

Theories of Restorative Justice*

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Theories of Restorative Justice

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Abstract:

The growing prominence of *restorative justice interventions* necessitates a reconceptualization of criminal justice in terms of a new paradigm. The most plausible candidate for this is an *empowerment paradigm of justice*. However, an overarching theory of criminal justice in these terms needs to be complemented by more fine-grained theoretical explanations of how and why conventional and alternative criminal justice interventions work the way they do. The paper discusses four such explanations:

1. Reversal of moral disengagement
2. Social and moral development
3. Emotional and moral psychological healing
4. Reintegrative shaming

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What is a fair and just response to a wrongful and criminal act, and how is this best determined? Traditional wisdom concerning such questions is gradually giving way to a new reality in criminal justice: *restorative justice interventions*. This new phenomenon in criminal justice allows, and even necessitates, a reconceptualization of criminal justice in terms of a new paradigm. According to traditional wisdom, the just and fair (or the most appropriate) response to a criminal act is best determined by criminal justice professionals. The main deficiencies of this approach are that

1. Professionals, no matter how competent they may be in their respective fields, typically do not possess the detailed knowledge and appreciation required for addressing successfully the specific justice (and welfare) needs of the principal parties (victim and offender) in the criminal justice dispute. Only the parties themselves and their close communities of care (typically family members and friends) have the requisite detailed knowledge of their personal needs and circumstances to come up with truly constructive and adequate responses and solutions to the criminal incident, its causes, and its many consequences.
2. Criminal justice professionals and bureaucrats inevitably operate with bureaucratic and procedural priorities that usually fail to reflect the justice needs of the primary stakeholders involved. As a result, outcomes and resolutions imposed by professionals tend to prove unhelpful, or even counterproductive, for the people who are already in considerable or serious trouble and distress, and who have the most to lose or gain by the criminal justice response.
3. The parties feel no ownership over responses and outcomes that are decided, and are forced on them, by others. Consequently, even if wise and competent, decisions by professionals will tend to result in less stakeholder satisfaction (probably unfairly), than the very same decisions would have if they were arrived at by the parties themselves in negotiation with one another.

4. Traditional processes of the criminal justice system disempower both parties in the conflict and create a sense of isolation and unnecessary alienation between them, thus exacerbating feelings of helplessness, anger, hatred and fear, which in turn worsen the plight of everyone involved on both sides.
5. Arising from an antiquated criminal justice theory, traditional criminal justice processes fail to acknowledge that seriously wrongful and criminal acts are primarily a violation of specific people, namely the victims of crime (where there are identifiable victims), not the state, or “The Law,” “The Crown,” “The Queen,” or “The People,” and that therefore it is the victim who is the primary and most legitimate claimant against the offender in a criminal justice response.¹ The subrogation of the victim with such abstractions in criminal justice is increasingly seen as indefensible, and traditional criminal justice systems have responded to victim justice issues with too little, too late.²

While defending the validity of these reasons falls beyond the scope of this paper, it has been principally because of them that the past decade has seen the rapid proliferation of restorative justice interventions around the world. The new wisdom with which these interventions come to us holds the opposite of the old, that the critical decisions of a criminal justice response (concerning justice, prevention, and welfare) are best made by the principal parties (victim and offender) themselves, preferably in dialogue with one another in the presence of their respective communities (typically family and friends). According this wisdom, this is the case quite generally wherever there is an identifiable victim and responsibility for the offence is not in dispute, and both parties are willing to meet in an attempt to settle the matter through a process of discussion and negotiation in ways that are meaningful and right for *them*, provided that their agreements fall within the law and are not obviously harmful to the public interest. It is only when one or more of these conditions are not met, or where there is no mutually satisfactory agreement between the parties, should a case be dealt with through traditional processes of the criminal justice system.

¹ For a more complete argument on this point, see Barton 2000c.

² These responses have tended to be in the form of victim-specific legislation and Victim Impact Statements, both falling substantially short of meeting legitimate victim needs and interests in the system’s response to the offence. (Barton 1999)

The difference between conventional and restorative justice can be most usefully articulated, not in terms of the (false) *retributive/restorative* dichotomy that figures so prominently in the restorative justice literature, but in terms of *paradigms of empowerment and disempowerment* of the primary stakeholders (victim, offender and their immediate communities of concern and care) in the criminal justice system's response to the crime.³ However, my purpose here is not to be critical of alternative conceptualizations of what restorative justice is fundamentally about. Rather, my purpose is constructive, and can be placed in context with the following observation. An overarching theory of criminal justice in terms of empowerment and disempowerment still leaves scope for, and possibly needs to be complemented by, more fine-grained theoretical explanations of how and why restorative justice interventions work the way they do, and why conventional responses to crime have little chance of doing any better than they have already done up to this point. In that context, the purpose of my paper is to draw attention to what are, perhaps, the four most relevant and compelling theoretical explanations that fall into this category (of the fine-grained).⁴ They are:

1. Reversal of moral disengagement
2. Social and moral development
3. Emotional and moral psychological healing
4. Reintegrative shaming

1. Reversal of moral disengagement

This is a moral-psychological theory, *moral-psychological* in the sense that it is concerned with the psychology of a person in relation to moral matters (as identified and expressed in moral judgements, in terms of right and wrong). The hypothesis that moral re-engagement plays an important role in restorative justice conferences starts with the observation that when someone engages in activities which are harmful to others, they will tend to silence their

³ Barton 1999 (Ch. 10), 2000a.

⁴ A fifth explanation, one that proceeds in terms of a care-ethical conceptual framework, is equally compelling. On a comparison of conventional and restorative justice processes from a care-ethical perspective, see Barton & van den Broek 1999. <http://www.ethics-justice.org/v2n2/conference.html>

conscience by means of various internal mechanisms of moral disengagement. In a different context, Bandura identified four such moral psychological mechanisms of disengagement.⁵

- a) Rationalisations about good consequences which are imagined to outweigh the bad ones (moral justification). ('If I make enough money on this, I can later help others.')
- b) Obscuring or otherwise lessening personal responsibility for the wrongful activity. ('It wasn't my fault. I just did what I was told;' 'I played only a small part in it;' 'Others do it, why can't I?')
- c) Denial of the seriousness of the harmful effects on others. ('They won't mind;' 'They will be fine;' 'It's only a few bits and pieces (TV, stereo, jewellery, etc.), and they can claim it on insurance.')
- d) Blaming, dehumanising, or otherwise derogating the victim. ('Foolish folk. Should not have left the window open;' 'Stupid man. He tried to be a hero;' 'He was a bastard;' 'She was a bitch;' 'Serves them right. They should not have ...')

These concepts are highly relevant to explaining and predicting the effectiveness of criminal justice interventions. They can be used to explain and predict, for example, the transformative power of well run restorative justice meetings. In the context of such meetings, where affected people tell the offender face to face about the disruption and the harm their actions caused, internal mechanisms of disengagement are seriously challenged and, in most cases they are successfully reversed. Such reversals of moral disengagement are important in criminal justice, not only for successful offender reintegration, but also from the point of view of victim restoration. They form part of the healing experienced by victims because, as restorative justice experience shows, the sight of disengaged and unmoved offenders is aggravating and distressing to victims - even though good facilitation practice can overcome even this impediment in the path of successful victim restoration and healing.

However, offenders are not the only ones who morally disengage following a criminal offence. There are good reasons to believe that similar mechanisms of moral disengagement often operate for victims and their supporters as well. Moral disengagement may play a

⁵ Bandura 1990.

significant role in allowing the ongoing intense hatred which may be felt toward the offender, and in their derogation and demonization evident in such phrases as ‘He should be hanged;’ ‘He is a monster;’ ‘He is an animal, not a human being,’ etc. However, as with disengaged offenders, when an angry victim comes face to face with the humanity, genuine remorse, and vulnerability of the offender in a restorative justice meeting, they are seriously challenged to re-examine their own disengaged, derogating views of the criminal as a moral monster. Such re-examination and spontaneous movement in the direction of acceptance, and possibly forgiveness, then becomes part of their own healing and possible conciliation towards the offender.

Evidently, these explanations can be plausibly generalized to include all criminal justice interventions. Restoration, emotional conciliation, and healing will be promoted by an intervention more or less in proportion to the extent to which it proves successful in reversing mechanisms of moral disengagement on both sides of the criminal justice dispute. The onus, of course, is on the relevant criminal justice professionals, especially Judges and Facilitators, to detect the presence of mechanisms of moral disengagement and to use the appropriate techniques for reversing them.⁶

2. Social and moral development

Morality may be viewed as a socially constructed reality within which people’s behaviour is judged in terms of moral right and wrong. (Socially acceptable or obligatory ways of relating and behaving towards others are deemed right, while unacceptable behaviour is deemed wrong.) Thus understood, morality plays an important function in society - it facilitates social harmony

⁶ On a note of caution, it would be counter-productive for professionals, and for anyone else, even to suggest to victims, for example, that forgiveness is in any way expected of them. Whether they reach that point during the intervention is an entirely individual matter to them. Although convenors of victim-offender meetings should aim to create the right conditions for emotional conciliation and healing, any expressions of remorse from offenders, or expressions of forgiveness from victims must be allowed to come from them. Attempts by professionals to engineer reconciliation are, for the most part, counter-productive, and are likely to be viewed by the stakeholders as undue coercion and manipulation.

and peaceful coexistence, without which good, fulfilling lives would be impossible. Peaceful coexistence and social harmony are thus heavily dependent on the *moralization* (moral enculturation) of society's individual members. Individuals who are failed by the moralizing process, and consequently fail to give effect to important values and social norms in their lives, become sources of danger and misery to others, as well as themselves as they face society's disapproval.

Learning from one's own and other people's mistakes and misdeeds forms an important part of an individual's social and moral development. There are good reasons to suppose that restorative justice meetings between offenders and victims are particularly effective in aiding the moral development of the participants. In a well run meeting there is going to be an indepth exploration of the details of the incident, its causes, and the many ways in which people were affected by it, including the offender. Even more importantly, participants voice their views about *why* this kind of behaviour is unacceptable and *why* it will not be tolerated. Finally, the meeting turns its attention to repairing the harm and the damage caused by the wrongful behavior. Upon having responded in appropriate ways to repair the harm, the offender is welcomed back into the moral fold with a clearly articulated expectation that they will have learned from the incident and that they will do better in the future. A restorative justice meeting, thus, offers a complete factual and moral picture of the wrongful behaviour, its circumstances, its causes, and its consequences. It also offers reasons as to *why* it is regarded to be wrong and unacceptable, and it demonstrates through example the need to put things right following moral mistakes and wrongful conduct. It is hard to imagine a more powerful way of learning from mistakes and moral misbehaviour. As John MacDonald put the matter with respect to the moral development of young offenders,

No one will argue against the right to silence, the right to legal representation, and competent counsel. But what we also suggest, and which lawyers can't offer, and don't want to offer, is the opportunity for the young offender to be educated from this experience. Young offenders have the right to learn the consequences of their crime. They have the right to understand how many other people it affects. They have the right to develop as full human beings through this process. Now if you let the opportunity slip by, by handing it over to lawyers, you deny them all those developmental rights.⁷

⁷ John MacDonald in "An Introduction to Family Group Conferencing." Video by REAL JUSTICE.

In talking about learning from mistakes and moral development we cannot ignore the hard cases: the relatively small number of recidivist offenders who commit a disproportionate amount of crime. Nothing so far seems to have helped in turning them around, and the question is whether restorative justice processes can make a difference where just about everything else has failed?⁸ The answer to that question, I believe, is affirmative. With the possible exception of sociopathic and otherwise damaged individuals, when done right, restorative justice meetings can make a positive difference. If nothing else, a well organised and facilitated meeting can be a catalyst for the individual and their community to look for lasting solutions to underlying problems, and it is hard to think of a better way of breaking through to recidivist offenders and inducing in them a process of moral change.

Von Willigenburg has suggested that it is possible to influence for the better even the moral development of confirmed serious criminals - people who show in their behaviour over a long period “a propensity to commit seriously criminal acts, with an emphasis on predatory acts which are condemned in nearly all societies in all historical periods, like serious battery, rape, murder, theft and robbery.”⁹ The moral outlook of some of these criminals, according to von Willigenburg, may be morally deficient as a consequence of a limited range of morally formative experiences. If so, the remedy is to provide them with such experiences. This, it seems to me, is what a well run restorative justice meetings do in fact provide.

The development of *moral maturity* in terms of character, moral awareness, sensitivity and perception, and good moral judgement is a gradual and complex process. Morally formative experiences are a crucial part of it. For example, the moral outlook and character of an eight year old will be influenced for the better if his parent hands in the lost valet they had found with an amount of cash in it, and it will be influenced for the worse if the parent keeps the cash, throws the valet in a rubbish bin and says, “It’s OK son. Everybody does it.” Through such

⁸ There seem to be exceptions, especially comprehensive programs for recidivist youth which take young people out of environments in which destructive influences are too powerful for them, and even for their families, to overcome. Giving young people the opportunity to absorb themselves in interesting and meaningful work, and other developmental activities is what seems to be needed. Such programs, it would appear, are too expensive to be introduced on a wide scale and typically are of relatively short duration.

⁹ von Willigenburg 1996, p. 127.

episodes and experiences our moral views and characters are gradually formed, and it should not be difficult to see that restorative justice conferences expose offenders to morally formative experiences of the most powerful sort. In fact, von Willigenburg's own example describes an important part of what typically happens in a restorative justice meeting.

Bringing criminals face to face with the consequences of their acts (for instance, by exposing them to their victims so that [they] may be in touch with the havoc caused in the lives of others) may induce a fine-tuning of moral perception. It may shape their imagination which is necessary for them to grasp what is real and to break through their self-preoccupied veil which partially seems to conceal from them what is going on when people are the victims of seriously criminal acts.¹⁰

von Willigenburg also considers that criminals who are in full reflective equilibrium may not be moved as easily by new experiences because "being in equilibrium strongly countervails changes in outlook."¹¹ These are the unreachable criminals, as opposed to the merely unaware ones who are much more susceptible to morally formative experiences. The question then is whether the unreachable criminals are beyond all hope of changing their moral outlook. Is there anything that may radically influence their moral development? It seems that there is. According to von Willigenburg,

What is needed here may be a kind of converting experience. This is the type of experience that forcefully invades into one's set of motivating reasons, because it is in some sense existentially moving. It is as if by shock one comes to see things one has never seen, one grasps the importance of reasons which one has never grasped.¹²

Recent research from the Netherlands mentioned by von Willigenburg seems to support the above hypothesis. Traumatic life events like the serious illness or death of a parent or beloved relative, or becoming oneself a victim of a serious offence, "sometimes have a surprising

¹⁰ von Willigenburg 1996, p. 137.

¹¹ von Willigenburg 1996, p. 138

¹² von Willigenburg 1996, p. 138.

influence on the outlook of juvenile criminals ... [which] cannot be completely explained in terms of growing attachment, commitment and involvement.”¹³

While von Willigenburg is tempted to think that it is the unexpected nature of the life event which is crucial to effect the necessary internal imbalance in the criminal’s state of equilibrium for bringing about a lasting and radical shift in outlook, I suggest that it is the sense of existential and moral crisis created by the relevant life events that is more significant in explaining the disturbance in the internal equilibrium of the subjects. Accordingly, the intentional induction of such crises in a controlled and humane manner in the lives of otherwise unreachable criminals holds the key to combating recidivism with a high degree of success even in the hardest cases.

There is no better way to induce and guide the outcome of such crises than in a restorative justice meeting, such as a conference or a sentencing circle where important people in the life of the offender are active participants. When, in addition to the victim and their supporters, the most important people in the offender’s life confront the offender with their unacceptable behaviour and make it clear that they are shocked, hurt, and ashamed by it, and that it is intolerable, there is tremendous pressure on the offender to re-examine their moral outlook and the kind of person they want to be.

In effect, restorative justice meetings confront recidivist offenders with a most critical choice. They can either choose to persist in their predatory ways and endure the pain of disapproval from their loved ones, or they can take a good hard look at the current course of their lives and ask themselves whether it really is worth it, considering all the pain and hardship it causes for everybody, not least of all themselves. Recognizably, this is a confronting and significant existential and moral life decision that a recidivist offender is pressed to make, but the key to its success lies in that the decision is socially forced on the offender by their own loved ones in an overall supportive and caring environment. My conjecture and prediction is that such a supportive, but at the same time very serious environment that does not tolerate excuses and rationalizations of inexcusable behavior, will see the majority of recidivist offenders choosing what is right over what is wrong – not least of all because in this instance choosing otherwise would be to choose rejection, isolation, and alienation from loved ones over being accepted by them and warm belonging.

¹³ von Willigenburg 1996, p. 139.

3. *Emotional and moral psychological healing*

Retzinger and Scheff have observed that there are two processes occurring side by side in a restorative justice conference, *material* and *symbolic* reparation. The process of material reparation results in a final settlement between offender and victim and typically consists of specific agreements about compensating the victim, community service, etc. The process of symbolic reparation is less visible. It is composed of gestures and expressions of courtesy, respect, remorse, and forgiveness. According to Retzinger and Scheff, the core sequence, consisting of the offender's apology and the victim's forgiveness, is the key to reconciliation, victim satisfaction, and decreasing recidivism.

It is the occurrence of the core sequence that generates repair and restoration of the bond between victim and offender, ... Without the core sequence, the path towards settlement is strewn with impediments; whatever settlement is reached does not decrease the tension level in the room, and leaves the participants with a feeling of arbitrariness and dissatisfaction. Thus, it is crucially important to give symbolic reparation at least parity with material settlement. Unless this is done, conferences may turn out, in the long run, to be only marginally better than traditional court practices. Symbolic reparation is the vital element that differentiates conferences from all other forms of crime control.¹⁴

These observations are generalizable beyond conferencing to restorative justice meetings in general. According to restorative justice philosophy, closure and emotional healing for the key participants are the vital characteristics of restorative outcomes, and symbolic reparation plays a recognizably crucial role in their achievement. Symbolic reparation is what allows and precipitates emotionally healing journeys being successfully undertaken by the relevant participants, a journey in the course of which people can rid themselves of the moral-psychological and emotional burdens from an oppressive and hurtful past.

Such a journey is not the same for everybody. For an offender it may mean moving from a state of intense anxiety and fear, or from self-protective defiance and indifference, or from paralysing feelings of shame, humiliation, and worthlessness to a state of genuine remorse, empathy for the victim, being ready to make amends and repair the damage caused, and a feeling of inner confidence and resolve that they can, and will, do better in the future. For a victim the

¹⁴ Retzinger and Scheff 1996, pp. 316 & 317.

healing emotional journey may consist in moving from a state of insecurity and fear, or feelings of humiliation and shame, or from (justified) indignation, resentment and anger, or even from intense feelings of hate, to a state of acceptance of what happened, and even feelings of empathy for the plight of the offender and being ready to forgive, or, at any rate, to put the matter behind them. Victim and offender supporters can also experience such emotional transition as part of their healing process, especially where they were seriously affected by the criminal incident.

Notwithstanding the differences, the healing processes of victims and offenders tend to be interdependent. For example, it is much easier for the victim to experience and extend forgiveness towards an offender who is genuinely apologetic and remorseful, as opposed to one who is disengaged and defiant. Similarly, it is much easier for an offender to drop their defensiveness in an atmosphere of respect, as opposed to one where they feel bullied and lectured by others with more power. Disrespectful treatment is likely to incite feelings of indignation and defiance even in an otherwise remorseful offender.

The considerations highlight, not only the importance of strong supporter representation in restorative justice meetings, but also the importance of good training for Facilitators. Successfully navigating participants through their emotional journeys requires great skill. Emotions can run high in restorative justice meetings and they are a minefield for the unskilled and the unwary. Victimisation and re-victimisation are ever present dangers in such, emotionally charged situations. Yet, it is impossible to deliver restoration and healing without dealing with the emotionality created by serious harm. The alternative of avoiding to deal with emotionality can only result in second-rate meetings where levels of participant satisfaction are bound to be poor. To be restorative, meetings between offenders and victims must aim to heal the effects of crime, and the nature of this healing is essentially moral psychological and emotional.

4. Reintegrative shaming

According to John Braithwaite,

Crime is best controlled when members of the community are the primary controllers through active participation in shaming offenders, and, having shamed them, through concerted participation in ways of reintegrating the offender back into the community of law abiding citizens. Low crime societies are

societies where ... communities prefer to handle their own crime problems rather than hand them over to professionals.¹⁵

The best place to see reintegrative shaming at work is in loving families. ... Family life teaches us that shaming and punishment are possible while maintaining bonds of respect. ... [F]amilies are the most effective agents of social control in most societies partly because of this characteristic;¹⁶

Properly understood, reintegrative shaming is definitely present in what are generally accepted (by both participants and observers) to be highly successful restorative justice meetings. This is especially the case where important people in the offender's life are present as active participants in the meeting, such as in conferences and sentencing circles. Braithwaite's theory explains what is confirmed in conferencing practice (not less so than in sentencing circles) time and time again: the importance of involving as many significant members of the offender's family and friends, their community of support and care. When important and respected people in the offender's life disapprove of the offender's *behaviour* while at the same time show clear signs of respect and acceptance towards the offender *as a person*, positive impact on the offender is maximal.

It is under such conditions that it becomes most likely that the offender themselves will internalize the distinction between *what they did* and *who they are*. And, once this happens, they are almost certain to align themselves once again with their family and community and will not hesitate in unconditionally rejecting their own wrongful behaviour as clearly unacceptable, which is, perhaps, the most critical first step in the process of successful restoration and healing. There are few things as distressing or aggravating to other participants, not least of all victims, as the defiance or indifference of the offender.

Having said that, there are a couple of points that must be clarified about the theory of reintegrative shaming. First, the theory provides only a partial explanation of what happens in restorative justice meetings. While it points us unmistakably in the right direction with regard to

¹⁵ Braithwaite 1989, p. 8.

¹⁶ Braithwaite 1989, p. 56.

the restoration and social reintegration of offenders, it does not go far enough to explain victim restoration and healing, which are just as important and are just as much part of restorative justice.¹⁷

The second point is that an unfortunate confusion surrounds the idea of reintegrative shaming. The confusion seems to be created by the word 'shaming,' as it is often taken to mean that offenders are intentionally shamed and humiliated in forums such as conferences. This is a misconception. For one thing, Braithwaite makes a clear distinction between *disintegrative* or *stigmatising shaming* on the one hand, and *reintegrative shaming* on the other.¹⁸ Disintegrative shaming happens when *the person* is stigmatised, demeaned, and humiliated for what they did. Reintegrative shaming happens when the person's *behaviour* is condemned but their self-esteem and confidence are upheld through positive comments about them and gestures of forgiveness and (re-)acceptance.

Moreover, restorative justice experience shows that, with rare exceptions, a feeling of deep shame is evoked naturally and automatically in an offender as they are confronted with the harmful consequences of their actions. This confrontation with harmful consequences is most powerful when the offender hears directly from the victim, from the victim's supporters, as well as from their own supporters about the trauma, the tremendous emotional and/or physical harm they all suffered as a consequence of their actions. The intense feelings of shame and remorse thus generated are further compounded by the explicit disapproval of the offender's behaviour by their own supporters, especially their close family and friends. All this happens quite naturally in the course of discussions of what happened and how people have been affected and the way they see the behavior. Therefore, there is absolutely no need to try shaming the offender intentionally, and people tend to naturally and instinctively avoid doing so in meetings. Indeed, deliberate and intentional shaming and humiliation would be counterproductive, as it would be likely to either crush all self-confidence in the offender, or incite their indignation and defiance, having been left with no option but to reject their rejecters.

¹⁷ To be fair, Braithwaite's theory is offender-focused by design. It does not purport to deal with victim justice issues.

¹⁸ Braithwaite 1989, p. 55.

According to Braithwaite's theory, this must be avoided. To prevent it from happening, the often overwhelming experience of shame by the offender in a restorative justice meeting must be eased through reassuring and positive comments about the offender's person by the participants. This is a crucially important role, which must be played by the offender's supporters in the meeting. Of course, sometimes even the most supportive families may fail to show adequate support in emotionally charged situations, which can be overwhelming. In such situations a skilled Convenor or Facilitator can still ensure through appropriate prompts that the requisite support for the offender is forthcoming. For example, when Dad says that he was deeply shocked when he heard that Johnny vandalised the local bus shelter, or that he violently attacked someone at school, the Facilitator should not miss the chance to ask 'Why?' As with many things in a well-prepared and well-run meeting, the answer is predictable: 'Because he is usually such a good and responsible kid.' It is simple but positive comments like this, which are incredibly important for winning over offenders in a restorative justice meeting. Respect and acceptance expressed through such comments are the essence of their successful social reintegration, which, evidently, is a crucial element in the concept of reintegrative shaming.

#. Conclusion

Sketchy as they are, these explanations and theories are suggestive of the following hypothesis. In terms of providing long-term solutions to criminal behaviour, the success or failure of a criminal justice intervention, whether conventional or restorative, depends significantly on the degree to which it allows, or promotes, the realization of the critical factors identified in these theoretical accounts. An intervention will tend to be helpful and constructive with regard to underlying problems to the degree that it succeeds in:

1. (re-)engaging the offender at a moral-psychological level with the consequences of their behavior.
2. aiding the moral and social development of the offender, so that they learn and become wiser for the experience.
3. aiding emotional and moral psychological healing from the trauma of the criminal incident through interaction between the parties and symbolic reparation.
4. tempering unequivocal disapproval of the wrongful *behavior* (shaming) with expressions of respect and acceptance of the individual into their community (reintegration).

Conversely, and intervention will fail to make a positive difference, and even tend to make things worse, to the degree that it fails to realize these factors. Finally, in line with the overarching theory mentioned in the Introduction, I suggest that these factors will tend to be realized by criminal justice interventions under conditions of empowerment, and conversely, they will be difficult to realize under conditions of disempowerment (of the primary stakeholders involved). It falls beyond the scope of this paper to defend, let alone test any of these hypotheses against relevant empirical research.¹⁹ For now, I leave it to others to examine their theoretical and practical usefulness in criminology and criminal justice.

¹⁹ Generally, traditional criminal justice responses are more disempowering to the primary stakeholders than are restorative justice processes, and empirical data clearly confirms that the identified factors tend to figure prominently in restorative justice meetings, and hardly at all in court. (Sherman, et.al, 1998) But there can be equally significant differences between various restorative justice programs in terms of empowerment. Some are very good at it, and some are downright disastrous, with unacceptably low levels of stakeholder satisfaction and correspondingly high levels of victimization, re-victimization and recidivism. (Barton 2000a,b.) Again, the degree to which the above critical factors are realized in these programs seems to be a direct function of this critical condition I refer to as the individual and collective empowerment of the primary stakeholders in the criminal justice response.

References

- Bandura, A. 1990. Mechanisms of Moral Disengagement. in *Origins of Terrorism*. W. Reich (Ed.). Cambridge: Woodrow Wilson International Center for Scholars and Cambridge University Press.
- Barton, C. & Karen van den Broek. 1999. Restorative Justice Conferencing and the Ethic of Care. *Ethics and Justice*, 2: 55 – 65. <http://www.ethics-justice.org/v2n2/conference.html>
- Barton, C. 1999. *Getting Even: Revenge as a Form of Justice*. Chicago and La Salle: Open Court Publishing.
- Barton, C. 2000a. Empowerment and Retribution in Criminal Justice. In Heather Strang and John Braithwaite (Eds.). 2000. *Restorative Justice: From Philosophy to Practice*. Aldershot: Dartmouth. (Ch. 4, pp. 55 – 76.) Also published in:
(2) *Journal of Professional Ethics*. 1999. Vol. 7(3&4) pp. 111 – 135.
(3) *Res Publica*, vol. 8, no. 3. 1999: 16 – 23.
- Barton, C. 2000b. Restorative Justice Empowerment. *Australian Journal of Professional and Applied Ethics*, vol. 2, no. 2. Also published in:
(2) *Just Peace?: Peace Making and Peace Building for the New Millennium*. (Proceedings of a Conference held 24 – 28 April 2000, at Massey University, Albany, Aotearoa/New Zealand) Edited by Warwick Tie. Massey University Centre for Justice and Peace Development. (pp. 50 – 62).
- Barton, C. 2000c. *Getting Even Again: A Reply to Davis*. *International Journal of Applied Philosophy*. vol. 14, Spring 2000.
- Braithwaite, J. 1989. *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press.
- Retzinger, S. M. & Scheff, T. J. 1996. Strategy for Community Conferences: Emotions and Social Bonds. In B. Galaway and J. Hudson (Eds). *Restorative Justice: International Perspectives*. Monsey, NY: Criminal Justice Press. (315 – 336)
- Shermann, L., Strang, H., Barnes, J., Braithwaite, J., Inkpen, N., & Teh. 1998. *Experiments in Restorative Policing: A Progress Report*. Canberra: Law Program. Research School of Social Sciences. The Australian National University.
- von Willigenburg, T. 1996. Criminals and Moral Development: Towards a cognitive theory of moral change. in Henry Tam (Ed.) *Punishment, Excuses, and Moral Development*. Brookfield: Ashgate Publishing Company. (127 – 141)