

MOTIVATIONAL INTERVIEWING AND RESTORATIVE JUSTICE PRAXIS

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1 EMANCIPATION 'WITH'

This volume is dedicated to one of many aspects of the inspiring contributions of Ivo Aertsen to restorative justice: justice as a skill we can do. In the professional life of Ivo Aertsen, justice has been a skill of collaboration, of 'doing with', in which he has skillfully 'led from behind'. For Aertsen, justice is also an emancipatory skill: 'justice clearly promotes the emancipated victim image: it offers active victims a chance to actively participate in mediation and conferencing' (Aertsen, et al., 2011: 7). This in turn connects to Ivo Aertsen's empirical oeuvre showing that restorative justice 'enabled offenders to change their perspective, to develop empathy with the victim, or to acknowledge the real impact of their behaviour' (Lauwaert & Aertsen, 2015: 4). Justice in the Aertsen vision is not a matter of imposition on passive stakeholders; rather, stakeholders are actively empowered to grasp justice.

But how, in practical terms, and in an evidence-based way, can restorative justice emancipate stakeholders in the art of doing justice actively. With Brunilda Pali and many others in the final year before his retirement from paid employment at KU Leuven, Ivo Aertsen has been networking on how restorative justice might empower environmental activists and regulators to work with nature rather than against it, rather than do for it or to it. A just art of environmental praxis in this emergent part of the Aertsen vision cannot be accomplished by bullying corporations into complying with environmental law. Punishment of corporate environmental offenders certainly has a role. Yet we can no more bully corporate executives into caring about environmental stewardship than we can bully young people to care about the harm of violence against other citizens.

* Some of the ideas in this chapter were first presented when I gave the Fasken Lecture at the University of British Columbia (Braithwaite, 2011).

2 MOTIVATIONAL INTERVIEWING

This chapter explores just one kind of justice praxis that can build motivation to care about non-violence and non-domination of people or ecosystems. This is motivational interviewing. A common strand between the work of Ivo Aertsen and the impressive evaluation literature on motivational interviewing is that to change behaviour we must genuinely listen to narratives of non-compliance. More than that, the listening must lead to agreement on desired outcomes and self-monitoring and/or external monitoring of progress towards them. That commitment is secured in the motivational interviewing method by helping people to find their own motivation to attain an outcome. In the application of Miller and Rollnick's (2012) motivational interviewing to restorative justice, we replace 'clinician' with 'facilitator' and 'client' with 'stakeholder' (which includes offenders, victims and affected members of communal or natural ecosystems):

- The stakeholder, rather than the facilitator, should make the arguments for change
- The facilitator's role is to evoke the stakeholder's own concerns and motivations
- To effect this change in approach:
 1. Listen with empathy
 2. Minimise resistance
 3. Nurture hope and optimism¹

Meta-analyses that include more than 80 randomised controlled trials show formidable effectiveness of motivational interviewing in changing a wide variety of oppressive behavioural outcomes that range well beyond crime (Rubak et al., 2005; Lundahl et al., 2010). In youth justice restorative conferences, stigmatisation is not needed: loved ones discussing how concerned they are about the consequences of the crime, the suffering of victims and what the family can do to help repair the harm is the way to elicit remorse without defiance. Motivational interviewing of these loved ones can draw this out. If desistance from drug abuse is settled as a motivation in a restorative and responsive process, the motivational interviewer asks the drug user why this aim matters to them and their family, what strategies might follow from this shared reason for wanting to desist and how could the family commit to support them.

The motivational interviewing literature mirrors much of what our RegNet research group at the Australian National University discovered along a different path during the past four decades about the limits of regulators being directional and combative as opposed to empathic and eliciting. Motivational interviewing's three key dimensions of motivation (confidence, importance and readiness) mirrors much of what emerges in Valerie Braithwaite's (2008) work on motivational posturing and regulation, trust and governance (Braithwaite & Levi, 1998), and hope and governance (Braithwaite, 2004).

¹ These dot points are adapted from a PowerPoint presentation by Dr Stan Steindl to RegNet colleagues.

Ann Jenkins' (1994) research on our 1988-1991 nursing home regulation data showed the importance of 'confidence' or 'self-efficacy' in regulatory compliance. It is easy to grasp the intuition that we achieve more against our outcomes on those days when we arrive at work with a feeling of confidence that we can tackle them. So clear empirical evidence that self-efficacy of managers predicted future regulatory compliance was not a surprise. In my own most recent work, I have sought to connect micro-self-efficacy to a macrocriminology of collective efficacy that cascades crime prevention (Braithwaite, 2019). I argue that restorative justice can help enable and empower this collective efficacy. 'Importance' as motivational interviewing's second key dimension of motivation has a much longer history of empirical predictive power, for example, in the consistent predictive power of commitment to obeying the law in the hundreds of empirical tests of control theory in criminology. In the motivational posturing literature, 'Readiness' is operationalised by asking clients, 'How ready are you to make these changes?' This is based on the finding that ambivalence is the crucial dilemma individuals and corporations face when they consider change. Because people have the feeling that life is short and there are good and bad sides to everything, they often focus on the bad side and take the lazy path of not making a change they know they should bother to make. Again, this insight arrived early in the criminological literature in the brilliant ethnographic work of David Matza (1964) on *Delinquency and Drift*. Delinquents are not often committed to law breaking; rather, they ambivalently drift between worlds of delinquency and law abidingness. They do not think breaking society's rules is right so much as they drift into 'techniques of neutralisation' that soften the moral bind of law (Sykes & Matza, 1957).

Restorative and responsive regulators are therefore skilled at what the counselling literature conceives as Rogerian reflective listening, listening that reflects back commitment to achieve outcomes grounded in motivations chosen by the speaker. Conversations with reflective listening ask open questions as opposed to rhetorical questions or questions that evoke yes/no answers, questioning that shows respect for the person and active listening that summarises back to speakers narratives that they might choose to use to steer their journey to change. This is a very common human skill that all good parents have. It rolls with resistance rather than arguing combatively, while communicating commitment to stick with the problem until it is sorted. While there is a 'high moral ground' that law enforcers must enforce when faced with exceptional intransigence to ensure that clear messages are delivered to third parties about what is morally unacceptable, in street-level law enforcement taking the high moral ground tends to be counterproductive.

Restorative praxis requires engagement with fairness of those who resist. We must show them respect by construing their resistance as an opportunity to learn how to improve the justice system. Valerie Braithwaite's (2008) research on motivational postures concludes that resistance is a good thing in justice and regulatory systems. It is what creates the best opportunities for improving them. The character with which democratic governance responds to resistance is vital to the quality and resilience of a democracy.

Restorative practitioners can learn adaptation through the skill of rolling with resistance. Empirically in both nursing home care quality and tax compliance, the motivational posture that Valerie Braithwaite labels 'resistance' was comparatively easy to flip into commitment to improvement. The tough nut was 'disengagement'. Offenders who opt out of the regulatory game are much harder to deal with than those who resist the regulator. As with the problem of underperforming employees in workplaces, a starting point is in being interested in what people *are* good at. That provides a point of entry to getting them engaged with projects of continuous improvement that regulator and regulatee can begin to see as shared projects. And that is why we seek first to pick strengths and expand them by moving up the pyramid of supports in restorative and responsive regulatory theory (Burford, Braithwaite & Braithwaite, 2019).

Restorative and responsive regulatory theory is also about the idea that all these empathic attempts at engagement will often fail. That failure is an opportunity too. It provides an opportunity to communicate the message that the justice system will keep innovating with alternative strategies until behaviour that brutally dominates nature or other human beings desists. The justice system must show itself to be resilient at persisting with attempts to fix injustice in collaboration with those caught up in the injustice until they are fixed.

Informal praise of stakeholders who seize active responsibility for fixing injustice is fundamental in the toolkit of the restorative and responsive regulator. No tool is cheaper to implement. For the environmental inspector to pause and say, 'You have done a great job in completely cleaning up that leakage I brought to your attention last month,' does not require an increase in regulatory budgets. No mechanism of justice praxis for reinforcing gains from motivational interviewing is simpler to do. The evidence of the effectiveness of informal praise by inspectors in improving nursing home quality of care outcomes in the two years following an inspection is strong (Makkai & Braithwaite, 1993; Braithwaite, Makkai & Braithwaite, 2007). This is also why 'celebration conferences' after an offender has completed the undertakings made in a restorative justice conference is a good practice. The idea is that while motivation to solve life's problems is a great thing, we can make it a greater thing by simple practices of good restorative justice, good regulation, good parenting and good living like praise that sustain the motivation.

3 AERTSEN'S 'GOOD LIFE'

I have found motivational interviewing to have special appeal for integration into restorative praxis because we should want restorative justice to be evidence based, and the evidence for motivational interviewing is strong. As Ivo Aertsen's friend and mentor Lode Walgrave (2016) put it, there are a variety of ways of shifting lenses from 'what works' in justice to 'what helps' those caught up in justice systems. Walgrave conceives the Good

Lives model as another promising approach to building better offender motivations through social support from offender communities of care. The Good Lives model might not have the heft of empirical support of motivational interviewing's 80+ randomised controlled trials, but it bears the hope of a more normatively rich justice praxis.

The Good Lives model is sympatico with restorative justice in shifting from seeing offenders through the lens of the risks they pose; shifting to helping build offenders' capacities 'to live personally meaningful and fulfilling lives' (Ward, Fox & Garber, 2014: 28). Good Lives is about "What helps" to support the offender's motivation to find his/her own way towards a satisfying socially integrated life' (Walgrave, 2016: 426). Of course, normatively for Walgrave and me as republican theorists, a good life cannot be a life of domination (or for that matter a life dominated by risk managers). While it is desirable for offenders to learn how to better manage their risk factors, and there is strong evidence that points to responsiveness to needs through cognitive behavioural risk management (risk-need-responsivity), perhaps even more can be achieved by also helping offenders to discover fulfilling ways of living (Ward & Brown, 2004; Willis & Ward, 2013; cf. Andrews et al., 2011).

Fulfilled lives are a better, more helpful thing even if future accumulation of evidence does not support large added value for crime prevention. As Seligman (2002: 7) puts it, 'We need to ask practitioners to recognize that much of the best work they already do in the consulting room is to amplify their clients' strengths rather than repair their weaknesses' (Seligman, 2002: 5). Risk reduction strategies often struggle to motivate and engage participants in rehabilitation processes that often have shockingly high attrition rates; herein lies the appeal of motivational interviewing when it discovers and motivates visions for fulfilling lives, individual or corporate (e.g. Ward & Maruna, 2007). When the evidence is in, it might well show that it is easier to persuade criminal offenders to hang in on projects of living more fulfilling lives than on projects of reducing the risks they pose to others.

As we move from individual to corporate offenders, many now also conclude that while the bread and butter of corporate regulation is 'picking risks and fixing them', the essence of regulatory excellence is 'picking strengths and expanding them' (Braithwaite et al., 2007). When environmental leaders take green stewardship up through new ceilings of excellence, that can also drag laggards above floors of minimum environmental standards. More fundamentally, it is now too late to save our planet just by picking risks and treating them. Our only hope is with environmental leaders who rise to the challenge of inventing new solar and other renewable technologies that displace carbon quickly; innovating fast into new electric cars that are better and cheaper than cars that carbonise; inventing cheaper and more environmentally friendly technologies of desalination to stave off famine; inventing entire new visions and implementation paths to smart cities such as China's hydrogen cities, circular cities, forest cities and sponge cities (Shepard, 2017); inventing new kinds of economies that grow jobs through increased consumption

of low-carbon human services as they reduce consumption of consumer durables (Burford, Braithwaite & Braithwaite, 2019); and more.

Unfortunately, the risk management myopia of Western capitalist economies has left it too late to shift gears to Good Corporate Lives that make the investments that might save the earth system. Today, China accounts for half the global capital investment in seizing such opportunities, so I suspect Peter Drahos (2019) is right that Western collaboration with Chinese corporate efforts to seize a survivable future is humankind's best or only hope now. Redemptive corporate ethical transformations to better corporate lives often do happen in the aftermath of corporate criminality, but more commonly do not because firms settle for plugging a few fingers in the dykes of their corporate risks. Even so, corporate compliance professionals rightly say that if you want to find the corporation that is taking new risk management and stewardship policies up through new ceilings of excellence this year, go to the companies that were in deepest legal trouble for non-compliance the previous year. The imperative here is to move beyond risk management mentalities to stewardship mentalities, individual and corporate, to restore natural systems and stem the ecocide of our fellow species.

Perhaps motivational interviewing can be helpful not only for finding motivations for changing bad behaviour but also for finding paths to good behaviour. This means living a Good Life in which crime is not as satisfying as that good way of living that offenders are helped to discover. Honig et al. (2015) argue that awareness of risks, needs and more fulfilling ways of living combined with motivation to seize them is not enough. *Pathways* to risk and need responsivity are also imperative and also pathways to Good Lives. The integrated transformation imperative is for AMP – Awareness, Motivation and Pathways. Help with getting secure housing is one example of an unusually important pathway without which many rehabilitation programmes have been shown to fail (Best et al., 2016). Likewise, pathways to employment and to improved study methods to enhance educational Good Lives are of quite general import to tracking to restored and redemptive lives, just as many more minor pathways are of more contextual import. As ecological crisis recursively cascades into economic crises and security crises, pathways to peace will become of more widespread importance to making Good Lives or the risk-need-responsivity paradigm possible as approaches to crime prevention that work (Braithwaite & d'Costa, 2018; Braithwaite, 2019). When human beings are under bombardment, as many people in the world are, responsivity findings from Western populations currently enjoying peace are unlikely to be relevant. If psychologism fingers people as suffering the risks of anxiety, neurosis, addiction to tobacco or alcohol, they are likely to suffer these afflictions more as they live the bad lives of the rockets raining in.

Ivo Aertsen's Good Life today has turned to helping corporate environmental offenders to discover the possibility that environmental stewardship for circular, renewable economies is a better way of living that can engender richer, more holistic motivation than making more money. The Leuven network for Restorative Environmental Justice is

beginning to lead us to discover transformed justice skills that might deliver corporate Good Lives with the AMP – Awareness, Motivation and Pathways – that might help save our planet. Leading from behind with this kind of work as he enters the late stage of his career is what makes Ivo Aertsen richer in life than the richest corporate magnates. For Ivo and his followers in our generation, it is all hands to the pumps of the climate crisis right now to find better ways of spurring good corporate and personal lives that might lay pathways to prevent collapse of the earth system.

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