

# Preface

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Criminal reconciliation (*xingshi hejie*) is a special procedure in China's new Criminal Procedure Law, which came into effect in January 2013. It allows the alleged perpetrators and victims of certain crimes – here referred to as 'the parties' – to resolve criminal cases through reconciliation or mediation. It is officially understood as a mechanism to promote a 'harmonious society' (*hexie shehui*) through voluntary offender–victim reconciliation and bringing 'closure' (*an jie shi liao*) to criminal cases in a way that empowers the parties. It has been designed as a mechanism that can overcome perceived deficiencies of the ordinary, in principle adversarial criminal justice process.

This book, written while criminal reconciliation was being experimentally used in some locations, draws on case examples and interviews with prosecutors, judges, lawyers and parties who participated in this programme in pilot projects in three different regions of China. It critically describes and examines the purposes, successes and failures of this practice observed during fieldwork and argues that while the criminal reconciliation mechanism has contributed to improvements in enforcing compensation agreements between suspects/defendants and victims, it can enable abuses of power and influence and infringement of the parties' rights and fail to lead to just outcomes, as long as wider problems of the current criminal justice system remain unaddressed.

While the case files accessed for the purpose of this research purport to document a well-functioning process of criminal reconciliation in accordance with the rules and principles supposed to govern it, interviews provide a drastically different picture. In practice, in many cases observed, the criminal reconciliation process was not characterized by the principle of voluntariness supposed to be one of its main advantages; rather, the officials in charge dominated the process. In addition, the entire process focused largely on compensation, so it was potentially unfair to economically weak suspects and defendants. It was also found in some cases that the conflict between the parties still existed or had worsened at the end of the criminal reconciliation programme. Evidence of the fact that criminal reconciliation has been used in serious cases well

beyond the intended scope of 'criminal reconciliation' as a formal mechanism raised further concerns about power abuses.

On the basis of these findings, it is argued that criminal reconciliation throws light on certain fundamental problems with the wider criminal justice system. First, officials in the criminal justice system routinely circumvented certain legal rules protecting the parties' rights and to some extent replaced these rules with 'hidden rules' (*qian guize*), whose content is largely shaped by politically driven performance assessment criteria, as well as in some cases by intervention from other entities such as the Political-Legal Committee. Second, the criminal proceedings in China reflect an authoritarian, paternalistic and educational (thought-reform-based) approach to criminal justice; the parties' rights are regarded as secondary to this political end. Third, the State does not take sufficient responsibility to protect the victim's right to get compensation in the civil litigation collateral to criminal proceedings.

In conclusion, this book argues that resolving criminal cases through reconciliation and mediation may aggravate the problems already affecting the ordinary criminal justice process, because it is a mechanism designed to weaken procedural rights protections and eliminate the adversarial character of the criminal justice process. Thus, the promotion of criminal reconciliation may be one of the several signs that, since the early 2000s, China is deviating from the path of rule of law development that was once the political leadership's clearly stated goal.