

Reconciling the Notions of Restorative Justice and Imprisonment

The Prison Journal

1–27

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DOI: 10.1177/0032885514548010

tpj.sagepub.com



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Abstract

Restorative justice (RJ) in the secure estate is widespread internationally, although piecemeal and inconsistent in its application. It exists in the form of many practices such as mediation, conferencing, circles, and panels. As the interest in RJ continues to grow, this research takes a step back to ask how reconcilable RJ is with incapacitation. Through a combination of normative thinking, literature review, and primary research that applied qualitative methodologies over a 3-year period, the article examines where the two notions meet in their intentions and expected outcomes. A new classification of restorative practices in prisons is proposed, placed in the context of case studies of existing programs from around the world.

Keywords

restorative justice, incapacitation, restorative practice programs

Problem Statement

The increasing number of prisoner suicides, the deepening racism and inequality in the secure estate (Elliott, 2011), prison overcrowding and the inhumane conditions to which prisoners are subjected,¹ high rates of reoffending (e.g., see Barabás, 2012; Barabás, Fellegi, & Windt, 2012; Elliott, 2011), and the rising costs of incapacitation as a policy and philosophy for crime control² are some

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of the factors quoted by reformists from around the world in their search for new avenues of justice, one of which is restorative justice (RJ).

RJ was reborn in the 1970s (Braithwaite, 1999; Gavrielides, 2011a), producing an unprecedented volume of academic and policy discussions on its potential. Many definitions have been developed since (Daly & Immarigeon, 1998; Gavrielides, 2007; Johnstone, 2002). For the purposes of this article, we accept that RJ is “an ethos with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue” (Gavrielides, 2007, p. 139). I have argued elsewhere that RJ “adopts a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals” (p. 139).

The application of RJ in the secure estate is widespread internationally (see Table 3), although piecemeal and “in the margins” (see Dhami, Mantle, & Fox, 2009; Edgar & Newell, 2006; Elliott, 2011; Gavrielides, 2012b; Guidoni, 2003; Johnstone, 2007). The limited literature on the evaluation of RJ practices in prisons suggests that when applied properly, they can render benefits for the offender, the victim, and the community (see Barabás, 2012; Gavrielides, 2012b; Liebmann & Braithwaite, 1999; Toews, 2006; Van Ness, 2007). This is not to say that there is not a strong sense of skepticism in the literature (e.g., Guidoni, 2003; Hirsch, 1999). It is not the intention of this article to engage with this debate. The focus of our research was somewhat different.

Dhami et al. (2009) noted that one of the reasons that RJ has been kept under the radar of prison governors, reformists, and prison policy makers is the identifying of in-prison programs as restorative. However, Van Ness (2007) countered that a number of prison projects self-identifying under the banner of RJ have nothing to do with the notion’s fundamental principles and outcomes.

In fact, the consistent message from the literature is that there is a fragmented picture of RJ in the secure estate (see also Gavrielides, 2012b; Johnstone, 2002), as its application is inconsistent and *under the radar* of research and evaluation. If this ambiguity is indeed a hindrance in RJ’s further development within the secure estate, then why is this the case? This question provided the impetus for the study.

However, we were not concerned with issues of conception in the narrow sense. We know that since its inception, RJ has struggled with definitional ambiguity, and this extends far beyond its application in the secure estate (see Gavrielides, 2008; Johnstone, 2002; Mackay, 2002). As Daly and Immarigeon (1998) put it,

Over the last two decades, RJ has emerged in varied guises with different names, and in many countries; it has sprung from sites of activism, academia,

and justice system workplaces. The concept may refer to an alternative process for resolving disputes, to alternative sanctioning options, or to a distinctively different, new model of criminal justice organised around principles of restoration to victims, offenders and the communities in which they live. (p. 21)

We saw RJ's conceptual ambiguity in the secure estate as a by-product of the wider question of how reconcilable its paradigm is with the concept of incapacitation. On the face of it, RJ and imprisonment appear to be in opposition. As early as 1977, Barnett spoke about a "paradigm shift," claiming that we are living a "crisis of an old paradigm," and that "this crisis can be restored by the adoption of a new paradigm of criminal justice" (p. 244). Braithwaite (1999), Christie (1977), and Zehr (1990) spoke about the transformative potential of the RJ paradigm and its "changing lenses" of how we view crime.

However, it is widely accepted that imprisonment is based on the philosophy of incapacitation, which, in simple terms, posits that if criminals are in prison, or under intense surveillance in the community, they will find it difficult to reoffend (Smith & Natalier, 2005). Incapacitation is not driven by the need to restore harm doing. It places emphasis on the criminal and the prevention of further crime by the convicted or other potential criminals who will hopefully observe punishment and be deterred (Elliott, 2011).

In posing our research question, we did not expect a straightforward answer, but rather to develop knowledge around the normative foundations underpinning the practices that we call RJ and imprisonment. This is not to say that without these foundations the RJ practice will not continue to exist within prisons. As it will be argued, RJ has done so for years. However, it is impossible to expect any further progress for the RJ practice (mediation, conferencing, circles, etc.) within prisons, if it refuses conceptually to accept the basic principles that drive incapacitation and vice versa.

As more and more governments are investing in RJ within the secure estate, this paper raises concerns around the reasons that drive policy reform in the secure estate. For instance, in 2011, the U.K. government gave £1.3 million to roll out training on RJ in all prisons,³ while Belgium has already spent millions of Euros to introduce an "RJ consultant" in all its prisons.⁴

Research Method and Caveats

In considering this project's research strategy, qualitative research was judged to be the most appropriate method. It was not our intention to paint a quantitative picture of RJ in the secure estate. If such a study was ever possible, it would require an incredible amount of resources and time. In fact, some have

argued that it is highly unlikely that such a scientific analysis of RJ in prisons can ever be achieved due to an array of factors such as sampling limitations, movement in the sample population, definitional confusion, access barriers, agreement on outcomes, and issues of confidentiality and ethics (see Gavrielides, 2007; Marshall & Merry, 1990).

According to Miles and Huberman (1994), qualitative research can “persuade through rich depiction and strategic comparison across cases, overcoming the abstraction inherent in quantitative studies” (p. 41). The qualitative approach also demanded that an adequate level of freedom was left to the respondents, allowing them to discuss and think at length and in their own terms. This could not have been achieved through the application of a quantitative design, mainly because this would have approached the investigated matters not through the examination of the substance of the sample’s responses, but of variables. In addition, our small-scale project had to allow for the possibility of issues emerging spontaneously from the data without being forced through fixed theoretical frames. Although the questions were intended to follow up the preliminary data from the literature, they merely aimed at stimulating imagination, providing an opportunity of identifying the sample’s thoughts, images, hopes, and fears.

The research design aimed to combine normative thinking with various qualitative methods, with a view to ensuring that our results were as accurate as possible. The research adopted a “nonprobability sampling” method and, more specifically, the rules governing “convenience sampling.” Therefore, it was essential that the limitations surrounding this approach were acknowledged. Bryman (2004), for instance, warned that the generated data cannot be used as the only basis for generalized conclusions. The yielded information, he said, “will only provide an insight into the sample’s views and attitudes towards the discussed topics” (Bryman, 2004, p. 100).

According to Shaw (1999), studies that are carried out with nonprobability sampling are not interested in what proportion of the population gives a particular response, but rather in gauging the range of respondents’ ideas. According to Shipman (1997), the dangers inherent in any generalization of data derived from the responses of a nonprobability sample will be minimized if analyzed in conjunction with evidence from the extant literature.

Therefore, the project started with an overview of the available literature and was then officially launched with an expert 3-day seminar that took place in London in November 2009. Thirteen criminal justice professionals (e.g., prison governors, probation staff, judges, prosecutors, and researchers)⁵ attended workshops organized by Independent Academic Research Studies (IARS).⁶

The preliminary findings from the workshops were complemented with a focused literature review, followed by original qualitative research that

combined 20 in-depth interviews with prison governors, RJ practitioners, policy makers and academics (see Table 1). The research was concluded with an expert half-day seminar that was held in London in November 2010. The seminar was organized by IARS in partnership with Open University. Forty experts in the field of RJ, policy, and criminal justice attended the seminar.⁷ Research ethics were observed by the IARS Academic Board, while the broader program fell into the European Commission–funded “Mediation and Restorative in Prison Settings” 3-year project (Barabás et al., 2012).

The data from the primary and secondary research were finally used for normative thinking and theoretical analysis of our central research question.

This article has been organized into three sections. First, it provides a summary of the debate and categories that are recorded in the extant literature on RJ in prisons. This account aims to develop an understanding of how RJ currently appears within the context of prisons. The discussion then moves on to expose some conceptual challenges. The implications of these challenges are also presented as these were captured by the in-depth interviews with practitioners and other experts. The next section analyses factors that create these challenges by addressing how reconcilable the concepts of RJ and imprisonment are. We then attempt to answer this question in the hope that a firmer normative RJ foundation can allow for future developments in RJ practice, policy, and research. A new classification of RJ practices in the secure estate is attempted using the normative argument that we developed through the primary and secondary research of the project. Existing RJ programs in prisons from around the world are used to contextualize this classification.

Extant Definitions and Categorizations

Arguably, the term *restorative justice* was first introduced in the contemporary criminal justice literature and practice in the 1970s.⁸ Van Ness and Strong (1997) claimed that the term was coined by Albert Eglash in a 1977 article (Eglash, 1977), but they then (Van Ness & Strong, 2010) cited research of Skelton (2005) who found that the 1977 chapter was a reprinted article from a series that Eglash published from 1958 to 1959.⁹

Here, we have accepted a broader definition of RJ as an “ethos.”

RJ, in nature, is not just a practice or just a theory. It is both. It is an ethos; it is a way of living. It is a new approach to life, interpersonal relationships and a way of prioritising what is important in the process of learning how to coexist. (Gavrielides, 2007, p. 139)

Table 1. Profile of Project Interviewees.

Interviewee	Area of expertise
HMP Grendon and Spring Hill, prison governor (retired)	Prison and RJ
Hull University, research director, MA in RJ	Research on RJ, academic
Prison Reform Trust, head of research	Prison and RJ policy
Youth Justice Board, director of secure accommodation	Prison and RJ
Association of RJ practitioners	RJ practitioner
HM Prison Hewell National Offender Management Service, RJ manager	Prison and RJ
Lambeth Mediation Service, mediator	Research on RJ, academic
Prison Fellowship International U.S. Sycamore Tree Program, director (retired)	Policy expert
West Midland Probation Service, victim-offender development manager	RJ practitioner
Board member, Youth Justice Board	Youth justice policy
Safer London Foundation, director (retired)	Criminal justice policy
NACRO, head of policy	Criminal justice policy
European Forum for RJ, chief executive officer	Research and policy on RJ
Centre for Justice and Reconciliation at Prison Fellowship International, executive director	Research and policy on RJ, academic
Independent RJ trainer and Researcher	Research, evaluation and training on RJ
Home Office, Antisocial Behavior and Youth Crime Unit	Youth justice policy
Southwark Mediation Centre, project manager	RJ practitioner
Open University, senior lecturer	Youth justice policy
London Probation, project manager	RJ practitioner
Metropolitan Police Service, detective chief inspector	Criminal justice practitioner

Note. HMP = Her Majesty's Prisons; RJ = restorative justice.

For Braithwaite (1999) and McCold (1999), the principles underlying this “ethos” are victim reparation, offender responsibility, and communities of care. McCold argues that if attention is not paid to all these three principles, then implementation will only be partially restorative.

In a similar vein, Daly (2000) said that RJ places “. . . an emphasis on the role and experience of victims in the criminal process” (p. 7) and that it involves all relevant parties in a discussion about the offence, its impact, and what should be done to repair it. The decision making, Daly said, has to be carried out by both lay and legal actors. The RJ ethos, as defined by Gavrielides, and the RJ principles, as developed by Braithwaite and McCold, must lead to certain outcomes if a practice is to remain genuinely restorative. These should relate to the victim, the offender, and the community (see Beven, Halla, Froylandb, & Steelsa, 2005).

Attempts to classify RJ practices in prisons have been numerous (see Dhami et al., 2009; Edgar & Newell, 2006; Immarigeon, 1994; Liebmann, 2007; Van Ness, 2007). These codifications tend to change depending on a range of factors such as the origin of the programs’ agencies (Immarigeon, 1994), the programs’ objectives (Van Ness, 2007), the programs’ inclusion of all, few, or none of the harmed parties (Newell, 2002a, 2002b), or the programs’ impact on the organizational and cultural aspect of prisons (Johnstone, 2007).

The latest literature groups prison-based RJ projects into five broad categories (Dhami et al., 2009). The first category is “offending behavior programmes,” such as Alternative to Violence Project (AVP) workshops. They are attended voluntarily by prisoners, but they do not include victims (Bitel & Edgar, 1998). The second is “victim awareness programmes,” such as the Sycamore Tree Project, developed by Prison Fellowship (1999). They are attended voluntarily by prisoners who are given the opportunity to interact (either in a direct or indirect way) with “surrogate victims.”¹⁰ They are usually delivered in group sessions and do not include restitution to their own victims, but provide opportunities to offenders to make symbolic acts of remorse such as poems, letters, and craftwork. The third is “community service work,” which includes projects that teach prisoners skills through work in the community that not only benefit the public but also prisoners’ prospects for postrelease success and integration (Carey, 1998). They do not involve interaction with the victim and are fairly prevalent in British prisons (Liebmann, 2007). The fourth category is “victim–offender mediation,” which includes an encounter (direct or indirect) with the prisoner and his or her victim. The final category refers to prisons with a complete RJ philosophy. These institutions have adopted RJ not just as a practice for the prisoners but also as an ethos and philosophy that guides their policies and procedures, induction programs, antibullying strategies, staff disputes, race relations, resettlement, and release strategies (Robert & Peters, 2002). Table 2 provides an illustration of the aforementioned five categories.

Table 2. Categorization of Prison-Based RJ Projects.

Categories of prison-based RJ projects	Key characteristics
1. Offending behavior programs	No encounter with victims; no direct reparation
2. Victim awareness programs	Encounter with surrogate victims; no reparation to the direct victim
3. Community service work	No encounter with the victim; no direct reparation
4. Victim–offender mediation (direct and indirect)	Encounter with the victim; direct reparation
5. Prisons with a complete RJ philosophy	Encounter with the victim; direct reparation

Note. RJ = restorative justice.

Grappling With the Restorative Notion

There seemed to be consensus among our sample that their “on the ground” experience with RJ had little to do with its normative vision. This finding is aligned with the views expressed by Dhami et al. (2009), Van Ness (2007), Johnstone (2007), Gavrielides (2012b), and others. For instance, our interviewed prison governors/staff and RJ practitioners/proponents agreed that when RJ is implemented in the secure estate, there is little awareness about it, even by the very agents implementing it. “Most of the times, prison staff will not realize that they are doing RJ, when they are,” one policy maker said. One practitioner pointed out,

One of the difficulties of identifying, measuring and rolling out RJ in the secure estate is that in the everyday reality of prison staff and in the chaotic lives of offenders, it cannot be pinned down as one isolated practice or phenomenon.

The interviewee continued,

When there is appetite for RJ in a prison, it will mostly be done in bits . . . some will use it for educational purposes, others for psychological support and mentoring and others for healing whether of a young person or the affected community.

This finding resonates with many RJ authors who have continuously warned the RJ movement to be cautious when claiming a practice to be restorative (e.g., see Braithwaite, 2002; Gavrielides, 2007; Roche, 2003).

Some interviewed practitioners who were open to the idea of a consistent and identifiable model of RJ within the secure estate warned of a potential threat of a narrow version of the practice. “A narrow version of RJ will not allow us to apply the educational and other preparatory stages that are needed in order for any encounter to be attempted,” one interviewee said.

The interviewed practitioners and prison staff also highlighted the extremely vulnerable nature of young prisoners who tend to be very emotional and insecure individuals. A few interviewees also quoted examples to illustrate the fear that prisoners carry not only in relation to their environment and themselves, but also of society and their victim. One practitioner shared the experience of a young person who had undergone a RJ program while in a secure institution. He described how frightened the young person was when he was confronted with the idea of meeting the victim he had assaulted. Repeating the young person’s own words, “meeting my victim was harder than hearing my sentence.” According to the same practitioner, another offender said to him, “I was so afraid meeting them for the first time as I was sure that the father would come to shoot me for what I did . . . not that I did not deserve it.”

A psychologist who was interviewed as part of our study stressed the significance of being able to instill a sense of hope and confidence in prisoners while involving them in a RJ program. “Without that hope, RJ practices have very little to offer within the secure estate.” The development of skills and “the right attitude that will allow prisoners to be integrated back into society as successfully as possible” were also highlighted. All in all, the interviewees advocated for a RJ model that is flexible enough to accommodate the educational, psychological, and other needs of young offenders, but at the same time retaining the core values underlying the RJ ethos.

The interviews and the group discussions among the practitioners, funders, government, and researchers indicated that the aforementioned conceptual challenges also had an impact on the funding of RJ practices within prisons as well as how evaluation and research are conducted. For instance, one interviewee said, “. . . RJ is not an easy concept to comprehend or accept. It is difficult to get it across within a short period of time.” According to our research participants, funders have often been led to

- think that RJ practice and practitioners are against the traditional criminal justice system—some may even believe that RJ was introduced to lead to a fundamental transformation of the prison system;
- associate RJ practices with religious beliefs;
- confuse RJ with individual practices such as victim–offender mediation;

- believe that RJ is something “new” and hence too risky or cumbersome to support;
- take RJ to be a “radical idea”; and
- believe that RJ is a “soft option” that should be used only for minor crimes and young offenders.

Our findings correlate with the extant literature. For instance Wilcox and Hoyle (2004) said, “Funding bodies need to be more specific about the nature of the interventions they are funding, or else they risk funding non-restorative activities” (p. 54). They move on to criticize the U.K.-based RJ projects that they were called to evaluate and were funded by the Youth Justice Board. They said, “There was a considerable amount of ‘drift’ from the aims stated in the bids, reflected by the fact that over 50% of interventions involved either community reparation or victim awareness only” (Wilcox & Hoyle, 2004, p. 54).

The findings from the fieldwork also indicated that the prioritization of funding resources for specific parties of crime affects the sponsoring of RJ schemes. This is mainly due to the fact that restorative principles place equal significance on all communities of interest. For example, funding specifically allocated to rehabilitating offenders may not consider RJ schemes to be appropriate. Likewise, funding for victim support programs may treat RJ as something just for the offender and maybe dangerous for the victim.

According to our research participants, the extant classification of RJ projects in prisons seemed to have aggravated this conceptual challenge of victim versus offender-based RJ practices. The group discussions also indicated that in the absence of a regulatory body that checks the quality of RJ practices, the question for funders is ensuring that the invested practice is one that is based on the norm’s true values. “We are not experts in RJ,” some funders said. They also said, “It should not be expected that we will be able to spot the difference between what is a practice that is indeed based on the values of RJ and what is not.” Another interviewee said,

. . . the term RJ is currently being used to label things that are in no means restorative for either party involved. And there are a lot of reasons for this, and one of them is money . . . some people came along with their punitive practices and labeled them RJ in order to get this money hijacking funding by nongenuine RJ programmes.

Moreover, according to the research, funding bodies introduce time scales and performance measurement targets into funded practices that usually undermine their effectiveness. The interviewees also pointed out that evaluation

needs to be large scale, and conducted at a sufficient length of time following an intervention to accommodate reoffending data. One practitioner said,

When it comes to asking for money, the problem is that RJ has a slow time delivery . . . this is especially the case with the government, which is where the money usually comes from. Funders, in general, want to see results now, and treat RJ as a “quick fix tool”; this often leads to disappointments and misunderstanding about what RJ really is and what it can offer.

Another practitioner pointed out,

Potential funding bodies will continue to insist on some measure of success or failure at a reasonably early stage, which is almost well short of the time needed to develop firm and efficient strategies of work . . . Rather than insisting on rigid academic conditions for “proper” evaluation, researchers are forced to develop modes of investigation that address success while accommodating the reality of what they are assessing.

Where Does the Heart of the Problem Lie?

Grappling with the concept of RJ within the secure estate should come as no surprise. As argued, this is not caused by lack of definitions on what RJ is or what its practices encompass. There is a plethora of them in the literature (e.g., see Braithwaite, 2002; Gavrielides, 2007, 2008; Johnstone, 2002; Marshall, 1996; Miers, 2001; Miers et al., 2001). The heart of the problem lies in our understanding of how RJ fits within the prison system. We are still struggling to understand how the principles of restoration can function with the punitive and top-down structures of the secure estate. This tension was reflected even in some of our interviewees’ initial reluctance to take part in our survey, as they believed that their involvement in a research project on prisons would undermine RJ’s development.

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

Barnett (1977) spoke of a “paradigm shift,” defining “paradigm” as “an achievement in a particular discipline which defines the legitimate problems and methods of research within that discipline.” Barnett claimed that we are

living a “crisis of an old paradigm”¹¹ and that “this crisis can be restored by the adoption of a new paradigm of criminal justice-restitution” (p. 280). Christie (1977)¹² claimed that the details of what society does or does not permit are often difficult to decode, and that “the degree of blameworthiness is often not expressed in the law at all” (p. 5). Christie argued that the State has “stolen the conflict” between citizens, and that this has deprived society of the “opportunities for norm-classification” (p. 5).

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

Admittedly, RJ purists continue to believe that RJ should sit outside the current criminal justice system including prisons. Some hold the view that if integrated into current traditions of punitive philosophy, some restorative practices will be co-opted, whereas others will be marginalized and gradually withdrawn (see Dhami et al., 2009; Edgar & Newell, 2006; Gavrielides, 2008). The most critical view from the interviews came from a leading practitioner who said, “I have strong concerns not just for RJ but for any humane practice that is introduced in prisons as this tends to make the public and prisoners feel that imprisonment is not as bad as originally thought.” The same practitioner, however, moved on to say, “However, being a realist, I am conscious not to deprive offenders and victims the option to meet if they both wish to do so.”

This tension is particularly visible in the RJ movement, and it has repeatedly led to misconceptions and disagreements. It has also created tendencies to either play up or down differences and similarities between RJ and the criminal justice system. These are often exemplified by reluctance from a number of RJ advocates to acknowledge that the criminal justice system comprises certain restorative elements (e.g., in the form of victim impact statements, community service, and victim compensation).

More importantly, as Johnstone (2007) argued, the RJ movement has had little success in its efforts to encourage the use of RJ as alternatives to imprisonment. Therefore, a normative discussion on wishful thinking and untested potential makes no contribution to the construction of implementation models and policy. Similarly, Immarigeon (1994) argued, “RJ measures rarely divert anyone from imprisonment . . . Some evidence exists that New Zealand is using RJ as an alternative to detention, but even that evidence is weaker than one would hope for” (p. 144).¹³

However, it also has to be accepted that the skepticism about restorative imprisonment derives from more than just “blue sky thinking” by abolitionists and RJ purists. As Guidoni (2003) argued, the possibility of integrating the constructive ethos of RJ within a punishment-based social institution, such as the prison, is highly problematic in philosophical terms.

For instance, the findings of a 2-year (2001-2003) evaluation of a RJ program (*A Bridge Towards New Horizons*) in Turin prison (Italy) concluded that, “RJ cannot be assimilated into the ideology and practice of punishment, if we mean by punishment negative sanctions for a crime—those inflicted on a convicted person by a judge under the rules and guarantees of the penal trial” (Guidoni, 2003, p. 57). Guidoni (2003) argued that before the potential of RJ in the prison estate is explored, we need to be able to develop a robust philosophical understanding of two preliminary questions. First, is RJ itself a form of punishment and second, does it have common features with rehabilitation and retribution? In a similar vein, Gavrielides (2005) asked, “Does RJ belong to the world of theories or is it merely an alternative criminal justice process?” (p. 87).

Back to Basics for a Common Ground

RJ in the secure estate is already widespread internationally. Surely, this would not have been possible if common ground was lacking. But how can conceptual challenges be faced? Using the data from our literature review and primary research, we attempted a normative exploration of the philosophical foundations that underpin the notions of RJ and imprisonment. Particular focus was given on their interpretation of “punishment.”

The debate on RJ’s relationship with punishment has been particularly interesting and extensive. To give some examples, Daly (2000) took RJ to be punishment because it leads to obligations for the offender. However, McCold (1999) rejected the idea of including coercive judicial sanctions in the restorative process, as they might shift RJ back to being punitive. Marshall (1996) claimed that noncoercive processes are not always achievable and that coercive measures must be considered. However, this should be done through the criminal justice system. He argued that this is where RJ should end and where the traditional system should take over.

For the sake of brevity, two broad categories of the relationship of RJ with punishment are offered. A third category by the author is also added (Gavrielides, 2005; 2013). The article will now argue that this new category is where the RJ paradigm and the concept of imprisonment reconcile.

The first camp in the literature denies that RJ measures can, in any way, be punitive (Wright, 1996). The second argues that RJ is not “alternative to

punishment,” but “alternative punishment” (Duff, 1992). The argument of the first group is that restorative measures’ primary purpose is to be constructive. Therefore, they are not inflicted “for their own sake” rather than for a higher purpose (Walgrave & Bazemore, 1999, p. 146). The second group, however, has noted,

This purported distinction is misleading because it relies for its effect on the confusion of two distinct elements in the concept of intention. One element relates to the motives for doing something; the other refers to the fact that the act in question is being performed deliberately or wilfully. (Dignan, 2002, p. 179)

I offer that irrespective of whether we decide to go with the first group of critics who deny that restorative measures are punitive, or with the second who claim that they are alternative punishments, we still have to accept that RJ is surely neither punishment nor is it interested in it, at least in the form that it has taken under the punitive paradigm of our criminal justice systems (Gavrielides, 2005; 2013).

I have argued that there is a third type called “restorative punishment.” This is where RJ and incapacitation meet. Punishment comes from the Greek word *poene*, meaning pain, and examples of RJ practices illustrate the restorative pain that offenders undergo when entering into a voluntary dialogue of personal transformation and community healing. Elliott (2011) also wrote, “It is often said of RJ that what is required in response to harm within a RJ paradigm is much more demanding of individuals and communities than is the reflexive resort to punishment” (p. 28) and I would add “as this is understood by the punitive paradigm of justice.”

What then is RJ’s relationship with punishment/*poene* as this sits outside of the punitive paradigm? The retributive understanding of punishment identifies the existence of two basic elements. The first is the communicative and the second the retributive. Punishment should aim to communicate with the receiver, imposing “the suffering which she deserves for her crime” (Duff, 1992, pp. 53-54). Punishment is thus justified as an intrinsically appropriate response to “crime.” On the contrary, according to the utilitarian position, its central characteristic is that it aims to prevent “crime” (either in a general or specific way), and what matters is that “crime” is actually or potentially harmful.

If we accept the retributive position that punishment consists of two elements, the expressive and the retributive (Duff, 1992), restorative measures would certainly deny the second one. Retribution is completely taken out of the restorative picture. However, the expressive element is desirable, as it

promotes the restorative goal of the process. Put another way, punishment, no matter the type (restorative or punitive) should serve an “expressive function” (Feinberg, 1965).

Clearly, we notice a difference of aims in the restorative versus punitive punishment comparison. As a restorative measure, punishment aims to restore, create, construct, repair and reintegrate. As a punitive one, depending on the punishment theory we use, for example, Retribution/Utilitarian (deterrence/rehabilitation, etc.), its aims are rather different. In addition, restorative measures can entail education per se. Put another way, restorative punishment can teach communication, negotiation, compromise, and related skills. In this way, it promotes a moral education, possibly creating a moral order in society.

I (Gavrielides, 2005) move on to conclude, “Restorative punishment aims to restore the harm done. Deterrence (general or specific) might be welcomed as a side effect, but is not among the primary goals of restorative measures, nor is retribution for what was done” (p. 93).¹⁴ RJ entails pain (*poene*) that is as deep as the one inflicted by the punishment of current criminal justice system.

Consequently, “restorative punishment,” prisons, and the RJ ideals and goals are not mutually exclusive. Although RJ is not punishment in the traditional criminal justice sense, in the context of “restorative punishment,” *poene* and deterrence are welcomed side effect. As argued by both utilitarian and libertarian schools of thought, deterrence is also one of the primary goals of imprisonment. Likewise, “restorative punishment” entails pain and has serious precautions for all parties involved.

In fact, “restorative punishment” shares similar objectives with imprisonment. The critique, however, is important as it helps us to identify a number of aspects of imprisonment that conflict with the ethos of RJ (Johnstone, 2007). Like Johnstone, I also have to agree that there is a considerable gap between the environment of a prison and the ethos of RJ. As he also points out, “there is also a very large gap between the environment of many parts of contemporary society and the ethos of RJ” (Johnstone, 2007, p. 20).

Guidoni is right in saying that the Turin project that he investigated failed to reach genuine and long-lasting RJ outcomes. However, he uses this to dismiss RJ in the prison estate altogether. His conclusion is flawed for three main reasons. First, Guidoni’s analysis makes the assumption that RJ must be “institutionalised”¹⁵ to coexist with imprisonment. In Guidoni (2003) own terms, “These ambivalences were decisive in the failure of the project’s institutionalisation” (p. 62). According to our research and the extant literature, rarely will RJ practitioners go as far as believing that RJ will one day be “institutionalised” (Gavrielides, 2008; Johnstone, 2007, 2012). In fact,

several interviewed practitioners expressed strong reservations with “RJ being institutionalised” or “mainstreamed.” For instance, they stressed the importance of the practice being and remaining community led or at least having a community representative at all times (see also Wright, 1996).

Second, Guidoni seems to accept only one vision of RJ. This vision dates back to the 1970s and was best captured by the abolitionist movement (Kuhn, 1970). He views RJ as being totally at odds with the criminal justice system while the notion of “restorative punishment” is not considered; naturally, the “RJ paradigm” is thus rejected. To illustrate his point, he quotes Stan Cohen’s (1975) *Peace Crimes*: “The core of a prison system . . . cannot be changed . . . Either we eliminate the institution entirely or we keep it with all the contradictions and paradoxes emerging when we try to reform it” (pp. 441-442). Our normative explanation of how RJ views punishment in a parallel universe also explains that despite being different, these universes are not mutually exclusive.

Finally, Guidoni is flawed in his belief that all RJ proponents reject the idea of using RJ for recidivism and the reduction of prison population. Guidoni (2003) said, “I cannot see how RJ could lead to reducing prison populations, which actually is not an intended goal of its advocates” (p. 65). Many RJ advocates would disagree with this statement particularly because there is consensus in the vast RJ literature that RJ’s objectives and goals do not merely revolve around the victim and the community but have an offender focus particularly when it comes to reintegration and resettlement (see Edgar & Newell, 2006; Gavrielides, 2008). Restorative punishment, as described above, retains certain rehabilitative goals as these are also explained in Gavrielides (2007), Braithwaite (1999), and McCold’s (1999) understanding of the RJ ethos.

Subsequently, we have concluded that RJ and imprisonment strategies can be pursued concurrently and that the two can be complementary in achieving crime reductions goals such as deterrence (common feature of both), incapacitation (feature of imprisonment), and restitution/healing (feature of RJ).

A New Classification and a Mapping Exercise

So, where do we go from here? Complex delineations of the RJ practice in the secure estate, long-winded definitions, and conceptual fluidity must be addressed. Starting with the extant classification of RJ projects in prisons as this was presented above (see Table 2), we notice that it does not reflect our normative thinking. The majority of our interviewees did not accept it either. For instance, one interviewee said, “I don’t find the five categories particularly accurate; how much restorative are offending behavior programs or community work?” Someone else said, “It is a useful typology . . . but only for the literature. I am not sure it helps when it comes to *doing* RJ.” Someone else

said, “RJ is harm-focused . . . where is the restored harm in offending behavior programs?” Another practitioner said, “Where is the encounter in AVP?”

To put our normative thinking in context and in response to the findings from the fieldwork, we propose a simpler delineation of RJ practices in prisons. This includes only two categories of RJ programs, which can be either “preparatory” or “delivery.” In the “preparatory practices” group, our research placed all practices that targeted only one party (i.e., offending behavior programs, victim awareness programs, and community service work). These practices were also characterized by a RJ *intention*, but not necessarily a RJ *outcome*. In our normative thinking, this group does not offer restorative punishment (restorative *poene*/pain) as it merely sits within the punitive paradigm aiming to prepare for a RJ encounter. Put another way, preparatory RJ practices are not placed within the restorative punishment paradigm, but aim to prepare for the restorative *poene* using existing structures within the current system and punitive paradigm.

However, “delivery practices” refers to programs that involve a (direct or indirect) encounter (i.e., victim–offender mediation and prisons with a complete RJ philosophy). Delivery practices must be run with a restorative outcome in mind—irrespective of whether this is successful or not. They entail restorative punishment/pain and involve deterrence in the same way as incapacitation. Their *telos* is to inflict restorative *poene* and attempt restorative outcomes in parallel to the intentions pursued through incapacitation.

To place this argument in context, examples of existing practices were needed. Examples were sought from around the globe both in relation to adult and young offenders (see Table 3).¹⁶ Sources for seeking more information on each of these programs are provided, as the limited scope of this article does not allow a detailed examination of their individual practices. A caveat that needs to be mentioned relates to the “labeling” or “self-categorization” of programs as restorative.

Concluding Remarks

We have shown that RJ exists within the secure estate widely in the form of mediation, circles, conferencing, victim awareness programs, and so forth. We have argued that if further development of RJ practices within the secure estate is wanted, then its concept has to reconcile with that of imprisonment. We also argued that the ambiguity that seems to exist around RJ within the prison estate is not due to lack of definitions. We identified the problem within a normative framework of misunderstanding of where the restorative notion sits within the context of incapacitation. We went back to basics by looking at the ultimate outcomes of RJ practices and imprisonment, as these

Table 3. Preparatory and Delivery Restorative Justice Projects in Prisons.

Name	Country	Young people/ adults	Category
Sycamore Tree ^a project	Australia, Bolivia, Cayman Islands, Colombia, Commonwealth of Northern Mariana Islands, Costa Rica, England and Wales, Guam, Hong Kong, Hungary, Kazakhstan, New Zealand, Netherlands, Northern Ireland, Palau, Philippines, Rwanda, Scotland, Solomon Islands, South Africa, United States, Zambia	Both	Preparatory
SORI project ^b	England and Wales (mainly Cardiff prison)	Both	Preparatory
Hope Prison Ministry ^c	South Africa	Adult	Preparatory
Bridges to Life ^d	Texas, United States	Adult	Preparatory
Community based mediation	Examples from the United Kingdom: REMEDI (South Yorkshire), Kent Mediation, Thames Valley Statutory Adult Restoration Service (STARS) and West Yorkshire mediation.	Adult	Delivery
Probation-based mediation	Examples from the United Kingdom: West Midlands, Kent, Avon, and Somerset	Both	Delivery
Youth offending teams based mediation	Examples from the United Kingdom: Leeds, Swindon, Torbay, South Devon, Lancaster, Cookham Wood.	Young people	Delivery
Victim-offender dialogue programs ^e	United States (24 states), Canada (Langley, British Columbia)	Both	Delivery
Prisons Transformation Project ^f	South Africa	Adult	Delivery
Corrective Services based mediations ^g	Australia, New South Wales	Adult	Delivery
Phoenix Zululand ^h	Zululand	Adult	Delivery
AMICUS girls restorative program ⁱ	United States, Minnesota Correctional Facility	Adult	Delivery
Restorative conferencing ^j	United Kingdom, Medway Secure Training Centre	Young people	Delivery

(continued)

Table 3. (continued)

Name	Country	Young people/ adults	Category
Restorative adjudications ^k	United Kingdom: Brixton, Bullingdon and Grendon (male), Swinfen Hall (both), Cornton Vale (adult female), Ashfield, Brinsford, Huntercombe, Cookham Wood (young male), New Hall (young female)	Both	Preparatory
Communities of Restoration (APAC) ^l	Argentina, Australia, Belize, Bolivia, Brazil, Bulgaria, Chile, Costa Rica, Ecuador, Germany, Hungary, Latvia, New Zealand, Norway, Singapore, United States	Both	Preparatory
Kainos Community Program ^m	England and Wales (HMP The Verne, HMP Swaleside and HMP Stocken)	Adult	Preparatory
Prison Therapeutic Community Program	England and Wales (HMP Grendon)	Adult	Preparatory
Alternative to Violence Project (AVP) ⁿ	African Great Lakes Initiative, Angola, Armenia, Australia, Azerbaijan, Belarus, Bosnia/Herzegovina, Brazil, Britain, Burundi, Canada, Colombia, Congo, Costa Rica, Croatia, Cuba, Dominican Republic, Ecuador, Georgia, Germany, Haiti, Hong Kong, Hungary, India, Indonesia, Ingushetia, Ireland, Japan, Jordan, Kenya, Lithuania, Macedonia, Mexico, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Russia, Rwanda, Singapore, South Africa, Spain, Sudan, Tanzania, Tonga, Uganda, Ukraine, United States, Zimbabwe	Adult	Preparatory
RJ in Prisons Project ^o	Belgium (Leuven Central, Hoogstraten School Centre, Leuven Hulp)	Both	Delivery
A Bridge Towards New Horizons	Italy (Turin prison)	Adult	Delivery
The Anne Frank Prison Project ^p	United Kingdom (Holloway, HMP Durham, HMP Highpoint, Oakhill STC, HMP Peterborough, HMP Highdown, HMP Wakefield, HMP Cookham Wood, HMP Bullingdon, HMP Werrington, HMP Swaleside, HMP Standford Hill, HMP Gartree, HMP Edmunds Hill, HMP Carlford, HMP Newhall)	Both	Preparatory
Prison-based mediation and conferencing ^q	United Kingdom (36 prisons)	Adult	Delivery

(continued)

Table 3. (continued)

Name	Country	Young people/ adults	Category
The Forgiveness Project ¹	United Kingdom (7 prisons: High Down, Guys Marsh, Featherstone, Wandsworth, YO1 Ashfield, HMP & YO1 Parc, HMP Doncaster, Blantyre House (Resettlement), Huntercombe)	Both	Preparatory

Note. SORI = Supporting offenders through restoration inside; REMEDI = restorative justice and mediation initiatives; APAC = association for the protection of the condemned; HMP = Her Majesty's prisons; STC = Secure Training Centre; YO1 = young offenders institution.

¹As recorded by Liebmam (2007) : www.pfcjr.org

²See SORI Project (Supporting Offenders through Restoration Inside), Ministry of Justice: (originally developed by Cardiff Prison Chaplaincy).

³See Hope Prison Ministry, Cape Town, South Africa: <http://www.hopepm.org/>

⁴See Bridges to Life, Texas: www.bridgestolife.org

⁵For further information see Umbreit, Vos, Coates, and Brown (2003).

⁶See www.ccr.org.za/images/stories/pdfs/CCRAR_0708_pt2.pdf, pp. 52-54

⁷See <http://www.correctiveservices.nsw.gov.au/related-links/victims>

⁸See <http://www.phoenix-zululand.org.za/>

⁹See <http://www.amicususa.org/wp-content/uploads/2012/11/AmicusGirlsStudy503small.pdf>

¹⁰Mainly used for bullying incidents and conflicts within prison.

¹¹These are mainly used to deal with prison incidents such as assaults and thefts.

¹²Country list as of 2009, <http://www.acea.org.au/Content/2005%20papers/Paper%20Roper.pdf>

¹³See www.kainoscommunity.com

¹⁴Country list as of 2009, for AVP in Britain see www.avpbritain.org.uk and internationally www.avpinternational.org

¹⁵For a detailed account of this program see Aertsen and Peters (1998), Newell (2002a, 2002b).

¹⁶Carried out by the Anne Frank Trust, see <http://www.annefrank.org.uk>

¹⁷This is based on Home Office (2003) RJ mapping exercise. Other projects not listed here but were in existence are as follows: The inside out trust (preparatory), Victim Impact Groups in Bristol Prison (preparatory), Manchester Adult RJ Project (preparatory), the government-funded project in HMP Bullingdon and Thames Valley, the government-funded CONNECT project (25 prisons were running it), Wetherby YO1 (preparatory).

¹⁸See <http://theforgivenessproject.com/projects/prisons/>

are placed within the punitive and restorative paradigms. The relationship of RJ and incapacitation with punishment was explored and common ground was identified in their intentions

We have concluded that RJ and prisons are not mutually exclusive as some commentators have argued (e.g. Guidoni, 2003). This proposition is, of course, open for debate. The article also endorsed the idea of “restorative punishment” and rejected the proposition that RJ can only be approached as an abolitionist concept.

Our findings also suggest that a simpler categorization of existing practices in the secure estate is preferable. A mapping exercise of existing programs in prisons was attempted grouping them into “preparatory” and “delivery” categories. While the first group aims to prepare the victim and the offender to reach RJ outcomes (e.g., via an encounter), the latter pursues these outcomes directly/indirectly. However, both preparatory and delivery programs must be based on the RJ ethos as this was described above. More importantly, when the restorative *poene* is inflicted, the pain must be justified through the principles underlying this ethos. This allows the development of a parallel restorative understanding of punishment that works alongside incapacitation. At the same time, we also accepted that RJ prioritizes goals and outcomes differently and hence it needs its own theoretical and philosophical justification. This does not mean that it is in opposition with criminal justice practices such as imprisonment. In the words of the late Liz Elliott, “RJ must be more than a programme within the current system—it must be a new paradigm for responding to harm and conflict with its own philosophical and theoretical framework” (Elliott, 2011, p. 3). Developing this further may indeed allow a more solid diffusion of RJ in the secure estate. In drawing a conclusion for our understanding of RJ in prisons, care needs to be taken not to raise false expectations. Morris (2002) claimed that many of the criticisms of RJ are the result of a fundamental understanding of what it seeks to achieve. Wright (1996) also warned that we would be doing RJ a disservice were we to raise expectations of complete success.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: Part of the research was funded by EU Grant agreement No. JLS/2008/JPEN/015-30-CE-0267156/0039.¹⁷

Notes

1. See, for instance, the Council of Europe Annual Penal Statistics (SPACE I and II) as well as the annual report produced by the Committee for the Prevention of Torture and Inhumane and Degrading Treatment <http://www.coe.int/lportal/web/coe-portal/what-we-do/human-rights/prevention-of-torture?dynLink=true&layoutId=23&dlgroupId=10226&fromArticleId=>
2. For instance, in 2005, US\$68,747,203,000 was spent on prisons in the United States and in England and Wales placing one young offender in prison costs as much as £140,000 per year (£100,000 in direct costs and £40,000 in indirect costs once they are released). Keeping each prisoner costs £41,000 annually (or £112.32 a day). This means that if there are 85,076 prisoners at the moment, prisons cost as much as £3.49 billion. According to Home Office statistics, it costs £146,000 to put someone through court and keep them in prison for a year).
3. See <https://consult.justice.gov.uk/digital-communications/effective-community-services-1>
4. See <http://www.restorativejustice.org/prison/09examples/belgium/>
5. For the full list of participants, see http://www.iars.org.uk/sites/default/files/IARS_MEREPS_EU%20Study%20Tour_2009.pdf
6. Independent Academic Research Studies (IARS) is an independent think tank with a charitable mission to give everyone a chance to forge a safer, fairer, and more inclusive society. IARS produces evidence-based solutions to current social problems, share best practice, and enable young people to shape decision making www.iars.org.uk
7. Gavrielides, T. (2011a). Also to download the expert seminar report and for the full list of participants, see http://iars.org.uk/sites/default/files/RJ%20Seminar%20Nov%202010%20report_Final.pdf
8. The first contemporary restorative justice (RJ) practice took place in Ontario (Canada) when Mark Yantzi, a probation officer, initiated the Victim–Offender Reconciliation Program (Yantzi, 1998).
9. Skelton found that Eglash’s source was Heinz Horst Schrey’s 1955 book *The Biblical Doctrine of Justice and the Law*, originally published in German and then translated and adapted into English.
10. This is a term used to refer to victims who are involved in similar crimes but they do not relate to the offender directly.
11. One of the most influential books on “paradigm changes” is by Kuhn (1970). There, Kuhn claimed that paradigms can replace each other, causing a “revolution” in the way we view and understand the world. What can cause such a change is a “paradigm crisis.”
12. Nils Christie is considered a leading proponent of the “Informal Justice” movement. After “Conflicts as Property,” he published “Limits to Pain,” where he showed the connection between the “theft of conflicts” that he advanced in the article and the use of punishment (Christie, 1977).
13. For a general guide to further reading, see Van Ness (2007), Guidoni (2003). For initiatives in the United Kingdom, see Stern (2005), Edgar and Newell (2006), and Liebmann (2007).

14. Marshall's (1996) understanding of punishment also seems to be aligned with Gavrielides' (2007).
15. Guidoni did not really define what he means by "institutionalisation" but we are left to assume that it means the implementation of RJ within an institution such as prisons. This is opposed to RJ's implementation in the community or as a pilot scheme introduced on ad hoc basis. Gavrielides (2008) defines mainstreaming as the process of integration into an institution's culture and everyday reality.
16. A thorough account of RJ in prisons can be found in Francis (2001) and Liebmann and Braithwaite (1999).
17. The wider project is titled Mediation and RJ in Prison Settings, see <http://mereps.foresee.hu/en/>

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