A Theory of Relational Justice – An Example of Asian Criminology's Approach to Decolonizing Criminology

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Introduction

A significant development in criminology is the recognition and identification of **colonization and Western centric** in criminology particularly by the rise of Asian criminology and Southern criminology (Liu et al., 2017). A growing literature has amply demonstrated the problems of colonization and western centric biases and their detrimental results for a healthy growth of criminology knowledge (Cunneen et al., 2017). Growing numbers of scholars and studies have argued for the importance of developing nonwestern criminology and studies and the importance of decolonization in developing criminology knowledge (Moosavi, 2019). This trend of decolonizing knowledge is consistent with and alongside the broader development in decolonizing social science in general. Both Asian criminology and southern criminology are **paradigm shifts**, presenting a revolution and leading to a new trend in criminology development. Different understanding of nature and colonization was leads to different approaches to decolonization.

Given the importance of decolonizing criminology knowledge <u>a central question</u> would be: what are the approaches and what is a better approach for decolonizing Criminology? This depends on the understanding of the **nature** of colonization. Different understanding will lead to different **approaches** to solving the problems. Different approach would also face different **difficulties**. A comprehensive **evaluation** of the difficulties and advantages would decide which approach we take in decolonizing criminology.

I propose that there are generally two primary approaches to decolonizing criminology One, representation approach. Two, Universalistic approach. The two approaches are quite different in their understanding the nature of the colonization, solutions follow that understanding, and difficulties that faces.

Behind the differences between the two approaches are some more fundamental Philosophical conceptual divisions in understanding of the nature of social Sciences and humanities. On the one hand is the conception of social Sciences are like natural Sciences the tasks are seeking for more or less broader universalities that generalizable across times and space. On the other side is the conception that theories and studies concerning social and human subjects are very different from natural Sciences. They are culturally and historically constituted.

Representation Approach the Understanding of The <u>Nature</u> of The Decolonization as A Group Inequality.

The decolonization scholarship can naturally view the western centric and colonization problem is a **representation problem.** Representation Approach Identifies the central and fundamental problem as the unequal representation problem among different groups.

The solutions by representation approach scholarship are naturally opposing hegemony by privileged groups and overcome unequal representation as a strategic task of rebalancing the inequality among groups to enhance the treatment and importance that the lower group, or marginalized group have unfairly received. **Democracy** as a goal is stresses in the group approach scholarship. The group ID typically first are geographic units and locations, such as countries, particularly colonies and Imperialist. and then gender, culture, race, language particularly English versus non-English etc.

Expending the representation of the knowledge from marginalized groups. (Asia, Africa, …. Gender, race, culture...) (**difficulties**: how far and how detail we can extend without a representation problem?) Generalization problems with Peculiarity findings. To what extent would the discovery and knowledge from a particular group and situation be useful of helpful in a different context?

Difficulties with the Representation Approach

Is Australia "south"? Should authors of Asian criminology be Asian? Would English publication be "Asian" criminology? The conceptual difficulties Moosavi (2018) listed shows that he is taking a group approach to decolonization. Despite Southern Criminology claims it does not deny accomplishment of western criminology, however it does not provide a path and pointing to a direction of that links to western criminology due to its understanding of the nature of colonization and a group inequality. Its contribution so far largely remains in pointing out the bias and weakness of Western criminology in its colonization over "South". The group approach does not provide a clear path of knowledge growth thus falls into the situation of primarily **only criticize** the existing but not to building up new.

Universality Approach

It accepts universality as a **principle** of knowledge building and supplements other successful approaches within their respective successful ranges. It conceptualizes the western to nonwestern differences as **cultural variation**, rather than group inequalities. Culture variation is a broad concept that can cover much of the group differences too. Cultural variation is my first entry point to study difference, but other variations can be considered too.

Advantage: it continues the human request from Western to Nonwestern, continues the recognized despite partial advantages of studying social and cultures as subject of sciences, and consider move the human seeking general regularity to the next stage.

The Concept /Nature of Asian Criminology and Its Approach to Decolonization.

The understanding of the **Nature** of decolonization by Asian Criminology. It is **not** to give up or consider impossible to seek universality in crime and crime control. The role of "Asia" is it provides a context to reveal ignore aspects and process of crime and crime control in the Western dominated criminology discipline. This understanding **avoids the difficulties** that the Group representation approach faces. The **nature** of

dominance of Western is it blindly applies knowledge from West to Norwest.

Asian criminology consider this dominance and colonization of Western criminology reflect that criminology is still in its early stage of a future unified criminology knowledge and the process of criminology knowledge growth should continue to a new stage which recognize that nonwestern contexts are new sources of information that informing new patterns and processes that the "young" Western originated criminology have not yet and are not able to cognate without deeply knowing the context of Asian (and other places), in the course of development of criminology discipline (Liu, 2021a).

This understanding the nature of colonization leads to the approach of Asian criminology: seeking further and broader universal knowledge considering information provided by Asia contexts (and other nonwestern contexts). Like paradigm shift in physics from Newton paradigm to Einstein's' paradigm. Therefore, the approach creates new knowledge that continues the path of growing criminology from Western to non-Western. In contrast, the group approach does not provide a clear path of knowledge growth thus falls into the situation of primarily only criticizing the existing but not building up new.

Despite Southern Criminology claims it does not deny accomplishment of western criminology, however it does not provide a path and pointing to a direction of that links to western criminology due to its understanding of the nature of colonization and a group inequality (Lin et al., 2018). It contribution so far largely remain in the area of pointing out the bias and weakness of Western criminology in its colonization over "South".

Features of Asian Criminology

I recognize the need to decolonize. We do not deny universality that seek universality in the context of Asia special even unique characteristics context. I respond to misunderstanding and critique for Asian Criminology, which often stress similarity of Asian Criminology with southern Criminology but do not realize the differences (Liu et al., 2009). The primary similarity of Asian Criminology and Southern Criminology developed to decolonizing of North or western Criminology dominance that overlook the knowledge of non-western (Moosavi, 2019). You need to know well western Criminology and Asian context to formulate and develop Criminology to convince both Western and Eastern scholars.

Asian Criminology include both testing and elaborate western theory and practices, also stresses decolonizing western dominance. Thus, link western with Asia and Southern, for creating a global Criminology applies to both Western and nonwestern (Carrington, 2017; Carrington et al., 2019; Karstedt, 2001; Liu, 2018; Moosavi, 2019). **Linking the nonwestern to western.**

In Liu (2017), I propose and establish an important function of Asian Criminology. Belknap recognize this unique role of Asian Criminology. My viewpoints in discussion parts. My beliefs are that both approaches are important and useful depending on the subjects and purpose of the study. Our promote teaching and training and exposure to both approaches to criminologists.

Universality As a Central Aim of Scientific Theories

A central scholarly aim has been to achieve a universal understanding of criminal justice systems, their nature, its objectives, its various properties, and patterns of criminal justice systems' behavior, and why they form and behave in its ways. Universality is by nature an aim of scientific understanding in any field of science, including criminology and criminal justice (Karstedt, 2001). Throughout the history of studies on criminal justice, since the times of classical scholars such as Cesare Beccaria (1738-1794) Beccaria's vision is that criminal justice systems should be based on rationality, humanity, efficiency, and reason. These features of criminal justice systems were considered universally important for all mankind.

Theoretical Gap in Criminal Justice

Many theories have been developed in criminology, but only very few contemporary theories have been proposed about criminal justice systems (Howard et al., 2000). The existing few theories tend to be simple classifications, not well developed to perform the substantive functions as theories. There is a large gap in criminal justice theory development. Criminal justice institutions are built in specific settings of various cultural and social contexts, thus the particularly prominent challenge for developing a universalistic theory of criminal justice is cultural variations (Liu, 2014).

The Challenge of Cultural Variation

There are 195 countries and vast many different cultures around the world across time and space. Each criminal justice system is built in a specific cultural, political, economic, and social setting. Cultural influence is central in criminal justice systems and their behaviors. Important contemporary social theories and much empirical evidence have well informed the vast variations in cultures and social systems, which have important impacts on the forms and behavior of criminal justice systems. Clash of civilization theory (Huntington, 1996); world system theories (Wallerstein, 1979). …

The Importance of a Better Understanding of Non-Western Systems

Must understand the philosophy, tradition, culture, and ideologies to work with non-Western systems. Why due process is not a significant part of the system in Iran and Pakistan. Method of incarceration is incompatible within the indigenous systems of community justice in Africa. Japanese do not comprehend the sense and sensibilities of the Second Amendment and gun control in America.

Culture relativism

A major challenge to universality comes from cultural relativism. Based on the great cultural variations, cultural relativism denies the possibility and necessity of the universality of the social science theories. Denying universality challenges the scientific nature of social theories and the much value of scientific theories. Most criminologists continue to pursue a universal understanding of crime and justice. I first examine the approaches to achieve universality.

Solutions to the challenge of cultural variation

An often see solution is not to forcefully confront the issues of cultural variation, that is, to just assume implicitly the universality of a theory (Liu, 2014). The second

strategy is to claim universality but subject the theory under test in different cultural contexts (Liu, 2018, 2021a). If some part of the theories is not supported, ad hoc adjustment is proposed.

The third strategy is to reformulate the theories to construct a parallel version of the theory in a new social context, making a different version of the same theory with parallel set of concepts for different cultural settings.

However, these strategies all a serious drawback; that is, they are <u>logically deficient</u> in that culture have not been explicitly built into the theory, but only minimally considered, no profound understanding of cultural variation is intrinsic part of the theory. The universality is superficial.

Literature Review: Assumed Universality in Theories

Examining the existing criminal justice theories, the literature shows that theories achieve universality primarily by implicitly or explicitly assuming their universality; some calling for empirical tests of the theories under different cultural contexts, others keep silence on the nature of universality, and ignore making explicit claims.

One explicit example is Hirschi. He stated that that his theory is valid and applicable across all times and spaces.

Herbert L. Packer, a celebrated American jurist has developed two theoretical models of the criminal process: due process and crime control model. They represent an attempt to abstract two separate value systems that compete for priority in the operation of the criminal process.

The classification is primarily built on US examples and for the US systems and their operations, without an attempt to build universality across cultures.

Donald Black

Black's theory of the law (Black, 1976) is one of the most influential theories in the field of socio-legal studies. The aimed at establishing a "scientific theory" of law. Black proposes that the variation of law, defined as "governmental social control" (Black, 1976, p. 2), is quantifiable and predictable. Its variation across social space can be explained by variations in five dimensions of social life: stratification, morphology, culture, organization, and social control (Black, 1976, p. 1).

The major weakness is that the proposed empirical associations between the broad concepts and law would change with competing alternative processes underling the associations. The theory is not able to explain the alternative processes and is rarely considered in analyses of policy issues.

Formal Standards: Empirical Disconnection and Logical Deficiency towards Universality

Existing theories have many contributions but also have important weaknesses and deficiency towards Universality (Liu, 2014). Primarily built on the <u>empirical reality</u> of Western context, tests outside of Western context are very limited. Assumed universality if there was an intention for universality. Primary <u>Logical Deficiency</u>: culture has never been explicitly built into the theory. No profound understanding of cultural variation is offered in the theory.

Functional Standard: Lack of Utility

A powerful universal theory for criminal justice should possess some basic substantive properties beyond the general logical and formal requirements:

A universal theory of Criminal justice should process the ability to <u>describe</u> along some essential differences among criminal justice systems. Its concepts should reveal underlining essence of the states and patterns of the criminal justice systems along some major dimensions such as culture variation.

A theory should provide a guide for insightful <u>explanation</u> of current, past, and future features of criminal justice systems and their major dynamic processes (Liu, 2014). It should be a <u>useful tool </u>for policy analyses and suggest guidance for practical issues. It should <u>predict</u> the changing patterns of criminal justice, and the future trends.

Substantive Weaknesses of Existing Theories

Construction of the theories are largely classifications of categories. Little causal propositions. <u>Descriptive Functions: </u>The concepts tend not to be able to capture underlining essence of the states and patterns of the criminal justice systems along some major dimensions. <u>Explanative Functions:</u> Little power to capture the dynamic processes of conflict, and contraction to capture the key processes of current, past, and future features of criminal justice systems. <u>Analytical Utility</u>: Lack of potential use for policy analyses and to offer guidance for analyzing practical issues. <u>Prediction Function</u>. Little help in predicting the patterns and changes of criminal justice and it's the future trends.

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A Framework of Theory of Relational Justice

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Relational Justice is a universal theory of criminal justice systems. It provides a cultural perspective for understanding criminal justice systems. The theory <u>describes</u> primary features of the criminal justice systems, provides an <u>explanation</u> of the dynamic process and the changing patterns of the systems, and provides a <u>analytical</u> tool for policy and practice issues, and <u>predicts</u> the future trends of criminal justice systems, in terms of competitions and conflicts between essential underlining cultural components of the system in the world.

Basic Premises and Approach of the theory

Individualism population and Culture

The theory is constructed using <u>ideal types</u> and <u>continuums (Zhao et al., 2019)</u>. The first pair of ideal types (models) are <u>Individualism population </u>and <u>relationism population</u>. Individualism population are people with individualism traits, with inclinations of stressing self-interests, individual freedom, independence, and personal rights. Individualism population is a product of interactional process of bio-psycho-cultural traits with <u>individualism cultural </u>environment.

Relationism population and Relationism culture

Relationism population are people with **relationism traits**, with an intrinsic <u>need</u> for relations with others, taking high importance of relationship and strong desire to be with others, seeking warm, harmonious relationships as an essential source of their happiness and wellbeing (Liu, 2021b). Relationism population is a product of <u>interactional process </u>of bio-psycho-cultural traits with **<u>relationism cultural</u>** environment. Relationism culture is a stable, long-lasting environment that socializes people into relationism and provides motivation for relational justice. Relationism culture show variations in different patterns. Some culture patterns stress only close relation circles such as family and close friends, while other kinds show a larger range of relationships such as communities and collectives, as far as ethics and nations.

Individualistic Criminal Justice Model and Relational Justice Model

The second pair of ideal types are Individualistic Criminal Justice Model and Relational Justice Model. Individualistic justice and relational justice are models not found in the real world, but US common law systems can be said closely described by the individualistic model, while some non-Western criminal justice systems are better described by relational justice model. Individualistic Justice and relational justice endorse very different concept of Crime and justice, which will be explained later. The real US system includes relational elements, while some non-Western systems also include many elements of individualistic justice.

Basic Theoretical Propositions

My theory constructs an abstract continuum with relational justice as a pole at one end of the continuum and individualistic justice as another pole at the other end. Any real-world system is a mixture of both relational justice and individualistic justice elements, located somewhere on the continuum between the two ideal type poles.

Individualistic justice grows out of the individualistic culture and meets the demands of individualism population. Relational justice grows out of the relationism culture and serves the needs of the relationism population. A framework of the theory is depicted in the following chart.

The Theory of Relational Justice

Essential Propositions of relational justice theory

The starting logical point of the relational justice theory is relational and individualistic population concentrations and their needs. The ideal types highlight that two populations have profound differences in their needs and demands. In real populations, people in the west and non-West share much more similarities than differences. However, the differences still exist to different extents under different settings. "Economic man" model describes the human population better for individualistic population than relational population.

In the ideal type, the focal concern of the relationism population is RELATIONS, while individualist population is self-interests. Relational and individualistic population concentration interact with relational and individualistic cultures produce and reinforce different demands for criminal justice systems and operations. Relational population and culture prefer relational justice; individualism population and culture prefer individualistic justice.

The Culture of Individualism

A central proposition of the theory of relationism is that **individualistic cultural values** produce Individualistic criminal justice systems (Karstedt, 2001; Liu, 2016, 2021b). Cultural values primarily include elements such as: independence, material success, and individuals rights. Individualistic Justice systems are also influenced by a tradition of formal and analytical thinking mode.

In an individualistic society, individualistic cultural values and thinking mode flourish. These are consequences of **individualistic traditions**, which is the primary way of life in Western societies. I argue that Individualism is reflected and reinforced deeply by Western philosophical traditions. Individualism can be identified from classic works of Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and John Bordley Rawls.

Thomas Hobbes

Famous for originating "social contract theory": individuals are greedy egoists;

without the government, individuals are in a state of nature", each would claim everything and fight against each other in a "war of all against all". Only through "social contract" can self-interested individuals build a civil society, to whom all individuals cede some rights to build a commonly agreed-upon contract so that each individual can obtain protection from the government.

John Locke

Founding father of classical liberalism: Selfishness is part of human nature. But human nature also includes abilities of reason and tolerance. In the natural state, all were equal and independent, people have the right to defend their "life, health, liberty, or possessions."

Jean-Jacques Rousseau

Adds much into the individualistic tradition. Developed a detailed theory of human nature. His theory considers that individuals are not just wicked animals but also have goodness in them. Humanity has developmental stages, where the third stage is the optimum stage, where humans are in between a brute animal and the extreme of decedent civilization.

John Bordley Rawls

Employed thought experiments inducing the famous "veil of ignorance" to derive his principles of social justice. Human beings are rational and reasonable, knowing what they want to achieve and willing to cooperate with others to achieve their goals.

Instead of deriving from a "state of nature", individuals' original positions include a "veil of ignorance", where we can imagine a situation where people are ignorant about their own characteristics relevant to their social standings, which may bias their choices due to advantages or disadvantages associated with these positions (Rawls, 1971). Under this imaginative situation, the choices made by individuals will be impartial and rational and will achieve the principle of justice, which is fairness. The western individualistic tradition describes human beings as <u>independent</u>, rational, interest-seeking creatures that defend their <u>rights</u> forcefully in ways to achieve <u>material</u> success.

Under the influence of this tradition, individuals are the unit of the examination in concepts of crime and justice. Criminal events are the unit of analyses; social consequences are less of a concern, or even legally irrelevant in court. Under the individualistic tradition. Protecting offenders' rights is a central concern of justice. Conflicting individuals are the starting point of major theories of justice. Individualistic culture produces individualistic criminal justice systems.

Individualistic criminal Justice

Individualistic justice has three major features:

1. State centered concept of crime

In the Western Paradigm, crime is defined as an act of individuals in violation of state criminal laws. The concept of crime is "<u>state centered</u>" and assumes that the state represents people/public interest. Therefore, the issue is that the state must identify and punish the offender. However, the state does not necessarily represent public interest since victims' interests are often in conflict with state action and interests.

2. Offender centered Concept of Justice

State centered concept of crime logically leads to an **offender centered justice.** The rights of the offender in the offender centered justice system become the central concern. The state centered concept of crime and offender centered justice put an <u>imbalance</u> into

legal institutions and processes. In state centered justice, the <u>role of victims</u> becomes marginalized. The imbalance is indicated by no consideration of due process for victims.

In offender centered justice, accurately punishing the guilty offender becomes a primary objective of the system. Thus, offender centered justice tends also to stress retributive punishment of offenders and being chaptalized as retributive justice.

3. Conflict Approaches to justice

I characterize the Western system takes a **conflict approach to justice**. Justice is achieved through a **legal conflict procedural approach.** It is believed that the truth can only be found through an adversarial system and procedural process based on due process. A key criticism is that the resources of the powerful and wealthy can often be translated into advantageous positions in adversarial processes. Conflict as a context may lead to concealment of truth (which is what the parties often actually do)

Relational Criminal Justice

1. Relational concept of crime

The unit of concern is the relation or group, not just the crime event or the individuals involved as a unit of observation (Liu, 2016). Under this orientation, crime is seen as **harm done to victims and social relations**. Therefore, the issue is to repair harm and resume harmony and peace, resume social relations. Crime is, first, the business of victims including the direct victim and indirect victims.

2. Relational concept of justice

Concept of Justice reflects a group concern and is a relational concept. The highest objective is to **resume relations** and peace for victims, for the community, and for the offender, and thus defend public interests. The objective of relational justice is set by the cultural value harmony, to achieve a holistic goal of long-term peace and fewer lawsuits for society, and minimal recidivism.

The important objective in reacting to crime is **Conflict Resolution**, which is the main content of relational justice. A fair solution to a crime should not be just a punishment based on the wording of the law, but also consider the feelings of the parties and community and meet the standard of "reasonableness". Morality often plays a role along with law.

3. Relational approach to Justice

The relational concept of justice and the holistic thinking style leads to relational approaches to justice. Specifically, the relational approach is a **Holistic substantive educational approach**. It is a set of methods including negotiation, persuasion, education, and punishment. Any method can be adopted in a case to fit the specifics of the case to reach the objectives of relational justice.

To achieve long term peace and preferable social consequences, targeting hearts and substantive truth is preferred over focusing only on the facts directly related to the case and on unified procedures.

Western Criminal Justice models move into Non-Western Societies

The trend: world Criminal justice has become more and more like the Western system. Colonialism. For example, The British <u>East India Company</u> and the British colonial power ruled India for almost three centuries, The present criminal justice system in India is largely the creation of the colonial government. (as well as Pakistan and Bangladesh). The Indian Police Act of 1861; India Penal Code of 1862; Code of Criminal

Procedure of 1882; In most of the English colonies in Asia and Africa, the common law largely remains unchanged (e.g. Hong Kong).   Spanish colonial laws in Latin America largely remain unchanged. Modernization: Non-Western countries learning from the West countries. Global Agenda for reforms: All major international organization has international law reform programs for non-Western countries:

United Nation's programs: the United Nations, the World Bank, the European Union, the United States Agency for International Development (USAID), the Canadian International Development Agency (CIDA), the UK Department for International Development, the Asian Development Bank (ADB), the inter-American Development Bank(IDB), the inter-American Commission on Human Rights, and the Organization of African Unity(OAU) in the countries of Asia, Africa, and Latin America

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