

✓ Globalization and Restorative Justice: in the Thai Criminal Justice System

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Restorative justice has recently become popular as a social movement in Thailand. This social phenomenon has been relatively successful in North America, Europe and Australia in terms of bringing crime victims and communities together and diverting less serious crimes and young offenders from the mainstream system. Thus, this study aims to find out how the global trend of restorative justice has emerged in Thailand and reformed the authoritarian regime of the Thai criminal justice system. This paper discusses the causes and consequences that combined to affect the rise of restorative justice in Thai society and changed the ideological view of the government as a result.

This research shows that restorative justice came to Thailand from both outside-in forces and inside-out forces. The former influence comes from the international or state system that defines United Nations activities, the movement of the global civil society in restorative justice and the adoption of the idea by the change agents in the Thai criminal justice system who attended the United Nations Congress and expert group meetings. Even more influential, the inside-out forces come from the declination of the retribution paradigm in the Thai criminal justice system and the powerful movement of the change agent in gradually extending this idea through various strategies. The result of these influences is that the Cabinet's resolution of 10 February 2004 accepted this idea of restorative justice and the Ministry of Justice has begun to implement it in Thailand.

1. Introduction

In recent years, Thailand's criminal justice system has just begun to warm to the idea of "restorative justice." Once received at a government level, the concept was introduced to the whole of Thai

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society as a resolution for the crisis of overcrowded prisons, a solution deemed to have fewer negative effects on the stakeholders, crime victims, offenders, and communities. Thai scholars in various fields, including legal, social welfare, criminology and criminal justice, were unsure how the western notion of restorative justice could be successfully transplanted to this eastern country and how the existing system could initially make room for crime victims in the mainstream criminal justice system in such a short time. Despite these misgivings, criminal justice agencies accepted the use of restorative justice and the concept was endorsed by the Cabinet's resolution of 10 February 2004. This endorsement means that the government has agreed to use restorative justice programs as an alternative to dispute resolution and furthermore, the government has provided funds to launch the necessary programs.

It seems that the new trends in law and criminal justice, trends that ride the wave of globalization, have threatened the Thai judicial system and have initiated most of the changes that occurred in Thailand. However, this time the change is in reviving the role of crime victims and communities into the thinking and praxis of the criminal justice system. So, this social phenomenon inspired me to ask some critical questions: *“why should the Thai criminal justice system accept this ideology and allow space for those marginal characteristics, crime victims and communities participation, in such a formal power system? What are the qualifications of restorative justice? Is it somehow possible that an important domino was pushed somewhere in this global society that affected the paradigm shift in the Thai criminal justice system, from retributive justice to restorative justice? And by what means was the restorative justice movement launched in Thailand where the rule of law was paramount? At the same time, could it be that there is some catalytic crisis in the Thai mainstream criminal justice or court-based system that gives a fillip to this system?”*

Research Problems

This research, then addresses the above issues, focusing mainly on the question of how this social phenomenon will emerge in and reform the authoritarian regime of the Thai criminal justice system. This paper will also consider the factors that led to this change and will speculate on how they will affect the views of the international community. Consequently, the purpose of this study is two-fold. First, intent is to find the general value concepts, the praxis concept, and the successful characteristics of restorative justice. Second, I intend to explain how the caused and consequences combined to affect the rise of restorative justice in the Thai criminal system.

Research Design

The study is a descriptive, explanatory research that uses a realistic approach to explain the structure and cause-effect process of this social phenomenon. Data analyzed included various documents related to the decisions made in the Cabinet, criminal policy of the state, and the national criminal justice plan, as well as journal and newspaper articles, including the published statistics of cases lodged in courts and prisons from 1999 to 2002. Numerous person-ages involved in the transition period were also interviewed, including: Chief Justice of the Supreme Court, Justice Attaniti Ditsataam-narj; the change agents, those who adopted restorative justice from outside influences and introduced the concept to Thai society, Dr. Kittipong Kittayarak, Director General of the Department of Probation and Mr. Nathee Chitsawong, Director General of the Department of Correction; those like Mrs. Maytinee Bhongsvej who work for women's groups and non-government organizations like the Association for the Promotion of the Status of Women Under the Royal Patronage of H.R.H. Princess Soamsawali; and various other Thai academics, such as Assistant Professor Dr. Decha Sunkawan. Also interviewed were the global experts in restorative justice in the United States of America, Mr. Daniel Van Ness, Vice President of Prison Fellowship International, and Mr. David Doubney, of the

General Counsel Coordinator Sentencing Reform Team, Department of Justice, Canada. The present research explains the causes and effects of the process and the success of the paradigm shift in the Thai criminal justice system by building a model or theoretical framework to explain and answer these research questions.

2. The Journey of Restorative Justice from the International Community to the Thai State, Society, and Criminal Justice System: a Theoretical Framework

To investigate globalization in restorative justice and its adoption in the Thai criminal justice system, the researcher reviewed a lot of literatures and used interdisciplinary theories from sociology, political science, criminology, and criminal justice, together with social psychology theories, to explain this social phenomenon from “the outside-in” and “inside-out.”

The Outside-in Factors

Outside-in factors can be explained through Burton’s division of the relationship network in global society into two types; “*the international system*” or “*the state system*” and “*the transitional system.*” (1972; Huntington, 1991; Wesson 1978: Limmanee, 1999, p.130-131) Each network has organizations or institutions that push government policies and determine the direction of society. The first type of network is composed of state and international organizations, that most of the nations attach to this institute as a membership. The second type of network is composed of a network of transitional corporations and international non-governmental organizations (NGOs) or private interest group, such as, Green Peace, victim supports groups, etc., and academic corporations. The major difference between the two networks, then, is the difference between “state” and “non-state” agencies. The former play their roles in the name of country to protect national interests through contracts with

organizations located elsewhere. The latter have private interests with aims that may be different from those of state agencies. However, both of these systems influence the other. While Wight (1977; Limmanee, 1999, p. 130-131) claims that the state system predates the nation-state system and has existed for a long time. The nation-state system did not appear until in the middle of the 17th century in Europe and, after World War II, it was developed as the foundation of United Nations system.

At the same time, the transnational system created from private networks in economics, society, and culture, uses friendships as their foundation. After World War II, transnational or multinational corporations dominated the world economics that control high levels of funds, technology, markets and raw material, and expanded activities through out the various business branches. (Baran and Sweezy, 1972; Magdoff, 1982; Limmanee, 1999, p. 134) Even though these transnational corporations do not want direct political power, they cannot avoid having a political role in pushing state policy for their transnational corporations' investments.

The other transnational corporations are classified as "*non-profit international organizations*" or "*global civil societies*." These types of organization are common throughout the world and this network allows people to learn of problems and solutions from each other. Therefore, these organizations can help governments solve similar patterns of social problems in their countries. Boli and Thomas (1997; Limmanee, 1999, p. 136) said that these non-profit international organizations always claim the principles of universalism, individualism from rational voluntary authority and world citizenship in order to perform their activities.

As a result, globalization in restorative justice might influence the state, the society, and the Thai criminal justice system through two district but interconnected network: the state system and the non-profit international organization.

Last but not least, the "Outside-in" factor of restorative justice that influences the Thai criminal justice system is *the*

adoption of the change agents in the criminal justice process. Malvin Kranzberg (1997, p. 204-205) explained that social change theory is interested in the role of the change agents in adoption innovation and their intention to disseminate it by using the core element, namely the interaction and corporation between the representative of the giver and the receiver. Therefore, the change agents who have participated in the global organizations' activities might adopt restorative justice as an alternative dispute resolution and may then introduce this concept to Thai society.

Thus, I believe that there are three main factors, namely *the international system or, the state system, the non-profit international organization or global civil society and the adoption of the change agents in the criminal justice process* that are the framework for the outside-in factors explaining how restorative justice came to be adopted by Thai society.

The Inside-out Factors

On the other hand, the problems of the court-based system itself are another important factor that must be considered. Kittipong Kittayarak (1999, p. 47-64) used his research data to present a picture reflecting the crisis in overcrowded prisons. His findings showed that the Thai criminal justice system:

1) Is totally taken over by the state, throughout the whole system, and leaves no space for community and civil society to become involved in their activities.

2) Has a punitive approach to treating offenders but is absolutely negligent in terms of paying attention to the victims of crime.

3) Tries to pull the caseload into the system, having only a few programs to encourage coming to a resolution in the community.

4) Overuses imprisonment as a means of punishing offenders. As a consequence, the prisons and juvenile training schools quickly become overcrowded.

Based on this research, we can infer that both of the outside-

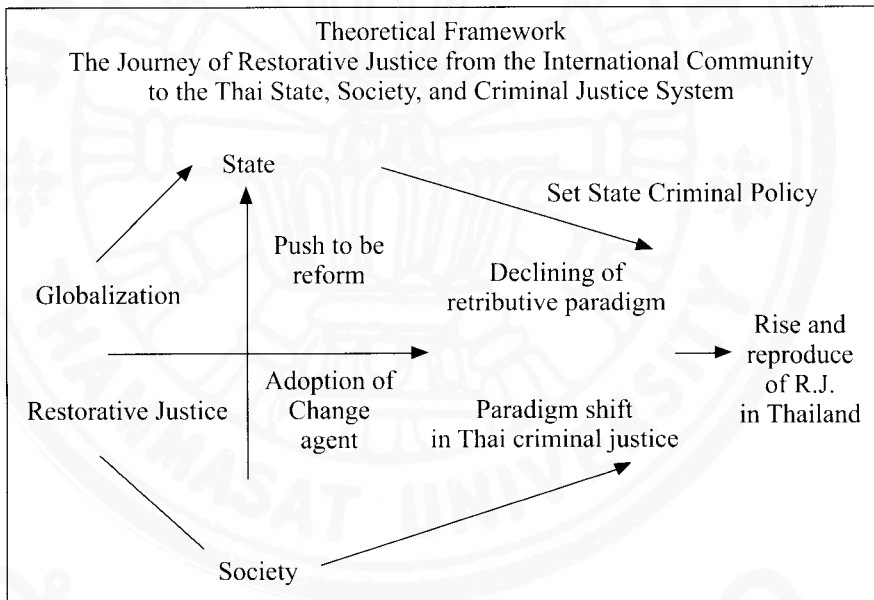
in and inside-out factors have affected the paradigm shift in the Thai criminal justice system, as shown by the model in Figure 1.

Research Assumption

Three assumptions guided this research:

1) The Thai criminal justice system confronted the crisis situation. In particular, it had to face complex problems stemming

Figure 1 The Theoretical Framework: “The Journey of Restorative Justice from the International Community to the Thai State, Society, and Criminal Justice System”



from the declination of the retribution paradigm that focuses on punishing offenders and neglecting crime victims and communities because this paradigm showed serious inside-out factors that called for reformation.

2) Globalization in Restorative Justice influenced the “*non-profit international organization*” networks in imitating victim supported activities by pushing their governments to rethink, and revise criminal policy toward offenders, victims, communities, and

the criminal justice system in step with international trends. At the same time, the social movement of the reforming network influenced the “*state system*” throughout the United Nations Organization to Use state power in solving social and legal problems. Then, the Thai change agents this concept from the international community.

3) *The change agents*, representatives of the Thai criminal justice offices adopted and disseminated the idea of restorative justice through the social movement of the network. The currency of restorative justice has power in pushing the state mechanism to change criminal justice processes to better-fit new trends in the international community.

Thus, these assumptions are accelerating factors that affect the paradigm shift in the Thai criminal justice system.

3. The Emergence of Restorative Justice: Value and Praxis Concepts

Restorative justice has a “universal paradigm” for criminal conflict management and has become increasingly popular as an alternative to solely punishment-based, retributive approaches to crime and justice. This trend seems to have developed out of the belief that victims should be actively involved in the criminal justice system instead of being *the marginal man of the court-based system* by taking limited action and, as Zedner (1994) said “remaining on the sidelines as witness in court.”

Furthermore, restorative justice is strongly linked with and aspires to a notion of community and communitarian ideals which views control of disputes as an entitlement and obligation of the community rather than of “the centralized organs of the state” (Mary, 1982; Belgrave, 1997, p.1). In other words, there is a strong emphasis on community responsibility as opposed to the rights of individual. Those who adhere to these ideals advocate a form of criminal justice that is based on reparation, or on actions, which attempt to repair, either materially or symbolically, the damage caused

by crime. Reparation is usually made to the victim by the offender, and is considered a duty or obligation for the offender (Marshall, 1990; Belgrave, 1997, p. 2).

What is Restorative Justice?

Many scholars and organizations throughout the world have attempted to define “restorative justice” One such definition was offered by the United Nations (Economic and Social Council, 2002): *“Restorative Justice is an alternative measure in the criminal justice process that is not punitive in nature but rather seeks to render justice to offenders and victims alike, instead of tilting the balance heavily in favor of one of the stakeholders to the disadvantage of another and focuses on the social harmony as the ultimate goal as well”* This definition clarified the aim, output, and outcome of using a restorative justice process. Other scholars, such as Tony Marshall (1997), who focus on dealing with the aftermath of the offence define restorative justice as *“a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future”* Whereas, in the opinion of non-government network agents such as Van Ness and Crocker (2003) who are much more interested in the process of restorative justice, *“Restorative justice is defined as a systematic response to wrongdoing that emphasizes healing the wounds of victims offenders and communities caused or revealed by crime. Practices and programs reflecting restorative purposes will respond to crime by: identifying and taking steps to repair harm; involving all stakeholders and transforming the traditional relationship between communities and their governments”* However, Kittipong Kittayarak (2545, p.180), the change agent of the Thai criminal justice system who has adopted restorative justice from meeting with United Nations’ experts, explained: *“Restorative justice is a new innovative approach to doing justice. It is more than a program or policy because it is an important alternative dispute resolution. It is being called a new paradigm or philosophy.”* This

approach necessitates a paradigm shift and the adoption of an alternative to mainstream criminal justice for solving the prison overcrowding neglected crime victims and community problems as well.

My conclusion is that. *Restorative justice is the philosophy, theories and actions needed to manage conflict, negative or offending behavior using a peacemaking method that approaches victims as the center of the process for access to social justice.* By this measure, both offenders and communities can be responsible in solving crime problems. The offender has the opportunity to show his accountability through the community's commitment to empowering and encouraging responsibility for the outputs of the offender's behavior by, for example, healing the trauma, restoring emotional balance, and fixing material things for victims. Likewise, communities could learn from dealing with occurrences of crime. Furthermore, the "*Restorative outcome*" means "*an agreement reached as the result of a restorative process. Examples of restorative outcomes include restitution, community service, and any other program or response designed to accomplish reparation of the victim and community, and reintegration of the victim and/or the offender.*" (United Nations, Economic and Social Council, 20 April 2000)

The Fundamental Principles of Restorative Justice

Tony Marshall (1997) and Ron Calassen (1996) noted that the fundamental principles of Restorative Justice are that:

- Crime is primarily an offence against human relationships and secondarily a violation of a law.
- Crime is wrong and is dangerous to communities and harmful to victims. So, in a restorative process, the injustice is recognized and equality is restored so that participants are safer, more respectful, and more empowered and cooperative with each other and society
- Restorative justice recognizes that not all offenders will choose to be cooperative, so outside authority is necessary.

- It is the victim's prerogative to use restorative justice as an alternative to the traditional criminal justice system or not.

Restorative Justice: History and Development

Restorative justice is an age-old concern, and has existed since ancient times. Van Ness (1986, p. 66) claims that:

Restorative Justice has been the dominant model of criminal justice throughout most of human history for perhaps all of the world's peoples. A decisive move away from it came with the Norman Conquest of much of Europe at the end of the Dark Ages transforming crime into a matter of fealty to and felony against the king, instead of a wrong done to another person, was a central part of the monarch's program of domination of his people.

However, development of this social phenomenon has only been revived as an important concept in the last 30 years. This development began in 1974 when Kitchener, Ontario, Canada established an experimental victim-offender reconciliation program for juvenile delinquents.

Throughout the 1980s and 90s, restorative justice programs were developed in North America, in many European countries including the United Kingdom, Germany, Sweden, and Finland, in parts of Asia such as Malaysia and Singapore, as well as in Australia, New Zealand and South Africa. The United Nations reported that by May 2001, 37 governments worldwide had responded.

Nowadays, restorative justice has been fully revived in the global society, and Europe has claimed that policies focuses on "the victim and the offender," had already begun in Europe by the late 1960s in the form of theoretical work by European scholars (Ivo Aertsen and Jolien Willemsens, 2001, p. 291). The first experiments, however, were set up in Kitchener, Ontario, Canada in 1974. The United States used diversion programs for juveniles in minor,

nonviolent, and nonsexual crimes while in New Zealand instigated family group conferences for all youth crimes, except murder and homicide, which differed from the policy adopted in Germany and Austria, where in 1995 and 1996 about 70% of both adult and juvenile cases (43% for juvenile cases in Australia) were for violent crimes (Leena Kurki, 2000, p. 240). This idea has now spread all over the world and recently became one of the most important issues in the Tenth United Nations Crime Congress and has also been successfully proposed as one of the four workshops, named “*Restorative Justice: Community Involvement, Diversion, and Other Alternative Measures*,” in the upcoming the Eleventh Congress to be held on 17-25 April 2005 in Bangkok, Thailand.

4. Globalization of Restorative Justice Influences the “Non-profit International Organization” and “States System” Networks

The rise of restorative in Canada attracted a non-government network that runs parallel to the mainstream criminal justice system in the United States of America called “The Pioneer Group in Restorative Justice.” Together with the Maclellam Foundation’s supported (Daniel Van Ness, Vice President of Prison Fellowship International, Interview, 12 September 2003), this pioneer group was able to launch the first American restorative justice program in Elkhart County, Indiana, in 1978 (Coates 1990; Leena Kurki, 2000, p.268). It can be seen, then, that the ideals of restorative justice are international and that its practice can be transplanted from one country to another, from Canada to the United States, to European countries, New Zealand, Australia, and to other countries around the world.

Van Ness and Strong (1997; Jennifer J. Lewellyn and Robert Howse, 1998) explained in-depth that restorative justice starts with a social movement. They explained that “*one of these movements alone has lead to restorative justice theory, but all have influenced its development, if only because many who are now preoccupied*

with restorative justice came to it from one of [these] perspectives.” Van Ness and Strong identify five such movements.

1) The *informal justice movement* emphasized informal procedures with a view to increasing access to and participation in the legal process. This movement focused on delegalization in an effort to minimize the stigmatization and coercion that resulted from existing practices.

2) *Restitution as a response to crime* was rediscovered in the 1960s. This movement focused on the needs of victims, maintaining that meeting the needs of victims would serve the interests of society more generally.

3) The *victims' rights movement* works to have the right of victims to participate in the legal process recognized.

4) In the reconciliation/conferencing movement, Van Ness and Strong identify two major strands:

a. *Victim-offender* mediation originated from efforts of the Mennonite Central Committee Canada and is a process that brings the victim and offender together with a mediator to discuss crime in order to form a plan to address the situation.

b. The *family group conferencing movement* in New Zealand arose out of the traditions of New Zealand's indigenous peoples, the Maori.

Until 1991, the fate of restorative justice was dependent on its acceptance by the U.S. government, Janet Reno, the Supreme Prosecutor in President Clinton's Cabinet, supported a lot of the related budgets and in 1993-4 the American Bar Association announced its support of the use of restorative justice as well. So, the movement of the non-government offices (NGOs) network was successful in pushing restorative justice into the governmental programs. This was the first big stepping-stone for the globalization of restorative justice.

This rising of restorative justice throughout the world also attracted the interest of European scholars and governments. In 1995 the Council of Europe appointed an Expert Committee to evaluate

and assess the use of mediation in criminal proceedings within Europe. From 1996 to 1999, the Committee met to review reports from countries with experience in the mediation of criminal matters with experience in the mediation of criminal matters, and described the use of mediation outcome evaluation, legal and policy issues raised by mediation and so on, are written recommendations for the consideration of the Committee of Ministers. These recommendations were adopted later in 1999. (Van Ness, 2003).

At the same time, the International Network for Research on Restorative Justice for Juveniles convened the first of what have become annual conferences on “*Restorative Justice for Juveniles.*” At the conclusion of that conference, the Network adopted a declaration “on the advisability of promoting the restorative approach to juvenile crime.” This came to be known as the “Declaration of Leuven,” in honor of the location of the conference in Leuven, Belgium.

Not only has the globalization of restorative justice influenced “*non-profit international organization*” networks in imitating victim-supported activities and in pushing their governments to rethink and revise criminal policy toward offenders. Victims, communities, and criminal justice processes in step with international trends, it has also influenced the state system throughout the United Nations Restorative justice was proposed by the *non-profit international organization* networks and their governments to the United Nations in the “UN Crime Congress forum.”

Every five years, beginning in 1955, the United Nations have convened a Congress on Crime Prevention and the Treatment of Offenders for discussion and debate on topics related to crime, criminal justice, treatment of offenders and, more recently, treatment of victims. The Congresses offer an opportunity for countries “to discuss national experiences with programs and problems in criminal justice. They also are used to discuss joint strategies and mutual cooperation in matters that transcend national boundaries” (Van Ness, 2001).

Non-governmental organizations, in consultative status with the United Nations, are actively involved in the Congress as well. Van Ness (2001) explained that “one of the most visible ways in which this happens is through ancillary meetings open to delegates at the Congress that explore issues of concern to the NGOs at the Congress in 1990 and 1995.” Later, the Ninth Congress, conducted in Cairo in 1995, included several sessions on the theme of restorative justice but the presentations during the ancillary meetings rarely dealt with this issue. So, a group of NGOs participating in the Alliance on Crime Prevention and Criminal Justice (NY) decided to form a working party on restorative justice. Finally, the Commission on Crime Prevention and Criminal Justice adopted a provisional agenda for the Tenth Congress in Vienna in 2000. Item four on the agenda was “*Offenders and victims: accountability and fairness in the justice process.*” Thus, restorative justice was formally in an international forum for the first time.

Meanwhile, the Working Party had begun drafting basic principles on restorative justice by using the guidelines and standards from all over the world. In November 2001, Van Ness presented his draft of the “Declaration on the Proposed UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters” to the UN Experts’ Meeting Group in Canada. In 2002, after the draft containing the Basic Principles was distributed for comment around the world, this resolution was adopted by the Economic and Social Council (ECOSCO) of the United Nations. For a period of several years beginning in the year 2000, the United Nations set a number of meetings that were intended for training and socializing and familiarizing every stakeholder at every level in the criminal justice system with the idea of restorative justice. The Eleventh Crime Congress took place in April, 2005, in Bangkok. The agenda lists a workshop, named “*Restorative justice: community involvement, diversion, and other alternative measures,*” in which member countries can discuss the basic principles and other issues pertaining to the use of restorative justice.

5. The Concept of Restorative Justice in Thai History

The anthropological work of Chatthip Nartsupha (1997, p. 3-4) proves that even in today's traditional Thai villages, as in South Navar Village, in Ubonrajthane Province in Northeastern Thailand, an informal dispute resolution for petty criminal cases is used. For example, in a dispute between neighbors, each side will invite four or five village elders to join the meeting to reach a decision about the quarrel and to determine some way to resolve the dispute, often by asking one of the parties to apologize or amend some action. This is called a "*Sapa Pu Tao*" or "*Village Elder Senate*." So, the fact is that many Thai villagers in rural areas have used this informal and social method of criminal conflict resolution for generations as a village custom to control and resolve conflicts among villagers by enabling crime victims to participate with the community's representatives in the justice system.

It seems that, even though Thailand had adopted a so-called modern legal system, in remoter villagers some informal criminal justice systems based on the concept of restorative justice were used persistently across time and space. This socio-cultural structure has continued throughout time and space as an alternative dispute resolution system for Thai people in rural areas from ancient times until now. This evidence proves that these sanctions or nontraditional criminal processes, based on the villagers' respect for their village elders, could benefit both parties in certain cases and could restore social harmony without actually bringing those cases to a formal trial. Unfortunately, restorative justice is not accepted as law in the Thai nation state. As Charan Puckdeetanakul, the Justice of Court of Appeal, said, "*...The powerful formal Judicial System endangers and threatens the local community justice. Conciliation by the respected elderly conciliator in the communities was not accepted by the modern legal and judicial system because the whole proceeding of legislate, law enforcement and trial are done by the state's power*" (2000, p. 25). So, the appearance of this contempo-

rary social phenomenon in Thai society might be called “*the furthering development of the concept of restorative justice in Thai Society.*”

6. The Rise of Contemporary Restorative Justice in Thailand

To answer the research question of how restorative justice could arise in Thai society and in its criminal justice system, I have used the hypothesis to be the tendency in the explanation of the model in Figure 1 which found that

The Declination of the Retribution Paradigm in the Thai Criminal Justice System

1) From B.E. 2435 (1892), during the colonization period, the Thai criminal justice and legal system underwent a shift from an eastern philosophy of law that was similar to the idea of “Natural Law” to John Austin’s more western approach of “Legal Positivism” (Preedee Kasemsup, 1983, p. 42-64). Although fortunately, Thailand is the only country in Southeast Asia that has never been directly colonized by any foreign powers (Syamananda, R., 1988) there was still a lot of pressure from Western powers to change the legal and criminal justice system in the free way of choosing our own model, accusatorial system or inquisitorial system. Finally, it is fair to conclude that Thailand has a “*mixed*” legal system on the truest sense of the world. (Kittipong Kittayarak, 1990, p. 39). As stated in the present Criminal Procedure Code, Article 28 “*both prosecutor and ordinary people can accuse to the court.*” So, the mixed legal system itself has become problematic in that the output of the criminal justice system cannot be calculated or predicted.

Unfortunately, with the onset of the 21st century Thai society and the crime problems it faces, had become more complex than ever before. A lack in overall criminal justice policy planning, a lack in cooperation and coordination, and inadequate funds have been

among the major obstacles hampering the successful introduction of community-based treatment measures as alternatives to the current practices that are based mostly on retributive, custodial measures. As a consequence, the criminal justice system in Thailand is swamped by a huge backlog of cases and severe overcrowding in prisons. It is not uncommon for a criminal case to take more than a year to get through the criminal courts of first instance and several more years before the final decision of the Supreme Court is given (Kittipong Kittayarak and Jutharat Ua-amnoey, 2003, p. 3). Regarding prison overcrowding, according to the latest statistics revealed in the annual year 2002, there are approximately 245,973 inmates in prisons where the space available was meant to accommodate only 100,000¹. Considering the manpower of 10,7000 correction officers, the ratio of officers to inmates is approximately 1 to 24, which is very far from the internationally preferred ratio of 1 to 4 or 5 (Kittipong Kittayarak and Jutharat Ua-amnoey, 2003, p. 3), as shown in Table 1 (with data from the Department of Corrections, 2003).

Table 1 Type and Number of Prisoner

| Type | 1998 | 1999 | 2000 | 2001 | 2002 |
|----------------------------|---------|---------|---------|---------|---------|
| Convicted Prisoners | 97,027 | 125,258 | 132,337 | 149,604 | 162,543 |
| Remanded | | | | | |
| Pending Appeal | 16,231 | 18,071 | 21,571 | 28,729 | 31,813 |
| Awaiting Trial | 17,994 | 33,591 | 37,802 | 39,720 | 30,040 |
| Awaiting Investigation | 23,071 | 22,622 | 25,683 | 26,187 | 21,405 |
| Others | | | | | |
| Psychosis | 66 | 29 | 42 | 0 | 0 |
| Juvenile Delinquents | 45 | 96 | 252 | 157 | 172 |
| Others | 17 | 6 | 10 | 0 | 0 |
| Total | 164,451 | 199,673 | 217,697 | 244,397 | 245,973 |

¹ Data from the Planning Division, Department of Correction, Ministry of Justice, 2003

Furthermore, it has also been shown that the quality of Thai criminal procedures is below par and that there is some injustice in the system. The best example of this is shown in the mistake in the “Sherry Ann Duncan murder case.” Kittipong Kittayarak (1997, p.50) critiqued this case and claimed that the miscarriage of justice here was due to the excessive power of the police and the organization’s abuse of said power, the lack of cooperation and coordination among agencies in the criminal justice process, the delay in the proceedings (it took about ten years for case to be closed), the unnecessary detention of the accused during the trial, and the lack of compensation for the accused after later being acquitted. Likewise, the productivity of the system has been questioned because it has been found that there was a 19.8% rate of juvenile delinquent recidivism in 2000² and that the percentage of adult recidivists was 11.58% in 2003³.

2) As with adult cases, the statistics of juvenile delinquents have remained fairly steady in the last five years from 29,284 cases in 1998 to 29,622 in 2002. Most of these were narcotics offenses. Twenty one point five percent of the 2002 cases were sent to the Central Observation and Protection Center for a period of between six months to three years without any restoration process.

² Data from the Department of Juvenile Observation and Protection, Ministry of Justice, 1997

³ Data from the 2003 Annual Report Department of Corrections, Ministry of Justice

Table 2 Type and Number of Juvenile Delinquents

| Type | Year | | | | |
|-------------------------------|---------------|---------------|---------------|---------------|---------------|
| | 1998 | 1999 | 2000 | 2001 | 2002 |
| Offense against Body and Life | 1,112 | 1,271 | 1,491 | 1,238 | 1,831 |
| Offense against Property | 5,657 | 6,010 | 6,167 | 5,109 | 5,625 |
| Sex Offense | 542 | 659 | 669 | 545 | 927 |
| Offense against Narcotics Law | 11,856 | 17,274 | 17,937 | 14,270 | 15,318 |
| Others | 10,117 | 5,458 | 4,980 | 4,229 | 5,921 |
| Total | 29,284 | 30,672 | 31,244 | 25,391 | 29,622 |

3) Moreover, as with most countries around the world in Thailand the victims of crime were neglected by the criminal law, by the criminal justice process, and also by the government's criminal policy. Consequently, victims themselves had to file for restitution from offenders by using the civil court system. This type of situation results in the victims feeling bored, disappointed, and powerless. In 1977, the constitution accepted the crime victim's right for the first time through the Crime Victim Compensation and Restitution and Expense for the Accused Act 2001. Two years later, figures on victim compensation showed that the 21 crime victims received 1,542,082 baht (or USD 39,000) and that the 32 wrongfully accused persons received 11,737,087 baht (or USD 300,000) in compensation⁴ which is eight times more than that paid out in compensation to crime victims. These figures make several things apparent. First, the government had paid a great deal of money to compensate for the flaws in its criminal justice system, more in fact than was paid to the actual victims of crime. Second, the money used to pay out this compensation came from government budgets that comprise, at least in part, crime victims' taxes. Third, this method of compensation

⁴ Tongthong Chandransu, Justice Ministry Deputy Permanent Secretary announced these figures to the ministry committee on compensation for people wrongfully convicted in criminal cases; Thairath Newspaper, 28 February, 2547.

does nothing to directly show the responsibilities of offenders to their victims because the state took this action, Thus, the adoption of the Act actually led Thai society far from the principles of restorative justice for a time.

Fourth, the strength of the Nation-State weakened communities and led to confusion in their roles as peacekeepers, and the network of community control was destroyed. Thinking of crime prevention and control as “the officers’ duties and roles,” in community organizations only reported crimes and illegal behaviors to the policemen in order to be dutiful citizens. This clearly divided the duties of the people and the duties of the officers in the Nation-State.

However, in return for the state’s negligence, in the ABAC’s 2000 poll⁵ “Attitudes toward criminal justice’s works,” fewer than half the respondents (43.1%) said that they would willingly be a witness in a criminal case. Furthermore, 78.8% of the 52.0% of respondents unwilling to serve as witnesses explained that their reluctance to testify stemmed from their mistrust in the witness security protection program, while 27.3% said that they did not want to be involved with law enforcement, and 13.6% said involvement was a waste of time.

The above empirical data emphasizes that The Thai criminal justice process confronted *the emergency situation or crisis* and especially, faced the complex problems caused by the declination of the retributive paradigm that focused on punishing the offender by putting them into jail and neglecting victims and communities.

Fifth and finally, the reform process was sparked by the first criminal justice academic forum supported by the Thailand Research Fund (TRF). The topic was Crisis Justice System and Innovation in Administration and Treatment of Offenders on 18 September, 1998, in Bangkok. The organizer was Kittipong Kittayarak, This first social movement in the criminal justice regime is very renowned and has gained a great deal support in its bid to reform the criminal

⁵ See Kittipong Kittayarak, 1999 p. 148-164.

justice system. The ten other forums for developing the criminal justice system were successfully given throughout the whole two year period, but by January 2000 the discussion again came back to the topic of “Prison Overcrowding: Criminal Justice crisis which must be solved!”

This crisis situation is now at its most critical. Lucky however, the Cabinet’s resolution of 10 July 2001 specified detailed guidelines on how to reduce case backlogs and overcrowding. “The so-called July 10 Resolution recommended several non-custodial and community-based treatment measures that will serve as a road map for future trends in the development of community-based and non-custodial treatment measures in Thailand.” (Kittipong Kittayarak and Jutharat Ua-amnoey, 2003, p. 3-4).

This is the manner of social movements in criminal justice reform and the way in which the government took action to solve this crisis.

The Rising of “Restorative Justice” in Thai Society

In 1995, the change agents, the representative for the Thai criminal justice offices, was Kittipong Kittayarak, Director General of the Department of Probation, Ministry of Justice, Kittipong was the Thai representative who attended the Ninth UN Crime Congress and who adopted the idea of restorative justice from that forum. After that, at the seminar on “*Strategies on the Thai Criminal Justice System’s Reform*” in October 2000, Kittipong translates “restorative justice” into Thai: “*Karboonkarn Yuttitham Chung Samannachun.*” Kittipong explained that he is concerned with the concept of restorative justice and with the desired outcome of this ideal, social harmony, so his translation of “restorative justice” incorporated the aim of this ideal (Kittipong Kittayarak, Interview, 1 March 2004).

One year later, in 2001, Kittipong Kittayarak, joined the UN Expert Group Meeting on Restorative Justice in Canada and acted as Rapporteur. After he returned to Thailand, he launched the first Restorative Justice Seminar in Bangkok named “Restorative Justice:

Alternative to Criminal Justice System” on 16 January 2002. That seminar served as the grand debut of “restorative justice” in Thai society as Her Royal Highness Princess Bhajarakittiyapa kindly attended, as did Pol. Lt. Col Dr. Thaksin Shinawatra, the Prime Minister, a number of Justices, some high ranking officers from the criminal justice system, and another guests.

The Movement’s Network Strategies for Restorative Justice in Thai Society

Thailand Legal Systems Development Project, the Thailand Research Funds (TRF), and the networks that Kittipong Kittayarak, the coordinator of the project, developed have been at the core of activating academic activities and stimulating the development of the criminal justice system from 1999 to the present. These groups have also been largely responsible for the promotion of the concept of restorative justice.

The main strategy in approaching, lobbying for and disseminating the idea of restorative justice to Thai scholars, officers, citizens was through a series of academic forums. So, after restorative justice had been formally introduced in 2002, the Association for the Promotion of the Status of Women Under the Royal Patronage of H.R.H. Princess Soamsawali organized a series of forums, including *“Restorative Justice for Domestic Violence and the Possibility in Thai Society.”* These forums allowed all participants to share their attitudes, exchange knowledge bases in criminal justice, find out may research questions, and build alternative conceptual frameworks that had never before been given a series of forums like this.

The pocketbook series of *“Strategies on the Thai Criminal Justice System’s Reform,”* volumes 1-4, is the second strategy of this public awareness movement. The third volume of the series was titled, *“Restorative Justice: Alternative to Criminal Justice System”* and was distributed all around the country to publicize the blossoming idea of social harmony in Thailand.

A feature television program on channel 11, called “Visaitud-Kodmai-thai” or “Thai vision on Legal Matters,” is the third strategy in this movement. On the second and fourth Friday of every month from 11:05 to 12:00 am, people around the country can learn about interesting and timely issues from ranking officers in the criminal justice system and from scholars in academic fields as well.

The promotion of research projects and articles on restorative justice in the Thai society is the fourth strategy of the movement. Some research projects are supported by TRF, while others are dissertations from both law schools and the field of criminal justice.

As a result of these publicized strategies, it took only two years for restorative justice to become recognized in Thailand and this was the springboard for government interest in this new measure for victims, offenders, and communities.

The Result of the Movement: Paradigm Shift in the Thai Criminal Justice

On 10 February 2004, the Cabinet accepted the First National Master Plan of Criminal Justice 2004-2007, which contains the Restorative Justice Programs Plan in its Sixth Strategy, “*the Strategy to Promote Conciliation and Diversion from Criminal Justice System.*” This is the first time in Thailand’s history that a “National Master Plan of Criminal Justice” has been adopted, and is also the first time that Restorative Justice has been incorporated into the Plan and into the mainstream criminal justice system as well. It seems, then, that the Thai government is willing to use restorative justice in the criminal justice system.

The Restorative Justice in Thai Praxis

In 2003, the Department of Juvenile Observation and Protection launched the Family Community Group Conferencing project, which is a measure of restorative justice, for the first time. By using the Juvenile Delinquency Act 2534, Article 63, together with the decision of the prosecutors, 1,972 cases were deferred to restorative

justice. The results showed that the prosecutors were able to defer 1,160 cases from the mainstream court system and only had to bring 30 cases to trial (Matichon Newspaper, June 6, 2004). This output shows that 10% of the juvenile delinquents can learn to show their responsibly to amend their victims through the restorative justice progress and be removed from the juvenile court system.

In 2004, the Department of Probation launched a restorative justice program by the victim-offender mediation model. This pilot project is in place for the eleven area offices around the country that will have some output in the upcoming annual budget year. Because of the limitation of the Criminal Code, probation officers can use restorative justice only for the pre-investigation stage in the trial process. So, there is now a movement to amend the law and to propose legislation for diversion at the prosecution stage.

It can be now said that this social phenomenon, that of restorative justice has come to the end of its long journey into the Thai criminal justice system. Restorative justice programs have been initiated in some offices, which is the beginning of empowering crime victims and the communities that have neglected for more than a hundred years.

7. Conclusion

To study the rise of restorative justice in Thailand is to look at how the causes and consequences affected the development of restorative justice in the Thai criminal justice system and in society generally. Therefore, I have developed and used a theoretical framework. *“The Journey of Restorative Justice from the International Community to the Thai State, Society, and Criminal Justice System,”* to explain this matter. Influential factors can be grouped as both outside-in and inside-out factors.

The outside-in effect comes from: 1) the international system or state system that defines the United Nations activities through UN Crime Congresses every five years; 2) the non-profit international

organizations or global civil societies that are behind the global movement for restorative justice and the network of NGOs that pushed their governments and the United Nations to pay attention to crime victims, and communities by adopting the use of restorative justice in mainstream criminal justice systems, and 3) the change agents for the Thai criminal justice system who attended the United Nations' Congress and met with experts and who then decided to adopt the ideal of restorative justice in Thailand.

The inside-out effect comes from: 1) the declination of the retribution paradigm in the Thai criminal justice system, which had been supported by empirical data that focused on the crisis situation in the overcrowded prisons and the problems in the quantity, quality, and the productivity of the court-based system: and 2) the change agent's strategic use of a network to take this adopted concept and disseminate this idea throughout the country, to Thai scholars, officers, and citizens, by using a series of academic forums, small publications, feature television programs, various research projects all centered on restorative justice in Thai society. Most of these projects have been supported by the Thailand Research Fund (TRF).

Finally, the Cabinet's resolution of 10 February 2004 accepted the First National Master Plan of Criminal Justice 2004-2007, which has provisions for the Restorative Justice Programs Plan in the Sixth Strategy. As a consequence, today, Thailand is successfully using family community group conferencing for about 10% of juvenile delinquents and has launched a pilot project for eleven probation offices around the country.

There are three main issues in my research on the paradigm shift toward restorative justice in the Thai criminal justice system.

Firstly, the movement of this social phenomenon named restorative justice is reality, the movement of "*power*" in framing the question, "*what social justice system maximizes utility for most people?*" It is widely accepted that "the power" is now moving from a "state-centered approach" to a "society-centered approach." That society-centered approach is found on the idea that society should

be dually controlled through “a user theory of law,” in which the user is defined as the ordinary citizen in the community, and “a crime victim theory of law,” which seeks to redress the truism that the crime victim was once the marginal man of the court-base system. Thus, the adoption of restorative justice signals a change in social approaches to restore the place of the crime and community in crime prevention and crime control.

Secondly, the international raise of restorative justice is a successful example of the “Global Civil Society” movement, which has activities between transitional states and individuals. This is a non-profit international organization that influences the United Nations. So, the use of the global network to map restorative justice is a successful way to de-power the mainstream sanctions, in a non-coercive, non-bureaucratic, informal and decentralized way.

Thirdly and finally, I think that this rise of restorative justice and the resulting changes in the Thai criminal justice system is a good example for any country that is on the way to independently adopt this measure. Governments should understand that the use of restorative justice is not composed of only “*have law or anti law*” and “*accepted by the mainstream criminal justice system or not.*” The socio-cultural atmosphere together with the socializing and learning process of people in those communities is important too. Moreover, intellectual academic discussions can help people to face the truth and to learn about the alternatives to their current system of justice. Only then can the government resolve the issue and make a decision. Thailand has already experienced these stages in its acceptance of restorative justice, and the country is now on its way to assess the productivity and suitability of this concept to Thai Society.

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