

Culture and Criminal Justice - A Theory of Relational Justice

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I. Introduction

- Prominent Enlightenment scholars such as Bentham, Voltaire, Helvetius, and Quetelet recognized the value of comparative inquiry, systematically contrasting features of crime and justice in their own nations with those of others. “Comparative criminology is as old as criminology itself.” Howard et al. (2000:141)
- However, interest in comparisons waned throughout much of the 19th and early 20th century, “as nations looked inward” (Howard et al. 2000:141).

- Comparative inquiry once again began to capture the interest of criminologists in the middle years of the 20th century – a development that Bennett (1980) characterized as an especially beneficial “revival.” Yet 20 years after Bennett’s pronouncement of this welcome development, Farrington (2000) in his 2000 Presidential Address to the American Society of Criminology assessed that “cross-national comparative studies in criminology are important but relatively infrequent” (2000:5)

- Comparative criminology gained importance in recently years again. The increasing pace of globalization means that criminologists can no longer ignore the legal systems and the work of legal practitioners outside their own countries (Larsen and Smadych 2008).
- However, for the most part, comparative research has mainly been conducted by Western researchers with the aim of reflecting on how their own criminal justice systems have developed.
- They have made comparisons with criminal justice systems in other Western countries (for example, Nelken 2010),

- For non-western countries, research has produced a large amount of useful descriptions of criminal justice systems in different countries. (e.g. Liu et al. 2013).
- There is a fairly large literature written in English about crime and criminal justice in Asian countries, published in the *Asian Journal of Criminology* (founded in 2006).
- There is also a sophisticated interdisciplinary literature about comparison in the fields of comparative law, socio-legal studies, criminology and sociology (Leavitt 1990, Gingrich and Fox 2002, Mattei 2006, Reimann and Zimmerman 2006, R. Connell 2007, Amelang and Beck 2012, Nelken 2010, Clark 2012, Cotterrell 2012, , Darian-Smith 2013, Merry 2014). However, few theorists or researchers from non-Western have contributed to these literatures.

Theoretical Work in Comparative Criminology

- Theory construction and development in the field has been insufficient. There is a lack of systematic explanation for differences among criminal justice systems.
- Western perspectives have dominated theoretical thinking.
- Recent scholarship analyzed the impact of global divisions and Western dominance in political, economic, cultural and military power on the production of knowledge (Connell, 2007, Carrington 2016).

- Among the limited theoretical work, two typologies have been proposed to understand the differences between criminal justice systems
 1. Herbert L. Packer's twofold typology
 2. Shahidullah's fourfold typology
- The first one reflects differences among Western systems.
- The second one reflects a Western view of all world criminal justice systems progressing from premodern to modern systems.

- **1. Herbert L. Packer's twofold typology:**
 - “**Due process model**” type: the type of system based on the dominance of the principle of the due process of law, reflects a liberal approach to governing crime and justice;
 - “**Crime control model**” type: based on the dominance of the goal of crime control, reflects a conservative approach.
 - Reflecting ideological difference between liberal and conservative is the most essential among criminal justice systems.
- Packer' Typology is Western theory explaining Western criminal justice differences.
- **2. Shahidullan's fourfold typology**
 - Modern, Modernizing, Traditional, and Dual systems.**
 - Addressing the differences between stages or level of modernity among different criminal justice systems
- Shahidullan's typology reflect a Western view that non western systems is in the low level of development.

II. Historical Development in Non Western Criminal Justice Systems

- Four historical processes have been important in the development of homogeneity of the criminal justice systems in non western countries: **colonialism, modernization, globalization, and the international development assistance programs** in developing countries.
- These historical development have significantly reduced the variation between criminal justices systems around the world.

- **Colonialism**
- We can hypothesize that colonization has had the most dramatic effect of variation reduction.
- In the colonies of the European powers, Continental Civil Law and Common Law were implanted in the colonies. So the legal institutions and criminal justice systems in the colonies are unified with that of the colonial power.
- E.g. India

- **Modernization**
- For criminal justice, the effect of modernization is to further reduce the differences to the Western Models through processes of copying and learning from the West.
 - Institutionalization of the rule of the law, democracy, and the due process of law; and
 - the increasing autonomy of the system of criminal justice away from politics and religion; and
 - the growth of professionalization in law and legal practice; and
 - the increased use of modern science and technology in crime control.

- **Globalization**

- The core idea of globalization is the notion of connectivity among the world societies.
- The effect of globalization is to further fuse countries into the one world system.

- **International development assistance programs**

- It is a social force that pushes forward the homogenization of the criminal justice system in developing countries.
- International development assistant organizations promote international standards.

the Puzzle

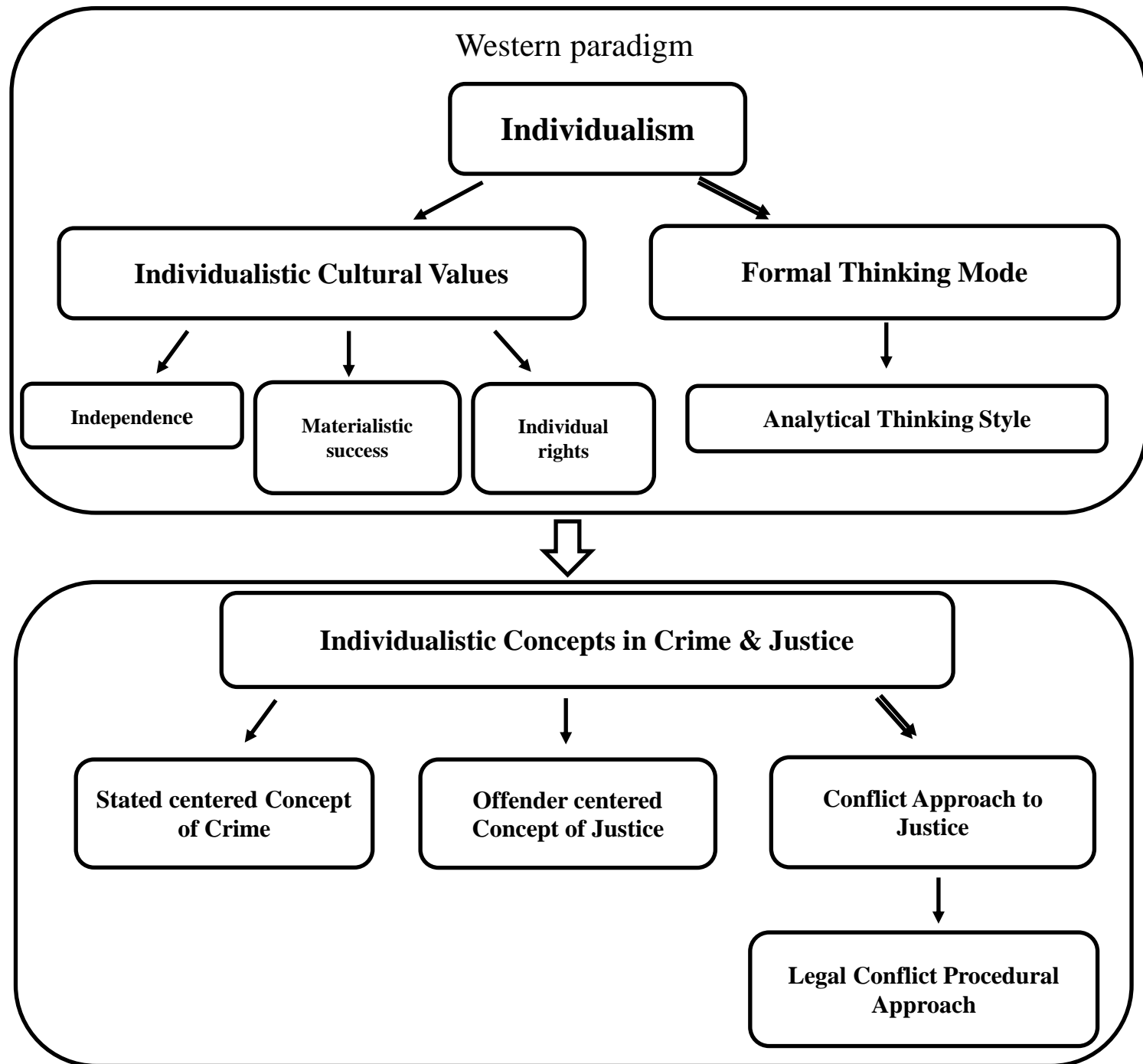
- It would be reasonable to expect that the variation among criminal justice systems and their operations have been very much minimized.
- But several theoretically important questions are:
 - Do the differences between Western and Eastern criminal justice system still **persist**? If so, why?
 - What are the primary **forces** that work to maintain differences between the Western and Eastern systems?
 - What are the **processes** that resist the narrowing down of the differences between the West and the East?....

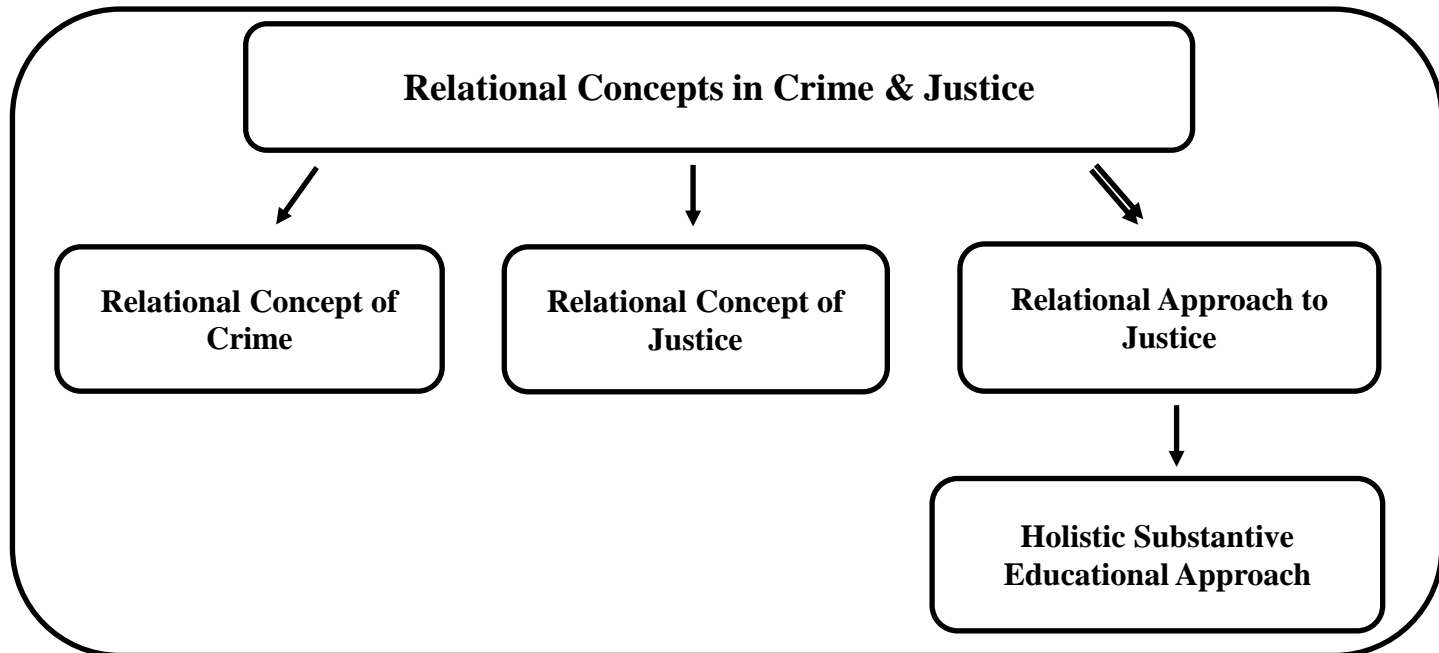
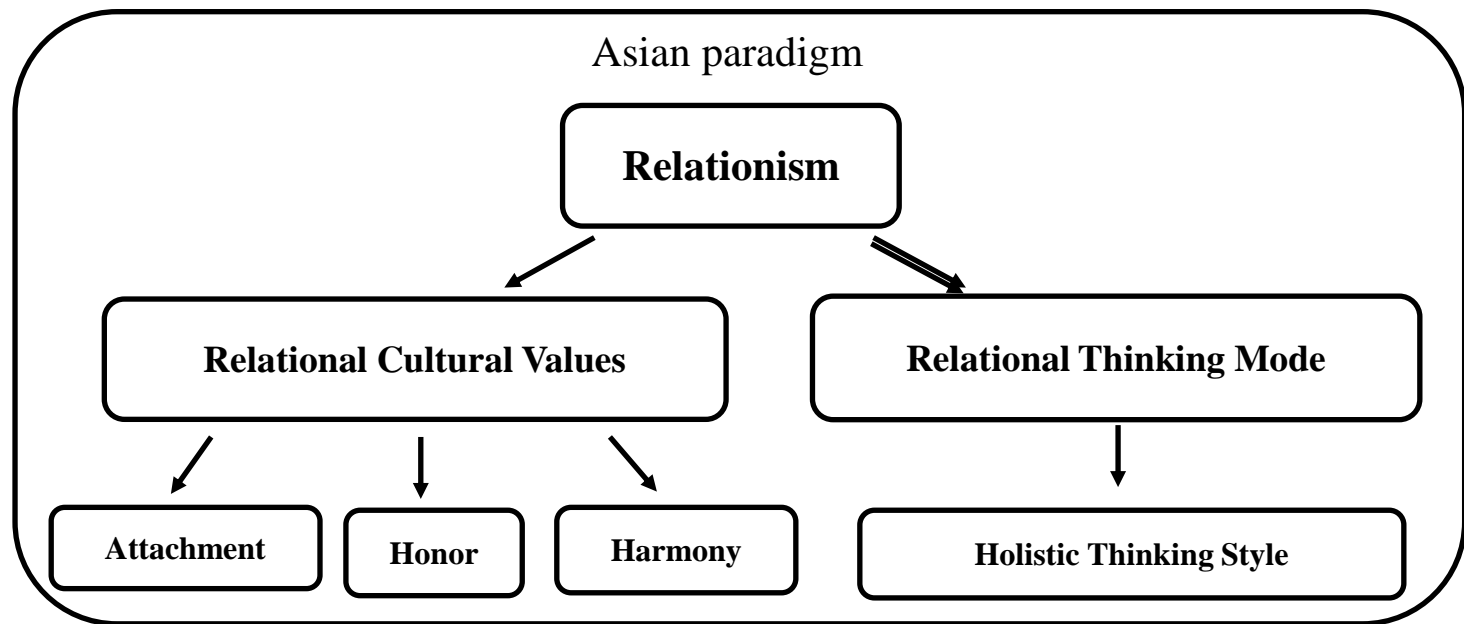
- Much evidence demonstrates that differences persist despite the effects of “homogenizing processes”.
- The primary reason supporting the persistent differences is profound cultural differences. Culture as an explanation can be particularly useful in addressing differences between different parts of the world such as between West and Asia, compared with comparisons within Western countries, for which most comparative research is done.
- I propose a “A Theory of Relational Justice” to explain the processes by which the differences between Western and Asian criminal justice systems are produced.

III. A Theory of Relational Justice

- The “Theory of Relational Justice” addresses the key cultural differences behind conceptions and operations of criminal justice systems in Western and Asian societies.
- Western concepts of crime and justice are **individualistic concepts** and Asian concepts of crime and justice are **relational concepts**. Both are consequences of different cultural value systems and thinking modes.
- Western justice is used as a standard of comparison in establishing the theory. **Relational justice**, which is more typically found in non-western societies, such as Asia, is a highlight of the theory, thus is emphasized in the title.

- Individualistic concepts of crime, justice and approaches to justice are consequences of **Individualism**, which produces **individualistic cultural values** and **thinking style** tradition. This process is summarized as a “**Western paradigm**”.
- In contrast with individualism, the foundational concept of the theory is “**relationism**”, which is the embedment of life in terms of emotion and activities in relationships.
- **Relationism** is the source of **relational cultural values** and **holistic thinking mode**; this value system produces the **relational concept of crime and justice**, and a **relational approach to justice**.
- Much empirical evidence suggests that relationism is higher in Asian societies than in the West, the process that relationism produces relational concept of crime and justice is summarized as an “**Asian paradigm**”.





Implications of the concept of relationism

- The concept of relationism provides a foundational tool for understanding cultural differences. Thus it has broad theoretical implications.
- The concept of relationism suggests fundamental cultural differences in the understanding of important concepts between populations and societies in many areas of study.
- The theory of relational justice is an implication of the concept of relationism.
- A study of cultural differences in understanding criminological concepts implies a theory of **relational criminology**.

The Western Paradigm

- **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 “state centered”, and makes an assumption 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 imbalance into legal institutions and processes.
- In state centered justice, the role of victims becomes marginalized. The imbalance is indicated by no consideration of due process for victims.
- In offender centered justice, punishing the guilty offender becomes a primary objective. Thus offender centered justice tends also to stress the punishment of offenders and leads to a retributive justice.

- **3. Conflict Approaches to justice**
- The Western system is characterized as 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 the 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 actually do)

Individualist nature of the Western Concepts

- The fundamental conceptions of Western criminal justice are influenced by individualistic cultural values, primarily, independence, material success, and an emphasis on individuals rights. They are also influenced by a tradition of formal and analytical thinking style.
- In an individualistic society, individualistic cultural values and thinking mode flourish. These are consequences of individualism, which is the primary way of life in Western societies. Individualism is reflected and reinforced deeply in Western philosophical traditions, such as in the works of Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and John Bordley Rawls.

- **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 in order to build a commonly agreed-upon contract so that each individual can obtain protection from the government.

- **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 has the right to defend their “life, health, liberty, or possessions”

- **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 human are in between a brute animal and the extreme of decadent 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 (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 independent, interest-seeking creatures that defend their rights forcefully in ways to achieve material success.
- Under the influence of this tradition, individuals are the unit of the examination in concepts of crime and justice. Criminal event is 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

The Asian Paradigm

- **1. Relationism**
- **Relationism** is the embedment of life in terms of emotions and activities in relationships.
- Research found that individuals in East Asian societies tend to be embedded in many social relations; in contrast, individuals in Western societies tend to have fewer social relations (Nisbett et al 2001).
- The distinguishing characteristic of relationism is its **emotional linkage** in social relations.
- Relationism tends to be high in societies with ancient traditions of family and clans as the basis of societies, which are more often found in Asia, compared with societies consisting of “socially contracted”, or “exchange engaging” individuals, which are more often found in the West.

- **Relationism** differs from **collectivism**. There are different forms and levels of collectivism. Japanese and Indians are found to be more group oriented, while Chinese were found to be more centered on key relationships. Relationism is the essential element of collectivism, but is a more basic construction than collectivism.
- **Relationism** differs from **interdependence**. Relationism contains interdependence, but also contains emotional components that interdependence does not necessarily contain.
- **Relationism** differs from **social capital**, which refers to the resources existing in relationships. Social capital as resource is more about means and tools, while relationism is a way of life, reflecting the nature of social organization.

- A high level of relationism in a society results in relational cultural values as primary cultural values.
- Relationism also influences people's thinking mode. A high level of relationism leads to a relational thinking mode, reflected in the holistic thinking style typically found in Asian societies.
- Relationism influences the concepts of crime and justice, and approaches to justice via influences upon cultural values and thinking mode.

- Relationism has profound implications for social life.
- Populations with high relationism traditions tend to employ a relational thinking mode, indicated by a holistic thinking style.
- Societies with populations living with high relationism tend to rely on morality rather than formal laws for social control.
- Populations with high relationism tend to value substantive justice over procedural justice.

- **2. Asian Cultural Values**
- Relationism stresses relational cultural values. Three most important ones are: **Attachment, Honor, and Harmony.**
- **(1). Attachment**
- High level of relationism produces high values for intimate feelings and satisfactions that relationships provide. Attachment is the feelings and emotions associated with the relationship.
- When attachment is valued highly, seeking or preserving attachment is a motivational factor for behavior.
- Attachment as a cultural values has important implications for the concept of justice and crime control.
- Informal social control plays a larger role in Asian social control.

- **(2). Honor**
- Relationism leads to high value on honor, including individual's honor and honor of the group the individual belongs to.
- Research has found that maintaining the family honor and good reputation is a top priority in every Chinese, Japanese, and Korean family.
- This Asian culture pattern is sometimes referred to by Westerners as “face” , as in the importance of not “losing face,” or of “saving face.”

- **(3). Harmony**
- High relationism leads to high values placed on harmony, conflict avoidance, baring and compromises when personal interest is harmed or personal conflict arises.
- Harmony is found to be a central value in some Asian societies in determining objectives of justice.
- No law suite as a objective of justice in Ancient Chain

- **3. Relational thinking mode**

- In contrast to the analytical thinking style, holistic thinking style is higher when relationism is high.
- Nisbett et al. (2001) argue that there are cross-cultural differences in styles of thinking. Holistic thinking is defined as “involving an orientation to the context or field as a whole, including attention to relationships between a focal object and the field, and a preference for explaining and predicting events on the basis of such relationships” (Nisbett et al. 2001, 293). In contrast, Analytic thinking is defined as “involves a detachment of the object from its context, a tendency to focus on attributes of the object to assign it to categories, and a preference for using rules about the categories to explain and predict the object’s behavior” (Nisbett et al. 2001, 293; Nisbett 2003, 2007; Norenzayan et al. 2007; Vanum et al. 2010; Oyserman et al. 2002).

- Relational cultural values produce relational concepts of crime and justice which stress their functions for relationships and groups.

- **3. 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.
- 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 of all, the business of victims including the direct victim and indirect victims.

- **4. 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 law suits for the society, and minimal recidivism.
- The specific 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.

- **5. Relational approach to Justice**
- 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, and education and punishment. Any methods can be adopted in a case to fit the specifics of the case in order 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.

Discussion and Conclusions

- Both Western and Asian cultures contain individualistic and relationistic elements.
- Great advancement has been made based on Western paradigms.
- Processes of modernization and globalization have moved in the direction of spreading more individualistic cultural elements.
- The effects of relationism should be more scientifically examined and considered, rather than being only negatively labeled as “pre-modern” or “backward”. Strengths of both Western and Asian cultures can contribute to better justice.

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