The comparison of victim-offender mediation programs between China and America

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THE COMPARISON OF VICTIM-OFFENDER MEDIATION PROGRAMS

BETWEEN CHINA AND AMERICA

A Thesis
Presented to the
Faculty of
California State University,
San Bernardino

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts
in
Criminal Justice

by

Yang Fang
June 1994
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ABSTRACT

One reason that American mediation programs have come of age is because of
the victim’s movement. Although China has a much longer history of mediation
practices, they have yet to develop coordinated programming and research practice
related to victimology.

Using a comparative methodology, this thesis analyzes the history of mediation
programs in China and America and attempts to explain the contributions of
victimology to their development. It will also explore the different models for
mediation, the philosophy behind them, and will critique current American programs.

This thesis describes the advantages and disadvantages of mediation programs
in China and America, and concludes that it is important to use mediation programs
as a mechanism of informal social control. It is not suggested that mediation programs
replace the justice system, rather that they be used as an additional resource in the
system’s effort to provide meaningful correctional services to the entire community.
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CHAPTER 1 INTRODUCTION

Crime victims are a social phenomenon. Because we have criminal law, we have both criminals and victims. From the historical literature it is not difficult to determine how our ancestors dealt with crimes and their victims. An "eye for an eye" and "tooth for tooth" was the basic philosophy of early societies. During that time, compensation and restitution were the main purposes of punitive sanctions against criminals. Victims held the right to punish offenders.

After this era, which some scholars refer to as the "golden time", victims were no longer seen as important. The government became the victim. Crime was considered an action against the government, which in turn, reserved the right to punish the offender. The victims' role was reduced to witness in the criminal justice system.

Victimology, as a social science, began in the 1940s. Von Hentig and Mendelsohn were academic pioneers in this field. In 1948, Von Hentig published his book to explore the relationship between criminals and their victims.

The study of victims spread rapidly throughout the world. For example, in 1963 New Zealand promulgated the first laws concerning crime victims which represent a milestone.

Several movements in the U.S. accelerated interest in the study of victims. For example, the civil rights movement, the women's movement, and the human rights movement all resulted in legislation and programming directed at protecting crime
victims.

Mediation programs are but one of many outcomes of the victim’s movement in the United States. The first victim-offender mediation program was started in Ontario, Canada in 1974, and today there are over 100 programs in the United States. The victim-offender mediation program is an alternative process available to judges and probation officers for dealing with criminal offenders. Programs offer a total or partial substitute for jail or prison sentences. Meetings are arranged between offenders and their victims, providing the opportunity for negotiation, reconciliation, and restitution. Cases usually come from probation departments or from the court. If victims and offenders are willing to accept mediation, they may meet with each other and a mediator, who is usually a volunteer. This gives both victims and offenders an opportunity to express their feelings. A written agreement may result between victims and offenders. If the mediation fails to yield a contract, the case returns to the criminal justice system.

Mediation programs are an informal mechanism to deal with criminal cases. They are not designed as an additional punishment. In America, mediation programs deal mainly, but not exclusively, with property cases. A recent development has been the inclusion of violent crimes. Many studies show that the programs are a success owing to the high percentage participant satisfaction with the process.

In China, the study of victimology has barely begun. There are no courses at the college level, and only a few theses on crime victims. China has yet to offer official seminars on victimology. Furthermore, there are no special laws protecting
crime victims. It would be valuable to develop victimology in China because there is a need to help victims with their suffering, to encourage victims to play a role in the criminal justice system, to protect victim's rights and to motivate the government to better serve people.

Although China does not offer formal studies in victimology, one can still find articles of law on protecting victims. China also has victim-offender mediation programs in practice. These mediation programs, which were founded in the mid-1950s, provide a very important informal mechanism to solve disputes among the people and to prevent crime, especially violent crime.

Chinese mediation programs are autonomous entities which solve the problems related to property, misdemeanor offenses, and daily disputes among people. Similar to the American system, victims and offenders are not coerced into accepting mediation. They participate by choice. Many mediators are volunteers who are knowledgeable in law, policy, and custom. Mediation is not a pre-criminal justice process. Sometimes the mediation involves not only the victim and offender, but also the work supervisors of both participants. Failure to negotiate a contract does not necessarily result in the offenders going through the criminal justice process. Many studies show (Cheng, 1990, Li, 1992) that mediation programs in China are very successful.

Mediation programs in China and America differ from each other because of political, economic, and cultural factors. However there is some common philosophical ground in the mediation programs of the two countries. One of the
purposes of this study is to compare the different systems of China and America and to explore the common ground between them.

Both America and China use philosophical frameworks as models to guide mediation. In China, they use the "shaming" model, the integration model, a self-examination model, and a decriminalization model in mediation. "Shaming" is explained as distress over guilt or disgrace. "Shame" is the feeling that the wrongdoer experiences when he recognizes his faults and wishes to change his behavior under the pressure of public embarrassment. Shaming models work via three elements: through public opinion spread by mass media, through stable interaction among people, and, through the wrongdoer's amenability. In integration models, the mediation focuses on uniting people rather than having them oppose each other. Self-examination models imply that people in mediation will re-examine their own faults which may lead to compromises, rather than accusations between the disputants. This requires understanding and forgiveness between comrades. The decriminalization model alleviates the burden of the justice system and prevents labeling, recidivism, and the possibility that an individual will become even more involved in a criminal or deviant lifestyle.

There are several models guiding American mediation programs. The first is the shaming model. Shaming involves expressions of community disapproval, which may range from mild rebuke to degradation ceremonies, which are followed by gestures of reacceptance into the community of law-abiding citizens. The second model, the reintegration model, focuses on making things right and repairing social
injuries. It allows both victim and offender to voice their side of the crime and express their feelings. This benefits the offender in reintegrating back into society. The self examination model in America helps crime victims reduce the tension and stress caused by fear of crime. It helps both victims and offenders face the truth with positive attitudes. The decriminalization model means that people solve their problems outside the formal criminal justice process. A formal system only serves to enhance the tension between victims and offenders while a social relationship is balanced through restitution and reconciliation. In the decriminalization model, guilt is removed through repentance and reparation rather than punishment and incarceration.

These philosophies and models are rooted in the political and cultural backgrounds of each country. Whether the mediation programs are successful or not depends on how the models are used. This thesis will explore the different philosophies and models used in mediation. Further it will examine how these models work as well as examine what we can learn from each country’s models. Hopefully, American mediation programs can be introduced to the Chinese people, and Chinese can learn from American experiences and enhance the science of victimology both in theory and practice.

This thesis will also confront the difficulties and conflicts that exist in mediation programs in both China and America. For example, what criteria should be used to evaluate the success of mediation? What kind of cases should be considered for mediation? Under what conditions does a particular model work best? How is the punishment aspect of mediation programs evaluated, and could better assistance be
offered to victims? These questions are related directly to the philosophies mediation programs and in the process, they relate to the assessments of success.

In summary, the purpose of this thesis is: to compare China and America in terms of the development of victimology, to explain the differences in philosophical mediation programs, and to explore how these models work. This essay will also critique current mediation programs, introduce American mediation programs and victimology to the Chinese people, and search for answers to some of the problems facing mediation programs.
CHAPTER 2 VICTIMS OF CRIMES AND VICTIMOLOGY

Understanding the Concept of Victimology

As a general concept, the term "victim" denotes a "living creature sacrificed to some deity. as a religious rite; or a person sacrificed in the pursuit of some object, one who is injured or killed, as by misfortune or calamity" (Black, 1983).

Victimology, derived from the Latin term "victimae", is a relatively new science focusing on the phenomenon of victims in society. There are two kinds of victimology: narrow and broad. As a narrow or micro concept, victimologists study only the individual crime victim. As a broad concept, victimology takes a macro view of all victims in society. Schneider (1979:15) defined victimology as an investigation of the "relationship between offender and victim in crime causation. It deals with the process of victimization, of becoming a victim, and in this context directs much of its attention to the problem of the victim-offender sequence". Mendelsohn (1979:59) viewed the concept of victimology as the "a branch of science which is concerned with all socially relevant categories of victims, individual or collective, with regard to the different types of damage." Victimology, in order to search for effective remedies, investigates the causes of victimization. Mendelsohn classifies the environment of victimization into six types: the bio-physical endogenous environment of the victim himself, the natural surroundings milieu, the milieu of changed surroundings, the social milieu, the antisocial milieu, the driving milieu (Young Rifai, 1979: 68). Mendelsohn’s purpose was to search for bio-psycho-social traits which are
common characteristics of victims.

On an international level, victimology is an accepted field of study in many countries. In 1984, the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held a special session on victims of crime in Ottawa, Canada. It developed a broad concept of victims in the Declaration on Justice and Assistance for Victims. Article II defines a victim as

a person who has suffered physical or mental injury or harm, material loss or damage, or other social disadvantage as a result of conduct which:
(a). is in violation of national penal laws; or
(b). is a crime under international law; or
(c). constitutes norms protecting life, liberty and personal security; or
(d). otherwise amounts to 'abuse of power' by persons who, by reason of their political economic or social position, whether they are public officials, agents or employees of the State or corporate entities, are "beyond the reach of the law"; or
(ii): although not presently proscribed by national or international law, causes physical, psychological or economic harm comparable to that caused by abuses of power constituting a crime under international law or a violation of internationally recognized human rights norms and creates needs in victims as serious as those caused by violations of such norms.

The breadth of this concept of victim includes not only national penal laws and crime under international law, but also internationally recognized human rights which encompass the U.N. Declaration on Human Rights, the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights, and the many specialized U.N. Rights covenants on women, workers, torture victims, and others. It
also incorporates the human rights protection of the UN's Draft Code on Transnational Corporations. It encompasses regional human rights declarations, such as from Europe and the Americas, and even non-governmental declarations like the Algiers Universal Declaration of the Rights of Peoples and the International Tribunal on Crimes Against Women (Elias, 1990:237). Although such principles are widely accepted political tools, it is harder to use these broad definitions in the exacting discipline of victimology and in criminal justice research.

This thesis will concern itself with the more narrow concept of victim. This concept of victim consists of three elements. The first is the victim who has been involved in a crime. A cause-effect relationship creates the crime victim. The victim suffers as a result of the criminal behavior. The second element deals with the classification of the victim as an individual or corporate person which includes legal entities, organizations, associations, communities, and the state. Thirdly, crime results from the victim's loss which many include financial loss, property damage, physical and emotional injury and even death. "Less obvious but sometimes more devastating are the psychological wounds left in the wake of victimization, that may never heal" (Skogan, Lurigio, Davis, 1990:7).

Although many are more likely to be seriously affected or victimized by acts of the state and large private corporations, this thesis is focused on efforts that have already been undertaken at the community level to resolve victimizations. This is only possible for people whose differences may be resolved through simple mediation. Perhaps it is more realistic to talk about crime victims because they are concrete,
vivid, and present in daily life. Again, in mediation programs, the participants are people who either commit or suffer from traditional crimes such as property, and/or street crime.

Victimology became popular in the late 1940s. Although some scholars feel that "the reasons for the recent, unprecedented growth of interest in crime victims rights across the world are not totally clear" (Maguire & Shapland, 1990:206), from a macro perspective the answers may be found in the development of politics, economics, technology, and social sciences throughout the world.

In terms of politics, in the early 20th century there was worldwide political turmoil. The First and Second World Wars created opportunities for people to upgrade the human condition. Protecting human rights and preventing holocausts became important issues in the United Nations. Meanwhile rapid economic changes also took place following the Second World War. Because of rapidly developing technology, working conditions were improved dramatically. Social welfare became more widespread and standards of living improved in many countries. These developments offer people the opportunity to address not only basic human survival needs, but also human rights such as security, satisfaction, independence, privacy, and freedom. As technology and the social sciences developed in the early 20th century, sociology, psychology, psychobiology and psychopathology became independent fields of study. The findings of researchers in these fields greatly affected people's daily lives. It became possible to explore human nature from many perspectives as the development of mass media and transportation made the world
seem smaller. News, technology, and ideology are all transferred rapidly throughout the world. Information about crime and victims are part of human interest not only for scholars and researchers but for all members of a concerned society.

Crime Victims in History and in Modern Society

The importance of victims' role has varied throughout history. First, victims had the absolute right to take revenge and to punish offenders. The Code of Hammurabi in ancient times emphasized the idea of deterrence not only through the cruel severity of the penal consequences, but also by establishing the collective responsibility of the family. For example, in the case of a theft, if the thief escaped, everyone in the offender's home town was responsible to the victim, even those who did not know about the crime (Schafer, 1968:13). Secondly, the offenders' responsibilities were expanded to include their families. In the early Western countries, a tenet of primitive law was "personal reparation by the offender's family to the victim. When political institutions were largely based upon kinship ties or tribal organization, and when there was an absence of a central authority to determine guilt and the form of punishment, some forms of revenge, blood-feud, vendetta, or pecuniary compensation were common practices" (Schafer, 1968:8). Thirdly, the principle of punishment as an eye for an eye, and a tooth for a tooth was a simple way to punish offenders. It can be concluded that ancient law was victim-centralized. Social control focused on punishing the offender and allowing for restitution to the victim. It was based on relative responsibility rather than individual responsibility.
Victims' needs were held as absolute over those of the criminal and restitution and corporal punishment were primary sanctions.

In the middle ages, incarceration became the primary instrument of punishment. "Crimes were considered hostile attacks against the authority of the state, as the representative governing body of the people. Public prosecutors, as representatives of the government and of society, took over powers and responsibilities formerly assumed by victims" (Karmen, 1989:17). Paradigms shifted from victim-oriented to offender-oriented. Many theories such as deterrence, rehabilitation, and retribution overshadowed the victim's demands. "A crime is thought of as an offense against the state, while a tort is an offense only against individual rights. Also, in accordance with this thinking, crime means only the offender and his offense, the victims' relationship with the crime is viewed in a civil rather than in a criminal light" (Schafer, 1968:22). The victim's rights were reduced to the role of witness in the criminal justice process, and the only possibility for victims to claim damages was through civil action. As Schafer (1968:19) indicated, "as the state monopolized the institution of punishment, the rights of the injured were only slowly separated from the penal law: compensation, as the obligation to pay damages, became separated from criminal law and became a special field in civil law. With this development, the 'golden age' of the victim came to the end."

American history experienced a period where the crime victim was the center of justice. Karmen (1989:16) explained that

in colonial America, victims were the central figures in the criminal justice drama. Police forces and public
prosecutors did not yet exist. Criminal acts were viewed primarily as harmful to the individuals involved. Victims conducted their own investigations, paid for warrants to have sheriffs make arrests, and hired private attorney to indict and prosecute their alleged offenders. Convicts were forced to repay victims up to three times as much as they damaged or stole. After the Revolutionary War and the framing of the Constitution, distinctions arose between offenses against the social order (crimes) and harmful acts inflicted on one individual by another (torts, or civil wrongs). Crimes were considered hostile attacks against the authority of the state, as the representative governing body of the people. Addressing the suffering of victims was deemed to be less important than dealing with the symbolic threat posed by criminals to society as a whole. Public prosecutors, as representatives of the government and of society, took over powers and responsibilities formerly assumed by victims.

Chinese laws in ancient times were different from those in Western countries. Chinese laws focused on protecting the ruling class rather than individual victims. Punishment was used as an important tool of social control. Chinese laws in ancient times had espoused these priorities: crimes against the ruling class deserved the most severe and even cruel punishment. Ancient law took collective responsibility for the crimes. Unlike Western countries, victims in ancient China did not have an important role. For example, the 1373 Ming Dynasty law stipulated that actions against the ruling class (emperor) were crimes which deserved the death penalty. The punishment affected the criminal himself and all his relatives over 16 years of age. Those punished were put to death by dismembering the body (Xiao, 1987:214).

In modern society, crime victim issues became controversial again and continue to evolve as a new branch of social science derived from criminology. Von Hentig was one of the first to attempt to explain the relationship between the criminal
and his victim. He explored the crime phenomenon from the victim's point of view, which shifted the focus in criminology and criminal justice from offenders to their victims.

From the 1950s to the 1960s, several books were published on victimology, for example, *The Victim and His Criminal* written by Stephen Schafer in 1968. Meanwhile, the victim's movement gained momentum as a social cause. Legislation followed both research and public demonstrations. In 1963, New Zealand promulgated the first laws concerning crime victims which was considered a milestone in modern victimology. In 1972, the United States became one of the few countries to carry out an annual national victimization survey. The survey was thought to be more criminologically oriented because it provided "another national index of crime, a view of crime from the perspective of the victim, and illumination of the dark figure of hidden crime" (Weis, 1983:385). In fact it stimulated the study of victimology in America. In 1973, the first international conference on victimology was convened in Jerusalem. Six years later, the World Society of Victimology was founded in Germany. The United Nation's Congress on the Prevention of Crime and Treatment of Offenders (PCTO) has stressed victim issues since the 5th conference in 1976. In 1984, the PCTO convened special sessions on victims' issues and formed the Declaration on Justice and Assistance for Victims.

Victimology in modern society does not simply renew the importance of the role of victims as in ancient times. Current perspectives include a more scientific perspective and although victim rights are advocated, this do not mean a return to a
system of relative justice. Justice has a more complex meaning which includes public opinion and social values. Individual victims do not avenge crimes. Society recognizes its responsibility to help and to heal victims.

In modern society, the law is a complex set of situationally defined standards. Yet the law is clear in its intent to safeguard victim's rights. Although victims saw the fruition of a "golden time" in ancient times, victim rights had not been guaranteed by the government. Furthermore in modern society, victims' rights are not based on the offender's suffering. Punishment follows the principle of human rights. In contrast, in ancient times, victims had the absolute right to take revenge. In the case of class differences, victims and offenders had different rights and degrees of accountability. Justice was rough and simple. In modern society, victimology pays attention to victims' rights with scientific perspectives. The study of victimology not only focuses on healing victims, but also on rehabilitating offenders, and insists on protecting victim rights without sabotaging the rights of offenders. Although victims and offenders have a different legal status in the criminal justice system, they are treated equally in front of the law. Finally, in modern society, victim's rights are thought to be supported by the whole society. Proof of this is the proliferation of social programs addressing victim's needs. Beyond restitution, there is a need to heal victims from a psychological and affective point of view. It is more complete and advanced than the "eye for an eye" mentality of ancient times.
Crime and victims in China and America Today

China has yet to develop the study of victimology. There have been no national surveys of victimization in China, no college courses in victimology, no victims' movement and no special legislation protecting victims. No special programs exist for helping victims such as crisis centers, battered women's shelters, and centers for abused children. There are, perhaps several reasons why China is behind on victims' issues.

China is an ancient country and has been viewed as a great civilized culture. Historically, China has also suffered from political and social turbulence. Since the first Chinese emperor Qing Shi Huang united China in 221 BC, China has had numerous dynasties. Each new government was established after overthrowing a former government by force. China experienced different social systems including a slave system, a feudalist system, a half-colony system, and socialist system. Because the Chinese people experienced many civil wars and independent wars in history, they are focused on the issue of social control. Crime was first thought of as an act against the state and the top leaders of the country, which deserved severe punishment. Even during Mao's time, especially during the Cultural Revolution, those who opposed the top leaders were thought of as counterrevolutionary, and serious criminals. Also, any crime against an individual was thought to danger socialist construction. Crimes related to property were thought to damage the principles of socialism. Even today, crime is punished mainly because it violates the government's ability to maintain control. Individual victims are a concrete body who represent social relationships
protected by the government. This ideology has resulted in the Chinese paying less
attention to the individual victim.

In China, the crime rate is low. Comparatively, Chinese living condition are
stable. People have more close interactions. Crimes do not often happen around
people; people are rarely cognizant of any crime around them much less serious
crime. Also, people do not often obtain news from the mass media. The mass media
is under the control of the government. For example, in China, there are no reports
submitted on crime to the publica like the UCR in America. What goes into the
newspaper is filtered carefully by the government. Most people know very little about
the criminal justice system.

"Tough" policies are the mainstream of Chinese law. Compared to the
American criminal justice system, Chinese laws and policies appear tougher on crime.
Usually, suspects are not released on bail. Most suspects who are charged with crimes
are incarcerated while awaiting trial and there is no plea bargaining. Chinese Criminal
Procedure limits the time for processing a case through the criminal justice system in
order to rapidly and severely punish criminals, especially for crimes which seriously
endanger public security. The law allows capital punishment because Chinese criminal
justice policy is still influenced by retribution. If anyone intentionally or unlawfully
deprives another citizen of life then they are thought to deserve the death penalty.
Chinese criminal policy uses less probation and parole. Most offenders serve their
entire sentence before they are released. Prison life is very restrictive and harsh.
Chinese criminal procedure also includes supplementary civil action. Crime victims
need not go through separate litigation to bring a civil liability suit against an offender.

Because of the culture and economic situation, Chinese people are willing to help each other. People are willing to show sympathy and friendship to crime victims. Normally, people have close relationships and if someone is victimized by crime, he or she will receive help from family numbers, neighbors, peer groups, colleagues, friends, and even their employers. Victims are not likely to feel ignored and isolated. The interaction between these informal "support" contact and victim helps to diffuse the pain and tensionrought about by crime.

One of the reasons that China does not focus on victimology is that people's legal ideology is quite unsophisticated. They have little knowledge about laws and the criminal justice system. Some people become crime victims, but they do not know they are victims and/or do not know how to prevent crimes. Some people are so tolerant that they always attempt to avoid conflicts instead of becoming more aggressive about protecting their rights as crime victims. In one case a ten-year-old girl was raped. Instead of reporting the offender to the police department, her father forced his daughter to commit suicide because he thought that his family reputation was damaged. Years ago, the Chinese government had a five year plan for a legal education campaign. However, the plan focused more on social control then on victimology.

China has a strong administrative system and a weak legal system. Administrative systems provide not only for businesses, but also for employees'
welfare which includes their homes, medical needs and family concerns. If someone becomes a crime victim, they can get help from their company. For example, A is a victim whose doctor requires that he stay away from work for a year. His company will not deduct his salary for the first six months. For the next six months, he will get less salary from the company, but he also can apply to get compensation from his company. His wife also might receive financial support from her company. If A became disabled because of the crime, he would not be fired by the company. He can move to another lighter job, which he is capable of performing. He may be moved to a less strenuous job rather than being laid off. These provisions help reduce the crime victim’s dissatisfaction and insecurity.

Because of political turmoil, China has not had significant relations with other countries and has learned little about international social sciences. For the Chinese, the twentieth century has been filled with turmoil including experiences with systems of feudalism, a mixture of half-feudalism and half-colonialism, and socialism.

Since 1949, China’s mass media have been under the control of the movement. All the news and reports are censored according to the control of the party. The mass media are tools serving the communist party. During the Cultural Revolution, social sciences studies were largely distorted as high crime rates were only associated with capitalist societies. The Chinese government was reluctant to admit crime occurred in the country, and even today, the mass media are not willing to report crime rates in China. The government fears that people would be discouraged and might lose confidence in the system. Because news and reports are oriented toward good news,
the victim is never discussed in the media.

Traditionally, China has had a unitary government system. Chinese rulers prefer a unitary model for easier control. The Chinese people experienced political abuses during the years 1966-1976 when extreme-leftists dominated the country. Anyone who criticized government policy, regardless of their intention, would be regarded as anti-revolutionary. Academic study was limited to extolling the extreme-leftist line. There was no academic argument for promoting the social sciences. Although in recent years, China has had more of an open door policy, it is not easy for people to develop an immediate concern for academic freedom.

America has its own situation. There are some reasons to explain crime and victim issues in the United States. After the Second World War, America experienced a period of peace, economic development and low crime rates. However, in the last thirty years, crime became a big issue in the United States. In America, over 18,000 people are murdered each year, and more than two million are injured in rapes, robberies, and assaults (Laub, 1990: 42). Crime has touched the most lives of Americans or their relatives, friends, and acquaintances. "The consequences of crime can involve financial loss, property damage, physical injury, and death" (Skogan, Lurigio, Davis, 1990:7). Concern for crime victim’s issues and victimology was an outcome of related social changes of the late 1960s and early 1970s.

Over the years, as crime rates rose and as researchers such as Robert Martinson declared "nothing works" (1972) in treating offenders, people reconsidered the function of rehabilitation. The criminal justice paradigm shifted from rehabilitation
to "getting tough" on crime. Conservative theory dominated criminal justice and stressed getting tough on offenders and helping crime victims. In 1972, the United States started its annual National Victimization Survey (NCS) which soon became one of the most important sources for understanding crime victims. Because of the high rate of crime and the growing number of crime victims, it was easy for Americans to accept the victim's movement and to look seriously at victims' problems.

America is a multi-cultural country whose history is connected with civil liberties issues and the quest for racial equality. Civil rights advocates complained that in America, racial discrimination resulted in violence against minorities and that these victims did not receive equal treatment in the criminal justice system. In addition, minority offenders usually received more severe punishments than whites making them victims of the criminal justice system. However, as a result of the civil rights movement, "in a few jurisdictions across the country, civil rights groups have been instrumental in setting up anti-bias task forces and human rights commissions and in establishing special police squads and prosecutorial teams to deter or solve crimes that otherwise would polarize communities along racial and ethnic lines" (Karmen, 1989:35).

The feminists movement of the early 1970s focused on a women's right to control her own body, protection against rape, wife beating, and sexual harassment. Many criticized the criminal justice system's tendency to blame women as if they shared responsibility for being raped. Women who sought help from the criminal justice system were often accused of improper behavior. Women's groups strongly
advocated reform of the criminal justice system and a change in attitudes towards victims. One extension of the women’s movement was to shelter battered women. Advocates argued that the criminal justice system failed to protect battered women although every state had laws against assault and battery long before activists focused attention on the problem. Activist groups argued that women victims were entitled to the same considerations as any other victim of violent crime: the police should respond to make arrests; prosecutors should press charge and judges should grant orders of protection to prohibit further contacts that might endanger the victim.

Another related movement is Mothers Against Drunk Driving (MADD). Before the movement, drunk driving was not considered a serious crime. A woman whose daughter was killed by a drunk driver initiated the MADD movement and it immediately grew in popularity and influence. It resulted in new legislation making drunk driving a more serious crime and in some cases a felony resulting in prison sentences.

The victims’ movement, higher rates of crime and victimization, and "get tough" policies all motivated the federal government to address crime policies. One Task Force Report (1982) claimed that the neglect of crime victims is a national disgrace. In fact, former President Ronald Reagan proclaimed a National Victims of Crime of Crime Week in 1981. This has since become an annual event in order to focus attention on victims’ problems. In 1982, Congress passed the Victim and Witness Protection Act which secured better treatment for crime victims, protection from harassment and threats, and implementation of crime victim compensation and
assistance programs. The Act mandated the use of victim impact statements at sentencing, greater protection of victims from harassment and intimidation, guidelines for the fair treatment of victims and witnesses, and more stringent bail laws. In 1984, the Federal Victims of Crime Act was passed and the Crime Victims Fund was established. The fund disbursed federal money to support state level victim's assistance and victim compensation programs. (Skogan, Lurigio, David, 1990:8)

Grassroots support for crime victims has also been described as dramatic. "There are some 5,000 victim service programs providing variety of services to crime victims, such as emergency care, crisis intervention, counseling, victim compensation and restitution, witness protection and other court-related services, public education, and victim advocacy" (Finn & Lee, 1988).

**The Importance of Victimology in China and America**

Although the Chinese have not developed victimology, there is need for specific information in the following areas:

**Helping victims access resources.** Although the crime rate in China is much lower than in the United States, there are many crime victims because China has the largest population in the world. It is said that over time, the crime rate and the number of victims will continue to rise. In America, some programs are available to victims such as police and prosecutor-based victim assistance programs. But in China, the channels to help victims are not systematic. Sometimes victims can get help from the police department or a resident's committee or their work place. However, many
people do not know where and how to get help. The development of victimology could help the Chinese study specific channels to help victims.

Enhancing the public's legal ideology. The legal ideology of the Chinese is unsophisticated because most people, particularly those in rural areas, are accustomed to solving problems by traditional means such as arbitration and mediation. There is no meaningful understanding of constitutional protection against crime.

Understanding the victim's roles in the criminal justice system. Victims play an important role in the criminal justice system. The President's Task Force Report (1982) mentioned that "the American criminal justice system is absolutely dependent on these victims to cooperate. Without the cooperation of victims and witnesses in reporting and testifying about crime, it is impossible in a free society to hold criminals accountable." In China the criminal justice system should receive help from victims. Victims should have high expectations for police, prosecutors, judges, and lawyers in carrying out justice. Victims should get support from the justice system. The justice system has a duty to punish crime and to maintain social control. But in practice, the criminal justice system sometimes dominates and overwhelms people, especially crime victims. In China, judges, prosecutors, and lawyers are government officials. The needs of the state often replace the needs of individuals such as crime victims. It is not uncommon that prosecutors only meet victims shortly before trial. Consequently, the justice system can not offer meaningful assistance to crime victims. It is important then, to educate officers of the criminal justice system about crime victims. A basic understanding of victimology in China could help government
officials re-exam their work with victims and establish good working partnerships with, as well as services for, victims.

Motivating the government and the officials to service people better. The Chinese legal system is still developing and there is much work to be done. China is a socialist country. One theory is that the government’s rights come from the people as a whole, not from just a few. Therefore, the government should represent all people, not just the few who are rich. The Chinese government provides people with many things including medical treatment, education, job opportunities, and low cost housing. In dealing with crime victims, Chinese law allows supplementary civil action in a criminal trial, but this is not enough. There should be systematic and complete legislation addressing victims’ needs. Victimology could explore the advantages and disadvantages of the various current criminal justice system processes for dealing with victims and could suggest more detailed laws and policies to help victims.

America is touted as a free society. Individual freedoms and human rights are emphasized. Realistically, there is some latitude in deciding how best to protect the security of the majority of the people. A few critics argue that current practices, maintaining due process, allow offenders to "beat" the justice system. It is suggested that the more freedom offenders have, the less freedom others have. It may be that victimology became popular in the United States because society lost its balance between justice and crime and people lost confidence in the system. Victimology provides a focus on victims, reminding policymakers and criminal justice practitioners about human rights, a focus which is welcomed by many.
Victimology offers some suggestions to policymakers in order to protect victims' rights in the criminal justice system. It has highlighted the "second victimization" in the criminal justice system. Limiting the victims' role to witnesses in criminal justice system is to ignore their feelings and needs. Victimologists suggest various reforms to alleviate the problems for victims resulting from crime and from encounters with the criminal justice system. These suggestions have led to legislative and programmatic changes in the way the criminal justice system treats crime victims (Erez, 1989, 1990).

Victimology in America explores the causes of crime and victimization and attempts to explain the interaction between victims and offenders before, during, and after a crime. It seeks to prevent crime and victimization and to assist justice practitioners in understanding victims from both a psychological and a sociological perspective.
CHAPTER 3 MEDIATION PROGRAMS IN CHINA AND AMERICA

The Concept of Mediation

Mediation implies intervention. It involves a third person intermediating between two contending parties with the intention of persuading them to adjust or settle their dispute. The term mediation is often used with conciliation and arbitration. According to Section 3602, Dispute Resolution Programs Act-Regulations, Title 16, California Code of Regulations, Chapter 36, mediation is "a process in which a neutral person(s) facilitates communication between disputants to assist them in reaching a reconciliation, settlement, or other understanding." Conciliation is "a process of independent communication between disputants and a neutral person. Arbitration is a voluntary adjudicative process in which a neutral person conducts a hearing, receives spoken and/or written evidence from the disputants and their witnesses, and renders a decision that may be binding or non-binding depending on the consent of the disputants." There are many different kinds of mediation programs in America such as family dispute conciliation, civil case mediation, and offender-victim mediation. The purpose of these programs is to provide alternative methods for participants to reconcile and to arrange an agreement on restitution. It was hoped that parties would use a third neutral person to mediate, and to deal with crime as a conflict to be resolved.

Victim-offender mediation programs are independent organizations outside the criminal justice system that work in cooperation with the system. The process of mediation consists of face-to-face encounters between victims and offenders in cases
which have entered the criminal justice process and where the offender has admitted
the offense. Mediation emphasizes facts, feelings, and agreements. Its purpose is to
hold offenders accountable and to help victims achieve restitution.

Chinese mediation programs include a wide range of cases including civil
cases, security cases, and minor criminal cases. These programs evolved over an
extended period of time. The first mediation programs originated in the new liberated
era from 1922-1949. The Jin, Cha, Ji District Mediation Regulation (1941)
propagated that all civil cases may be mediated; criminal cases should be mediated
except those which pose a danger to country, society, public security, and individual
interests (Liu, 1990:30). In 1953, the central government propagated the Temporary
Regulation of Mediation Programs. In Article 3, it specified that mediation programs
should address general civil cases and minor criminal cases. These cases included
minor occupation, battery, injury, damage, theft, fraud, and defamation cases. A
revision of the regulation was published by the Chinese government in May 1989
because the Chinese had just adopted a formal system of criminal laws and criminal
procedures. The new regulations excluded criminal cases from mediation programs as
they would now be handled by the criminal justice system. However, because of
historical precedent, there are still some criminal cases in mediation programs.

The first Criminal Law published in 1980 was quite simple and basic. There
were only 192 articles which included all kinds of crimes and punishments. Many
questions arose in practice because of the simplicity of the code. Today it is still
difficult to avoid confusion and consequently, some criminal cases are still sent to
mediation programs. For example, C and W are Husband and wife. One day W left home to live with another man, G. C was so angry that he went to G’s house and smashed the window and G’s furniture. C also beat his wife. When his wife left him again, C threatened to kill his wife and G. The mediator went to C’s house to talk with him and to mediate among C, W, and G. Finally, W recognized that she was wrong. She returned home to live with her husband. C admitted his error and make compensation to G. In China many cases such as this are settled in mediation programs or are settled according to the regulations of the administrative penalty for violations of public security. Chinese mediation programs focus on preventing more serious crimes. It is a way of "dealing informally with disputes that may become more serious should they be left untreated or allowed to escalate to the point where they can be dealt with only through the police and courts in their most extreme form" (Kennedy, 1990:70).

In the Chinese mediation process, cases are initiated by a victim or offender asking for advice or help. Also, mediators will visit disputants and express their willingness to serve as a mediator. After both parties agree, a mediator talks with the offender and victim separately and makes arrangements for them to meet several times. A case will be closed if the parties enter into an agreement which could include financial compensation, an oral or written apology, or a statement of repentance. Sometimes representatives from both victim and offender regulating agencies are involved in order to help solve a problem. The agreements are monitored by the mediators and representatives from an offenders' agency.
There are many different kinds of mediation programs in America such as family dispute conciliation, civil case mediation, and offender-victim mediation. This study focuses on offender-victim mediation programs.

Offender-victim mediation programs can be described as nonprofit organizations. Usually, there is no charge for victims and offenders to take part in the program. The programs primarily deal with property offenses, although some only deal with juvenile cases. Although some programs have no restrictions on the types of cases handled, in most, some types of offenders or offenses are excluded. The most common exclusion is for violent offenses or offenses (Hughes, Schneider, 1989:217).

Most mediators are volunteers. The main purpose of the programs is to hold the offender accountable or to make things right. Participation is usually voluntary. The programs are different from probation or other court imposed sentences in that they are an informal mechanism adjunct to criminal justice system.

Cases mediated in United States are most often initiated by a probation department. Other cases come from the courts, and some come directly from a police department. Mediators accept the cases and meet offenders and victims separately. Mediators introduce the program and related policies including the participants’ rights and obligations. If both the offender and victim are willing to work together and take part in the program, mediators will arrange a meeting. When offenders and victims face each other, they can question, express, and explain their feelings. Usually, an oral or written agreement between the parties will be reached. Most contracts involve restitution agreements. Normally, probation officers monitor agreements and if an
offender breaks the agreement, the case will return to the official "legal" process.

The Development of Mediation Programs in China and in the United States

Mediation, like arbitration, is not new in China. "Before the communists gained power, mediation had been the primary mode of dispute settlement for thousands of years in traditional China—that is, the China ruled by successive imperial dynasties until 1911, when the Qing Dynasty was overthrown" (Lubman, 1967:1286). During that time, people were willing to settle cases in mediation because the common people feared involvement with government officers who usually were corrupt. Historically the Chinese were ruled more by moral criteria than law. The Chinese legal system contained more punitive legislation than civil legislation and punishments were cruel.

Immediately after the founding of the People’s Republic of China in 1949, the Chinese government did not have a legal system in place. Officials looked favorably upon mediation programs and they shaped new ideology into the programs. Mediation programs became a tool of social control and of the class struggle.

Since the anti-rightist campaign in 1957, Chinese politics could be characterized as leftist-extreme. The Cultural Revolution occurred at the peak of the leftist period, as the already weakened formal legal system was further disabled. Those in power disbanded the prosecutor and put law enforcement under the control of the military.

Currently, the guidelines for Chinese mediation programs can be found in the
People’s Mediation Committee Regulations promulgated by the Chinese government on June, 17, 1989. Elements of the programs are as follows: Mediation is an informal mechanism to settle disputes and to prevent further more serious crime. Mediation programs are under the supervision of city government and are guided by the court. Mediators are usually volunteers who have a basic knowledge of law and policy. Participants take part in the programs willingly and can withdraw from the mediation at any time or take cases to the court directly. Mediation programs help people solve problems according to the law and ethics. Mediation programs are non-profit organizations. Programs focus on solving problems before they escalate into dangerous crimes.

There are several possible explanations for the coming of age of mediation programs in America. One reason may be that people do not view the current criminal justice system as effective and therefore seek alternatives. Another reason may be that the system has become too large and slow, and other avenues must be developed to reduce caseloads. As Danzig (1982:2) explains, "There is a strong case that America’s criminal justice system neither controls nor corrects criminality". The American criminal justice system focuses on offenders and many cases reflect "relatively minor charges growing out of deeper human conflict, frustration, and alienation; the criminal law with its focus on the defendant alone is ill equipped to deal with this basic fact" (Stulberg, 1975: 361).

In America, "less than 10% of reported crime in the United States falls into the broad category of street (crime), strangers attacking strangers is a rare
occurrence" (Stephens, 1989: 22). Most crimes involve offenders and victims who know each other. However, the justice system cannot handle these cases well, and sentences often appear too lenient or too tough for the type of circumstances involved. Stephens (1989:22) indicated that more than 90% of crimes between acquaintances are inappropriately and ineffectively handled by the adversarial system of justice. There failures can be analyzed individually.

**Failure to help victims.** When cases go through the criminal justice system, victims get neither financial support nor enough information about their case. Victims often feel that they are only being used as witnesses or to provide evidence (McShane & Williams, 1992). They are often blamed and required to bear responsibility for provoking the crime. Their disappointment drives them to search for services which can help them express their emotions directly and with people who might be sympathetic. Victims often willingly accept mediation in these programs because they feel they have more right to express their feelings and needs. Victims' are satisfied by having their psychological and financial needs met.

**Failure to offer more chances to offenders.** The criminal justice system also often fails to utilize or maximize opportunities for restitution or reconciliation. Criminals are rarely given the chance to make up for what they have done by returning money to the victims, cleaning up damage, or helping out in other ways. Instead, they are typically punished with fines or prison sentences that do little for the victims except possibly feed a sense of revenge (Samarto,1993:42).

**Failure to expedite trials in the court system.** The American legal and criminal
justice systems are very complex. There are different facets of the criminal justice systems at both the federal and state level. As part of common law, both statutory law and case law are available as guides. Also, America has a very complex code of criminal procedure to protect the rights of the accused because everyone is assumed innocent before trial. When arrest rates increase, the court systems have workload problems and a backlog of cases waiting for trial. "Court systems have what their participants, spokesmen, and critics consider too much to do. The notion of delay in the courts refers to the number of weeks, months, or even years necessary to bring various cases to a close" (Mileski, 1978:192). Such a situation makes it difficult to continue a "get tough" policy. Criminal justice systems are often eager to find a way to eliminate cases and to focus on more serious crimes. Mediation programs, like a freeway exit, divert offenders from the court system and correctional institutions. Mediation programs share the workload of the court and help the court proceed with more "serious" cases.

Failure to rehabilitate in prisons. Deterrence as a sentencing goal re-emerged in the United States during the 1980s. "Those voicing a 'get-tough' philosophy referred to prisons as 'country clubs'. The rehabilitative programs of the past were believed to be too expensive, too good for the inmates, and probably too ineffective. The 'get tough' policy resulted in a doubling of the prison population in the U.S. between 1980 and 1988" (McShane & Williams, 1989:571). But prison overcrowding is still an unsolved problem. In addition to asking for more money to build more prisons, the government also seeks other mechanisms to reduce the number of people
incarcerated.

Failure of community corrections. Historically, community corrections has been based on models of diversion, advocacy, and reintegration. Rehabilitation policies in the 1960s and 1970s focused on offenders' needs and problems. "This rehabilitative approach assumed that most clients could be changed into well-adjusted, law-abiding citizens" (Lawrence, 1991). With the "nothing works" challenge, the role of rehabilitation in community corrections has been questioned and acceptance of the rehabilitative ideal has declined. Holding offenders accountable became the new policy guiding the criminal justice system and community corrections. It attempted to reunite offenders with society under intensive supervision and also required that offenders be given citizenship responsibilities in the community. Mediation programs are consistent with the new demands of community corrections.

In the criminal justice system, guns and muscles are replaced by articulate tongues. The battle is fought between the prosecutor and the defense attorney (Smarto, 1993:43). The result of the battle is that one wins and the other loses. However, the criminal justice system should perhaps try to achieve healing both the individual and society, and work to mend the broken relationship. Because of the system's problems, victims are dissatisfied by the verdict, society is upset by the insecurity, and offenders are disappointed by incarceration. Society is not "fixed" by such a justice system. On the contrary, the system works "against mending relationships and healing for either the victim, the criminal or society at large" (Smarto, 1993:41). Because of this dissatisfaction, Americans look for new programs
which can solve the problems of the justice system. It is not surprising that mediation programs were developed with the promise of providing features rarely seen in the formal justice system.

Interestingly enough, addressing victim concerns was not the original goal of mediation programs. When the first offender-victim mediation program was founded in 1974, it was obviously focused on offering more choices for offenders. The first mediation program was the Canadian Kitchener Experiment in Kitchener, Ontario. Mark Yantzi, a probation officer, was also a volunteer under a program sponsored by the Mennonite Central Committee (MCC). He and his co-worker successfully dealt with a case involving two young offenders by keeping them out of the jail. The experiment went so far as to exceed everyone’s expectations. "Although they were unaware of anyone else who was conducting victim-offender meetings of this type, they were operating in a milieu that encouraged experimentation. The program developed a stronger view that the victim and offender should be the ones to decide how much would be paid, and according to what timetable" (Peachey, 1989:16). The principle components of the Kitchener’s VORP spread rapidly in Canada, America and European countries. Many different programs based on settling conflicts among disputants, neighborhoods, victim and offenders were established. The contents of each program varied according to service needs from minor neighborhood disputes to more serious cases of sexual abuse. Concern for helping victims deal with the psychological consequences of crime has given rise to a broader range of services to victims. Attempts to deprofessionalize the process have also facilitated the use of
volunteers in a variety of programs (Peachey, 1989: 24).

**The Popularity of Mediation Programs in China and America**

Mediation programs are very popular in China particularly with the government. At the end of 1988 there were 1,000,000 mediation programs and 6,370,000 mediators in China. Each year from 1981-1988, mediation programs settled an average of more than 7,000,000 cases and an estimated 90,000 dangerous crimes were prevented (Liu, 1989).

Cultural, historical, political, and economic conditions are important factors in explaining why mediation became popular. Traditionally, the Chinese are not predisposed to resolving issues through lawsuits so they view any case that goes to court as serious. Mediation therefore is widely accepted by most people. The Chinese value friendship and are more willing to make a friend than to engender adversity and hostility. People are willing to solve problems by informal mechanisms instead of going to the justice system which is intimidating to most who are legally unsophisticated. Chinese personalities are more introverted, and individuals prefer to settle problems informally. They feel shame if their cases end up in court because they have to face judges, lawyers, prosecutors, and the public. Chinese people ascribe to the philosophy of turning "the big problem to a small one, and the small problem to nothing". Mediation programs are compatible with the people's philosophy of dealing with problems.

In China, mediation programs are flexible. Mediators usually live in the
community. They are familiar with the participants and are able to obtain detailed information from other people about the cases. Mediation programs attempt to make participation convenient. Mediators live locally in the community. They are well known and people are willing to accept their counsel. In addition, mediators are often members of the very same community and are concerned about cases that occur there. They may offer legal advice to disputants which is often gratefully accepted.

In America many scholars, like Umberit (1989, 1990, 1991), Colson (1988, 1989), Zehr (1990), and Galaway (1981, 1988) indicate that mediation programs are welcomed by victims, offenders, and the general public. Summarizing their work, it appears that there are several reasons that mediation programs are accepted. First, victims are pleased to have the opportunity to meet offenders and to talk to them. Understanding the reasons behind the crimes and the offenders’ situation helps reduce victims’ tensions and fear of crime. Victims are often satisfied with restitution from the offender to remedy the loss caused by crimes. Victims also feel less anger and stress if offenders display remorse. In addition, offenders are often satisfied by the mediation process. They are pleased to find that victims are willing to listen to their side of the story. They appreciate the opportunity to pay restitution to victims so that they may avoid jail sentences. Finally, mediation programs are used by the government as a tool of social control. Mediation programs absorb some of the minor criminal cases so that the justice system can concentrate on the most serious and dangerous crimes. Putting offenders through community corrections not only alleviates prison overcrowding, but also saves the expense of jail and prison which
constitutes a growing proportion of the government budget. Society is pleased that mediation programs reintegrate offenders into the community avoiding the negative effects of incarceration, and improving the chances of rehabilitation. The idea of restitution is also very popular and appeals to people in terms of restorative justice or "just deserts".

**Mediation Programs and Victimology**

In the U.S. one of the greatest contributions of mediation is its victim orientation; its potential to help victims in many ways. Although victims often appear at trials and their statements are used in courts, it is doubtful that such measures will have much effect on their own well-being. Mediation offers victims a chance to talk to offenders directly. Victims can express their feelings and ask offenders questions. From a psychological perspective, talking is one of the ways to release pain and suffering. It helps victims release tension and anger. Most studies show that victims are satisfied by meeting and talking to offenders through the mediation process.

In the criminal justice system, victims often feel used. Prosecutors depend on victims to win cases and to further their own reputations. Offenders' lawyers may blame victims and criticize them in order to establish their client's defense. In addition, victims are limited in their testimony to answering the questions of the prosecutor and defense attorney. They are not free to express their emotions or their suffering. In mediation programs, victims are respected by mediators and offenders. First, victims have the right to decide if they want to participate in mediation.
Second, they are made aware of their rights in the mediation programs. Thirdly, they can obtain information about the offenders’ situation through mediation and they are all able to talk directly to him or her during mediation without any limitations.

Victims play an important role in mediation programs. In 1978, Blumberg and Mileski described the court system reminding us that it functioned neither for offenders nor victims but for the courtroom workgroup. "Accused persons come and go in the court system schema, but the structure and its occupational incumbents remain to carry on their respective career, occupational and organizational enterprise" (Blumberg, 1978:261). Prosecutors and lawyers "all are members of the team that maintains orderly operations of the court. Though the interests of some of the parties are formally at odds, in operation they share common interests" (Mileski, 1978:185). As such, victims may be very disappointed by their own limited role. In mediation programs, victims appreciate the mediators’ concern and any attempts to obtain compensation. Victims sense that mediator volunteers are very dedicated to the process of helping them. Victims are made to feel that they are important in the program.

Victims may even feel safer after mediation programs. After being victimized, a person has doubts and attempts to explore the reasons for their fate. They worry about future victimization. Mediation programs help victims to release insecurities and tension by getting to know the offenders. Usually victims receive an apology and restitution from the offenders. Victims try to understand the reason they were chosen as victims and the reasons that offenders committed the crimes. Some victims went
from fearing offenders to wanting to help them, no longer concerned about revenge. Furthermore, some victims recognize mistakes they made that caused unsafe, high-risk situations. Such an understanding may prevent crime and/or victimization in the future.
CHAPTER 4 THE IMPACT OF CULTURAL BACKGROUND ON MEDIATION PROGRAMS BETWEEN CHINA AND AMERICA

Political Systems

China and America have different political systems which include different administrative systems and forms of government. The main differences in the political systems of the two countries is discussed in this section.

Socialism v. capitalism. China is a socialist country. The First and Second Articles of the Constitution of the People’s Republic of China specifies that as a socialist state, the Republic is "under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants. The socialist system is the basic system of the People’s Republic of China. Disruption of the socialist system by any organization or individual is prohibited. All power in the People’s Republic of China belongs to the people."

America has long been considered a capitalist country. In America, individual rights and private venture are very important. The American Constitution protects the private ownership system which has been the foundation of American society for more than two hundreds years.

Central government system v. decentralized government system. Historically, China has had a centralized system of government. Thousands of years of centralized government has created a complex hierarchal system. Up until now, all provinces in the mainland are under the control of the central government. The government tried to maintain a balance among the different provinces and to institute an easily
controlled unitary model. A pyramid-like Central Government system made it easy for the government to carry out policies and laws dictated by the top leaders to those beneath them. However, such a model limits the democracy and independence of the provinces. In China, people are taught to be obedient, and they believe that following instructions is more important than creativity. Because people are accustomed to abiding by instructions, they are generally more amenable to formal authority.

America has a federal system, which is a decentralized form of government.

As Travis (1990:32) indicates

The basic principle of governmental organization in the United States is that of federalism. Our nation is the result of a federation of sovereign states. The United States Constitution enumerates the rights and obligations of the federal government, and the Tenth Amendment includes the "reservation clause". This amendment reads: The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. The Constitution of the United States also created and maintains a separation of powers between the executive, judicial and legislative branches of government. Each branch of government is checked and balanced by the other two branches.

Unlike the Chinese, Americans were never taught to be obedient to their authority or to be loyal to the individual governors. Citizens are trained to realize that they are the hosts of the state. As Erler (1991:2) pointed out "the American Founding represents the first time in human history that a people attempted to constitute itself by dedication to a principle--the principle that 'all men are created equal' and its necessary concomitant that all legitimate government must be derived from 'the consent of the governed'". The advantage of a decentralized political system is that
each part has limited power and is supervised by the other two parts which can
prevent oligarchy. However, a decentralized government system could result in
ineffectiveness when there is conflict among the three parts. The complexity of the
America criminal justice system and its perceived ineffectiveness is a good example.

Egalitarianism v. a class-based political society. China is an agriculturally-
based country. Even today, more than 75% of the Chinese population are peasants.
Historically, peasant movements shared similar ideal of egalitarianism. Most Chinese
ideology focuses on satisfaction through self-sufficiency and people are sensitive to
the differences of living conditions among themselves. Years ago, communism was
explained as egalitarianism. Theoretically, everyone is equal in terms of political
position. Everyone is a master of the country and has a similar salary to ensure equal
political status. No one is classified as an aristocrat and no one is a member of the
lower class. People are comfortable just being average and like everyone else.

In contrast, America is a free society. It is a class-based society where a
person’s social status is determined by their economic background. Through education
and competition, people can change class levels by changing their economic situation.
Theoretically, this stimulates people to engage in social competition which is
considered good for capitalism and social progress. But in recent years, critics have
argued that the rich are getting richer, and the poor are getting poorer. Such a
phenomenon causes serious social problems such as crime, homelessness, and
unemployment. These problems are closely related to the causes of victimization.
Many studies show that poverty is one of the characteristics of high risk for
victimization. Poor people are often ignored by society and the criminal justice system. Some critics postulate that social inequality is the root cause of crime. "Harsh inequality is not only morally unjust but also enormously destructive to or of the human personality and of the social order" (Currie, 1985:160). Although recent government initiatives are directed toward improving conditions of the poor and trying to create more job opportunities for the unemployed, it is very hard to make fundamental changes because the tradition of a class-based society is rooted in the American political and economic systems.

Comparing Legal Systems

Legal systems are based on political and economic situations and they function as mechanisms of social control. China has a different legal system from that of the United States. Over the long history of China, the legal system has changed many times. The main difference between the Chinese legal system and the American legal system can be explained as follows.

The rule of man v. the rule of law China is a country where the rule of man is ingrained in its history. Initially, the Emperor was law, his word was law. He dominated the country according to his emotions and ideology. He could kill anyone he wanted. The Emperor also controlled the central government and the whole country was structured in a hierarchy. People in China were ruled by power, and authority. There were some laws, but the laws were not applied equally to everyone. The Emperor and other powerful people were above the law and punishments varied
by social status. Severe punishments were used mainly for common people, not the aristocrats. For example, in the Tang Dynasty, the law stimulated "Ba Yi", in which the emperor’s relatives, friends, nobles, respected scholars, and high status officials would not be subject to the death penalty. The punishment could not only be reduced, but also waived by paying money (Xiao, 1987:168). In addition, there were many forms of punishment. For example, in the Shong and Ming Dynasties, although the law listed five kinds of punishment (slashing, beating with a stick, imprisonment, expulsion, and death), there were many other cruel punishments used such as cutting off the nose and tongue, castrating, peeling off skin, frying, and so forth.

Since 1949, the communist government has dominated the country and attempted to establish a new system of law. Unfortunately, during the "cultural revolution" from 1966 to 1976, law was destroyed and the criminal justice system was run by the military. The "gang of four" manipulated the legal system to punish anyone who acted against them. Thousands of people were killed and were put in jail without the benefit of due process. People were trained to pay attention to what those in authority said rather than what the law said. In the last ten years China has revised its legal system and has declared many new laws to ensure people’s constitutional rights. Chinese criminal laws and codes of criminal procedure were promulgated in 1980 and in the new Constitution in 1982. The Chinese people are more civilized and democratic than before, although the legal system is still being revised.

America had experienced a similar situation in history. For example, when America started development in the West, small towns were sometimes dominated by
those mayors, governors, or sheriff’s who sometimes all did not represent the people. In these cases, the individual will of these leaders was the law which controlled the people in the small towns. But generally speaking, America today is a country characterize by the rule of law, and the Constitution is the primary source of law. There are three examples that illustrate the American preference for the rule of law. First, laws are legislated by Congress and the government, not the individual. There is a strict process for making laws and no one can bypass these procedures and make law on his or her own. Second, anyone who violates the law is held responsible no matter, who he is, or what position he holds. All citizens are equal in front of the law. Third, there are various, sometimes even complex procedures for supervising the implementation of the law in order to guarantee social control.

The rights of the ruling class v. the rights of the individual. Chinese history demonstrates social turmoil through the many civil wars that changed the dynasties. The ruling class always attempted to keep their dominant rights and used severe, punitive law to punish those who tried to overthrow them. Ancient Chinese law focused on punishments instead of individual rights. For example, in the Shui Dynasty there were ten crimes which deserved the death penalty. The first three crimes were against the ruling class: overthrowing or attempting to overthrow the emperor and his dominant control; attempts to destroy a place of worship or the emperor’s cemetery; or the act of surrendering to the another ruling class (Xiao, 1987:167).

Even today, the Chinese legal system still focuses on the social group. It is said that the government is rooted in the people’s support. Whatever a government
does should represent the people. According to the first and second articles of the Chinese Constitution: "The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants. Disruption of the socialist system by any organization or individual is prohibited. All power in the People's Republic of China belongs to the people." Any action against the government is against the people as well as the state because any crime against an individual in fact, violates his or her rights.

Chinese laws seek to protect the current political and economic system. It stresses the social order rather than individual rights. Crime is regarded as an action violating the social system and social order. We can see clearly from Article II of the criminal law that

the tasks of the Criminal Law of the People's Republic of China are to use criminal punishments to struggle against all counterrevolutionary and other criminal acts in order to defend the system of the dictatorship of the proletariat, to protect socialist property owned by the whole people and property collectively owned by the laboring masses, to protect citizens' lawful privately-owned property, to protect citizens' rights of the person, democratic rights and other rights, to maintain social order, order in production, order in work, order in education and scientific research and order in the lives of the masses of people, and to safeguard the smooth progress of the cause of socialist revolution and socialist construction.

Perhaps the Chinese people are more amenable to conformity and sensitive to the opinions of the group because few are willing to risk conflict with the government.

On the contrary, America laws stress individual rights. Historically, America has been a non-military, political system. The United States was founded on 13 states
whose leaders were guided by the principles of individual rights. The American Constitution details measures to protect individual rights and to prevent the government from abusing those rights. Most of the amendments to the constitution focus on individual rights instead of government rights. For example, the Fourteenth Amendment specifies that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." We can see from this that Chinese laws are more likely to be initiated by the ruling class and to serve their interests while American law is more orientated toward the individual.

A continental legal system v. a common law system. Because the Chinese legal system is a continental system, it has some characteristics which are different from the system adopted by the United States. China has unitary case processing instead of overlapping jurisdictions. China has a central government based political system, which influences the legal system. The court system consists of the Supreme People’s Court (central government), High People’s Court (province), Intermediate People’s Court (city), Basic People’s Court (local), and some special courts. In China, every province has the same three levels of courts; the high court, an intermediate court, and a basic court. The jurisdiction of the court fits the jurisdiction of the government’s administration. According to Chinese law, the people’s court carries out a system in which the second verdict is the final verdict of a case. So if the case originates in basic court, the plaintiff or offender only has one chance to appeal the
case to an intermediate court which makes a final judgement. The opportunity to appeal a case after the final judgement is very limited. The laws of Criminal Procedure stipulate which cases begin in basic court or intermediate court according to the attributes of a case. For example, according to Article 15, Procedural Law of the People's Republic of China "the intermediate people's courts have jurisdiction as courts of first instance over the following criminal cases: counterrevolutionary cases; ordinary criminal cases in which there may be a sentence of life imprisonment or death; and criminal cases in which foreigners commit crimes or in which citizens of our country violated the lawful rights of foreigners." So the case processing in China is not complex.

America has a federal system of government yet at the same time every state is independent. At the federal level, there is a Supreme Court (review), Circuit Courts (review), and District Courts (trial). At the state level, courts are designated as Supreme (review), Appeals Courts (review), Superior Courts (trial), Municipal Courts (trial), and Justice Courts (trial). It is even possible that both federal and state court systems could have jurisdiction over a case at the same time. Also, American court systems offer many opportunities for participants to appeal cases. In addition to federal law, the states have the right to pass and enforce their own laws. As Travis (1990:32) indicates "For the justice system, the result is thousands of police agencies at federal, state and municipal levels, thousands of jails, courts, probations agencies, prosecutors, and defense offices, and scores of prison and parole agencies. It also results in differences in the definitions of crimes and the levels of punishments
applicable to criminal behavior. Variety is central to American Criminal Justice."

Obviously, such a complex organization may cause inefficiency.

China has statutory law, and as a part of a continental law system, case laws is not available. Criminal law is the only standard to judge whether or not a behavior is a crime. Judges usually have the authority to decide whether a suspect is guilty and what is an appropriate sentence.

Under the American tradition of common law, the judge is the symbol of law, although his role is not as powerful as it is under the continental legal system. In America, however, case law is used to expand and explain statutory law. The American jury system also plays an important role in law. Jurors often come to surprising verdicts which makes law more colorful than its original context. Because of the co-existence of state and federal law as well as common law, the American legal system is viewed as more complex.

Chinese law allows for supplementary civil action which puts a criminal verdict and civil compensation in one trial. According to Chinese law, victim compensation is ordered during the procedures of the criminal trial. According to Article 53, and 54 of the Criminal Procedure Law of the People's Republic of China: "Victims who have suffered material losses because of the defendant's criminal act have the right, during the process of the criminal procedure, to bring a supplementary civil action. A supplementary civil action shall be adjudicated together with the criminal case. Only for the purpose of preventing excessive delay in adjudication of the criminal case may the same adjudication organization, after the criminal case has
been adjudicated, continue to hear the supplementary civil action." The supplementary civil action can save time both for victims and for justice systems. The victim does not need to file a separate lawsuit which means they may be able to obtain restitution early. In contrast, American law separates criminal and civil cases. When crimes causes material or financial losses, the settlements often go to civil courts instead of being incorporated into the criminal charge. This would be very inconvenient for many crime victims. As Hillenbrand (1990:90) noted, "Civil remedies are often expensive and time consuming: their outcome is uncertain; and they require the victim, who may have already undergone the rigors of the criminal justice system, to initiate yet another unwelcome relationship with the offender and the justice system."

**Historical collective responsibility v. individual responsibility.** One of the principles in the penal code in ancient Chinese law was collective responsibility. Anyone who violated criminal law was held accountable. Family, relatives, even neighbors and district officers might hold the violator accountable. Since the Qing Dynasty (221, BC) the Chinese government has held a "small family" policy. The family was the basic social unit and all family members shared collective responsibility. Collective responsibility for crime is different from joint crime. In a system of collective responsibility, innocent people would be punished only because they were the offender’s family member, neighbor, relative, or co-worker. Even in the Cultural Revolution, people suffered in such a system. As a result of collective responsibility the Chinese are more sensitive about what they say and do. They are more passive, conservative, negative, introverted, and defensive. They are concerned
not only with themselves, but also with their family members, relatives, and friends’ actions. Because of collective responsibility, people are always trying to avoid the courts. Although collective responsibility no longer exists in Chinese law, it still influences peoples’ daily lives as a tradition of the culture.

Overall, America laws have reflected the belief that everyone is responsible for his own behavior. Criminal courts have only recently begun to consider the notion of a collective responsibility. For example, parents in all states can be held accountable for the damages caused by the delinquent acts of their children. Prosecutors have also begun charging parents of gang members with the failure to control and supervise their children which authorities argue has made them criminally responsible for resulting harms (Geis & Binder, 1990). In addition, prosecutors are now allowed to charge all participants in a criminal enterprise with the most serious crime resulting from that activity even if it is the consequence of a single persons’ action. This means that if four men commit a burglary and one of them shoots and kills a security guard, all four may be tried for murder, regardless of their individual intents. It is important to realize however, that in many jurisdictions these innovations are relatively new and that criminal law has traditionally held accountable only those persons who violate the law by their specific behaviors. Americans for the most part have been less concerned about the influence of an offender’s behavior on family, relatives and friends.
Economic Systems

Public ownership v. private ownership. The main difference in the economic systems of China and the U.S. is socialist ownership and capitalist (private) ownership. According to the sixth article of the Chinese Constitution: The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people. The government does the macro planning for economic development.

One of the biggest differences between public ownership and private ownership might be the welfare system. Generally speaking, welfare in a public ownership system is more widespread than in a private ownership system. For example, since China established its socialist system in 1949, most citizens have free medical insurance from their employers who either belong to government or collective ownerships. Children receive welfare from their parents. Because medical care is not expensive, even people who don't have a job need not worry about medical treatment. Anyone who is injured by crime can get medical care immediately without any limitations or conditions.

The American economic system is based on private ownership. The private ownership system stimulates people to join in competition and to pursue profit, the key to keeping the economy moving. Competition drives Americans to create more programs, better services and advanced technical equipment in order to corner markets and increase sales. Medical treatment and insurance are also private
businesses with the same goals of profit and expansion. Enhancing profit becomes the only goal for many privately owned companies. For example, many hospitals refuse to treat someone who does not have medical insurance because there is no reimbursement, even though a person may be a crime victim. And, as Hillenbrand (1990:90) points out, private insurance for medical bills and property loss benefits only those victims who have had the foresight and the means to purchase it in advance of the crime; even for these relatively few victims, high deductibles may exclude reimbursement for many losses. Further, as the President Task Force Reports (1982:36) notes, even though the "purpose of the physical examination of rape victims by doctors and emergency room personal is the collection of evidence, victims are routinely required to pay for the examination themselves." This is why the Report called for hospitals to provide emergency medical assistance to victims of violent crime without regard to their ability to pay, and to collect payment from state victim compensation programs. Thus, Chinese victims have been in a better position to get medical treatment than victims in the U.S..

Planned economy v. market economy. Because of public ownership, China has a planned economic system to control the market. Articles 15, 16, and 17 of the Chinese Constitution declare that

The state practices a planned economy on the basis of socialist public ownership. It ensures the proportionate and coordinated growth of the national economy through overall balancing by economic planning and the supplementary role of regulation by the market. ... State enterprises have decision-making power with regard to operation and management within the limits prescribed by law, on condition that they submit to unified
leadership by the state and fulfill all their obligations under the state plan....
Collective economic organizations have decision-making power in conducting independent economic activities, on condition that they accept the guidance of the state plan and abide by relevant laws....

The advantage of the planned economy is that it ensures control of the economic development which reduces random over-production and materials waste. However these safeguards can also cause problems. Often it restricts the flexibility of the market economy and sabotages economic development.

America’s market economic system means that private owners have absolute rights to decide their course of production. Economic plans are regulated by market demands. Although every individual has his own plan, there is less control from the state and federal levels. The advantage of this arrangement is that it can stimulate the development of a market driven economy. However, it sometimes causes huge waste, recession and depression because of the lack control from a macro perspective.

**Economic equality v. economic competition.** In China, everyone has a similar economic position. Most people get jobs arranged by the government and everyone has a similar income. Although the Chinese government allows some people to accumulate wealth now, there are many limitations because of the social system and its traditional customs. Egalitarianism is still a value of the Chinese economic system today. In contrast, Americans have never espoused this philosophy and instead, have survived about two hundred years of capitalism. Competition and a class-based society are concepts accepted by most Americans today.
Culture and Customs

Culture is very important in shaping people's lives and daily behaviors and is an important feature of the study of comparative criminology and criminal justice. Culture and customs influence our social structure and our perception of justice. Mediation programs in America and China are different, though both types are popular because they are compatible with existing cultural systems. Chinese mediation programs are accepted by Chinese people because they are rooted in traditional cultural values.

"Yu shi wu zheng" value of existence. One of the doctrines many Chinese value is "yu shi wu zheng", meaning holding oneself aloof from the world. A person avoids disputes, quarrels, and fights with others. Chinese people are thought to be patient, lenient, tolerant, obedient, and compliant. They look down on the bellicose personality and praise self-satisfaction. They forgive the wrongdoer even though they have enough reason to sue someone. For example, A and B are neighbors. A often turns on the radio loudly and makes noise. B can't study during this time. Instead of calling the police or talking to A directly, B would adjust his study schedule and change his study time. For B, who holds the doctrine of yu shi wu zheng, is not willing to argue with A and wants to avoid a dispute. The Chinese emphasize living together with people peacefully rather than competing and fighting each other.

Meanwhile, "from an international perspective, America can't plausibly be considered a 'tolerant' or 'lenient' society; it is, however, an acquisitive and materialistic one. These cultural attitudes surely have some relationship to severity of our crime.
problem." (Currie, 1985: 49) Throughout America's history the people have been competitive. The "Mayflower" was loaded with people who could not tolerate religious intervention from government. America has experienced many wars within its 200 year history. Early settlers fought Indians and the British and even each other in the Civil War. Later, Americans joined the first and second world wars as well as the Korean War, Vietnam War, and Persian Gulf war. Americans are encouraged to be very independent, competitive, and aggressive. However, it also creates low tolerance. As a culture, low tolerance for conflict may lead to the overregulation of behavior. This may result, in turn, in the redefinition of conflicts into incidents that may be dealt with in more formal ways. (Kennedy, 1990: 8) Compared to the Chinese's doctrine of holding oneself aloof from the world, the characteristic of American is the willingness to intervene in the affairs of others.

"Zhong yong zhi dao" v. respecting competition. The doctrine of "zhong yong zhi dao" means not to go to extremes. The Chinese are taught to be gentle, lenient, and moderate instead of extreme. This doctrine does not support people fighting each other. If people have a reason to accuse someone, they should give the accused rights and should not push them to the extreme. Going to court is thought of as an extreme way to solve problems. People who subscribe to the zhong yong doctrine will think of a gentler way to reduce the tension and settle disputes. Besides, people do not like to be either famous or infamous. Famous people may become infamous because of jealousy and rumors. They like to be moderate which keeps them far away from any disputes. They would feel shame and under pressure in the community if they or a
family member were thought of as criminal.

In China, people are willing to show their friendship and kindness. They know that if they take a case to court, they may win the case, but they would lose friendships with other people because they would now be regarded as tough or extreme. Therefore, people are willing to choose a milder way to settle problems.

American culture values competition. "This is evident not only on the playing fields, in the professions, and in the business sector where the State has proclaimed the principle of free enterprise. Social life animated by this competitive spirit is one constant struggle. Unscrupulous competition has given rise to a pragmatic way of life." (Viano, 1976:32) Under a competitive doctrine, people have strong feelings about winning and losing. Americans adamantly protect their rights yet they respect competition and often measure their success through competition. In the area of criminal justice, there is a widespread popular belief that Americans are overly litigious, taking all their grievances to formal adjudication through the courts (Kennedy, 1990: 32). Even the adversarial arrangement of the American justice system is, in a sense, a competitive. By going to the court and having both sides argue, a determination will be made, with the participants either winners or losers. Theoretically, there is no middle ground.

Group psychology v. individual ideology. The Chinese have strong feelings of belonging and group spirit. Thousands of years ago, the Chinese had to live within groups in order to survive under poor agricultural conditions. Anyone who attempted to deviate from the group would threaten the whole. Leadership and dominance
became important. Chinese are trained to cooperate as a group. Today, China still is a
developing agricultural country and traditional customs survive from one generation to
the next. Chinese people are interactive and interdependent. Group feelings motivate
people to help each other and they have close connections with each other. A person
needs a good reputation to be around people so that they can maintain friendships and
get help from others. On the other hand, Chinese people are taught to unite as group.
Children in elementary school are taught "one chopstick is easily broken, but ten are
harder to break." As part of one's moral education, the Chinese government always
wants people to help each other and make improvements together. The individual is
trivial and only plays a role when he joins the group. The relationship between
individuals and the group are described as a drip of water and the ocean. A drip of
water will dry only if it leaves the ocean.

American are very independent. They believe in competition. They hope no
one intervenes in their business and they are reluctant to intervene in anyone else's.
They are more pragmatic, focusing on results instead of motivation. They are
pragmatic people with an independent character. As Saney (1986:44) pointed out "the
culture of the United States is filled with positive, individualistic, and aggressive
values. America has been the land of vast opportunities. To reach its high level of
progress and affluence, America culture has encouraged industry, innovation,
ambition, individuality, and the willingness to take high risks, to be able to persevere
in the face of dire defeat."
Shaming Model

Shame is an emotion in response to a negative evaluation of one’s self (Harper & Hoopes, 1990:3). Shame is a personal internal experience and consciousness. According to Broucek (1991:33), there are three inseparable aspects to consciousness: intentionality, knowing what one is doing and why; awareness of the here and now reality; and the sharing of knowing and personal feelings, having intimacy with the consciousness of others and an awareness of affectional and moral responsibility to them.

Shame may be regarded as a personal experience that connects those conditions. Shame stems from the phenomenon of exposing one’s actions and motivations to others. It is an experience where one knows that his actions are counter to the norm and that his behavior might result in negative reactions. Shame is an internal personal experience which is based on interaction and communication with others. Like a mirror, one feels shame from the way people respond towards him. The most immediate consequence of shame probably is "physiological discomfort, more long-term consequences include loss of valued relationships and perhaps restricted opportunities to achieve other valued goals" (Grasmick, Bursik, Cochran, 1991:253).

Shaming is often confused with the concept of guilt. According to Harper and Hoopes (1990:3), guilt is an evaluation of behavior. "When people recognize that their behavior has violated some standard that had meaning to them, they feel guilt
for having done it." Shaming and guilt are both personal feelings, but guilt is a feeling deeper than shame. Shaming does not necessarily mean doing something wrong, where guilt is a feeling of doing something wrong.

The shaming model is successfully used in mediation programs. According to John Braithwaite (1989:55), shame is the expression of disapproval that can be enacted in an infinite variety of verbal and nonverbal cultural forms with the intention or effect of invoking remorse in the person being shamed. He identifies two kinds of shame: reintegrative shaming and deintegrative shaming. Reintegrative shaming means expressions of community disapproval, which may range from mild rebuke to degradation ceremonies, and are followed by gestures of reacceptance into the community of law-abiding citizens. Shaming models use integrative shaming to help deviators return to society through mediation programs.

The shaming model in mediation programs has several advantages: it places pressure on offenders to make apologies and restitution to their victims. After being involved in the justice system, offenders are eager to disengage from the system. They are often ashamed of their behavior in front of their families, friends, and acquaintances. Shaming compels them to seek a new balance in their minds by making restitution. Restitution in some ways is made by using a shaming mode. For example, an offender steals a TV from his neighbors. When he was caught, he feels ashamed however, returning the TV to his neighbors could reduce his shame. In other words, his shame compels him to return the TV. Mediation programs may use the shaming model to help victims obtain apologies and restitution from offenders.
The shaming model includes the function of moral education. As a matter of fact, morality plays a significant role in people's daily lives. The shaming model does not work as legal punishment, but has a stronger influence on moral education. The shaming model tells an offender that his deviation is rejected by most people and society. "If the people are governed by laws and their conduct is regulated by a system of punishments, they will only try to avoid punishment, and will lose the sense of shame. On the other hand, if the people are governed by morality, and their conduct is regulated by rules of Li (moral code), they will have the sense of shame and will also become good" (Chai and Chai, 1962:102).

Another function of the shaming model is deterrence. Some offenders lose face and their reputations when confronted by facing people who know of their guilt or wrongdoing. They feel fortunate to be able to settle their cases in mediation programs. They are ashamed and anxious about their misbehavior. They are not willing to go through such an experience again so they are motivated to be honest with their victims and avoid such a situation in the future.

It can be argued that the shaming model used in mediation programs is based on three elements: public opinion, stable interaction among people, and an offenders' morality and amenability. The first two elements are external conditions and the last one comes from an internal condition. The shaming model in Chinese mediation programs works because of these three elements.

First, public opinion is very important in a communal society. Public opinion is influenced by law, government policy, and the way people view events through the
mass media. "Shaming often works in communitarian societies through the formal court system and indirectly by the community through scandal and gossip which is not expressed openly to the offender" (Braithwaite, 1989: 87). Traditionally, Chinese people have close relationships with each other. The community plays an important role in a person’s daily life. Special living conditions in China more readily lend to the spread of news and gossip. China has the largest population in the world and is a developing country. Traditionally, the Chinese government limited the movement of people from place to place because it was easier to administrate. Even today, compared to the American people, Chinese people are more stable in their living and working conditions. The result is that people know each other well. If someone commits a crime, the news spreads quickly. Chinese people work with low levels of technology. Many factories require large numbers of people to work together simply because of low labor productivity. Because the Chinese political and economic system tries to place everyone in a job, the consequence is that some agencies hire more people than they need. As a result, people have time to gossip during work, and thus news and rumors run rampant. Furthermore, the living conditions for many Chinese are poor. Often, families have to live in a small room so that members have to spend more time outside instead of being at home. They often visit with each other and spend time talking about circumstances at work and at home. For example, in Shanghai if one man has a friend visit him to talk about his job, his wife probably would visit her neighbor and leave the house for her husband and his friend. These conditions create the opportunity for interaction. In some areas, because of the
limited space, houses are built so close that people have almost no privacy. It is easy for those people to interact and spread news about community problems and what others have done.

The second factor is the stable interaction among people. In a community, offenders are supervised by peer groups and neighbors. Things as cotidal as eye contact, speech body language say much about one’s opinion of the person he or she addresses. Shaming is a kind of invisible pressure which makes the offenders feel guilty and evokes the need to be reaccepted by the community. The basis of people’s potential powers over offenders is that they know what happened to them. In other words, only people who people live in a stable environments where residents know each other are able to employ the shame model efficaciously. If no one knows who the offenders are and what happened to them, they could be powerless in conjuring shame.

Thirdly, one must consider the offender’s morality and amenability. Shaming happens when offenders internalize public opinion through community corrections programs. It would not be possible for all offenders to experience shaming. Only those whose morality and amenability allow the possibility of internalization. Because of each individual psyche and personality, it is hard to say if there is a standard for distinguishing people’s morality and whether we can predict who would internalize the moral lesson. It is plausible that some people experience less shame than others. "Someone has even coined the acronym term to describe what we now suspect are the amenable subjects of therapy: YAVIN (young, anxious, verbal, intelligent, neurotic)"
Normally, the more amenable the offenders are, the easier it is for them to accept a shaming model. After analyzing the Chinese culture including politics, economics, and law, it is easier to understand why a shaming model can work in mediation programs there.

The shaming model would also work in American mediation programs if it met these criteria. Conditions in the United States may not be as conducive to shaming as in China. However, this does not mean the shaming model cannot be used effectively in this country. Compared to China and Eastern countries, America and Western societies are more individualistic than communitarian. A model for shaming in the community means that "probation and parole officers would be located in the neighborhoods where their clients live and work, intervening in the community as well as offenders’ lives. The agents would be involved with community institutions such as businesses, churches and schools" (Braithwaite, 1989: 87). These institutions keep in touch with each other. They constitute community opinion which affects the residents and offenders of the community. This environment is also found in the countryside, and some small towns which still maintain a community of close relationships. Such situations can facilitate a shaming model in mediation programs.

Americans are said to be living on wheels, meaning that they keep moving. However, it is not uncommon that some people maintain stable lives for many years. Where neighbors know each other well, there is the possibility of using a shaming model in community mediation programs.

Because of social conditions, Americans are less likely to extensively utilize a
shaming model in mediation programs than the Chinese. However, there is the potential for further use of shaming models in America. Even though the shaming model may not be suitable for a large community, it may be effective in small groups such as peer groups, colleagues, and close friends. The key is how we structure the mediation environment and use the elements of shaming in community corrections.

Integrated model

Mediation programs in China also function to integrate people into society. Integrated models mean mediation programs reunite participants, restore friendships, solve problems more completely, and help deviants (offenders) to return to society.

As we all know, China went through a difficult period during the Cultural Revolution (1966-1976). According to Mao's philosophy, the history of all hitherto existing societies is based on class struggles. Even though China is in a period of socialism, class struggles never stop because of the influence of world capitalism. Mediation was a tool for solving problems among people and for keeping people from becoming enemies. The integrated model has had strong political significance throughout the Cultural Revolution.

After the Cultural Revolution, the Chinese government abolished many extreme doctrines which it believed had misled the people. Government officials re-explained the meaning of the integrated model as a tool of social control instead of class struggle. Crimes are considered a heavy burden on the criminal justice system and modernization efforts because it consumes much money and energy. It also
threatens the safety and security of the people. Disputes between families, colleagues, and neighbors are unstable elements which may lead to more serious crimes. The goal of integration in mediation programs could reduce conflicts and prevent serious crimes, functioning as a means of social control.

According to data, most offenders are occasional offenders. Some of them commit crimes under very emotional circumstances. They either do not harm society seriously or have moral excuses and justifications for their actions. It is harmful to send them to prison, which is often called a "school of crime". Therefore, mediation programs function to solve problems and reduce recidivism.

Integrated models also consider the offenders' family situation. The family is affected whenever an offender is sent to jail. Spouses become single parents who raise the children and who may ultimately seek a divorce. It may be impossible for an offender to make compensation to a victim or provide for his family if incarcerated. The Chinese government pays much attention to the integration of the family, which is thought to be the basic unit of society. Integrative models use community corrections to provide family stability and social integrity.

Mediation programs serve the function of educating people. An integrated model is meaningful to teach about law, the legal system, policy and morality. Social security largely depends on people's legal and moral ideology. So it is very important to publicize laws, regulations, and policies as well as educate people on how to follow social morality and mediation is one of the ways (Liu, 1989:34). The purpose of an integrated model in mediation programs is to unite people and reduce crime.
Integrative models in mediation should focus on four goals: repairing relationships, preventing dangerous crime, solving problems and integrating law and morality.

**Repairing relationships.** Integrated models focus on repairing broken relationships among offenders and victims. Mediators try very hard to persuade participants to restore their friendship after making things right. They do not think that making compensation is the final purpose of mediation. Repairing relationships among participants is thought to help offenders return to society and to keep the society better integrated. The more broken relationships, the less integration of society. Years ago, the Chinese thought that simply repairing the relationship would mark the success of mediation. For example, if a battered wife wanted to divorce her husband, the mediator would keep on working until both husband and wife agreed to live together as usual. Today, the meaning of success has changed. Although mediators still try to repair broken relationships, solving problems is also a criteria for success. As in the example above, even though the husband and wife no longer live together, the husband stopped beating his wife, so it is considered a successful resolution.

**Preventing dangerous crime.** Mediation programs try very hard to prevent dangerous crime. Chinese mediators work to resolve civil cases to prevent future crime and to prevent the escalation of minor crimes. They work hard to keep these "would-be criminals" from deviating any further.

**Solving problems more completely.** One of the advantages of mediation programs is that they can solve problems at certain root causes. Mediators are not
satisfied by simply figuring out who is right and who is wrong. They try to solve problems from the roots. For example, two families share one tap in the kitchen which cause disputes, fights, and injuries. If the case is taken to court, the result might tell us one is right and one is wrong and that the wrongdoer should stop such behavior and make compensation to the victim. It settles a case but does not solve the problem at the roots. In a mediation program, the mediator would not only analyze the case and settle the dispute, but would also attempt to install another tap in the kitchen.

**Integrating law and morality.** Mediation programs function to help people integrate in society not only legally, but also morally. In any society, the strongest opinion that keep most people from crime is not the criminal code but morality. Crime is an extreme, a deviant behavior which has to be settled by the justice system. However, the court system only settles cases according to the law. Although the court may consider moral issues, it is not necessary to deal with moral issues. Mediation programs do not have the strong binding force of a court system, but the role of morality is much wider and deeper than in the court system. In the mediation process, mediators work not only on law, but on morality, social policy, and practical social circumstances related to the issues. Moral education is more detailed, practical and concrete to both victims and offenders. In many situations, it may work better than the court system.

Generally speaking, Chinese mediators try to use integrated models to settle problems completely, not superficially. They try to settle problems at the root causes
with different points of view and to integrate offenders and deviators into society more completely.

An integrated model is also a doctrine to guide American mediation programs. If an offender is put in prison because of a felony crime, he might lose his voting rights forever. This would be a serious consequence if an offender actually realized his fault and was rehabilitated. Many offenders in America are first time violators. According to current correctional conditions, offenders are much more likely to be trained as recidivists by other recidivists if they are put in prisons. In such a situation, there is no rehabilitation at all. The only result is pushing offenders farther away from society.

Self-Examination Model

For many years, the Chinese formula used in mediation programs has been Mao’s doctrine: unite-criticize-reunite, meaning that the motivation of mediation is to unite people and not class struggle. All participants in mediation programs use a self-examination model which is a positive way to deal with conflict among people. Self-examination means that when one has conflicts with others, one should re-examine himself and find his own faults instead of blaming others. Misunderstanding and misbehavior can be moved by understanding and forgiveness. Problems are solved by getting at the truth.

The self-examination model in China has a political heritage. The doctrine of class struggle has dominated Chinese political theories for many years. According to
this theory, all citizens were separated into two groups: comrades and enemies. Comrades did not have serious conflicts. All problems among comrades could be settled by using the self-examination model. So, the criminal justice system was a tool of the dictatorship of the proletariat. Mediation programs kept people from further deviation. According to Mao's theory, pushing comrades to the side of enemy was losing people to establishing socialism. Mediation programs used gentle, mild ways to help comrades and prevent deviants from becoming enemies. Today, class struggle theory is no longer mainstream any more. But the mediation and the self-examination model still works. In fact, the self-examination model stems from psychological and sociological points of views. However, it was distorted by the class struggle doctrine.

From a psychological perspective, self-examination helps people understand each other. In China, the causes of disputes between neighbors are usually trivial. Because the parties don't talk frankly with each other, they often misunderstand the other's behaviors. "Misunderstandings and suspiciousness lead to antagonism and even competition between people. When the misunderstandings are directly confronted, suspiciousness decreases, and antagonistic, competitive behaviors give way to cooperative and appreciative ways of being" (Maddi, 1972). Self-examination offers offenders and victims the opportunity to face each other and explain their behaviors and the reasons for their behaviors. It results in understanding between participants and it is good for solving the problems.

A self-examination model can reduce tension and stress. As human beings, people's instincts are a combination of both somatic processes and mental processes.
As Maddi (1972:23) noted, "Instincts have their source in somatic processes and are characterized by the tension and pressure toward the action of biological deprivation states." We know from psychosocial theories that safety and security are basic human needs. Insecurity and threats to safety cause anxiety, stress and defenses which accelerate antagonism. Under such circumstances, intuition, distortion, and illusion might dominate peoples' minds. Disputes that escalate into crimes are often the results of exposure to tension and antagonism.

The self-examination model helps reduce people's anxiety, tension, and stress. It breaks down the defenses which might stem from intuition, distortion and misunderstanding. Meanwhile, people can see the real truth. It is a great help for both offenders and victims to reintegrate and reunite.

The self-examination model works in China not only because of its basic philosophy, but also because of the special culture of China. For example, the concept of "yu shi wu zheng" (holding oneself aloof from the world) and "zhong yong zhi dao" (not going to extremes) makes it possible for the self-examination model to work. Also powerful administrative controls in China have a great influence on the self-examination model. Again, social bonds in China allow a self-examination model to work well.

American mediation does not usually incorporate a self-examination model in offender-victim mediation programs, but the mediation process has a similar function to the Chinese self-examination model. First, the mediation process releases stress for both participants. Before offenders and victims are face to face talking about the
case, both of them are nervous. After the mediation, however, many offenders and victims feel relaxed, stress is released, defenses are also reduced. People talk more openly and honestly. Secondly, many offenders expound upon the reasons they committed crimes. They express repentance and make apologies to their victims. They require forgiveness and are willing to make compensation. Thirdly, many victims do not look at compensation as the most important part of mediation. Often psychological satisfaction is more important. The mediation process not only helps victims to understand offenders, but also allows victims to examine their own situation and to prevent being a victim in the future. At the meetings, victims can try to get satisfactory answers to unsettling and lingering questions like "why did you choose to attack me?" or "how did you gain entrance to my home?" Exploring the reasons that lead to becoming a victim may help a victim to re-examine himself. It also helps mediation programs settle problems through honest interaction. Victims are more satisfied by knowing the truth through self-examination.

A self-examination model is suitable in Chinese mediation programs because Chinese mediation programs deal with various kinds of cases. It is all right to use a self-examination model in civil and security cases because they are not related to crimes. But one must be more sensitive when using the model with offenders and victims due to the victim orientation of programs. In those cases, mediators should judge right and wrong solely on the basis of facts. Offenders shoulder the main responsibility precisely because they are the ones who committed the crimes and should admit their guilt and wrongdoing first. Mediators have the duty to analyze
each case and to help offenders to recognize deviant behavior. When an offender apologizes and makes restitution, he is taking a step toward accountability. On the other side, mediators also help victims understand what factors may have led to the crimes. The purpose of the work by mediators is not to blame, reproach, or denounce victims, but to help them to improve their insight and to prevent further victimization. In these cases, there is no obligation for victims to examine their own faults. But many victims engage in self-examination because of the sincere atmosphere of mediation programs. Usually when both participants examine their motives and behaviors, there are more positive effects.

Self-examination models in offender-victim mediation programs are more complex than in civil cases. The key for handling these cases is how to insist on a victim-orientation. If we cannot keep cases focused this way then we may lose benefits of self-examination.

Decriminalization Model

Decriminalization is an official act generally accomplished by legislation, in which an act or omission, formerly criminal, is made non-criminal and without punitive sanctions (Black, 1983). There are two types of decriminalization. In one, an act that was previously a criminal activity, is no longer regarded as a criminal behavior according to legislation. In the second, a behavior may constitute a crime according to law, but it will not be dealt with criminally or enforced with a punishment. There are three ways to deal with crime using the second type of
decriminalization in mediation programs. If an offender commits the crime, he is not charged, not given a punishment, or given only a reduced punishment.

Decriminalization is a special phenomenon in the United States. It may be considered an outcome of the high rate of crime, the problem of overcrowded prisons, and the compromise that results from conservative and liberal conflicts in ideology.

In America, the crime rate is much higher than other countries. "Americans have faced roughly seven to ten times the risk of death by homicide as the residents of most European countries and Japan. Careful research reveals that Americans are more than three times as likely to be raped than West Germans, and six times as likely to be robbed" (Currie, 1985:5). High rates of crime become a burden on the criminal justice system. Suspects wait for long periods of time before trial, which makes it harder to maintain evidence. This results in less efficiency in the criminal justice system. Low risk of punishment may also stimulate more crime.

Decriminalization is considered by some to be one of the ways to alleviate the burdens on the criminal justice system.

The overcrowding problem in prisons became more serious because of "get tough" policies legislated between 1980 and 1990. However, incarceration may not reduce crime. The National Commission on the Causes and Prevention of Violence reviewed evidence that longer sentences did not consistently reduce recidivism rates and in some instances seemed to increase them. Currie (1989:59) noted that widely varying relationships between imprisonment and crime rates probably meant that the connection between them is tenuous. So it was impossible to construct policies about
the use of imprisonment as a social sanction based on its presumed relationship with
the crime rate. Under such circumstances, decriminalization is an alternative method
of dealing with crime.

Decriminalization may be viewed as a compromise between conservative and
liberal philosophies. The American political playground appears both conservative and
liberal as each party has its own theory of governance. Criminal justice policies
change according to these different political conditions. Decriminalization may fit
both tendencies. Conservatives stress tougher policies and just deserts. They doubt the
function of rehabilitation, thinking that "the proper design of public policies requires a
clear and sober understanding of the nature of man" (Wilson, 1983). Some believe that
society has already offered offenders countless opportunities to rehabilitate, they reject
the very opportunities that they rejected before (work, school, counseling) or else
shamelessly exploit them while continuing to commit crime (Samarto, 1984:21).

Many argue that the best way to deal with criminals is to lock them up and throw
away the keys. "If every person convicted of a felony received a five-year prison
term, the number of felonies committed would drop by 45%" (Wilson, 1983:152).
However, reducing crime by a significant amount through longer prison terms would
be very costly. Conservative measures alone cannot solve the prison overcrowding
problem. "Where once there were no penitentiaries at all, today there is no space in
the prisons and jails. The pressure for alternative sanctions is great, even from those
who endorse the 'punitive' approach but recognize the realities of economics and
court orders aimed at overcrowded facilities" (Hillenbrand, 1990:190). Conservatives
have to decriminalize some offenses in order to focus on serious crime.

According to a liberal perspective crime is caused by the pressures of social and economic inequality and deprivation. Liberals assume that "a combination of rehabilitation for offenders, better opportunities for the disadvantaged, and a more humane, less intrusive criminal justice system would reduce crime" (Currie, 1983:12). Community corrections is an ideal way for liberals to rehabilitate offenders and prevent crimes. However, most liberals' anti-crime programs did not directly address those problems. They "responded with poorly conceived, ill-equipped, and superficial programs to problems that cried out for intensive and sustained intervention" (Currie, 1983:227). Support is needed from the criminal justice system to implement community corrections. Decriminalization is a way to moderate both conservative and liberal perspectives as well as provide rehabilitation in mediation programs.

Mediation and restitution should be available during all phases of the criminal justice system. If we separate criminal justice procedures into pre-arrest, arrest, indictment and prosecution, trial and conviction, imprisonment (probation), parole, and release, we can see that between every two processes there is the possibility of offering restitution and/or mediation to divert or resolve criminal cases. Mediation programs should take place after arrest and before imprisonment. One of the reasons mediation programs may work is because of this decriminalization model. In other words, the success of mediation may be based on the success of using a decriminalization model. The main function of decriminalization in mediation is to alleviate the burdens on the criminal justice system and to reduce the rate of
In theory, Chinese laws do not allow for decriminalization. Chinese lawmakers argue that any behavior that constitutes a crime should be punished. Yet decriminalization exists in practice, which is often ignored by researchers. A Chinese decriminalization model could be seen as the following: First, according to the definition of crime in Article 10 in Chinese Criminal Law, all acts are crimes if according to law, they should be criminally punished: but if the circumstances are clearly minor and the harm is not great, they may not be deemed crimes. Because Chinese criminal law is quite simple, it is not clear what is "the clearly minor of circumstances"; Second, according to the Chinese Criminal Procedure, there is private prosecution. In these cases, plaintiffs can make the decision to sue an offender or to recant the case. These cases may include using violence to interfere with the freedom of marriage of others and abusing family members and so on. In practice, the government encourages people to solve these problems informally, without going through the criminal justice system. Third, Chinese laws do not allow parties to decriminalize an act if a case is brought by government prosecutors. However, some criminal cases could be settled in mediation programs through restitution and compensation if victims choose an informal route rather than the formal accusation process of the criminal justice system. One of the reasons that mediation programs are successes in China is that they use the decriminalization model to solve differences between offenders and victims outside of criminal justice system.

The decriminalization model used in mediation programs in China has its own
background which is different from the U.S. There was a long period of time before
the 1980s' during which China had no Criminal Law. Citizens were separated by
comrades and enemies. Enemies were under the dictatorship of the proletariat. There
was no clear concept of crime. Mediation programs were one way of the government
dealt with problems among comrades. Today, the criminal justice system in China is
still considered young. It cannot handle a large number of cases. It is important for
mediation programs to share the responsibility for settling minor cases. Because of
people's legal ideology, the strong influence of mediation programs and strong
administrative controls, many people are willing to offer their cases for mediation
instead of using the criminal justice system even though some cases should be
classified as criminal cases. Although China is developing a more elaborate system of
Criminal Law now, in some ways, people are still willing to settle the dispute using
mediation. The fact that mediation programs may settle some criminal cases, they
seem to provide satisfaction and successful results.

A decriminalization crime model also has a function of social control. For
example, A and B are neighbors. They fought each other in order to occupy a
common space, and A was injured by B. A could accuse B and B might be sentenced
to jail for several months. The result for A is that he might get some money from B,
but A and B might never be friends and good neighbors again. It would be
unfortunate if two neighbors who lived together for many years could no longer be
friends. A was willing to send the case to a mediation program. B realized his fault
and was willing to pay compensation to A and apologized to A through mediation.
Subsequently, they repaired their friendship. The result was better than putting B in jail and having A worry about retaliation by B's family members. A decriminalization model in mediation is beneficial for both offenders and victims, especially in those cases where offenders and victims had been friend before.

Although the backgrounds and uses of the decriminalization model and mediation programs would vary between America and China, both countries could use them to settle some criminal cases and to strengthen social controls. There are however, limitations to the use of a decriminalization model in mediation. There are three factors to consider when using such a model: victims' rights, rehabilitation effects, and the public's legal ideology.

Victims' rights. Not all criminal acts should be approached with a decriminalization model. We should consider the victim's concerns first when we put cases in mediation. Many people criticize the criminal justice system for appearing to emphasize the offender's rights and ignore the victims's needs. What results is that "victims not only deal with offenders and their lawyers; they sometimes actually have to fight the criminal justice system itself" (Van Ness, 1986:23). Take for example, what happened when Karen Simpson was raped. The suspect had been in trouble before and had a series of burglary charges pending against him. As part of a plea bargain, the suspect admitted guilt to the burglary and the rape charges were dropped. Simpson was not called as a witness. She was not even told that the prosecutor was considering the plea agreement. She was horrified to discover that the case had been dismissed. The criminal justice system, she felt, was clearly not working in her
interest. She began urging friends in the community to write to the prosecutor demanding that the charges be reinstated and that a trial be held. Eventually the prosecutor bowed to the pressure, and the suspect was brought into court again to face the rape charges (Van Ness, 1986).

In cases such as this, decriminalization seems wrong. The prosecutor sacrificed the victim's case so as to exact the offender's plea of guilt to burglary. As a prosecutor, he should not ignore victims in order to facilitate court processing. Mediation programs may face similar situations but should never ignore the victim.

Rehabilitation effects. The process of decriminalization should not eliminate the opportunity to rehabilitate offenders. Currently, most offenders taking part in mediation program are satisfied with the programs because they have the opportunity to know the victim and to understand their situation. They are given the opportunity to take responsibility for their actions. It is important for us to think about rehabilitation and the integration of offenders back into society. Literately, rehabilitation in mediation programs should be more successful because those offenders should have less serious criminal records, less serious crimes, and less recidivism than offenders in the traditional criminal justice system. Therefore, they are more suitable for community corrections and its rehabilitative potential. Unell and Leeming (1988) studied 75 offenders in 1988 and concluded that "offenders who had some contact with the scheme or who participated in a joint meeting benefited from the experience and that this benefit was reflected in their future criminal or offenses of less severity". However, the study had only a small sample (n=75), There are only
a few studies on the rehabilitative effects of mediation programs.

Public legal ideology. A decriminalization model should be consistent with the public’s social-psychological expectations. This means that we should consider public opinion and legal ideology. Usually, people’s legal ideology stems from formal systematic education and mass media which is informal, unsystematic education. Legal ideology is dependant upon political, economic, and cultural background. For most people, legal ideology is also influenced by legislation and the legal system and vice verse. It is important to consider public opinion while using a decriminalization model in mediation programs.

Legal ideology is not unchangeable. For example, in ancient times, it was reasonable for an offender to make restitution to his victim because public ideology allowed an eye for an eye and a tooth for a tooth. In modern society, such a philosophy no longer fits public ideology. Retribution, deterrence, punishment, rehabilitation, restitution, incarceration, and just deserts, are the basis of American criminal justice policies. Paradigms shift from one side to the other side and public opinion changes over time. A decriminalization model would work only if it is accepted by the general public.

Currently American mediation programs are trying to expand their caseloads to include not only misdemeanors but also selective felonies, both non-violent and violent. Only time will tell how far the mediation program will go and how well they will be accepted by people. Some cases will fail in mediation because of the victims’ refusal to participate. Other cases fail because we misuse the decriminalization model
which is unacceptable to both victims and the public such as the Karen Simpson case mentioned above. When the rape charge was dropped, the victim began urging friends in the community to write to the prosecutor demanding that the charges be reinstated and that a trial be held. Obviously, the prosecutor misused the decriminalization model. He had to face pressure not only from the individual victim, but from the community and its legal ideology.
CHAPTER 6 CRITIQUE OF CURRENT MEDIATION PROGRAMS

Selecting Suitable Participants

Chinese mediation programs not only address civil cases and security cases, but also some minor criminal cases. Most cases involve acquaintances. The conflicts include marriage problems, family fights, disputes between neighbors, property arguments, and colleague conflicts on the job. Generally speaking, most Chinese mediation programs only involve people who are related or who knew one another and lived in close proximity to one another.

American mediation programs are different from China's. Here, offender-victim mediation programs deal with cases referred from probation departments and courts, which mean all offenders have already become involved in the criminal justice system. According to one survey, although in some mediation programs there were no restrictions on the types of cases considered appropriate, in most (80%) some kinds of offenders or offenses were excluded. Violent offenses or offenders were eliminated most often (Hughes, Schneider, 1989).

In America, mediation has been attempted with felony cases which include sex crimes and violent offenses. The new trend for offender-victim mediation programs is to expand participation beyond misdemeanors to felony cases, and from non-violent to violent offenses, and from property crimes to include a wider range of personal crimes cases.

There is no clear line to separate out the most suitable participants. Normally,
probation departments and courts select cases according to several different aspects and then make decisions about them. Offenders selected to participate in mediation programs should perhaps meet several criteria.

**Occasional offenders v. recidivists.** Offenders in mediation should not be chronic offenders (recidivists). Technically, programs should focus on first time offenders. As human beings, people often make mistakes, even serious mistakes such as committing a crime. If the damage caused by a crime is not serious enough, there is a reason for us to forgive the first time offender. Usually, offenders also experience anxiety, stress, struggle, and some repentance after being accused. Some offenders are intimidated by the criminal justice system. Mediation programs give them a way to evaluate themselves and provide an opportunity to remedy damages so as to reintegrate themselves into society. Some offenders take this opportunity seriously and under these circumstances, mediation programs work well.

Community corrections is a milder way to settle criminal cases that focuses more on rehabilitation. Theoretically, offenders put in community corrections have either committed less serious crimes or have characters amenable to treatment. One of the reasons we lock up offenders is to isolate them and to protect society. If an offender is a chronic offender, they are considered difficult to rehabilitate and reintegrate into society. Ruddick (1989:122) has concluded that mediation programs "involving hardened professional criminals were unlikely to benefit victims or offenders. The victims understandably were not reassured in any way by meeting professional burglars, who were untypical since most burglars are young people. The
professional burglars in turn seemed little affected by accounts of the victims' suffering."
It is understandable that "in some programs sex offenders, chronic offenders, those with drug, alcohol, or mental health problems, and the retarded were excluded. It is also reasonable to exclude offenders considered to be sociopathic, cases of child abuse, offenders showing no remorse or denying involvement, and overly angry victims" (Hughes & Schneider, 1989).

**Crimes of passion v. intentional crimes.** Those who commit crimes of passion are often occasional offenders. In most aspects of their life they are law abiding people. Those who commit crimes of passion are usually frustrated by some things and there are strong links between immediate events and the crime. In some cases, these offenders have a moral justification for their crimes which may arouse sympathy and forgiveness from society. These offenders may also have deep remorse for their crime. Mediation programs may assist offenders in realizing their problems and offer the opportunity for them to avoid the negative effects of prison. Also, it is rare that these offenders recidivate because the precipitating events do not reoccur.

**Misdemeanor offender v. felony offender.** One of the conditions we consider about crime is its harm to the individual victim and society. The difference between a misdemeanor and a felony is that a misdemeanor results in less harm than a felony. People and society have more tolerance for and may forgive misdemeanants because they do not cause serious damage to society. Processing misdemeanor cases in the criminal justice system would prevent the system from focusing on serious crimes which have caused greater harm to society. There should be considerable caution
exercised when considering felony cases for mediation. Because of the limited range of punishments in mediation programs, it is not often suitable to have felony offenders participate, especially if the criminal behavior seriously harmed society.

**Non-violent offender v. violent offender.** Currently, most American mediation programs focus on non-violent offenses. However, in the last several years "there has been a small but growing amount of evidence, grounded in the statements of victims of violent crimes and the limited practice experience of applying mediation in such cases, that face to face contact between victims and offenders may be, appropriate in certain cases involving violent criminal behavior" (Umbreit, 1990: 348). However, we should be very cautious in dealing with those cases and should establish limits and guidelines.

Human beings place considerable value on life. Therefore it is not surprising that violent crime is rated as the most serious type of crime by almost all cultures. People fear violent crime because life and health cannot be replaced. Victims can get restitution from offenders to buy another VCR if one is stolen but a family cannot be reunited with a victim who is murdered. Violent crime causes victims material losses, bodily injury, psychological problems, and even death. It often takes longer for victims of violent crimes to heal. Therefore, when considering whether to mediate cases of violent crime, one must carefully consider the nature of the crime, the impact of the crime on both the individual victim and society. Also, when dealing with violent crime, mediation programs should consider restitution agreements that include material damages, psychological damage, and other indirect damages caused by
violent crime. Currently in American "restitution for victims' loss of time and wages, and medical costs is occasionally provided, especially if victims request it. Typically, however, the programs do not provide restitution for intangible losses" (Hudson, & Galaway, 1990:168). Our laws on restitution say that only actual-direct damage can be recouped.

While it is difficult for mediation programs to have mandatory or absolute criteria for selecting cases, it is important to consider the nature of the cases. It is predictable that in cases where offenders are nonviolent, occasional offenders or have committed crimes of passion, or misdemeanors, participants may be more amenable to mediation. This is consistent with the philosophy of community corrections and may yield better results.

Evaluating Punishment

According to Black, (1983) "punishment means any fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgement and sentence of a court, for some crime or offense committed by him, or for his omission of a duty enjoined by law." If the purpose of punishment is deterrence, then all crime should be punished. Punishing offenders and rehabilitation are two of the goals of mediation programs. From a social control viewpoint, punishment is a message from the state to the individual and the public to say that crime does not pay. Secondly, it is a form of moral education, teaching people to avoid certain acts because they are morally improper or incorrect. Thirdly, it promotes prevention or the habit of
avoiding certain acts (Mathiesen, 1990:58). The following section explores the severity of punishment offered by mediation.

Generally speaking, the key to mediation is often a restitution agreement. In practice, most agreements involve financial compensation. Usually the money is equal to or less than the victim's loss. If the case comes from probation or the court, sentencing could be deferred for voluntary completion of the agreement, a probation order with a condition, a conditional discharge, or a community service order with a restitution agreement. If a case comes from the police department, the case might be discharged while the suspect makes restitution.

First, restitution is not a fine, a penalty, or confinement. Punishment connotes the infliction of pain and suffering. When offenders commit crimes, victims suffer both materially and psychologically. When an offender makes restitution, it is only some percentage of the material loss. One might argue that there is little pain and suffering so therefore, it may not represent true punishment.

Secondly, even though restitution is thought of as a punishment, it can be argued that it does not include a punitive payment such as the civil claims notion of "damages". Thus perhaps, the offenders should also pay a price for the criminal nature of their behaviors. Usually, offenders are locked up in order to exact punishment and for this the public has criticized the criminal justice system for directing attention to offenders, not victims. However, it is also negligent to overstate the importance of restitution to victims if one ignores the punitive effects of punishment on offenders.
Offenders may be expected to pay compensation to victims as well as experience some punitive measures. There are two kinds of punishments: fines and lose of freedom. The price of a fine should be higher than the damages caused by an offense. Fines could provide funds for either the victim or society. Some may argue that offenders must pay some punitive assessment, in order to say that justice is done. Although restitution to victims is part of justice, it does not represent the whole meaning of the term "justice".

If there is less punishment in restitution in mediation program, it is possible that there will be less deterrence. Assuming that there is a close relationship between punishment and deterrence, if the punishment is light, the deterrent effects will be weak. According to utilitarian theory, human beings are inclined toward hedonism and attempt to avoid punishment. If offenders only pay restitution which is either equal to their damages or less, there is no "pain" and little "effect" of punishment. This lack of deterrence may stimulate offenders to take another risk. Even though there is no way to deter all criminal activities, punishment is available and "punishment may be viewed as a form of communication, asserting public standards and expressing condemnation of the act in breach" (Waston, Boucherat, Davis, 1989:215).

Another goal of mediation is to hold offenders accountable. Holding offenders accountable may mean more than simply paying damages to victims in the form of restitution. Only if some type of punitive fees, a demonstration of the price that offenders should pay to society is added to restitution will it be meaningful.
punishment. In addition, restitution should be used in conjunction with some other conditional sentence such as probation whereby the offender could be monitored improving the chances that payments will be made.

Chinese mediation takes place within an informal system. Punishment is not the goal of the programs. Usually offenders write an apology to the victims and promise not to violate the victims' rights again. In China an offenders' apology serves as the basis for obtaining the victim's forgiveness, even though it might be "difficult to see how an apology could be thought sincere. Trust would not be restored, nor reconciliation achieved" (Watson, Boucherat, Davis: 1989:218). In China, a written apology sometimes works because it is consistent with the shaming model that appeals to traditional cultural values.

The Role of Rehabilitation

According to Black's Law Dictionary (1983,5th), a definition of rehabilitation is "Investing or clothing again with some right, authority, or dignity. Restoring to a former capacity; reinstating; qualifying again." Rehabilitation used in correction means that "we will reduce crime by correcting the behavior of criminals, thereby causing them to stop their illegal behavior" (Walker, 1989: 201). Rehabilitation was a popular paradigm in criminal justice in the 1960-1970s. During this time, rehabilitation was thought to be the goal of modern corrections and that every other consideration should be subordinated to it.

In America there are many different approaches to rehabilitation programs.
Mediation is one of them because it addresses not only the reformation of the individual, but a return to the community as well. There are different community corrections strategies including probation, parole, house arrest, electronic house, work release, and mediation programs. Although different programs have different functions and special goals, as a rule, they all have the goal of social control despite keeping offenders out of jails and prisons. Studies have indicated that "restitution programs are as effective or more effective at reducing recidivism than traditional juvenile or adult justice measures. The public may be more likely than criminal justice professionals to support development of restitution programs to replace jail and prison for property offenses. Victim-offender mediation is a workable way to implement restitution sanctions" (Galaway, 1988:680).

Mediation programs may provide rehabilitation through restitution. This may occur anywhere in the process between arrest and sentencing. The police, attorneys, probation or judges all may refer cases to mediation. If an offender and a victim complete a restitution agreement in mediation, the offender would then be discharged and may avoid establishing a criminal record or spending any additional time incarcerated.

Mediation may also have the rehabilitative faction of uniting the offender and his family. Mediation programs offer offenders the opportunity to remain with their family and to rehabilitate themselves. Through mediation programs, offenders can stay in society, live with their family, keep their jobs and raise their kids. Both offenders and their families benefit from these programs.
Mediation programs may also function as rehabilitation by avoiding incarceration, where in all actuality offenders learn further crime skills. Mediation programs offer offenders the chance to exit from the formal criminal justice system and the "school of crime", thus eliminating the need to "unlearn" bad habits developed during incarceration.

Mediation programs create the opportunity to repair relationships between offenders and victims. In some cases, offenders and victims have had a special relationship before the crime occurred. Mediation programs try to make things right, and hopefully, both participants express their willingness to reunite in friendship. This goal of community corrections is good for social control as well as for rehabilitation.

Several studies on this topic proved that mediation programs have the function of reducing future criminal behavior. For example, Umbreit and Coates (1993:579) found that "juvenile offenders in the three mediation programs committed considerably fewer additional crimes (18% recidivism) within a 1-year period following the mediation than similar offenders in the court-administered restitution program (27% recidivism). They also tended to commit crimes that were less serious than the offense that was referred to the mediation program." However, as Umbreit and Coates indicated, although it is important to know that the victim-offender mediation process appears to have had an effect on suppressing further criminal behavior, the finding is not, however, statistically significant. It could be argued that it is naive to think that a time-limited intervention such as mediation by itself (perhaps 4 to 8 hours per case) would have a dramatic effect on altering criminal and
delinquent behavior that is influenced by many other factors. It can be argued that the rehabilitative function of mediation programs is still theoretical. In reality, whether an offender can be rehabilitated or not depends on both social conditions and the offender himself. If an offender refuses to attempt rehabilitation, he would not integrate into society through mediation. In fact, he would probably use the program to avoid punishment and incarceration. Rehabilitation is a complex process which includes complex behavior and attitude change. There is no single way to achieve rehabilitation. However the key to rehabilitation is perhaps the willingness of the offenders to change. If an offender refuses the opportunity offered by society, he cannot be rehabilitated by mediation programs. Therefore, the function of rehabilitation in mediation programs is conditional.

The Formal and Informal Aspects of Mediation

There are two types of social control, one is formal, another is informal. Formal social control is a routine process expressed by legislation. In America, it is called due process. Typically, a case goes through the police, prosecutors, the courts, and corrections. From arrest to appeals these processes are restricted by laws, operate according to judicial inertia, and are forcefully binding. Anyone who attempts to violate due process would be subject to punishment. Formal control is carried out by judicial personnel and is funded by the government. On the other hand, with informal social control, both victims and offenders are free to choose the appropriate venue to settle problems. Although lacking the binding force of formal control, people abide by
the agreements mainly because of their moral values. Staff members in informal control organizations are not judicial personnel hired by the government.

Chinese mediation programs function as informal social control, outside the criminal justice system. When people make the choice to participate in mediation, it does not affect their ability to recant and send cases to the formal justice system later. There is no time limit for redirecting cases. Mediation programs settle cases using morality and public legal ideology. They use the concept of right and wrong instead of justice, guilt, and punishment. Compensation and restitution are based on the pressure of morality more than legal obligations. The supervision of mediation programs comes from the administrative level instead of the courts.

Are American mediation programs really informal control? According to Coate and Gehm (1989:261), there are four idealized models of mediation: normalized community conflict resolution, diversion from the formal criminal justice system, alternatives to incarceration, and justice. Currently American mediation programs focus on diversion models and alternative models. It is possible that American mediation programs are not totally classified as an informal control system. The reasons are as follows:

First, most cases in mediation programs come from the probation department and the courts, either at the pre-trial stage or between the verdict and the sentence. It is clear that these cases have already been in the criminal justice system and that offenders are aware of the formal charges.

Second, offenders know that they must interact with the criminal justice system
and judicial personnel, not only victims and mediators. Coate and Gehm (1989) found that many offenders did not view their involvement in mediation as voluntary.

Because of the highly coercive nature of any justice system's interaction with an offender, one would expect that many offenders in mediation would feel forced into it. On the other hand, when the cases are referred to mediation programs, offenders know that they are being offered one more chance. Though offenders have to pay compensation or restitution to their victims, it is a light punishment compared to prison. Mediation then, settles cases outside the courts which means it assumes a function of the formal criminal justice system.

Third, the cases are closed after the agreement between offenders and victims is fulfilled. Normally, the probation officers supervise those agreements and offenders know that they are still under the control of judicial personnel who represent the formal criminal justice system. In this period then, there is still formal, legal influence over offenders.

Fourth, if an offender fails to fulfill the agreement or breaks the restitution agreement, he or she may face formal sentencing. The formal justice system will replace the conditional freedom in society. Offenders in the mediation program understand that mediation programs are strongly supported by the justice system. So even though American mediation programs try to rely on personal responsibility and morality more than law, they still have strong judicial pressure behind the programs.

Fifth, although offenders are free to choose mediation programs, generally, all the cases in mediation programs are filtered by probation officers or the courts, and
offenders do not nominate themselves. If mediation programs function as an informal mechanism, both offenders and victims should be able to choose to participate.

The conclusion here is that compared to Chinese mediation programs, American mediation programs are more formal mechanisms. They contain just such a mixture of the elements of both formal and informal social control system, that the balance tips perceptibly toward the formal.

The Legal and Moral Aspects of Mediation

In China, mediation programs follow the Mediation Regulations legislated by the government. Because mediation programs deal with more cases of disputes among acquaintances, they involve many complex matters related to peoples' morality. Chinese mediation programs have more of a moral role than a legal function. There are several possible explanations for this.

The reason is that most cases are civil cases, security cases, and a few minor crimes which involve acquaintances. Many moral issues are raised before cases are sent to mediation and it would be too simplistic to only use criminal law to settle these cases. Mediators are volunteers, not judicial personnel, who try to judge the cases more completely. They need to analyze problems from a moral perspective. They have an obligation to educate participants on morality. Mediation is considered a moderate way to resolve cases. Because the determinations are not enforceable binding moral education becomes an important outcome in the mediation process. Based on the elements and traditions of culture, the mediation process may use a
shaming model, an integrated model, a self-examination model, and a
decriminalization model to deal with cases. These models focus on the moral
education of participants instead of resolving informal points of law.

America mediation programs are different from Chinese programs. Because
the American approach is from a criminal justice perspective, offenders in the U.S.
have often been adjudicated. The programs are more legally oriented and have been
deemed criminally responsible. But America mediation programs have the function of
moral education as well. This function is often emphasized by those who have a
religious orientation.

About 90% of the population in America has a religious affiliation. Religion
provides moral direction and may also serve as a crime deterrent. The first offender-
victim mediation program in Kitchener, Ontario was developed by Christian persons
who worked for the Mennonite Central Committee (MCC). Although the first
program was a joint probation-MCC project, it later became an exclusive MCC
program. Religious ideology has influenced mediation programs since the very
beginning. With the development of mediation programs, religious committees still
play an important role. One survey indicated that 7% of the funding for mediation
programs in America comes from religious agencies. This is the second largest single
source of funding for mediation programs (Hughes & Schneider, 1989).

One of the goals of mediation programs mentioned by some authors is to
"make things right". This can be explained from a religious perspective, particularly
from the Bible. In mediation, "making things right" means understanding the crime
and obtaining accountability and justice. Crime is defined as a harm to the individual person, that disrupts interpersonal relationships, and creates guilt and responsibility. Crime causes the offender to owe concrete debts to the victim. Holding offenders accountable "makes things right". When the offender pays restitution to the victim he or she "makes thing right". Justice does not mean one triumphs over another, but means healing both offenders and victims by holding offenders accountable through confession, repentance, and restitution. From a religious viewpoint, mediation programs are transforming the cynosure of the justice system from punishment to restoration. Some biblical scholars think mediation programs should focus on morality rather than legality. This would require forgiveness instead of punishment. Zehr, in his book titled Changing Lenses indicated that "forgiveness is an act of empowerment and healing. It allows the experience to become part of one's life story, part of one's biography in an important way but without letting it continue to control" (Zehr, 1990: 47). He thought offenders should confess their guilt, express repentance, and admit responsibility. He felt that offenders could be healed by the process of mediation and that victims could be healed by the offender's confession, repentance, and restitution. The victim's forgiveness could also help heal the offender.

Mediation from a biblical perspective focuses on social pressure instead of legal accountability. Some writers argue that historically, social control had been "maintained by informal controls by belief system, by social pressures and obligations, by the rewards of conforming" (Zehr, 1990: 196). Holding offenders' accountable with moral pressure is thought to be a good way to "make things right".
The shaming model in mediation programs is a good example of the use of morality to settle problems. It assumes that informal social control still has an important role in most people's daily lives. It is assumed that people's behaviors are under the control of the legal system as well as a moral system, mainly the latter. Confessions of guilt and expression of repentance are basic moral components of restitution. In such situations offenders are influenced by moral responsibilities and social pressures which are enough to "make things right". In contrast, the formal criminal justice system only punishes and doesn't leave much room for moral education.

The use of mediation requires restoration instead of incarceration. The key difference between mediation and due process is the use of restitution instead of incarceration. From a moral perspective, punishment looks backward and focuses on the offenders' past behavior and current legal standards. By using an offenders' confession and repentance, restitution looks forward to the future. It helps offenders realize their guilt which is a more binding function than punishment. According to the Bible, everyone sins, but guilt can be removed through repentance and reparation. Citing a Biblical passage, Colson (1988:56) argued that in ancient Israel, criminals were not punished by imprisonment, but most often by restitution. In Leviticus Chapter Six verses 1-5 of the Bible, it said that

"The Lord said to Moses: If anyone sins and is unfaithful to the Lord by deceiving his neighbor about something entrusted to him or left in his care or stolen, or if he cheats him, or if he finds lost property and lies about it, or if he swears falsely, or if he commits any such sin that people may do-when he thus sins and becomes guilty, he must return what he has stolen or taken by extortion, or what was entrusted to him, or the lost
property he found, or whatever it was he swore falsely about. He must make restitution in full and add a fifth of the value to it and have it all to the owner on the day he presents his guilt offering."

Colson (1988:56) continued that

"Biblical justice demands individuals be held accountable. Throughout the history of ancient Israel, to break God’s laws was to invite swift, specific, and certain punishment. When a law was broken, the resulting imbalance could be righted only when the transgressor was punished, and thus made to 'pay' for his wrong. Through modern sociologists take offense at this elemental concept of retribution, it is essential: If justice means getting one's due, then justice is denied when deserved punishment is not received. And ultimately this undermines one’s role as a moral, responsible human being.

In conclusion, mediation programs in both China and America are morality oriented. Chinese mediation programs have the traditional function of moral education. It is required by the Chinese government and approved by existing Mediation Regulations. In America, although mediation programs have a closer relationship with the formal justice system, the programs try to have a moral influence on participants.

Measuring Success in Mediation

When scholars evaluate the success of mediation, they always mention the satisfaction experienced by both offenders and victims. In fact, most evaluations measure success by the satisfaction expressed by participants. "A new criterion for evaluating the process is introduced: that it should be satisfactory for both parties, not
only victims but also offenders" (Wright, 1991). In one study, victims who participated in mediation were overwhelmingly satisfied with the program as were the juvenile offenders who participated. Nearly all victims felt the restitution agreement was fair to both parties. "Both victims and offenders benefit from this humanizing experience with the justice system. The vast majority of participants express satisfaction with the meetings and indicate the process and outcome were fair" (Umbreit, 1991, B).

However there is reason to believe that participant satisfaction should not be the only criterion in measuring program success. Offenders and victims each have a different legal status when they participate in mediation, their needs are different. It can be assumed that offenders appreciate less formal criminal justice system action. From an offenders' view, the less punishment, the higher the satisfaction. Few offenders feel their behaviors deserve punishment. "Predictably, offenders will define their interest as minimizing any penalty for their lawbreaking. This includes minimizing restitution, even if it is so offered as a substitute for saving time behind bars" (Karmen, 1989: 290). If offenders have the same view of justice and satisfaction as the victims, perhaps they would not commit the crimes. Higher satisfaction from offenders does not necessarily mean justice and success in mediation. Because of the difference in legal status between victims and offenders, we can not expect high satisfaction from both as a result of mediation.

There are also different levels of satisfaction between victims who participate in mediation programs and those who do not. Researchers have compared the
satisfaction ratings of victims who are in mediation programs to those who went through the criminal justice system. According to Umbreit (1989), "victims who are referred to VORP and participated in mediation session with their offender were far more likely to have experienced fairness (80%) with the manner in which the criminal justice system dealt with their case than those victims who were referred to VORP but chose not to enter mediation (38%)." In addition to a sample size issue in his research (n=46), Umbreit also did not consider the effect of differing victim expectations. We are not always sure why people refuse to participate in mediation. One plausible reason is that they had higher expectations from the criminal justice system than from the mediation program. It is not surprising when they report unfairness and lower satisfaction if the program did not meet their goals and expectations. For example, a victim hoping to get $500 compensation joins in a mediation program and a victim who hopes to get $5,000 compensation enters the justice system. The former got $500, felt that the results were fair and was satisfied; the latter got $2,000 and felt dissatisfied. It seems reasonable to compare the different expectations of victims in both mediation and the formal justice system as a criteria for evaluating the success and fairness of informal resolutions.

Satisfaction does not always mean justice. Almost all researchers consider victims' satisfaction as the first criterion to judge fairness and success of mediation. They reason that if victims and offender feel fairness, they will have higher level of satisfactions in mediation. Umbreit described fairness as rehabilitation, compensation, and punishment. In addition, many victims are satisfied not only because of
rehabilitation, compensation and punishment, but also curiosity. "The reasons most commonly given spontaneously by people who would have agreed to meeting were: 'to know why he did it' or 'to see what he was like'" (Reeves, & Helen, 1989:49). Even Umbreit (1989) himself found that "when asked what they found to be the most satisfying element of their experience in the victim-offender mediation process, gaining restitution for their losses was not identified as either their first, second, or third choice." Meeting the offender was found to be the most commonly identified reason for their satisfaction with the victim-offender mediation process. The point here is, when curiosity is the primary reason people take part in the programs, the victims are easily satisfied. If we base the success mediation programs on victims' naivete and curiosity, it is perhaps misleading.

The satisfaction of curiosity is not equal to "justice". Without knowing the average education level of victims or their understanding of legal ideology and their rights in mediation or in the criminal justice system, it is difficult to evaluate their expectations. If offender outcomes are part of that expectation, how do victims even know if offenders have been rehabilitated?

There are different points of views from which to judge the success of meditations, depending on the individual party's expectations. If one hopes to reduce the burden on the justice system, we can say meditations are successful if the cases are settled without the courts. If one desires to get a certain amount of money as compensation, he can say mediation is successful if he gets what he wants. However, the outcome of mediation program should perhaps be justice which addresses victim
and social values. Social values should include punishing crimes and protecting citizens, maintaining social security and human rights, and reducing recidivism.

The Limitations of Crime as a Violation of Individual Rights

Literature on victimology usually begins with the assertion that crime victims have long been ignored by the criminal justice system. Schafer (1968:22) pointed out that the conventional view is that a crime is an offense against the state, while a tort is an offense only against individual rights. Also, in accordance with this thinking, crime means only the offender and his offense. The victims' relationship to the crime is viewed in a civil rather than in a criminal light.

When we say the victim, it includes both the individual victim and the general public. Crimes violate the social relationship established by the state which is alleged to represent the will of the majority. According to social contract theory, people want to protect their natural human rights. Because we have so many people defending their own freedom and rights, there is conflict. People have to sacrifice some freedom, relinquish some rights to the government in order to safeguard and protect the interest and rights of their greatest numbers. The government has the right to punish crimes and this right comes from the people. The government also has the duty to establish laws to protect the people. Any action which violates the law violates the government, its individual citizens and the demands of the majority. "Under the social-contract theory, society must see to it that the rules established by the individuals who compose it-acting through their elected representatives-are obeyed by
all. In case of any breach of this contract, society is obligated to force maximum restitution by the offender and to guarantee the making whole of the victim, by compensation or otherwise" (De Seife, 1991:70).

Some typologies classify victims into two categories. One is the specific individual who suffers directly from a crime. Another is the abstract victim represented by the public at large. Research and media stories indicate that the public suffers from a high level of fear of crime. "In attempts to prevent or avoid victimization, individuals may move, restrict their daily activities, or purchase expensive security measures" (Skogan, Lurigio, Davis, 1990:8). People remain at home in the evening; they are afraid to stay at home alone or to talk to strangers. In addition, they may pay more taxes to the government in attempts to combat crime. The general public indirectly perceives itself as a crime victim. Most crimes create both direct and indirect victims.

Crimes should be punished not only because they cause individuals to suffer, but also because they violate the will of the people and restrict individual freedom. The government assumes the responsibility for protecting people by punishing crimes, not only for the ruling class, but for all citizens. Crime "is never confined to damage to a person’s body or property, or to their state of mind; it also involves damages to social and moral relationships. The offense gives the victim good reason to fear for his or her rights in future. The offense has undermined the victim’s belief in the existence of moral standards held in common. This means that it has threatened his or her moral relationship with the offender by providing grounds for review of mutual obligations based on trust. The presumption of security and of common values can only
be restored by some effort to reassure the victim that his or her rights are now respected" (Watson, Boucherat, Davis, 1989: 217).

Punishment, therefore, serves not only the interests of the state and the individual victim, but also those of all people.

Paradigms in criminal justice often shift from one side to the other. Historically, criminal justice system emphasis shifted from the individual victim to a state orientation and now seems to be returning to a concern for the individual victim. While it is true that we need to pay attention to the victim, we should also be concerned about society in general. Some mediation theories imply that if only the victim could receive restitution from the offender than everything would be fine. This perhaps oversimplifies or even trivializes the potential harms created by the breakdown of the social contract in crime.

Current mediation efforts are often evaluated as successful because we are able to measure "substantial victim satisfaction" (Zehr, 1990: 164). However it is not always clear what determines satisfaction. As one study found "almost 80% of both victim and offenders who had gone through VORP believed that justice had been served in their cases" (Zehr, 1990: 166). Justice, like satisfaction, is not always clearly defined. According to some scholars, especially those who focus on a biblical perspective, justice may mean making things right and holding offenders accountable through a restitution agreement between the victim and the offender. So the completion of restitution seems to be the key to explaining the success of mediation.

One weakness of this approach is that it only considers the individual victim and
neglects the majority people. In fact, the social relationship is not easily repaired by a restitution agreement. Furthermore, in most agreements the restitution fee is only equal to or less than the victim’s loss and it is only limited to material losses.

Zehr (1990:184) pointed out that crime involves injuries which need healing. Those injuries represent the four basic dimensions of harm: harm to the victim, to interpersonal relationships, to the offender, and to the community. However Zehr’s work seems to focus only on the first three parts and ignores the community. This is unfortunate because social relationships are important to us as human beings. People need to help each other and need the government to safeguard freedoms. Crime infringes on someone’s rights directly and violates the people’s rights indirectly. Zehr thought focusing on the community is retributive and criticized the way retributive justice defines the state as a victim, defines wrongful behavior as a violation of rules, and sees the relationship between victim and offender as irrelevant. He argued that "offenses are defined as personal harms and interpersonal relationships. Crime is a violation of people and of relationships". In fact, he narrows the relationships to mean victim-offender relationships and excluded the broader concept of the social relationship. He emphasized specific interpersonal relationships, rather than that of society in general.

Crime is an action which violates both the individual victim and social relations. Any theory that concentrates on one side and ignores the other is potentially biased. Crimes affects victims both materially and psychologically and causes material as well as psychological damage to society. While a victim is satisfied by getting
restitution from the offender, it does not necessarily mean that the public also accepts
the idea that restitution can cure all aspects of the damage. Society still suffers from
fear of crime. It is not dialectical that the paradigm shifts from one extreme to the
other which may mislead criminal justice theory and practice.
CHAPTER 7 CONCLUSIONS

Mediation programs in both America and China are widely accepted by the government and the people. Although there are many differences between American and Chinese mediation programs because of different political, economic, legal, and cultural influences, there are many similarities. The goal of mediation programs in America and China can be expressed in terms of benefits for victims, offenders and for the criminal justice system.

First, they help victims receive restitution in order to help remedy losses. They provide an opportunity for victims to express their feelings during the mediation process which greatly reduces the anxiety, stress, and tension related to the crime. Mediation gives victims a chance to understand the reasons they became crime victims so that they can avoid unsafe situations in the future. Mediation offers victims the opportunity to know and talk to offenders, which could help victims reduce their fear of crime.

Next, mediation programs share part of the work of the criminal justice system, reducing the case burden and allowing officials to focus on more serious crimes. Also, programs offer offenders one more chance to face their problems and gives offenders an opportunity to exit from the justice system, which could reduce the number of trials and the amount of incarceration. It is beneficial for offenders in that it helps to reduce their likelihood of recidivism. Mediation is an important element of community corrections which can help offenders to continue to live with their families in society, which is good for rehabilitation. It helps offenders a chance to avoid the
negative influences of prisons and jails.

However, mediation programs are not a panacea. They cannot replace the criminal justice system. These programs have some limitations and weaknesses. One such dubious function is that in China, although the law says that mediation programs do not handle criminal cases anymore, mediation programs in fact still settle some minor criminal cases, especially in rural areas. This may cause confusion and concern that some serious crimes are sent to mediation. The result is that the crimes may not seem to have been punished because punishment is not the goal of Chinese mediation programs.

A second concern is that although the results of mediation are binding, they focus on morality rather than law. Because of the success of the shaming model, many offenders are willing to complete restitution, however, shaming does not work for everyone. Mediation only works under some specific conditions and one should not overestimate its potential.

The quality of mediators is another issue. Mediators in the Resident Committees were once to be housewives, retired workers, and volunteers. Generally speaking, they did not have any special training before dealing with cases. This resulted in misunderstandings about the law and about policy. It was not unusual for them to settle cases based on personal judgements. In China, some people were not willing to have their cases settled in mediation because of the mediators' lack of sophistication and training. Many were worried that justice might be distorted. Today, many young people who become mediators not only have a better education, but also
have special training in law and policy. Disputers are more willing to send the cases to mediators who are better equipped to handle them. However, even though young mediators are better educated than the previous generation, they face new challenges because modern society needs many qualified mediators to settle more complex issues. So the quality of mediators is still an unsolved problem in China.

It is fortunate for mediation programs that American culture values a volunteer system. In China, many mediators who work in agencies are professional mediators. Their jobs include reconciling some cases at their work place for other employees. However, most mediators in resident committees are volunteers. In China, volunteering has few benefits, so only a few dedicated join the volunteer's force. Since China has such a large population, they need more people to join mediator groups.

The fourth issue for Chinese mediation programs is that sometimes, mediators are over zealous so that decisions interfere with people's privacy. Chinese people have close relationships with each other and less privacy. When cases are sent to mediation programs, mediators might be too eager to help participants. They might consciously or unconsciously approach cases with personal emotions either because they are already familiar with the participants or because of their lack of expertise. For example, one husband beat his wife because his wife did not return home for several nights. He feared that his wife was sleeping with another man. The mediator actively mediated the case and stopped the husband from beating his wife. Meanwhile, he tried desperately to find out where she had lived during these days.
Although his intention was to solve the problem between the husband and wife, he interfered with their individual privacy rights. Later, he might gossip to other people about the woman's story which would only make things worse.

American mediation programs also have some issues which should be handled carefully. First, time is limited in the mediation process. After having visited a mediation program in Orange County, this author was told by the director that they only spend about three hours on one case. In the first hour the mediator meets the victim, another hour is dedicated to meeting the offender, and the last hour is for the meeting between the offender and the victim where restitution is arranged. The director reported that they really hope that mediators can be more involved in the cases, because it might solve the problems more efficaciously. Three hours for a case sometimes looks a bit meager.

Secondly, it is hard to keep a balance between punishment, rehabilitation and restitution. In America, it is not easy for mediation programs to provide punishment and rehabilitation through restitution at the same time. Theoretically, mediation programs have the goals of punishment and rehabilitation. Although studies have shown that the rates of restitution agreements that result from mediation are high, few researchers are able to establish that the goals of punishment and rehabilitation are met. Mediation programs should pay attention to these functions and their measurement.

Thirdly, mediation programs should be very careful when selecting felony cases. We have already mentioned that crimes violate not only individual, but social
relationships as well. Crimes cause both direct and indirect victimization. When a mediation program accepts felony case, it should be careful not to alienate public opinion nor impinge upon and legal ideology. Currently, Americans are very concerned about crime and have taken many steps to "get tough". Mediation programs should settle cases according to social situations and be sensitive to public opinion about appropriate sanctions.
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