

Ph.D. In-Depth Article

“Models of Restorative Justice and the Reform of
Juvenile Justice System in Greece”

Introduction:

Crime - Immorality - Isolation - Weakened Bonds - More Crime. All of us, victims, offenders, community members, are caught in a downward spiral where the lack of shame leads to more crime and increased crime results in scattered bonds and immorality.

Taking the key worlds of the present research, “*restoration, criminal justice, juveniles*”, this thesis discussed critically the models of restorative justice and how could help us to understand their impact on juvenile crime in Greece. The purpose of this study is to explore the applicability and potential of Restorative Justice in the Greek Justice System with special regard to juvenile offender.

During the last decades, restorative justice has emerged internationally (partially in Europe, in the United States, Canada, New Zealand, Australia and South Africa) as a viable response to the harm caused by crime. Restorative Justice refocuses the process of criminal justice on the harm caused to victims and brings together those directly affected by a crime and empowers them to decide on the most appropriate solution. As an alternative to systems that advocate retributive justice, restorative justice seeks to elevate the role of crime victims and community members, hold offenders directly accountable to the people they have violated, and restore the emotional and material losses of victims by providing a range of opportunities for dialogue, negotiation, and problem solving that can lead to a greater sense of community safety, conflict resolution, and healing for all involved (Umbreit, 2001). RJ encourages the offender to take responsibility for their harmful behaviour in a meaningful way, to gain insight into the causes and effects

of their behaviour on others, to change that behaviour and to be accepted back into the community (Morris, 2002). It is important to stress that Restorative Justice is not intended as an alternative to existing practices neither is a panacea nor appropriate for all offenders or for all victims. There is gathering international and domestic evidence to suggest that, when Restorative justice approach is adopted as part of a broader response to crime, victims and the general public are typically more satisfied with the process and outcome¹.

It is now an accepted truism to say that restorative justice is an ‘umbrella concept’, sheltering beneath its spokes a variety of practices, including mediation, conferencing, sentencing circles and community panels, and with no universally acclaimed definition. This situation itself promotes a proliferation of potential tasks and roles for restorative justice, such that different schemes or commentators can stress the importance of different aspects, and continue to disagree about what is its ‘essence’. It means that, when considering, as we are, the role of restorative justice set in the context of adult criminal justice, it is necessary to look at its main claims and tasks - a slightly lengthy process!²

To narrow things down slightly, although restorative justice has emerged internationally as an alternative to imprisonment (without meaning that prison and restorative justice are mutually exclusive) and as a viable response to the harm caused by crime, unfortunately, initiatives have been used primarily, if not exclusively, as a “front-end” diversionary option reserved for non-violent property crimes and minor assaults. I agree with Carey³ that Prison must only be used as a last resort if there really is no appropriate community-based sentence. On this, there are several empirical studies (Umbreit, 1995; Braithwaite, 1999; Kurki 2003; Sherman, Strang and Woods, 2000; Strang, 2002) suggesting that the RJ-way of

¹ O’Keeffe, J. (January 2007), ‘*Report on Restorative Justice*’, Joint Committee on Justice, Equality, Defense and Women’s Rights, House of the Oireachtas / Tithe an Oireachtas, p. 1

² Cited by Shapland, J., Atkinson, A., Atkinson, H., Colledge, E., Dignan, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A. (2006: 506)

³ Carey, M. (2004) “*The Inside Out Trust: Restorative Justice at work in prisons – Prisoners are also citizens*”, <http://www.euforumrj.org/readingroom/Oostendeconf.pdf>

responding to crime might be able to deliver key objectives of justice systems, especially in relation to the three following areas: firstly, it can improve victim satisfaction by making it possible to find answers to their questions connected to the offence and by helping them to get over the unpleasant or traumatic experiences. Secondly, it might reduce crime and re-offending by holding offenders to account, by engaging them with their victim, and by mobilising their networks of support that can prevent further offending; and thirdly it seems to be effective in building public confidence and reducing fear of crime.

The Argument:

The young prison population in Greece continues to grow. The main argument of my doctoral research is a possible way of answering the question of Radbruck by Tulkens (1993:493) if:

“[...] the best reform of penal law consists of its replacement by a better penal law or by something better”.

The quotation of Radbruck, appeared as the main question of my research, arguing whether Restorative Justice (RJ) practices could consist of a “better penal law” or “something better” [...], should not be conceived as a front-end argument. My project tried to discover, rather to prove, if RJ could provide a better solution (“something better”) than the contemporary way of dealing with youth crime and offenders through the contemporary Greek criminal law and its formal procedures. In addition, Restorative Justice cannot be tagged as a different or better criminal law, since one of its basic aspects is the alternative nature of the provided outcomes. The *basso continuo* of this research is to explore the applicability of RJ in Greece, as a way to propose whether the practices and models of Restorative Justice could ‘flourish’ individually, or in parallel, or they could be incorporated in the formal Greek justice system as a new and “better” criminal law. More is specific:

Aims and Objectives:

Aim 1 To consider restorative justice principles as they apply to prisons.

Aim 2 To establish what schemes are currently working in prisons involving

- Victim Offender mediation
- Restorative conferencing
- Adjudication mediation
- Mediation in staff issues
- Reparative relationships with communities and victims
- Relationships with Victim Support
- And maintain a directory of such practice

Aim 3 To consider the relationship between the probation service, prisons, prisoners, their victims and their communities.

Aim 4 To explore what is happening in prisons describing best practice and developing the quality of dialogue between prisons.

Aim 5 To enable young offenders to understand the impact of crime on victims and accept responsibility for their actions and responses.

Taking into consideration these aims, it is recognised that low or less serious crime offenders have become the ‘easy’ target for Restorative Justice, but this group does not constitute the only ‘fertile’ ground. The involvement and role of the victim is indeed crucial in every RJ attempt. However, for ‘non-fitting’ offenders and in cases of unwillingness or incapability from the victim’s part to participate, we could still give the opportunity to serious offenders who are willing to participate in RJ models through the involvement of peer groups and other community members that could represent the afflicted part (*Partially* Restorative) and might emerge the notion of Restorative Justice, foreseeing partial, but still valuable, restorative outcomes. Hence, the objective of such restorative interventions will be to enable *all* juveniles to:

- Understand the impact of their own crime
- Take responsibility for their actions Understand the difference between retributive and restorative justice
- Be aware of the needs of victims
- Understand the value of forgiveness and reconciliation
- Recognise opportunities for individual change and restoration
- Participate in an act of symbolic restitution to a victim of crime.

In adopting the approach of 'bifurcation' or 'twin-track policy' several Western countries have decided to divide the offender population into two groups that are managed differently, pointing to a two-tiered system of justice.

Various legislative policies are to reserve diversion mechanisms (i.e. sanctions instead of imprisonment) for 'minor' offenders, while the more 'serious' offenders are subject to harsher punishments. It is true that some cases cannot be diverted at any stage. Serious matters generally proceed to trial and where there is a guilty verdict it is possible that the offender may be sentenced to a lengthy period of imprisonment. No matter how much a legislation gives discretion to prosecutors and judicial officers to utilise restorative justice options, it is self-evident that such discretion sometimes result in cases not being referred to those options, and being taken through the formal court system instead. This promotes a bifurcated approach. Concerning the risks of a bifurcated version of RJ, allowing a system in which some cases go through a restorative process and others through the formal criminal justice process would almost certainly result in a "soft-hard bifurcation" in which the 'soft' cases will be diverted, and the 'hard' cases put beyond the reach of a restorative solution. This can very easily result in discriminatory practices in which those who are better off can access restorative justice while the disadvantaged cannot.

The present study is in tune with this policy, however, it is not directly influenced by the approach of bifurcation, since here, the dilemma is not whether

or not the Restorative Justice practices should be applied in order to avoid harsher sanctions. The present research supports and tries to empower the principles of restorative justice in the context of judicial measures and throughout the criminal justice system (maximalist approach).

The Structure:

The structure of my doctoral study is based on the discussion whether the effects of restorative justice could be understood by examining the dynamics of restorative justice and its capacity and feasibility to infiltrate and subsequently change the present criminal justice system for juveniles in Greece.

The same study explored the relationships among Restorative and Traditional Justice and the possible impact of restorative justice on the 12 emerged sensitive - and occasionally problematic - matters of the Greek judicial reality. Sententiously, these are:

- i. The recognition of victim's rights.
- ii. The precise limits of punishment for juvenile offenders.
- iii. The 'simple' probation.
- iv. The joint criminal responsibility and the possibility of parental exhortation in the committal of illegal activities.
- v. The risk of misconceived psychological phenomena.
- vi. The juvenile probation service.
- vii. The exercise of violence from the police.
- viii. The centres for temporary detention.
- ix. The control of the criminal justice system.
- x. The special detention centres for juveniles.
- xi. The impact of media.
- xii. The 'trailblazing' of a compound policy against crime.

Justice should be discursive and it should allow a plurality of voices within the discourse. Particularly in my study, this thread of pluralism is important. Most commentaries on restorative justice focus on its potential and capacity to improve the satisfaction levels of victims and local communities that come into contact with offending and the criminal process. Taking this into consideration, it is recognised that juveniles and/or low-less serious crime offenders have become the initial target for Restorative Justice, but this group does not constitute the only 'fertile' ground. The involvement and role of the victim is indeed crucial in every RJ attempt. However, for 'non-fitting' offenders and in cases of unwillingness or incapability from the victim's part to participate, we could still give the opportunity to serious offenders who are willing to participate in RJ models through the involvement of peer groups and other community members that could represent the afflicted part (*Partially* Restorative) and might emerge the notion of Restorative Justice, foreseeing partial, but still valuable, restorative outcomes. Here, the key-words "juvenile offender – Restorative Justice" possess a mutual influence: "Could RJ interventions have a positive impact on juvenile offenders?" and at the same time "Could juvenile offenders help us measure the general applicability and effectiveness of the RJ models?" Hence, the objective of such restorative interventions was to enable *juvenile offenders to*:

- Understand the impact of their own crime;
- take responsibility for their actions;
- understand the difference between retributive and restorative justice;
- be aware of the needs of victims;
- understand the value of forgiveness and reconciliation;
- recognise opportunities for individual change and restoration; and
- participate in an act of symbolic restitution to a victim of crime.

The Methodology:

The potential for restorative justice in youth crime is considerable. It should not be seen primarily as a tool towards reducing recidivism (all the evidence is that this will happen) but as a mean towards empowering offenders to take responsibility for their actions and to make amends to their victims and their communities. There are many areas of work that the ideas could be applied to the Greek judicial system. They include:

- Induction programmes;
- Sentence planning;
- Victim awareness discussion groups;
- Race relations disputes;
- Anti bullying strategies to help resolve conflicts;
- Dealing with complaints and requests through a mediated approach; and
- meaningful community work of a reparative nature, engaging people in the work with juveniles.

However, in order to clarify what restorative justice means, firstly I summarised its main definitions, most frequently used forms, principles and goals. Following this theoretical 'arena', the focus of my study (i.e. the role of offenders) was explored in relation to the restorative concept. I made efforts to explore how and under which circumstances, restorative justice might fit into the Greek Juvenile Justice System, whether it would be possible to conceive of a restorative prison regime – one based fully on restorative principles and values. Since the last amendment of the Greek Penal Code in 2003, there are at least three ways these efforts have been already started:

One is when groups of young offenders have decided that they want to find ways to make amends and to meet with their victims.

A **second** is when people working on prisoner rehabilitation have discovered that it is necessary to deal with juveniles' responsibilities to those they have harmed as part of their reintegration process.

A **third** is when victims of crime decide that they would like to meet with their offender. This is usually years after the crime took place, and the offender will have gone through the criminal justice system and been sent to special detention centres.

Following the theoretical and statistical exploration of the crime trends and rates among juvenile offenders in Greece, the main chapter summarised how these effects operate in practice. In other words, this section discussed if and how restorative justice programmes could be implemented in different contexts.

The last chapter of the thesis was based on the construction and unfoldment of a restorative model and its 11 essential 'ingredients' adjusted to the Greek judicial standards. These are:

1. The establishment and delimitation of the right for legal representation to the juvenile offenders.
2. The new role of the juvenile judges in parallel to the immediate and harmonious staffing of the probation service.
3. The availability of opportunities for victim's direct and/or indirect reparation before (in prison settings) and after the service of a punishment.
4. The introduction of the restorative justice models in schools.
5. The development of local-communal police.
6. The active involvement of the non-governmental organisations and of the Greek community.
7. The enforcement and proliferation of the minor protection agencies.
8. The creation of offices of youth services.
9. The bridging of gap between theory and practice.
10. The (technical) education of the young misdemeanours.
11. The sensitisation and information of the wider public.

The process could be carried out as part of induction and sentence planning or as part of seeking to resolve a dispute. The restorative justice approach to crime is to see it as a conflict and to work with the context within which the conflict occurred so that the people mainly affected by the conflict can all be considered in seeking to be just and to repair the harm.

Possible Limitations:

Restorative processes can only take place if the parties are willing. The conference takes place by consent. Hence, the facilitator should not impose a meeting on victims or offenders who clearly do not wish to take part in or benefit from the process.

The success of the process and the conferences depends very much on the individual facilitator. There are guidelines and standards in place and some supervision of the conferencing process by those who are using it, but it is still an arbitrary process where one cannot be sure of the expertise and impartiality of the facilitator.

The restorative conference can be a very private form of justice, compared to the open court procedure. This represents a risk to both the victim and the offender and the likelihood is that restorative justice procedures will continue as complementary to the contemporary Greek justice system.

Foreseen Results:

Indirect Reparation. This is one of the most established ways in which prisons have for many years tried to provide juveniles with opportunities to pay back something to society by charity work in workshops or through offenders' direct efforts, through inviting groups of less advantaged people into the prison to use facilities, and through voluntary community work either in the prison or in the community on temporary release.

Direct Reparation Could be possible through the mediation of a probation officer for the young perpetrators or even inmates to make some direct restitution to the victim, but this must be carefully arranged.

Restoration of Young Lawbreakers. Juveniles may not be able to be in direct relationship with their victim but they could be encouraged through the official justice system to take some responsibility through offender empowerment programmes in order to build their capacity to prosper in society.

Victims' Needs. Respect for victims' rights requires voluntary participation in all phases and thus any involvement should require careful handling. For this, Victim Support groups could run victim awareness workshops. Issues concerning victims could be taken into account in planning release and home leaves. This could also result into an increase of the number of victims who are willing to visit special detention centres for juveniles.

Epilogue:

The dichotomy between deterrence and rehabilitative approaches is transformed by this third way of working to include retributive, rehabilitative and restorative elements. Offenders are censured and called to account (retributive), they have issues to work on for the future (rehabilitative) and have an opportunity to make reparation to the victims they have harmed (restorative). The debate about restorative opportunities for Greek juveniles must become more central in seeking to establish restorative justice as anything other than an interesting alternative for the less serious offenders and offences. Prisons or special detention centres are full of people in desperate need of restoration – those most damaged and damaging in our society. Unresolved conflicts about their relationships with their victims and their community often remain within the person no matter how many personal development opportunities for change and learning they have taken behind the bars. Young inmates are often not required to face up to the

effect their crime has had on others. Breaking rules is punished but prisoners are not required to take responsibility for their actions.

Justice should be discursive and it should allow a plurality of voices within the discourse. Particularly in my doctoral study, this thread of pluralism is important. Most commentaries on restorative justice focus on its potential and capacity to improve the satisfaction levels of victims and local communities that come into contact with offending and the criminal process. But does it have a role to play at the back-end of the system with young persons already serving prison sentences? These voices have rarely been heard. If we wish to be true to the principle that restorative justice is discursive, then it follows that the discourse is not complete without also accommodating their voices.

Restorative Justice allows young offenders, being sanctioned or imprisoned, to take full responsibility for their behaviour and provides opportunities for improving self-esteem. In other words, a Restorative Justice mediated approach will emphasise the harm that may have been caused to parties involved in the conflict and seeks to bring about reparation for the harm and a consequential change of behaviour. At the core of Restorative Justice are the concept of social inclusion, and the idea that individuals and the community as a whole have both needs and obligations. A restorative approach requires a sensitive and constructive approach to the needs of victims and a recognition of the many ways in which an offence can affect the victim and offender's families, friends and the wider community.

The restorative justice approach argues that an offence is a violation of people and of relationships. Restorative justice holds offenders to account for their actions, challenges their offending and demands their active participation in repairing the damage done by anti-social behaviour. It seeks to fully integrate offenders as law-abiding members of the community and encourage and support both victims and offenders in the process.

Consequently, restorative principles have an important contribution to create safer communities. Of course, restorative justice also possesses potential dangers of which we should remain mindful, including the usurpation of due process rights, the over intrusion by the victim in the determination of an offender's (and moreover, juvenile's) punishment, net widening and power imbalances. However, the inclusionary potential of restorative justice initiatives, particularly their capacity to emphasise the standpoints of victims and local communities, should be views as a whole and not as a blueprint or 'panacea' for all the deficiencies of the current Greek Juvenile Justice System.

