

# New Challenges and Perspectives of Restorative Justice

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## Abstract

*From the beginning of punitive responses to the excesses of negative behavior, when a larger role was given to the victims and offenders, and their communities, penal and criminological scientific thought and practice have been trying to find effective solutions in response to crime. Dissatisfaction due to the lengthy and inefficient court trial, on one side and disappointment in the repressive policy of the states, on the other hand, has led to serious attempts to change the approach in response to crime and to find appropriate solutions to remove the consequences of crime. That movement introduces restorative justice, i.e. restorative measures and programs that have found their deserved place in almost all penal codes in the world. But, restorative measures do not reject retributive measures. They are interrelated and are not mutually exclusive, and therefore they can be practiced together. Discourse for their relationship and compatibility is part of this paper.*

*Namely, we are opening theoretical debate on several key questions: what is restorative justice; whether restorative interventions are alternatives to punishment or punishments, or whether restorative justice is the opposite of punitive and retributive justice? In an effort to give appropriate responses, we advocate the thesis that restorative justice allows for a more efficient and more humane response to crime.*

*The main objective of this paper is to awaken the scientific community to accept restorative approaches in crime response as a new, nontraditional way of thinking and a new philosophy of life in general.*

**Key words:** Restorative justice, Retributive justice, punishment, violence, crime

## 1. Restorative Justice - Concept and Objectives

From the beginning of punitive responses to the excesses of negative behavior, when a larger role was given to the victims and offenders, and their communities, penal and criminological scientific thought and practice have been trying to find effective solutions in response to crime. Dissatisfaction due to lengthy and inefficient court trial, on one side and disappointment in the repressive policy of the states, on the other hand have led to serious attempts to change the approach in response to crime and to find appropriate solutions to remove the consequences of crime. That movement introduces restorative justice, i.e. restorative measures and programs that found their deserved place in almost all penal codes in the world.

With the introduction of the term of restorative justice in the criminal law, its representatives are trying to give a proper explanation and meaning to the term, which divide several aspects regarding the idea of restorative justice, the concept, the essence, as well as the relationship between its objectives. Opponents of restorative justice argue against its introduction into the criminal justice system because it is contrary to the purposes of the criminal justice. Restorative justice, as they say, tries to avoid punishment, a key component to the criminal justice system.

Therefore, in the text that follows we will open a discourse with a few questions to better understand the concept and philosophy of restorative justice: what is restorative justice; whether restorative interventions are alternatives to punishment or punishments, or whether restorative justice is the opposite of punitive and retributive justice?

In an attempt to answer the first question, which is related to the concept of restorative justice, we refer to the Norwegian criminologist Nils Christie, who, although in his first papers used the term participatory Justice rather than restorative justice,, in his 1997 work *Conflict as Property*, laid the grounds for the restorative movement which struggles to find out better penal system in order to meet the new challenges of society.

Christie denies punishment, and thus the criminal justice system, is an effective tool against crime, saying that the sentence, in its essence, is contrary to acceptable societal values. Punishment means intentionally inflicting pain or actions intended to bring other people in a state of suffering.<sup>1</sup> Christie describes that crime is a conflict, and the conflict belongs to those who are directly or indirectly involved: offender, victim and community, and therefore these players

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<sup>1</sup> Christie, N. (2003) "Kada je zaista dosta? I sta bi kriminolog trebalo da kaze?", *Penalne teorije i prakse*, retrived 28.08.2013, <http://www.doiserbia.nb.rs/img/doi/1450-6637/2003/1450-66370303003C.pdf>

need to resolve the crime and not professionals in the traditional criminal justice system who steal the conflict from those to whom it belongs.<sup>2</sup> Hence, according to Christie, participatory justice is a better response to crime because it involves direct communication between those involved in the conflict.

Albert Eglash is considered to be the first author to use the term restorative justice in his 1977 paper *Beyond Restitution: Creative Restitution*. He suggests that there are three basic types of criminal justice: retributive, which is based on punishment, distributive, which is based on therapeutic treatment of offenders and restorative justice, which is based on restitution that focuses on the harm caused by the offense, its compensation and the prevention of crime.<sup>3</sup>

American criminologist Howard Zehr is among the first pioneers and protagonists for development and expansion of restorative justice in the United States (hereinafter U.S.). He distinguishes the models of restorative and retributive justice. Restorative justice is presented as a new paradigm of criminal justice or as an alternative and opposite to the retributive justice. In his famous work of 1990, *Changing Lenses: A New focus for crime and justice*, Zehr writes:

Crime is a violation or harm to people and relationships.

The aim of justice is to identify obligations, to meet needs and to promote healing. The process of justice involves victims, offenders and community in an effort to identify obligations and solutions, maximizing the exchange of information (dialogue, mutual agreement) between them.

In other words, crime violates people. Violations always create obligations. Justice should involve victims, offenders and the community in search to identify needs and obligations so that things can be made right"<sup>4</sup>

Rather than focusing on the weaknesses of the offenders and the victims, restorative justice seeks to highlight their strengths and capabilities, and its goals are restitution and healing of victims and repairing the disturbed relationship with the offender.

A similar definition, which is often cited in the literature and which outlines the procedural features of restorative justice is given by Tony Marshal.

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<sup>2</sup> Christie, N. (1977) "Conflicts as property", *The British Journal of Criminology*, Vol. 17 No1

<sup>3</sup> Schmid, J. Donald (2001) "Restorative Justice in New Zealand: A Model For U.S. Criminal Justice", Wellington, New Zealand, retrieved 15.07.2013, <http://www.fulbright.org.nz/voices/axford/docs/schmidd.pdf>, p. 6

<sup>4</sup> Ibid. p.6 retrieved 15.07.2013

He defines restorative justice “as a process in which both parties meet together to settle the crime conflict and its further implications in the future.”<sup>5</sup> Because the core values of restorative justice, such as forgiveness, responsibility, apology, correction, community participation and treatment, are not included, this definition is criticized for its restrictiveness.

According to Bazemore and Walgrave, who are also strong advocates of restorative justice movement, restorative justice is every action primarily oriented to implement justice through compensation for damage caused by the offense. The above definition promotes the development of a system that would be an alternative to the existing punitive system and which would be directed towards achieving justice through restoration.<sup>5</sup>

Galaway and Hudson highlight several fundamental elements in the definition of restorative justice. Starting from the offense, primarily as a conflict between individuals that result in injury to the victim, offender and community and secondarily, as violence against the state, they claim that, the purpose of the restorative process is to create peace in the community through the active participation of the parties and their reconciliation and to find an appropriate solution to compensate for injuries caused by conflict.<sup>6</sup>

In 1995, the famous representative of the Christian Church in New Zealand and an advocate for the restorative justice approach to conflict resolution, Jim Considine, in his 1995 book *Restorative Justice - Healing The Effects Of Crime*, writes:

Restorative justice is a philosophy that offers us a chance to practice the qualities that make people great – true justice based on apology, compassion, healing, mercy, reconciliation, forgiveness and, where appropriate, sanction. It offers the processes whereby those affected by criminal behaviour – be they victims, offenders, the families involved or the wider community – all can have a part in resolving the issues that flow from the offending.

We need a quality of criminal justice that recognises the immense value that these virtues bring to the quality of life and acknowledges the centrality of and need to enhance and protect the common good. No one is saying ‘be soft on crime’. Rather the plea is to take this

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<sup>5</sup> Walgrave, L. (2001) “On Restoration and Punishment Favourable Similarities and fortunate differences”, in Morris, A. & Maxwell, G. (eds.) *Restorative justice for juveniles – Conferencing, mediation and circles*, Hart Publishing, Oxford and Portland, Oregon

<sup>6</sup> Barton, C (2000) “Restorative justice empowerment”, VOMA publication, retrieved 15.08.2013 [http://www.voma.org/docs/barton\\_rje.pdf](http://www.voma.org/docs/barton_rje.pdf)

tougher option and utilize all the great human qualities that reflect a power that can and does change human behaviour for the better. Now is the time for a radical shift to a parallel system of criminal justice involving restorative processes. These include conferencing, victim offender facilitation and more diversion.<sup>7</sup>

Braithwaite, one of the first advocates of restorative justice in Australia and New Zealand, sees the restorative justice vision as changing the way in which we accomplish justice in the world, a way of thinking, behavior and judgment. Restorative elements such as healing, moral learning, community participation, dialogue, forgiveness, accountability, apology, correction, are embedded in his view of restorative justice. He perceives victim healing and restoration as restoration of our sense of security, dignity, harmony based on a feeling that justice is done. However, according to Braithwaite, restoration of the balance between the offender and the victim is only acceptable if there is a real balance between the two sides (the offender and the victim) prior to the crime. The following example clearly indicates this: we can not expect restoration of the balance between the offender who has committed the theft to feed his children and the victim by requiring the offender to pay the cost of stolen bread. According to Braithwaite, the harmony between the offender and the victim can be established only if we raise the question: why are children hungry and what could be done to alleviate the situation? So, the dialogue between the two parties should include discussion of all issues that are relevant to the case, although restorative justice can not solve the deep structural injustices that cause hunger as a global problem.<sup>8</sup>

Studying restorative roots in many societies, Braithwaite, would like to preserve the restorative traditions that are part of the culture in every society, although he says “*there is no society without retributive traditions*”.<sup>9</sup>

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<sup>7</sup> Schmid, J. Donald (2001) “Restorative Justice in New Zealand: A Model For U.S. Criminal Justice”, Wellington, New Zealand, retrieved 15.08.2013  
[http://www.voma.org/docs/barton\\_rje.pdf](http://www.voma.org/docs/barton_rje.pdf)  
<http://www.fulbright.org.nz/voices/axford/docs/schmidd.pdf>, p. 17

<sup>8</sup> Braithwaite, J. (1996) “Restorative justice and a better future”, available at: retrieved 30.03.2012 <http://iirp.org/library/braithwaite.html>

<sup>9</sup> Braithwaite, J. (1999) “Restorative justice: Assessing optimistic and pessimistic Accounts”, in Tonry, M. (ed.) *Crime and Justice: A Review of Research*, Vol. 25, p.1-127, retrieved 15.08. 2013  
<http://www.anu.edu.au/fellows/jbraithwaite/pubsubsubject/restorativejustice/index.php>

Protagonists on the American continent who promote compensation for damage caused by the offense as one of the primary goals of restorative justice are Daniel Van Ness & Marty Price. According to Van Ness, restorative justice is a different way of thinking about how to respond to crime as victims and offenders, and as law enforcers and representatives of the judicial system. Basically it is a new understanding of crime, not only as a violation of the law, but also as causing injuries to victims, communities and to the offenders themselves.<sup>10</sup>

The term restorative justice and its meaning are still on the agenda of many international conferences, scientific meetings and conferences of certain international governmental and non-governmental organizations that have enacted several important documents that incorporated elements, standards and best practices of restorative justice. We highlight the *United Nations Declaration on Fundamental Principles on the Application of Restorative Programs in Criminal Matters* adopted by the Economic and Social Council in 2002. It is a short but important document that provides clear explanations of what the restorative process and its results mean. The victim, the offender and others members of the community all actively participate in the process in order to address issues arising from the crime and to achieve reparation, restitution, or certain social services. Restorative measures need to meet the individual and common needs and responsibilities of the parties and to achieve their successful reintegration.<sup>11</sup>

Taking into account the previous mention, we can conclude that there are different definitions of restorative justice. Some stress its value as an important new way of responding to crime. Others see restorative justice as a replacement for the traditional criminal justice. Still others see it as a process that includes stakeholders in solving the crime event. Hence, there is no single term or process for restorative justice.

We can, however, draw the conclusion that, in the criminal justice area, restorative justice means a new and different response to crime, a response that requires new restorative justice. If the crime takes away or disrupts some possession, justice can be established by restoring the right of the owner to again enjoy his possession, as well as ensure that it will not be disturbed in the future. Or, if a person caused someone physical or mental pain, only if he reimburses and

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<sup>10</sup> Van Ness, W. Daniel (1998) "Restorative Justice: International Trends", presented at Victoria University Wellington, New Zealand, retrieved 10.09.2013 <http://www.poderjudicialcoahuila.gob.mx/cursoprocesopenal/pdf/van-ness-int-trends.pdf>

<sup>11</sup> Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, ESCO Res.2000/14 U.N.Doc.E/2000

mitigates the pain, will justice be served. Other questions about whether the offender has received deserved punishment or whether it corresponds to the degree of severity and the nature of the crime is foreign to the theory of restorative justice because the guilt of the offender is not the focus of the attention.

It is said because crime hurts, justice should heal. But what does the crime hurt? Crime undermines the peace, security, harmony, normal life of the victims, it narrows and broadens the social environment and, of course, it hurts the relationship between the offender and the victim. Therefore, measures and activities of the affected parties should be directed towards restoring peace, security and harmony between them. The priorities of the victims are to restore the lost, of the community to ensure a peaceful life among its citizens and of the criminal justice system to protect the offender and the victim and to mitigate negative consequences of the crime. In order to achieve that, restorative response to crime is appropriate solution.

## **2. Restorative Interventions: Punishments or Alternatives to Punishments**

The literature presents a number of different understandings of the essence of punishment. Different views of that issue are also found among advocates of restorative justice. For some of them, the intention of inflicting pain is viewed as one of the basic criteria for distinguishing punishment and restitution.<sup>12</sup> In restorative interventions, the intention is constructive and therefore can not be defined as punishments. In restorative justice, the pain is secondary, a side effect and obligation imposed on the offender that should be socially constructive and contribute to the compensation of the harmful effects caused by the offense. Disapproval of the crime does not require strict treatment of the offender. It should be disapproved by the affected parties: the offender, the victim and the wider community.<sup>13</sup> If the punitive reaction is limited to penal sentence, then its

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<sup>12</sup> Dignan, J. (2003) "Towards a systemic Model of Restorative Justice: Reflections on the concept, its context and the need for clear constraints", *Restorative justice and criminal justice-competing or responsible paradigms?*, Hart Publishing, Oxford and Portland, Oregon

<sup>13</sup> Walgrave, L. (2001) "On Restoration and Punishment Favorable Similarities and fortunate differences", in Morris, A. & Maxwell, G. (eds.) *Restorative justice for juveniles – Conferencing, mediation and circles*, Hart Publishing, Oxford and Portland, Oregon, p. 28

goal can be harder to achieve. In the context of the previously mentioned ideas, Braithwaite rejects punishment as a component of restorative justice, saying that the restorative process is designed to help people to be less repressive.<sup>14</sup>

However, other protagonists of restorative justice for example, Anthony Duff, consider that restorative interventions are not alternatives to punishment but alternative punishments. Duff strives to make retribution a part of the response to the offender because he and his supporters consider that restorative and retributive justice are compatible, and even that retribution is essential to achieve restorative justice.<sup>15</sup> His proposed model of restorative justice is called “the making amends model” or model of making changes because it involves the recognition of responsibility and an apology by the offender, with an obligation to compensate for damages. This model, although it is significantly different from the concept of punishment, also includes imposing orders. First, the request for recognition of responsibility includes condemnation of the offender and his behavior. Second, every result that comes out of the process can deprive the offender of significant interests and goods, such as his property, if he has to pay compensation, or his liberty, if he needs to perform a particular task to repair the damage. The offender can not simply choose “nothing has happened”. If he does,, he will have to face the alternative penal system. Since the victim-offender mediation results in loss of one's interests, imposing certain obligations is necessary whether the offender voluntarily agrees to participate in victim-offender mediation process or not.<sup>16</sup>

Kathleen Daly offers a similar opinion, according to which restorative justice is punishment because it leads to unpleasant obligations for the offender.<sup>17</sup> She believes that restorative justice should be seen as an alternative form of punishment, rather than as an alternative to punishment. In other words, it is a more constructive use of the right to punish, rather than something other than punishment.

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<sup>14</sup> Frederiksen, E. (2005) “Restorative justice: Rethinking Justice in a postcolonial World”, retrieved 10.08 <http://www.cpsa-acsp.ca/papers-2005/Frederiksen.pdf>, p.7

<sup>15</sup> Johnstone, G. (2002) *Restorative Justice – ideas, values, debates*, William Publishing, Devon

<sup>16</sup> Von Hirsch, A., Ashworth, A. & Shearing, C. (2003) “Specifying Aims and Limits for Restorative Justice: A making Amends Model”, *Restorative justice and criminal justice-competing or responsible paradigms?*, Hart Publishing, Oxford and Portland, Oregon

<sup>17</sup> Walgrave, L. (2001) “On Restoration and Punishment Favorable Similarities and fortunate differences”, in Morris, A. & Maxwell, G. (eds.) *Restorative justice for juveniles – Conferencing, mediation and circles*, Hart Publishing, Oxford and Portland, Oregon



In addition, the claim is often made that shame as an integral element of restorative justice is painful feeling, and therefore its proponents should not deny the pain? According to Loge Walgrawe, restorative interventions can be painful, but are not punishments because the pain is not inflicted intentionally. However, a similar response is given by proponents of retributive justice when they say that the infliction of pain is not their primary goal or something they desire. So, if both, retributive and restorative justices deliberately inflict pain, then there is no clear difference between them.<sup>18</sup>

Therefore, if we accept the opinion that restorative interventions are alternative punishments, then, the dilemma of whether or not punishment means retribution appears to be more blurred.

Punishment definitely does not mean retribution, and punishment and retribution are not synonymous and therefore a logical conclusion is that restorative and retributive justices are two concepts of justice. According to the concept of just deserts, the offender is punished because he deserves to be punished for his unacceptable behavior. That is the etymology of the word retribution which in Latin is *retributio*- I will return. So, the real meaning of punishment is much wider than retribution, because punishment includes not only punishment, what is deserved by retributive elements, but also requires the correct punishment, deterrence, prevention, rehabilitation, i.e. restorative elements.<sup>19</sup> That is one side of the answer that leads to the other side, which is that restorative justice is not the opposite of punitive/retributive justice, because in practice, restorative responses to crime incorporate retributive measures and elements. It is hard to imagine a social order in which retribution is not regulated as an appropriate response to serious crime. Therefore, it should not be a surprise that restorative justice does not deny retributive measures, but includes and uses them in a constructive manner in the interest of the affected parties.<sup>20</sup> It is really difficult to imagine how the restorative process would be widely accepted unless it is complementary with the retributive responses of the criminal justice system or if direct incorporation of retributive elements in the restorative measures and programs is not allowed. This is recognized by Judge McElrea, who is involved with family group conferences in New Zealand for rape cases, found that the agreement between the parties may still include imprisonment as part of a joint

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<sup>18</sup> Johnstone, G. (2002) *Restorative Justice – ideas, values, debates*, William Publishing, Devon, p. 117

<sup>19</sup> Barton, C (2001) “Empowerment and Retribution in Criminal and restorative justice”, VOMA publication, retrieved 10.06  
[http://www.voma.org/docs/barton\\_emp&re.pdf](http://www.voma.org/docs/barton_emp&re.pdf),

<sup>20</sup> *Ibid*, p.9

solution. Punishment, though not the dominant influence, still plays a role in part of restorative justice.<sup>21</sup>

### 3. Restorative Justice versus Retributive Justice

Sharp contrasts between restorative justice and retributive justice claim that restorative justice focuses on compensation for damages, while retributive justice focuses on the punishment for the offense. Restorative justice is characterized by dialogue and mediation between the parties, while retributive justice is characterized by antagonistic relations between parties. Finally, restorative justice presupposes active participation of community members, while for the retributive justice community is represented by the state. These comparisons are wrong. According to Daly, justice has multiple goals, which involve certain elements of retributive justice (for example, condemnation and disapproval because of previous offenses), of rehabilitative justice (for example, discussing the question: what can we do to reduce delinquent behavior?) and of restorative justice (for example, discussing the question how can offender compensate for the harm done to the victim?).<sup>22</sup> The above elements should be seen as connected, not independent of each other. The reason for the confused image is that different people understand punishment and retribution differently. Some believe that imprisonment and fines are punishments because they are focused on deprivation, while probation or reparative measures (work in favor of the victim, community work) are not punishments because their intent is to be constructive. Others define punishment more broadly, as something that is not enjoyable and that the offenders feel is a burden. Therefore, Daly suggests the idea of older and newer forms of justice. In the older justice, Daly includes current case law which does not allow interaction between offender and victim, where attorneys and other professionals speak and make decisions. In the new justice, Daly includes previous social practices in which victim and offender together with other legal actors make decisions intended to compensate the victim.<sup>23</sup>

However, if punitive/retributive elements are not considered as part of the mutual agreements among the affected parties, the use of alternative dispute resolution can never be accepted as practice in criminal justice. This is true in those cases in which restorative responses are most needed (for more serious offenses and where there is a greater likelihood of re-offending). Also, it is wrong

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<sup>21</sup> Ibid, p.10

<sup>22</sup>Daly, K. (2001) "Restorative justice: The Real story", retrieved 10.08: [http://www.griffith.edu.au/\\_\\_data/assets/pdf\\_file/0011/50321/kdpaper12.pdf](http://www.griffith.edu.au/__data/assets/pdf_file/0011/50321/kdpaper12.pdf), p. 19

<sup>23</sup> Ibid, p.13

to think that punitive elements in one agreement automatically weaken its restorative purpose. As Barton says: “some appropriate level and form of punitiveness will enhance the effectiveness of the restorative justice response, and will often have to form part of agreements to be acceptable to the relevant parties. That wrongdoing deserves punishment is a fundamental aspect of our reality, even if that reality is, in part, socially constructed. Our liability to punishment is an ineliminable part of what defines us as mature and responsible members of the moral community. As a result, in many cases of serious victimization, no amount of therapy, or indeed conference discussion, may replace a victim’s and the community’s need to know that wrongdoing is punished, that justice, including justice in the retributive, just deserts sense, is done”.<sup>24</sup>

Hence, the question of whether restorative justice is the opposite of retributive justice? The advocates of so-called principle punishment argue that justice demands punishment be based on concrete, certain principles, especially punitive sanctions must be proportionate to the seriousness of the offense and be consistent with the sentences in similar criminal cases. The obvious answer of principled defenders of sanctions is that restorative justice measures are not intended to punish and therefore the principles of punishment can not be applied. But, the opposite view is that these principles can be applied even when the punishment is called by another name such as treatment or repair. Opponents have no doubt that reparation by offenders to victims, when it is accompanied by any degree of coercion, is a form of punishment because it meets the defined characteristics of a punishment; that is it clearly imposes obligations on the offender that are not welcome.<sup>25</sup> So, restorative justice is not an alternative to conventional repressive justice, but is an addition and the two elements should be seen as partners.

The view that retribution is compatible with the restoration can be proved through historical and current practice. Current restorative practices are inspired and modeled from historical traditional systems of conflict resolution that are community-based and are best known for their retributive character. For example, the traditional meetings of the indigenous Maori population in New Zealand may decide that the family of a murder or rape victim can kill the offender for what he

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<sup>24</sup> Barton, C (2001) “Empowerment and Retribution in Criminal and restorative justice”, *VOMA publication*, retrieved 10.06 [http://www.voma.org/docs/barton\\_emp&re.pdf](http://www.voma.org/docs/barton_emp&re.pdf), p. 10 -11

<sup>25</sup> Johnstone, G. (2002) *Restorative Justice – ideas, values, debates*, William Publishing, Devon, p. 33

did, as compensation for the loss.<sup>26</sup> As previously mentioned, some advocates of restorative justice have contradictory approaches. Morris and Young have said that retributive justice is the opposite of restorative justice and therefore can not be part of it. At the same time they agree that restorative justice can not exclude prison sentences as possible justifiable solutions if the legitimate parties of restorative process agree with them. It is very wrong, too, when some advocates of restorative justice in trying to portray traditional systems of indigenous people as restorative, consciously or unconsciously deny or mask the retributive and retaliatory nature of these practices. Consedine goes further because he denies the retributive nature of restorative practices in Australia by explaining the process of compensation (pay back) or pay back feature of restorative justice.<sup>27</sup> As long as social peace between the parties in the conflict and between the offender and the community is restored, this process can not be called anything else but restorative, as also monitored by the community.

So, the conclusion is justified that they are two compatible practices. The extent, form and mix of retributive and punitive elements in the restorative process would certainly depend on the number of different factors, such as culture, tradition and other circumstances in society. The punishment is appropriate and often necessary response to crime, as without some level and form of punishment, justice, including restorative justice is simply impossible to achieve. As Barton write: "Failure to recognize the obvious and visible punitive retributive elements in restorative interventions shows not only the failure to identify the key problem in the criminal justice system, but also a lack of understanding of the nature of restorative justice and restorative process".<sup>28</sup>

## Conclusion

The perception of crime as human conflict between two sides that can be resolved through reconciliation of disturbed relations between the parties returned to the new restorative approach in solving the problem. The strength of restorative approach not lies in the rejection and denial of retribution but in strengthening and encouraging the offender, the victim and the community together to address the causes and consequences of unacceptable behavior. Restorative interventions find their form in the legislation and practice of the

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<sup>26</sup> Barton, C (2001) "Empowerment and Retribution in Criminal and restorative justice", *VOMA publication*, retrieved 10.06  
[http://www.voma.org/docs/barton\\_emp&re.pdf](http://www.voma.org/docs/barton_emp&re.pdf), p.11

<sup>27</sup> Ibid, p.12-13

<sup>28</sup> Ibid, p.15

countries in the world through the use of informal, alternative measures and procedures to deter or as an additional part of the court trials. One of the goals of restorative justice is to replace the forms of criminal justice as the only task of the state and to empower the community and affected parties to work together in reducing crime.

Restorative justice and retributive justice are not incompatible practices in response to crime. As there are retributive elements in restorative processes, so there are restorative elements in the court trials.

In the Republic of Macedonia, restorative justice was incorporated in the new Law on Juvenile Justice<sup>29</sup> (enacted in 2007, but come into force on September 2009) by introducing informal procedures to resolve criminal disputes i.e. victim-offender mediation. Restorative response is based on the principle of diversion from court trial that should be proceed only for crimes sentenced to more than three years imprisonment.

But VOM process does not replace the criminal justice system. The victim and offender can reach mutual agreement how to resolve the criminal case, facilitated by a third neutral party-mediator out of criminal justice system. If the mediation process is successful, the agreement should be confirmed and verified by the public prosecutor or the juvenile court.

So far, there is no case referred to VOM in our practice. Therefore, if we want to apply restorative measures we need to develop a new culture of dealing with conflicts. Instead of reporting the case to the police station or filing private lawsuits to the court, the primary effort of the affected parties should be to resolve the case through reconciliation and mediation. Therefore, social groups, such as NGOs, educational institutions, other public services and local community as well, should have a complementary role with the state to raise individual and community awareness of the role and purposes of restorative justice measures.

Although restorative justice can achieve the goals of punishment in terms of special and general prevention, maybe better than the criminal justice, it should not replace the criminal justice and judicial proceedings in criminal cases. The main challenge is to give to the affected parties their right, under certain conditions, to choose whether they want together to resolve the crime, to re-establish disturbed relationship and to restore the harm done to the victim. At the same time, the community needs to understand the human dimension of the crime and the importance and value of reconciliation between offender and victim, including community, as secondary victim of the crime.

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<sup>29</sup> Law on juvenile justice, Official Gazette of the Republic of Macedonia No 87/2007

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