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Criminal Reconciliation following the Legislation: through the Lenses of Prosecutors in China

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by

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Abstract

Since 2012, the procedure of criminal reconciliation (CR) applied in public prosecution cases has developed from pilot projects in some district procuratorates to a statute-based procedure for use throughout China. The law now allows prosecutors to handle certain criminal cases by bringing about reconciliation between the victims and the (alleged) perpetrator of an offence and, if such reconciliation is achieved, to close the case. This thesis aims to evaluate CR after uniform legislation with the intention of better understanding the new process. In pursuing this objective, two questions have been focused on. The first is to explore what goals are set for CR behind the legislation, by examining legal documents, official discourse and relevant academic proposals concerning the introduction of legislation related to CR. The second is to understand the actual situation when these goals are put into practice, via consideration of evidence collected from in-depth interviews with seven prosecutors in China who have worked as facilitators in CR cases.

In attempting to develop a better understanding of how CR works in practice after uniform legislation, it analyses some key debates over CR, with special attention being paid to whether it is a form of restorative practice or a revival of Chinese traditional mediation. On the basis of theoretical analysis and empirical evidence, it points out that this is not an either-or option for CR that overlaps exist between western restorative justice and Chinese traditional way of conflict resolution. Rather, it is better to acknowledge that CR has inherited traditional methods but has also been inspired by restorative movement.

The unique lenses of the prosecutors provide a current view of the practice of CR after the institutionalization, and raise new concerns involving the ambiguous role-setting of prosecutor as a facilitator in CR process. In light of empirical reflection and analysis of relevant literature, it will demonstrate that the new facilitator role incorporates certain conflicts of interest for prosecutors, which in turn may affect their performance in the implementation of CR.

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List of abbreviations

CM: Criminal Reconciliation

CPC: Communist Party of China, the governing party of PRC

CPL: Criminal Procedural Law (if not specified, stands for the new law in 2012)

NPC: The National People's Congress, the highest power organ of PRC

PSM: The Public Security Ministry

RJ: Restorative Justice

ROC: The Republic of China (1912-1949)

PRC: The People's Republic of China

SPC: The Supreme People's Court

SPP: The Supreme People's Procuratorate

2012 PSM Regulations: 'Regulations on the Procedures of Handling Criminal Cases for the Public Security Organs'

2012 SPC Interpretation: 'Judicial Interpretation for the Application of 2012 CPL'

2012 SPP Rule: 'Criminal Litigation Rules for People's Procuratorates (Trial)'

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Introduction

This thesis seeks to advance knowledge and understanding of the process of criminal reconciliation (CR) in Chinese criminal justice. Criminal reconciliation, similar to the victim-offender mediation approach in western countries, involves the participation of the victim and the offender in the resolution of a public prosecution case. During the reconciliation process, the offender apologizes to and remedies the victim, usually through compensation, with a view to gaining forgiveness from the victim. As a result, the offender could normally receive a lenient result from the criminal proceedings (Chen G.Z. & Ge, 2006: 3). In the process, the judicial officer who is handling the case usually plays the role of facilitator in the process or refers the case to a third party for facilitation, responsible for reviewing and supervising the reconciliation agreement reached between the two parties (Song, 2009: 79).

CR arose as an alternative to resolving minor injury cases by traditional criminal proceedings in some district procuratorates in around 2002. That is, in some minor injury cases, the victim and the offender were given the opportunity to resolve the case through reconciliation. Consequently, the prosecutor would make a non-prosecution decision, leading to the diversion of the case from the traditional form of criminal proceedings. Starting in the stage of prosecution, CR was also tried in the stage of investigation that the police would dismiss the case or suggest the prosecutor for mitigation on the offender based on a successful reconciliation between the two parties; and in the stage of trial that the judge would normally pass a mitigating sentencing on the offender. Further, some non-legislative biding documents on CR were made by different district judicial organs, guiding the implementation of CR within their own jurisdiction. This bottom-up approach to criminal justice reform attracted the attention of the policy-makers and more pilot projects had been conducted nationwide with support from the upper level of judicial authorities since 2007. In the scheme of its development, the case scope of applying reconciliation was expanded from minor injury cases to other types of crimes. After calls for uniform legislation, criminal reconciliation

was, after years of practice, written into law as an independent section in the large-scale revision on the Criminal Procedural Law of the People's Republic of China (PRC) in 2012. Uniform legislation was a major step in the institutionalization of criminal reconciliation, yet the picture of the practice of CR after legislation has not been updated, not to mention no further evaluation having taken place of the institutionalization of CR itself.

During the pilot period, the practising of criminal reconciliation varied in the different judicial organs, including the application scope, reconciliation model and the methods of handling a case in the aftermath of reconciliation. The uncertainty and inconsistency of applying CR caused some controversies among scholars and practitioners. Some clearly regard it as a desirable reform for better solving the disputes between the two parties, and remedying the victim with timely and adequate compensation (Chen G.Z. & Ge, 2006; Yao & Feng, 2010); while others are critical of it for a number of reasons that CR provides rich offenders an opportunity to buy their way out of punishment, and that judicial officers, for their own interests (Lin, 2007: 54; Liu, 2007: 43; Rosenzweig et al., 2012), use coercion on the two parties to accept certain reconciliation agreement (Li Y.T., 2008; Rosenzweig et al., 2012). A key argument of this thesis is that much of this debate revolves around a lack of understanding – and in some cases positive misunderstanding – of the goals behind the 2012 institutionalization of CR; and of the actual situation of practicing CR, including how the prosecutors and others make decisions about which cases are suitable for CR, how they play the role in the process of reconciliation and what happens if a resolution is reached.

In order to provide a more accurate and adequate picture of CR, and in particular to dispel some mistaken assumptions about it, this thesis sought to add to the understanding of the criminal reconciliation process after uniform legislation. In particular, the thesis tries to depict the practical picture through the unique lenses of some of the prosecutors who play the role of facilitator in the process of criminal reconciliation. Based on the current practice of criminal reconciliation, this thesis explores the extent to which the institutionalization of criminal reconciliation through

uniform legislation has helped improve the situation in the pilot projects as expected.

To achieve this aim, a series of related questions are explored in this thesis. To answer these questions, it employs corresponding research methods, which will be introduced in detail in chapter 3. This thesis will first identify the goals behind the uniform legislation of criminal reconciliation in chapter 4, which is the coupling of ideal aspirations for CR, the broader political goals and the public's response. In order to achieve the goals, the part of the thesis adopted a documentary research method by analysing legal provisions, related official policies and documents regarding the application of criminal reconciliation and the debates and arguments which shaped the legislative process. By doing so, this thesis points out that the probably most important official objectives for CR institution to achieve is to better solve the disputes between the two parties, while other aspirations of encounter or transformation could be regarded as collateral benefits. Besides, expectations have been put on the uniform legislation of CR to address the concern for CR being taken as a mechanism of "paying compensation for lighter penalty", by limiting the application scope of CR and enhancing procuratorates' supervision on CR procedures taken through the whole criminal proceedings. Meanwhile, it implies that prosecutors and other judicial officers should stand in the periphery of CR process to guarantee the voluntariness of the participants.

With these legislative goals as benchmarks, this thesis will then proceed to undertake an evaluation of whether the goals have been achieved in the practice of criminal reconciliation after the uniform legislation, and how and why the goals have been accomplished or not. As the prosecutor plays the indispensable and controversial role of facilitator in the reconciliation process, this research conducted in-depth interviews with several prosecutors. This approach provides a unique lens through which to observe the practical world of criminal reconciliation after legislation for the first time.

Foremost, this thesis tries to depict the picture of how a CR case is handled by prosecutors in the practice after legislation through the lenses of my interviewees. To be specific, it tries to represent the process of CR from two angles: how victims and

offenders make their decision when facing the alternative of CR and interact during the reconciliation process, not only with the other party but also with the prosecutors; and how prosecutors make the decision on the initiation of CR procedures, how to facilitate the reconciliation process and how to achieve their original responsibilities as a prosecutor.

In the light of these insights, this research tries to assess how the goals behind the legislation were achieved in the practice of CR. On the most important goal of solving dispute, the practice does not give consistent answers. Overall, CR is appraised by my interviewees as better solving disputes between the parties comparing to the traditional trial methods, yet not in every case. What is more important, the assumptions for setting this goal are not as expected when put into practice that Chinese people have a preference on non-litigation methods and show more compassion to people with close relationship. In accordance with the interviewees, some victims do not regard CR as a more just avenue to settle a criminal case than traditional trial methods and the close relationship between the two parties do not necessarily help the resolution of dispute. The misjudgment on the assumptions of CR from the beginning could explain why some goals are not achieved as expected in the practice.

Further, a better understanding of the assumptions and practice of CR in return advances the debate about the origins and nature of CR. For some, CR represents the revival of traditional Chinese ways of handling criminal behaviour. For others, it is an attempt to introduce restorative justice practices, which are currently being experimented within many Western criminal justice systems, into China. This debate connects tightly with the development direction of CR in China, because it revolves on setting different aspirations and standards for CR, and further influences the evaluation on the practice of CR in the light of different or even controversial assumptions. This thesis tries to point out that CR is not moulded by only one origin and has no relation with the other. In fact, it is a product of integrating the advantages of traditional Chinese mediation with the aspirations of restorative justice to fit into the Chinese cultural, historical and political contexts.

The interviews with the prosecutors also shed lights on another question of whether CR becomes a process of 'paying compensation to the victims for a lighter punishment'. From the practical experience, after the legislation, prosecutors are responsible for supervising the CR process and guaranteeing the agreement between the two parties within the realm of legality and rationale. In most cases, compensation plays an important role, but not as the only focus, in the CR process, depending on different needs of the victims and different interaction between the two parties.

This thesis may also have identified new tensions or problems regarding the ambiguous role of prosecutors from the current development of criminal reconciliation after legislation. The CR legislation implies the restriction on prosecutors' involvement in the reconciliation process, but the practice does not seem to obtain the result of more understanding and acceptance from the two parties, especially the victims on this new institution. On the contrary, it has weakened prosecutors' motivation to apply CR.

Chapter 1: Criminal Reconciliation: A New Institution in the Chinese Criminal Justice System

Introduction

There are two main stages of the development of criminal reconciliation in China: the first is the local pilot stage from the early twenty-first century, and the second is the uniform application stage, which began with the new legislation in 2012. The development of CR began with several pilot projects in district procuratorates, as an alternative to solving minor injury cases through making reconciliation between the two parties, which received positive feedback from practitioners. The minor injury case in the pilot project of criminal reconciliation is similar to the "Assault occasioning Actual Bodily Harm" stated in the *Offences against the Person Act* 1861 in England and Ireland, that the offence violates Chinese criminal law but not to a degree for long-term prison sentencing. Before the legislation of CR, public prosecution criminal cases including minor injury cases could not be solved by reconciliation or mediation but only through trials in accordance with law. The rise of CR broke the status quo of clear distinction on employing non-litigation methods between civil field and public prosecution field.

Before discussing the ongoing debates on criminal reconciliation, and particularly from the unique angle of this thesis, a wider and cohesive picture of the development track of criminal reconciliation needs to be presented. An overview is necessary because the complexity and variety of the practical development of criminal reconciliation have led to different advocacies and evaluative accounts of the practice, and these arguments in turn have cultivated the development of the practice. There is a prevailing tension between advocacy for the revival of Chinese traditions (Chen G.Z. & Ge, 2006; Chen R.H., 2011) and the suggestion of importing restorative justice from other jurisdictions and cultures to develop criminal reconciliation in China (Ma, 2003; Du, 2010b; Song, 2010a). This debate influenced the development and perception of CR in the way of producing different evaluative perspectives of CR based on various aspirations they hold as evaluation standards. It is plausible to believe that policy-makers need to be persuaded

by good outcomes they value and justification of applying CR, in order to implement this new process and break the current order of criminal justice system (Cornwell, 2009: 63). Therefore, the objectives injected by policy-makers into the institutionalization of CR could be regarded the 'survivals' from comprehensive considerations on the debates.

In addition, presenting a history of criminal reconciliation from pilot project to uniform institution will help explain the reasons for different advocacies of criminal reconciliation, the tensions between them and their reflection on the legislation of criminal reconciliation. This chapter also provide a preview of the new criminal reconciliation institution through uniform legislation and its relationship with the Chinese criminal justice system in the first chapter.

Overall, this chapter focuses on presenting the development process of criminal reconciliation within the unique Chinese context. Through the expansion of the application scope in the pilot period to the restriction of scope through uniform legislation, this chapter aims to present an enriched and dynamic image of the criminal reconciliation institution. By doing so, the vagueness of the criminal reconciliation concept can also be reflected, as this reveals my research interest.

1. The social and political background for the rise of CR

1.1 Socialization of the country

In the early years of the founding of the PRC, influenced by the institutional structure and ideology of the former Soviet Union, laws were merely taken as the ruling class's will to safeguard the state power and personal interests of offenders and victims were neglected in criminal proceedings (Liu X.M., 2009). Since the implementation of the 'reform and opening' (Gai Ge Kai Fang) policy in 1979, through over 30 years' rapid development of market economy, civil society has gradually developed in China and appropriately separated from political state. It seems that the state started to give some rights back to society, one of which is the judicial power, thus form the society's judicial self-determination (*ibid*). It is reflected in the way that the society has gained certain

participation in judicial decisions and the state's judicial arbitrary and enforcement tend to be restrained. This transformation in judicial world probably brings the biggest impact to the field of criminal proceedings, which is traditionally dominated by state institutions. The result of the idea penetration of free choice and consensus into criminal proceedings is that victims and offenders have gradually gained their status of litigation subject and are able to determine their own destiny to some extent. Therefore, it is believed that this ongoing social change in China provides the soil for the bud and growth of conversational alternative to solving conflicts of criminal cases quickly and thoroughly (Liang, 2005).

1.2 Transformation of ruling policy

Since criminal proceedings have been taken as important approaches to solve social conflicts of one country, basic principles and specific institutions of criminal justice system would inevitably be influenced by the ruling party's philosophical views. The Communist Party of China (CPC), the ruling party of China, has been experiencing the change of political philosophical views in different periods during its 90 years' history. Before the found of the PRC, the CPC had held the philosophical view of 'struggle', under the context of fighting the wars against invasion from other countries and wars against other parties to establish the new regime. However, for a long time after wining these wars, the CPC had continued the philosophical view of 'class struggle'— advocating the struggle of Chinese proletariat with other rotten classes — in order to consolidate its ruling position. Under the influence of this philosophical view, criminal procedural law in China in 20th century had put focus on cracking down crimes harshly at the cost of neglecting the protection of human rights and procedural justice.

Again, following the reform and opening movement in 1979, the CPC began to transform its ruling policy from 'class struggling as essentials' to 'economic development as focus'. In the same year, the first criminal law and criminal procedural law of the PRC were born, revealing that the ruling level started to attach importance to criminal proceedings and procedural justice as guardians of economic development and social order. In fact, early in 1990s, a series of reforms on criminal justice system had been carried out in China,

focusing on the transformation of prosecutorial system from inquisitorial to adversarial. The situation seemed to be relieved that the state monopolized criminal justice and cracked down criminals with very tough attitude. However, ruling policy at that period had not provided much space for the two parties to participate in the process of dealing with the offence. On the contrary, the approach of criminal reconciliation, not putting punishment in the first place, seemed to be contradictory with traditional criminal justice principles. It was considered as 'contempt and challenge to legal system', thus was compelled and denied by the main criminal justice theory at the time in China (Liu X.M., 2009:30).

It was until 2004 that social harmony has been confirmed as the essential attribute of socialism with Chinese characteristic at the 4th Session of 16th CPC Congress. This indicated that harmonious philosophical view had officially replaced struggling view due to the fact that new generation of leaders had stepped onto the political stage of China. Professor Yang Bao in his research of Marxism has pointed out that the transformation from struggling philosophy to harmonious philosophy is an inevitable result when social history has developed to a certain stage, although those ideas and habits of 'struggling' are not easy to be eliminated (2007). According to Liu Xuemin (2009: 13), the precondition of harmonious society is to show recognition and respect to various subjects, interests and forms of social existence. The harmonious idea reflected in the field of criminal justice system is to recognize and respect the different characteristics of the two parties, and to protect them equally. Under this context, criminal reconciliation, intensifying the subject position of the two parties in conflict resolution, appears to be fit in with the harmonious ruling policy perfectly and thus re-excavated and advocated by current Chinese academia.

1.3 Practical need of judicial resource

China is currently in the middle of acceleratory social transformation from traditional to modern model. Along with the big flow of population and assets in recent China, social conventions and ethnics that used to play the role of regulation and restrain on people's

social activities have gradually lost the function; while necessary institutions for maintaining current social orders have not been fully established yet. This gap in social regulation leads to a rapidly growing number of offences. On the other hand, criminal reforms in recent decades have attached more importance to procedural justice, litigation rights of the two parties and adversarial nature of the litigation process. Correspondingly, the evidence rules become more complete and precise and the criminal proceedings become more complicated and tedious. Eventually, it would result in the rise of litigation cost and the extension of case-dealing time, bringing enormous practical pressure to the already scarce judicial resources in China. In recent years, practical judicial organs have tried pilots in every litigation stages to relieve the tension between the limited judicial resource and the increasing workload, including deferred prosecution for juveniles and school students, summary trial procedures, and community corrections replacing punishment. Basically, the pilots focus on minor criminal cases in which the offenders are voluntary to confess. Criminal reconciliation is also one of the products in judicial organs' bottom-up exploration of saving judicial resources and improving litigation efficiency.

2. The historical background for CR development in China

One of CR's characteristics is putting much focus on the offender's remedy to the victim in the reconciliation process; the other characteristic is the participation of prosecutors in this new institution, from initiating CR's pilot projects to still playing an important role after the legislation. Historical traces could be found about these two characteristics. This section will present some background information regarding the changes and reforms of Chinese criminal justice, which plays an important role in moulding the practical models of CR into current situation with Chinese characteristics.

2.1 Remedy victims – ancient methods of handling injury cases

The offence of bodily injury has received special treatment in intervention methods since ancient times in China. Around 1,200 years ago, in the Chinese Sui and Tang Dynasties, 'Bao Gu' (保辜) had already been established and specialized in dealing with injury cases;

it was also adopted in the Ming and Qing Dynasties, the last two feudal dynasties of Ancient China. Devolving into a peace-making tradition in Chinese culture, the 'Bao Gu' system acted as the prototype for the later design of reconciliation intervention for handling injury cases (Wang, 2010: 57). Regardless of the RJ movement now being a revival of old traditions, I agree with the view that similar restorative values have existed in great cultures all over the world (Braithwaite, 2002: 61). Here, 'Bao' means a remedy to the injured party and 'Gu' is the fault or sin of the offender, so the purpose of this system could be understood as 'repairing the victim's injuries so that your guilt could be alleviated' for the offender (Shen, 2000:722).

The particularity of 'Bao Gu' is that the first action taken by the offender in the aftermath of a crime is required to be taking care of the injured victim within a legal term. If the injury is not fatal, following a preliminary interrogation by the local magistrate, the offender would be given a period of time in which to help the victim recover. The period for 'Bao Gu' varies depending on the extent of the injury, indicating the different times needed to recover. During this remedy period, the offender should actively seek treatment for the victim (Wang, 2010; Xue, 2015). It is very probable that offenders are motivated because how the victim is cured will determine the outcome of the trial in accordance with criminal law in Tang Dynasty. As stipulated, "after the 'Bao Gu' period, if the victim dies of the injury, the offender will be tried for the crime of manslaughter; if not, the offender will be tried for the crime of 'assault and injury'" (Article 307 of *Criminal Law and Official Interpretations in Tang Dynasty*).

Indeed, the legislative goals for CR to achieve given by the Legal Affairs Committee show similarities with the positive effects obtained by applying 'Bao Gu'. However, the modern approach takes the voluntary participation of the victim and the offender as a prior and indispensable condition for initiating CR, in comparison with that it is the magistrate's order to initiate the procedures of 'Bao Gu'.

2.2 Prosecutor-led reconciliation in the period of late Qing Dynasty and the Republic of China

The most well-known embodiment of the division of judiciary power and administrative power in the late Qing Dynasty is that the county magistracies no longer took charge of trial activities; instead, there emerged professional judges, a general term for judges and prosecutors in today's definition (Xie et al., 2009: 28). The birth of new legislation on criminal proceedings and institution settings around the 1910s is considered a symbol of establishing modern criminal proceedings with the separation of prosecution and trial (Gong, 1994). It also symbolizes the inception of a modern prosecution institution, which transformed Chinese traditional inquisitional proceedings in which the magistrate was responsible for both accusation and trial in criminal cases (Xie et al., 2009: 30). At that time, the prosecution institution seemed to hold multiple types of authorities, including accepting and hearing cases, investigation, taking coercive measures, prosecution, execution judgments, and the supervision of trials (33). Pissler in his studies on the history of China's mediation practices points out that the importation of Western judicial system models and ideas caused the decline of Chinese traditional mediation and the rise of formal court proceedings after the found of the Public of China (2012:962).

In accordance with the aspirations of the late Qing government, although separate from prosecution and supervision, prosecutors' exercising of other authorities usually needed cooperation from the investigation department, the prosecution institution presenting an image of full engagement in the whole process of dealing with a criminal case. Pursuant to research on the selection system of judicial officials during that time, there seems to have been a lack of clear distinction between magistrates and prosecutors in some situations (Zhu, 2015). Around the 1930s, with the birth of two criminal procedural laws, a more independent prosecution institution was established, which identified among the principles of state prosecution that 'the prosecutors have the monopoly of implementing power of criminal punishment' (Zhang, 2013: 133). It then may be easier to understand the custom of the high rate of using reconciliation in criminal cases during the stage of prosecution after the establishment of a prosecution and trial institution.

Legal practice during the period from the fall of the feudal empire to the founding of the socialist PRC was not strictly in accordance with the legislation. Through this reform process of legal powers and legal institutions, it is possible to see the primary image of prosecutors coming from the 'judge' in the late Qing Dynasty and more earlier from the 'magistrate' who handled both legal administrative power and judiciary power, and take charge of most reconciliation or mediation cases in the feudal period.

Although in this transform stage (1905-1949), in which criminal reconciliation was objected to under the legislation, criminal cases were still settled through reconciliation with a relatively high rate. In Zhang Jian's research on 245 criminal cases he selected from the Longquan Records[1], 102 of the cases were settled by reconciliation and most of these took place during the prosecution stage (2013: 134). Since the law had abandoned the application of reconciliation in criminal cases during the transformative period, the practice of reconciliation in the prosecution stage could be regarded as a form of customary law. Although not completely the same as the prosecution institution of today, prosecutors had greater independent prosecution power in the ROC period. From another perspective, prosecutors documented in Longquan Records were facing the situation of playing multiple roles in the judicial practices, which seems familiar in light of the situation reflected by the prosecutors I interviewed.

3. The pilot period of CR in the district procuratorates

In sketching a map of the development of CR, the process started with a focus on minor injury cases, followed by the extension of the application scope during a pilot period. Reviewing the history of CR, after the first non-legislative binding document on "handling minor injury cases" made by the Chaoyang District Procuratorate of Beijing in 2002, several other provinces introduced similar regulations. Although there is no expression of reconciliation in these documents, the essence of "handling minor injury cases" is that of conducting reconciliation work between the victim and the offender (Feng & Cui, 2008: 109). From 2006, some judicial organs started to use the term "criminal

reconciliation" explicitly in normative documents.[2] As the normative documents were only effective within their respective jurisdiction, the practice of CR differed in accordance with different guidelines.

If the non-legislative binding documents referred to above were considered as the achievements of several district judicial organs' practical work, it then became a nationwide reform of criminal justice when the Supreme People's Procuratorate (SPP)[3] launched a pilot scheme for applying CR in more procuratorates around 2007.[4] This period marks the rise of CR. Both policy-makers and academics had shown more interest in CR pilot projects, and two large-scale fieldwork projects were conducted led by Professor Song Yinghui (2007-2008) and Professor Bian Jianlin (2008-2009). Together with research reports made by the district procuratorates, a practical picture of CR in the pilot period can be gained to a certain extent. From the pilot schemes and binding documents, it appears that the district procuratorates were the major driving force in this bottom-up reform of criminal justice. The classical models or "depictions" of CR studied in academia mainly come from the practical experiences of the district procuratorates.

The next section introduces the two main pilot projects, to a large extent standing for the practice of CR before the legislation. Their inclusion here has the aim of helping to understand how the pilot models influenced the subsequent institutionalization.

3.1 The two main pilot projects in the district procuratorates

3.1.1 The non-prosecution institution in minor injury cases

According to the "Empirical research on criminal reconciliation of Beijing district procuratorates" research report, from July 2003 to December 2005, seven district procuratorates in Beijing accepted all types of criminal cases, with a total number of 27,427 (Beijing District Procuratorates Research Group, 2006). Of these, 4,607 were minor injury cases. This accounted for one-sixth of the district prosecutors' caseload. The district procuratorate, district public security organ and district court constitute the basic

levels of the Chinese judicial system. While the upper-level organs (mainly the medium level) are responsible for relatively serious crimes, which may generate sentences of life imprisonment or death penalty, the basic-level organs need to deal with the first trial in the majority of criminal cases. From the data, minor injury cases account for a fair amount of the workload of district judicial practitioners, and therefore enhancing efficiency in dealing with minor injury cases may have been a particular goal for district prosecutors. While the "Fast Trial for Minor Crime" mechanism was established for judges to solve this problem, the prosecutors still felt the burden of heavy workloads and limited judicial resources. Therefore, they raised the suggestion that a minor injury crime involving a relatively small amount of conflict and a clear case situation should be settled in the earlier stage of criminal proceedings thus saving the judicial resources, not only for the prosecution side, but also for the whole justice system.

More specifically from the research report, one in seven minor injury cases went through the reconciliation process in the pilot projects of CR in the Beijing District Procuratorates. Data from these cases allow a general sketch of typical CR outcomes. If an offender, through repentance, extends a formal apology, makes compensation, or obtains forgiveness from the victim, the two parties can reach an agreement in which they agree to the procuratorate's decision for a lighter punishment for the offender. This pilot project was called a "non-prosecution institution" due to the low rate of prosecuting the offenders after a successful application of CR. In practice, 80.1 per cent of cases after CR were returned to the public security organs and 19.3 per cent were settled with discretional non-prosecution decisions, while only 0.6 per cent of cases were still prosecuted after a successful reconciliation.

The first two approaches to handling a reconciliation case functioned as the pre-trial diversion. The difference between them is that if a case was returned to and withdrawn from the public security organs, the offender would be regarded as having committed no crime; however, if the case was settled with discretional non-prosecution, the offender's acts constituted a crime but the procuratorate considered there to be no

need to initiate a public prosecution to the court. For this part, different procuratorates tended to have their own working patterns. Almost all cases after CR were sent back to the police to be withdrawn in Haidian, Dongcheng and Xicheng district procuratorates, while Chaoyang and Changping procuratorates generally made the discretional non-prosecution decision.

'Discretional non-prosecution' refers to the situation that the procuratorate considers the circumstances of criminal behaviour to be minor that there is no need to pass a criminal penalty or the offender could be exempted of penalty (Article 173 of 2012 CPL). However, the application of "discretional non-prosecution" conditions in CR cases was questioned during the time before the legislation of CR, because some of the minor injury offences in the practice of CR had reached beyond the level of exemption from penalty (Sun & Zhao, 2007; Zhang F., 2010). The use of discretional non-prosecution in CR cases seems to increase the risk of turning CR into a "compensation for less punishment" method, leading to advocate for using conditional non-prosecution instead of discretional non-prosecution as the pattern of handling CR cases (Chen G.Z., 2009; Song, 2009). In other words, before the 2012 legislation, minor injury offences in the CR pilot project are supposed to be prosecuted in accordance with Chinese criminal law, rather than belonging to the situation of minor criminal circumstances, in which the procuratorates could exercise the discretion not to prosecute. As a consequence, the preference for returning the case to the public security organs for withdrawal in some of the procuratorates may help the prosecutors avoid having to explain their decision of prosecution or non-prosecution.

In the pilot project, the principal prosecutor of the case took responsibility for reconciliation. He or she needed to read through the case file, review the full case information and establish whether the case met the requirement for CR, and ask for the parties' intentions to reconcile or not. In the CR process, prosecutors played their role in two ways. One way was a relatively passive role that the two parties would reach an agreement themselves, without much facilitation work from the procuratorate, and the

prosecutor mainly provided a good environment for the two parties to have a reconciliation and sign an agreement. The other way was more active that the prosecutor would facilitate the communication and negotiation between the two parties via telephone or in-person such as going to their residences. Given that offenders may be kept in custody in some cases, prosecutors would play an indispensable role in the shuttling between the two parties and ask help from people of influence or reputation to the two parties such as one party's leader or relative.

The institutionalization of CR in uniform legislation has continued to use the main operation mode employed in the pilot project but with more focus on the voluntary of the two parties especially the victim. The reports from the pilot procuratorates before the legislation had already show this trend that prosecutors had more limited involvement in the reconciliation process and the parties showed a high degree of satisfaction (Bian & Feng, 2010: 33). This is controversial in the light of some feedback from the victims on the prosecutors' putting pressure on the participants during the reconciliation process (Jiang, 2012). The interaction between the two parties and the prosecutors in CR needs more exploration to understand the controversy regarding the prosecutors' role in the practical picture of CR.

3.1.2 Joint work of the prosecution and mediation organs

In 2011, the SPP started another pilot project to bring the force of the People's Mediation Committee into CR, called Joint Work of Prosecution and Mediation (*Jian Tiao Dui Jie*, 检调对接). In comparison with the first pilot model for applying CR depending on the resources in the criminal justice system (mainly the procuratorates), this joint model proposed transferring some of the prosecutors' responsibilities in CR to the people's mediators. As early as 2005, the judicial organs in Shanghai cooperated to formulate a document stipulating how to entrust the People's Mediation Committee – a mass organization under the supervision of the Judicial Department – with mediating between the two parties in minor injury cases, which would otherwise go through public-prosecution proceedings (Huang et al., 2006). The joint work pilot project initiated by

the SPP focused on the cooperation between the prosecution organ and the People's Mediation Committee. The Chongchuan District Procuratorate of Jiangsu Province was considered to be the first to practise this pilot project (Cai, 2010).

From the report by the Chongchuan District Procuratorate, the joint work between the procuratorate and the mediation committee embodied two aspects. The first was the procedural element. In the examination and prosecution stage, the procuratorate would inform the victim and the offender of qualified conditions that the two parties could reconcile regarding the civil part of the case. Then, if the two parties agreed and applied for reconciliation, the issue of civil compensation in the case would be transferred to the People's Mediation Committee, where the case would be undertaken by the mediator while being supervised and guided by the chief prosecutor. The second was the substantial element. If the two parties could reach an agreement during the reconciliation, the procuratorate would take into consideration the written suggestion report made by the People's Mediation Committee. Factors such as how the damaged relationship had been restored through reconciliation, whether or not the victim forgave the offender and the repentance exhibited by the offender through compensation, were all weighed in the decision of how best to handle the case. The options included returning the case to the police to withdraw, discretional non-prosecution and recommending the court pass a lenient punishment. By transferring the facilitation work to the mediation committee, the prosecutors could keep their focus on handling the criminal proceedings of the case, with less involvement in the reconciliation between the parties especially the compensation part.

On the eve of the legislation, many CR practitioners from the procuratorates reflected that a prosecutor would spend more time handling a case with CR than when following traditional criminal proceedings (Bian & Feng, 2010). In addition, some of them considered prosecutors were no longer appropriate for the facilitator role, which requires neutrality in CR, contradicting their original role of prosecuting the offender (Li A.J., 2010: 162; Wan, 2010: 413). The new joint work model was created to solve the

dilemma of prosecutors' role in CR by transferring the mediation-related work to the people's mediators. However, this model was still restricted by the time limit for prosecutors' handling cases[5] and required a high degree of cooperation from the People's Mediation Committee. Although not stipulated in the legislation, this model retains a certain popularity, even in today's reports of CR.

3.2 On the expanding scope of CR application

Bringing in the approach of reconciliation between the two parties to public prosecution field is generally regarded as a sort of practical exploration of the district procuratorates (Chen R.H., 2009; Wu, 2009). To a certain stage of the development of CR, it had been applied in a gradually extended scope of criminal cases, as the debates on CR once focused on whether CR should be applied in serious crimes, including some death penalty cases (Sun, 2010; Chen, 2009). Scholars were concerned that the development of CR would bring certain tension regarding the strict division between crime and non-crime, on the traditional legal consciousness and justice, and in the roles of judicial officers, particularly the prosecutors (Chen R.H., 2009: 7-8; Li A.J., 2009: 15). Therefore, some scholars suggest the necessity of holding a cautious attitude towards the CR pilot projects and its application in public prosecution cases (Fan et al., 2007).

In the early stage of exploring how to apply CR, Wu Mengshuan (2009), the director of Law and Policy Research Office of the SPP, had praised District procuratorates as the main force in the development of CR, for practising CR with a cautious but active attitude in the pilot projects. Following the procuratorates' step, some public security organs and the courts also joined in with the CR pilot projects, although the application of CR was not as popular as in the procuratorates. From the practical experience of district judicial organs, there is no consensus understanding on the application scope of CR, since different narrative documents or guidelines have been made by different district judicial organs, which were only effective within their own districts before the passage of uniform legislation. In these guidelines, minor injuries, traffic accidents and some property crimes, such as theft and vandalism, were the most common case types for

applying CR (Song et al., 2008; Sun, 2012: 54). In addition, special categories of offenders, such as juveniles or enrolled students, could also enable the application of CR. Song's fieldwork report in 2009 presents CR as being applied in some crimes involving negligence and others with mitigating circumstances. In general, the threshold for applying CR has been that the offence will not receive a sentence greater than three years' imprisonment. During that period (before the legislation of CR), it is believed that the practical judicial organs, including the public security organs, the procuratorates and the courts, were reluctant to break too far from the then-current legal framework in the pilot projects (Wu, 2009; Sun, 2012).

Nevertheless, critical voices have been gradually heard on the practice of CR with a wider application scope in public prosecution cases. For example, some victims may ask for outrageous compensation, rich offenders may avoid punishment by providing a large amount of compensation, and a failure to reconcile may result in conflicts becoming intensified rather than resolved. Sun (2012: 21) suggests that all these phenomena should remind legislators to take full account of 'the public's endurance for accepting CR institution and the cultural qualities of victims and offenders while determining the applicable scope'. In other words, Sun is concerned about the acceptance of the general public if the application scope of CR is enlarged beyond a certain extent.

In an earlier stage of the pilot project, Chen G.Z. & Ge (2006: 11) proposed establishing the institution of CR and regarding reconciliation as a kind of value or spirit for resolving conflicts through different stages of criminal justice. When it came to the eve of the uniform legislation, scholars and practitioners considered that the application scope of CR should be clarified in the law and should be restricted to relatively minor cases so that CR would not jeopardize the authority of justice (Fan at el., 2007).

4. The new CR institution in the uniform legislation

After ten years of studies, debates and amendments, a newly amended criminal procedural law draft was finally approved by the Eleventh National People's Congress,

China's legislature, on 14th March 2012. In the 2012 CPL, the stipulations for the CR institution were given the name "Procedures of the Two Parties' Reconciliation in the Cases of Public Prosecution". The stipulations for the CR institution were positioned in the last and newly added Special Procedures section of CPL. CR seems to have been regarded as an accessory institution to traditional criminal justice, which could be initiated in every stage of criminal proceedings but strictly under the control of the judicial organs.

Although there are only three articles for the stipulations of CR, this is a milestone for Chinese criminal justice by affirming the legal status of the CR institution. In this section of the thesis, the application proceedings of CR stipulated in the legislation are explained to provide a basic understanding of the institution in accordance with the legislation and how it is positioned as a special procedure within the traditional criminal system in China.

The first stipulation of CR in CPL provides the application conditions and scope (Article 277). There are three positive and one negative condition for applying CR. For the interaction between the two parties, the offender is required to express his or her sincere remorse and obtain the victim's forgiveness by means of compensation, apology or other remedy. In terms of voluntarily participating in the CR institution, it only mentions the victim party. An exclusion condition of reconciliation is if the offender had committed an intentional crime within the previous five years.

In terms of the scope of application, the stipulations are divided into intentional crimes and negligent crimes. In relation to intentional crimes included within this scheme, the motivation behind the offence is rooted in civil conflicts, and the offence violates the victim's personal or property rights. Moreover, it adopts the regulations made in the pilot period that punishment of the offence is limited to no more than three years of imprisonment. For negligent crimes, the 2012 CPL only stipulates that the offence may receive no more than seven years of imprisonment.

The second stipulation refers to the work and responsibility of the judicial organs in CR (Article 278). After the two parties show consent to reconciliation, the public security organ, the procuratorate and the court should listen to the ideas of the victim, the offender and other relevant persons, review the voluntariness and legality of the CR and guide the formulation of the reconciliation agreement. The legislation has not involved specific regulations on how judicial organs should interact with the two parties in the process of CR, but it is apparently one of the issues that practitioners expected to have resolved in the uniform legislation given the ambiguous understanding of the judicial organs' roles in the pilot projects.

Finally, Article 279 stipulates how judicial organs can handle the traditional criminal proceedings of a case if a reconciliation agreement is reached successfully. Generally, an offender could be treated with leniency after a successful CR, no matter in which criminal proceeding the CR procedures have been taken. To be specific, Article 279 lists three situations: if the CR agreement was made in the investigation stage, the public security organ could make suggestions to the procuratorate to treat the offender with leniency; if made in the prosecution stage, the procuratorate could either decide not to prosecute or make suggestions to the court to show leniency; and if made in the trial stage, the court could show leniency in the sentencing. Thus it can be seen that according to the new legislation, the procuratorates have been given the right to make a non-prosecution decision if they decide there is no more need to put the offender through the trial proceedings once a reconciliation agreement has been reached between the two parties[6]. In other words, the procuratorate becomes the only judicial organ that could directly bring the case out of the traditional criminal proceedings after a successful CR by making a non-prosecution decision; while the public security organ could only make suggestions and the court merely make some changes to the sentencing on account of the CR result.

5. The prosecutorial system in China

Procuratorates, the pioneers of innovating the new alternative to solving minor injury cases, play the key role in the institutionalization of CR. There is a need to introduce the basic knowledge of prosecutorial system in China, which is regarded as not typically adversarial or inquisitorial. There are ongoing debates over the type of prosecutorial system Chinese criminal system, as improvements and reforms on criminal justice have being taken place in China in the past two decades. In Jiang Na's evaluation on the prosecutorial system in China, she comments that it is 'a long march towards the adversarial system' for Chinese criminal justice (2014). A seemingly common idea is that criminal justice reform through the issue of *1996 Criminal Procedural Law* has turned China's prosecutorial system from inquisitorial to adversarial, mainly because the new legislation added in the principle that 'one is innocent before the court's verdict' for the first time (Article 12, 1996 CPL).

Further, the 2012 CPL brought about another criminal justice reform, by adding in a series stipulations to protect offenders' rights and expand lawyers' participation in criminal procedures. For example, before the revision of CPL in 2012, the defendant of a public-prosecution case could only authorize a defender after the case file has been forward to the procuratorate (Article 33, 1996 CPL). In current Article 33 of 2012 CPL, it stipulates that a suspect has the right to authorize a defender anytime in criminal proceedings.

However, there are still many non-adversarial controls in China's criminal procedures after these reforms. From the point of investigation, the judges, the prosecutors and the police should collect all evidence regarding the innocence or guilt of the defendant and the circumstance of the crime (Article 50, 2012 CPL). If the collegial panel has any doubt about the evidence at a trial, it could announce an adjournment in order to carry out investigation to verify the evidence (Article 191, 2012 CPL). These two articles show a strong sense of inquisitorial system and authority principle. With regard to court debates and cross-examinations, it seems more of an adversarial system that the prosecutor tries to prove the guilty of the defendant, while the defendant's lawyer argues for the client's

acquittal. But the judges still keep the power to lead the trial by querying the defendant or the witness if they believe it is necessary. To summarize, through the criminal justice reforms, more adversarial elements have been added into China's prosecutorial system, in order to balance the disadvantages of the original inquisitorial system, whereas the latter still holds certain place. As Jiang has said, the direction to adversarial system for China's criminal justice system is clearer, but the reform in the practice towards the final goal is still in need of a long progress.

In public-prosecution cases, most of the criminal offences except several situations stipulated in the criminal law for victims to sue directly, prosecutors decide whether to charge a person with criminal offence and if so, which offence it should be. Prosecutors are responsible for reviewing every case transferred from the police or other investigators in order to make prosecutorial decision. The reviewing of case includes two major aspects, whether the criminal facts of the suspect are ascertained and whether the evidence is irrefutable and sufficient. Given that China pursues the doctrine of legal prosecution, if these two aspects were verified and prosecutors believe the person is held criminally liable in accordance with laws, they should make the decision of prosecution. The exception is that prosecutors have non pros discretion if they believe the circumstances are minor of the suspect's criminal behaviour in accordance with criminal law that there is no need for imposition of penalty (Article 173, 2012 CPL). But the non-prosecution decision should be passed by chief prosecutors or prosecution committees. If procuratorates decide not to prosecute, the decision should be delivered to the police and the victims who could require for reconsideration or appeal to higher level procuratorate if they are not convinced by the decision.

6. What waits to be explored

This chapter presents the development journey of CR within the Chinese historical context. Based on the primary understanding of this newly established institution, this thesis will dig deeper in the way of evaluating the practice of CR after uniform legislation.

To some extent, it seems that the legislation has defined the development direction of CR and brought solutions to some problematic issues raised in the early years of its practice. It remains unknown how the sketchy stipulations of legislation could improve the application of CR in practice. Therefore, the establishment and implementation of the CR institution is the focus of this research, under the new context of uniform legislation. This research is an exploration of the extent to which the institutionalization of CR through uniform legislation has helped improve the situation in the pilot stage, as expected.

In order to explore this theme, a series of sub-questions need to be discussed regarding the blueprints drawn up for CR development, including the revival of traditions and the importation of RJ practices, what goals the legislation of CR has chosen to follow and how these goals are being implemented into practice after legislation. The next chapter will begin with examine the gap in the studies of CR and justify the research strategy, through a review of the existing literature.

Chapter 2 Debates on CR - A Review of the Literature

Introduction

Having explained the historical development of CR, this chapter develops the thesis by outlining the main debates on CR, examining the assumptions and assessments concerning the CR institution, analysing the reasons why authors have reached different conclusions, and identifying some under-researched issues upon which this thesis will focus.

The chapter starts by presenting an overview of the research situation regarding CR. Previewing my conclusions on the existing literature that the focus has been placed on depicting the ideal picture of CR based on different theoretical foundations and evaluating the practices of CR in accordance with a mixture of standards. The proposals and concerns expressed for establishing the CR institution were not explored in the aftermath of uniform legislation. From an examination of the more recent pieces, it may appear that the process of CR has been little changed by the legislation, as the focuses of discussions have remained the same.

This research attempts to join in the evaluation of the CR institution, not to repeat the advantages and disadvantages, but in the sense of learning about this new process after legislation, in the attempt to explain how and why it could achieve some good outcomes and cause some concerns. As with other institutions, CR requires certain standards as references for judgement regarding the practical situation. Therefore, this chapter first investigates the different aspirations for CR from the continuous debates on CR is a form of restorative justice, a revival of Chinese traditional mediation or a mixture of both. The importance of reviewing this debate is that the two sides try to inject different aspirations into the implications of the CR institution and believe it is more desirable to develop CR according to their suggestions. In following certain aspirations, many attempts have been made to evaluate the performance of CR in practice (e.g., Song et al., 2010; Bian & Wang, 2010). The advantages and drawbacks of applying CR have been concluded from practical experience. However, the picture of the practice of CR seems

to contain controversy, which is attributed to the lack of uniform regulation and improper implementation. More importantly, the analysis of the reasons behind the good or bad effects have shaped understanding of the different arguments on how the institution should be built through uniform legislation.

Before entering into the practical world, there is a need to explore upon which blueprint, or set of integrated blueprints, the institution of CR has been established. The discussion on CR's blueprint plays an important role in understanding what kind of standards have been set for evaluating CR based on different aspirations, which could largely influence the evaluation results. For example, if a blueprint of CR is set to be restorative justice, the evaluation would mostly focus on the aspects of reparation and restoration in the practice of CR; while if a blueprint of reviving traditional ways of mediation is depicted, then a result of settlement would receive more attention. In this way, it explains why there exist controversies over the evaluations on the practice of CR because they are made in comparisons of different blueprints. Further, it will help interpret the ultimate blueprint – the expected goals behind the legislation of CR – which the policy-makers have deliberated in the consideration of different aspects benefits.

This section shows the subtle contradictions in the institutionalization of CR between achieving certain aspirations and preventing potential risks in practice. It forms a complicated chart of missions for the uniform legislation to achieve the policy-makers' need to make decisions carefully. However, an exploration of what goals are set for the legislation of CR and how they are achieved in practice after legislation has not been accomplished.

1. An overview of studies on CR

From the outset, it was necessary to expand the knowledge net that the current literature had woven in order to understand criminal reconciliation. In this large net, two focuses have left obvious traces in the research history of CR.

Primarily, the focus is on the introduction and exploration of the theoretical foundations of CR, gradually into a debate on the different advocates of CR: the model of Western restorative justice or the model of Chinese traditional mediation. This research direction was relatively popular before the large-scale pilot projects were conducted nationwide around 2007. However, the debates failed to reach any firm conclusion regarding the question of whether CR amounts to a kind of restorative practice model. What is interesting is that the scholars standing on the different sides of the debate show a more moderate attitude later. Advocates for the Chinese theories of harmony and reconciliation would remind others to pay attention that the real upspring of applying CR is driven by the government's recent advocacy of a revival of the reconciliation tradition after a long period of time spent introducing restorative justice to China (Chen G.Q., 2009: 4). From another perspective, although it is believed that CR does not possess all of the values of RJ, the rise of CR could not be fully attributed to the traditional Chinese culture of harmony and reconciliation, since they have existed for thousands of years without being awakened (Chen R.H., 2009: 6).

The debate seems to be suspended in the status that CR is not a production of a single resource but the coupling of different ones. The focus of the research then turned to the feasibility of establishing the institution of CR in China and in which way it should be shaped. As great progress had been made in the practice since 2007 in the larger scale of pilot projects initiated by the SPP, more practitioners, particularly the prosecutors, joined the discussion on criminal reconciliation. Research followed the direction of establishing the advantages and disadvantages of practising CR. Further, solutions could be provided for the problems reflected by the pilot projects and help mould the CR institution in accordance with Chinese characteristics.

To judge whether this new system is feasible in China, the Chinese academic circle seemed to have the intention of exploring its social effects and values. Pilot projects initiated in local judicial organs were operated in accordance with their own trial rules, resulting in different application scopes and handling methods. Therefore, despite some

district data having been collected around 2010, there was no uniform standard by which to judge the fairness and effectiveness of the new dispute-solving institution. To acquire legal basis for applying criminal reconciliation in public prosecution cases, practitioners and scholars appealed for uniform legislation and anticipated that the normalization could minimize the drawback of obtaining different results of applying CR in similar cases and could address the public's concerns that CR may explore too far to guarantee the punishment function of criminal justice in the pilot stage. In 2012, CR was taken into the new CPL and judicial interpretations have been gradually made afterwards to coordinate its application. The legislative process of CR, which would be studied carefully in chapter 4, is of great importance to understand the goals set for CR as a formal institution after the policy makers' consideration and weigh of the assumptions and assessment on CR in the pilot stage.

This legislative action shows the supportive attitude from the policy-making level towards making reconciliation in certain minor public prosecution cases. There is a trend that this institution will be further developed on the basis of the repeated statement on valuing the function of reconciliation and mediation in criminal justice. The discourse of discussing the necessity and feasibility of bringing the CR institution into Chinese criminal justice seems to be closed for now, while debates on how the institution should be built has not stopped along with the introduction of uniform legislation. On the one hand, the application scope and stage of CR in the legislation are considered to be too limited, in that it could not acquire the good effects expected of the innovative institution. Some advocates have suggested attaching a more restorative spirit to criminal justice, such as the expansion of the application scope from minor crimes to more serious crimes with certain judgment on the social influence of the case (Chen & Yu, 2013: 100-102). On the other hand, some scholars still feel uneasy about the practice of CR after legislation and place emphasis on the supplementary schemes which are indispensable for the implementation of CR. They propose establishing a strict supervisory mechanism for the application of CR and a state compensation mechanism for criminal victims in order to minimize the gaps in the institutionalization of CR (Yao, 2014).

Throughout the related literature, CR has been exposited on the grounds of theoretical discussion in the majority of discourses. The application of criminal reconciliation in local procuratorates and courts before the legislation has been discussed in a few reports of the pilot projects[7]. However, to a great extent, the evaluation of CR in practice is made in the light of the Western conceptual system without much consideration of the Chinese context, although it is the other way around in the debates on the theoretical foundations that the Chinese origins are more favoured than the imported ones.

Above is the overall characteristic of the research on Chinese criminal reconciliation. Following the focuses in this brief introduction, the literature will be reviewed and analysed from two aspects: the theoretical discussion and the establishment of the institution.

2. Debates on CR

2.1 The advocates of importing RJ ideas into CR in China

The first and most referred to journal paper introducing the concept of criminal reconciliation in mainland China was Liu Lingmei's 'Introduction and evaluation on criminal reconciliation of western countries in both theory and practice' in 2001, before the practice of CR. From the title, it can be seen that Liu regards the restorative practices in Western countries as a form of reconciliation used in criminal justice system. She comments that 'the practices of criminal reconciliation in western countries are the embodiment of the development trend of criminal penalty', and predicts that this new institution would arise in China as well (2010: 154). Comparatively, there exist similar approaches in Chinese criminal justice such as the non-penalty punishment of apologizing or compensating the damages/injuries, only with a very low application rate, which reflects 'the ingrained ideas of heavy punishment and the overlooking of the victim's interests in Chinese criminal justice' (*ibid*.). Therefore, she advocates reforming the current criminal justice system in China through taking the offender's compensation

and remorse into consideration as mitigating circumstances in the punishment of offenders, which are the preliminary ideas of developing CR in Chinese criminal justice.

Although Liu offers a starting point, there were not many responses from academia during the early years of the twenty-first century. Professor Liu Fangquan of litigation law followed the line first. Liu and Chen (2003) focused on introducing and evaluating the theoretical foundation of Western criminal reconciliation. In this paper, they regarded restorative justice as a similar concept to criminal reconciliation, which became the focus of debates on CR in the following years. Besides, CR was also compared with the institution of plea bargaining for a time, when considering that the two systems have the same foundation as the contractual relationship (Liu, 2003; Ma and Chen, 2003). The uncertainty of CR's concept and how to position CR in criminal justice system could be reflected from the early pieces.

Ma, another professor of litigation law, is also a name needs to be mentioned in CR's development in China. As one the earliest advocates of implementing CR in China, published three papers on CR in China in 2003, alone or with other scholars. First, Ma, with her teacher, contributed discussions on the value structure of criminal reconciliation and the establishment of a China mode (Xiang & Ma: 2003). Then, she raised the idea of applying criminal reconciliation in China in different stages of criminal proceedings, and gradually enlarging the application case scope from minor cases to heavier ones (Ma, 2003). In a way, at the beginning of importing restorative justice ideas into China, the advocates tried to mould CR in the direction of restorative practices. From Ma's papers (2003), establishing CR institution in China has been studied and evaluated from the perspective of restorative justice and named "Chinese restorative justice" in quite a few pieces of work (Song and Xu, 2004; Di, 2005). Conversely, some scholars started to question whether the values of restorative justice could be fully embodied in the practice of CR.

After a stage of only sporadic academic pieces being produced, it was not until 2006 that several major and often-cited works came into being. Professor Chen G.Z., the famous

jurist, educationist and one of the founders of Criminal Procedural Law in the PRC, published an article on the 'Primary exploration of criminal reconciliation', together with Ge Lin, his PhD student at the time. Ge later became an expert in the field of criminal reconciliation and devoted herself to valuable academic accounts in the following years. In the most-cited work, Chen and Ge (2006) tried to define CR, seeking its theoretical foundation in China and designing how to apply it in different judicial phases. As a consequence, they (2006: 7) believed that reconciliation between the victim and the offender in China 'stems from the dispute-settlement methods of paying compensation in substitution for revenge in late primitive society of, distinguished from RJ. Nevertheless, they agreed that the worldwide restorative justice movement has shown certain intersections with the rise of CR in China, including focuses on protecting victims' rights and restoring damaged relationships (2006: 8-9).

Similarly, Chen R.H. (2006) chose to give the CR approach a different name and put it in the title of his paper, "the private remedy cooperation mode", with the view to distinguishing it from the RJ concept. Nevertheless, the aspirations of restorative justice are not entirely rejected in establishing CR as a new institution. Chen concluded that there exist three models of a "private remedy cooperation mode" in China, which were reconciliation by the parties, judicial reconciliation and mediation by the People's Mediation Committee (2006: 16-8). Despite deficiencies in theory and practice, he held high expectations for the development of criminal reconciliation in China, predicting that it would become a special system independent of traditional criminal justice (2006: 26).

In an article 'On the value of criminal reconciliation system', Zhou (2006: 506-8) provided a train of thought to explore the values of CR from the point of legal consciousness. He suggested that the stereotype of criminal justice should be broken that it depends on retribution and punishment to realize the justice. He highlighted the overlooked mission of criminal justice - morality re-establishment - which should function through guidance and induction rather than compulsion. There was a gap in the criminal justice system in

which criminal reconciliation could fit by establishing a cooperative attitude between the public and criminal justice, in order to improve the communication between them.

Yang Xingpei was another of those who strongly advocated the transplantation and application of criminal reconciliation as a new institution. In 'The fate of criminal reconciliation in China', he listed three reasons for transplanting the CR institution into China: to meet the needs of a people-oriented and harmonious society; to restrain the mighty state power from damaging the public's will; and to save judicial costs and social resources (2006: 2-3). In particular, he explained the political context for the development of the CR institution in China. Since the political goal of establishing a harmonious society in China has been set explicitly by the ruling party - the Communist Party of China (CPC), transplanting the CR institution could help to achieve the goal to "stabilize the broader masses" by providing more peace-making opportunities (2006: 4).

It is worthy of note that CR has received particular attention in relation to juvenile criminal cases at the height of restorative justice studies in China. This idea has first been raised by Tang (2004), advocating that it is necessary and feasible to apply more reconciliation methods in juvenile-involved crimes in China based on the characteristics of juveniles. In 2007, the international seminar of Restorative Justice and Juvenile Justice Reform was held in Nanjing, probably the only CR-related seminar that invited restorative justice experts around world with a clear view to learning experience from UK and US. The major organizer of the seminar Professor Di Xiaohua (2007) reviewed these western experiences and gave a high appraisal to youth justice in Northern Ireland where youth conferencing has become the "default" response to youth offending. This achievement is largely attributed to the maturity of system supporting restorative justice to become the mainstream in Northern Ireland, especially the professional co-ordinators to facilitate the restorative process; and to the practical model that could effectively balance the rights and needs between the victim and the young people who commit offences (Chapman & O' Mahony, 2008: 109).

From actively importing RJ ideas and moulding CR accordingly at the start, to trying to distinguish CR in China from western RJ practices and add in more Chinese traditional elements, the discussion regarding CR's development in China seemed to face more controversies gradually.

2.2 The opposing voices

As stated, in the early days of studying the new approach of CR, the advocates of restorative justice received a certain popularity in Chinese academia, while the opposing voices were also heard. Clear standpoints have been taken on the potential deficiencies of developing CR in the light of restorative justice in China. In general, concerns are mainly raised regarding the legal, cultural and political contexts of China, which some scholars believe are not suitable for the importation of restorative justice ideas. One important point to make before starting the exploration of the opposing voices is that there exists a mixed understanding on the aspirations of CR and RJ in some scholars' analysis, on the precondition that CR is the production of importing RJ ideas (Zou, 2004; Guo & Zhang, 2008).

2.2.1 Jeopardizing the rule of law in China's current criminal justice system

In 2004, Zou expresses the concern for the first time that the progress of importing restorative justice to China should be slowed. Zou regards the good effects of RJ as a 'beautiful temptation', which could make people neglect the immaturity of its ideas and functions and the significant impact it may impose on the current Chinese justice environment (2004:39). First, he questions that RJ tends to lay emphasis on the justice of an individual case from the fact that offenders obtaining forgiveness could receive a more lenient punishment than those who do not (40). This is a big challenge to the principle of "suiting punishment to crime" that guides current criminal justice system, as the standard of realizing justice in RJ is determined by the result of how the relationship has been restored (*ibid*). In other words, traditional retributive justice provides relatively stable and clear standard for punishing offenders based on their offence; while new restorative justice adds the factors in the aftermath of offence - the restoration of

relationship, into the consideration of punishment. This pursuing of 'concrete justice' in individual case could push justice into a state of uncertainty, which in Zou's judgment, is apparently contrary to the aspirations of the people (41).

In addition, Zou (2004) draws the conclusion that the development of RJ could turn out to be a threat to the aspiration of constructing China as a nation ruled by law, which has been written into constitutional law as the fundamental policy in 1999. To be specific, he considers that an offender "pleading guilty" has been taken as a precondition of applying RJ in practice, which is dangerous to the idea of the presumption of innocence that has been valued in China now after years of advocacy. Zou use two negative sentences to describe RJ: it belongs to the status of 'not rule by law'; and contains 'advanced ideas' not consistent with the current times (2004: 41). To summarize, Zou seems to have little confidence in introducing innovative ideas of criminal justice to China as 'ideas of rule of law a country has not mature enough' (*ibid*.). One thing needs to mention is that Chinese criminal justice system is in a relatively innovative stage in 2004 when Zou made these evaluative accounts. The broader background is the important revision of both criminal law and criminal procedural law in 2002. It is not to allege that current legal system in China is mature enough for certain advanced ideas, but it has been much developed in the past decades.

Guo and Zhang (2008) follows Zou's thought that the newly formed rule of law ideas in China are not ready for the impact brought about by restorative justice. They compare China with Western countries which practise the rule of law and with mature ideas, with the view to explaining why restorative justice could rise and become popular in Western countries but is not suitable for China. Guo and Zhang attribute this to the highly-developed economy, political civilization and deep tradition of the rule of law culture in Western countries. In such conditions, they believe that the traditional justice systems in these countries have been matured but that drawbacks are starting to be exposed. One of the noticeable drawbacks is that imprisonment fails to achieve the goals of reforming offenders and helping them reintegrate into society. Therefore, restorative

justice, a comparatively flexible system that pays more attention to the participation of the two parties in the process of handling crimes, emerged at the right moment in Western countries (2008: 72-73).

By contrast, it is irrational to transplant criminal reconciliation into China prematurely according to Guo and Zhang. Two of the concerns they have expressed on the implementation of CR are still being discussed even after the uniform legislation. One concern is that CR could cost far more judicial sources if reconciliation sank into a stalemate or failed and returned to the trial proceedings (74). It is counterproductive to the initial goal of saving judicial sources when the district procuratorates started the trial application of CR. Another more intense concern is concluded as 'the uncontrollability in procedures' of CR institution (74). The foundation for raising this concern is that Guo and Zhang regard the essential characteristic of CR as 'the parties waiving partial right and the procuratorates abandoning partial duty' (*ibid*). Based on this, they analyse two possible disadvantages of CR. First, it increases the discretional power of judicial organs, leading to the misuse of judicial power. Especially for victims, the influence from judicial organs may push them to waive their right and accept certain deal. Second, the criticism goes directly to the procuratorates' non-prosecution decisions due to a successful CR result. The tone reflected in this concern becomes quite harsh and negative. Guo and Zhang comment that CR's requirement of genuine remorse and apology from the offender is 'the noble personality in the Republic of Plato' (2008: 75). They even raise rhetorical questions whether more compensation stands for more genuine remorse and whether it is inevitable that offenders with limited economic capability would end up in prison, concluding CR becomes 'the advanced game of rich people' to some extent (*ibid*).

The concerns expressed in this section have been occupying the focuses of debates on CR in China. Albeit a little too much intensity in Guo and Zhang's comment, two general contradictions are highlighted in the implementation of CR: the one between the two parties (especially the victim) and the judicial organs, and the one between the

procuratorates and the public opinion. These two contradictions will be further elaborated in the following chapters in the light of my interview data.

2.2.2 Challenges from the traditional legal culture of China

Apart from the concern of jeopardizing China's rule of law in society, Wang and Zhang (2007) examine the idea of transplanting restorative justice into China in the cultural context and point out that the cultural differences between China and Western countries would become an obstacle for importing restorative justice to China.

Influence of religion and civil society are regarded as two important mainstays of restorative justice in western countries, yet missing in the Chinese culture (Wang & Zhang, 2007). They make the comparison that Christian ethics advocates universal fraternity and sacrifice to society, while this kind of love and sacrifice among the Chinese is confined to people with a blood relationship (2007:127). In other words, Chinese people have less compassion for the strangers who have hurt them, while easier to forgive if the offenders have close relationship with them. This could still be reflected in the current legislation such as the maltreating crime discussed above which does not belong to public prosecution case and has a relative mild statuary sentence comparing to other assault crimes.

Another mainstay, the idea of civil society, was born of the process of confrontation and cooperation with the government in Western countries (2007:128). Civil society is appraised as the private power confronting both violence and state power, which appeals for more care for victims and offenders. From this perspective, Wang and Zhang (2007) elaborate that restorative justice has emerged at the right moment as the government's compromise to civil society in dispute settlement. In their judgement, this idea is still absent in China, since the strong administrative power leaves little space for private power to grow in China.

Further, Wang and Zhang refute the viewpoint that the Chinese cultural and legal environment is suitable for the rise of restorative justice after comparing the spirit of

civil society in restorative justice with the 'non-lawsuit justice' in China, including 'anti-litigation', reconciliation and harmonious ideas (2007: 129). First and most important, is that there are different motivations for applying reconciliation instead of litigation. In Western countries, restorative justice is used to pursue justice actively and restore damaged relationships by mediation and multiple forms of compensation, while reconciliation or private settlement in Chinese is a negative response in order to elude the litigation process. Second, there is always the involvement of administrative authority or influence from the clan (*Zong Zu*, 宗族)[8] "pushing" the parties to make a decision in Chinese mediation, while mediators in Western restorative justice play a neutral role in facilitating the process. Third, the value of non-lawsuit justice and restorative justice is quite different. In China, the purpose is to quell litigation and achieve political harmony, which shows a political and compulsory complexion, while the initiation of restorative justice in Western countries is to achieve the goal of remedying the limitations of retributive justice.

Wang and Zhang's comparison of traditional mediation in China with RJ in western countries further analyse the reasons why the development of CR should not take the direction of RJ in western countries. Unlike Guo and Zhang (2008), Wang and Zhang do not disagree with the ideas of RJ, but to propose that it needs to be adjusted in accordance with Chinese context if similar approaches are going to be taken in Chinese criminal justice system. Thus, Chinese traditional legal culture has received great attention during the institutionalization of CR. However, some of the traditions have been taken granted for making the assumptions for applying CR, further leading to some of the goals behind the legislation of CR unable to be achieved in the practice. Chapter 7 will elaborate on the changed function of Chinese traditions in current society, and how and why this influence the realization of the goals behind the legislation of CR.

2.2.3 Concerns regarding the aspirations of RJ

There is no lack of questioning towards the ideas of restorative justice itself, as an alternative to solving criminal cases. For one thing, "the victim" becomes a frequently discussed point concerning the impulse brought by restorative justice into traditional

criminal justice system. One of the important advocates of RJ is to benefits victim by providing more satisfaction and fairness to victims (Umbreit & Greenwood 1999), although in some argument RJ is still unsatisfactory that it actually aims to deal with the problems of offender, not as claimed to be victim-oriented (Zehr, 2015).

Similarly, Chinese scholars also express their concern that doing reconciliation or mediation with his/her offender may place the victim at risk of a second-time damage (Xu, 2009; He, 2010). Possible reasons include that victims of some injury crimes may not feel relieved through facing the people who have hurt them; some victims may bear the burden if they could not show mercy to the offender; what is more, victims may fear to receive threats from the offender if they refuse to reconcile (He, 2010: 94-95). Besides, the independent choice of victims in the process of CR is very crucial, yet difficult to guarantee in the institutionalization. For example, the victim may accept a reconciliation agreement, not out of willingness, but due to pressure from a judicial authority who hopes to achieve certain targets behind the criminal policy (Xu, 2009: 132-133).

It is worth mentioning that some Chinese scholars hold a different opinion that such restorative approaches lean over too much on the road of benefiting victims. The victim's position is considered to be over-elevated in both theoretical research and in the practical application of criminal reconciliation in China. (Li Z., 2007; Yu, 2009). Li Z. (2007: 123) is in disagreement with RJ's 'overdoing focus on victim party, without regard to the role and function of a political state and the state's interests'. For Yu (2009: 95), RJ seems to be practiced to an extent that as long as the victim forgives the offender in practice, the case could be settled by reconciliation without considering other conditions. Yu (2009: 26) comments that the over-heated popularity of new restorative justice theories facilitates the rise of victims' position in criminal justice, and China is following the trend with the trial of CR in practice, only a little bit late than the western countries. This kind of victim-oriented approach is likely to hinder criminal justice's function of protecting public interests (Yu, 2009), which points to another concern on RJ.

That is the development of restorative justice would blur the boundary between crime and non-crime and undermine the deterrence of penalty (Li X., 2007; Li Z., 2007). Li X. (2007:15) points out that China now employs a two-level state punishment system: punishment on behaviours disturbing public order and criminal punishment. Within this system, minor delinquencies are handled by public security organs and imposed with administrative penalty; while criminal behaviours are handled by judicial organs and imposed with criminal penalty. Given that minor illegal behaviours or delinquencies have already been excluded from the scale of crimes in China, 'the other harmful behaviours entering into criminal proceedings have reached the threshold of criminal punishment' (ibid). Therefore, RJ is criticized as 'handling criminal behaviour with civil methods, blurring the criminal field and civil field', and even 'a step backward in the history of law development' (Li Z., 2007:123). If it is believed that some types of criminal behaviours, such as minor injuries in the application of CR, were no longer suitable to be punished with criminal penalties in current society, the solution could be decriminalization through legislation, instead of applying reconciliation within the criminal justice system (*ibid*), although in the transformative stage of China, there may be more new types of crimes to deal with, rather than decriminalization of the existing crimes (Li X., 2007: 15).

2.3 Dialogues between theorists and practitioners

Apart from exchanging opinions through published articles, there are also opportunities for face-to-face communications on CR in Chinese criminal field. Since 2003, seminars have been held to investigate CR as a new alternative to resolving criminal cases, every year by the research centres of universities, district prosecution organizations or jointly.

Among the seminars, three large-scale ones from 2006 to 2008, when CR had a quite high popularity in Chinese academia, are very influential and make elaborate discussions on the development of CR. In 2006, the theme is 'CR in the Context of Harmonious Society'; in 2007 it focused on the relationship with 'Criminal Policy of "Combining Leniency with Rigidity" and CR'; and in 2008 it mainly deals with the 'Procedural Diversion' issues concerning CR. Different themes of each year's CR seminar reflected

the change of focuses on studying CR, a trend from theoretical justification to practical implementation. These seminars were all held jointly by academic institution and Procuratorate Department, inviting both theorists and practitioners nationwide to provide understandings and practical experience of CR and, more importantly, to exchange opinions from theoretical and practical perspectives. Here will present two topics receiving continuous debating at the seminars and very inspiring for the analysis in this thesis: the foundation of applying CR in China and the role of procuratorate in CR.

2.3.1 Debates on the foundation of CR

At the 2006 seminar, most participants believed that both the theory and practice of criminal reconciliation originated in Western countries within the social context of 'the rise of victim-oriented criminal protectionism and the recession of offender-oriented confinement and correction policy' (Huang et al., 2006: 109). In contrast, a few scholars considered CR as representative of the revival of the "oriental experience" which first originated in China. From the ideology, Professor Fan Chongyi (2006) considered that the "extensive and profound thought of harmoniousness" in CR is more comprehensive and scientific compared to restorative justice (*ibid*). From the perspective of practice, Professor Chen R.H. (2006) examined that the practical experience of CR in China shows a strong domestic characteristic which is quite different from Western countries (*ibid*). And Professor Jia Yu pointed out that the rudiment of CR could be found in the revolutionary period before the founding of the PRC, to prove that CR is not the product of the reform of modern criminal justice system (ibid)[9]. To conclude, these "indigenous origination" advocates stressed that CR could find both theoretical foundations and practical experience from Chinese culture and traditions. Thus, the indigenous experience or model was more suitable for the development of CR in the Chinese context because it could be adopted into the original law and order more easily.

Nevertheless, at the 2007 seminar, Professor Chen R.H. also refuted taking traditional harmonious ideology of China as the theoretical foundation for CR for the lack of 'argumentation of causality' since the traditional ideology has been existing for

thousands of years. (Zhang J.S., 2008: 40). Therefore, some scholars showed an inclusive attitude of Chinese traditional ideology and RJ of western countries. For example, Chen Guoqing, research director of the Supreme People's Procuratorate, indicated that RJ had been introduced to China since 1990s but gained little attention from the judicial practitioners and legislators (*ibid*). Only after the proposal of "Establishing Harmonious Society" theory, had the exploration of CR in Chinese criminal justice started. Although there is no agreement whether the importation of RJ or the Chinese own ideology development plays a more important role in triggering the rise of CR, it seems to be gradually accepted that CR was moulded by both imported and indigenous ideas.

At the 2008 Seminar, only Professor Chen Guangzhong, the key member for drafting amendment of CPL, talked about the foundation and nature of CR. He stressed that the practice of reconciliation is 'inheriting good traditions of China, rather than 'just intimating the models in western countries'; while admitted that there lacks specific legal and institutional foundation to implement CR in China. To some extent, the debate on the foundation of CR was not further advanced at this seminar, while the focus on the studying on CR has changed to the institutionalization of CR.

2.3.2 Debates on the role of procuratorate in CR

In fact, it could be seen that the debate on foundation of CR was still basically among theorists, although there are many judicial officers at the seminars. These practitioners involved more in the topics regarding the practical application of CR. As introduced above, the three influential seminars were all held by procuratorates and research institution. Although there are also judicial officers from public security organs and courts, the core of discussion on the practice of CR was reconciliation cases handled during the stage of prosecution. The debate with high attention at seminars and much participation from prosecution practitioners is on the role of procuratorate in the process of CR. The change of attitudes in the debate towards prosecutor being the facilitator of CR at different seminars may help interpret the institutional design of CR in the new legislation.

At 2006 seminar, Professor Chen G.Z. first laid foundation on the question that which practical model CR should choose - 'should not simply apply the models in other countries' (Huang et al., 2006: 115). He proposed that although judicial organs should not involve too much in the process and result of reconciliation, they need to supervise and examine whether the case was suitable for applying CR and the two parties were voluntary to reconcile. According to Huang's report (2006: 115), the majority of theorist and practitioners at the seminar advocated procuratorates as the organ to 'zhu chi' (facilitate/ preside over) the process of CR. On this side, Chaoyang District Procuratorate of Beijing shared their practical models at the seminar: if both parties employed lawyers, then the two lawyers were responsible for the reconciliation between the two parties; in other common situations, prosecutors played the role of facilitator in the process of CR. Professor Chen Xingliang supported this model because the procuratorate was the only organ with both the supervision right of law enforcement and the right of examination and prosecution (*ibid*). On the opposing side, Professor Min Chunlei listed two reasons why procuratorate is not a better choice for facilitating CR than independent mediation institution outside judicial system: first, the facilitation role is not the authority of procuratorate, and would hinder its original role of prosecution; second, under such situation of lacking judicial resources, procuratorate could not guarantee the quality of achieving the facilitation work as more time and energy was needed in a CR case. Similarly, there was practical experience from district procuratorate backing this advocate of facilitation model. Chief prosecutor Li Xi from Chongqu District Procuratorate of Jiangsu Province introduced their pilot project of 'Joint Work between Prosecution and Mediation' (*ibid*).

At 2007 Seminar, the discussion specially divided the practical models of CR in procuratorate into CR facilitation model and CR confirmation model, revealing the great attention on procuratorates' specific role in CR (Zhang Jianyi, 2007: 42). Another leader prosecutor, Li Anjun, from Jiangsu Province, followed Professor Min's viewpoints, advocated to transform the facilitation role from procuratorate to People's Mediation Committee or Community Correction Office. Li stressed that CR is a process 'in need of

participation and effort of the whole society' (*ibid*). Certainly, the cooperation of other social organizations is confined to their development situation in districts. In the meantime, the supportive voices for procuratorates' participation in CR were not weak, such as Professor Chen R.H. proposing procurators to take control of the compensation part within a rational range and Doctor Li Zhe thinking highly of procuratorates' role in the procedural diversion for a CR case (Zhang Jianyi, 2007: 43). Noteworthy was the account of Zhang Zhihui from the SPP that 'procuratorates have shown a cautious attitude in the practice of CR', for the lack of clarified guidance on procuratorates' performance in CR (*ibid*).

While in 2008, the tendency on this debating topic seemed to have changed. The majorities at 2008 seminar advocated that the facilitation role in CR process was better to be given to a neutral third party, since the procuratorate is not suitable for taking an active role in the reconciliation. The opponents of procuratorate playing the facilitation roles provided several reasons. Researcher Ge Lin worried that active involvement in the reconciliation may produce corruption of prosecutors and push them to 'take sides' from the two parties. Being both a prosecutor and a researcher, Li Xiang criticized that facilitating CR process would make the prosecutors a shareholder of CR and could not supervise the process properly, which received agreement from other scholars and lawyers present. Only one scholar Zhang Dong raised that prosecutors should 'host' the process of reconciliation, as he stated "I'm really confused about the neutral role of prosecutors that has been discussed repeatedly here…I think prosecutors are responsible for protecting the victim's rights and facilitate them to obtain the deserved compensation".

Being the core of the debates, quite a few prosecution practitioners shared the difficulties facing the procuratorate in the process of CR from the practical perspective. Wan Chun, one of the leaders of the SPP, expressed that facilitating CR increased the prosecutors' burden of caseload in accordance with practical feedbacks reported to the SPP. Another leader of the SPP introduced that involving too much in the reconciliation

process would put prosecutors in an awkward position. Miao Shengming, a prosecutor from Beijing, complained that the process of CR depended greatly on the attitudes of the two parties in the practice, which increased the uncertainty of prosecutors' work and reduced legal authority.

There were no consented answers for this tough question after the two-day discussion at 2008 seminar. In overall consideration, the procuratorate was regarded as not suitable for much involving in the reconciliation process, yet it needed to control and supervise CR within rational and legal standards. Therefore, the model of establishing special CR office within a procuratorate employed by Chaoyang District Procuratorate received high attention from the attendees, seemingly to satisfy all the expectations for procuratorates. Luckily, insights of employing this model after legislation has been shared by my interviewees, which will be examined comparatively with other models in chapter six.

3. Attempts to evaluate CR

3.1 The positive voices

When talking about the positive effects brought about by applying CR in China, it is often discussed in comparison with traditional criminal justice. The aspirations for CR focus on remedying the deficiencies of traditional criminal justice. In this section, the good effects of CR will be concluded with the classification of the different beneficiaries from the CR institution.

3.1.1 For the victims

Theoretically, CR's benefits for victims have been put in the context of restoration of interests. In the book of *CR in the Eyes of Victims,* Li J.L. listed the values of encounter, empowerment and reparation through a CR process in which victims' interest could be restored (2007: 82), reflecting analogical aspirations within the broad concepts of restorative justice (Johnstone, 2012: 9-15).

The prominent effect which gains CR many affirmative voices is that it cares more about the victims' rights and better protects them. According to Song (2010: 17-21, 43, 72-73), data from many district practical reports, not limited to his fieldwork, all show that 'victims are one hundred percent satisfied with the result of reconciliation and there is no further appeal or complaint from victims afterwards'. Feng Chunming (2009), a prosecutor as well as a practitioner of CR, considers traditional criminal justice as 'cold and callous', and lacks care for remedying victims; while CR is a more realistic approach to compensating victims which meets the needs of the common people. His opinion stands for most scholars and practitioners' evaluation of CR that victims could receive better and more efficient compensation from the offenders through CR institution.

Two indicators in the practical situation have been discussed to support the superiority of CR over traditional criminal justice. One is that the amount of compensation required in the verdict is usually lower than that in a criminal reconciliation agreement (Shi, 2007: 304). Although no comparative research has been done on the reason for this difference, it may be related to the different focuses in the reconciliation process. Compared with traditional criminal proceedings, the victim could gain more initiative in the process of CR and his or her attitude may affect the outcome of the compensation. As a consequence, the offender may offer more compensation to show his or her intention for a successful reconciliation, while the court's decision regarding the compensation amount is in accordance with legal criteria which cannot catch the pace of economic development.

The other indicator is that the implementation rate of the judgment of a "civil suit collateral to criminal proceedings" is rather low. This mechanism is designed for the victim or the victim party to seek remedy from the offender through criminal proceedings. However, the implementation situation is highly unsatisfactory; for example, only 2 per cent of civil suit judgments could be implemented in Beijing District (Xue & Yan, 2006: 118). The explanation for the low implementation rate is that after punishment is passed on an offender, the offender party becomes unwilling to

compensate the victim because they think they have already received the punishment. In conclusion, traditional criminal litigation proceedings could not guarantee that victims received efficient and satisfactory material compensation. From this point, victims who are in need of compensation to cure their injury or eliminate their losses would prefer CR to settle a dispute.

Apart from material compensation, Wang (2010: 34-35) points out that the spiritual needs of the victim could also be fulfilled and negative emotions could be released during the process of criminal reconciliation. The questionnaires used in Song's (2010: 20-21) empirical research also show that victims would feel more secure and their spirit gain more comfort through reconciliation than the traditional litigation process. However, the reasons for a victim feeling secure or what kinds of factors make the victim feel so in the reconciliation process are not shown in the research, because there is no deeper communication with the victims through the questionnaires.

3.1.2 For the offenders

In China, a conviction is strong enough to terminate one's study life or career, as the person will be labelled a "criminal" for the rest of his or her life (Li J.L., 2007: 194). Therefore, once having been convicted, some offenders will become disappointed with their future and may even feel resentful towards the victim (Wang, 2006: 33). It seems that heavy punishment plays a more important role in general precaution rather than special precaution, since it decreases the possibility of an offender reintegrating into society.

According to the practical experience, in a minor injury case caused by civil conflicts, a guilty verdict made by the court always results in 'internecine conflict or even family feud' for the two parties (Xue & Yan, 2006: 119). While, through CR, the offender may receive a non-custodial penalty, or an imprisonment penalty with lenience if the offence is serious. For the former situation, the offender could avoid the social isolation caused by imprisonment; for the latter, the mitigation of punishment could make the offender

feel mercy and warmth from society, which could prompt him or her to reintegrate into society after rehabilitation (*ibid*; Song, 2010: 18-19).

From the aspect of special prevention, the process of communicating with the victim plays a better educational role in making the offender fully recognize the harmful consequences of what he or she has done (Xiang and Ma, 2003: 117). Fang's (2007: 15) notion that 'imprisonment is an expensive way of making a bad person worse' has been cited in the advocates for CR, with the view to showing CR's superiority than traditional penalty on treating offender. In most cases of applying CR, the offenders are those who commit crimes for the first time or commit negligent crimes, meaning the offender's subjective culpability is relatively low. Settling the case by reconciliation instead of punishment could reduce the risk of recidivism, because the offender may receive a 'negative influence in the prison such as learning "tricks of the trade" from the hardened inmates' (Wang, 2010: 33). Song's empirical research shows that all of the offenders taking part in the study who were exempted from prosecution after reconciliation behaved quite well after settling their cases through reconciliation that almost everyone returned to school or a career (Song, 2010: 18-19).

3.1.3 For the judicial organs

In general, applying criminal reconciliation is expected to help raise litigation efficiency and reduce litigation costs. In her evaluation of traditional Chinese criminal litigation, Li J.L. (2007: 189-191) regards the number of criminal cases in China increased rapidly with the reform of economic system and social structure. She proposes that the limited judicial resources should be used with a focus on handling more serious crimes, while CR could help divert minor cases from the litigation proceedings, such as by making non-prosecution decisions during the phase of reviewing and prosecuting.

Song (2010: 35) introduces that the workload pressure on judicial organs is actually huge in the areas in which he conducted the fieldwork because there are many floating populations in those areas, which could lead to a higher crime rate. According to Song, his research demonstrates that CR could help reduce the litigation cost from two

perspectives (2010: 21-23). In some cases, it takes less time and energy for judicial officers to apply criminal reconciliation. Data from three procuratorates in different areas show that it takes approximately twenty days to resolve a case by reconciliation, which is much shorter than the forty-five days taken by traditional litigation (2010:14). In the other situation, CR helps reduce litigation cost because it could settle a case thoroughly. Although applying CR may cost more time and energy for the judicial officer who is handling the case, the victim would feel more satisfied with the result of reconciliation (2010: 14). The satisfaction level of victims seems to influence the quality of the case settlement. In practice, if a victim believes that the punishment of the offender is not sufficiently just, he or she could choose to appeal or petition the result, which requires the judicial organs to expend more time and energy (Wang, 2010: 39-40). Thus, from an overall perspective, if a victim could receive a more satisfactory result through CR, resulting in a lower possibility of appeal or petition, this would actually help the justice system to save resources.

3.1.4 For society

The most common evaluation of restorative justice from Chinese scholars and practitioners is that it helps restore damaged relationships. In the advocates' eyes, it accords with the governing idea of a "harmonious society" and the criminal policy of "Combining Leniency with Rigidity" in current China (Yao & Feng, 2010: 61). To explain this further, the former idea advocates the application of reconciliation and mediation in litigation to resolve conflicts, and the latter policy requires punishing a serious crime harshly while showing mercy in relation to minor ones. The requirements of these public policies in China share the similar aspirations of restorative justice. These advocates believe that the coupling of the Chinese political context and the restorative justice movement leads to the rapid development of CR with a view to resolving conflicts and establishing a harmonious society.

The applications of CR have been investigated for the establishment of the institution. In the light of empirical research, Zhou (2010: 108) comes to the conclusion that the new

institution of CR is easier to implement in more developed areas, in which the residents value time and efficiency more, while people in rural areas may find it difficult to reach a compromise with the other party in the reconciliation process. Conversely, it is considered that Chinese people lack a common legal consciousness to settle conflicts through litigation approaches, especially in rural areas (Wang, 2010: 57-67). Similarly, Yao and Feng (2010: 113-114) believe that Chinese people show a 'strong sense of endorsement and preference' for alternative dispute settlement methods, particularly in rural areas. In their opinion, Chinese people in rural areas tend to prefer non-lawsuit alternatives to resolve conflicts compared with other areas. However, the opinion is raised based on an exploration of traditions, rather than empirical data from the application of CR in rural areas. In general, if entering the keywords of "the effect of criminal reconciliation" in Chinese search engines, reports from local judicial organs will be presented with the similar title of "criminal reconciliation is beneficial for harmonious society" or "achieving good results". Further analysis of the similarity or divergence behind the report of good effects has rarely been made. Neither does the new legislation bring new blood into the discussion of the effectiveness of the CR institution.

3.2 The negative voices

Just as it has received positive feedback from practice, the CR approach was also deprecated in the development process, particularly in the transition stage from district pilot projects to a uniform institution. It is worth mentioning that the critiques focus more on the practical implementation of CR than the aspirations behind it. While the calls for legal recognition grew louder, concerns were expressed to remind the policy-makers of the negative effects of applying CR. As a result of the lack of accessory institutions for the implementation of CR, some disadvantages would be inevitable if no measures were taken during institutionalization. The two most highlighted deficiencies of CR include its high relevance with compensation and insufficiently voluntary participation for the two parties. This section introduces the negative voices and how they came about in the light of integrating the scholars' debates with the Chinese context.

3.2.1 Hua Qian Mai Xing (paying compensation for less punishment)

- A frequently mentioned expression

This four-character Chinese expression is quite a negative evaluation of the CR institution. To some extent, it has been considered as a "label" attached to CR that this expression is closely associated with CR in many related reports (Wang, 2010: 239; Chen & Shi, 2010: 128), although official voices have always tried to draw a clear line of distinction. In the mass media age, the results of searching for CR on the internet are filled with discussions of the question of whether CR is *Hua Qian Mai Xing.*

To be specific, CR is criticized on the basis that the offender could take advantage of this alternative form of handling criminal cases to receive a less severe punishment by paying compensation to the victim (Lin, 2007: 54; Liu, 2007: 45). This negative function is called *Hua Qian Mai Xing* for short, using two verb phrases which could be translated literally as "paying money" to "buying punishment". To translate the expression more expressively and cohesively in English, hereafter it is referred to as "paying compensation for less punishment".

In the academic works aiming to introduce the CR institution more fully, there is generally a section discussing the relationship with "criminal reconciliation and paying compensation for less punishment" (e.g., Wu, 2008; Hu, 2009). The works aim to distinguish between the two concepts and try to demonstrate that CR is not a way of avoiding punishment by paying compensation. I could not establish the origins of this expression of how CR receives such a negative review. However, through analysing the debates on "paying compensation for less punishment", a clearer understanding could be gained of the causes for "the misunderstanding of the CR institution" in the eyes of the advocates (Chen & Shi, 2010: 128-129).

- The close relation with money

It has been a criticism that money is the very focus during the process of criminal reconciliation (Rosenzweig et al., 2012: 25-26). On this point, some Chinese scholars

emphasize that 'an approach only focusing on the compensation but not on the offender's repentance could not be regarded as real criminal reconciliation' (Song et al., 2010: 75). The CR institution can be defended from the perspective that the aspirations for CR were to restore damaged relationships and benefit the two parties in the process. In the cases Rosenzweig and his colleague studied, paying compensation was not the only standard for making a successful reconciliation between the two parties. This inspires an explanation that if the aspirations were achieved in practice, there would be no phenomenon of only focusing on compensation in the process of CR. Nevertheless, it cannot be ignored that there exist some negative examples in practice.

Chen and Shi (2010: 128) from the Legal Policy Research Office of the SPP provide an account of the extreme situation of applying CR in practice: 'The offenders would take out an amount of money in the court and wait for the verdict. If the sentencing is not death penalty or heavy imprisonment, they give money to the victim; otherwise, they will take away the money and make no compensation'. Chen and Shi (2010) comment that in such cases compensation is made in exchange for a lighter punishment, even as a threat to the victim and the judicial organs to meet the offender's requirement. The phenomena were criticized for undermining the spirit of CR injected into the design of the institution, which needs to be 'restrained resolutely' (Chen & Shi, 2010: 129). Again, advocates point to the improper practice of CR as the cause of the negative voices. Therefore, they propose exploring a more systematic mechanism for offenders to remedy victims in order to prevent the alienation of CR in practice.

However, in the light of the practical experience of handling CR cases, besides the offenders' apology to the victim, the main content of reconciliation process is about making material compensation for the victim (Song, 2010: 11). In a focused discussion of whether CR could be equated with "paying compensation for less punishment", the participants reached consensus that there existed strict differences. They agreed that CR appeared to cause the "commercialization of criminal liability" to some extent, but the reason behind this was the lack of other mechanisms to remedy criminal victims. The

phenomenon of focusing on material compensation would exist in the application of criminal reconciliation if there were no corresponding compensation system. Currently, the key point is 'within what degree of limits we could tolerate it in legislation and jurisdiction during the process of building the harmonious society' (Song, 2010: 128; CR and Procedural Division Research Group, 2010: 528).

Since remedying the criminal victim belongs to the offender's obligation in the current Chinese criminal system, there is a high possibility that the offender would be sued by the victim for compensation even without the CR institution. As stated above, this mechanism of supplementary civil action in criminal proceedings does not receive good practice effects when executing a compensation verdict. In my understanding, the emergence of the CR approach may help share the task of remedying criminal victims.

- Unfairness to the poor

Rosenzweig and others (2012: 25) criticize the CR institution in China for being unfair to economically weak suspects and defendants. They take several Chinese scholars' opinions to illustrate this point. However, after I checked the original literature, I believe some of the accounts may not have been fully interpreted to a certain degree.

First, they quote Li Hongjiang's accounts that 'if you have money, you will get a lenient sentence; if you are poor, you will go to prison' (2006: 13). To better understand the account, I translated the context as follows:

> *CR depends on the attitude of the victim, and it is decided by the compensation…If a rich person commits an offence, he could be forgiven easily because of the satisfactory amount of compensation so that he could avoid punishment; on the other hand, the poor person may be punished because he could not compensate the victim. Generally, the poor could not receive benefit from the CR institution, but accept the punishment.*

Second, Ge (2010: 19-20) considered that compensation could be used as the main standard for judging whether a damaged relationship has been restored between the

victim and the offender, which is similar to the idea of the "commercialization of criminal liability" mentioned above.

Third, when Shan (2006) expressed his concern about CR, it was in the early stage of the pilot projects. He even used the expression '*Si Liao'* (settle the case behind the door) to describe the process of CR, because most people had not accepted the idea of reconciliation in criminal cases at that stage. As a journalist, Shan shows his professional sensitivity, which is much needed to review the potential risks of a new institution.

Examining the accounts above, we could find some clues that there exist certain hazards in the practice of CR that victims or offenders use compensation to compel the other party, which is different from the aspirations of CR that the public have been told or have expected. Thus, the CR institution may leave the impression that an offender who is capable of paying more money will experience an easier reconciliation process and receive a more lenient punishment. In fact, the discontented attitude towards the gap between the rich and the poor reflected in criminal justice may soured when comparing two influential cases of traffic accident. One offender, Sun Mingwei, who caused five casualties because of drunk driving was passed on death penalty in the trial of first instance; while the other offender Hu Bin who caused one casualty due to a fast car received a three-and-half year's imprisonment. And the distinction of the sentencing results was largely attributed to Hu Bin's active compensation of 1.13 million RMB to the families of the deceased (Wuhan Evening News, 2009). Not mention whether the compensation in Hu's case belonged to a practice of CR, the sentencing result was made by the judge on consideration of various circumstances. However, when some reports focused on the elements of "large amount compensation" and a relatively "mitigating sentencing result" in their titles, quite a few internet users expressed strong dissatisfaction on this mitigating result and question whether it was the million compensation that exchanged for the lighter penalty. Further, this feeling of injustice caused by compensation has extended to most situations in criminal field that involves compensation and mitigation. Concerned about the dissatisfaction and distrust from the

public, Wang Hongxiang (2008: 115-116) from the SPP suggested that public opinion should be taken into account more in the application of criminal reconciliation, because the degree of sensitivity of the public with regard to fairness and justice has become much higher and any relevant event will trigger controversy.

The analysis of these accounts is not aimed at denying that more emphasis has sometimes been put on the compensation in a CR process. However, it cannot be equated with an approach to providing a convenient way for rich people to avoid punishment. The CR institution is still under the control of the criminal justice system, in that certain judgements on the legality and reasonability of reconciliation will be made by the judicial officers, which raises another concern for CR.

3.2.2 Coercion from judicial officers

In Jiang's (2012) study, prosecutors and judges tend to "promote" the application of CR in practice for reasons of their own interests other than good social effects. First, applying CR could make their work easier. Since an offender's admission of guilt is taken as the precondition for applying CR in most cases, CR would save prosecutors time and energy in reviewing the evidence or looking for new evidence. Jiang also comments that it happens that judges seek to "educate" an offender about the benefits of CR with the view to receiving the offender's acknowledgement of guilty. What is more, if a case lacks sufficient evidence to prosecute, the prosecutor will push the application of CR to avoid this situation, rather than make a non-prosecution decision due to insufficient evidence in the normal proceedings. This point has been expressed similarly in Li J.L.'s (2007: 199) accounts, in that helping resolve cases with 'facts or evidence in doubt' is one of the advantages of CR. Second, Jiang (2012) points out that internal performance assessment encourages prosecutors and judges to apply CR in the handling of case. According to Rosenzweig and others, CR is taken as an "addition" to the criterion of performance assessment, which motivates officials to fulfil targets through 'repeated persuasion or even more overt pressure' on the offenders. In conclusion, CR seems to be an easier and beneficial option for judicial officers to resolve cases.

There is no doubt that the new approach of CR has had an influence on the performance of judicial officers, who play an indispensable role in the CR process. However, it is controversial in the way in which the application of CR affects their work positively or negatively, according to other scholars. First, CR may be incapable of saving a judicial officer's working time as expected. The arguments mentioned above have already shown that it may cost an individual judicial officer more in terms of time to accomplish the process of reconciliation than the traditional proceedings (Song, 2010: 14). In some districts in which Song conducted his fieldwork, if a prosecutor wanted to make a non-prosecution decision after CR, this decision needed to be reviewed and approved by other prosecutors from the senior level of the procuratorate.

Second, CR means that the officers need to take more responsibilities for the two parties in the eyes of some practitioners. On some occasions, the prosecutor needs to 'bring the offender out from the house of detention' to have a reconciliation with the victim, which is an additional responsibility for the prosecutor to administer the offender during the CR process (Xue & Yan, 2010: 121). Therefore, applying CR could complicate the judicial officer's work rather than mitigate it. As CR reconciliation is formally written into law, it remains unexplored whether the legislation has implied a certain encouragement or discouragement for judicial officers to apply CR.

In terms of the motivation from the internal performance assessment mechanism to apply CR, there is no documentary record or practitioners' feedback to support this. Conversely, it is known that one of the criteria in the assessment mechanism is the "rate of case closure" of a judicial officer (Sun, 2012). He points out that the special easy procedures for minor cases in Chinese criminal litigation enable a judge to resolve a minor injury case within two days, while the application of CR will take at least ten days. Great effort needs to be devoted to one particular case if the judicial officer chooses to initiate the process of CR, while more cases could be solved with traditional proceedings. Therefore, Sun (2012) does not think the internal performance assessment encourages judicial officers to apply CR. Instead, he advocates that the criterion that focuses on the

rate of case closure needs to be reformed, or judicial officers would prefer not to apply CR when they are facing a heavy workload.

As a result of judicial officers being a form of stakeholder in the application of CR, they have received harsh critiques for coercing the two parties to participate in CR in order to fulfil their own targets (Li Y.T., 2008; Rosenzweig et al., 2012). In Rosenzweig and others' research, a lawyer he interviewed in 2010 complained that the judicial officer suggested that he play a shuttle role in order to make his client accept the reconciliation agreement. This is consistent with information I received from my conversation with a lawyer that a lawyer will play a more important role in the communication between the parties. That is to say, the pressure from the judicial officers may sometimes be passed on to the parties through their lawyers.

There is a need to point out that within a certain degree the pressure from a judicial officer does not seem to be unacceptable for the promotion of a new institution. It is the degree of the coercion from judicial officers that matters in the evaluation of CR. The judicial officers' explanation or suggestion of the CR institution could also be regarded as a kind of pressure for the parties. However, it is not necessarily a negative influence, since it could help people with traditional retributive ideas to learn new transformative thoughts about the new alternative to resolving criminal cases. However, the practical picture of whether judicial officers coerce the parties or not remains quite controversial. From the perspective of motivation, both positive and negative influences on the judicial officers' preference for CR have been argued. In addition, the participants' feedback is of a great variety, as some of them feel very satisfied while others feel that they are being coerced during the process.

To take a step back, the inappropriate usage of judicial power may exist in the application of CR, but it is not necessarily the result brought about by the CR institution as the phenomena also exist in other fields with a large degree of power. CR at least helps to take some power from the judicial authorities and gives it to the parties so that they can decide collaboratively how to resolve a case, which represents an innovation to

traditional criminal justice. It may be better to try judicial reforms even with some risks, rather than remain conservative. As Du (2010) points out, concern for judicial officers' coercion in the CR process cannot lead to the conclusion that the CR institution should not be established in China. Fundamentally, it cautions us on the issues of how to supervise and balance public and private power.

Distrust of judicial authorities has lasted for a long time (Cai, 2010). Li J.L. (2007: 116) proposes that people do not need to worry about the improper application of CR, because 'the reconciliation content is highly connected with the parties' interests'. In her comparison, the two parties could control the CR process and maximize their self-interest; while in other mechanisms involving "the exchange of punishment", such as plea bargaining, the interested parties are the offender and the procuratorate. In terms of the coercion used in CR, as a direct stakeholder, the offender is more likely to force the victim to accept reconciliation, compared with the judicial officers (Li A.J., 2010: 93).

Given that participating in reconciliation could incur suspicion and criticism from the public, judicial officers hold a more cautious attitude towards the application of CR. Many scholars take judicial officers' negative attitude as one of the obstacles in the journey towards establishing and developing the CR institution (Cai, 2010; Li A.J., 2010; Xue & Yan, 2010; Sun, 2012).

4. Dig deeper into CR behind the legislation

Reviewing the current evaluations of the practice of CR, there have been distinctive or even controversial conclusions about CR. Some regard that victims and offenders are very satisfied with CR process and could benefit more from it than traditional trial methods (Song, 2010); while others consider that the two parties are lack of voluntary during the CR process due to the pressure from the judicial authorities (Rosenzweig et al., 2012). There are two important reasons for the controversial evaluations that first, the evaluations are made in accordance with different standards, and second, the practical picture of CR is still inadequate and inaccurate. It is of importance to clarify the

vagueness and explain the controversies in the evaluations regarding CR, because the different suggestions out of different evaluations have confused the development direction of CR in the institutionalization.

This thesis will try to achieve two tasks: identifying the goals for CR behind the legislation as the evaluative standards and understanding the practice of CR after legislation in the light of insights from the practice. Among the reports reflecting the application of CR after legislation, it remains to be a kind of repetition of the existing evaluations. It lacks insights into how CR is achieving the goals behind the legislation and the influential factors. Therefore, this thesis employs empirical research to collect first-hand data on practicing CR. To achieve the insights, it relies on qualitative methods to directly communicate with the practitioners of CR.

In light of the above, concerns regarding CR being taken as a means of "paying compensation for lighter punishment" and the pressure on the parties brought about by prosecutors in the theoretical debates remain unexplained after the legislation. Therefore, my research is designed to explore how and why the practice of CR is achieving the goals as set down in the legislation, so that there will be a clearer picture of the application of CR which could also help explain whether the old concerns should still be considered and explore any new tensions or problems that emerged in the practice after legislation.

In the practice of CR in China, one of the characteristics is that the judicial officers play an important role in facilitating the reconciliation between the two parties, which is different from the neutral facilitators outside the judicial system in similar approaches in Western countries. The judicial officers perform their functions in the CR institution from two directions: interpreting the institution built by the policy-makers and implementing it into practice with the victims and offenders. As the intermediary level between the decision-makers and the participants, the function of the facilitators is to bridge the aspirations and the practices of CR. They are able to provide a unique lens

through which to view the practical world of CR after uniform legislation, which forms the chapter 5 and 6 of fieldwork report in this thesis.

Under the uniform legislation and policy, the models for applying CR remain various in practice, as reflected from the practical documents of different procuratorates. The unique roles of Chinese judicial officers as facilitators and their interpretations of the CR policy may be the key to understanding the different models in practice.

Chapter 3 Research strategy

1. General approaches

This research employs case study as the research design, attributed to its focused attention on studying the special case of criminal reconciliation institution in China. As the researcher, I am aiming to provide an in-depth examination on the complex and particular nature of the rising and development of CR in China (Bryman, 2012). Therefore, necessary introductions and interpretations on the historical and political contexts of China have also been made in the whole thesis with the view to understanding the implementation of CR in China.

As a new policy implemented using bottom-up approaches, the criminal reconciliation (hereafter referred to as CR) institution in China probably signifies more than an institutional reform to traditional criminal justice; it also triggers a transformation of the views towards crime and a solution to the aftermath of crime. Although several studies have produced evaluative accounts of the implementation of CR (Song, 2008; Bian & Feng, 2010), they seem to depict a blurred and sometimes controversial image of CR in practice and are based on limited empirical data. The vagueness of a practical picture has triggered debates on the value orientation of the CR institution and impedes the evaluative progress of this new policy. As my research aims to explore how the institutionalization of CR has improved the situation in the pilot project, as expected in the legislation, there is a need to present a clearer picture of the practical application of CR after the introduction of uniform legislation. A research project based on fieldwork to collect first-hand data seemed to be the optimal approach to answering the research questions, given the insufficient information from both official statistics and academic outcomes on how CR is actually practicing after the legislation. The empirical approach was taken as the 'important weapon' of my whole research strategy to clarify the ambiguity of the practical image of CR.

Wong's (2015) overview of the Chinese literature studying CR shows a high rate of arguments made without the support of empirical evidence, not to mention first-hand

data. Liu (2013: 73) attributes this mainly to the lack of empirical methodology in Chinese criminology studies, in which Chinese scholars have tended to focus on argumentation approaches to discuss the 'ideal or deserved picture', rather than the practical situation. Criminological research in China has been receiving criticism for lacking empirical approaches in the studies since the rising day (Wu & Wang, 2000). While the significance of 'collecting more empirical data' has become a recurring topic in the Chinese criminology field for the past decades, the hope of fulfilling this aspiration in practice does not seem to be optimistic (Liu, 2010; Liu, 2013).

A realization of the importance of empirical research also occurred to me when I was attempting to formulate the research strategy and join in the discussion of the new institution of CR. It seemed that the experience of practising CR could not be explained clearly by current theories and debates get stuck in choosing the desired goals for the establishment of a CR institution in China. There is a need to discover new theories from the empirical data that could provide us with more explanations, interpretations and applications to better understand CR as a social event (Glaser and Strauss, 1967). Therefore, my research is not designed to test well-defined theoretical ideas, but to start with a more open-minded aim of learning about the process of criminal reconciliation.

As a consequence, instead of making arguments based on the existing data, I decided to probe the actual world of applying CR, as this could reflect what happens when various aspirations are put into practice. The empirical findings could then provide clues for answering the question of what the real picture of practising CR is after the legislation, which will assist further evaluation of the new institution of CR. New questions may also be raised upon reflection of the empirical findings. The ultimate goal of my research is to help move forward the theoretical debates on CR in the light of empirical findings.

Although the research project does not have definite connections with a certain theory, it is far from empiricist (Bryman, 2012: 22). Reliance on empirical findings does not hinder a researcher from also observing a social event through a theoretical lens. Rather, my research is guided by theoretical analysis and directed to the research question

raised on the basis of reviewing background literature, which, as Bryman points out, is a proxy for theory (ibid.). By and large, this research was carried out through the approach of combining empirical studies and theoretical analysis.

This research aims to establish the practical situation of applying CR after legislation and how the expected goals behind the legislation have been achieved or not in practice. Primarily, I chose to rely on qualitative research to collect first-hand data to present an updated picture of practicing CR in current institution. This practical picture is viewed from the eyes of practitioners, for whom the process of criminal reconciliation is the focus. Moreover, based on the practical situation, the research seeks to probe beneath the surface of the advantages and drawbacks of applying CR as reflected in the existing studies, with a view to establishing the reasons behind them. In particular, the discrepancy in the empirical data remains confusing, in that the two parties generally express extraordinarily high degrees of satisfaction regarding the process of CR and a preference for prosecutors to be the facilitators, but discontent for insufficient voluntary of the two parties during the process caused by prosecutors is also reflected. Instead of obtaining a generalized result, this research attempts to explore the various factors that may exert influence on the practical application of CR.

This research process chose to tell the story from a key but neglected angle of view: the prosecutors, who play the role of facilitator in the process of CR in some situations. The policy context of this research is set in the new institution of CR established through a uniform law and corresponding judicial rules from 2012. Local practitioners of prosecutors, as the initiators and actors in the practice of CR, are inevitably influenced by the institutionalization of CR and, in turn, their practical activities could affect the fulfilment of the aspirations injected into the new legislation. This empirical research tries to dig deeper into the causes of the formation of the unique mode of Chinese criminal reconciliation and bring insights into debates on the theoretical foundation and values of CR and the evaluation of the implementation of this new policy.

2. The research strategy: qualitative research

Having clarified the research aims outlined above, the next step was to make concrete decisions on the strategies to use to answer the research questions raised earlier. The first choice to be made was between the strategies of qualitative and quantitative research, which further determined the methods of data collection and analysis for this research project.

My selection of a qualitative approach to accomplish the research was strongly driven and guided by the research goals, in order to gain more insights from the participants in the real world of criminal reconciliation. As stated above, this research evolved with a set of interrelated questions: 'What is the practical situation of applying criminal reconciliation?', 'What has influenced this process?' and 'Why are some aspirations achieved or not in the practice of CR?' Qualitative traditions have been established in criminology to answer such questions, since, according to the advocates of interactionism, more attention has been paid to the social reactions to crime (Noaks & Wincup, 2004: 7).

It is possibly the foremost characteristic of a qualitative researcher to observe a social event from the eyes of the people being studied (Bryman, 2012: 399). Moreover, qualitative research is believed to provide the opportunity and attach importance to observing the social world through the lenses of criminal justice professionals (Noaks & Wincup, 2004: 13). By employing qualitative techniques, this research could achieve an understanding and appreciation of the dynamics of the interaction among the participants in CR. A quantitative survey did not seem to be an appropriate approach for me to use to understand participants' behaviours and attitudes during the reconciliation process. Choosing from the settled options provided in a survey is likely to limit those being researched in expressing their underlying thoughts, which may not be included in the options and would need to be detected from a more flexible and open conversation. In other words, I expected to gain greater explanation and understanding of the practice of CR by virtue of the practitioners' experiences and insights (Guba & Lincoln, 2004: 2). I

would have the chance to 'appreciate' the CR process from the corner lifted by the participants being studied, which could not have been achieved using quantitative approaches (Noaks & Wincup, 2004).

I needed to collect data with a focus on unfolding the process of the social event, rather than the reduction to statistics. As Jupp (1989: 119) points out, qualitative research gives primacy to 'descriptions and explanations generated from data collected about the actor's point of view of his or her social situation' with a view to uncovering social meanings. Compared with survey and questionnaire research, fieldwork research tends to be guided by the overall question and is favoured by symbolic interactionists (Macdonald, 2001). It is more analogous to investigative work conducted to explore possible factors, rather than a verification process of the known variables during the process of CR.

To some extent, this qualitative research could complement quantitative research in two aspects. First, the findings from this research regarding the factors that have an influence on CR could contribute to formulating a new hypothesis to be tested using large-scale quantitative data. Second, the findings from the practitioners' own experience of CR could help understand and explain the divergence and ambiguity in the current quantitative research (Noaks & Wincup, 14).

On the whole, this research topic seemed better served by a qualitative approach. More important was the choice of a combination of appropriate methods for answering a set of sub-questions, logically linked in order to explain the central research question (Bryman, 1988: 173).

3. Research methods

After identifying qualitative research as my overall research strategy and case study as research design, the next task was to make a specific decision on what methods to employ and how each would be used (Mason, 1996: 19). This is analogous to a process of putting the 'flesh' of qualitative methods onto a 'skeleton' built from the research

aims. This research was accomplished by the triangulation of methods in order to answer different sets of sub-questions with a logical relationship to achieve the central question eventually. I used methods which could generate data with a certain flexibility and would be sensitive to the social context in which the data were produced (Mason, 1996).

In the deconstruction of the research questions, in order to understand the central question of how the institutionalization of CR through uniform legislation has improved the situation in the pilot projects, there were two branch lines that needed to be traced: one concerned the goals set for the legislation of CR to achieve, and the other was how the goals were being achieved in current practice.

To clarify, this research aims to evaluate the new policy of criminal reconciliation. As an evaluative process for a new policy, criteria needed to be set before any assessment could be made. In this qualitative research, the purpose of policy evaluation was perceived as a process of better learning the policy, rather than judging the policy using criteria based on theories generated from other models. Therefore, the CR institution was evaluated based on internal criteria, which were the goals the policy-makers expected the CR institution to achieve through uniform legislation. The empirical findings from the practice of CR could then be discussed in the light of the 'expected goals'.

As Denzin (1998: 313) has pointed out, 'there is only interpretation in the social sciences'. The interpretation of the expected goals in the legislation of CR and the practical situation of how the goals could be achieved were acquired by different methods based on the more beneficial option for collecting data. To be specific, there follows an explanation of why I used documentary research and semi-structured methods to collect data to answer the two questions.

3.1 Documentary research: interpreting the goals

Although a great deal of discussion has taken place regarding the aspirations for CR, most of the attention has been paid to the question of how criminal reconciliation should

ideally be characterized. Instead, the aspirations for CR in the theories received impacts from the different streams of the social conditions when policy-makers were making decisions during the legislative progress (Kingdon, 1984). Therefore, to evaluate the implementation of CR policy in practice, I needed to find out the goals that were first recognized and injected into the legislation as the internal criteria. Documentary methods were employed to accomplish this task, as I considered them to be the most appropriate and practicable approach to exploring the legislative process of CR in my current research project.

Initially, attempts were made, but failed, during the fieldwork to gain access to policy-makers to acquire insights into the expected goals behind the CR legislation. Only is this attempt taken as a collateral task since I had an approximately estimate about such a result before entering into the fieldwork. First, restrained by research time and space, my network competence was greatly weakened when arriving at the level of policy-makers in China as available sources for focusing on local practitioners. Second, the opinions and discussions of the policy-makers during the legislative process were disclosed to the public with much reservation. It was very unlikely that people joining the legislative process would accept an informal interview and share their experience relating to the legislation. The responses from my intermediaries also confirmed that it was an essentially impossible mission to interview policy-makers without any official recommendation for my current project, restrained as it was by time and place.

Documentary research seemed to be the most appropriate option for me to investigate the goals behind the legislation of CR on the basis of the existing materials. In MacDonald's (2001) comparison, the documentary approach is more like the detective work of fieldwork guided by an overall question. In my case, the question leading the investigation through the documentary materials was what goals were expected to be achieved in the legislation of CR? Although documentary research is often neglected or regarded as a supplementary method in social science, it was the principal method here of analysing and interpreting this question.

The accessible materials presented more of the results than the process of and reasons behind the decision-making in the legislative process. Therefore, to interpret the expected goals in the legislation of CR, analysis was undertaken of the official discourse surrounding the 2012 legislation, including the legislative provisions and judicial interpretations, official pronouncements, criminal policies regarding criminal reconciliation, and the discussion leading up to the legislation.

Large quantities of written material in the form of legal documents, public records, and media and related debates of policy-makers during the legislative process were read. I processed the data based on the time sequence of how CR earned a place in China's criminal justice system and was eventually written into law for the past decades. From the first attempt to legislate criminal reconciliation by adding it to the process of revising criminal procedural law, the legislative design of the CR institution underwent a number of changes before the final draft. The change in official attitude towards the CR institution could be reflected in the change in its legislative arrangement, which is the production of the coupling of aspirations of advocators, public opinion and political considerations (Kingdon, 1984). The public opinion on criminal justice matters because the function of system relies on public cooperation so as to exercise legitimate authority (Hugh & Roberts, 2012: 279).

This documentary research could be the first time the goals that were taken into the new policy of CR after the decision-makers had selected from various aspirations in the debates have been investigated. Cohesively, it serves to provide internal criteria – the goals by which the CR institution could be judged and weighed by the policy-makers – for making evaluative accounts of the practical situation of CR following the uniform legislation.

3.2 In-depth interviews: exploring practice

While the expected goals of legislation were studied using documentary research, with respect to the practical situation of CR, the choice was made to use qualitative interviews to collect empirical data during the fieldwork. I desired a method that could generate

spontaneous information, rather than testing a given hypothesis, and encourage those taking part in the research to voice their innermost thoughts (Fielding and Thomas, 2015: 126). Therefore, a qualitative interview was deemed to be appropriate for the task because it would pay more attention to the interviewee's point of view than the interviewer's concerns (Bryman, 2012).

The highlight of this research is to establish how criminal reconciliation was being practised following the legislation. I was concerned not to pigeonhole my interviewees with specific questions that would lead to limited answers (Bryman, 2012: 471). Therefore, the design of the interviews had to leave an appropriate amount of space for the interviewees to 'lead' the conversation if they sometimes felt like doing so, which can be likened to opening a window on insiders for me to view the practice of CR from their eyes. Nevertheless, as suggested above, I had a relatively clear focus for guiding the research rather than a very general idea of conducting research on CR, so certain constructions were still needed for the interviews. In other words, any 'rambling' of the interviewees was welcomed but it needed not to be too far from my research direction.

The guidelines for the semi-structured interviews were driven by the aim to fill the gap detected by my review of the existing studies on CR. One of the focuses triggering most of the debates on the establishment of the CR institution was the prosecutors' facilitator role and how they interact with the two parties in the process of criminal reconciliation. As the pioneers of practising reconciliation in public prosecution cases, basic-level prosecutors have received criticism for using coercion and, in some cases, being partial to offenders during the CR process. The uniform legislation was believed to improve this situation by providing rules for the operation of CR, but the practical situation following the legislation has not yet been studied. In order to learn about prosecutors' actual performance in the current practice of CR, I chose a 'simple yet complicated' way of going into the field and talking with basic-level prosecutors directly. I anticipated that the insights of the prosecutors could shed some light on the practice of CR after legislation through their unique lens, especially on questions relating to their own understanding of the prosecutors' roles in CR and what these roles really were when put

into practice. Following this expectation, the guidelines for the interviews emerged. In their experience sharing of participating in the CR and their reflections on the roles they played in the process, a practical picture of CR following the legislation could be reconstructed. In a way, this research is more of an inductive process, analogous to grounded theory, expecting to be enlightened by the practice but guided by certain theoretical focuses.

The focuses of my research could also explain why I chose qualitative interviewing to collect data in comparison to participant observation. First, although observation is a useful approach to learning about the process of a social event, my research was targeted more at understanding CR through the lenses of the participants, rather than the researcher's lens. I sought to learn about prosecutors' understanding of their roles and decision-making in the process of CR, which could not be achieved through observation (Bryman, 2012). With regard to ethical considerations, I was also informed that, given my relatively fixed fieldwork time in the PhD stage, I would have very little chance of observing a criminal reconciliation, as both the victim and the offender would have to give their consent for me to join the process. Therefore, although observation was also one of the methods for collecting data regarding CR in which I was interested, I needed to consider the reality of accomplishing my research at that stage. With the foundation of this fieldwork, I hoped I would be able to achieve further research on the two parties in criminal reconciliation if circumstances permitted in the future.

4. The interview project

4.1 Preparation for the interview

In accordance with the research ethics policy of University of Hull, before conducting the fieldwork, I sought and gained ethical approval to my research proposal from the faculty's Research Ethics Committee. Subsequently, I started to make strategies on what themes to be discussed with prosecutors during the interviews.

As mentioned earlier, instead of testing a concrete hypothesis, this research aims to harvest new 'theory' generated from the empirical findings. Unlike the well-structured design of quantitative research, my research was not concerned with using pre-prepared questions for the interviewees to answer. Instead, I had a set of general questions that would lead the direction of the interview. The general questions included the prosecutors' expectations of the CR institution and their own roles in this process, where their expectations came from and what the practice of CR was like. These prepared questions functioned more as a form of inspiration and encouragement for the interviewees to share their experiences and thoughts as they hoped to do, rather than restricting their minds or make any implication on their answers. In the meantime, this would prevent the rambling of the interviewees from moving too far from my research objectives.

The greatest focus of the interviews was on the prosecutors' practical experience of the CR process. This provided a chance for some prosecutors to share their feelings on being a 'stakeholder' in this process and how they handled the interaction between the two parties. We have viewed the process of criminal reconciliation through the lens of the victims or offenders, while the lenses of their facilitators have rarely been 'borrowed' for outsiders to look through.

Knowing what insights were expected to be learned from the prosecutors, I also needed to select and become familiar with the target procuratorates, the workplaces of the prosecutors and the administrative organization they belong to as civil servants, so that further networking could be extended to potential interviewees. One of the expectations for CR legislation was that it could unify the prosecutors' practice of CR which existed variety in different basic-level procuratorates during the pilot period (Chen G.Z., 2010). Given that the legislative provisions are generalized in the prosecutors' practice during the CR process, insights from different procuratorates could also generate interesting triangulation of the local applications of the central policy. Therefore, I planned to conduct the fieldwork in four different procuratorates in Beijing, where my networking was believed to be the strongest. In addition, the procuratorates

I approached had certain representatives in the pilot practice of CR, including the models of the 'joint work of prosecution and people's mediation' and the 'special CR office within the procuratorate'. The different application models are introduced in the later analysis of the empirical data, which is also an embodiment of the deviation that can occur when expectations are put into practice.

4.2 Approaching the target interviewees

After making the interview guide, I started the process of approaching the potential interviewees. For gaining access in interviewing the district prosecutors, gatekeepers were used in this research to recruit the participants. The gatekeepers, regarded as intermediaries later in this thesis, were public servants having working relationships with the potential interviewees from the same administrative region, who could provide valuable information about the local community (Hennink et al., 2011: 93). The reason for using gatekeepers to recruit participants is that it is easier to get access to the prosecutors through someone whom they have already had connection with and trust in, due to the prudence of Chinese prosecutors when it involves criminal justice system. I am aware that relying on gatekeepers would bring certain limitations such as the gatekeepers' bias since they selected the interviewees based on their considerations and capacities (Groger et al., 1999). In order to overcome this limitation, my pre-meeting with the intermediaries played an important role, at which I talked through with them about my expectation for the potential interviewees. By doing so, I could ask my intermediaries to share the general information of all the prosecutors they could possibly introduce to me and to some extent participated in the sampling process myself. Due to the fact that not many prosecutors have practical experience of facilitating CR, the scope for us to select from was actually limited. Eventually, after discussing with my intermediaries, I had each of them introduced me two prosecutors who qualified for my research project.

It is important to mention that my fieldwork was to be accomplished in China, which generated some additional work in selecting and gaining access to potential

interviewees, given that my PhD project was being conducted in England. The time and expense spent during the fieldwork in China needed to be within certain limitations. In order to make my work more efficient and economical, I started the process of networking and approaching the intermediaries before my trip to China. As my intended interviewees had been specified as basic-level prosecutors in Beijing, I started making contact with potential intermediaries who might be able to introduce me to qualified interviewees. Communication with the intermediaries was done electronically through email and WeChat (a popular Chinese mobile messenger with a high degree of privacy during communication). During this process, I received valuable information about my future interviewees from the intermediaries. Some of their reflections helped me realize that the gatekeepers would trust me more and feel more confident about my research project after meeting me face-to-face. Although I did not gain access to the interviewees through this step, the pre-communication was still crucial because the intermediaries had started to pay attention to my request for interviewees and began their primary sampling for me after this first contact.

From late February to mid-March 2014, the first step for me after returning to Beijing was to arrange face-to-face meetings with four intermediaries who had expressed a positive attitude towards introducing prosecutors to me during the first contact. The meetings with the intermediaries were quite informal and the conversations were kept confidential. One of the intermediaries became my interviewee later and introduced her colleague to me, whose working experience and opinions are reflected in a later report of the fieldwork in this thesis. Other intermediaries simply played the role of intermediation. Their information and communication with me were not relevant to this research and are not disclosed in this thesis.

4.3 Into the field

From mid-March to early April 2014, I accomplished interviews with seven prosecutors from four different procuratorates. The arrangement of interview times was made by the interviewees and I attempted to meet their demands, as long as enough time was left between interviews in the different procuratorates. Some of the interviews were

conducted in the independent offices of the interviewees who could spare some time for me, while others preferred a private place away from the work space. Among the seven interviewees, three agreed to let me record the interviews using an audio recorder. The other interviewees preferred not to be recorded but provided me with enough time to take notes regarding their responses.

The experience of interviewing the prosecutors was not that stressful than I expected, even could be considered as satisfactory to some extent. The interviewees were not as cautious as I had expected, so the process of communication went quite smoothly. After reading the information sheet, all of the interviewees showed an interest in my research topic, which was to explore criminal reconciliation through the lenses of prosecutors. Most of them expressed delight and gratitude that 'the prosecutors' voices could be heard' through this research. To some extent, this could reflect why these prosecutors accepted the offer of an interview during the selection of interviewees. It was within my expectations that the interviewees talked more or less about the common theoretical debates and official policy in their expectation of CR, which seemed to be impressive sources for every practitioner in relation to CR. When it came to the practical situation of CR, the prosecutors enlightened me with their individual experiences and reflections of dealing with real cases and their interactions with victims and offenders during the CR process.

My interviewees had different educational backgrounds and working experience in relation to criminal reconciliation. Unplanned, but part of the charm of conducting qualitative research for me, was that several of the interviewees had some 'special' connection with the institution of CR. For example, one prosecutor was in the midst of researching CR for the purpose of making detailed guidelines for his workplace; another prosecutor had been a member of the Office of Criminal Reconciliation as a postgraduate several years before his career in the procuratorate, which was the first office to specialize in dealing with CR cases in the Chinese procuratorate system. These very particular experiences facilitated the interviewees in gaining unique insights into the application of CR, which increased the value of my data triangulation.

One point that seems to be neglected in the discourse of research methods is how a racial or cultural commonality between a researcher and the researched may have an effect on the research situation (Song & Parker, 1995: 244). In the process of conducting the interviews, I could clearly feel that the dynamics between the interviewees and myself altered at certain times, probably resulting from their judgement of my identity, as detailed below.

Despite the intermediaries having delivered basic information regarding my research and me to the prosecutors, I arranged the first phase of my face-to-face meeting with the interviewees as a more detailed background introduction to my study and experience with the procuratorate. Since I majored in Chinese criminal justice in my master's degree and had practised in the procuratorates as an apprentice for half a year in the city in which I conducted the interviews, I identified myself as sharing a certain ethical and cultural commonality with these interviewees. It is very likely that the interviewees disclosed certain kinds of information to me based on their assumption of the commonality they also perceived with me (Song & Parker, 1995: 254). This could be reflected in the way in which the interviewees became more dominant with the proceeding and deepening of the interviews. In addition, the dynamics between us was shaped by dialogue which begin with the prosecutors' expression of 'you know that…' This could be regarded as a way in which, during the interview process, some of the interviewees started to believe that I could understand their working patterns and feelings.

4.4 Ethical issues

In this research, several measures have been taken to protect my interviewees. The names of the interviewees and the procuratorates to which they belonged are not identifiable and were replaced with aliases in my fieldwork notes, transcriptions and in this thesis. Nobody has had access to the materials regarding the fieldwork except my supervisors and me. The related audio and paper materials have been kept safely in my personal space, not used on public computers or left unprotected in public areas.

The interviewees were informed of the main purpose of the interviews and how the data would be used in my research. All the interviewees signed the consent form provided. Before initiating the interviews, they were aware that they were joining the research project voluntarily and were free to withdraw from it or stop the interview whenever they wished to do so.

My interviewees are subjects who are both immensely powerful, but also – in a polity such as China – likely to be highly reticent because of their identities of national public servant. Thus, I adopt a measure that I would introduce myself and have a brief talk with the interviewees to see if they prefer to receive more information from me before entering the themes of the interview. It turned out to help improving and building greater harmony in the atmosphere between the interviewee and me. Some of the interviewees showed a high degree of trust in me and we built quite a friendly relationship during the interviews. In general, my interviewees expressed the opinion that participation in my research would not bring any difficulties or have any negative impact on their work or daily life. Instead, being a participant of a process that could facilitate research on CR made them feel a sense of mission and contributing.

4.5 Practical problems

4.5.1 The number of interviews

One of several factors that I need to stress is that my focus on carrying out the fieldwork was to explore the actual situation of CR practice after the legislation through the lenses of several prosecutors. The interviewees possessed various lengths of work experience, including some who were new to the practice of CR following the new legislation, and others who were more experienced and had been performing the facilitation work of CR before the legislation.

The seven prosecutors I have interviewed in this research may be regarded as a small number, but it represents my best attempt to approach procuratorates and finally gain access to interviewees who were willing to cooperate. In the process of designing my research, I tried to contact several scholars because with their roles in research center

or procuratorates, they could be potential gatekeepers for my access to practitioners of CR. When I talked about my intention to conduct empirical research with several scholars, I was suggested to choose documentary research instead. They told me that this would be a much easier way for me to collect data in China. When I expressed an intention to know more about the practical situation of CR, it was recommended that I read the case studies which are available to the public, since the information related to CR is in the scope of criminal justice with a high probability of being kept confidential. However, their kind suggestion had not deterred me from entering into the empirical field, although I did have a taste of the difficulties they had mentioned when I encountered the failure to get access to victims and offenders later in the fieldwork.

Before entering the field, the target was set to accomplish eight to ten interviews. Overall, the seven samples could be regarded as being in line with my expectation. As Tonry (2012) concludes, research on the prosecution institution seems to be a difficult task in every country and researchers always receive the least cooperation from the procuratorates compared to other judicial organs. I have received some responses expressing surprise at the fact that I managed to conduct in-depth interviews with any prosecutors. As far as I am concerned, these interviews shed some light on the prosecutors' roles in the practice of CR following the legislation.

4.5.2 The specialty of the prosecutors

As a civil servant and a legal professional, a prosecutor has some features which, in practice, increased the difficulties of achieving an interview.

First, according to my fieldwork, although showing more openness than I had expected, most of the prosecutors still held a cautious attitude to a certain degree towards interviews from outside the official system. This resulted in obstacles in two respects: one was the access to potential interviewees through intermediary officials who also acted as gatekeepers; the other was the extent of prosecutors' openness to sharing information and experience. Networking offered me important assistance in gaining the opportunity to talk with the intermediaries, but the number of interviewees I was

actually able to contact was very limited. Essentially, each intermediary could introduce one or two potential interviewees to me. As the fieldwork was mainly set in different procuratorates of one city, there also existed overlaps in my network in the official system. To place the researcher and the interviewees in a safe status, I did not push the boundary too much to gain contact with potential interviewees for the fieldwork.

In addition, in my primary design for the fieldwork, I wanted to try to acquire the opportunity to gain access to victims and offenders from the resource of the prosecutors during the interviews. In practice, only one prosecutor was willing, as an intermediator, to offer me the contact information of victims and offenders in minor cases for academic purposes, but I need to do the contacting work by myself. Without direct referrals from officials, however, I was not able to gain any responses from the two parties.

Second, as elites in the field of practising law, the prosecutors interviewed did not provide a long period of time for the interviews compared with other interviewees. According to Bryman (2012), the length of an elite interview could be from thirty to forty-five minutes. In my fieldwork, the average length of interview was one hour, while three were less than one hour and one lasted over two hours. The longest interview provided much interesting material for my research findings. This is in no way to judge the value of the interviews based on their length, but to point out the difficulties of generating lengthy interviews during the course of my fieldwork.

As my own conditions for conducting fieldwork in China were limited to cover the expenses of two or three months, I also needed to cooperate with the schedules of the interviewees during that period. Fortunately, I had explained the limited conditions and notified the intermediaries of my plan in advance. The intermediaries helped me to achieve meetings with the interviewees in a centralized time within my original plan. Prosecutors from the same procuratorate were interviewed on the same day to enable better arrangement of the interview venues if the interviews took place in the procuratorate. In the meantime, I left an interval between the interviews with

prosecutors from different procuratorates that was sufficient for filing the notes and reflecting on each interview.

5. The coding and analysis of the empirical data

The first task I faced when returning from the fieldwork was to organize the interview data I had collected. The interviews were recorded using audio recordings and notes and there was a total of four hours of recordings that I had transcribed into written documents. It is not a very easy task to cope with the complications of working in Chinese and English. For sure, there exists some linguistic obstacles for me to climb over, especially when I try to restore the picture of practicing CR depicted by my interviewees from Chinese to English. Thus, the full transcriptions were made in Chinese, since there exist some linguistic and tonal features of the interviewees' original narrative that I needed to retain as part of the clues in the subsequent analysis.

After all the transcriptions had been completed, I reviewed each interview one by one using my 'Chinese head', and gained an initial idea of the possible topics that occurred repeatedly in multiple interviews. After the descriptive coding, I read the transcription again and started to change my 'Chinese head' to my 'English head'. I translated those important topics into English and described these data in English. This also involves the practice of comparative research between jurisdiction and traditions, not only in the coding process, but throughout my whole research project. Noticing this difficulty, I kept notes in English, on my reflection and discussion of the key issues that emerged during the fieldwork.

After coding the data in English, I put the coded data into separate tables for each individual interview to categorize them under broad themes. The main classifications include: the influential factors on the two parties' decisions regarding criminal reconciliation, the influential factors in the prosecutors' work, the prosecutors' role in criminal reconciliation, the prosecutors' expectation of criminal reconciliation and their practical experience.

Under each broad theme, there existed various sub-themes reflected from the different interviewees. In order to identify the similarities and divergences between the different interviewees' accounts, I drew up a large analytical table on a long roll of paper, with eight rows and forty-one columns, in order to make explanatory accounts of individual themes. Each column stands for one sub-theme categorized from the interviews. I put coding of the same theme from different interviewees together under one column with each interview occupying one row. By doing this, it was clear at a glance how I could connect similar feelings and ideas from different prosecutors and interrelate different reflections upon different subjects to explore the reasons behind them.

6. Limitations of the research

First, as an actor in the process of interviewing the prosecutors, I am very aware that the practical picture of CR that I experienced was through the lenses of certain prosecutors who have handled CR cases (Bottoms, 2000: 31). While processing the data, I also played an active role in interpreting the data and coding and categorizing them under the themes I had selected for answering the research question. In other words, the outcomes of this research were inevitably assembled by the researcher and reflect my understanding of this particular social event of criminal reconciliation (Pawson & Tilley, 1997: 21). This is a general limitation in the field of qualitative social research that involves the participation of social actors. Therefore, realizing that this point matters in the presentation of research results, I have handled cautiously to the best.

Second, this 'real' picture of CR following legislation is depicted from the angle of several prosecutors. It could not draw any definite conclusions regarding an evaluation of the practice of CR, although there is a desire to reveal certain tendency (Groger et al., 1999: 834). This qualitative research was not designed to answer an either/or question, but the possible reasons behind a certain social event. In terms of deeper understanding of the practical situation, viewing through the spectacles of other participants of CR, especially the victims and the offenders, is of great importance. To my knowledge, the

triangulation of the views of different stakeholders in the reconciliation process would generate a more comprehensive understanding of the CR institution. Restrained by practical aspects and while keeping the research suitable for a PhD project, I balanced the research ambition with the feasibility of fulfilling the research objectives.

Chapter 4 The legislative process and stated objectives of the criminal reconciliation institution in China

Introduction

In the journey from local practice to legislated proceedings, criminal reconciliation has undergone an undulating form of development during the past 15 years. The long-awaited legislation regarding criminal reconciliation had not clarified relative proceedings, as had been expected by scholars and practitioners; the prudent and sketchy stipulations still reflect some of the ideas of the policy-maker regarding institutionalization. In order to make evaluative accounts of the practice of CR following legislation, this chapter explores the question of what goals the legislation of CR was expected to achieve initially. To explore the expectations held by the policy-makers, it is unachievable depending only on the legal provisions. However, the final stipulations, proposals and objections raised by various parties in relation to the legislation, and the relative modifications and explanations made by the legislators, all contribute to a discussion of the goals behind CR legislation. Therefore, in this chapter, authoritative documents and opinions affecting the legislative process are discussed with the time sequence of CR legislation.

This chapter presents the legislative process of CR with the focus on two policies that play the roles of guidance and regulation for CR application in practice. The first section discusses the birth of the 'Combining Leniency with Rigidity' (*Kuan Yan Xiang Ji*) criminal policy. It presents how, during the transformation from the harsh policy of 'crackdown' to the new policy embodying leniency, space was provided for the birth of pilot projects for CR. The new leniency policy set the keynote for CR's function of resolving civil contradiction and promoting a harmonious society. However, in the meantime, with little restriction, the application scope of CR expanded to cause dissatisfaction among the public. In this situation, the appeal for uniform legislation for CR had been growing.

The second section discusses the process by which the proposal for legislating CR was finally adopted and became law in the 2012 revision of the CPL. The three drafts for

revising the CPL will be elaborated, with the focus on the part regarding the institutionalization of CR. The first official draft for the revision of the CPL was written by a group of scholars led by Professor Chen Guangzhong. The legislative setting of CR in this draft was not adopted in the final legislation but the reasons revealed by the change in legislative design could help us grasp the corresponding changes in the goals set for the institution of CR during the legislative process. The second draft was the motion for legislating CR proposed by delegates as the prosecutor in the practicing of CR. The third draft was the version used for review by the national legislative organ of the PRC.

In the last section of this chapter, after the presentation of information about the legislative process of CR, two connected questions are discussed. First, from exploring the legislative process, it helps understand what was taken into consideration in the institutionalization of CR. Second, the goals for CR to achieve in the local programmatic practicing may be changed or not in the legislative process. This question has not been discussed before. Less focus has been put on the goals of the legislation of CR, since it is taken for granted that the goals of the legislation remained the same with the good effects of the pilot projects. The goals for the legislation of CR to achieve discussed in this chapter are the foundation for further evaluation of the practice of CR after legislation.

1. The transformation of China's basic criminal policy

The development of China's main criminal policy and relative judicial background must be clarified in order to understand the birth of certain criminal proceedings and why they were adopted in the legislation in a certain way. Criminal policy in PRC has gone through certain stages, from focusing on heavy punishment to balancing this with leniency in minor cases, in an attempt to keep pace with the international criminal field. Criminal reconciliation emerged during the transition stages of China's main tune regarding criminal policy in the early twenty-first century. Therefore, in order to introduce the transformative process of China's criminal policy, this section follows the time sequence

involved, first presenting the harsh policy of 'crackdown' (1983~2003) [10] and then a more 'bipolar' policy of 'Combining Leniency with Rigidity' (from 2004).

Although the 'crackdown' policy did not provide the soil for the budding and growth of reconciliation in criminal justice, it continued to exert influence on criminal policy-making and the establishment of new institutions after the twenty-year dominance of China's criminal policy. In addition to being a tough measure on which the governing leaders relied for striking down crime waves, using severe punishment seems to have been endorsed by the public as well. Indeed, some scholars point out that the favouring of severe punishment in China, at both the governing level and that of the common people, can be traced back to ancient times (Chen X.L., 2001; Jia, 2008). Knowing what happened during the 'crackdown' period could help us understand that this retributive tradition or stereotype of the function of criminal justice may increase the difficulties of the development of criminal reconciliation in China. It is also the consequences of the procedural injustice caused by 'crackdown' operations that jeopardize the public's trust in criminal justice, which the governing party has been trying to restore from the twenty-first century. Therefore, when the policy-makers tried to bring criminal reconciliation into China's criminal proceedings, it was understandable that the public showed concern regarding whether the new proceeding could be handled justly in practice.

In terms of the 'Combining Leniency with Rigidity' policy, the part regarding showing more leniency in minor cases has acted as a guideline for the practice of criminal reconciliation for a long time. The rising importance of the 'leniency part' in criminal policy provided space for the development of local pilot projects for criminal reconciliation. In the SPC's further explanation of judicial practice under the new criminal policy, it refers specifically to the beneficial result if offenders actively make compensation to victims. These details of stipulations regarding criminal reconciliation may reflect the development track of institutionalization.

1.1 Crackdown policy

In the early years following the foundation of the PRC, striking down the counterrevolutionary forces continued to be one of the chief tasks for China's new government to fulfil, led by the first generation of leaders, with Mao Zedong as the core. With the consolidation of the communist regime, the relationship between punishment and leniency in criminal justice seemed to receive attention gradually. However, written into the political report of the Communist Party of China (CPC) in 1956 and the first criminal law of the new China in 1979, the policy of 'Combining Leniency with Rigidity' was still not the main theme orchestrated in criminal justice for a long time. Instead, during the twenty years following the 1980s, three periods of large-scale operations referred to as 'crackdowns' were undertaken, aiming to punish certain criminal offences more harshly and heavily than usual. Even today, the tradition of cracking down on violent offences has been kept[11]; no longer as an overwhelming embodiment of criminal policy, but balanced by a leniency policy. The first three major 'crackdown' operations before the birth of the 'Combining Leniency with Rigidity' policy could, to a large extent, reflect the attitude of the policy-makers of the day.

The first 'crackdown' operation was initiated, in 1983, by Deng Xiaoping, the core of the PRC's second-generation leaders, who returned to his political career in 1977 after the end of the Cultural Revolution. What triggered the CPC's resolution on implementing the crackdown policy was an extremely heinous case that took place in Nei Mongol on 16th June 1983. Facing great social pressure, the governing party made the decision to use heavy penalties in turbulent times. Deng Xiaoping, in a conversation with the then Minister of Public Security in 1983, pointed out that 'there is a must to kill a group of criminals according to law. And someone should be put into prison for a long time. Given that it is abnormal times for China right now, only harsh and quick punishment could do the work' (Cui, 2012). Later that year, the Standing Committee of the CPC issued two decisions regarding the punishment of severe crimes. One decision stressed the harshness of the punishment, stipulating that 'the sentencing on severe offence could exceed the maximum statutory penalty, even death penalty'. The other decision

stipulates the speed of legal proceedings; for example, the time limit of appealing had shrunk from ten days to three days. It could be seen that the first 'crackdown' operation had gone beyond the 'rule of law' principle. Judicial organs were given more discretion than they should have, together with a neglect of procedure and evidence, leading to a series of misjudged cases or ridiculous cases that according to today's standards.

However, at that time, the first 'crackdown' did achieve the result of containing violent crimes in China at the early stage of reform and openness. After that, the second 'crackdown' between 1996 and 1997 and the third from 2001 to 2002 were modelled on once the governing party faced a rising crime rate[12]. Although criticizing the substantial and procedural injustices caused by the 'crackdown' operation, it is believed that the harsh policy was suitable for governing a relatively unstable society (Chen G.Z., 2002: 10). In their analysis of the justification for the 'crackdown' operations, scholars first pointed out that striking crimes harshly was the usual international practice (Yang & Yu, 2001: 8; Chen G.Z., 2002: 15). They also pointed out that this harsh policy corresponded to Chinese citizens' retributive minds, passed on from generation to generation (Yang & Yu, 2001; Chen G.Z., 2002; Chen X.L., 2004b). It was also reflected in officials' and deputies' proposal for striking crimes harshly before the 'crackdown' dominated China's criminal policy, and that 'the public are unsatisfied with our way of punishing the criminals for now, not harsh enough' (Chen X.L., 2004b). It is probably one of the reasons why the part regarding 'striking heavy crimes with severe punishment' has been kept in the new policy of 'Combining Leniency with Rigidity'. However, even though the crime rate was suppressed by the 'crackdown' operations for a period, it tended to rebound to a higher level after the operation ended (Jia, 2008: 154). It seems that simply relying on severe punishment is not promising for crime prevention and social stability in China.

1.2 'Combining Leniency with Rigidity' policy and the development of CR

In Professor Jia Yu's analysis on the transform of Chinese criminal policy, he points out that the reason why crackdown policy had been continuously used for 20 years is that it accords with the Chinese traditional culture of 'governing an unstable society with heavy

penalties' (2008: 151). But it was a tradeoff decision, only workable and acceptable for "a special historical period" (Zou XG, 2009: 803). The fact was that negative effects and social influence brought about by crackdown policy far outweighed the advantages that the policy-makers had perceived. Besides the increasing number of crime, the crackdown events even led to the break of the legal limitation on sentencing and the neglect of human rights protection (Zou XG, 2009). Due to the public's decline of safety sense, there seemed to be an urgent need to amend the crackdown policy which focused too much on the deterrent effect of punishment.

In the meantime, the year 2003, the end of the third 'crackdown' period, was the time when the fourth generation of CPC leaders, with Hu Jintao as the core, began to step onto China's political stage. In his political career, Hu Jintao raised one of the most important political thoughts in new China's history, which also became the leading goal for China's development: to 'establish a communist harmonious society'. This theory has been repeatedly emphasized and further elaborated during Hu's ten-year time in power. The social background for China at early 21st Century was that China's economic development had reached a new height, along with more and diverse conflicts between different interest group. Also, it is a global trend that people more and more yearn for democracy, peace and live in harmony. The raise of harmonious society theory in this key period seemed to comfort Chinese people with the goal to solve different conflicts and to provide a harmonious society. In the meantime, it is advisable that the new generation of CPC leaders would expect to harvest a more stabilized society, which probably means a more stabilized political context for their ruling.

The core of harmonious society theory includes five main aspects of goals for Chinese socialism society to achieve: democracy and rule by law; fairness and justice; integrity and affection; full of energy; and harmonious coexistence between people and nature.

From the first two goals, it could be perceived that priority has been given to the construction of justice system in the goals of establishing a communist harmonious society. Specifically, 'fairness and justice', stresses the proper coordination of various

interests and resolution of contradiction among the people. Facing the tough situation of China's criminal justice that the 'crackdown' left behind, the new leader turn to adopt a relatively mitigating criminal policy. It also requires the transformation of judicial organs' working style in dealing with contradiction among the people in the new circumstances. In terms of social security, it should focus on the combination of crime prevention and control, and that prevention should take precedence (CPC News, 2005).

Guided by the above requirements, the new criminal policy of the 'Combining Leniency with Rigidity' was raised to replace the 'crackdown' policy. On the one hand, striking serious crimes harshly and timely from the previous policy has been kept in the new one, particularly aiming at outstanding crime types in that time period, but the severity level of punishing crimes should be strictly in accordance with law. On the other hand, the new policy has been adopted to show a lenient attitude towards young offenders and some minor cases, particularly those 'caused by disputes between people' ('*Min Jian Jiu Fen*' 民间纠纷, sometimes translated as 'civil disputes'). The continuation of expression is noticeable here. In the requirements for building a harmonious society, the importance of resolving disputes among people is pointed out and the recognition of preventative solutions over punishment of the offender is expressed. To implement this spirit, the new criminal policy also pays particular attention to crimes caused by disputes between the people in the hope of providing alternative solutions to achieving the goal of eliminating contradictions. Inspired by this 'weathervane' around 2004, attempts were made, in both the academic and practical fields, to develop new models for better resolving contradictions between offenders and victims of minor criminal cases. From this context was generated and developed the institution of criminal reconciliation today

To some extent, criminal reconciliation is the most successful embodiment of the leniency element of the new criminal policy. Through its process of development, CR has always received support from the authorities. In 2007, the Supreme People's Procuratorate (SPP) convened a seminar inviting prosecutors from all over the country, as well as scholars, to discuss the theme of 'criminal reconciliation and the establishment

of harmonious society'. According to the instruction given by the Research Director of the SPP at the seminar, 'criminal reconciliation could be used to settle minor criminal cases caused by contradiction among the people, not the ones caused by antagonistic contradiction'[13]. Together with other accounts at the seminar, it could deliver some ideas of the upper level of the prosecution field regarding CR that it complies well with the leniency policy and helps achieve the goal of a harmonious society by restoring harmed relationships. Meanwhile, they were aware of the hidden danger of practising CR brought about by a lack of specific provisions. Therefore, they stressed that 'injustice reconciliation should not be acceptable', and 'application standards of the leniency policy should be specified for the next step'.

One year later, at another seminar with the theme of 'Criminal Reconciliation and Procedural Division', Zhu Xiaoqing (2008), Deputy Chief of the SPP at the time, expressed to the public for the first time the notion that the practising of CR in China was not a form of 'spending money for less punishment' (Li & Huang, 2009). He considered that a misunderstanding existed in the practice of criminal reconciliation that 'the two parties are negotiating over the offender's criminal responsibility in the process of CR'; it was, however, about making reconciliation in terms of a remedy for emotional distress and civil compensation. In a further distinction of CR and 'spending money for less punishment', Zhu pointed out that the fundamental boundary lay with the offender's repentance, making amends to the victim, and receiving forgiveness from the victim. Here he raised the point that monetary compensation should be understood as the embodiment of genuine repentance, unless receiving a lesser punishment was being taken as a precondition for paying compensation, which stood for a strong intention of 'buying sentencing'.

Based on the ideal conditions described by the decision-making level, the two parties in CR focus on showing remorse and making amends, which may include monetary compensation or not, in the hope of the victim forgiving the offender, while leaving the work of how to deal with the case from the judicial proceedings perspective to professional judicial officers. In practice, as mentioned before, the majority of

reconciliations have been made on the stage of review and prosecution; that is to say that some of the cases are handled by procuratorates with the result of the offender receiving a non-prosecution decision. Although there are no provisions regarding reconciliation in public prosecution cases, the legal basis for procuratorates making a non-prosecution decision has existed since the 1996 CPL. In Article 173 of the 2012 CPL (originally Article 142 of the 1996 CPL), the second paragraph stipulates that 'with respect to a case that is minor and the offender need not be given criminal punishment or need be exempted from it according to the Criminal Law, the People's Procuratorate may decide not to initiate a prosecution'. While in Criminal Law, Article 37 stipulates the same situation with the twist that, if someone is exempted from punishment, 'however, he may, depending on the different circumstances of the case, be reprimanded or ordered to make a statement of repentance, offer an apology or pay compensation for the losses, or be subjected to administrative penalty or administrative sanctions by the competent department'.

Despite the expression of repentance, apology, compensation and the result of exemption sounding very similar to the judicial leaders' ideal description of CR, in the relative stipulations regarding exemption, however, the focuses are quite different. In the case of an exemption, it is the judicial organs making a request to the offender to remedy his/her victim, while, in the ideal process of CR, the remedies are made by the offender voluntarily, or actions taken as a result of the parties' reconciliation without pressure from professionals. The supplementary discipline of exemption is given after the decision of exemption, yet an exemption decision such as a non-prosecution would be made after a criminal reconciliation, which is to say that the performance of an offender's remedy during reconciliation may influence the judicial organs' decision in the end. Examined in this way, it becomes easier to understand the misunderstanding or concerns of the public.

The SPC's Opinion on Implementing the Policy of "Combining leniency with rigidity" (2010) underlines the leniency policy in criminal justice, particularly with regard to making a lenient or exemption decision in cases caused by disputes between the people,

such as among family members or neighbours. This could be regarded as a policy justification for practising CR, but the limitation on the scope of application remains a blur. With the gradual expansion of the scope of the application of CR and the increasing relevance between compensation and exemption in pilot practice, the appeal for making a specific stipulation regarding CR finally rose to the level of legislative bills presented by two groups of delegates to the NPC in 2009, initiating a legislative process.

2. The second amendment of the CPL and the legislation on CR

In the journey towards attaining legal status, the CR institution has undergone collective discussion and formed certain written documents conveying different legislative designs three times. The first happened during the development peak of criminal reconciliation in 2006 and the design of the legislation of CR is presented in a book titled the Draft of the second revision of CPL based on the scholar's opinion, accomplished by Chen G.Z. and his research team. The second time was the delegate's motion for legislating CR in 2009 and the third was a series of drafts of a CPL amendment which was finally passed in 2012.

2.1 The scholar's proposal for revising the CPL in 2006

Professor Chen G.Z., who had undertaken the task of drafting the bill of the 1996 revision of the Criminal Procedural Law, also led a project researching the second revision of the law from 2004 to 2006, which led to a book presenting and expounding at large on the scholars' proposal for the new revision. He expressed in an interview in 2006 that one of the purposes for studying criminal reconciliation was to legitimize part of the civilian solution, called 'private settling', into formal reconciliation proceedings within the justice system. As the first complete and elaborated proposal for CPL, this scholar's version exerted certain key influences on the subsequent legislative construction of the CPL.

2.1.1 Legislative design

In Chen G.Z.'s legislative construction, criminal reconciliation should have respective stipulations at the different stages of 'investigation' and 'review and prosecution'. For the stage of investigation, he added a provision stipulating the situation of dismissing a case due to criminal reconciliation (Article 241 of *the Scholar's Proposal for CPL Amendment*). In this provision, the case scope for applying CR is strictly limited to 'petty offences which are caused by mitigated injury, causing traffic causalities, or destroying articles of property'. In such situations, if the offender and the victim have reached a settlement and put forward a settlement, 'the public security organ may dismiss the case'. Apart from the restriction on case types, there seems to be no other requirements for the public security organ to take into consideration in making the decision to dismiss a case.

As for the stipulation of CR in the review and prosecution stage, this could be regarded as an early form of the legislation of CR, as the condition for the application of CR, that the offender may receive 'a maximum sentencing of three-year fixed-term imprisonment', has been adopted in the final legislation, but with further restriction on the case type. Furthermore, the requirement for voluntary reconciliation is on both victim and suspect, with no emphasis on the voluntary of victims. The decision of not prosecuting made by a Procuratorate also requires no other particular examination if the victim and offender voluntarily make a settlement. Less limitation on the participants and greater discretion for judicial organs may be the general expression of the scholars' legislative design for CR.

2.1.2 Legislative reasons

In explaining the legislative reasons, the scholars express the opinion that reconciliation in judicial proceedings is a representation of the Chinese cultural tradition of 'harmonious' but is also within the new trend of 'restorative justice'. Their ideal aspiration for the practice of CR in the prosecution stage is that the non-prosecution decision could be made subject to particular conditions, so that 'the goals of restorative justice' could be achieved. In this legislative design for criminal reconciliation, the goals

of a remedy for victims and the integration of offenders are equally expected, following the values of restorative justice, which has not been mentioned in the later legislative process.

Although Chen G.Z. and his research team conceived the institutionalization of criminal reconciliation in detail in their proposal for the second revision of the Criminal Procedural Law of 2006, it seems that the idea had not been brought to the forefront among the deputies of the NPC at that time. Or to say, the proposal and argumentation for revising the CPL made by the scholars was not regarded as adequate or mature enough by the legislators.

Meanwhile, the original plan to review the primary bill of Criminal Procedural Law in 2007 was postponed until 2011. No explanation to the public about this postponement could be found by looking up the reports of the NPC meeting. What is known is that the revision of the two major procedural laws (Criminal and Civil) were listed together in China's five-year legislation plan made in 2003, anticipating a primary review of the bill at the Thirtieth Session of the Tenth NPC in 2007. However, only the bill for the Civil Procedural Law was reviewed by the deputies at that meeting as originally planned, while there was no action regarding the CPL. Although both bills for revising the two procedural laws were finally passed in 2012, and fulfilled in another five-year plan of legislation, from another angle, this may imply an unfinished or unsatisfactory status of the bill for revising the CPL in 2007. In addition, the institutional design of CR in this version was basically employed in the NPC deputies' motions dedicated to legislating criminal reconciliation in 2009. Although changes were made to the primary design during the legislative process, knowing more about the changes could be of benefit when attempting to understand what the legislation for criminal reconciliation was expected to achieve.

2.2 The NPC delegates' motions for legislating criminal reconciliation in 2009

The study of criminal reconciliation or mediation became increasingly common on the scene of Chinese criminal justice and reached its first climax around 2006. During that

time, in addition to its popularity in academia, criminal reconciliation gradually received quite positive feedback from practical fields. Reconciliation was used as an alternative to handling minor injury cases, traffic offences, and some juvenile delinquency cases by district public security bureaus, district procuratorates and district courts in several provinces of China. For the purpose of the better application of criminal reconciliation in practice, relevant legal regulations were issued by district judicial organs as working guidance. After a period of implementation, based on local experience, provincial judicial departments of investigation, prosecution and trial from the same province would jointly produce regulations on criminal reconciliation that were effective only within that province (Zhejiang, 2004; Beijing, 2005; Shanghai, 2006).

Given various respective regulations by which to abide, it was almost inevitable that differences would be seen in the local practice of criminal reconciliation, which was implemented by 'district procuratorates more than courts in China's practice' (Chen X.L., 2006). Gradually, the practitioners began to feel a certain amount of stress regarding the different stipulations in different districts, relating to the scope of application, the application stage, the role of judicial organs, compensation criteria and other remedy methods in the process of criminal reconciliation (Huang, 2006). As a result, similar cases from different regions could receive distinct or even contradictory handling results after applying criminal reconciliation. To be specific, through this new proceeding called criminal reconciliation, victims could receive different amounts of compensation or spiritual remedy; the offenders could face imprisonment as a punishment or be exempted from prosecution. Despite knowing the variation in individual cases, the general public believed that there was a certain tie between the two key elements in criminal reconciliation, compensation and exemption, in which the former was the decisive factor for the latter. Facing the doubt that this institution was probably being used to escape punishment, the SPP chose to respond publicly in a seminar in 2008 that 'criminal reconciliation is not a way of paying compensation in exchange for less punishment'. In addition, the effectiveness of the reconciliation agreement between the parties had been put in an embarrassing position without the protection of formal

legislation. Seemingly, it was time to establish uniform legislation based on experience gathered from local practice.

As expected, a delegate from the NPC and the Chief Prosecutor of the Procuratorate of Hunan Province, Gong Jiahe, and other delegates from Hunan proposed the motion of legislating criminal reconciliation at the Second Meeting of the Eleventh NPC on 6th March 2009. This motion kept the legislative design of the scholar's proposal for legislating CR in the CPL, but only concerning the stipulation regarding the stage of prosecution, which could be concerned with the delegate's role as a prosecutor. In this motion, Gong reflected that many factors constrain the application of CR in prosecutors' practice, of which the lack of legislation was the most important. It stresses the inadequacy of the instructive and operational function of the criminal policy. Furthermore, it led to different standards and handling methods in the practice of CR by the various local organs. The negative effect was that this situation had already influenced the practitioners' enthusiasm for applying CR. As a motion proposing the legislation of CR through the lenses of the prosecution organs, it successfully received attention from the level of the policy-makers. From this motion onwards, the plan of legislating CR in an amendment to the CPL was finally initiated in 2009.

2.3 The legislative process of revising the CPL (2011-2012)

When another period involving a five-year legislation plan (2007-2012) for revising the CPL was coming to an end, criminal reconciliation regained the spotlight with a position in the bill of amendments to the 1996 CPL. This first draft of the bill passed through the primary review by the Eleventh Standing Committee of the NPC at its 22nd Meeting in August 2011. From the primary review, it took over half a year to pass the bill by the NPC, after soliciting public opinion, a second review by the Standing Committee and a review by the NPC.

The aim of introducing the legislative process of the 2012 CPL here is to present the legislative construction of criminal reconciliation. By exploring the discussions, critiques, official responses and revisions of the bill regarding the part concerned with criminal

reconciliation, we are helped to understand the goals the policy-makers expected the institution of CR to achieve in practice. Not only the content kept in the final stipulations, but also the suggestions that were not adopted may contribute to an outline of the legislative thought on CR.

Several points need to be made before entering the field of legislative procedures. First, a background introduction to the legislative institutions and the meetings at which the bills are reviewed by delegates is indispensable for understanding the legislative process. However, the aim of this section is to show more clearly how the institution of CR was moulded in the legislation, rather than to introduce the entire legislative system of China. Thus, the focus here is on the discussion and revision of CR during the legislative process. Second, the description of the CPL's legislative process here is largely based on a series of special reports about the revision of the CPL posted on the official website of the NPC. The information it is possible to access is essentially what was shown in the report. For example, it can be seen on the site that the bill had been put on the internet for one month to solicit public opinion and received over eight thousand pieces of advice from over seven thousand people; however, we barely know anything about the content of the advice and how much the bill was influenced by the advice, since no information is posted about it. Actions actually taken to accomplish the legislative task are probably greater than those discussed here. However, in terms of the materials open to the public, this section tries to restore the legislative process and interpret the goals behind the legislation based on the accessible information to the greatest extent possible.

2.3.1 Primary review by the Standing Committee (the first draft)

Different versions of the draft are produced after each deliberation, which have been given long and easily confusable names. For the convenience of description, the versions of the drafts that appear in this chapter are named in accordance with their time sequence, from the first draft to the fourth. [14]

As the first step in reviewing a bill, the Chairmen Council of the Standing Committee entrusted Lang Sheng, the Deputy Director of the Commission of Legal Affairs, with the

work of introducing and explaining the first draft of a revision of the CPL at the Twenty-second Meeting of the Eleventh Standing Committee. The Commission of Legal Affairs, subordinate to the Standing Committee of the NPC, is a working body responsible for legislative activities, such as drafting basic bills and providing a service for the review of bills. It undertook the task of drawing up the draft revising the CPL for the first review, entrusted by the Chairman council, which was initiated in early 2009. In the breeding process of the first draft for revising the CPL, delegates to the NPC, primary-level judicial organs, lawyers, experts and scholars were invited to express their ideas. It is said that this first draft was born after fully justifying and obtaining basic consensus, producing 99 articles of amending advice. Given that the draft covers a wide range of original content for revision, as well as a number of new regulations, it was decided to have it reviewed by the Standing Committee first and then by the NPC. [15]

From the day that the first draft was proposed to the Standing Committee for review, the press had highlighted this as a significant event in legislation. Many reports were published concerning the revision of the CPL being raised in draft, and the join of criminal reconciliation in public prosecution cases was no exception. A report titled 'Public Prosecution Cases within a Particular Range could be Reconciled' was published on the associated website of Legal Daily on the day of the proposal of the review. Legal Daily is the official newspaper of the Political and Judiciary Commission under the Central Committee of the CPC. It is the 'mouthpiece and front position of public opinion' in the Party's democratic and legal construction', according to the Political and Judiciary Commission, one of whose missions it is to 'advocate the achievement and information about China's legislation, judiciary, law enforcement and law popularization' (Legal Daily Web, 2006). Therefore, the report from Legal Daily could indicate the authority's thoughts regarding legislating CR to some extent.

Several points could be concluded from this report on introducing the new legislation on CR. First, the action of taking CR into legislation was regarded as expanding the scope of applying reconciliation in the criminal field, from the originally stipulated private prosecution cases to certain public prosecution cases. Second, the purpose of

establishing this institution of CR was to benefit the resolving of contradictions and disputes, and that this purpose was based on opinions from different groups. Third, however, when considering the state's power and responsibility in public prosecution cases and the seriousness of criminal punishment, the expanding scope received strict limitation (Legal Daily Web, 2011a).

After establishing the general attitude of the authorities, this section now moves to a reflection on the legislation of criminal reconciliation received from the members of the Standing Committee during their group review of the first draft. As happened previously, Legal Daily posted several members' opinions to represent the objectors to and advocators of the legislation on criminal reconciliation among the committee members. Not surprisingly, the objecting parties raised the concern that reconciliation could jeopardize the dignity and justice of criminal proceedings and may be used as a way of offenders avoiding punishment by paying compensation to their victims (for example, Liu Zhenwei stated that 'reconciliation in criminal cases always feels like paying money for less punishment'; Cong Bin was of the opinion that 'Indeed, it happens in the practice, which violates the law').

As a strong opponent of the institutionalizing of CR in the first draft, Member Cong Bin's counterview was fully presented, taking up a large part of the report. To conclude, he raised objections to the stipulations of CR from two aspects: the content of the legislation and the construction of the legislation. First, the draft stipulates that crimes belonging to Chapter 4 and 5 of Criminal Law, with a maximum sentence of three years of imprisonment, could be settled by CR. Cong considered these were still 'very severe crimes', and it was not appropriate for them to be solved by mitigation only because of reconciliation as well as the increase in the judicial officer's discretion. In general, he thought it problematic to make a lenient judicial decision based on reconciliation between the parties. Second, to say the least, Cong expressed that if such a legal institution were to be built, it should be revised accordingly in the substantial Criminal Law first. As for the legislative design, Cong first discussed the main characteristic of Communism, which is to narrow the gap between the rich and the poor. He then pointed

out that the legal system should serve the same purpose, while the establishment of CR provided the rich with an avenue to avoid punishment by paying money. Therefore, instead of making CR a condition for mitigation, he suggested taking the condition of an 'offender's refusal to remedy the victim' as an aggravating condition, which could 'do the same work of protecting the victim's rights' (Legal Daily Web, 2011b). In other words, the design for establishing the institution of CR in the first draft may lead to injustice or unfair results in practice, in the eyes of Member Cong.

In contrast, another member of the Standing Committee of the NPC Shen Chun Yao advocated that the application scope of reconciliation in public prosecution cases could be expanded in the legislation (Legal Daily Web, 2011c). Chen G.Z. (2010), as an experienced drafter who once accomplished the scholar's proposal for revising the CPL and one of the leading advocators of CR, also specifically pointed out in his evaluation of the first draft that the application scope of CR should be expanded.

Comparing the first draft with the final amendment bill (not every version of the drafts is presented to the public), it seems that the opposing voices heard in the primary review by the Standing Committee had no influence on the legislative progress of CR in public prosecution cases. Nevertheless, another item connected with CR in the first draft was revised according to the members' opinion: the doubling of the time limits of trials in the first draft (Article 202 of the 2012 CPL). One of the reasons for having a longer time limit on a trial was that, from practical experience, cases involving criminal reconciliation or incidental civil proceedings generally required more time to handle (Gong Xueping Member). Although the member asked for more time only for cases involving criminal reconciliation and incidental civil proceedings, the final amendment stipulates longer time limits for all cases.

After the primary review by the members of the Standing Committee, the 'CPL Amendment (Draft)' document, together with its explanation, was published on the NPC website in order to solicit public opinion from 30th August to 30th September 2011. In the authoritative explanation given by the Legislative Affairs Committee, the

introduction of criminal reconciliation as a new and special proceeding in criminal justice had essentially the same content as the report posted by Legal Daily, which had been discussed previously. Another factor to mention is that the member's opinion on the legislation of CR, expressed at the first review on 25th to 26th August, was not posted on the internet until 28th September, two days before the closure of the event of soliciting public opinion. Apparently, the members' discussion had little effect on public opinion to any extent. From the accessible information, it can be seen that there were 80,953 opinions of the draft, but we know nothing concrete about the suggestions or critiques. Accordingly, we do not know what influence public opinion exerted on the formation of the final CPL amendment.

2.3.2 Second review by the Standing Committee (the second draft)

In addition to soliciting public opinion, the Legal Committee and the Legislative Affairs Commission also took advice from various parties by holding forums and seminars on studying the draft. After synthesized deliberation of the advice, a second draft was produced based on a revision of the first draft. On 26th December 2011, the second draft for revising the CPL was proposed to the Twenty-fourth Meeting of the Eleventh Standing Committee of the NPC for a second review. Xin Hua She, China's national news agency, released a report on the review the first time, speaking highly of the second draft as 'manifesting humanistic care'. The situation was similar in the second review of the draft, in that most of the focus was on discussing the change in criminal procedures relating to evidence collection, compulsory measures and so on. In general, it was believed that procedural justice and the protection of human rights had been further enhanced in the second draft compared to the first.

As for stipulations of CR in the second draft, nothing seemed to have changed, since there was no publication of the second draft. However, a report on the Standing Committee members' opinion on the stipulations of CR was posted on the website of the NPC. Unlike the presentation of both advocators' and opponents' opinions in the first review, this time, only one member's opinion was shown to the public. This person was more than a common member; she was one of the deputy directors of the Standing

Meeting, Xin Chunying (NPC, 2011a). From the leadership level, she highlighted that the procedures of criminal reconciliation needed further specification in the legislation. Specifically, she raised a series of questions about CR being instituted as one of the special proceedings, paralleling juvenile delinquency criminal proceedings and those regarding the confiscation of illegal gains. These three newly added proceedings together formed a new chapter in the CPL called the Special Proceedings, which represented a major change to the structure of the CPL. Recalling the motion proposed by the delegates in 2009, it was suggested that a stipulation on CR be placed in the 'Review and Make a Decision of Prosecution' chapter, whereby CR would be regarded as a condition for making a deferred prosecution decision (see the introduction on page 7). What Xin referred to regarding institutionalization was that since CR had been designed as a special proceeding in criminal justice, the initiation, hosting and concrete procedures of the proceeding should be stipulated. The major concern behind this suggestion was still the possibility of CR becoming a trade between money and punishment. In her words, 'the rich could take advantage of this proceeding to avoid punishment, leading to social discontent' and eventually, it is the 'national public power to be blamed for the injustice' if the stipulation of CR remains to be vague.

During the second review of the draft, it can be seen from the limited material available that the members' attitude towards CR remained sceptical and prudent. However, it seemed that the policy-makers had no plan to specify the procedures for practising CR in the legislation of the CPL, given that the provisions on CR received only minor revision during the whole legislative process.

2.3.3 Review (the third draft) and being passed by the NPC (the final amendment)

After two rounds of review and modification, the third draft of revising the CPL was finally proposed to the NPC for further review at the Fifth Meeting of the Eleventh NPC on 8th March 2012. As the delegates of the NPC were reviewing the third draft in groups, a press conference was held by the Legislative Affairs Commission on the amendments to the CPL. The Deputy Director of the Commission, Lang Sheng, and the Deputy Director of the Criminal Law Office of the Commission, Li Shouwei, were present at the press

conference and were responsible for answering questions raised by journalists on the revision of the CPL (NPC, 2012). There were, in total, fifteen questions posed by the press that were answered with respect to some compelling changes to criminal proceedings. Among those present, a journalist from the Procuratorate Daily, run by the SPP, asked about criminal reconciliation in the amendment. The specific question was about the reasons for establishing the institution of CR and for setting a strict scope to its application in public prosecution cases. The question could be understood as asking about the legislative ideas behind establishing the institution of CR in this way. It seems that the policy-makers had recognized the need for writing CR into law, but also the need for restricting its application. The latter was, however, what other people, except the policy-makers, would like to be told and have explained.

Deputy Director Lang's answer to this question was almost the longest given at the press conference. First, he talked about the reason for establishing CR, as 'the more moderate approaches' may obtain a better social effect in resolving cases caused by disputes between the people in the majority of situations. Therefore, the reconciliation approach used in private prosecution cases would be introduced to public prosecution cases. He then explained why the application of CR in public prosecution cases needed to be restricted: 'We have no experience about this new institution before', he stated; 'It needs further research theoretically and practically, so we need to handle it prudently for now'. This was followed by specific embodiments of prudence in the following: 1) in the scope of cases caused by disputes between the people or negligent acts, 2) genuine repentance from the offender, 3) forgiveness by the victim, and 4) a lenient settlement for the offender. Last but not least, he stressed that such cases would still be handled by judicial organs, but with a lenient result. Therefore, judicial organs were required to be very strict on the practice of reconciliation in public prosecution cases from the aspects of the offender's genuine repentance, the victim's forgiveness and the restoration of a damaged social relationship. Based on Lang's accounts, the policy-makers' expectation of avoiding probable injustice emerging from the practice of CR seems to have depended largely on judicial practitioners' strict examination and supervision of the CR process.

At this stage of the draft review, the opinions from the delegates seemed more positive; which is to say that there were no obvious objections to the new institutions. In terms of CR, a report was posted on 13th March 2012 with the title 'Applying Reconciliation in Certain Public Prosecution Cases Will Certainly Better Resolve Contradiction in Accordance with Law – Opinion from Delegate Yan Jinhai' (NPC, 2011b). The title refers to delegates' positive reflection on the establishment of the CR institution, at least as far as we were informed. After two reviews by the delegates of the NPC, several modifications were made to form the final version of the amendment. This time, however, all the modifications were published for the public in the form of a report. Therefore, it is known that, in the second modification, the stipulations regarding CR were revised. This is the only information known to us regarding what was changed in relation to the stipulations of CR based on the delegates' opinion in the legislative process. 'The Legislative Affairs Commission's Report of Modification Suggestion on the CPL Amendment' made on 13th March states that some delegates raised a proposal for adding an important condition to the legislation of CR, which is the voluntary of the criminal victim to participate in CR. The result was that the Legislative Affairs Commission decided to adopt this advice and added the expression that the 'victim is voluntary to reconcile' to the final amendment of the CPL. The next day, 14th March 2012, the final version of the amendment was passed by the majority at the Fifth Meeting of the Eleventh NPC, which was also the sign for the legislation of CR in public prosecution cases.

2.3.4 Official legislative purposes of the institutionalization of CR

Right after the passing of the 2012 CPL Amendment, a book offering an explanation of the stipulations and legislative reasons was published in March 2012. The book was written and compiled by individuals from the Criminal Office of the Legislative Affairs Commission who had participated in the legislative process of the CPL Amendment. It can be regarded as the official explanation to the public for making such revisions to the original CPL.

In explaining the reasons for establishing the institution of CR in public prosecution cases, three questions were answered in accordance with the three provisions. First, in presenting the reasons for bringing CR into legislation with certain restrictions; second, the role-setting of the judicial organs in the practice of CR; and third, showing leniency in decision-making.

In the legislative reasons for the CR institution, the starting point was the inadequate attention paid to victims' participation in criminal proceedings and the provision of a remedy for them, both spiritually and materially (Lang, 2012: 604-11). It was believed that a local exploration of CR pilot projects could be aimed at enhancing protection for victims. The beneficial results obtained from the practice were to be more than the remedy to victims; they would also involve 'contradiction resolution to the largest extent' and 'restoration of the damaged social relationship', which would benefit the achievement of the fundamental goal of having a harmonious society (2012: 605). Given such a good legal effect and social effect, there seemed to be no reason for not absorbing CR into China's criminal justice system. After affirming the good effects of CR, it then stresses the necessity of placing a restriction on the application condition, case scope, etc. in the legislation. It is said that this restriction in the legislative design could 'help avoid the production of new injustices caused by the indulgence of heavy criminals happening in CR' (*ibid*). In conclusion, the general purpose for legislating the CR institution in this way includes two parts: to achieve the good effects of victim protection and contradiction resolution, as pursued in local practice, and to eliminate concerns regarding offenders making use of CR to avoid punishment by excluding the application of CR in the majority of cases.

Apart from the application conditions for applying CR, the remainder of the legislation relates to judicial organs' role-setting in the institution. The purpose of avoiding the emergence of new injustices from CR could be reflected in the role- setting of judicial organs. Requirements for judicial organs are listed in the legislative reasons, in that they should play a dominant role in the CR institution regardless of whether the reconciliation

was facilitated by them. Anything in CR regarding the decision-making in criminal proceedings, such as the offender's criminal responsibility or a lenient result, should be strictly under the control of the judicial organs. It is believed that as long as the judicial organs make the final lenient decision, the situation of 'paying money for less punishment' can be avoided by keeping the parties outside the circle of judicial decision-making.

3. Learning from the legislative process

In following the train of thought of those at the level of policy-making, this chapter presented the legislative process of criminal reconciliation from local practice to uniform official institution. First, the leniency part of the new criminal policy was taken as the foundation for practising CR in public prosecution cases. After receiving positive comments from the practical world, the trial practice of CR in local districts seems to have developed to a certain extent. In general, the case scope for applying CR was expanding and different standards were set to handle the reconciliation process in different places. Given that a common result after reconciliation is to pass a lenient decision regarding the offender, concerns about the misuse of reconciliation in criminal cases were expressed, particularly by the public, who held certain traditional expectations of criminal justice. Although the criminal policy specifically requires judicial decisions to be conducted in a way the public could understand and recognize, the authorities felt the need to establish the institution of CR formally in the form of legislation. After two reviews and revisions by the Standing Committee and the NPC, the Amendment to NPC was passed in 2012, in which criminal reconciliation was added to the traditional criminal justice system as a special proceeding.

Although the amendment regarding CR received only slight changes during the stages of reviewing the drafts, alterations in the delegates' attitude towards CR from reports and the repeatedly mentioned purposes for establishing CR can be found in an exploration

of the legislative process. This exploration was of help in answering two questions regarding the legislation of CR, moving from the surface to greater depth.

The first question is what was taken into consideration in the legislative design of the CR institution? In the legislative process of CR, praise and critiques of this institution did not stop. What did change during this process was the transformation of the focus from the positive effects to the concerns and critiques. Before the expansion of the application of CR in practice, it was believed that this approach could be beneficial to every participant, including victims, offenders and society, regardless of whether it was based on Chinese tradition, the spirit of RJ or both, as stated in the scholars' proposal for the legislation for CR. However, the situation changed at the stage of practising with no legal standards, leading to more critiques. From then on, the focus of the legislative design of CR gradually changed, from receiving positive effects to weakening the good effects for offenders and placing strict restrictions on the application of CR in order to ease the impression of 'paying money for less punishment', which had become a stereotype in the minds of the public.

After elaborating the first question, we now come to a deeper one: what goals are expected for this legislation of CR to achieve? From the first review of the draft of the amendment, two expectations were stressed repeatedly regarding the legislation of CR expressed by the policy-making level: a function to resolve civil contradiction and avoiding the situation of 'paying money for lenient punishment'. These two expectations for the legislation of CR are further explained in the book introducing legislative reasons. First, it was expected that the legislation of CR could help protect victims' rights, reform offenders and, most importantly, resolve contradictions, as had been achieved in local practice. Second, it was expected that the restriction on the conditions and application scope of CR could regulate practice, in order to improve the situation before the legislation, when the public held a very sceptical attitude towards CR. Third, it was expected that instituting CR as a special proceeding within the traditional criminal justice system could still keep all criminal cases under the control of the public authority. That is to say, any judicial decision made in the process of CR should be handled and

supervised by judicial organs, such as issuing a lenient punishment. It largely depends on the judicial practitioners to meet this expectation, which also places a lot of pressure on them to play a complicated role in the practice of CR. It is not uncommon to see such sort of governmental intervention through institutional reform, with the expectation to resolve issues in a restorative process, especially using coercion to the parties (Chapman, 2012: 578). However, as Chapman (2012) have pointed out, the supervision and assessment on referral cases by the state system aims to safeguard the legitimacy of criminal justice system which may be blurred by restorative process, but it would also largely restrain the exertion of advantages of restorative justice (579). As in the case of CR, I will also examine whether this intervention from traditional criminal justice system has weakened the practical effects of CR in the light of empirical evidence.

Following the above-mentioned expectations for the current legislation of criminal reconciliation, the next chapter attempts to explore the actual practice of CR after legislation, now that the focus of the institution has changed, and whether the role of the judicial officers has changed compared with the pilot projects. Since the judicial officers play a crucial part in CR fulfilling expectations, and the procuratorate is the judicial organ by which most CR has been conducted, the restoration of the practice of CR after legislation is presented through the lenses of the prosecutors whom I interviewed during the fieldwork. The exploration of the practice of CR after legislation begins with a report of my fieldwork and is followed by discussion regarding the fulfilment of the expectations embodied in the legislation.

Chapter 5 The participants of CR in the eyes of the prosecutors

Introduction

In the debates regarding the advantages and disadvantages of Chinese criminal reconciliation, much attention has been given to its influence on the victim and the offender. As we saw in chapter 2, advocates of CR such as Li J.J. (2007) and Wang (2010) suggest that CR would better satisfy the needs of victims and repair the offenders compared to the traditional trial proceedings. Whereas the practical outcomes of criminal reconciliation obtained from Song's (2008) quantitative research could not help explaining how participants are affected throughout the process of reconciliation and what factors influence the participants' decision to reconcile. This chapter aims to present the diverse issues and complicated factors which have an influence on the participants' decision-making processes behind the scenes of reconciliation as told through the lens of the prosecutors.

After a brief introduction of each interviewee and the procuratorates they belong to, this chapter will first discuss the needs of victims in minor injury cases, including restitution and apologies received from offenders. Next, issues that affect the victims' attitude towards CR in satisfying their needs are discussed. Furthermore, if CR could meet the needs of victims, will it make a change to victims' status in the process of resolving a problem or not?

Second, this chapter focuses on the offenders in the criminal reconciliation process. Similarly, advocates also claimed that CR would be beneficial for offenders in several ways. Therefore, four possible advantages for offenders undergoing criminal reconciliation have been considered based on analysis of the prosecutors' reflections and experiences. Offenders' families, special groups of people closely related to the offender, are discussed separately. This group of people plays an important role in the process of criminal reconciliation because of the particular context of the Chinese criminal system.

After discussing the participants, some of the factors presented by the interaction between the two parties are analysed. In this part, how each factor affects the

participants' decision-making in relation to criminal reconciliation is presented. Although the analysis is based on the observations of the prosecutors, the thoughts and attitudes of the two parties towards criminal reconciliation can, in some way, be reflected from their practical actions.

1. A brief introduction of the interviewees

Seven prosecutors who have experience of facilitating CR cases participated in my interview. This section starts with a brief 'biography' of each interviewee, as they are the leading characters in my research project, who provide unique angles of the facilitators to learn the practice of CR. Although the seven interviewees are all prosecutors from district procuratorates, they reflect different characteristics in tones and attitudes regarding my interview. This biography also outlines different working conditions and atmospheres of the interviewees, including their traditional duties of handling non-CR cases. In arrangement, interviewees from the same procuratorate are put under the same sub-heading. Despite that my interviewees have different features, the work pattern of the procuratorate they belong to is also embodied in individual practitioners, which appear as a kind of pattern of one procuratorate in several themes of chapter 5 and 6. Therefore, these sketches of interviewees are essential in interpreting these practitioners' ideas and practices of CR and of the traditional criminal proceedings.

My interviewees come from four district procuratorates of Beijing, the districts hereafter referred as A, B, C and D to protect the anonymity of my interviewees. Geographically speaking, C is the more central one, A and B are a bit marginal, and C is the outermost. Economically speaking, C is the rising one with more large-scale enterprise and white-collar workers while the other three develop in a more traditional way. As a result, the case type in procuratorates of these four districts differs, result in different working styles in four procuratorates, which could be reflected in their practice of CR.

- A Procuratorate

ANQI is the first prosecutor I have interviewed, whom I would describe as optimistic and energetic. She, among my interviewees, is the one relatively willing to share her experience and feelings about being a prosecutor, though it is not long before she walked out of college and into the society. Based on her understanding of CR and current experience, she looks expectantly towards this new reconciliation mechanism. She is very interested in my research

ENCI is the youngest interviewee, but not the least experienced prosecutor in the practice of CR. As a member of research team on CR in A procuratorate, he is in the middle of producing regulations based on generalizing experience from half-year CR practice applied in injury cases. Thus, compared to others, he provides clearer and more logical answers about the application of CR.

- B Procuratorate:

BING is a conscientious young man who will become voluble when talking about his profession. He has passion especially for academic research on criminal justice since student hood and keeps this custom to his prosecution work. Therefore, compared to other practitioners, he is more familiar with relevant theories and argument on RJ, and also with the operation of empirical research. It makes him more open —not that careful and cautious like other interviewees -- to my questions which shows a sense of participation in this project.

- C Procuratorate:

CONG has relative longer working experience on CR. He is quite proud of the 'prosecutor' identity and has high confidence in criminal justice and judicial officers, not including the police. While the working experience also makes him more cautious and sensitive towards the interview, which lead to some contradictory answers linger between his real thoughts and 'what should be expressed' in his understanding.

DA shows a relatively high cautious attitude among the interviewees through the process of interview. He answers in a very low voice and uses some blurry words or laughter to

suggest something but rarely points it out. Only at the end of the interview, when I have a few words with both BING and DA, does DA clearly state his opinion out, which is actually organized and thoughtful. The reason why he becomes opener to me in the end may be because he feels more secure while being companied by his colleague and has some mutual opinions with his colleague.

- D Procuratorate:

FEI is the oldest and the most experienced prosecutor among the seven interviewees. Unlike most other interviewees who deal with CR cases after legislation, he begins to act as a facilitator when there is only pilot project instead of unified regulations and prosecutors develop their own working method. Therefore, he keeps his working habit for now and is not that cautious like the young people even though he has experienced the event of being misunderstood by victim's family. Although feel frustrated, he remains being passionate for his work.

GAO is distinctive from others due to his administrative position. Comparing to other practitioners, he is more like a superior leader now but he still has several years' experience dealing with CR cases. Naturally, as a leader, he cares more about criminal policy and principles. His answer is quite affirmative and the he makes argument viewing the situation of Chinese criminal justice as a whole.

2. Understanding the victims through the lens of the prosecutor

According to Song (2008), one of the pioneers conducting empirical research on CR in China, one aspect of the traditional criminal justice system that is being addressed is that the rights of victims cannot be guaranteed in the approach to handling a case. Professor Zhang Jianwei (2009) from Tsinghua University indicate that this alleged drawback of traditional justice system provides the opportunity for the rise of restorative justice in the eyes of western scholar, just as CR in the eyes of Chinese scholars, that could empower the two parties to solve the conflict and bring positive effects to protecting

victims' interests. To be specific, based on the findings of Song's quantitative data from a questionnaire survey conducted with victims, most victims participating in CR could obtain better results with regard to adequate compensation, emotional relief and resolving the bad feelings caused by the offence, although there was no control group using a traditional court trial in the research.

In the reviewing of literature in chapter 2, the first advantage of CR discussed is the benefits to victims who participate in reconciliation. Besides providing the rationale, Song's empirical evidence also show that CR is beneficial to victims, the underlying reasons why and how it meets the needs of victims better than traditional criminal justice remain unknown. In order to establish the reasons for the proposed benefits, understanding the reconciliation process as a whole, by embracing the behaviours and reflections of the participants, could be helpful, when considering that the above participants' thoughts were restricted or extended to the options offered by a questionnaire.

Playing the role of facilitators in CR, the interviewees, who have experienced the criminal reconciliation process, could offer some opinions from their observation of the process or communication with the parties concerned.

2.1 The needs of the victim in criminal reconciliation

Based on their observation of victims' behaviours and reactions during the process of negotiating restitution, ANQI, BING, ENCI and FEI expressed a similar feeling that the restitution part of the reconciliation process is especially beneficial to victims, since they are in need of money for the treatment of their injuries. Essentially, in the practice of the interviewees, the majority of cases settled by reconciliation belong to the type involving minor bodily injuries. Therefore, as understood from their experience, monetary compensation for treatment may be the key need of victims who have been violated by this kind of offence. Whether it is the process of negotiating compensation or the result of receiving compensation that the victim cares more about was not discussed further by the facilitators in the interviews. As introduced in chapter 3 of the research strategy,

this fieldwork was designed to incorporate semi-structured interviews guided by several general themes, aimed at encouraging participants to raise and discuss issues themselves in order to avoid too much in the way of restrictions. Even so, certain perspectives of the process and results of restitution could be extracted from the conversations with the participants.

2.1.1 Negotiating and receiving restitution

Based on Umbreit's (1994: 96) analysis of quantitative data from restorative projects, about seven out of ten victims attach importance to receiving restitution. Furthermore, the opportunity to participate directly in the process of solving one's own problem and to reach a fair restitution agreement was more important to victims than simply receiving the agreed-upon restitution (Umbreit, 1994: 71).

The need for victims to receive restitution was discussed explicitly during my interviews, while the importance of participation in the decision-making process seemed to be hidden in some of the expressions of the facilitators. ENCI offered his analysis in trying to explore the victims' need to take their own position. Through his communication with victims, the main reflection ENCI gained was that the main damage caused by the offence is the bodily injury and, accordingly, victims' primary need to be satisfied is to cover the cost for treating the injury. As for the rest, ENCI considered such types of minor crime had little influence on the victim's life; however, bodily injury, since he does not receive many accusations or complaints from the victims about other aspects of violation, needs to be healed. In accordance with his observation and summary, for those victims who choose CR to settle a dispute, the main appeal of the reconciliation process is to gain sufficient restitution; people who believe offenders should be punished with imprisonment and put this need at the top of their list usually prefer traditional litigation over CR. To clarify, in ENCI's interpretation, most victims who decide to enter the CR process are seeking to fulfil a need to gain restitution from the offender.

In BING's evaluation of the institution of criminal reconciliation, it helps protect victims' rights by enabling them to receive a fairer and more timely compensation from the

offender for the treatment of injuries. In our dialogue, the qualifier he used to describe the benefits of reconciliation for victims was 'at least', indicating that the primary advantage of CR for victims is, in his eyes, receiving compensation. A similar assessment was given by FEI, who considered one of the aims of building the CR institution was to better compensate victims' material losses caused by an offence. This prompts a question: for victims who choose CR, is the focus of reconciliation to receive fairer restitution or to be empowered by participating in the decision-making process?

While BING shared his experience of helping two parties determine the compensation amount, he showed a clear attitude towards how to act fairly to both parties during the facilitation process. In that particular case, the victim asked for restitution of 3000 or 4000 RMB (approx. 400 - 500 GBP), he could not recall the amount precisely, but he ascertained it was higher than the average treatment cost. The offender negotiated for a lower amount, but what made BING felt that he needed to stand out and facilitate the reconciliation was that the amount offered by the offender was too low to cover the treatment fees. Here is one place where BING seems to be not only facilitating, but also using his authority to ensure that the agreement arrived at is a just one, according to his standards as a prosecutor, a professional within the criminal justice system. This will be discussed as a focus later regarding the prosecutors' roles in CR.

In the case of irritating the victim with an unreasonable amount of restitution, BING delivered his opinion to the offender once he knew of the offer:

> *Just think about the two ribs you have broken. Even in a civil case, you should at least pay for the treatment fee. It won't work out unless you show some sincerity to compensate for the victim whose life was damaged by you (BING, 30)*.

Convinced of BING's sense, the offender chose to offer higher restitution. Together with BING's explanation of the offender's endeavour to remedy the situation, the victim made a concession by taking the higher offer from the offender. From this case, it can be seen that BING's general standard for reasonable restitution is no less than the treatment cost

for healing the damage caused by the offender. For those victims who choose to trust to the CR institution, they have, more or less, an acknowledgement of their need to receive restitution and an anticipation of CR fulfilling their needs. In the aforementioned case, although the final result was not as good as the victim's expectation, the fairness of the facilitator and the cooperative attitude of the offender shown in the process of negotiation still satisfied the victim.

2.1.2 Healing

The point seemed to be made by my interviewees that victims willing to go through reconciliation care more about the acquisition of restitution for material damage, compared with those who choose traditional litigation. This is not to say that victims who turn down the opportunity to settle a dispute through reconciliation have no need to receive restitution, nor to say that victims have no other requirements from the CR process. Based on ANQI's experience, in the process of reconciliation, some victims make no specific request for offenders to make actions of apology or remorse, but, according to her observation, it is when offenders show a good attitude and sincerity towards achieving a remedy that victims will forgive them and accept the reconciliation offer. Some failed criminal reconciliation cases demonstrate from the other side that some of the victims need the reconciliation process to provide not only restitution, but also an opportunity to heal their feelings. In one case, CONG felt pity regarding the failure of a reconciliation. The two parties were a couple and the husband had caused minor wounds to his wife during a fight. The cause of the failure of their reconciliation was that the husband refused to apologize to his wife. The wife claimed that she could not feel remorse from her husband without an apology, since he considered himself to have done nothing wrong, and she was afraid that such a thing would happen again and she herself would again become the victim. Although not highlighted in every interviewee's conversation, erasing the negative effects caused by an offence and feeling secure again remains crucial to some victims during the process of CR.

To some extent, the interviewee who helps facilitating the process of CR is informed about the full picture of the two parties, not limited to the case situation. In these

reconciliation cases the interviewees have handled, a common point shared by the prosecutors is that most of the victims and offenders know about the causes of their conflict. For example, in a case which the two parties are neighbours of up and down stairs, their primary conflict focuses on the noises made from the offender's home upstairs. As the conflict was not solved well for a while, the row with neighbours upgraded to physical altercation one day. Put it in another way, the victims may not have much demand to hear from the other party about why he/she was victimized. During my research study in UK, I had attended an experience-sharing meeting of restorative approaches by victims, offenders and facilitators from Humberside area in September of 2015, held by Police and Crime Commissioners for and Humberside Remedi charity organization which provides restorative intervention to victims of crime with their offender. At the meeting, I heard several victims expressing their expectation to regain power through communication with their offenders in the aftermath of offence. Particularly, the victims shared why they felt their power had been deprived by the offence. In most burglary cases, the victims did not know their offenders at all before the occurrence of the offence and being targeted by offenders brings them confusion and powerlessness. On the contrary, through the lenses of my interviewees, the victims' needs to communicate with the offender may not be that strong in the context of China's CR institution that most cases solved through CR are caused by disputes between the people that the two parties are aware of. None of the victim, according to my interviewees, had expression of expecting to know more about why the offender did harm to him/her before participating CR. Nevertheless, it does not mean that victim's understanding about the offender and why he/her made the offence cannot be achieved as an outcome of reconciliation between the two parties in the practice.

2.2 Issues related to victims' attitude towards CR

The focus of criminal reconciliation on restitution partly originates from the needs of the victims, since restitution for treatment is required. Some issues affecting the needs of victims are discussed in the sections below.

2.2.1 Victims' financial condition

At an individual level, a victim's attitude towards CR is determined by the extent of his/her need for restitution. Generally, this need is influenced by the victim's financial condition. From ANQI's practical experience, if a victim is in financial difficulty, the individual's family may be more than willing to accept restitution or even offer the offender an opportunity for reconciliation. In DA's comparison, given the same situation and the offender being willing and able to afford enough restitution, if the victim is in a poor financial state, such as not being capable of paying for the injury treatment him/herself, the reconciliation process will go more smoothly, since the victim is in need of restitution for treatment.

2.2.2 The compensation system for criminal victims in China

Several interviewees have agreed with the opinion that at an institutional level, the ineffectiveness of the criminal justice system in victims' acquisition of restitution makes CR popular among some victims who regard restitution as the primary need. They show sympathy for the victims because they could not get enough and timely restitution from the national relief system, as it should have functioned.

To explain this opinion better, the interviewees introduce the practice related to compensation for victims in the Chinese criminal justice system at first. Admittedly, a fine is one of the options that judges can apply in their verdict. However, its application rate is not very high and it is mainly used in economic crimes in serving the purpose of punishment by the government rather than restitution to the victim. To receive compensation for a loss caused by a crime, the victim could file a separate civil lawsuit for restitution from the offender, which will be handled by a civil court. In the Chinese justice system, the criminal proceedings of a case have priority and are processed over civil proceedings. Therefore, to initiate a civil suit for an appeal for restitution, the victim first needs to wait for the criminal proceedings to be completed and, if the verdict involves a fine, it will be implemented as a priority. DA considered that it takes a long time for a victim to receive restitution from a civil suit; and, after receiving the results of the punishment from a criminal trial, there is no peace to be gained for the victim or

remorse from the offender to reconcile with the victim in a civil suit. When facing imprisonment, some offenders become less cooperative in the implementation of a civil judgment. DA surmised that this was because the offender feels the criminal penalty is a strict enough punishment in being restricted in or deprived of personal liberty. In the public's understanding of traditional criminal justice, victims do not usually participate in the process of decision-making in a public-prosecution case since it is the prosecutor who plays the role of accusing and debating.

There is also a specific proceeding in the Chinese criminal justice system for dealing with disputes between the people resulting from a criminal offence, called a 'Civil Suit Collateral to Criminal Proceedings'. This civil suit should be filed during the criminal proceedings and its establishment and settlement both depend on those criminal proceedings. It will be handled by the same collegial panel as that of the criminal court, who come to a judgment together with the criminal verdict. The restitution appeal of collateral criminal proceedings is restricted to the direct material loss caused by the crime (the damages already being caused and inevitable to be caused afterwards), including restitution for damaged goods, the cost spent on the victim for the evaluation and treatment of the injury, the cost of nursing a wounded victim or the funeral arrangements for a deceased, and a living allowance for those who used to be supported or were raised by a deceased victim (Article 77 of 2012 CPL, Article 31 of CL).

BING complained about the 'Civil Suit Collateral to Criminal Proceedings' in China, in that it does not function well in helping victims receive enough restitution for treatment, nor is it timely in dispensing payments. He talked about a case that took place over ten years previously, in which the victim sued for restitution through a civil suit collateral to criminal proceedings before the criminal reconciliation institution had been established. The judge's verdict was reasonable but also determined compensation which may have been beyond the defendant's financial capacity to afford (BING could not tell for certain which). To escape punishment, the defendant chose to abscond and became a fugitive for ten years until he was caught by the police. Meanwhile, the victim's family did not receive any restitution during those ten years. Ironically, after the defendant had been

arrested again the previous year, the case was finally settled via criminal reconciliation. The two parties came to an agreement on a restitution amount which the defendant could afford. Although it was much lower than the victim's expectations, given the standard set by the court, the victim's family still found the result acceptable, stating that it was '*better than no restitution*'. BING even felt pity for the two parties: one had sacrificed ten years of life and the other received no compensation when it was most needed at the time. If there had been a chance for the defendant to tell the victim about his financial condition, perhaps the two parties could have negotiated and determined an affordable restitution amount or a viable instalment payment mode. BING made the following observation:

> *Oh, the CR institution had not been established at that time. Had the two parties known what was going to happen after the verdict, I bet they would choose to reconcile if CR was an option*.

He supplemented this by stating that this was

> *Because they expressed their regret and pity that they did not have a chance to talk things through ten years ago (BING, 1)*.

Although the above was an individual case, it was evident from the reflection upon the practice that there exist great difficulties in the implementation of collateral civil suit judgments. A report from one of Beijing's district primary courts shows a low implementation rate during the previous five years and summarized the reasons on the offender's part as a poor financial situation and a resistance to paying restitution, since his/her guilt had been reduced along with the criminal punishment. The latter difficulty could be overcome by enforcement, but the former situation, especially those judgments with a large amount of restitution, could easily turn the judgment into a mere scrap of paper. When a victim cannot acquire effective and necessary compensation from the offender, in addition to making greater efforts to implement the judgment, another institution is needed to guarantee the victim's rights. It is the state's indirect responsibility to compensate criminal victims who suffer violation and misfortune so that

they can maintain a normal life. Five of the seven interviewees offered the suggestion of establishing a state compensation system for criminal victims in China, since this was still a blank space in the legislation.

The prosecutors realized that the main need of most victims of minor injury crimes is restitution for injury treatment; they also understood that the victim could not receive satisfactory restitution from a collateral civil suit, given the difficult situation of judgment implementation in practice. Without a state compensation system, the appearance of criminal reconciliation not only seemed to provide some victims with more satisfactory restitution, but also a perfect opportunity to participate in the determination of restitution. It is then not difficult to understand the debates over whether victims are given too many rights in the process of criminal reconciliation. One scholar's concern focuses on the possibility of some victims taking advantage of reconciliation to ask for unreasonable compensation (Yu, 2009). To explore this issue further, there is a need to hear from practitioners about victims' behaviours in practice through the eyes of the interviewees, which provides important clues for discussion on the special focus on victims in CR in chapter 7.

2.3 Changes in the victim's position in the process of resolving disputes

To discuss the changes brought about by the criminal reconciliation institution more thoroughly, the victim's position in resolving disputes is presented from two sides below.

2.3.1 Victims in a strong position

Five of the seven interviewees reflected that they had encountered situations in which the victim asked for too much compensation in the process of reconciliation and threatened the offender with this requirement if they wanted to reach an agreement. The interviewees' comments also showed their attitude towards this type of victim. BING described these victims and their attempts to '*pin hope on the CR institution*' and ask for '*as much [compensation] as they could*' (25, 38). CONG stated that the compensation they asked for was '*exaggerated*' (11), while DA was surprised by their requests for one hundred thousand or two hundred thousand RMB restitution: '*it is not possible'* (10).

ENCI made a direct assessment of this type of victim as trying to become rich through criminal reconciliation. He tried to present an image of the negotiation:

> *When they require a large amount of money, they are expressing the signal to the offender that you could only avoid the punishment by paying me enough money (ENCI: 15)*.

FEI found it unacceptable that some victims acted excessively. Having played the role of punishing offenders and helping victims for many years, he stated that it was sometimes even more detestable to see a victim threatening to send the offender to prison if he/she did not receive enough restitution, than to see the offender commit a minor crime.

2.3.2 Victims in a weak position

In contrast, some victims who do not attach every importance to receiving restitution seem to be quite sensitive and become irate regarding the result the offender has after the reconciliation. Four of the interviewees expressed the opinion that, compared with offenders, victims are more likely to misunderstand the prosecutor's role as a facilitator in reconciliation. When restitution is no longer the primary need of the victims, some of them turn their attention to the punishment of the offenders.

Generally, particularly when the victim has voluntarily chosen to settle a dispute via criminal reconciliation at the beginning, there is a strong possibility of the two parties holding an expectation of solving the problem and fulfilling their needs by negotiation. In most cases, the two parties are satisfied with the outcome of a reconciliation which is determined by their participation. According to BING, for those victims who swing between wanting a traditional trial and criminal reconciliation,

> *you could sense their hesitation and concern*. *On one side, they hope to settle the disputes and get the restitution in time; on the other side, they are afraid of letting off the offender too easily because they have no experience in both criminal proceedings and reconciliation (BING, 29)*.

Standing in a relatively weak position, victims may be taken advantage of or 'feel' that

they have been fooled by the offender, particularly when they hear others in a similar situation receiving better restitution from CR. It is not difficult to imagine that prosecutors need to play the role of facilitator in such situations to ensure that the process is just and the restitution is within a reasonable range. As BING pointed out sadly, "if so, we the prosecutors, would be easily blamed by unsatisfied victims since they may misunderstand us as acting unjustly during the facilitation".

3. Understanding offenders through the lens of the prosecutor

Another repeatedly mentioned aspiration for CR in academia is its advantage in achieving offenders' correction and reintegration into the society. The advocates attribute to the reconciliation process, which provides the offenders an avenue to realize their fault and gain forgiveness from their victims; and attribute to the reconciliation result, which enables the offenders to receive a lenient penalty (Chen G.Z. & Ge, 2006).

Empirical evidence seems to buttress CR's benefits for offenders. As mentioned in the literature review, Song's significant research project on the practice of CR during 2006 to 2008 includes a follow-up questionnaire survey with the offenders after a successful CR, yet there is no mentioning of how long the survey was conducted after CR procedures (2009: 79). Of 143 respondents, 95 of them had returned to work, 10 had returned to school, and 22 were helping with the work in family; while only 16 were occupied with nothing. Taking the status of 'occupied' as the standard for 'reintegration', Song's research group concludes that the reintegration rate of offenders after successful CR has reached 88.8 per cent. Another important finding is the amazingly satisfactory zero recidivism of the respondents after CR. Taken together these evidences, Song (2009) drew the conclusion that 'CR has got the initial achievement' in facilitating the reintegration and preventing the recidivism of offenders.

Nevertheless, these data need to be interpreted with caution because there was not a comparison group of offenders who had committed similar crimes with the respondents but undergone a traditional trial. The possibility could not be excluded that the reasons

for high reintegration and low recidivism may relate to the characteristics of the respondents themselves who committed minor crimes with relatively small social harmfulness.

My interviewees who have interacted with offenders during the CR process also made similar claims about CR being beneficial to offenders in several aspects. In this section, the experience shared from my interviews could help add to the understanding of why and how a process of reconciliation could lead to an offender's better correction and reintegration into society. These prosecutors I interviewed provide lenses as insiders of the criminal justice system and the authorities in the social order. They grasp some interpreting the offenders' status when returning to the after undergoing criminal proceedings.

3.1 Advantages for offenders through criminal reconciliation

Through encouraging the interviewees to share their observations and conclusions they may have made based on communicating with offenders, a more comprehensive result of the benefits for offenders could be explored. Apart from directly perceived outcomes, such as receiving a lenient punishment, some implicit benefits were raised by the interviewees.

3.1.1 Mental redemption and reintegration

Several interviewees referred to the meaningfulness of CR to special groups of victims. DA deemed that the outcome of non-prosecution or non-imprisonment after CR was especially beneficial to offenders who are still college students, as they could continue studying after settling a dispute. ANQI held a similar opinion and considered that this was also the situation with juvenile offenders. CONG offered the vision that reconciliation helped some offenders with socially helpful skills from giving up on themselves and continuing to make a contribution in return for being grateful for mercy from the victim and society. In the interviewees' experience, CR's function of mental redemption may be more easily reflected in such groups of offenders, as they tend to gain more companion and forgiveness from the victims and society.

3.1.2 Avoiding detrimental influences from detention centres

In comparison, BING, as an arrest-application prosecutor, considered that offenders of minor crimes would be affected by other intimates in a negative way if put into a detention centre (*Kan Shou Suo*). In order to make a decision regarding the arrest or prosecution of an offender, prosecutors have the power to bring the detainees in for interrogation to hear their side of the story when necessary. BING stressed that he could be quite stunned by an offender's change in attitude after staying in a detention house for any amount of time. When BING read the interrogation records from the investigating officer, there were a number of offenders who showed repentance and confessed their criminal behaviours during the first interrogation in a police station. However, by the time he met them face-to-face in the detention house, some of the offenders had already been tainted with bad habits. According to BING,

> *It is not uncommon for detainees to pick up drinking, gambling or drugs. What is more, they may be taught some experience or techniques to counter investigation and to escape from punishment by some habitual criminals (BING, 8)*.

He was aggrieved that an offender who chose to retract a confession and claim to have remembered nothing about the offence, which based on BING'S experience was influenced by the offender's detainees:

> *We hold other evidence to prove his crime. His retraction would not help himself from punishment at all. It is a shame that the opportunity for both parties to benefit from CR got lost as the offender chose to play a trick (ibid.)*.

3.1.3 The benefits of a clean criminal record

A criminal record not only brings an offender discrimination from the individual's relatives, neighbourhood, workplace or the whole of society, but also causes obstacles and inconvenience to offenders and their family, particularly their children. Therefore, CONG appreciated the non-prosecution outcome of CR for offenders, stating that

> *It could actually help offenders returning to society given the great difficulties*

for a man with a criminal record to be taken on by employers.

ENCI pointed out that a clean criminal record may be more crucial to an offender's family than the offender him/herself. At the very least, if offenders experience social rejection because of their criminal offence, it is because they first made a mistake; however, it would be a shame if their criminal record compromised the prospects of their children. For example, if someone was preparing to become a civil servant, there would be a session of political review, including a background check for the existence of a criminal record as well as checking the background of direct relatives. This may become a vulnerable point for people competing for a position if one of their parents has a criminal record. In consideration of the difficulties caused by possessing a criminal record, settling minor injury cases through criminal reconciliation seems to be an option that is beneficial to offenders.

3.1.4 Receiving a lenient punishment

In the broader understanding of criminal reconciliation, if an offender makes a successful reconciliation with the victim, this will be reflected in the prosecutor's report on sentencing in suggesting a mitigation factor that will be further considered by the judge while making a decision. Therefore, the prosecutors responsible for public prosecution work, such as ANQI and CONG, considered the CR institution to be quite beneficial to offenders. ANQI even made her comparison that the offender could gain more benefits from CR than the victim, since the outcome for the offender was that the period of restriction on his/her personal freedom would be reduced.

3.2 The role of an offender's family in CR while the offender is in custody

During the interviews, an offender's spouse or parents were often mentioned while discussing or introducing the process of reconciliation. Sometimes, it seemed that an offender's family was more active in the process of the negotiation and determination of an agreement and their attitude played a crucial role in the proceedings of reconciliation and in determining the outcome for the offender. There was no generalized explanation for this phenomenon, but several opinions shared by the interviewees may

help in understanding it. I will present the behaviours of an offender's family in terms of being a positive or negative factor in CR proceedings.

ANQI gave an account of a case in which the wife of the offender expressed that he was sorry and apologized to the victim on behalf of the offender, considering that the offender was in detention during the reconciliation process. This kind of situation is not uncommon in criminal reconciliation, since quite a few offenders have already been arrested by the review and prosecution stage. The average arrest rate of offenders has been around ninety per cent in recent years, making it objectively impossible for the two parties to have a face-to-face encounter, or even any other method of communication. Therefore, the outcomes of victim-offender mediation from Western restorative justice could sometimes not be achieved in the practice of Chinese criminal reconciliation, such as letting the offender realize the damage he/she has caused to the victim and taking accountability.

Nevertheless, victims seem to be willing to accept an apology from the 'substituted participant' in criminal reconciliation, according to ANQI and BING's reflections on the practice. This is probably because the offender's spouse or immediate relative could be counted as an interested party affected by the offence. To some extent, the spouse who shares joint property with the offender takes on the liability for paying the restitution; the guardian of a juvenile offender could blame him/herself for the offender's wrongdoings. In addition, the incentive for some offences originates from a contradiction between two families instead of two individuals, so the family contradiction needs to be resolved in order to have criminal reconciliation. In this way, the participation of the family of the detained offender could help promote the process of criminal reconciliation on the condition that the offender is willing to achieve reconciliation with the victim.

On the other hand, too much intervention or control from the offender's family could jeopardize the proceedings of criminal reconciliation. After all, some families' focus is to get the offender out of detention or prison, regardless of any remedy to the victim. This could be gleaned from BING and ENCI's experience. BING concluded that once an

offender has been placed in a detention house, his/her family will become much more nervous and change their attitude towards reconciliation from one of unwillingness to willingness, since they cannot bear the fact that the offender is suffering in detention. ENCI stated that a family, by hoping to help the offender, has higher expectations of the outcome of CR than of a traditional trial. Thus, they continue to ask the prosecutors for affirmative answers to the question of whether the offender will be given a lenient punishment, which makes prosecutors feel embarrassed and helpless. In other cases, the individual who administers the family funds may determine the outcome of criminal reconciliation. In one face-to-face encounter facilitated by FEI, there were different opinions from the offender's party. The situation was that the offender would have been willing to remedy the victim, while his spouse, who took charge of managing the family finances, disagreed with paying the restitution.

4. Influential factors to the achievement of reconciliation

From the cases shared by the interviewees, various factors influencing and shaping the process of criminal reconciliation were revealed. Some factors are initiated by the offender's financial condition or mental activity; some are produced by the victim's. Some relate to the dynamics between the two parties during the reconciliation process, while some trace back to their original relationship before the occurrence of offence. Exploring how these factors affect the result of criminal reconciliation could help in understanding the process and provide a picture of the behaviour of the participants. First, this section will introduce two factors probably causing the failure of reconciliation mentioned by multiple interviewees.

4.1 'Unaffordable' compensation

It is complicated to describe the offender's attitude towards CR in the practice. The apparent outcome of CR is that the offender provides apology and compensation to remedy the victim and are passed with a lenient punishment. While apology seems to be no difficulty in reconciliation process in most cases, it is highlighted that the offender

needs to be able to 'afford' the compensation negotiated and agreed by both parties, which was regarded as a necessary condition by a few of my interviewees. Here, it is argued separately why the interviewees consider the compensation is 'unaffordable' for the offenders.

On some occasions, the offenders simply could not afford the compensation needed by a victim. It does not mean that the victims always require a super high compensation, in which situation the prosecutor would usually educate and guide the victim to make a reasonable request. Based on FEI's practical experience, he shares the situation when the victim asked for a certain amount of money for treatment in the reconciliation but the offender is incapable of cover it. He concludes that the reconciliation would almost certainly face the failure under such condition in the practice. In these cases, if the victim was in actual need of money, he/she may spare less compassion for the offender when the victim's own need could not be fulfilled.

Even the offender is affordable to the compensation, the reconciliation may fail because the offender value more on money than personal freedom. For example, BING explained that some offenders are quite realistic, particularly some ordinary workers:

> *They would consider how long they could earn back the money paid as restitution. For example, the restitution is set at 2000 RMB and the offender would face a one-year imprisonment if the reconciliation does not work out. Although he could afford the restitution, he takes into consideration about his earning capacity, which is 1000 RMB per month. Whether to pay 2000 RMB restitution, making life tougher, or to serve the one-year imprisonment, the offender chooses to sacrifice the freedom in order to cut his losses in the end (BING, 22)*.

This shows in some way that offenders who have exhausted their livelihood are less enthusiastic about the outcome of receiving a lenient punishment from criminal reconciliation. In the end, it is still the financial conditions that matters in the CR process.

However, the 'unaffordable' status is not always caused by the offender's actual financial

condition, but maybe a result after the offender's comparison between paying compensation and other things, which he/she believes as more important in the end. It means that even though the offender is capable of paying compensation, he/she may choose not to do so, resulting in the failure of reconciliation. For example, ENCI said that some of the offenders expressed that they felt being coerced or extorted by victims in their requirement of compensation although the offenders realized their faults and were financially strong. Here, according to ENCI, the victim's requirement for compensation is actually not over the boundary in his eye as a facilitator. Under such context, the 'unaffordable' status might be interpreted as unacceptable mentally in some offender's opinions. The phrases the offenders used almost imply a kind of idea that the victims are taking advantage through the CR process, which is unaffordable for the offender's emotions.

For example, ENCI explains that some offenders refused further reconciliation, because they claimed that the reconciliation process made them 'feeling being coerced by the victim' (3). Here, victims' requirement, no matter how it is according to objective standard, seems to be beyond some offenders' expectation for the cost of making things right. According to ENCI's introduction, some offenders complained about the victim's primary idea of asking for a big compensation from CR procedures.

4.2 The two parties' understanding of justice

In the debate surrounding the origin of Chinese criminal reconciliation, Fan (2006) advocates that the Chinese cultural and intellectual context has greatly shaped the establishment and development of CR, such as the Chinese people's unwillingness to settle disputes through litigation (Huang et al., 2006: 109). In the interview with ANQI, she put forward the suggestion that some victims choose to settle a case through reconciliation for fear of '*losing face*' (*Mei Mianzi* *没面子*, which could be explained as losing a sense of pride or esteem) when confronting others before a law court (5). However, at the same time, she stressed that now quite a few people in China have more legal awareness than before and are willing to fight for their rights in court.

The above is not only true for the victims, it is the same situation for some offenders. As ENCI pointed out, some offenders consider themselves as having done nothing wrong during the conflict with the victim, or at most the fault is fifty-fifty. As introduced above in the debates of the foundation of CR, some advocates of RJ speak highly of the reconciliation process between the two parties because it enables the offender to better realize how his/her wrongdoings has influenced the victim's life and become more liable for his/her behavior.

With such an idea, these offenders would be reluctant to make an apology to their victims. Furthermore, according to BING, even if an apology is not required by the victim, this type of offender would feel unjustly punished for their conflicts, not to mention paying compensation to victims. The offenders are aggrieved, especially in the situation in which both parties were injured, since it is sometimes simply a coincidence that only one party's wound from a fight reaches the standard of constituting a minor injury crime. In addition, some offenders simply feel that it hurts their self-esteem to apologize to the victim. '*Some of them called the victim his enemy*', stated ENCI (5), regardless of whether it was their fault for causing the conflict. In the circumstances described above, the practice of solving a case through criminal justice could not work. Nevertheless, it demonstrates that, from another perspective, although compensation plays an important role in determining the progress of reconciliation, a lack of a genuine apology may irritate the victim, also leading to the failure of criminal reconciliation. In addition, there seems to be no coercion from the criminal justice system if an offender shows reluctance to apologize or compensate. It is the offender's free choice whether to enter the field of CR or stand in front of a judge.

4.3 Personal relationship between the two parties: acquaintances or strangers

In Song's (2009) research report, the success rate for reconciliation between two parties who used to be acquaintances was over twice the rate for that between strangers. In his analysis of the data, Song claims that

> *It could prove that CR is beneficial for the reparation of acquaintances'*

> *relationship damaged by the crime. Therefore, the type of cases in which the two parties used to be acquaintances should be the focus of applying criminal reconciliation in Chinese criminal justice (79).*

In my interviews, different prosecutors come to disparate conclusions about the influence on reconciliation proceedings of a personal relationship between the two parties.

CONG and ANQI's experience was supportive of SONG's claim. CONG felt that it was difficult to have a reconciliation between two parties if they were strangers because it was easier to show sympathy to acquaintances than to strangers. In addition, since there was barely any relationship between them before the offence, there was, as a consequence, no need to restore it after the offence. However, it is the other way around when the two parties are acquaintances or continue living in a close relationship with each other after the offence, which would include friends, relatives and neighbours (CONG). As some close relationships would not be changed or broken because of a conflict, such as neighbours or mother-in-law and daughter-in-law, restoring the relationship would be taken into consideration by the two parties while making criminal reconciliation (ANQI).

In contrast, ENCI and FEI had the feeling that it was, in most cases, easier to have reconciliation between two parties who are strangers. The reason FEI outlined is that restoring a damaged relationship between strangers through reconciliation is a one-time event, which does not involve resolving a previous or continuous contradiction. ENCI expressed a similar reflection from the practice that a contradiction between neighbours is usually deep-rooted and it is difficult to restore their relationship by only dealing with the problem caused by the offence. This led to another factor that influences the success or failure of criminal reconciliation. The thoughts expressed by ENCI and FEI had one condition in common: that the two parties with an acquaintance relationship had some existing contradiction before the criminal offence. It seemed that their relationship would be difficult to restore due to a long-existing and deep-rooted contradiction.

4.4 The degree of conflict between the two parties: occasional or accumulated

The interviewees who discussed this factor appeared to reach a consensus that reconciliation was easier to process in the case of a contradiction between the two parties being accidental, rather than having accumulated. FEI explained that if there is an accumulated contradiction between two parties, a physical altercation is normally the escalation of a verbal skirmish, showing the degree of contradiction being rather deep. BING cited an example of one party trying to expel the other party from the neighbourhood, taking the opportunity of dealing with a criminal case. The evaluation FEI and BING gave is that criminal reconciliation was not quite capable of resolving an accumulated contradiction between two parties, but was more promising and practical for settling an accidental contradiction.

Nonetheless, CONG highlighted that the behaviour of randomly assaulting others showed the offender was highly dangerous, and prosecutors should be very cautious about letting the two parties solve such a case by reconciliation even if it was an accidental offence.

4.5 The victim's fault or special conditions

Some special conditions of victims are taken into consideration while the prosecutor handles criminal reconciliation in a case. These conditions are used to judge the offender's subjective culpability. BING and GAO raised the point that in some cases the victim is at no less fault than the offender in the conflict. BING recalled that in one case the victim was already drunk before the conflict, while GAO stated that it was sometimes the victim who provoked the offender to fight. On other occasions, the victim may have a special constitution, including being elderly (ANQI and FEI) or having a pre-existing health condition (BING and FEI). Let us consider an example to explain how these conditions influence reconciliation. On the surface, the victim is pushed by the offender, resulting in a fracture. However, the strength the offender actually used may not have been enough to push the victim over. The other reason for causing a fracture might be that the victim was drunk at the time and could barely stand. In such a circumstance, the prosecutor would remind the two parties of this condition to make the reconciliation

fairer and the restitution more reasonable.

4.6 The status of whether offenders being arrested

According to the rules of subtraction of penalty term in Criminal Law of the PRC, if custody has been employed before the judgment, the term of public surveillance (*Guan Zhi* 管制) is to be shortened by two days for each day spent in custody; and the term of criminal detention (*Ju Yi* 拘役) and fixed-term imprisonment (*You Qi Tu Xing* 有期徒刑) is to be shortened by one day for each day spent in custody (Article 41, 44 and 47). These rules reflect that keeping the offender in custody is considered as having the nature of punishment because of the deprivation of offender's freedom. In Chinese criminal justice system, the term in custody refers to the temporary confinement of suspect before the final judgment, mainly including the detention employed by the public security organ (the investigation organ) and the arrest approved by the procuratorate. Given the 3-day time limit of detention (extending 1 to 4 days in special cases), if the public security organs consider necessary to arrest the offender for investigation, they will need to apply an arrest application to the corresponding procuratorate.

The detention in this discussion refers to the status of offenders' being deprived of personal liberty before the trial. It is usually used as a state succeeding custody and arrest, while the application of arrest is usually made to the procuratorate while an offender is being kept in custody and the investigation organ believes there is a need to arrest the offender for further investigation. The legal limit for arrest is now two months (one month before the revision of CPL in 2012). After application to the procuratorate, the duration can be extended for another two months and one extra month beyond that if there are serious circumstances.

This context of Chinese criminal proceedings is very important for understanding why, in some senses, an offender and his/her family might pay a lot of attention to the decision-making of arrest. As introduced above, BING, is responsible for approving or disapproving the arrest application applied by the police, standing at an earlier stage of the criminal proceedings. He concluded that if a case could be settled by reconciliation at that stage,

thus setting the offender free from detention, the contradiction between the two parties could be minimized. BING speculated that it may breed the offender's complaint towards the victim such as in the situation that the victim refuses to reconcile at the arrest-approval stage but change his/her mind later. He explained that

CONG's accounts from the other angle buttressed BING's speculation that if the attempt of reconciliation failed during the stage of arrest application and the offender was put in custody, it became difficult to reconcile in later stages as the offender's party were less willing to do so.

Not all cases with offenders being arrested are unable to be settled by reconciliation, explained CONG, but the difficulty of negotiation between the two parties increased after the arrest of the offender. DA, ENCI and FEI shared their practical experience that the majority of cases settled by reconciliation at the stage of review and prosecution were those for which the offenders have been released on bail.

Conclusion

As providing with their perspective on how victims and offenders experience CR, my interviewees also provided with important information about how they view and deal with certain situations such as victims demanding too much restitution or offenders failing to respond constructively to requests for reasonable restitution. Through the lens of the prosecutors, it can be seen that victims and offenders who choose to resolve a problem through criminal reconciliation are aware of the advantages that this institution could provide for them. Some of the benefits from CR could not be brought by the traditional trial system, given that the needs of the two parties participating CR may differ from those who are unwilling to or not qualified to apply the CR procedure. By presenting every issue that may affect the decision-making of participants and every reflection made by participants with regard to the proceedings of criminal reconciliation, the image of the application of criminal reconciliation may become clearer.

In this chapter, it could be seen that through the communication with the two parties

and the messages embodied in their actions, rather than the facilitation work, the prosecutors help represent the participants during criminal reconciliation. There are indications that the misunderstanding of criminal reconciliation as being behind 'exchanging money for punishment' may have multiple causes; and speculation about coercion used by prosecutors and other judicial officers in the process of CR has also been disproved to some extent and provides evidence for discussion in later chapters. Here, the prosecutor-facilitators seem to be intervene more than would a purely neutral facilitator as they influence and in some cases virtually decide the outcome. In some influential 'western' theories of RJ, the facilitator or mediator's role is simply to help the parties reach agreement, and not to impose their ideas about what would constitute a just outcome on the proceedings. Apparently, the prosecutors do not regard themselves as restricted in that way. And, crucially, it seems that because they are prepared to be more interventionist, they can better counteract any power imbalances between victims and offenders that do exist.

Chapter 6 Exploring CR in the eyes of prosecutors

Introduction

During the CR process, some important decisions are made by the two parties, such as whether they choose to employ CR procedures as an alternative to traditional criminal proceedings, and how they finally reach a settlement through reconciliation. Last chapter tries to shed some lights on what influence the two parties' decision-makings found by some prosecutors through their observation and facilitation of CR process. Although the victim and the offender are the primary actors on the stage of CR, they are not the only decision-makers in this process. Prosecutors, who have the responsibilities to supervise and facilitate CR according to law, also face the moments of making decisions.

This chapter aims to represent the decision-making, developmental and outcome stage of criminal reconciliation through the lens of prosecutors playing as the facilitator, at least someone with information if not that actively involved in the process. According to this sequence, influential factors taken into consideration by prosecutors while making the decision of applying CR in a case will be discussed at first, in two categories which are overt ones referring to individual case situation and covert ones hidden in prosecutors' working habits and environment. Topic followed is that, after initiating the procedures of criminal reconciliation, interviewees from different procuratorates have various positioning for themselves in this process, but some similar roles are also agreed by different individuals with the function of facilitating reconciliation the most consented one. Assessment on the performance of other facilitators are also made by the interviewees to compare with prosecutor's, to conclude who is in the right position for facilitating CR since several interviewees complain prosecutors having less power than other judicial officer in facilitation although might be more appropriate for the job.

Instead of simply stating prosecutor's evaluation on the operation of criminal reconciliation institution, I will bring in a new subject in joint with its practical outcomes for discussion. Not getting attached, it remains a blank in the existing empirical research

that prosecutor as a stakeholder of criminal reconciliation will get influenced by the practice and alter his/her anticipation and attitude to this institution by the unexpected outcomes, which in turn leading to the change of facilitation work, or even the entire reconciliation process in the practice. Therefore, prosecutor's expectations on CR institution before the practice and how these expectations come from will be raised first as a core part. Bearing in mind the ideal picture of CR, next approach is to report the satisfactory and dissatisfactory feedbacks from the interviews for further purpose of accordingly verifying the anticipations with the practice and exploring reasons behind it in later chapter. Given the drawbacks existed in current institution, corresponding suggestion are also offered by the interviewees based on their respective experience and reflections.

1. Prosecutors' lenses: what to consider about facing a CR procedure

For better understanding the influence on prosecutor's own work by this new additional facilitating job, there is a need to recall the prosecutor's original role in judicial system and a brief introduction of each interviewee in passing which will be enriched as accomplishing the report and analysis of this research. There are two types of prosecutors who have the chance of encountering criminal reconciliation while handling the case, one called public-prosecution prosecutor and the other arrest-approval prosecutor. In terms of my interviewees, only BING is at the department of arrest-approval while the other six prosecutors responsible for public-prosecution.

For BING, his job duty is to examine the application, made by the police in the stage of investigation, of arresting a suspect who is of severe social harmfulness, then make the decision of approval or disapproval of the arrest application. During the seven-day time limits of making this crucial decision, since it determines the restraint of one's liberty, the two parties have the chance of making criminal reconciliation under the supervision of the arrest-approval prosecutor, and for most cases due to the fact that the disputes between them has been solved through the reconciliation, there will be a happy result

for the offender not to be arrested and prosecuted.

For public-prosecution prosecutors, their job, known from this title, is to review the investigation report by the police, make necessary investigation if needed and decide whether or not to prosecute the suspect to the courthouse on behalf of the state. The case types they are dealing with are not allowed to be settled by the two parties themselves, only by trial if the suspect is qualified to be prosecuted, before the application of CR institution in recent years. Started with some pilot projects of applying reconciliation in minor injury cases facilitated by district prosecutors, CR institution has been legally fixed from last year. According to 2012 CPL, if the reconciliation has been made voluntarily and legally and agreement has been reached to settle the disputes between the two parties after prosecutor's examination, the offender could obtain a non-prosecution decision by the public-prosecution prosecutor (Article 279). This difference in job responsibility and circumstance between arrest-approval and public prosecution prosecutors could be reflected in distinct values, focus or considerations in the process of dealing with criminal reconciliation.

As analyzed in chapter 4 of the goals behind legislation, procuratorates are expected to play the role of gatekeepers on the application of CR in criminal justice system. Inevitably, institutionalization of CR adds new roles to prosecutors besides their original one of affixing criminal responsibility. This theme is one of my prepared questions to discuss with the interviewees. It is the first question inviting the interviewees to unfold the image of CR in practice through the lens of a prosecutor. This section presents the factors my interviewees have taken into consideration when they are facing the situation to initiate CR procedures.

1.1 Consideration from the case itself

1.1.1 Social Harmfulness of the offence

If trying to put these influential factors in sequence, harmfulness of the offence is probably to be put in the first place to consider about in prosecutors' initiation of CR. The reason is that the interviewees concluded certain rules of employing CR procedures from

their practical experience. In their judgment on the conditions of a criminal case, if the offence only does harm for the victim, then the prosecutors consider CR is a better approach and of high possibility to rehabilitate the damaged relationship between the two parties; on the contrary, if the offence is not only a threat to the victim but to non-specified people, they perceive a reconciliation may not be enough for the offender to realize and correct his error.

The typical one among the interviewees holding this opinion is CONG. According to CONG's working habit, the first precondition for initiating CR proceedings when handling a case is that the social harmfulness of the offence should be minor. One crucial point he has explained to me is that in his studying of the concept of 'Criminal Reconciliation' in criminal procedural law, criminal policy documents and in some academic material, it is usually discussed as a narrow definition, referring to minor cases settled by reconciliation between the victim and the offender with a result that the prosecutor may make a non-prosecution decision. Therefore, his judgment on whether a case is justified and appropriate for initiating CR procedures is based on this definition of CR. This way of understanding CR is consistent with CONG's interpretation of prosecutors' restrained roles in the institutionalization of CR, which is believed, not only by the prosecutors but maybe also the policy-making levels, to help decrease the concerns for widely application of CR in pilot period. Under this narrowed-down context, especially with the very high possibility of making a non-prosecution decision, CONG is relatively strict with the social harmfulness of a case to initiate CR. In the meanwhile, he disagrees that an offender who violates social order seriously cannot be given a chance to communicate and reconcile with the victim, to show repentance or to pay compensation to the victim. Only with great social harmfulness, the reconciliation between the two parties should not be called as CR procedures and ending with a non-prosecution result, but still full of restorative values and could be practiced in any stage of criminal proceedings.

In addition, BING shares a case he had handled to me, which explains why he did not imitate the CR procedures when considering the social harmfulness of a minor injury case.

'We will evaluate the harmfulness of his offence to judge whether the offender is qualified to avoid being arrested. There is a case which appears to be a normal minor injury case at first sight. A drunkard broke a wine bottle, holding the shards of glass to threaten people. In the end, a victim suffered about seven or eight gashes on his arm. When we were in the middle of reviewing the arrest application, the offender's family came to us expecting us to disapprove the application and release the offender on bail. The justification raised for non-arrest is that they had already reconciled with the victim and an agreement was made.'

I ask how his responded to the request from the offender party. He smiles to me and reply: 'You should understand the situation due to your professional background. The offender's action at that time imperilled unspecified people. Not only did the victim suffer mental and physical injury from his action, but the social order was disturbed and social stability undermined. The high social harmfulness of his behaviour made him unqualified for a non-arrest decision even though the reconciliation with victim had been done' (BING, 16).

This discussion on the offender's social harmfulness is in relation to the prosecutors' judgement on the offender's dangerousness, a concept with no unified standards. Although criminal cases qualified for CR process are basically categorized as the minor ones, the offenders in such cases may still be evaluated as "dangerous", since it is a protean concept that depends on various factors and contexts (Harrison, 2010).

1.1.2 Considering the two parties' attitudes towards CR

If the situation of the case meets the requirements for applying CR after the prosecutor's judgment, attitude of the two parties towards this dispute-resolving alternative becomes the focus. ANQI uses the phrase 'genuine willingness', while similar claim has been made by ENCI that 'CR should be done out of the two parties' true intention'. Coincidently, ANQI and ENCI come from the same procuratorate which points to the possibility that

such instruction or guidance may be underlined in their unit. Other interviewees express that generally the two parties show interest in the choice of reconciliation and hope to learn more about its operation. 'When entitled the right to solve the dispute by oneself', DA concludes that 'People often reply that they will think it over. Anyhow, few will refuse flatly without consideration' (DA, 9). FEI in particular mentions that when seeking opinions from the two parties, 'it is mainly about the offender's intention, because we need to investigate the offender's attitude of repentance through this phase, which is a must-to-do for us' (FEI, 3).

1.1.3 Special situation of the two parties

Both ANQI and DA emphasize that the identity or status of the two parties needs to be taken into consideration. The special identity or status they are referring to is student at school or highly-educated young people. They consider offenders with such status having a more promising future and prospective to make a contribution to the society. Since resolving case via CR could help the offender escape from the criminal record, those people should be recommended and encouraged to apply CR. It would be better if their victims could also understand the situation and try to show accommodation and support to these people by choosing CR.

1.2 Considering some external factors

1.2.1 The unique thought of 'self-protection'

Except CONG and GAO, the rest of the interviewees express their concern about being misunderstood when involved in a CR. Hence, self-protection of the prosecutors becomes an eternal theme they bear in mind during the process of CR. The initiation stage of a criminal reconciliation is one of the peaks that prosecutors are misunderstood by the victim for taking sides with the offender. Therefore, they have some warnings or working principles for themselves, such as 'keep in mind to act impartially to both parties' (ANQI, 6), 'avoid speaking in a commanding tone while communicating with the two parties' (BING, 10) and 'do not make the decision for the two parties' (FEI, 3). But in some of the interviewees' explanation of being impartial, it could be found that the standard for not causing dissatisfaction of the two parties does not equal to the standard in their

own interpretation of being a good facilitator. For example, it would still cause the dissatisfaction of some victims if the prosecutor simply helps reaching an agreement that is achievable and fair for both parties, as some victims believe they should get more help from prosecutors – 'how can the prosecutor speak for criminals' (BING, 18). The reason why self-protection is regarded as an influential factor for prosecutor's decision-making or preference is that it will come in the first place if there is any difficulty in starting a reconciliation, especially hesitation from the victim.

At the same time, BING's 'self-protection' has richer contents than others. From an overall perspective, an accomplished reconciliation is a form of protection to him – an arrest-approval prosecutor. Basically, hardly any victim of a physical injury crime and his family feel quite comfortable to see his offender released on bail. Therefore, if the offender meets the requirements of non-arrest mostly, or on the edge of arrest and non-arrest, the most secure method to avoid discontent from the victim's party is to defuse it through a reconciliation. Otherwise, without a reconciliation to comfort, it is likely that the victim's party will blame the prosecutor for being injustice by setting the criminal free. Under such circumstance, the arrest-approval prosecutor prefers to help or promote within the limit to initiate a CR

1.2.2 The need to fulfil the work

Some moments in the interviews, prosecutors show tiredness and frustration on the process of balancing the desire of two parties and pressure on accomplishing one's own work. After all, 'to get the work done' (BING, 14) or to 'fulfil the work' (DA, 7) is the primary aim for these prosecutors, since they are all restrained by 'Assessment on work performance system', which has countless ties to the prosecutor's career. The influence brought by the assessment system on CR is an agreed account by all interviewees and will be discussed later as an independent section.

There is one particular situation raised by BING and CONG only: when the existing evidence is not sufficient enough to support the conviction but certain damage has been done, such as minor injury from a fight may involve multiple people. It is considered that

a criminal reconciliation could help the prosecutor out of the dilemma to choose from taking a risk to prosecute with incomplete evidence or not to prosecute with an angry and disappointed victim. If such type of cases solved by reconciliation gets the outcome that the offender recognizes and corrects his fault and the victim feels sense of justice and gets proper compensation, CR is an effective approach for the prosecutor to complete his work task, in an ideal way.

1.2.3 Suggestion from superior instructions

As an arrest-approval prosecutor, BING talks about the situation that sometimes in internal meetings of one procuratorate, the superior leader may mention the application of CR in some cases. To be specific, the leader called attention of some prosecutor, who was dealing with certain case during that time, to consider more about applying CR in that cases. According to BING's understanding of the leader's instruction, the purpose of making reconciliation between the two parties was to guarantee the non-arrest decision proceeding smoothly. It is kind of confusing for me to hear for the first time that the non-arrest decision has any relation to the achievement of CR. As BING explains to me, there is a premise here that the non-arrest decision was actually made independently regardless of the CR procedures. But if a case is influential in some ways, for example the victim's party

Also, he has encountered situation that old colleague came to him inquiring about information and selling the idea of reconciliation for non-arrest of the offender.

> *'I could not refuse him toughly. At least, he is my senior and we share the same network. How did I respond? Well……I told him CR is initiated by the two parties' choice. There is no definite connection between CR and disapproval of arrest. If the offender had the intention to reconcile, then he needed to contact the victim to sort it out. If both parties agreed to solve the dispute by reconciliation, we were happy to help facilitating. After this conversation, I guess he passed on my suggestion to the offender. Anyway, such kind of networking is not very pleasant.' (BING, 23)*

Although he is quite serious and cautious, DA is the only one among the public-prosecution prosecutors who talks about the phenomenon that prosecutor may receive some implication or instruction from his leaders. It is quite out of my expectation, but still understandable since he put it in a really low voice 'Sometimes there will be some guidance from the upper leader, you know, some cases……' (DA, 4).

2. Behind the lenses: what also influence prosecutors' attitudes on CR

2.1 How does work experience affect a prosecutor's attitude on CR?

Interviewees' responses to this part are determined mainly by observation within their own workplace. BING concludes that experienced prosecutors try to avoid getting involved in CR because it brings about troublesome while the young ones are more willing to handle the cases solved by CR. Therefore, leaders of one procuratorate prefer to assign such CR cases to young prosecutors, at least in his own procuratorate.

While in CONG's case, C Procuratorate, there is one prosecutor specialized in dealing with CR cases, who will be responsible for contacting a third-party to hold a mediation meeting for the two parties after other unspecialized prosecutors make the judgment on applying CR and transfer the case to him. From the same workplace, DA introduces the process in a more detailed way: if the prosecutor considers the case appropriate for applying CR and determines to promote the two parties to participate in the process, he will transfer the case to a prosecutor experienced in criminal reconciliation to manage the procedures, even though the specific reconciliation plan for the two parties is still made by the original decision-making prosecutor.

ANQI and ENCI come from the same procuratorate, while ANQI has no particular feeling about this point, ENCI expresses that prosecutors with more experience in CR tend to have more interest in the practice of CR for the purpose of conducting new research and perfecting the mechanism, derived from his communicating with the experienced prosecutors and observing their facilitation in the reconciliation.

As a relatively experienced prosecutor in criminal reconciliation, FEI believes that when facing a case with complex situation, a more experienced facilitator is needed to handle the reconciliation. His leader, GAO tells me he is impressed by some successful reconciliation cases handled by FEI, showing his affirmation to experienced prosecutor in the work of facilitating CR.

2.2 The Work Performance Appraisal Mechanism

As mentioned before, this topic receives the most consensus from participants during the whole process of interview. Therefore, each interviewee talks about this institution and how it influences their practice of CR. Basically, the institution is just similar to other points-based system used to evaluate one's work. Due to the fact that it is an internal assessment and made by each procuratorate respectively, not much detailed criteria have been discussed. But they do give some examples about situations leading to plus or drop of points in one's assessment, which could show some characteristic of this institution. BING introduced that if an offender, who has been arrested for a period, is not prosecuted or found not guilty in the end, the judicial officers who files the application for arresting him, who approves the arrest application, and who initiates a public prosecution of him (in the situation of acquittal) should take lifetime responsibility for making the case misjudged (BING, 13). He thinks this provision in *National Compensation Law and Guidance on Avoiding Unjust Cases* is not reasonable enough and quite unfair to judicial officers. Encountering such events, the assessment points of the prosecutor will be dropped. On the contrary, if a prosecutor found that the offender should be convicted as another type of crime, which means the police's decision on the criminal type is wrong, then the points of this prosecutor will be added on probably because he save the case from being misjudged (ENCI, 15).

How this assessment institution influences prosecutor's handling of CR discussed during the interview could be concluded as three types of pressure: complaint from the two parties and wrong decision-making and energy-consuming. The most frequently mentioned pressure is complaint or even unreasonable troublesome made by the two

parties, mostly the victim. ANQI, BING, ENCI and FEI all refer to this point, dreadful of some victims regarding everyone else as enemies. Except GAO who talks little about practice but policy, CONG and DA seems to be the only two not bothered by this distress. One thing to note is that they come from the same procuratorate of an economically developed district, which is the first judicial office initiating criminal reconciliation in Beijing and still a pioneer in this area.

For the second pressure, the decision-making interviewees talk about is on arrest-approval. Naturally, BING has a voice on this topic being an arrest-approval prosecutor. His senior colleague passes on experience to him to use CR as a protection measure if he wants to disapprove the arrest application without irritating the victim. Relatively, CONG and DA explain why as public-prosecution prosecutors, their decision of non-prosecution exercises an influence on their colleagues from the arrest-approval department from the same procuratorate. The reason has been mentioned before that a prosecutor is to be blame for mistakenly approving the arrest of an offender who later gets a non-prosecution verdict. Therefore, public-prosecution prosecutors become quite discreetly in applying CR in the cases that the offender has been arrested, since it is very likely to end up with a non-prosecution decision placing the arrest-approval colleagues in a very passive position. It does not only damage the assessment on the prosecutor himself but also the entire procuratorate.

In addition, it takes much more time to settle a case through reconciliation than through traditional judicial proceedings according to ENCI and GAO. Therefore, doing more facilitator work means more time and energy spent on CR leading to inadequate time on other cases. The consequence may be failed to fulfil the work task, leading to an unsatisfactory assessment on the work performance of the prosecutor.

3. Prosecutors' understanding of their roles in the process of CR

3.1 Shuttle

CONG and ENCI use the very phrase of 'go-betweener' or 'shuttle' to describe their work

during a reconciliation. In their words, 'lack of communication channel' is the major obstacle for the victim and the offender in most cases they have some thoughts to, and that is where the facilitator shows his importance.

From other interviewers' narrations, prosecutor's role of shuttling could also be concluded. For example, according to BING, prosecutors from B procuratorate apply 'telephone-shuttle' to build connections between the two parties. While FEI described in one case that how he goes far away to the village where the two parties live but meets them separately and deliver messages between them since the situation will become awkward and unfriendly if the two parties sit down together. No matter via telephone or face-to-face, prosecutor in such situations plays the role of shuttle or exchanging opinions for the two parties due to the reason that they do not want to meet each other or have difficulties in making that kind of arrangement.

3.2 Facilitate

"Shuttle" shows one of the prosecutor's role in CR is probably exchanging information for the two parties in the situations where direct communication is not a desirable option for them. Besides passing on opinions, some prosecutors also believe themselves contribute in facilitating each part accept the conditions of the other. During the interview, Xie Zhu (Help) and Cu Jin (Promote) are the two common phrases the prosecutors tend to choose referring to their efforts in solving the disputes between victims and offenders.

In consideration of their explanation, "Facilitate" may be the most matching English translation for prosecutor's self-positioning in the process of reconciliation, containing both the meaning of help and promote.

The "help" part of facilitation refers to prosecutor joining the dispute resolution as a third party who is familiar with details of the case and situations of the two parties, different from "assist" (see below), the role of which is closer to a space-provider or material-provider without involving in the interaction part of reconciliation process. In most cases, if the two parties have the intention to make reconciliation but stuck in some issues for

further negotiation, it is when the prosecutor is needed to play a role. So, to what extend and with what aspects do they usually help the two parties? Answering this question could help understanding the process of CR and some responses from my interviews may add some insights into it.

'A relative inactive role'—that is how ANQI specifies her position in CR, and she further adds 'we are unable to actively promote the reconciliation as people's mediators or other third party' (7). ANQI is my first interviewee. She is cooperative and friendly during the whole process of interview. And her responses are basically positive and infectious, just like her character. As she uses the word 'inactive', it shows some limitation on their role in CR. And this inactive role is mainly about helping the two parties clear up confusions. In other words, it is the situation that the two parties do not know about something which needs to be clarified by the prosecutor with his professional knowledge or experience. In ANQI's case, a criminal reconciliation with ups and downs is fairly impressive to her. The victim is an elder man and a little stubborn with sending the offender to prison although the offence is caused by frictions and both parties have faults. The offender and his family really hope for a reconciliation and resolution of disputes since the victim family are 'neighbours who sees each other every day', but struggle in finding a breakthrough. Naturally, they turn to ANQI for help. She, who is very familiar with the cause of this dispute and their personal circumstances, reminds the offender's wife that simply compensating may be not enough for the victim family to acknowledge his repentance. 'Since the offender is in custody, perhaps a visiting to the hospital by his wife on behalf of the offender would help. And…… the victim couple may bear with the offender's behaviour after knowing his difficulties, especially, you know, from the mouth of the offender's wife —a woman's perspective.' It turns out that ANQI's suggestion works. Taking ANQI's advice, the offender's wife goes to the hospital and stands by the victim's bed, expressing the offender's apology to him and bringing him a new birdcage since the original one has been broken during that fight. The old couple are touched by her action and attitude. Combined with compensation, the victim relents and forgives the offender in the end and writes to the procuratorate for mercy on the offender. 'You

could not expect us—prosecutors, to do the mediating job like those aunts from neighbourhood committee or People's Mediators. As mediation is part of their own work, they do it in a very proactive way, which we cannot equal', explains ANQI why the prosecutor's facilitating work is relatively inactive (ANQI, 7).

The 'inactive' help could be understood in the way that the prosecutor does not directly go to contact one party and persuade him to accept the other party's condition, or to make a concession. Instead, they offer advice to the parties for their reference only. Whoever taking the advice needs to put it into practice by himself. Apart from suggestions given in ANQI'S case, the help may also be providing general practice of some issues that the two parties care about. One of the issues would be payment method of the compensation. BING introduces that there are a few offenders concerning with the payment method, 'Sometimes, you know, the offender party worries that the victim may regret and deny the compensation, the agreement—the whole reconciliation thing.' He then tells a typical case in which both parties feel sort of insecure about the payment of compensation and stuck in a dilemma when they turn to the prosecutors for help (BING, 34-35). It is a case that the offender's inappropriate driving causes a traffic accident resulting in the death of a young woman. Coincidently, both parties come from the same hometown which makes the reconciliation process easier. Both parties would like to reach an agreement through reconciliation, since in this case the offender does not have the subjective intention to hurt the victim, which makes the victim's family easier to forgive him. At that stage, the amount of compensation is settled that both parties agreed with a 100 thousand RMB (approx. 10 thousand GBP) payment. However, the seemingly smooth reconciliation is actually built on one condition that the victim's family should be able to provide the offender with several documents to decide the amount of pension for the disabled or for the family of the deceased, and to prove how much payment has been made during CR for him to make the insurance claim afterwards. Since there exists uncertainty that the victim's husband and parents may have their own contradiction on the pension and refuse to cooperate with the following documents-providing, the offender prepares the 100 thousands compensation but reluctant to pay

it. Therefore, the offender proposes to BING and his colleague:

'How about I leave the compensation in your care? We trust the procuratorate. If the victim's family provides the documents, then they can take the compensation from you; if not, we could take it back. In this way, we will not be terrified by the risk that the other party go back on what they promise.'

I: How do you respond to his request?

BING (smile and sign): We are unable to offer help like this. I mean, if, in the end, the two parties have other disputes cannot be solved, how are we going to do with the money? Even if they only put the money here for safekeeping, it is far beyond our responsibility as prosecutors. Oh…… it would be troublesome without doubt.

I: How does the victim's family react?

Bandon: They also have their concern that the offender will refuse to pay the compensation after they provide the documents.

I: So there is no reassurance for both parties, then how did you solve it at that time?

BING: It may be…… what I called personal skill of reconciliation. We could not help by keeping the money for them, but we do help with the payment method. I came up with the idea that 100 thousand is quite a large amount. What if we divide the compensation? I mean… let me put it this way. I asked them how much the offender would lose from insurance if the victim's family fail to provide the documents and how much is the basic compensation that the victim's family should have. And they give me the answer that it is 50 thousand lost and 50 thousand basic compensations. Therefore, I suggest that the offender should pay the basic compensation to the victim's family first, since this part is the precondition of reconciliation and it is his liability to

compensate the victim's family. And regarding to the other 50 thousand, the offender could wait until to pay until the victim's family provide the documents. For criminal reconciliation process, the two parties should write down the reason why the other 50 thousand is not given to victim's family at present, although the agreement is achieved through CR (BING, 34-35).

The outcome of this case is that the two parties consider about BING's suggestion and think it could work. Both party believe this payment method is more secure and are willing to compromise a little to accomplish the reconciliation. In this case, how BING helps with the parties is also giving advice, similar to ANQI's example. While in other cases, he plays the role of facilitator by promoting the process of reconciliation, which is 1) to directly inform one party of his unreasonable requirement or 2) to push the parties to reach the agreement within the time limits.

Among the interviews, the same kind of promoting role has also been discussed by other prosecutors. DA, who tends to keep a careful attitude to my questions and answer concisely, regards himself playing the role of facilitating 'Because of the regulation, we are not supposed to excessively interfere with their reconciliation in terms of civil part in case causing stress for the two parties' (DA, 9). But once he encounters with the situation that the victim asks for outrageous compensation price, DA said 'You need to make it clear to him that his requirement will never be fulfilled no matter in CR or go to trial' (DA, 10). While in BING's case, he has also dealt with situations that the offender offers—in his opinion-- an unreasonable low amount of compensation. There is an injury case that the offender breaks three ribs of the victim and attempts to compensate with 20 thousand RMB while the victim asks for 50 thousand. No party would like to make a concession and they invite BING to judge it by reason in the reconciliation meeting. This time BING gives a clear guidance or make a judgment on the compensation amount. He reasoned the offender 'It is an absurd idea that you try to compensate with 20 thousand. That poor guy has got three broken ribs, not one or two, because of your violence. Just consider about the cost of treatment' (BING, 30). And the next day, the victim told him that the offender compromised and offered a higher compensation. The result seems to

be satisfactory. Beyond my expectation, BING then expresses his worries to me. He tells me that he felt a bit regret after saying the strict words to the offender. He even confirmed this issue with his colleague, who was also at the reconciliation meeting, whether he went too far. His colleague comforted him that as long as he did not say things like 'the offender must compensate 40 thousand', it should be fine (BING, 30). It could be seen that the prosecutor is not quite sure about how deep he could go to facilitate, especially when persuading one party to compromise.

In terms of time limits, some of the prosecutors from my interviews indicate that they would choose to promote the parties to reach the agreement if they have the intention to reconcile but the progress has been made slowly. It is assumed that it would be a pity if the case could be solved by CR in examination and prosecution stage but fails only due to lack of time. According to ANQI and BING, normally they would push the offender to hurry up in making reconciliation with the victim, because after all, a successful CR could avoid the offender from a criminal record.

3.3 Preside

According to Sawin and Zehr (2007), the facilitator is not just a stakeholder but a very important one who provides proper circumstance for the two parties to be empowered and engaged. Along with creating opportunity for the two parties to meet and offering suggestion to promote the progress of reconciliation, prosecutors as the facilitator with professional background need to preside over the process of reconciliation to some extent. The aspects they attempt to keep under control are about supervising the process of CR and filtering out the cases not suitable for reconciliation, and examining their agreement to detect and expose those not being genuinely reconciled meaning fraud or compel exists during the reconciliation process.

It is the prosecutor's responsibility to give clear guidance to the parties especially referring to the effectiveness of CR, the meaning of apology and compensation that ordinary people are not familiar with or even misunderstand. In BING's words, 'In fact, some parties' expectation on CR is merely that the procuratorate could decide not to

arrest the offender' (BING, 9). When I confirm about the expression of 'no arrest' with him, he further explains it based on his comprehension, 'What they mean is that since the offender pay the compensation, then this dispute is settled. Their understanding about law and legal system is different from us. They are not able to draw a clear distinction between criminal and civil case, especially in the minor injury cases' (BING, 23-24). ENCI has also been asked by offender or his relatives about whether he has avoided being prosecuted or sent to prison after CR (22-23). They are nervous about such questions, and yet have to explain with certainty and patience that it is not an either-or choice between imprisonment and reconciliation. Rather, CR is an alternative for the parties to solve the dispute if they consider it is better for themselves than traditional judicial procedures. The outcome of CR is individualized to different cases, no guarantee of definite result, but mitigation is the basic principle. Under this circumstance, it is when prosecutors step forward to the centre of the reconciliation stage, clarifying the position of CR in the whole criminal justice system to the participants. Those who are being empowered in this process should also know about the limitation and boundary. The reconciliation needs to be accomplished in a reasonable and lawful way and does not necessarily mean avoiding penalty punishment just as the parties wish to.

In most cases, the agreement is made out of the parties' genuine will. Among seven interviewees, only one of them claims that he has once encountered a feigned reconciliation. During interviews, I ask every interviewee to share some CR cases they believe to be impressive. Due to the experience of joining a research team on CR for several months dealing with CR cases only, ENCI tells one with twist. A husband caused minor injury to his wife because of trivial matters. When ENCI asked whether he had the intention to reconcile with the victim, the husband replied that they have already made up. Considering that it is a dispute between husband and wife and compensation is not the only solution in CR, ENCI did believe in the husband's saying. Later near the time limits, when he called the victim, she retorted upon the offender that not a bit of his words was true. ENCI and his colleague realized the severity of the problem and asked the victim to their office for a face-to-face talk. She told them that they had divorced

after the fight and she had been severely injured, so she would not reconcile with her ex-husband unless he paid the compensation. Therefore, the following work for ENCI is endeavouring to facilitate their reconciliation within a very limited period, which was quite in haste. Learning from this lesson, his procuratorate starts to build up the hearing of witness system for CR cases with the two parties involved to avoid such situations (ENCI, 16-27).

The young interviewees tend to show that because of the legislation, prosecutors at present only have limited authority in CR and have been taken away the power to preside over reconciliation meeting by introducing former practice of handling the CR process when they have much more power to dominate the meeting. While for the older prosecutors, FEI and GAO, sometimes they still prefer to perform a relatively more active role to hold the reconciliation meeting based on their working habit. When FEI talks about the cases he has handled, he shows high passion for his work as a CR facilitator. He would pop in the two parties' home, presenting facts and reasons in order to make them reach an agreement, acting as a mediator to handle disputes between the people. For similar cases which young interviewee may give up for conducting CR, FEI tends to stick around longer. As for GAO, who is more a leader in administration than a practitioner, he holds the opinion that prosecutors need to keep presiding over the reconciliation meeting since the parties usually have weak legal consciousness and may easily turn CR into a settlement in private.

3.4 Assist

Providing space, documents—concluded as material help, which could not be done by the two parties on their own. However, it should be pointed out that these helps provided by prosecutors may not affect the process or the essence of the reconciliation. In another word, these are not key infectors determining the agreement. Nevertheless, the word 'assist' has been mentioned by more than one prosecutor and the content of assist they list is basically the same (Shawn and Ryan). It shows more or less, in their understanding, providing such assistance in the process of CR is their main responsibility

or at least the uncontested role comparing to the facilitation part is not agreeable by everyone.

4. Prosecutor's views on other legal workers playing the role of facilitator

When my interviewees are explaining their roles in CR to me, they also give some comments on the performance of others while handling the reconciliation cases.

4.1 Police Officer

There are distinctive work patterns of cooperation and division with other judicial organs in different procuratorates. Four out of seven interviewees present akin interaction with the policeman in relation to facilitating CR (ANQI, ENCI, CONG, and DA). According to their practice, the pre-trail policeman will be the first judicial officer getting contact with the two parties and knowing about their disputes. In general, the police will make a primary judgment on the feasibility of CR for that case. Working pattern of these two procuratorates are similar that the focus of facilitating CR is on the police. Their idea is that if a case is able to be reconciled, then the work could be done at the beginning which is the investigation phase by the police.

Among them, ANQI and DA give a more objective assessment on the police's work, claiming the police, prosecutor and judge from their district cooperate well with each other. Therefore, they seem to accept well the decision of applying criminal reconciliation made by the police. By contrast, CONG and DA feel worried about the CR decision made by the policeman. Especially CONG, not only did he show no belief in professional capacity of the policemen to judge whether a case meets the requirement of applying CR, but also question their character.

The similar negative comments come from FEI, who considers the policeman's facilitating job is inferior to the prosecutor's. His argument is that the policeman does not have enough professional knowledge to judge whether a case is suitable to be solved by criminal reconciliation, since the policeman's job is to maintain social order and chase

for criminals which leaves him not much patience to facilitate reconciliation for the two parties.

As an exception, BING adds on some insights to the CR during the arrest-approval phase. Since the decision of arrest or non-arrest is made by the prosecutors, the facilitating work during this phase is also done by them instead of the policeman, although in the earlier time, as in pilot period of CR, policeman used to hold the reconciliation meeting. His personal perspective on policeman as the facilitator is hardly positive in that lack of supervision and the hearsay of receiving bribery. But he does attempt to pull back the negative reviews by saying that offender at this stage face less pressure of being accused leading to less motive to reconcile.

4.2 Judge

The reviews on judges as facilitator are more positive than on policemen. It could be concluded in two aspects about the advantages of the judge being facilitator. One is the judge's neutral status conductive to mediate between the victim and the offender without deviating from his own judicial function. ANQI compares her work content with the judge, 'We are not allowed to contact the parties too much and got few chance of meeting them together, while judges have enough opportunity even just from the court hearing'. The other advantage is more about the timing the judge takes over the case rather than his authority. What CONG, DA and ENCI have perceived is that by entering the stage of trial, the offender will be faced with more and more pressure on the forthcoming punishment, which turns out to be a significant motive for reconciliation with the victim. On the other hand, some of the victims may also change their minds on CR at this stage facing the final verdict which is highly possible to determine a less compensation than it from criminal reconciliation.

Again, drawbacks of the judge as facilitator have also been explored by interviewees. The focus is on the time of reconciliation facilitated by the judge. BING perceives it in his arrest-approval profession that by the time the reconciliation is made at trial stage, it would be quite unjust for the long-time deprivation of the offender's liberty. CONG puts

it in the context of the offender's integration to the society since in most cases criminal reconciliation at trial stage is still accompanied by a criminal record for the offender. Except for the time, FEI complains that sometimes judge will pass unreasonable light sentence on the offender in order to make a successful reconciliation which has already been denied by the prosecutor during the prosecution phase due to not meeting the requirements for CR.

4.3 People's mediator

Overall, evaluation on the performance of people's mediator as CR facilitator is 'not effective' by the interviewees. In their analysis, people's mediators are not professional and not concentrated enough to facilitate the reconciliation. There is one extreme example given by FEI that some people's mediators just do the job in order to get a position in the civil servant system. If this is the situation, then it is not difficult to explain why they are indifferent to the case or the two parties, not to mention how the dispute will be solved, since they take no responsibility for the case result.

In addition, as an arrest-approval prosecutor, BING has less time limit to make the decision. Therefore, he regards transferring the case to people's mediator for reconciliation a waste of time. And he disagrees with the criticism that judicial officer may act impartially, 'Transferring the case to people's mediator does not necessarily improve this situation. There remains the same problem of acting unjustly even with a neutral third party.' From this thought, maybe the focus of this issue is whether the facilitator have self-interest in the process of criminal reconciliation.

4.4 Lawyers

In terms of lawyers acting as facilitator of CR, DA and ENCI have encountered such situations and dealt with lawyers. Their feedback is fine since lawyers have professional legal background and guaranteed to work with concentrated attention because they are paid to do the facilitating job. Without doubt, one lawyer has preference to his client and the fee is not affordable to anyone. Therefore, it is purely an option for the parties whether to employ a lawyer for facilitating the reconciliation.

5. Prosecutor's ideas for CR before the Practice

5.1 Expectations and Worries

5.1.1 Beneficial to offenders?

There is a pattern that when the interviewees talk about the benefits of CR institution, it usually goes to both ways on victim and offender. Different is the situation that when the interviewees try to depict the ideal picture of CR, it seems that the part of victim slips out of their mind, only being mentioned in some general referring of both parties, in contrast with the emphasis on reforming the offenders. Typical is ANQI highly-anticipated that this institution could be especially beneficial to young people referring to juvenile and college students and the reconciliation process should make a difference in 'correcting some offender's rebelling behavious' (ANQI, 8). Both ANQI and GAO show a bit preference for CR being an offender-oriented project. ANQI claims that the offender remains to be an individual living and functioning in the society, who should not be evicted by others. As the network of social relationship is broken by the offender, there is a need for other stakeholders of the reconciliation to cooperate with the CR operation and to help the offender reintegrate into the society, except his own effort (ANQI and GAO).

5.1.2 Easily accepted by the two parties?

More than half of the interviewees hold the opinion that the application of CR should be rather acceptant to the two parties based on different considerations. BING regards CR as a complicated process in which the two parties need to negotiate with each other. With presuppositions and theories about Chinese CR appearing to be proper, he feels curious and at ease about the upcoming reconciliation work by his words 'should be not difficult to operate' (BING, 2). DA deems that two parties should be OK with criminal reconciliation since there has been the tradition of making compensation to people whose interest has been violated. In terms of reconciliation, FEI sets his work aim primitively at resolving the disputes between the two parties and believes there should scarcely be any obstacle in operating it since the process will be beneficial to both parties in his eyes. CONG also expresses his wishes of seizing the opportunity of CR to resolve

their disputes and to restore the damaged relationship. In his understanding, CR is an alternative approach within the system of traditional criminal justice and achieving reconciliation with the victim has long been a factor for judges to consider about for imposing lighter punishment on the offender before the legislation of CR. In overall consideration, CONG concludes that CR is of little possibility causing conflicts with traditional justice system, nor the parties. Even GAO whose work barely concerns with practical operation states that prosecutors should play an active role in the process of reconciliation since it is doing good on behalf of the two parties rather than the prosecutors.

5.1.3 Helps saving judicial resource?

Only BING fancies that criminal reconciliation institution will help with saving judicial resource by settling minor cases out of the court. CONG and ENCI think otherwise that individually it will take more energy and time for the prosecutor to accomplish a reconciliation case.

5.1.4 Would it be a challenge for prosecutor's work?

Perhaps gathering more information from multiple resources, ENCI is quite nervous about the notion that prosecutors are easily misunderstood by the victims during the process of CR. The high risk of being wrongly blamed makes him feel the facilitating work challenging. It should be noted that BING has also been advised by experienced prosecutors many times about keeping distance with the reconciliation process before practice, but he does not show nervous and fear about the work needs dealing with the two parties which may have relation with his earlier experience in mediation.

5.1.5 Is CR a form of trading between money and punishment?

Last but not least, there are only two interviewees BING and ENCI who have followed news and public opinion on CR from internet resource. Nonetheless, both of them consider the claim of "paying money for lighter punishment" as a speculation rather than a fact. In their expectations, CR in practice has little relation to the expression of exchanging or trading between money and punishment. They are not surprised

5.2 Where do the prosecutors draw expectations from?

At the beginning of each interviews before asking questions to the prosecutors, I give a brief introduction of my research project and also some background of myself to connect with my interviewees. It turns out that most of them graduate from reputable law schools, and three hold master degrees. With similar legal education background, my interviewees learn about the knowledge of criminal justice from tertiary education at the earliest. Some of them said they studied relative theories and definitions of restorative justice and criminal reconciliation in class from university teachers, some obtain information from journal paper, books or published debates of the scholars. Interviews who make no reference to academic resource are FEI and GAO, come from D Procuratorate. The possible reason is that they, as elder and more experienced prosecutors, attach more importance to the practice which is constantly shown during their interviews.

Likewise, the role of legal worker makes every interviewee more or less refer to relevant laws and regulations on criminal reconciliation while discussing some details in their practice. In an indirect way, these legal documents play a significant role in moulding their anticipation on criminal reconciliation. CONG and FEI clearly point out that legal provisions delineate the primary overview of criminal reconciliation to them. As for GAO, who is in the leadership, he shows preference for policy documents such as criminal policy of 'Combining Leniency with Rigidity', social development goal of 'building a harmonious society', and spirit of 'establish the "Big Mediation" work system: the trinity of people's mediation, administrative mediation and judicial mediation' summarized from speeches given by leaders of Political and Legal affair committee at the Political and Legal Work Conference (4).

Equally important, three talk about their expectation on this mechanism getting influenced from other practitioners of CR, but not in the same way. In BING's early days of being a prosecutor, he works as an apprentice of a senior prosecutor who has passed on a number of working experience and habits to him. From BING's words, although no topic such as expectation on CR has been discussed between them, the senior's

emphasis of avoiding much involvement in reconciliation process and placing self-protection in the first place has shaped BING's way of thinking about CR in some way, which can be seen from the number of his mentioning self-protection during the interview. While for CONG who works in C Procuratorate, the judicial organ pioneering in criminal justice reform including initiating criminal reconciliation in minor injury cases, there are more opportunity for him to make contact with CR practitioners from his working place, listening to mature reconciliation skills and first-hand successfully-reconciled case information. The whole impression I could get from the interviewees on C procuratorate is authoritative and precursory in CR not only from its own prosecutors, but also from interviewees of other procuratorates, since it is usually prosecutors from C procuratorate who speak at the conference reporting new development of reconciliation made at the prosecution phase. Based on this point, their prosecutors show more affirmative attitudes on their way of dealing with CR, which is to say that it feels like that they perceive themselves more professional than facilitators from other judicial organs. Regarding to ENCI, he starts to think and write articles about CR out of interest before entering the field of practice. As a result, he goes to have conversations with former university teachers and former classmates who now become prosecutors dealing with CR cases. In his summary, teachers tend to discuss about relative theories such as CR's theoretical foundation or its similarities and divergence with western VOM and family meeting. While the practitioners are more concerned with the perfection of this mechanism and regulation or guidance for them to assure proper application of facilitating reconciliation. Unlike others, except from learning skills from experienced prosecutors, he chooses to share ideas with peers, who may provide similar reflection on CR.

Notable is the fact that several of the interviewees have former experience of dealing with mediation, not necessarily applied in criminal cases, before stepping into the field of CR. For example, BING recalls that he had been an intern as legal assistant for nearly a year dealing with civil cases where much mediation has been applied to settle the disputes. As a result, he founds the mediation process troublesome as sometimes

neither of the parties is willing to make concession. Therefore, before practicing in criminal reconciliation, BING has a primary anticipation that the process of reconciliation would not be a quickly-accomplished programme. Even so, he seems to have more confidence facing cases involving criminal reconciliation, which maybe an outcome benefiting from skills he learned from mediation. While asking DA about any anticipation on CR before practicing, he barely recalls anything special. But he considers this institution as a signature and well-practiced programme in C Procuratorate. I grasp a sense that he has more background stories related to CR and ask why he got such expressions. DA then explains that he has been a member of a research group on the theme of criminal reconciliation and case division with his teachers and classmates for half a year in the same procuratorate he works in now when he was in the final year. Not surprisingly would he show not that much curiosity about CR before practicing and feel little discrepancy with his expectation after practicing. FEI had handled similar reconciliation work during the rudiment stage of CR, which has effective result. From this period of experience, FEI deduces the practice of CR should not be much different with the rudiment.

There is another influential factor which is the public opinion about criminal reconciliation on the Internet. BING and ENCI, interviewees paying attention on this resource, are young prosecutors who have passion about academic research. They regard the saying of 'exchanging money for less punishment' as rumour or misunderstanding attributive to low popularity of legal knowledge. That is why they have an alert mind towards these possible vices of CR institution, but still hold a positive attitude entering the field.

One point should not be neglected is what ANQI has concluded in our dialogue. Her word, I quote, 'Our understandings of this institution are all influenced by the big background of Chinese society of human relationship which we all live in and are accustomed to' (ANQI, 5). It could be understood that generally speaking her expectation on CR partly derives from her cognition and context about Chinese culture, society and justice, as may be the case for other interviewees.

6. Practical Feedbacks from the Prosecutors

Interviewees' expectations for CR could shape their evaluation on its practical situation in the way that each interviewee has a list of pre-set standards. While these prosecutors set foot in the world of handling reconciliation cases, expected and unexpected outcomes may be encountered. After exploring how their expectations are generated with my interviewees, it goes naturally to the question of their actual feelings about the practice of CR. What caught my attention during the interview is that they have more to say on this topic than on the expectations of CR. For me, it is a sense that they feel to be more professional and confident in the practical field. There is a pattern that different feedbacks are given accordingly on account of their anticipations for CR institution.

6.1 Positive feedbacks

As mentioned before, judgment about what victim and offender obtain or forfeit from the process of CR usually goes together. Positive comments through the lens of prosecutor facilitators on CR's advantages for the two parties are no exception.

6.1.1 Beneficial to victims

ANQI and BING express the similar opinion on victim's benefits from CR procedures on the ground of a facilitator in the reconciliation process. Known from the practice, the victim at least receives some material remedy from the application of reconciliation to ensure timely medical treatment. Overall considering, it is beneficial for the victim to participate in CR, said BING; while ANQI raises the importance of compensation together with emotional remedy, as 'compensation or apology from the offender is more or less a comfort to the victim' (7).

Some of them discover that CR institution precedes traditional trial in the way of treating victims. ENCI compares the application of CR to traditional criminal justice proceedings and comes to his conclusion that CR places more emphasis on satisfying the needs of the victim rather than punishing the offender for wrongdoing. Likewise, FEI considers the establishing of CR institution is an opportunity for the victim to choose from more alternatives other than traditional litigation methods.

From other prosecutors' updating of case progress, GAO as the leader produces a unique insight that victims through reconciliation process are given the opportunity to communicate with the offender and get to know why targeted as criminal victims. What is more, those victims partially reliable for causing the dispute may find out their own faults and learn some lessons from it in order to prevent its reoccurrence.

6.1.2 Beneficial to Offenders

Criticizing incarceration being poorly effective in educating and reforming offenders, BING is inclined to endorse the non-imprisonment methods as an outcome of the CR institution. In terms of the two aspects of educating and reforming offenders which most interviewees consider as the main functions of criminal justice system, two interviewees feel CR prevail over prosecuting the offender to the court for an imprisonment as punishment and caution. GAO keeps his insights on recognizing one's own fault, here referring to the offender listening to the victim, understanding how much damage he has caused to make it up and finding out the cause of his malfeasance from reoffending. ANQI's thought is built on the basis that forgiveness is given by the victim to the offender as one of the outcomes of reconciliation. She perceives from their grateful words that the offender feels relief after being forgiven and gains more confidence to reintegrate into the society.

6.1.3 Solve the disputes

Most interviewees show an ambitious attitude towards reconciliation's effect in solving the disputes between the two parties, partly due to the fact that this aspect is not on their aiming list for managing a CR case. Even so, there are a few positive feedbacks on this part from the practice. ANQI and BING use the expression of degree such as 'more or less' or 'to some degree' in the description of the result of conflict solution in a criminal reconciliation.

6.1.4 Save judicial resource

Most prosecutors agree that CR helps save judicial resource from the angel of the whole justice system since it brings forward the time of resolving the contradiction in the stage of investigation and prosecution from the sentencing stage, but not answer this question

based on their individual situation. Only one interviewee, Cong considers that he does not spend extra more energy and time dealing with criminal reconciliation than normal procedure in his personal sense.

6.1.5 Merge with traditional justice

For the justice system, less petition and appeal from the parties, more satisfaction from CR institution. Although several of my interviewees compare CR, this new way of dealing with offence and solving dispute, to the 'traditional criminal justice way', ANQI, BING and DA regard CR as an embranchment of the Chinese criminal justice system— 'it helps increase the victim's satisfaction to criminal justice system through making criminal reconciliation' (Da, 2). Whether the traditional application of imprisonment or the new-born institution of reconciliation substituting incarceration with repentance and compensation is one of approaches belonging to the whole criminal justice system.

Overall, more and more reconciliation has been taken into consideration to be applied in various cases, foreseeing better development of CR institution in the future. For the purpose of perfecting it, drawbacks discovered in the practice also need to be discussed.

6.2 Difficulties and concerns

Unlike the positive evaluations from my interviewees, which have the trend of corresponding to their expectations, unsatisfactory feedback appears to be caused by institutional deficiencies of CR and expectation discrepancy of these practitioners.

6.2.1 Limited application case scope

Most of the interviewees have something to say about the case types eligible to use criminal reconciliation, while the rest two mentioning nothing on this point. Among the five prosecutors expressing their opinions, four deem the case types of CR in practice too limited. CONG makes a general comment, 'the scope of case type applying CR is limited in practice, only focusing on injury and theft, while it is hard to apply CR in other types of cases' (CONG, 7). BING makes an indirect judgment on the application scope by suggesting that 'the scope of case types applying CR could be enlarged' (BING, 40). FEI concludes that the case scope of CR application currently focuses on those which could

end up with a non-prosecution result, excluding serious offence. Also, DA and FEI have similar feelings that Chinese CR in practice is basically about the case of which the offender has not been arrested.

The only prosecutor argues to the contrary is ENCI who believes that the application scope of CR should not be extended given two reasons. First, from what he has perceived, China is at its special transformation stage that people care more about meeting their material needs rather than emotional ones, not mentioning the value of justice. Therefore, if the limitation of CR application gets extended, it is possible that some will take advantage of this institution to 'get more compensation' for the victim or to 'escape from punishment' for the offender. Second, broader application scope means more authority for the facilitators from judicial organs, which is easily to breed abuse of power and corruption.

6.2.2 Limited approaches of remedy victims

It is worth mentioning that this concern is concluded from my interviewees' answering to a very open-ended question I have raised about their feedback on the practice of CR. Two interviewees complain about the only way of offender's remedy to victim in practice. 'The only offset way in CR is to compensate by money', said BING (38). Holding the same idea, ENCI (17) raises that 'reconciliation in criminal cases could learn from ways of compensation used in civil cases such as restitution and illumination of the effects'. When they talk about money as the most common form of compensation in reconciliation cases, their reflection is that it is not as satisfactory as they have pictured that criminal reconciliation should be, based on their saying of 'some victims even take chance to make a fortune out of CR' (BING, 39). A whiff of worry about money being paid in exchange of punishment could be sniffed from the gap between what they encounter in practice and what they depict in their presupposition.

Meanwhile, there are two prosecutors, ANQI and DA from A Procuratorate, not subscribing to the concern that remedy approaches in CR practice are too limited. ANQI expresses that remedy approaches in the practice of CR are not limited to monetary

compensation in her eyes. She lists several options that an offender or his/her family could help take care of the victim, cook for the victim, buy small gifts or many other ways to remedy the victim. 'Only if the offender party sets mind on it' stresses ANQI. She gives a detailed case to buttress her opinion, a very classic minor injury case caused by neighbourhood conflicts. From her practice, given that the offender had been arrested, his wife bought the senior victim a new birdcage to compensate the old one, which was broken in the victim and offender's physical conflict (ANQI, 3). Although the offender's family had already covered the victim's treatment fee, and bought nourishment for the victim additionally, the offender let his wife pass on his repentance and sincerity by buying the victim a new birdcage symbolic of restoring their relationship. In a word, the point ANQI wants to note is that in practice the offender may seek to multiple compensation approaches rather than the only way of paying money to make reconciliation with the victim. Although it cannot be judged whether money plays the indispensable role in making a successful reconciliation, in ANQI's example the offender's attitude towards reconciliation is not only to pursue the result of non-prosecution, but also to restore the relationship with the victim by trying out using multiple compensation ways.

As for DA, he does not counter the saying that money compensation dominates the practical situation of remedy approaches in Chinese CR. On the contrary, what he disagrees with is the appealing for adding more variety to CR remedy approach. He feels that since oral apology could not help meet most victims' needs for medical treatment, material compensation appears to be the most appropriate option in present state of economic development of China (DA, 8).

6.2.3 The hazard of CR turning into 'paying compensation for less punishment'

Five interviewees from A, B, D procuratorates express their thoughts or views about the possible hazard of CR being taken as a way of paying money for less punishment for the offender in the practice. Just as what has been mentioned in the previous section, BING believes that the focus of Chinese reconciliation has a trend to become paying the compensation, which causes Chinese CR institution suspicious of becoming a tool for the

purpose of paying money for less punishment, as he explores his memory and concludes 'it exists some kind of trading essence during the reconciliation process'. ENCI's opinion is not that negative comparing to BING. He agrees that it could be easy for Chinese CR to sink into the hazard of 'paying compensation for less punishment', under the condition that the supervision system, which should restrain the operation of power during the process of reconciliation, is still vacancy. Albeit the fear of this hazard, ENCI considers that the harsh criticism on this developing institution is excessive and people are jittery about CR becoming virtually a form of collegiate resolution between the two parties. He attributes it mostly to insufficient law popularization in China. More or less, it reflects that Chinese people hold a cautious attitude towards the empowerment of the two parties in the resolution of criminal cases. This is a sensible distinction with the restorative values that worth thinking. GAO also inclines to believe that Chinese CR is of possibility to face the hazard of 'paying compensation for less punishment'. But as one in the leadership level, he makes no judgment on the status quo of Chinese CR institution for causing the hazard. Instead, he ascribes the reasons to deficiency in belief and inflated egoism being prevalence in the present society of China.

ANQI further points out that in some cases the capability of offender to pay the compensation determines whether the offender will be forgiven by the victim or not to a large extent. In her interpretation, the compensation becomes the chip in the CR process. She comments that it is unfair to some poor offender who would also expect the rehabilitation from CR.

Among the five interviewees who share their thoughts about the hazard of CR being used as a way of paying money for less punishment, FEI is the only one who believes there is nothing wrong to provide an approach to the offender to get a lenient result. He first stresses that

> *…the society could not be an absolutely fair world. Once an individual chooses to violate others' right, he needs to take responsibility and remedy the damage he has caused, 'punishment is one of the consequence he should take*

into consideration when he makes the decision of transgression' (FEI, 6).

FEI articulates against the view that CR is unfair to the poor. He points out that the build of CR institution offers some eligible offenders an alternative (not a determined right) to be exonerated from punishment, partially because the damage to the victim has been compensated. Also, CR should not be blamed for not providing equal opportunities for those offenders who cannot benefit from the reconciliation since they made no compensation to help the victim timely. Viewed from another angel, it would be unfair to most victims if the offender neither pays material compensation for the damage, nor pays through serving a sentence, unless the victim is consented to exempt the offender from liability voluntarily.

Noticeably, the other two interviewees form C procuratorates, where the pioneer practitioners of CR come from, barely express any idea about the saying. It may relate to the situation that the more mature procedures and regulations on handling CR cases in C procuratorate reduce the possibility of neglecting supervision and examination of the reconciliation process.

6.2.4 Misunderstanding and self-protection

Except for GAO, other front-line facilitators regard themselves —prosecutors dealing with CR cases, in a predicament of being misunderstood by the CR participants. Amid these six interviewees, apart from CONG, the rest have literally used the phrase 'have the risk of' being misunderstood to delineate their working circumstance while facilitating, two of whom, BING and ENCI, attempt to surmise the reasons of causing this risk. BING considers the low credibility of the whole Chinese justice system is to blame for the public's mistrust and misunderstanding since such a poor impression has been produced in Chinese people's mind during the early days when the legal system was not wholesome; While ENCI also refers to this ingrained notion, he once again highlights the low popularization of law in China which should be improved to change the stereotype.

Faced with this risk, three interviews start to opine that prosecutors are pushed to place self-protection at the first place by the unsound system of criminal reconciliation without

clarified regulation on the measure of prosecutor's practice on facilitating. Their self-protection coping mode is avoiding actively facilitating in reconciliation and not a bit compelling the participants (ANQI, BING and ENCI). In addition, some of them express their frustration about encountering being misunderstood by the parties in the practice. 'It makes you feel facilitating is "a thankless job" when they censure you for unjust law enforcement, while your endeavour is nothing but to help them,' BING becomes more and more prudent about the facilitating work in the practice (BING, 3). Relatively, FEI expresses that he has not expected the distrust and reprimand coming from the two parties in the practice. According to FEI, he came across this kind of awkward situation of being misunderstood by the participants during his handling of CR cases. But clearly, he does not want to tell about the details of how and why the misunderstanding was produced. He just lets out a sign and shakes his head, saying he could do nothing about it.

7. Outlook for CR's development in China

7.1 Comparing to Western Restorative Justice

ANQI feel aggrieved for not much attention on criminal reconciliation in the practice. The imperfect practical procedure and vague guidance weaken people's enthusiasm on applying CR, though its good performance has been seen.

Two prosecutors talk about that Chinese CR has shown the value or spirit of restorative justice, which is empowering the two parties in the process of the disputes resolution. Regardless how much this empowerment is, it enables the 'participation of interested party', said BING. He compares that while western restorative justice puts restoring damaged relationship in the first place, what Chinese CR values, or to say Chinese society values, is to terminate the dispute and to bring the broken circumstance back to harmony with no more variation. It appears that Chinese CR regards the harmonious result beneficial to every party rather than the process of feeling empowered and handling the situation. Same comparison with RJ, unlike BING, ENCI considers that CR focuses more

on the victim and it tries to speed up the resolution of the dispute for fear of sharpening the contradiction between the two parties.

Again, the respond made by CONG and DA plays almost the same tune. They have not evaluated the institution in compare with western restorative justice. There are two parts of their outlook of Chinese CR. First, promising and in good development are their overall expression on CR, conveying the confidence for this criminal justice reform. Second part of the evaluation is that although the current role CR plays is not very important and its position is supplementary to traditional justice, in the wake of development and perfection it will become more and more indispensable in Chinese criminal justice. Besides, GAO express the similar feeling that CR has wide applying foreground in settling criminal cases.

As a practitioner who has gone through much cases, the reflection FEI gives is that Chinese CR is more similar to plea bargaining in western justice system. He proposes that 'we could learn from it to settle cases especially those with insufficient evidence.' (6) This feeling, which is different with other interviewees, is understandable, at least for me. In his position, an institution with simple and straightforward operability is more practical and effective for a prosecutor comparing to the abstract restorative justice spirit without generalized standard. Overall, CR is a better alternative for both parties in FEI's evaluation.

7.2 Suggestion on perfecting the institution

In general, the interviewees show optimistic attitude towards the development of CR institution in China, while point out there is much space for it to pullulate at the same time. Naturally, on account of their dissatisfaction with CR practice, the prosecutors could provide some suggestions for perfecting the institution. Similar to the unsatisfactory reflection, there are some common themes targeted to improve the defects of current CR institution in their suggestions.

One apparent proposal is to ask for explicit stipulations on prosecutors' limits of authority in the process of handling CR cases, in order to improve the situation of being

misunderstood by the two parties (BING, CONG and FEI). This point is quite imperative because it has come up again and again during the interviews, probably standing for the most irritating problem influencing the prosecutors' performance in CR. As they express the willingness to playing the role to help CR function more than rapidly solving a minor criminal case, they aspire for more clarified guidance in practicing CR cases, especially when facing the two parties.

In addition to this aspect, there are other requests for the legislation serving the same purpose with regard to prosecutor's work. BING and FEI envisage that the time limits of handling a case should be extended and the rest of caseload be reduced if the criminal reconciliation project is applied, so that the prosecutors could spare more time and energy for the CR project. Fundamentally, a large proportion of the work pressure comes from the 'Assessment on work performance system'. Therefore, BING, ENCI and GAO all express the expectation on changing or improving the assessment system. Unlike BING and ENCI making a general proposal, ENCI offers a specific suggestion that successfully facilitating a criminal reconciliation could be taken as a point-plus indicator in the assessment if this facilitation work is still part of prosecutor's responsibility.

Another set of propositions embodies prosecutors' aspiration to justify the hearsay of 'compensation for commutation'. The primary proposal is around the way of compensation that multiple approaches should be developed in the CR process (ANQI and BING). Notably, BING and FEI states particularly that albeit he expects to see the law encouraging alternatives of money as compensation, limited standards or fixed range of compensation amount for the purpose of easy application and supervision, which may be just the other way around resulting in less discretion for the prosecutors. Additionally, BING again underlines the importance of improving the system of criminal victim relief from the state, as satisfying the basic need for victim's treatment in his consideration should be the origin of solution for problems about putting too much attention on the material compensation. From the analysis of BING, ENCI and FEI on the factors for causing this hearsay, low popularity of civic education about legal knowledge and consciousness is on the list. 'It is a long way to go', said ENCI (17), 'If we hope to end this

rumour, or to say, decrease people's mistrust on our justice system, at first we need to be integrity and just during the work. Meanwhile, it is crucial to keep the people updated and clarified about our new policy and institution, so that they could understand how our judicial system functions and rebuild trust in it.'

Third, with regard to fair performance in the process of CR, several prosecutors talk about another issue in need of clarification in the institutional design. Most of them are not satisfied with the current situation of the procuratorate's division and cooperation with the police and the court in a CR case. Accordingly, these interviewees provide different suggestions they believe could help improve this situation, which could reflect traces of close relationship with working patterns in different districts. CONG and Da come from C district procuratorate, expressing the concern about the contradictions existing within the power and liability distribution within the police, the procuratorate and the court. CONG advocates that prosecutors should be paid more attention in power distribution of handling CR cases, comparing to other two judicial organs. ANQI, who comes from A Procuratorate, believes some sort of joint working methods could be strategized by the police, the procuratorate and the court, valuing cooperation with other judicial apartments from the same district, to carry through new institutional practice. Also from A procuratorate, ENCI advocates to create a dedicated branch within individual police station, procuratorate, and court to deal with CR cases. Consequently, supervision on CR work performance is easier to be supervised and reliability to be determined, while other prosecutors job duties of prosecution or arrest-application not being mixed and collided by facilitation of criminal reconciliation.

Conclusion

It could be clarified from the report of the interviews that prosecutors occupy a position in the process of criminal reconciliation. Although the propriety of prosecutor's facilitation and guidance in the process of reconciliation seems to be hard to ascertain, most interviewees choose to fulfil the task of facilitating reconciliation in the light of

voice of experience that no active role should be played in the process of reconciliation between victim and offender to avoid being misunderstood for abusing power by the parties. Various infectors, or to say stumbles raised by the interviewees, restrains prosecutors from fully playing the role of facilitator for the purpose of satisfying the two parties' needs in the process of criminal reconciliation. Comparing to other judicial officers, prosecutors believe they have pros in facilitating CR because they could solve the disputes in an earlier time comparing to making reconciliation in the courtroom; and their supervision responsibilities could guarantee the legitimacy of the CR process. However, the vagueness of to which extent they could join in the reconciliation process and facilitate the dispute-resolution between the parties, makes them appealing for more explicit stipulation on their authority in the implementation of this institution. Recalling primary presupposing for the work in criminal reconciliation, expectation and challenges has coexisted in the minds of the interviewees. While some anticipations for CR institution such as beneficial to victim, good for offender, or solve the disputes have been partly met in the practice of some interviewees, others have been broken after experiencing the practical operation especially the one that it is not of low possibility that the application of reconciliation and judicial officers who are facilitating this process would be misunderstood and blamed by the two parties. To avoid trapped into such awkward situation, on one hand interviewees express that they have put more attention on self-protection during the facilitating process, on the other hand they offer multiple proposals to perfect the institution.

From the integration and report of these reflections from the interviewees, several themes have emerged clearly on the ground of being raised repeatedly. The analysis of arguments on CR being a trading between money and punishment and prosecutors are abusing power to compel the parties in reconciliation will be the focus in next chapter with the insights provided by the interviewees. There are also new issues revealing importance for the first time will be explored, including the importance of self-protection changing prosecutor's attitude on CR institution and distinct working habit and circumstance from different procuratorates being an influential factor

Chapter 7 Criminal reconciliation: the mission of conflict resolution

Introduction

As discussed in Chapter 4, the official objective is emphasized as conflict-resolution, yet vagueness remains with regard to why and how CR is capable of achieving this aim. It is believed that with regard to minor crimes, particularly those caused by disputes among the people, an alternative of reconciliation may be more effective in resolving conflicts between two parties in comparison with traditional trial process, as the former could better fulfill the parties' needs while the latter usually ends with a verdict which may intensify their conflict. Through the analysis in Chapter 4, as a result, official statements regarding the CR institution usually highlight its important role in resolving conflict and further promoting social harmony, followed by cautions regarding distinguishing CR from the saying of 'avoiding punishment by compensating the victim' (Lang, 2012: 605-11). It could be inferred that, from the perspective of policy-makers, expectations have been placed on the implementation of the CR institution in China, so has the restriction on the practice of CR through law-making.

This chapter elaborates upon the extent to which CR has achieved the mission of resolving conflict and promoting a harmonious society, as given by the policy-makers. More importantly, the chapter attempts to raise a corner of the veil behind which CR has been practised after the legislation through the lenses of some of the prosecutors. In order to evaluate the practice of CR following the legislation, this general and abstract mission of 'conflict resolution' first needs to be made concrete and specified in this chapter. This agenda will be pursued in three parts. First, the chapter explores the superficial restrictions placed in the legislation on applying CR. The legislators consider that, with these restrictions, CR could better complete the mission of conflict resolution within the scope of certain case types and offender features (Lang Sheng: 605).

Second, the chapter digs deeper in examining what have been taken as premises by the policy-makers in their construction of the CR institution. It revisits different advocates of

RJ values, Chinese traditions or a mixture of both in the institutionalization of CR in China. This section mainly discusses the assumptions on which the goal of conflict resolution for CR to achieve are built, with insights shared by the practitioners into what they have been able to deliver in relation to the objectives of CR. By doing so, it could reach a clearer understanding of how CR is achieving the goal of conflict resolution, and how its premises have influenced the fulfilment of the mission. Through the analysis, it concludes that the premises of Chinese traditional values, such as 'aversion to litigation' and 'caring for acquaintances', are not necessarily beneficial to resolving conflicts between parties during the process of CR. Further, it helps to explain the tension between the ideal vision for the institutionalization of CR and some unsatisfactory reflections, particularly from the populace, of the practice.

Third, the chapter attempts to analyse the reasons for the functions of some conventional Chinese traditions having changed in current society to better understand their impacts on the participants during reconciliation.

1. Restrictions on the application of CR in the institutionalization

Among the criminal justice reforms in China over the past twenty years, the establishment of the CR institution has been given great attention, as it involves the participation of both parties, particularly the victims, in criminal proceedings. The CR institution is regarded as the main implementation of the criminal policy of the 'Complementariness of Leniency with Strictness' (Gao Mingxuan, 2007), which provided guidance for practising CR before the legislation (Zhang J.S., 2007). In terms of legislative arrangement, the CR institution has been set as Chapter 2 under Part 5 of 'Special procedures'. The whole Part 5 is new, and includes chapters on 'Juvenile criminal proceedings', 'Reconciliation in public prosecution cases' (the CR institution discussed in this thesis), and the 'Executive programme'. These new chapters have been positioned following the original stipulations regarding traditional criminal proceedings, instead of an alternative procedure added to the original 'non-prosecution' institution.

In combination with the general restrictions, cases to which CR procedures apply should be those stipulated in Chapters Four and Five of China's specific provisions of the 1997 Criminal Law. These two chapters contain two main categories of crimes: Chapter Four of Infringing upon Personal and Domestic Rights of Citizens and Chapter Five of Encroaching on Property[16]. Together, these could be regarded as offences that violate the rights of citizens, distinguishing them from those harming the interests of the state or the public. Within this large scope, situations in need of a preliminary judgment on sentencing for applying CR also exist for a few other types of crime. Theoretically, part of the legislators' expectation of CR is that this special procedure could provide an opportunity to solve a case with the collaboration of the private powers of the parties, instead of public power (Chen R.H., 2006). In conclusion, offenders who are given the opportunity to exercise private power should have a relatively minor criminal liability, which, in a more intuitive way of judging, means that they receive imprisonment of under three years, and should only have violated the rights of citizens.

At the press conference for the new Amendments to the CPL, spokesperson Lang Sheng answered a question about the reasons for establishing the CR institution while restricting the application scope in the meantime (NPC, 2012). He explained that 'with the development of economic society, sometimes if we choose a more mitigating approach to settle an offence caused by civil dispute, it may achieve better social effects than passing a sentence on the offender'. He then pointed out that, based on this consideration, the CR institution had been extended from the field of private prosecution cases into that of cases involving public prosecutions. In establishing 'this new institution', Lang admitted that China had little experience of CR in the public prosecution field and that this would require further study both in theory and practice. Therefore, at the initial stage of institutionalizing, CR having been added to the amendment to CPL could be considered as a kind of preliminary attempt at legislation. On the one hand, uniform legislation provides the main pillars for establishing the rudiments of reconciliation in the public prosecution field; on the other, the prudent attitude of the policy-makers reflected in the legislation placed restrictions on the practising of CR (Lang, 2012).

It is likely that the restrictions are in place to ensure, in the views of the policy-makers, that the new institution can function in a relatively more assured and controllable scope. To make the goal of resolving conflict more achievable and acceptable to the public, the conflicts eligible for CR to resolve have been specified via a series of stipulations in the application conditions of CR. However, the anticipation that CR is appropriate for resolving civil conflicts more effectively than other interventions is probably based on certain preconditions.

1.1 Relatively low culpability

Criminal reconciliation in China started with a pilot application in "minor injury cases" (*Qing Shang Hai An* Jian), as the name suggests, causing relatively light personal injury to the victim. According to the practical experience of Chaoyang District Procuratorate, the pioneer of conducting CR pilot projects, the judgement standards for minor injury cases to be reconciled include that the victim's injury degree is identified as minor in a forensic test and the offender could be passed a sentence lighter than three-year imprisonment (Feng L.Q. & Cui Y., 2008: 109).[17] For example, two strangers in a bar had altercations on some issues which turned out to be a brawl, and one of them trampled down the other who thus suffered from two rib fractures. In the early stage, most of the rules made by local procuratorates on the pilot practice of CR between the two parties focused on its application in minor injury cases. Although there have been appeals to expand the scope of applying CR to some categories of more serious cases, the legislators chose to adopt a scope for the application of CR in the uniform legislation that was consistent with the previous local practice. It could probably be reckoned that the statutory sentence of minor injury crimes has been taken as the standard for other minor crimes entering the applicative scope of CR. Article 277 of the 2013 CPL stipulates that CR could be applied in cases in which, 'for intentional crimes, the offender may be passed a sentence under three-year fixed imprisonment'. Recalling the legislative process of CPL, during the first deliberation of the draft, a delegate named Shen Chunyao (2011) proposed expanding the application scope from those crimes for which the offender may receive 'under three-year imprisonment' to 'under five-year imprisonment', yet this was not adopted

(NPC, 2011). The stipulation on the "potential sentence" here mostly sets the standard that offenders receiving sentences under three-year imprisonment could be given the opportunity to reconcile with his/her victim. In accordance with the principle of suiting responsibility and punishment to the crime (Article 5 of Criminal Law), while criminal liability is intangible and unquantifiable, the restriction on the possible sentence for an offence plays the role of threshold, allowing offenders with relatively low liability to enter into CR.

For ease of understanding, I here exemplify the applicative scope with a comparatively complex stipulated crime - that of domestic abuse. Unlike starkly different opinions in whether RJ is appropriate to domestic abuses in UK (BBC Wales, 2016), Chinese criminal justice holds a more lenient attitude towards handling conflicts between family members at the beginning. It shows the importance placed on family and kin relationship in China's society, which has been added into institutionalization of CR with no exception, although this leniency on domestic abuse has received more critiques in recent years (QQ News., 2015). Although the Law of Anti-Domestic Violence was enacted in 2015, claiming to better protect victims from domestic violence, the crime of domestic violence remains to be private prosecution cases and has a relatively lighter statutory sentence.

According to Article 260 of 1997 Criminal Law, abusive behaviour towards family members with serious circumstances of crime constitutes the crime of abuse, and the maximum sentence for the offender is a two-year fixed term of imprisonment (Paragraph 1). This is the basic stipulation for abusive crime and comes under private prosecution cases and could be settled by reconciliation or mediation, while prosecution in the court is simply one of the solutions available but only if the victim decides to indict (Paragraph 3).

Meanwhile, this crime has an aggravated level along with a harsher sentencing scope of from two years to seven years fixed imprisonment, if the abusive behaviour leads to serious injury or a lethal result for the victim (Paragraph 2). This level is where the changes brought about by the new CR legislation could be embodied. Having the option of reconciliation in such kinds of cases was not legitimated before CR in public

prosecution cases was written into the 2012 CPL.

Although the maximum sentence for aggravated abuse is seven years' imprisonment, if the offender can be 'passed with a sentence under three years of imprisonment', such as the situation in which the extent of the victim's injury just meets the requirement of 'heavy injury', the offender is capable of initiating the CR procedure in accordance with Article 277 of 2012 CPL. Here, it actually implies a precondition that the judgment on whether an offender may be 'passed with imprisonment of under than three years' needs to be made before the case enters the court. In accordance with the CR legislation that CR procedures could be initiated at the different judicial stages, not confined to abusive crime, any crimes specified in chapter 4 and 5 of Criminal law with a larger sentencing range may require a preliminary trial and sentencing task accomplished by judicial officers, including police officers, prosecutors and judges, before the formal trial. Nevertheless, sentencing decision is also the embodiment of the judge's discretion. Taking the sentencing 'should be passed on the offender' as one of the standards to decide whether a case is qualified for CR procedures may be experiential choice for weighing the culpability of offender in the practice. However, for police officers and prosecutors, this seems to represent extra work and is beyond the scope of their duty and expertise.

2. Resolving conflicts: the premise and practice of CR

In the previous chapters reporting data from empirical research, we could already see some clues that the same picture may not be seen when the expectations of CR are put into practice. Although there are no official accounts of the foundations of CR, it takes some of the 'traditional customs' of China as premises for establishing CR in legislation. These preconditions are essential for further discussion of whether CR could achieve its goal in practice, particularly when involving the traditional cognition of Chinese people and Chinese society, which may have been altered in the economic development of present-day China. This goes back to the popular debate on CR being a revival of a Chinese tradition or an importation of Western RJ discussed in Chapter 2. An analysis of

this question could better define the direction of the development of CR in China, given that it is still in the early stage of institutionalization with a long way to go.

2.1 What is behind the goal of conflict resolution: RJ values and Chinese traditions?

Throughout the literature review relating to the development of CR in China, one of the focuses is on its origins and features. The debates on CR being a revival of a Chinese tradition or inspired by the RJ movement worldwide has been taking place in Chinese academic circles. The reason this continues to be a popular area of discussion is probably because people need certain standards or benchmarking to explain, justify and evaluate the new institution of CR, which might be achieved if CR falls into categories of new restorative movements or revival of traditional reconciliation methods. However, there is a need to point out that restorative justice and traditional way of dealing with wrongdoings are not necessarily two mutually exclusive concepts, but have overlaps reflected in the debates on the feasibility of reviving restorative traditions in modern society (Johnstone, 2011:35-39). In consideration of the time of the rise of CR projects and its form of reconciliation between the two parties, it would be quite plausible to believe that it was inspired by the worldwide growth of restorative justice. Moreover, being enlightened by the ideas of resolving disputes behind RJ, policy-makers look to Chinese traditions of conflict resolution and try to create a new intervention based upon restorative elements in those traditions, which seems to fit perfectly into China's political goal of establishing a harmonious society.

Llewellyn and Philpott (2014:16) has argued that there exist relations between the conceptions of restorative justice and reconciliation, not simply about how to respond to offences but rather the harm and effects in the aftermath of offences on relationship at all levels. Therefore, instead of comparing the two categories of restorative justice and Chinese traditional reconciliation methods in conceptual level (Mok and Wong, 2013), which draws a negative conclusion that Chinese indigenous justice could be regarded as restorative, I will compare CR institution by virtue of insights added by my interviewees of the practice following legislation with RJ and traditional reconciliation methods separately. The purpose of comparison is not to form an either-or answer, but to see

what key elements have been injected into the institutionalization of CR.

2.1.1 Exploring the extent of restorativeness in CR

The practice of CR in the pilot stage shows similarities to victim-offender mediation, including communication between the two parties and a satisfactory result agreed by the participants. The advantages of applying CR have been highlighted by practitioners as resolving disputes more directly and effectively and saving judicial resources for more serious cases (Ge, 2006; Ma 2008). However, when it comes to the analysis of the application of CR, the key values of RJ proposed by the advocators do not seem to be consistently embodied in the CR process (Chen X.L., 2006).

When enlightened by the three main groups of RJ concepts, it can be seen that the values of RJ include 1) offering an opportunity for the two parties to encounter, discuss matters and understand each other; 2) repairing the harm to people and relationships caused by the offence and 3) perhaps even transforming the way people view themselves, understand their relationship to others around them, and relate to the social structure in which they live (Johnstone & Van Ness, 2012, 3-22). They point out that the values of encounter, repair and transformation are included in all three conceptions, but with different level of emphasis which cause the tensions among three groups of concepts (15). A vivid metaphor is used to help explain the dynamic and evolving restorative justice movement that advocates holding different concepts of restorative justice are like living in different storeys of RJ house, but this does not prevent them walking to other storeys for the consideration of other values by internal stairs (16).

After visiting this house of RJ movement, I found that one of the distinctive and attractive features of restorative justice is that it tries to break the stereotype for offence and for how to deal with offence. It aims to provide an appropriate avenue for the two parties and/or other related parties to talk through issues they believe are important to the resolution of conflicts caused by the offence. Just like other advocates, I appreciate all three values of RJ, yet I place more emphasis on restoring and repairing as the goal of restorative justice. Next, I will try to evaluate CR from different aspects of RJ's features.

Chinese CR is likely to fall short of being evaluated as pure RJ, just as many of the practices around the world that are conventionally called 'restorative justice' yet hardly achieve the degree of fully restorative. One of the assumptions or suspicisions rasied by Christie (2003) when he tries to expound the functions of conflicts is that the birth of criminology may hinder the most original or natural way of sovling conflicts by taking away conflicts from the parties. Based on the experience of my interviewees, given that the majorities of offenders have been kept in detenion house when entering criminal proceedings, lawyers may represent their clients to communicate and negociate with victims. Lawyers, in Chirsitine's evluation 'trained to prevent and solve conflicts', carry reconciliation forward with the goal of obtaining a beneficial result for their clients. On the other hand, this takes away the offenders' opportunities to solve the conflicts by themselves and to be empowered, which could only be gained through actully participating the reconciliation process. In this sense, CR could not be evaluated as restorative justice because decision-making is not fully empowered to victims and offenders when there exist great difficulties for their encounter in the practice. Nevertheless, CR could be regarded as an approach emodying certain restorative values in the light of reparative concepts of RJ that both the process of reparing and satisfying the two paries and the justice structure is actually restorative. In quite a few examples given by my interviewees, emphasis have been placed on the needs of the two parties with the view to solving their disputes. To some extent, the differences in evaluative results are caused by the contested nature of RJ concepts (Johnstone & Van Ness, 2012).

Instead of taking sides on different RJ values, in Van ness's judgement on the restorativeness of a system, both perspectives of process and outcome are important to consider about (2003: 271). According to Van ness's two sets of attributes of restorative process and outcome, the existing studies on China's CR focus on the evaluation from the perspective of outcome, including the attributes of 'Amends' and 'Reintegration'. Song's (2010) two-year fieldwork on CR presents a relatively large amount of quantitative data relating to feedback from CR participants. Two advantages of CR presented by Song's report, stressed in Chapter 2 of this thesis, are that the participants found the CR

process highly satisfactory and that the situation of offenders' reintegration after CR is particularly gratifying. These two advantages put CR institution in the position near the end of fully restorative. CR fits the description of the attribute of 'Amends' nicely that the offender made restitution, offering an apology, undertaken specific behaviours to change the situation in the aftermath of wrongdoings (Van Ness, 2003: 272). In terms of reintegration, it is one of the items measured in Song's survey, obtaining a good result. To calibrate where CR lies in the continuum of 'Reintegration', the standard of the opposite end 'of Ostracism' could also help, which includes enforced separation of the offender and continuing stigmatization of the roles of the two parties (273). The findings from my fieldwork in chapter 5 and 6 have shown that one of the benefits for offenders through CR is to obtain a non-arrest decision or a non-prosecution decision, in avoidance of bad influence from inmates and criminal record. Based on my interviewees' insights, CR could also gain a high mark in the attribute of 'Reintegration'.

The other two attributes of judging to what extent a system has restorative outcomes are 'Whole truth' and 'Encounter', which receive less attention in existing literature of evaluating CR. Regarding 'the nature and extent of the truth discovered' in the process of an intervention (ibid), CR is very clearly focusing on more than finding legal truth, given its primary aim to resolve conflicts, mostly civil disputes, through reconciliation. My interviewees have discussed various CR cases in which the two parties share perspectives on how to settle the dispute, while the prosecutors suspend considering about conviction and sentencing while initiating CR procedures. Notably, some victims and offenders in the practice of CR are not always willing to explore the 'wider truth', although it is expected to help resolve conflicts. Neither is the idea of seeking whole truth over legal truth of a criminal case very welcomed among the public. It presents Chinese people's current legal ideas with respect to dispensing justice and dependence on authorities and professionals to certain extent after substantial importation of western legal system especially criminal justice system since 1970s (He, 2002: 5).

So far, CR seems to perform well relative to the three attributes of restorative outcomes. The weakness of CR seems to be in relation to the 'Encounter' value of restorative

approach. There are two points to be stressed when discussing the practical situation of encounter in CR process. First, CR institution, compares to conventional criminal proceedings, is trying to provide the two parties an opportunity to encounter and work together to solve the disputes. Some of the prosecutors facilitate a meeting inviting the two parties and other interested party together, especially those more experienced prosecutors in pilot period as my interviewees introduced. But this encounter outcome is not commonly achieved in the practice and in need of much effort and time of the prosecutor, regarded as a huge task and an ideal model by the interviewees. Second, restrained by criminal justice process in China, certain proportion of offenders are kept in custody before trial. Although in rare cases, procuratorates managed to bring the victim into the detention centre to meet and talk things through with the offender, the atmosphere of conducting reconciliation in detention centre is not ideal as in a more relaxed circumstance. Under such circumstances, it depends largely on the prosecutors' endeavor to prompt the encounter of the two parties. However, as the legislation of CR expects prosecutors to be involved less in the reconciliation process, the experienced interviewees compare that encounter outcome is less of focus following legislation of CR. In Van Ness's system of judging the extent of restorative outcome of a system, encounter value seems to be the most important benchmarking, through comparing his different examples of fully, moderately and minimally restorative outcomes (2003: 274). Although largely meeting expectations with regard to the other three attributes, CR is hindered by its weakest link of Encounter value, the seemingly underlying attribute. Based on this analysis, it is probably reasonable to classify CR as a system with minimally restorative outcome.

In another dimension on the values of restorativeness relating to process, CR seems to have no obvious weakness as relating to outcome. One of the important outcomes from interviews with prosecutors is that they provide lenses to observe the actual process of CR. The opposite ends of Van Ness's four attributes of restorative processes are basically formed by the goals of conventional process of determining guilt and imposing punishment (Van Ness, 2003: 271 - 272). Accordingly, prosecutors' judgement on how CR

process contains restorative values may be more comprehensive, because they are able to make comparison of CR with conventional criminal justice as insiders.

First, there is no doubt that victims have been included in the process of CR, and even been given an elevated position in the institutionalization, which has been discussed in the legislative goals in chapter 4 and examined in the findings in chapter 5. Second, naturally the interests of victims and offenders have been considered and attempted to be achieved in the process of CR, as a consequence of inclusion value. The balance of public interest in solving criminal cases and the new-added interest of the stakeholders of CR is controlled by prosecutors playing both conventional roles and new facilitator role. Third, the focus of Van Ness' understanding of voluntary is that the parties are offered with alternatives of restorative approach to choose from that the choice is theirs rather than being a requirement imposed on them. In addition, it does not confine the parties' motive of making the choice of participating restorative approach. From practical feedback, the two parties are voluntary in choosing to employ CR procedures according to the interviewees, as none of my interviewees will take the risk of requiring the two parties to make certain decision. For them, it is not worthy of being misunderstood and complained by the two parties comparing prosecutors' interest in facilitating CR, which could be equally achieved in conventional process. However, the omitting of offender's voluntariness in participating CR process in legislation does leave hidden dangers, as Jiang (2016) has pointed out that offenders could be coerced to enter into CR procedures, albeit in the cases I have learned from interviewees there is no situation that the offender was required to make reconciliation against his/her will. Fourth, as analysed in chapter 4, one of the goals for CR to achieve behind the legislation is to resolve the conflicts between the parties and makes the society more harmonious. It shows a typical problem-solving orientation in the legislator's design. Although my interviewees express that the conflicts may not be easily resolved though CR, depending on different factors of the case, they did put focus on it in the practice.

Based on the evidence from my research and the other perspectives considered here, the extent to which CR reflects restorative values relating to process is higher than

relating to outcomes. CR could at least meet the standard of a moderately restorative process that the two parties provide their perspectives to work toward a resolution (Van Ness, 2003: 274). Even though encounter may not be achieved, the perspective comes from the victim himself/herself instead of a facilitator (if in a minimally restorative process), the latter only help delivering information if needed. Where there is a good opportunity for the two parties to fully communicate and probe underlying issues, it is not impossible that CR process could achieve being fully restorative in the practice. Notably, Van Ness's examples of different degrees of restorative process seem to show more focus on the different way of treating offender's party in a restorative approach.

In conclusion, both in the dimension of restorative outcomes and processes, the practice of CR fits the attributes of restorative justice. The degree of CR's restorativeness in processes is probably higher than in outcomes, due to the less importance attached to encounter between the two parties in the institutionalization.

Based on my analysis, CR could be seen as a form of restorative justice, although not a fully restorative system. The policy-makers, holding no intention to replace the current criminal justice with restorative justice, have chosen to implement CR into China's criminal justice system as alternative procedures for certain minor crimes, with the purpose of not hindering the primary ruling principle of China's Communist Party – 'rule of law'. It is expected that the feasibility of CR will be increased if the public consider the development of restorative justice is not going to break the current order of dispensing criminal justice in China. Policy-makers try to balance this situation by combining the revival of traditions into the institutionalization of CR, in order to offset the impulse brought about by restorative justice on current criminal justice system. I regard this as a kind of indigenization of restorativeness, because the notion of reviving traditional methods of conflict resolution is not contradictory to restorative justice, but inclusive, or even being the core idea in some scholars' study of restorative justice such as Braithwaite (2000) and Daly (2002).

2.1.2 Public acceptance and reviving traditions

As mentioned, discordant voices more commonly come from the public in relation to the

new gate CR has opened onto the world of criminal justice, once strictly controlled by the authorities and professionals. In 2007, Sina Website, one of the major news patrols of China, had conducted a survey of internet users, asking whether people could accept the judicial trial of 'getting lenient punishment based on paying compensation'. There is a need to point out that although a survey such as this can serve as a useful 'snapshot' or indicator, it is not a reliable source on which great weight can be placed. There is only one question in the survey – 'Can you accept the judicial attempt of passing a lighter punishment after the victim's receiving compensation?'. The survey provides the respondents with three options to choose from: yes, no and depending on the circumstances. Among the 4452 respondents, 77.4 percent chose the option of 'no, this attempt could be taken advantage, resulting injustice'. What commonly emerged was that people were more cautious about CR being used by offenders to avoid punishment by paying compensation. This is not equivalent of saying that Chinese people hold more punitive thoughts against criminals, but to some extent, it implies that it is not easy for all of them to accept the idea of RJ in a short space of time, particularly the idea of showing sympathy to offenders.

Therefore, some advocates opt to focus on developing CR in the way of reviving Chinese traditions of conflict resolution, which is expected to resonate with the public with regard to the inheritance of Chinese culture and their cognition of their identities (Wang Chang, 2006). In the existing literature, many attempts have been found to compare CR with traditional reconciliation (Chen G.Z., 2006; Wang, 2006; Wong, 2010). One characteristic in their comparisons is that the image of CR is depicted in accordance with aspirations, including some major Chinese traditional ideas such as non-litigation and harmoniousness. It is necessary to stress that the depiction of CR is on the assumption that the functions of these traditional ideas have not been altered in current Chinese society. In the expounding of the goals behind the legislation of CR in chapter 4, it appears that dispute resolution and a harmonious society stand for the official attitude. More deeply, reaching the conclusion that CR could achieve such goals is actually driven by a series of assumptions involving Chinese traditions based on the way these goals

have been raised, which I will explore in the following section.

Therefore, to answer the question of how the practice of CR is achieving the goals set by the legislation, I will first present the possibly hidden condition behind the goals that some Chinese traditions are expected to play dominant roles in the social behaviours of present-day China. In this way, examining the ability of CR to accomplish the goal of dispute resolution in practice also includes the verification of those assumptions on which the goal was set. From insights shared by the prosecutors interviewed for this study, the goals behind the legislation of CR have not been accomplished as smoothly as expected. When revisiting the goals set for CR and the assumptions on which they are based, it could be found that some obstacles to fulfilling the goals are caused by unclear institution-setting or improper practical application, while some disparities between aspiration and actual practice are due to the assumptions buttressing the goals having been mistaken from the beginning.

2.2 Inspirations drawn from traditional reparative intervention

To achieve the goal of resolving conflicts between parties and meeting the people's expectations of realizing justice in the meantime, in the establishment of the CR institution, the legislators took some inspiration from Chinese traditions which are assumed to play a similar role in current Chinese society. In the depiction of historical background of CR development, Chapter one has introduced a reparative intervention known as 'Bao Gu', generally used for resolving injury cases in Ancient China for thousands of years. To summarize the characteristics of 'Bao Gu', unlike other alternatives for solving criminal cases, it lays particular emphasis on remedying the victim in the aftermath of a crime. It requires and compels the offender to take liability for his/her wrongdoings in the form of treating and remedying the victim before the adjudication. A better reparative result for the victim through the offender's efforts will earn the offender a lighter punishment. With these advantages in dealing with injury crimes, 'Bao Gu' was applied in almost all injury cases in Ancient China (Wang, 2010). Based on these traits, this section attempts to identify what has been learnt from the traditional reparative approach during the institutionalization of CR in achieving the goal

of dispute resolution.

As a special approach for solving injury cases, unsurprisingly, ‘Bao Gu’ drew attention from scholars when they were seeking to explore the indigenous orientation for CR in China. Some advocates of CR try to provide an analogical account that the application of CR could achieve the goal of resolving disputes and maintaining social stability, as was the case with ‘Bao Gu’ (Wang, 2010; Xue, 2015). First, the effectiveness of ‘Bao Gu’ is acclaimed in treating the victim promptly, making the offender atone for his/her fault at an early point, and easing the antipathy between the two parties (Wang, 2009; Wang, 2010; Xue, 2015). It seems that the success of ‘Bao Gu’ in achieving positive effects is attributed to its focus on meeting the victim’s needs and, by doing so, the victim’s interests are protected and the offender could also receive a beneficial result after correcting wrongdoing. Although the ultimate goal for the offender may be to gain a beneficial result through remedying the victim, the institution of ‘Bao Gu’ also accomplished a timely remedy for the victim, alleviating the offender’s guilt, and repairing the damaged relationship. In addition, the expectation of a beneficial result held by the offenders should not eliminate the effects produced by their actions taken to compensate their victims and settle problems. Inspired by this ‘win-win’ model, the legislators conceived of the institutionalization of CR on the assumption that remedying victims would be taken as the priority, so that CR could achieve the goal of dispute resolution just as the advocators had projected. Different from ‘Bao Gu’ being applied in injury cases only, with a broader scope of application to cases, the approaches to remedying victims in CR also have been increased to ‘compensation, apology, or others’ that the victim will accept in legislation (Article 373 of 2012 CPL), reflecting a trend of focus from financial restitution to symbolic reparation in reconciliation process.

Second, ‘Bao Gu’ is praised for making a great contribution to preserving the stability of Ancient Chinese society and considers it a significant reference for CR in modern society (Xue, 2015). Indeed, the legislative goals for CR to achieve claimed by the Legal Affairs Committee show similarities with the positive effects obtained by applying ‘Bao Gu’ (Lang, 2012). A core notion for maintaining both social and regime stability, shared by

the governors in both Ancient and contemporary China, is the application of more peace-making and reparative interventions for resolving disputes caused by minor crimes. 'Bao Gu' as an innovation for making offenders undertake responsibilities and remedying the victim in the meantime seems to have been the optimum solution in the eyes of feudal officials. Therefore, injury cases in Ancient China were allowed to be settled by reconciliation through the process of 'Bao Gu', and the magistrate might even sometimes have dismissed actions to compel the application of reconciliation (Wang, 2010: 58). Whereas the modern approach of CR is claimed to take the voluntary participation of the two parties as a prior and indispensable condition for initiating CR, in comparison with the magistrate's order to start the period of 'Bao Gu' in Ancient China.

Third, Wang (2009: 41) appraises that with the focus of civil liability on remedy and of criminal liability on punishment, 'Bao Gu' integrated the two forms of liability together. The impression emerges in many people's mind when talking about Ancient China Laws is the notion of '*Min Xing Bu Fen*' (民刑不分) that there was no precise boundary between civil and criminal laws (Tong Weihua, 2006: 176). The most representative viewpoint in understanding this notion is that in form, the ancient legislators chose not to distinguish criminal and civil laws in codification; in substance, Huai Xiaofeng (1998) concludes that the major measure to adjust criminal and civil legal relationships is through criminal sanction (Tong, 2006: 177).

It was until late Qing Dynasty when 'the modern transition of Chinese law' took place that Chinese traditional legal system was dismantled and a new continental legal system was established (Zhang J.F., 2014: 699). In the movement of 'learning western laws', Shen Jiaben, one of the famous legislators in late Qing Dynasty proposed for the first time in 1904 that it is very necessary to distinguish civil laws from criminal laws and make independent civil codes (Li, 2005). Led by Shen, a series of new laws including specialized criminal procedural law draft and civil procedural law draft had been enacted in a few years, which, in Li's (2005: 78) evaluation, opened a new era of legal system and legal culture for China in modern times when the distinction of criminal law and civil law starts to emerge in China. However, Li also points out that the practice of litigation and trial

had not been improved fundamentally late Qing Dynasty that the bygone trial mechanism was still running whereas the implementation of advanced legal ideas and institutions was not ideal as supposed (ibid). After the federal society was overthrown, litigation system in China had experienced precautious periods along with the changes of regimes. It entered into a relatively stable stage during 1970s when PRC decided to transplant western legal system and principles (He, 2002). Under the influence of the tradition of 'attaching more importance to criminal law than civil law', the first trial civil procedural law of PRC only got enacted in 1982 and the formal one in 1991. It was when the distinction between criminal law and civil law has become more completed in China. One of the issues with CR is that it again blurs that distinction between civil and criminal fields. It takes place within a criminal justice context, but otherwise has many features of a civil process leading to civil remedies.

Moreover, Wang (2009: 41-42) explains that civil liability is realized before criminal liability in 'Bao Gu' mechanism as the state power would start to make the judgement on punishment after the offender making remedy to the victim. To an extent, it reflects that the mission of remedying the victim is probably prior to punishing the offender in 'Bao Gu' system. Some scholars thus consider that in criminal justice of Ancient China, 'Bao Gu' embodied humanism, the dominant norm and ethics of Confucianism (Wang, 2009; Wang, 2010; Xue, 2015).

As already stated, there has been strict barrier between inside and outside the scale of crime in China, which has a relatively high threshold for crime compared to Western countries' criminal justice systems (Xu, 2003: 135). While there have been a number of proposals and actions for enlarging the scale of crime in China, the legislation of CR could be regarded as a kind of innovation and reform in the resolution of criminal cases. As the dominant implementation of a lenient criminal policy, CR aspires to embody humanism, in that the help and support given to meet the victim's needs should take priority in the process of reconciliation. 'Humanism' is the foremost principle in 'Perspective of Scientific Development' of Hu Jintao, which serves as the theoretical guideline for China's goal of building a harmonious society. Reflected in judicial activities, it requires 'the

needs of people to be the main body in the construction of Chinese nomocracy'. It is not, then, difficult to understand that legislators have confidence in CR achieving the goal of resolving disputes. The goal is set on the assumption that both parties will benefit from the reconciliation process because, whatever remedy has been made by the offender, whether it be material or spiritual, it should do no harm but good to the victim; after accomplishing the remedy mission, the criminal liability for offenders to take will be alleviated in most cases. With the long history and custom of applying reconciliation to solve injury crimes, the legislators target the parties of minor injury cases and others sharing a similar light criminal liability as the audience most likely to need and accept the new alternative of CR. This could explain how, even with the negative reflection and apprehension regarding CR being used as a way of avoiding punishment, the legislators place confidence in the function of CR in remedying the victims of crime and further solving disputes.

2.3 CR: satisfying the victim's needs in the aftermath of a crime

Taking the related legal provisions and policies of CR into consideration, in the views of policy-makers, a more victim-centred solution is expected to be provided by the CR institution than with traditional criminal justice. This could be reflected in the legislative process of CR. In the final stage of reviewing the draft legislation, as introduced in Chapter on the legislative process of CR, a revision was made by replacing the expression that 'the two parties volunteer to reconcile' with 'the victim volunteers to reconcile', as the primary requirement for applying criminal reconciliation. This could be seen as an implication of the legislators putting a certain and particular emphasis on the victim's side in the application of CR. The revision of the legislation in the final draft broke the balance in the positions of the victim and offender in the original construction of the CR institution. The orientation of protecting the victim in the policy-making of CR could have a subtle relation with people 'taking sides' when facing a criminal case. What, then, is the situation with regard to remedying the harm to the victim caused by an offence in the practice of CR following the uniform legislation?

In accordance with empirical data from fieldwork report, there have been quite a few

positive reflections from victims and offenders on their experience of participating in the CR process. Noticeably, dissatisfied voices have been heard mostly from the victims, while rarely from the offenders. In some victims' complaints, they are sometimes required to, or it is implied that they should, take agreement even if they are reluctant to do so in the reconciliation process (Rosenzweig et al., 2012; Mok and Wong, 2013). Some scholars attribute it to a Chinese traditional value or ideology preference that individual interests would be sacrificed to protect the collective interest, and to build a stable and harmonious society in current China (Rosenzweig & et al., 2012). The interests of victims appear to be neglected rather than protected in the practice of CR in some cases, although certain compensation have been provided to victims. The outcomes of practicing CR have already shown discrepancy with the aspirations of better protecting victims. Due to this precaution, policy-makers pay special attention to avoid such situations in the new CR legislation and guarantee to put the victim's needs in the first place including their voluntary in the CR process.

2.3.1 The focus on satisfying the victims in the practice of CR

The most observable outcome of CR is probable that victims could receive more and timely compensation. The one hundred per cent satisfaction from victims shown in follow-up surveys could be regarded as evidence supporting the ability of CR to satisfy the victim's needs in different aspects more effectively than material compensation (Song, 2010). A first impression or the most intuitive feeling about the remedy victims acquire from CR is the material compensation, according to prosecutors who have helped the parties to reach agreement in the process of reconciliation. Four of my interviewees gave approbatory accounts of the effect of CR on guaranteeing a victim's treatment after being injured, due to timely compensation from the offender. These prosecutors maintained that material compensation would be helpful to some victims in injury cases. Through the exemplary cases shared to explain this perspective, it could be inferred that the practitioners gave their evaluative account based on two objective conditions: one is that some victims are really in need of compensation for treatment after an offence; and the other is that victims could not receive an expected remedy from the National Victim

Relief System at the current stage, as introduced by my interviewees in chapter 5.

It is not difficult for the prosecutors in charge of a case to make a general judgment regarding the financial conditions of the victim, or, to be more specific, the capability to afford an unexpected amount of expense due to another's wrongdoing. In such a situation, the victim and his/her family would show more interest in the application of CR or even offer the offender an opportunity to reconcile and the process of reconciliation would go more smoothly, according to two of the interviewees. They also expressed a similar opinion that the participants of CR would usually try to reach an agreement fulfilling the needs of both parties, while the goal of satisfying the victim takes more attention. This is clearly evidenced in the hearing session of a non-prosecution decision made based on successful CR conducted by A Procuratorate. According to the interviewee's introduction, this 'non-prosecution decision hearing' (*Bu Qi Su Ting Zheng*) session is not a dispensable proceeding for making a non-prosecution decision in the aftermath of CR, only primarily used in the Beijing area by A Procuratorate in 2013. For the hearing session my interviewee ENCI had handled, the victim was invited to attend, was asked about his/her recognition of the reconciliation result and to consent to a non-prosecution decision regarding the offender. According to the official report, this session aims to increase the openness and transparency of the prosecution's work. It provides an opportunity for the two parties to express opinions and to cross-examine, particularly regarding a potential non-prosecution decision before the trial stage, since, if the decision is finalized, there will be no chance for the parties to be heard unless they file an appeal. It could be regarded as a form of supervision on procuratorates' work, including their handling of the criminal reconciliation applied in minor cases. Nevertheless, when it comes to the hearing process involving CR, my interviewee ENCI expressed that although the non-prosecution decision has a direct effect on the offender, the hearing seems to focus on guaranteeing that the victim feels satisfied and has consented to the CR result, including any leniency shown to the offender.

Although in most cases the requirement raised by victims is about material compensation and the parts in need of negotiation are also about this, it does not stand

for the whole picture of what the victim expects to acquire from CR, which influences the course of dispute resolution differently. We could recall the case introduced by ANQI in chapter 6, in which the offender's family bought a new birdcage to the injured victim, went to the hospital to visit him and even helped care for him. These actions along with a sincere apology from the offender brought out the compassion of the victim, who forgave the offender and reach an reconciliation agreement with him later. It could reflect why fufilling the needs of victims in the reonciilation process is of importance. In the legislation, it clearly stipulates that a successful reconciliaiton process requires the forgiveness from the victim through various remedy measures taken by the offender (Article 277 of 2012 CPL). As the victim's forgiveness plays an indispensable role in the achievement of reconcilaition, it is not the material compensation that decides the progress of CR, rather the symbolic meaning behind it with a view to making the victim experiencing forgiveness. Therefore, once the victim feels that his/her needs - spirtual or material - are not addressed with respect and carefulness, leading to a failure of forgiveness, they may put this experience of resolving conflicts under the microscope with connection to general public discourses on crime (Chapman & Chapman, 2016: 141).

Based on the interviewees' general experience, there is a pattern that victims of injury cases in need of timely compensation for treatment would more easily feel satisfied by participating in CR, in comparison with victims of other offences. In the interviewees' eyes, these victims may be representative of the picture depicted by Song's survey in which the participants show high satisfaction towards their CR experience. The interviewees also made their judgment based on the victims' active attitude towards reconciliation with the offender, consent to a lenient result the offender may receive, and no appeal or petition after the decision has been made.

As already noted, most of the cases discussed here concern the offence of minor injury. A minor injury crime could be regarded as the most common case type for applying CR; for example, around one quarter of minor injury cases were solved by reconciliation according to the data of one district from 2001 to 2005 (Huang, 2013). In injury cases, CR could deliver its advantage of satisfying the victim's needs directly that the design of CR

process gives priority to remedy the victim's injury by providing timely compensation, just as with the traditional reparative intervention of 'Bao Gu' discussed above. However, in ancient times, in which medical treatment was poorly developed, timely treatment was more important to the victim than sending the offender to be punished. Moreover, proceeding with a remedy for the victim before the trial in the 'Bao Gu' system could be regarded as a form of subtracting from the offender's actual liability, which has a relatively unified and measurable standard. For example, if a victim is fully recovered after the offender's 'Bao Gu', the offender may be exempted from criminal punishment based on a reconciliation; if the victim only half recovers after 'Bao Gu', the offender may have to be accountable for a certain amount of liability. It is in contrast with some of the prevailing rules in current criminal justice in the way 'Bau Gu' makes a presumption of the injury result and lets the offender take responsibility before a formal trial takes place, which means that liability is affected by what the offender does after the offence. Whereas in modern criminal law liability depends only on what the offender did and their state of mind at the time they did it.

2.3.2 An over-elevated position for the victim?

In the previous discussion of the goals set for the legislation of CR, they seem to strengthen the attention on keeping the participants, particularly the victim, satisfied. Some details of the practice of CR as shared by the interviewees help shed light on whether the increased 'focuses' on remedy for the victim could promote the achievement of dispute resolution. The original design of favouring victims in the legislation is to protect the victims' rights to the greatest extent, in order to avoid the stuation that offenders take advantage of this new process. But, at least from my interviewees' own experience, there is not a case in which the offender could offer some kind of deal and push the victim to accept it, even if the victim does not feel he/she has been remedied and does not consent, with the exemption of the offender after participating in CR. On the contrary, the failure to resolve conflicts even in a reconciliation intervention has much to do with the high level of the compensation requirement made by the victim. Among the seven prosecutors I interviewed, with the exception of GAO,

who is currently in the leadership of D Procuratorate and has less practical experience of CR following the legislation, five of the remaining six interviewees talked about victims' high demands for compensation during the negotiation process in some cases. Afterwards, in a comparatively active attitude, they shared their own explanations and opinions regarding this phenomenon without further questioning from me. It seemed as if they were eager to present a more complete picture of the practice of CR to people outside the criminal justice system.

This was not, however, the first time that this issue has been discussed. Early in the process, before the unified legislation, Yu (2009) had raised concerns about the potential situation in CR that victims may be over-empowered, leading to unreasonable demands for compensation. However, although the potential had been substantiated as a real issue and complained about by practitioners, it has attracted little academic attention to the underlying reasons for this or to taking further measurements regarding this. Nor has it been given particular consideration in the CR legislation that the expression descriBING this phenomenon, referred to as 'the victim's demand for an exorbitant price', could be seen in procuratorates' reports on the practice of CR in accordance with the new legislation (Li, 2012: 72). In the evaluative accounts of CR, a victim's exorbitant requirement is considered to provoke the dissatisfaction of the offender, resulting in a failure to resolve the conflict. To an extent, this rather makes the offender feel he/she could actually be exempted from punishment if the compensation is enough, as it is what the victim has required for only. The consequence is a possible trend of appeals from practitioners for uniform regulations on the compensation amount in CR to correct the situation, in which the position of victims has been over-elevated. However, apart from the proposal for specific rules, there has been little study of what causes the situation of exorbitant requirement from victims, how this affects the expected goal of CR in resolving conflict and future development of the institution, and what could help in avoiding such situations. Accordingly, I will try to unfold the picture of how the victim raised demands and how the offender reacted through the lenses of my interviewees when they facilitating the reconciliation process.

One of the prosecutors interviewed, BING, explained the issue regarding a concrete amount of compensation compared to the average annual salary of an ordinary person for me to better understand the situation. According to his practical experience of compensation in CR, the amount required by the victim will usually be higher than the amount calculated based on the compensation standard for bodily injuries. He expressed the notion that a higher demand for compensation within a reasonable range is understandable:

> *It is not hard to imagine…the victim should have the right to file civil litigation for compensation according to CPL, which is to say it is the offender's liability to remedy the harm he has caused to the victim from the beginning. Since CR is said to provide the victims with better remedy, you can imagine that they expect more from the reconciliation process. It is as if there would be no loss to the victim if the reconciliation is not achieved in the end (BING, 17).*

In a sense, CR becomes more like an opportunity for the victims to take advantage, rather than for the offenders to run away from punishment as in the critics. For offenders, however, this may become a very difficult decision to make. Even if the compensation amount is within a reasonable range, if the offender is not in a strong financial condition, the attempt at reconciliation is very likely to end in failure. The prosecutors mentioned that they would help the parties negotiate and reach an agreement when the compensation requirement was not beyond acceptance. In general, the facilitation techniques they use include explaining the offender's financial competence to the victim for a compromise in compensation amount or for the compensation to be made in instalments. Two prosecutors observed that most victims would consider the prosecutor's suggestion and show some sympathy to an offender who was really in difficulty. They attributed the success of facilitation work to prosecutors' authoritative and experienced image in the victims' eyes. Nevertheless, another situation the interviewees had encountered in practice was that the victim starts with an unreasonably high demand for compensation. Expressions such as '*impossible*', '*as much as possible', 'exaggerate', 'become rich'* and '*threaten to'* were used by the interviewees

when they recounted cases in which the victim had asked for overly high compensation in the reconciliation process. I could feel there was a sense of discontent and blame in their words and tones when they told me about victims' inappropriate requirements. If faced with this kind of situation, all the prosecutors I interviewed stated they would choose to point out the victim's irrationality instead of following the guidance of 'satisfying the victim's needs'. Although it is the victim who is more prone to showing misunderstanding of the prosecutors during the process of CR, according to some of the interviewees, when it comes to the extent of putting a price on a non-prosecution result, it is time for the prosecutors to make the decision even if the victim might not be satisfied.

However, when asked about how to avoid such situations, most of the prosecutors I have interviewed showed a cautious attitude towards the proposal of setting uniform standards on a compensation amount corresponding to injury degree. Nevertheless, BING voiced disagreement with setting uniform compensation standards. He maintained that uniform standards would not necessarily generate just results, 'there are different factors influencing the reconciliation process in different cases. And different financial conditions of the parties, let alone different economic levels in different districts' (BING, 38). I asked him about imitating the sentencing standards for larceny, in that the amount differs in different districts according to the local economic level. I remember he thought for a minute and, instead of answering me, he asked 'don't you think that it is very likely to turn CR into a real process of exchanging money for less punishment? All about compensation? What about the part of self-determination in CR?' (ibid.) I was incapable of answering these questions. However, I could conclude that some points were shared by the prosecutors about the efforts of the new legislation in helping to satisfy victims' needs in the process of CR.

It is not certain from the practice my interviewees shared whether the legislation had made a contribution to avoiding the situation that the offender takes CR as an opportunity to avoid punishment by paying compensation to the victim. Actually, it becomes less of a focus when questioning the leniency shown to the offender resulting from CR, unless the victim makes the reconciliation involuntarily, which could be implied

from the legislation and reflected from the prosecutors' attitudes in practice. It is expected that putting more focus on meeting the victim's needs in the process of CR could help to resolve disputes between parties. In some cases, such as victims being in need of remedy from the offenders for the treatment of injuries, CR performs as an effective intervention for satisfying both parties, according to most of my interviewees. However, it is a double-edged sword, intensifying the protection of the victim in CR, without any other restrictions or regulations, as this causes an imbalance in the position between the two parties in some situations. This seems to be a difficult issue in the practice of CR expressed by every interviewee who had encountered such a situation, since the prosecutor may need to make a judgment and reject the victim's proposal. It is further discussed in a later chapter, together with the ambiguous role of prosecutors in CR, that the supervision power added to prosecutors in the institutionalization of CR is sometimes contradicted by their traditional responsibilities.

The above discussion seems to focus heavily in financial compensation, because the obstacle of victims' high demands for compensation in some cases has drawn attention from practitioners and scholars. It has been noticed in academia after legislation that the situation of victim's high demands in CR is equally problematic with the situation that offenders paying compensation to exchange for a lighter punishment (Tian, 2014). Some scholars appeal that the element of financial compensation should be weakened and the communication and understanding should be intensified in CR (ibid). However, when scholars and practitioners study CR, the victim's other needs have not received similar attention as the need of financial compensation, such as the need of obtaining more information and making a statement being a stakeholder through the conflict resolution process according to Strang (2002: 9-14).

Actually, reflected from my interviews, there are other elements affecting the reconciliation progress in individual cases and the parties' attitudes towards resolving the conflict are not simply controlled by compensation. To resolve a conflict, compensation can only satisfy partial needs of some victims. It is not surprising that the situation becomes more complicated than expected for the victim to 'forgive and forget'

with regard to a criminal offence in current Chinese society. Zehr (1990:28) has told us that an experience of justice is probably the fundamental demand of the victim, without which the healing could not be achieved. This idea is embodied in my interviewees' discussion on the practical situation of CR that the requirement for a just and fair result is no less important in conflict resolution than financial compensation, as outlined above in chapter 5. Sometimes, financial restitution could be one of the dimensions of realizing justice if the two parties agree so; in other cases, other elements are believed to be more important in achieving CR such as the two parties' understanding and cognition of the conflict, the result of the offence, the resolution and the justice sought. It is noteworthy that the need of realizing justice is not only from the victim, but also the offender in the process of CR. It may have relation with the fact that there is no absolutely right and wrong if looking at the whole truth of these CR case, especially considering the causes of conflicts between the two parties. Next, I will dig deeper in the factors influencing the realizing of justice in CR and try to find out why the goal of conflict resolution is not always achieved as in the expectation.

2.4 CR: realizing justice in the aftermath of a crime

Apart from failure to reach agreement on the level of compensation, the other main reason leading to the failure of dispute resolution between the two parties belongs to the divergent understanding of realizing justice. Since I did not have the chance to have a direct conversation with two parties involved in the process, the intention here is not to come to any certain conclusions about what kind of reconciliation process the parties would recognize as just; the discussion here is to examine the Chinese traditions implied in the goals behind the legislation of CR. These traditions have been taken for granted as the preconditions for CR to achieve its goals. Whether in the eyes of scholars advocating the RJ model or those supporting the revival of a traditional Chinese mediation approach, there is little doubt about some traditional views that Chinese people hold negative attitude towards litigation and attach great importance to close relationship. This is not to deny the influence of traditional culture and value on Chinese people's minds and behaviour; it is simply a presentation that some traditions taken as a premise on which

to build the anticipation of dispute resolution by CR may no longer have the same impact as expected in the establishment of CR.

2.4.1 Chinese people's 'aversion to litigation'

Revisiting the advocacy of the possibility of CR being highly feasible in China, one of the principal justifications is the Chinese traditional value of 'aversion to litigation' (Cheng G.z. & Ge, 2006; Wang, 2010). This assumes that this traditional value has not been impacted upon by the economic development of China and the global legal culture and continues to dominate people's behaviours in current Chinese society. The passion for promoting CR makes the advocators' description slightly radical that 'the aversion to litigation has become an inherent characteristic of Chinese people' (Zhang, 2007; 10). Based on evidence from empirical research conducted in 2003 that 'eighty percent of people living in the rural areas prefer to choose reconciliation for dispute resolution', the conclusion is arrived at that 'it is not hard to understand why CR would receive a high acceptability among Chinese people' (Zhang, 2007: 11). Such speculation is probably made by virtue of Confucius's usual deep influence on Chinese people's behaviours in the stereotypical image. As long as a tradition fits the current political and economic environment, it will be interpreted as a beneficial factor and not be challenged. Therefore, the narration of traditional values from the perspective of CR advocators is always favourable.

In the aspirations of the policy-makers, reconciliation and mediation intervention has become their favourite 'tool' in achieving the goal of a harmonious society. Compared with litigation, mediation/reconciliation method is expected to resolve disputes more efficiently and also prevent further dispute, since confrontation in a court could hurt the feelings of both parties (Zhang W.S., 2011). This is another implication of the Chinese tradition of 'aversion to litigation', particularly when the two parties are part of a close relationship. It surprised the public when this implication was raised by an official on advocacy to the Chinese people. In an online communication activity organized by Chinese Radio Network in 2010, Zhang Jun, the vice-president of the Supreme People's Court (SPC), proposed to the Chinese internet users that they should 'please try not to

bring the dispute to court if you can' (Henan Business Daily, 2010). He reckoned that litigation not only wasted money and energy, but also destroyed harmony (which is a paraphrase for hurt feelings). A verdict could not guarantee that the parties were persuaded and their relationship may continue to be awkward and their conflict intensify in the future after the litigation.

Two of my interviewees (ANQI and Fei) reflected almost the same situation from her practice in terms of what the vice-president had advocated, in that some parties preferred to settle a dispute through reconciliation. As I have introduced in chapter 5, some parties, according to ANQI would express that they would feel feel embarrassed and awkward thinking about confronting other people in court and that the conflict between the two parties would be publicized to more people through the process of litigation. However, in the meantime, she pointed out that this reflection comes from a few parties, and did not even reach the majority of the participants of CR holding such emotions.

In contrast, although using the same expression of 'loss of face', some offenders in FEI's account considered the action of 'apologizing to the enemy' as a 'loss of face'. To keep their self-esteem, some offenders would choose to give up applying CR to solve a dispute because they were not willing to meet the requirements of apology and forgiveness. Such situations reflect another traditional custom among Chinese people that we are reluctant to share sentiment with others, particularly an opponent. Some of my interviewees told me that the participants of CR in practice do not always present the same picture as depicted in the news of the two parties holding hands and the offender shedding tears of shame while the sympathetic victim comforts him/her. BING explained that,

> *apart from the exemplary cases, we have experienced more attitudes of reluctance to apologize or realize fault from the offenders. Not a few cases are caused by mutual affray that both parties may have been at fault and been injured. You cannot expect them to sit down and share feelings so that they could understand each other's*

situations, as described in the book of restorative justice I have read. We do not have such customs (BING, 29).

Other prosecutors also referred to the similar point that, in the case of the victim also being at fault or even causing injury to the offender, this may show an image that is the opposite of the traditional stereotype of Chinese people's 'aversion to litigation'. Although material compensation plays a key role in determining the result of CR, as agreed by most of the interviewees, some participants attach more importance to the pursuit of justice according to the participants' own understanding of the function of criminal justice system and how the offence should be solved in this system. For example, some offenders feel aggrieved about being identified as the wrongdoer in the first place because, from their perspective, the dispute was caused by both parties and the consequences should be taken by both. If CR focuses on satisfying the victim's needs in reaching agreement, the offender will sometimes prefer a trial in order to 'bring out the facts and reasons'. It may be questioned that since these offenders do not agree to remedy the victim or resolve disputes through CR, it is pointless to discuss their attitude in the context of researching CR. However, the rejection of CR sometimes emerges as being temporary during the prosecution stages; what is worth pondering is the offender's change of attitude in the proceedings of a criminal trial.

Although offered several opportunities to reconcile, some parties choose to 'fight for justice' and consider themselves as standing on the side of righteousness, until the sentencing phase. Some prosecutors, BING and FEI, shared such stories with some frustration and pity. Based on FEI's experience, the victims are usually determined if they entertain ideas of revenge; while some offenders will yield to the upcoming punishment and return to the procedure of CR for leniency in the trial phase (7). What the prosecutors felt sad about was that they believed the two parties should have settled the dispute at an earlier stage, such as before the prosecution had been made, as the prosecutors had witnessed the whole litigation proceedings. Instead, some offenders chose to give priority to realizing justice over the quelling of litigation and the resolution of disputes, even if it took much of their energy and money. It seems that the legal consciousness of

'aversion to litigation' become less dominant among Chinese people facing criminal cases, as expected in the official goals. The anticipation is not always the same when put into practice that alternatives, such as CR, would be regarded as more welcome and effective than traditional criminal trials among Chinese people.

2.4.2 'He He' (和合) and the ultimate goal of a harmonious society

Another label attached to Chinese traditional values that should be mentioned is the culture of 'He He', the first 'He' standing for the ideal status of concord and peace and the second for collaboration and integration (Zhang L.W., 2011). It is often discussed, together with the idea of 'no litigation', as the delineation of a Utopia in which people live harmoniously and solve disputes using ethics and the views of ideologists in Ancient China (Wang, 2010: 61-6). In previous introduction in Chapter four of the legislative process of CR, it is known that a harmonious society was again proposed as the goal of PRC by Hu Jintao, the core of the fourth generation of state leaders, and persistently pursued by the present generation. A series of discourses has been delivered by the leadership upon the goal of a "harmonious society" (Xinhua News, 2005). Among these official discourses, Wen Jiabao, the previous Prime Minister, gave a relatively detailed interpretation of the implication of a 'harmonious society' in present-day China (Xinhua News, 2006). He pointed out that the concept of harmony could refer to Guan Zhong's classical argument about 'He He', in which concord and collaboration between the people could achieve the status of harmony eventually (*ibid*). Guan Zhong was another significant philosopher and politician in Ancient China around 2,700 years ago, which puts his thoughts earlier than those of Confucius and the Legalists. Although Confucianism is the most prestigious and influential ideology of Chinese traditional culture known to the world, there have been periods in which other schools of ideology were favoured more by the ruling class. One prominent opponent school to Confucianism is Legalism[18], which advocates the application of draconian law and harsh punishment to govern the country, a striking contrast to the guidance of 'convincing people by virtues' contained in Confucianism (Xia, 2010). Although Guan Zhong is classified as the pioneer of Legalism because he initiated placing importance on the

governing ideology of ‘rule by law’ (Chen Y., 2015), some scholars have pointed out that the ideology of Guanzi is the integration of Legalism, Confucianism and others that are more or less enlightened by Guan Zhong (Xia, 2010; Cui, 2014). However, what makes Guan Zhong’s ideas profound is that they emphasize deterring people with penalties, while also taking account of the function of moral disciplines (Xia, 2010).

In comparison with Confucians’ idealized world, in which the maintaining of social order relies on conservative moral principles and repels democracy and legal systems, Guan Zhong stresses that adherence to the rule of law is the foundation of administrating a country. Unlike the core idea of the ‘emperor having superior authority over everything’ in Legalism, Guan Zhong’s ‘rule by law’ requires the emperor’s adherence to laws and regulations and does not neglect the important effects of moral principles (Hu Jiacong, 1995). Based on the above, he raises the concept of ‘He He’ and the goal of harmony. As a pioneer in Chinese philosophy, Guan Zhong’s ideas have been carried forward by later schools of thought with different focuses, as in Confucius’s comment that ‘if there is no Guan Zhong who helped the emperor to unify all lands with the power of virtue, then we are still barbarians’ (Wang K.B., 2010).

The official voice that the harmonious goal for current Chinese society derives from Guan Zong’s ideas implies the emphasis of the current leadership. There seems to be a perfect match for the aspirations of current Chinese leaders who seek to strengthen the power of virtue in maintaining social order without jeopardizing the construction of a legal system. There is little possibility of seeing the expression of the revival of Confucius in official discourse due to the repellence of litigation in Confucianism, while the two principal aspirations for China to establish a harmonious society are ‘democracy and rule by law’ and ‘fairness and justice’. Therefore, this implies that a harmonious state, which Chinese leaders are chasing in the current stage, is expected to be strongly compatible with dealing with various conflicts under the framework of the legal system, instead of quelling appeals and petition without actually resolving conflicts.

CR is appraised by some scholars as being a radical mechanism which provides parties an opportunity to reconcile fully with each other and solve disputes (Chen G.Z. et al.,

2009; Song, 2010). Some evaluative accounts are based on empirical reflection of the participants of CR, such as reports showing 'zero per cent rate of appealing and petitioning from a victim and offender after settling the cases by reconciliation'[19], or presening how a dispute between neighbours was finally solved by reconciliation, which was unachievable by general criminal proceedings (Shandng Daily, 2014). Through my communication with the prosecutors, some of them reflected that a zero petition or appeal rate does not necessarily mean the resolution of disputes. They would still encounter the situation that the victim was reckoned to receive a more unfair compensation than required and show discontent with the procuratorate after the CR procedure. What they enlightened me upon is that not all participants with a close relationship, compared to those with a more distant relationship, would accept and need a reconciliation intervention to resolve a conflict, as explained in the news and reports.

2.4.3 Acquaintance society, stranger society

Although there is no explicit statement in the legislation or related explanation that CR is expected to achieve the goal of conflict resolution by virtue of traditional Chinese values, the policy documents have shown a uniform appraisal attitude towards the development of reconciliation in Chinese criminal justice. In reports advocating or guiding the application of CR, it is stated that the type of disputes targeted for settlement by CR should be those involving two parties with a close relationship, such as family members or neighbours (Lang, 2012). For example, according to the SPC's opinion on implementing a lenient criminal policy among civil conflicts, those caused by disputes generated from dating, marriage, family and neighbours should have greater efforts put into conflict resolution (Article 22). This approach involves two implications with regard to 'solving the conflict in a close relationship'. Under the precondition that people in a close relationship will continue to live near to each other in the aftermath of an offence, it is first of importance to solve the conflict thoroughly and restore the damaged relationship; otherwise, the conflict may re-emerge and cause instability; second, it assumes that reconciliation would be more welcomed and effective between two parties with a close relationship, since they may have scruples about the awkwardness and

difficulties caused by a unrestored relationship.

From the policy-makers' perspectives, Chinese traditions again play an important role in helping to enhance the credibility of CR's ability to solve disputes in close relationships. One of the characteristics of Chinese social culture is a rural society, in which people are acquainted with each other and live in a relatively stable social order (Fei X.T., 1947: 13-15). According to some practitioners, disputes between acquaintances are regarded as having a narrow understanding, but are the focus of the folk disputes in the legislation of CR (Wang, 2013). The aspiration that disputes between acquaintances are easier to resolve by reconciliation is usually proposed alongside the assumption of an 'aversion to litigation' by the Chinese people. As a successful reconciliation helps acquaintances away from a confrontation in court, the conflict between them will not be intensified, so that the original order between them can be restored.

There were intensive reflections from the prosecutors I interviewed regarding the relationship between the two parties and the result of dispute resolution. At first, in a discussion of the relationship between the two parties, this was classified as acquaintances and strangers, and I asked if the advocacy of solving disputes between acquaintances involved more reconciliation. Two prosecutors presented the conformity of putting advocacy into practice (ANQI and CONG). ANQI gave specific successful examples of CR cases in which parties had the relationship of neighbours or mother and daughter in-law, which have been discussed in chapter 5 on the influential factors to the achievement of reconciliaiton. Both of them attributed the fact that acquaintances are easier to reconcile in accordance with their experience and judgement of the practical conditions that the two parties need to live in the same relationship after the offence. Cong gave his comparison that parties with a closer relationship will try harder to solve disputes, since they are believed to benefit more from the reconciliation approach. Such an opinion was expressed more than once during my interviews by different practitioners regarding different topics. This could be related to the prosecutor's traditional role of making a decision to prosecute an offender or not. Most of them regarded a non-prosecution decision as a beneficial result for the offenders, and then a favourable factor

in mitigating the relationship between the two parties. As Cong observed, strangers care less about conflict resolution since they barely have any connection after the offence. He maintained that CR, which was capable of providing a better chance of restoring relationships, would be needed and favoured more by acquaintances.

Conversely, some interviewees were unequivocal in their opposition to this 'acquaintance' opinion. They indicated that disputes between strangers were easier to solve based on the same reason given above: that they would have little connection after the CR. However, in their explanation, it was the more distant relationship that made reconciliation easier. The harm to victims is more of a bodily injury, leading to the simplification and clarification of the remedy, which is mainly about material compensation. The opposing prosecutors, while commenting on 'acquaintances being easier to reconcile', tried to let me take their positions while making the points that

> *Think about the disputes between neighbours. Normally it would be just quarrels if they take the close relationship seriously. But when it upgrades to a bodily injury, it is no longer an easy task to reconcile, compared to an affray between strangers. You only need to remedy the one-time damage… (FEI, 6)*

Moreover, the majority of the interviewees showed no particular feeling that people in a close relationship would show more sympathy to each other. As FEI shared with me, he has tried to facilitate reconciliation between brothers or neighbours but ultimately failed since no party was willing to comprise with the other. He commented that relationships are no more of importance than benefits in China now.

Certainly, not all disputes between acquaintances are easy to reconcile or more difficult, since the arguments of the prosecutors also involved another influential factor to reconciliation, which is the extent of the conflict. Somehow, however, based on the practical reflections of my interviewees, placing the focus on solving disputes between acquaintances will not always receive the expected result.

From my interviews, the only unified reflection about the factors influencing conflict

resolution is that if there exist accumulated conflicts between the two parties, it was not a matter for optimism that they would be solved in the criminal reconciliation process. However, some of the interviewees added explanations after this reflection that at least CR was capable of dealing with the direct consequences in the aftermath of the offence. In other words, they believed CR was more effective in solving part of a dispute or mitigating the conflict to a certain degree more effectively than traditional criminal justice.

As for disputes caused by accidental conflicts, some prosecutors maintained these were easier to solve because the result of the offence did not usually go deep enough to influence the everyday life of the parties; while others believed it was more difficult to be reconciled in this situation since it was hard to arouse sympathy between the parties rather than revenge. In addition, one interviewee expressed the opinion that situations need to be analysed individually, since there was no unified judgment on the conflict of interests of the parties, which he believed was the reason for whether the parties would like to make a settlement or not.

3. Under political context: the changes to conventional Chinese values

Analysis on the practice of CR above indicates that some traditional values of Chinese culture have not functioned as expected and then hindered CR from accomplishing the goal of conflict resolution. This provides a new angle to explore why the goals set for CR could not be achieved as expected that some premises behind the goals about conventional Chinese values have already been altered. Attitude of the ruling party of PRC towards conventional Chinese values play an indispensable role in the form of Chinese ideology. This section tries to sketch the influences on conventional Chinese values brought about by the ruling ideas of PRC.

The core of the second generation of leaders of the PRC, Deng Xiaoping, proposed at the 12th Congress of the CPC in 1982 that development and construction in China should conform to the ‘Chinese characteristic of socialism’, which has become the fundamental

guideline and principle for China ever since. Deng pointed out that China had been in the primary stage of socialism for such a long time that this characteristic needed to be taken into consideration in every aspect of development: 'The conflict existing in China has transformed from the one within different classes to the one between people's increasing material and culture need and backward social productivity'; this discourse proclaims the reality of China and its demand for economic development to meet people's needs. On the basis of adhering to socialism, Deng brought forth the idea that in order to gear China to dealing with the reality of economic backwardness, whatever approach beneficial to developing productivity could be used by China. The most outstanding element of Deng's new theories of 'Chinese characteristics' is that it breaks the restriction of the typical configuration of socialism, advocating a developmental approach for China that should proceed from its actual situation, which includes the policy of reform and opening up.

The qualifier of 'Chinese characteristics' has been applied in discussions on various aspects of constructing the new China. As Professor of the Science of Culture Tao Dongfeng pointed out, it is generally considered that 'Chinese characteristics' are the opposite to Western discourse (2014). He also criticizes art and social science research in modern China as lacking these characteristics, on the grounds that 'we are following behind the Western world blindly without our own concepts, categories and philosophical thinking, and cannot even raise our own problem'. Apart from importation from the Western world, the interpretation of Chinese traditional ideology is sometimes farfetched in order to achieve a certain purpose, such as standing on nationalistic ground (*ibid*). Tao proposed that scholars have an inclusive and open mind to indigenous and foreign cultures. The result of blending different cultures could be reflected in various fields, and the discussion of CR and restorative justice is one of them.

As legal practitioners who have received professional education and training, my interviewees knew about the main discussions on CR to a large extent, particularly the debates on whether CR is a revival of Chinese tradition or imported from Western RJ practices. Although they gave somewhat blurred answers regarding their standpoints in

this debate, the prosecutors showed an inclusive attitude towards values from both sides. To be specfic, through my observation and analysis of their reflections on some cases, I concluded that these interviewees held a higher expectation of Chinese traditional values playing an efficient role in CR than their expectation of the values of restorative justice. However, from critical comments given by some of the prosecutors, for exmaple ANQI, ENCI and FEI, they considered it inappropriate or inadvisable that some victims or offenders attached no importance to the restoration of a close relationship or cared about material compensation too much. There was a little anger and disappointment in their attitude for a brief moment towards some actions of the parties in such cases, which were considered as against conventional moral principles. Whereas, after practising more, the interviewees were in the process of gradually accepting the fact that some victims and offenders in criminal cases are some distance from the stereotype of Chinese people who are reluctant to confront others in court and care a great deal about maintaining close relationships. This change in expectations of the two parties' performance during reconciliation in turn affects the interviewees' work in handling CR, which is the focus of the discussion in the next chapter.

Conclusion

Chapter 7 tries to explain that some well-known Chinese traditional ideas which attract the interest of international scholars, and are taken for granted as the foundation for setting the goals of CR, have been altered by the great political and economic transformations since the found of the PRC. Therefore, this could explain why the anticipation that CR would be more welcomed and needed by Chinese people by means of traditional ways of resolving criminal cases in Chinese history were not always achievable in practice. To conclude, the tradition of mediation has different positions in China's criminal justice and serves different purposes in accordance with the changes in the ruling ideas. In this way, it would help in better understanding the CR institution if it were considered as the reform or improvement of the traditional mediation approach,

rather than a revival.

Given that reviving traditional way of solving dispute is part of the ideas of restorative justice, it is not a question of simply taking sides with regard to the CR institution between the domestic and foreign advocates. CR, which is still in a dynamic process of development, is a product shaped by the restorative justice movement and our own advantages of reconciliation within a complicated cultural, historical and political context in China. The establishment of the CR institution in the Chinese criminal justice system has similarities with other restorative approaches, but the nature of its restorativeness is not that strong. Under the ultimate mission of building a harmonious society, the policy-makers also need to guarantee public acceptance of a new institution, which may sacrifice some of the values of restorative justice. As Chinese people have formed their ideas of separating the criminal case field from that of civil cases during the past decades, it may take longer for them to accept another big transformation of idea in the solving of criminal cases through alternative forms of resolution. The importance of advancing this debate lies in clarifying the interacting elements injected into the CR institution and to making them function together towards more achievable goals.

Chapter 8 The ambiguous roles of prosecutors in the CR institution

Introduction

After clarifying some vague understandings of criminal reconciliation in previous chapters, chapter 8 is designed to present and discuss some new issues reflected from my empirical research, which has received little attention in current research on criminal reconciliation. It will introduce the important role that prosecutors play in criminal reconciliation given that prosecutor is more than a neutral third party who facilitates the two parties during the process of reconciliation. Rather, prosecutors' main work duties and power to make some crucial decisions in judicial proceeding might generate some form of conflict of interest for prosecutors in the process of criminal reconciliation. Therefore, prosecutors' attitudes towards criminal reconciliation have been influenced by the practice, which could in return affect their performance in the implementation of criminal reconciliation.

First, this chapter introduces the influence on prosecutors' roles from the development of CR. It presents the conventional roles of prosecutors before CR, revisits the debates on the role-setting of prosecutors before legislation, and, based on these, depict the new image of prosecutors' work duty in the legislation of CR.

Second, it focuses on discussing prosecutors' handling of CR cases after legislation through my interviewees' lenses. It tries to present how prosecutors define their roles in the new institution of CR, how their feelings have been affected and changed by the practice of facilitation, and what positive and negative influences have been reflected during the process of putting the ideals into reality. In this part, I will make my point that it has shown a sign of tension in the current practice model of CR, in which the prosecutor plays both the roles of prosecution and facilitation. To support my argument, I will further present what the tensions might be and how they are generated in accordance with my interviewee's experience. In return, these tensions may produce an effect on their practice of facilitating reconciliation, which can be seen from the concerns and

complaints shared by my interviewees, and also from their change of work attitude as a response.

Finally, it calls attention to the problems and risks which may arise from this process revealed by prosecutors' own accounts if no change were made to current practical model of criminal reconciliation. In addition, it offers pieces of suggestion that may help improve the institutionalization based on current practical situation.

1. The influence on prosecutors' roles from the development of CR

1.1 The conventional roles of Chinese prosecutors in the criminal system

In order to pursue further discussion of how prosecutors' roles have been influenced by the practice of CR, I will first try to build a reference to the conventional roles of prosecutors authorized by the current Chinese criminal system, which have gradually been established since the enactment of criminal law and CPL in 1979 and greatly innovated during the judicial reforms of the twenty-first century.

The foremost feature of procuratorate' roles in China is probable about their dual powers over prosecution and judicial supervision, which complicates the responsibilities of prosecutors and causes more contradictions in the eyes of some scholars (Chen R.H., 2000; Xie & Zhou, 2006; Zhu, 2011). Xie and Zhou (2006: 30) express that the procuratorate, entitled as 'legal supervision organ' by Chinese Constitution (Article 129), hold an important and independent state power of supervising judicial activities. Moreover, Chen R.H. takes the supervision power as making the procuratorate's power even slightly superior than the court's jurisdiction (Chen, 2000: 55). Thus, he comments on the prosecutors' execution of dual judicial powers as 'having fundamental deficiency', because the powers of criminal prosecution and legal supervision are 'opposing each other' (ibid). In other words, the execution of the former power would incapacitate the prosecutors from conforming to the requirement of neutrality and transparency in the execution of the latter. Not to mention that the prosecutors' execution of powers lacks external supervision, prosecutors' oversee work on the investigation institution, and the

trial institution is considered to be influenced by the fact that these three institutions have close working relationships. But there is a need to point out that this is viewed legitimate in official Chinese discourse that apart from supervision role, the equally important role of the people's procuratorate is legal supervision stipulated in Article 129 of *Constitutional Law of the PRC* and the first article of the *Organizational Law of People's Procuratorates of the PRC*.

More specifically, Chen R.H. (2000, 2011) points out that the main investigation institutions of China -- the public security organs and the procuratorates – are both pursuing the result of 'winning the lawsuit' in a dynamic sense; thus, the goals of their judicial activities share a certain internal coherence. This description of the procuratorates' implicit preference for winning cases, which could be interpreted as a conviction result for the defendant in the trial, has been commonly referred to when discussion is held on the procuratorates' restrictive and supportive relationship with the public security organs (Zhen, 2014). On the one hand, prosecutors should examine and supervise investigation activities and provide relief for people, especially offenders, who receive unjust treatment during this process; on the other, the prosecution role requires prosecutors to intervene actively in the proceedings of handling an offence and seek a guilty verdict for the offenders, thus realizing the protection of social order and state interests. The contradictory relationship between the two responsibilities unavoidably results in prosecutors' preference for one or the other, rather than a focus on both.

After analysis and comparison, Chen R.H. (2000: 55 - 56) concludes that the procuratorate has positioned itself as a criminal prosecution organ in the practice based on practical social effects. The main reason he gives is that the procuratorates put more emphasis on the evidence against the offender than in his/her defence, although CPL requires the procuratorate to collect the full evidence and facts related to a case. This could be reflected in possible practical situations such as seriously overdue detention, the rampant extortion of confessions by torture, or the incorrect application of laws and ascertaining of the facts that frequently occur during the investigation stage (Chen R.H., 55). These situations should be effectively prevented and corrected by the prosecutors

but, in reality, prosecutors do not execute their supervisory power as expected and may even indulge such situations (ibid.). There are no data cited in Chen's critiques to illustrate these situations and prosecutors' overlooking of negative acts. For a more impressionistic understanding, official statistics are presented below with some practitioners' reflections regarding the situation of overdue detention periods.

One consideration to be pointed out is that Chen's analysis was made in 2000, when the situation of overdue detentions and torture during interrogations had been at its worst at the end of the twentieth century. According to statistics published by the SPP, the number of people who were held in overdue detention by judicial organs all over the country were maintained at 50 to 80 thousand from 1993 to 2001 (Lu, 2007). Perhaps due to a realization of the severity of the situation, the SPP held an intercommunion conference of procuratorates across the country in 2002, with the aim of improving the situation regarding overdue detention. After the order was given at the conference to rectify the mistakes that existed in the practice of detention, the effect seems to be clear that the overdue detention number has decreased year by year as a result of more actual inspection and rectification by the procuratorates. According to the SPP report in 2003, the procuratorates nationwide had rectified over 300 thousand person-time of overdue detention cases during the previous five years (*ibid*). The main measure taken by the SPP was to rely on procuratorates to correct the existing mistakes, some of which were very serious situations involving more than ten years of detention. While the situation regarding overdue detention has improved over the past ten years, we should not ignore that it is common in current practice for the detention duration of an offender to be in need of extension during the general investigation period of one month. For example, in a detention centre in one municipality, up to 98.8 per cent of the 337 offenders had their detention duration extended during the first five months of 2005 (Hou & Liu, 2005). The point here is that in addition to the arrest application, the application for detention extension also needs approval by the corresponding procuratorate, and this high rate of approval could show procuratorates' support for the investigation organs since they share the same goal of fighting crime, which more or less weakens the procuratorates'

supervision dynamics.

In August 2015, another round of rectifications was made on the situation of overdue detention. The SPP even published a special regulation called 'Trial regulation on the work of Supervision on Criminal Execution Department in the people's procuratorate' to prevent and correct the situations of detention beyond the legally prescribed time limits and postponing decision resulting in a long detention period in procuratorates. From another angle, this reflects that overdue detention is still an issue in need of attention in current Chinese judicial practices. The measures taken to resolve the problem never stop focusing on the procuratorates' work, which is a form of requirement for prosecutors to play more of a supervision role in criminal justice. The complicated roles authorized to the procuratorate require systematic assignment among the prosecution practitioners. In my previous report of the fieldwork, I gave a brief introduction to the distinct roles of the prosecutors from two different departments of one procuratorate. To better explain the supervisory responsibilities assigned to the prosecutors, I here make a more detailed presentation of the classification of the departments in a procuratorate: the Investigation Supervision Department, the Public Prosecution Department and the Execution Supervision Department.[20] The role of the Investigation Supervision Department can be detected from its name, as the prosecutors from this department are mainly responsible for deciding the applications for arrest or the extension of detention raised by the investigation organs, which are also referred to as 'arrest approval' prosecutors in my fieldwork. One of the interviewees, BING, belongs to this category, while the other six interviewees are referred to as 'public prosecution' prosecutors from the Public Prosecution Department. As for the third department, that of Execution Supervision, it has not been discussed above in this thesis. This department has recently experienced a change of name, from the Prosecutorial Department in Prisons to the Criminal Execution Supervision Department in 2015 to strengthen the supervision roles. These three departments are in charge of monitoring the necessity for detention in their own stages of the handling of a case.

It is gratifying to see more attention and measures placed on the issue of 'unnecessary

detention' (the scope of concern has been extended from the situation regarding overdue detention). However, more responsibility for supervising the legitimacy of judicial activities would more or less affect the procuratorates' ultimate goal of realizing justice through punishing criminal activities. Although the supervision responsibilities seem to be assigned to different departments in one procuratorate in accordance with the different stages of a case, there is mutual containment and coordination among the departments under the same administrative management. For example, one of my interviewees implied that the Public Prosecution Department was unlikely to change the decision of an arrest made by the Arrest Approval Department from the same procuratorate. Not to mention that challenging colleagues' work may influence their performance assessment as a collective and their close cooperative relationship in every case; holding the same expectation of winning a case could tie different departments of a procuratorate together unconsciously.

As for the discussion on the working relationship between the procuratorate and the court, this differs from the analysis of the relationship between the procuratorate and the public security organ for sharing the same goal of fighting crime and winning cases. Some scholars have again questioned the dual roles of the procuratorates and raise the concern that there exists a conflict between the supervisory power of the procuratorates and the independent jurisdiction of the courts (Xie & Zhou, 2006). Although the 1996 CPL abolished the prosecutors' supervisory power in the courts, Article 169 still maintains the procuratorates' power to raise corrective opinions in writing to the court after a trial. Xie and Zhou (2006) comment that the supervisory position would make the procuratorate more influential to the court than the defendant, which means judges will find it difficult to remain neutral between the two parties. Xie and Zhou also suggest clarifying the position of the procuratorate in the trial, with the intention of weakening the procuratorate's supervisory power and influence on the court unless it is aimed at highlighting the wrongfulness of the behaviour of an individual judge. Similarly, Chen R.H. (2000) has appealed to limit the procuratorates' power except for that of public prosecution, such as the decision-making powers of arrest and the extension of

detention being given to the judge instead of the prosecutor, who could better execute prosecutorial power.

To conclude, the procuratorate's conventional image is composed of the execution of two important powers in the criminal proceedings. The prosecution power means that the procuratorate usually stands on the opposite side to the offender, while its exclusive supervisory power over other organs sometimes serves the prosecution purpose. Although there exists an inherent conflict between the two powers, the policy-makers try to balance this by strengthening the supervisory power. This trend in institutional design is also reflected in the setting of the prosecutor's role in the legislation of CR, but a strong image of prosecuting offenders needs to be maintained in the meantime. This is why it is of importance to discuss the conventional roles of prosecutors in order to better understand the new tensions in prosecutors' facilitation work during the CR process. With the institutionalization of CR, an innovative method of handling public prosecution cases, its influence on traditional criminal justice makes it even harder to balance the dual roles of the procuratorates.

1.2 Revisiting the debates on the prosecutor's roles in CR before the legislation

Since the emergence of CR pilot projects in district procuratorates, there have been debates on how to position the prosecutor's role in this process. The opinions are divided into three groups:

1.2.1 The prosecutor is appropriate in the role of facilitator (Zhu Chi Ren) [21]

There is some regularity in choosing sides regarding whether the prosecutor is appropriate in the facilitator role in the reconciliation process that practitioners in earlier pilot period held a relatively positive attitude. There are some empirical reports from district procuratorates in which the CR pilot projects took place in the ten years prior to the legislation. The majority of the reports show quite a high level of satisfaction with conducting reconciliation in the prosecution stage, reflected by the two parties who actually participated in the reconciliation process.[22] Based on their own statements in the reports, most practitioners considered the facilitator role as appropriate for

prosecutors.

One reason is that, compared to non-judicial personnel, such as community or workplace leaders, the public puts more trust in judicial officers, particularly prosecutors, who are professionals in dealing with criminal cases. Although the reconciliation process focuses on solving disputes between the two parties concerned, it still belongs to the field of criminal justice (Wang D., 2009). Thus, the public holds relatively high expectations of upright prosecutors, who represent state power in the criminal justice system, to take control of CR cases (Huang F.J.X., 2009). The second reason is that the prosecutor is believed to have greater professional knowledge and legal qualification and, more importantly, is more familiar with the situation of a case and the two parties, which could make him/her more compatible with facilitating reconciliation (Huang F.X.J, 2010; Wang D., 2009; Wang & Feng, 2009). Overall, these practitioners believe the facilitation role in CR cases does not contradict with their conventional role of prosecution and supervision.

1.2.2 The prosecutor should play the role of supervisor rather than facilitator

On the other side, the majority of leadership level believe that prosecutors are not very suitable for the facilitator role in the CR process. Peng Dong (2009), when he was the Deputy Director of the Public Prosecution Department under the SPP, disagreed with the opinion that the prosecutor, who is handling the prosecution work in a case, should also take charge of facilitating the reconciliation. He explains that, at a more practical operational level, there is a lack of legal accordance for the prosecutor to form a reconciliation between the parties in public prosecution cases. Likewise, the prosecutor has no power to constrain the two parties in the fulfilment of a reconciliation agreement. So far, it seems that the concern is purely on legal authorization for prosecutors' facilitation role. But Peng also pointed out that the workload in the Public Prosecution Department is immense; thus, even if empowered by the law, prosecutors are incapable of presiding over the work in the reconciliation process and instead affect the quality and efficiency of their original work. This causes the interesting situation that the majority of prosecutors show a positive reflection upon and confidence in facilitating the reconciliation between the parties, but their leaders seem to see a potential problem in

the prosecutor-led CR model.

Unlike leadership level of procuratorates considering from the practical aspect, some scholars make the argument with reference to Western RJ practices, in which the role of facilitator should be that of a neutral third party, rather than the judicial officers who are dealing with the case (Xiong et al., 2010; Ye et al., 2010). In Xiong's (2009) expectation, the role of facilitator in reconciliation should focus more on flexibility and support. She argues that it is not particularly appropriate for prosecutors, who conventionally take the position of prosecuting offenders, to be involved in a process that could have a contrary non-prosecution result.

1.2.3 The prosecutor could play the facilitation role or delegate it to other organization based on the individual case

Wan (2010), with the identity of both a scholar and a prosecutor, raises some different opinions about the conflicts in prosecutors' roles. He refutes the argument that there is conflict of interest for a prosecutor in facilitating a reconciliation between the parties, given that the reconciliation content is between those parties (411). In addition, without the participation of the prosecutor, the reconciliation process may have more potential to focus on material compensation without the offender's realizing criminal liability (p. 420). Instead of giving an exclusive answer to who should play the role of facilitator in CR, Wan raises that prosecutors could make the judgement based on the individual cases.

This inclusive attitude is also held by Song and his research team, after comparing different facilitation models they have studied in the fieldwork. They point out that although theoretically, neutral organizations such as courts or people's mediation committee would better guarantee the fairness and voluntary of CR process; the participants in the practice of CR show a preference for prosecutors to be the facilitator before trial, especially in areas that mediation organizations are not developed well (Song et al.: 2008: 10). In line with the empirical data, they conclude that it is advisable to develop diverse facilitation models, rather than to choose an exclusive facilitation organization.

1.3 The institutional design of the prosecutor's roles in the process of CR

From the practical feedback in the practitioners' reports, the participants in the reconciliation process rarely show a negative attitude towards the prosecutors' facilitation work; in most cases, their disputes have been resolved successfully (according to Song's fieldwork and most reports from the district procuratorates). In comparison, in the reports provided by several researchers, there also exist unsatisfactory phenomena in the reconciliation process, as reflected in empirical cases. These cases present how prosecutors would 'repeatedly persuade' the parties concerned to accept reconciliation in accordance with their interviews with some parties (Jiang, 2012; Rosenzweig et al., 2012: 28). They attribute the phenomenon mainly to pressures on the prosecutors brought about by performance assessment, which encourages them to apply a more 'appropriate alternative measure' (Jiang, 2012). In conclusion, the researchers show concern about too much discretion by the judicial authorities in China's criminal justice system.

We could not reach a conclusion based only on the procuratorates' reports that having the prosecutors presiding over the reconciliation process in the pilot projects was not problematic, since a report presenting one's own performance could not avoid bias. However, an interview with the parties concerned does not necessarily reveal the full picture of the prosecutors' facilitation work in CR. It reveals, for example, the hidden rules for encouraging the application of CR in the performance assessment of prosecutors' work, which may need to be checked with the prosecutors if we hope to explore the deeper reason behind these rules. What is certain is that the prosecutors' role-setting and their own interests in the practice of CR, one of the negative voices in the evaluation of CR discussed in chapter 2, seem to be the main issues that need to be clarified as soon as possible. With the expectation of specifying the prosecutor's roles in CR, such kinds of appeals for legislation finally came into being in the revision of CPL in 2012. Next, I will try to discuss the role-settings for prosecutors in this new institution of CR in the following dimensions.

1.3.1 Supervision on CR procedures

From appearances, stipulations for 'the special procedures of reconciliation in public prosecution cases' authorize the victim and the offender in some minor cases the power to reconcile in the aftermath of the offence. It seems that they have the right to start the reconciliation procedures at any stage of the criminal proceedings. Nevertheless, as discussed in chapter 7, there is an implied condition for initiating the special procedures of CR through interpreting the stipulations on applicable conditions in CPL. That is, a judgment needs to be made on whether the case meets the requirements for applying CR, which involves the application of knowledge of criminal law and CPL, and even about prejudging the sentencing. Some authoritative voices interpret that the law has authorized the criminal police, the public prosecution prosecutor or the judge who is handling the case in the respective stage, together with the two parties concerned, with the power of initiating CR (Liu, 2012). In some theoretical research selected and published by the SPP, it is stated that following the legislation the procuratorate is responsible for the supervision of CR initiated in all three stages: investigation, prosecution and trial (Zhao, 2012). Essentially, the procuratorate should supervise and guarantee that CR can take place at any time in the criminal proceedings and it is to be made voluntarily without coercion in any form. The content of their reconciliation agreement should also be in accordance with the law and should not harm the interests of others or the public.

Specific to different stages of criminal proceedings, if reconciliation was made successfully during the investigation stage, the public security organ then needs to transmit all the case files, along with the reconciliation agreement, to the corresponding procuratorate for review and supervision. This stipulation aims to improve the situation that could occur before the legislation that the public security organ would sometimes directly make a decision to withdraw a case if a reconciliation agreement had been reached. Diverting cases at this early stage is believed to cause injustice or make the abuse of power easier due to lack of supervision (Sun, 2012; Zhao, 2012). In terms of reconciliation during the trial stage, the procuratorate also needs to supervise the

application of CR, particularly in terms of how the court takes a successful CR as a circumstance for lenient sentencing. Through emphasizing the unification of sentencing, this is expected to show the public that the Chinese government could still maintain equality in the Chinese criminal system even if an alternative solution is provided, such as criminal reconciliation.

In addition, influenced by the procuratorate's power to supervise the whole criminal proceedings, it could be regarded as the only judicial organ that can take responsibility for the disposal of a case part way through traditional criminal proceedings. The non-prosecution decision is possibly one of the judicial decisions with the least supervision, according to the justice system, while lenient decisions on offenders made by public security organs and the courts may be reviewed and disagreed with by the procuratorates. As an innovative disposal method, which increases the possibility of a decision of non-prosecution, the application of CR may be a typical reflection for the procuratorate's control over criminal proceedings. The underlying question here is the extent of, and adequate control of, discretionary powers – ensuring that discretion is exercised legitimately and is not abused. Overall, in the institutional design, the procuratorate has the most powerful voice in the application of CR, which may put the procuratorate in the spotlight of 'those external elements influencing the CR process except the parties'. In one sense, this design embodies what we have discussed in chapter 4 that the decision-makers have placed great reliance and expectation on the procuratorate to maintain the order of the application of CR in the criminal justice system.

1.3.2 Less involvement in the reconciliation process

There is not much reference in the 2012 CPL in relation to the concrete role of prosecutors in handling the CR process, although practitioners have appealed for this clarification for a long period. In this situation, the *Criminal Litigation Rules for People's Procuratorates (Trial*) drawn up by the SPP (hereafter referred to as the '2012 SPP Rules') provide more concrete guidance for the procuratorates nationwide to better apply the new 2012 CPL. Similarly, the SPC has issued the *Judicial Interpretation for the Application of 2012 CPL* (hereafter referred to as the '2012 SPC Interpretation'), to help guide the

courts nationwide; while the Public Security Ministry (PSM) has issued the *Regulations on the Procedures of Handling Criminal Cases for the Public Security Organs* (hereafter referred to as the '2012 PSM Regulations'). These documents are not discussed here for the first time in this thesis, but were introduced earlier in chapter 4 in order to explore the goals behind the legislation of CR. In this chapter, I compare the different expectations of the roles of the criminal police office, the prosecutor and the judge in the institutionalization of CR.

As analysed above, reaching reconciliation in the early stage of an investigation does not seem to be as encouraged as it is in the prosecution and trial stage, since a CR agreement made by the investigation organs needs to be further reviewed by the procuratorate, which means that cases cannot be diverted from the criminal proceedings at this stage. The 2012 PSM Regulations hardly mention roles of the criminal police officers in the actual process of CR; only the responsibility to review the CR agreement and the power to suggest leniency for the offender when transferring the case to the procuratorate (Article 327). Similarly, in the 2012 SPP Rules, it is also stipulated that the two parties can reconcile by themselves or seek help from other third parties, as in the 2012 PSM Regulations, but the second paragraph contains the addition that the prosecutor can suggest the parties reach a reconciliation if the conditions are met and can provide legal consultation if necessary (Article 514). Among the judicial officers for the three stages, the judge seems to have the most power for facilitating the reconciliation process, according to the 2012 SPC Interpretation (Article 496). The interpretation expresses explicitly that the parties could reconcile by themselves or apply to the judge to achieve reconciliation between them. If this involves the second situation, the judge could decide to invite a people's mediator, lawyers and the parties' relatives and friends to the reconciliation meeting. Through this comparison, it seems that, for the judicial officers with the goal of cracking down on crime, that is, the criminal police officers and the procuratorates, the legislation expects them to be less involved in the concrete reconciliation process since they are standing on the opposite side to the offender. With regard to the judges, who have the responsibility of making judgments impartially, they

have been given more discretion in the facilitation of the criminal reconciliation between the two parties.

From the beginning of the CR pilot projects, some procuratorates produced certain models or methods successively for uniformly applying CR in one district.[23] There was not much attention placed in this phase on the prosecutors' roles and they usually displayed subjective initiative in facilitating the reconciliation process. However, as described above, when it came to around 2010, both the policy-making level and practical district level showed a trend to reduce the prosecutor's involvement in reconciliation between the parties concerned in a case. In the final interpretation of the uniform legislation, the SPP positioned the roles of prosecutors as having the ability to 'suggest' and 'consult' in the reconciliation process, on condition that the two parties were willing to do so. This is probably considered based on below: 1) the facilitator role means that prosecutors needed to invest already inadequate time and energy in the reconciliation process that hampers their completion of the original target; 2) the new facilitator role, which involves more detailed and frequent communication with the two parties, will even more complicate the dual roles of prosecutors, as introduced above.

It is also worth noting that among the three judicial institutions in criminal litigation, the prosecution institution is the only one that had given relative instructions on how to apply CR before the uniform legislation came into force. An instructional document, titled 'the SPP's Opinion on the Application of Reconciliation in Minor Criminal Cases', was issued to all procuratorates for guidance at the beginning of 2011 (SPP, 2011). Comparing this with the 2012 SPP Rules, it can be seen that the 'joint work between the procuratorate and the mediation committee' (*Jian Tiao Dui Jie*) has not been adopted in the final Rules. This implies to some extent that, in the institutional design of CR, the joint work model has not received much support, possibly resulting from the unsatisfactory system of the People's Mediation Committee. Yet still there has been joint work experience-sharing from practice following the legislation. It seems that the joint work model has been achieving effective results in practice.

After gaining an initial understanding of the institutional design for prosecutors' roles in CR cases, the following step of my research was to talk to some prosecutors directly about what roles they were really playing in practice following the legislation. If, as intended, the design was to put prosecutors on the periphery of the reconciliation process, the problems of the prosecutor 'using coercion' and 'indulging the offender to take advantage of CR' will have been alleviated in practice.

2. Through the prosecutors' lenses: how to deal with CR cases after legislation

2.1 The prosecutors' self-positioning in CR after legislation

One agreement from my interviews is that all of my interviewees considered that the institutionalization of CR sends out a signal expecting prosecutors to be involved less in the reconciliation process, compared with the pilot period before the legislation. Under the consensus of less involvement in CR, prosecutors' expectations for their roles in CR following the legislation vary in accordance with their experiences of handling CR cases, especially those before uniform legislation of CR.

Of my seven interviewees, ANQI, BING and ENCI had only recently begun dealing with CR cases following the legislation in 2012, while the others had experienced both the pilot and the uniform legislation periods of practising CR. This distinction in work experience influences prosecutors' expectation for CR because they are receiving different sources for generating the expectation.

The newcomers to CR only had an abstract perception of the pilot period and had not experienced the CR model in which prosecutors play a more active facilitator role in the heyday of CR. Part of their understanding of "less involvement" in CR following legislation was affected by some more experienced prosecutors' experience sharing. In my interviews, most of the newcomers had been cautioned about the potential 'risk' of becoming too involved in the reconciliation process, as a prosecutor would easily be criticized by the two parties if they felt unsatisfied about the CR result. The cautions were usually given by their older colleagues, and possibly the leadership in their

procuratorates. For example, BING had received 'working tips' from his master or teacher to 'just simply ask the parties' intention to make reconciliation' and that the principle of 'self-protection' comes first (BING, 6). Baring these concerns, in discussing feelings about entering the practical field of CR, the 'newcomers' expressed that they felt curious (ANQI) and nervous (BING and ENCI) about upcoming CR cases and considered it to be a challenging task. However, as the newcomers gradually learned and improved their working skills, albeit they became aware of the 'potential troubles' caused by facilitating CR, they were not entirely overwhelmed by the cautions in practice.

In contrast, the more experienced interviewees such as CONG and FEI tended to know more of the change in prosecutor's role from presiding over to more procedural supervising in CR process, because of their experience in both periods. The more experienced prosecutors did not feel relieved about the new role-setting in uniform legislation, which remains ambiguous for guiding practice.

2.2 The prosecutors' 'interests' in the practice of CR

Before the introduction of CR legislation, there were voices expressing the view that it was not appropriate for prosecutors to undertake the facilitation work in the reconciliation process between the parties because their traditional role of prosecuting offenders would disenable them from acting impartially (Xiong et al., 2009). Therefore, when the facilitation role was changed to one of supervision as the main work for prosecutors in CR, the original concerns regarding prosecutors' dual roles of prosecution and supervision seemed to have been put aside temporarily.

Among the sceptical voices, some provided empirical evidence to illustrate that the prosecutor would coerce the parties to participate in CR or to accept some reconciliation agreement, as revealed in the interviews with some offenders and their defense lawyers conducted in 2008 and 2010 (Jiang, 2012; Rosenzweig et al., 2012). What they refer to as the coercion used in CR, are the situations that the officials would bring a lot pressure on the two parties by persuading them repeatedly to choose CR procedures or informing them about the adverse outcome if not choosing CR (Rosenzweig et al., 2012: 28). In

their analysis, the reason behind such coercion is mainly that the prosecutor would benefit from successfully resolving a case through reconciliation, since it is one of the practices being encouraged in the internal performance assessment system for prosecutors (Ibid). Jiang (2012) calls it a form of hidden rule, which affects prosecutors' application of CR. Notably, the 'hidden rule' that prompting CR is beneficial for prosecutors was inferred from the two parties' reflections on CR in which they felt being coerced by prosecutors. In a way, this rule has not been written into the assessment standard for prosecutor's performance, so that there are no official sources to support.

In addition, Rosenzweig et al. (2012) had expressed concerns about the new CR legislation, which omits the 'offender's voluntary' participation as one of the preconditions for initiating CR procedures (Article 277 of CPL). They believed that it would make prosecutors' 'abuse of power' even easier, since they did not even need offenders' consent to initiate the CR process (28). In my previous analysis of the legislative process of CR, I also mentioned this revision in the drafts. I agreed that it seemed to be quite problematic to omit the offender's initiation in the process of CR. Nevertheless, the consequence of this may be to place too much focus on the victim, rather than incurring the prosecutors' abuse of power, if viewed from my interviewees' complicated emotions towards applying CR in their routine work. To stress again, these interviews are not expected to answer the ambitious question of whether the institutionalization of CR is good or not, but to shed some light on the prosecutors' roles in the practice of CR following the legislation. Although the interviewees were still confused about their ambiguous role-setting, we could at least start to realize this and try to explore the reasons behind it. In this section of analysis based on my empirical data, I hope to contribute to the discussion of prosecutors' 'motivation' or the interests shown in their consideration of applying CR or not after the legislation and some possible reasons for conflicts of interest.

The influential factors in the prosecutors' facilitation work in CR are diverse, according to the different interviewees after I had analysed my conversations with them. This is not simply listing every interviewee's answer from a single question about the influential

conditions, but a combination of the interviewees' direct or indirect expressions about what criminal reconciliation may bring to them. During the interview, I encouraged the prosecutors to talk about their train of thought when making decisions in the practice. Given that I had told them that I was a doctoral researcher studying CR practices in China, the interviewees did not spend much time explaining the legal provisions of CR to me. The insights focus on the interactions between the prosecutors and the two parties, and the institutional pressure on the prosecutors, which may produce a positive or negative influence on the prosecutors' facilitation role and eventually influence the outcome of CR. The very basis of any discussion here is that the operation of initiating CR procedures and the interviewees' facilitation work between the parties were claimed and considered to be in accordance with the law. In other words, the influential factors I am discussing here are those that do not affect the legitimacy of the prosecutors' judgment when handling a case but, within the discretion of the prosecutors, may influence the degree of the prosecutors' playing the roles of 'providing facilitation and consulting' in CR, as stipulated in the 2012 SPP Rules.

In the previous chapter, I focused on discussing the internal influential factors created by the interaction between the victim and the offender that affect the outcome of CR, such as the victim's economic status, the offender's economic status, the degree of conflict between them, the original relationship between them, or the extent of the victim's blame in the conflict. In this chapter, in highlighting the roles of the prosecutors, I present some of the external influential factors involved in the prosecutors' performance in the process of CR. This includes the interactions between the two parties and the prosecutors and the pressure of the justice system on the prosecutors, which may produce a positive or negative influence on the prosecutors' facilitation role and eventually influence the outcome of CR.

First, I present the findings from my fieldwork regarding the most frequently raised concern that handling cases using the CR method will help the prosecutors in their performance assessment, since this new approach has been promoted by the leadership. According to my interviewees' reflections, none of them had received such guidance or

experienced any benefit from applying CR in their performance assessment. Instead, some complained that if the new institution of CR was really encouraged and expected to be further developed in practice by the policy-makers, then perhaps those prosecutors who spend a great deal of time and energy on facilitating it should receive certain 'bonuses'. ANQI has made a "joke" that CR would have become more popular among prosecutors if it is an item for performance assessment. BING explains that facilitating a CR case may involve more interaction with the two parties, which means more time and energy and possibly more dissatisfactory appraisal from the two parties. While investment on time and energy will influence the prosecutor's original efficiency of case-handling, my interviewees have not introduced explicitly about the influence brought about by complaints or dissatisfactory reflection from the two parties on prosecutors' performance assessment. But it seems to be a quite undesired result for the prosecutors in the practice, which would exert a negative influence over their assessment.

Surely, this could not stand for the whole picture of the performance assessment of prosecutors nationwide when it comes to the leadership of different levels and different districts, who may interpret different meanings from the assessment requirements and put pressure on the practitioners. However, inappropriate application in individual situations could not be equal to the drawbacks of the CR institution either. According to the statutory assessment criteria in the period in which I conducted the interviews, there was no particular item directly mentioning CR. At the same time, in practice, the prosecutors did not feel encouraged to practise CR but sometimes felt the opposite after the new uniform CR legislation.

2.2.1 Positive factors to prosecutors' facilitation work

Before moves to an exploration of the possible 'resistance' in prosecutors' facilitation work in CR, I will first introduce probably the only factor causing prosecutor's preference for employing CR procedures over traditional criminal proceedings, based on some interviewees' own 'interest' consideration.

As stated in my findings of chapter 6, prosecutors, although not the primary participants

of the reconciliation process, have been granted an irreplaceable and complicated role by the institutionalization of CR. On one hand, prosecutors need to stand in the periphery of reconciliation to guarantee the voluntary and empowerment of the two parties; on the other hand, prosecutors need to pay close attention on the result of reconciliation and take that into consideration while making decisions on criminal proceedings. Only that these expected roles are interacted and mutually restricted, resulting in the prosecutors' attempt to define themselves between 'peripheral' and 'close' relationship with CR in the practice. In a way, these expectations for prosecutors' roles in CR is fundamentally determined by the expectations for CR institution, which is entitled with new thoughts of empowering the two parties to solve their conflicts, yet a strictly controlled and dependent institution within traditional criminal justice system.

The blurred role-setting for prosecutors in CR institution turns out to be a kind of discretion for them to make decisions in practising of CR. Let us not forget the one of the legislative goals for prosecutors' less involvement in CR is to control their discretional power. In the light of empirical evidence, it turns out in the practice that this institutional design has not solved this issue effectively as expected. From my interviewees' feedback, there are a few factors in the practice influencing prosecutors' preference of employing CR procedures. The factors only act on how much the prosecutors choose to participate in the reconciliation process, either actively helping the parties to communicate and reach an agreement or simply being responsible for the notification. Legality is the precondition of this discussion on prosecutors' practicing of CR within their discretional power, not including faulty practice, such as unqualified cases authorized for reconciliation or qualified cases deprived of the power to reconcile.

In most situations, the strength of prosecutors' participation in CR would, ultimately, affect the result of reconciliation, since it is not an easy task for the two parties to achieve reconciliation by themselves, not to mention the difficulties in creating opportunities for them to meet without the help and arrangement of the prosecutors.[24] This is the aspect that has always concerned people who hope to understand how CR is practised and how much work has been done by the prosecutors. There are no specific stipulations or

guidelines about how prosecutors should actually play their role in CR. They have been given a relatively wide scope for choosing how to position their roles in the process of reconciliation. Although in the interpretation of the institutional design prosecutors have been expected to have less involvement in the actual reconciliation process, as with the interviewees' expectations of their roles in CR, the practical situation of applying CR is affected by complicated pressures of which we can find some clues through the interviewees' lens.

- Help fulfil the prosecutors' routine work by comforting victims in CR

Some of the interviewees expressed the opinion that in the type of cases that lack sufficient evidence, one of the focuses of their work is to employ reconciliation methods for resolution. In this situation, CR is used to solve the practical dilemma that the prosecutor should have made a non-prosecution decision in the case due to insufficient evidence but the victim's party found it difficult to accept the result (FEI). By reaching reconciliation between the two parties, the victim's party may find it easier to accept a non-prosecution result, since the offender provides an apology and compensation to remedy the harm he/she has caused. Similarly, if the arrest approval prosecutor evaluates the offender's degree of harm and considers that there is no need to arrest him/her, the prosecutor would like to comfort the victim in accepting that the offender will not be confined (BING, 1). To be specific, BING believed that making a non-arrest decision at the investigation stage was even more likely to provoke the discontent of the victim compared with a non-prosecution result at the prosecution stage. If a non-prosecution result in the practice of CR could be considered a way of depenalization, then a non-arrest decision may mean the indifference of the justice system to the victim.

To a certain extent, the function of CR in resolving conflicts between the two parties, particularly in comforting the victim through the reconciliation process, is being used by prosecutors to avoid making decisions that would cause dissatisfaction for the victim. The interviewees, who agreed that the CR institution could help prosecutors to better play the traditional role, were able to have a more active facilitation role in the process of reconciliation. There was also a complex question in front of them between focusing

more on facilitation work or on traditional work. I have to state that this type of prosecutor may share something in common. Similar to the other interviewees, they are also aware of the 'risk' of being questioned about whether undertaking a lot of facilitation work (something that is always raised by the victim) would jeopardize their original work of 'catching bad people'. However, they still believed that CR would benefit both parties and that the victims would eventually understand their facilitation after the reconciliation had been successful. They believed in their ability to resolve conflicts between the two parties and some new functions of CR that traditional criminal justice could not achieve.

2.2.2 Negative factors to prosecutors' facilitation work

Most of the interviewees (ANQI, CONG, DA and FEI) considered that, in accordance with the legislative design of CR, prosecutors should do less of the facilitation work and more of the supervision. By doing so, two goals were expected to be achieved. First, it is believed it will avoid the parties' misunderstanding of or discontent with prosecutors that the policy-makers attribute as part of the reason for prosecutors' complicated roles in handling CR cases. Second, it is intended to clarify the prosecutors' role-setting in CR so that the prosecutors no longer have doubts about the conflicts between the traditional role and the facilitation role. In an ideal situation, the prosecutors would return to the traditional roles of 'prosecution' and 'supervision', while the role of facilitation has been 'degenerated' and 'assimilated' to the scope of supervision. If so, this could solve the problem of prosecutors' coercion or partiality in dealing with CR cases raised by some scholars and the prosecutors' heavy workload since the practice of CR raised by some practitioners.

When the ideals are put into practice, the factor of having less involvement in the reconciliation process might be reflected in the interviewees' experience, but it does not necessarily save the prosecutors from undertaking multiple tasks, while the rest of the CR institution can barely keep up with the demand for CR cases. In the majority of situations, my interviewees still tried to undertake the facilitation work required to resolve the conflicts between the parties on the premise that they would not be

misunderstood by the two parties. This phenomenon caused them confusion with regard to the development direction of CR because they were losing enthusiasm for facilitating CR in the face of the pressures which they had expected would be alleviated by the legislation.

- The continuing heavy facilitation work in CR

Before the CR legislation, empirical researchers reflected upon the issue that dealing with a CR case would cost an individual of prosecutor much more time than adopting the traditional approach to prosecution (Song, 2010; Wan, 2012). How is this problem solved or improved after the uniform legislation?

As a relatively elder prosecutor who had experienced pilot period of CR, FEI expresses that after the uniform legislation of CR prosecutors have received certain guidance in their workplace that the role-setting of prosecutors in CR should focus more on supervising the reconciliation process and reviewing the reconciliation agreement. It seems to depict an ideal picture of saving the prosecutors much time from reasoning and reconciliation work on the parties' behalf in the pilot period. To see this ideal picture more clearly, it is also necessary to present the corresponding working mechanism which takes over the prosecutor's original facilitator role in the institutionalization of CR. These mechanisms are produced in the exploration of the district procuratorates but said to be maintained in practice after the uniform legislation, given that the legislation and related rules nationwide have only provided guidelines but without any practical solution for replacing the prosecutor's facilitator role. In general, the mechanisms could be classified into two types: the joint work between the procuratorate and the People's Mediation Committee (hereinafter referred to as 'joint work') and the 'independent CR office inside the procuratorate' (hereinafter referred to as the 'CR office').[25] My fieldwork was designed to better understand how CR was practised following the legislation through the lenses of some prosecutors because they are part of the focus of the institutionalization of CR. Fortunately, I gained access to interviewees from four district procuratorates, which covered two paradigmatic mechanisms, as I was curious about the operation of these mechanisms and intentionally targeted them when forming contacts.

D Procuratorate started the joint work mechanism for CR cases in 2010, and my interviewees had been dealing with CR cases before that time. Before I asked about this mechanism, the interviewees had not mentioned it when introducing how to deal with CR cases in D Procuratorate. The practical situation they presented to me was simply that the prosecutors were responsible for facilitation work. Nothing seems to have changed. Since I expected to learn how joint work operated in practice, I asked if there was such a mechanism. They gave me affirmative answers but expressed the opinion that it could only provide limited help to the prosecutors in dealing with CR cases. According to the interviewees, the people's mediator, who receives the joint work from the prosecutor and should have taken over the facilitator role, does not perform as well as the prosecutor does in practice. There is more than one reason for the distinction between the prosecutor and the mediator as the facilitator. First, the interviewees felt that comparing to prosecutors, mediators tend to be a little 'apathy', or to say, care less about the two parties and the reconciliation process because none of these will affect the assessment of their work. Therefore, in practice, if the interviewees felt the facilitator role had not been fully played by the mediators, they would sometimes return to facilitation work. Second, the people's mediation system is not considered to be appropriate for resolving criminal cases, although CR cases are usually minor. The interviewees, not only those from D Procuratorate, had a general impression of the people's mediators as lacking professional legal skills. It may come from the prosecutors' contact and cooperation with them at work, or the prosecutors' exclusion and prejudice towards non-judicial authorities. Nevertheless, from the appeals to improve the quality of the people's mediators by the scholars, we could always see the expression that people's mediators from the primary level were of a relatively low quality (Han B., 2002; Li Y.X., 2008; Xu, 2011). During recent years, measures have been taken to improve the people's mediation system in response to the call of 'Big Mediation' in the current justice system in China (Cheng, 2010; Hong, 2013). Combined with the reflection of the interviewees, establishing an effective people's mediation system may take more time.

The reflections from the interviewees on the practice of the joint work mechanism are

not very much in line with my expectations that mainly generate from news reports. There is actually a quite low referral rate in the practical situation of CR in D procuratorate, which was reported to have an effective joint work model with the people's mediation committee. Now let us turn to the second mechanism of setting up a special CR office within the procuratorate. C Procuratorate, known for having a more mature system of handling CR cases within the procuratorate system, is one of the pioneers in the development of CR in China, including being the first to initiate CR pilot projects, the first to implement an assessment system for CR cases, and the first to establish an independent CR office.[26] The CR office mechanism was intended to solve prosecutors' confusion about their role-setting in the practice of CR. According to a report on C Procuratorate's ten-year experience of operating the CR office, this mechanism has the advantage of specialized personnel being allocated to the CR office for facilitating reconciliation between the parties in a case, which reduces the awkwardness of prosecutors' role in the CR process. During the trial period, the CR office was composed of prosecutors and outstanding law students. One of the personnel was a doctoral researcher, Feng Liqiang, who had written papers after practising facilitation work in the CR office. According to Feng, the students were responsible for reviewing and selecting cases for reconciliation and providing written opinions for prosecutors to make the decision regarding applying CR. More importantly, Feng pointed out that the identity of a CR officer could more easily undertake the contact and communication work with the two parties concerned in a case, since the victims felt discontented with the prosecutor performing the mediation instead of protecting victims and punishing offenders. It is also a central question discussed a number of times in this chapter of the contradiction between the prosecutors' powerful prosecution role and the neutral facilitation role brought about by the practice of CR.

Given that the distribution of facilitation work to the special CR office in trial period is said to have produced positive effects, this model has since been maintained in C procuratorate. In the report, it introduces that the composition of the CR office has changed to 'prosecutors, legal aid lawyers and people's mediators, who work

cooperatively to facilitate reconciliation'. While reading the reports, I felt slightly confused about the cooperation between the different types of professions, which I hoped would be answered by the interviewees.

One of the interviewees from C Procuratorate, Cong, was willing to talk more about the operations of the CR office, but not at the beginning of the interview. At first, when Cong mentioned the CR office, it sounded as if he was reading from a written report to me that, if he considered a case qualified for initiating CR procedures, he would transfer the case to the CR office. After asking for more details, I started to see a clearer picture of the mechanism. The first aspect to note is that there is only one prosecutor in the CR office responsible for receiving CR cases from the whole procuratorate and contacting a legal aid lawyer to act in the negotiation between the parties. According to Cong, there is not a great deal in the workload for this special prosecutor since, in practice, they are facing more situations in which the two parties have already had the intention to reconcile or have already reached an agreement during the investigation stage. After a while, when talking about the process of selecting cases that qualify and initiating the CR procedures, which is one of Cong's tasks, he commented that he needed to inform the parties of the alternative resolution of CR and ask about their attitude towards it. Upon reconsideration, he interpreted his role at this stage in that, during the communication with the parties and explaining what it would bring to them if they chose to solve the case through CR, the prosecutor is actually doing facilitation work. This is exactly what the SPP Rules require prosecutors to provide in CR: facilitation and consulting. Actually, before the case is transferred to the CR office, the conflicts have already been resolved more than half by the prosecutors, complained by Cong. He proposed that, if the prosecutors cannot avoid the task of facilitating reconciliation between the parties, then the legislation should authorize them with clearer facilitation powers.

- The continuing potential risk of being misunderstood

The role-setting of prosecutors in the institutionalization of CR seems to follow this train of thought: to pull controversial involver 'prosecutors' from virtual reconciliation to peripheral supervision and leave the stage of CR to the two parties as the means for

achieving it. By doing so, first, it could achieve the goal of avoiding coercion from officials, one of the major concerns for the practice of CR. In addition, this role-setting could guarantee the legality of the whole reconciliation process and control the disposal of the criminal case by the hands of the judicial authorities. The goals are not to be achieved by relying only on the control of prosecutors' roles and the roles of the other officers, but the intention to drag prosecutors or, more fundamentally, the state power they represent, out of the whirlpool of being questioned and criticized is still clear.

Does the prosecutor return to the traditional image of a powerful authority against the criminal after the revision of CPL? The restoring of a practical situation comes from how prosecutors handle individual cases, more than how they comprehend the guidelines. Through the interviewees' lenses, we could see some overlaps in their practice of CR, which drew my attention. As mentioned, facilitation work or help work is still regarded as a burden on prosecutors' total workload. I will next deconstruct their work step by step in an attempt to 'examine' how the interviewees put the guidance and cautions regarding handling CR cases into practice.

Step one, the preparation work for initiating the CR process, is mainly undertaken by prosecutors. First, the prosecutors are the only ones who know the details of a case, and can gain access to the two parties procedurally. In some cases, such as the offender being arrested in the detention centre, the prosecutor will play a "shuttle" role or arrange for an encounter between the two parties in the detention centre with the help of executive staff. The prosecutor also needs to ensure that the two parties understand the CR institution properly, their rights and liabilities in the application of CR, and the possible results. From being informed of the opportunity to reconcile to making the decision of whether to accept it, the two parties need the involvement of the prosecutor. Sometimes, the prosecutor does not become involved in the very detailed negotiation of the reconciliation agreement, if that is a way to understand the decrease in facilitation work. Nevertheless, when the two parties are expressing feelings about the conflict and about methods of resolving it, changing their attitudes towards each other, and finally choosing whether to reconcile, they cannot accomplish these without the prosecutor. However,

this depends on how we define the reconciliation process. If these important moments are included, then the prosecutors still play an active role in facilitating the two parties.

Step two, in which some prosecutors will give opinions and advice to the parties if they regard the compensation or other conditions are unreasonable. According to the legislation, guaranteeing the legality of the reconciliation agreement is part of the prosecutor's responsibility, but the rationality is not. I have read a research paper that discussed the working methods of CR in C Procuratorate, in which the procuratorate should share no disagreement on the compensation amount as long as the two parties consent (Hu et al., 2013). With the guideline as it is, when it comes to practical cases, several interviewees shared their experience of correcting or suggesting a situation of too high or low a compensation, based on the offender's individual financial status. If the conflict is within a family, the most dominant reflection of Chinese tradition (or human nature), it is noticeable that it is not the parties but the prosecutor who seems to consider that it is worth trying to form a reconciliation and offer more facilitation.[27]

Step three concerns the request made by some parties arising from their trust in public authority. Some interviewees believed that some parties relied on the deterrent power of the state behind the prosecutors to protect their rights. Some of the interviewees had even been asked to help with the delivery of compensation, such as taking temporary safekeeping of the money. Generally, the interviewees would offer the suggestion of paying compensation in stages to the parties if they could not come to an agreement. When it came to guaranteeing the delivery of compensation or other measures to effect a remedy, the prosecutors seemed to be welcomed.

The last step should be the prosecutor confirming the result of the CR. If the agreement between the parties is made voluntarily and genuinely, the prosecutor will make a non-prosecution decision or recommend prosecution to the court with the opinion of showing leniency to the offender. In A Procuratorate, a hearing may be held to invite the victim to be present for the purpose of expressing opinions about the non-prosecution decision. It seems to be a specific phase aimed at protecting the victim's rights. In other

words, instead of facing the victim's objection or petition in the future, an opportunity is given to the victim to reflect discontent if there is any. It is also another form of the procuratorate's "self-protection" rule in dealing with CR cases.

The first three steps seem to show an image of the prosecutor still occupied in the CR process. Although the interviewees introduced the notion that they would sometimes invite mediators or lawyers to the reconciliation process, they tended to help facilitate the process more actively than the way they stated they had been instructed. Only two of the interviewees had experienced being complained about by the victim's party, which, in their interpretation, was caused by not understanding the prosecutor's behaviour of 'speaking of the offender' in the facilitation work (BING and FEI). Shen Deyong, the vice-president of the SPC, has lamented to his senior judge colleagues that 'the distrust in our judiciary from some of the populace has gradually generalized to common attitude at a seminar with the theme of 'People's judges serve for people' (Wu J., 2009). In return, concerns regarding the distrust and misunderstanding from the parties have also become a matter of general apprehension for prosecutors, making them more cautious in practice. This probably benefits the aspect of strengthening supervision of the procuratorates in the judicial system, but may discourage prosecutors from using discretion in practice and impede the pace of current judicial reform in China.

- Not in favour of referral CR cases to other organizations

Applying CR may result in a non-prosecution disposal of a case, but it does not necessarily save the prosecutor from playing the traditional role of prosecuting the offenders in accordance with the law. This means that prosecutors need to take into consideration any factors that would influence the normal criminal proceedings. More importantly, the prosecutor belongs to a large judicial system at all times and receives internal supervision and assessment from the system, as do police officers and the judge.

While reviewing the debates on the advantages and disadvantages of CR in chapter 2, we could hear the voices of some prosecutors that, although CR could achieve better social effects, they would prefer to prosecute cases in court. The reason they gave was

that they were restricted by the institution and performance assessment system. The situation seems to have improved little after the institutionalization of CR. The interviewees showed a certain confidence in the CR institution. However, they were unable to deal with the multiple roles of mutual containment. In my conversation with the prosecutors, some of them even proposed making the facilitation of CR cases an additional item in the performance assessment of prosecutors, in order to promote the application of CR in the prosecution stage. The constraint of the performance assessment on prosecutors' work in CR cases focuses on two aspects: the time limit for handling a case and complaints from the parties.

Although two of my interviewees (ANQI and ENCI) were less worried about the extra time spent on helping the communication between the two parties, most of them had to consider the average speed of handling cases. All of the interviewees felt that transferring cases to a third party who knew nothing about the previous situation had not really alleviated the prosecutors' workload as expected, since, as the individual dealing with the case, they still needed to help with the facilitation process. In addition, transferring CR cases does not mean that the prosecutors have finished with them, because the prosecutors need to make the final decision about how to dispose the case. In a certain sense, if a prosecutor feels the time limit for handling a case is not enough, he/she will still try to speed up the reconciliation process, which may unavoidably place pressure on the two parties and the mediator. I prefer to regard this pressure as a problem in the institutional design of CR, rather than the fault of the individual prosecutor. With regard to complaints from the parties on the pressure brought about by prosecutors, let us not forget the fact that CR has been introduced as a new process and the role of prosecutors in it is ill-defined. It is not difficult to find out that the prosecutors have interpreted their roles in different ways. Sometimes, the way prosecutors are using the new process tends to undermine the value of CR, but the fault lies in the lack of clarity about the nature and purpose of CR in Chinese criminal justice. One can hardly blame the prosecutors for doing simply what they see as most convenient with the powers, especially when they are under the pressure from time limit of handling

a case and internal performance assessment.

To conclude, the prosecutors in the current practice of CR have a general understanding that, following the legislation, they are expected to be involved less in the reconciliation process. Nevertheless, it is unavoidable for them to help with communication and uphold the 'justice' between the two parties in the CR. Holding two advantages in being familiar with a case from the beginning and having the identity of legal authority, some of the prosecutors believed they were more appropriate for the facilitation role when the new personnel designated to take over the prosecutors' tasks in the mechanism do not have both advantages. In other words, there has been a lack of attention to the design of the facilitator role in CR. At the same time as expecting prosecutors to stand on the periphery of the reconciliation process, no efficient and qualified facilitator has been put into the design of the institution. Some attempts have been made to transfer CR cases from prosecutors in practice, but the effect has not been as positive as the aspiration. The next section presents an exploration of why prosecutors could precede other personnel as facilitators in China's current criminal system.

3. Re-examine CR institution in the lights of prosecutors' facilitator role

A pattern, formed followed the legislation, could be seen clearly in the attitude of my interviewees who have worked on the front line of dealing with CR cases. When the facilitating process tends to bring suspicion and regret from the parties, a significant investment of work time, and has an influence on performance reviews, the scale in the prosecutor's mind is very likely to be balanced in favour of the traditional proceedings rather than the CR procedure. This expectation for prosecutors to stand in the periphery of CR, when put into practice, has weaken their willingness and capability as an interventionist between the two parties, which could be the primary self-positioning of prosecutor in this approach. Additionally, it seems to undermine the prosecutors' resolution to stir up more restorativeness in CR approach, which has been embedded faintly along with their learning about CR and its close relationship with restorative

justice.

Looking back, the first unique element I learned when encountering the topic of CR in China was that the pilot projects were initiated by the prosecutors, who presented an image of being relatively keen on helping the two parties in a case reach reconciliation at that early period. In the recent advocate for prosecutors to play the role of facilitator in CR, Germany has been taken as the example that the prosecutor of Germany plays a positive role of mediator in the reconciliation approaches (Qian & Peng, 2012: 191). This has relation with the convenience principle of prosecution in Germany that prosecutors have a relatively large discretion and could make non-prosecution decisions on certain cases. Whereas China's criminal legal system adopts the legality prosecution principle as primacy, while the expediency principle plays a supplementary role when a crime is *de minimis*, which means that the prosecutor could only exercise the discretion to make a non-prosecution decision in accordance with criminal codes (Chen L., 2000). Although prosecutors' discretion has been expanded in past years, it is strictly under the legality prosecution principle (Chen R.H., 2009).

Under such context, prosecutors' new role of facilitator in CR process received doubts in two aspects. First, such a stricter role of prosecution in current legal system of China has depicted a stereotype for prosecutors as standing on the opposite side of offenders. It may cause dubiety that in the reconciliation process the prosecutor would continue being adversary to the offenders and in making the decision. Second, to some extent, it is the establishment of the CR institution that produced a leap for Chinese prosecutors in terms of their discretion in making a non-prosecution decision. This leap may result in the difficulty of the populace in accepting the changing role of prosecutors in a legal system with a legality prosecution principle, compared with a populace accustomed to the expediency prosecution principle.

As reviewed in chapter 7, criminal reconciliation as practised in China has a certain restorative nature in the light of my empirical research, more in the attributes of process than of outcome. Comparing to the pilot projects, the restorativeness of CR institution

has receded following the legislation as the core attribute of encounter has not been valued, reflected both in the discussions on legislative goals and in the prosecutors' practical experience. From what we have discussed above, it is plausible to say that prosecutors, who are the almost indispensable role in facilitating the encounter of the two parties, have been marginalized in such involvement with the two parties. One could argue that the value of encounter is not the focus in the development of CR in China. But the deficiency in encounter may influence the achievement of conflicts resolution, which is the ultimate goal for the institutionalization of CR. Apparently, the proposal for a neutral third party to play the role of facilitator in CR is based on the principles of restorative justice, in pursuit of the values of voluntary, democratic consensus and de-professionalization. In other words, if we are not developing a restorative approach, but only adding an alternative of reconciliation into current criminal justice for case diversion, there is no need to question the prosecutor's adversarial relationship the with offender in dealing with a criminal case, as long as it is entitled by law. The fact is that more or less, we are learning from the western experience of restorative justice to better achieve the goal of conflicts resolution.

Let us turn to the restorative approaches which Bazemore and Umbreit (2003) have concluded and compared. Generally, as Bazemore and Umbreit introduced (2003: 238-239), it is the probation officer or judge that refers the case to restorative process, opening the door for the encounter and reconciliation of victims and offenders. In their analytical form, the roles in restorative approaches including 'Managing dialogue' and 'Gatekeepers' are presented separately. The similarities and differences of role-setting between these restorative approaches and CR could be seen more clearly. Judicial officials dominate the item of 'Gatekeepers', responsible for making referrals, which is similar to the prosecutors and other officials in China who review the case and decide to initiate CR procedures. The difference is embodied in the item of 'Managing dialogue', there are various 'neutral helpers' from outside of criminal justice system including 'mediators', 'board chairperson' and 'coordinator', other than the officials, in the restorative approaches (237-8). Whereas it seems that these figures have been blended

in the roles of prosecutor in CR.

Take a concrete example of RJ to present this differences in official's role-settings: in England and Wales, although restorative justice could be initiated at any stage of criminal proceedings, the more common opportunity for applying restorative justice seems to be before the two parties move into the courtroom (CPS, 2013). During this phase, the Crown Prosecution Service (CPS) in England and Wales may authorize the recommendations from the caseworker and make a decision on an out-of-court disposal, such as a conditional caution with reparative goals. Similarly, Chinese prosecutors would make a non-prosecution decision with the consideration of the need to protect the public interest and the level of offending if the two parties reconciled successfully in the CR process. It is not difficult to understand that both systems' prosecutors hold the power to make a decision on the diversionary process of dealing with a criminal case. However, the Crown prosecutors do not seem to be involved in the facilitation work between the victim and offender, while the additional work of Chinese prosecutors in the reconciliation process is that they are also responsible for communication and shuttling between the parties in many instances. There is a lack of roles such as caseworker, parole officer, or social worker, who try to protect the rights of the victim or offender in China's justice system. Pursuant to McCold's (2000: 387) three stages in the transformative process of restorative justice, China may start from the second stage where the justice system itself starts to organize and facilitate the reconciliation between the parties, given the historical reasons for leaving the space for the magistrate-alike prosecutor to solve conflicts through reconciliation. In such a situation, it is not surprising that prosecutors, who become the officers closest to the parties, initiated the pilot project of CR to address cases in the prosecution stage.

To be noted, even if an organization or department is established to take over the facilitator or interventionist role from prosecutors, the restorative values injected into CR would be hindered by several issues relating to Chinese criminal justice system. One factor making prosecutors' rush into facilitation work is the time limit of making decisions on the criminal proceedings. Because the CR institution is implemented as depending on

the conventional criminal justice system, it is also adjusted by the rules of the latter. Even in the model of joint work with the people's mediator, the whole process of CR needs to be completed within the same time limit. Then, it is understandable why the prosecutors consider this model to be more time-consuming, counting in the time spent on prosecutor's referring the case to mediator and reviewing the outcomes of CR after the reconciliation. This time limit of making reconciliation may be the crux for the situation that prosecutors may bring pressure to the two parties to reach an agreement within a certain period. In addition, there exists irrationality in the internal performance assessment system that it takes the rate of making a type of judicial decision as the criteria for assessing the performance of prosecutors. It is not difficult to understand that the pressure to achieve completion rates could lead to prosecutors' emphasis on some easily achievable outcomes such as a high prosecution rate or a low rate of being complained. As a result, these may become more valued than the values which originally may have informed the policy.

Conclusion

For the first time, my interviewees shared the experience of how a prosecutor deals with a CR case following the uniform legislation. The lenses of the prosecutors have provided a rarely explored but important field of vision for understanding the application of CR. More importantly, they talked about their awkward position between the traditional prosecution role and the role of facilitation. They are the middle link in the CR institution, and are responsible for interpreting and implementing the legislation of CR made by the policy-makers and for delivering this alternative to the two parties and facilitating them in completing the reconciliation process.

This unique model of prosecutors facilitating CR in China is moulded by the characteristics of our legal system, such as the lack of a mature social work system for contacting and helping the two parties in a case. For historical reasons, prosecutors in Chinese history had a tradition of playing a complicated role in prosecuting cases,

communicating with the parties and sometimes mediating the case. Therefore, the suggestion that prosecutors transfer CR cases to a neutral third party to facilitate the reconciliation process may not be an effective solution, as it would almost certainly cost more in terms of time to achieve the CR process.

The findings indicate that the application of CR could bring additional pressure to the prosecutors' workload, based on the experience shared by the interviewees. First, the CR legislation does not solve the problem that the reconciliation process in the practice needs to be accomplished within a limited period, restricted by the fact that prosecutors need to make a decision regarding deposition based on the CR result and this decision has to be made within a period according to the law. As long as the time limit of reconciliation depends on the prosecutor's time limit of handling the case in the prosecution phase, it nearly inevitably leads to the prosecutor's hastening for a result of CR in order to makes sure the case is processed efficiently in the criminal proceedings. Instead of promoting the two parties to accept some agreement unwillingly, which is regarded as a risky option for the prosecutor's career in accordance with the interviewees, one of the solutions of prosecutors in the practice could be seeking for a reconciliation result within the time limit regardless it is successful or not. Confined to this situation, some goals such as reparation or encounter might be sacrificed in the practice.

Second, saying that the 'prosecutor is vulnerable to being misunderstood during the CR process' was familiar among the interviewees. It is also implied in their interpretation of the CR legislation that the prosecutor should stand in the periphery of the CR process, compared with the more active facilitation role taken in the pilot projects. However, my interviewees, as practitioners in the CR, regarded the process as a valuable and effective alternative to handling minor criminal cases. But they appeal strongly for more time and discretion to accomplish the facilitation work, if the outcome of really resolving conflicts is expected. Currently, the vague role-setting of prosecutors reduces the focus on applying CR in the practice, which is contrary to the expectation for relying on the new alternative to solving conflict between people.

Conclusion

In this thesis, I have tried to depict the practical picture of CR after uniform legislation through the lenses of prosecutors. On this basis, I attempt to explore the question of whether the legislation has improved the application of CR and solved the issues raised in the pilot period. In order to make evaluative accounts, I have analysed two related questions: how the legislation is expected to solve the issues and what is the actual effect in practice after legislation. Based on the analysis, I would suggest that CR has not achieve the goals set in the legislation as expected, on accounts of misjudgement on the premises of setting the goals and practical obstacles when expectations are put into practice.

First, through reviewing the arguments, I have found sceptical voices about CR concentrating on two aspects that much focus has been put on material compensation and the empowerment to victims and offenders is insufficient in the process of CR (Li & Huang, 2009; Rosenzweig et al., 2012). Much of my argument has been that in resolution to these problems, the legislation of CR tries to put more focus on fulfilling the needs of the two parties for the purpose of dispute resolution. On the other hand, the legislation assigns the prosecutors to stand in the periphery of the reconciliation process in the expectation of ensuring the voluntary of the parties.

Next, I have examined the accomplishment of goals in the practice of CR and elaborated on the reasons why they are not achieved as expected. Based on my research I would suggest that the new legislation, which carried expectations from advocates of CR, has not managed to improve its implementation situation from the following aspect. The analysis on the assumptions taken into account in the legislation of CR, undertaken in this thesis, suggests that some traditions of Chinese in ancient society have been mistakenly considered to play the same role in current contexts of China. One of the premises disproved in my empirical research is that Chinese people still have aversion to litigation in the current society. On the contrary, from the cases shared by prosecutors, we could find that Chinese people attach importance to and take good use of legal

resources nowadays. To be more specific, through my exploration on the legislative process, one clear emphasis reflected in the institutionalization of CR is on resolving disputes of people with close relationship, based on the premise that acquaintances are easier to be reconciled. On the contrary, the actual practice of CR has shown that when the conflict has reached the level of an offence, the factor of "close relationship" is hardly beneficial for the reconciliation as expected. Due to the contradictory results in the practice of CR, it is inadvisable to take the direction of relying on traditional methods in the institutionalization of CR in the current context of China.

Second, even RJ has not been taken as official developmental direction for CR in the legislation, the aspirations of RJ such as repairing the harmed relationship and resolving disputes have been appreciated. In the lights of influential factors in reconciliation process concluded from my interviews with prosecutors, these goals could not be achieved if the dispute-resolution mechanism is closely connected with or even determined by the offenders' treatment in criminal procedures. The empirical data have shown that in a few cases the offenders' decisions of participating CR were made out of the considerations of getting a lenient punishment, and the victims' decision out of receiving material compensation. Based on the current institutional design of CR, these motivations are unavoidable and understandable if CR is dependent on the criminal justice system and serves more for division of case in the practice.

It is advisable to believe that the result-oriented design of CR could hardly achieve the conflicts resolution goal as it is expected. First, little importance has been attached to the resolution of conflicts in the institutionalization of CR due to the lack of avenue for communication and encounter. Second, restricted by their role-settings and pressure from performance appraisal, prosecutors, who used to facilitate the reconciliation of the two parties actively, have been repressed by the new legislation of CR. In the lights of my interviewees, more prosecutors would prefer not to involve themselves much in a CR case after the legislation, comparing to the pilot period when the majorities were aiming to help resolve the disputes between the two parties in the process of reconciliation.

Another goal held by policy-makers, stressed in the necessity of CR legislation, is to

resolve the misunderstanding of the public with official recognition to CR. Simple requirements have been made on the practical operation of CR procedures, including the voluntary of the participants, the genuine apology from the offender, and the reduction of proseuctors' involvement in reconciliation process. The legislation of CR is expected to prove to the public that this new institution is established to provide an alternative to solving minor criminal cases with legal procedures. Whereas, the effect is not satisfactory enough because of the misjudgment on the cause of people's misunderstanding of CR. The public's having difficulties in accepting the new institution could be the contradictory product of the gradually established ideology in China on western criminal justice system and the lack of trust in Chinese judicature after tasting the bitter fruit of the immature justice system, especially before the criminal justice reforms in 21st Century (Pratt, 2007).

Herein I make several recommendations for the development of CR institution in China, which has been entangled in the expected goals and practical difficulties. First, if the advantages of CR in the pilot projects would like to be carried forward, for example the repairing of both parties and better resolution of conflicts, then the restorativeness of CR institution needs more emphasis by the policy-makers in the institutional design. One clear point reflected by the prosecutors is that the legislation of CR has put focus on the reconciliation result but it fails to help resolve conflicts due to the neglect of the reconciliation process. To guarantee the restorativeness of reconciliation process, the CR institution should be more independent from current criminal proceedings so that there would be less consideration of the result of punishment treatment in the decision-making of CR. Based on my findings and discussions, I would argue that CR's disadvantages of placing too much on compensation and punishment result are not mainly caused by professional coercion but the consideration of the two parties themselves. Therefore, when CR is introduced to the two parties as an alternative to solve conflicts, its goal should not be connected to obtain a lenient punishment or even a non-prosecution result. The independence I propose here include two aspects. First, CR's result would not influence the decision-making of arrest, nor the decision-making of prosecution. Although the application rate may decrease due to the cut-off of the link

between CR and 'a beneficial result', the participants, knowing what CR could bring to them, would really enjoy the advantages provided by the reconciliation process to solve the conflicts or any issues they choose to talk through. Second, the facilitator of CR should be independent from the performance appraisal system given that we have no sufficient and trained mediators to do the facilitation work. Based on the current context of China's justice system, I would suggest, not a permanent solution that prosecutors could help play the role of facilitator in the form of separating different roles of prosecution and facilitation to different prosecutors.

My suggestion on the independence of CR is not made for permeating the formal justice system (Walgrave, 2000). In consideration of the current context of China, I would argue that criminal justice system is still of importance for the public to obtain protection from the state. From the point of policy-makers, a better solution to the delineation of people's trust in justice system may be a clear distinction between criminal justice punishing crimes and CR help the parties solving conflicts.

Even CR plays an important role of case division in criminal proceedings, when a case is referred to CR procedures, one goal should be put in the first place that the two parties could share ideas and deliberate on the resolution of their conflicts. Drawing upon my research, I would argue that CR should not bear the heavy burden of improving the reintegration of an offender by itself and fundamentally, CR's advantage of reducing recidivism is not merely harvested by the avoidance of a criminal record. Therefore, considering current criminal justice system, one attempt could be that the positioning of CR could be a private remedy methods focusing on the two parties' needs, parallel to the public remedy mechanism of pursuing the protection of public interest.

Second, along the line of a more independent CR system, I will put forward some proposals on concrete operations in the practice. From the analysis of the restorativeness of CR in this thesis, I have pointed out that the weakest link would be the lack of encounter attributes in the practice of CR. To actually promote an effective encounter beneficial to both parties, facilitators of CR play an indispensable role in accomplishing much of the preparation work before the two parties entering the CR process. We could

learn from the western restorative justice model in which the roles of referrers and facilitators are separated. In this case, prosecutors still hold the authorities in supervising the CR institution by making the decision of referring the case to CR procedures, or examining the referral decisions made by the police and the judges. From the other aspect, when the referral decision is made and CR procedure is initiated, prosecutors who play the role of referrer have accomplished their mission for the moment. And the stage of CR should be given to the two parties and their supporters, while the facilitator plays as the 'stage manager' whose work starts earlier before the actual encounter of the two parties. After separating the case-handling prosecutors from the ambiguous role of prosecution and neutral facilitation work, I will try to make recommendations for solving the dilemma of choosing whom to play the facilitator role.

Facilitators need to coordinate with the two parties and know about background information of them and manage to make a strategy that works for both parties to feel comfortable to meet and talk things through. This task is doubtless time-consuming and profession-requiring. Therefore, one major reason for the dissatisfactory performance of people's mediators could be that they have not received systematic and targeted training of facilitating a conversation between the victim and the offender. As I have stressed several times in this thesis, the weakening of prosecutors' function in CR by legislation needs to be balanced with concentrated and fully-prepared facilitators. Although China has put more attention on training people's mediators in recent years, we are currently in the temporary shortage of mediators for criminal reconciliation. More importantly, I think that facilitators of CR needs to master more professional knowledge facing victims and offenders who are more special and vulnerable than the parties of civil cases. In overall considerations, we could set up a CR office within the prosecutorate, which is consisted of prosecutors, legal aid lawyers, people's mediators and other senior legal workers. The prosecutors here have no workload of prosecution and are responsible for accepting the referral case from other prosecutors, and coordinating with the available legal service workers to get contact with the two parties and prepare the CR procedures for them. Under this scheme, the prosecutors who are responsible for public prosecution

could avoid involving much in the CR process and consecrate on their original work task; if the case is referred to CR procedures, they could suspend the criminal proceedings of this case and turn to handling other cases. In addition, the legal service workers, may they be lawyers, mediators or scholars in daily life, their identities become facilitators of CR when they are called to work for CR cases. In current stage, it is advisable that these legal workers given their career professionalism are easier to be trained to become a facilitator who mainly help and guide other than dominate the processing of reconciliation between the two parties.

Last but not the least, the public attitudes towards the new institution need to be considered. Most ideally, this opportunity of communication could be provided to the parties of all criminal cases at any stages of criminal proceedings. As I have pointed out in this thesis, the idea of making reconciliation of a criminal case is not easily acceptable among the public. The major responsibility should be laid on the policy-makers to promote and popularize the idea of criminal reconciliation, the goal behind it and how it is actually practiced. Otherwise, news reports on extremely individual cases or those mistakenly regarded as CR case would be the only resource for the public to understand the new CR institution. Given that, we could provide mock CR procedures for the public to observe or even participate. The practical department of CR such as the CR office within the procuratorate could hold open day events in which CR participants voluntarily share their own stories to other people.

Although the development of CR in China is like a long march in which the independence of CR from criminal justice system could save it from being used as a way of avoiding punishment, and the well-trained facilitator could fully play the role of helping the two parties to resolve disputes via consensus, the institutionalization of CR contributes in opening the door to restorative approaches in China.

Notes

[1] Longquan Judicial Records (*Longquan Sifa Dangan*,龙泉司法档案), documenting the judicial cases that took place from 1858 to 1949, which included the late Qing Dynasty and the regime of the Republic of China. Found in 2007, they are the most complete and the largest district judicial files in China, revealing many practical facts that were little known to people previously.

[2] The most known one is 'Hunan Provincial Trial Regulation on Procuratorate's Application of Criminal Reconciliation in Criminal Cases' had been introduced in November of 2006, as the first district regulation on CR nationwide, available at http://news.163.com/06/1122/11/30HFG7RA000120GU.html. Similarly, Zhejiang Provincal People's Procuratorate issued the 'Regulation on Proceduratorate's Handling of Victim-offender Reconciliation Cases' in November of 2007, available at http://www.spp.gov.cn/gs/200712/t20071218_29571.shtml In the court system, Beijing First Intermediate People's Court issued 'Guidance on the Application of Criminal Reconciliaiton in Criminal Trial'' in July of 2009, available at http://old.chinacourt.org/html/article/200907/24/366736.shtml [Accessed 10 December 2013].

[3] The Supreme People's Procuratorate is the highest prosecution organ in Chinese criminal justice system, leading the prosecution work nationwide and deploying missions for procuratorates of lower level.

[4] The information on CR pilot scheme was provided in reports from several procuratorates, in which they claim to have been pointed towards joining the pilot scheme during that time, such as the report of Nanjing City Procuratorate of Jiangsu Province from 2007 available at http://www.jcfyzz.com/zt/cxshgl/sj/2013/04/09/4624.html and the report of the Jinbo Procuratorate of Ningbo City from 2008. Available at http://www.spp.gov.cn/site2006/2012-11-26/0005543792.html. (Accessed 10/12/2013).

[5] In consideration of the practicing of CR cases in procuratorate, there are two situations: during the periods of the prosecutors making the prosecution decision and making the arrest application decision. 1)According to the Article 169 of 2012 CPL, the procuratorate needs to make the decision on prosecute or not within a month since the case was transferred to the procuratorate by the public security authority; if the case is significant or complicated, the time limit could be extended for another half month; 2)According to the Article 69 of 2012 CPL, the procuratorate needs to make the decision on the arrest application filed by the public security authority within seven days.

[6] There is no consensus on the nature of non-prosecution decision made in a CR process

[7] E.g., Ningxiang Procuratorate of Hunan Province, 2007, available at http://news.xinhuanet.com/focus/2007-02/26/content_5743422.htm; Wulong Procuratorate of ChongQing City, 2008, available at http://wulong.cqjcy.cn/information/informationdisplay.asp?newsid=15326 ; Jiangan Procuratorate of Shanghai City, 2009, available at http://sh.eastday.com/qtmt/20090413/u1a559658.html ; Xiqing Procuratorate of Tianjin City, 2010, available at http://www.legaldaily.com.cn/dfjzz/content/2010-07/16/content_2197977.htm?node=8396 [Accessed 17/06/2015].

[8] Zong Zu refers to a family or several families with kin relationship living together as a unit in a compact community. In this paper, it talks about traditional mediation in ancient China when the clan is a common residential form that the clan member helps each other, worships the ancestor together, and develop together. Someone in the clan with high reputation and influence will play a similar role of mediator when resolving the disputes of clan members. The influential person may admonish and reason the members with the goal of restoring the harmonious relationship within the clan, which is

the 'influence from the clan' in the context.

[9] Jia gave an example of an abandonment case at the revolutionary period before the found of the PRC. In the handling of this case through reconciliation, the offender was forgiven by his mother, whom he had abandoned. As a result, the judge passed a conditional discharge on him.

[10] Although the phrase of 'cracking down' had been used in two operations after 2003, one led by the Ministry of Public Security in 2010 and the other by the Central Committee of Politburo of the CPC in 2014, the harsh policy is no longer the focus in China's criminal policy.

[11] The phrase of 'cracking down' has also been used in two operations, one led by the Ministry of Public Security in 2010 and the other by the Central Committee of Politburo of the CPC in 2014.

[12] These two operations were undertaken under the leadership of Jiang Zemin (the core of the third generation CPC leaders).

[13] The definition of 'antagonistic contradiction' and 'contradiction among people' was first discussed in China in Mao Zedong's (the founding leader of new China) paper called 'On Contradiction' in 1937. In the paper, he introduced the thought of Lenin about the non-antagonism of the contradictions among the people.

[14] See Appendix II of different versions of drafts during the legislative process.

[15] See Appendix I of the institution setting of the NPC involving legislative affairs.

[16] The special provisions of Criminal Law of PRC are divided into ten chapters with stipulations on different types of rights being violated.

[17] The stipulations on identification standards of injury degree had been rougher during the pilot period of CR than they are today, gradually specified in recent years. From 1990 to 2013, the identification standards for slight injury, minor injury, and serious injury had been stipulated in respective documents. From 1st Jan of 2014, a combined 'Identification standards on injury degree of human body' began to take effect, with more detailed classifications of injury degrees.

[18] Confucianism, Legalism and Taoist all belong to the "Hundred schools of philosophy in pre-Qin times", which is a period from 21st century BC to 221 BC when various philosophies flourished in ancient China.

[19] See news such as: 1) 'CR achieves the result of "zero petition or appealing" in Hunan Province' (XingShi HeJie ShiXIan Ling ShangSu ShangFang), *Hunan Daily*, 11 January of 2011, Availabe online http://news.163.com/11/0111/07/6Q3P5R4S00014AED.html; 2) 'No petition from the parties after 23 cases settled criminal reconciliation this year in Nanchang City' (23Jian XingShi HeJie An Wu YiRen ShangFang XinFang), *New Legal Report*, 16 October of 2012, Availabale online http://jxfzb.jxnews.com.cn/system/2012/10/16/012140895.shtml '; 3) 'No petition from participants since the application of CR for four years in Ningbo City' (NingBo SiNian XingShi HeJie Wu ShangFang), *Procuratoraial Daily*, 26 November of 2012, Available online: http://newspaper.jcrb.com/html/2012-11/26/content_114212.htm. [Accessed 8/5/2016]

[20] Here I have not listed all the departments of a procuratorate. Some administrative departments and the Anti-Corruption Department have not been discussed here because the latter department focuses on cases related to the corruption and bribery of state functionaries and executes investigative power in these cases, which is different from the roles of public prosecution and supervision focused upon in the discussion of this thesis.

[21] 'Zhu Chi Ren', '主持人' in Chinese, could be directly translated as 'presider', meaning people who control or take charge of a process; it is sometimes replaced by the term 'mediator'. 'Zhu Chi Ren' is more often used during the pilot project period when the prosecutor played a more active role in the

process. The actual role of the prosecutors in the current practice of CR is considered to be more a facilitator than a mediator. For the convenience of discussion, the role of prosecutor in CR is referred to as a facilitator in this thesis.

[22] Chongan District Procuratorate of Wuxi City in Jiangsu Province (reported by Wang Dan); Pingjiang District Procuratorate of Suzhou City in Jiangsu Province (reported by Huang Fujuexin); Yuhua District of Shijiazhuang City in Hebei Province (reported by Fu Wenkui); Yiwu City Procuratorate of Zhejiang Province (reported by Weng Yueqiang); Yantai City Procuratorate of Shz Province (reported by Wang Liguo and Feng Ruyi), etc.

[23] In 2002, Beijing Chaoyang District Procuratorate issued 'Regulations on Procedures of Handling Minor Injury Cases (Trial)'; in 2006 Hunan Province Procuratorate issued 'Regulation on How Prosecution Organs Employ Criminal Reconciliation in Handling Criminal Cases'; in 2007 Zhejiang Province Procuratorate issued 'Regulation on Criminal Reconciliation of Minor Criminal Cases (Trial)'; in 2006 Shandong Province Yantai City Procuratorate implementing 'Ping He Si Fa' (Taking restorative justice as reference); in 2007 Jiangsu Province Judicial Offices of Wuxi City and Yangzhou City issued 'Opinions on Criminal Reconciliation Work'.

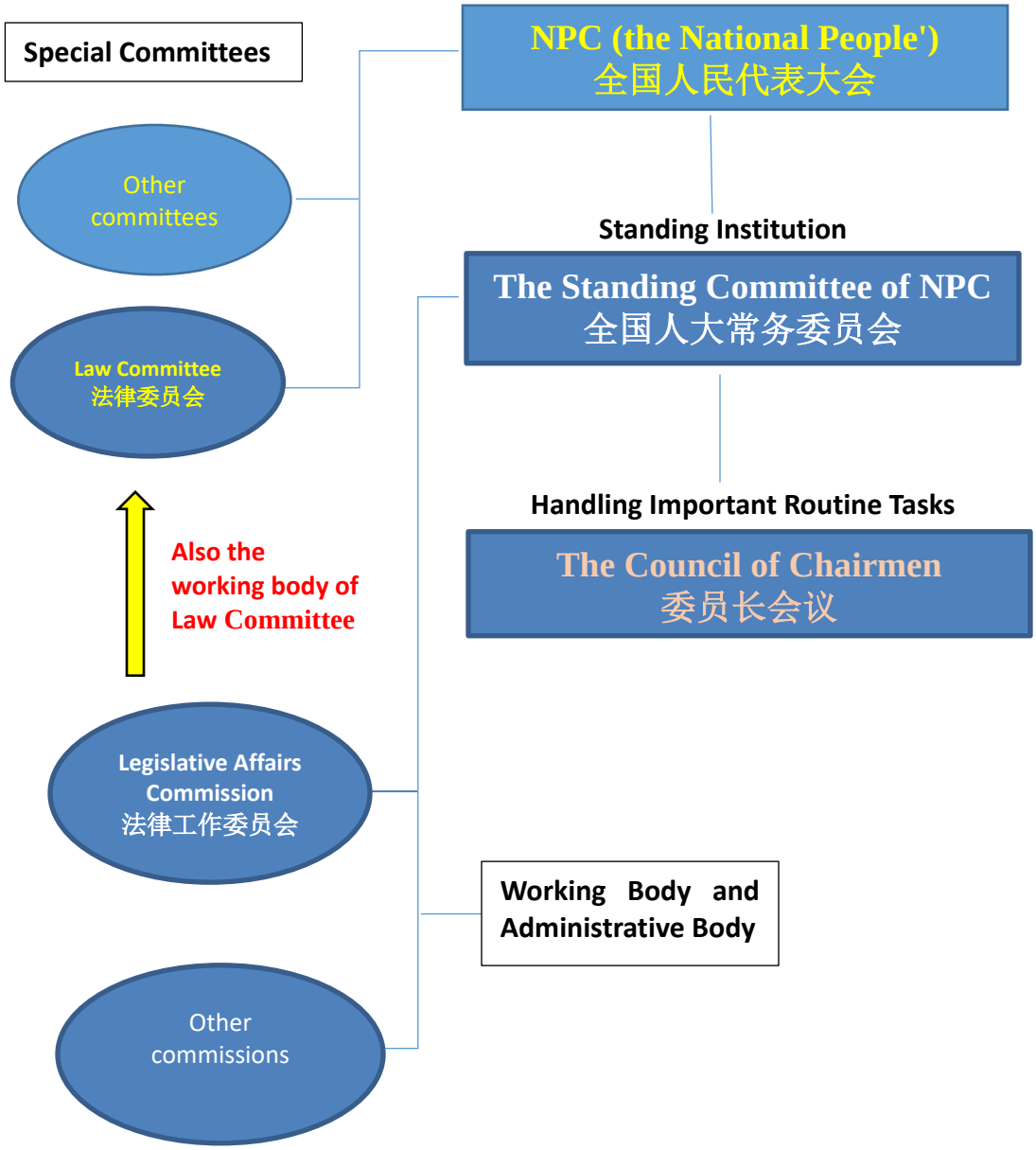
[24] According to the interviewees, most of the prosecutors following the legislation made fewer arrangements for the encounters between the two parties than before under the general guidance for less involvement in the actual reconciliation process. Nevertheless, from reports and news items, it can be seen that the specific encounter (excluding meeting at the trial) between the two parties for reconciliation is arranged by the prosecutors, who hold strong judicial authority.

[25] See reports such as http://www.bjjc.gov.cn/bjoweb/zt6/41634.jhtml and http://news.sohu.com/20090320/n262909714.shtml. These mechanisms are still introduced in recent reports as exemplary models for distributing the prosecutors' facilitation work. Viewed at http://www.hbsf.gov.cn/wzlm/tjgcs/tjcgzc/jytg/29482.htm. [Accessed 05/03/2016]

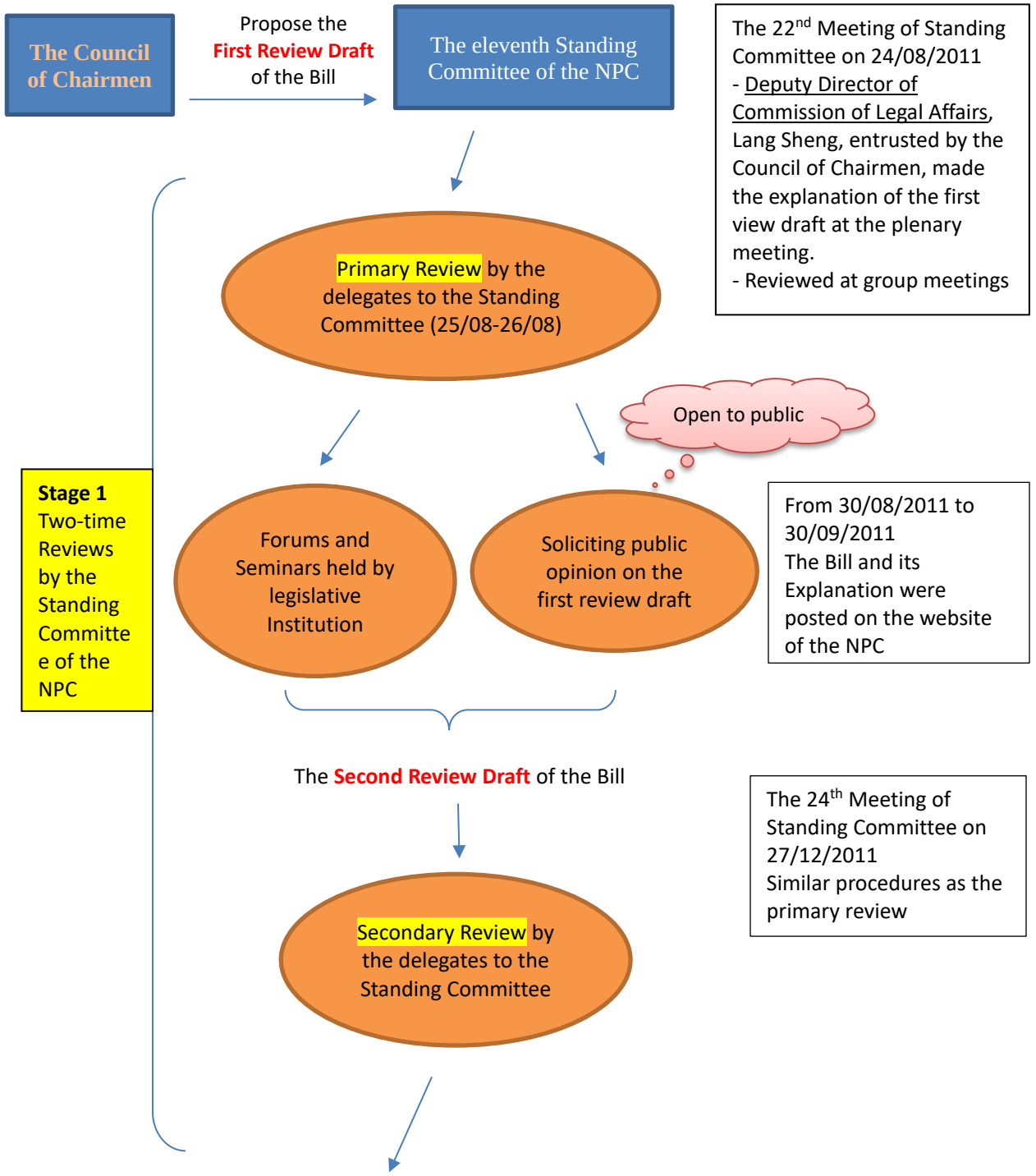
[26] C Procuratorate began trying to solve minor injury cases through reconciliation between the parties concerned in 2002 and established a specialized office in 2007 with the participation of postgraduates from China's University of Political Science and Law at the time.

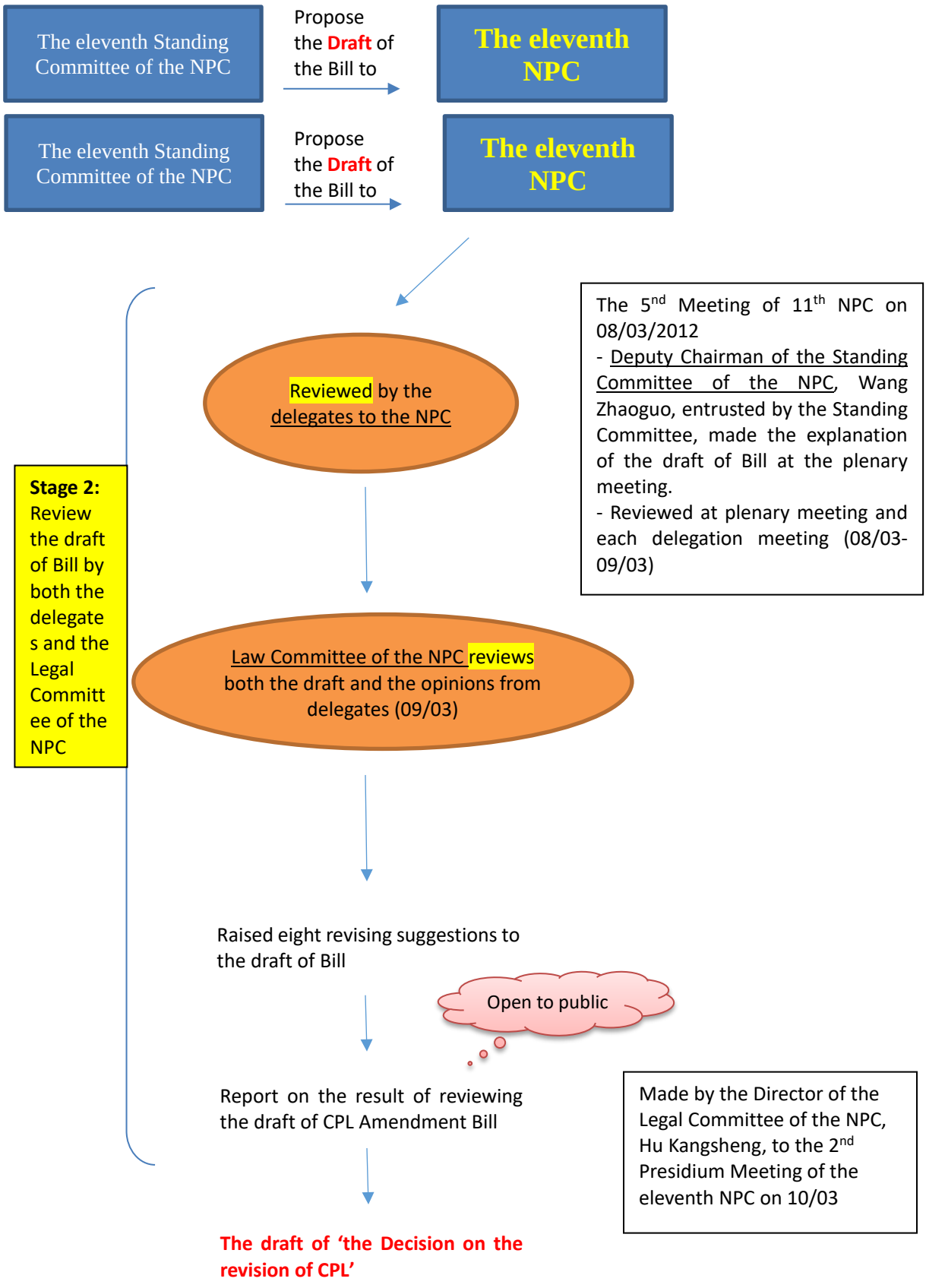
[27] I was told by the prosecutors about three family cases employing the CR method: one between a father and son, one between brothers, and one between a husband and wife. In all three cases, the interviewees stated that they had tried to facilitate the parties in resolving the conflict at the time, but the effect had not been as good as they had expected.

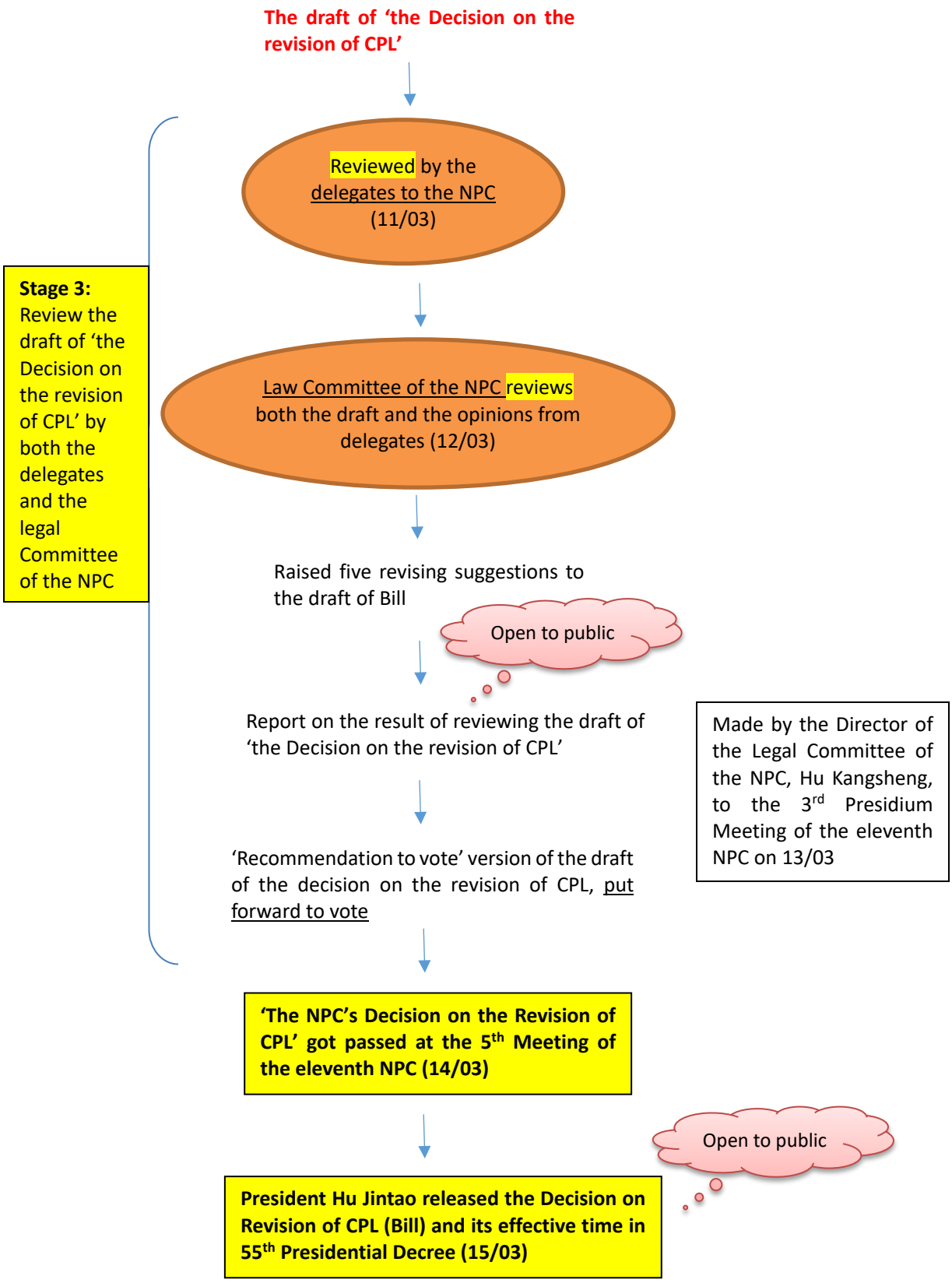
Appendix I The institution setting of the NPC



Appendix II The legislative process of the Revision of CPL Bill




The eleventh Standing Committee of the NPC
Propose the Draft of the Bill to
The eleventh NPC
The eleventh Standing Committee of the NPC
Propose the Draft of the Bill to
The eleventh NPC
Reviewed by the delegates to the NPC
The 5nd Meeting of 11th NPC on 08/03/2012
- Deputy Chairman of the Standing Committee of the NPC, Wang Zhaoguo, entrusted by the Standing Committee, made the explanation of the draft of Bill at the plenary meeting.
- Reviewed at plenary meeting and each delegation meeting (08/03-09/03)
Stage 2: Review the draft of Bill by both the delegates and the Legal Committee of the NPC
Law Committee of the NPC reviews both the draft and the opinions from delegates (09/03)
Raised eight revising suggestions to the draft of Bill
Open to public
Report on the result of reviewing the draft of CPL Amendment Bill
Made by the Director of the Legal Committee of the NPC, Hu Kangsheng, to the 2nd Presidium Meeting of the eleventh NPC on 10/03
The draft of 'the Decision on the revision of CPL'


The draft of 'the Decision on the revision of CPL'
Reviewed by the delegates to the NPC (11/03)
Law Committee of the NPC reviews both the draft and the opinions from delegates (12/03)
Raised five revising suggestions to the draft of Bill
Open to public
Report on the result of reviewing the draft of 'the Decision on the revision of CPL'
'Recommendation to vote' version of the draft of the decision on the revision of CPL, put forward to vote
'The NPC's Decision on the Revision of CPL' got passed at the 5th Meeting of the eleventh NPC (14/03)
Open to public
President Hu Jintao released the Decision on Revision of CPL (Bill) and its effective time in 55th Presidential Decree (15/03)
Stage 3: Review the draft of 'the Decision on the revision of CPL' by both the delegates and the legal Committee of the NPC
Made by the Director of the Legal Committee of the NPC, Hu Kangsheng, to the 3rd Presidium Meeting of the eleventh NPC on 13/03

Appendix III. List of interview questions

(Questions are adjusted based on the situation and process of the interviews)

1. Professional experience

- How long have you been working as a prosecutor?
- What kind of specific work are you usually responsible for (prosecuting? approval of rest?), before dealing with reconciliation cases?
- How do you feel about the traditional way of prosecuting offenders?

2. Stepping into the area of criminal reconciliation

- By what means do you start out in application of criminal reconciliation? Volunteer to take charge or be assigned to take the job?
- What qualities or experience make you the one suitable for this job?
- Have you got any experience of reconciliation before?
- Do you know any theories or case examples of criminal reconciliation before practice?

3. Expectation of this new way of solving cases

- What's your reaction of knowing that you are going to resolve the case through reconciliation?
- What kind of preparation have you done for better application of reconciliation?
- What relevant legal documents or materials have you read? Laws, policies, guidelines from your own procuratorate, academic readings
- Do you think these guidelines are enough for you? How do you interpret those regulations that are not very clear or too general?
- How do you understand this process of reconciliation? Is the focus on reaching an agreement or repairing the damaged relationship?
- What do you think of your role/function in this process? Presiding over the process as in traditional criminal justice or facilitating the parties to solve the disputes or else?
- What do you expect from criminal reconciliation? Advantages and disadvantages.
- What do you think of the effectiveness of this method? Compared to traditional trial?

- Why do you get such conclusions or expressions? What resources make you think so, from policy advocacy? Requirements from the leader? Experience sharing from your peers? Learning from academic research?

4. Experience and reflection from practice

- While in practice, among the cases you dealt with, what types of cases have been settled through reconciliation?

- How do you handle the process? Could you describe the process to me? Main procedures. Examples of cases.

- Are these cases settled well or turned to trial process in the end?

- How is your interaction with the parties? Are they satisfied with this process?

- Does the process need much of your control? Need your skill of being a prosecutor or a mediator?

- What difficulties do you come across during the process? Especially difficulties that will not occur in traditional criminal justice or difficulties not anticipated before application?

- Do these questions remind you of some impressive cases? Could you share them with me?

- How would you evaluate the results of reconciliation?

- How do you think of your role during the reconciliation process?

- What do you found are the difference about the parties being reconciled with those who not?

- Now could you recall your expectations on this new mechanism? Have these practical experience met your original expectations?

- Why do you think causes these differences or contradictions between rationale/ your understanding and expectation and the application in practice? List any factors you could think of.

- Now, as a whole, please share me with your evaluation on criminal reconciliation? What if compared with traditional criminal justice?

- Do you believe this new mechanism has its vitality in mainland China? If so, what aspects it needs to be improved and perfected?

- After applying it in practice, what's your reflection on the current legislation about criminal reconciliation? Any suggestions from your practical experience

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