
Routledge International Handbook of Restorative Justice

Edited by Theo Gavrielides

 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

2019

Beyond restorative justice

Social justice as a new objective for criminal justice

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From restorative justice to social justice

Following the onset of the 2008 financial crisis, the difficult conditions that most Europeans have been facing have led to the emergence of new challenges in criminal justice policy and to the respective need of new responses. This chapter argues that a possible response to this new demanding situation could be based on the double aim for a greater level of social solidarity in human relations as well as for meritocratic fairness when assessing incidences of inequality.

During the last few decades, criminal justice policy has developed the idea of reconciliation of conflicts between the offender and the victim. Restorative justice has emerged¹ to support these debates and to remind reformists that they must consider the needs of both the victim and the offender. There is also now a need to advocate for relevant methods aiming at extrajudicial settlements and for the reconciliation of the offender and the victim. Restorative Justice is, hence, based on the triptych of the perpetrator assuming responsibility for their actions, of restoring the state of the victim, as far as possible, to what it was before the injurious actions against the victim and, also, of actively expressing the desire for reconciliation with the victim (cf. Gavrielides, 2007: 139). These ideas have already penetrated in legislation. For example, in the Greek Law for Minors, there is provision for the reformatory conciliation measure, pursuant to article 122 of the Greek Penal Code.

Apparently, this trend has reinforced the detachment of criminal law from state authority and from the so-called *jus puniendi*. At the same time, it has brought to the forefront both the decisive role that the victim plays in disputes of a criminal nature and the active participation of the community in resolving differences among its members, for example, through mediation. Therefore, this trend towards restorative justice, has opened up new horizons in the field of criminal policy as well as in the field of criminal science in general.

¹ Restorative justice owes its origin, and even its name, to Aristotle (Nicomachean Ethics, V 6, 1130 b 38 ff.) (cf. Artinopoulou and Gavrielides, 2013)

At the same time, another significant trend has emerged, one that focuses on the principle of proportionality. This is based on the assumption that the sanction or any other social reaction, caused by the criminal act, must be both proportionate and appropriate to the offence. Known as “*just deserts*” (=deserved punishment or reward), this trend is complementary to restorative justice and draws attention to the gravity of the offence and to the respect of the rights of the perpetrator, either as defendant or as prisoner – cf. von Hirsch, 1986 and von Hirsch and Ashworth, 2005.

However, this chapter argues that both these trends favour only a mere restoration of the *status quo* in the form of a so-called “numerical” equality and proportion (cf. Aristotle, *Nicomachean Ethics*, V 6, 1131 a 33 ff) between the damage caused and the compensation awarded. Yet the characteristics of the perpetrator and the conditions that led him to the criminal act are not taken into account, except for some general considerations regarding his capacity for imputability and the degree of his criminal responsibility. Consequently, factors which have led to criminal behaviour, such as the perpetrator’s poor financial situation, do not seem to play an important role in his criminal treatment, even though coping with these factors could certainly contribute to the elimination or reduction of such criminal acts in the future.

During times of profound crisis at all levels (financial, moral and ethical), the chapter argues that there is a need for more than simple offender–victim conciliation in the form of restorative justice and just deserts. The chapter aims to contribute to the volume’s ambition for pushing the boundaries of criminology and restorative justice by arguing that the need for this spirit of reconciliation and solidarity between persons involved in a criminal act should be extended to the benefit of all those who are experiencing hard times and may, therefore, in their deprivation and frustration, be led to committing crime or to suffering from it. In other words, in view of the current difficult financial conditions, a new form of justice is required to fill this existing gap by embracing the two aforementioned fundamental concepts of social solidarity and meritocratic fairness. Besides, this kind of justice could also be appropriate for healing at a more general level society’s wounds relating to crisis and distress. Put another way, when it comes to restorative justice, it should not be just about the victim and the offender in the narrow sense.

The chapter is divided into three main sections. The first aims to unravel the concept of social justice, putting it within the context of our current reality and societies. The second section proceeds to explain how social justice can be achieved by putting an emphasis on socially and economically disadvantaged groups. The third section aims at introducing our social justice notion into contemporary criminal justice policy. The chapter argues that social justice can be incorporated through four routes: legislation, sentencing, correctional services and finally and more importantly, social prevention. We conclude with some critical remarks for the restorative justice movement, which must open up its doors to social justice and its wider aims for addressing economic disparities.

Understanding social justice

Social justice can be described as the shared space where the two concepts of restorative justice and just deserts meet. Social justice “may be broadly understood as the fair and compassionate distribution of the fruits of economic growth” (International Forum for Social Development of the United Nations, 2006: 7).² Consequently, social justice has two main aspects and serves, at the same time, two main purposes.

2 www.un.org/esa/socdev/documents/ifsd/SocialJustice.pdf.

First, social justice focuses on social solidarity and humanism, having therefore as a main objective the idea of helping others in a spirit of love and “compassion”, and even of offering our belongings to those in need.³ Second, this same notion of social justice contains the idea of meritocratic fairness, which prioritises excellence and encourages each individual to develop their abilities and skills in order to overcome oneself and build a better future at a personal level. Meritocracy contains here a specific sense: According to Aristotle, it provides equality for those who are equal and inequality for those who are unequal (*Politics*, III 5, 1280 a 12 ff. and 1282 b 22 ff.). This kind of “deserved equality” means that emphasis is placed on the specific characteristics of each individual so as to achieve, in accordance with the relevant teaching of the same philosopher, the goal of distributive justice and of a so-called “geometric” equality (*Nicomachean Ethics*, V 6, 1131 b 15 ff, VII, 1132 a 3 ff.).

At a more general level, but almost similar in effect, justice, according to David Miller in his book *Principles of Social Justice* (2003: 207 ff., 134 ff., 232), has three major principles and pillars: (a) need (one is lacking in basic necessities and one’s capacity to function is being impeded); (b) desert (one earns reward based on performance); and (c) equality (society regards and treats its citizens as equals, so that certain rights should be distributed equally) – (cf. Caravelis and Robinson, 2016, 20 and Capeheart and Milovanovic, 2007, 41 ff.). The idea that equality is also a pillar of justice is in principle correct. However, apart from some specific civil and political rights which must be recognized equally for all citizens, (irrespective of their race, ethnicity, gender, etc.), all other available resources and disadvantages in society have to be distributed on the basis of particular characteristics of these citizens, depending each time on the circumstances – hence mainly on the basis of their needs and their desert.

Obviously, these two criteria and purposes (needs and just desert) conceal in the last analysis two opposing world views. In fact, in their extreme forms, they are contradictory to one another and, when disconnected from each other, create more problems than the ones they solve. The idea of helping others in view of their needs, detached from the motivation of rewarding those who are talented, can lead to a society where citizens have no incentives for excellence and who consequently, instead of working hard, will be expecting help from others and the state. On the other hand, desert and excellence alone encourage an attitude of extreme individualism. This individualistic approach implies, in particular, that everyone must be interested only in themselves, and, essentially, to such an extent that the ideas of social cohesion and social offering are deprived of every substantive content and value. Nevertheless, this view has been particularly expressed by the libertarian Robert Nozick in his book *Anarchy, State and Utopia* (1974: 150 ff.), where he considers the redistribution of income through progressive taxation as “theft” and even “servitude” imposed by the government.

A bridging and creative synthesis of these opposing approaches and world views is therefore essential, also because they are both indispensable for a well-functioning society. Besides, these two counterbalancing views tend to disguise a more general conflict between idealism and utilitarianism, or even between equality and freedom, especially in the form of an opposition between socialism and (neo)liberalism. Furthermore, such controversies can also be detected in the interpretation of legal rules, where the principles of natural law and *equitas* in the sense of Aristotle (*Nicomachean Ethics*, V 15, 1137 b 16 ff.) contradict the so-called legal positivism.

3 Cf. under this aspect: Malekian, 2017: esp. 217 ff. and furthermore Rawls, 1971: 191–192, who considers the so called “love of mankind” as prompting to acts of supererogation and as binding a community of persons together, quoted in Malekian, 2017, 29.

Hence, a crucial question arises: in which way can social justice contribute to the bridging of these contradictions? The chapter argues that this can be achieved if some limits are set concerning both approaches and if the one eventually influences the other in a positive way so as to jointly create an organic whole.

With respect to the *concept of humanism (and social solidarity)*, the limit is to ensure a basic level of living and dignity for our fellow citizens, both at a national and an international level. Obviously, this concerns mainly the vulnerable social groups (e.g. unemployed and homeless people, economic migrants, drug-dependents, inmates that have been released from prison). In the case of these people, solidarity does not constitute a form of generosity within the social state but an important obligation of the state, particularly related to securing citizens' basic social rights, such as education, health and social security services, employment and housing opportunities, protection of children and of the elderly. John Rawls's development of the Difference Principle (*A Theory of Justice*, Harvard University Press, 1971, § 26) provides us with some insight as to how this solidarity in favour of our weak, unqualified fellow citizens can be achieved.

However, this theory was formed back in the 1970s, when economic development in European countries was still unhindered and there was consistent funding of the social state's institutions. Yet nowadays economic conditions have deteriorated dramatically, and a more general phenomenon of impoverished social groups is observed, especially in Southern European countries. Consequently, a new and innovative proposal is required to support these groups and reduce the great economic inequality in society which can lead to crime and to social unrest. This kind of proposal and one with such an objective unfortunately is not found in Rawls's work, even if the influence of this work in modern political philosophy cannot be denied and its ideas are still broadly discussed whenever social justice is at stake (cf. Clayton and Williams (Eds.), 2004, in particular the contributions of Robert Nozick, Ronald Dworkin, G.A. Cohen, Elizabeth S. Anderson and David Miller – Amartya Sen could also be included here!). In particular, the work of Rawls constitutes, according to a pertinent remark, an "ideal theory" and not an approach of how, for example, to organize social institutions in societies with a serious scarcity of resources (Meyer and Sanklecha, 2016: 16).

Furthermore, with respect to the *concept of excellence (and meritocracy)*, the limit is to ensure equal opportunities for all citizens from the beginning of their careers onwards. An important condition for the achievement of this goal is of course to ensure the adequacy of the aforementioned services of education, healthcare and so on, which are related to the social rights and the social state's function. Moreover, what is also crucial is to combat and, if possible, to eliminate the conditions that favour lack of meritocracy, such as clientele relations and corruption. In addition, equally important is to address the factors that give rise to corruption, for instance, the multitude of laws, the bureaucracy, the lack of employee assessment and accountability, maladministration and impunity for duty offences as well as the lack of public sensibilisation, especially of young people, concerning these issues.

Achieving social justice

Social justice attempts to bring together, in a spirit of humanism and meritocracy, (a) a decent standard of living for the members of a society, especially the vulnerable ones, by enhancing their social rights (Kant refers, here, to man's need for being *sui juris*) (1798, in the edition of 1968: 345), and (b) the possibility of equal opportunities at an educational and a professional level for those aspiring to improve their social situation. On this occasion, it is useful to underline here that this equality of opportunity should not be limited to economic equality and justice. Instead, it should also aim, to some extent, at the equality of outcome, even by means of a

radical redistribution of income (e.g. by imposing high inheritance taxes). In this way, necessary resources can be provided to offer support, through state scholarships or working capital at the beginning of a professional career, to individuals whose skills and abilities have already become evident during school and higher education. Although this synthesis cannot easily be addressed, one could take into account, on a practical level, the Copenhagen Declaration and Program of Action (1995).⁴ This is a thorough and comprehensive programme concerning the ways in which the vulnerable social groups, as well as the countries within which they are found, can be supported without putting economic growth at risk.

It is obvious that the synthesis of these two approaches, (i.e. the humanistic and the meritocratic), within the conceptual framework of social justice, is characterised by fragility, due to difficult balances that must be achieved every time. However, this is a synthesis that constitutes the optimal form of justice, because it combines all the positive aspects of opposing conditions and interests, eventually going back to and even tackling the primary conflict between the community and the individual, or between collectivism and individualism.

At a political level, a substantive form of this Hegelian “synthesis” (or of the “harmony” in the terminology of Heraclitus) could be found in the ideology of social democracy and social liberalism, as a “centrist” reconciliation between socialism and (neo)liberalism. Moreover, at a financial level, a similar form of this synthesis is observed in the successful model of *soziale Marktwirtschaft*, which has been, for decades, the theoretical foundation of the economic policy of the Federal Republic of Germany.⁵ Similarly, some of the so-called “mixed economy theories” have been set forth within the same theoretical framework.

However, it should be noted that social justice, although a result of a synthesis between socialism and (neo)liberalism, does not necessarily coincide with the political “centre” and social democracy. Instead, social justice should mainly be understood as overcoming the traditional division between the left and the right, which goes back to the French Revolution in 1789, and as putting the priority on “pragmatic” policies (“Realpolitik”!) that are primarily based on the effective and efficient management of power. This is the case, as it seems, with the governments that the French President Emmanuel Macron formed from 2017 onwards and, to a lesser extent, with the governments of the English statesman Tony Blair: during the ten years of his premiership (1997–2007), and in the spirit of the so-called “Third Way”, he advocated social justice, cohesion, the equal worth of each citizen, and equal opportunity combined with an emphasis of personal responsibility.⁶

Social justice is an archetypical notion, having therefore an idealistic character and concerns societies and economies studied by scholars under so-called “laboratory conditions”. On the contrary, in real contemporary societies, and especially in societies undergoing an economic crisis or distress, conditions are in a state of flux and, therefore, models are required which would be able to harmonize the proper degree of humanism and meritocracy with the respective given circumstances. When the primary focus in a society is on the economic development and on the increase of the gross domestic product, (neo)liberal policies and wealth accumulation evidently come to the forefront so as to create big, powerful businesses that will not only survive but will also prevail in the intense international competition. But once a country’s position in the regional and international economic environment is established, it becomes feasible for socialist, or social-democratic, policies to then be applied in order to achieve a fairer

4 www.un.org/esa/socdev/wssd/text-version/.

5 cf. https://de.wikipedia.org/wiki/Soziale_Marktwirtschaft.

6 – cf. https://en.wikipedia.org/wiki/Third_Way; see also Cook, 2006, esp. pp. 67 ff., where criminal policy of the Blair administration is assessed.

distribution of the already accumulated wealth (i.e. of the big "wealth pie"), especially in favour of the vulnerable social groups.

Finally, if economic development has been established, but its maintenance is put at risk due to conditions of crisis or distress, then a new model becomes essential, which may take a more complex form, combining the two main political systems (i.e. (neo)liberalism and socialism). Such a model would pursue the target of distribution of social wealth with concern to vulnerable social groups so that they do not become impoverished but also without causing any serious impact on the market economy. Achieving this fragile objective is indeed difficult, but it is probably the only solution to the problems triggered by a breaking crisis.

Introducing social justice into criminal justice policy and practice

We are now ready to turn to the question of the possibilities for social justice to help in the planning and implementation of an effective criminal policy at the legislative, judicial (sentencing) and correctional levels as well as in the social prevention of crime. We also ask what the problems are which should be taken into consideration in such an endeavour.

Social justice at the legislative level

At a legislative level, there are institutions that reinforce the idea of social solidarity and humanism, while at the same time there are other institutions that attempt to prevent any unequal treatment of citizens, thus emphasizing the promotion of meritocracy.

With respect to the first part of the issue just mentioned (i.e. social solidarity and humanism), criminal law penalizes the behaviour of any person who does not show solidarity with their fellow citizens and who is not willing to protect them from life-threatening danger, as long as he/she can do it without risking his/ her own life or health (e.g. see – cf. art. 307 Greek Penal Code and art. 422b ff. Belgian Penal Code; see also Feinberg, 1984, 165 ff). Furthermore, the punishment becomes more severe when the person who fails to take such an action has a special legal obligation to do so (e.g. a father who is able to swim and does not do so to save his child from drowning is liable for intentional homicide (cf. art 15 Greek Penal Code and § 13 German Penal Code). In addition, a criminal sanction can be inflicted if a person fails to offer the assistance requested in the case of a fatal accident, of a common danger or of general emergency, provided that this assistance may be offered without putting themselves in substantial danger (cf. art. 288 para. 2 Greek Penal Code and § 323c German Penal Code). Finally, punishment is also imposed on anyone who, in the case of self-defence, exceeds the limits of its proper exercise and badly injures, for instance, a child or a mentally disabled person who steals something from their garden. Apparently, such an act is contrary to the prerequisite of solidarity towards vulnerable persons and furthermore violates the principle of proportionality, which of course plays a decisive role in most legal relations (cf. art. 22 Greek Penal Code and § 32 German Penal Code).

At a more general level, social solidarity and social justice are also recognized as primary principles. In fact, some constitutions, such as the Italian (article 2) and the Greek (article 25 para. 4) ones, stipulate that the state has the right to claim of all citizens to fulfil the duty of social and national solidarity. Moreover, in the existing Treaty of the European Union (article 3 para. 3) there is a clear reference to the obligation of the European Union to promote, *inter alia*, "social justice and protection".⁷ Likewise, of particular importance, at the level of soft-law,

7 www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-1-common-provisions/4-article-3.html.

is the provision (art. 1) of the Universal Declaration of Human Rights (1948), under which people must treat each other in a spirit of brotherhood.⁸ It is noteworthy to recall that brotherhood (*fraternité*) was also one of the principles of the French Revolution of 1789, along with freedom and equality.

Apart from penal regulations concerning social solidarity, there are also relevant institutions which seek to ensure an equal and meritocratic treatment in the distribution of tax burdens in proportion to the citizens' means (cf. article 13 of the Declaration of the Rights of Man and of the Citizen, 1789)⁹. The violation of the relevant provisions because of tax evasion has serious implications and, in the case of Greece, it can even lead to felony sentencing, especially if it exceeds a certain amount of money (art. 8, Law-Nr. 4337/2015) and/or occurs concurrently with the offence of money-laundering. Under this aspect, legislation on taxation indeed attempts to moderate economic inequality and, therefore to enhance social justice. However, this rule is reversed when legislation leaves room for tax avoidance, as happens, for example, when an offshore company is established, particularly in the so-called "tax havens" (cf. Zucman, 2013). As a result of this legislative loophole, a lot of wealthy taxpayers avoid paying taxes "according to the law", while, on the other hand, the majority of the tax burden is placed on those whose income cannot be hidden (mainly salaried employees and pensioners).

Similar problems of legislative inequality in the treatment of citizens, in the context of criminal legislation, arise with regard to financial crimes. The inequality in this domain was stressed particularly by Edwin Sutherland in his well-known theory of white-collar crime back in 1939 (see his paper "White-Collar Criminality", published in *American Sociological Review*, 5: 1940, 1–12). According to this theory, financial crime, at least in the United States, is not always primarily treated on the basis of criminal provisions (instead, administrative regulations and fines are preferred). In addition, even when treatment is of a criminal nature, the penalties provided are not severe enough and rarely lead to the perpetrators' imprisonment, even in cases where the damage caused may be particularly great.

However, it needs to be acknowledged that over the last few years, due to the financial crisis, this lenient legislative approach towards financial crimes has changed, and several prominent businessmen have already been convicted and imprisoned in the US and elsewhere because of fraud, stock market manipulation and so on.¹⁰ This is a positive evolution, given that society cannot be lenient to persons who, exploiting their high socio-economic situation, violate important laws, thus giving a bad example to the others. In contrast, persons from vulnerable social groups should be treated in a more lenient manner, since they usually do not bear alone the whole responsibility for their illegal acts. Most of them, according to research, have faced problems during their childhood and afterwards, being excluded from school, finding no work as adults and consequently having little or no legal income.¹¹

Issues of inequality may also be observed at other levels of criminal repression, thus violating the principles of social justice.

8 www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.

9 https://fr.wikipedia.org/wiki/Imp%C3%B4t_progressif and <https://de.wikipedia.org/wiki/Steuerprogression#Deutschland>.

10 <http://money.cnn.com/2016/04/28/news/companies/bankers-prison/>.

11 – cf. a Home Office white paper published in February 2001 under the title: Criminal Justice: The Way Ahead, p. 41, also accessible online: www.gov.uk/government/uploads/system/uploads/attachment_data/file/250876/5074.pdf.

Social justice at the sentencing level

At the level of sentencing, an important question arises as to whether judges, prosecutors, police officers and other law enforcement officials are guided or not in their judgements by a spirit of solidarity and equity in favour of the socially marginalised defendants who belong to vulnerable social groups and deserve some special support so as not to relapse.

According to some scholars, especially those supporting the ideas of “Radical Criminology”, the competent law enforcement officials neither treat the less-favoured citizens in a spirit of solidarity, nor behave in a spirit of impartiality and fairness towards the wealthy citizens.¹² However, research in some European countries reveals that things are more complex. In particular, according to the results of various studies on this topic, it seems that a basic “extra-legal” factor that influences the behaviour of law enforcement agencies is whether the suspect or defendant meets the characteristics of a “socially integrated person”. This means that judges or other law enforcement officials are more lenient if the defendant has a permanent job (even if the person is poor!), has never before had any issues with the law, has a family and, in general, neither causes any problems in society nor is likely to create such problems in the future by committing new criminal acts (cf. mainly the research findings of Pollück, 1977: 282 ff., of Blankenburg, Sessar, and Steffen, 1978: 268 ff., 292–294, 302 ff. and of Kapardis, 2014, 185–199).

Certainly, this perspective does not satisfy those who would like to see a stronger spirit of solidarity, equity and “gentleness” in the treatment of suffering people by the law enforcement agencies. But even so, it would be difficult for these judicial and police officials to be proved to be prejudiced against a suspect or defendant who simply has a low socio-economic situation. However, the situation seems to be different in the United States, where there are strong indications that “unwarranted racial disparities persist”, especially if the perpetrator or the victim is African American (Reamer, 2014, 276 ff.) or Latino (Caravelis and Robinson, 2016, 138 ff., 260 ff; cf. on this topic: Reiman and Leighton, 2012, Wacquant, 2009, Spohn, 2009; see also the findings of a research conducted in Canada: *National Council of Welfare*, 2009).¹³

Furthermore, it seems that the objections of those who believe that the court cases of socially powerful defendants in financial crimes rarely lead to their conviction or severe punishment are rather valid. In fact, during the trial of such cases, the well-paid lawyers of the defendants, who are presumed to be experienced, socially connected and with excellent legal education, usually do have the knowledge to find out and emphasize the deficiencies, obscurities and gaps of the law to be applied. As a result, in such cases the defendant cannot easily be found guilty “beyond a reasonable doubt” and hence be convicted. On the contrary, it is more likely to be declared innocent “because of doubts”.

Moreover, in the case of financial crimes, legislation lacks the required vigour to tackle them, while further difficulties also arise during the procuring of evidence, and this mainly for two reasons: Firstly, because, usually, the “objective causal connection” between a defendant’s conduct and its result cannot easily and firmly be established (for example, that the sea environment was polluted by wastewater as a result of activities of a specific factory and, further, as a result of activities of a specific individual). Secondly, it is difficult to find plaintiffs, witnesses for the prosecution or experts who are willing to get involved in disputes on economic interests of great importance and to give evidence against powerful businesspersons before the court. Along with these facts, the usually “positive” background of financially prominent defendants

12 cf. https://en.wikipedia.org/wiki/Radical_criminology.

13 www.oaith.ca/assets/files/Publications/justice_andthe_poor.pdf

may be taken into consideration by the judges as well, also for the reason that these businesspersons provide employment to dozens or even hundreds of workers and consequently appear as the “pillars of society”, even when their actions demonstrate that in essence they are primarily interested only in themselves and in their profit.

Social justice at the correctional level

Finally, at the correctional level (i.e. when the criminal decision is issued and the convicted criminal has to be imprisoned or has to serve a non-custodial sanction), social justice can be essential, both for social solidarity and meritocratic fairness. Indeed, social solidarity may be evinced if convicts are given all the possible opportunities to develop their personality and improve themselves. On the other hand, meritocratic fairness and impartiality are ensured if correctional officers treat the convict the same as they treat other prisoners as well as if convicts’ personalities are fully respected, irrespective of their socio-economic situation. In view of this double function of social justice at the correctional stage, one could make a parallel to the two classical models of correctional policy, that is, respectively: (a) the *welfare model*, which places emphasis on the social reintegration of the prisoner through education and appropriate treatment and support by the society, and (b) the *justice model*, which focuses on respecting the prisoner’s rights, and, furthermore, on ensuring the conditions necessary for their decent and equitable living in prison or, in less severe cases, on serving properly a non-custodial sanction (for example a community service order).

These remarks should be considered along with the critical question concerning whether the treatment of prisoners is affected by factors relating to their socio-economic situation (i.e. if prisoners facing financial difficulties receive less favourable treatment by correctional officers than those of a higher economic status). At this point, it should be mentioned that research on this topic is, generally, limited due to the “dark figure” of existing evidence. More specifically, prisoners tend to avoid making complaints about any discriminatory behaviour against them in fear of the consequences. As a result, the number of reported incidents of prisoners’ unfavourable treatment by correctional officers is usually small. Furthermore, it is just recently –mainly due to the financial crisis – that eminent politicians or businesspersons in the US and elsewhere, even as a result of “scapegoating”, have been sent to prison for serious financial crimes, usually connected with fraud or with corruption (rake-off) committed on the occasion of armament programmes or of public works.

Although the number of prisoners that have been sent to prison in such cases is still relatively small, these new developments create the conditions for further, more thorough research as concerns the question whether the way in which prisoners are treated by the correctional officers may be influenced by their socio-economic situation, in violation of the internal and international regulations which protect the rights of prisoners (cf. on such research: Stadler/Benson/ Cullen, 2013; Logan, 2015).

Social justice at the social prevention level

The two basic principles of social justice (i.e. social solidarity and meritocratic fairness) may contribute decisively in two respective directions: that citizens of vulnerable social groups could be prevented become impoverished, while at the same time talented citizens would gain prominence within a wider framework of opportunities and mobility, similar to what Plato had envisioned in his allegories in *The Republic* (415 a 1 ff.).

Actions that might be taken by governments towards social prevention of crime can move in a double direction. Firstly, actions can improve the opportunities for housing, education, healthcare services, social care and protection of children and of the elderly, while ensuring employment opportunities for all social groups and especially for the vulnerable ones. Secondly, actions can combat lack of meritocracy, clientele relations and corruption, as well as the factors which lead to these phenomena (cf. Kapardis and Courakis, 2016). In such cases, the recruitment or the promotion of an employee through acquaintances or political intervention, but also the assignment of a public work and the issuance of a permit for investment following a transaction with the state service, can reasonably lead to the malfunctioning of society and eventually to the gradual decline of the whole state, where such situations are fostered.

Among the previously mentioned actions, those concerning the latter issue of fight against lack of meritocracy do not require any significant financial cost. Instead, what is needed is political will for the better functioning of public administration and, mainly, for having a confrontation on the part of political leaders with the mentality of patronage and favouritism, which is primarily promoted by trade-unionists, suppliers of the state and strong local politicians. This ought to be, obviously, an acute confrontation, the outcome of which is uncertain. Yet its undertaking and carrying out is essential, especially in Southern European countries, in order for them to achieve the necessary modernization which will set the pace for the 21st century.

Conversely, the measures aimed at achieving a decent standard of living entail various problems and require a considerable budget, which is, indeed, hard to find in the current time of financial distress. In addition, things are even more difficult in these countries, due to a high level of unemployment and of impoverishment of large groups of the population, even of scholars, which started taking place in the 1990s. This situation has been mainly the result of some new worldwide developments which unfortunately cannot be reversed, such as the further opening of markets (globalisation) and the subsequent growth of multinational enterprises, in connection with the competitive low wages of other countries which are in a state of rapid development (India, China, Korea, etc.) and the predominance of new technologies favouring computerisation/"robotisation" of work and thus eliminating a lot of jobs.

However, the problem of securing resources in favour of vulnerable social groups could be resolved to a great extent, and this could be done without requiring citizens to pay an excessive amount of taxes or suffer retrenchments in salaries and pensions. This would be the case if the public administration could function more appropriately and if patronage together with corruption could be drastically reduced, in accordance with what has been stated earlier. More specifically, a state can certainly attract significant investments, so that thousands of new jobs can be created, if it creates a mechanism by which (a) there are no bureaucracy, clientele relations and corruption, (b) nearly all transactions are done electronically through computers – as seems to occur, for example, in Estonia, (c) there exists a stable, investor-friendly tax system and an equally stable and attractive level of interest rates and (d) all transactions rely on the state's trustworthiness. As a result, these measures may conduce to better standards of living and may equally strengthen citizens' confidence in meritocracy. Besides, from the angle of criminal policy, a great part of offences which can be attributed to bad living conditions and to anomic situations might be diminished.

A redistribution of wealth through progressive taxation may enhance social justice. Nevertheless, special attention needs to be paid to how to achieve this objective. Indeed, there is a danger that, under such political initiatives, the incentives of the individuals who have both the ability and willingness to build wealth and, hence, to contribute to the economic growth of their country will become weaker or will even be wiped out. It is, thus, likely that the continuous and oppressive taxation of those who build the national wealth will result,

according to an astute and popular idiom, in “killing the goose that lays the golden egg”. Therefore, a pertinent combination of measures is required so that a decent standard of living is ensured without, however, compromising economic growth. This is a difficult undertaking, just like social justice itself, especially in times of distress, when extreme political views and populism may be developed and distort the balance which is necessary for obtaining the optimal result. However, the objective of social justice is worth pursuing, all the more because this is the only way to achieve, in this currently competitive world, a more humane and socially fair society.

Concluding thoughts

We are currently experiencing considerable disparities in the distribution of wealth and power. The recent economic crisis has exacerbated the need for a more equal society. Therefore, the vision for a society that is focused on goals such as combating socio-economic disparities and providing substantial opportunities to all members of society can be a primary objective, worthy of captivating us. Restorative justice has emerged from ancient traditions to teach us in both theory and practice that the victim and the community must also be prioritized alongside the need for just deserts and offender rehabilitation. There has been a plethora of papers and projects on restorative justice, and yet its potential for moving beyond the direct and indirect parties in conflict have been limited. This chapter challenges current thinking and writing by arguing that the new target for criminal justice policy and practice should be social justice. It also argues that restorative justice must move into new project areas – first, for a fairer, meritocratic distribution of social goods, and second, for greater solidarity towards the weaker members of society. We are referring here to all the socially marginalized and often impoverished groups of people, who are scientifically characterized as “weak” or “vulnerable” or “socially excluded” and who try, with great courage, to survive without surmounting the threshold of criminal law, although, according to research, the situation is not always encouraging.¹⁴

Similarly, there is a need to assist crime victims who suffer from the consequences of an illegal, punishable behaviour against them and who are sometimes unable, due to their financial condition, to participate in a process and claim the restoration of their damage. Apart from securing to these persons a legal aid, so that they can present their claims before the court, a further idea which could be helpful to them is that the state compensate such poor victims via a fund which would be financed by a part of the fines that the convicts pay by court decision to the state for their offences.

If one of the aims of criminal justice policy is to generate solutions to the problems of crime, then it should not solely be limited to facilitating the repair of damage and the conciliation of victim and perpetrator. We have argued that one of the primary aims of criminal justice policy should be to address the causative factors of crime, socio-economic inequalities and other forms of injustice which trigger social reactions, attitudes and a sequence of serious criminal acts (see also Aristotle's *Politics* V. 1301 b 27, 1301 a 32 ff., 1266 b 40). Put another way, restorative justice in its current normative and implementation form is inadequate in helping criminal justice policy to achieve its new goal around socio-economic inequality. We have proposed a “restorative justice plus” version, which we have referred to as “social justice” and extends beyond the criminal justice system.

¹⁴ For example in the UK, “crime increased dramatically during the same period that rates of relative poverty escalated” (Garside, 2006, 46).

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