

# CONSTRUCTIVE AND DESTRUCTIVE DIALOGUES BETWEEN VICTIMS AND OFFENDERS

TESTING THE NEEDS-BASED MODEL OF RECONCILIATION IN A RESTORATIVE JUSTICE SETTING



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## SUMMARY

*Background and aims:* The goal of the present article was to design a pilot study investigating the relevance of two theoretical frameworks in a restorative justice setting in order to better understand the characteristics of communication between victims and offenders. The concept of the “magnitude gap” (Baumeister, 1996) and the Needs-Based Model of Reconciliation (Shnabel and Nadler, 2008) are presented as theoretical foundations and are hypothesized as indicators for destructive and constructive communication behaviours in conflict. As a real life setting, restorative justice practices are introduced. *Methods:* Recorded tapes of two conveniently selected cases of restorative justice interventions were content analysed. A categorization scheme was a priori developed based on the presented theories, mapping victim and offender needs, magnitude gap behaviours as well as messages of empowerment and acceptance. Findings of the content analysis were then compared against the postulates of the theoretical models. *Results:* Results indicate that both frameworks are relevant and applicable in RJ settings. Implications of needs, constructive and destructive communication as well as on methodology are reflected in light of the findings. *Discussion:* Implications for practitioners as well as attempts to embed empowerment and acceptance messages in clinical and in real-life contexts are discussed.

*Keywords:* conflict, needs-based model of reconciliation, magnitude gap, restorative justice

## INTRODUCTION

In order to understand the chosen theoretical foundations it is important to glance at the evolution of the perception of conflict in academia. Previously the so-called instrumental or realist approach had been the dominating framework in understanding conflict and conflict management. This approach conceptualized conflict between persons or groups as disputes driven by the parties' interest over tangible, material issues and conflict resolution as a process of coming to an agreement over redistributing contested resources (Pruitt, 1998). Although this framework has been very influential in social sciences (with the formulation of the game theory, for example), it has seen major limitations as it disregarded participants' emotional and psychological needs. Theoreticians in the field of negotiation emphasized that although ignoring intangible needs of the participants is a common practice, it often deadlocks the process of negotiation (Zubek et al., 1992 cited by Shnabel and Nadler, 2008). An alternative to the instrumental perspective is the psychological needs approach proposed by Burton (1969). It suggests that during conflicts, parties' basic psychological needs are threatened and this leads to certain emotional states and behaviours that prolong and intensify the conflict. Based on this line of reasoning, Shnabel and Nadler (2008) distinguish between resolution of conflicts and reconciliation. Conflict resolution refers to the process of handling instrumental needs while reconciliation, in contrast, "must include a changed psychological orientation towards the other" (Staub et al., 2005, p. 301). The process of satisfying emotional needs that is key for reconciliation is described as the "socio-emotional route to

reconciliation" by Nadler (2002). In the past decades scientists' attention has turned to focusing on intangible needs (Shnabel et al., 2008) with the aim to explore what factors impede and which ones facilitate reconciliation.

### **The magnitude gap**

Shnabel and Nadler (2008) draw attention on research literature indicating that victims and perpetrators have different perspectives on the same victimization episode. The term "magnitude gap" (Baumeister, 1996) describes "the usual tendency for perpetrators to perceive their transgressions as less harmful and serious than victims do" (cited by Nwoye, 2009, p. 117). This phenomenon appears to reflect self-serving distortions on the part of both victims and perpetrators (Nwoye, 2009). Perpetrators often avoid feelings of guilt by minimizing the moral implications of their actions or by denying responsibility for them (Mikula, 2002). This contrasts with victims' tendency to emphasize the injustice they suffered and the perpetrator's responsibility for it (Shnabel and Nadler, 2008). Magnitude gap attitudes and behaviours impede the process of reconciliation and are therefore associated with destructive communication between victim and offender as they contribute to the prolongation or even to the escalation of the conflict thus impeding reconciliation.

### **The Needs-Based Model of Reconciliation**

The Needs-Based Model of Reconciliation is based upon the – later empirically proven – presumption that "in a victimization episode, the impairment to the psychological resources of victims and perpetrators is asymmetrical" (Shnabel and Nadler, 2008, p. 117).

Their need- and motivation-focused model identifies different psychological impairments and resulting needs, and they suggest constructive ways of satisfying those needs to foster reconciliation (*Figure 1*). The model has three postulates. According to the first one, victims and offenders suffer different damages in a conflict that result in different and role-specific (victim or offender) needs. Victims have an impaired sense of power and have an enhanced need to restore that power. Offenders, on the other hand, have an impairment in their public moral image and therefore an enhanced urge to restore it. The second postulate states that if these specific needs are satisfied, both victims and perpetrators show a greater willingness to reconcile. Thirdly, the model implies that such needs are satisfied via “acts of social exchange”, in other words in exchange of communication between victim and offender. Victims’ needs are best satisfied through messages of empowerment coming from perpetrators, while perpetrators needs can be met by victims’ messages of acceptance. The model has been tested and confirmed in var-

ious ways and settings, with methodological variety (including role-play, scenario and memory recollection), both in interpersonal (Shnabel and Nadler, 2008) and intergroup experimental settings (eg. Shnabel et al., 2009).

From a communication aspect, participants’ needs can be conceptualized as “expectations” from the other in the model (Shnabel and Nadler, 2008). In case of victims, restoration of power can be achieved by perpetrators’ explicit acknowledgement of injustice and responsibility taking, expressing guilt and remorse, asking for forgiveness and acknowledging victim’s competence, status or power, in other words by messages of empowerment. In case of offenders, victims’ messages of acceptance, such as communicating understanding and empathy as well as granting forgiveness may serve the purpose of restoring perpetrator’s public moral image. According to the model, messages of empowerment and messages of acceptance can be considered constructive communication acts, as they foster parties’ willingness to reconcile.

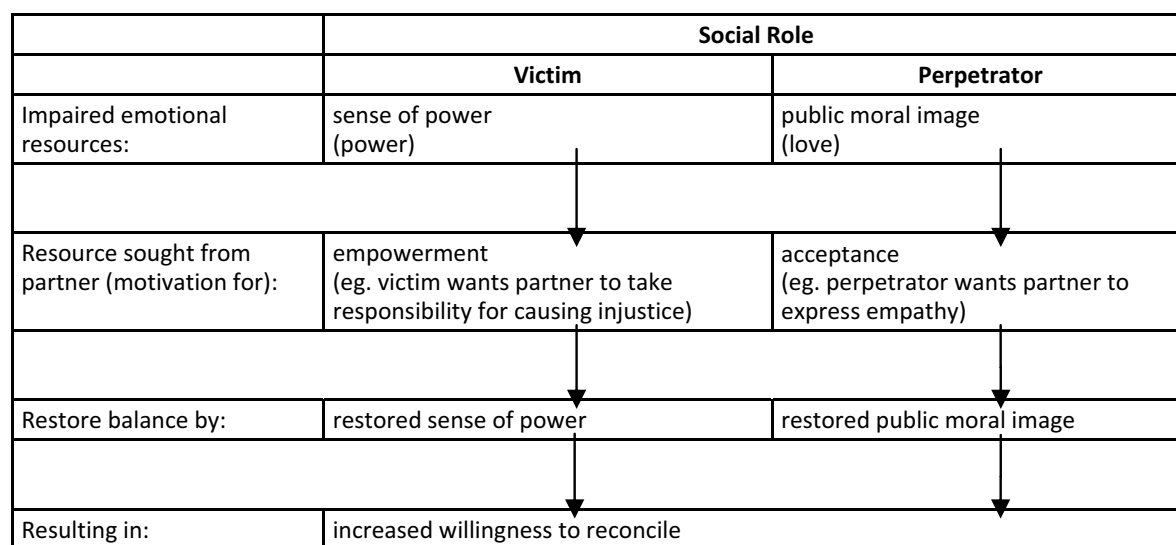


Figure 1. The Needs-Based Model of Reconciliation by Shnabel and Nadler (2008, p. 118)

### **Restorative justice as a practical setting: definition, principles, methods**

Similar to theoreticians, practitioners and the legal system also make efforts to structure and categorize the complexity of conflict situations (Pallai, 2011). While affiliated parties in a conflict may think of themselves as victims or offenders or a combination of both, the legal system and the alternative conflict resolution literature make a clear distinction between types of cases. Cases where the involved parties are considered equal (symmetrical) in their status are regulated by Civil Law. Cases where parties are asymmetrical regarding their status, they hold either a victim or an offender role, are regulated by Criminal Law. In both civil and criminal cases, the legal procedure focuses mostly on the aforementioned instrumental needs (Fellegi, 2009). Alternative conflict management approaches also take participants' status into consideration but they always address both instrumental and psychological needs. When the parties are perceived symmetrical, mediation is offered. In cases where actual norm-breaking behaviour(s) or criminal act(s) took place and involved parties are considered asymmetrical, restorative justice services are recommended (Pallai, 2011). Restorative justice is an ethos (Gavrielides, 2007), a way of viewing conflict and human relations, in general. It encompasses an approach, a set of principles as well as methodologies to address conflict and wrongdoing. Restorative practices have origins in ancient tribal community conflict resolution rituals and in their institutionalized forms they offer alternative or complementary justice services to the criminal justice system. The definition of the Restorative Justice Consortium (2006, cited by Liebmann, 2007) also reflects that this

approach goes well beyond satisfying instrumental needs. "Restorative justice works to resolve conflict and repair harm. It encourages those who have caused harm to acknowledge the impact of what they have done and gives them an opportunity to make reparation. It offers those who have suffered harm the opportunity to have their harm or loss acknowledged and amends made." (p. 25). Hallmarks of restorative justice are the restorative principles that serve as basic values and guidelines for practitioners. They are summarized by Liebmann (2007) as follows: (1) victim support and healing is a priority, (2) offenders take responsibility for what they have done, (3) there is a voluntary dialogue to achieve understanding guided by well-trained and impartial facilitators, (4) there is an attempt to put right the harm done, (5) offenders look at how to avoid future offending, (6) the community helps to reintegrate both victim and offender. The common characteristic of all restorative justice interventions is that they are all prepared and conducted in the spirit of the aforementioned restorative principles. Restorative practices build upon various theoretical foundations (eg. Braithwaite, 1989; Nathanson, 1997; O'Connell et al., 1999) and they can be classified by various dimensions. Depending on the level of institutionalization, a restorative intervention can take form of a spontaneous dialogue (exchanging affective questions and statements), while at the other end of the continuum, formal restorative conferences and circles held in court houses can be found (Negrea, 2010). Methods can vary regarding their preventive (eg. focusing on norm- and community-building) or intervening nature (eg. reacting to victimization, wrongdoing, law- or norm-breaking behaviours). Depending on the number of partici-

pants, victim–offender mediation can be distinguished from restorative conferencing and circle. While the former invites primary victims and the offenders together with one accompanist on each side, the latter forms of restorative methods aim to welcome a larger circle of affected people (secondary victims as well as members of the community). Methods can have specific themes (e.g. family group conferencing) or can be specific in relation to the type of community involved (school, prison, workplace, etc.). The style of communication is of utmost importance in restorative justice: the focus is on sharing personal stories, feelings and meanings rather than fact-finding in a safe and non-judgmental environment. It is important to note that while the symbolic act of requesting and granting forgiveness can be an inherent and natural part of the process, it is never explicitly addressed by facilitators or presented as an expected outcome.

### **Rationale for bringing the Needs-Based Model of Reconciliation and restorative justice practices together. Research goals and research questions**

The theoretical model and restorative justice share similar perspectives on conflict: both conceptualize involved participants in asymmetrical roles (distinguishing between victims and offenders) resulting in different needs; both have a focus on addressing the intangible psychological, emotional and motivational needs of the parties; both have a dialogue based approach and both put down

principles defining what constructive communication is; and finally both agree that reconciliation can be fostered by communication, in other words, by “acts of social exchange”. Authors of the Needs-Based Model also find their theory relevant to restorative justice when they say that “these (restorative) practices involve nurturing the expression of vulnerable emotions and our model can cast light upon the nature of these emotions as well as on the psychological needs that lie beneath them” (Shnabel and Nadler, 2008, p. 131).

The aim of the present pilot study is to investigate the relevance of the Needs-Based Model of Reconciliation (Shnabel and Nadler, 2008) and the magnitude gap concept (Baumeister, 1996) in real life restorative justice settings. Research questions to be investigated are the following: (1) Do communication acts described by the magnitude gap and the Needs-Based Model of Reconciliation manifest in real life conflict management situations? (2) If so, in what ways do they appear? (3) The aim is to explore and compare the manifestations against the postulates of the magnitude gap concept and the Needs-Based Model. Deriving from the theoretical frameworks, we can postulate that if a restorative session goes well, magnitude gap behaviours reduce and constructive communication acts increase over the course of the session<sup>1</sup>. (4) Finally, another goal of this study is to develop a categorization scheme a priori based on the aforementioned theories by which dialogues of restorative sessions

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<sup>1</sup> It is important to note that the communication process described above is just one example of a possible model script of the session. There are cases, typically in car accidents, where the offender is already in the phase of grief and has complete ownership of his actions right from the beginning of the session. In such instances, magnitude gap behaviours will not likely to be detected from his/her side.

could be analysed. It is important to reflect upon the relevance of such communication categories in practice.

## METHOD

### Research approach

In the present pilot study we used a qualitative approach as our goal was to explore the relevance of theoretical frameworks in restorative justice settings. We chose the method of content analysis using a priori established categories based on the theoretical models. General uses of content analyses include the description of trends in communication, description of communication patterns as well as comparison of communication content to standards (Berelson, 1952).

#### Data collection

Data was collected from an EU funded project titled “Developing Peacemaking Circles in a European Context: How can Peacemaking Circles be implemented in countries governed by the ‘principle of legality’?”<sup>2</sup> executed in the period of September 2011 until May 2013 with international partnership of Germany, Belgium and Hungary. Hungarian data was collected by researchers of Foresee Research Group<sup>3</sup>. Restorative peacemaking circles took place in four counties in Hungary, sessions were held at the county courts. Cases were referred to mediation by judges<sup>4</sup>

and were prepared and conducted by two trained facilitators. Each participant was informed about data registration via dictaphone for research purposes and were requested to sign a consent. In the present study two cases were analysed. Selection of data (cases) was convenient, based on the availability of dictaphone registered material. Restorative session of case 1 was held in the winter of 2011 in Békéscsaba County Court with the participation of one female offender and four victims (siblings), one victim’s supporter (husband) and a judge (unrelated to the case). In this case, the offender was a new tenant moving in to the property after the victims, who left two old cars in the yard of the property that was taken away by offender, committing theft this way. Although the cars were of low financial value they were very important functionally and symbolically to the victims’ whole family. Restorative encounter in case 2 took place in Nyíregyháza County Court in the winter of 2012 with the presence of one juvenile female offender with her parents, three juvenile female victims with one or two accompanying parents, a related probation officer and an independent psychologist, as an expert. In this case victims and offenders were former friends and high-school students sharing the same dormitory room. The offender committed a series of small value thefts and lies (stating for example having cancer when it was not the case) for a longer period of time. Both sessions ended with an agreement but in case 1 it was not

<sup>2</sup> Project No: JLS/2010/JPEN/AG/1609, the project was co-funded by the European Commission’s Criminal Justice Programme, Directorate-General Justice, consortium leader: University of Tübingen

<sup>3</sup> Foresee Research Group: <http://www.foresee.hu/en/>

About the project: <http://www.foresee.hu/en/segedoldalok/news/592/58f145060b/5/>

<sup>4</sup> In Hungary according to the Criminal Procedure Law, the types of cases that can be referred to court mediation are as follows: any crime against property; traffic offence and crime against another person that are punishable by imprisonment for up to 5 years (Fellegi, 2009. 202.)

fulfilled (Ehret et al., 2013). Altogether 5 hours of data of the two sessions (2 hours 23 minutes and 2 hours 34 minutes respectively), registered by dictaphone, was analysed. In transcripts, names of the participants were changed in order to protect their anonymity. In the present study, the cases were conducted using a restorative method called *peacemaking circles*. Peacemaking circle sessions invite a larger circle of audience affected by the crime or wrongdoing as well as legal personnel (police officers, judges, probation officers, psychologists and so on) as experts. In terms of methodology, the circle is held by two trained facilitators and the flow of communication goes in a circle by the help of a symbolic object called the talking piece. A session usually consists of four phases: (1) meeting and introduction, (2) trust-building, (3) identifying issues, (4) developing an action plan (Fellegi and Szegő, 2013.)

### Procedure

A categorization scheme was a priori established based on the reviewed literature to code victims' and offenders' communication (Baumeister et al., 1994; Exline and Baumeister, 2000; Shnabel and Nadler, 2008; Shnabel et al., 2009; Nwoye, 2009; Shnabel and Nadler, 2010). The categorization scheme contained three main categories: (1) communication of needs (need for restored public moral image and need for control), (2) role-specific indicators for destructive magnitude gap behaviours and (3) indicators for constructive communication: perspective taking via (a) messages of acceptance and (b) messages of empowerment. Category 1 contained communication of needs according to the Needs-Based Model: need for restored public moral image (being morally acceptable, good character; denial of being a bad

person or criminal; making an effort to present oneself as likeable, agreeable, socially acceptable) and the need for control or power (referring to have power over the other; making an effort to present oneself as able and competent). Category 2 contained indicators of magnitude gap communication behaviours for offenders (minimizing responsibility or the importance of the criminal act and its consequences; giving excuses or mitigating circumstances; redeeming purpose or merit for the criminal act; blaming victim, circumstances or others; scapegoating; indicators of competitive victimhood; denying the crime or responsibility) and for victims (emphasizing injustice suffered; emphasizing the perpetrators' responsibility; blaming the offender; wish to punish offender; wish for revenge; inducing guilt in perpetrator; questioning offender's sincerity; refusing apology; questioning the possibility of a positive outcome with the offender). Category 3 contained indicators for constructive communication described by the Needs-Based Model. Messages of acceptance consisted of expressions of empathy, sympathy, acknowledgment of hardships of the other party; expressions about the other's being agreeable, likeable, human or nice; expressing trust in the other or willingness for a positive, cooperative relation with the other in the future; emphasis on the other being human; forgiving, accepting or granting apology. Empowerment messages had two qualitatively different subcategories. One contained responsibility taking behaviours (admitting partial or full responsibility for the transgression; expressing feelings of guilt, shame or remorse; acknowledging unjust; asking for apology, apologizing) while the other contained behaviours of power restoration (acknowledging or praising the others' power or status or superiority;

Table 1. Results of the content analysis

	CATEGORIES OF EXPRESSIONS	Case 1		Case 2		
		Offender	Primary victims	Offender	Primary victims	
Needs	Need for public moral image	4	0	7	0	
	Need for power	4	2	0	2	
Destructive comm	Magnitude gap communication acts	14	0	2	5	
Constructive comm.	Messages of acceptance	3	1	1	5	
	Messages of empowerment	Responsibility taking	7	0	8	0
		Power restoration	0	0	0	0

Note: cells in grey indicate the postulates of the Needs based Model of Reconciliation (Shnabel and Nadler, 2008) Content of the white cells are not explained or derived by the model; black cells indicate destructive communication acts described by the magnitude gap concept.

acknowledging context-relevant abilities of the other; acknowledging the other's rights for self-determination and rights to control their own life or future; acknowledging the other's right for respect, to feel strong or to be proud; acknowledging the other's contributions or value). As a first step, communication of victims and offenders were coded according to the categorization scheme by author 1 that was later on reviewed, discussed and amended by author 2 and 3 based on consensual agreements. Communication of participants other than victims and offenders were not coded in this study. As a second step, the coded material was quantified and thirdly it was analysed and compared against the postulates of the theoretical frameworks. Extracts from the original voice material are presented to illustrate the findings.

## RESULTS

Research question 1 and 2 focused on investigating whether communication acts described by the Needs-Based Model of Rec-

onciliation and the concept of magnitude gap appear in real life communication and if so, how. Table 1 shows the quantified results of the content analysis of the two cases. In this section, examples from the two cases are provided as illustrations. Citations are followed by information on the case number, role, age category and gender of the participant as well as the number of the participant (only in case there were more participants in the same role) and the phase of the session it was delivered.

### Communication of needs

According to the Needs-Based Model, participants have different needs depending on their victim or offender status. Offenders have a need to restore their impaired public moral image by appearing as morally acceptable, good characters and by making efforts to present themselves as likeable, agreeable, cooperative or socially acceptable people. We have identified more cues that were in line with this postulate. The adult female offender in the car theft case denied the "criminal label" and emphasized morality in her family.



“..because I’m not a criminal or anything” (...) “and it’s needless to say that I am not a criminal or at least I do not consider myself one” [Case1 Adult female offender Stage2]

“so I really am not a criminal type, (..), my brother is a police officer, my daughter studies law” [Case1 Adult female offender Stage3]

The juvenile offender also made efforts to show how her character had changed for the better since the series of lies and thefts took place to her former dormitory roommates who were the victims in this case.

“Although since then I went to see a psychologist and I put my life together. Since then I have a relationship for a few month, I have improved in my studies, you know I studied almost nothing before, now I have an average of 4,6-7 again. So I try to put my life back on track again.” [Case2 Juvenile female offender Stage3]

Victims on the other hand are described to have a need for control and power. We have found cues that were in line with these needs, when, for instance, an adult female victim expressed the following:

“It is not my goal that she (offender) would go to prison” [Case1 Adult female victim3 Stage2]

Although in this statement the victim renounces to (ab)use her power over the offender, there is an indication that she is aware of such power difference. For emphasizing victim’s own competence, we have found no context relevant manifestations (eg. acknowledging the ability of protecting one’s car or belongings from theft). The examples above are in line with the theory. As an unexpected result, four examples were found in case 1 where the offender described herself as being powerless and incompetent in relation

to the amends asking for help and empowerment multiple times.

“I only would like someone to inform me about my rights how I could compensate them so that this case could come to a closure. [Case1 Adult female offender Stage2]

“Somebody help me, tell me what I should start doing and I will.” [Case1 Adult female offender Stage3]

### Magnitude gap behaviours

Magnitude gap communication behaviours are seen as impediment of reconciliation according to the Needs-Based Model. Mitigating circumstances were present most often, the juvenile offender mentioned them twice, while the adult offender was coded six times. The adult offender demonstrated a wide variety of other examples of minimizing, blaming, scapegoating, and expressing competitive victimhood. We coded as minimizing her act when referring to the consequence of her transgression as a “fuss”.

“I also want this to come to a closure as soon as possible and to end this fuss”. [Case1 Adult female offender Stage1]

Mentioning mitigating circumstances, such as acting out of a sudden impulse or anger were present six times.

“I did that thing then out of a sudden impulse (falters), I haven’t thought it over, I was very angry in that very moment (...)” [Case1 Adult female offender Stage2]

Scapegoating also appeared three times by the same offender in form of blaming a third person who was not present in the session.

“Practically I’m telling this to you Ildikó (victim), that it was a third person to create this mess between us.” [Case1 Adult female offender Stage1]

A typical example of competitive victimhood was presented by the same offender

when reacting to victim's self-disclosure on how the crime had affected her. The offender repeats everything the victim had said just minutes before.

*"Because I have also become destroyed both mentally and in terms of health" (...) As I also work, I also have two kids, my health has also become destroyed"* [Case1 Adult female offender Stage2]

From the victims' part we have not found examples matching the a priori established magnitude gap behaviours in case 1. In case 2, the five examples consist of refusing offender's apology, questioning the sincerity of offender's apology, showing lack of empathy and not having faith in a positive future with the perpetrator. From the context it is understood that the juvenile offender was a recidivist so the theme of offender's sincerity was recurrent and key. When the first thefts had been revealed in the dormitory, the roommates and former friends (in this case the victims) of the offender have forgiven her and have tried to help her. Later however the series of thefts and lies continued.

*"It might sound rude but it leaves me unaffected if she regretted or not. Because the fact that she regretted has not made it easier. At least, for me."* [Case2 Juvenile female victim3 Stage3]

*"We perceived that it did not affect you and I can't believe that you are honest now either. (sobs) I'm sorry. It hurts."* [Case2 Juvenile female victim1 Stage3]

#### **Perspective taking behaviours: messages of acceptance**

According to the model, messages of acceptance are conveyed by victims to offenders showing empathy, sympathy, understanding and acceptance or acknowledging that the offender is a likeable, human, coop-

erative person. One example was found in case 1, while five examples were identified from the part of the juvenile victims expressing messages of acceptance towards their peer offender (accepting apology and expressing empathy or sympathy) in case2.

*"I only care about that your family can become normalized and your parents could accept you and your troubles would be solved. (Sobs)"* [Case2 Juvenile female victim Stage3]

Although messages of acceptance are theorized to be delivered by the victims, messages of "love" or "likeability" were also formed in both cases from the parts of the offenders, as an emphasis of the good relationship prior to victimization. While in the first case the previous relationship between the victim and the offender was fairly irrelevant, in the case of the dormitory theft it was a friendship that became lost as a result of the series of wrongdoings.

*"When they (victims) came to rent the apartment I told to Helga that I thought they were a very nice couple (...)"*[Case1 Adult female offender Stage3]

*"I would also like you to know, now this will sound ridiculous because I have done these things but independent of what I have done I really loved all of you."* [Case2 Juvenile female offender Stage3]

Underived from the theory, offenders also showed empathy for victims' suffering.

*"I did not want to hurt you, I don't know, I really don't know... I'm sorry, that's all I can say, nothing else. I also have memories so I know... now I know ..."* [Case1 Adult female offender Stage3]

Although these communication acts are not postulated by the theoretical model, from a restorative practice point of view, it is a hope that during the course of the session

the offender would understand the consequences of her actions which can lead to expressions of empathy towards the victims.

### **Perspective taking behaviours: messages of empowerment**

In this section, two qualitatively different kinds of empowerment messages were pre-established. Many examples were seen of behaviours indicating responsibility taking by the offenders mostly in forms of apologizing, expressing guilt or regret and acknowledging the harm done. In terms of verbalizing emotions, regret and guilt appeared more times in the communication.

*“I feel guilt. I know as it was mentioned that it cannot be seen but I feel it inside that I regret very much what I have done and I really hate myself I just hate myself.”* [Case2 Juvenile female offender Stage 3]

*“I really have regretted this whole thing, I also talked it over with my sister that something should happen, I even pay just let this be over.”* [Case1 Adult female offender Stage3]

Asking for apology was also a common behaviour. Interestingly, in both cases apology was present already in offenders' first statements in the very beginning of the session.

*“I would like to say that I apologize (...)”* [Case1 Adult female offender Stage1]

*“Well, I also would like to close this at last, and ask for apology as this cannot be undone, but as much as possible I have regretted this and I just wanted to state that.”* [Case2 Juvenile female offender Stage1]

We have found no example for the second type of empowerment messages that demonstrate power restorative behaviours delivered by the offenders.

### **Findings in light of the postulates of the theoretical frameworks**

Research question 3 aims to investigate the results of the content analysis in light of the postulates of the theoretical frameworks. *Table 1* highlights both consistent and inconsistent results with the Needs- Based Model of Reconciliation. Most data are in line with the model in terms of the assumed source of the message. It is important to note that in both cases the communication of needs is numerous. Magnitude gap behaviours show a different pattern in the two cases regarding quantity and message source. The table shows the frequency of appearance of certain communication behaviours, thus an overall impression about participants' activity can be formulated. It is conspicuous that although there were only one offender and more primary victims (four and three respectively), offenders showed much more activity on the examined dimensions. From the recorded material the imbalance is better understood; in both cases victims came in with a large portion of grief and sadness and the majority of their speech acts focused on sharing their own hardships and on what they had to face due to the criminal act. In case of the adult offender the high frequency could be interpreted as an indicator of tension and instability in her position. There is indication of an impaired sense of public moral image and numerous (14) magnitude gap behaviours while some (7) responsibility taking acts can also be detected. In case of the juvenile offender, responsibility taking and the need to restore her public moral image are equally present. The magnitude gap behaviours (2) are mitigating circumstances regarding her mental illness as a cause for her wrongdoing. As the table only shows

frequency of appearance, it does not allow us to grasp a more complex understanding of communication patterns.

*Inconsistent data: power needs  
and power messages*

As an unexpected result, four examples were identified in case 1, where the offender described herself as being powerless and incompetent in relation to the amends asking for help and empowerment multiple times. In this case the offender verbalizes her intention together with the lack of competence to make up for the wrongdoing. This communication act can be understood as complementing victims' need for power or as a possible cue for competitive victimhood. As the session goes on, there are more instances where the offender acts as if she was also a victim of this situation and demonstrates competitive victimhood later on. Although we have identified several responsibility taking behaviours from the part of the offenders, no cues for power restorative messages were found. This can of course be explained by the small number of cases reviewed but further reflection on this result is provided in the discussion.

*Inconsistent data: messages of acceptance*

Messages of acceptance were postulated to be delivered by victims to offenders, we have however found four examples altogether where offenders have also conveyed messages of acceptance to victims, even in the car theft case, where the previous relationship between them was fairly irrelevant. In an intergroup laboratory setting, Shnabel et al. (2009) concluded that any type of positive message coming from the adversary enhanced the willingness to reconcile. They argue that it is because any positive gesture made by the other party is relatively unex-

pected, therefore has a positive value. In reference to the relationship between the effects of power and acceptance messages, the model's authors state that based on their statistical results "there is an unavoidable partial overlap rather than equivalence in the effects of these two independent variables (...). This suggests that our manipulations are better seen as emphasizing empowerment or acceptance rather than as excluding one or the other." (Shnabel and Nadler, 2008, pp. 126-127). In addition, trauma literature also shows that traumatized victims' self-esteem and positive self-image are also impaired (Herman, 1992) therefore acceptance messages may play a role in the process of reconciliation for them.

*Constructive and destructive  
communication*

Both theoretical models hypothesize constructive and destructive communication that are promoters or impediments of reconciliation. In order to reflect upon the constructive or destructive nature of the communication, their indicators need to be defined. One indicator can be outcome, such as coming to an agreement and the offender's compliance with it later on. Another indicator can be the adversary's reaction to it (with a constructive or a destructive response) growing or reducing the psychological gap as a result. A third indicator can be a positive change in the person's communication content over time. As said earlier, in a hypothetical model of a restorative session, the initial large quantity of magnitude gap acts are expected to reduce over the course of time while the number of constructive communication acts increase, facilitating reconciliation this way. Compared to victim-offender mediation and restorative conferences, the methodology of

the peacemaking circles allows the least direct interaction between victims and offenders. For this reason, choosing the second mentioned indicator (conversation analysis) would not have been a logical option. To test the postulates on constructive and destructive communication therefore, we have chosen to exemplify the process using within person change analysis and outcome indicators of offender's communication in case 1. The presented example is of illustrative value. Two uninterrupted monologues of the offender in case 1 were extracted for content analysis in two distinguished time phases (offenders' first statement and in the end of the third phase).<sup>5</sup> The hypothesized expectation is that a positive change took place (and willingness to reconcile is more likely) if the latter speech unit contains less or no magnitude gap acts and more constructive communication acts compared to the first speech unit content. Below the offender's first statement is presented.

*"I'm XY (offender's name). I was the one who committed this out of a sudden impulse, I also came because it was offered as a possibility by the police and I also want this to come to a closure as soon as possible and to end this fuss. I would like to say that I apologize, I was very angry at the time, anyways, I don't want to throw the ball back and forth what's important is to come to a closure and end this whole thing."* [Case1 Adult female offender Stage1]

The message content is ambivalent with one constructive (apologizing) and four destructive elements including giving excuse or

mitigating circumstance twice (sudden impulse and anger), minimizing the importance or consequence of crime (fuss), blaming (referring to victims' also throwing the ball of accusation at the offender). The offender delivers the following message towards the end of the session:

*"I just would like to say to everybody that I have said so far that I really reg...so I'm sor...I did not know this so I did not, I did not know this. To come back to your earlier question Ildikó, yes, my sister had told me back then not to do this, so I really am sorry, and I would eventually undo it if I could as I told this to the police back then as well, so I would do anything to, so I really am not a criminal type, my brother is a police officer, my daughter studies law, so, so, well, as we said, we did not talk to each other and I didn't know you guys, especially I did not want to hurt you, I don't know, I really don't know... I'm sorry, that's all I can say, nothing else. I also have memories so I know... now I know. If I had known I would have left it (the car) there, if it had been for me, it could have been there up until this day if the two of us would have communicated and not a third party would have intermediated back and forth. That's all I can say."* [Case1 Adult female offender Stage3]

This message content is also ambivalent with four destructive and four constructive elements (ripped words were not coded). It included giving excuses or mitigating circumstances three times (indicating lack of information and communication as reasons) and scapegoating (blaming third party).

<sup>5</sup> In a peacemaking session four phases can be differentiated (meeting and introduction, trust-building, identifying issues and developing and action plan, Fellegi and Szegő, 2013). There are two distinguished points in a session for the offenders, their first statement and at the end of the third phase when the facilitator comes back to them and asks if they have anything to add to what has been said.

Constructive speech acts contained showing remorse as an empowerment message (saying sorry twice) and empathy as acceptance messages twice. These elements could indeed be an indicator of change. However, if we look at the content, destructive elements are still solid parts of the message indicating that responsibility taking has not truly taken place and the offender does not “own” her actions and blames others for it. Finally, it is important to be noted that the offender’s effort to restore her public moral image when she denies the criminal label, indicates that her need for acceptance may not have been addressed or fulfilled sufficiently during the session.

Having this in mind, it may not be a surprise that case 1 can actually be considered a failed one, as, although an agreement had been reached, the offender did not comply with it and the case was referred back to court as a result. This outcome needs to be reflected upon for two reasons. Data shows that when an agreement is reached in a restorative session, offenders’ compliance are very high. According to Hungarian data of 2011, non-compliance was around 10% out of 2965 cases (Bogshütz, 2011). The high ratio of offenders’ keeping the agreement is reasoned to be the result of a joint decision making process where offenders are also involved (internal motivation to comply). In certain countries, like Hungary, non-compliance results in the continuation of the court procedure which can also serve as a motivation for perpetrators to comply (external motivation). The second important reason to reflect upon this failed case is the fact that independent researcher observers of the case did not detect or report any sign from the part of the offender that would be considered ambivalent or worrisome. In their report they de-

clared the circle to be successful where the victims were “heard by the accused which deepened her taking of responsibility and regret. The financial compensation defined in the action plan reflected the need of sense of forgiveness and a sense of mutual empathy.” (Ehret et al., 2013, p. 743). Authors of the present study analysed the offender’s message content *without* being driven by the effort to find answers for this discrepancy and they became aware of the outcome only later on. In light of the results of our investigation, positive change in offender’s attitude is not evident. The content analysis shows that the perpetrator’s message content remained highly ambivalent even towards the end of the session containing many destructive communication acts that should raise concerns. In restorative justice, the perception of sincerity of the apology delivered by the offender is crucial for victims in order to reconcile (Choi and Severson, 2009).

## DISCUSSION

Our analyses show that both the magnitude gap concept and the Needs-Based Model can be used with relevance in restorative justice settings. Regarding research question 1 and 2 and communication of needs, more examples illustrating self-formulated role-specific (offender or victim) needs were identified. Offenders expressed a need for restored public moral image by claiming their moral character and likeability or the fact that they have changed. Some victims formulated statements indicating that they were aware of the power difference and their status. An unexpected result was that an adult offender emphasized her powerlessness a great deal that could be understood as complementing vic-

tims' need for power, thus is in line with the theory. An important conclusion is that participants expressed their needs with relatively high frequency during the session. Paying attention to role-consistent needs may be of importance in handling conflicts constructively. Based on the two cases, messages of acceptance may be of importance to both parties. Messages of empowerment manifested only in form of responsibility taking and their sincerity was a key question in both cases. Our examples illustrate that conceptualizing magnitude gap behaviours as destructive and conceptualizing messages of acceptance and empowerment as constructive communication are relevant. In the example presented earlier, ambivalent message content and a high number of magnitude gap communication acts were present even towards the end of the session and this may be linked with the fact that the offender did not comply with the agreement later on. Regarding the categorization scheme and the method of content analysis, it would be important to further investigate their potential on larger samples in order to better understand communication dynamics in conflicts and their relevance in making implications on participants' sincerity and predicting outcome. It should be noted however, that while the Needs-Based Model focuses only on intangible needs, restorative practices address both psychological and instrumental needs, making outcome predictions more complex and challenging.

### **Control needs, empowerment messages and ecological validity**

A clinical aspect in relation to control needs is also included as an extension of the discussion on case 2, where the juvenile offender had a clinical diagnosis of mental illness. Her mental illness could not only be related to her transgressions (lying and committing a series of thefts) but it also had a significant impact on the dynamics of the session by the inability to show emotions, for instance. Mental illnesses may play a role in certain transgressions, therefore it makes sense to bring this phenomena into the realm of investigation. Interestingly, from a clinical psychologist's point of view, series of thefts committed by one person within a given community can be explained as a non-adaptive way to exercise control and power in the community<sup>6</sup>. In case 2, it was emphasized multiple times, that the offender did not steal because she was in need, so this case can be understood as the juvenile offender's increased need for attention and for controlling the environment. That brings us to the question of the permeability of victim and offender roles, as the criminal act may be an indicator of a non-adaptive response to previous victimization. Aggressive behaviour, especially in juvenile cases, is also a typical type of offence where roles are easily interchangeable. The juvenile who enters the justice system with an offender label, often-times turns out to be a subject of severe prior victimization. Paradoxically, it therefore becomes crucial to pay attention not to re-victimize the *perpetrator*, especially in case of

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<sup>6</sup> Discussions with Hantos Ágnes clinical supervisor, psychotherapist at clinical supervision and case analyses sessions for psychologists working in social care in October 2009.

juvenile offenders. The case in our study showed a great example of how an expert, in this case a psychologist, could be of use in favour of such process. She served as a buffer to satisfy victims' needs by explaining the whys (giving general information about the mechanisms in this illness) and to satisfy offender's needs (showing that the offender is not evil and because of the illness she is still a morally acceptable and likeable character, but at the same time, not releasing, in fact, encouraging her to take responsibility). These communicational activities are in line with the postulates of the Needs-Based Model, as asking and understanding "whys" can help victims' to restore their sense of control.

In the theoretical model (Shnabel and Nadler, 2008), empowerment messages are conceptualized in two ways. One is related to responsibility taking that helps restoring the symbolic debt the offender created by the transgression (by acknowledging unjust, taking responsibility, showing remorse, guilt, shame and asking for apology). The other is related to restoring victims' impaired sense of power by the offender's acknowledgement of victims' power, status or superiority, their rights to control their life and future, by praising their abilities or by making them feel strong or proud. While we identified many verbal examples of the first type in the two sessions, no examples of the latter one were detected. This, of course, can easily be explained by the small number of cases that have been reviewed in this study. Because of the nature of power needs, we have nonetheless found it important to reflect further upon this result. Both the theoretical model and trauma literature acknowledge victims' impaired sense of control and power (Herman, 1992) as something happened against their will destroying their sense of self-determi-

nation and their belief in their ability to control their environment and their life. This type of impairment however is very hard to verbalize. By nature, power is often demonstrated non-verbally (by gestures or by the large number of supporters a participant would bring to a session, for instance) while control is rather exercised through actions or decisions. Restorative sessions give a number of opportunities for victims to restore their sense of control and power (e.g. Hagemann, 2012; Z. Papp, in press) in practice. It still remains a question however how verbally delivered empowerment messages are formulated from the part of the offender in real life settings.

### **Implications for practitioners**

In light of our analyses, what are the implications of the Needs-Based Model for practitioners? Firstly, it is important to draw attention to some considerations regarding the constraints of theoretical frameworks. Theories, by nature, are simplifying, aiming to model a "likely" way of functioning. Varieties and the complexity of real life situations are not grasped therefore. In addition, depending on the relation and crime type (eg. domestic violence, rape, attempted murder, etc.), other theoretical frameworks could also have relevance. It is important to stress that by describing role-specific needs and message contents as ways to promote reconciliation, the creation of the image of an "ideal victim" or "ideal offender" should be avoided. In real life contexts, there are many different ways of coping and coming to closure. Facilitators therefore should avoid having expectations from victims or offenders regarding their behaviour or the outcome. There are several ways however practitioners could benefit from the model and our findings. By



knowing the theoretical concepts, practitioners can have a more “sensitive ear” for participants’ needs during the preparation phase and in the session. In the preparation phase, practitioners may actively address participants’ needs in one-on-one discussions and may feel better equipped in determining if the participants are ready for the session. Practitioners can pay more careful attention to respect victims’ control needs also in the way of organizing the session. Without evaluation, they can have a better understanding of how the session is going by recognizing cues for constructive and destructive communication with more awareness. Shnabel et al. (2014) found that messages of acceptance coming from a third party may hinder trust thus inhibiting reconciliation. This empirical evidence further strengthens the importance of the restorative principle whereas facilitators should maintain their impartial and neutral behaviour.

#### **Limitations and further research directions**

One of the main contributions of this article is the attempt to put theory into practice by developing a categorization scheme by which the Needs-Based Model and the magnitude gap concept can be examined in real life conflict management contexts. The study however has some limitations. It only contains two cases, therefore its findings have more of an illustrative value. It is also important to note that the selected cases cannot be considered prototypical of mediation cases. The

first case is not typical in terms of outcome, as the agreement was not fulfilled by the perpetrator. As mentioned earlier, unfulfilled agreements make up only about 10% of all cases (Bogshütz, 2011). In the second case, mental illness of the perpetrator played an important role but in most mediation cases mental illness is not a theme. The nature of the data (acoustic only) can also be considered as an additional constraint, as visual non-verbal signals could also have contributed to a more complex analysis, as they can have significant relevance in conveying empowerment and acceptance messages. It can also be considered a limitation that only communication messages of victims and offenders were analysed while there were a number of other participants (relatives, facilitators, experts) present. Analysing their communication, as a further step in research, would be necessary in order to understand how they contribute to satisfying needs and to better understand the dynamics of restorative sessions. Authors of the Needs-Based Model further strengthen the importance of revealing mechanisms “in which the process described by the Needs-Based Model may be set in motion” (Shnabel and Nadler, 2010, p. 22). For these reasons, continuation of this research on larger samples may create a deeper understanding of ecologically valid manifestations of the aforementioned needs and communication messages and their effects, as well as of the real-life nature of conflict reparation mechanisms, serving both practice and academia.

## ÖSSZEFOGLALÓ

KONSTRUKTÍV ÉS DESTRUKTÍV PÁRBESZÉD TETTES ÉS ÁLDOZAT KÖZÖTT:  
A MEGBÉKÉLÉS SZÜKSÉGLETALAPÚ MODELLJÉNEK VIZSGÁLATA A RESZTORATÍV  
IGAZSÁGSZOLGÁLTATÁS KONTEXTUSÁBAN

*Háttér és célkitűzések:* Jelen pilotkutatás célja két elméleti keret relevanciájának vizsgálata a resztoratív igazságszolgáltatás kontextusában, a tettes és áldozat közötti párbeszéd jellemzőinek mélyebb megértése érdekében. Elméleti megalapozásként a „szakadék-elméletet” (Baumeister, 1996) és a megbékélés szükségletalapú modelljét (Shnabel és Nadler, 2008) mutatjuk be, mint a destruktív és a konstruktív kommunikáció indikátorait. Ökológiailag valid kontextusként a resztoratív találkozók gyakorlatát ismertetjük. *Módszer:* Két kényelmi alapon kiválasztott resztoratív közvetítői eljárás hanganyagát tartalomelemezük előre kialakított kategorizációs séma alapján, amely magában foglalta a tettes és az áldozat szükségleteit, a destruktív kommunikációs viselkedésformákat, valamint a megerősítést és elfogadást közvetítő üzeneteket. A tartalomelemzés eredményeit ezután összevetettük az elméleti modellek posztulátumaival. *Eredmények:* Mindkét elméleti keret releváns és alkalmazható resztoratív kontextusban. A szükségleteket, a konstruktív és destruktív kommunikációt, valamint a módszertant illető implikációkat az eredmények tükrében tárgyaljuk. *Következtetések:* Az eredmények alapján megvitatjuk a gyakorló szakemberek számára megfogalmazható tanulságokat, és megkíséreljük a megerősítő és elfogadó kommunikációs üzeneteket klinikai és valós élethelyzetekhez kapcsolni.

*Kulcsszavak:* konfliktuskezelés, a megbékélés szükségletalapú modellje, szakadék-elmélet, resztoratív igazságszolgáltatás

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