Index

comparative look at criminal reconciliation 57–74
criminal reconciliation
aims of 68–9
community missing in 60
compensation, focus on 59
compensation, role of 69
conducted in context of normal criminal justice system 59
defendant as object to be educated and corrected 68
indigenous Chinese practice, as 57
‘looking outside’ and ‘looking inside’ at programme 57–8
restorative justice, and 59–60
differences between criminal reconciliation and restorative justice 59–60, 65–9
different roles of community 65–6
different roles of community 65–6
political goals for criminal reconciliation not in restorative justice 68–9
reintegrative shaming missing in criminal reconciliation 67–8
restorative justice 60–65
aims of 68–9
alternative to normal criminal justice system, as 59
community role/responsibility 65–6
compensation, role of 69
core values of 62
criminal reconciliation, and 59–60
definition of restorative justice, UN 64
definition of restorative justice process, UN 64–5
deliberate infliction of pain regarded as unethical 61–2
divergence on values of 62–3
escape from harsher treatments in formal system, as 62
first restorative justice practice in Canada 63
focus on 57, 58, 60
global popularity of 64
judging how restorative a programme or model is 63
non-coercion, value of 62–3
objectives of 68
real communication/exchange, in particular psychologically, stressed 59
retributive justice, and 61–3
significance of community in 60
social control, built on 65
stakeholders, interest of 61
traditional criminal justice system, compared 60–61
Victim-Offender-Mediation programmes 63–4
Victim-Offender-Reconciliation, criminal reconciliation as 58–9
Victim-Offender-Reconciliation programmes, establishment of 63
Victim-Offender-Reconciliation
Victim-Offender-Mediation from 63–4
restorative justice in practice: author’s observations in Brisbane, Australia 69–72
first observation 70–72
second observation 72–3
compensation bargaining over compensation, focus on 130–35, 238
fulfilment of compensation obligations, focus on 59, 139–43 compensation as absolute focus 142, 143, 188, 238 concerns and criticisms over focus on 50–51, 191, 238–9 crucial importance of amount paid in deciding outcome of case 140–41, 238 different economic circumstances affecting results, unfairness of 141–3, 238 unfairness, focus on compensation leading to 191 function of compensation for victim overstated 186–8 main content of criminal reconciliation agreements, as 132, 138 private agreement reached prior to formal meeting, compensation in 135–6 compensation often paid ‘on the spot’ 135 risk of coercion 136 role of 69 smooth enforcement of 42–3 contradictory rules and ‘hidden rules’ 200–19 conflicting ideologies or power struggle? 203–5 conflicting ideologies in criminal justice system 203–4 internally conflicted design of Criminal procedure law 204 revision of law as power game between State authorities 203–5 unsuitability of values transplanted from Western jurisdictions 204 disregard for written rules as general problem with criminal justice system 199, 200 hidden rules replacing written rules 200, 201 internal and external pressures for ‘hidden rules’ and ‘parallel systems’ 202–3 causes for malfunction of written rules 202–3 deficiencies of institutional design 202–3 officials’ enormous power 203 lack of supervision or lack of independence 207–17 further supervision mechanisms unlikely to be effective 211 judges and prosecutors not independent 211–16 mechanism needed for alleged violations of procedure 209, 210–11 media and public supervision in question 216–17 no legal liability on officials for infringing rights and rules 209 officials’ power too strong/lacking effective supervision 207–8, 210 party control 211–13, 216 supervision arrangements at Peoples’ Procuratorate 208–9, 210 supervision of the courts 209–10 ‘Zhao Zuohai case’ 213–14 main ‘hidden rules’ 201–2 dismissing claims that confession induced by torture 202 irregular/illegal collection of evidence 20–2 no acquittals for lack of evidence 202, 206 preliminary conclusions 218–19 prevalence of ‘hidden rules’ and ‘parallel systems’ 201–2 disregard for written rules leading to malfunction of law 201 pursuing own interests or pressure from quota system? 205–7 internal quotas replacing legal rules in judicial practice 206–7
officials engaging in cost-benefit calculation 205–6
criminal justice through ‘correction’ and ‘thought reform’ 219–37
concept of ‘correction’ in wider criminal process 220–29
defendant’s final Statement expressing remorse 223–4
defendant’s rights heavily compromised 221
educating and correcting as aim of criminal reconciliation 219–20
educating and correcting as important features of normal trial process 220–21
education playing critical role in system of correction post-conviction 224
goal, methods, outcomes of education programmes, dubious nature of 226–7
moral condemnation as education of defendant 223
prosecution opinions as educational 222
stating goal of educating defendant 222–3
thought education and reform through labour 224–8
thought education for pre-trial detainees 227–8
wider public, education of 228–9, 231
ideology of ‘thought reform’, underlying ‘correction’ 229–33
causes of crime as reasons for educating and correcting 229–30
deficient moral consciousness and crime 229, 230
educating and reforming the person as goal of punishment 231
methods of punishment and re-education 231–2
open trials, educational function of 231–3
preliminary conclusions 236–7

thought reform, critique of 233–6
criminal justice system as authoritarian 236
criminals regarded by State as people who are not free 234
educational trial rendering presumption of innocence impossible 233
infringements of rights of individuals 236
‘inner freedom’ and ‘individual freedom’ 234–5
‘positive liberty’ 235–6
strong defence not possible as conflicting with presumption of guilt 234
Criminal Procedure Law (CPL) new special procedure to ‘reconcile’ (criminal reconciliation) 1
Art 277: requirements and ‘scope’ of cases eligible 1
Art 278: public authorities’ role 2
Art 279: outcomes of process 2
follow-up programmes not mentioned 35
normal criminal procedure see normal criminal procedure
overcoming shortcomings of normal adversarial criminal procedure 3
pilot projects of 2
purpose of 3
voluntary participation not required 35
criminal reconciliation aims of 68–9, 219–20
community missing in 60
compensation see compensation
comparative look at see comparative look at criminal reconciliation conducted in context of normal criminal justice system 59
debates on see scholarly debates surrounding criminal reconciliation programmes
defendant as object to be educated and corrected 68
effects of 76–7
better protecting victim’s rights 77
more beneficial in educating
offenders and reducing
reoffending 77
resolving conflicts between parties 76–7
victim and suspect satisfaction
with outcome 77–8
implementation of see
implementation and
development of criminal
reconciliation
indigenous Chinese practice, as 57
‘looking outside’ and ‘looking inside’
at programme 57–8
meeting see criminal reconciliation
meeting
nature of 10–13
debate over 57
defendant as object to be educated
and corrected 68
indigenous Chinese practice, as 57, 60
infringing victim’s rights in
statutory laws 238–9
lenient dispositions, benefit of 68
restorative justice, as transplant of
57, 58, 60
various names given to 24
victim-offender-reconciliation.
defined by reference to 58–9
practice see criminal reconciliation in
practice: evidence from official
case files
process see process of criminal
reconciliation programmes:
evidence from interviews
recent developments in 38–41
‘big mediation’ 38
collaboration mechanism in
conducting criminal
reconciliation 39–40
serious crimes/capital cases,
criminal reconciliation used in
38–9, 54–5
wider circle of persons
participating in criminal
reconciliation meeting 40–41
restorative justice, and 59–60, 65–9
different roles of community 65–6
political goals for criminal
reconciliation not in
restorative justice 68–9
reintegrative shaming missing in
criminal reconciliation 67–8
see also restorative justice
stages in see stages in criminal
reconciliation procedure
see also understanding wider
problems with criminal justice
system through criminal
reconciliation
criminal reconciliation in practice:
evidence from official case files
75–113
analysis of criminal reconciliation
practice relying on official files
106–13
achievements and failures of
official goals in practice
108–10
conflicting official goals 112–13
procedure of criminal
reconciliation in practice
106–8
questioning official design of
criminal reconciliation
procedure 110–12
doubts about findings/conclusions of
fieldwork projects 78–9
impact of undisclosed methods not
able to be assessed 79
lack of important information
about methods adopted 78–9
methods of data and information
collection problematic 78
researchers having stake in the
reports 78
fieldwork locations, overview of see
criminal reconciliation in three
fieldwork locations, overview of
motivation for the empirical study
75–80
doubts about findings/conclusions
of fieldwork projects 78–9
<table>
<thead>
<tr>
<th>Index</th>
<th>281</th>
</tr>
</thead>
<tbody>
<tr>
<td>extent of use of criminal reconciliation</td>
<td>75–6</td>
</tr>
<tr>
<td>fieldwork reports, nature of</td>
<td>75–9</td>
</tr>
<tr>
<td>success/satisfactory effects of criminal reconciliation practices</td>
<td>76–8</td>
</tr>
<tr>
<td>nature of empirical studies</td>
<td>76–8</td>
</tr>
<tr>
<td>fieldwork see criminal reconciliation in three fieldwork locations, overview of</td>
<td>79–80</td>
</tr>
<tr>
<td>locations chosen for ease of access/hospitable to idea of research</td>
<td>79–80</td>
</tr>
<tr>
<td>participants contacted personally for interviews to avoid interference</td>
<td>80</td>
</tr>
<tr>
<td>procedure of criminal reconciliation in practice</td>
<td>106–8</td>
</tr>
<tr>
<td>criminal reconciliation meeting</td>
<td>107</td>
</tr>
<tr>
<td>follow-up programme</td>
<td>108</td>
</tr>
<tr>
<td>initiation stage</td>
<td>106</td>
</tr>
<tr>
<td>official’s decision</td>
<td>107–8</td>
</tr>
<tr>
<td>criminal reconciliation in three fieldwork locations, overview of 80–105</td>
<td>80–105</td>
</tr>
<tr>
<td>basic statistical facts</td>
<td>81–3</td>
</tr>
<tr>
<td>criminal reconciliation rarely used in the three locations</td>
<td>84–5</td>
</tr>
<tr>
<td>cases eligible for criminal reconciliation</td>
<td>84–5</td>
</tr>
<tr>
<td>all case files involved ‘minor crimes’ and juvenile crimes</td>
<td>85</td>
</tr>
<tr>
<td>defendants/suspects eligible for criminal reconciliation</td>
<td>85</td>
</tr>
<tr>
<td>no preference for juvenile suspect/defendants was evident</td>
<td>85–6</td>
</tr>
<tr>
<td>duration of criminal reconciliation programme</td>
<td>100–105</td>
</tr>
<tr>
<td>People’s Courts and Procuratorates of Y and B Districts in Xi’an</td>
<td>104–5</td>
</tr>
<tr>
<td>People’s Procuratorate of D District, Chongqing</td>
<td>101–2</td>
</tr>
<tr>
<td>People’s Procuratorate of X District, Changzhou</td>
<td>101–2</td>
</tr>
<tr>
<td>procedure of criminal reconciliation and follow-up programmes</td>
<td>86–100</td>
</tr>
<tr>
<td>criminal reconciliation agreement</td>
<td>96</td>
</tr>
<tr>
<td>criminal reconciliation meeting</td>
<td>90–96</td>
</tr>
<tr>
<td>criminal reconciliation procedure following pattern of Chinese scholars</td>
<td>86–9</td>
</tr>
<tr>
<td>follow-up programmes</td>
<td>98–100</td>
</tr>
<tr>
<td>initiation stage of criminal reconciliation programme</td>
<td>89–90</td>
</tr>
<tr>
<td>official’s decision after criminal reconciliation programme</td>
<td>96–7</td>
</tr>
<tr>
<td>purpose of empirical work</td>
<td>80</td>
</tr>
<tr>
<td>selection of cases, limitations of</td>
<td>81–3</td>
</tr>
<tr>
<td>typical criminal reconciliation programme without follow-up</td>
<td>86–9</td>
</tr>
<tr>
<td>criminal reconciliation meeting</td>
<td>128–39</td>
</tr>
<tr>
<td>aims/objectives of sufficient communication and discussion</td>
<td>132, 135</td>
</tr>
<tr>
<td>appropriate communication between parties in some meetings</td>
<td>128–30</td>
</tr>
<tr>
<td>excessive participation and observation causing negative impacts</td>
<td>130</td>
</tr>
<tr>
<td>free communication in meetings, need for</td>
<td>128–30, 132</td>
</tr>
<tr>
<td>bargaining over compensation, focus on</td>
<td>130–35</td>
</tr>
<tr>
<td>compensation as main content of criminal reconciliation agreements</td>
<td>132, 138</td>
</tr>
<tr>
<td>clauses added by officials into criminal reconciliation agreements</td>
<td>138–9</td>
</tr>
<tr>
<td>clauses infringing on parties’ procedural appeal rights</td>
<td>139</td>
</tr>
<tr>
<td>compensation as main content of criminal reconciliation agreements</td>
<td>138</td>
</tr>
<tr>
<td>custody, extended periods of</td>
<td>133</td>
</tr>
</tbody>
</table>
essential stage of criminal reconciliation, as 128
focus on compensation 132
juvenile cases
juveniles not attending meeting in person 131–2
juveniles replaced by parents or lawyers, no legal basis for 125–7, 132
lack of communication when in meeting 130–31, 132
voluntary participation of juveniles needed 127
no communication between parties, cases where 130–31, 132
no criminal reconciliation meeting, cases where 134–5
pressure on parties to reach agreement 130, 137
private agreement reached prior to formal reconciliation meeting 135–6
compensation often paid ‘on the spot’ 135
minor criminal cases resolved through civil means 135–6
risk of coercion in private negotiations 136
tort law and criminal law, relationship between 136
suspect and victim not meeting, cases where 131–2
suspects in custody during criminal reconciliation meeting 131, 132, 134
custody
arbitrary detention 133
arrest, after 133
criminal reconciliation meeting, suspects in custody during 131, 132, 134
detention centres 133
education
education and correction expected to start in detention 176–7, 227–8
goal, methods, outcomes of education programmes, dubious nature of 226–7
playing critical role in system of correction post-conviction 224
thought education and reform through labour 224–8
thought education for pre-trial detainees 227–8
long period of custody for suspects/defendants 132, 133
causing hurt to family of suspect 177–8
no presumption of innocence
education and correction expected to start in detention 176–7
suspects viewed as criminals 133
no supervision or examination in deciding extensions of custody 133
origins of custody problems
cooperation between public authorities/‘line process’ 133–4
power of Public Security Bureau, difficult to challenge 134
pre-trial custody 133
trial, custody during 133
enforcing victims’ compensation claims through civil litigation 238–42
preliminary conclusions 242
reasons for problem with enforceability 239–41
adjudication and execution as two different powers 240–41
Criminal Reconciliation Aid Association, effectiveness of 241
direct interference or resistance from powerful authorities 240
local protectionism/lack of judicial independence limiting court’s action 240
mediation delaying enforcement 241
problem lying with court or system 239–41
subordinate position of execution to jurisdiction 240–41
follow-up programmes 33–7, 66, 108, 146–51
community correction as non-custodial criminal punishment 33–5, 66
effects and problems of the follow-up programmes 149–50
concerns about teaching and help programme 149–50
good effect of follow-up programmes 149
forms of 146–9
limited substantiation of findings in case file examination 146–9
officials’ continuous contact with suspect/defendants, families, teachers 147
potential failure of official aim of correcting suspect without follow-up 150–51
importance of follow-up programme for rehabilitation 151
less good results without follow-up 150
small sample of cases, effect of 151
procedure of criminal reconciliation 108, 98–100
supervision periods 146–7
teaching and help programmes 33, 35, 147–9
concerns expressed about people knowing about case 149–50
time for follow-up programmes 35
wider circle of persons participating in, reasons for 40–41
harmonious society, concept of criminal reconciliation helping to promote 60, 69
maintaining harmony as political task of judicial system 3
mediation promoting 9
new value, as 46
policy of establishing a socialist harmonious society 6
central policy as 8
political goal, as 5–6
six main requirements of 6 ‘social unrest’, increase in 5–6
value of harmony, criminal reconciliation serving 46, 48
implementation and development of criminal reconciliation 24–41
conduct of criminal reconciliation conducted at stage of filing case for investigation and trial stage 25
initially conducted at stage of examination for prosecution 24–5
differences between criminal reconciliation and normal criminal proceedings 35–7
admission of guilt or remorse, criminal reconciliation based on 37
criminal reconciliation based on communication and negotiation 37
criminal reconciliation initiated at four stages of normal criminal procedure 36
judges’ role as neutral and independent 37
normal criminal procedure as adversarial system 36
normal criminal procedure, stages in 36
officials’ role/discretion 37
voluntariness as basic/core principle underlying criminal reconciliation 37
growth of programme 25–6
parties’ roles and rights, process and effect of criminal reconciliation on 28
‘pioneer’ programme 25
regulations and guidelines issued by local authorities 27
regulations and guidelines not publicly available 27–8
stages in see stages in criminal reconciliation procedure
unbalanced developments of programme 26–7
judicial system
adversarial system, judges’ neutral and independent role in 37
Chinese peoples’ real needs/characteristics, adjusting system towards 4, 13–14
democracy and rule of law, and 6
fairness and justice, and 6
harmonious society policy as retrogression of Chinese judiciary 15, 18
judges’ power in criminal reconciliation 191–2
judicial independence 4, 15, 37
external judicial independence 144–5
hierarchy of judges 145
internal judicial independence 145
lack of 143–6, 211–16, 240
ways in which judicial independence has been eroded 214–15
judicial professionalism 4, 7, 15
legal formalism, emphasis on 7–8
legal reform towards rule of law
indigenous rejection of 58
upsurge in petitioning resulting from 4, 7
maintaining social stability and harmony as political tasks of 3
mediation, importance/prioritization of 7, 8–10
criminal justice system, in 10–12
debate on 13–17
even wider coverage of mediation 38
harmonious judiciary, as 10
promoted at all stages of a case 10
mediation/reconciliation
embedding China’s traditional culture 4
most effective way to address factors of instability 7
new procedure overcoming shortcomings of normal criminal procedure 3
procedural fairness and justice, reforms embodying 8
ruling party intensifying control of judiciary 4, 14–15
well-functioning litigation, need for 16–18
juvenile cases
eligibility of 85
follow-up programmes for 146
officials’ continuous contact with suspect/defendants, families, teachers 147
supervision periods 146–7
teaching and help programmes 147–9
teaching and help programmes, concerns expressed about 149–50
long period of custody for suspects causing harm to family 177–8
meetings
focus on compensation 132
juveniles not attending meeting in person 131–2
lack of communication when in meeting 130–31, 132
no follow-up programme for 150–51
no evident preference for juvenile suspect/defendants 85–6
non-local juveniles excluded from programme 120–21
preference for criminal reconciliation in juvenile cases 116
social circumstances in terms of correcting juveniles, concerns about 164
voluntariness principle, and juveniles replaced by parents or lawyers, no legal basis for 125–7, 132
voluntary participation of juveniles needed 127
lawyers as actors (participants) in criminal reconciliation cases 188–92
lawyers’ comments on criminal reconciliation 191–2
criminal justice system, in 10–13
concern with focus on compensation 191
officials’ dominant role/
discretionary power, concerns about 192
unfairness and coercion, problem of 191–2
lawyers’ role as mediators between officials and parties 188–91
assisting bargaining over compensation 189
defendant’s remorse, conveying 189
erosion of adversarial and rights-centred conception of justice 190–91
facilitating criminal reconciliation 189–91
lawyers as ‘go-betweens’ 188–9, 190
legal reforms in China 3, 5–18
constraints on State behaviour and 7
debate on reforms 13–17
development of formal legal framework 7
individual rights 7
legal education/training, resources for 7
legal formalism, emphasis on 7–8
legal professionalism 7
mediation
criminal justice system, promotion in 10–13
litigation, and 16–18
prioritization of 7, 8–10
socialist harmonious society, policy of establishing 5–6
socialist rule of law, establishing 6–7
well-functioning litigation, need for 18
mediation/reconciliation
adjudication, and 9–10
‘big mediation’ 38
closure, bringing 3, 9
criminal justice system, in 10–13
aims of reconciliation 13
‘combining severity with leniency’, policy of 10–12
facilitating reconciliation 13
minor crimes 12–13
reconciliation and mediation in disputes among the people 13–14
scope cases suitable for reconciliation/lenient disposition 12
sentencing, factors in 13
embedding China’s traditional culture 4
importance of/prioritizing 7, 8–10
mediation systems from Mao era to criminal reconciliation today 19–23
Mao era: suppressing disputes to serve Party’s policies 19–20
mediation today: still coercive process 21–3
post-Mao era: ‘plastering over’ disputes and serving the Party’s policies 20–1
most effective way to address factors of instability 7
not preferred by Chinese people 16–18
private mediation, preference for 18 voluntariness and lawfulness, based on 8
normal criminal procedure
adversarial system 36
community missing in traditional system 61
criminal reconciliation conducted in context of/supported by 59
diversion from 65
establishing guilt as key issue 37
judges’ neutral and independent role in 37
no presumption of innocence 37
officials’ discretion restricted 37
restorative justice as alternative to 59
retributive justice as spiritual core 60, 61
severe and flawed criminal justice system 56
stages in 36
top-down approach/restricted room for offenders, victims and stakeholders 60–61
see also understanding wider problems with criminal justice system through criminal reconciliation

official involvement in criminal reconciliation programmes 154–71
difficulties faced by officials in charge of criminal reconciliation 168–71
confusion regarding performance assessment system 168–9
criminal reconciliation programme taking too much time/energy 169–70
extent of use of criminal reconciliation process 167, 169
performance assessment system, further problems with 171–2
reasons why criminal reconciliation agreement not reached 170–71
officials’ expressed concern about criminal reconciliation 165–8
clause impeding parties’ right to appeal, reasons for 167–8
confusion from lack of clear and solid legal basis for process 166–8
lack of legal restriction of officials’ power in criminal reconciliation 168

uncertainty about legal basis for criminal reconciliation programmes 165–6
officials’ leading and dominant role 154–61
avoiding acquittal, as reason to initiate process 157–8
avoiding potential failure of criminal reconciliation programme 160–61
compulsory requirements, officials adding 159–61
discretionary power of officials 192
efforts to initiate process at cost of parties’ wishes and interests 158
illegal methods to make parties reconcile, use of 158–9
internal performance assessment system, as reason to initiate process 155–8, 161
officials’ arbitrary disregard of requirements of eligible cases 155
officials’ passive role under regulations/guidelines 154
reasons for passive role 154
resolving deficient cases, as reason to initiate process 155, 158
officials’ negative comments on criminal reconciliation 164–5
impact of criminal reconciliation on victim/society, concerns about 164–5
social circumstances in terms of correcting juveniles, concerns about 164
officials’ positive comments on criminal reconciliation 161–4
advantages over normal criminal process 162–3
legal knowledge popularization as advantage of criminal reconciliation 163–4
officials’ satisfaction with criminal reconciliation process 161–2
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participants of criminal reconciliation programmes: evidence from interviews</td>
<td>153–98</td>
</tr>
<tr>
<td>Lawyers as actors (participants) in criminal reconciliation cases</td>
<td>188–92</td>
</tr>
<tr>
<td>Lawyers’ comments on criminal reconciliation</td>
<td>191–2</td>
</tr>
<tr>
<td>Lawyers’ role as mediators between officials and parties</td>
<td>188–91</td>
</tr>
<tr>
<td>Official involvement in criminal reconciliation programmes</td>
<td>154–71</td>
</tr>
<tr>
<td>Difficulties faced by officials in charge of criminal reconciliation</td>
<td>168–71</td>
</tr>
<tr>
<td>Officials’ expressed concern about criminal reconciliation</td>
<td>165–8</td>
</tr>
<tr>
<td>Officials’ leading and dominant role</td>
<td>154–61</td>
</tr>
<tr>
<td>Officials’ negative comments on criminal reconciliation</td>
<td>164–5</td>
</tr>
<tr>
<td>Officials’ positive comments on criminal reconciliation</td>
<td>161–4</td>
</tr>
<tr>
<td>‘Participant’, meaning of 151</td>
<td>151</td>
</tr>
<tr>
<td>Parties participating in criminal reconciliation programmes</td>
<td>172–88</td>
</tr>
<tr>
<td>Active role for parties only in private reconciliation</td>
<td>179–82</td>
</tr>
<tr>
<td>Function of compensation for victim overstated</td>
<td>186–8</td>
</tr>
<tr>
<td>No presumption of innocence</td>
<td>176–9</td>
</tr>
<tr>
<td>Parties’ comments on criminal reconciliation</td>
<td>182–5</td>
</tr>
<tr>
<td>Parties’ difficulties in criminal reconciliation programmes</td>
<td>185–8</td>
</tr>
<tr>
<td>Parties’ satisfaction with criminal reconciliation process</td>
<td>182–5</td>
</tr>
<tr>
<td>Suspects pressed to enter criminal reconciliation</td>
<td>178–9</td>
</tr>
<tr>
<td>Victim’s participation under coercion</td>
<td>172–6</td>
</tr>
<tr>
<td>Role of other participants in criminal reconciliation programmes</td>
<td>193–6</td>
</tr>
<tr>
<td>Other participants’ comments on criminal reconciliation</td>
<td>194–6</td>
</tr>
<tr>
<td>Serving officials’ purposes</td>
<td>193–4</td>
</tr>
<tr>
<td>Peoples’ Mediation Committee</td>
<td>40</td>
</tr>
<tr>
<td>Petitioning</td>
<td>82–3</td>
</tr>
<tr>
<td>Criminal reconciliation preventing petitioning</td>
<td>45–6, 69</td>
</tr>
<tr>
<td>Upsurge in petitioning resulting from legal reform towards rule of law</td>
<td>4, 7</td>
</tr>
<tr>
<td>Presumption of innocence</td>
<td>121–2, 199</td>
</tr>
<tr>
<td>No presumption of innocence</td>
<td>118, 121–2, 133, 176–9</td>
</tr>
<tr>
<td>Formulaic engagement with question of regret</td>
<td>122</td>
</tr>
<tr>
<td>Individual rights subverted by public power</td>
<td>133</td>
</tr>
<tr>
<td>Normal criminal procedure, in requirement of guilt or remorse to enter criminal reconciliation</td>
<td>122</td>
</tr>
<tr>
<td>Suspects in detention viewed as criminals</td>
<td>133, 177–8</td>
</tr>
<tr>
<td>Process of criminal reconciliation programmes: evidence from interviews</td>
<td>114–52</td>
</tr>
<tr>
<td>Criminal reconciliation meeting</td>
<td>128–39</td>
</tr>
<tr>
<td>Appropriate communication between parties in some meetings</td>
<td>128–30</td>
</tr>
<tr>
<td>Clauses added by officials into criminal reconciliation agreements</td>
<td>138–9</td>
</tr>
<tr>
<td>Compensation as main content of criminal reconciliation agreements</td>
<td>138</td>
</tr>
<tr>
<td>Focus on bargaining over compensation</td>
<td>130–35</td>
</tr>
<tr>
<td>Pressure on parties to reach agreement</td>
<td>136</td>
</tr>
</tbody>
</table>
private agreement reached prior to formal meeting 135–6
deficiencies in case file examination, interviews necessary as result of 114
factors affecting official decisions in criminal reconciliation process 139–46
focus on fulfilment of compensation obligations 139–43
lack of judicial independence 143–6
initiation stage 115–27
additional pre-requirements as compulsory determinants 120–21
eligibility requirements 115–16
juvenile cases, preference for criminal reconciliation in 116
no presumption of innocence 118
non-local juveniles excluded from programme 120–21
risk of pressure on suspect to enter programme 118
stipulated requirements not always observed 118–20
suspect’s remorse/admission of guilt as result of programme 118
suspect’s remorse not taken into account 118–19
violations of eligibility requirements 115–21
insights into follow-up programmes 145–51
effects and problems of the follow-up programmes 149–50
limited substantiation of findings in case file examination 146–9
potential failure of official aim of correcting suspect without follow-up 150–51
interviews private, in 115
prosecutors’ offices, in 114–15
no presumption of innocence 118, 121–2
formulaic engagement with question of regret 122
requirement of guilt or remorse to enter criminal reconciliation 122
violations of principle of voluntariness 122–7
benefits of criminal reconciliation explained to get participation 124
efforts required to persuade parties to accept criminal reconciliation 123–4
explanation of nature of programme required 122
importance attached to voluntariness precluding use of representatives 127
influence of powerful persons, effects of 125
juveniles replaced by parents or lawyers, no legal basis for 125–7, 132
offers of criminal reconciliation coinciding with parties’ wishes 122–3
officials’ conduct impairing parties’ voluntary participation 127
perception that suspects viewed as criminals 127
persuasion meaning voluntariness questionable/impaired 125
regret, relevance of 127
voluntary participation of juveniles needed 127
reconciliation see criminal reconciliation; mediation/reconciliation reintegrative shaming definition of 67
missing in criminal reconciliation 67–8
restorative justice 60–65
Index

aims of 68–9
alternative to normal criminal justice system, as 59
community role/responsibility 65–6
compensation, role of 69
core values of 62
criminal reconciliation, and 59–60
definition of restorative justice, UN 64
definition of restorative justice process, UN 64–5
deliberate infliction of pain regarded as unethical 61–2
divergence on values of 62–3
escape from harsher treatments in formal system, as 62
first restorative justice practice in Canada 63
focus on 57, 58, 60
global popularity of 64
judging how restorative a programme or model is 63
non-coercion, value of 62–3
objectives of 68
real communication/exchange, in particular psychologically, stressed 59
restorative justice in practice: author’s observations in Brisbane, Australia 69–72
first observation 70–72
second observation 72–3
retributive justice, and 61–3
significance of community in 60
social control, built on 65
stakeholders, interest of 61
traditional criminal justice system, compared 60–61
Victim-Offender-Mediation programmes 63–4
Victim-Offender-Reconciliation, criminal reconciliation as 58–9
Victim-Offender-Reconciliation programmes, establishment of 63
Victim-Offender-Reconciliation, Victim-Offender-Mediation from 63–4
rettributive justice
 criticisms of 61–2
ethically questionable, as 61
instrumentally inefficient 61, 62
restorative justice, and 61–3
spiritual core of criminal justice system 60, 61
‘stigmatic shaming’ and ‘labelling’ 67
rule of law
democracy, and 6
harmonious society, and contradictions between 18
harmonious society dependent upon rule of law 6–7
landmarks in path towards 8
legal reform towards rule of law indigenous rejection of 58
upsurge in petitioning resulting from 4
socialist rule of law, establishing 6–7
criminal reconciliation, and 49

scholarly debates surrounding criminal reconciliation programmes 41–56
concerns and criticisms 49–56
adequate supervision mechanism, need for 53–4
compensation payment, focus on 50–51
equality as equality of opportunity provided by criminal reconciliation 51
extended use of criminal reconciliation to felonies/capital cases 38–9, 54–6
heavy reliance of positive appraisals on official information 49
judicial corruption, risk of 55
lighter sentences as judge’s decision 51–2
obvious coercion 52, 57–8
officials’ added power and risk of rent-seeking 53
officials’ discretion, reliance on 55
privatization of criminal law, criminal reconciliation as 54–5
public power’s infringement on parties’ voluntariness 52–3, 157
State law weaker in rural China 49
subtle coercion, forms of 52–3
unfairness to economically weak suspects 49–52
focus on effects of programme 41
positive appraisals 42–9
closure to criminal cases, criminal reconciliation bringing 45
‘four zeros’, criminal reconciliation achieving 46
educating and rehabilitating suspect 43–4
more reasonable allocation of limited resources 43
preventing petitioning in criminal cases 45–6, 69
resolving crimes privately, criminal reconciliation absorbing practice of 46–8
smooth enforcement of compensation 42–3
tangible benefits to three parties concerned 42
value of Chinese culture/customs, State’s laws adoption of 48–9
value of harmony, criminal reconciliation serving 46, 48
value of justice served by criminal reconciliation 44–5
social control theory 65
stages in criminal reconciliation procedure 28–41
criminal reconciliation meeting 31–2
attendance at 31–2
official or mediator, role of 31
steps in 32
follow-up programmes 33–7, 66
community correction as non-custodial criminal punishment 33–5, 66
help and teaching programmes 33, 35
time for follow-up programmes 35
wider circle of persons participating in, reasons for 40–41
official’s decision 32–3
decision not to prosecute 32
dismissal of case 32
lenient sentence, suggested to court 32–3
transfer back to normal criminal procedure 33
principle of voluntariness see voluntariness, principle of
stage of initiation 29–31
both parties agreeing to participate in criminal reconciliation 29
factors in official examination of cases 29–31
initiated on either party’s application 29
official initiation 29
parties’ own agreement, submission for examination of 29
‘thought reform’, criminal justice through 219–37
ideology of ‘thought reform’ underlying ‘correction’ 229–33
causes of crime as reasons for educating and correcting 229–30
deficient moral consciousness and crime 229, 230
educating and reforming the person as goal of punishment 231
methods of punishment and re-education 231–2
open trials, educational function of 231–3
thought reform, critique of 233–6
criminal justice system as authoritarian 236
criminals regarded by State as people who are not free 234
educational trial rendering presumption of innocence impossible 233
infringements of rights of individuals 236
‘inner freedom’ and ‘individual freedom’ 234–5
‘positive liberty’ 235–6
strong defence not possible as conflicting with presumption of guilt 234
thought reports 88–9
understanding wider problems with criminal justice system through criminal reconciliation 199–247
contradictory rules and ‘hidden rules’ 200–19
conflicting ideologies or power struggle? 203–5
disregard for written rules 199, 200
internal and external pressures for ‘hidden rules’ and ‘parallel systems’ 202–3
lack of supervision or lack of independence 207–17
preliminary conclusions 218–19
prevalence of ‘hidden rules’ and ‘parallel systems’ 201–2
pursuing own interests or pressure from quota system? 205–7

criminal justice through ‘correction’ and ‘thought reform’ 219–37
concept of ‘correction’ in wider criminal process 220–29
ideology of ‘thought reform’ underlying ‘correction’ 229–33
preliminary conclusion 236–7
thought reform, critique of 233–6

State’s failure to enforce victims’ compensation claims through civil litigation 238–42
preliminary conclusions 242
reasons for problem with enforceability 239–41
Victim-Offender-Mediation programmes 63–4
Victim-Offender-Reconciliation criminal reconciliation as 58–9
programmes, establishment of 63
Victim-Offender-Mediation from 63–4
voluntariness, principle of 31
basic/core principle underlying criminal reconciliation, as 37, 154
local regulations and guidelines, voluntary participation stressed in 35
mediation based on voluntariness and lawfulness 8
public power’s infringement on parties’ voluntariness 52–3, 57
guaranteeing voluntariness when public power taking active role 37
violations of principle in practice 122–7
benefits of criminal reconciliation explained to get participation 124
efforts required to persuade parties to accept criminal reconciliation 123–4
explanation of nature of programme required 122
importance attached to voluntariness precluding use of representatives 127
influence of powerful persons, effects of 125
juveniles being replaced by parents or lawyers, no legal basis for 125–7, 138
offers of criminal reconciliation coinciding with parties’ wishes 122–3
officials’ conduct impairing parties’ voluntary participation 127
perception that suspects viewed as criminals 127

persuasion meaning voluntariness was questionable/impaired 125
regret, relevance of 127
voluntary participation of juveniles needed 127