

Conceptual problems of restorative justice - a new paradigm of a contemporary response to crime

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The introduction of subject into language automatically means a renunciation of violence, since language is an instrument that intervenes as a mediator between people. Conflicts between people are thus entirely ordinary, as are also strategies and techniques of non-violent conflict resolution. Alternative resolution of conflicts, which has attracted extraordinary academic, research and institutional attention in the last three decades, is therefore inevitably present in the social tissue and has found expression in the development of the theory of restorative justice as a social reaction to "problematic" acts. More detailed analysis shows that restorative justice is not just a new penal theory. On the one hand it has brought some new approaches in the understanding of crime and criminal justice interventions, because it has curbed the punitive aspect of countries belonging to Western cultural circles (a value argument) and at the same time it relieves the burden on the criminal justice system (a pragmatic argument). On the other hand, the far-reaching changes brought by this reaction to crime show that this paradigm opposes the basic tenets of modern criminal law. In its ideal theoretical conception, the character of restorative justice is neither penal nor modern. Its numerous elements can never belong in absolute terms to modern criminal law. To leave the criminal law reaction to "interested" parties would mean the collapse of public criminal law into private law. Its understanding of a subject would imply the elimination of that quality of a subject's autonomy that characterises modern law. Conciliation elements, which remain relatively externalised in modern (criminal) law, would lead to the negation of the thesis of the separation of subject and society and require from the subject a greater «intimate» subordination to social imperatives. Ultimately, restorative justice suppresses some of the formal characteristics of modern law and also questions the basic principles of criminal procedure. In any case, this paradigm, which relies on certain assumptions of post-modern theory about a subject and its integration in the social symbolic network, indicates that contemporary (criminal) law is not an evolutionary climax, on which would be worth insisting.

Key words: restorative justice, conflict resolution, reconciliation, mediation

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