feel ashamed about sharing their marital problems or what their wives did. I would allow them to protect their face at least in the first preparation meeting and make them feel comfortable to talk. I could sympathise with the emotional burdens they carry. But, still their violent act is wrong. (RJ practitioner in Project B, bp4_67-69)

Thus, the ways in which the criminal justice officers and practitioners accomplished the goal of 'empowerment of the parties' echoed the western version of the principle of active participation. Sometimes the goal was practiced with feminist appeals for women's confidence-building and recovery from harm. Sometimes the goal was practiced with consideration for Confucian influences on Taiwanese men, which cushioned men's emotional incompetence and need for face protection.

7.3.3 Dialogue and mutual understanding between two parties

The goal of 'dialogue and mutual understanding between two parties' in part demonstrated most of the criminal justice officers' and practitioners' interpretations of the principle of active participation. Dialogue was seen to create space for them to share and listen to each other. Commonly, this goal was implemented in the context of formal

meetings, when both parties were able to meet each other. The process allowed the parties to obtain updated information, have a fuller understanding of the violence that occurred and discover ways of handling it.

In the formal meetings, I hope both parties can hear the other party's voices and understand how they think and feel. Perhaps through the process, they may find a way to reduce their conflicts. (RJ practitioner in Project B, bp3_24)

To some of the criminal justice officers and practitioners, this goal was thought to be better achieved with the goal of 'education or educational discussions on gender and virtue issues and family relationships'. They were not very convinced that constructive conversations could spontaneously happen between the parties on their own. They felt that the key to constructive dialogue was practitioners' professional skills, such as skills in counselling or experiences in handling marital disputes.

I hope dialogue could help both parties speak out about what is in their minds. I know it's hard to resolve their problems. But this is a beginning. This is why we need professionals to facilitate such a process. Through this process, the offender may review his motive of violence and the victim could have a better understanding of why violence happened or why her marriage ended up like this. (Criminal justice officer in Project B, bj3_18-20)

Thus, the criminal justice officers' and practitioners' goal of 'dialogue and mutual understanding between two parties' had substantial connections to the western version of the principle of active participation, but few connections to any Confucian and feminist ideas. To some implementers, the fulfilment of this goal required practitioners' professional aid.

7.3.4 Recognition of harm caused by crime

The goal of 'recognition of harm caused by crime' was connected to the execution of

the principle of active participation as well. This goal was imagined to be realised through two other goals, discussed earlier and more highly sought after by criminal justice officers and practitioners – ‘education or educational discussions’ and ‘dialogue and mutual understanding between two parties’. Significantly fewer criminal justice officers and practitioners articulated the goal of ‘recognition of harm caused by crime’.

In our discussion sessions, he felt that what he did was wrong. He complained as well. He said his family hurt him with words or did things to annoy him. When he could not stand it anymore, he used violence to respond. Nevertheless, he realised that he did not have to use violence and that using violence is not the best way. (RJ practitioner in Project B, bp5_33-34)

When the parties sit down and talk, it should be good to let victims share their emotions and anger – this way offenders may come to know more about how victims feel. (Criminal justice officer in Project B, bj2_55)

7.3.5 Summary

The principles of active participation and reintegration were executed by the criminal justice officers and practitioners as four practice goals: ‘education or educational discussions on family relationships’; ‘empowerment of the parties’; ‘dialogue and mutual understanding between two parties’; and ‘recognition of harm caused by violence’.

The first two goals were practiced in such a way that the principles of active participation and reintegration were enriched with Confucian and feminist concerns. Confucian sensibilities gave rise to family tolerance of wrongdoing and family over-engagement in restorative justice processes occasionally being endured. A sympathetic reception was at times given to Taiwanese men’s needs for face protection and encouragement of emotional expression. Feminist concerns sharpened some criminal justice officers’ and practitioners’ insistence in meeting abused women’s needs

for empowerment.

7.4 Interpretation of the principle of restoration

Lastly, the principle of restoration was interpreted and exercised by the criminal justice officers and practitioners through the two practice goals of restoration and case closure (see Table 7.4 below). Both goals were consistent with the western version of the principle of restoration. The goal of restoration contained some Confucian and feminist insights, which coloured the interpretation of the principle of restoration with cultural or gendered sensibilities.

Table 7.4 Interpretation of the principle of restoration

Principle	Principle of restoration
Goals	- Restoration (C+F) - Case closure
Note: (1) 'C' stands for Confucian values; 'F' stands for feminist values. (2) This table is a segment of Table 7.1.	

7.4.1 Restoration

The goal of restoration was upheld by all the criminal justice officers and practitioners, and included to varying degrees of importance emotional, material, and relationship restoration. Relationship restoration was given more attention than emotional and material restoration, which were viewed as the second best outcomes when relationship restoration seemed unlikely to happen.

I consider restorative justice is more about emotional and relational restoration. To me, restorative justice is not a kind of exchange, but a certain level of emotional communication. (Criminal justice officer in Project B, bj2_33)

Most of the criminal justice officers and practitioners took relationship restoration as the ultimate goal of restorative justice. Some of them even attempted to convince the parties that participating in restorative processes offered the prospect of restoring relationships. The goal of 'relationship restoration' was highly appreciated by these implementers since it was considered beneficial for future communication among the parties, re-establishment of peaceful relationships, or individuals' emotional relief. Relationship restoration was not defined as reunion, but relationship improvement. Positive communication was regarded as the starting point of relationship restoration.

We love to see that they are happily back together though we know it's hard to make that happen. Still, we create opportunities for them to have positive communications on past family disputes. (RJ practitioner in Project B, bp1_65)

Some of the criminal justice officers and practitioners operated with an emphasis on the Confucian idea of harmony. Superficial reconciliation was regarded as satisfactory. To this group of implementers, relationship restoration offered healthier relationships, peaceful marriage separation, or cooperative parenthood.

I often recommended the parties to have a peaceful ending, which is good for both sides. Peaceful resolution could relieve their stress and make their lives much easier. ... Apologies with sincerity are the best outcome we hope but not something we can demand. Offenders might pretend that they feel regret for their actions in order to reduce their legal liability. This is fine. Perhaps, after superficially apologising to their victims, they may truly feel they are wrong. (RJ practitioner in Project A, ap2_22, 41)

To other criminal justice officers and practitioners, the goal of restoration was handled with discretion. The purpose was not to trivialise reconciliation through having no denunciation of wrongdoing. A further purpose was to avoid putting pressure on victims. Apologies were not recommended. Feminist worries were well illustrated here.

If offenders still count victims as those who trigger their violence, victims could be harmed again. Such admission could not lead to any emotional, substantial or relational restoration, in a meaningful way. (RJ practitioner in Project B, bp7_32)

The above interpretations of the goal of restoration show that restoration was universally favoured, but diversely translated. On the one hand there was the influence of the Confucian idea of harmony. On the other hand there was feminist wariness about no-fault reconciliation and the potential for a future cycle of violence. The criminal justice officers' and practitioners' interpretations of the principle of restoration therefore had cultural and gendered overlays to the western version of restoration.

7.4.2 Case closure

Compared with the other eight goals, the goal of 'case closure' was supported by the fewest criminal justice officers and practitioners. Through this goal, the principle of restoration was implemented in a pragmatic form. The aim was to get agreement and end criminal and civil procedures.

Criminal justice officers and practitioners assumed that the time and resources the parties spent in criminal justice procedures and the negative effects of criminal justice systems on the parties might be lessened if the case could be finalised as soon as possible.

We try to close relevant civil and criminal cases as soon as possible in order to lessen the negative influences that laws bring into the family. I do expect the formal meetings can come up with some agreement on how to end or handle criminal accusations. Then, the parties together could more possibly have some parenting plans for their kids, who will not be badly affected because of unresolved issues between their parents. (RJ practitioner in Project A, ap4_41, 43)

Seemingly, the goal of 'case closure' was regarded as a solution to the drawbacks of

legal actions and legal systems. Thus, in pursuit of the goal of ‘case closure’, the criminal justice officers’ and practitioners’ legal perspectives were much more prominent than their belief in Confucian or feminist philosophies.

7.4.3 Summary

The principle of restoration was interpreted by the criminal justice officers and practitioners in terms of two practice goals: restoration and case closure. The goal of ‘restoration’ was practiced with consideration for Confucian or feminist ideas; the goal of ‘case closure’ was basically buttressed by legal perspectives. Hence, the western, Confucian, and feminist versions of the principle of restoration as well as legal perspectives were all implemented to some extent.

7.5 Prioritisation of restorative justice principles

The nine practice goals articulated by the criminal justice officers and practitioners conveyed values and beliefs beyond the five western principles of restorative justice. These additional elements that influenced practice drew on Confucianism, feminism and legal imperatives in Taiwan. These goals also provide the key to understanding how and why the five restorative justice principles assumed a certain order of priority in the Taiwanese context.

First it should be acknowledged that the nine goals were interconnected in varying ways by different criminal justice officers and practitioners, as were the five principles of restorative justice. All criminal justice officers and practitioners had multiple goals, including a unanimously-agreed ultimate goal of relationship restoration. Within this complex set of connected goals, one in particular served as a watershed goal for partitioning pathways of action, the goal of ‘acknowledgment of wrongdoing’. Figure 7.4 below demonstrates the partitioning effect on action.

In Figure 7.4, the nine goals of restorative justice are listed and numbered within the solid text boxes. The relations between the goals are shown with lines and arrows. In the web of all nine goals, the goal of ‘acknowledgment of wrongdoing’ is the linchpin for other goals. The solid lines and arrows signify the paths where ‘acknowledgment of wrongdoing’ was to occur before the other party. By contrast, the dotted lines and arrows symbolise the paths where ‘acknowledgment of wrongdoing’ was disregarded or thought to be only appropriate before practitioners⁷⁷. The paths connecting the goals in Figure 7.4 begin at the stage of preparatory meetings and end at the stage of formal meetings.

Despite these connections between the goals in Figure 7.4, each of the goals could be an end in itself. This is because many of the criminal justice officers and practitioners counted cases as successful after one or some of the goals they set up were achieved, notwithstanding failure to realise other goals or the ultimate goal they aimed to achieve.

Lastly, some tasks and procedures are marked with dotted text boxes in Figure 7.4, and as such are distinguished from the nine practice goals in solid text boxes. The tasks were expected by the criminal justice officers and practitioners to facilitate the completion of the goals. ‘The parties telling stories to the practitioners’ and ‘mutual consent’ were the tasks conducted individually prior to the goals of ‘empowerment of the parties’ and ‘case closure’. The procedure of ‘entering formal meeting’, on the other hand, denoted a bridging procedure for cases from the preparatory stage to the formal meeting stage.

In the following discussion, the criminal justice officers’ and practitioners’ reasoning around goal setting is discussed first. Based on the logic of goal setting, the prioritisation of the principles of restorative justice is then elaborated.

⁷⁷ The routes, (a) in red and (b) in blue in Figure 7.4, symbolise two disparate situations in regard to the relations of the goals, which will be explained later in this section.

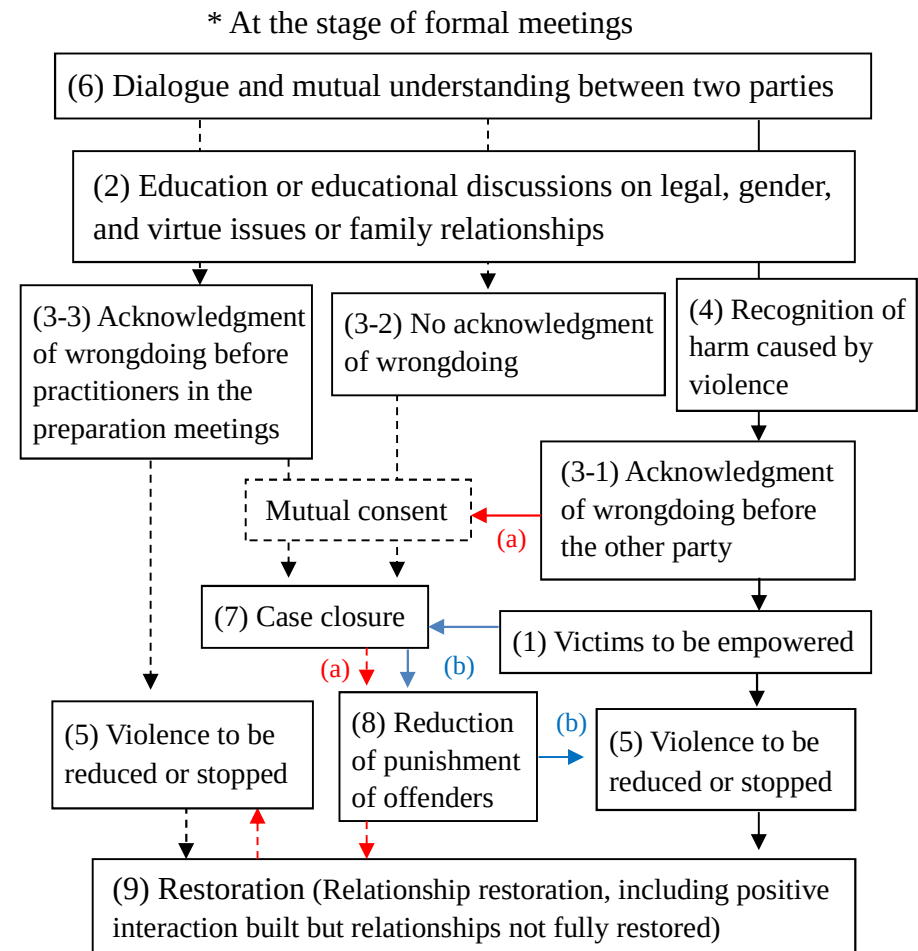
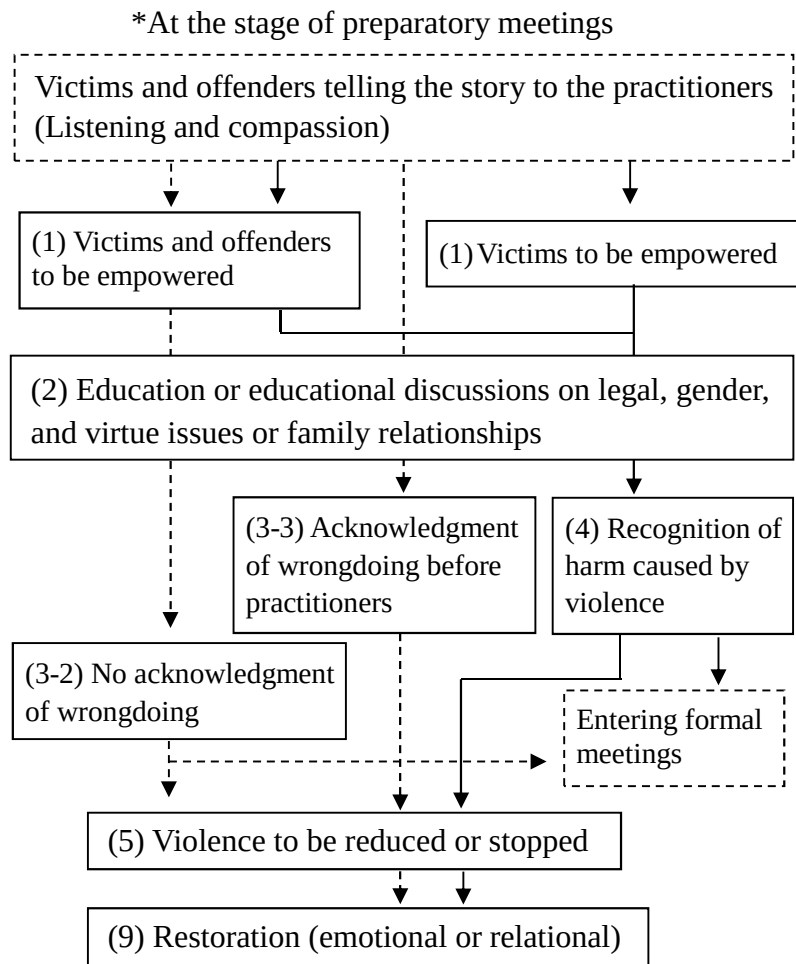


Figure 7.4 Paths to multiple goals of the restorative justice practices in domestic violence

7.5.1 The reasoning of the goal setting

Six out of the nine goals – ‘empowerment of the parties’, ‘education or educational discussions’, ‘acknowledgment of wrongdoing’, ‘harm caused by violence to be perceived’, ‘violence to be reduced or stopped’, and ‘restoration’ were regarded as achievable before the formal meetings. The relations among these goals are shown on the left of Figure 7.4.

7.5.1.1 At the stage of preparatory meetings

Many of the criminal justice officers and practitioners believed that the first task in the restorative justice process was inviting victims and offenders to tell their stories. In this way, the facts and causes of domestic violence could be exposed. During this process, compassion was considered to be the necessary practitioner skill to reach the goal of ‘empowerment of both parties or victims’. Then, the criminal justice officers and practitioners unanimously expected a certain sort of ‘education or educational discussion with the parties on legal, gender, and virtue issues or family relationships’. Some of the criminal justice officers and practitioners expected such education or educational discussions to diminish the occurrence of domestic violence, regardless of whether offenders ‘acknowledged their wrongdoing’ or not. Relational or emotional restoration was considered achievable through such empowerment and education.

At this stage, a number of the criminal justice officers and practitioners considered the two goals of ‘empowerment of victims’ and ‘recognition of the harm caused by violence’ to be integrally connected to the goal of ‘acknowledging one’s wrongdoing before the other party’, which was expected to be realised at the formal meeting stage. Similar linkages between the three goals emerged more distinctively at the stage of the formal meetings, where the logic binding the three goals together was much clearer.

7.5.1.2 At the stage of formal meetings

After cases entered formal meetings, three goals – ‘dialogue and mutual understanding between two parties’, ‘case closure’, and ‘reduction of punishment of offenders’, which were not presumed achievable at the preparatory meetings, were considered feasible. At the stage of formal meetings, the nine practice goals were managed by different logics and therefore were situated on different routes toward the ultimate goal of relationship restoration shown on the right of Figure 7.4⁷⁸.

The most important and initial feature at the stage of the formal meetings was creating space for dialogue. To most of the criminal justice officers and practitioners, mutual understanding could be at least moderately realised if the parties were willing and had opportunity to communicate with each other. Then, education or educational discussions on legal, gender, and virtue issues and family relationships were delivered again in front of both parties to guide them to constructive conversations on these issues.

After education or educational discussions, the criminal justice officers and practitioners often would turn attention to the goal of ‘acknowledgment of wrongdoing’ again. They either expected/instructed the involved parties to acknowledge the wrongdoing in front of the other party, or actively circumvented ‘acknowledgment of wrongdoing’. This was a pivotal point in how things unfolded thereafter.

Some of the criminal justice officers and practitioners demanded to see ‘acknowledgment of wrongdoing’ presented to the other party. Once this position was taken, criminal justice officers and practitioners preferred pursuing the goals of

⁷⁸ To clarify the logics and routes, the third and fifth goals – ‘acknowledgment of wrongdoing’ and ‘violence to be reduced or stopped’ are repetitively listed in Figure 7.4.

‘empowerment of victims’, ‘harm caused by violence to be perceived’, and ‘violence to be reduced or stopped’ prior to the goal of ‘restoration’.

By contrast, other criminal justice officers and practitioners viewed ‘acknowledgment of wrongdoing before the other party’ as pointless. They were keen to maximise the probability of realising the goal of ‘restoration’ through the goals of ‘case closure’ and ‘reduction of punishment of offenders’. The goal of ‘restoration’ was believed to benefit or benefit from the execution of the goal of ‘violence to be reduced or stopped’. Violence was believed to be controlled best through reducing punishments and reaching agreements so that cases could be closed.

To sum up, goals were interconnected in different ways among criminal justice officers and practitioners. Figure 7.4 denotes the more prevalent logics of goal setting which explain how certain goals took priority and subsequently affected the ordering of other goals. Despite variation in the logics of goal setting, a key operating feature was the importance assigned to the goal of ‘acknowledgment of wrongdoing’ in securing the goal of ‘restoration’, particularly at the stage of formal meetings. In support of ‘acknowledgment of wrongdoing before the other party’, the goals of ‘empowerment of victims’ and ‘harm caused by violence to be perceived’ were thought to be catalysts for ‘restoration of the parties’. In opposition to ‘acknowledgment of wrongdoing before the other party’, the goals of ‘case closure’ and ‘reduction of punishment of offenders’ were promoted as the channels to ‘restoration of the parties’.

7.5.2 The prioritisation of the five principles of restorative justice

The criminal justice officers’ and practitioners’ reasoning around their goal setting can shed light on the prioritisation of the five principles of restorative justice. The professionals’ propositions about handling the goal of ‘acknowledgment of

wrongdoing’ to reach the goal of ‘restoration’ is critical in exposing how the five principles of restorative justice have been prioritised.

As elaborated earlier, western, Confucian, and feminist values underpinned different operationalizations of the goal of ‘acknowledgment of wrongdoing’. The same values underpinned the logics of goal setting are contributing to the prioritisation of restorative justice principles. Below, the three ways of handling the goal of ‘acknowledgment of wrongdoing’ are discussed separately to show how the values underpinning different logics of goal setting flow through to variation in the prioritisation of restorative justice principles. The numbers of 3-1, 3-2, and 3-3 in Figure 7.4 represent the three ways of handling the goal of ‘acknowledgment of wrongdoing’.

(3-1) ‘Acknowledgment of wrongdoing before the other party’

To a number of the criminal justice officers and practitioners, ‘acknowledgment of wrongdoing’ needed to be addressed before the other party. Giving this goal meaning was the western idea of ‘recognition of wrongdoing’ or the feminist idea of ‘validation of wrongness of violence’, as Figure 7.2 shows. These ideas flowed through the logic of why acknowledgment of wrongdoing before the other party was so important.

From Figure 7.4, ‘acknowledgment of wrongdoing before the other party’ was the basis for working toward the goal of ‘recognition of harm caused by violence’ and reinforcing the goal of ‘empowerment of victims’. At the heart of this step is the victim’s voices and wellbeing assuming greater importance, thus victim empowerment. Moreover, criminal justice officers and practitioners on this trajectory asserted that achieving the goal of ‘relationship restoration’ would be meaningful only if harm is recognised, admission of wrongness is sincerely made, and violence is stopped.

The logic of goal setting here implied that the principles of accountability and active participation (especially through the goal of empowerment) constituted the groundwork for the realisation of two other principles: rehabilitation and restoration. To those who were in support of ‘acknowledgment of wrongdoing before the other party’, precedence was given to the principles of accountability and active participation over the principles of rehabilitation and restoration.

(3-2) ‘No acknowledgment of wrongdoing’

By contrast, a few of the criminal justice officers and practitioners preferred to settle domestic violence with ‘no acknowledgment of wrongdoing’. As shown in Figure 7.4, they made use of ‘no acknowledgment of wrongdoing’ to reach mutual consent, with the hope of increasing the possibility of ‘case closure’ and then facilitating the process through ‘reduction of punishment of offenders’ and ‘relationship restoration’. Once the relationship was restored, even at a superficial level, this peaceful ending was viewed as a start to eliminating hatred, revenge, conflicts, and violence in the future.

‘Acknowledgment of wrongdoing’ is an important value in restorative justice, but in practice, I rarely emphasise this principle. Instead, the closure of civil cases and criminal cases related to this family is our main interest. Closing the control of the criminal justice system on this family, this family may work out their problems by themselves. (RJ practitioner in Project A, ap4_28)

Through favouring ‘no acknowledgment of wrongdoing’ and pursuing goals that would increase prospects of ‘case closure’, this group of criminal justice officers and practitioners conveyed the message that they prioritised restorative justice principles differently. The principle of accountability was not the top priority. Instead, they cared most about the principles of rehabilitation and restoration.

The Confucian values of ‘face’ and ‘harmony’ explained the prioritising of goals

associated with the approach of ‘no acknowledgment of wrongdoing’, as illustrated in Figure 7.2. In this approach, ‘face’ and ‘harmony’ were quite compelling in directing the goal setting: do not demand acknowledgment, reduce punishment for the offender, achieve an agreement between parties so that the goal of closure can be reached and further civil or criminal litigation avoided, and achieve realization of the ultimate goal of relationship restoration. The principles of rehabilitation and restoration were driving the process at the expense of the principle of accountability.

(3-3) ‘Acknowledgment of wrongdoing before practitioners’

Lastly, for another group of criminal justice officers and practitioners, the parties’ acknowledgment of wrongdoing was to be presented only before practitioners in the preparatory meetings. Handling ‘acknowledgment of wrongdoing’ in this way was designed to help the parties reach mutual consent, with good prospects of reaching quick ‘case closure’ and ‘reduction of punishment of offenders’, and eventually ‘relationship restoration’. The Confucian values of ‘face’ and ‘harmony’ but also ‘inner repentance’ were embedded in the approach of ‘acknowledgment of wrongdoing before practitioners’, as shown in Figure 7.2. It was ‘inner repentance’ leading this group of implementers to pay attention to ‘acknowledgment of wrongdoing’, compared to the second group who preferred ‘no acknowledgment of wrongdoing’.

Goal setting in this trajectory assigned almost equal credence to the principles of accountability, rehabilitation, and restoration. Seemingly, the criminal justice officers and practitioners tried to find the equilibrium among these three principles and did not want to compromise any of the principles in practice. Their goal setting was designed to strike a delicate balance between the principles of accountability, rehabilitation, and restoration. The two other restorative justice principles of active participation and reintegration, by comparison, were given less attention.

Two disparate situations not in accord with ‘acknowledgment of wrongdoing’

The goal setting of two practitioners did not exactly follow the three paths classified above. Nevertheless, the underlying values behind the goal of ‘acknowledgment of wrongdoing’, specifically the Confucian value of ‘harmony’ and the feminist idea of ‘validation of wrongness of violence’, remained in place, steering the goal setting and leading to a more unusual prioritisation of restorative justice principles.

In one case, the goal of ‘acknowledgment of wrongdoing before the other party’ was used to achieve harmony between the parties. This discrete logic is marked as the red route (a) in Figure 7.4 and has been explained in 7.2.2. The reasoning of this particular practitioner was similar to the thinking of other criminal justice officers and practitioners who upheld ‘no acknowledgment of wrongdoing’. Their reasoning was harmony-focused, believing that the goals of ‘case closure’ and ‘reduction of punishment of offenders’ could lead to the realisation of the goal of ‘relationship restoration’, which in turn would make the goal of ‘violence to be reduced or stopped’ more possible. The principles of rehabilitation and restoration were prioritised first.

The other case involved a practitioner who attempted to benefit both parties together. The reasoning of this practitioner is drawn as the blue route (b) in Figure 7.4. The purpose of pursuing the goal of ‘acknowledgment of wrongdoing before the other party’ was to greatly empower victims. Equally, the goal of ‘reduction of punishment of offenders’ was pursued to treat offenders more constructively and thereby achieve better outcomes.

The reasoning of this practitioner bore much similarity to the reasoning of other criminal justice officers and practitioners, who preferred ‘acknowledgment of wrongdoing before the other party’ but not ‘reduction of punishment of offenders’.

They all believed that ‘recognition of wrongdoing before the other party’ could foster ‘empowerment of victims’, ‘decline or desistance of violence’, and finally ‘relationship restoration’. Yet, this practitioner differed from other criminal justice officers and practitioners in promoting rather than discounting the importance of the principle of rehabilitation along with the principles of accountability and active participation.

7.5.3 Summary

With diverse reasoning, the criminal justice officers and practitioners came up with different ways of managing the goals they set for restorative justice. The reasoning was tightly built on the values they upheld in choosing their approach to the goal of ‘acknowledgment of wrongdoing’, namely the western idea of ‘recognition of wrongdoing’, the feminist idea of ‘validation of wrongness of violence’, and the Confucian ideas of ‘face’, ‘harmony’, and ‘inner repentance’.

When the western idea of ‘recognition of wrongdoing’ or the feminist one of ‘validation of wrongness of violence’ was advocated by the criminal justice officers and practitioners, the favoured design was one where acknowledgment of wrongdoing was done before the other party. The principles of accountability and active participation (particularly through the goal of empowerment) were prioritised over the principles of rehabilitation and restoration.

In cases where criminal justice officers and practitioners were committed to the Confucian values of ‘face’ and ‘harmony’, acknowledgment of wrongdoing was regarded as unnecessary, in some cases disapproved of. The principles of rehabilitation and restoration trumped the principles of accountability and active participation.

Last of all, when all three Confucian values of ‘face’, ‘harmony’ and ‘inner repentance’ were embraced by the criminal justice officers and practitioners, the design chosen was

the acknowledgment of wrongdoing in front of practitioners. The principles of accountability, rehabilitation, and restoration were given almost equal attention in the hope that a delicate balance could be struck so that one principle was not achieved at the expense of the others.

Despite two practitioners with logics of goal setting that departed from the above three, the key to understanding implementers' goal setting and ordering of restorative justice principles was to understand and recognise the values that gave meaning to the goal of 'acknowledgment of wrongdoing'. The western, Confucian, and feminist values listed above shaped the thinking and action plans of the implementers.

7.6 Challenges in the interpretation of restorative justice

In the above discussion, little has been said about the principle of reintegration. This presented a challenge for the criminal justice officers' and practitioners' in their interpretations of restorative justice, as did active participation, though to a lesser extent. The goal through which delivery on these principles was most complicated was 'education and educational discussions'. The challenges are discussed below in terms of delivering on the principles of reintegration and active participation.

7.6.1 Challenges in interpreting the principle of reintegration

The principle of reintegration was least thought about and discussed by the criminal justice officers and practitioners. They were more interested in and attuned to the four other principles – accountability, active participation, rehabilitation, and restoration. 'Education or educational discussions on family relationship' was the only practice goal of the criminal justice officers and practitioners that linked to the principle of reintegration.

The criminal justice officers' and practitioners' limited interest may correctly reflect the reality that Confucian family tradition lingered and braced individuals' strong attachment for family. The parties' family involvement had been strong and seldom needed implementers' additional enhancement. In this sense, reintegration was an unnecessary principle because family integration had never been under threat.

Of considerable importance, however, is the way in which the negative impact of family involvement on the principle of reintegration was not properly addressed by criminal justice officers and practitioners, as elaborated in 7.3.1. The practitioners had no solution to irrational blame of the other party's family and displays of family love to their involved family members, with disregard for their responsibility for violence.

Hence, the interpretation and implementation of the principle of reintegration was challenging. The bright side of the Confucian family tradition was family support, rendering the principle of reintegration unlikely a problem in restorative practices. The dark side of the Confucian family tradition was enmity to other families and tolerance of violence within one's own, leaving the principle of reintegration in a vulnerable place.

7.6.2 Challenges in interpreting the principle of active participation

Challenges in interpreting the principle of active participation were unlike the challenges in interpreting reintegration, with the cultural indemnity involved with reintegration. The principle of active participation was actively developed by implementers in terms of several practice goals, as discussed in 7.3. But it was the connecting goal of 'education or educational discussions' that had the potential to undermine realisation of the principle of active participation.

It was not the content of the education or educational discussions, but the nature and

process of education and educational discussions, which could damage the parties' level of active participation. The nature of education or educational discussions was assumed to be a kind of persuasion or instruction by the practitioners, no matter whether the content of education or educational discussions was pro-feminist or pro-Confucian. The process of education or educational discussions was expected to create some space for the parties to communicate with each other but also with practitioners. The nature and process of these kinds of education or educational discussions subtly impeded parties' active participation, with respect to extent of participation and voluntariness of participation.

With regard to extent of participation, the education or educational discussions implicitly elevated the role of the practitioners, instead of the role of the parties in the restorative process. From the perspectives of the implementers, the parties were generally incapable in certain domains or in need of education or consultation. The topics in education or discussions were often decided or expected to be decided by the practitioners rather than by the parties.

The difference between education and educational discussions was that the degree of dominance of the practitioners was greater in the former than in the latter. Specifically speaking, the space, time, and direction of meetings were more available to the parties to take the initiative in educational discussions than in sheer education.

Everyone has his/her own sense of justice. To the District Prosecutors Office, justice may rely on a form of apologies; to victims, they might expect abusers to be changed; to offenders, they may want their wives to live up to the standard of an ideal wife. To me as a facilitator, should I seek justice in accord with the goal of this project or with the expectations of the parties? I think I was inclined to satisfy the goal of this project, so I did not give too much heed to the parties' expectations of justice. (RJ practitioner in Project B, bp3_54)

I try to let the parties talk and decide for themselves. I may push them a little bit, but I don't want to be dominant in the meeting. Any decision should be out of their willingness. Thus, if they say anything, it would be what they truly want, not what I ask of them. (RJ practitioner in Project A, ap2_22)

In regard to voluntariness of participation, the education or educational discussions sometimes aimed for delivery of persuasion rather than neutral information to the parties. Around one-third of the practitioners used such education or discussions to convey a lure or warnings to the parties. A lure took the form of flexible time arrangement, reduction of punishment, or benefits of peaceful resolution. Warnings were against not partaking in restorative justice meetings, such as receiving revenge of offenders out of the imposed punishment from the courts or anger of offenders created through court processes. These practitioners presented the advantages of restorative justice practices and the disadvantages of the court system. Their education sessions were not served as neutral analyses of the pros and cons of restorative justice processes. Despite that the parties were still given the right to decide if they wanted to participate in restorative justice. Voluntary participation of the parties was tempered by fear as well as hopes for a better future.

I tell them: 'In restorative justice, we can resolve things peacefully. You can read from the newspapers, there are a lot of violent husbands taking revenge after ten or twenty years. They track you down and kill you and your family. But after talking with us, offenders can be changed, and the parties usually happily leave the meeting. (RJ practitioner in Project A, ap1_9)

I think the most important thing is their willingness of participation, which is also the key factor that determines if a case can be successfully closed. Thus, I wait but not to persuade or force them. If s/he is not willing to participate in the first time, I wait and see if s/he changes her/his mind. (RJ practitioner in Project B, bp1_43)

Hence, the goal of 'education or educational discussions' somewhat adversely affected the parties' degrees and voluntariness of participation. The nature of education or

educational discussions could give precedence to practitioners offering guidance rather than autonomy to the parties. The criminal justice officers and practitioners might undermine the parties' participation rights and space if they regarded the parties as incapable of perceiving things and making decisions. The hazards had nothing to do with whether Confucian or feminist values were upheld, but were common, generated by the implementers to a greater or lesser degree.

To sum up, the challenges of interpreting the principles of reintegration and active participation were in part due to the fact that they were veiled by the criminal justice officers and practitioners' on-the-record success in interpreting the two principles. One of the principles (reintegration) was easily achieved due to traditional family integration. The other principle (active participation) was commonly highlighted by the criminal justice officers and practitioners as a vital feature of restorative justice. However, the two principles were actually under implicit threat in Taiwan. Strong family engagement could lead to family tolerance of their own involved family member's violence and unjust blame on the other party. Education and educational discussions might increase the power of practitioners but damage the quality of parties' participation.

7.7 Conclusion

This chapter provides an in-depth analysis of criminal justice officers' and practitioners' personal vernacularisation of restorative justice. The content and ordering of restorative justice principles were managed by the criminal justice officers and practitioners with their nine practice goals and diverse reasoning about goal setting.

Criminal justice officers and practitioners interpreted restorative justice in an inclusive way as western theories of restorative justice argue it should be interpreted. Yet, the

content and ordering of the five principles varied and went beyond what western theories of restorative justice propose. In addition to some legal perspectives, Confucian and feminist values were embedded in the goals of the criminal justice officers and practitioners and these values enriched the content of the restorative justice principles. The Confucian and feminist values, in particular, further shaped the ordering of the principles in a different way.

The Confucian values of ‘role-bearing persons’, ‘face’, ‘harmony’, and inner ‘repentance’ contributed to reframing the five restorative justice principles. The influence of the Confucian values penetrated through the goals of ‘education or educational discussions on gender and virtue issues and family relationships’, ‘acknowledgment of wrongdoing’, ‘empowerment of the parties’, and ‘restoration’.

The feminist ideas of ‘gender equality’, ‘power and control’, ‘cycle of violence’, and ‘validation of wrongness of violence’ came into play in interpreting the four principles of restorative justice: accountability, rehabilitation, active participation, and restoration. The feminist influence came about through the goals of ‘education or educational discussions on gender and virtue issues’, ‘acknowledgment of wrongdoing’, ‘empowerment of the parties’, ‘recognition of harm caused by violence’ and ‘restoration’.

The influence of western, Confucian, and feminist ideas also flowed into criminal justice officers’ and practitioners’ strategies for ordering the principles of restorative justice. In appreciation of the Confucian values of ‘face’ and ‘harmony’, the principles of rehabilitation and restoration were undertaken as the top priority. In favour of the western idea of ‘recognition of wrongdoing’ or the feminist idea of ‘validation of wrongness of violence’, the principles of accountability and active participation were prioritised as cornerstones of restorative practice. As the Confucian values of ‘face’,

‘harmony’, and ‘inner repentance’ were embraced, the principles of accountability, rehabilitation, and restoration were brought into a delicate balance as all were identified as important.

The principles of accountability, rehabilitation, and restoration acquired different interpretations and orderings of importance in restorative practice. The principles of reintegration and active participation were distinguished through a particular kind of vulnerability in practice. Reintegration of the parties could grow into tolerance of parties’ wrongdoing. The design for encouraging active participation could turn into a mechanism of transmitting practitioners’ professional guidance.

In brief, the nine practice goals of criminal justice officers and practitioners manifested the coexistence of the western ideas of restorative justice, Confucian ideas, and feminist values in the interpretation of restorative justice principles. The goal setting of the implementers indicated competition between these western, Confucian, and feminist ideas, concurrently occurring and influencing the ordering of restorative justice principles. Yet, their goals did not navigate them safely through practice to realise the principles of reintegration and active participation without the risk of serious harm.

Chapter 8

Voices of victims and offenders in the transfer

8.1 Introduction

This chapter provides a different lens for assessing the transfer process of restorative justice. The two preceding chapters elucidated how implementation organisations and professionals vernacularised restorative justice. This chapter turns to victims and offenders and what they expected and needed in the restorative process. The site for this analysis is Project A⁷⁹. A detailed analysis of Project A was pursued because victims and offenders provide important insights into how they are served by restorative justice in dealing with domestic violence.

The following five sections of this chapter explicate the parties' expectations and needs in relation to the five principles of restorative justice: accountability, active participation, reintegration, rehabilitation, and restoration. The sections provide evidence to support the main finding: Victims and offenders had multiple and mixed expectations and needs that corresponded to aspects of the three versions of restorative justice, namely western, Confucian, and feminist.

Each of the following five sections of this chapter deals with two themes. The first pertains to where the expectations and needs of the victims and offenders in Project A echoed the three versions of restorative justice. Consistencies and inconsistencies between the authentic perspectives of the victims and offenders and the three theoretical versions of restorative justice are examined.

⁷⁹ Permission to undertake a similar analysis in Project B was declined.

The second theme is whether the expectations and needs of the victims and offenders in Project A were in accord with the implementation views of their practitioners (Project A only). The successes and failures in satisfying the expectations and needs of the victims and offenders are scrutinised, including the benefits, harms, and unaddressed issues that unfolded for victims and offenders.

Based on the lessons learnt from Project A, the second-last section of this chapter will put forth possible improvements for interpreting and operating restorative justice in domestic violence cases in Taiwan. The last section concludes by identifying limitations and giving a summary of the findings.

It is worth noting that the data of this chapter were collected through interviews with victims, offenders, and their family members. The expectations of the victims and offenders were observed in their articulation of the feelings and thoughts about restorative processes and outcomes, their perception of the domestic conflict/violence in which they were involved, and their preferences for ways of handling the problem. Most of the needs of the parties were explicit and expressed plainly in their accounts of domestic violence and restorative justice experiences. Some of their needs were rather implicit or even unnoticed by the parties themselves, for they articulated feelings, but not always reasoned for those feelings. The researcher identified hidden needs in the text that follows, acknowledged the inference and carefully based these inferences on the parties' accounts of domestic violence and restorative justice experiences.

There were some similarities and differences between the victims and offenders in their expectations and needs. Table 8.1 summarises the expectations and needs of the victims and offenders separately. Details will be elaborated in the following discussions as these needs and expectations are linked with the western, Confucian and feminist versions of restorative justice, focusing on one principle at a time for analytic completeness.

Table 8.1 Victim and offender expectations and needs for restorative justice

RJ principles	Western version (W)	Confucian version (C)	Feminist version (F)
Accountability	(w1) offenders to acknowledge wrongdoing (w2) offenders to take responsibility	(c1) face protection (c2) family hierarchy (c3) relational appropriateness (義 yi) (c4) inner repentance	(f1) to validate the wrongness of violence and domination (f2) offenders to take responsibility (f3) structural accountability of patriarchy
Active participation	(w1) voluntary participation (w2) sharing/listening/discussion/decision-making (w3) solution-seeking/whole truth/empowerment/reintegrative shaming	(c1) limited empowerment of the parties (c2) families to replace the parties in discussion, sharing, and decision-making (c3) family's moral lecturing	(f1) women's empowerment and self-consciousness (f2) no excuses from men (f3) danger of power and control (f4) a story of power and domination
Reintegration	(w1) offenders to be re-integrated to their own families or communities	(c1) family reintegration and tolerance of the party's misconduct (c2) family's full support for the party and enmity toward the other party	(f1) reintegration for both parties or victims only (f2) transform patriarchal families and communities
Rehabilitation	(w1) to help offenders change (w2) to avoid future crimes (w3) punishment as last resort	(c1) moral education and self-cultivation (c2) punishment as last resort and for 'bad guys'	(f1) offender rehabilitation for victim safety (f2) caution about state's intervention and punishment
Restoration	(w1) material, emotional, and relational restoration (w2) apology and forgiveness where the parties choose it	(c1) material compensation (c2) harmony restoration (c3) encouraging both genuine and superficial reconciliation	(f1) material and emotional healing for women (f2) dangers of promoting apology and forgiveness (f3) caution about relational restoration
Note: The expectations and needs found to be of little relevance to victims and offenders are marked in black, shared by both parties highlighted in green, of only victims in red; of only offenders in blue.			

8.2 Parties' voices on the principle of accountability

All the victims and offenders sought certain kinds of 'recognition of wrongdoing' which varied according to the western, Confucian, and feminist versions of the principle of accountability (see Table 8.2). This intention was prominent not just when the parties first turned to the criminal justice system, but also after they agreed to participate in the restorative justice process.

Table 8.2 Victim and offender expectations and needs linking to the principle of accountability

RJ principle	Western version (W)	Confucian version (C)	Feminist version (F)
Accountability	(w1) offenders to acknowledge wrongdoing (w2) offenders to take responsibility	(c1) face protection (c2) family hierarchy (c3) relational appropriateness (義 yi) (c4) inner repentance	(f1) to validate the wrongness of violence and domination (f2) offenders to take responsibility (f3) structural accountability of patriarchy
Note: The expectations and needs found to be of little relevance to victims and offenders are marked in black, shared by both parties highlighted in green; of only victims in red.			

The shared views of victims and offenders seemed to greatly resemble the Confucian version of the principle of accountability (see green text in Table 8.2). Most of the victims and offenders believed that personal misconduct was a remote cause for the violent events. Some of the victims, however, as opposed to the offenders, demanded accountability for violence along the lines associated with the western or feminist versions.

8.2.1 Parties' voices corresponding to the Confucian version of the principle of accountability

As shown in Table 8.2, victims' and offenders' expectations for accountability were partly consistent with the Confucian version of the principle of accountability. Both the victims and offenders conceived the intent as being to restrengthen family hierarchy and relational appropriateness (義 yi) in the family. As to face protection, more of the offenders than the victims had this concern. But, neither the victims nor the offenders could be simply satisfied with the other party's inner repentance. Visible recognition of wrongdoing, elaborated in either Confucian, western, or feminist versions of the principle of accountability, appeared to be much more appealing to the victims and offenders.

8.2.1.1 Family hierarchy

Many of the victims and offenders considered that there should be due respect and courtesy in a relationship between a younger and elder family member, due to a sense of appropriate authority, not out of affection. Family hierarchy was emphasised by victims and offenders more in relationships between younger and elder family members than in marital relationships. This finding is in line with the recent results of Chinese socio-psychological studies (Hwang, 2009; M.-C. Li, 2004).

Family hierarchy was applicable to relationships by blood and marriage (in-law relationships). Violation of family hierarchy in the latter situation, rather than the former, was a very common source of resentment underlying the violence, regardless of whether it was spousal or non-spousal violence. Interestingly, not just violation of family hierarchy between mother/father-in-law and daughter/son-in-law but also between elder and younger brothers/sisters-in-law ignited and boosted conflicts and

violence.

My wife's sisters barefacedly came to my place, questioning my father on why he hadn't paid off my wife's debts. Although my father agreed to clear off the debts for her, they were totally rude and shameless. After that incident, my wife still insisted on inviting her family to be my family's guests in our village's big Taoist sacrificial ceremony. I told her: 'That's not possible.' One day I came home from work, thinking to let go of the grudge and agree to have her family to our feast. But when I heard she was snarling at my mother; I got totally pissed off. How come she thought that she could do this to my mother and I would still kindly invite her mother to be our guest? During that fight with my wife, I threw a clock in her direction, and she reported it to the police. (Offender in Project A, ao2_12-15)

He does not learn what respect is. I am his big brother-in-law, and my other sister is his elder sister-in-law. How could he try to bully my youngest sister before the two of us, his elder brother-in-law and sister-in-law? I didn't care about their marriage problem. But, he must learn respect and gratitude. My mother also treated him very well, taking good care of their daughter. He just took our kindness for granted. (Offender in Project A, ao10_5, 8)

Even though some of the victims suffered as a result of family hierarchy, they did not abandon the belief in family hierarchy. Instead, these victims tightly guarded the role-related respect that they believed they deserved from younger family members.

My mother-in-law spoiled my husband for too long. She asked me to endure her son's irrational behaviour, too. That was ridiculous, but I couldn't say no to her request. My younger sister-in-law showed no respect for me, either. She barely appreciated that I am her elder sister-in-law. She called me by my name instead of calling me 'elder sister-in-law'. After that, I decided not to be nice to her any more. She didn't respect me; why should I be nice to her? (Victim in Project A, av13_8, 72)

8.2.1.2 Relational appropriateness (義 yi)

Relational appropriateness (義 yi) was another main cause of domestic violence put forth by the victims and offenders. A large number of the victims and offenders

proclaimed that they themselves had behaved properly and fulfilled the role-related obligations in the family. Then, they claimed that the other party did not live up to their role-related duties.

We always said that we have ‘a big rice cooker’, which means all her friends and sisters are welcome to enjoy meals in our place. We served them with all our generosity and hospitality. Supposedly, she should have, at the least, come and asked us to join them for the meal when we were busy at cooking and serving her guests. But, she sat there and ate with her guests without thinking of us. To be honest, we are sensible and nice parents (in-law). She just had not grown up. (Offender in Project A, ao6_10)

I paid all the bills and our kids’ living expenses and school costs. I also gave my mother-in-law some pocket money, which should be my husband’s duty. What else should I do and I haven’t done? He had no job and no sense of responsibility. He just beat me up whenever he was not pleased. (Victim in Project A, av3_5)

Moreover, over half of the victims and offenders held the other party’s family accountable, alleging they were not decent in-laws, making little effort to comply with relational appropriateness. The content of the accusations was closely tied to the functions of family hierarchy, deemed as the mechanism through which younger family members are nursed, educated, and corrected. For instance, both victims and offenders reprimanded the other’s family members for failing in duties, such as disciplining their own son or daughter, looking after their daughter/son-in-law (the victims or offenders themselves), respecting their in-law’s family, or helping settle family disputes between the two parties.

I think my son-in-law’s elder sisters should have done something to help him. If they already knew their brother is so easily influenced by others. They should not leave their brother alone and let him divorce my daughter. Does divorce make their brother better-off? (Victim’s mother in Project A, av11f_21)

I gave my wife all the money I earned, and she lost most of it. She neither told me where she used the money nor felt wrong about what she did. Her family was far beyond outrageous. Their daughter messed up, but they came to my place, blamed me, and yelled at me to pay the debt off. (Offender in Project A, ao2_2)

It is worth noting that many of the victims who sought help from the criminal justice system were motivated by the hope that the justice system would restore the declining functions of family hierarchy and relational appropriateness in their family. They were steadfast in their belief in family hierarchy and relational appropriateness, even after they turned to justice department.

In the past, when my husband and I had some arguments, I usually sought help from my husband's eldest brother. Like what people say, 'the eldest brother is like a father in the family.' When something went wrong, I just went to him for help, to get him to persuade or talk to my husband for me. Since my brother-in-law and parents-in-law stopped offering any help, I went outside to seek help. If my husband's family didn't think beating people is a crime, they should be taught. (Victim in Project A, av2_39-40)

The victims' and offenders' commitment to family hierarchy and relational appropriateness brought to light the broad scope of culpability. The culpability was not confined to who behaved violently but extended to who had not performed their role-related duties adequately. Culpability was not just pinned on one party but also on the whole family of the party. The victims' and offenders' perspectives here were quite contrary to the western or feminist idea of culpability.

The victims' and offenders' endorsement of family hierarchy and relational appropriateness also denotes that the role-related duties and shortcomings in performing them carried great weight with both the victims and offenders, more so than the simple excuses of offenders that are encountered in the feminist version of restorative justice. The role-related duties and tasks defined the self-worth and identity

of victims and offenders.

Correspondingly, male chauvinism perceived by some of the victims was interpreted as a personal or familial moral issue, rather than as a societal problem of structural patriarchy, as suggested in the feminist version of the principle of accountability. Structural patriarchy (that is preserved in Taiwan as a cultural tenet) remained prominent in the victims' account of domestic violence, even though it was not perceived as such by the victims. Victims made no appeal for transformation of structural patriarchy.

This time I filed a report against my husband not because of my husband's violence but because of the meanness of his whole family. The two old folks (parents-in-law) loved bossing me around and treated me like a maid. Last time, when my husband got drunk and hit me, they did not even try to stop him but stood there and watched him beating me. What could I say? They are just a very low quality family. Living with them makes me sick. (Victim in Project A, av12_6-9)

8.2.1.3 Face protection

Lastly, while considering accountability for violence, a number of the offenders and victims expressed concern for face protection as they commented on how facilitators treated them or the other party in the restorative justice meeting.

Offenders wanted face protection. This meant that they did not need to admit fault before reaching reconciliation and case closure. Victims allowed face protection to be applied to some extent because they recognised the value of face protection in Taiwan as a sensible strategy used by facilitators to build bonds with the parties. Overall, face protection appeared to be more relevant and meaningful to more of the offenders than the victims.

The facilitators did not say who is right or wrong. The way they handled the

process was good. If they ask me to admit I am wrong, I would not say their approaches are good. Indeed, there is no absolute right or wrong in such things. (Offender in Project A, ao10_23)

8.2.2 Victim voices corresponding to the western and feminist versions of the principle of accountability

As shown in Table 8.2, only the victims' expectations partially paralleled the western and feminist versions of the principle of accountability. Around half of the victims envisaged accountability for violence as extending beyond family hierarchy, relational appropriateness, and face protection. These victims requested offenders' accountability for not just role-related misconduct but also violent behaviour.

Some of these victims wished to see offenders admit that violence was wrong, which resembles the western argument on the principle of accountability. Others despaired of obtaining offenders' recognition of wrongdoing. They shifted their hopes to the justice departments or restorative justice processes to come up with a public and official declaration that can condemn offenders' violent behaviour. The second hope was more in keeping with the feminist version of the principle of accountability.

I hoped they could have the guts to admit what they have done. My ex-wife's brother hit me and threatened to hurt me again if I filed a report to the police. But when we got there (the meeting of restorative justice), he only admitted he 'might accidentally' hit me and denied any intimidation he made to me. My ex-wife's sister lied too. In the meeting, she claimed that she never kicked my sister. That was not the truth. (Victim in Project A, av10_24)

A number of the victims recognised the damage of patriarchy, but had difficulty moving beyond seeing it as a personal or familial morality issue. 'Structural accountability of patriarchy' in the feminist version of the principle of accountability was not in the minds of victims taking part in restorative justice in Project A.

Last of all, ‘taking responsibility’, as proposed in the western or feminist version of the principle of accountability, was barely mentioned by victims and offenders. Taking responsibility appeared to be practically interpreted as offender recognition of wrongdoing, offender willingness in taking up a rehabilitation program, or offender action to apologise.

8.2.3 Practical successes and failures in fulfilling the principle of accountability

8.2.3.1 Facilitators’ achievements

Victim and offender expectations for family hierarchy and relational appropriateness were mostly fulfilled in practice. Victims and offenders were pleased that their pro-Confucian values were largely recognised by the facilitators. Their concerns were being heard, discussed, or strengthened by the facilitators.

Most of the victims and offenders were happy with the attention drawn to family hierarchy or relational appropriateness even though the facilitators’ work in the restorative justice process was unable to restore these expected standards. At best, facilitators encouraged participants to perform their role-related duties.

The facilitator learnt of the discord between my mother-in-law and me. She shared with me her relationship with her mother-in-law. She taught me: ‘The elder has the mouth, and the younger is all ears.’ I know she told me this for the sake of my interests. I trusted her and I felt what she said is right. (Offender in Project A, ao4_48, 54-57)

The way that the facilitators held the meeting was just like what we expected. My son needs to be taught and encouraged. They said to him: ‘You should do some changes, respect your parents, and look after your kids; otherwise, you might be punished.’ (Victim in Project A, av1_66)

Face protection that was expected by some of the offenders was mostly achieved by their facilitators, who skipped or softly touched on the issue of the wrongness of

violence. As mentioned earlier, an ambiguous expression of wrongness of violence was tolerable to some of the victims, who recognised the value of face protection. Victims sympathised with facilitators who were in an awkward position, being sandwiched between victims and offenders.

Of course, I understand the facilitators would not point out who or what is wrong. They just said: 'It would be better if you two could sort this out in a peaceful way.' They would not put themselves in a difficult situation. They still tried to earn trust from us, and work with us. (Victim in Project A, av4_40-42)

However, the facilitators were not able to satisfy the offender's expectations for face protection at the same time as meeting victim expectations that the offender acknowledge wrongdoing or that there was public condemnation of violence. Dealing with offenders' face protection meant tension between fighting for victims' interests or offenders' interests. Here was the inevitable practical clash between the Confucian, western, and feminist versions of the principle of accountability.

I did not do anything wrong, but I was asked to apologise to my wife. Fine, I apologised, saving her face in that meeting, and then everything was settled. But I felt that 40-minute meeting was a torture to me. I had no idea how to deal with my face issue. I could only be sitting there and felt embarrassed. If the meeting could be shortened, that would be much better. (Offender in Project A, ao5_48-50, 69; the victim was very pleased with the facilitator's advice on the offender's offering apologies.)

8.2.3.2 Facilitators' difficulties and oversight

Some of the facilitators failed to heed victims' appeals, which reflected concerns raised in the western and feminist versions of the principle of accountability. Particularly, there was lack of success in meeting two victims' demands for offender's recognition of wrongness of violence and public validation of the wrongness of violence.

As mentioned, half the victims expected offenders' reflections on their behaviour or else hoped the facilitator would make a fair judgment on the violence. Some restorative justice meetings in which practitioners endeavoured to bring recognition of the wrongness of violence still ended up with offenders being reluctant to accept responsibility for the harm they had done. The victims were disappointed with the outcomes, but not with the whole restorative process nor with the facilitators.

More importantly, some victims experienced secondary victimisation from facilitators. In these cases, facilitators disregarded the wrongfulness of violence or allowed offenders to justify their violence in the meetings. The victims involved were inclined to blame their facilitators for this failing.

The facilitator did not even mention that beating women is wrong. I felt he was more on my husband's side. He did not understand what a beaten woman felt. I don't feel I got justice after the meeting. No one was saying violence is wrong. (Victim in Project A, av2_30-31, 52-53)

The facilitators' oversight of the victims' expectations for acknowledgment of wrongdoing and validation of wrongness of violence reflected a discrepancy between the viewpoints of the facilitators and the victims. Victims' expectations were in accord with not just the Confucian but also western and feminist versions of the principle of accountability. However, the facilitators responded only through honouring family hierarchy, relational appropriateness, or face protection, as contended in the Confucian version of the principle of accountability. It may be inferred that both facilitators and victims had their own interpretation of accountability in domestic violence and they did not always quite match.

My husband was insulting my sister and me at the meeting, suggesting that I should earn money for our kids by selling my body. I was agitated. I yelled back: 'You had no job and never took care of our kids. It was me who was around them all the time.' The facilitator shut me up; she said 'You have no

right to blame your husband. It is he who is now looking after the kids since you left home'. I felt it was so unfair. My sister said: 'She was the one who got beaten up. Why couldn't she speak up and say what is on her mind?' The facilitator only told my husband not to say things about women earning money through sex, which insults all females in the meeting. She insisted that I have no right to blame him. She said this is why he turned out to be more aggressive; I answered back to him, so things got worse. (Victim in Project A, av13_20-24)

8.2.3.3 Practical effects on the parties' sense of accountability

Slight changes of the parties' sense of accountability were fairly common, no matter what version of the principle of accountability was more executed by the facilitators. Only a small number of the victims and offenders came to feel more morally responsible for their family violence or conflicts after they went through the entire process of restorative justice. These victims and offenders recognised that they might not be flawless in their role-related duties.

More crucially, none of the offenders admitted their violent act without rationalising their violence, at least a little bit. Rationalisation of violence meant that victims were held responsible more or less by the offenders. Only a few offenders said they felt sorry for what they did. The outcomes here reveal that the issue of offenders' accountability was ineffectively tackled in Project A. This problem has been documented in other domestic violence programs (E. Bowen, Brown, & Gilchrist, 2002; Dutton, 2006).

I admit I hit her. I punched her not because I was drunk. I am not a thug. I haven't even got into a fight before with others. So, that must be her problem. She was smacked by me because she was nagging and annoying me when I had my drinks. (Offender in Project A, ao3_1)

I know I should not have turned on the gas tank in our place that night. But that was her fault. My wife did not talk to me. I said to her: 'I am your

husband. Why don't you tell me what you are thinking?' Things had been like that for a while. On that night, I questioned her: 'Are you seeing someone else?' She was mad, saying: 'You don't have any proof.' I got really angry. I never beat women, so I turned on the gas tank just to threaten her. What I wanted is her telling me what is in her mind. (Offender in Project A, ao7_14)

In sum, the victims' and offenders' understanding of accountability for violence was numerous, varied, and sometimes contradictory, which can be explained together by the western, Confucian, and feminist versions of the principle of accountability. The practical difficulties and failures in realising the principle of accountability could be attributed to the conflicts between the victims' and offenders' interests (regarding recognition of wrongdoing and face protection) and the discrepancy in interpreting wrongdoing between the facilitators and the parties (role-related duties and criminal culpability). Overall, there was little evidence of improvement in the offenders' sense of accountability for violence through the restorative justice process in Project A.

8.3 Parties' voices on the principle of active participation

There was considerable overlap in how victims and offenders thought they could take part in the process of handling domestic violence. The parties' explicit viewpoints pretty much manifested the western version of the principle of active participation. The parties' implicit needs reflected Confucian and feminist versions of this principle. The preferences of the parties in this regard are summarised in Table 8.3 below.

Table 8.3 Victim and offender expectations and needs linking to the principle of active participation

RJ principle	Western version (W)	Confucian version (C)	Feminist version (F)
Active participation	(w1) voluntary participation (w2) sharing/listening/discussion/decision-making (w3) solution-seeking/whole truth/empowerment/reintegrative shaming	(c1) limited empowerment of the parties (c2) families to replace the parties in discussion, sharing, and decision-making (c3) family's moral lecturing	(f1) women's empowerment and self-consciousness (f2) no excuses from men (f3) danger of power and control (f4) a story of power and domination
Note: The expectations and needs found to be of little relevance to victims and offenders are marked in black, shared by both parties highlighted in green; of only victims in red.			

8.3.1 Parties' voices corresponding to the western version of the principle of active participation

Both the victims and offenders expressed their desires to be the key players in the process of handling the violence or the criminal case. As shown in Table 8.3, they would like to speak, communicate, take part in decision-making, or piece together the story of violence. Only reintegrative shaming argued in the western version of the principle of active participation did not interest the victims and offenders.

Some of the parties particularly loved their stories to be heard and their points to be taken as part of the final decision on resolution of domestic conflicts/violence. Others focused on taking advantage of the restorative justice process to grasp the thoughts of the other party and communicate with the other party. Although the majority of the parties already had their own interpretation of why violence happened, there was one victim still hoping that in the restorative justice process, she could find some missing

pieces to complete the whole picture of the violent incident.

I went to see my ex-husband at the detention centre. I wanted to know why he did this to me. Why did he intend to set our house on fire through a gas tank? I felt he might misunderstand something. We have known each other for so long. I can't believe he became like that. But in the meeting, the facilitator did not touch this issue. We had no time to discuss why this happened. (Victim in Project A, av7_14)

Most of the victims and offenders voluntarily participated in restorative justice. The parties mentioned little about what voluntary participation meant to them, but their voluntariness was reflected in their high expectations for the restorative process. Voluntariness drove them to act and perform vigorously in the process of restorative justice.

I would love to talk to the facilitators. They were like my elder sisters. If the case is processed in the court, I would not feel free to talk and explain more. There is no such space created for us when we are present in front of the judge. (Victim in Project A, av3_19)

8.3.2 Parties' voices corresponding to the Confucian version of the principle of active participation

Many of the victims and offenders revealed a passive response to their family's participation in the restorative justice process, which was quite in accord with the Confucian version of the principle of active participation (see Table 8.3). To the parties, the family's over-engagement and the resulting limited empowerment of the parties were understandable and acceptable. Moral lecturing from the family was not anticipated by the parties in the restorative justice process because this had usually already taken place in the family context, before the process of restorative justice began.

8.3.2.1 Family participation and limited empowerment of the parties

In over half the cases, the involvement of the parties' families outweighed the participation of the parties. Family participation was allowed or welcomed by these victims and offenders, even when they expected opportunities to have a say for themselves in the meetings.

My father wanted to know the results of the meeting, so he and my mother went along with me. He was afraid that I would be bullied by them. I know no matter how old I am; I am still their boy. I didn't want him to worry too much about me, but my father did not want me to go there alone and get hurt. (Victim in Project A, av10_53)

This kind of family involvement was not unique to the restorative justice meeting, but had been already going on in the parties' past experiences of resolving domestic conflicts/violence. Family hierarchy and relational appropriateness were foundational beliefs which convinced the parties and their families that it was legitimate for the family to take charge of the process of handling domestic conflicts/violence. Undoubtedly, the restorative justice process was included as one of the occasions where family should take action.

I felt that I wasn't able to make any decision at that time. I was disturbed and didn't know whether I should divorce him or not. My father and the whole family supported the decision of divorce. Actually, before this incident, my husband and I already had some furious arguments. My father came to help and knew our disputes all along. So, at that time my father said to me: 'See, I told you this would happen. You should not marry him.' (Victim in Project A, av7_18-20)

Seemingly, empowerment of the parties was accordingly disregarded, which was perceived and commented on by some of the parties. However, none of them considered that their family's over-engagement in the meeting was problematic. None of them felt that their limited participation needed to be enhanced, even though they

liked participating in the process. Probably, as the last two quote show, space for participation for some victims could be forgone in exchange for family unity and support, which were valued in times of personal vulnerability.

8.3.2.2 Family's moral lecturing

Very few of the victims and offenders expected moral lecturing from the family. This might be because family members offered teachings or persuasion before domestic conflicts/violence ended up in the criminal justice system.

We already talked to my daughter-in-law's mother a few years ago, but her mother was on her side. Once, her mother came with a mediator from the city and asked our village leader to show up as an arbiter. Her mother complained how badly her daughter had been treated, in fact it was her daughter unscrupulously scolding and insulting us. After her mother's talk, my son and I described how my daughter-in-law behaved in our family. The mediator coming with her mother was speechless then. Our village leader gave some final admonition. My daughter-in-law and her mother became quiet and went back in total shame. Since then, her mother never dared to come back again. (Victim in Project A, av4_35-36)

8.3.3 Parties' voices corresponding to the feminist version of the principle of active participation

As shown in Table 8.3, many victims and offenders gave little consideration to power and domination in domestic violence and to the danger of power and control in restorative processes. Yet a substantial part of their experiences of domestic violence and restorative processes described the use and misuse of power by victim and offender as illustrated below. This shows the relevance of feminist arguments about women's self-consciousness around power and domination and addressing power in the course of participation in restorative processes.

Comparatively speaking, the majority of the victims saw themselves as autonomous individuals, conscious of their rights, and willing to hear offenders' accounts of violence. The feminist propositions advocating for women's empowerment and vetoing of men's excuses in the restorative justice process were not very pertinent to the victims.

8.3.3.1 A story of power and domination

Underneath most of the victims' and offenders' articulation of domestic disputes and violence was power and domination, as feminists suggest. According to the victims and offenders, familial or marital disputes simmered in the family for quite some time. The disputes ranged from monetary quarrels, dissatisfaction about the other party's role-related duties, suspicion about the other party's extra-marital affairs, to complaints about the other party's discourteous attitudes toward the in-laws. Violence was a means used by the majority of the offenders to keep a superior and controlling position in the family or to win power and domination over disputes. An immediate

Every time we moved to a new place, my wife was quite paranoid about me having an affair with our neighbours. So, we had some arguments constantly. I kept telling her: 'Stop being so suspicious of my loyalty to you.' One day, I could no more put up with her questioning. I started beating her to shut her up. Finally, she couldn't take it anymore, and a married guy seduced her. She admitted to me that she had an affair with that man. She would not stop meeting that guy and writing love letters to him even though I had told her to leave him. That night, again we had a fight. I was too impulsive and under a lot of pressure. I tied her up and wanted to drive her to her boy-friend's place. I said to her: 'We three have to talk about this; otherwise, I do not know how things could end up fine.' That day, I was caught red-handed by the police. (Offender in Project A, ao9_7)

Most of the victims also actively participated in the game of power and domination, commonly involving immediate control over disputes rather than long-standing control

over the other party, and verbal assaults rather than physical attacks. Except in one case, victims showed no signs of being manipulated by the offenders. Even when sometimes afraid, they acted as autonomous individuals. Filing a police report was one of the tactics of victims to gain back power in a dispute.

Things began with his smoking habit. On that night, he was smoking indoors. I could not put up with the smell, so I poured a bucket of water on him. He got angry and punched a fist on my face. I was very dizzy then, so I went to the hospital to get a medical examination and reported this to the police.
(Victim in Project A, av5_1)

Therefore, the feminist version of the principle of active participation captures the nature of domestic violence, a story of power and domination, veiled under various types of family disputes presented in the restorative justice meeting. Sadly, the victims and offenders were not aware of or gave little heed to this abstract and hidden intent – power and domination. Quite overwhelmingly, they were immersed in the overt and concrete issues, like family hierarchy or relational appropriateness, suggested in the Confucian version of this principle.

Importantly, the story of power and domination between victims and offenders was less likely to be a story of one-way domination as a story of competition over power. Both offenders and victims exercised various forms of power and domination to cope with their disputes. Many of the victims amalgamated ‘agency and victimization’ in their behaviour. There was little evidence of the image of a helpless person. In making this observation, violence to victims is not being construed as more justifiable.

8.3.3.2 Danger of power and control

According to around one third of the victims in Project A, danger of power and control was real in the restorative justice process. The offenders threatened or tried to

dominate the victims before, in, or/and after the meetings of restorative justice. The offenders' severe threats were not overlooked by the victims. The victims knew what the offenders were capable of and what probable vicious consequences could follow from the bargaining results in the restorative justice meeting.

I couldn't hold her down. She just did whatever she liked. The facilitators could not restrain her in the meeting either. That was predictable. If I as her husband couldn't control her, how could they keep her down? Otherwise, I cannot be counted as a man. So, we ended up with divorce. (Offender in Project A, ao3_31)

My husband hit me and kicked me whenever he wasn't delighted. After I decided to leave him and hid from him, he kept calling me and threatened to hurt my other family members. My sister went to the meeting with me. We were frightened. We hid in the corner, waiting for my husband to show up and enter the meeting room first. In that meeting, I was agitated as I spoke. I was afraid of seeing him even though others were sitting around with me. I remembered I was shivering with fear. (Victim in Project A, av13_17, 53)

To the majority of the victims, danger of power and control was foreseeable and manageable. The victims were very much aware of hints of threats ahead of restorative justice meetings if there would be any. The threats and danger did not necessarily become an obstacle to the victims' participation in the restorative justice meeting. This was probably because the victims had to deal with the danger either in the restorative justice process or in the standard criminal justice procedures.

The victims showed capacity to make the most of the restorative justice process. Some of them, including the ones under threat, used the restorative justice process to demand things that were important to them since they actually stood in a relatively advantageous position to bargain with the offenders who were the accused in this scenario. A few of the victims, who were very worried about offenders' temper and violence exploding in the restorative justice process, chose to manage risks by

discussing their concerns with and seeking support from the facilitators, prior to meeting with offenders.

My husband threatened me, saying that he would take revenge on me if he gets convicted of anything. I was afraid of his revenge, so I talked to the female facilitator that I would like to withdraw the accusation of assault against him. She explained to me that the accusation of assault, but not the breach of Protection Order, could be rescinded. She understood my situation, and she was on my side in that meeting. (Victim in Project A, av2_25-26)

8.3.3.3 Women's empowerment and self-consciousness

Women's empowerment and self-consciousness was rarely brought up as a need by the victims or female offenders. Yet, the feminist ideas of women's self-consciousness around power and domination was crucial, for signs of power and domination, as discussed, were evident but seldom perceived by the parties.

By contrast, women's empowerment, emphasised by the feminist version of the principle of active participation, lacks particular relevance to the victims in Project A. All the victims (mostly female) were able to recognise the unfair and wrongful harm that had been done to them, and also capable of standing up for themselves or seeking help. They demonstrated considerable agency even though they were scared at times. This does not deny that some of the victims had gone through stages of being dominated, manipulated, and helpless. But at this point, most of the victims had enough strength to proceed with their case and file a report with the police against their offenders.

The feminist version, compared with the western version, resonated less with the reality of the expectations and needs of the victims and offenders in Project A. Being empowered and having a say meant a lot to the victims, but the victims' needs in terms of participation were little different from the offenders', as the western version of the

principle of active participation elaborates.

8.3.3.4 No excuses for men

The ways that victims perceived and expected to handle offenders' excuses over violence were not entirely consistent with feminist expectations. The victims had anticipated that they might hear offenders' excuses in the restorative justice meeting. But as mentioned earlier, the offenders' side of the story was more than excuses for violence, and included their perspectives on family ethics which some of the victims wanted to debate in the restorative process. Other victims attempted to use the process to put offenders' excuses under public scrutiny and denunciation.

Hence, the feminist concern about restorative justice meetings being a venue for offenders' expressing their excuses was something that victims were prepared for and were willing to manage, hopefully in a way that was to their advantage. Offenders' excuses were hardly an issue for the victims to consider in relation to their own participation in the restorative justice process.

8.3.4 Practical successes and failures in fulfilling the principle of active participation

In practice, victim and offender needs and expectations, related to the western, Confucian, and feminist versions of the principle of active participation, were not entirely met by all the facilitators. Facilitator oversight of some of the parties' needs and expectations became one of the main reasons why the parties felt harmed in the process of restorative justice.

8.3.4.1 Facilitators' achievements and difficulties in fulfilling the Confucian version of the principle of active participation

In Project A, the facilitators well perceived and encouraged family support provided for the parties. Facilitators' difficulties in preventing family over-engagement stemmed from the cultural remnant of the Confucian idea of family duties, in which the parties and their family were basically immersed. It was hard to properly restrain family's engagement, even by the facilitators who endorsed modern ideas of independent personhood and were hesitant in consenting to intense family involvement. Such facilitators took action to prevent families from taking over the parties' roles in handling conflicts or violence. Yet, improper intervention by families easily penetrated the restorative justice process because family support was welcomed at the most fundamental level.

8.3.4.2 Facilitators' achievements and failures in fulfilling the western version of the principle of active participation

With the support of the facilitators, more than half of the victims and offenders believed that they were given time and space to participate in handling their cases. They had a say in the process and were able to make a difference to the closing decision of the case. The various forms of participation and the empowerment effects argued in the western version of the principle of active participation seemed to be fairly well achieved.

I trusted the way they handled the meeting. The facilitators listened to me. I saw them making some notes when I spoke. They seemed serious and really cared about what I said. I felt being respected. We also discussed about issues like children custody and visitation. (Offender in Project A, ao3_35)

I felt the facilitators were warm and sincere. They listened to me. I could feel

that they were experienced. They understood my situation. I had no intent to sue my mother-in-law. I didn't want to be seen as an unfilial daughter, either. In fact, I just wanted her to know that she can't keep insulting me and that she can't keep my sons away from me. Things seemed to work out then. (Victim in Project A, av6_28)

But it was also common for the facilitators to contribute little to the level of the parties' participation in handling their cases. A number of the victims and offenders admitted that they simply complied with the instructions given by the facilitators, including the proceedings and also the goals of the meetings. The intentions and thoughts of this group of victims and offenders were left unheeded by the facilitators. They were not too disappointed, however, with facilitators assuming a dominant role for they believed in Confucian hierarchy which granted facilitators the authority in the meeting.

I thought we were going to discuss the relationship with my husband. But they started taking about divorce. I felt my husband's family was deciding for him and they had defamed my name badly. The facilitator also said if you don't divorce now, you might cause more serious problems to the society. So, we divorced. (Victim in Project A, av14_39-40)

She did not tell me what the process is about. She just said: it is for reconciliation. (Offender in Project A, ao1_18)

We did not have any discussions on how and why the violence happened between my brother, my husband, my sister-in-law, and me. I wasn't very sure where this process is heading to. The facilitator just said: Now, the most important thing is how both parties have a plan for your kid after you get divorced. (Victim in Project A, av11_44-46)

In a few cases, the professionals' judgment caused some real damage. The expectations of the victims and offenders were treated carelessly by the facilitators. The victims and offenders felt their expectations of participation were somewhat distorted by the facilitators, who had their own standpoint and guided the meeting in other directions. According to the victims and offenders, they were deprived of rights, time or space to

express themselves, to seek the whole truth of the violence, or to consider other possible solutions. Reasonable and legitimate actions and expectations of these victims and offenders were prohibited or suppressed by their facilitators.

I was not afraid of or felt uncomfortable about speaking before others, but I wasn't given any chance to express myself. Every time I tried to explain and talked more, I was always interrupted by the facilitator. She did not allow me to have the chance to say more. (Offender in Project A, ao7_12)

I was struggling a great deal with the decision of custody of our kid. I was afraid that my ex-husband might stop paying me children support. One of the facilitators kept saying that kids should be raised by their mothers, that was better. I was not sure about the guardianship. But the facilitators did not give us enough time to mull it over. They seemed to be very rushed in our case. (Victim in Project A, av10_57-60)

8.3.4.3 Facilitators' achievements and failures in fulfilling the feminist version of the principle of active participation

The feminist notions of seeing domestic violence as a story of power and domination and raising women's consciousness of domination were little perceived by the parties, and also scarcely employed by the facilitators in Project A. The facilitators' inattentiveness to the feminist notions could be related to the institutional posture of the implementation team in Project A, which offered a pro-Confucian interpretation approach.

By comparison, the feminist worry about dangers of power and control in the restorative justice process was heeded better in practice. As mentioned, around one third of the victims foresaw and managed the danger of power and control with facilitators prior to meeting with the offenders. Through discussion with the victims, facilitators also helped victims bargain with offenders so as to secure the victims' greater gains at the expense of their minor interests. Only in one case did the meeting

proceed not as the victim wished: The facilitator did not take the danger of violence as seriously as the victim, and failed to attend to the victim's worries. Apart from this case, in the implementation of Project A, danger of domination and threats of violence were fairly assessed and addressed in favour of the victims' needs.

I talked to the facilitators before I had that meeting with my ex-husband. I told them I would pay off the bank loan 10,000 dollars every month for my ex-husband's family. I knew if I am not going to pay the loan or to take care of my kids, he would not let me go, and I would not be able to get rid of him. So the facilitators already knew my concerns before the meeting. In that meeting, they argued for me and negotiated with my ex-husband. I was not afraid of him because the facilitators were on my side. (Victim in Project A, av3_17-20)

8.3.4.4 Explanations for facilitators' oversight and failures in fulfilling the western and feminist versions of active participation

Some of the facilitators' deprivation of the parties' needs for expression, truth-seeking, and decision-making and disregard of the victims' worries about danger of power and control in the restorative justice process was a result of the discrepancy between the facilitators' perceptions and the parties' expectations. The discrepancy was not simply related to the facilitators' and the parties' interpretation of one single principle of active participation. Instead, the discrepancy involved the facilitators' and the parties' priorities over multiple goals that were linked to several restorative justice principles.

These facilitators appeared to value the outcomes of relationship restoration or offender rehabilitation over the participation process, giving precedence to the principle of restoration or rehabilitation over the principle of active participation. At the time, the parties felt disappointed or harmed since they did not want to take a shortcut to restoration, but desired fuller participation before repairing any crime-related damages or relationships.

The facilitator stopped me from talking about what happened in the past. She said that there is no need to recite the past, and that the plan for the future is more important. But I felt she was on my ex-husband's side. My ex-husband kept slandering me that I wasn't taking care of my kids. I got angry and retorted: 'No, I was the one who looked after our children. You did nothing.' The facilitator interrupted me again and said that I have no right to blame my ex-husband because I am going to leave my kids and he is the one who is going to take care of our kids. (Victim in Project A, av13_36)

I don't feel there was any good out of the process. The facilitators just made sure who got the guardianship and how much the other party should give for the kid. I can do the same thing for my daughter and her ex-husband. I think, at least, we should be given some time to talk with the other party. They did not let us talk and simply settled things. I am not saying we were eager to talk to them. But I still felt that we should not close the case without speaking to each other. (Victim's family in Project A, av11f_24-25)

8.3.5 Summary

The parties' expectations for restorative justice were numerous and fitted with the western version of the principle of active participation, except that some victims had worries about danger of power and control in the participation process that were consistent with feminist concerns for victims' participation. A few more implicit needs of the parties were identified by the researcher. First were issues of family over-engagement and limited individual empowerment in the Confucian version of this principle. Second was the issue of power and domination as the nature of domestic violence, perceived shallowly by the parties but recognised prominently in the feminist version of this principle. Interestingly, the contest over power was two-sided. It was not the case that victims were entirely helpless throughout the process.

By and large, the practical potential of restorative processes to enhance the parties' participation in their own cases was great, but sometimes quietly subdued. Cultural and interpretive issues contributed to this situation. First, the Confucian familial and

hierarchical ideas remained meaningful to the parties and some of the facilitators, resulting in concessions to family participation at the expense of the parties' participation. Second, the facilitators' directives could suppress the empowerment of the parties, particularly when the facilitators paid little heed to the parties' expectations and pursued different goals.

Thus, the implementation of the principle of active participation was not entirely secure in practice. Active participation of the parties was easily, and at times unwittingly, undermined by the power of the parties' families and by the facilitators. The effects of Confucian family ethics and hierarchical thinking as well as flourishing professionalism carried weight with the fulfilment the principles of active participation.

8.4 Parties' voices on the principle of reintegration

Many of the victims and offenders recognised that family support meant a great deal to them. But family reintegration, to most of the victims and offenders, was more of a given reality, rather than some wish they had not achieved and longed for.

The given reality of family support precisely echoed the Confucian version of the principle of reintegration. The western and feminist versions of this principle, by comparison, appeared irrelevant to the victims and offenders. Mention should be made, however, of the unnoticed needs of victims for transformation of the patriarchal system according to the feminist version. Table 8.4 below displays where the parties' expectations and needs corresponded to the three versions of this principle.

Table 8.4 Victim and offender expectations and needs linking to the principle of reintegration

RJ principle	Western version (W)	Confucian version (C)	Feminist version (F)
Reintegration	(w1) offenders to be reintegrated to their own families or communities	(c1) family reintegration and tolerance of the party's misconduct (c2) family's full support for the party and enmity toward the other party	(f1) reintegration for both parties or victims only (f2) transform patriarchal families and communities
Note: The expectations and needs found to be of little relevance to victims and offenders are marked in black, shared by both parties highlighted in green; of only victims in red.			

8.4.1 Parties' voices corresponding to the Confucian version of the principle of reintegration

The Confucian version of the principle of reintegration projects very well the reality of the function and meaning of families to the victims and offenders. According to the majority of victims and offenders, their families gave them unconditional support and fought against the other party and his/her family before, during, and after the restorative process. The parties had no need to count on the restorative justice process to acquire family reintegration, since it was already present and was seldom a goal waiting to be achieved.

Family members' tolerance of the party's misconduct, suggested in the Confucian version of the principle of reintegration, was common in reality as well. Both parties' family members often described the other party as extremely degraded or flawed, and minimised or rationalised the wrongdoing of their own family members, who were acclaimed as decent folk. Ironically, families did a 'great' job to back up the parties.

After the meeting, I went back to pack up my stuff. My ex-wife's family

again gave me a hard time. They called me trash, asshole, and this time I got slaps in the face from my ex-sister-in-law. When I got home, I told my parents what happened. My father started planning to take revenge on my ex-wife's family, suing them again. He felt my ex-parents-in-law did a terrible job, failing to discipline their kids. I persuaded him just let go of these things, otherwise, we might become too narrow-minded. (Victim in Project A, av10_47)

8.4.2 Parties' voices corresponding to the western and feminist versions of the principle of reintegration

The victims' and offenders' thinking was not consistent with the western and feminist versions of the principle of reintegration. Western and feminist versions of this principle reflected little cultural sensibility regarding Taiwanese family ethics, in which family reintegration was a given, and was not generated through the restorative process.

Some of the victims and offenders expressed the view that they would like to transform the other party's families and communities, a view akin to the feminist version of the principle of reintegration. But as elaborated in 8.2.1 and 8.2.2, the parties' expectation for transformation concerned the poor ethical quality of the other party's family (poor fulfilment of their role-related duties). As such, transformation was more in accord with the Confucian version of the principle of accountability than the feminist version of the principle of reintegration. Nevertheless, the feminist version of transformation of families that challenges structural patriarchy and diminishes tolerance for wrongdoing among one's own family members was valuable in addressing the unrecognised needs of victims and offenders in Project A.

8.4.3 Practical effects of family reintegration and facilitators' achievements and failures

In practice, there were some positive effects of reintegration occurring for victims and offenders. The positive effects were of the kind expressed in the Confucian version of the principle of reintegration – spontaneous family reintegration and full family support. Yet, it is worth noting that the positive effects were rarely the result of the facilitators' endeavours.

Family was all I had at that time. My cousin was helping me since I left my ex-husband; I stayed in her place for a few weeks. My sister offered me very strong financial support, hired a lawyer for me and went to the meeting with me. Another cousin of mine helped me in the police station where we were trying to find an old hand-written document that could prove I once reported my ex-husband's violence. My brother also asked me to live with his family; they protected me from my ex-husband's harassment. (Victim in Project A, av13_44)

Family tolerance of violence and enmity against the other party were prevalent as well, and also part of the Confucian version of this principle. Facilitators tried to eliminate this downside, but their endeavours produced limited returns. The downside was not so much an interpretive problem, as a cultural tradition. Rooted in a Confucian cultural background, a family's tolerance of violence and enmity against the other party were hard to address in a short period of time.

My parents were on my side. They did not count me responsible for the divorce or violence. They just thought my ex-husband was too stupid and too dependent on his parents. (Victim in Project A, av11_77)

In the first meeting, my sister and my ex-husband's uncle and mother were waiting outside the meeting room. They started blaming me for leaving my kids. They yelled at my sister: 'How could you let your sister get divorced and leave her kids behind?' They also said: 'Violence is no big deal. Every couple fights. But no one encourages a couple to break up. You should be

ashamed of inducing your sister to get a divorce’. (Victim in Project A, av13_18)

Last of all, some facilitators upheld the Confucian or feminist proposition of transforming families. The timeframe and limited resources of Project A meant both the Confucian and feminist versions of transformation of families was difficult for the facilitators to achieve.

8.5 Parties’ voices on the principle of rehabilitation

The victims and offenders had certain expectations for restorative justice processes that linked to offender rehabilitation. In this respect, the victims and offenders had quite distinct points of view, shown in Table 8.5. Victim expectations for offender rehabilitation were an amalgamation of the western, Confucian, and feminist versions of the principle of rehabilitation. By contrast, the offenders’ perceptions of their own rehabilitation were only connected with the Confucian version of this principle.

Table 8.5 Victim and offender expectations and needs linking to the principle of rehabilitation

RJ principle	Western version (W)	Confucian version (C)	Feminist version (F)
Rehabilitation	(w1) to help offenders change (w2) to avoid future crimes (w3) punishment as the last resort	(c1) moral education and self-cultivation (c2) punishment as the last resort and for ‘bad guys’	(f1) offender rehabilitation for victim safety (f2) caution about state’s intervention and punishment
Note: The expectations and needs of offenders are highlighted in blue, and of victims in red.			

8.5.1 Victim expectations and needs for offender rehabilitation

Victims’ expectations for how the state should use its power were complicated. Many

victims did not look to the state for punishment of offenders, but for protection. Victims' reluctance to see punitive measures used against offenders validated the western version of the principle of rehabilitation in promoting punishment as the last resort. Yet, the state's involvement in stopping domestic violence was desired by victims. Victims turned to the criminal justice system for external intervention since their internal family intervention failed. Overall, victim resistance to and appreciation of the state's power corroborated feminist cautions about the role of the state in offender rehabilitation.

I called the police because I wanted to secure my safety. I don't want him to whinge around me or fight with the customers in my shop. I also hoped this would be a warning to him. Perhaps, he may change. (Victim in Project A, av14_31)

I just hope my son could quit gambling-related video games and do his job. I knew he is afraid of the police and the Protection Order. So, filing a report made us feel safer. (Victim in Project A, av1_40-41)

Numerous motives led victims to welcome the state's use of power, including victims' longing for emotional or physical freedom from violence, offender wellbeing, deterrent effects of criminal justice systems on offender violence, and punishment. Some of the victims showed their concerns for the wellbeing of both the offenders and themselves, others only for their own safety and interests. The variety of the victims' motivations for welcoming the state's power showed that the western and feminist versions of offender rehabilitation are both appropriate at some point, depending on the needs of different victims.

I dropped other charges against him because I still hoped he might change through this process. I still felt the connection with him. (Victim in Project A, av3_39)

When I got into this (restorative justice) process, I just hoped he would feel

regretful for his behaviour, stop hitting me, and taking good care of our kids.
(Victim in Project A, av9_53)

It is crucial to clarify that when victims conceived of punishment as part of their intent, punishment was envisaged in various forms. In addition to imposing physical and psychological pain on the offenders (traditional retribution), the victims sought punishment to rehabilitate the offenders, to stop violence, to regain respect and power, and to assure condemnation of violence. Punishment was imagined as serving punitive, rehabilitative, and educative functions.

I thought these evil people should be punished, not just my husband but his whole family. I could not let them bully me like that. I deserve respect.
(Victim in Project A, av12_11)

I sued my mother-in-law because I wanted justice to be done. I wanted my parents-in-law to fear and dare not to slander me again. They did not let me see my boys. I wanted them to know they can do this to me no more. (Victim in Project A, av6_2)

Lastly, to the victims who hoped offenders would change, mechanisms that can deliver moral education to offenders or motivate offenders to self-reform were welcomed as part of the process of offender rehabilitation. The victims were very pleased to see facilitators lecturing offenders on moral education or family ethics. Victim anticipations here were very much reflected in the Confucian version of offender rehabilitation.

I was very pleased with the process. The facilitators told my husband that he should look after our family and stop visiting the betel nut vendor, where he met his mistress. They said to him: ‘You have your own family. Why do you go there twice a day?’ (Victim in Project A, av5_34)

In short, the victims’ expectations and needs for offender rehabilitation corresponded to all three versions of the principle of rehabilitation. The western version can reflect

the common wants of the victims for offender transformation. The Confucian version can reveal means of rehabilitation in the minds of the victims. The feminist version can point out the victims' delicate manoeuvre to exploit state intervention.

8.5.2 Offender expectations for rehabilitation

Compared to the victims, rehabilitation was understood by the offenders in a very different way (see Table 8.5). Most of the offenders did not see rehabilitation as necessary because they basically felt that they had a solid reason behind the violent act or that their use of violence was under unavoidable conditions. Thus, neither the western nor the feminist version of the principle of rehabilitation could shed much light on the offenders' perception of rehabilitation.

Yet, the thoughts of the offenders were quite vividly revealed through the Confucian version of the principle of rehabilitation: Punishment is solely for villains. Almost all the offenders saw themselves, not as villains, but as a good father, son, husband, or in-law. They distinguished themselves from the 'bad guys' who kill or steal and deserve punishment. Half of them even stressed the good quality of their character through bragging about the large amount of support and compassion they gained from the officials they encountered in the criminal justice system.

The judge heard what we said. He knew I was set up. He told me the standard answers: what to do, what not to do, and avoid future conflicts. He also taught me that I can tape-record my mother-in-law next time. (Offender in Project A, ao4_52)

The police officers told me: 'Why did your wife call us so often but nothing serious ever happened?' She always reported very trivial things. I did not beat her up. I hardly hurt her. She needed no medical treatment. (Offender in Project A, ao5_4-5)

Given that many studies have shown that offenders tend to rationalise the wrong they

do (Cavanagh, Dobash, Dobash, & Lewis, 2001; Presser, 2003), it is not surprising that the offenders in Project A regarded themselves as being in no need of rehabilitation. In light of the offenders' thoughts about accountability, largely referring to Confucian role-related duties, the Confucian version of the principle of rehabilitation may be a pertinent starting point for provoking offenders' introspection about their deeds.

However, even without expectations for rehabilitation, many of the offenders grew to have intentions to stop future violence. This may have happened since they came to realise the possible penalty they might face (see discussion in the next section). Legal education from the facilitators and from compulsory rehabilitation courses played a significant role in this change.

8.5.3 Practical outcomes of the implementation of the principle of rehabilitation

8.5.3.1 Facilitators' achievements

The western and Confucian versions of the principle of rehabilitation which were longed for by the victims were recognised by the facilitators in Project A. Most of the facilitators put a lot of effort into offender transformation, prevention of future crimes, and moral education. For example, the facilitators offered moral teachings on the offenders' bad habits, discussed family relationships with the victims and offenders, and encouraged offenders to develop tactics to avoid the recurrence of violence.

The facilitator suggested some ways that I could learn to control my emotions and desires so as to get myself away from gambling-related video games. I already knew the ways they said. Sometimes, I do try these ways. (Offender in Project A, ao1_30)

I just cussed on her, using some coarse language. I did not do anything terrible. We, are country folks, just used to talking this way. The facilitator told me not to use any filthy language, which was against the law, and I thought: 'All right, I could quit saying these words'. (Offender in Project A,

Punishment as the last resort, proposed in the western and Confucian versions of the principle of rehabilitation, was substantially realised in most of the cases, thanks to the work of the facilitators. Some of the facilitators suggested punishment as the least preferable option, in order to save the offenders from the more adverse consequences of going through the criminal justice system. Others suggested offenders be spared punishment as a valuable lever to bargain with the offender in order to gain better outcomes for the victims, some of whom were persuaded to drop an accusation against the offenders if the accusation was renounceable. Nevertheless in the end, the facilitators often suggested in the report submitted to the prosecutors that the offenders could get a deferred prosecution with certain assigned treatment or community work.

The facilitators just asked me to drop the charges against my ex-wife. They said that this process could produce similar effects and that I don't have to go to the court. (Victim in Project A, av8_2-3)

The facilitator suggested the prosecutor offer me a deferred prosecution. The prosecutor did not agree; she said to me: 'You have made a serious mistake, and that was not the first time.' I knew what she said was reasonable. Later, the facilitator went to see the judge too, and I was granted a suspended sentence. I was grateful, and I thought this lenient sentence might be partly attributed to the efforts of the facilitator. (Offender in Project A, Ao9_57)

As the practitioners and offenders wished, a deferred prosecution or suspended sentence was the most common result granted by the prosecutor or the judge, except for the few cases where accusations had already been dropped by the victims. With the decree, the offenders were often ordered to undertake community service, counselling, or family violence prevention programs.

This means that some of the victims' expectations for imposing punishment on the offenders were unrealised. But, victims launched few complaints about the lack of

harsh punishment. This was perhaps because the victims' accusations already functioned as an action of intimidation against the offenders or a lever to force offenders to agree to a negotiated resolution in favour of victims.

8.5.3.2 Practical effects on offender rehabilitation

Many of the offenders felt they were punished, while they undertook rehabilitative activities, such as compulsory domestic violence prevention courses and community service. The offenders felt punished because they had to set aside some time for activities they considered unnecessary and a waste of their time, even though some of them admitted their legal knowledge of domestic violence had improved in the process.

The feelings of being punished comprised a substantial part of the effects that the rehabilitation programs brought to the offenders. Offenders' feelings were not far from what the victims expected of rehabilitation through punishment. This may support Daly's (2001) assertion about the component of punishment as part of the practice of rehabilitation in restorative justice.

The course I took was talking about what domestic violence is and how to avoid verbal quarrels or physical fights. I did learn something from that. But I don't think this course could help solve the real problems in the family. (Offender in Project A, ao2_35)

I felt I did nothing wrong. Why should I suffer from this torture? I got the court document that tells me where and when to take courses and meet my probation officer. I am so reluctant to read these documents not because I can't understand what the documents say, but because I felt my life was terribly disturbed by these required tasks. (Offender in Project A, ao5_19, 23)

The main positive rehabilitation effect on the offenders was to learn to avoid future

offences. The biggest motivator for offenders to stop violence was the deterrent effects of legal sanction or legal education, which offenders received from the facilitators or the compulsory rehabilitation courses. Most of the offenders and victims reported that the violence had not happened again or was reduced in the following 2 to 9 months (mostly over 5 months) after the restorative justice process ended. Legal sanction and education worked quite well, raising the offenders' legal consciousness about domestic violence. Violence on the surface was diminished.

I did not try to change myself at all. I just tried not to have any further fight with her. I still do my job and take care of my kids. But it is very annoying that I need to break off my work and go to the court to take these courses.
(Offender in Project A, ao2_45)

But many of the offenders who controlled their behaviour from violating the laws, did not feel remorse inside their minds for their violence. Only three out of the ten offenders expressed that there were some rehabilitation effects on their life; they felt sorry about the violence and the harms they caused.

One particular offender had noticeable cognitive changes in interpreting his violent act. He attributed his changed way of thinking and acting to the restorative justice process, which gave time for him and his wife to cool down and mull over the disputes and violence between them. According to him, neither legal deterrence nor moral education contributed to such changes. In this case, having punishment as the last resort provided the offender with a fresh start.

As I was locked up in the detention centre, all I thought about was how to take revenge on my ex-wife. I was segregated from the outside world. I had no information about my kids, my ex-wife, or my fruit retail business. I was thinking to sue her or to beat her up again. One day, the facilitator came. Finally, I got someone to talk to; I felt relieved. I don't think what the facilitator said to me changed me. I changed because in the process of restorative justice the tangled problem in my mind was like an onion to be

peeled layer by layer. Finally, I found the crux. I felt calm. I really feel that this process gave me some buffer space. My ex-wife and I could have some communication. I could be given another chance to start over. (Offender in Project A, ao9_17-19, 39)

Thus, offender rehabilitation was only partially successful in Project A and mostly at the behavioural level, achieved largely through legal education or deterrence. The failures in fulfilling the principle of rehabilitation might be related to the failures in the realisation of the principle of accountability. Given that some of the facilitators made no room for offender's recognition of wrongdoing, the possibility of offender rehabilitation at a cognitive level was therefore lessened. Also, the short-term program design could limit the possible rehabilitation functions of Project A. Nonetheless, the practical effects of Project A on offender rehabilitation were positive. Many domestic violence programs end up with moderate rehabilitation effects as well (Babcock et al., 2004; E. Bowen, Gilchrist, & Beech, 2005; Day, Chung, O'Leary, & Carson, 2009).

To sum up, the victims had higher and wider expectations for offender rehabilitation than the offenders, who mostly regarded rehabilitation as unnecessary. The victims, by contrast, were keen to seek the state's intervention, professional treatment, moral education, or criminal punishment to increase the probability of offenders' reform or to further their own safety. The western, Confucian, and feminist versions of the principle of rehabilitation respectively capture some expectations of the victims.

In Project A, legal education and deterrence rather than moral lecturing, provided by the facilitators or the rehabilitation programs, played an essential role in the offenders' behavioural changes. Having punishment as the last resort rarely but possibly contributed to offender cognitive changes. The short-term design of Project A and the facilitators' unwillingness to seek offender recognition of wrongdoing might be the reasons for inadequate cognitive rehabilitation effects in Project A.

8.6 Parties' voices on the principle of restoration

Victims and offenders were very much concerned about reparation of the damage caused by domestic violence. Victim and offender expectations in this regard were alike, exhibiting more of the western and Confucian versions of the principle of restoration than the feminist version of this principle. Table 8.6 summarises this part of victim and offender aspirations for restorative processes.

Table 8.6 Victim and offender expectations and needs linking to the principle of restoration

RJ principle	Western version (W)	Confucian version (C)	Feminist version (F)
Restoration	(w1) material, emotional, and relational restoration (w2) apology and forgiveness where the parties choose it	(c1) material compensation (c2) harmony restoration (c3) encouraging both genuine and superficial reconciliation	(f1) material and emotional restoration for women (f2) dangers of promoting apology and forgiveness (f3) caution about relational restoration
Note: The expectations and needs found to be of little relevance to victims and offenders are marked in black, and shared by both parties highlighted in green.			

8.6.1 Parties' voices corresponding to the western version of the principle of restoration

Victims and offenders had a variety of expectations of restoration, as the western version of the principle of restoration proposes: an inclusive definition of restoration including material, emotional, and relational aspects. A great number of the victims and offenders articulated their wants and needs for emotional or relational healing. But only a few of the victims paid attention to material reparation, which was partly given up once the offenders' disadvantaged financial status was acknowledged.

Victims and offenders both suffered much emotional and relational damage. They carried a bundle of emotions toward the other party, including fear, anger, sadness, betrayal, disappointment, and loss of control. These emotions were tangled, complicated, unpleasant, but vital to the parties. For this reason, many of the parties retained some hope of gaining emotional or relational restoration in the restorative justice process.

I wanted to see how he would behave in the future. If we decide to be together, we have to be considerate of each other. This time, I gave him a chance to turn around. If he doesn't change, we don't have to be together.
(Victim in Project A, av5_22-23)

In pursuit of emotional or relational restoration, some of the victims craved their offender's apologies that they never received but had been waiting years for. To these victims, apology from the offender was weighty because it figured as a symbol of the offenders' willingness to admit the wrongness of their violence. But for other victims, no apologies were expected, for they had no faith in offender reform. Apologies of offenders were presumed as impossible or hypocritical.

I did not expect my daughter-in-law would apologise. She is the boss in our family. How come this kind of person would feel sorry about what she did?
(Victim in Project A, av4_33)

He never admits he did something wrong. It is not possible that he would apologise to me. (Victim in Project A, av4_33)

However, apologies and forgiveness were not an indispensable element to relational restoration. There were more than half of the victims and offenders who could accept restoration without a concrete form of apology or forgiveness. It was especially true to the offenders. Only three out of ten offenders had the expectation of making apologies or receiving forgiveness.

8.6.2 Parties' voices corresponding to the Confucian version of the principle of restoration

Many of the victims and offenders placed high value on restoration of family harmony, which was a demonstration of repair of family hierarchy or relational appropriateness. Such expectations of the victims and offenders for restoration appeared in accord with the Confucian version of the principle of restoration.

Also, some of the victims and offenders were eager to close the case as soon as possible once their objectives were achieved. They came to embrace superficial reconciliation, as promoted in the Confucian version of the principle of restoration. When the victims or offenders were able to secure the things they wanted through bargaining, a superficial or even an unpleasant reconciliation was endurable to them.

My sister told me that I had better get divorced as soon as possible at the expense of giving up any further negotiation with my ex-husband. I felt that is right. I should not waste my time arguing with him in the court. If I could not divorce him, there will be lots of problems waiting for me. Now, I am so happy I finally got divorced. (Victim in Project A, av13_39-40)

8.6.3 Parties' voices corresponding to the feminist version of the principle of restoration

The western and Confucian versions of the principle of restoration were useful in capturing the expectations of the victims and offenders for emotional and relational restoration accurately and in a complex way. The feminist version of the principle of restoration, in contrast, lacked subtlety and nuance for victims and offenders in Project A.

In Project A, apologies were rarely given to victims. Moreover, offenders rarely exploited apology in order to manipulate victims into a state of submission. As

elaborated, apologies reflected the offenders' willingness to lose face and to admit the wrongness of their violence. Both tasks were not easy for the offenders. Accordingly, the feminist warnings of the danger of apologies and forgiveness made little sense to the victims. Moreover, to many of the victims, a successful bargain with superficial relational restoration could add greatly to the quality of their life despite patriarchy in their family remaining intact.

In short, the western and Confucian versions of the principle of restoration provided better descriptions of victim and offender expectations and needs for restoration. By comparison, the feminist version of this principle did not resonate with victims and made little sense in Project A.

8.6.4 Practical effects on the principle of restoration

In Project A, the concerns of the victims and offenders linking to the western and Confucian versions of the principle of restoration were taken and addressed seriously by the facilitators. Despite facilitator diligence in this regard, the facilitators' work on restoration did not always turn out to be satisfactory to the victims and offenders. For this reason, the next section focuses less on what facilitators did and more on what had been restored and not restored in the life of the victims and offenders.

8.6.4.1 Practical effects regarding realisation of the western version of the principle of restoration

To the victims and offenders in Project A, material, emotional, and relational restoration were intertwined. Victim and offender experiences of emotional restoration often encompassed a certain level of material and relational restoration. They experienced partial success toward restoration as set out in the western version of the principle.

A number of the victims and offenders underwent a process whereby their emotional hurt and burden was eased. The parties' emotional repair was brought about through the closure of marriage or the closure of cases, which was a high priority for some facilitators in the restorative justice process. Around half of the victims found certain levels of emotional healing from closure of marriage. Half of the offenders also experienced emotional relief, which was derived from the closure of their criminal cases.

I fled from all the spiritual pressures coming from my ex-husband. Now, I am not all nerves any more. The day I got the divorce certificate from the district household registration office was one of the happiest days in my life. (Victim in Project A, av13_42)

I feel quite relieved after divorce. I mean I may still love my ex-husband, but it is hard to maintain my marriage. I am not saying that is all his fault. Perhaps, it is just not easy to get along with whom you love. (Victim in Project A, av7_58)

However, another half of the victims and offenders were still troubled with emotional pain and distress. The suffering of the victims was mostly associated with domestic violence, such as anger, fear, depression, or other physical and economic damages, even though violence was not occurring at the time. The emotional distress of the offenders was commonly associated with relationship problems that they had with the victims, and also with legal troubles which they saw as a plot by the victims to set them up and cause inconvenience in their daily life.

I felt so bitter. I was set up by my mother-in-law. She accused me of things that never happened. She was treacherous, tape-recording my words against me. I was helpless and so worn out. I hardly fell asleep at night. (Offender in Project A, ao4_33, 66)

Emotional restoration to the victims and offenders meant recovery from emotional but also material and relational damage. Despite the fact that material restoration was

seldom brought up by the parties, the absence of material restoration was sometimes the reason why the parties still felt emotionally wounded after the restorative justice process.

After divorce, I have been less harassed by my ex-husband, but I need a new place to live. I feel I was so stupid that I only got back half of the money I spent on that shop which he destroyed. (Victim in Project A, av14_53, 84)

Concerning relational restoration, about half of the victims and offenders felt that their relationship with the other party was better off. They credited such relational improvement to some aspects of the legal system (such as the detention centre) or to the effects of the restorative justice project (such as the communication or teaching in the process and the treatment stipulated under the conditions of deferred prosecution or suspended sentences).

He said he was sorry that he hit me and he would never hit me again. He also said he has learned his lesson from the time he was locked up in the detention centre. Now, he just calls me from time to time and says some sweet words, which he never did to me before. He told me that we should not be back together and that living separately might be good for both of us. I have forgiven him. We are good now. (Victim in Project A, av9_32-35)

Just a few days ago, I accidentally scraped his car a little. I told him about the scratch. He did not nag me as much as he used to. This time, he just grumbled a bit. His emotion was more stable. He also drove me to some places for fun. He admitted that he should not hit me and that it was his fault. But now, I am not so sure if he has changed. I need to do more observation. (Victim in Project A, av2_46-47)

Another half of the victims and offenders were mired in relationship agony, whether they stayed together or moved apart. Among the couples who divorced, restlessness over their decision to divorce or visitation issues around children continued to haunt them. For the victims and offenders who lived together, relationship problems

remained unsettled. This simply echoed the common understanding that it is hard to address family relationship issues in a short time.

It is worth noting that offenders' apologies played a crucial role in the victims' relational restoration process, which was inconsistent with the feminist worry about dangers of promoting apology. The offenders' offering of apologies was a declaration that something unjust had taken place and ceded victory in the power games. Moreover, to the victims, offenders' apologies were so precious that they were seen as silver linings for relationship recovery. The effects of apologies, when they occurred, were mostly positive and remarkable for the victims.

The facilitator asked my husband to apologise to me. He never apologised to me before, which he should have. That was the first time he said he was sorry. I was very pleased. I could feel that his apology was genuine. (Victim in Project A, av5_31-35)

They asked my husband to say sorry for hurting me. I did hope he could apologise because he should and he never did. I felt great when he said that. (Victim in Project A, av9_75-77)

8.6.4.2 Practical effects regarding the realisation of the Confucian version of the principle of restoration

Both superficial reconciliation and real harmony are proposed in the Confucian version of the principle of restoration. Almost all the victims and offenders attained superficial reconciliation. Reconciliation was accomplished in 13 out of the 14 cases in Project A. Less success was associated with also attaining real harmony in relationships.

Superficial reconciliation produced pragmatic positive effects for victims and offenders; even though, in some cases, accountability of violence was completely ignored. One third of the victims took advantage of superficial reconciliation to gain things they

wanted most, such as divorce or custody of children. Such superficial reconciliation might be one of the greatest contributions of the facilitators.

Yes, I beat her and I didn't want her to enter my house again. I was thinking that I would not let her see my kids again, but she still had to pay for my kids' living expenses. The facilitators told me that I would violate the rights of my ex-wife and my kids if I insisted on having sole custody. They said my kids have needs to be taken care of by their mother. I divorced, but my kids would still miss their mother. The facilitators convinced me. I was not right. So, I agreed to have joint custody with my ex-wife. (Offender in Project A, ao3_36-38; his ex-wife asked the facilitator to help with the bargain.)

To sum up, the western and Confucian versions, rather the feminist version of the principle of restoration, seemed more capable of portraying the victims' and offenders' expectations and needs for restoration in Project A. Through the restorative justice process, around half of the victims and offenders felt their wounded emotions and relationships were partly healed. Offenders' apologies were an important factor in the victims' positive feedback. Even in the situations short of real relationship restoration, a number of the victims were content with superficial reconciliation that was facilitated in such a way as to protect their interests.

8.7 Ideas about improvement of practices of RJ in domestic violence in Taiwan

In the above five sections, 8.2 to 8.6, victim and offender expectations and needs in Project A are elucidated in a way to show whether they corroborate the western, Confucian, and feminist propositions of the five restorative justice principles. The practical outcomes of satisfying or failing victim and offender expectations and needs are discussed as well. The following discussion relies on the above findings to offer some suggestions for improvement of the restorative justice practices in domestic violence in Taiwan. The challenging question of whether the needs and expectations of

those attending restorative justice processes in Project A have been distorted by the institutional posture adopted by the Project A team is addressed later.

Three types of factors caused some disappointment and damage to the victims and offenders in Project A. Problems are grouped under the headings of project design, cultural remnants, and interpretation of the goals of restorative justice. Project design covered technical issues that could not be effectively resolved by practitioners alone. The cultural and interpretation issues, however, could be better managed by practitioners, particularly facilitators.

8.7.1 Remarks on technical improvement

The short-term design of Project A undercut prospects for realising the principles of accountability, reintegration, and rehabilitation to the point where progress was made in meeting the needs of victims and offenders. This revealed a fundamental difficulty that similarly occurs in other domestic violence studies: within a short period of time, it is not easy to stimulate cognitive changes in offenders and their families around gender issues.

Many feminist studies recognise this point and argue that offender accountability, reintegration, and rehabilitation would be more constructively achieved through a plan of transformation for offenders and their families and communities (Alexandre, 2011; Coker, 1999; Shepard & Pence, 1999). Applying the feminist suggestion to a restorative justice program would mean a long-term educative program or a family-and-community transformation scheme that the state could lead through public campaigns that condemn domestic violence.

In Taiwan, attending offender education programs has been a common condition of deferred prosecution. More than half of the offenders in Project A were asked to take

such courses. As discussed, the courses were somewhat helpful in eliciting improved offender behavioural control, but less effective in promoting cognitive change in offenders.

The feminist proposal for a family-and-community transformation scheme has not been commonly used in Taiwan, so little is known about its likely cost-effectiveness. The use of this kind of scheme also needs to be deliberated and scrutinised along with other existing domestic violence policies and practices in Taiwan.

In attempt to produce positive effects of offender accountability, reintegration, and rehabilitation, a future restorative justice application to domestic violence could consider incorporating a family-and-community transformation scheme. Also, it may be sensible to not take offenders' cognitive changes as a determinative indicator in evaluating short-term restorative justice projects.

This discussion highlights the importance of standing back and reflecting on the success of a restorative justice program for domestic violence in the context in which it is practiced. The successes and failings of the program lie not just in the program itself but also with its interface with the broader community. Changes to the broader community may be necessary to enable the restorative justice program to achieve new performance milestones.

8.7.2 Remarks on improvement in cultural and interpretation issues

Compared to the technical issues found in Project A, the cultural and interpretation issues were more prevalent in the execution of the five principles of restorative justice, and could be more readily modified. Drawing on what was learnt about victims' and offenders' expectations and needs, two proposals are discussed below for practitioners in Taiwan. One is acceptance, indeed promotion, of the mixed use of the western,

Confucian, and feminist versions of restorative justice. The other is attention to the parties' diversity and priority.

8.7.2.1 Mixed use of the western, Confucian, and feminist versions of restorative justice

The above findings show that none of the three versions of restorative justice could solely accommodate the various expectations and needs of the victims and offenders who were willing to participate in the process of restorative justice. It implies that a composite utilisation of the three versions of restorative justice may benefit victims and offenders of domestic violence in Taiwan to a greater extent.

In order to mix the use of the three versions of restorative justice, facilitators need a clear theoretical understanding of the three different versions of restorative justice. In the very first place, practitioners (especially facilitators) should be familiar with the advantages and disadvantages that the three versions of restorative justice can produce around each of the five principles of restorative justice. Needless to say, deliberative training workshops are necessary so that facilitators can become fluent and skilled in mixing methods safely in response to victim and offender expectations and needs.

Project A interviews with victims and offenders suggested that the Confucian version may be better in projecting the thinking of the majority of Taiwanese victims and offenders overall. But the use of the Confucian version also more often brought damage to victims and offenders.

It is suggested that proper use of the western and feminist versions of restorative justice could be a remedy for the limitations of the Confucian version of restorative justice. Perhaps weaknesses of one model could be covered in an amalgam with the strengths of the other two. A strategic amalgamation of the three versions of restorative justice is put forward as follows for practitioners to consider.

With regard to the principles of accountability and active participation, practitioners should have the Confucian version of the two principles in mind so that they are well positioned to understand the parties in a culturally relevant way, including their perception of violence and of the bonds with their own family and in-laws. In the meantime, practitioners might employ the western and feminist versions of the two principles that reveal the significance of acknowledgment of wrongdoing and competition for power and control among victims and offenders of domestic violence.

Specifically, practitioners' endorsement of the Confucian version of the principles of accountability and active participation that promotes moral accountability and family participation may lead to disapproval of admission of wrongdoing and to families stealing the parties' voices (see Christie (1977) on 'stealing conflicts'). But with recognition of the western and feminist versions, which endeavour to secure accountability for offences and the parties' full and safe participation, the negative effects of the Confucian version of the two principles could be checked and balanced.

Similarly with regard to the principle of reintegration, the feminist version can further prepare practitioners with good sense to detect parties' needs in transforming families and communities, so as to address family tolerance of violence and retaliative emotions that are well depicted in the Confucian version of this principle.

With the principle of rehabilitation, we also see a possibility of an amalgam of the three approaches combining strengths as opposed to covering weaknesses of one with strengths of another. This is particularly because victims usually have manifold and tangled expectations and needs that are laid out in the three versions of this principle.

Moreover, with the western version of the principle of restoration, practitioners could see the meaning of material, emotional, and relational healing to victims and offenders.

With the Confucian version of this principle, practitioners could comprehend that compromised restoration (superficial reconciliation) can produce pragmatic and beneficial outcomes in victims' and offenders' daily lives. The feminist version of this principle was not very pertinent based on the experiences learnt from Project A; it does not seem to add value in this data.

Lastly, with Confucian and feminist insights, practitioners could better address issues of power and control that permeated the parties' stories. Feminist perspectives on power and control can add value in the implementation of the principles of accountability, active participation, and restoration, which in Project A were normally expected by the parties and facilitators with Confucian norms around relational appropriateness, face protection, and harmony.

In brief, to practitioners, a clear understanding of the pros and cons of the three versions of restorative justice would be a vital premise for practicing restorative justice in domestic violence in Taiwan. By being iteratively western, Confucian and feminist in their restorativeness, practitioners become more sensitive to the parties' untold needs and vulnerabilities based on their cultural schema. The parties would be more likely to get the best of restorative justice and not suffer secondary victimisation from other participants or mistreatment from practitioners.

8.7.2.2 Diversity and priority

The other issue for practitioners to address is the interpretation problems in restorative practices about the diversity of priorities for victims and offenders exposed by these data (particularly among victims). In Project A, when restorative justice hurt parties it was often because practitioners failed to be responsive to the parties. Hence, practitioners can be outfitted with awareness of the diversity of parties' expectations

and needs and sensitivity to how they differ from their own concerns, preferred interpretations, and priorities. This kind of awareness and sensitivity corresponds to Presser's and Gaarder's (2000) idea of 'individualised intervention' in the application of restorative justice to domestic violence.

Diversity of expectations was well illustrated in regard to the principle of accountability, where some of the victims were more concerned about repair of family hierarchy and relational appropriateness, as suggested in the Confucian version of restorative justice. Others were keener to obtain recognition of wrongdoing, proposed in the western or feminist version of restorative justice. Given that victim expectations and needs are so diverse, victim voices certainly require discreet and sensitive attention. Except for endorsing or tolerating violence, honouring the parties' reasonable expectations for restorative justice over facilitators' shall be advocated.

8.8 Limitations and conclusion

8.8.1 Limitations

The findings of this chapter are limited by two major features of the data. The first is that victims and offenders discussed here consented to participate in restorative justice. Their expectations and needs may not be the same as those of all victims and offenders of domestic violence in Taiwan.

The second limiting feature of the data in this chapter is that effects of the five restorative justice principles are only based on the practices of Project A. Inevitably, examined practical effects were somewhat shaped by the institutional postures of Project A, which was in support of a pro-Confucian version of restorative justice and a life-wisdom approach. Thus, the practical failures found in Project A were more about practitioner nonfulfillment of the feminist and western versions of restorative justice

and excesses of the Confucian version of restorative justice, rather than the other way around. That is to say, the findings of this chapter reveal little about possible consequences of excesses of feminist or western versions of restorative practice.

8.8.2 Conclusion

Victims and offenders in Project A sought a more participatory criminal justice mechanism to deal with their domestic violence incident than they received. They had multiple expectations and needs that corresponded to the western, Confucian, and feminist versions of restorative justice to a greater or lesser extent.

Generally, the victims and offenders had quite similar expectations and needs, particularly in relation to the principles of active participation, reintegration, and restoration. Victims expected and needed much more than offenders with respect to the principles of accountability and rehabilitation. The offenders' full hopes could adequately be explained by the Confucian version of the two principles; but they accounted for only part of the hopes of victims. Victim wishes and needs were filled out to a larger extent with the western and feminist versions of the two principles.

Short-term designs and limited supplementary measures for transformation of offenders and their families might partly account for the modest effects of Project A on offenders' accountability and rehabilitation. But based on the victims' and offenders' feedback, the main practical imperfection was that the parties' expectations and needs were sometimes overlooked or disregarded by the practitioners. The practitioners often failed in responding to the parties' expectations related to principles of accountability and active participation, in contrast to their greater responsiveness on the principles of reintegration, rehabilitation, and restoration. The main cause of the failures could be summarised as practitioners' insufficient attention to and efforts at the interpretation

discrepancies between their own beliefs about priorities and those of the parties.

An important conclusion is that even though victims and offenders were usually aware of their expectations and needs in the restorative justice process, some of their deeper needs were unnoticed by them or inaccessible to them. These needs were obscure, such as protection for the parties' voices from their family's domination, easily veiled by the parties' cultural schema of family relationships, and consciousness of power and domination underneath domestic violence, often unseen through the day-to-day explosiveness of disputes. This would require practitioners with adequate cultural and gendered sensibilities to identify and expose parties' unheeded needs.

Notwithstanding all these limitations, we must recall that these data reveal that most victims and most offenders reported that violence had ceased or reduced during the 2 to 9 months (mostly more than 5 months) after the restorative conference, around half the victims and half the offenders reported emotional relief from closure of the case or closure of the marriage as a result of the restorative process, and a workable reconciliation (if not real harmony) was achieved in 13 of the 14 cases. So the strengths of what was accomplished through the Confucian institutional posture of Project A are as clear as its weaknesses.

The nature of the weaknesses revealed in these last two sections of this chapter suggests that checking and balancing the Confucian institutional posture with a feminist and a western restorative justice institutional posture could greatly benefit victims and offenders. Unresponsiveness to a diversity of institutional postures was a weakness in Project A that was compounded by a tendency of practitioners to impose their own priorities with insufficient responsiveness to the priorities of victims and offenders and also by a failure to protect victim and offender priorities against engulfment and domination by their own families.

Chapter 9

Conclusion

9.1 Summary of findings

This thesis explores the transfer of restorative justice to the regulation of domestic violence in a society of Confucian background, through a case study of Taiwan's Restorative Justice Initiative. Two local projects proposed tackling domestic violence cases as part of the Initiative. These projects were the sites of the study.

Based on western discourses of restorative justice, five core principles of restorative justice were identified: accountability, active participation, reintegration, rehabilitation, and restoration. They provided the theoretical framework for the development of this thesis. The five principles of restorative justice were theorised further to recognise Confucian and feminist perspectives. This process was undertaken with the purpose of connecting the five western principles with important cultural and gender frames shaping domestic violence discussions in Taiwan at the time. Taiwan has been nurtured in Confucian family tradition, and well versed and welcoming of feminist gender politics.

The main empirical findings of the thesis indicate different forms of coexistence of western, Confucian, and feminist ideas. This mix of ideas carried some weight with the implementers' vernacularisation of restorative justice. The mix of ideas was also evident in the expectations and needs of victims and offenders. Against the background of multiple ideologies, the governance of the vernacularisation process conceded different sites their institutional postures toward restorative justice. Institutional postures shaped, but only to a certain extent, the way in which individual implementers

(criminal justice officers and restorative justice practitioners) vernacularised restorative justice and responded to voices of victims and offenders.

Institutional postures toward restorative justice, individual implementers' vernacularisation of restorative justice, and voices of victims and offenders are summarised as follows.

9.1.1 Institutional postures toward restorative justice

Policy and practice contexts, governance settings of the Initiative, and the implementation networks of local projects created institutional postures around the local implementation of restorative justice. Western and Confucian interpretations of restorative justice were advocated by the state. Confucian and feminist interpretations of restorative justice were endorsed respectively in Projects A and B by the local implementation teams (the District Prosecutors Office and the NGO).

9.1.1.1 The state's postures

The state's (Ministry of Justice) endorsement of the western and Confucian versions of restorative justice occurred against the background of Taiwan's recent legal reforms: a polarised model of criminal justice policies. The western package of restorative justice caught the state's attention as a lenient approach to manage the soft end of a polarised criminal justice model. The Confucian version of restorative justice was familiar to the state. The state already supported Taiwan's Confucian-like mediation system. Restorative justice was the next easy step to represent the lenient side of its criminal justice approach.

By and large, the Ministry of Justice adopted the western package. The five core principles of restorative justice extracted from the western literature were inclusively

embraced. But when it came to prioritising the principles, the Ministry of Justice put emphasis on the principle of restoration, as the Confucian version asserts, rather than on the principles of accountability and active participation, as favoured in the western version. Hence, at the state level, the Confucian version of restorative justice set the ultimate purpose of the Initiative, while the western version of restorative justice offered an overall knowledge of restorative justice in the Initiative.

Feminist perspectives of restorative justice, by contrast, were not heeded in the first instance. They were later brought to the state's attention by the external alliance, who had doubts about the application of restorative justice to domestic violence. The external alliance, consisting of practitioners, scholars, and governmental authorities in the field of domestic violence in Taiwan, urged and offered feminist guidance on implementing restorative justice. To be precise, the feminist version of restorative justice was constructed locally, but under the influence of western feminist discourses that had been introduced to Taiwan long before the Initiative by Taiwanese pro-feminist academics.

9.1.1.2 The institutional postures of Project A

While the western version of restorative justice had pre-eminence at the state level, it lost its significance in Projects A and B. The local implementation team in Project A largely vernacularised restorative justice in favour of the Confucian version and a life-wisdom approach, and against the feminist version and a professional 'knowledge and skills' approach.

The institutional postures toward restorative justice in Project A were related to the organisational culture of the NGO as a grassroots group. The NGO specialised in family mediation with great enthusiasm about seeking family reconciliation. When the

NGO undertook the restorative justice implementation, life-wisdom and Confucian family ethics were valued over professional skills and pro-feminist knowledge of domestic violence, and solution-seeking supervision over ethical reviews of how restorative justice was used in the context of domestic violence.

An analysis of the political networks of the local implementation institutions revealed how they reinforced the institutional posture of Project A. The recruitment process for restorative justice practitioners sought candidates with abundant experiences in life and family mediation and formal affiliation with the NGO. Thus, in Project A, the channels that linked to the external alliance, a pro-feminist and professional version of restorative justice, were few in number and blocked for the exchange of content. Relatively closed networks meant that the Confucian and life-wisdom version of restorative justice was sustained and continued to prosper.

9.1.1.3 The institutional postures of Project B

By contrast, the institutional postures of Project B favoured the feminist version of restorative justice and embraced a highly professional approach. The local implementation team played a critical role in ensuring that the existing feminist influence and professional dominance in the field of domestic violence in Taiwan were well-preserved in Project B.

The local implementation networks fostered and fortified the institutional postures of Project B as pro-feminist and professional. The recruitment of restorative justice practitioners actively included respected experts in the field of domestic violence with the expectation that Project B would operate with feminist understandings of domestic violence, professional skills, and clinical supervision. With successful recruitment, the communication channels were well established between the local implementation team

and the pro-feminist external alliance. Pro-feminist and professional postures toward restorative justice were not only firmly established in Project B, but well supported by the surrounding network.

9.1.1.4 Governance on the implementers' vernacularisation of restorative justice

Interestingly, the different preferences at different sites for western, Confucian, or/and feminist ideas in the vernacularisation of restorative justice were seldom examined. In part this was due to the state's provision of local discretion. In part it was due to the work patterns of the District Prosecutors Offices involving compartmentalization and professional separation. Both these factors weakened communication within the implementation networks. The vernacularisation of restorative justice was left with little space for discussion, reviews, debates, and further refinement. A few positive experiences in the local implementation revealed that enhancement of communication channels and a cross-disciplinary learning atmosphere among the implementers and the external alliance could increase transparency of the work and improve the quality of dialogue and governance on the vernacularisation of restorative justice.

9.1.2 Individual implementers' vernacularisation of restorative justice

Similarly, the individual implementers' interpretations of restorative justice contained mixed ideas from western theories of restorative justice, Confucianism, and feminism. Although the institutions had influence on individual implementers through supervision and organisational cultures, implementers' vernacularisation of restorative justice was not entirely aligned to the institutional postures that they were surrounded with.

The five principles of restorative justice were translated to practice goals by the individual implementers: (1) empowerment of the parties; (2) education or educational

discussions, on legal, gender, and virtue issues, or family relationships; (3) acknowledgment of wrongdoing; (4) recognition of harm caused by violence; (5) violence to be reduced or stopped; (6) dialogue and mutual understanding between two parties; (7) case closure; (8) reduction of punishment of offenders; and (9) restoration. Implementers did not necessarily adopt all of the goals, but they adopted at least four of them in their practice.

The five principles of restorative justice, centred in the western version, were more or less fulfilled through the implementers' practice goals. The principles of accountability and rehabilitation were both connected to two practice goals – education or educational discussions on gender and virtue issues and reduction of punishment of offenders. The principle of accountability was also linked to the goal of acknowledgment of wrongdoing, the principle of rehabilitation to the goal of violence to be reduced or stopped. The principle of active participation was basically realised through four goals: education or educational discussions on family relationships, recognition of harm caused by violence, empowerment of the parties, and dialogue and mutual understanding between two parties. Empowerment and dialogue were also goals that served to realise the principle of reintegration. Lastly, the principle of restoration was commonly achieved through the practice goals of restoration and case closure.

Some of the nine practice goals were delicately shaped by Confucian and feminist values which gave them very different meanings. The underlying Confucian values (including 'role-bearing persons', 'harmony', 'face', and 'inner repentance') and feminist ideas (including 'validation of wrongness of violence', 'gender equality', 'power and control', and 'cycle of violence') added subtle insights and gave new meaning to goals such as education or educational discussions, acknowledgment of wrongdoing, empowerment of the parties, recognition of harm caused by violence, and

restoration. The goal of education or educational discussions on gender and virtue issues, for example, was sometimes implemented to sustain Confucian beliefs of ‘role-bearing persons’, but by others to convey feminist concerns about ‘validation of wrongness of violence’ and ‘gender equality’.

Through the implementers’ practice goals, the prioritisation of these coexisting western, Confucian, and feminist values became apparent. The implementers managed their multiple goals in certain orders. The ways that implementers acted on the goal of ‘acknowledgment of wrongdoing’ indicated their three different logics of prioritisation.

To the implementers who vernacularised restorative justice with an emphasis on the Confucian values of ‘face’ and ‘harmony’, the goal of ‘acknowledgment of wrongdoing’ was deemed at best pointless, and at worst harmful to maintaining the parties’ face and relational harmony. Instead, ‘case closure’, ‘reduction of punishment of offenders’, and ‘relationship restoration’ were desirable goals. The logic signified that the focus was placed on the principles of rehabilitation and restoration over the principle of accountability.

To the implementers who vernacularised restorative justice with Confucian values – ‘face’ and ‘harmony’ as well as ‘inner repentance’, the goal of ‘acknowledgment of wrongdoing’ was regarded as critical. But it was to be achieved before practitioners only, not the other party. The logic of this group of implementers was to pursue the principles of rehabilitation and restoration, but not at the cost of the principle of accountability. The logic involved balancing the principles as best one could in the context.

Lastly, to the implementers who vernacularised restorative justice with deep belief in western or feminist ideas – ‘acknowledgment of wrongdoing’ or ‘validation of

wrongness of violence’, the goal of ‘acknowledgment of wrongdoing’ was deemed to be the first priority and one which was to be performed in the presence of the other party. The fulfilment of the goal of ‘acknowledgment of wrongdoing’ was the way to bring about meaningful realisation of the goals of ‘violence to be reduced or stopped’ and ‘relationship restoration’. The underlying logic was to give precedence to the principles of accountability and active participation (particularly empowerment) over the principles of rehabilitation and restoration.

Thus, just as the postures of the implementation institutions reflected how the mix of western, Confucian and feminist ideas were to play out in restorative justice practice, the implementers’ practice goals reflected the same mix. The implementation occurred in different ways, contingent upon how western, Confucian, and feminist values guided and arranged the implementers’ practice goals.

9.1.3 Voices of victims and offenders

To the victims and offenders in Project A, western theories of restorative justice, Confucianism, and feminism were all valuable in understanding and responding to their domestic violence issues. The victims’ and offenders’ expectations and needs in regard to each of the five principles of restorative justice were a mixture of partly western, Confucian, and feminist concerns within restorative justice.

9.1.3.1 Principles of accountability and rehabilitation

With regard to the principles of accountability and rehabilitation, victims’ expectations were linked to an extent to the western, Confucian, and feminist versions of restorative justice. Yet, offenders’ expectations were more firmly aligned with the Confucian version.

Both victims and offenders took personal failures in Confucian virtues as the cause of domestic violence. They hoped to repair ‘family hierarchy’ and ‘relational appropriateness’, and they attempted to address domestic violence through ‘moral cultivation’. In theory, these Confucian ideas could have blurred culpability for violence. But, in practice, most victims appreciated the functions of these Confucian values and rarely considered them as excuses for violence.

For victims but not offenders, ideas that unfolded in the western and feminist versions of restorative justice had appeal. Many of the victims sought to obtain ‘acknowledgment of wrongdoing’ from offenders and attain ‘validation and protection’ from the state or facilitators. In this way, the Confucian, western, and feminist versions of restorative justice generated diverse, constructive, and mutually supportive ways of delivering on the principles of accountability and rehabilitation from the perspective of victims.

9.1.3.2 Principle of active participation

In regard to the principle of active participation, victim and offender expectations and needs were similarly connected with ideas from the western, Confucian, and feminist versions of restorative justice. In line with the Confucian version, most victims and offenders allowed their family members to speak for them or even take their place in exercising the rights of expression, communication, and decision-making. Despite these displays of deference to family, victims and offenders looked forward to their increased personal participation in the justice process, as the western version proposes.

The violence the victims and offenders were involved in was very much ‘a story of power and domination’ and entailed ‘danger of power and control, which the feminist version warns of in relation to the principle of active participation in particular. The

observational fieldwork and the analysis of the stories of victims and offenders confirmed that the feminist warnings were of great relevance to both victims and offenders. This was not to the exclusion of the Confucian and western versions, but rather provided additional insight and understanding. Sadly, the feminist version was least expected and appreciated by the parties.

9.1.3.3 Principle of reintegration

In terms of the principle of reintegration, the victims and offenders had similar cultural expectations, which involved family full support and tolerance of their own misconduct. This largely echoed the Confucian version of this principle. Transformation of offenders and their families was desired by some victims as well. But hopes lay less with grappling with the unwanted effects of structural patriarchy as advocated in the feminist version, and more with pursuing a Confucian transformation through improvements in the moral quality of individuals and families.

9.1.3.4 Principle of restoration

Material, emotional, and relational restoration promoted in the western version, and genuine apologies and harmony in the Confucian version were the ideal outcomes that victims and offenders sought. In a number of cases, superficial reconciliation in the Confucian version was acceptable to the victims and offenders as long as the interests that mattered to them were secured. By contrast, the feminist version showing disapproval of the use of apologies and relational restoration lost its significance in the Taiwanese context.

In short, an empirical analysis of the expectations and needs of the victims and offenders in Project A showed that it was necessary to see these needs and expectations through multiple lenses – the western, Confucian, and feminist versions so as to be

fully responsive in addressing their issues. Lessons from Project A imply that the western, Confucian, and feminist versions of restorative justice cannot on their own respond to the parties' expectations and needs. Collectively, however, they make sense of what victims and offenders are having difficulties with and how they want to resolve their problems.

9.1.3.5 Practical successes and failures

Project A offered a unique opportunity to see how well practitioners were able to adjust to be responsive to the needs and views of victims and offenders. These are discussed below as examples of practical successes and failures.

On the success side, victims' and offenders' expectations and needs were generally met by practitioners' vernacularisation and operation of restorative justice. But practice failures occurred at times, mainly as a result of practitioners not recognizing that there was a discrepancy between their own vernacularisation of restorative justice and the parties' expectations and needs. For instance in regard to the principle of accountability, some victims desired offender recognition of wrongdoing or at least, public condemnation of violence. Facilitators were observed disregarding this need and instead set the focus of conversation on honouring family hierarchy, relational appropriateness, or face protection. This was a severe limitation from a feminist perspective.

Failures also came from the unheeded differences between the practitioners' ordering of multiple goals and the parties' prioritisation of their multiple expectations. Some of the victims' and offenders' major concerns for active participation were suppressed by their practitioners' insistence that the top priority was relational restoration and offender rehabilitation.

To conclude, the implementation teams, the individual implementers, and the victims and offenders had their own perspectives on what restorative justice could and should offer. The perspectives were diverse and interspersed western theories of restorative justice with Confucian and feminist values and ideas. The important thing was that their perspectives were not always consistent with one another. Above all, the perspectives of the victims and offenders shed light on how the western, Confucian, and feminist versions of restorative justice could be blended in a productive hybridity. Chapter 8 specified some ways that they overlap, so that one version does not add value above the others, but many more ways that they complement each other, sensitizing practitioners to issues that are disastrously neglected in a Taiwanese context by the other versions. Finally, Chapter 8 specified a variety of ways each of the three models is a check and balance on excesses each model risks without those checks and balances in a Taiwanese context.

9.2 Hybridity of emotional, cultural, and political intelligence of restorative justice

Experiences of Taiwan's restorative justice projects on domestic violence revealed that Confucian and feminist values enriched the interpretation and operation of restorative justice. But at the same time, these Confucian and feminist ideas complicated the issues of definition, standards, and evaluation of restorative practices, which are debated by restorative justice theorists and practitioners.

This thesis proposes that hybridity of emotional, cultural, and political intelligence around restorative justice can be a more productive direction for the application of restorative justice to domestic violence in East Asia. This proposal presents a direct challenge to the debates about the definition, standards, and evaluation of restorative justice which proceed with a view to homogenization and routinization of restorative

justice practice. Hybridity of emotional, cultural, and political intelligence in the use of restorative justice is built upon the objective of participatory justice: voices of victims and offenders, and can be achieved through reflexive (Hobbs & Njoya, 2005; Meer et al., 2005) and learning governance. Voices of victims and offenders, hybridity of emotional, cultural, and political intelligence around restorative justice, and reflexive and learning governance are now elaborated.

9.2.1 Participatory justice: voices of victims and offenders

The proposal that restorative justice should be vernacularised with hybridity of emotional, cultural, and political intelligence at a fundamental level echoes the objective of restorative justice. As participatory justice, restorative justice aims to satisfy expectations and needs of victims and offenders in the process of criminal justice and to return power and space of participation to them (Zehr, 1990). The quest for higher standards and what works ‘in aggregate’ is well underway in restorative justice where evaluations and meta analyses of evaluations are now available in multiple forms (Latimer, Dowden, & Muise, 2005; Strang et al., 2013). This thesis is a reminder, however, that in attending to the problematic standards of restorative justice, voices of victims and offenders must be more assiduously heard. Victims and offenders hold a legitimate and pivotal position that needs to be recognised to ensure that propositions for the definition, implementation, and assessment of restorative justice are meaningful (Presser & Gaarder, 2000).

This proposition is one of the main lessons learnt from Project A (see Chapter 8). Concentration on voices of victims and offenders and a careful analysis of their concerns is critical for successful implementation and continuous improvement. It is important to take an in-depth and holistic perspective of viewing the needs of victims and offenders in the criminal justice process. As learnt from Project A, victims’ and

offenders' needs in the justice process have multilayered emotional, cultural, and political elements, which are not always consistent. Victims and offenders seek nuanced and delicate compromises in the restorative justice process to appreciate and disentangle the complexity of their situation. Restorative practices that were vernacularised in a way that narrowed the focus to say only emotional concerns without taking cultural and political concerns into account proved inadequate in helping victims and offenders find a pathway forward.

It can be concluded that the proposal for the adoption in Taiwan of a hybrid model of restorative justice has a solid foundation in so far as the core feature of restorative justice is participatory justice. Participants need and expect a hybrid to help them work through their issues. Participatory justice provides the argument for privileging victim and offender needs concerning their emotions, cultures, and political situations in the vernacularisation of restorative justice.

9.2.2 Hybridity of emotional, cultural, and political intelligence in RJ

In the Restorative Justice Initiative in Taiwan, the western version of restorative justice symbolised emotionally intelligent justice (Rossner, 2008; Sherman, 2003), the feminist version of restorative justice politically intelligent justice (Daly & Stubbs, 2006a; Hopkins et al., 2004b; Presser & Gaarder, 2000), and the Confucian version of restorative justice culturally intelligent of justice (W.-C. Chan, 2013; J. Liu & Palermo, 2009; H. Lu et al., 2002; D. S. W. Wong, 2011). The western version is insightful about victims' and offenders' needs relating to harms and emotions in the criminal justice process (Rossner, 2008, 2011). The feminist version offers great strength around the politics of domestic violence in so far as it secures victims' safety and gendered interests in the face of imbalances of power (Coker, 2002; Koss, 2000; Stubbs, 2002). The Confucian version as opposed to the western and feminist versions is more attuned

to the cultural perception of victims and offenders in Taiwanese circumstances, which is also important in so far as cultural identities are integral to individuals' mental health and social functioning (Z.-F. Lu, 2008; D. S. W. Wong, 2011).

The hybridity of emotional, cultural, and political intelligence in scoping out a model of restorative justice echoes Sally Engle Merry's (2006b) appreciation of the hybridity of local and global values in the vernacularisation, in her case, of gender rights. In Merry's theorising, the concept of 'hybridity' involves facilitation of the distribution of global ideas to the local and incorporation of local meanings in transplanted ideas. The proposed hybrid intelligence of restorative justice here includes and extends attention beyond interaction between local and global ideas in the vernacularisation. Attention is further given to issues of emotions in justice, culture, and politics in the place where restorative justice is applied and victims and offenders live.

The hybridity of emotional, cultural, and political intelligence has greater capability of addressing the difficulty in the hybridity of local and global values that was identified by Sally Engle Merry. The recognised difficulty is that substantial reliance on local perspectives and conventional practices to implement transplanted values may lead to loss of global support in funding and publicity and little change to the recipient society (Levitt & Merry, 2009; Merry, 2006b). Yet if the vernacularisation proceeds with a hybridity of emotional, cultural, and political intelligence, political debate could improve global understanding of local practices. Political contestation might also complement cultural concerns by colliding with and bringing challenges to local custom.

For this reason, the hybridity of emotional, cultural, and political intelligence of restorative justice provides a good answer to the inevitable debates on definition, standards, and evaluation of transferred restorative justice practices. The proposed

hybridity of different forms of intelligence can better attend to wide-ranging needs of victims and offenders who live in specific locales. Pragmatic and pertinent services can be subsequently built up around the form that the hybrid model takes in any particular region or site.

9.2.3 Fostering learning governance in vernacularisation processes

Lastly, this thesis argues that the pursuit of the hybridity of emotional, cultural, and political intelligence of restorative justice requires devolved governance that learns how to learn. As discussed in Chapter 6, reflexive governance is another theoretical tradition that gives priority to ‘steering by process’ (Meer et al., 2005) and actors’ reflexive governing capacity. Through fostering a learning atmosphere, actors are encouraged to reconsider and examine assumptions underlying the practices, and take their current goals and preferences as always mouldable (Bang, 2004; Marsden, 2013). This learning feature manifests the means (governing strategies) and ends (actors’ belief to be transformed) of reflexive governance.

9.2.3.1 Single-loop learning and double-loop learning

Another feature reflexive governance shares with the approach adopted here is commitment to single-loop learning and more importantly, double-loop learning (Steiner, 2013; Voß & Kemp, 2006). One does not have to be theoretically committed to reflexive governance, however, to commit to these processes of learning. Single-loop learning refers to the discovery of divergence between intentions and results and subsequent endeavours to seek alternative action strategies to enhance results (goal achievement). In single-loop learning processes, actors need not question the accuracy of the original intentions or assumptions of the implementation. By comparison, double-loop learning incorporates reviews on implementation intentions

and assumptions when goals are not achieved through planned actions. Actors are directed to revisit and rebuild original problem frameworks, value frameworks, and goal settings for implementation, rather than simply adjust their action strategies. Positive as well as negative feedback are recognised in the implementation process and respect for other members' perspectives is advocated to get the best results from the process (Kooiman & Jentoft, 2009; Morgan, 2006; Pahl-Wostl, 2009).

Learning governance builds action capacity through single-loop learning and reframing problems, assumptions, and goals through double-loop learning (Steiner, 2013). Learning governance creates space for tensions between single-loop learning and double-loop learning; practices are to be shaped by the interaction of these two forms of learning (Voß & Kemp, 2006).

Double-loop learning that fosters actors' introspection, discussion, and examination on values behind practices can enable the vernacularisation of restorative justice to grow with balanced hybridity of emotional, cultural, and political intelligence. Possible conflicts between emotional, cultural, and political concerns in the vernacularisation of restorative justice would more likely be identified, understood, and properly addressed because actors are all pushed to review different perspectives and eventually to refine interpretations of restorative justice.

9.2.3.2 The logic of mutual causality

The logic of mutual causality is rooted in the double-loop learning model. The logic of mutual causality can reveal and tackle the connections of factors for the vernacularisation of restorative justice so as to make hybridity of emotional, cultural and political intelligence more possible. According to the logic of mutual causality, no single factor is the cause of problems. Multiple factors are connected, affecting each

other, and together contributing to the final outcomes. Causal relationships are not linear, but operate as networks of relationships. The logic of mutual causality involves identifying major and secondary loops and recognising their importance to implementation. Then, the task becomes one of weakening negative connections and strengthening positive connections of factors in the implementation rather than directly looking to manipulate causes and effects (Morgan, 2006).

As Chapter 6 discovers, there are many factors intertwining to influence the direction of vernacularisation of restorative justice in the Taiwan Initiative. The factors identified were the society's cultural background, criminal justice policies, gender policies and politics, organisational cultures of the NGOs, beliefs and work patterns relating to compartmentalisation and professionalism, governance strategies and the political networking of the implementers.

This thesis observes the complex connections among all these factors and considers that the logic of mutual causality can be applied to increase and decrease linkages among these factors. For example, the enhancement of the political networks in the implementation system may reduce the negative impact of compartmentalisation and professionalism, which meant that there was far too little discussion and communication among implementation organisations and different professional groups. In doing so, the flow of information in the vernacularisation process could be improved. But the gates may also be open to domination. Monitoring and adjusting for these influences and assuring transparency and mutual respect for different ideas becomes part of the responsiveness necessary for the benefits from multiple vernacularisations where each checks the dominations of the other. Hybridity of emotional, cultural and political intelligence is less likely to be crushed by domination when multiple vernacularisations are in place.

In sum, this thesis recognises that learning governance drawing on plural vernaculars can enable hybridity of emotional, cultural, and political intelligence in restorative justice. Single-loop learning, double-loop learning, and the logic of mutual causality are critical methods in this process. Ongoing interpretations of restorative justice are routinely revisited. Subsequently, the emotional, cultural, and political concerns of victims and offenders can be better balanced against one another in the vernacularisation of restorative justice.

To conclude, this thesis proposes hybridity of emotional, cultural, and political intelligence in vernacularising restorative justice so as to reposition voices of victims and offenders at the centre of implementation. The hybridity implies competition and complementarity among different ideologies concerning either emotional, cultural, or political needs of the parties. The competition and complementarity among ideologies are of great significance to the vernacularisation of restorative justice, especially if they are appropriately handled through learning governance that devolves the governance of justice to a very local level.

In this study, the analysis mainly revealed three vernaculars connected to restorative justice – western, Confucian, and feminist. These three vernaculars do not map onto any simple global-local or downward-upward vernacularisation dichotomy. Restorative justice theories are labelled western, but as discussed in Chapter 3, were greatly influenced by various indigenous justice traditions. Confucianism is an influence from ancient mainland China, more or less local, but really a regional East Asian vernacular. Taiwan feminism forged robustness in Taiwan's historical and political contexts and its struggles with Confucian patriarchy, therefore departing from western feminism. For all of the complexity of multi-way vernacularisation that this thesis has empirically demonstrated inside Taiwan, one simple empirical conclusion from Merry's (2006b)

research remains intact. There is much more downwards vernacularisation from global/western discourses of feminism and restorative justice than upwards vernacularisation from Confucian or Taiwanese vernacular up to shape global or western discourses.

9.3 Practical lessons

The inductions about hybrid intelligence in restorative justice and learning governance provide new insights toward a better practice of restorative justice. Connected to this inductive insight, two more practical lessons can be learnt from this research. One of the lessons relates to a current trend toward professionalization of restorative practices, the other particularly addresses issues in restorative justice practices in East Asia.

9.3.1 Professionalization versus participant-centred practices

This thesis recognises that professionalization can benefit restorative practices, but warns against a shift in focus from listening to and responding to participants' voices to validating fellow professionals' opinions. Tensions are likely to emerge between pursuing professionalization of restorative practice and securing participants at the centre of practice. Such tensions are often disregarded, but the empirical findings in this thesis suggest that they are vital.

Professionalization has increasingly occupied a crucial role in the implementation of restorative justice. It is widely regarded as effective in enhancing the quality of restorative justice practices. Professionalization is embodied in the recruitment, training, supervision, and accreditation of restorative justice practitioners, which have gained enormous affirmation in the recent years world-wide (Bruce, 2012; Presser & Lowenkamp, 1999; Dennis S. W. Wong, 2001).

When applying restorative justice to domestic violence, the quality of restorative justice practices raises a lot of concerns. In response, higher demands for professionalization of restorative justice practices have been advocated. Besides practitioners' abilities being under professional scrutiny, case screening is regarded as imperative under professional standards (Bruce, 2012; Presser & Lowenkamp, 1999; Stubbs, 2012).

This thesis recognises that quality enhancement and assurance can be generated through professionalization of restorative practices. It is evident that supervision and case screening in Project B were mostly conducted prudently under the influence of professionalism around restorative justice practices. Yet professionalization may draw restorative justice practices away from participants' concerns. The danger of professionalization of practices lies in the belief that the professionals must know better about domestic violence than victims and offenders (Hooper & Busch, 1996).

The findings of this thesis corroborate the possibility of tensions between believing in professionalization of restorative justice practices and securing participants in the centre of practices. As elaborated in Chapters 7 and 8, some of the facilitators conceded that their professional perspectives and power stopped them from discovering more about the thoughts and choices of the participants. They also admitted that their professional opinions, instead of victims' or offenders' expectations, directed the restorative justice meetings. Participation and empowerment of victims and offenders was somewhat undermined owing to professionals taking over the restorative justice process through their seemingly reasonable work on education or educational discussions.

This thesis recognises the values of professionalization of restorative justice practices and participants' voices, and the potential tensions between them. To address the

potential tensions, greater attention needs to be paid to training and supervision on being sensitive to the needs and expectations of victims and offenders. Practitioners can learn to be professional and at the same time be sensitive and attentive to participants' expectations. Training and supervision on sensitivity and active listening can equip practitioners with abilities to acknowledge and respond to their own expectations in the restorative justice process, the diversity and priority of participants' multiple expectations for restorative justice, and any discrepancy between their expectations and participants' expectations. As long as the wrongfulness of violence is not indulged, twisted or rationalised. The wills of victims and offenders should be honoured (Presser & Gaarder, 2000).

The findings and conclusions of this thesis also lends credibility to a strategy offered by Pennell and Burford (2000). They have suggested that after assessment of safety and power issues of domestic violence, there could be a period of time in the process of restorative justice that is set apart for the parties and their families only. Professionals are asked to leave the meeting venue in the Pennell and Burford model. To some extent, professional power is restrained, and space for the parties and their families is preserved. Professionals are reminded in this way that they have a responsibility to empower, listen to the voices that emerge as a result, and be responsive to those voices to the best of their ability.

9.3.2 Family involvement versus active participation of victims and offenders

This thesis also has discovered that in East Asia, the fulfilment of the principle of active participation appears to be a specific issue that needs attention. High levels of family involvement could be foreseeable in a society of Confucian background like Taiwan. Also predictable is the likelihood that family over-engagement might hinder active participation of victims and offenders. In Project A, space for participation of the

victims and offenders was not only possibly stolen by the professional practitioners but also by their family members who intended to show their familial love.

This thesis considers high levels of family involvement as a valuable cultural asset to East Asian societies in regard to restorative justice practices. While appreciating this asset, the thesis suggests that family involvement should be managed in a prudent manner with consideration for the parties' participation needs. It would be sensible if practitioners weighed the advantages and disadvantages of family involvement of the parties and found a manageable way to address these issues when they implement restorative justice practices in societies of Confucian backgrounds.

Thus, the two practical lessons here primarily impact on practitioners. Practitioners can learn to manage tensions between profession-led and participant-centred working approaches, and learn to manage competition between the parties' needs in family relationships and in full participation.

9.4 Limitations and strengths of the present study

9.4.1 Limitations of this study

The limitations of this study are connected to limits on the access to observe and examine the studied case. Interviews were conducted only with seven officials in the criminal justice system, thirteen practitioners, fourteen victims, and ten offenders. The small number of interviewees for each group reflects willingness and availability, and raises the question of whether different voices, perhaps even influential voices, have not been heard.

The lack of information on the perspectives of the Ministry of Justice and local criminal justice officers is relatively obvious. This thesis attempted to compensate for

this gap in information through making the most of relevant official reports and documentation. These do provide information on objective procedures and outcomes and overall institutional views, but little information on individual criminal justice officials' concerns and interests.

For this reason, it is hard to capture the extent to which institutional postures influenced individual officials in the criminal justice system and what these individual officials expected of restorative justice. It is also difficult to properly answer why the rates of finalising the referred cases in Project A and B were so hugely different (14/19 in Project A and 2/26 in Project B). Various factors that could be related to this difference are unknown, such as the reasons why the criminal justice officers referred these cases to practitioners and the ways that criminal justice officers introduced restorative justice to participants. This unknown information restrains this study in its bid to provide as complete a picture as possible of the transfer of restorative justice to domestic violence in Taiwan.

The data on the perspectives of the participants are limited too. The access to the participants was open in Project A, but closed in Project B. At one level, participant interviews discussed in Chapter 8 could have been culled from the thesis. But the insights there were so important and the pattern of findings so robust with regard to demonstrating a mix of western, Confucian and feminist needs that they have been included. Needless to say, the opportunity to validate these conclusions through replicating the study with Project B participants is one to be grasped should the opening arise in the future.

That said, it would be remiss not to acknowledge the institutional posture favouring a Confucian approach in Project A was responsible for some of the disappointments of participants. The participants' disappointments were most often associated with

situations where participant needs could have been met by the use of the western or feminist version of restorative justice, but instead were disregarded by the practitioners. Particularly, practitioners in Project A were given little guidance or encouragement to employ the feminist version of restorative justice. Lack of data on the perspectives of the participants in Project B makes it impossible to answer the burning question: In Project B, could participants' needs be better met through incorporating the use of the Confucian version of restorative justice? Chapter 6 shows Project B practitioners diverting conversation away from Confucian ideas to refocus attention on the feminist version of restorative justice.

In brief, limited access to potential interviewees is the main weakness of this study. This means there are some missing parts in the picture of this studied case. At the same time, it is worth remembering that the Restorative Justice Initiative in Taiwan has been a major policy initiative. It would be unrealistic not to expect pockets of defensiveness and guardedness around the Initiative in certain quarters. And the time may come when these same actors see advantage in greater transparency and adding to the understandings gleaned in this study with their own story.

9.4.2 Strengths of this study

Strengths of this study reside in the methods and analyses used. First, the observation and analysis of the translation of restorative justice was conducted from three different lenses: western theories of restorative justice, Confucianism, and feminism. At critical moments, a legalist lens was also part of the analysis. This multi-perspectival quality of the research has delivered a complexity of nuance to its insights.

Second, the transfer of restorative justice to domestic violence was observed in a single case – Taiwan, but in two local projects. This study can present the similarities and

discrepancies between these two local projects where vernacularisation of restorative justice evolved in radically different ways.

Third, this study examines the transfer of restorative justice to domestic violence in Taiwan through three different dimensions. The transmission dimension uncovered the institutional postures displayed by Project A and Project B. The ideological dimension uncovered the variation in individual implementers' vernacularisation of restorative justice. The participatory dimension revealed victims' and offenders' expectations for restorative justice, the needs that were expressed and were apparent through observation of their restorative justice sessions, and their own feedback on the practitioners' services. Through detailed analyses of all these dimensions, the studied case is more thoroughly understood through a different layer of triangulation. Out of this final triangulation in this thesis, not only has a contribution been made to practice via Merry's (2006b) theory, a modest refinement of Merry's theoretical framework has also been accomplished.

Finally, the study is a corrective to the overly western restorative justice literature and has value in its own right as a contribution to understanding Taiwanese justice and society.

9.5 Future Research

Future research on the application of restorative justice to domestic violence should consider not just gender issues but also cultural questions and questions of the vernacularisation of discourses across cultures. In doing so, research can better depict and explain the needs of participants in restorative justice practices and further provide sensible suggestions for reforming such practices.

Merry's (2006b) vernacularisation theory has laid a practical path to restorative justice

reform and domestic violence reform in Taiwan in this thesis. More research is needed with a four-way linkage of theoretical voices, practitioner voices, voices of female and male participants, and analysis of implementing institutions in justice processes. Restorative justice and feminist scholars in Asia should have the ambition to be more than passive receivers and implementers of western theory. Future research in Asia can have the ambition of crafting more ambitious theoretical hybridity.

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