

Punishment or Logical Consequences:

A Response to the Punishment Debate Within Restorative Justice

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There will be some overlap between the old and new, but the new cannot be an extension of the old. Rather, the new paradigm must reconstruct the field from new fundamentals changing the field's most elementary theoretical generalizations as well as many of its paradigm methods and applications.

(Kuhn 1962)

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**“A movement needs to say clearly what it is for, not just what it is against.”
(Lakoff 2004: 74)**

Abstract

Restorative justice and retributive justice systems worldwide have entered a transitional period where old and new justice paradigms overlap, resulting in imprecise terminology and inconsistent practices. The ambiguity regarding the terminology and concept of punishment creates confusion insofar as Restorative Justice practice and paradigm development are concerned, hindering its growth and acceptance. It is argued that from restorative justice, social movement, cognitive linguistics and psychological perspectives, re-visioning justice requires clarification of the role of punishment and adoption of a terminology that more effectively reflects the new approach and its intentions and goals. Development of the concept of Logical Consequences proposed by Dreikurs & Grey, based on the work of Adler and refined by contemporary scholars, provides an alternative framework which conceptualizes responses to crime restoratively. It also provides a precise method of articulation required for a new and consistent way of thinking, aligning not only with the new paradigm rather than reinforcing the old, but also aligning with current sentencing principles of the *Criminal Code of Canada* as well as Canada's *Youth Criminal Justice Act*.

Introduction

The effectiveness, moral value, and role of punishment in the criminal justice system has long been a topic of debate. Recently however, the increasing acceptance and worldwide implementation of contemporary restorative justice has added a new dimension to this debate. Perspectives on punishment vary significantly within the restorative justice movement, with some restorative justice scholars and practitioners debating what types of punishment are acceptable in practice and who should decide on appropriate punishment, while others are conflicted as to whether restorative justice constitutes an “alternative to punishment or an alternative punishment” (Duff 1992). Still others debate whether or not punishment has any legitimate role at all within the restorative justice paradigm, and if so, what that role is. As

contemporary restorative justice evolves as a social movement, its collective identity and consistency insofar as concepts and terminology becomes increasingly important to its acceptance and implementation, particularly within a dominantly punitive and retributive culture (Snow et. al 1986; Pawlychka 2010).

In this paper, I enter the restorative justice punishment discussion, asserting that the punishment debate is not simply an alleviation of what Wright refers to as “terminological confusion” (2003: 5) while maintaining the practice of inflicting pain on those who have harmed others. Rather, agreeing with Wright, I suggest that it is necessary to eliminate the use of the term itself, as well as the practice of punishment, and replace it with a more effective concept in line with restorative justice values. To this end, however, I suggest adoption of the concept of logical consequences proposed by Dreikurs & Grey (1968), based on the Individual Psychology of Alfred Adler (1956). In doing so, it becomes possible to reframe restorative responses to criminal behaviours while maintaining the integrity, values and vision of contemporary restorative justice, and aligning the discussion with current Canadian criminal justice legislation which has paved the way for restorative approaches.

This paper begins with an exploration of contemporary restorative justice values, followed by an examination of current perspectives on punishment within the restorative justice literature. The position of the restorative justice movement is then analyzed utilizing social movement, framing and cognitive linguistics approaches, demonstrating the necessity of aligning restorative values, practices and terminology. Finally, the concept of logical consequences is presented, followed by a discussion of Canadian legislation which has already provided the foundation for this fundamental terminological and conceptual shift.

Contemporary Restorative Justice: Respect, healing, restoration and reparation

Contemporary restorative justice is a culmination of adaptations of indigenous traditions of New Zealand Maori, Canadian Aboriginal, Northern Navajo, African, Afghani and religious traditions (Zehr 2002). In addition, contributions of victims-rights and alternatives-to-prisons movements, as well as the politicization of justice and historical processes of colonialism are of equal importance in the evolution of the movement and the development of its principles and values (Woolford 2009). Marshall (2003) points out that due, however, to its extremely varied beginnings, restorative justice is represented by an eclectic accretion of cultures, practices and experiences rather than any one particular academic theory. While each of these concomitant contributions are foundational in its development, contemporary restorative justice developed into a social movement as recently as the latter part of the 20th century as various contributors and participants attempted to create a united and universal vision, and dissatisfaction with the criminal justice system grew. Acknowledging the diversity of these contributions, my argument rests primarily on the seminal writings of Howard Zehr, who is widely regarded as “the grandfather of restorative justice” (Van Ness & Strong 2002). Zehr’s writings were highly influential to the emerging international field of restorative justice study and have since been refined by Zehr as well as various other scholars.

More particularly, in *Changing Lens*, Zehr (1990) provides an abundance of evidence as to the ineffective and harmful nature of punishment, as well as a clear contrast between retributive and restorative justice. More importantly, however, he presents restorative justice as a new paradigm which operates on the basis of fundamental concepts, values and assumptions that emerge through the lens through which crime is viewed. It is this lens and the refinement of restorative justice values that negate the use of and need for punishment.

According to Zehr (2002), restorative justice is:

“A process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible” (Zehr 2002: 37).

Zehr explains that through the retributive lens crime is viewed as a violation of state and therefore focuses on guilt, rule breaking and administration of pain as punishment. The focus of this system is determining who is to blame and how much pain they deserve. Through a restorative justice lens, on the other hand, crime is viewed as a violation of people and relationships, and it therefore “creates obligations to make things right” (1990: 181). Through this lens, victim, offender and community are involved “in a search for solutions which promote repair, reconciliation, and reassurance” (181). Specifically, the wrongdoer is obligated to “make things as right as possible,” (2002: 37) while the community (and society) has the responsibility of assisting and “encouraging offenders to understand and acknowledge the harm they have done and then...to make that wrong right” (1990: 197). According to Zehr, making the wrong right is primary and “central to justice” (197).

Zehr’s analogy of the lens is critical as he explains:

The choice of lens...affects what is in the picture. It also determines the relationships and proportions of the elements included. Similarly, the lens we use to examine crime and justice affects what we include as relevant variables, what we consider their relative importance to be, and what we consider proper outcomes (1990: 178).

Therefore, viewing crime as a violation of people and relationships and focusing primarily on righting the wrongs and healing all impacted parties provides the basis for and the importance of various elements to be involved in the process. One of the elements would be punishment. To this end, Zehr argues that finding alternative ways of punishing, or even finding alternative ways of responding to crime other than punishment is not enough. We must embrace a lens which completely shifts our way of viewing the problem (crime) as well as the solution (justice). In

fact, Zehr referred to Harris, according to whom justice requires alternative values rather than “alternate *technologies* of punishment” (as cited in Zehr 1990: 179, emphasis added).

More specifically, Zehr provides four dimensions of harm caused by crime, which include harm to the victim, interpersonal relationships, the offender and the community. Therefore, healing and restoration, which he presents as the primary goals of justice, must consider and address each of these dimensions (1990: 186-7). To this end, Zehr offers three primary questions which are the focus of restorative justice: who has been hurt? what are their needs? and whose obligations are these? By engaging in a respectful dialogue, all involved parties are able to determine an avenue to repair harm where possible, and to make things right. Zehr (1990) argues that with regard to offenders, the role of the justice system should be to help them acknowledge and assume their responsibilities willingly, and then to guide and assist them in fulfilling their obligations, rather than to punish them. According to Zehr, infliction of pain as punishment is a “fulcrum” of the retributive justice system, and prison, specifically, is the normative response, the “elaborate mechanism for administering this pain” (75). But he clearly rejects punishment as the normative response within a restorative paradigm, referring to it as “inflicting pain intended as pain” (75) in an attempt to relieve an offender’s guilt and fulfill payment of their societal debt. He argues that it is ineffective, in part, because it “seeks to right the balance by lowering the offender to the level to which the victim has been reduced” and because “it tries to defeat the wrongdoer” (1990: 193) rather than heal all parties, including the wrongdoer. According to Zehr, because justice is restoration, it “requires acts of restoration – not further harm – [to] counterbalance the harm of crime” (186). Therefore, achieving justice involves the rejection, rather than the normalization, of punishment.

Over two decades, of extensive practical development and research have passed since Zehr's seminal vision. Since then, restorative justice has grown into a worldwide social movement, "leaving its infancy...and becoming recognized increasingly by policy-makers, the judiciary, practitioners, academics and by the population in general" (Walgrave 2007: 560). This growth has been facilitated by a discussion of the principles, values and concepts of the paradigm, which have been developed and refined, although it is significant that the restorative and healing aspects of Zehr's original vision have been maintained. For example, in a later publication, Zehr (2002) offered the following five principles of restorative justice:

- Focus on harms and consequent needs of the victims, as well as communities' and offenders';
- Address obligations resulting from harms;
- Use inclusive, collaborative processes;
- Involve those with a legitimate stake in the situation, including victims, offenders, community members and society;
- Seek to put right the wrongs.

He further points out that these principles must be rooted in underlying values which include interconnectedness and individuality, and that the value of respect is "supremely important" (2002: 36). According to Zehr, justice requires "respect for all, even those who are different from us, even those who seem to be our enemies" and importantly, "respect reminds us of our interconnectedness but also of our differences...[and] respect insists that we balance concern for all parties" (Zehr 2002: 36).

Other scholars have also since contributed significantly to the refining of contemporary restorative justice. For example, Sharpe (1998) provides three primary goals of restorative justice: putting key decisions into the hands of those most affected by crime, making justice more healing and transformative, and reducing the likelihood of future offences. According to Sharpe, these goals are achieved by including all affected parties, encouraging understanding,

providing reintegration for victim and offender, and providing “outcomes [that] help to repair the harms done and address the reasons for the offence” (1998: 20). Van Ness and Heetderks Strong (2006: 43) offer three key principles which must “govern the implementation of restorative justice.” The first of these is that “justice requires that we work to heal victims, offenders and communities that have been injured by crime.” These authors also identify four normative values of restorative justice, which include, active responsibility, peaceful social life, respect and solidarity. In addition, Kay Pranis (2009) stresses the importance of relationships in restorative justice and differentiates between process and individual values. According to her, process values address the quality of the restorative process itself, while individual values are those that the restorative processes “strive to draw out of participants – the values that represent participants acting out of their best self” (63). She notes that her review of restorative values within the literature reveals respect to be the most consistently used insofar as process values, with individual values including dignity, inclusion, responsibility, humility, mutual care, reparation and non-domination to be primary themes. According to Pranis, universal interconnectedness and interdependence are assumptions of restorative justice, but more importantly, justice requires healing of all parties, which can only be achieved through the exercising of the process values (2009: 63-65).

In addition to offerings of individual scholars, The Alliance of Non-Governmental Organizations on Crime Prevention and Criminal Justice created the Working Party on Restorative Justice, comprised of leading international scholars. In 1996 this Working Party conducted a Delphi process to discuss and explore terms, to consider “major threads in the evolution” of restorative justice (McCold 2007) and to further its development, principles and practices (The Alliance 2011). This Working Party developed the *Declaration of Leuven on the*

Advisability of Promoting the Restorative Approach to Juvenile Crime (Walgrave 1998), which advanced a number of propositions, in part recognizing that “reactions to crime should contribute towards the decrease of ... harm, threats and challenges” and that:

The main function of social reaction to crime is *not to punish*, but to contribute to conditions that promote restoration of the harm caused by the offence (p. 405, emphasis added).

More specifically, this *Declaration* recognizes that “the aim of the restorative approach is to restore the harm done to victims and to contribute to peace in the community and safety in society” (p. 404).

Finally, in 2002, the United Nations Economic and Social Council adopted a *Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (hereafter referred to as “the UN Declaration”), based on which the United Nations Office on Drugs and Crime Handbook on Restorative Justice Programs (2006) was developed. The Preamble, forming part of the UN Declaration, emphasizes healing and respect:

“*Emphasizing* that restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities,” (UNODC 2006: 99, emphasis in original).

Further, the Preamble acknowledges the values of restoration and reparation:

“This approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities to understand the underlying causes of crime, to promote community well-being and to prevent crime” (UNODC 2006: 99).

There remains much discussion and debate within the movement insofar as principles and practices of restorative justice are concerned, and as McCold (2007) states, “developments toward a generally accepted theoretical consensus have made little progress.” However, there

seems to be acceptance of and consistency in maintaining Zehr's original vision of restoration, respect and healing as primary values of restorative justice.

In order to offer an alternative concept and terminology for punishment within restorative justice, I first juxtapose the apparent agreement regarding healing, restoration and respect as core values, against the increasing disagreement and discussion around the concept and practice of punishment within the paradigm, followed by the implications of this debate.

“The term punishment evokes strong images and feelings in people; it has no singular meaning”

(Daly 2000: 33).

Van Ness and Heetderks Strong note that words such as democracy and justice are terms that people generally understand even though they may not be able to agree on a precise definition (2006: 41). Remarkably, punishment has also become one of those terms. Although the term has become ambiguous, it is often used without clarification or definition. To this end, much criminological literature neglects to provide a basic definition of the term and, in fact, Canada's *Criminal Code of Canada* fails to provide a definition of the term punishment, yet it refers to concepts such as ‘punishable’ offences, ‘prescribed punishments,’ and other variations of punishment. This is particularly interesting in a criminal justice system where punishment is “the bedrock of the system” (Elliott 2011: 24), which will be discussed further below. In any event, punishment is derived from the Greek *poine*, and its Latin derivative, *poena*, meaning revenge and pain, and means “the deliberate infliction of pain on a person for the sake of attaining revenge” (Gilligan 2000: 746). This definition provides a starting point from which to examine various perspectives within the movement, although other scholars expand on this definition in order to present their specific arguments.

For example, according to Anthony Duff (1992, 2001, 2003), although punishment includes delivery of pain, it is a genuinely communicative, reformatory, and reconciliatory process, necessary for the “communication of communal censure that (offenders) deserve” (2001: 201). While he argues that an exercise on the definition of punishment is “doomed to futility” (2001: xiv), he offers that there are familiar points agreed upon, and that therefore punishment is:

“something intended to be burdensome or painful, imposed on a (supposed) offender for a [supposed] offense by someone with [supposedly] the authority to do so; and that punishment...is typically intended to express or communicate censure” (2001: xv).

He argues that punishment is “an exercise in moral communication,” *through which* offenders are “call[ed] to answer for [their] wrongdoing” and are thus recognized and treated as citizens (2001: 199). While he recognizes that communication must be two-way and that the offender must not only voluntarily accept punishment, he argues that ideally, they should impose it upon themselves. He further argues that the purpose of punishment is to encourage and facilitate repentance, genuine remorse, and therefore “moral reparation,” and that in fact, it is only through the acceptance of punishment that an apology can have sufficient moral force:

“The kind of moral reparation that is needed to give an apology for wrongdoing a suitably forceful expression *must* be burdensome to the wrongdoer. Undertaking a task that is in no way burdensome to me...or making a payment that is so small relative to my means that it constitutes no financial burden: these cannot constitute the kind of moral reparation that gives force to an apology...a reparation that imposes no real burden on the wrongdoer cannot suffice either – it costs too little to add force to a verbal apology...[it] must be something burdensome – something that symbolises the burden of moral injury...the burden of wrongdoing...and the burden of remorse” (Duff 2003: 389, emphasis in original).

Therefore, Duff maintains that the restorative justice movement must not only embrace punishment, but that restorative justice programs, rather than being understood as alternatives to

punishment, should be accepted as “paradigms of punishment” (2003: 387) or “alternative punishments” (1992: 71) within the criminal justice system.

Kathleen Daly (2000), like Duff, views restorative justice as an alternative punishment rather than an alternative *to* punishment. According to her, punishment is necessary in order to vindicate the victim’s worth, to indicate offender willingness to make amends by submitting to punishment and to avoid an appearance of condoning harmful behaviours (Daly 2000: 39, 41). In fact, Daly refers to restorative justice as “partly, but not entirely, state punishment” (p. 33), and contends that it combines retribution and rehabilitation (p. 35). According to her, we should “embrace...punishment as the main activity of the state’s response to crime” (2000: 34), partly because punishment actually makes restorative justice possible, partly because excising the idea of punishment is not politically strategic, and partly because she sees a distance too vast between “the familiar world of retributive justice and the ideal world of restorative justice” (p. 38). Daly offers a definition of punishment as “anything that is unpleasant, a burden, or an imposition of some sort on an offender” (2000: 39). Specifically, to her, the intention to inflict pain is irrelevant to the determination of whether or not something constitutes punishment. In fact, she explains that:

“justice elites have increasingly come to imagine and announce that what they *intend* to do in responding to crime is *not* to punish, but rather to *guide, correct, educate* or *instruct* offenders” (p. 38, emphasis in original).

For Daly, this argument is simply rhetorical because what is intended by a sanction may not be the way the offender experiences or perceives the sanction, and therefore intention is an ineffective and impossible measure of punishment. Accordingly, to her, all impositions, including prison, compensation, counselling programs, apology, fines, reporting to a probation officer and “any sanction imposed in a criminal legal process” (p. 38) should be considered

punitive, regardless of the purpose or intent in imposing them. Finally, in order to strengthen her argument, Daly emphasizes that punishment, together with exclusion, are part of “commonsense understandings of a just response to crime” held by people who have a “limited range of ideas” at their disposal for responding to crime (p. 45). Therefore, according to her, it is necessary for restorative justice advocates to embrace punishment in order to “*work with them*” (p. 45, emphasis in original) and to build interest in the movement, rather than to insist that punishment does not form a part of restorative justice practice.

Referring to “retributive punishment” (2010: 42), Carolyn Hoyle supports Daly and Duff’s positions, emphasizing her agreement that restorative justice is an alternative form of punishment. She argues that “the intentional and authoritative imposition of a burden on an offender in response to a breach of the criminal law qualifies a process as punitive” and therefore, restorative processes “unequivocally deliver punishment” (p. 43). Not only does Hoyle argue that punishment can contribute to repairing harms, and that there is much more common ground between the retributive and justice system than was initially presented by Zehr, she clearly rejects a restorative justice ideal where punishment is eliminated, stating that restorative justice, itself, does not reject punishment.

Gerry Johnstone (2002: 93) wrote that “the ideal restorative justice system...will refrain from inflicting pain upon offenders, or at least keep pain to a minimum.” Yet he also refers to restorative processes as potentially painful for offenders, and argues that “the impression that (restorative justice) eschews intentional imposition of pain is revealed as, at best, wishful thinking” (2002: 109). While Johnstone clearly maintains that the goal of restorative justice is to repair harm, and he accepts punishment as the deliberate infliction of pain (2002; 2007; Heartspeak Productions 2010), his position regarding punishment within restorative justice is

less clear. Specifically, Johnstone & Van Ness (2007) offer three conceptions of restorative justice which include: encounter/process, reparative, and transformative justice. Under the process conception, the outcome, specifically punishment, becomes less important than the process engaged in to arrive at it (Heartspeak Productions 2010). Johnstone explains that the essence of this model is that it brings all stakeholders together to discuss what happened, who was harmed and what can be done to repair the harm, rather than having professionals dominate the decision making process. Therefore, under this conception, if all participants, including the offender, agree to a punishment, even the death penalty, Johnstone explains, “it’s quite hard to explain why that’s not restorative justice” (Heartspeak Productions 2010: 14:20). Further, while Johnstone encourages discussion and debate within the movement, he asserts that “there must be boundaries...some line between what is restorative and what is not” (2010: 20:00). Yet he, like Duff, rejects lines between punishment and healing, but rather sees the possibility of punishment facilitating healing:

“When people make that opposition between punishment or healing on the one hand, and restorative justice on the other hand, in some ways they are working with a conception of punishment that is itself quite narrow. We can think of punishment in much richer terms...punishment can be involved in restoration... you can have healing through punishment” (Heartspeak Productions 2010: 29:23).

Finally, Van Ness takes a stronger position regarding punishment in restorative justice, equating punishment with consequence, and lack of punishment as lack of consequence:

“... ‘without punishment’...seems strange. Do you mean forgiveness without punishment, or are you more generally simply saying that punishment has no role in RJ. Either way I disagree...How can we talk about moral wrongs...and not talk about a consequence, forced if necessary” (McCold 1998: 21).

He contends that punishment should be used restoratively, or “for the purposes of positive discipline and reparation rather than punitively” (McCold 1998: 22). Similarly, Barton (2000) explains that punishment, when imposed for instrumental purposes, is not punitive and

that restorative justice must address “both the causes *and* the consequences of the unacceptable behaviour” (p. 57), implying that punishment and consequences are synonymous.

While some scholars stress the importance of including punishment within a restorative paradigm, debating its meaning and role, others are equally adamant about its exclusion and destructive nature.

Punishment “involves actions that are generally considered to be morally wrong or evil were they not described and justified as punishments”

(de Keijser 2000: 7 as quoted in Walgrave 2003: 66).

For many scholars, using punishment restoratively is an oxymoron. For example, Elizabeth Elliott writes that as a society, “our punitive approaches might actually impede the cultivation of social morality in a country’s citizens – yet we still believe that punishment works” (2011: 29). She contends that punishment “is the unquestioned element of an authoritative response” to criminal behaviours, which “has been given a sacred status in our societies” (2011: 24) and that it is necessary to unpack the term and the practice in order to actually achieve social justice. Pointing out that restorative justice is about values, Elliott emphasizes that threat of punishment (while ineffective), at its best only coerces compliance with the law rather than compliance based on shared values and therefore does not belong in the paradigm. Quoting Kohn, Elliott explains that “*All ...punishment teaches that when you are bigger or stronger than someone else, you can use that advantage to force the person to do what you want*” (Kohn 1999 as quoted in Elliott 2011: 35, emphasis in original), and that punishment is based on unequal power relationships which create distorted, damaged relationships and eventually crime, particularly violent crime. She argues that most violent crimes are privately acted out punishments and that crime reduction requires recreation of relationships based on mutual respect and trust (Moore & Douglas 2007). Further, Elliott explains that punishment is required

only when one's argument or ability to convince is weak (Moore & Douglas 2007; Elliott 2011). On the other hand, emphasizing the reparative and healing values and goals of restorative justice (and justice in general), Elliott explains that reparation is "about fixing things, problem-solving, generating and implementing plans to change conditions for the well being of all" (p. 69). With healing defined as making something sound or whole, she asserts that this can only occur through an intentional focus on healthy relationships and holistic restoration. Finally, pointing to Zehr and Mika's signposts of restorative justice (2002), Elliott emphasizes that a restorative response to harm is motivated by healing for individuals as well as collective healing of community, and that not even the language of punishment is in these guidelines (2011: 170-171).

Martin Wright (2003) argues that "the infliction of pain is not always punitive," but "all punishment, in the normal sense of the word, is intended to cause pain and fear" (p. 5). Referring to Fatic, he argues that "the answer to moral concerns about infliction of pain is not to rationalise punishment but to eliminate it" (Fatic 1995 as quoted in Wright 2003: 17). In fact, Wright explains that the basic principle underlying restorative justice is reparation, and this occurs through "incentive to confession and disclosure, while punishment encourages concealment and denial" (p. 19). To this end, intention is key, and the crux of the restorative justice argument against punishment is that infliction of pain for the sake of intending to cause pain is counterproductive, and that even the use of the term punishment should be eliminated because it legitimizes its use. He rejects the notion, however, that lack of punishment equals lack of consequence, arguing that measures which are conducive to restorative justice goals of reparation and repentance, which occur through understanding, awareness and empathy, must be specifically designed for that purpose, and must be labelled accordingly. To this end, Wright replaces "punishment" with "sanctions," suggests labelling sanctions according to their

intentions, and recommends eliminating sanctions which are primarily intended to impose pain.

He proposes the following alternative terminology:

- Punitive sanctions - ...[are] intended to hurt, and fail if they don't. They may be symbolic, and the criterion for 'success' is pain or denunciation, where the usual measure is a reduction in reoffending;
- Rehabilitative sanctions – ...[are] intended to help, with potential for unintentional pain, and loss of liberty should be minimised;
- Punitive/rehabilitative sanctions – [are] those which are ambivalent about their aims;
- Reparative sanctions – [are] intended to help the victim and often the offender also. May involve loss of liberty or money, but by consent if possible...since pain is not the aim, and therefore successful even when enjoyed and continued voluntarily;
- Containment – [is] intended to protect the public...may include restriction of liberty... should as far as possible be reparative, not punitive, and should not 'incapacitate' people for normal lives after release.

(Wright 2003: 6, 7; McCold 1998; 23)

In order to develop measures which promote reparation and repentance, Wright draws on the writing of Fatic (1995) who proposes the development of policies that are based on: encouragement to behave rather than threaten to inflict pain; reparation as primary response; awareness of 'natural consequences'¹ which follow from harmful acts; and restriction or deprivation of liberty as a last resort only where serious risk of serious harm can be prevented in no other way (as cited in Wright 2003: 18). Although Wright rejects the effectiveness of punishment as well as rejecting the term and its use in restorative justice, interestingly, he maintains the term punitive, a derivative of punishment, to describe a type of sanctions and quotes Fatic who calls for a theory which explains what mechanism would provide a social control "equivalent to punishment" (as quoted in Wright 2003: 18).

Lode Walgrave (2003a), taking a maximalist approach to restorative justice, also argues that intention is the crux of the punishment debate, and emphasizes reparation of harm as the goal of restorative justice. He accepts the three elements of punishment offered by von Hirsch

¹ The term "natural consequences" is distinguished from "logical consequences" by Dreikurs & Grey (1968), as well as by Nelsen (2006), and is an important distinction, addressed later in this paper.

which include “hard treatment, intention of inflicting it, and the link with the wrong committed” (von Hirsch 1993 as quoted in Walgrave 2003a: 63), arguing that without the intention of inflicting pain on the part of the inflictor, there *is* no punishment. Specifically, Walgrave rejects Daly’s argument, and contends that the wrongdoer’s consideration of the obligation as punishment cannot be determinative. Similar to Elliott, he rejects inclusion of punishment within a restorative paradigm, clearly stating that the idea “that crime must be punished is both ethically questionable and instrumentally inefficient” (2001 in Walgrave 2003a: 66). To him, while restorative obligations may contain elements of pain, these obligations must be considered for the purposes of reducing the obligation, never to increase it (p. 64). Further, because restoration requires communication, and he argues that hard treatment and punishment are a “major obstruction” to effective and constructive communication, Walgrave rejects Duff’s claim that punishment is required *as* communication.

Importantly however, Walgrave explains that restorative justice is, as some critics claim, a “utopian ideal of justice in a utopian ideal of society,” drawing its strength from motivation based on trust, participation and support, and relying on respect, solidarity and responsibility as behavioural guidelines or virtues (p. 69). He explains that respect recognizes the intrinsic value of every human being; solidarity, which presupposes commitment, includes a form of companionship and reciprocity of support through empathy and mutual trust; and responsibility must be active rather than passive, requiring a link between the self and its own actions. Punishment however, is a barrier to companionship, support, empathy, and trust and can therefore not contribute to restoration. In short, Walgrave argues:

Penal procedure and the penal sanction generally hinders the chances for victims to be compensated and/or repaired. For the offender, the sanction involves a senseless infliction of suffering. It does not contribute to public safety, nor to the victim’s interests. It is a needless intrusion in the offender’s freedom, causing an additional

threat to his social future (2003a: 67).

Finally, Paul McCold asserts that there is a fundamental difference between discipline and punishment, and that “criminal punishment reduces the chance for healing, and in the long run, probably causes more crime than it prevents” (1998: 22). Therefore, his “purist model” of restorative justice clearly rejects punishment or “elements of obedience,” based on the three pillars of restorative practices which account for its goals. Because “restorative processes are healing in and of themselves,” these pillars require that restorative practice must simultaneously address the needs of (1) victims for reparation, (2) offenders for responsibility, and (3) communities of care for relational reconciliation and reintegration (McCold 2000: 400). To this end, similar to Zehr’s restorative continuum (2002), McCold (2000) proposes three categories of restorative justice programs, including holistic, mostly restorative, and partly restorative programs. Holistic programs simultaneously address victim needs, offender needs and relational needs of communities of care. These programs contain no elements of punishment or obedience, and include peace circles, family group conferencing and community conferencing. Holistic programs represent the ideal of restorative justice. Mostly restorative programs address two of the three pillars and play a critical role in the development of restorative justice as a paradigm, while the third type, partly restorative programs, addresses only one of the pillars of restorative justice. McCold stresses this categorization as necessary in order to develop a shared vision of restorative justice and to avoid misdirection of related, but not completely restorative approaches. Through this categorization, McCold addresses the issue of punishment in partly restorative practices, contending that in order for sanctions in these practices to be partly restorative they must be (1) reasonable in proportion to the harm caused; (2) related to the actual harm done; and (3) respectful by distinguishing deed and doer (Nelson 1996 & Classeen 1995 in

McCold 2000: 403). Finally, McCold refers to programs that do not engage primary stakeholders, do not challenge existing authority structures, simply determine or impose dispositions (regardless of reparative intent), or are punitive or stigmatizing, as pseudo-restorative programs, which “have no place in the restorative justice paradigm...should be publicly exposed and soundly disavowed by all restorative justice advocates” (p. 405).

Specifically, while McCold clearly rejects punishment as part of restorative justice practice, he emphasizes the importance of recognizing degrees of restorativeness within programs in order to facilitate the development of standards, while also acknowledging contributions of less restorative programs to the development of the paradigm.

A discussion or a “bloomin’ buzzin’ confusion”?

(Kuhn 1996: 113)

With an abundant collective of judicious perspectives regarding punishment within the restorative field, “terminological confusion” (Wright 2003) becomes an understatement. The lack of clarity and consensus also leads to confusion insofar as acceptance, implementation and practice of restorative justice are concerned. For example, as McCold states, restorative justice has come to mean all things to all people (2000: 358) and scholars refer to increasing numbers of programs which do not embody restorative values (McCold 2000; Woolford 2009; Hoyle 2010), yet which compete for funding as well as legitimacy under the trendy and viable restorative umbrella. Others express concern over the potential “loss of vision” (Umbreit 1999) and “watering down of restorative justice” (Masters 2004). Confusion in practical and theoretical variations is potentially overwhelming and competitive, with new scholars and practitioners uncertain as to which practices constitute restorative approaches and which do not (Pawlychka 2010) while established and highly experienced restorative practitioners and scholars, such as

Gustafson, criticizing the “bastardization” of theories within the paradigm (Moore & Douglas, 2007).

While negotiation and debate between actors who hold heterogeneous beliefs are natural within a social movement attempting to affect a shift in paradigm, inconsistency and fragmentation can also leave a movement ambiguous and vulnerable (Snow et al. 1986).

“Thinking differently requires speaking differently.”

(Lakoff 2004: xv)

Zehr (1990) presents restorative justice as a new paradigm, explaining that paradigms:

Shape our approach...to the social, psychological, and philosophical world. They provide the lens through which we understand phenomena. They determine how we solve problems. They shape what we ‘know’ to be possible and impossible. Our paradigms form our common sense, and things which fall outside the paradigm seem absurd (p. 87).

In presenting restorative justice as a paradigm, Zehr (1990) emphasizes the ongoing need to question fundamental principles and assumptions of the retributive justice paradigm. Recognizing that retributive justice is “deeply embedded in our political institutions and our psyche” (p. 226), he points out that as changes in paradigm begin and increasing numbers of phenomena do not fit expectations of the old paradigm, society tends to “rescue the (original) model by inventing epicycles, reforms, which piece it together” until “the sense of dysfunction becomes so great that the model breaks down and is replaced by another” (p. 92). According to Zehr, these epicycles, such as rehabilitation governed by sentencing schemes, alternatives to prison movement, and community service orders, tend merely to prop up the old paradigm and prevent an entirely new paradigm shift because they do not question the fundamental assumptions of old paradigm itself, namely punishment. Rather, they find new ways to employ

punishment to achieve justice, without recognizing that the goal of justice itself must change. There is certainly extensive academic support for Zehr's concerns.

For example, in *The Structure of Scientific Revolutions*, Kuhn (1996) explains that during the transition between paradigms there will be some overlap between the old and new, but that the new cannot be an extension of the old. Rather, the new paradigm must reconstruct the field from new fundamentals, changing the field's "most elementary theoretical generalizations as well as many of its paradigm methods and applications" (p. 85). He advises that there must be differences in modes of solutions with the new paradigm and that the new paradigm must not only change the view of the field, its methods and its goals, but that the new paradigm will present "new instruments and look in new places" resulting in a revolution where scientists respond to a different world where fundamental aspects of the new paradigm are principal (p. 111). To this end, it is evident from the previous discussion that there currently exists substantial overlap between the retributive and restorative justice systems regarding punitive measures and that the justice system in several countries, including Canada, is in transition. The goal, however, as Kuhn points out, must be to "present new instruments" through the elimination of the use of punishment and through its replacement with more effective methods to attain the goals of the new paradigm. While some scholars, including Duff (2001), Daly (2000), and Barton (2000) argue that punishment should form a part of restorative justice, their arguments align with goals of the old paradigm, or at least maintain a transitional position rather than aligning with the goals of the new paradigm, which include reparation, healing and respect for all parties involved. Social movement scholars further demonstrate the potentially negative impact which this position may have on the movement as a whole.

According to Melucci, social movements affect paradigm shifts and create new instruments by developing a collective identity, through which they:

Reshape the discursive terrain of politics in distinctive and potentially radical ways, through personal and cultural transformations that refuse accommodation with existing institutions (1989 in Carroll 1992:17).

In doing so, they challenge common understandings and overturn dominant cultural codes, requiring the rethinking of commonly used terms and creating new cultural and political terms and practices in order to disrupt hegemonic discourses and practices (Melucci 1989 in Carroll 1992: 25). This involves the generation of an injustice frame whereby conditions and actions that are ordinarily considered just and immutable in the old paradigm must come to be seen not only as a misfortune, but as unjust and mutable. This is referred to as “cognitive liberation” (McAdam 1982 in Snow 1986: 466). According to Snow et al (1986), the process of cognitive liberation is necessary to facilitate the disruption of hegemonic discourses and practices and the subsequent shift in paradigm. They caution that consistency, particularly at this time, is crucial. Inconsistent or contradictory messages are one of the key determinants of failure of social movement framing efforts, and Snow et al. note that if one value is inconsistently applied or contradicted by the movement itself, this value or belief then becomes vulnerable to being discredited or less salient and potentially “drags associated frames down with it” (1986: 477). The result is reduced resonance with potential constituents, clouding of original movement frames, and perceived insincerity of movement claims as well as overall reduced credibility of the movement.

Cognitive linguists agree. For example, George Lakoff (2004) emphasizes the importance of language in reframing and social change. According to Lakoff, words are defined relative to conceptual frames and when words are heard, frames are automatically activated in

the brain. Therefore it is critical that when attempting to put forward a new worldview, language and frames reflecting the new world view are used, rather than the old. Lakoff explains “because language activates frames, new language is required for new frames. Thinking differently requires speaking differently” (2004: xv). More specifically, Lakoff explains that when the language of the old paradigm is used, the new paradigm loses because it is reinforcing the old framing. Specifically, to be effective “a movement needs to say clearly what it is for, not just what it is against” (p. 74). Therefore, social change requires clarity of values and *only* the use of language that reflects those values.

According to Pavlich (2005) the discrediting of values, reduced credibility of the new paradigm and reinforcement of the old paradigm have already occurred. He argues that the restorative justice movement has developed a “parasitic identity” (109) resulting, in part, on its predication on key concepts of the criminal justice system and its increasing incorporation into its supposed opposite, the criminal justice system. In fact, Pavlich refers to this as the “imitator paradox,” because:

Restorative justice defines its governmentalities in opposition to basic concepts within the criminal justice system, but it does so by founding itself on many of those self-same concepts (p. 14).

This is further demonstrated as other scholars maintain that because restorative justice practice involves elements of punishment, intentional or unintentional, restorative justice is, or least contains, punishment. These scholars question whether restorative justice is actually practicing what it purports (Pavlich 2005; Woolford 2009). The current debate, while considered a fruitful and necessary discussion by some, also leads to confusion as to what the movement even purports.

It has been argued that radical changes in paradigm and policy require strategic planning and implementation which should occur incrementally rather than in one sweeping motion to allow for cultural and political changes to take root (Ursel 1998, 2001; Woolford 2009; Daly 2000). However, restorative justice has developed worldwide since the 1990s and as McCold states it is no longer in its infancy. Therefore, particularly during the period of transition, it is important to ensure that restorative practices do not become an epicycle by incorporating fundamental aspects of a retributive system, i.e. punishment, in order to make the shift more palatable to those whose psyche is resistant to a fundamental change. If restorative justice is to experience continued acceptance and growth, truly emerging from its transitional position into a new paradigm, it is imperative that a shift must include a change in terminology as well as practices of the retributive system.

Sanction...solution or symmetry...old paradigm or new?

The search for new terminology has begun, with terms such as sanctions, dispositions, consequences and sentences appearing within restorative justice literature, often interchangeably. Wright proposes the use of the term ‘sanctions,’ rather than punishment, with a variety of adjectives to specifically address the intention of each (2003). While it should be acknowledged that the term sanction is defined as “support; encouragement, approval” it is also defined as:

- The act of a recognized authority confirming or ratifying an action;
- Something that gives binding force to a law, or secures obedience to it, as the penalty for breaking it;
- A coercive measure, taken by a group to enforce demands.

(Neufeldt & Guralnik 1988: 1187)

In criminological literature, Decaux defines sanction as “a broad range of reactions adopted unilaterally or collectively...*against* the perpetrator of an...unlawful act in order to ensure respect for and performance of a right or obligation” (Decaux 2008: 249, emphasis

added). Sanction is commonly used synonymously with penalty and punishment in criminological literature (for example Decaux 2008; London 2011: 107; Walgrave 2003; Braithwaite 1989), and is often preceded by the adjective “penal” (Decaux 2008; McCold 2000). In fact, sanctions has replaced the term punishment in sentencing purposes and objectives of *Criminal Code of Canada* (Criminal Code (R.S.C., 1985, c. C-46, S 718) and the term “extrajudicial sanctions” is included in Canada’s *Youth Criminal Justice Act* (YCJA). Neither *Act* defines the term sanction, although these may be used and will mark the beginning of a youth record under the *YCJA* if it is deemed that the young person does not qualify to be dealt with through extrajudicial measures² due to the seriousness of the offence (Tustin & Lutes 2009: 35).

Within the restorative justice movement, sanction, particularly ‘alternative sanction’ includes apologies, restitution, rehabilitative programs, educative and therapeutic programs, compensation, and community service (Walgrave 2003: 261; Tustin & Lutes, QC 2009: 35), becoming, in fact, a “catch all...which embraces a miscellany of practices” and confusing philosophy, legal status and scope (Walgrave 2003: 261).

Due to the current connotations attached to sanctions, I argue that a term more fitting and aligned with restorative justice values and paradigm be utilized to facilitate a shift not only in terminology, but also in attitude, intention and goal. To this end, I put forward the term and concept of logical consequences, based on the work of Alfred Adler, developed by Dreikurs & Grey (1968) and refined by Nelson (2006).

Logical Consequences

In the early 20th Century, Alfred Adler developed the concept of Individual Psychology with “prophetic foresight” (Dreikurs 1950: ix), altering the impending field of psychology and

² Extrajudicial measures include police warnings, cautions and referrals (to Youth Justice Committees).

laying the foundation for directional shift in psychological therapy, parenting and education for years to come. In an era where authoritarianism and obedience prevailed, Adler recognized the importance of human connection, social interest and cooperation as fundamental in the behaviour of individuals and the development of individual character. Particularly, influence of the environment was dependent upon the attitude to environment which the individual developed over time, and this was dependent upon “opposition, support, negation or affirmation, acceptance or non-acceptance of the group...” (Dreikurs 1950: 4). Because all humans strive for belonging and connection in a continual and innate struggle to feel worthwhile and significant (Ansbacher & Ansbacher 1956: 102-104), social interest plays an integral part of cooperation:

“ Social interest is expressed subjectively in the consciousness of having something in common with other people and of being one of them. People can develop their capacity for cooperation only if they feel that in spite of all external dissimilarities they are not fundamentally different from other people – if they feel belonging. A man’s (sic³) ability to co-operate may therefore, be regarded as a measure of the development of his social interest” (Dreikurs 1950: 5).

Adler believed that criminal behaviours are basically an extension of the inferiority complex initiated in an individual’s childhood. Therefore any punishment bestowed upon them “will act only as a sign that society is against him, as he always thought,” resulting in the individual being “bent on safeguarding his idea of his value as far as possible” (p. 69).

Therefore:

“[P]unishment [will] not deter him. From the psychologist’s standpoint, all harsh treatment in prison is a challenge, a trial of strength in the same way when criminals continually hear “we must put an end to this crime wave.” They take it as a challenge. They feel that society is daring them and continue all the more stubbornly” (1956: 421-423).

According to Adler, the goal of obedience must be avoided:

³ The use of gender specific terminology is found throughout Adler’s as well as Dreikurs & Grey’s writings. It is replicated here exactly as in the original source, while acknowledging that contemporary writings would be more gender inclusive.

“One should not educate for obedience if one wants to avoid the attitude of defiance...the defiant [individual] is only defying authority. We are approaching a time where everyone will take his place as an equal, self-reliantly and freely, no longer in the service of a person, but in the service of a common idea...” (p. 55).

Rather, according to Adler, punishment and humiliation were extremely harmful, and cooperation is only achievable through acceptance of responsibility, mutual respect and democratic living (Dreikurs 1968: 18).

Building on Adler’s work, Dreikurs & Grey (1968) developed the concept of logical consequences to be applied in family and educational settings. The primary principle behind this concept is Adler’s fundamental belief that all individuals, including children, must be treated as equals and all relationships must be based on mutual respect. This allows for acceptance of responsibility and encouragement while maintaining the feeling that one is worthwhile and has a place in the group. To this end, Dreikurs emphasized that although children are not equal to adults in size, skill or experience, they are equal in ability to decide freely and right to be treated with respect (p. 43). Therefore, mistakes and misbehaviours should be followed by logical consequences rather than punishment.

Dreikurs & Grey note the distinction between natural consequences (Spencer 1885) and logical consequences as an important one, explaining that natural consequences are “natural results of ill-advised acts” or more specifically, “*unavoidable consequences* of the deeds which they follow...nothing more than the *inevitable reactions* entailed by the [individual’s] actions” (p. 63-64; emphasis added). Logical consequences, on the other hand, may be arranged by the parent or other adult rather than being solely the result of the child’s own acts (p. 64). The differentiation then, between logical consequences and punishment becomes critical. Following are the five features that Dreikurs and Grey provide distinguishing between the two:

1. *Logical consequences express the reality of a social order*, as opposed to punishment, which expresses the power of an authority.
2. *Logical consequences must be related to the misbehaviour* and it must be possible for the individual to clearly see the relationship between the act and the result of their own behaviour.
3. *Logical consequences involve no element of moral judgment* while punishments inevitably do.
4. *Logical consequences are concerned with the present and future*, while punishment is concerned with the past.
5. *Logical consequences involve a friendly voice*, while there is open or concealed anger in punishment.

(Dreikurs & Grey 1968: 71-82).

The correspondence between logical consequences and restorative justice is significant and requires elaboration and connection to restorative justice.

First, according to Dreikurs & Grey, social order represents the rules of living which all human beings must abide by in order to function effectively within society. They stress that, in general, social rules are designed to ensure safety and well-being of all citizens and represent the established values of society. This is particularly reflected in the restorative justice paradigm, which is based on values and relationships rather than broken laws and rules (Elliott 2011; Pranis 2009; Van Ness & Heetderks Strong 2006; Zehr 1990, 2002), and which focuses on the safety and healing of all parties, repairing their harms and their successful reintegration into their communities.

Secondly, logical consequences are *logically* related to the misbehaviour, while restorative justice focuses on “the collective identification of harms, needs and obligations in order to heal and put things as right as possible,” (Zehr 2002: 37; 1990), also *requiring* a connection between the act and result, or harms and subsequent consequence required to repair

harms. This raises two points. First, imposition of consequences that are not connected to the misbehaviour, such as *unrelated* community service or infliction of pain do not constitute logical consequences. Similarly, the focus of reparation of harm and healing of needs implies that consequences must be logical and related to the misbehaviour in order for healing and reparation to be effective. Secondly, in order for reparation to occur, restorative justice requires inclusion of all stakeholders. Their inclusion in “a search for solutions which promote repair...” (Zehr 1990: 181) requires attention to needs, obligations and reparation of harm, which logically follow violations and harms, and allow for learning and growth rather than punishment. More specifically, Zehr clearly points out that restorative justice recognizes that obligations are not intended as harms (2002: 40), while McCold reminds the movement that all sanctions “must be related to the harm done” (2000: 43).

Next Dreikurs & Grey (1968: 75) explain that logical consequences refrain from moral judgment, distinguishing between deed and doer, making the distinction that an action may be judged good or bad, but the essential value of the individual as a human being remains unaltered. The connection with restorative justice is striking. Braithwaite’s theory of reintegrative shaming (1989), which was instrumental in the development of contemporary restorative justice, emphasizes the separation between offence and offender through the restorative process. This requires denunciation of the behaviour while reaffirming the morality of the offender and maintaining support as the offender learns the impact of and methods to repair harms (Braithwaite 1989; Van Ness & Strong 2002: 108). Contemporary restorative justice maintains this respectful distinguishing of deed and doer (McCold 2000: 43). Further, Dreikurs & Grey point out that while a logical consequence may be unpleasant, the individual is not subject to an authority over which it has no control, but maintains the autonomy to decide whether they are

willing to experience unpleasant consequences again (which will not necessarily be the same) in the future by repeating such behaviours. As previously noted, Zehr clearly points out that obligations are not intended as harms. Further, he stresses that the “value that reigns supreme” in restorative justice is respect (2002: 36), and that all parties, including the offender, must be treated with respect and dignity throughout the process.

Fourth, while punishment is imposed for past transgressions, logical consequences are, conversely, present and future oriented and bring balance to the disturbance of order, are self-evident and become order and reality (p. 76-77). They correspond with the paradigm of restorative justice which emphasizes the present through an acknowledgement of harms and a future oriented focus through determination of solutions for healing, reparation and restoration. Further, viewing conflictual situations as opportunities for learning and growth (Zehr 1990) maintains a future oriented perspective.

Finally, Dreikurs & Grey assert that tone of voice indicates open or underlying attitudes and that punishment is angry, demanding and retaliatory. Logical consequences, however, maintain empathy and genuine regret that under a given circumstance one cannot do anything except face the consequences (p. 78). Through a restorative lens, crime creates obligations and responsibilities which are resolved through constructive dialogue and encouragement of offenders to accept and fulfill these responsibilities and obligations (Zehr 1990: 181; 2002: 40). Further, restorative justice literature builds on this concept with Walgrave’s argument that punishment is a barrier to effective communication (2003: 69), Elliott’s assertion that truth is the first casualty of punishment (2011: 37), Morrison’s emphasis on the importance of connection and engagement through the provision of “time and space to talk about what matters” (2010), and Sherman’s theory of emotional engagement which states:

“The power of the (restorative) process comes from the engine of emotional engagement of the participants, in contrast to the suppression of participants’ emotions in court determinations of guilt” (2003: 11).

In addition to the five distinctions between logical consequences and punishment, Dreikurs & Grey point out that the most important requirement for logical consequences to be effective is to ensure that they are not simply imposed, but are inherent in the situation (p. 80). Because defiance is thus not activated, Dreikurs & Grey contend that it is unlikely that the misbehaviour will be repeated. Sherman’s defiance theory (1993), endorsing restorative justice approaches, provides contemporary support for this perspective, and aligns it with restorative justice.

Since the seminal writings of Alfred Adler, and the subsequent writings of Dreikurs & Grey, much psychological research has sustained and strengthened the value and effectiveness of Adler’s approach. For example, in 1981, Nelsen further built on the work of Dreikurs and Adler, as the concept of logical consequences became refined, developed and labelled *Positive Discipline* (Nelsen 2006). Nelsen emphasizes that acceptance of responsibility does not equal blame or shame and further, that suffering is not a requirement of logical consequences (although she maintains that logical consequences are likely to be unpleasant). Further, Nelsen provides the following concepts as principles of Positive Discipline:

- Understanding the Four Goals of Misbehaviour⁴
- Kindness & firmness at the same time
- Mutual respect
- Mistakes as opportunities to learn
- Social responsibility
- Family & class meetings
- Involving (individuals) in problem solving
- Encouragement

⁴ Nelsen summarized Dreikurs four inappropriate or mistaken goals adopted by discouraged children when attempting to achieve belonging and significance. These include (1) undue attention, (2) Power, (3) Revenge, and (4) Assumed inadequacy. For a discussion of these goals please see Nelsen (2006: 70-73).

While logical consequences provide a direction and terminology for replacing punishment, it does not require total elimination or removal of dangerous individuals from society.

“Sanctuaries offer a far better route toward that end than do prisons”

(Bianchi 1994: 140)

Logical consequences, while strongly excluding punishment, includes an avenue for addressing situations of particular danger. For example, Dreikurs & Grey point out that logical consequences may require “simple prohibition” and “removal to a safer location” until the individual is ready and able to correct their misbehaviour. Applying this to the criminal justice system, similarly, it is evident that there are situations where persons pose immediate or ongoing danger to public safety and must be removed from society. To this end, Herman Bianchi (1994) proposes the concept of *Sanctuary*, a concept which was elaborated on and applied in the psychiatric environment by Bloom (1997).

Bianchi’s concept of sanctuary is based on the tzedaka model of justice, under which it is recognized that punishment “inflicting suffering...will not bear fruit” and therefore it cannot be part of justice. In fact, Bianchi explains that inflicting punishment on offenders is the main cause of recidivism and actually obstructs, rather than produces justice (1994: 35). According to him, and the tzedaka justice model, justice must include:

1. Some practical way to achieve absolution or release from guilt;
2. Confirmation of truth, since truth is relational and found through the process of dialogue; and
3. Substantiation – when no one has been lied to, when victims have been fully heard and offenders have been offered the possibility of redress and release.

(Elliott 2011: 52).

Applying Bianchi’s concept of sanctuary, prisons become, rather than places of exclusion

and punishment, places which provide restrictive and sufficiently ordered facilities that prevent infliction of harm while providing adequate opportunities for learning and growth (Bloom 1997: 238). Within these facilities, conflict resolution, restitution and atonement involving victim and offender provide opportunities for reparation and “meaningful consequences” (p.238). These facilities, based on a eunomic system, include processes which are:

- Communicative rather than disruptive;
- Horizontal rather than vertical;
- Responsive rather than inquisitorial;
- Educative rather than informative;
- Invocative rather than provocative;
- Organic rather than servomechanistic;
- Therapeutic rather than frustrative;
- Rational rather than irrational;
- Opponent based rather than enemy based;
- Based on ‘real law’ rather than criminal law;
- Functional rather than dysfunctional;
- Liberating rather than stigmatizing;
- Piacular rather than ritualistic.

(Bianchi 1994: 58-70).

According to Dreikurs & Grey, because logical consequences are logical to the disturbance of order, they are required only as long as order is disregarded (1968: 76). Because sanctuary is based on a eunomic system which focuses on learning, growth and reparation of harm, consequences must be meaningful to the misbehaviour, and deprivation of the right to live freely with other people is only required until ability to function effectively in society is restored.

From the foregoing, it is evident that the concept of logical consequences reflects the goals of restorative justice while providing a terminological as well as attitudinal paradigm shift from punitive justice to the newer paradigm of restorative justice in all areas of the criminal justice system. The question, however, remains as to whether or not it is realistic and practical to

anticipate such a change of terminology and practice in a hegemonic culture and system of punishment.

“Restorative justice is the law”

(Larry Moore, Heartspeak Productions: Personal Communication)

As previously discussed, some scholars express concern that changes must occur incrementally and that elimination of punishment as a concept and a terminology is too drastic in a dominantly punitive criminal justice system. These scholars warn that such measures will be detrimental not only to the future growth and acceptance of restorative justice, but to progress already made. To the contrary, current Canadian legislation indicates that this country has already taken steps in this direction. For example, Section 718 of the *Criminal Code of Canada* (Department of Justice 2011) provides sentencing principles, as follows:

- (a) To denounce unlawful conduct;
- (b) To deter the offender and other persons from committing offences;
- (c) To separate offenders from society, where necessary;
- (d) To assist in rehabilitating offenders;
- (e) To provide reparations for harm done to victims or to the community; and
- (f) To promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

It is evident that these sentencing principles not only pave the way for new concepts and terminology, specifically that of restorative justice, they also both encourage and require it.

Specifically, section (c) requires separation of offenders from society *where necessary* rather than as a primary and continuing response, and Bianchi’s concept of *Sanctuary* may reduce the necessity for this exclusion while providing appropriate facilities when exclusion is required.

This is further supported by Section 718.2(d) and (e) according to which:

- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

Further, sentencing principles under Section 718(d), (e) and (f) require the addressing of healing (rehabilitation), promotion of a sense of responsibility, acknowledgement of harm to victims and/or community and reparation of those harms, further supporting logical consequences while omitting language and concept of punishment.

In addition, the (2003) *Youth Criminal Justice Act* recognizes the need to respond to crime more effectively through “meaningful consequences” rather than primarily through punishment. This *Act* contains a Preamble which contains statements pertaining to specific values of this legislation, recognizing in part that:

- Communities and families should work in partnership with others to prevent youth crime by addressing its underlying causes, responding to the needs of young persons and *providing guidance and support*;
- Members of society share a responsibility to address the developmental challenges and the needs of young persons, and to guide them into adulthood;
- The Canadian youth justice system should take account of the interests of victims, foster responsibility and ensure accountability through *meaningful consequences* and effective *rehabilitation and reintegration*;
- The youth justice system should reserve its most serious interventions for the most serious crimes and reduce over-reliance on incarceration.

(Minister of Justice 2010: 1, emphasis added)

This *Act* also contains a Declaration of Principle, which provides principles, strategies and key characteristics to guide decision-making under the act. Using the restorative language of accountability, encouragement of reparation of harm and reintegration, it also emphasizes the importance of *meaningful consequences*, rather than punishment, and includes the following requirements:

- Rehabilitation and reintegration of the young persons into society;
- Timely interventions that reinforce the link between the offending behaviour and its consequences;
- Encouragement of reparation of harms to victims and community;
- Consequences that are meaningful for the individual young person;

- Consequences that are particularly meaningful given the young person's level of development, and which where appropriate, involve parents, extended family, community and social or other agencies;
- Encouragement of respect for societal values.

(Minister of Justice 2010: 5-7)

Evidently, the language of restorative justice, and particularly that of logical consequences has already been incorporated into adult and youth legislation in Canada.

Therefore, with the groundwork already in place, it is not only acceptable, it is incumbent upon the restorative justice movement to ensure that it promotes appropriate processes as well as terminology.

Conclusion

Over two decades have passed since Zehr's seminal writings presented a new lens through which to respond to criminal behaviours. Scholars and practitioners worldwide have been taking note, effecting change and developing the restorative paradigm, while legislation confirms that the discursive terrain has been disrupted and cultural transformations have begun. Concurrently, punishment has become a highly discussed and debated topic within the restorative justice movement, with the presentation of a variety of persuasive perspectives on punishment together with alternatives to the concept as well as the terminology. Critical examination of both the debate as well as the currently overlapping position of criminal and restorative justice indicates the transitional position of the movement and the collective identity of the movement have become increasingly important. To this end, clarification and consistency of values, worldview, practices and terminology are critical.

Continued development of the restorative paradigm has resulted in the infliction of pain being contradictory to the values of healing, restoration, reparation and respect which form fundamental values of restorative justice, and much groundwork through incremental changes has provided the foundation from which the restorative justice movement can progress. It is

important now to recognize the current transitional position of restorative justice and to continue dialogue and development, persisting through this transitional phase and ensuring the emergence of the new paradigm. The concept of logical consequences contributes to the natural progression of this shift, and provides a basis for the continuation of its progress, offering a conceptually consistent practice and a terminology consistent with the restorative worldview.

Over a century ago, Adler contributed to the field of psychology with visionary and prophetic ideas. In 1968, Dreikurs & Grey expanded those ideas, developing a concept which would guide parenting, education and psychology for years to come, with contemporary scholars continuing its development. Similarly, in 1990, Zehr offered visionary and prophetic ideas to the criminal justice field, providing “an ideal...a beacon, something toward which to aim, something against which to test our actions...” (p. 228). The merging of long established and contemporary ideas through incorporation of logical consequences into the restorative paradigm will provide the advancement required for continued and enhanced discussion, development of standards for practice, progression through the transition into a restorative paradigm and maintaining the seminal and visionary direction.

In 1990, Zehr stated that “the lens we use to examine crime...affects what we include as relevant variables” (p. 178), and that “things which fall outside of the paradigm seem absurd” (p. 87). It is time for the concept and terminology of punishment to be lowered from its “sacred status” (Elliott 2011) to absurdity, elimination and replacement through the development of logical consequences.

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