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## **Psychological Aspects of Restorative Justice**

### **Abstract**

Besides the traditional methods of jurisdiction restorative justice techniques (e.g. mediation, family group conferences), that focus more on the interests of the victim and the accused, have come into the light lately. These methods create circumstances under which a common discourse is established, the position and needs, the motivations of both the victim and the offender may surface. In the process there is an opportunity to express emotions and thoughts that eventually result in the emergence of psychodynamics on the level of both the individual and the community. Therefore, there are significant psychological moments in the background of restorative techniques. Being based on the professional literature and studying them, are fully relevant. We have analysed six factors where researches have shown positive effects. (1) We take into consideration the active involvement of the participants, which clearly defines the exercise of the „*influence on my own destiny*” as opposed to the “*experience of own vulnerability*”. (2) The area of morality, apology and forgiveness may become important. (3) Expressing the emotions by the offender the victim provides an opportunity to resolve any frustration. (4) Expressing the offender’s motivations gives the victim an opportunity to understand the hidden factors. (5) In addition, emphasis will be placed on offering and, where appropriate, accepting reparation. (6) Finally, the emotions of the involved may change, into the direction of a positive vision.

**Keywords:** criminal justice system, psychological mechanism, punishment, restorative justice

*„I'm sorry for all the pain that I caused  
Putting your family through something I could have stopped  
And now I'm staring at the stars thinking of what I have done.  
Something stupid of course what was I thinking of  
Looking for my mentality but that was lost  
Back in the days BC I'd be pinned to a cross*

*But instead I'm writing this rhyme because you gave me a chance,  
So in the words that I write  
You should know that they came from my heart.  
You opened my eyes despising what I had done.  
Look above and find the strength to carry on...*

*The stupid things I've done in my life  
Creating enemies that want to bring a lot of strife  
We'd fight  
On the streets  
Is probably where you would see me  
Drugged out struggling to breathe  
But now I', down on my knees  
With a million apologies  
Please time freeze wish I could turn back the time  
Rewind but it's all over and done  
A new era begun."*

Andrew Becroft  
Principal Youth Court Judge  
(Kelly, 2014, 14.)

There is a growing number of cases that are solved through restorative justice techniques and there is also a tendency to involve communities in the healing process (Rosenblatt, 2015). The quotation above, was a reaction given to the affairs of a family group conference. The young offender opened up by getting rid of heavy feelings during and after the procedure. The deepness of the quotation demonstrates the power of the restorative justice. However, this does not mean that one has to sacrifice traditional legal practices for the sake of new techniques – but it is a requirement to consider whether the outcome of the cases can be positively affected by the help of the restorative methodology. There are crucial practical questions arising, too, namely: whether there is an actual reduction in recidivism when restorative technique is used, or whether the burdens of the judiciary system or the prevalence of crime are lower? (Polt et al, 2020)

## **Brief History of Restorative Justice**

In the past, during 20-30 years, criticism towards traditional criminal justice has been accentuated. In the background of this, there is the fact, that traditional

criminal justice practices are less and less in accordance with the expectations of the 21<sup>st</sup> century (Barabás, 2014). The reactions to the traditional practice can be materialized in three aspects:

- Firstly, the pursuit of decriminalisation that is to narrow the scope of authority of penal law. In this matter the felonious behaviour is resolved and is followed by legalization.
- With depenalization legalization does not go live, but reparation takes place. That means, that from the field of penal law the case shifts to another legal area (e.g. administrative law, civil law).
- Diversion (i.e. diverting from penalty) is an alternative of traditional penal law, in the course of which the offender is treated by (mainly) medical, psychological, pedagogical methods. It is different from restorative techniques in a way as it is applied within the frame of traditional criminal justice practices.

Mediation – as part of restorative justice – and family group conference are widely used in Hungary (Barabás, 2015). They range widely in both theory and practice, and have significant history (Van Ness – Heetderks, 2015, 23.).

- As for the theory: the idea was born amongst the sociologists of the 19th century (e.g. Durkheim) (Leonard – Kenny, 2014, 30). Penalties at this time were primarily focused on the pedagogy of the delinquent. Such as positivism, which suggested that the offender is separated completely from the rest of the society and is healed with the help of medical methods (Sullivan – Tift, 2006, 440.).
- The “social defence” movement, which started after the II. World War, required an absolute alteration of the penal law practices focusing on the fact that the penalty should be individualized (i.e. formed individually) in a way that, in the long run, it serves the protection of the society and the criminals.
- In the mid-20th century in the USA, the treatment ideology awakened, in the centre of which, there was the reformation of the criminal. Treatment ideology can be seen as a reaction and opposition given to deed-proportional fine. This ideology proved to be unsuccessful so the deed-proportional fine strengthened.
- As neither the protection of the society nor the re-education of the criminal was materialized by the second half of the 20th century, from the ‘70s on, the review of criminal justice has been started. It resulted in the introduction of several alternative methods, such as the victim services in the

UK (where there are still mainly victim-centred practices), the foundation of which lies in the 1964-born Criminal Justice Scheme (Liebmann, 2007, 37.). The first recorded victim-offender mediation is from 1974, Ontario, Canada, when a Mennonite probation officer made two youngsters apologize to victims whose houses they had vandalised. Since then, the practice has become even more general.

Possible causes of the appearance of restorative practices:

- One of the main reasons is that victimology – that emphasizes the aspects of the victim – strengthened (Lloyd – Borrill, 2020).
- Also, there were significant efforts of decriminalization, in the course of which, the state disclaims practising retribution. This is realized, for example, through diversion that resolved conflict in an informal way. This practise tries to withdraw both the victim and the perpetrator from parts of the criminal justice.

## **The Restorative Approach**

There is an obvious relation between crime and punishment. However, besides punishing the criminal, there is another technique when the compensation of the victim can be realized in an alternative way. Restorative techniques are built upon tribal traditions (Maoris and Navajo Indians) (Maxwell – Liu, 2007, 38). In these cultures, the interest of a community is more accentuated than it is in the individualist society. The delinquent is not alienated but they process the trauma and conflict caused to the victim. The individual goes on being the part of the community and is not stigmatized. This tribal practice was first built in criminal procedures in New Zealand and Canada. Based on their experience, restorative techniques result in lower recidivism (Strickland, 2004, 26.). Interestingly enough, in Papua-New- Guinea, or in the Malagasy language community, it is men, who tend to cooperate, reconcile, and negotiate about the problems in a moderate manner (Ürmösné, 2015).

## **In a Broader Sense**

In the case of restorative justice, the emphasis is not on punishment but on how to resolve a certain problem or conflict. Its main characteristic feature is, that it

gives way to express feelings: stigmas in this approach are unknown; the shame of the perpetrator serves reintegration (McLaughlin – Muncie, 2013, 384.).

## **In a Narrower Sense**

Emphasis is on the individual and the community. It is part of the criminal procedure rather than its alternative. According to ECOSOC (United Nations Economic and Social Council) 2002/12: „*Restorative process means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters, arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.*” (ECOSOC, 2012)

These days, these alternative techniques and methodology of jurisdiction are emphasized and introduced – mainly as amendments to the traditional practice. Kent Roach (1999) and Herbert Packer (1964), by questioning the crime control model, played great role in this process. Roach and Packer were the ones to create a new model of the victims i.e. the punitive-, and non-punitive model (Roach, 1999). According to them, the traditional jurisdiction is in an acute crisis and its future lies in its ability of highlighting the importance of the rights of the victim. In the focus of the theory there is the individual as an autonomous being, who takes responsibility for his deeds and sees the consequences. In this system, the victim’s rights are in the first place, victimization is at the utmost importance and precipitates victim protection reforms. The model (where there is punishment) is built upon traditional jurisdiction and calls for strengthening the rights of the victim. The conception emphasizes the importance of prevention and the restorative characteristics; it is widely accepted and used in practice (Foley, 2014). However, restorative approaches are not unified: the conditions are whether the victim, the perpetrator or the community has the priority in the process and the usage of different aspects depends on the type of the crime committed. For example, in case of domestic- or school violence, it is more likely that confrontation with the deed, remorse and forgiveness will happen (Strang – Braithwaite, 2002). Mainly, when apology is more important than reparation as the parties go on being members of the same community, they maintain a relationship of some kind, so an acceptable personal attitude is a must. Reparation is accentuated when compensation is the priority.

## Key Goals

- „*To understand the harm and develop empathy for both the harmed and the harmer.*
- *To listen and respond to the needs of the person harmed and the person who harmed.*
- *To encourage accountability and responsibility through personal reflection within a collaborative planning process.*
- *To reintegrate the harmer (and, if necessary, the harmed) into the community as valuable, contributing members.*
- *To create caring climates to support healthy communities.*
- *To change the system when it contributes to the harm.” (Amstutz – Mullett, 2014, 10.)*

## Retributive paradigm vs. restorative paradigm

First, Zehr (1990) describes the difference between restorative justice and traditional criminal justice in his book “*Changing Lenses*”. The restorative justice asks:

- „*Who has been hurt?*
- *What are their needs?*
- *Who is obligated to meet the needs?*
- *Who has been impacted or has a stake in this situation?*
- *What processes can be used to involve these „stakeholders” in finding a solution?” (Zehr, 1990, 15.)*

On the contrary in the case of traditional criminal justice one can come across with three basic questions:

- *What laws have been broken?*
- *Who did it?*
- *What do the offender(s) deserve?*

As one can see in Table 1., there are several differences between the two approaches. One (and the basic) of these is that in restorative justice practices participants form their own needs and claims.

	<b>Paradigm of restorative justice</b>	<b>Paradigm of criminal justice</b>
<b>Focus</b>	Victim	Violation of law
<b>Role of delinquent</b>	Compensation	Wrong-doer
<b>Aim of the procedure</b>	Agree on reparation	Enforcement, implementation of rules
<b>Role of parties in the procedure</b>	Active	Passive
<b>Secondary aim of the procedure</b>	To understand motivation and emotions behind the crime, agree on reparation.	Investigate the truth
<b>Control is...</b>	...in the parties' hands	...in the hands of the representative of the state
<b>Nature of procedure</b>	Confidential	Open
<b>Orientation</b>	Future-oriented thinking	Past-oriented thinking
<b>Mode of the procedure</b>	Informal	Formal

Table 1. Differences between restorative justice and criminal justice practices

The first approach unfolds the needs of the sufferer of the crime and here the responsibility from the offender part is integral. In criminal justice the perpetrator himself is more stressed than the victim, emphasis is on the breaches of the law and the punishment imposed upon by the state. In this case the type of crime is one of the most important questions. The victim plays an active part in the process, he has the opportunity to express emotions concerning the crime, can get answers to his questions, can feel remorse. The perpetrator may also explain his motivation in the criminal offence so the sufferer will be able to understand the dynamics of the deed that can be essential in processing the affair. As for the offender: the focus in his case is not solely on punishment but on him, to take responsibility and to help him settle in society. This is a future-oriented approach, whereas in the traditional practice the representatives of the state reconstruct a past event. Thus, psychological agents play an important role, because, instead of formal statements and framework procession is the first concern and it is executed in an informal setting. Dialogue that forms between victim and offender helps understanding the dynamics and the motivation of the deed (Farkas, 2018). The confidential situation can evoke shame in the perpetrator, he is not stigmatized, can have the opportunity to better the situation and the focus is in his reintegration (Farkas, 2017).

The procedure is executed by a neutral professional who guarantees the principles of restorative justice, including adhering to human rights. The mediator

has to be independent and impartial, cannot make a decision only can assist in negotiation. He has to possess all the necessary qualifications and has to try to compensate the hierarchy level in the process. Without these conditions the procedure might become unsuccessful. The case remains in state settings in order to provide security of the parties and keep the rule of law.

- Basic human rights should be respected.
- State intervention has to be provided – not all cases are good for mediation.
- One has to keep in mind that mediation does not always end in consent.

## Psychological Processes

Fellegi asks the following: „*why this way of responding to crime might be more effective in reintegrating offenders and how it can achieve this goal more successfully than other sanctioning approaches.*” (Fellegi, 2007) In order to answer these questions, one has to turn to the science of psychology. Psychological characteristics can be realized at least in six areas (thus has to be explored in here) (Strasser – Randolph, 2004). The role of the parties, morality, emotions (of both the victim and the perpetrator) and motivation are just as important from a psychological point of view as reparation, the possible modifications in the feelings of the participants, the significance of the formation of a positive future. Table 2. presents these positive effects.

	Offender	Victim
<b>Role</b>	Active	Active
<b>Morality</b>	Apologies	Forgiveness
<b>Emotions</b>	To express emotions	To express emotions
	To understand emotions of the victim	To understand emotions of the offender
	Catharsis – resolve frustration	Catharsis – resolve frustration
<b>Motivations</b>	To express motivation behind the felony	To understand motivation behind the felony
<b>Reparation</b>	Offer reparation	Accept reparation
<b>Future</b>	Positive – without the shadow of punishment and stigmas	Positive – without fear and anxiety

Table 2. Positive effects on offender and victim



## **To Take an Active Role**

In traditional procedure parties function passively. They cannot have a voice in either the process or sanctions. It depends on the judge whether they can express their opinion and feelings. On the contrary, restorative practices provide an active role to both the victim and the offender, who will be able to see themselves as autonomous, competent and effective individuals who can form and influence their fate and future life (Gromet, 2015). Resolving conflict is entirely up to the parties. As they jump to a conclusion collectively and following compromise, victimization is far less an option than in traditional practice as during the process neither the interests nor the dignity of the parties are damaged. And from a psychological point of view: the participants will be able to identify themselves with the agreement – that they formed together, and as such, the compliance with it will be more likely realized.

## **Morality**

Apology helps in processing the events (Hutchison, 2014, 118.). The perpetrator has to reconsider his deeds morally. He has to face it and the fact that he did not obey the rules and norms. He has to do soul-searching as he receives a negative feedback from his victim. He has to recall his memories of the offence, has to explore the motives behind it and re-examine its emotional background. Restorative procedure creates an environment in which these psychological aspects can surface; after which, the delinquent will be able to understand his deed, encounter the consequences and the fact that he has caused damage to his fellow human being. He has the opportunity to feel remorse and if he feels the need of apologizing his victim, he is allowed to do so.

## **Emotions**

Since under such circumstances the parties are able to speak out their own feelings, the victim and the offender as individuals, have greater value. The process is less faceless and nameless than it is experienced in the traditional criminal procedure (Kelly – Thorsborne, 2014). The parties can express their emotions about the felony in a safe setting – in connection with how they felt about it and of what effects they are afraid of or suffer from. The victim can encounter the delinquent. By doing so, the possibility of understanding each other is present.

During the process both parties can develop empathy, which, in the case of the offender, can reduce the chance of recidivism.

## Empathy

Empathy has been described as the skill to recognize the feelings and the thoughts of others. When one empathizes, one tries to understand and feel the other one, both through verbal and nonverbal communication channels. Non-verbal elements could not only be gestures, postures, or mimics, but sighing, coughing, or throat clearing as well (Ürmösné, 2019). Interestingly enough, females generally verbalize their attentiveness, apply more feedback strategies, metacommunication phenomena, and motivational schemes (Ürmösné, 2017). In the restorative procedure situation empathy can be born from both sides. Empathy arising between the two human beings is the key concept in the restorative process. It can appear on five levels (Wallis, 2014, 8.):

- Empathy Level Zero (Hurting): starts with the offence itself. It is the phase of searching the offender of the crime (Sófi – Farkas, 2019).
- Empathy Level One (Seeing): entry into the criminal justice system. After the police investigation there are two possible solutions: retributive or restorative justice (Farkas et al., 2020).
- Empathy Level Two (Voicing): initial discussion with the parties involved.
- Empathy Level Three (Hearing): indirect communication and the beginning of the restorative conversation. Traumatic events can be recalled in this phase after which a reaction to it, and positive or negative thoughts may appear. These all help in processing.
- Empathy Level Four (Helping): during the restorative meeting, the perpetrator can apologize as a consequence of which frustration is minimalized.
- Empathy Level Five (Healing): the feelings of shame and guilt appear; empathy is in the focus. The emergence of these can be life changing.

All the other psychological factors that accompany the procedure, also help to deal with the events that cause anxiety in the individual. Through the course of the meetings, the parties can experience such emotional shower that can result in the development of the catharsis.

## **Motivations**

From the point of view of restorative work, understanding and expressing the motives behind a criminal offence is a must (London, 2011, 156). Both the parties arrive in the situation with needs, curiosity and eagerness to comprehend the crime and the motives in the other party. If the offender is able to manifest his conscience, he will win the trust of the victim that can be a key momentum in the agreement that follows. By admitting failure, the restoration of trust can take place, that has a curing effect in the process.

## **Reparation**

In the social interaction, the victim can express his discontent and can also decide on the means of reparation. The offer of the offender is reported by the facilitator, thus can begin the convergence of the claims. In an ideal situation, this process results in a compromise and even though it is not always the case, it is an undeniable accomplishment of the method that, by having opportunity to take an active part in decision-making, one is more easily able to identify with the results.

## **The Sense of a Positive Future**

The positive effects of the restorative procedure are certain. The victim gets rid of the emotions accompanying the offence, processes his anger so – hopefully – the situation will no longer be combined with anxiety. The victim most probably will be more confident with the offender or the other individuals similar to him. The offender will not be stigmatized and be part of the criminal procedure, which is also beneficial.

## **Conclusion and discussion**

To sum up the previous thoughts, one can see, that in the restorative procedure an independent, professional facilitator takes care of the validation of the maxims of restorative justice as well as adhering to procedural law and to human rights treaties. The mediator is of utmost importance in the process, since he does not fulfil the basic criteria that can result in the unsuccessful-

ness of the procedure. One has to admit, that there are several positive traits of restorative criminal justice as opposed to the traditional practices; however, one cannot overlook the fact that cases must not quit entirely state influence as it is the state, that secures the individuals and the rule of law. As restorative approach is accompanied by the resurface of grave feelings and anxiety, psychological supervision gains territory in it (Gavrielides, 2016). In order to explore psychodynamics behind the restorative procedure more researches would be beneficial.

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