

XIII. Restorative Justice and Crisis

Restorative justice: a new model of 'doing justice'

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Contribution dedicated to dear friend and colleague Professor Nestor Courakis as a minimum evidence of the appreciation for his contribution to the academic community and society.

Abstract

The deadlocks of the traditional criminal justice systems are reflected in the reproduction of the multiple and complex social inequalities, the high rates of reoffending and recidivism, the under representation of the victims' voices, and the overpopulated prisons. In this paper, I thoroughly analyze the Restorative Justice case through an evidence-based perspective. I examine the deadlocks of the criminal justice systems by employing recent statistics from the Council of Europe (SPACE I and II). After I review the state of the art, I present the new trends of positive psychology and positive criminology in corrections. Focused mostly in Restorative Justice, either as social movement or a trend within criminology and the formal criminal justice systems, I identify the strengths and weakness of Restorative Justice on theoretical, methodological and policy level. I conclude with suggestions of a new model of Restorative Justice that brings together theory, research and practice in the criminal justice policies. The need for inter- and trans- disciplinary approaches and synergies is also stressed in the paper's conclusions.

Introduction

Justice is a wide, abstract and complex concept. It's not easy to define what justice is, but it is easier to define what injustice is. Justice is then defined only through its opposite, by social injustice and inequality. Surprisingly enough, justice as concept is everywhere; in the families, the schools, the communities, the states, and the international institutions. Justice is the key concept of socialization and the demand at the same time. The history of human kind reflects a permanent demand of justice. Wars, revolutions and social uprisings reflect the struggle for social justice and equity.

No matter how we define the notion of justice, either as a social construction or an inherent value, we argue that justice is a fundamental principle of the socialization that seeks realization in the everyday life worldwide. Furthermore, justice can be transformed into conscious praxis, and the term 'doing justice' instead of the mere rhetoric word 'justice' could alternatively used.

The aim of the paper is to address the potential of restorative justice as a form of 'doing justice' through identifying the problems and the deadlocks of the current criminal justice systems that exist – at least- in the developed countries. To that, I argue that we need more responses to the complex problems, as criminality is, and we need to find out flexible and effective ways of crime prevention and pro-active strategies to reduce criminality and re-offending. Restorative justice could be an alternative to the traditional criminal justice ways in this perspective.

The paper has two main parts. In the first part, I present the problem statement through the review and elaboration of research data and findings on prison population, reoffending, and crime statistics that reflect the deadlocks of the current traditional criminal justice systems. In the second part, I explore the potential of restorative justice through addressing the concepts, the methodologies and the practices of restorative justice. The justifications for the restorative justice potential focused on its holistic and integrated perspective, the evidence on the fields that restorative justice works, and the economics of restorative

justice are presented in order to explain why restorative justice is a value for money justice. Social capital is also taken into consideration in the justification, due to the pro- active perspective or restorative justice.

For the purpose of this paper, I focus on the traditional western culture and mainly the US, Canada and Europe. Since there are many differences in between the continents and the countries, the criminal justice systems are different, as are the legal practices. The differences between the continental and Anglo-Saxon justice systems limit the scope of the paper. However, I put the concepts of crime, offender, victim, prison settings, rehabilitation, community, reoffending, and others in the wider framework of the 'rule of law' and 'human rights'.

That to say, in the first part where the deadlocks of the criminal justice systems are presented, I use statistics and data from reliable sources –whatever means 'reliable' in crime statistics – as the Council of Europe (SPACE I), the FBI's Uniform Crime Reporting (UCR) Program and the International Centre for Prisons Studies. I try to avoid the abstract and philosophical concepts and analysis frameworks, despite my background in classic and ancient greek philosophers, as Plato's and Aristotle's theories of justice. Instead, I argue that the problems and the deadlocks of the traditional criminal justice policies reflect the need for radical changes in the

More specifically the violent crime rate declined 5.1 percent compared to the 2012 rate, while the property crime rate declined 4.8 percent. Additional information on the two types of crimes is presented in the table below (Table 1). current complex, multicultural and postmodern societies. I present a review of worldwide statistics from various organisations and synthesize them in order to illustrate how the criminal justice system works and their structural problems.

A few original research findings are also included, but they come only from UK and Greece, so they have limited value for any generalizations. It is not really a meta-analysis of the research findings, but a thorough elaboration to describe the problems and the deadlocks of the criminal justice systems and how the restorative justice could be an op-

tion for exploring more effective ways of dealing with the crime issue. The methodological choices of restorative justice mostly focus on the qualitative research and include case studies, narratives, focus groups, field research and participant observation. In the second part of the paper, I justify why and how the qualitative methodologies fit better to the restorative justice theory and research. Thus, the empirical limitations found both in the difficulties of comparative approach and the problems of generalization in the field of criminal justice systems and the restorative justice approach.

Problem Statement: The Deadlocks of the Current Criminal Justice Systems

The criminal justice systems are founded in democracy and in the protection of human rights. In the context of the Enlightenment (this time including the French and Scottish Enlightenment) and the ideas of the French revolution, the values and principles of *equality, liberty* and *justice* defined the fundamental triad, the building-ideas as it were behind the values, ideals of and demand for democracy, society and the birth and sociopolitical organization of western European nation-states. Thus, punishment aims mostly at the rehabilitation of the offender than the retribution.

This reflects how the criminal justice system is constructed in an abstract and ideal perspective. Nevertheless, there is gap between the ideal and the real. What we face in USA and Europe is an increase of penal populism and of punitive attitudes, at least during the last decade. Research findings reinsure that criminal penal attitudes and prison population increase more and more, independently of the rates of criminality and the trends in crime statistics. And here is the paradox: even if the crime rates decline, both the prison population and the punitive attitudes are continuously increasing. Cecelia Klingele (2013) argues that punitive attitudes is what actually increases the prison population despite the lower crime rates. Namely more strict prison sentences are imposed instead of probation/community sentences etc. And 1/2 of admissions to jail and 1/3 of admission to prison are for pro-

bation and parole violations.

Trying to address this paradox I present a few crime statistics from US and Europe that illustrate the decline in crime rates. The crime statistics and the findings in US come from the 2013 edition of the FBI's annual report *Crime in the United States*. This publication is a statistical compilation of offense and arrest data reported by law enforcement agencies voluntarily participating in the FBI's Uniform Crime Reporting (UCR) Program.¹

A total of 18,415 city, county, state, university and college, tribal, and federal agencies participated in the UCR Program in 2013. A summary of the statistics reported by these agencies was included in *Crime in the United States, 2013*. Overall the estimated number of violent crimes in the nation decreased 4.4 percent in 2013 when compared to the 2012 data, according to FBI figures. Property crimes decreased 4.1 percent, marking the 11th consecutive year the collective estimates for these offenses declined.

¹ http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/summary-2013/2013-cius-summary-_final)

Table 1: Violent and property crimes in the US

	Violent crimes	Property crimes
Number of crimes in 2013	1,163,146	8,632,512
Estimated rate	367.9 offenses per 100,000 inhabitants	2,730.7 offenses per 100,000 inhabitants
Decline compared to 2012	<ul style="list-style-type: none"> •murder and non-negligent manslaughter – 4.4% •rape [legacy definition] – 6.3% •robbery – 2.8% •aggravated assault – 5.0% 	<ul style="list-style-type: none"> •burglaries – 8.6% •larceny-thefts – 2.7% •motor vehicle thefts – 3.3%
Total arrest rate	159.8 per 100,000 inhabitants	513.2 per 100,000 inhabitants
Arrest rate by crime offense per 100,000 inhabitants	<ul style="list-style-type: none"> •murder and non-negligent manslaughter – 3.4 •rape (aggregate total of revised and legacy) – 5.5 •robbery – 32.0 •aggravated assault – 118.8 	<ul style="list-style-type: none"> •burglary – 82.9 •larceny-theft – 405.5 •motor vehicle theft – 21.4 •arson – 3.4

Notably, collectively, victims of property crimes (excluding arson) suffered losses calculated at an estimated \$16.6 billion in 2013. The FBI also estimated that agencies nationwide made about 11.3 million arrests, excluding traffic violations, in 2013. In 2013, there were 13,051 law enforcement agencies that reported their staffing levels to the FBI. These agencies reported that, as of October 31, 2013, they collectively employed 626,942 sworn officers and 275,468 civilians, a rate of 3.4 employees per 1,000 inhabitants.

And as the figure (Figure 1) below shows US is the country with the highest prison population worldwide.

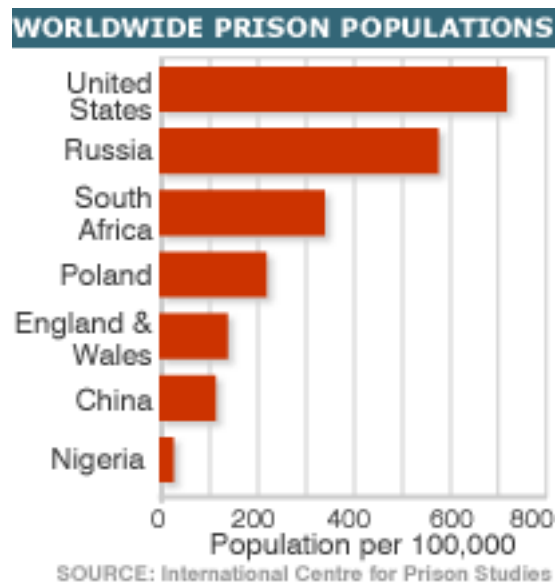


Figure 1: Worldwide prison populations

Similarly, as the figure above illustrates the picture in Europe is not much different. In the western European prison populations England and Wales have the highest per capita prison population in Western Europe – 143 people per 100,000 inhabitants (Figure 2). Scotland, where 135 people out of every 100,000 are in jail, is also above average. Northern Ireland, however, is among those countries with the lowest rates of imprisonment.



Figure 2: Western European prison populations

Crime statistics in Europe however have declined during the last 10 years as well. The very recent research findings on penal statistics coming from the member states of the Council of Europe, verify that trend (M. Aebi and N. Delgrande, Strasbourg, 3 May 2013, PC-CP (2013)5). However, the prison population didn't follow this trend.

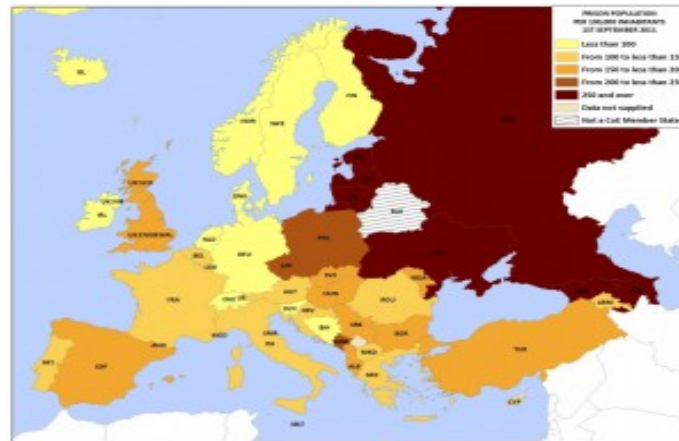


Figure 3: Prison Population 2011 in the MS of the Council of Europe

According to that SPACE report, on 1st September 2011, there were 1,825,356 inmates held in penal institutions across Europe. On the same date in 2010, there were 1,861,246 inmates. This represents a decrease of about 2% from 2010 to 2011. The average European prison population rate was 154 inmates per 100,000 inhabitants, which is slightly higher than in 2010, when there were 149.3 inmates per 100,000 inhabitants. Additional information is presented in Table 2.

Table 2: Facts and figures about European prisons in 2010-11

Prison capacity	99.5 inmates per 100 places – half of the Prison Administrations were experiencing overcrowding. – Since 2009, when there were 98.4 inmates per 100 places, there has been an increase of 1% in the prison density.
Average age of prison population	33 years
Female inmates	5.3% of the total prison population – Almost one fourth of them were pre-trial detainees
Foreign inmates	21% of the inmates 21% of the inmates – The lower numbers are found in Eastern European countries, where they seldom represent more than 2% of the prison population – the highest in Western European countries, where they usually represent more than 30%. – Around a quarter of the foreign inmates were citizens of EU Member States
Pre-trial detainees	21% of the inmates – The percentage increases to 27% when inmates without a final sentence are included
Sentence length	26% less than one year 26% one to three years 48% longer sentences
Type of offence	14% more than 10 years drug offences – 17.5%, theft – 17.5% robbery – 12.2% homicide – 12.2%
Length of imprisonment	9 months in 2010
Duration of pre-trial detention	5 months in 2010
Average mortality rate	28 deaths per 10,000 inmates in 2010
Average inmates per custodian	3 inmates per one custodian in 2010
Amount spent	93 Euros per day and per inmate in 2010 <i>The median amount was 50 Euros due to the huge differences across countries (from 3 to 750 Euros). *The 33 Prison Administrations that provided data on this item had spent more than 17.000 million Euros in 2010.</i>

Prison population consists of convicted in sentences less than one year, for less serious crimes. The imposition of the alternatives to prison sentences (such as community service, probation, etc.), diversion procedures and restorative justice practices may contribute to the discharge of the criminal justice workload and the reducing of prison population.

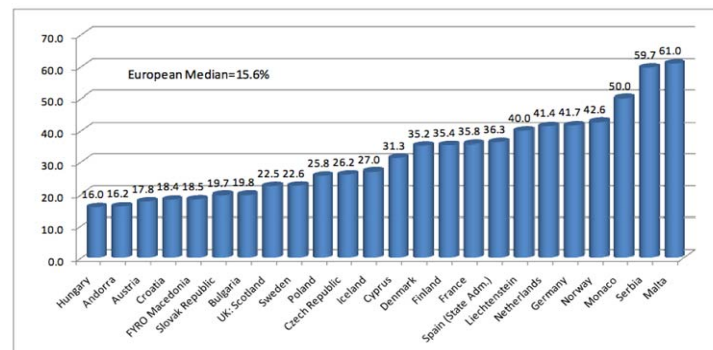
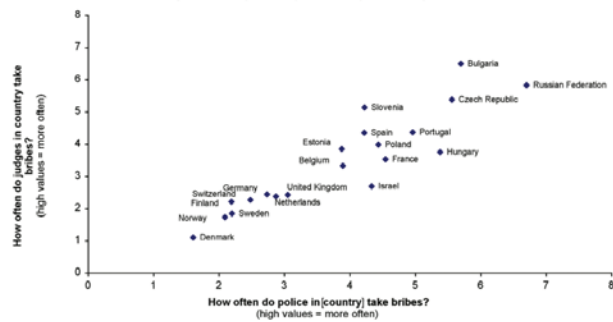


Figure 4: Countries with the highest percentage of prisoners sentenced to less than one year

The citizens' trust in the criminal justice institutions appears to be another significant issue since it seems to be relatively low across Europe. The Eurobarometer survey in the member states of the EU show that the Europeans are almost divided in their perceptions. A majority (53%) tends to trust their national criminal justice systems, although a sizeable minority (43%) tends not to trust (Flash Eurobarometer 385, *Justice in the EU*, TNS Political & Social, November 2013:13). Of course there are differences between the EU member states. People in Finland and Denmark (both 85%) demonstrating the highest levels of trust, since Slovenia (24%), Slovakia (25%) and the Czech Republic (25%) show the lowest rates. Furthermore, according to the findings of the European Social Survey (European Social Survey, *Trust in Europe, Topline results from round 5 of the European Social Survey, 1st issue, De-*

cember 2011)² the Europeans believe that corruption and bias exist both in police and justice, as Figures 5 and 6 illustrate.



Source: European Social Survey Round Five, 2010

Figure 5: Perceptions of judicial and police corruption

² http://www.europeansocialsurvey.org/docs/findings/ESS5_toplines_issue_1_trust_in_justice.pdf

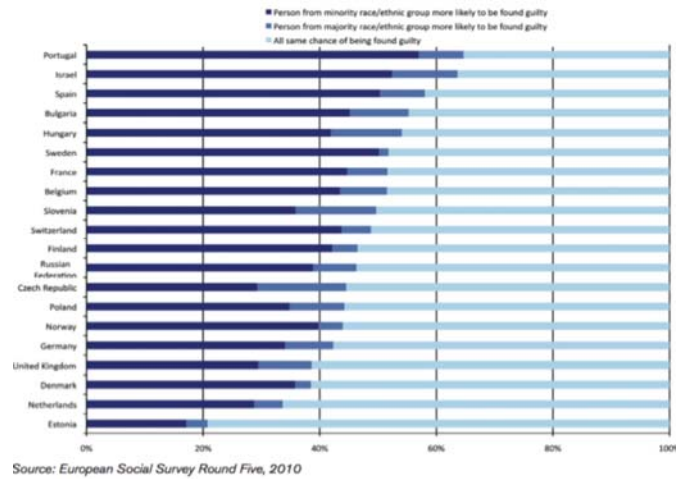


Figure 6: View on how fair the courts are to majority versus race/ethnic groups: by country

Furthermore, the high rates of reoffending and the failures of rehabilitation policies burden more and more the deadlocks of the criminal justice systems. In a survey conducted in the United States, from the 404,638 prisoners that were released in 2005, two thirds (67.8%) were arrested again within three years of release, while 76.6% had been arrested within five years.³

Statistics illustrate the problems of the criminal justice efficiencies and the gap between the ideal and the pragmatic. The level of trust of the European population in doing justice is also problematic. With an average rate of 24% of the foreigners in the European prison population (Aebi & Delgrande 2015) and the inequalities reflected in the criminal justice systems (Cole 2000, Statistics on Race and Criminal Justice System, Ministry of Justice, UK, October 2011) we also address the issue of the minority populations in prisons that are often dispropor-

³ <http://www.nij.gov/topics/corrections/recidivism/Pages/welcome.aspx>

tionately represented. The reasons for this phenomenon are complex. One claim is that racism is surely alive and active within such systems – a reflection of conscious or unconscious prejudice among the broader population. Whether this effort is conscious, involuntary, or some combination of both, it is argued that aspects of today's criminal justice system sustain the iniquities of a different era, such that real discrimination is merely disguised in socially acceptable practices of safety and justice (Artinopoulou, 2014).

Prison overpopulation has an impact in the relations between inmates and the prison staff, the protection of prisoners' rights as set by the international organizations (UN, A/RES/40/33 Standard minima rules for the treatment of prisoners, Council of Europe Recommendations R (99)22, R (2006)2, the decisions of the European Court of Human Rights), the prison as workplace for the staff, the effectiveness of the crime policies etc. Even if prison as an institution within the criminal justice system is the best way for the offenders treatment in the history of punishment, comparing to other forms of brutal punishments, as death penalty and the mediaeval public executions, the way that prisons function is totally ineffective, and dangerous for the human rights today. Democracy and human rights are constantly violated in the prison settings worldwide. I kindly remind the article 10 of the UN International Covenant on civil and political rights that 'All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person'.

The correction systems reflect the social values of each society and the level of development. Prisons do not exist in a vacuum. Given that, I'm not quite sure if we have to be proud of our culture since the offenders' punishment is still the goal of the justice instead of crime reduction and offender's rehabilitation. At the end of the day, we have to admit that the prisons have failed to achieve their aims. And the traditional criminal justice systems are trapped in their deadlocks, if they somehow work...

These are the reasons why we try to find new ways of dealing with crime, punishment, re-offending prevention and reintegration. That's

why we explore the potential of restorative justice, as a complementary and/or alternative response to the criminal justice deadlocks and problems. More as a matter of pragmatism than of utopism.

The Potential of Restorative Justice

1. A few justifications

THE COMPLEX CONCEPT OF RESTORATIVE JUSTICE: A DIFFERENT ZEITGEIST

The criminal justice system(s) (CJS) are *de facto* and *de jure* legitimate structures of power. Both the theories of social contract and conflict agree that power is an inherent, corporate and fundamental element in the criminal justice system. Legitimacy and authority are to be found in the background of the CJS. Obedience, social control, trust, normative commitments to the rule of law, and moral arguments on fair and justice contribute as to the social construction of law and the CJS, as to the reproduction of its legitimacy and authority in time and space. The citizens' trust to the CJS lays on the free willing consent and not the coercive one.

The attack of September 11 led to reconsidering of the concepts of risk and danger (Zinn, 2010) and affected the safety and criminal justice policies worldwide. Emphasis put as on the individual and collective feelings of safety as on concept of 'risk'. A punitive penal and social environment was created for the organized crime, terrorism and transnational crime. So, the main question remains: is there is any place left for Restorative Justice Values and practices? In other words, if and how Restorative Justice may enrich the spectrum of the responses in crime and how RJ values, such as fairness and equity may get involved in that scene.

I don't suggest restorative justice as a solution or a panacea in the deadlocks as presented above. Neither do I believe that there are pre-constructed responses in the social problems, as crime and criminality are. However, I do believe that the complex problems seek for complex responses. Different needs, different contexts, much different personalities and individuals, different values and cultures, all differences demand multiple answers and a wide spectrum of responses.

Restorative justice is perceived as a trend in criminology that seeks to bring healing after wrongdoing. It has also a proactive dimension. Its emphasis is primarily on repairing the harm done to parties involved in conflict, often by urging conversation between offenders and victims. It is a model of justice that has developed over the last several decades to affect criminal justice systems in numerous countries. Its historical roots borrow from a variety of cultures and philosophies, and its modern application is found not only in the criminal justice system but also in restorative practices influencing education, the workplace, and also cases of pervasive ethnic and social conflict. To date, restorative exercises such as face-to-face dialogues between victims and offenders are said to be the most widely practiced and researched modality because direct engagement is considered fundamental to restorative justice (Umbreit *et al.*, 2005).

It's not easy to define what restorative justice is, due to its holistic, interdisciplinary and integrating perspective. Restorative justice is the field where researchers, policy makers and professionals are dealing with law and human rights. Usually, restorative justice represents an alternative response and paradigm in the criminal justice system. Especially it is highly recommended for violent and property crimes, for juveniles offenders, putting emphasis on the victims' rights, the offender's accountability, and the restoration of the harm/damage.

The literature on restorative justice shows that it seeks to encourage more civic and social participation to prevent and resolve problems of criminality through personal engagement in healing and peace. Gavrielides and I argue that restorative justice is a different *Zeitgeist*. It relates to how you and I view, pursue, achieve and indeed want to experience justice at the inter-personal, inter-community and inter-state levels. (Gavrielides & Artinopoulou, 2013a). So, restorative justice is more than a trend in criminology, even if it reflects the continuum in the criminological thinking. Restorative justice lays on abolitionism and victimology (Artinopoulou, 2010) and focuses on the individual (offender/ victim) and the micro and meso level of analysis. Restorative justice perceives crime as a violation of interpersonal relations that re-

flects the broken social and community bonds. It also introduces practices as victim offender mediation and conferences, aiming to give voice to the victims and the offenders and restore the relations through forgiveness and healing (micro and meso level in case of community involvement). Restorative justice's key concepts are the accountability and the responsibility of the offender, the restoration of the damage done to the victim, the active participation of community, and the healing through the process of catharsis (Artinopoulou, 2010). Restorative justice aims in the restoration of the harmful effects of crime and advocates for the offender to have the opportunity to repair the harm and the implications caused by his actions (Eglash, 1977; Gavrielides & Artinopoulou, 2013a). It also stresses the importance of repairing the relationships between the offender and the victim, as well the offender's relationship to the society, aiming at last to his re-integration into the community. Whereas, it also calls for an active participation into the restoration process of all the members involved or affected by the crime (Artinopoulou, 2010; Marshall, 1996). Conferences and victim-offender mediation are a few of the practices encompassed by restorative justice, that offer the opportunity to all the involved parties to come together under a safe context and resolve the issues or damages caused by the offender's actions (Artinopoulou, 2010). Finally, a 2005 meta-analytic study examining the effectiveness of restorative justice practices, found that restorative programs were significantly more effective in recidivism reduction comparing to traditional approaches (Latimer, Dowden & Muise, 2005). According to the research findings 'the overall mean effect size for the 32 tests that examined the effectiveness of restorative justice programming in reducing offender recidivism was $+0.07$ ($SD = .13$) with a 95% CI of $+0.12$ to $+0.02$. Although the effect sizes ranged from $+0.38$ to -0.23 , more than two thirds of the effect sizes were positive (72%). In other words, restorative justice programs, on average, yielded reductions in recidivism compared to non restorative approaches to criminal behavior. In fact, compared to the comparison and/or control groups who did not participate in a restorative justice program, offenders in the treatment groups were significantly

more successful during the follow-up periods, $t(31) = 2.88, p < .01'$ (Latimer et al, 2005:137).

Restorative justice is multi-, inter- and trans-disciplinary approach. Its foundations lay in sociology, psychology, social anthropology, economics, criminology and law. It includes a bottom up perspective and focus on the community level. Interactionism, relationism, social transformation, social change, the 'otherness', restoration and healing are only a few key concepts in the restorative justice vocabulary. Restorative justice is inclusive, integrating and holistic as it refers to different scientific discourses. I defined restorative justice as a field of interdisciplinarity, where interdisciplinarity is defined as the discourse on the discourses (Artinopoulou, 2015)

The wide and integrating perspective of restorative justice is also reflected in the multiple fields of its implementation. From schools to the courts, from family to prison settings, restorative justice practices include a range of communication strategies from listening skills to the victim offender mediation and Alternative Dispute Resolution techniques.

The most frequently used practices are mediation, community conferences, and restorative circles. The active participation not only of the opposed parts, but also of the community members is encouraged through restorative justice. However, the issues of reproducing social and other inequalities and power structures during the restorative practices are still pending for any further research exploration (Artinopoulou, 2014).

2. Research based evidence on restorative justice

The diverse aspects, concepts and approaches embodying restorative justice do not often allow for extensive research in the field and quantification of its results. Thus existing empirical data range from small research projects focused on the community to wide comparative research projects on European or international level. Lode Walgrave after addressing the methodological problems and the empirical inefficiencies of restorative justice research asks for a second generation of

research in the field (Walgrave, 2011). I agree with him that there is an eminent need for further research in order to examine and justify in which fields of crime, to whom offenders and victims, to what communities fits and how it works.

A study towards that direction was conducted by Sherman *et al.* (2015). The authors in a recent meta analysis on repeat offending in UK and after examining 519 studies and a random sample of 1880 accused or convicted offenders found that, on average, restorative justice conferences are a cost-effective means of reducing frequency of recidivism.

The average effect size is .155 standard deviations less repeat offending among the offenders in cases randomly assigned to Restorative Justice Conferences than among the offenders in cases assigned not to have an restorative justice conference. The 95% confidence interval for this effect lies between only .06 standard deviations less crime and .25 standard deviations less crime. This means that the average effect across all these experiments is highly unlikely to be a chance finding. (Sherman *et al.* 2015:12).

John Braithwaite refers to the previous to 2006, several studies that have shown a 40% reduction in reoffending in the first year outcomes of the RISE⁴ youth violence experiment in Canberra and almost 45% reduction in the British case (Braithwaite, 2014:4).

Recent studies implementing stricter research methodologies and combined data conclude that restorative justice results into a significant reduction of reoffending (Weatherburn and Macadam 2013). John Braithwaite, one of the pioneers in restorative justice elaborates the latest evidence on restorative justice effectiveness (Braithwaite, 2014) and stresses once again the importance of putting offenders and victims

⁴ The Reintegrative Shaming Experiments project (RISE) has been running in the Australian Capital Territory since 1995. It examines conferencing in Canberra, which is based on the "Wagga model" of police-run conferences. The study is being conducted by the Centre for Restorative Justice at the Australian National University. Source: http://www.aic.gov.au/criminal_justice_system/rjustice/rise.html

into follow up rehabilitation programs.

Artinopoulou & Gavrielides push the barriers of restorative justice addressing the issue of appropriateness of restorative justice in cases of domestic and/or interpersonal violence. In their comparative research between UK and Greece argue that restorative justice works even in cases of minor offences of domestic violence, through the recognition of the victims' needs and the change of the dynamics in the abusive behavior (Gavrielides & Artinopoulou, 2013b).

However, the expansion of the restorative justice literature isn't in accordance with the research development in relevant fields, potentially due to the holistic and 'alternative' character of restorative justice that adopts and prefers the qualitative social research methods rather than the quantitative ones. Narratives, life histories, case studies, focus groups and field research are the main methodologies used by restorative justice to explore the potential responding to crime through other roads than those of the criminal justice system. The limitations of generalization that are inherent in the qualitative social research don't allow for justifying the restorative justice's potential in the macro structural level.

Acknowledging these methodological problems, I present a recent European experience on Restorative justice from a transnational EU funded, two-year project (2012-2014). Five countries involved (UK, Greece, Bulgaria, Netherlands and Germany)⁵ and I participated as the principal investigator and the head of the research team from Greece. The project entitled "Restorative Justice in Europe: Safeguarding Victims & Empowering Professionals" aimed at facilitating the implementation of the restorative justice related articles (principally Articles 12 and 25) of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, otherwise known as "the Victims' Directive". The Directive establishes minimum standards on rights, sup-

⁵ IARS (UK) was the project leader, and the other partners were the Institute of Conflict Resolution (Bulgaria), the University of Applied Sciences for Public Administration Bremen (Germany), Restorative Justice Netherlands (the Netherlands) and The European Public Law Organisation (Greece)

port and protection of victims of crime, replacing Council Framework Decision 2001/220/JHA. The project focused on the implementation of the restorative justice (RJ) related articles. During the project original research was conducted in the five participating countries, in order to identify the victims' needs and the potential of restorative justice. The findings from Greece are thoroughly presented in another paper of this volume (Αρτινοπούλου, Β. & Μιχαήλ, Η. *Η Ευρωπαϊκή Οδηγία 2012/29/ΕΕ και η Επανορθωτική Δικαιοσύνη: Ένα βήμα μπροστά για την προστασία των θυμάτων εγκληματικότητας*). However, from the overall research findings it was clear that the victims who had participated in restorative justice practices had an overall positive experience and they would recommend it to others (Gavrielides, Th. 2014).

Of course there is a pool of research findings for restorative justice practices and evaluation research also. It seems that juvenile delinquency, violent offenses, desistance and reoffending prevention are the fields that restorative justice works positively at the moment (Umbreit et al 2003, Bonta et al 2006). Recently the findings on the Good Lives Model, the positive psychology and the restorative justice interventions in reducing reoffending seem also very promising. The Good Lives Model (GLM) suggests principles for effective rehabilitation, and are primary examples of a risk management approach and a strength-based approach of working with offenders (Ward and Maruna 2007). Despite the methodological problems of the evaluation research, there is a coherent trend in justification of the effectiveness of restorative justice in these fields.

3. Beyond the economic analysis: RJ in a social capital approach

Cost effectiveness analysis and other calculations prove that restorative justice is much cheaper than the criminal justice functions, indeed. And this is a justification in favor of restorative justice implementation that many 'restorativists' argue.

Focusing in UK, as a European country with long standing restorative tradition in the community sector, the cost-savings found in London were much higher because of the kinds of crimes the London site

dealt with – serious burglary and robbery. Here reductions in reconvictions through RJ Conferencing saved the Criminal Justice System 14 times the cost of delivering RJ; in Thames Valley the cost-savings ratio was 2 to 1 (RJ saved the CJS twice as much as it cost to deliver). Summed together the RJ Conferencing demonstrated cost-savings on average of £9 to £1 – through reductions in the frequency of offending RJ saved the CJS 9 times what it cost to deliver (Restorative Justice Council, November 2011, p. 4).

In the same report of the Restorative Justice Council in UK, using the Ministry of Justice data, modelled the potential cost-savings from delivering restorative justice in 70,000 cases. They found that restorative justice would provide cashable cost-savings to criminal justice agencies alone of £185 million over two years.

Crime by former prisoners costs society more than £11 billion per year (Prison Reform Working Group 2009), while RJ can deliver cost savings of up to £9 for every £1 spent. According to Victim Support (2010: 29), “if RJ were offered to all victims of burglary, robbery and violence against the person where the offender had pleaded guilty (which would amount to around 75,000 victims), the cost savings to the criminal justice system – as a result of a reduction in reconviction rates – would amount to at least £185 million over two years”.

Nevertheless, I argue that only the cost benefit perspective will not benefit restorative justice in a long-term basis. The justification of ‘doing cheap justice’ maybe fits in the era of austerity, through cutting down the public spending for crime and criminal justice policies, but at the same time it divests restorative justice from its holistic, processing and integrative perspective.

Restorative justice implementation through victim offender mediation and community conferences refers to the tertiary level of dealing with the crime issue. That means that the aims of the restorative interventions are both the prevention of the re offending and the healing/restoration of the harm/ or damage done to the victim(s). Recognising the effectiveness of the primary level prevention strategies and policies in a longitudinal basis, social and economic investments are

needed. Restorative justice's pro active dimension that empowers the values of fairness and justice lead to the prevention in the primary and secondary level. Thus, the benefits are much more than the narrow comparison of how much a restorative program costs comparing to other programs in the traditional criminal justice system.

Furthermore, the economics of restorative justice are not able to measure and calculate any possible effects in changing attitudes and perceptions in a long-term basis. My concern at this point is that the more we argue that restorative justice is cheap justice the more we undermine the restorative content, values and aims. The dilemma is if the wide and superficial implementation of restorative justice alters its philosophy and becomes an alibi for the politicians to reduce the public spending in the confrontation and prevention of systemic problems, such as power imbalances, race, gender and class.

Besides the pros and cons of the economics of restorative justice, I agree that restorative justice embraces the ideal, the values and the vision of justice in the current post-modern societies. It is grounded in the democracy and the active participation of the citizens in doing justice. That's why I strongly relate restorative justice to the social capital, trust, social change and transformation. Social capital is a complex concept referring to the social bonds, links, networks and connections that bind families, communities and societies. Beyond the differences in the definition of the social capital (Hanifan, 1916; Hanifan, 1920; Coleman 1988; Putnam, 1993; Fukuyama, 1996; World Bank, 1999) there is a crucial core found in the social bonds of communities, and the sense of belonging that bring great benefits to people. Only a few attempts have been made to relate the concepts of restorative justice with the social capital. Bazemore (2005), Braithwaite (1989) and Hsiao-fen Huang *et al.* (2011) addressed the restorative justice as a way of building and developing the social capital. I do agree that we need more complex and sustainable methodologies while trying to identify the interconnections between restorative justice and social capital in terms of impact assessing of the restorative practices. To this end, we may use the tools of social policy impact assessment (Barrow, 2000; Becker & Van-

clay, 2003; Vanclay, 2014) to justify the social dimensions of doing justice and why not to elaborate new tools for assessing the impact of restorative justice in the development of the social capital. Enriching the spectrum of social impact assessment in criminal justice policies in general and in restorative justice policies in concrete, may lead to research based evidence on where, how and when restorative justice works. Identifying the social indicators and adjusting restorative justice in certain contexts will facilitate the evaluation of this kind of justice and contribute to a thorough justification of the holistic, integrating and relational perspective of restorative justice.

4. *Suggesting the Gavrielides & Artinopoulou model of restorative justice*

Through addressing the methodological problems of defining and assessing the effectiveness of restorative justice and recognizing the wideness, diversity and vagueness of restorative justice, both Theo Gavrielides and I suggested an operational model for restorative justice, in order to elaborate on theoretical, the methodological and the practical level. A tool conveyed through an attempt to reconstruct the restorative justice philosophy. It is included in the last chapter of our common publication *Reconstructing Restorative Justice Philosophy* (Ashgate, 2013) and is open to any kind of testing. The model resulted from the detailed analysis and de-construction of RJ, as theory, research and practice.

Our basic arguments are:

- a. That we have to accept there is an injustice, an imbalance in the status quo. We call this imbalance 'conflict'; this can be between individuals, communities, states or even ourselves and reflected in the deadlocks of the traditional criminal justice systems.
- b. There are two forms of justice: the lawful and the fair. Both are desirable and can co-exist. However, whereas the lawful requires a structure and a system of regulation, the fair is value-based and can be attained through loose and bottom up methods.

There is enough empirical evidence to show that restorative justice exists in both forms; the structured and unstructured – the lawful and

the fair. There is no better or worse form. There is also no reason for comparing it with what isn't. Our reconstructed vision of restorative justice philosophy has a dual dimension: the structured and unstructured restorative justice. So let us focus on understanding it as it is.

STRUCTURED RESTORATIVE JUSTICE

Structured restorative justice is placed within the criminal justice and refers mostly to the diversion procedures.

Chart 1 illustrates how this structured way of delivering justice and restorative justice works. Within this model, conflict creates crime, offenders and victims. All three are placed within a funnel. Emptying the funnel will bring peace. Exit from the funnel can be achieved through a legalised and structured justice system that is served by structured institutions. The outside layer of the funnel, which is made of human rights as these are materialised through the law, regulates the power imbalance that this structure creates. Structured restorative justice is one way of emptying the funnel and is part of many other structured forms of delivering and maintaining justice and bringing peace (Gavrielides & Artinopoulou, 2013).

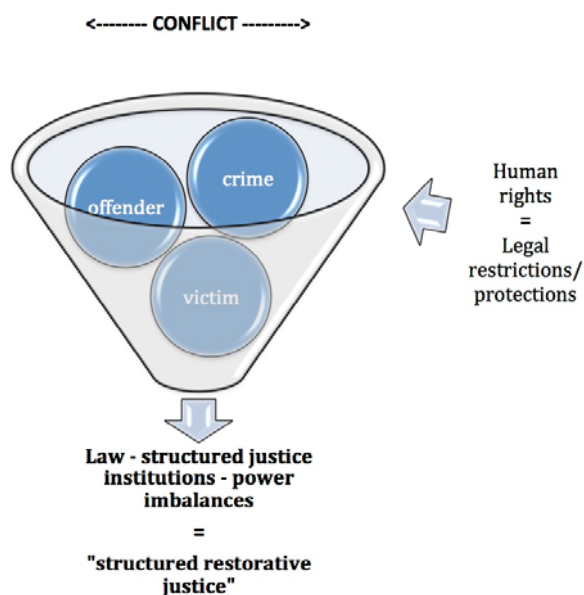


Chart 1: Structured restorative justice

UNSTRUCTURED RESTORATIVE JUSTICE

The unstructured restorative justice model perceives conflict in terms of the broken social liaison between individuals, communities, groups, and states and/or between the states. It also creates harmed parties independently of whether these are labelled as victims or offenders. Under this model it does not matter who did what to whom. What matters is that the conflict has caused harm and a broken liaison in the pre-existent relationship of the harmed parties.

The funnel in the unstructured restorative justice is filled with the concepts of harm, broken social liaison and the harmed parties. Interestingly enough, the funnel does not empty when the law intervenes, but only when community takes action. Unlike the previous funnel, here loose and bottom up mechanisms that aim to restore harm and the

broken social liaison are used. These are not dependent on formalised sub-systems. They use localised and informal projects of bringing peace (Gavrielides & Artinopoulou, 2013).

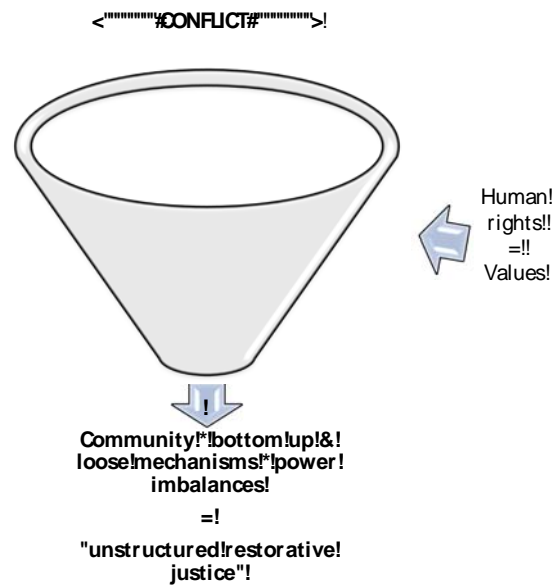


Chart 2: Unstructured restorative justice

Human rights are common issue in both models. In the structural restorative justice model, they are represented by the legal restrictions and the legislation; while in the unstructured model, human rights are relevant to the values of fairness and justice, through the value –based guidelines. Social capital is strongly related to the unstructured restorative justice, because of the crucial role of the communities and the social bonds that lead not only to the restorative justice practices, but also to the result of the restorative practices in empowering the social bonds. A mutual, and interactive, process before and after the restora-

tive practices reflects and empowers the social capital in certain social contexts.

We hope that this model contributes to the better conceptualization of restorative justice, as it reflects the interactive, transformative and processing character of restorative justice. It is currently under testing in multiple contexts and open to any addition, comments or critics. Through enriching the restorative justice framework as with the human rights dimension, as with the social liaison intervention, this model responds to the question why restorative justice is a value for money justice.

Conclusion

Through addressing the deadlocks and the problems of the traditional criminal justice systems, as the increase of the prison population and the inefficiencies of the offenders' rehabilitation policies, I suggested the implementation of restorative justice as an additional/ alternative response to the crime issue. Restorative justice is an interdisciplinary field of 'doing justice', through social change and transformation. It perceives crime as the reflection of the social bonds and aims to the restoration through taking over the responsibility by the offender and responding to the victims needs. Research findings support the restorative justice practices in the fields of juvenile delinquency, property and violent offences. Restorative justice has positive effects in the reintegration of the offenders and the reduction of recidivism (Wigzell & Hough, 2015). The Gavrielides and Artinopoulou model on structured and unstructured restorative justice contributes to the conceptualization of restorative justice and reflects its interactive and transformative approach.

Finally, restorative justice benefits the criminal justice systems through the new ways of dealing with the crime issue that it provides. Victim offender mediation, community conferences and offenders' social reintegration policies are only a few practices of 'doing justice' and reassuring both victims' and offenders' rights. RJ benefits societies and communities, as it focuses on the social bonds and strengthens the so-

cial relations in the basis of societies. Being a bottom up and relational process, restorative justice asks for restoration of the harm, and the restoration of the social bonds. It's a transformative and dynamic process of social change that goes beyond the static and monolithic responses of the traditional criminal justice ways of dealing with the crime issue. It's also proactive at the same time, because the empowerment of the social bonds leads to better societies. RJ benefits the economies and develops the social capital as well. That's why restorative justice is a value for money justice, not only in terms of the cost benefit analysis, but of the social benefits as well.

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