Chapter 2
Conflict Resolution in China: Cultural Then Political?

Braithwaite (1999, p. 12) once opined that “Confucius [was] arguably the most influential thinker about restorative justice the world has known.” Deeply influenced by Confucian values and philosophies, Chinese society, as compared with its Western counterparts, is supposed to exhibit a higher degree of interdependency and communitarianism, two characteristics believed to be conducive to the reintegrative shaming of the wrongdoer. Restorative justice, as an umbrella concept – covering various programs that endeavor to bring the wrongdoer and the victim together – did not establish itself until the early 1990s (Strang 2002). It claims to have roots in community conflict resolution mechanisms in the early histories of various societies. The concept of restorative justice may be unknown to the Chinese (Johnstone and Van Ness 2007), but its ideals and values are not new to Chinese society and its people. Mediation, as a peaceful way of resolving conflicts, is a historical reality and continues today. In fact, there are remarkable convergences between restorative justice principles and the Chinese traditional legal culture (Liu and Palermo 2009), although one cannot neglect their distinct differences in terms of their respective value-driven practices (Wong and Mok 2013).

Knowing the past helps us to better understand the present. This chapter comprises three parts. The first part (Sects. 1, 2, and 3) delineates the traditional Chinese culture and social structure and its sustaining traditional dispute resolution model. The convergences and divergences between traditional Chinese mediation and modern Western restorative justice are discussed. In the second part (Sects. 4 and 5), we examine mediation in more recent periods, namely, the Republican period and the Socialist period. For this part of the analysis, we relied on the literature and historical materials retrieved from the Century Journals Project in CNKI (China National Knowledge Infrastructure) as well as English and Chinese scholarly publications. In the third part (Sect. 6), we conclude by expressing some concerns as well as by pointing out the implications that Western restorative justice may have for reforming Chinese mediation.
1 A Glimpse of Traditional Chinese Culture

1.1 Harmony Culture

Perhaps the term that best represents Chinese culture is “harmony” (和). There are many proverbs in Chinese (Mandarin) associated with 和, such as 和为贵 (harmony is the most precious thing), 和气生财 (harmony brings wealth), 家和万事兴 (a peaceful family will prosper), etc. The emphasis on harmony is rooted in Confucianism. The Analects of Confucius articulates 和 many times, and the one that is probably cited the most is: “In hearing litigations, I am like any other body. What is necessary, however, is to cause the people to have no litigations.” The ideal society, for Confucians, is a land without litigation. People maintain harmonious interpersonal relationships and exert mutual love and respect, which is for the greater good and ultimately benefits the whole society. The Confucian ideal of harmony is said to have been borrowed from another Chinese philosophy, Taoism, which believes in the existence of a corresponding relationship between the human world and the cosmic order. A disturbance in society is a disruption of harmony in the cosmos. Therefore, harmony in society should be well preserved. Another school, the Legalists (法), which is opposed to Confucianism, emphasizes heavy penalties to keep people’s behavior in line. However, the Legalists share the Confucian pursuit: People should live in peace and harmony without being bound to external constraints such as the law. In other words, the purpose of punishment was to restore social order and harmony, thus restoring relationships to their original state.

To attain the status of harmony, Confucianism also developed a comprehensive set of norms for the social interactions between people in various relationships. Among these norms, two core concepts are 仁 (benevolence) and 礼 (rites). Ren refers to showing love and affection to one’s counterparts in social interactions (Chen 2002). The truly cultivated gentleman would not allow himself to be drawn into a dispute or a lawsuit against his fellows; such involvement was itself a sign of moral failure (Huang 2006). If a dispute arose, he would nevertheless rise above it by practicing yielding (让) and forbearance (忍).

The other core element of Confucianism, 礼, refers to propriety and respect for social norms (Yum 1988, as cited in Chen and Ma 2002). Each human being should behave in accordance with his status in the hierarchical structure categorized by five relationships: parents and children, inferiors and superiors, teachers and students, elders and youngsters, and friends. Hence, harmonious relationships are characterized by “benevolence from the father, filial piety from the son, gentleness from the elder

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1 A collection of ideas and notions attributed to Confucius and his disciples, also known as the Confucian Analects or the Analects.


3 For a discussion on 和 in Confucianism and Taoism, see Jun (1994).
brother, obedience from the younger, uprightness from the husband, submission from the wife, benevolence from elders, deference from juniors” (Zhang 2013b, p. 144). In short, the maintenance of harmony and the containment of interpersonal conflict are highly valued principles of social regulation in Chinese society (Hwang 2012). The belief in harmony leads the Chinese people to pursue a conflict-free society in which they can attain “a feeling of security, a feeling of togetherness, a joyful feeling of interacting, and a feeling of being benefited from the interaction” (Chen 2002, p. 14).

1.2 Shame Culture

Chinese people believe that a human being should have a sense of shame. A man without a sense of shame is a shame in itself. Since the seminal book by Benedict (1946), *The Chrysanthemum and the Sword*, Eastern culture, influenced by Confucianism, has generally been regarded as a shame culture, while Western culture has been perceived as a guilt culture. While a popular distinction between shame and guilt suggests that shame is a more public emotion, whereas guilt is a more private affair, this idea has been challenged by another influential distinction proposed by Lewis (1971, as cited in Tangney et al. 1996, p. 1257) that “a fundamental difference between shame and guilt centres on the role of the self in these experiences.” Lewis argued that the experience of shame is directly about the self, while in guilt, the focus is on the thing done or undone (as cited in Tangney et al. 1996, p. 1257). Despite these psychological endeavors regarding the differences between shame and guilt, the role of shame in people’s lives and in Chinese society cannot be neglected.

1.2.1 Shaming as Punishing

As in any other society, punishment was pervasively used in ancient China, although it may have meant different things. Punishment could consist of a variety of cruel penalties imposed by the sentencer, such as casting out, exile, imprisonment, etc. It may also refer to the rationalities behind the way the sentencer treats the perpetrator. What has distinguished the punishments in China from those in its Western counterparts historically may lie in the fact that shaming was used both in formal settings and informal settings to punish offenders. While the formal setting refers to a formal court procedure, the informal setting refers to close-knit niches: the family, the neighborhood, the clan, the village, etc.

Formal shaming seemed to have been used much less than informal shaming. Historically, the state justice was only sought for the most serious crimes, which defied the royal rule or broke the fundamental ethics of the Confucian society (MacCormack 1990). The penalties imposed by courts, recorded as *wu xing* (five penalties), were largely for the purpose of shaming the offender, such as beating with a light stick, beating with a heavy stick, penal servitude, and life exile. Arguably, there was no such thing as “imprisonment” because the ancient Chinese did not
believe that throwing the offender into prison could turn a bad man into a good one (Mühlhahn 2009). State punishments, with exceptions such as execution, were resorted to with the purpose of arousing the offender’s sense of shame so that he could repent and renew himself.

### 1.2.2 Reintegrative Shaming Practices

Social sanctioning, an informal shaming used by the family and the neighborhood, was widely used to bring offenders in line (Leng 1967). Historically, the family and the neighborhood have been important institutions of informal social control in China (Lu et al. 2002). One illustration is *baojia* (*jia*, 10 households; *bao*, 100 households), a system in existence since the *Qin* state\(^4\) to ensure interdependency, the reinforcement of mutual obligations, and the supervision of neighbors.

The fact that the state had difficulty extending its power into the vast rural lands contributed to the growing number of local societies comprised of families, clans, villages, or counties. Governance was performed by these local institutions, which were not formally integrated into the governmental system. They had the duty to resolve disputes related to family, marriage, property, and minor criminal cases. When a dispute arose, the family and clan organization were the first to settle it, and if this failed, the village headmen were then consulted. A wrongdoer violating the values or morality maintained by the larger group for community life was encouraged to reform himself – which was the process by which he could be reintegrated back into the community (Mascolo et al. 2003, cited in Li et al. 2004). If he did not show a sense of shame, people may have felt an urge to condemn him not only for his shameful act but mainly for the person’s unwillingness to amend himself (Li et al. 2004). Surrounded by the community and caring people, the perpetrator was placed under great pressure to demonstrate shame and remorse for his behavior. In societies with a high level of communitarianism, offenders are viewed as “whole complex personalities” whose behavior is seen as shameful, but the self is not stigmatized as deviant (Braithwaite 1989). Shaming is more likely to end in reintegration: He who shows repentance is accepted back into his original community.

### 1.3 Interdependent and Communitarian Society

#### 1.3.1 Families and Neighborhoods

In Confucian political philosophy, the family and the state are not very distinct from each other. The relationship between the emperor and his subjects was akin to the relationship in a family between the father and his subordinates, including the son, \(^4\)The *Qin* state conquered all the other warring states and established the first dynasty in China in 221 BC, although the dynasty was short-lived (14 years).
the wife, the daughter, the grandchildren, etc. A stable state and family require
everyone to behave according to their roles and status in society and the family.

One of the fundamental ethics in Confucian philosophy is the “filial piety” (xiao, 孝) that children should practice toward their parents. Children should obey the
teachings of their parents and behave as is expected of them, i.e., they should be
good members of their family and law-abiding members of society. While a per-
son’s achievement is a source of pride to the whole family, his bad deeds are also
shameful for all members of the family. A shameful circumstance even goes beyond
the present members, reaching to their ancestors. One might say a good achieve-
ment “grants face” to the ancestry, while a bad one “loses face” for the ancestry.

Children are usually socialized through shaming: They learn that what they have
done is not acceptable when their parents exert disapproval. This disapproval may
include care and hope, but it can also be very harsh, disrespectful, hateful, etc.
Nevertheless, as long as bonds with the family remain central in one’s social life, the
family’s role in deterring and preventing negative social behavior is significant.

Neighbors may play both good and bad roles. As the Chinese saying goes, “a
close neighbor is better than a distant cousin” (yuangqin buru jinlin, 远亲不如近邻),
because the good neighbor provides social support when it is needed. However, he
can also spread bad/shameful news to others. Gossip remains a very powerful
weapon in a highly interdependent community. When one member of the family
commits a reprehensible act that shames all the family members, this event cannot
be kept only within the family. The neighbors always hear about it and work as
important messengers; as another saying goes, “good things stay indoors while bad
things will go far away” (haoshi bu chumen, waishi chuan qianli; 好事不出门, 坏事传千里). Consequently, family members may suffer from anxiety, worries,
embarrassment, etc. because their shame has been exposed to the community. This
may act as an important but very pervasive informal social control and crime pre-
vention strategy in Chinese society. Nevertheless, the power of shaming cannot be
divorced from the basic societal structure, which is dominated by
interconnectedness.

1.3.2 Interconnectedness and Mutual Obligation

The modern reintegrative shaming theory proposed by Braithwaite (1989) hypoth-
esized that interdependence and communitarianism are two social conditions that
are conducive to reintegrative shaming. While Western culture emphasizes indepen-
dence, in which “the self is conceived of primarily as an autonomous entity,” Asian
cultures like China emphasize interdependence, which is defined as “the inherent
connectedness among different individuals” (Kitayama et al. 1995, p. 442, as cited

Chinese society is widely regarded as an “acquaintance society” (shuren shehui,
熟人社会). Connections play an extremely important role in people’s lives. For the
Chinese, each person’s identity is intimately and essentially defined by their many
relationships within the intricate network of Chinese society (Utter 1987). One
anthropologist (Fei 1985) pointed out that the Chinese categorize their relationships by steps, from the self outward, much like the ripples created when a stone is thrown into a lake. He defined this cultural feature as a “differential mode of association (chaxu geju, 差序格局).” The Chinese view the self as “the totality of relationships touching one’s life” (Utter 1987, p. 396), thus preserving a relationship is paramount. Moreover, because people are closely connected with each other, interpersonal conflict never affects only the primary parties; rather, that “which touches one person must inevitably reverberate through the lives of a host of others” (Utter 1987, p. 394).

In contrast to the individualism and liberalism in Western societies, Chinese society reinforces one’s obligations to others, i.e., those in the network of family, friends, neighbors, colleagues, etc. There is no such a thing as an individual “right” in Chinese legal culture (Liang 2011). The bearer of the “right” is the one whose properties, interests, or feelings have been harmed – the “victim” according to the Western concept. However, if the “victim” raised his claims, he would be laughed at or treated as an outcast by the community, because by doing so, he would violate the mutual obligation that everyone within the same community owes to each other. An encouraged virtue would be ren (forbearance). Due to their obligations to others, those faced with injuries and suffering are supposed to exert endurance and even forgiveness. This orientation toward obligation was well captured by Montesquieu et al. (1748):

The principal object of the Chinese legislators was to have their people living [in] tranquility. They wanted men to have much respect for each other; they wanted each one to feel at every instance that he owed much to the others; they wanted every citizen to depend, in some respect, on another citizen. Therefore, they extended the rules of civility to a great many people. (p. 317)

2 Traditional Dispute Settlement in China

Recourse to litigation was definitely a breakdown in an interpersonal relationship and hence was greatly discouraged by rulers throughout Chinese history. A good man must not have issues with others, while those who brought lawsuits were usually considered morally reprehensible. Such a repressive attitude toward conflict stemmed, on the one hand, from the need for governance; on the other hand, it embodied a pursuit of harmony in society. Under the harmony mores, the law was to teach people to avoid conflict with each other, rather than to specify a person’s rights in the conflict as in the Western legal system. Overall, the responsibility of the state and the mission of the law were not to coordinate people’s conflicts but to eliminate conflicts (Liang 2011). However, just as in any other society, conflicts could not be eliminated entirely; therefore, mechanisms for resolving conflicts had to be functional and accessible.

Throughout Chinese history and over the extensive rural areas in China, mediation has been dominant in dispute resolution (Cohen 1966; Lubman 1967; Huang
Dispute settlement was mainly performed by the county organizations (Jun 1994), comprised of a system of families, villages, clans, guilds, etc. The mediation was based on the Confucian social norms of *li* and, hence, was recognized or given tacit consent by all the dynasties. Only the most serious cases in a village were referred to the officials; most matters of conflict or crime were specified for settlement at the village level, and the officials were ordered not to interfere.

Although the village was given the maximum autonomy in managing and administering its own affairs, the central authority still monitored it via the rule exercised indirectly through the local elites to make sure that the community order conformed to the state sovereignty. The founder of the *Ming* dynasty (1368 AD–1644 AD), for example, attached importance to penetrating the villages and ensuring that the local populace’s behavior and beliefs conformed to the ideals advocated by the government (Farmer 1987). The elders and the village leaders had the duty to settle local disputes and establish a positive moral influence over the community. In the *Qing* dynasty (1644 AD–1911 AD), the reach of the official state apparatus was quite limited, and much of the work of government was undertaken in “a third realm” in which the state and society collaborated (Huang 1993). The local magistrates incorporated community and kin mediation in dealing with civil matters: There was mediation or conciliation both in court and in the community. According to Huang’s study of Qing’s civil justice, in these cases, an out-of-court resolution of the dispute through the efforts of community or kin mediators was very common. As he described based upon an examination of the historical archives:

> Upon satisfactory resolution of the matter, the plaintiff was expected to petition to close the case, explaining how it had been settled. Alternatively, the group of mediators—community or kin leaders, the local xiangbao, or one or more local notables—might submit the petition to close the case and recount how the dispute had been settled. Such petitions usually mentioned that the two parties had observed the appropriate ritual of apologizing to one another (bici jianmian fuli [or peili]), or that the offender had apologized or otherwise made amends, and that both parties wished to end the suit (juyuan xisong). In the event injury was involved, some reference also would be made to the fact that the wounds had healed (shang yi quanyu). (Huang 1993, p. 266)

The magistrates usually granted the petitions from the plaintiff and the offender, or from the mediators, to close the case, showing leniency to the parties in dispute and respecting local customs and culture. They would attach a note of warning, e.g., “if this person should cause trouble again, the matter will be dealt with severely,” or “if this person should engage in such unseemly behavior again, he will definitely be arrested and punished” (Huang 1993, p. 266).

In addition to the cooperation between the official and unofficial processes, village mediation was a typical “third realm” dispute resolution mechanism at the grassroots level.

First, the invited or self-appointed village leaders come to the involved parties to find out the real issues at stake, and also to collect opinions from other villagers concerning the background of the matter. Then they evaluate the case according to their past experience and propose a solution. In bringing the two parties to accept the proposal, the peacemakers
have to go back and forth until the opponents are willing to meet halfway. Then a formal party is held either in the village or in the market town, to which are invited the mediators, the village leaders, clan heads, and the heads of the two disputing families. The main feature of such a party is a feast. While it is in progress, the talk may concern anything except the conflict. The expenses of the feast will either be equally shared by the disputing parties or borne entirely by one of them. If the controversy is settled in a form of ‘negotiated peace’, that is, if both parties admit their mistakes, the expenses will be equally shared. If the settlement reached shows that only one party was at fault, the expenses are paid by the guilty family. If one party chooses voluntarily, or is forced, to concede to the other… it will assume the entire cost. When the heads or representatives of the disputing families are ushered to the feast, they greet each other and exchange a few words. After a little while they will ask to be excused and depart. Thus, the conflict is settled. (M.C. Yang 1945, p. 165–166; as cited in Jun 1994, p. 27)

According to Jun (1994), this type of village mediation was sought only when informal mediation proved unsuccessful, the family and clan organization proved too weak to settle the dispute, or the disputing parties were from different clans, causing difficulty in solving the problem.

In settling disputes, the heads of the family and clan concerned, the gentry or other respected persons were often invited to mediate the conflict jointly. Disputes were frequently settled at the village or town tea-house, which was often found to provide a congenial as well as a neutral and public setting for restoring harmony (Jun 1994, p. 26).

Settling disputes in a peaceful way and restoring harmony within communities mostly applied to ancient Chinese society (Jun 1994). A number of criminal matters were also settled this way, even if they were supposed to be reported to the authorities. The exact proportion of these cases remains unknown due to the limited amount of historical data. McKnight (1981) assumed that in the late imperial times (from the end of the first millennium to the last imperial dynasty), there was an increase in the proportion of criminal matters dealt with by agencies other than the state. As he explained, the foreign dynasties (or alien states) ruling the Chinese had less of a capacity to dispense official justice. Because the body of officials remained Han Chinese, influenced by Confucian philosophy, they may have been more concerned with preserving traditional culture, e.g., by respecting local customs and harmony.

The preference for local community settlement, such as mediation or peacemaking, although primarily driven by Confucian philosophy and values, also had something to do with the traditional legal structure. Chinese law, with very few clauses regulating civil affairs in the imperial formal codes, criminalized almost every type of civil dispute, allocating guilt and punishment to the parties in dispute, instead of differentiating rights from obligations. For fear of official sanction, the ordinary people entrusted their disputes to local organizations by seeking help from a respected or elder authority from the same community. Most civil cases and minor offenses were resolved within the community and attended by all the affected members. According to Lubman (1999), in the local community settlement, the “peace-talkers” or guild/clan leaders usually tried to bring the parties to a compromise without imposing a decision on them.

For traditional Chinese people, offenses were understood not in an official sense but as a violation of human feelings and community bonds. The aim of the settle-
ment was not to exclude the guilty from the community or to impose suffering on him. Rather, the ideology was to achieve the greatest harmony possible among the parties and, more importantly, the community. Thus, a breakdown in social harmony far outweighs an individual concern.

3 Traditional Chinese Mediation and Western Restorative Justice: Convergences and Divergences

The Confucian philosophy, which stresses the virtue of harmony, has produced very strong social pressure against conflict and in favor of mediation and compromise. The community is not composed of equal individuals; rather, everyone’s status and prestige is predetermined and known to the community members. To resolve conflicts within the community, the moral authorities from families, clans, and villages are all invited to decide upon the matters. This mechanism protects against state coercion and relies on a community’s own resources. The agreement reached signifies harmony between the disputing sides and within the community and, thus, restoration.

Although it has been said that restorative justice (RJ) was commonly found in non-Western communities’ early methods of resolving conflicts, the process comprising Chinese mediation can be totally different from what modern restorative justice would appreciate. However, both seek to resolve conflicts within the community. Restorative justice practices give decision-making power to the participants. In Chinese mediation, the mediator represents the moral authority in the community and has great influence on both sides, while the mediator/facilitator in many Western RJ settings is usually a trained volunteer or professional and has no moral weight in the disputants’ lives. Braithwaite (2002), despite promoting the democratic decision-making model, recognized that “it might be wrong to persuade Asia to democratize their restorative justice practices. There may be merit in special efforts to recruit exemplars of virtue, grace, mana (italic in original), to participate” (p. 53).

Chinese mediation does not specifically attach importance to personal needs or rights but places greater emphasis on the solidarity and harmony within the community or society. In collectivist societies, individuality is devalued, and the individual’s rights and needs are repressed. Rather, one’s obligations and duties to others are stressed. In Western RJ, however, the victim is acknowledged as the direct bearer of the harm. Following that perspective, victims should be given the opportunity to tell their story of suffering, to be vindicated, and to be empowered when they walk out of the room. In Chinese mediation, individuals are considered selfish if they only care about their own needs or interests, therefore neglecting the harmony of the whole community. Perhaps there is not an obvious distinction between the perpetrator and the victim, because when a relational dispute occurs, both suffer the harm resulting from the broken relationship.
The judgment of what is right and wrong during Chinese mediation is based on *qing* 情 (human feelings) and *li* 理 (customary rules), rather than a clear legal responsibility set by the law, as may be embraced by many of today’s restorative justice practices. Braithwaite and Pettit (1990) used the concept “dominion” to counter criticism from just desert theorists on the grounds of a lack of protection of legal rights. “Dominion,” meaning freedom as non-domination, represents the minimum standard for safeguarding both offenders’ and victims’ rights in restorative justice. The criminal justice system supervises and takes care of any failure in the restorative justice process. In Chinese mediation, substantive justice has priority over the “due process” paradigm; there can be no such “Sword of Damocles” hanging over the parties in dispute, because the courtroom is generally believed to be impersonal, distant, and less relevant.

In order to achieve a resolution between the two sides, Chinese mediation may involve many techniques, such as persuasion, lecturing, education, etc. In some RJ practices, a “script” or “peace stone” is used in order to facilitate an equal dialogue. Facilitators/mediators cannot push the perpetrator or the victim into any settlement. If there is unwillingness, the process can stop at any time if one side so chooses. In Chinese mediation, the mediator, the community representatives, and other participants all make efforts to persuade each side to compromise and take a step back. The pressure from those involved is certainly tolerable. A final agreement that restores harmony is greatly appreciated.

Although Christie (1977) sounded the alarm that in Western societies, “conflict” has been stolen from the community by the state, we have probably seen how conflict was resolved in non-Western societies, despite the great divide between the approaches and the values of the East and the West. Triandis (1995), in *Individualism and Collectivism*, wisely pointed out: “[M]any problems of modernity in the West can be linked to too much individualism, whereas a lack of human rights can be attributed to too much collectivism” (p. 2). Not only are there differences in the approaches to crime, there are also nuances between the fundamental assumptions of restorative justice and the perceptions of conflict resolution in China.

### 3.1 Defining Harm

Chinese “mediation” is a term for bringing people together to resolve conflict. It is not, however, as limited as the modern concept of “victim-offender mediation,” in which only the victim and the offender or, at most, their respective parents (in the case of juveniles) are invited. For the Chinese, the conflict is perceived as a community affair, and all those involved on both sides, as well as the community leaders and respectful persons, join the “circle” or “conference” to see the issue resolved.

In RJ, harm has been defined very broadly, including “material losses, physical injuries, psychological consequences, relational troubles and social dysfunctions” (Walgrave 2000, p. 260). Although the RJ literature to date has comprehensively focused on harm toward the victim, theoretically, it has defined harm at the indi-
vidual, relational, and societal levels (Walgrave 2008). Thus, RJ theorists have supported the claim of a balanced attention to the needs of the victim, the community, and the offender (Bazemore and Maloney 1994).

However, the traditional practice in China seems to initially treat harm as relational and as having an orientation toward the community or the society. If one has a conflict with another, their relationship has been broken; therefore, as community members, the conflict between them interrupts the harmony (peace) within the community or, in a larger sense, in the society. Community leaders thus feel a need to restore peace within the geographical place over which they have authority.

3.2 Defining the “Victim”

Restorative justice places the victim at the center of attention and tries to meet the victim’s needs. In Chinese society, because the harm is relational, all sides – the offended, the perpetrator, and their families – suffer from the occurrence of the conflict. In particular, the offender’s family is affected to a greater extent, because it now bears great pressure and blame. As stated above, having a delinquent family member is considered as “losing face” (diulian, 丢脸), and all the family members can only bow their heads in front of their neighbors. The family then must stand up and make an apology for the wrong caused. This, presumably, shifts the attention from the person who is directly affected to the offender and his family. Mawby and Walklate (1994) critically commented that victims do not necessarily enjoy better treatment in non-Western systems of dispute settlement than they do in Western industrial societies. We would argue that in a collectivist culture, in which individuality is downplayed, the definition of a victim is different from that in Western societies.

Chinese mediation emphasizes the pursuit of harmony within the community and within interpersonal relationships, a goal shared by modern Western restorative justice. However, as discussed above, there may be differences with Western restorative justice, but the fundamental divergence may lie in the following: While Western restorative justice has defined a crime as “a violation of people and interpersonal relationships” (Zehr 1990, p. 19), implying one individual against another, Chinese mediation places interpersonal relationships and harmony above the individual. Thus, the understanding of a “victim” in the Western sense does not necessarily apply in a non-Western society such as China.

4 Mediation in the Republic of China (1912–1949)

The traditional dispute settlement was recontextualized to include new functions and roles in the “new China,” which was founded in 1949 after the Communist Party finally took control over mainland China through violence and revolution. It might
be worthwhile to briefly describe the period prior to the Communist takeover. Throughout the first half of the twentieth century, even though Chinese society frequently suffered civil wars and engaged in the War of Resistance against the Japanese (1937–1945), mediation survived this societal turbulence. As demonstrated below in this section, mediation continued to function as the primary way of resolving conflicts throughout the vast rural land, where peasants accounted for the largest portion of the population. In the cities, the courts, the police, the prosecutors, and the prisons were increasingly influenced by Western legal systems in terms of the way they functioned. It was a widely shared belief among intellectuals and reformists that Confucian culture and the two thousand years of feudalism it sustained were the reasons that China was backward and bullied (Lin 1979). The way out, according to these intellectuals and reformists, was to modernize Chinese society. Apart from developing industry, another crucial solution was to overhaul the traditional criminal justice system and to replace it with a whole set of advanced Western legal systems (Michael 1962). The German legal system was heavily emulated. However, these endeavors experienced very little success (Tay 1968). Still, traditional mediation had great vitality during the Republican period in countering the legal system as an instrument of modernization, and it largely operated on the basis of community autonomy with limited state intervention (Li 2009).

Early in the Republic of China, a nationwide mediation organization was yet to be established, but traditional civil organizations (minjian zuzhi, 民间组织) continued to play a significant role in resolving conflicts. In the period of the Nanjing Nationalist Government (1928–1949), xi song hui 息讼会 and xi zheng hui 息争会 were built across the country. Although most of the constitutions for these committees did not specify the scope for mediation, a variety of disputes could be addressed (Luo 2013). For instance, the Constitution for Village Xi Song Hui 乡息讼会在 Hebei Province prescribed that “except death and theft cases, as long as the sides involved in the dispute request mediation and reconciliation, (the cases) should be decided fairly” (Luo 2013, p. 136). Usually, when hearing the case, renqing 人情 (human emotions) and gong li 公理 (common sense) were observed, while persuasion and peace were held as the key principles.

Based on some constitutions of xi song hui, a set of procedural requirements can also be identified. The mediators (gong duan yuan, 公断员) should remain fair and neutral, for instance, the “gong duan yuan should claim based on conscientiousness, conduct mediation in a proper way; (he/she) should not be influenced by private feelings such as closeness of relationship (qinshu, 亲疏), reciprocity and resentment, likeness and anger” (Luo 2013, p. 136). Moreover, gong duan yuan must not accept gifts beforehand or rewards afterward, and any violators would be punished. The mediation process was generally made public with a few exceptions, and at least half of all the committee members participated.

Later on, these xi song hui and xi zheng hui were replaced by mediation committees. In 1929, the Nationalist Government promulgated the Town Self-Governance Committee. 

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5 Literally translated, they are the quenching litigation committee and the quenching conflict committee, respectively.
Implementation Law and the District Self-Governance Implementation Law, both prescribing that mediation committees be set up to resolve civil and criminal matters withdrawn from the court. More legal efforts can be found in the national 1931 Rules of Competence for Qu 区, Xiang 乡, Zhen 镇, Fang 坊 mediation committees and the national 1943 Organizational Rules on Xiang Zhen 乡镇 mediation committees. In addition, each province, county, and town laid down their own rules or regulations based on the local circumstances.

Note that the matters listed in the Organizational Rules on Xiang Zhen mediation committees comprised rape by means of guile (Article 229, Criminal Law of Republic of China), incest (Article 230), infringing marriage and family (Articles 238, 239), assault and battery (Articles 270-1, 281, 284), infringing freedom (Articles 298-1, 360), endangering reputation and credit (Articles 309-1, 310, 312, 313), infringing confidentiality (Articles 315, 316, 317, 318), theft (Article 324-2), encroachment (Articles 338, 324-2), fraud (Articles 343, 324-2), and damage (Articles 352, 354, 355, 356). Additionally, criminal matters that had been brought to court could still be mediated by the mediation committees.6

The following is an account of the work of a mediation committee in an administrative village of Sichuan Province in 1948 under the Nationalist regime (Barnett 1963, as cited in Cohen 1968):

The Mediation Committee in the Hsiang Government is a five-man board (according to the regulations, there should be seven) responsible for administering justice. There is no court of law in the Hsiang. All disputes that can be handled locally are settled by this committee on the basis of equity. For example, if a man is accused of robbery, his neighbours escort him to the Mediation Committee, which hears both sides of the case, decides whether or not the man is guilty, and then proposes some sort of settlement that is accepted by all concerned. Crime is not a serious local problem, however. In the rare cases where a serious crime is committed, the man is sent to the Chungking Local Court for trial. Normally, he would be sent to the Hsien Local Court, but Pahsien has no court of its own and uses the one nearby in Chungking.

The Mediation Committee holds its sessions on market days, and at each session a minimum of three committee members must meet to handle the cases brought before them (they average two to six cases each market day). Decisions must have the concurrence of at least two committee members and the committee’s chairman. If the disputes are trivial and informal, the meeting is held in a teahouse. If they are more serious and a formal written report is presented, then the session is held in the Hsiang Office. All the current committee members are old men who have the respect, and command the deference, of the entire community. Four of the five belong to the group of twenty-one gentlemen [leaders] already mentioned. None of them receives any salary for serving on the committee.

The cases brought before the Mediation Committee in Hsieh-mahsiang include petty criminal cases such as stealing, commercial disputes, personal arguments, debt trouble, and landlord-tenant disputes. (p. 129–130)

Only serious crimes were brought to court, while larger numbers of crimes were dealt with by the nongovernmental committees. With no intent to generalize, the

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6See Luo (2013). The original is in Chinese; as such, the English translation is by myself.
above material may provide an indication about the notion of crime as it was understood by most of the population. That is, in most cases, crime was not understood as an offense against the state, and the offenders were not ostracized. This was a great contrast with the Western notion of crime. In the modernization of the criminal justice system in the Late Middle Ages in Europe (Langbein 2003), the state had taken over conflicts, distancing the offenders and victims and taking revenge in a “legitimized” form by sentencing the offender to prison. Because the crime occurred in the community, its solution should be provided by the local people within the same community. Even when some of the disputes were brought to the officials, the idea was not to alienate but to bring peace.

Cases brought to court could also be mediated by the judges in the Republican Era. Interestingly, an order issued by a judicial administrative minister on 3 June 1943 addressed how the judges should conduct mediation:

*First, he should depart from the judge’s ground, behaving himself as a mediator. When observing and listening, he should express the intent to resolve the disputes and let people have peace (xishi ningren, 息事宁人), making sure that both sides are convinced and contented, willing to mediate; then (he) should deliberately investigate the causes and development of the disputes, the character of the disputing parties, their experience, and their daily contacts and relationships. The aim is to identify the root causes, offer an equitable solution based on the time and the context, and inform both sides of the advantages, disadvantages and the policy. When a quarrel of greater intensity emerges, it is preferable to have a temporary interval, hold private discussions with each side and try to persuade them separately. If they are accompanied by relatives and friends, they should be allowed to be present should they so wish, or stay outside and assist in the persuasion. When an antecedent mediation is suitable, a recess is ordered, and mediation should come first. All in all, (if the mediators) are not afraid of fatigue and expenses, and harbour good will, then nothing is impossible for a willing heart, and mediation is more likely to achieve an effect.*

According to Huang’s (2006) investigation into the documentation, as well as the civil cases preserved in the country’s archives (Huang 2006; Chen 2008), the business of the courts was mainly to adjudicate, while mediation was done extrajudicially by community and kin. In no case would a court make a serious effort to push the two sides toward a mutually acceptable settlement. Mediation operated to greater effect in the Republican period in society itself, and community mediation continued to play a significant role in the justice system as a whole (Huang 2006).

The Nationalist Government, which made substantial efforts in advancing China toward the Western model of the rule of law, acted progressively – albeit with difficulty – in respecting and preserving Chinese traditions (Chen 2008). As a result, crime remained a local problem and was dealt with by the local community with the help of mediation committees and their mediators. Community autonomy was respected and shielded from state intervention. However, the Nationalist Government retained only nominal control over China, and the Communist Party ruled over most of the country (Leng 1967).

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7 The 3098 order by the judicial administrative minister on 3 June, the thirty-second year of the Republic of China, in the Wartime Judicial Summary, 1948, p.165; as cited in Luo (2013, p. 142), my translation.
5 Mediation in the People’s Republic of China

5.1 Early Period of the Socialist Regime (1949–1978)

5.1.1 Politicalizing Crime and Conflict

Following the triumph of the Chinese Communist Party (CCP) and the founding of the “new China,” the socialist regime led by Mao immediately endeavored to consolidate its leadership. The notion of conflict suddenly fell within the ambit of “class struggle.” Throughout the continuous revolutionary campaigns and reforms, Chinese society was split into “the people,” i.e., those who were in favor of the socialist regime, and “the enemies,” i.e., those who were against the CCP. Likewise, “conflict” was also classified as “between the people” and “between the people and the enemies.” For conflict “between the people,” a milder approach was used, such as self-criticism and socialist education. For conflict “between the people and the enemies,” repression was the rule, although leniency could be granted when these reactionaries agreed to reform through labor and turned themselves in to the new socialist regime. According to Huang (2001), in the wider form of criminal process, harsh treatment, stigmatization, and exclusion were imposed on these enemies.

After all the previous legal codes enacted by the Nationalist Government were abolished, for a period, there was neither criminal law nor criminal procedure law in China. However, the trials of these enemies continued based on the regulations and policies made by the party itself. Criminality was defined as acts that did harm to the socialist state, and those who were against or presumably opposed to the socialist regime were offenders. “The state apparatus, including the army, the police and the courts, is the instrument by which one class oppresses another. It is an instrument of the oppression of antagonistic classes; it is violence, not ‘benevolence’...” (Mao 1967, vol. 4:445–446, cited in Mühlhahn 2009, p. 200). The criminal justice system, established in the absence of a criminal code and a criminal procedure code, was based solely on the socialist ideology. As Michael (1962) commented, “[l]aw in the sense of norm no longer exists... the social order is to be reduced to that of a monist Communist power system, the totalitarian state” (p. 147). Crime was defined by the interests of the socialist regime. The 1979 Criminal Law and Criminal Procedure Law continued to be characterized by this notion.

5.1.2 “Institutionalizing” Mediation

While a formal criminal process was almost nonexistent during the first 30 years of Communist China, large numbers of conflicts were handled in an informal way. In fact, not long after the founding of the socialist regime, the State Council promulgated the Provisional General Rules for the Organization of People’s Mediation Committees (25 February 1954), the first legislation specifically regulating mediation throughout the country. A People’s Mediation Committee, according to this
regulation, was defined as the masses’ organization, working under the guidance of the local people’s governments and the people’s courts (Article 2). The task of the mediation committees was to mediate ordinary civil disputes among the people and minor criminal cases, and through mediation, they also had to conduct policies concerning propaganda-education, laws, and decrees (Article 3). The mediators should be selected from among those “whose political appearance is clear and who are impartial, linked with the masses, and enthusiastic about mediation work” (Article 5). By the end of 1954, in less than 10 months, 155,100 people’s mediation committees had been set up in both the countryside and the cities (Jun 1994). Perhaps the most astonishing figure in the Chinese criminal justice system is the number of cases (this will be touched on in the next section) that have been handled by this mass organization since the founding of the People’s Republic of China (PRC).

The dramatic departure of the semiofficial mediation organization from traditional Chinese mediation perhaps lies in its politicization. This process was compounded by the frequently launched political campaigns aimed at protecting the socialist regime, the high point being the 10-year Great Proletarian Cultural Revolution. The practices of the people’s mediation committees during that period may provide some insights about how they worked. The following description is based on an article by a headman of the court at the county level on the role of mediation. People’s mediators voiced their support for the party’s policy and ideology, “under the Party’s as well as Mao’s leadership…we promise to work hard, diligently and with creativity, and will never be afraid of trouble.” It was also asserted that “mediators should under the uniform leadership of the party, be equipped with more intensive political and ideological education.” To benefit the socialist production and reinforce solidarity among the people, the mediators spared no expense to provide mediation services. Cited in the same article, a divorce case involving assault was discussed in which the wife was persuaded as follows:

Only the people’s government would come to persuade you. If it were the reactionary government in the past, even if you died ten times, who would care about you? Yin mediator did not eat one meal at your home, and he also criticized your husband and he admitted mistakes. Others persuaded you with such patience only for your own sake, that if you continued with the quarrel, you may feel ashamed about this.

It was said that the wife was greatly touched and did not claim divorce or suicide, and they both lived peacefully. It was not uncommon to find that the policies and interests of the party were cited during the mediation process in order to convince the disputants to surrender. While minor criminal offenses among “the people” were also dealt with by mediation, it arguably also helped the wrongdoers to correct their mistakes and induced conforming behavior.

Besides mediation, other forms of informal sanctions were widely used by local units (work units, residential committees, etc.). These sanctions were summed up by

8 The script was taken from Zhao (1958).
9 Ibid.
Mühlhahn (2009, p. 214) as follows: “Private criticism education through a member of the local unit, usually a party cadre; private warning by a functionary or an official; criticism in front of a small group; criticism in front of a larger group; censure as a harsher degree of criticism, involving oral or written statements of self-denunciation, self-examination, and repentance; discussion session to make the offender see reason; struggle session involves shaming and public humiliation and physical intimidation.”

Given that most disputes arose among the people, not between the people and the non-people (the enemies), a series of measures were used according to the context and the circumstances. The policy for handling these disputes and misdemeanors was formulated in an explicit way in the following quotes (Cohen 1968):

Our firm and unchanging policy for handling disputes among the people is to use persuasion-education and mediation. The basic method is energetically conducting socialist and communist education of the vast masses of people and propagandizing socialist law and discipline, thereby heightening the political awareness of the masses of people and their concept of law and discipline and preventing or reducing the occurrence of disputes. When we say that in resolving disputes one should persist in persuasion-education and in mediation, we certainly do not mean to reject the use of appropriate coercive sanctions when they are necessary. Persuasion-education and mediation have principles and a standpoint. Their principles are the benefiting of unity among the people and the benefiting of production and construction; their standpoint is the use of proletarian concepts to analyse affairs and to resolve problems. They are not vulgar mediation methods that rely on some abstract, supra-class “fairness” and “humanitarianism” or that in an unprincipled way make big matters into small matters and small matters into nothing. If we do not censure those who ought to be censured and if we do not give sanctions to those who must be sanctioned, then we cannot effectively educate the parties and the vast masses of people.

Family meetings resolve family disputes. Since family disputes are problems within the same family, a meeting of the family members living within the same household may be held so that they can take the initiative in discussing the problem and resolving them. When necessary, they may invite relatives, friends, or neighbours to participate in the discussion in order to clarify right and wrong so as to arrive at a resolution of the dispute. It is their own affair, and this is a method whereby they themselves analyse and resolve it. (pp. 141–142)

During the initial 30 years of the socialist regime, the party-state had gradually extended its influence deep into the lives of ordinary people, which manifested itself by politicizing informal organizations into semiofficial apparatuses. The wider part of society, which had not been touched by the past regimes, had now been incorporated into the socialist program, which has exerted its role as an instrument of propaganda-education and social control ever since. It was through its organizational web that the party’s authority over the mediation process was distributed and wielded (Lubman 1967). This observation is also supported by the sociolegal analysis of Li (2009). His study suggested that “from 1949 to the mid-1970s, we notice a clear pattern of the ruling political party’s gradual organizational penetration into the grassroots level of society, a situation that had never been seen before in Chinese history” (p. 249). Meanwhile, the Maoist ideology of mediation, which bore stark

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differences from the earlier Confucian ideology, expanded the meaning of mediation, giving it a far more aggressive and interventionist nature, irrespective of the will of the disputing parties (Huang 2006).

5.2 Conflict Resolution After the 1978 Opening Up and Reform

5.2.1 Defining Criminality Through Legislation

In the late 1970s, the party, under the leadership of Deng Xiaoping, was determined to steer the country back onto the right track, ending the chaotic political upheavals. The bold program of Opening Up and Reform was established as the state policy. A well-rounded legal system had to be put in place to facilitate economic development. Early in 1979, the Chinese criminal law (hereafter CL) and the criminal procedure law (hereafter CPL) were passed, respectively, by the National People’s Congress. From the onset, both of these laws were strongly saturated with the ideology of the Communist state, with the Marxist-Leninist-Mao ideal as their guiding principle (Article 1, CL and CPL). The goal of the implementation of the criminal justice system became to punish criminals and protect the people (Article 1, CPL). A standard criminal process, similar to those in the Western world, was laid down, consisting of proceedings ranging from investigation, prosecution, pretrial, trial, and court sentencing to execution.

The 1979 Criminal Law consisted of eight categories of crimes: (1) counterrevolutionary, (2) endangering public security, (3) undermining the order of the socialist market economy, (4) infringing upon the rights of the person and the democratic rights of citizens, (5) encroaching on property, (6) disturbing the public administrative order, (7) disturbing marriage and family, and (8) dereliction of duty. The power to regulate crime was seemingly centralized to the state, in contrast to the relatively scattered approaches to crime before 1979. For instance, violently intervening in marriage freedom now constituted a crime based on CL and needed to be handled through the formal court procedure. In conducting a criminal lawsuit, the people’s courts, the people’s prosecutors, and the public security organs had to divide their responsibilities, coordinate their efforts, and check each other to ensure the correct and effective enforcement of law (Article 5, CPL).

The 1979 Criminal Law was later replaced with the 1997 Criminal Law, and the 1979 Criminal Procedural Law was replaced with the 1996 Criminal Procedural Law. To conform with the spirit of the legal systems of many other countries, the new CL established “nulla poena sine lege (no crime without law)” (Article 3), equality before the law (Article 4), and proportionality (Article 5) as its fundamental principles (Qu and Chen 2008). The categories of crime were provided with the following slight adjustments: (1) endangering national security (i.e., espionage), (2) endangering public security (i.e., arson, sabotaging public transportation), (3) undermining the order of the socialist market economy (i.e., smuggling, financial
fraud), (4) infringing upon the rights of the person and the democratic rights of citizens (i.e., murder, rape), (5) encroaching on property (i.e., theft), (6) disrupting the order of the social administration (i.e., drug trafficking, organizing and forcing prostitution, manufacturing and selling obscene publications), (7) endangering the interests of national defense (i.e., sabotaging military weapons), (8) graft and bribery, (9) dereliction of duty (i.e., governmental official abuse of power), and (10) crimes of the violation of duty by military personnel (Lu and Kelly 2008). The order of this arrangement revolved around the severity of the harm each crime caused to society or the public interest, where applicable. The principles underlying the Chinese criminal justice system had changed. Crime was now seen as a rebellion against the state. Tackling crime became the monopoly of the state, including the public security organs, the prosecutor’s office, and the courts.

If crime had been previously perceived as being not among “the people,” but committed by the “enemies,” there was now a perception of rising disorder, whereby crime challenged the entire modernization program and the power of the party. In dealing with this, the new leadership, led by Deng Xiaoping, believed firmly in the use of harsh punishment. The criminal justice system, since its establishment in 1979, has been marked by the frequent use of strike hard (yan da) campaigns, namely, in 1983, 1996, 2001, and 2004.\footnote{The one launched in 2004 particularly focused on organized and gang crimes, violent crimes, and thefts.} Being swift and brutal, strike hard campaigns were launched at the expense of offenders’ rights and judicial fairness (Chen 2004a, b). Harshness in itself became the core of the argument in criminal justice policy (Bakken 2011). All these campaigns were launched in an attempt to halt the rising crime, to free society from hard-core criminals through harsh penalties and executions, and to frighten the population away from criminal involvement (deterrence). Capital punishment was used extensively, covering crimes ranging from the most severe to very minor and, sometimes, the slightest violations. Although data on crime prior to 1983 was unavailable, data on the crime rates from 1984 to 1988 showed that this draconian campaign did not manage to achieve any long-term effects (Bakken 2000). What ensued, however, was the fostering of a punitive culture in society. As Bakken (2011) asserted, changes in public attitudes toward harsh punishments are highly dependent on the state’s own practices of punishment. Offenders were perceived as the “other” and, therefore, as deserving punishment with no mercy. Arguably, it was presumed that the state’s interests lie in social stability; when the crimes jeopardize the social order, they deserve to be dealt with by criminal law.

5.2.2 People’s Mediation in Handling Conflicts

People’s mediation has appealed to international scholars (Goh 2002; Cohen 1967; Wall and Blum 1991; Lubman 1967; Cloke 1987). Here, we briefly examine the legislative efforts to bring the people’s mediation committees under the framework of the rule of law, as well as the challenges and weaknesses associated with its functioning in the new broader societal context.
People’s mediation committees expanded quickly, as can be illustrated by the following figures. By 1979, there were 410,000 committees and 3,000,000 mediation workers (Yu and Liu 2007). Three decades later, by 2010, there were 818,000 committees and 4,669,000 mediation workers. In 2010, 8,418,000 cases were handled by these local mediation organizations, which was more than those handled by the courts, namely, 7,022,000 (Law Yearbook of China Editor Committee 2011).

The 1982 Constitution recognized the People’s Mediation Committee as an important form of self-governing mass organization. In resolving conflicts in neighborhoods between groups, organizations, and individuals, it aims at promoting public morality and a sense of neighborhood (Wong 1999). Consistent with the practices formulated during the early years of the PRC, the committees handled a large number of disputes that may be qualified as “criminal” cases in Western legal systems. The mediated civil disputes include family disputes, housing disputes, conflicts between neighbors, damages and compensation, and a variety of other situations. Criminal cases could appear within some of these categories, such as conflicts between neighbors, damages and compensation, and so on.

In 1989, the new Organization Rules of the People’s Mediation Committee were approved by the State Council. Note that in this regulation, the authority over minor criminal offenses was withdrawn from the people’s mediation organization. Instead, the cases it addressed were of a civil nature, occurring in neighborhoods, among acquaintances, colleagues, etc. They included those concerned with divorce, inheritance, parental and child support, alimony, debts, real property, production, torts, etc. Mediation committees are branches of the villagers’ committees in the towns and villages and residents’ committees in the cities. They are also under the guidance of the local government and the local people’s court to conduct mediation. The mediation must clearly observe the stipulations of law, the regulations, and the party policies, and when they are not in place, the norms of public morality shall be observed.

People’s mediation has undergone reforms along with the national goals of the CCP (Halegua 2005). Legal scholars in China have questioned the legitimacy of people’s mediation on the grounds of problems with their approaches, in an era when there is an increasing demand for personal rights and legal protection. Yet the government perceives a need and an interest in increasing the use of people’s mediation to resolve conflicts in society. In 2010, the National Congress passed the People’s Mediation Law of PRC, granting the agreements reached through people’s mediation legal weight in court. The People’s Mediation Law requires that people’s mediation committees shall abide by the laws, regulations, and policies of the state (Article 3) and that the mediator shall report in a timely way to the local public security organ or another competent department when he finds that a dispute may become a public security case or a criminal case (Article 5). It stipulates that in mediating a dispute, one or several people’s mediators from the people’s mediation committee can either be designated or chosen by the parties. After obtaining consent from the parties, the mediators can invite relatives, neighbors, colleagues, or people with certain expertise to participate in the mediation (Articles 19, 20).

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12 The original term was Minjian jiufen 民间纠纷, my translation.
An examination is required to understand exactly how mediation based on the law is being conducted (Halegua 2005). The members of the committees are selected or appointed based on their political integrity and ideology. Many of them are retired party cadres paid by local justice bureaus. Interference from the government is likely to occur in these circumstances in the form of pressure on the mediator to favor the party’s interests and ideology when deciding upon the matter (Zhang 2013a, b). The parties may not be able to choose the mediator they want, and voluntariness during the mediation process, as well as in the final outcome, cannot be secured.

As one of the most informal social control mechanisms in Chinese society (Chen 2004a, b; Wong 1999), the main function of people’s mediation is to maintain social order and social harmony, as written in the People’s Mediation Law of the PRC 2010. Progressive efforts made by the government to promote people’s mediation in recent years, including the passage of the People’s Mediation Law 2010, need to be interpreted as responding to the intensified social conflicts that have manifested themselves in various types of negative incidents such as mass events (Halegua 2005; Wang 2013). The official utilization of comprehensive societal management in the name of social harmony has given rise to a quest by governmental offices and the judiciary to mobilize conflict solving – the “grand mediation” (da tiaojie, 大调解) (Zhang 2013a, b; Hu 2011). As in the past decades, the state has remained an active player in resolving disputes, although a proportion of these conflicts are between the people and the state (Hu 2011).

The extent to which mediation is used led Wall and Blum (1991) to name China the “most heavily mediated nation on earth.” Whether or not this argument was made with care, mediation declined in the 1990s (Di and Wu 2009), and since 2002, there has been a tendency to rely more on the courts to resolve a broad range of disputes and conflicts (Zhang 2013a, b). Di and Wu (2009) explained this evolution in relation to the broader social structure and social changes. They cited economic development, social transformation, and cultural changes, which are more evident in urban China. They maintained that, as a result of increasing economic activities, conflicts have increased in number, type, and complexity, posing new challenges to people’s mediation. The societal transition from an “acquaintance society” to a “stranger society” has weakened people’s traditional bonds with their work units or neighborhoods. Therefore, when a dispute arises today, traditional reasoning such as collective interests and social harmony no longer has the same persuasive power. On the road to modernity, with people’s enhanced awareness of rights and democracy, people’s mediation will inevitably face old problems, as well as new challenges.

6 “The End” After the End

Braithwaite (2003) considered that, with regard to restorative justice, “Asian legal traditions are a more useful resource than Western ones” (p. 17). When we examined conflict resolution in Chinese legal history and the important philosophies and
values from which it was formed, we share a similar opinion, although there are great divergences between China and its Western counterparts. As China modernizes under the socialist regime through the politicalizing and statizing of Chinese society, traditional mediation has been mobilized and transformed into people’s mediation. According to some scholars (e.g., Hu 2011), people’s mediation offers a place for the party-state to implement its ideologies and policies and to oversee every activity that may endanger the socialist order. Perhaps traditional mediation still exists in very rural villages or minor ethnic groups, where informal mediation by families, friends, neighbors, and colleagues is still favored (Cao 2008). One study by Song (2003) estimated that in the villages of Shandong Province, the number of criminal cases that are privately settled could be as much as 25%, although this is now prohibited by the law. Given the level of transformation to which the society has been subjected, this figure is dubious. A seed has been planted that the act of failing to hand a criminal over to the state is a crime in itself. A well-known recent example was that, in order to capture an escaped death-row prisoner, every corner of a village in a rural county installed CCTV and deployed well-equipped military personnel. A relative of the prisoner bound the prisoner when he came in for food and waited for the police to come. Suffering great guilt ever since, the relative murmured to the journalist: “No matter who he is, he would do the same.”

According to Wong (1999) and Braithwaite (1999), mediation-based informal control in China is the aspect that is the most similar to Western restorative justice. Indeed, in many respects, they bear a striking resemblance. For instance, they both aim to restore broken relationships and bring peace to disputing parties and the community (Mok and Wong 2013). Both emphasize negotiation and communication, rather than confrontation (Nie 2006). Both stress the role of community in crime prevention. Further, mediation programs in modern China and restorative justice practices in the West seem to have grown along parallel paths so far.

China’s modernization process, which has been salient in recent decades, has transformed the nature of mediation and the voluntary settling of differences through third-party facilitation or intervention by a state-sponsored or state-controlled program, the “grand mediation” launched in recent years (Zhang 2013a; Hu 2011). This seems to have contrasting implications. Di and Wu (2009) believed that China’s modernization and democratization process promises a bright future for people’s mediation in terms of involving and empowering the community. By contrast, Li (2009) suggested that empowering the community has become an unattainable dream in the face of a strong party-state. Conflicts in the form of demonstrations, protests, and collective complaints have habitually been perceived as a threat to its regime, rather than as a legitimate way of articulating citizen interests (Hu 2011). While the trends of community participation in Chinese civil society remain marginal due to the monopolized power exercised by the CCP (Taylor 2004), organizations have also emerged to strengthen civil society and enhance people’s participation in the decision-making processes affecting their daily lives (Taylor 2004).

Which of these developments provides a more accurate representation of the mediation being conducted today? What lessons can the Western restorative justice

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movement, which calls for the empowerment of the community, learn from China’s resolution of conflicts and achievement of harmony? Conversely, what are the implications of the theory and practice of Western restorative justice for reforms in Chinese mediation?

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