Chapter 6

ANOTHER PUSH FOR RESTORATIVE JUSTICE: POSITIVE PSYCHOLOGY AND OFFENDER REHABILITATION

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ABSTRACT

Traditionally, criminologists have used psychology to understand and reduce violence by focusing on the negative traits that lead people to crime. This approach is encapsulated in the Risk Need Responsivity (RNR) model of rehabilitation, which is now being challenged at practical, policy, political and financial levels internationally. The Good Lives Model (GLM) was recently developed as an alternative approach focusing on nurturing the offender's personal strengths and goals. This paper takes the next step in deepening the relationship between rehabilitation theory and restorative justice. We use the perspectives and tools of positive psychology and the GLM to provide a fresh critical analysis of restorative practices, which have recently received much attention by policy makers and politicians. What can restorative justice learn from positive psychology? Is there anything to be gained from this relationship for rehabilitation theories? How can the victim and the community be brought into the rehabilitation debate?

Keywords: restorative justice, positive psychology, risk-need-responsivity (RNR), Good Lives Model (GLM), offender rehabilitation

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1. PROBLEM STATEMENT

In an increasingly specialist age where expertise is valued and innovation is questioned it is rare to see a lawyer collaborating with a psychologist to mutually influence each other's work. This paper encapsulates our attempt to bring a fresh perspective to the re-born social justice movement of restorative justice by combining our disciplines and minds. We feel that offender rehabilitation could benefit from a more integrative approach to desistance, while the barriers of restorative justice could be pushed further by stop downplaying rehabilitation theory.

Offender rehabilitation has traditionally focused on all that is wrong with the offender (psychologically, socially, biologically etc.) by trying to minimise risk through treatment programmes (Bonta and Andrews, 2007). This is also called the Risk Need Responsive (RNR) model of rehabilitation (Andrews and Bonta, 1994; 2008). Its focus is on reducing and managing risk as well as on studying the process of relapse. Pathology-focused research and intervention have consequently been developed as tools for RNR based approaches to rehabilitation. Despite of being criticised by clinicians and researchers, RNR is generally accepted as the benchmark against which rehabilitation programmes should be measured and tested (Mapham and Hefferon, 2012).

As a result, policies, laws and practices have focused on setting up and managing a criminal justice system that aims to deal with offenders' negative traits. Desistance is seen as a result of being 'tough on crime' and criminals (Gavrielides, 2012a). According to Andrew and Bonta (1998), Hollin (1999), McGuire, 2002) and others, RNR has resulted in effective therapy for many offenders and has led to lowered recidivism rates. The fact that the model emphasises empirically supported therapies makes its scientific approach appealing.

However, Ellerby et al (2000), Maruna (2006), Ward and Steward (2003), Gavrielides (2012b; 2012c) and others have argued that concentrating on criminogenic needs to reduce risk factors may be necessary, but not a sufficient condition for effective correctional intervention. Furthermore, McAdams (1994; 2006) argues that integration and relatedness are crucial in encouraging desistance. His research suggests that self-narratives and the recognition of offenders' personal strivings have the most potential for change over the course of a life. Ward and Langlands (2009), Laws and Ward (2011), Ward and Maruna (2007) all agree with this conclusion. The expanded RNR model by Andrews, Bonta and Wormith (2011) tried to address some of this criticism, but the truth of the matter is that it continues to underplay the contextual nature of human behaviour. Maruna's (2006) Liverpool Desistance Study is revealing. His qualitative investigation (1996-1998) of desistance that involved long-term field observations and numerous in-depth interviews with British ex-convicts concludes that to desist from crime, ex-offenders irrespective of age "need to develop a coherent, pro-social identity for themselves" (2006: 7).

Politicians and the public now seem to agree with the extant literature that our RNR-based criminal justice system is failing. For instance, in June 2010, the UK Justice Secretary said that prison often turns out to be "a costly and ineffectual approach that fails to turn criminals into law-abiding citizens" (Travis 2010: 1). We also know that the reoffending rate post-custody is high compared with other disposals. While the overall reoffending rate across all disposals is 40%, the reoffending rate post-custody is almost 50%, meaning that approximately half of all offenders sentenced to prison will go on to commit a further offence

(Ministry of Justice, 2010). "Banging up more and more people for longer is actually making some criminals worse without protecting the public" the justice secretary said in his speech at the Centre for Crime and Justice Studies in June 2010.

This disappointment is also reflected in the spiralling incarceration rates. For example, in October 2010, in England and Wales, the prison population stood at 85,494. This accounted for 2,150 places above the usable operational capacity of the prison estate, and it is forecast to rise to 94,000 before the next general election (Berman, 2010: 1). There are now 139 prisons including high security prisons, local prisons, closed and open training prisons, young offender institutions and remand centres. The statistics on young prisoners are not encouraging either. In September 2010, there were 1,637 young people (15-17 years) in prison, 273 children (12-15) in privately run secure training centres (STCs) and 160 in local authority secure children homes (SCHs). In addition, there were 10,114 young adults (18-21) in prison (Berman 2010: 7). Compared to the rest of the world, England and Wales comes 10th with the US at the top.

Financially, the RNR has not proved viable either. Again, looking at the UK as an example, keeping each prisoner costs £41,000 annually (or £112.32 a day). This means that if there are 85,076 prisoners at the moment, prisons cost as much as £3.49bn annually. If we add the cost of courts then according to Home Office statistics, this goes up to £146,000 annually (quote in Prison Reform Trust, 2010). Putting one young offender in prison costs as much as £140,000 per year (£100,000 in direct costs and £40,000 in indirect costs once they are released) (Knuutila, 2010). Two thirds of the Youth Justice Board budget, or about £300 million a year, is spent on prisons, while the money it uses for prevention is roughly one-tenth (Youth Justice Board, 2009). More worryingly, as a result of inflation and the rising costs of utilities and food, the costs of custody will keep rising even if prisoners' numbers stay the same.

According to a 2010 report by the New Economics Foundation, "a person that is offending at 17 after being released from prison will commit on average about 145 crimes (Knuutila, 2010). Out of these crimes about 1.7 are serious crimes (homicides, sexual crimes or serious violent offences). Given that a prison sentence is estimated to increase the likelihood of continuing to offend by 3.9 per cent, this translates into an average of about 5.5 crimes caused, out of which about 0.06 are serious" (Knuutila, 2010: 40).

This disappointment provided an opportunity for restorative justice, which is based on the foundation of promoting human goods in the pursuit of restoration of harm and the correction of deviant behaviour (i.e. approach goals as well as avoidance goals). Restorative justice practices, such as mediation, circles and conferencing bring to the fore states of affairs, activities and experiences that are strongly associated with well-being and higher level of personal satisfaction and social functioning. They aim to create empathy and remorse and through constructive and honest dialogue create sense of responsibility in the offender and a feeling of empowerment and justice in the victim. Restorative justice is also a community born and community led ethos (Gavrielides, 2012a) and as such its practices are informed or led by or found within a community context. They might also involve the community directly by allowing community representatives to be part of the dialogue and the restorative process.

In the UK, EU and internationally, restorative justice is receiving increasing attention. For example, in December 2010, the UK coalition government published the Green Paper "Breaking the Cycle", announcing its intentions for key reforms to the adult and youth justice sentencing philosophy and practice. This consultation set out the resulting proposals, which

aim to break the destructive cycle of crime and protect the public, through more effec... methods of punishing and rehabilitating offenders and by reforming the senten... framework. In October 2012, the government published a national restorative justice stra... (Gavrielides, 2013a), while legislation has been passed to provide restorative justice to all offenders independently of the crime they committed and their age. Training is being roll... out in all prisons in England and Wales while the Ministry of Justice is introducing resto... justice targets in all their contracts with probation trusts and prisons.

In the eyes of a criminologist, or indeed any thinking citizen, the growing interes... governments in restorative justice should come as no surprise. In a financial climate whe... public services are being reduced, legislative reforms are expected. The truth is tha... independently of the motives behind the review of our sentencing philosophy and practice... provides a unique opportunity for also renewing our social contract for law and order... modern society.

Restorative justice has received much evaluation and scrutiny in a number of are... However, certain aspects of its practice remain uncovered and untested particularly some... the psychological implications involved (Gavrielides 2007: Sherman and Strang 200... Gavrielides and Artinopoulou, 2013). The relationship between restorative justice an... positive psychology is yet to be examined in detail (Ward and Langlands, 2009; Tweed et a... 2011; Mapham and Hefferon, 2012), while there is still confusion about the contribution tha... restorative practices can make to rehabilitation theories (Zernova, 2009).

This paper will use the perspectives and tools of positive psychology to deepen th... relationship between restorative justice and rehabilitation theory. It will also explore the ro... of victims and offenders in the normative and practical development of rehabilitation theme... and practices. The paper is developed as part of a larger project supported ... Buckinghamshire New University aiming to test the contribution of positive psycholog... the theoretical development of restorative justice as well as the design, evaluation an... delivery of its practices. By bringing positive psychology into the restorative justice debate... the larger project may be able to generate a much needed normative and practical directio... for improved implementation of restorative justice including minimising the risks associa... with its delivery as well as increasing the positive effects that we now know it can have ... victims, offenders and the community.

The paper is divided into three sections. The first will aim to establish a common poin... understanding for some key concepts such as restorative justice, positive psycholog... rehabilitation and desistance. It will also provide a descriptive account of the RNR and GL... models of offender rehabilitation. We are aware of the tensions between the two models an... the developing literature supporting both sides of the argument. This debate is beyond th... scope of our paper.

The second section will focus on the relationship between restorative justice and offend... rehabilitation theory. The literature on the potential of this relationship is thin and this pap... will start from Gavrielides' 2007 definition of restorative justice, which accepts "cert... rehabilitative goals" (p. 139). To this end, the GLM and positive psychology will be use... Does positive psychology helps us understand better the techniques, strength-based approa... and ethos of restorative justice? Is there anything to be gained from positive psychology f... restorative justice?

The third section will move beyond rehabilitation theory to understand how restorati... justice engages the victim and the community in the pursuit of its goals, and whether these ar...

supportive of desistance. Is justice within the community and victim empowerment and restoration possible alongside offender rehabilitation? Furthermore, what is the role of forgiveness and how can the victim and the community be engaged in offender rehabilitation; how relevant is forgiveness to restorative justice outcomes and offender rehabilitation?

It should not be expected that this think piece will provide 'handbook solutions'. Here, we only aim to lay the conceptual framework within which positive psychology can strengthen its contribution to restorative justice both normatively and empirically. Following this paper, pilots and fieldwork with qualitative methodologies will be carried out.

We also acknowledge three key limitations. First, the paper develops some critical thinking using secondary analysis of data. Up to date there hasn't been a research project with an exclusive focus the collection of primary data on positive psychology and restorative justice. The arguments and issues raised here are triangulated through relevant studies that looked at specific issues where positive psychology was touched upon as a side matter in the investigation of restorative justice.

Second, the extant studies that were used to provide a check for our arguments are scarce. Third, it must be acknowledged that psychology can only provide a certain, limited perspective, which must be combined with the social, economic, cultural, political and policy environments of its time. As Maruna points out, the narratives that are generated through offenders' self-reporting although psychologically analysed cannot be understood "outside of their social, historical and structural context. Self-narratives are developed through social interaction (2006: 8). Foucault (1988) reminds us that our stories, as offenders, victims or community members are "proposed, suggested and imposed on [us] by [our] culture, [our] society and social group" (p. 11).

2. SOME DEFINITIONAL AGREEMENTS

Restorative Justice

The definition of 'restorative justice' has occupied the attention of the bulk of the restorative justice literature and hence we do not intend here to add to this traffic. Here, we only attempt to lay some basic foundations that will allow us a shared understanding to pursue our paper's objectives.

A number of international and national documents attempted to identify the key principles underlying the restorative practice. Some examples include the UN Basic Principles on the use of Restorative Justice Programmes in criminal Matters 2002, the Canadian Department of Justice Restorative Justice Values 2010 and the New Zealand Principles and Values for Restorative Justice 2004. Gavrielides concluded in his 2007 fieldwork:

> "Restorative justice is an ethos with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue" (p. 139).

For Braithwaite (2002) and McCold (2000), the principles underlying the restorative justice 'ethos' are: victim reparation, offender responsibility and communities of care.

McCold argues that if attention is not paid to all these three concerns, then the result will only be partially restorative. Gavrielides understands this ethos in a broad way: "Restorative justice, in nature, is not just a practice or just a theory. It is both (Gavrielides, 2007). It is an ethos; it is a way of living. It is a new approach to life, interpersonal relationships and a way of prioritising what is important in the process of learning how to coexist" (2007: 139). In a similar vein, Daly (2000) said that restorative justice places "...an emphasis on the role and experience of victims in the criminal process" (p.7), and that it involves all relevant parties in a discussion about the offence, its impact and what should be done to repair it. The decision making, Daly said, has to be carried out by both lay and legal actors (see also Zehr 1990).

Similarly, in *Fundamental Concepts of Restorative Justice*, Zehr and Mika provided a list of principles to clarify what constitutes restorative justice (1998). Their list was composed of three major headings: (a) Crime is fundamentally a violation of people and interpersonal relationships. (b) Violations create obligations and liabilities. (c) Restorative justice seeks to heal and put right the wrongs. Under each of these headings, a number of secondary and tertiary points specified and elaborated on the general themes providing elements, which, according to their opinion, can address the critical components of one vision of restorative justice practice. In *Restorative Justice: Variation on a theme*, McCold recorded four principles, which he attempted to put to test. He said restorative justice is:

a) moralizing
b) healing
c) empowering
d) transforming.

According to Gavrielides (139), "Restorative justice adopts a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals".

Rehabilitation

The literature on rehabilitation theories is rich and is often combined with theories of punishment, penology and criminal law. According to Gavrielides (2005; 2013b) there are four main arguments for explaining punishment in modern society:

- **Deterrence:** Either specific for the given offender or 'general' for the society that watches the offender being punished.
- **Incapacitation:** Removing the offender from society making it physically impossible to harm others, even for a certain period of time.
- **Retribution or 'just deserts':** encapsulating the Old Testament saying "an eye for an eye".
- **Rehabilitation:** "Rehabilitation is the idea of curing an offender of his or her criminal tendencies. It consists, more precisely, of changing an offender's personality, outlook, habits, or opportunities so as to make him or her less inclined to commit crimes" (Von Hirsch, 1998: 1). Von Hirsch continues: "Often, rehabilitation is said to involve helping the offender, but a benefit to the offender is not necessarily

presupposed: those who benefit are other persons, ourselves, who become less likely to be victimised by the offender (1998: 1).

If we shift our focus from criminal law to psychology, the definitions for rehabilitation change. For instance, according to Ward and Mann rehabilitation "refers to the overall aims, values, principles, and etiological assumptions that should be used to guide the treatment of offenders, and translates how these principles should be to guide therapy" (2007: 89). They see rehabilitation theory as the broader framework within which therapy and treatment should be placed. The latter two terms, they argue, are narrower in scope and refer to the process of applying psychological principles and strategies to change the behaviour of offenders in a clinical setting.

Positive Psychology

The origins of positive psychology exist in the work of psychologists such as Abraham Maslow (e.g. 1970) and Carl Rogers (e.g. 2004). The proposal and development of positive psychology as a focused discipline came through the Presidential address of Professor Martin Seligman to the American Psychological Association in 1998. Seligman and Csikszentmihalyi (2000: 5) suggest:

> "...positive psychology at the subjective level is about valued subjective experiences: well-being, contentment, and satisfaction (in the past); hope and optimism (for the future); and flow and happiness (in the present). At the individual level, positive psychology is about positive individual traits: the capacity for love and vocation, courage, interpersonal skill, aesthetic sensibility, perseverance, forgiveness, originality, future mindedness, spirituality, high talent and wisdom. At the group level, it is about civic virtues and the institutions that move individuals toward better citizenship: responsibility, nurturance, altruism, civility, moderation, tolerance and work ethic."

Writing deliberately at the turn of the millennium these visionaries used defining words that also link positive psychology to the questions and challenges of restorative justice, desistance and rehabilitation being explored here. The important practical question is 'how'.

Positive psychology has over a decade of progress in theorising and research in such areas as psychological well-being (Ryff and Singer, 1998), the development of human strengths (Peterson and Seligman, 2004), the nature and contribution of positive emotions (Fredrickson, 1998; 2001), hope (Snyder, 2002) and forgiveness (Enright and Fitzgibbons, 2000). How some of these ideas have been brought together in the GLM will be summarised below. Yet, drawing on the definition above, it also leaves us with the possibility and question of how experiences such as 'hope', 'love', 'vocation', 'courage', 'interpersonal skill', 'perseverance', 'future-mindedness' and more may be found in or brought to restorative justice, rehabilitation and desistance through positive psychology research and method. The need to do so is highlighted when one considers the psychological focus of RNR.

The Risk Need Responsivity (RNR) Model of Rehabilitation

Developed in the 1980s and first formalized in 1990 by Andrews, Bonta and Hope (1990), RNR uses three basic principles to guide the assessment and treatment of offenders with the purpose of advancing rehabilitative goals such as recidivism. These are:

- **Risk** i.e. matching the level of risk to be caused by the offender and the amount of treatment that they are to receive
- **Need** i.e. targeting treatment with offending and criminogenic needs that can be altered
- **Responsivity** i.e. the treatment programme must be able to reach and indeed make sense to those for which it was designed (Andrews and Bonta, 1994)

It is generally accepted that RNR is the dominant model of offender rehabilitation at least in the Western world. Its pursuit of psychometrically sound assessments for effective prevention and treatment resonates with the evidence based policies of many governments. Even Ward and Maruna (2007) who are considered to be adversaries of RNR have commented that RNR has "an impressive research record to back up its claims (p. 74).

In 2008, Andrews expanded RNR to include a total of 18 principles. These are grouped into overarching principles (respect of the person, theory, human service and crime prevention), RNR principles (risk, need, responsivity: general and specific), structured assessment principles (assess RNR, strengths, breath, professional discretion), programme delivery principles (dosage), staff practices principles (relationship skills, structuring skills) and organisational principles (community-based, continuity of service, agency management and community linkages).

According to Andrews, Bonta and Wormith (2011), "RNR-based prevention can be promoted as an honourable, positive, strength-based, and legitimate objective of human service" (p. 751). However, does RNR still overlook some key aspects of the path to rehabilitation, recovery and desistance? Psychology faced comparable questioning in the need for and development of 'positive psychology'. Mainstream psychology grew out of the need to solve problems, and remove or cure 'illness'. Professional training and the focus of activity were based largely on attention to the negative. As our attention narrows to focus on the 'deficient', abnormal and unhealthy, we run the risk that we will overlook and misunderstand the nature of health and positive adjustment (Joseph and Linley, 2008: 5). Further, this focus emphasises the role of the individual perhaps at the expense of understanding the interactions with or contribution of the social context.

Whether it is 'illness' in psychology, or 'wrong-doing' in the discipline of criminology, the 'problem' (such as wrong-doing) becomes a distinct entity from this perspective and the scope to understand systemic influences, particularly the opportunities for growth and change, reduces or is blocked (Ibid: 6). The GLM offers an illustration of how the two perspectives may be linked and developed.

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The Good Lives Models (GLM)

The contrast in names is stark between RNR and GLM in considering the rehabilitation of offenders. This difference in emphasis is explored and articulated in academic literature, e.g. Andrews, Bonta and Wormith (2011) and Ward, Yates and Willis (2012).

The Good Lives Model (GLM, now referred to as Good Lives – Comprehensive) assumes that we are goal-influenced and all seek certain 'goods' in our lives, not 'material', but qualitative, all likely to increase or improve our psychological well-being. The model sees us as driven in search of at least ten primary human goods: healthy living and functioning, the experience of mastery, autonomy and self-directedness, freedom from emotional turmoil and stress, friendship, happiness and creativity (Ward, Mann and Gannon 2007: 90). The majority of these areas have a base of research within the discipline of positive psychology.

Offending behaviour is seen as an inappropriate or unskilled means of achieving primary 'human goods', particularly where it lacks internal or external conditions to work towards a positive or good life plan (Scottish Prison Service 2011: 37). The GLM operates in both a holistic and constructive manner in considering how offenders might identify and work towards a way of living that is likely to involve the goods we seek in life, as well as a positive way of living that does not involve or need crime (ibid: 36). In this process the argument is that the model works towards a positive, growth-oriented change in life where an offender works on the development of the values, skills and resources towards life based on human goods that is a necessary counter-balance of managing risk alone (Ward, Mann and Gannon 2007: 92), i.e. risk is managed as well as seeking to develop positive life alternatives. To illustrate the importance of this balance, Emmons (1999 and 2003) has made an articulate and moving case for why positive personal goals and the skill to attain them are central to psychological well-being and conversely how avoidance-based extrinsic goals may lead to lower levels of functioning.

While Ward and colleagues describe this positive psychology model as 'strengths-based' we believe this is an understatement of evaluation because its component parts go beyond strengths to a more comprehensive and profound attempt to influence well-being and positive development over time.

Desistance

When attempting to define notions such as restorative justice and desistance, we must be careful not to assert that they can ever fully capture the normative and practical elements of their lived manifestations. Gavrielides has argued that definitions for restorative justice are temporary constructs that very quickly become out of date and in some cases misleading and counterproductive (Gavrielides, 2008).

This is also true for desistance, which has traditionally being associated with a 'termination event'. Maruna argues, "The criminal career literature traditionally imagines desistance as an event – an abrupt cessation of criminal behaviour" (2006: 22). The field of criminology has come a long way from trying to understand deviant behaviour as a single dimensional phenomenon, whether this is due to biological, psychological, social, financial or other factors. However, we agree with Maruna that despite progress and an acceptance that a multi-disciplinary approach must be adopted in understanding deviance "the notion of

intractable criminality is still very much alive in criminology and popular thought" (2006: 19). In other words, although common logic tells us that people are not born criminals, subconsciously and through our overt bias for those who deviate we may believe that there was something inevitable. Characteristically, Glaser said "Despite this shift from hereditary to environmental interpretations of crime, there is still a tendency to think of the person who experiences make him [or her] criminal as distinctly different fro the non-criminal" (1964: 466). Shover for instance, defined desistance as "the voluntary termination of serious criminal participation (1996: 121). Farrall and Bowling (1999) defined it as the "moment that a criminal career ends" suggesting that one quits crime in much the same way as one resigns from a legitimate occupation.

Indeed, there is a plethora of theories and definitions on desistance. Social bond theory, labelling theory, ontogenic and sociogenic paradigms are some of the approaches that have been adopted over the years. We do not wish to engage with this dialogue. What is important to note here is that if we are to engage with the arguments of this paper we must acknowledge a much broader understanding of desistance that focuses not on that 'moment of clarity' that takes people away from being deviant, but on their journey to change. Maruna argues that desistance "might more productively be defined as the log-term abstinence from crime among individuals who had previously engaged in persistent patterns of criminal offending" (1996: 26). Here we look at the factors that trigger and then maintain a crime-free behaviour in the face of life's obstacles. Looking at Foote and Frank's definition of 'resistance', then desistance is "no end state where one can be; rather than it is a perpetual process of arrival" (1999: 179).

3. REHABILITATION THEORY AND RESTORATIVE JUSTICE: FRIENDS OR FOES?

Paradoxically, the literature on the relationship between restorative justice and rehabilitation theory is rather thin. Ward and Langlands argue that the "comparative neglect of offender rehabilitation theory and principles within the restorative justice literature is problematic because evidence-based rehabilitation programmes have been shown to be effective in reducing recidivism" (2009: 206). We argue that restorative justice and rehabilitation theory are not foes as we accept that "restorative justice adopts a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals" (Gavrielides, 2007: 139). Our aim here is to advance the restorative justice field, its tools, practices and evaluation techniques by bringing rehabilitation theory into its current debate and vice versa. Rehabilitation has also much to gain from a needs-based approach to antisocial behaviour such as restorative justice, and positive psychology can show us the way in how to achieve this.

We agree with Ward and Langlands that "by failing to adequately address offender rehabilitation, restorative justice does not live up to its promise as a needs-based justice system" (2009: 206). We also agree that the restorative justice movement has downplayed the value of rehabilitation for far too long in its attempt to highlight the role of victims and communities. We disagree with Zernova (2009) that rehabilitation approaches and restorative justice practices cannot co-exist. It is in fact because we believe that the two are

complimentary and necessary for achieving better results through a needs-based, positive approach to anti-social behaviour. The restorative justice concept is now well supported by theory and philosophy (Braithwaite and Strang, 2001; Gavrielides and Artinopoulou, 2013) for its proponents to fear a compromise of its conceptual integrity.

We believe that this reluctance reaches deep into the very foundations and history of restorative justice. When its notion was first coined in the 1970s, its early advocates such as Cantor (1976), Christie (1978), Barnet (1977) and Zehr (1990) portrayed the relationship between the then emerging restorative justice and the existing criminal justice system as being 'polar opposites' in almost every aspect. Cantor (1976) for instance, argued in favour of a total substitution of civil law for criminal law processes with a view to 'civilising' the treatment of offenders.

Barnett (1977) spoke of a "paradigm shift", defining 'paradigm' as "an achievement in a particular discipline which defines the legitimate problems and methods of research within that discipline" (1977: 280). Barnet (ibid: 280) claimed that we are living a "crisis of an old paradigm" and that "this crisis can be restored by the adoption of a new paradigm of criminal justice-restitution". Christie (1978: 5) claimed that the details of what society does or does not permit are often difficult to decode, and that "the degree of blameworthiness is often not expressed in the law at all". Christie (ibid: 5) argued that the state has 'stolen the conflict' between citizens, and that this has deprived society of the "opportunities for norm-classification".

By introducing restorative justice as a radical concept, its proponents were hoping to make the then new concept of restorative justice appealing and interesting enough for writers and politicians who knew nothing about it. However, once the excitement was over, and while restorative justice was leaving the phase of 'innovation' to enter the one of 'implementation', its advocates (e.g. Braithwaite, 1999) started to talk about the need to combine its values and practices with existing traditions of criminal practice and philosophy including rehabilitation.

However, restorative justice purists continue to believe that restorative justice should sit outside the current criminal justice system. Some hold the view that if integrated into current traditions of punitive philosophy, some restorative practices will be co-opted, while others will be marginalised and gradually withdrawn. For example, Zernova believes that " Merging the two models may serve to individualise problems with social-structural roots and disable search for ethical responses which are not centred on values of healing crime's harm and offender rehabilitation" (2009: 73). Zernova is not alone in this as her view is shared by Walgrave (1995), Bazemore (1996) and McCold (2000).

Undoubtedly, there is still strong debate both inside and outside the restorative justice movement about the compatibility of restorative justice and punishment theories and practices including those of rehabilitation. For the sake of brevity, I will attempt to divide the many views from the extant literature into two broad categories. The first denies that restorative justice measures can, in any way, be punitive (e.g. see Wright 1996). The second argues that restorative justice is not "alternative to punishment," but "alternative punishment" (Duff, 1992) yet in the act of being so involves what we conceive of as links or 'doorways' to the possibility of desistance and its development. The argument of the first group is that restorative measures' primary purpose is to be constructive. Therefore, they are not inflicted "for their own sake" rather than for a higher purpose. The second group, however, has argued, "this purported distinction is misleading because it relies for its effect on the confusion of two

distinct elements in the concept of intention. One element relates to the motives for doing something; the other refers to the fact that the act in question is being performed deliberately or wilfully" (Dignan, 2003: 179).

We argue that this approach has led to division that is not constructive while it serves very little the field of implementation. We also argue to gain all society seeks from restorative justice, we have to conceive of the two as linked. If we take a step back we realise that this division is merely a construct of historical events and the current political priorities and populist agenda. For example, Gavrielides (2011) argues that today's dominant understanding of punishment as retribution and rehabilitation is the outcome of historical events and the demands of modern society. In Europe, what is really believed to have caused this change was the increasing power of kingships as trans-local and trans-tribal institutions. This is mainly because they united the tribes and large areas, changing in this way the structure of societies from communitarian/tribal to hierarchical/feudal. Sharpe (1980) and Rossner (1989) explain that in Europe contemporary punishment was constructed after the Norman Conquest when crime was seen as a violation of the law of the King. The understanding of what is crime and harm was key in defining society's response.

In the pursuit of increasing the success of the criminal justice system as constructed within the aforementioned understanding, crime control was formalised in communities. Cohen (1985) describes how justice and social control were reconstructed from being informal local and regional control systems to becoming a centralised machinery of processing justice. The formalisation and professionalization process of the criminal justice system was also a key consequence of trade development and economics (Marx, 1954). Barnett (1977) also reminds us the role of religious institutions and the significance of the ecclesiastic law of that time. This claim is also supported by Tallack (1900) who noted that the greedy ecclesiastical powers of the time aimed to exact a double vengeance upon the offenders by taking their property and by applying corporal punishment or imprisonment.

In consequence, as the rights of the state gradually overshadowed those of the victim, the concept of punishment took a more punitive meaning. What also emerged from this development was the division of law between public and private. Crime was mostly dealt with as an act against the state and the public interest, while offences against individual rights were pursued separately as torts. The terms offender and victim started to be used.

In 2005, Gavrielides introduced a different type of punishment. He argued that in practice there are only two kinds of ποινή (poene/ punishment/ pain); "The first is what we *experience today*, as the outcome of a criminal process, and is based on the understanding of the punitive paradigm. The second is what we *normatively experience* in a restorative process, and has little to do with what retribution and other punishment theories deal with" (Gavrielides 2005: 91). Gavrielides names this type "Restorative Punishment" (ibid: 91). He argues that irrespective of whether we decide to go with the first group of critics who deny that restorative measures are punitive, or with the second who claim that they are alternative punishments, we still have to accept that RJ is surely neither punishment nor is it interested in it, at least in the form that it has taken under the punitive paradigm of our criminal justice systems. Gavrielides (ibid: 93) moves on to conclude that Restorative Punishment aims to restore the harm done. Deterrence (general or specific), just deserts and rehabilitation are all welcomed side effects of restorative justice. However, it must be pointed out that they are not among the primary goals of restorative measures.

In his follow up 2013 work, Gavrielides further developed the notion of Restorative Punishment. He explains that "restorative justice does entail pain, but of a different kind; Not pain that is triggered by state and top-down punishment, as we understand it through the current paradigm. Restorative justice triggers pain that is personal and specific to each participant and is the consequence of his or her own actions, behaviour, self-observation and self-reflection. This pain is a gift and is not always present. It cannot be imposed but it can be nurtured" (Gavrielides, 2013: 321).

This is where the tools of positive psychology and the GLM can assist us in further developing the undervalued relationship between restorative justice and rehabilitation theory. If we explore Maruna's (2001) milestone work on desistance as an illustration it suggests to us that certain experiences will be found in desisting ex-offenders. The individual will gain a sense of a 'true self' that may have existed pre-offending and contrasts with that of being a criminal and offender (ibid: 88 and 95). The catalyst for change will commonly come from outside events initially, which in turn can create the insight into the damage done by their offending, and the wish and the actuality of 'giving something back' in order to seek change and redemption (ibid: 96/7). Gaining a deeper understanding of the story of their actions and bad events may prompt shifts in self-perception that in turn creates the possibility of a new personal 'narrative' (ibid: 98, 102 and 105). The ability and the opportunity to give something back to another person becomes a form of influence and self-efficacy. The act of 'giving back' also becomes a form of restitution, a paying of a debt, and a means of coming to terms with shame, guilt and past mistakes (ibid: 118 – 121).

While this is a simple summary of some longer term and complex experiences involved in desistance, it is intended to illustrate that aspects of these will also be seen in short-term restorative justice encounters and longer-term wider restorative practices. Gavrielides' 'restorative pain' (2005; 2013) and Braithwaite's 'reintegrative shaming' (1989) are two theoretical models that may explain the connection. Here, we suggest that restorative justice is a natural doorway into longer term desistance and that facilitators should be alert to behaviours that indicate further change may follow. Maruna (2001: 114) observed that as a desisting ex-offender started to change they might find social support absent. Where the possibility of longer-term change is apparent, this should be further built-upon by separate support within the social context.

4. BEYOND REHABILITATION

We will now turn our attention away from offenders alone. Although they constitute important players in the pursuit of justice, restorative justice reminds us that there are two other critical parties that must also be considered. These are the victim and the community. Bearing in mind that even the victims' movement (particularly those relating to violence against women) have traditionally being sceptical about the role that restorative justice gives to victims (Gavrielides and Artinopoulou, 2012), we will ask how they can be brought into the rehabilitation-restorative justice debate through the use of positive psychology. A possible reason why RNR-based interventions have only a 17%-35% desistance rate (Bonta and Andrews, 2007) maybe because programmes that focus on offender risk management in effect bar themselves from incorporating the victim and the community in the intervention. It

is therefore important, when looking at the GLM through the eyes of restorative justice to expand it beyond the field of offender rehabilitation.

Van Ness and Strong argued that reintegration must be seen as "re-entry into community life as whole, contributing productive persons" (1997: 103). If we start from this premise, then it is not difficult to see how the inclusive and strength based approach of restorative justice can contribute to rehabilitation theory through the involvement of the victim and the parties' communities. We have accepted that desistance is a journey to transformation and that rehabilitation is about making that journey worthwhile. The more specific and communicative the intervention, the more success it will have to produce a life story of change. We have also accepted that restorative justice is not punishment as this is understood by the criminal justice system. It is a form of constructive pain that can lead to catharsis. As in any Greek tragedy, before catharsis is achieved the key players must be identified and watched as they generate a series of emotions and pain (Gavrielides, 2013b). Victims and communities are as important as offenders in this play. Because without them there is no dialogue, no pain and no catharsis. And they engage in this dialogue not by patronising the offender or by being afraid of his [or her] criminogenic needs. They enter the dialogue because they aim for that constructive pain that will lead to catharsis. They are not afraid of it; they welcome it; they seek it. And once the dialogue has taken place and an agreement must be reached, the follow up actions tab into the strengths of the person that needs to restore and heal. They are not meant to control their passions, desires and habits but to encourage their strengths and nurture them by using them as tools for the much sought healing that needs to take place for all involved.

Achilles has argued that rehabilitation facilitates restoration as evidence has shown that a large number of victims who participate in restorative justice do so in order to help prevent future offending (2004). The best way for offenders to repair the harm caused by crime may be to become a "productive citizen" (Achilles, 2004: 70). The involvement of the victim and the community in the restoration of harm gives offenders "new optimism and relief of being reconnected with their communities (Mapham, A. and Hefferon, 2012: 402). Schoeman brings this back to the African concept of Ubuntu. She explains, "The African ethic and humanistic philosophy of Ubuntu encompasses issues of human dignity and respect within the understanding that an individual's humanity is interconnected with the dignity and humanity of others" (Schoeman, 2013: 292). In other words, it is not possible to better oneself without the inclusion of the other.

Furthermore, by paying attention to offenders' experiences of victimisation or needs, the community may be better mobilised to support them in their reintegration and desistance from crime (see Towes and Katounas 2004). Robinson and Shapland's advise that "Instead of thinking about restorative justice as a new-style intervention – something that is done to offenders – we might better advised to re-reframe it as an opportunity to facilitate a desire, or consolidate a decision to desist" (2008: 352). Indeed, restorative encounters should be seen as stepping-stones in the provision of the necessary scaffolding for offenders.

Bazemore and O'Brien spoke of a model of 'relational rehabilitation' grounded in restorative principles of informal social support and control, inclusiveness, the repair or relationships and the development of community (2002). Up to date this is the only theoretical attempt to reconcile rehabilitation theory with restorative justice. Bazemore and O'Brien believe that repairing and restoring relationships is the first step towards building the skills and social capital that is necessary to desist from crime. Therefore, offender

rehabilitation is conceptualised as a cyclical process with restorative justice its starting point. Gavrielides' (2007) fieldwork with a representative sample of restorative practitioners from around the world agrees with Bazemore and O'Brien only it points out that the goal of restorative justice is to repair broken relationships not offenders. The latter is a bi-product of the restorative justice approach.

Positive psychology helps us understand the triggers that restorative justice engages to achieve this objective, and the GLM is a good illustration of how this takes place. Mapham and Hefferon's evaluation of the Khulisa restorative justice project reminds us of Gavrielides' understanding of restorative punishment as being contingent of an painful interplay of emotions triggered through interactions with offenders, victims and their communities. They note"

> "Participants were seen to develop emotional intelligence as they became sensitive to the experiencing, feelings, thoughts and attitudes of others. They felt the pain of the others in the group when they listened to their secrets and when they heard the stories that lay behind the masks that their fellow group members had created" (2012: 402).

Positive psychology suggests that strengths and virtues such as empathy, forgiveness, humility, sense of meaning and civic values "may be incompatible with violence or at least produce behaviour that can displace violent behaviour" (Tweed et al, 2011: 8). Focusing on youth violence, they claim "Population interventions that create even small increases in relevant character strengths could potentially reduce incidences of violence" (ibid, 8). This is not possible to achieve without involving the victim. For example, in relation to empathy, Mapham and Hefferon note that their "participants recounted developing compassion for their victims and for their family's pain by their criminal activity" (2012: 402).

Turning our focus on forgiveness, despite of attracting the literature's attention only recently, the narrative around its advantages as well as the psychological stages that must be undertaken is rich (e.g. see Peterson and Seligman, 2004). Here we do not wish to engage with the wider debate on forgiveness but to provide a focused analysis of its mechanisms in engaging the victim and the community in the transformation of the offender. To this end, we must look at the communicative requirement of forgiveness and not so much on its impact on the forgiver. Much has been said about the healing benefits of those who forgive, in this case the victim and the community. Not so much has been said, however, about the significance of the process of forgiving for the offender. We contest that if theory, research and practice are further developed in this area, the "addition of forgiveness into the legal process might change how we think about and serve justice. Perhaps forgiveness may be one avenue of humanising the quest for justice"(Enright and Kittle, 1999: 1631).

Depending on whether we are viewing forgiveness from a certain spiritual, philosophical, psychological or other scientific perspective, its definition and priorities may change. One understanding that may encapsulate most of spiritual and philosophical writings is that developed by North:

> People, upon rationally determining that they have been unfairly treated, forgive when they wilfully abandon resentment and related responses, and endeavour to respond to the wrongdoer based on the moral principle of beneficence, which may include compassion, unconditional worth, generosity, and moral love (to which the wrongdoer, by nature of the hurtful act has not right)" (1987: 499).

The latest scientific research on forgiveness suggests that those who receive it are encouraged to enter into a path of transformation. Enright and Kittle's research into forgiveness and deviance identifies four stages in the forgiving process. Although these relate to the forgiver and the challenges that he [or she] has to overcome to taste the fruits of forgiveness, most units identified within each stage are not esoteric related challenges, but communicative strategies for reaching forgiveness. The process of forgiveness, independently of whether forgiveness is reached, is often followed by apology and ultimately reconciliation.

However, a few words of caution from positive psychology for restorative justice. Forgiveness is a moral concept and not a technique that can be learned to reduce crime and rehabilitate the offender. We agree with Enright and Kittle who see it as a "merciful act of giving a gift to someone who does not necessarily deserve it" (1999: 1630). Braithwaite, one of the leading advocates of restorative justice, agrees with this (2002). In particular, Braithwaite spoke about three groups of restorative justice standards: constraining, maximising and emergent. Constraining standards specify precise rights and limits, maximising standards pursue restoration and justify the constraining standards and emergent standards are gifts that are given in the process of restorative justice and may include forgiveness, apology and remorse.

Therefore, in any training, delivery or preparation for restorative justice, facilitators must understand that a careful assessment of the readiness of a victim to forgive and the intent of the forgiver is critical. In fact, due to the powerful nature of the process of forgiveness for both the receiving and giving objects, if not managed carefully it may lead to negative effects including re-victimisation of victims, or trauma for the offenders; a sensitive rather than forced pace is essential. Gavrielides' (2011b) research of restorative justice in prisons has pointed out examples where restorative justice triggered fears and anxieties among young offenders who due to lack of proper support were traumatised and left damaged by the well-intended process that were implemented. This is not to suggest that all in-prison restorative justice projects are inappropriate. On the contrary, the research supports that when properly applied, restorative justice can indeed provide a unique experience for incarcerated offenders who search for an opportunity to reintegrate and restore (Gavrielides, 2011b). The mapping exercise that is included in the same study bears evidence to this claim and includes projects such as the Forgiveness Project and Khulisa UK. Similarly, Gavrielides and Coker (2005) and Gavrielides (2012c) work on clergy child sexual abuse and restorative justice warns that the process of forgiveness for this particular type of offence encompasses high risks for survivors since their world is shaken as they are awaken from the trauma that they often bury for years.

This is indeed one area where positive psychology can help restorative justice to develop further its tools and methodologies while guiding facilitators to minimise risk. For example, how much information should be given about forgiveness? Does the victim forgive because the facilitator or the information he [or she] received created false expectations or because they feel pressurised? What can be done if the victim or the offender are not ready to enter all stages of the forgiveness process but may be willing to do so at a later stage?

The willingness to be open to and include the possibility of forgiveness having an accepted place in restorative justice also involves the possibility of what is termed 'post-traumatic growth' (e.g. Tedeschi and Calhoun 1995). Joseph and Linley (2008: 9) describe how post-traumatic reactions are based on an individual's psycho-social interpretation of their experiences; with the support to process, more deeply understand and learn from their interpretations, such as occurs in restorative justice, the potential is created for growth.

growth that may in turn lead to the capacity to forgive in a victim. Yet in a challenging development of thinking, we are also seeing interpretations and reports of an offender's experiences as potentially being a form of trauma that they, in turn, must process more constructively and move beyond (E.G.Mapham and Heffron, 2012).

The need to increase awareness of these possibilities also exists beyond the field of practice. Politicians, decision makers and funders often impose unrealistic timescales and expectations that take away the very foundations of the restorative justice practice. As Enright and Kittle note: "Genuine forgiveness is never forced. It can take time and is the choice of the one offended" (1999: 1630). It must also be acknowledged that forgiving, receiving forgiveness and reconciliation may not occur. If an encounter fails, another meeting may be possible. Forgiveness should not be seen as a substitute for justice either. Forgiving does not mean that the harm has been restored. Unlike the adversarial process of criminal justice, in order to enter the restorative justice dialogue, first there must be acceptance of the harm that was caused and even if apology is achieved in order to complete the process there must be a mutual agreement that will lead to restoration.

CONCLUSION

This paper has reviewed why the 'good' in a person and in a life needs to be given place in the treatment and rehabilitation of an offender in order to achieve the potential for a healthier outcome. This is reflected in the GLM, but also has its seeds and possibilities in other positive psychology practices. The use of positive psychology perspectives is not a soft option, it is a balanced one. The same applies for restorative justice and the constructive and often deep pain that it entails.

We may choose to consider restorative justice as separate from other parts of the justice system. However, when we can see that the psychological reactions within its practise are also triggers and doorways to potential longer term desistance, there is a skill-based, training, financial and practical case to act on this, incorporate this in future training and create links to other forms of support to develop this in the offender or ex-offender. Further, where the age curve of desistance generally argues that it occurs with increased maturity, why would we or could we ignore an opportunity to support and develop doorways to desistance appearing for younger offenders.

As the restorative justice social justice movement expands internationally and matures, its relationship with other fields such as psychology, positive psychology and rehabilitation theory must deepen. We have attempted such a step here by adopting a multi-disciplinary approach that is compatible with the nature of restorative justice a field that has been cross-fertilised and infused by ideas taken from social and political sciences, religion, philosophy, art and cultures, our own worldviews and biases.

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Chapter 7

In: Crime
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