

THE SOCIO-PHILOSOPHICAL POTENTIAL OF THE CONCEPT OF RESTORATIVE JUSTICE IN THE PREVENTION OF RECIDIVIST CRIME

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Abstract. The article offers a socio-philosophical examination of the heuristic and practical potential of the concept of restorative justice in the prevention of recidivist crime. The author proceeds from the thesis that the reproduction of repeat offending is not merely a technical malfunction of penal administration but a logical consequence of the ontological and anthropological premises upon which the retributive paradigm of punishment is constructed. By interpreting the offence as an abstract violation of a legal norm rather than as the rupture of a concrete intersubjective relation, the retributive model reduces the offender to the status of an object of coercive influence and thereby institutionalises the very exclusion that subsequently manifests itself as recidivism. Relying upon the dialectical, comparative-historical, hermeneutic and axiological methods, the article reconstructs the philosophical architecture of restorative justice as a communicative and ethical project grounded in the categories of recognition, responsibility, dialogue and reintegration. Particular attention is devoted to J. Braithwaite's theory of reintegrative shaming, to N. Christie's interpretation of conflict as expropriated property, and to the conceptual resonance between these constructions and A. Honneth's theory of recognition. The author demonstrates that the anti-recidivist effect of restorative practices is generated not by the mitigation of punishment as such but by the restoration of the offender's moral subjectivity and the reconstruction of his narrative identity. The concluding propositions substantiate the conditions under which restorative mechanisms may be organically integrated into the legal culture and the spiritual-educational environment of New Uzbekistan.

Keywords: restorative justice, recidivist crime, reintegrative shaming, stigmatisation, moral subjectivity, communicative rationality, theory of recognition, desistance, social capital, penal paradigm, mahalla, legal culture.

INTRODUCTION

Among the problems that contemporary social philosophy inherits from criminology and penitentiary practice, the phenomenon of recidivist crime occupies a distinctly paradoxical position. It is at once the most readily measurable indicator of the efficiency of a penal system and the least explicable phenomenon within the conceptual framework that this very system employs. If punishment is understood, in accordance with the classical retributive tradition, as the restoration of a violated legal order through the infliction of proportionate suffering, then the systematic return of the punished person to the same offence constitutes not an accidental deviation from the rule but a refutation of the founding premise. An institution designed to negate crime proves, upon closer inspection, to be one of the conditions of its reproduction. This inversion transforms recidivism from a narrow question of penitentiary administration into a genuinely philosophical problem concerning the relation between norm and person, sanction and sense, exclusion and belonging.

The empirical scale of the phenomenon lends the paradox an acute practical urgency. Comparative criminological research conducted over the past three decades in jurisdictions with markedly different

Multidisciplinary research and Innovation (SICMRI 2026)

legal traditions reveals a stable regularity: a substantial proportion of persons released from custodial institutions — in numerous national studies between one third and one half within the first three years — are again drawn into the orbit of criminal justice. No less significant is the circumstance that this proportion has proved largely insensitive to the intensification of repression. The lengthening of sentences, the expansion of the prison population and the tightening of supervisory regimes have not produced the reduction in repeat offending that the logic of deterrence predicts. The correlation postulated by penal populism between the severity of the sanction and subsequent law-abiding conduct is considerably weaker than public discourse habitually assumes [9, p. 4–11].

The socio-philosophical diagnosis of this situation must begin with the ontological premises of the retributive paradigm. Within its framework the offence is construed as an abstract violation of a norm, that is, as a relation between an individual will and an impersonal legal order. The state assumes the position of the injured party; the concrete victim is displaced towards the procedural periphery and retains the diminished status of a witness; harm is transformed from a lived experience into a juridical category admitting of quantification. N. Christie articulated this displacement with precision when he described conflicts as a form of property that professional institutions expropriate from those to whom it properly belongs [2, p. 1–7]. The consequence is not merely the alienation of the victim, but the impossibility for the offender of encountering the human consequences of his act, which reach him solely as the arithmetic of the sentence.

No less consequential is the anthropological premise of the same paradigm. The punished person is constituted as an object of correctional influence rather than as a participant in moral dialogue. M. Foucault demonstrated that the disciplinary apparatus of the prison does not simply fail to eliminate delinquency but actively produces the delinquent as a stable social type endowed with a biography, a milieu and an identity [5, p. 264–272]. The institutional trajectory running from arrest through conviction and incarceration to release dismantles precisely those bonds — familial, occupational, communal — upon which the possibility of a non-criminal existence depends, while furnishing the individual with a new and durable form of belonging. The released person thus returns to a society that has formally discharged its claim against him yet has not restored him to the position of a full participant in social exchange.

It is against this background that the concept of restorative justice, which took shape in the final quarter of the twentieth century, acquires its theoretical significance. H. Zehr described the transition towards it as a change of lenses: the same reality of crime is observed, but the questions addressed to it are radically different [10, p. 177–181]. In place of the retributive triad — which norm has been violated, who violated it, what punishment is deserved — restorative justice asks who has been harmed, what needs have arisen from that harm, and upon whom the obligation to meet them rests. This reformulation is no rhetorical device. It relocates the centre of gravity of the procedure from the vertical relation between individual and state to the horizontal relation between persons, restoring to the offence its character as an event within a community of concrete human beings.

The socio-philosophical potential of this reorientation extends far beyond procedural technique. Restorative justice presupposes a determinate philosophical anthropology, according to which the human being is not exhaustively defined by the worst of his acts; a determinate social ontology, according to which society is constituted not as an aggregate of atomised individuals held together by external coercion but as a fabric of mutual recognition; and a determinate axiology, in which the supreme value of

Multidisciplinary research and Innovation (SICMRI 2026)

the juridical process consists in the restoration of a ruptured relation rather than in the calculated infliction of suffering. The concept thus converges with the Hegelian dialectic of recognition, with J. Habermas's conception of communicative rationality, with E. Levinas's ethics of responsibility for the Other, and above all with A. Honneth's theory of recognition, in which disrespect is identified as the moral grammar of social conflict [6, p. 131–139].

The theoretical bridge between this philosophical apparatus and the empirical problem of recidivism is provided by J. Braithwaite's theory of reintegrative shaming. Its central distinction concerns two modalities of social disapproval. Stigmatising shaming condemns the person as such and expels him from the moral community, leaving him no source of self-respect other than the subcultures of the excluded. Reintegrative shaming condemns the act while affirming the enduring membership of its author, and is terminated by gestures of forgiveness and readmission [1, p. 55–68]. The anti-recidivist effect is attributed not to the intensity of disapproval but to the presence or absence of a ritual of return — a proposition that renders the philosophical category of recognition operational and empirically testable.

For the Republic of Uzbekistan the problem possesses an additional dimension conditioned by the humanisation of criminal policy, the broadening application of the institute of reconciliation, and a living tradition of communal mediation embodied in the mahalla. Yet the effectiveness of any restorative mechanism depends upon the moral maturity of its participants, formed within the system of continuous education and spiritual upbringing [3, p. 314–316; 8, p. 325–328]. The aim of the article accordingly consists in the socio-philosophical substantiation of the anti-recidivist potential of restorative justice and in determining the conditions of its realisation. The novelty of the work resides in interpreting recidivism not as a defect of individual will but as a systemic effect of the denial of recognition.

METHODS AND MATERIALS

The methodological foundation of the study is constituted by the dialectical method, which permits punishment and restoration to be apprehended not as mutually exclusive alternatives but as contradictory moments of a single process of social regulation. The comparative-historical method has been employed in order to trace the transformation of conceptions of justice from archaic compensatory practices, through the formation of the state monopoly on punishment, to contemporary restorative programmes. The hermeneutic approach has made it possible to reconstruct the meaning-bearing structures that the participants in a criminal conflict attribute to their own situation, while the axiological approach has served to identify the value hierarchies underlying the competing models of justice. The empirical basis of the argument is formed by internationally recognised evaluative studies of restorative programmes and by the conceptual material of contemporary theories of desistance.

RESULTS AND DISCUSSION

The first result of the analysis concerns the ontological limits of the retributive paradigm. Punishment conceived as retribution possesses a closed temporal structure: it is oriented towards a past act and is exhausted in the moment of its execution. It contains no internal mechanism capable of generating a future, for the restoration of an abstract norm says nothing about the restoration of the concrete relation that the offence destroyed. The dialectical difficulty consists in the fact that the negation of crime by punishment remains an abstract negation in the Hegelian sense: it annuls the external manifestation of the deed without sublating its social content. A formally executed sentence therefore leaves the configuration of circumstances that produced the offence — the disintegration of bonds, the

Multidisciplinary research and Innovation (SICMRI 2026)

absence of recognition, the deficit of legitimate opportunities — not merely unchanged but frequently aggravated.

The second result concerns the constitution of restorative justice as a communicative and ethical project. The restorative encounter, whether it assumes the form of victim–offender mediation, of a family group conference or of a communal circle, is structurally a discursive procedure in which the validity of a moral claim is established through argumentation rather than through the authority of an external instance. The offender is here neither the object of a verdict nor the passive recipient of an assigned measure, but a participant obliged to articulate his position and to confront the narrative of the person he has harmed. This directness constitutes the philosophical core of the procedure: the abstract victim is transformed into a concrete Other whose vulnerability imposes a responsibility that no institutional mediation can discharge on the subject's behalf.

The third and central result concerns the mechanism by which the anti-recidivist effect is produced. Generalisations of the accumulated empirical data indicate a moderate but stable reduction in the probability of repeat offending among participants in restorative programmes, alongside a markedly higher level of satisfaction among victims [9, p. 8–13]. The philosophical interpretation of this regularity requires the category of narrative identity. Research on desistance demonstrates that the durable cessation of criminal activity is associated with a reconstruction of the life story: the individual who abandons offending reinterprets his past as a path towards a redeemed present, whereas the persistent offender reproduces a narrative of condemnation in which he figures as a being devoid of agency [7, p. 85–96]. Restorative procedure functions as an institutionalised occasion for such reinterpretation, supplying the two elements the punitive ritual withholds: acknowledgement of harm by its author, and acknowledgement of the author's personhood by the community.

The fourth result concerns the conditions of applicability within the national context. The restorative potential of the mahalla resides in its capacity to serve as the collective subject of reintegration, that is, as the instance capable of performing the ritual of return that Braithwaite identifies as decisive. The same communal density, however, may generate the opposite effect: where local opinion is oriented towards permanent exclusion, informal control amplifies stigmatisation instead of dissolving it. The determining variable is therefore not the presence of community as such but the value orientation of its members, formed through continuous education and the cultivation of a spiritual and philosophical worldview among the younger generation [4, p. 10–13].

CONCLUSION

The socio-philosophical analysis undertaken above permits several interrelated conclusions. First, recidivist crime should be interpreted not as an aggregate of individual failures of will but as a systemic effect of the structure of the retributive paradigm itself. By constituting the offence as a relation between the individual and an abstract norm, and the offender as an object of coercive influence, this paradigm produces exclusion as its regular by-product, and exclusion in turn constitutes the principal social condition of the repetition of the offence.

Second, restorative justice possesses genuine philosophical substance and is not reducible to a set of procedural innovations. It rests upon an anthropology of the perfectible subject, a social ontology of mutual recognition, and an axiology in which the restoration of ruptured relations takes precedence over the calculated infliction of suffering. From its connection with communicative philosophy and the theory

Multidisciplinary research and Innovation (SICMRI 2026)

of recognition it derives a legitimacy considerably more robust than the pragmatic arguments of procedural economy ordinarily advanced in its defence.

Third, the anti-recidivist effect of restorative practices is generated by a mechanism that admits of philosophical description. The direct encounter with the consequences of the act restores the moral subjectivity of its author; the separation of condemnation of the deed from condemnation of the person preserves his membership of the moral community; and the ritual of readmission furnishes the material for a new narrative identity. Where any one of these elements is absent, restorative procedure degenerates into a formality.

Fourth, the realisation of this potential under the conditions of Uzbekistan depends upon the legislative expansion of conciliatory procedures, upon the readiness of local communities to assume the function of the reintegrating subject, and upon the formation, through continuous education, of a civic consciousness capable of distinguishing the condemnation of an act from the rejection of a person. The absence of the last factor renders the first two ineffective, since no legal norm can compel a community to accept back a person it has already morally expelled.

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