

RESTORATIVE JUSTICE AND SOCIETY

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Introduction

Criminal actions involve not only the perpetrators but also the victims. In our systems of criminal justice we see signs of a strongly focused reaction. The Public Prosecutor brings a case before the court on behalf of 'society'. When the formal and material conditions are satisfied the Judge will reach a decision as to the nature of his sentence. Justice has been done, the offender receives his 'just deserts' and the disrupted legal order has been re-established; at least in theory. The victims are often left with painful emotions and a sense of dissatisfaction; particularly once the offender has been released having served his sentence. 'He is out there, as free as the air but I've got a life sentence'. During the criminal justice process offenders are generally confronted with an administration of justice that gives every appearance of having retained strong connotations with the past. Has the legal order really been re-established or, better still, has the administration of justice adequately helped the victims and the offenders so that, certainly at a personal level, their understanding and further actions can be said to be based on a sense of having truly received justice? These are legitimate questions. Another important question that covers a much bigger field is in how far society has had or can have a part in the implementation of justice. This last aspect in particular forms the subject matter of this article. Following on several theoretical considerations the second part of this article describes a programme with which Gevangenenzorg Nederland is actually putting the restorative justice concept into practice.²

Personal responsibility

Holding people personally responsible for their actions has a twofold outcome. On the one hand the offender is punished for that for which he is responsible. The punishment is proportional, that is to say appropriate for that person and their actions. Each offender is a unique individual who is distinguishable from others on the grounds of their actions (and the relevant circumstances). At the same time these specifics require us to consider each person in the totality of their personality, having a past, a present and a future. (Ward and Maruna, 2007). A person generally has a past that is much longer and more far reaching than their criminal past alone.

Anyone who is imprisoned for a short or a longer period spends that part of their life within a totalitarian system but within that system he remains the unique being that he always was. Bear in

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² Gevangenenzorg Nederland is a member of Prison Fellowship International. Collaboration in the field of restorative justice takes place with, among others, the Centre for Justice and Reconciliation. (zie <http://www.pfi.org/cjr/>)

mind that there is still a degree of choice in how the days there are filled as educational opportunities are available in penal institutions in the form of various courses and trainings.

Thirdly this person also has a future (and indeed during the detention this is given consideration through various programmes such as those of the TR office). If the primary aim of our judicial system is that the punishment should cease on leaving the prison then it is necessary that everyone involved should do their best to accomplish this objective. The community also has a part to play in this.

Penal containment should be followed by social inclusion, not exclusion. Who is not familiar with the remark; 'Before my release I had just one judge but after my release I had 16 million'? Restoration is a process within which the harm to various parties needs to be given a place; this includes the harm to society. After detention the community has the responsibility of making a contribution and being open to restoration. In this we recognise the all-party predisposition described by Anne-Mie Jonckheere. In short we are speaking of merciful justice in which punishment and restoration meet. Later in this article we shall return to this concept.

Criminology

Two important theories in criminology are known as the Risk-Need-Responsivity concept and the Good Lives concept. These concepts have divergent starting points; respectively; the estimated risk of recidivism or the potential for improvement. We shall discuss both concepts in order to identify and explain their differences as well as their relationships as opposed to restorative justice.

Risk-Need-Responsivity concept (RNR-concept)

In the 80's and 90's of the last century Don Andrews and James Bonta in particular put the integration of criminogenic factors and risk assessment on the criminological map.³ An estimation of the chances of recidivism can be realized based on statistically demonstrated criminogenic factors and the circumstances and characteristics of an offender. For politics or management the cost-effectiveness of this concept is an important point of departure whereby evidence-based methods are preferred. It is after all basis that is to be found in statistical, scientific research. The *Recidive Inschatting Schalen (RISc)* (Recidivism Estimation Scale) employed by the 3RO⁴ is an excellent example of this.

In the course of time the RNR concept has received criticism. It provides prisoners with no or inadequate stimulation to give up their criminal careers and pays too little attention to the uniqueness of (the circumstances of) a prisoner. (Ward and Maruna, 2007).

Good Lives concept (GL-concept)

In principle those who are sentenced for offences are being punished. The difference between a prisoner and someone who has never been sentenced is actually not always as large as may be thought. According to the GL-concept prisoners have needs that are comparable to those of non-

³ See further e.g. Bonta, J. (2007). Offender Risk Assessment and Sentencing, *Canadian Journal of Criminology and Criminal Justice*, 49 (4), p. 521

⁴ '3RO' stands for the 3 prisoners' aid organisations in the Netherlands: Reclassering (Prisoners Aid) Nederland, Leger des Heils (Salvation Army) and Verslaving s(Drug and Substance abuse) reclassering.

prisoners. (Ward and Maruna, 2007). Getting prisoners ready for their release should certainly not be solely aimed at repression and the suppression of negative characteristics but should also give consideration to the prisoner's interests and needs. A positive approach is called for. This is dealt with in detail in the report 'Locked up potential' (Centre for Social Justice, 2009). This is why the GL-concept is directed towards the strengths and skills of prisoners. The primary spear-point of this concept is therefore a positive utilization of these strengths. As well as this the reduction of risks is also important. However according to Ward and Maruna (2007) a reduction in criminogenic factors is already shown with the focus on the first spear-point alone. Exploring a prisoner's potential and utilizing this towards an eventual reintegration in the community is not only effective but also efficient. According to the same researchers focussing exclusively on the risks (as in the RNR-concept) would have a negative effect in the long run.

Restorative justice opens up the way

Now both concepts will be compared to the perspectives of restorative justice as exemplified in the SOS course. This course is just one of Gevangenenzorg Nederland's restorative justice programmes and will be described in more detail later. The RNR-concept is systematically based on 'dry' statistics. However the presence of criminogenic factors varies from one individual to another and must be seen within the context of the whole personality. Personalities are not easily catalogued. Naturally this is not to say that statistics are pointless; quite the contrary. An indication is given concerning those areas in a prisoner's life where there is a need for restoration and that could benefit from the attention and support of the volunteer. We can also concur with the criticism that more is needed than just risk reduction. Moreover we are in agreement with the opinion that the RNR-concept is not sufficiently inclusive but excludes by placing too great a focus on the offender alone. (Van Ness and Strong, 2006). The GL-concept is based on the idea that the prisoner should be taken seriously in their totality as a human being and not just seen in the light of their crime. In this way it is possible that an act of restoration can be of help to a prisoner in adopting a new course. It should be noted that: the purpose of restorative justice is not predominantly the prevention of recidivism which is one of the aims of the GL-concept (Ward and Langlands, 2009). Restorative justice in that sense can not just be grafted on to an (accredited) rehabilitation programme. However participation in a restorative justice programme such as the SOS course should not be underestimated as an augmentation to a programme like the Good Lives Concept. It should not be seen as a panacea that will end recidivism but as an aid in increasing the consciousness of offenders as to who they are and what their potential is – in a positive sense of course! The way through a rehabilitation programme should be a lot smoother once this point has been reached (Walgrave, 2008). A way on which mercy and justice travel hand in hand.

Merciful justice

The most important core value of Gevangenenzorg Nederland is the concept of merciful justice. This is an exciting concept that, at first, could seem like a contradiction in terms. It is not justice as contained in criminal law. Our judicial system is based on the principles of legitimacy and proportionality. This means that the punisher is working in accordance with the law and that the punishment is proportional

to the offence or the crime. This is justice whereby the law may take its course but no restoration or fresh prospects are put forward. On the other hand it is not the intention that merciful justice should be thought to be a denial of the existence of guilt and harm. Not at all! If that were to happen justice would lose all meaning. Without guilt there is no injustice and without harm no need for restoration. Merciful justice is a view of justice whereby the notion of (just) retribution is not only perceived as being one-sided and punitive but also as restorative, personal and covering the full width of community life. That is the reason for the addition 'merciful' which puts justice in a whole new light. It spurs us on to put one of the good works into practice, that of visiting prisoners (bible book Matthew chapter 25) Visiting means meeting with, it means seeing someone as a person not just as an offender who has committed a punishable offence. It is inherent to the Christian viewpoint that the fundamental worth of a person is not lessened by a crime, no matter how serious. It is against this background that we make the effort to offer prisoners and their families a positive outlook for the present and the future. Ideally the past might then also be dealt with in a suitable and mature manner. This fits in well with the Good Lives-concept.

Summing up, merciful justice can convey an interpretation of retribution with numerous facets. It recognizes the punitive perception of retribution but at the same time provides scope for restorative action⁵.

Merciful justice in practice

How does Gevangenzorg Nederland give a practical interpretation to this concept of merciful justice? The answer is simple, by volunteers visiting prisoners and conversing with them. Under the guidance of professionals a national network of nearly 400 volunteers visits prisoners and Tbs patients. After release there is also an after-care period of at least six months. This system depends on mutual respect and trust and there are no judicial demands involved. Volunteers are also active in the care for the prisoners' families. As well as this one-to-one care there are also restorative justice programmes available for group sessions; the SOS course is one of these, more details of which can be found below.

SOS course

In the course 'Talking about guilt, regret, victims and the community' (in Dutch "Spreken over schuld, spijt, slachtoffers en samenleving" = SOS) prisoners or young people and volunteers, with the aid of the course leader, enter into a dialogue about the consequences of criminality for all concerned and the possible steps that could be taken to achieve restoration.

At the commencement of the course, in a session in which offenders and victims are the main subject, two 'prisons' are examined, that of the offender but also that of the victim. In which prison is each to be found? The similarity between a number of emotions that can unite both offender and victim is strikingly apparent. We look at fear, anger, shame, regret and uncertainty. In the following session the ripple-effect is examined. An offence is not only a matter between offender and victim but sets up

⁵ Within the scope of this article it would be going too far to introduce the concept of 'forgiveness'. However in the mean time the Christian belief that Jesus Christ brings forgiveness and reconciliation for sin and iniquity stimulates the way of thinking whereby people can visit prisoners without prejudice and shown them charity.

ripples, just like a stone thrown into water. The consequences of an offence can affect both of their families, their environment and community, even society in general.

Bringing all the affected parties as it were onto the stage raises the awareness of offenders as to the impact and further effect that their actions can have not only for themselves but also on others. It is this understanding of the impact in particular that can give rise to a willingness to really work at restoration.

For the final session the participants are given the opportunity of inviting one or two people who they would really like see having a part in this process at which they have been working. This invitation to visitors for the last session – parents, partner, friend, guardian etc. – is a crucial element in a further processing of the whole subject matter, not only for the participants but it is also necessary that their personal environment has an understanding of it. They too must have a voice and they too are a part of the participant's life.

An act of restoration

At the end of the course the participants carry out a (symbolic) act of restoration which they present to the course members and the invited guests during the last session. This act of restoration is an expression of the content of the course and what working on restoration has meant for them personally. One participant may make a card or a painting another could write a letter or record a video-message. Sometimes this action is the nudge that was needed to move on to restorative mediation and sometimes it is a way of demonstrating the new phase that a participant has entered and the hopes for the future.

In one SOS course for young offenders a participant created a collage for one of the victims out of fragments from a video used during the course. His motivation was: "I can't do anything for my own victim but maybe with this I can in some way make up for things". We were able to trace the woman in the film and she was prepared to come to the young offenders' institution and be given the collage. The encounter itself turned into something quite special. The woman asked the boy: "Why have you made something for me?" and his answer was: "Because through watching you on the video I could see that forgiveness really does exist." When I asked him later how he felt, on looking back, about the session, he said: "For the first time in my life that I had the feeling that I had done something good".

The strengths of the programmes

A participant on one of the SOS courses reacted to the course as follows: "I want to show the victims the other side of me, the one that they don't need to be afraid of". A restoration consultant who works with us in the young offenders' institution identified the strength of SOS as follows: "All the other programmes are directed towards the mind but you aim mostly for the heart". The efforts of trained volunteers play a very important part in this. That these volunteers are obviously enthusiastic about it is something the participants have said to really value. They are eager to cooperate with this programme because they are able to meet and spend time with other people during the course or the group sessions. The course leader is a professional worker but it is the volunteers who play an essential part in building bridges between 'out there' and 'in here' and by exercising compassion. If the

background and the community are to be given a place as involved parties in the course and the results of criminality are being discussed it is a logical to involve this circle in the process through bringing the volunteers into it too. The victims who cooperate in the course by telling their side of things also do this of their own free will and see it as their contribution in a process that can bring healing to all concerned (also for themselves).

The fact that restorative justice group programmes exist could, initially, be viewed with suspicion. In these programmes the strength of the group is utilized as much as possible. No one can better stimulate the participants, provide them with insights or correct them than they themselves. The programmes are set up in such a way that the participants, under the guidance of the co-workers, can be supportive to each other in seeking solutions for problems and in turning over a new leaf. One participant told us: "Here you find out that the others are stuck with much the same things that you are but on the unit you don't talk about that sort of thing." Before the power of the group can be put to use an atmosphere of safety is necessary. This can be provided through alternating work in the main group with that in sub-groups but in particular in the fact that what goes on in the group stays in the group and no reports go to the institution or other parties unless a participant specifically requests it.

A future for people with a past

During or after the course various options for after-care are offered. Frequently it is Judicial Pastoral Care or a Behaviourist that takes up or maintains contact with the participant giving special consideration to the further development of restoration in his personal life. For actual restorative mediation a referral to Slachtoffer in Beeld (Victim in the Picture) is possible. It is a pity that this form of mediation can only be initiated where a punishable offence with a prosecution case number is concerned. We regularly come across prisoners who have things they want to put right with family or friends and it is regrettable that for them there are as yet no opportunities for restoration dialogue in such situations.

A third form of after-care is, at the request of the participant, setting up a visitor contact with a volunteer from Gevangenzorg Nederland which is aimed at support and follow-up. The needs of each participant are considered as well as what would be of further assistance to him after following the restorative programme. In that way our aims are dovetailed into their aims: A future for people with a past. That too is merciful justice.

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