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Abstract

Although the convergence between appreciative ideology and the ideologies derived from the need of preserving human dignity is not complete, they can be seen in a single paradigm of affirmative action. Although restorative justice principles are not inspired by appreciative inquiry methodology, are at least converging with it, both of them focusing on human potential positivity. Moving the accent from the offense and its due retribution, on the recovery of prior state offense, both for the victim and the offender, this can be interpreted as waiving the deficiency paradigm, and integrating positive experiences resulting from mediation offender-victim relationship in an appreciative paradigm. Application of appreciative inquiry in restorative justice and in probation systems is a unique area in the world, it being applied only on an experimental level in some restorative justice programs.

Keywords:

restorative justice, appreciative inquiry, depenalization, probation

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Introduction

The restorative justice model is becoming more prevalent in Romania, starting from the example of other EU countries. Doina Balahur (2004) sees restorative justice as a paradigm - a conceptual framework of non-custodial sentences. Pavel Abraham and Anamaria Szabo (2006) believe that restorative justice can be seen as a process in achieving better outcomes in the case of some conflicts from pre-delinquent behaviors to offenses. Custodial sentences given at this time are criminal fines and suspended sentences (Durnescu, 2006; Martin 2008). However there are a number of other non-custodial measures, such as community service work, ordering to participate in rehabilitation programs, these been seen as possible solutions to current legislation.

Theoretical context. The 4 penalty philosophies

The difference between these 4 penalty philosophies: utilitarian justice, retributive justice, justice oriented on human rights and restorative justice - is based on the different answer for the question: Why should criminals be punished? (Groza, 2006:16).

Utilitarian Justice: believes that the sentence has the purpose for preventing new crimes (Von Hirsh, Ashworth, 1992:63). The utilitarian vision involves four principles in applying a sentence: principle of deterrence (discouragement), the exemplary principle (severity), the principle of proportionality (gradualism), the principle of rehabilitation (Groza, 2006:17-19).

Retributive justice: (Von Hirsh, 1976). In the view of retributive justice advocates, punishment is applied to individual, because he deserves to be punished. This has a talion origin. Depending on the seriousness of the offense is established the "cost of crime". According to this principle comes the individualization of punishment, depending on the seriousness and circumstances of the offense (Ashwoorth, 1989, Hudson, 1996).

Justice orientated on human rights derives from the incorporation of internal law of international treaties on human rights, and support the state responsibility with the offender, the disturbance of social relationships through the offense (Groza, 2006:24-25). The role of

punishment is to facilitate rehabilitation, where the state is the responsible of its rehabilitation. Restorative justice questions the victim-offender mediation relationship. The purpose of punishment is the restoration of the victim's rights through victim-offender mediation process.

Restorative justice is considered an alternative means of resolving conflicts between victim and offender (James, 2005). This vision changes the meaning of the term of "liability", in understanding by the delinquent on the damage done, and of accepting responsibility in repairing the damages (Toroipan, Oancea, 2002:2).

The restorative justice model emphasizes the social dimension of criminal liability.

Restorative justice principles are:
- Awareness support;
- Avoiding reproach during mediation;
- Active involvement of the offender to restore the situation of victims;
- Accepting ambiguity of roles;
- Delimitation of the perpetrator of the offense;
- Recovery criminal convictions as an opportunity for learning (Toroipan, Oancea 2002).

Comparative analysis of traditional justice system and restorative justice, highlights some specific features of each system considered (Daly, 2000; Damian at all, 2010).

Retributive Justice	Restorative Justice
Offense defined as violation of fundamental social values, protected by the state.	Offense defined as an injury to a value, belonging to a individual.
The emphasis is on establishing guilt, on prosecution, on what happened in the past (Did they committed the act?)	The emphasis is on the problem solving aspect, in terms of responsibilities, and obligations in the future (What should be done?)
Contradictory relations and criminal process.	Dialog and negotiation.

Appling a punishment with a punitive purposes, remand and detention.	Reconciliation and restitution as an end.
Justice follows the course of a criminal justice process, guided by established rules.	Justice seeks to establish equitable relations, and it is assessed against the results.
Social damage is replaced by another.	The aim is social remedies.
The action is directed from the state to the offender: - The victim is ignored - The offender has a passive role	The roles of victim and offender are recognized both in terms of problem and solution. - Rights / needs of victims are recognized - The offender is encouraged to take responsibility.
The offender is responsible for his deed, by serving the sentence.	The offender is responsible for his deed, through awareness of the impact of crime and its consequences, taking an active role in decision making process on his social reintegration.
The solution is focused on the history of the offender.	The solution is focused on the negative consequences of delinquent's behavior.

The origins of Restorative Justice Paradigm

Specific practices of Rrestorative Justice have been recorded since the first written codes of humanity, since the Code of Hammurabi 1792-1750 BC, which included the idea that the one who could not repay the loan, could be converted into slave, during the fulfillment of certain debt, which aimed to offset the benefit of creditors (Martin, 2008).

Aristotle distinguishes between Private Justice, which governs the private transactions and corrects abuses (Dunca, 2009:74), and Distributive Justice, which is to legislate equal ratios, and division of

goods in accordance with individual merit (Dunca, 2009:74), this being understood in the sense of fairness, while Restorative Justice governs the repair of unjustices, and corrects the response to injustice. These principles of law draw a philosophy of law: paradigm of retributive justice.

Another paradigm in the contemporary philosophy law is "Restorative Justice". The theoretical foundation of this philosophy is the restoration of the criminal condition before the crime was committed (Balahur, 2001), especially the victim's situation, thus creating a model of alternative justice. "One of these concepts is regarding Restorative justice, conceived as a new model designed to prevent and control crime. From this view, in solving the conflict created by crime, the restorative work focuses on the harm caused by crime, with equal interest on the victim and the offender, these being equally involved in the administration of justice, and to assist victims in repairing the damage caused for them, in the way desired by them. At the same time the offender also must be helped to understand, accept and fulfill his obligations towards the victim and the community. The implementation of restorative justice, the community is an essential factor, which encourages collaboration between parties, victim restoration, and offender reintegration.

Foucault exposes in his volume "Discipline and Punish" the question of power and its establishment in the social space. Foucault believes that the punitive mechanisms, towards marginality and deviance, and correlated with these, introduce the body in power relations (coercive and institutional), as a "representative in the physical world of the person to whom it belongs, and to which is substituted". Foucault places "technology of power" (the exercise of power) as a principle of penalty humanization. Normality and abnormality became the object of criminal justice, multiplying its functions, stopping to simply punish, but rather with a diagnostic effect and social therapeutic (Cretu, 2005).

Foucault identifies 3 penalty philosophies of modernity, according to the body involved in punishments' application:
– Monarchical,
– Contractualist,
– Of generalized surveillance.

The first of these (belonging to pre-modernity and early modernity) is seen by Foucault as coming from the monarchy law (medieval). The power has regulatory role and it is outside individuals. The blame towards the victim is doubled by the one towards the sovereign, as legal representative. Within this kind of speech, by identifying the guilt to an individual, with public order offense of the state and sovereign, occurs the nationalization of legal power, which gives rise to prosecutor's function as a representative of the king (Foucoult, 1995).

Torment and torture were not expressions of violence, but "coded techniques of power" through which power was maintained, and truth occurred. As the monarchy law was based on truth, as the principle for punishment. Getting the truth required a specific way of knowing, which took the investigation shape. Initially, the investigation replaced the "judicial duel" procedure, from the Middle Ages. Investigation is therefore required as a tool for knowledge, and simultaneously as power technology. According to this vision, the truth is unique and transcendent, finding this guaranteeing the justice exertion.

The contractualist philosophy introduces a reform of punishment, by limiting the arbitrary and replacing absolute power with absolute ownership (Cretu, 2005). Violation of the law is not seen anymore as an offense towards the sovereign, but towards society as a whole. Penal philosophy is not anymore exclusively retributive, rather especially preventive. Violation of the law is redefined as a social danger. The role of punishment is to protect society, and not to avenge the king.

Physical punishment is gradually replaced by symbolic punishment and punishment representation. "Example is no longer a ritual to be known, but rather a sign to prevent. The penalty philosophy is no longer directly retributive, but especially preventive. This penalty philosophy leads to coding criminal offenses and individualization of punishment depending on contingency. The sanction comes only after a research that is done in the manner of scientific knowledge. This philosophy is based on the principles of realistic humanism (Foucault, 1995).

A third penalty philosophy is placed by Foucault around the prison institution. The objective of this philosophy is the control on criminal acts, and especially the possibility and virtuality of crime.

According to Foucault introducing the concept of "danger" and "crime control virtuality", extends the punishment outside legality control (Foucoult, 1995).

Discipline involves rather an active social control, the penalty being a consequence of his actions. The principle of innocent until proven otherwise turns into a criminal probabilistic calculus of risk, resulting in Foucault's opinion a state model of generalized supervision.

Foucault sees postmodern society as one of generalized surveillance, diffused throughout the entire social body. In the philosopher's vision does not take place a transformation of social consciousness, but rather of the power styles, where the power is transformed from legal into normative (Foucault, 1995). Foucault's social philosophy is a holistic, the author appreciating the mix between individualistic discourses and the general and globalizing ones. Foucault's analysis opens up the way to understanding social reality as a construct, as an interpretation where "signs are masks" (Nietzsche) with the role of imposing an interpretant, and not to establish a sense.

Foucault opens up the way of reality's subjectivization (legal) and understanding it as a negotiation of interpretation in a meta-story. The subjectivization of ideas of power (the legal case) transfers the punishment from the actual physical aggression to social seclusion of the punished person. Gradual subtilization of power manifestation brings a new criminal philosophy, namely the symbolic punishment.

The term "restorative justice" was first used by the American psychologist Albert Eglash in 1958 to describe the guidelines in criminal justice. Eglash identified three different paradigms of justice: retributive paradigm, distributive and restorative. Unlike retributive paradigm that emphasizes the offender's punishment, and distributive paradigm which focuses on rehabilitation of the offender, restorative justice is based on the idea of repairing the damage caused to victim (Digan, 2005, Damian, Luca, Hefco, 2010).

Probation versus Imprisonment

Probation is understood in two ways: the first being that of strategies that limit the perpetrator's contact with the formal criminal justice system, and the second, in a narrow sense, is understood as an alternative to custodial penalties (Balahur, 2008; Acsinte, 2011).

Claus J. (apud. Balahur, 2008), identifies a group of arguments in favor of probation and community measures:

- They are suited for certain types of offenses and offenders;
- Avoid deprivation of liberty and imprisonment;
- Are focused on community reintegration and rehabilitation;
- There are more human;
- Are less expensive;
- Avoid overcrowding of prisons;
- Improve the quality of educational programs.

In one of the United Nations' report, regarding the alternatives to imprisonment UNODOC 2007 (cf. Balahur 2008), is emphasized that through the alternative measures to deprivation of liberty is avoided the human rights violations, in what concerns the condemned person, and also costs are reduced. Cartledge (cf. Balahur 2008) defines probation as a method of punishment with strong socio-pedagogical aspect that combines supervision with support. In restorative justice programs are aimed not only the sanctions' depenalization, but as a strategy for reconstruction of organized reciprocity networks and of "civic solidarity" (Putnam, 1995, conf. Balahur, 2008). John Braith Waite identifies 300 restorative justice programs in North America, 500 in Europe and 400 in Canada. Schriff (conf. Balahur 2008) identifies 500 programs of restorative justice in American justice.

Appreciative Inquiry

Appreciative inquiry is a form of progressive discovery of what works in organizations, communities and individual experiences, and also gradual development of individuals' potentialities, communities and organizations, in order to fulfill the objectives they set themselves (Sandu, 2009; Ponea, Sandu, 2011).

The Appreciative Inquiry's pinciples, as set by Cooperrider and Whitney (2000), are the following:

– Constructionist principle. Social reality is a construct that occurs as a result of negotiation and interpretative mental models of reality.

– The principle of simultaneity. Individuals, organizations and communities will develop in the direction in which attention will be focused in the research intervention.

– The poetic principle. Social reality is socially constructed as a continuous negotiation of interpretations; has creative and auto-transformative ability, so that individuals, groups, communities and organizations define and auto-creates themselves during the social interaction, by questioning their own experiences, expectations and interpretations.

– The principle of anticipation. The evolution of individuals, groups, communities and organizations is built by subjective projections of the desirable future that individuals make for themselves or as members of groups, community organizations, etc.

– The affirmative principle. Appreciative inquiry focuses on successful experiences of individuals, groups, communities etc. giving up the deficiency paradigm (Cojocaru, 2005). Interogation on problems' failure, deficiencies and their exclusive focus on solving will generate new sources of problems, deficiencies, failures (Cojocaru, 2008).

Stefan Cojocaru (2005) states that research based on appreciative inquiry reverses the **approach** based on problem centered research, and the research questions become simultaneously actions ways. Appreciative inquiry does not deny the existence of problems on the level of individual, organizational group or community, rather proposes to overcome them through identification, cultivation and promoting practices (Socoro, 2010) which have been a success and can be reproduced in new situations.

Appreciative inquiry term derives from the verb "to appreciate", in the sense of valuing, to cherish, to recognize the positive aspects in people and world around them, affirming present and past strengths,

identifying transforming potentials, ***notification*** elements of excellence and value (Sandu, 2009; Ponea, Sandu, 2010).

Affirmative action and appreciative intervention on minority groups

Affirmative Action (term used in U.S. research or positive discrimination, term used in European research, mainly in Britain) consists of a series of programs focusing on the support of different minority groups: ethnic and cultural, religious, sexual, of conscience, health condition or disability, gender, etc.

Affirmative actions are usually implemented to allow preferential access of minority groups to education, work, health and social protection, integration work, etc. Affirmative actions are an integrated part of diversity management, as understood in postmodern society (Ponea, 2010; Varona Madrid, 2008). The vision behind the establishment of affirmative measures is of insufficient protection offered to certain categories, through out the simple banning discrimination, and the need for concrete actions for vulnerable groups to gain access to exercise effectively their rights. This philosophy is consistent with the ideology of appreciation, in terms of identifying what is positive and successful in the communication process with different disadvantaged categories, and the extrapolation of successful strategies into affirmative protection strategies (Lusting, Ringland, 2010). In this respect we identify a change in the discourse on human rights paradigm, from one focused on the deficiency, lack, or affirmative rights violations, into one based on the construction of concrete manifestations of rights frameworks. In this respect there is a tendency of the European Union to generalize the most favorable practices (Cretu, 2009).

In terms of socio-political practice Shawn Erik Schooley formulates the thesis "Appreciative Democracy" (2008). The author investigates the posible use of appreciative inquiry in the process of increasing citizen involvement in community affairs, and building political decision. Citizen involvement and participatory democracy is a process considered of a particular importance in community governance and in the legislative process.

Mary Emery, Barbara Radke, Melissa Hanson and Dawn Newman use appreciative inquiry as a strategy for social planning in multicultural contexts (2010).

The Paradigm of Restorative Justice as an Appreciative Paradigm?

Judy Larkins (2004) presents the application of Appreciative inquiry in the mediation process of the relationship between parents and adolescents. Alison Liebling, Charles Elliot, Helen Arnold, researched at the University of Cambridge Institute of Criminology (2001), discusses the problem of using appreciative inquiry in UK's prisons, and the results of this experimental practice. The authors present the link between Appreciative Inquiry and Restorative Justice, referring to the principles governing the two models. They show that appreciative inquiry is a solid theoretical foundation for transforming research and practices in prisons. Research cited was applied on prison staff, and referred to their particular way of working with convicts.

Appreciative inquiry was also used in research on restorative justice by Otmar Hagemann (2003) in Germany, in a research regarding the implementation frameworks of restorative justice at EU level. It proposes an analysis of the implementation of elements regarding restorative justice in prison system, starting from the principled incompatibility between incarceration and restorative justice philosophy. Prison policies are analyzed, proposing renunciation of imprisonment for certain offenses, and launching into a vision of "abolitionist" to it (Walgrave, 2010).

Appreciative inquiry was also used by Alison Liebling, David Price and Charles Elliot (1999) to investigate the relationships between prison staff and inmates in high security prisons in Britain. Published results refer only to the application of appreciative inquiry prison personnel, without specifying whether it was done similar research on prisoners and what were the eventual results.

In Romanian literature, Ecaterina Croitoru (2006) brings into question the use of appreciative methods in the practice of probation services, in their work for social reintegration of juveniles who have committed penalty offenses.

The activity of appreciative investigation group

This method involves investigating what is the best and most valuable in an organization on individuals and social environment. Research focuses on the social imagination and innovativeness.

Main tool is the appreciative interview that follows the projection of the existing positive image system on the development of that system. Based on appreciative inquiry methodology was developed the appreciative investigation group, which was formed of 19 judges of the Superior Council of Magistracy. Group aims to achieve a profile of the magistrate and training strategies.

Requirements for magistrate profile:
- The magistrate's profile should result from identifying the main issues facing the legal system in our country;
- The magistrate's profile must evolve in the spirit of balance (always analyzed and improved) between independence and accountability of judges and justice;
- To be able to think independent in legal matters.
- To recognize the intrapersonal factors that can prevent his good judgment.
- Understand Romanian society.
- To show moral integrity; to have ability and courage in improving the social intra-organizational environment in which they work.
- To communicate clearly and logically and to be receptive to information that can enhance his message.
- To be credible, trustworthy. Judges and prosecutors should act and be perceived as acting with professionalism and fairness.
- To be effective in their management duties and to improve court administration (Unguru, Alexa, Sandu, 2010).

Mental qualities that meet the requirements of the judge's profession:
- Critical thinking is manifested in the ability to identify: conclusions inadequate or inappropriate, data that can

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    support a hypothesis,or the new information needed to draw a conclusion;

- Morla- cognitive integrity / consistency. Personal quality that allows the magistrate to avoid any influence on the process, by which he seeks / accepts evidence and deliberates.
- Clearly and rationally communication alomg with receptivity to any information and self-control. The magistrate with good communication skills expresses specifically, clear and understandable.
- Conscientiousness, diligence, respect collegial. These qualities mean consistency, perseverance and concentration (Unguru, Alexa, Sandu, 2010).

Conclusions

    Although the convergence between appreciative ideology and the ideologies derived from the need of preserving human dignity is not complete, they can be seen in a single paradigm of affirmative action. Although restorative justice principles are not inspired by appreciative inquiry methodology, are at least converging with it, both of them focusing on human potential positivity. Moving the accent from the offense and its due retribution, on the recovery of prior state offense, both for the victim and the offender, this can be interpreted as waiving the deficiency paradigm, and integrating positive experiences resulting from mediation offender-victim relationship in an appreciative paradigm. Application of appreciative inquiry in restorative justice and in probation systems is a unique area in the world, it being applied only on an experimental level in some restorative justice programs.

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