

## VICTIM-CENTRED APPROACH TO IMPRISONMENT: RESTORATIVE JUSTICE

Harun IŐIK\*

### ABSTRACT

The penal system has been under the influence of particularly three main philosophies: retributive approach, utilitarianism and restorative justice. Retributive rationale having crime-centred outlook defended pure punishment. It grounds on offence and severity of it in the punishment to be given the crime. As a result of the search for solutions to increased crime and number of criminals, retributive approach gave its place to utilitarianism. It focused on criminal centred point of view instead of crime-centred outlook. After utilitarianism, the imprisonment has been adopted to the penal system since 17th century. The rehabilitation of prisoners came into question with this theory and this was introduced in the UK in the last quarter of the 18th century, especially as a religious based. Different rehabilitation activities have been implemented in the course of time as a reflection of this understanding. The constant increase in the number of crimes and criminals brought about the searching of the reduction and prevention of crime, as a result of this, the restorative justice was practiced in the penal system of developed countries such as the United States, the United Kingdom and Canada after 1980. It has a victim-centred structure rather than

---

\* Doç. Dr., Erciyes Üniversitesi İlahiyat Fakültesi Kelâm Anabilim Dalı Öğretim Üyesi, E-Mail: [harun@erciyes.edu.tr](mailto:harun@erciyes.edu.tr), ORCID ID: 0000-0002-0818-6482.

Makalenin Gönderim Tarihi : 29.05.2018.

Makalenin Kabul Tarihi : 05.11.2018.

crime or criminal centred and is focused on correcting the relationship between the offender and the victim with different programmes. Restorative justice has brought new concepts into the justice system such as responsibility, repentance, forgiveness, reconciliation, restitution, restoration and compensation. In this paper has been analysed the philosophy of imprisonment focusing on three central approaches, especially restorative justice.

**Keywords:** Penal system, retributive approach, utilitarianism, restorative justice, crime, criminal, victim.

## HÜRRİYETİ BAĞLAYICI CEZAYA MAĞDUR MERKEZLİ YAKLAŞIM: ONARICI ADALET

### ÖZ

Ceza sistemi özellikle üç ana felsefenin etkisi altında olmuştur: cezalandırıcı yaklaşım, faydacı teori ve onarıcı adalet. Suç merkezli bakış açısına sahip olan cezalandırıcı rasyonalite sırf cezalandırmayı savunmuştur. O, suça verilecek cezada suçu ve suçun şiddetini esas almaktadır. Artan suç ve suçlu sayısına çözüm arayışlarının bir neticesi olarak cezalandırıcı yaklaşım yerini faydacı teoriye bıraktı. O, suç merkezli bakış açısının yerine suçlu merkezli yaklaşıma odaklandı. Faydacı teori ile birlikte 17. yüzyıldan itibaren hürriyeti bağlayıcı ceza infaz sistemine adapte edildi. Bu teori ile birlikte mahkûmların rehabilitasyonu gündeme geldi ve bu, 18. yüzyılın son çeyreğinden itibaren İngiltere’de uygulamaya konuldu, özellikle dini temelli olarak. Bu anlayışın bir yansıması olarak zaman içerisinde farklı iyileştirme faaliyetleri de gerçekleştirilmiştir. Suç ve suçlu sayısındaki sürekli artış suçu azaltma ve önleme arayışlarını da beraberinde getirmiş, bunun sonucunda da onarıcı adalet 1980’den sonra Amerika, İngiltere ve Kanada gibi gelişmiş ülkelerin ceza sisteminde uygulamaya konulmuştur. O, suç veya suçlu merkezli olmaktan ziyade mağdur merkezli bir yapıya sahiptir ve farklı programlarla suçlu ve mağdur arasındaki ilişkiyi düzeltmeye odaklanmıştır. Onarıcı adalet, adalet sistemine bağışlama, uzlaşma, pişmanlık, zararı tazmin etme ve onarma gibi yeni kavramlar getirmiştir. Bu çalışmada üç merkezi yaklaşıma, özellikle onarıcı adalete odaklanılarak ceza felsefesi analiz edilmiştir.

**Anahtar Kelimeler:** Ceza sistemi, cezalandırıcı yaklaşım, faydacı teori, onarıcı adalet, suç, suçlu, mağdur.

## I. INTRODUCTION

Crime is a fact which has existed in every society during history. It affects relations between people in an unfavourable way by breaking the social system. As a reflection of the increase in crime, the number of criminals is going up all over the world as well as in Turkey.<sup>1</sup> Accordingly, the prisons serve the community with a capacity above. This situation leads many individual, social and economic problems. When we consider prison conditions, we can notice that they give rise to individual and psychological troubles such as restrain, embarrassment, depression, isolation, unknown, fear, danger and stress. As for the social problems, one of them is the divorce because of the long-term conviction and sometimes to give the children to the child protection institution owing to the broken family structure. The second is to provide the necessary support and assistance to the inmate's family such as money, shelter. The third is to give required support to the inmate and his/her family for a healthy family atmosphere after release. The fourth is to create a home and a job for people who do not have a home and work after their release. The fifth is to try to eliminate the probable problems such as fear, anxiety, insecurity related with victim in particular and all society in general. With reference to economic problems, first of all is the necessity of the construction of new incarceration as a result of the shortage of space caused by rapid increase. Other one is the need for more staff and resources to ensure security and meet the needs of prisoners such as education and rehabilitation activities and vocational courses. When we take into consideration the age and gender, these problems are various and much more. The people, organizations and institutions interested in the penal system and incarceration have been continuously search for solutions to the problems mentioned above. That is why the issue of prisons and prisoners has always an important place on the public agenda. The existence of prisons and their goals have been among the issues which have consistently been discussed and perhaps will continue to be discussed in the future. Why should offenders be punished? It may be said that offenders should be punished because they

---

<sup>1</sup> For instance, at the end of 2006, the prison population in Turkey was about 70.277. At the beginning of October 2017, the number of prisoners was soaring around the 228.993. The number of male is 216.180; the number of female is 9.985 and the number of children is 2.828. (<http://www.cte.adalet.gov.tr/> accessed 29.10.2017).

deserve it. Criminals must be punished to prevent and reduce re-offense and to make people realize that laws must be obeyed and thereby to prevent them from committing a crime. They should be penalized to ensure security and tranquillity, to relieve the mind and life of both victim and society and to protect us from dangerous or harmful people. Why did prisons come into being? What is the purpose of convicting someone? Is prison merely to punish the offenders or to protect the society? Is it also the institution that helps to educate, rehabilitate of prisoners by implanting moral and social values during imprisonment and provide them occupation and thus are the means by which prisoners can reintegrate into society after release.<sup>2</sup> Maybe prisons are for giving prisoners the opportunity to think about their current positions, to make amends for the harm they have caused.<sup>3</sup>

When the penal history is analysed, it will be seen that three main approaches have been proposed to the above questions. One of them is retributive rationale; the other is utilitarianism<sup>4</sup> and the last one is restorative justice<sup>5</sup>. The penal history commenced with retributive rationale, changed its direction to utilitarian philosophy and restorative justice came to the fore at the end of 20<sup>th</sup> century in developed countries such as UK, USA and Canada.

---

<sup>2</sup> D. Jenkins, “*Criminal Justice: Impediments to Reform*” in *Imprisonment Today: Current Issues in the Prison Debate*. ed. S. Backett et al. (London: Macmillan Press, 1988), 160.

<sup>3</sup> W. Cragg, *The Practice of Punishment: Towards a Theory of Restorative Justice* (London and New York: Routledge, 1992), 9-14; G. Johnstone, Introduction: Restorative Approaches to Criminal Justice (Devon and Portland: Willan Publishing, 2003), 8-10.

<sup>4</sup> M. Cavadino and J. Dignan, *The Penal System: An Introduction*, 3<sup>rd</sup> ed. (London: Thousand Oaks & New Delhi: Sage Publications, 2002), 33; N. Walker, *Why Punish: Theories of Punishment Reassessed* (Oxford, New York: Oxford University Press, 1991), 7; B. A. Hudson, *Understanding Justice: An Introduction to Ideas, Perspectives and Controversies in Modern Penal Theory* (Buckingham-Philadelphia: Open University Press, 2003), 38.

<sup>5</sup> D. Roche, *Accountability in Restorative Justice* (New York: Oxford University Press, 2003); A. Von Hirsch et al., *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing, 2003); T. Newell, “*Restorative Justice*” in *The Future of Criminal Justice: Resettlement, Chaplaincy and Community*, ed. C. James and P. Sedgwick (London: SPCK, 2002).

## II. RETRIBUTIVE RATIONALE: PURE PUNISHMENT

Retributive theory defended by Kant (d. 1804) and F. Bradley (1924) has a crime-centred approach. It focuses on the offence and its seriousness.<sup>6</sup> The central point of this approach is that punishment is necessary because the offender has deserved it by infringing the law and harming others.<sup>7</sup> It is a fact that every human who has free will is responsible for his behaviours and attitudes.<sup>8</sup> Everybody living in a community has to accept the rules of the community that he/she lives in. If one of the citizens in the society harms another or breaks one of the social rules, this means that he/she should be punished. According to this approach based on rationale of “an eye for eye, a tooth for tooth, and a life for life”, it should be balance between crime and punishment.<sup>9</sup> As a reflection of this perspective, retributive theory called the courts to abide by the severity of the crime in punishment.<sup>10</sup> Likewise, in respect of Kant, the offender would have an unfair advantage against victim and other innocents. Consequently, he should be punished proportionally to establish justice and to eliminate unjust advantage.<sup>11</sup>

Retributive rationale divided into two categories in historical process. One of them was negative and the other was positive. The supporters of negative point of view displayed a more hospitable manner and they said that the offender should be punished only to the extent that he deserves. The positivists, however, showed a tougher punitive attitude and they pointed out that the criminal must be punished according to the offence, i.e. an eye for eye.<sup>12</sup> Although negative approach did not accept

---

<sup>6</sup> D. Garland and P. Young, *The Power to Punish: Contemporary Penalty and Social Analysis* (Vermont: Ashgate, 1992), 11; Walker, *Why Punish*, 7.

<sup>7</sup> Cavadino and Dignan, *The Penal System*, 33; T. Morris, “*The Parlous State of Prisons*” in *Prisons Past and Future*, ed. J.C. Freeman (London: Heinemann, 1978), 73.

<sup>8</sup> J. M. Pollock, *Prisons: Today and Tomorrow* (U.S.: Aspen Publisher Inc, 1997), 4-5.

<sup>9</sup> Hudson, *Understanding Justice*, 38.

<sup>10</sup> A. Duff and D. Garland, *Introduction: Thinking about Punishment* (New York: Oxford University Press, 1997), 13.

<sup>11</sup> A. Hirsch, “*Censure and Proportionality*” in *A Reader on Punishment*, ed. A. Duff and D. Garland (New York: Oxford University Press, 1997), 110-116.

<sup>12</sup> Duff and Garland, *Thinking about Punishment*, 23-27.

the complete justification of punishment, it is understood that positivists acknowledge the complete rationalization of chastisement.

From these explanations, we can see that the main idea of retributive rationale asks “what punishment should be given for the offence committed in the past?” According to this approach, the goal of punishment was to establish justice in proportion to the offense committed. This means merely simple retribution.<sup>13</sup> Hence, its punishment philosophy has a backward-looking and crime-centred viewpoint. Deserve and punishment in proportion to severity of crime is very important for retributive theory. For this reason no reformation, rehabilitation and education programmes was in question. When conviction is defined and applied in this way, the prisoner can be more devastating towards after being released as a result of physical, psychological and mental exhaustion.<sup>14</sup> Because of the number of criminals and criminals, the philosophy of punishment has commenced to change since 1700s and the imprisonment has been adapted to the penal system.

### III. UTILITARIANISM: THE DETERRENCE AND REHABILITATION THEORY

Utilitarianism focused on imprisonment as a punishment in a more positive way than retributive logic. It became dominant in the penal history after the last quarter of the 18<sup>th</sup> century. The imprisonment, deterrence and rehabilitation process came into prominence instead of severe punishments.<sup>15</sup> Those who support this philosophy have been entitled as utilitarian, consequentialist, reductionist or liberal.<sup>16</sup> The utilitarian rationale asks “what imprisonment should be given to the

---

<sup>13</sup> C. L. Ten, *Crime, Guilt, and Punishment: A Philosophical Introduction* (Oxford: Clarendon Press, 1987), 43.

<sup>14</sup> Hudson, *Understanding Justice*, 55.

<sup>15</sup> Hudson, *Understanding Justice*, 45; Ten, *Crime, Guilt, and Punishment*, 63; N. Flynn, *Introduction to Prisons and Imprisonment* (Winchester: Waterside Press, 1998), 27; S.R. Brody, *The Effectiveness of Sentencing: Home Office Research Unit Report* (London: Her Majesty’s Stationery Office, 1992), 2; Murphy, “*Marxism and Retribution*” in *A Reader on Punishment*, ed. R. A. Duff, D. Garland (New York: Oxford University Press, 1997), 48.

<sup>16</sup> Ten, *Crime, Guilt, and Punishment*, 46; Morris, “*The Parlous State of Prisons*”, 13.

criminal and what rehabilitation activities would be practiced on behalf of him/her while he is in prison?

The reformers such as Jeremy Bentham (d. 1748), Elizabeth Fry (d. 1780), John Howard (d. 1790) and Jonas Hanway (d. 1786) in UK made many attempts to provide a more rational use of punishment and to improve the prison conditions and the rights of prisoners.<sup>17</sup> As a result of the reform attempts of them, prisons which had a coercive structure in retributive viewpoint were started to be used as a deterrent and rehabilitative instrument.<sup>18</sup> In addition, the rationale of punishment altered its aspect from offence-centred approach to offender-centred with utilitarianism. While retributive *raison d'être* was a backward-looking structure, utilitarianism displayed forward-looking formation. From this standpoint, punishment should aim at education, reformation, rehabilitation of the offender during imprisonment and reintegration of his/her to the community after release.

The argument of utilitarian philosophers has been that the offenders should be deterred through incapacitation instead of giving pure punishment and be rehabilitated during punishment.<sup>19</sup> In this context, they put forward three main concepts to reduce future crimes and discourage both offenders and the whole community from committing crime again: long or short term imprisonment in proportion to crime, deterrence, rehabilitation. As a result of this, different kinds of rehabilitation activities such as cultural and sportive actions, vocational training, education, health service, religious and pastoral care during imprisonment have been implemented as key elements.<sup>20</sup>

However, the percentage of crime and recidivism which increased annually indicated that these attempts were not adequate. The

---

<sup>17</sup> J. E. H. Williams, *The English Penal System in Transition* (London: Butterworths, 1970), 34; D. L. Howard, *The English Prisons: Their Past and Their Future* (London: Methuen & Co Ltd, 1960), 73; R. McGowen, "The Well-Ordered Prison: England, 1780-1865" in *The Oxford History of the Prison: The Practice of Punishment in Western Society*, N. Morris and D. J. Rothman (New York, Oxford: Oxford University Press, 1998), 87.

<sup>18</sup> Williams, *The English Penal System*, 37; Cavadino and Dignan, *The Penal System*, 48.

<sup>19</sup> Hudson, *Understanding Justice*, 55.

<sup>20</sup> Cavadino and Dignan, *The Penal System*, 38; Ten, *Crime, Guilt, and Punishment*, 7-10; Flynn, *Introduction to Prisons and Imprisonment*, 29-30.

victim and the community were not satisfied with the penalty. This situation compelled the policy makers to seek new solutions to the crime and criminal problem. Restorative justice accepted after the end of 20<sup>th</sup> century was considered as the new solution and started to be practiced.

#### IV. RESTORATIVE JUSTICE: RESTORATION AND RECONCILIATION

Restorative justice is generally defined like this: “*Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.*”<sup>21</sup> This definition points out that restorative justice aims at solving the problems such as the harmful act, the damage and the loss arising from the offence by calling on all parties affected by crime directly or indirectly to act together actively.<sup>22</sup> Restorative justice, it tries to find answers to these questions: “What should be done to repair the harm which was given to the victim? How can relationships between those who have been affected by an offence be restored? What should be done to rehabilitate and reintegrate the offender to the community after release? How can social connections be made strong? What should be done to prevent re-offending in the future?”<sup>23</sup>

Restorative justice suggests some solutions for the harmful act, the damage and loss. One of these solutions is to repair the harm caused by the offender. In this process, the offender should take the responsibility for his/her action to repair the harm which he/she caused.

---

<sup>21</sup> Newell, “*Restorative Justice*”, 152; J. Shapland, “*Restorative Justice and Criminal Justice*” in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*, ed. A. Von Hirsch et al. (Oxford and Portland: Hart Publishing, 2003), 197.

<sup>22</sup> W. Noblett, *Prayers for People in Prison* (New York: Oxford University Press 1998), 175-177; D. Van Ness, “*Proposed Basic Principles on the Use of Restorative Justice*” in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*, A. Von Hirsch et al. (Oxford and Portland: Hart Publishing, 2003), 167; Roche, *Accountability*, 30.

<sup>23</sup> H. Zehr and B. Toews, *Critical Issues in Restorative Justice* (Monsey, New York: Criminal Justice Press and Cullompton, Devon: Willan Publishing, 2004), 23-25; C. G. Brunk, “*Restorative Justice and Philosophical Theories of Criminal Punishment*” in *The Spiritual Roots of Restorative Justice*, Ed. M. L. Hadley (Albany: State University of New York Press, 2001), 31-40.

The second is to restore the sense of security within the society. The third is to support the rehabilitation of the victim and those who are affected from offence. The fourth is to try to reintegrate the offenders into the community after release.<sup>24</sup> It is clear that restorative justice endeavours to bring together all parties directly or indirectly affected by crime to achieve these solutions. From this perspective, restorative justice has brought new dimension to the justice system unlike retributive rationale and utilitarianism. What is the difference between restorative justice, retributive rationale and utilitarianism?

With respect to restorative justice, offence means harm to the relationships between people who were affected by the crime rather than merely infringing the law. Retributive rationale, however, defines the crime as the breakdown of the law.<sup>25</sup> Restorative justice endeavours to restore relationships between the offender and the victim in particular, and society in general. In addition it tries to repair what has been damaged and to wipe the causes of the loss out. Retributive approach, however, focuses on vengeance, punitive sanctions and punishment.<sup>26</sup> This means that restorative justice lays stress on the relationship between the offender, the victim and the community though the retributive rationale emphasises the relationship between the offender and the state.<sup>27</sup> Restorative justice stresses on devastating consequences of crime and has a forward-looking, whereas retributive rationale focuses only on the offence committed in the past and backward-looking.<sup>28</sup> Furthermore, while restorative justice tries to heal the relationships between the offenders, the victims and the community in addition with the rehabilitation of the offender and reintegration of him/her to the society after release, utilitarianism is putting forward only the last one (i.e.

---

<sup>24</sup> Johnstone, *Introduction: Restorative*, 5-10.

<sup>25</sup> H. Zehr, “*Retributive Justice, Restorative Justice*” in *A Restorative Justice Reader*, ed. G. Johnstone (Devon and Portland: Willan Publishing, 2003), 70-74; Roche, *Accountability*, 34.

<sup>26</sup> Noblett, *Prayers*, 175-177; Zehr, “*Retributive Justice, Restorative Justice*”, 76; K. Daly, “*Restorative Justice: The Real Story*” in *A Restorative Justice Reader*, ed. G. Johnstone (Devon and Portland: Willan Publishing, 2003a), 365-368.

<sup>27</sup> A. Coyle, *Restorative Justice in the Prison Setting* (London: International Centre for Prison Studies. 2001), 47; K. Daly, “*Restorative Justice: The Real Story*”, 376.

<sup>28</sup> Zehr, “*Retributive Justice, Restorative Justice*”, 77.

rehabilitation of the offender, and reintegration of him/her to the society after release) in the solution of crime problem.<sup>29</sup> All these explanations indicate that restorative justice encompasses both retributive and utilitarian characteristics. Moreover, it brings a new standpoint to the justice system with restitution, reparation, reconciliation and repentance apart from the two.

Restorative justice is based primarily on the reparation of the victim.<sup>30</sup> Consequently, it displays essentially victim-centred approach and sees the victim the most important element in rehabilitation, restoration and reintegration process of the offender. In this process, firstly, it tries to restore the loss and injury of the victim, his sense of security and reliance on the law and to give social support.<sup>31</sup> Secondly, it endeavours to mend relationships between the offender and the victim by stressing upon humanity.<sup>32</sup> Thirdly, it tries to restore the sense of safety and authorisation of the offender, to meet his needs such as employment, education and housing by giving hope about the future. Furthermore, it endeavours to give a sense of wellbeing to the society.<sup>33</sup>

The answer of restorative justice to “Why prisons came into being?” is that they are establishments in which the offenders have been kept and prevented from doing wrong. In addition, the inmates can get an opportunity to repair the harm which they caused through compensation, reparation, restitution, reconciliation and repentance. Moreover, they can be improved with rehabilitation activities and prepared for returning to the society with a preventative and problem-solving orientation.<sup>34</sup> In this context, restorative justice puts forward some values such as negotiation, personal responsibility, participation, repentance, forgiveness,

---

<sup>29</sup> H. Zehr, *Changing Lenses: A New Focus For Crime and Justice*, 3<sup>rd</sup> ed. (Scottsdale, Pennsylvania, Waterloo, Ontario: Herald Press., 2005), 90).

<sup>30</sup> Roche, *Accountability*, 26.

<sup>31</sup> J. Braithwaite, “*Restorative Justice and A Better Future*” in *A Restorative Justice Reader*, Ed. G. Johnstone (Devon and Portland: Willan Publishing, 2003a), 84.

<sup>32</sup> M. Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998), 92.

<sup>33</sup> Braithwaite, “*Restorative Justice and a Better Future*”, 90.

<sup>34</sup> Coyle, *Restorative Justice*, 50; Noblett, *Prayers for People*, 175-177; Newell, “*Restorative Justice*”, 153).

reconciliation, reparation, compensation and reintegration.<sup>35</sup> If we look at these values closely, restorative justice gives a chance to the victim and the offender to come together, to discuss the crime and its results and to express feelings.<sup>36</sup> Therefore, restorative justice process requires the dynamical participation of all the parties who have been affected by crime or neutral third parties that are likely to participate in the solution of problems emerging from crime. This process related with victim-offender mediation can ensure by the aid of professionals community reparative boards and volunteers. Furthermore, family group conferencing and sentencing circles can be actualized with the involvement of the victim, offender, their supporters, the judges, the police and all relevant parties.<sup>37</sup> It appears to us that the active participation of the parties affected directly or indirectly from the crime to the rehabilitation and reintegration process with various activities is very important to reduction or prevention of re-offence. Particularly the participation of the victim to the justice system can open the new perspective because he is the main person affected by the crime. Additionally some faith-based programmes have been put into practice such as sycamore tree (victim awareness), justice awareness and SORI (supporting offenders restoring inside) in UK. Sycamore tree uses the story of Zacchaeus and Jesus<sup>38</sup> in the New Testament to show the impact of the crime on victims. It tries to make the offenders take the responsibility for their actions. As for justice awareness, it is based on the story of Prophet Joseph in the Qur'an. SORI has been developed and practiced for young offenders since 2004. The programme run by the participation of all relevant bodies inside and outside the prison walls

---

<sup>35</sup> Roche, *Accountability*, 21; M. L. Hadley, *Introduction: Multi-faith Reflection on Criminal Justice* (Albany: State University of New York Press, 2001), 13-17.

<sup>36</sup> K. Daly, "Mind the Gap: Restorative Justice in Theory and Practice" in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*, ed. A. Von Hirsch et al. (Oxford and Portland: Hart Publishing, 2003b), 221-222; Ness, "Proposed Basic Principles", 158.

<sup>37</sup> J. Shapland, "Restorative Justice and Criminal Justice" in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*, ed. A. Von Hirsch et al. (Oxford and Portland: Hart Publishing, 2003), 197.

<sup>38</sup> Luke 19.

such as chaplains, victim support, probation, victim liaison officers, psychology staff, safer custody counsellor and criminal justice agencies.<sup>39</sup>

Similarly Zehr expresses that restorative justice reflects one of the best developments in the criminal justice system. It tries to reform prisoners mentally, psychologically and emotionally. Moreover, it tries to heal antipathy between the criminal and the victim of crime by inviting them to repentance, forgiveness, reconciliation. In this process, one of the most important things is active participation of the victim of crime and the acceptance of the offender taking responsibility of his/her action by seeking reconciliation. The second is to try to repair the consequences which emerge in the aftermath of a crime by promoting restoration and healing relationships between the offender, the victim and the wider community. Moreover, the criminal will be seen as a person and punishment as an instrument of restitution.<sup>40</sup>

Restorative justice brought a new dimension to the criminal justice system has been criticised by some scholars. The following can be dealt with as their criticisms: it has multiple and unclear goals in terms of the offender and the victim. It has underspecified means and modalities and few or no disposal criteria to evaluate the achievement of restorative justice methods involving participant satisfaction and impact on re-offending. Participants may show negative behaviour such as scolding, humiliation and bullying instead of reparation and renovation. This may give rise to demoralization on both sides.<sup>41</sup> However, the advocates of restorative justice have stated that: it can meet the needs of victims such as restoration, participation and satisfaction. It can cover the needs of the community such as the sense of security and fulfilment. Moreover, it may ensure reformation, restoration, reintegration, forgiveness, fairness and

---

<sup>39</sup> For more information see: Harun Isik, *What is The Role of Chaplaincy in The Delivery of Restorative Justice in Prisons in England and Wales? A Case Study of HMP Birmingham* (MPhil Thesis, University of Birmingham, 2010), 64-67.

<sup>40</sup> Zehr, *Changing Lenses*, 94-97.

<sup>41</sup> Roche, *Accountability*, 34; A. Von Hirsch et al., "Specifying Aims and Limits for Restorative Justice" in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*, ed. A. Von Hirsch et al. (Oxford and Portland: Hart Publishing, 2003), 21-24; Duff and Garland, *Introduction*, 12-16; A. Duff, "Restoration and Retribution" in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*, ed. A. Von Hirsch et al. (Oxford and Portland: Hart Publishing, 2003), 17.

the contentment of inmates in sessions, and thus helps to reduce or prevent re-offending.<sup>42</sup> When we think about crime, punishment and prisons, they do not concern only offenders. However, victims, the families of both side and the society in general are affected as well. It is very important that all parties being influenced from crime come together actively and try to solve the problems arising from the offence by mediation, conferencing and sentencing circles.<sup>43</sup> This is a quite important development in the penology. If we want to solve the crime, criminal, re-offending problem and to satisfy the victim and society, we should gather all parties and seek answers outside the prison service rather than in it. We should clarify the reasons which give rise to crime outside the prison. As it is known, every prisoner reaches every kind of facility within the prison service. After release, he stands alone in his life without nearly any assistance. In this process, all parties in the society can help the criminal after release to reduce or prevent re-offending and reintegrate them to the community in a useful and peaceful manner.

## V. CONCLUSION

If someone commits a crime by using his reason and will, he is responsible for his action and deserves punishment in return. It is seen that different punishment-justice approaches have been put into practice in order to prevent and reduce the number of criminals and the number of criminals. Utilitarian rationale adopted the imprisonment became a part of the penal system towards the end of the 18th century due to the effect of deterrence was few in retributive theory focused on the crime or give his/her punishment and the prisons were born. Rehabilitation of prisoners in the prisons settings and their reintegration into the society after release have also been implemented as a reflection of this understanding.

---

<sup>42</sup> J. Braithwaite, "Does Restorative Justice Work" in *A. Restorative Justice Reader*, Ed. G. Johnstone (Devon and Portland: Willan Publishing 2003b), 324-325; C. D. Marshall, *Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment* (Michigan, Cambridge: B. Eerdmans Publishing Co. and Auckland: Lime Grove House Publishing Ltd., 2001), 63-64.

<sup>43</sup> Ness, *Proposed Basic Principles*, 167; Roche, *Accountability*, 35; Shapland, *Restorative Justice*, 197; E. Mclaughling et al., *Introduction: Justice in the Round-Contextualizing Restorative Justice* (London, Thousand Oaks, New Delhi: Sage publications, 2003), 3-5.

However, the increasing number of people committed to the crime and the increase in the rate of return to the penal execution of the ones who were released that the utilitarian theory cannot achieve its aims such as the rehabilitation of prisoners and the healthy participation of them to the society. In addition, the victim was ignored the retributive and utilitarian rationality, he/she was evaluated as a means of the penalty process, not a purpose of it. The state has been raised to the position of the subject, the satisfaction of the state is taken as the basis and the victim and the society have been neglected because the crime is perceived as a violation of the law determined by the state rather than being perceived as an injustice to the victim. Moreover, the practices in the penal system even lead to the impression that the aim of protecting the criminal is dominant. Consequently, it has been inevitable to think about what and how a fair for all and acceptable criminal-justice concept which satisfies all the parties affected by crime and it must be made profound changes. In this context, restorative justice has been adopted and implemented as a legal method in most of the countries in different ways. It is necessary to think about the restorative justice idea and implementing its principles in Turkey's penal system taking into account the typology of prisoners, victims and other interested parties. Reconciliation being at the Turkish penal system after 2005 evokes restorative justice. However, when the content of the reconciliation process and the basic principles of the restorative justice are compared, it is possible to say that it is far from meeting the expectations for the real restoration of the victim and society. When we consider that offence and punishment affect a number of people such as the offender, victim, offenders' and victims' families and the community in general, the principles of restorative justice are ideal, constructive and practicable as well. Active participation of all parties, related institutions and organizations to the criminal justice system can provide a chance to constitute public opinion and solve the problem in a more successful way. In addition, religion and religious values are very important in restorative justice because they are one of the most effective factors which shape social life and amend the problems of individuals. Thus, Krumbholz asserted that "no rehabilitation can be complete without the spiritual therapy of religion."<sup>44</sup>

---

<sup>44</sup> J. Sundt et al., *"The Role of the Prison Chaplain in Rehabilitation" in Religion, the Community and the Rehabilitation of Criminal Offenders*, ed. T. P. O'Connor and N. J. Pallone (New York, London, Oxford: The Harworth Press, 2013), 63.

## REFERENCES

- BRAITHWAITE, J. “*Restorative Justice and A Better Future*” in *A Restorative Justice Reader*. Ed. G. Johnstone. Devon and Portland: Willan Publishing, 2003, p. 83-99.
- BRAITHWAITE, J. “*Does Restorative Justice Work*” in *A Restorative Justice Reader*. Ed. G. Johnstone. Devon and Portland: Willan Publishing, 2003, p. 320-353.
- BRODY, S. R. *The Effectiveness of Sentencing: Home Office Research Unit Report*. London: Her Majesty’s Stationery Office, 1976.
- BRUNK, C. G. “*Restorative Justice and Philosophical Theories of Criminal Punishment*” in *the Spiritual Roots of Restorative Justice*. M. L. Hadley. Albany: State University of New York Press, 2001, p. 31-56.
- CAVADINO, M. and Dignan J. *The Penal System: An Introduction*. 3<sup>rd</sup> ed. London: Thousand Oaks & New Delhi: Sage Publications, 2002.
- COYLE, A. *Restorative Justice in the Prison Setting*. London: International Centre for Prison Studies, 2001.
- CRAGG, W. *The Practice of Punishment: Towards a Theory of Restorative Justice*. London and New York: Routledge, 1992.
- DALY, K. “*Restorative justice: the real story*” in *A Restorative Justice Reader*. Ed. G. Johnstone. Devon and Portland: Willan Publishing, 2003a, p. 363-382.
- DALY, K. “*Mind the Gap: Restorative Justice in Theory and Practice*”, in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*. Ed. A. Hirsch and et al. Oxford and Portland: Hart Publishing, 2003b, p. 219-237.
- DUFF, A. and Garland, D. *Introduction: Thinking about Punishment*. New York: Oxford University Press, 1997.
- DUFF, A. “*Restoration and Retribution*” in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*. Ed. A. Hirsch and et al. Oxford and Portland: Hart Publishing, 2003, p. 1-35.

- FLYYN, N. *Introduction to Prisons and Imprisonment*. Winchester: Waterside Press, 1998.
- GARLAND, D. and Young P. *The Power to Punish: Contemporary Penalty and Social Analysis*. Vermont: Ashgate, 1992.
- HADLEY, M. L. *Introduction: Multi-faith Reflection on Criminal Justice*. Albany: State University of New York Press, 2001, 1-29.
- HIRSCH, A. Von. "Censure and Proportionality" in *A Reader on Punishment*. Ed. A. Duff and D. Garland. New York: Oxford University Press, 1997.
- HIRSCH, A. Von. et al. *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* Oxford and Portland, Oregon: Hart Publishing, 2003.
- HIRSCH, A. Von. et al. "Specifying Aims and Limits for Restorative Justice" in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*. Ed. A. Von Hirsch et al. Oxford and Portland: Hart Publishing, 2003, p. 21-41.
- HOWARD, D. L. *The English Prisons: Their Past and Their Future*. London: Methuen & Co Ltd, 1960.
- HUDSON, A. B. *Understanding Justice: An Introduction to Ideas, Perspectives and Controversies in Modern Penal Theory*. Buckingham-Philadelphia: Open University Press, 2003.
- ISIK, Harun. *What is The Role of Chaplaincy in The Delivery of Restorative Justice in Prisons in England and Wales? A Case Study of HMP Birmingham*. MPhil Thesis, University of Birmingham, 2010.
- JENKINS, D. "Criminal Justice: Impediments to Reform" in *Imprisonment Today: Current Issues in the Prison Debate*. Ed. S. Backett, J. McNeill, A. Yellowless. London: Macmillan Press, 1988, p. 160-172.
- JOHNSTONE, G. *Introduction: Restorative Approaches to Criminal Justice*. Devon and Portland: Willan Publishing, 2003, p. 1-18.
- MARSHALL, C. D. *Beyond Retribution: a New Testament Vision for Justice, Crime, and Punishment*. Michigan, Cambridge: Wm. B. Eerdmans Publishing Co. and Auckland: Lime Grove House Publishing Ltd., 2001.

- MCGOWEN, R. “*The Well-Ordered Prison: England, 1780-1865*” in the *Oxford History of the Prison: The Practice of Punishment in Western Society*. Ed. N. Morris and D. J. Rothman. New York, Oxford: Oxford University Press, 1998, p. 71-99.
- MCLAUGHLING, E. et al. *Introduction: Justice in the Round-Contextualizing Restorative Justice*. London, Thousand Oaks, New Delhi: Sage publications, 2003, p. 1-18.
- MINOW, M. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press, 1998.
- MORRIS, T. “*The Parlous State of Prisons*” in *Prisons Past and Future*. Ed. J.C. Freeman. London: Heinemann, 1978, p. 81-93.
- MURPHY, J. G. “*Marxism and Retribution*”, in *A Reader on Punishment*. Ed. R. A. Duff and D. Garland. New York: Oxford University Press, 1997, p. 44-71.
- NESS, D. Van. “*Proposed Basic Principles on the Use of Restorative Justice*” in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*. Ed. A. Von Hirsch et al. Oxford and Portland: Hart Publishing, 2003, p. 157-177.
- NEWELL, T. “*Restorative Justice*” in *The Future of Criminal Justice: Resettlement, Chaplaincy and Community*. Ed. C. James and P. Sedgwick, London: SPCK, 2002, p. 148-164.
- NOBLETT, W. *Prayers for People in Prison*. New York: Oxford University Press, 1998.
- POLLOCK, J. M. *Prisons: Today and Tomorrow*. U.S.: Aspen Publisher Inc, 1997.
- ROCHE, D. *Accountability in Restorative Justice*. New York: Oxford University Press, 2003.
- SHAPLAND, J. “*Restorative Justice and Criminal Justice*” in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*. Ed. A. Von Hirsch et al. Oxford and Portland: Hart Publishing, 2003, p. 195-219.
- SUNDT, J. et al. “*The Role of the Prison Chaplain in Rehabilitation*” in *Religion, the Community and the Rehabilitation of Criminal Offenders*. Ed. T. P. O’Connor and N. J. PALLONE, New York, London, Oxford: The Harworth Press, 2013, p. 59-87.

- TEN, C. L. *Crime, Guilt, and Punishment: A Philosophical Introduction*. Oxford: Clarendon Press, 1987.
- WALKER, N. *Why Punish: Theories of Punishment Reassessed*. Oxford, New York: Oxford University Press, 1991.
- WILLIAMS, J. E. H. *The English Penal System in Transition*. London: Butterworths, 1970.
- ZEHR, H. “Retributive Justice, restorative justice” in *A Restorative Justice Reader*. Ed. G. Johnstone. Devon and Portland: Willan Publishing, 2003, p. 69-83.
- ZEHR, H. *Changing Lenses: A New Focus For Crime and Justice*. 3<sup>rd</sup> ed. Scottsdale, Pennsylvania, Waterloo, Ontario: Herald Press., 2005.
- ZEHR, H. and Toews B. *Critical Issues in Restorative Justice*. Monsey, New York: Criminal Justice Press and Cullompton, Devon: Willan Publishing, 2004.