

Editorial

Hello everyone,

A very warm welcome to the first edition of the EFRJ Newsletter for 2015! As many of you will know from the third edition of 2014, I have been on maternity leave. Our little girl Alexandra has been taking up much of my time since August and I am smitten with her as all parents are!

In my absence, Robert Shaw and Martin Wright have been working hard to ensure that the newsletters go out, finding new committee members and representing the Newsletter at the EFRJ's annual board meeting. A special mention must also be made of Mirko Miceli, our EFRJ Communications and Liaison Officer who has been working with both the Board and the Editorial Committee. I want to both acknowledge and thank all of their efforts in my absence. Furthermore, I am sure that you will join me in extending a warm welcome to our new committee members — Branka Peuraca, Nicola Preston, Diana Ziedina and Magnus Lønneberg — who will be actively involved in contributing to the production of the Newsletter in 2015 and beyond.

We begin with some news from the Board. Beata Czarnecka-Dzialuk, draws attention to the location of the next EFRJ Annual General Meeting taking place in May this year. This is being held in Poland and a special one-day conference is being held to respond to some of the policy developments taking place in Poland around the use of restorative justice in relation to domestic violence. I would encourage those of you with experience in delivering restorative processes in relation to domestic violence cases or those who are interested in this area to take part. All of the relevant details of the event are on page 12. We appreciate Beata taking the time to write this overview for us.

In terms of substantive content, this edition offers three very different and thought provoking articles. The first describes an innovative programme which seeks to tackle the pre-trial detention of juvenile offenders. Social Net Conferencing seeks to increase the involvement of the young offender's support network (families, friends and teachers and so on) in assisting the young person to tackle the underlying causes and consequences of their offending behaviour. The success of the initiative is demonstrated through research findings conducted during an evaluation of the programme

and the innovation of the initiative has been acknowledged through the receipt of the 'Sozial-Marie Award.' Many thanks to Christoph Koss and Georg Wielander for sharing their project with us, I hope you will enjoy reading their summary.



Alexandra Ivy

In our second contribution, Brunilda Pali offers a personal reflection of the role of restorative justice in offering a challenge, to what she perceives, as a discriminatory justice system for immigrants in Europe. She suggests that forging alliances with criminal justice practitioners with a commitment to social justice will offer fruitful outcomes in terms of moving restorative

justice from the periphery of the system and being applied to non-immigrants. I hope that you find this article interesting!

Finally, for the first time in the history of the Newsletter (certainly since I have been Editor), we have a contribution from a non-European individual reporting on a non-European initiative. Rob Hulls from RMIT in Victoria, Australia shares how the Centre for Innovative Justice (CIJ) is involved in creating change at both a practical and policy level in response to sexual violence. He shares the rationale underpinning the need for changes in the response to sexual violence and the activities undertaken by CIJ. We are very grateful to Rob for taking the time to provide insight on restorative initiatives in Australia.

We would be keen to hear your thoughts on any developments on restorative justice, theory or practice, so please feel free to get in touch with me at Editor@Euforumrj.org. I would also encourage you

to email me with any thoughts or responses that you might have to the articles that have been written for this edition as we would like to develop a new feature which highlights your reactions or feedback on other members' work.

Furthermore, any ideas that you may have about the structure or content of the newsletter, any offers to contribute to it in the form of written articles and information about events would be very welcomed. We hope that this year will begin a greater involvement of our readership with the editorial committee and other readers.

I look forward to receiving any thoughts, advice or contributions over the next coming months.

With very best wishes,

Dr Kerry Clamp

Chair of the Editorial Committee

Editor@euforumrj.org

News from the board

Dear members of the European Forum for Restorative Justice!

The European Forum is currently planning the 2015 Annual General Meeting (AGM). As announced on the website www.euforumrj.org, the meeting is scheduled to take place in Warsaw, Poland, on the afternoon of the 21th of May, 2015. It is the policy of the Board to hold the AGMs in the years between the big conferences in countries that are represented on the Board and in which we have not yet had a conference or a greater project-related event.

In order to raise the interest of the regional restorative justice community as well as to attract the attention of members from other parts of Europe as well, we always link the AGM to a one-day thematic event. As the EFRJ is carefully observing the critical discussion on the use of mediation or other forms of restorative justice in cases of domestic violence, the Board decided at its last meeting in November, 2014, to take the current political developments in Poland as an opportunity to set up the programme for a one day event in which experts from Poland, Austria, Germany, the Netherlands and Spain can exchange views and experiences.

We recognise that at least in particular categories of cases of domestic violence the use of mediation or other forms of restorative justice might even be recommended, however in a very careful manner and with the involvement of experienced and well-trained mediators. This approach is supported by serious evidence from empirical research conducted in this field in different countries; see the related articles in issue 2/2010 of the [ERFJ Newsletter](#).

In this context, the Forum has expressed considerable concern about the concluding observations of the Committee on the Elimination of Discrimination

against Women, directed to the Government of the Republic of Poland (CEDAW/C/POL/CO/7-8), namely about its article 25e, urging the State party to 'end the use of reconciliatory mediation for victims of domestic violence.' This statement is too categorical, especially in the light of the fact that it goes beyond the related provisions in the international documents (United Nations and Council of Europe). The latest one, CAHVIO¹ (EFRJ is aware of the fact that Poland did not ratify it) prohibits only mandatory mediation in cases of domestic violence (Art. 48 of CAHVIO). Mandatory mediation would never be compatible with a fundamental principle of restorative justice, namely, voluntary participation. Mandatory mediation has certainly not been in place in Poland, neither in cases of domestic violence nor for other types of crime, and nobody has ever argued in favour of such an approach.

The intention of CEDAW's concluding observation connected with the use of the term 'reconciliatory mediation' remains rather unclear to us. If the idea of CEDAW is to prohibit mediation in domestic violence cases aimed solely at reconciliation, it would be acceptable. However, Polish law does not provide such kind of mediation anyhow.

¹Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence

Therefore EFRJ and the Criminology Department of the Institute of Law Studies of the Polish Academy of Sciences have decided to organise the forthcoming conference which aims at discussing the access of victims of domestic violence to mediation. The conference is titled 'Access to mediation for victims of domestic violence' and will take place on 22 May 2015 at the Polish Academy of Sciences. We are looking forward to an open exchange of views, both critical and supportive towards the idea of restricting access in such cases, the presentation of experiences from practice in other countries as well as of good practice and special safeguards in respect of mediation in this specific area. If you would like to contribute to the discussion, you are

warmly welcome.

Please have a look in the conference programme at www.euforumrj.org. And please make up your mind quickly — as the number of participants is limited — and register for this event with [Mirko Miceli](#) before April 30. Spending some early summer days in Warsaw will provide you, besides many other advantages, with a double incentive: attending an interesting conference about one of the most controversial topics of restorative justice and participating in the Forum's AGM.

Beata Czarnecka-Dzialuk

EFRJ Board Member

dzialuk@iws.org.pl

Social innovation award for 'Social Net Conferencing' — a pilot project in Austria's Probation Service²

The experience that so many people are supporting me has meant that I pushed myself a lot more. I don't want to disappoint any of them.

(Juvenile offender host of a Social Net Conference)

Social Net Conferences are based on the fundamental idea of 'Family Group Conferencing' to involve the 'extended family' in conflict resolutions. Social Net Conferencing was established in 2011 with the financial support by the Ministry of Justice as a pilot project — as a way to test if there are new opportunities to support juvenile offenders in the context of Probation Service.

The project was carried out by [NEUSTART](#), a private not for profit association in charge of the probation service and other tasks like victim-offender mediation in Austria. The duration was 24 months (2012 and 2013). To gain experiences 60 conferences should be carried out.

The target group for Social Net Conferences was juvenile offenders from 14 to 18 years (in certain cases up to 21 years) to encourage them to take responsibility for their actions, make amends for the offences committed and repair the harm caused, as well as preparing them for release and probation orders.

At the start of the project, three types of Social Net Conferences were developed:

- *Concern Conferences*, where solutions for difficult situations, circumstances and problems are dealt with;
- *Release Conferences*, where arrangements are made to re-integrate offenders successfully into society after release;
- *Restorative Justice Conferences*, where the victim is involved face-to-face. These are aimed at

problem-solving with the involvement of the social network.

And as a result of our experiences in the period of our project, Social Net Conferences were also extended to a fourth type — pre-trial custody cases:

- *Pre-trial Custody Conferences*; most of the Social Net Conferences carried out concerned juveniles in pre-trial detention.

Accompanying evaluation survey

In May 2012, NEUSTART chose the University of Vienna ([Institute for Criminal Law and Criminology](#)) to carry out the research study. In addition to a comprehensive quantitative survey, qualitative methods and procedures were also agreed upon in order to assess the utility and feasibility and the effects of this new procedure for probation. The conclusion of the survey, which was completed in May 2014, was to implement Social Net Conferencing in Austria's Criminal Justice System. It is now in the decision process of the Ministry of Justice.

²This paper was presented at the Eighth Conference of the European Forum for Restorative Justice in Belfast on June, 13th 2014.

Austria's Probation service — starting position

Probation in Austria carried out by NEUSTART has a background in the *casework approach*. The *support plans* and *working concepts* necessary for this are usually created by both the clients and the probation officers in a joint effort. So-called *risk-oriented interventions*, for example, a cognitive behavioural programme, are employed in order to address the offence (circumstances, attitude, . . .), the victim's perspective and, if necessary, to effect changes in behaviour. In the last decade several new methods like anti-aggression training or working with groups were implemented. One lesson learned from the experiences of family group conferencing is the active involvement of juvenile offenders and their families to solve problems. To implement this knowledge within probation we had to adapt several points like not just to involve the family but also other people who had been supportive to the juvenile in the past and therefore chosen by them to participate. All new methods support the strategy to find new ways with better results and less recidivism for probation work.

Social Net Conferencing within the context of pre-trial custody of juvenile offenders

The development of a Conferencing Model within the context of pre-trial custody at the beginning was a completely new challenge which led to quite interesting preliminary results during the course of the project.

Because of the rape of a juvenile in custody a debate started in Austria during the summer months of 2013, provoked by media reports about how poor the conditions in prison are for juveniles. The result was the inclusion of the current NEUSTART project 'Social Net Conferencing' in a pre-trial custody task force at ministerial level.

As a result of this, NEUSTART started at the end of summer 2013 to test Social Net Conferences for pre-trial detainees of 14 to 18 years of age. Juveniles were arrested for example because of mobile phone robbery, which was classified as 'aggravated robbery' (several attacks, as part of a gang, sometimes armed).

Pre-trial custody Social Net Conferences.

This type of conference differs in some ways from other Social Net Conferences.

Compared to other types, the cases are referred by Juvenile Court judges (they are responsible only for the period of time spent in pre-trial custody). The conference room is an ordinary courtroom. The conference has to be carried out within two weeks which is significantly shorter than in other Social Net Conferences. The reason is that the outcome and the report are needed by the court to decide if the juvenile could be released.

There is enormous pressure to produce results which

weighs heavily on the client and his social network. In most cases the relationship between the client and his probation officer is still at an early stage.

The goal and purpose of the implementation of Social Net Conferences is to reduce the period of detention in pre-trial custody after a suitable plan for the future has been worked out and accepted by the judge. Using the 'Restorative Justice' approach for the newly defined pre-trial custody conferences and addressing the aspect of making amends and repairing the harm caused by juvenile offenders was also one of the goals. However, it soon became clear that the direct involvement of victims in the procedure of pre-trial custody conferences at this stage of development was not yet possible. The main focus was the involvement of the social network in a decision-making-process, whose goal was to ensure that juvenile offenders may desist from their criminal misconduct. Together with the help of his social network, he should work out his own plan to which he can fully commit to. Both commitment and the support of the juvenile's network should raise the opportunity to desist from criminal behaviour.

Juveniles in pre-trial custody

What can a Social Net Conference achieve in terms of avoiding pre-trial custody and what distinguishes it from conventional conferencing models?

Pre-trial custody of juvenile offenders in the Austrian justice system

The requirements for pre-trial custody for juvenile offenders are regulated under the Austrian juvenile court act and the penal law code. Juvenile offenders should only be remanded in custody in exceptional circumstances and in the absence of more lenient measures, and for the shortest possible period of time. This is also to be avoided if 'the disadvantages for the personal development and advancement of the juvenile concerned are not disproportionate to the nature or importance of the offence and the punishment to be expected'. There are also specific provisions regarding the duration of pre-trial custody.

Pre-trial custody is considered to be a particularly dramatic experience, due to the fact that it hits the person concerned suddenly and without being able to prepare. This unexpected detention often causes enormous mental stress. Another big problem is the fact that while remanded in custody, many juveniles lose their jobs or apprenticeships. Jobs and training possibilities on offer during pre-trial custody are inadequate, since choice is limited. Losing contact with their social environment and a risk of stigmatisation for their life in future are other problematic consequences. The numerous negative aspects have provoked discussions on the abolition of juvenile pre-trial custody all over Europe. The Austrian discussion was about finding possibilities to reduce the number of juveniles in pre-trial custody.

Young people on remand

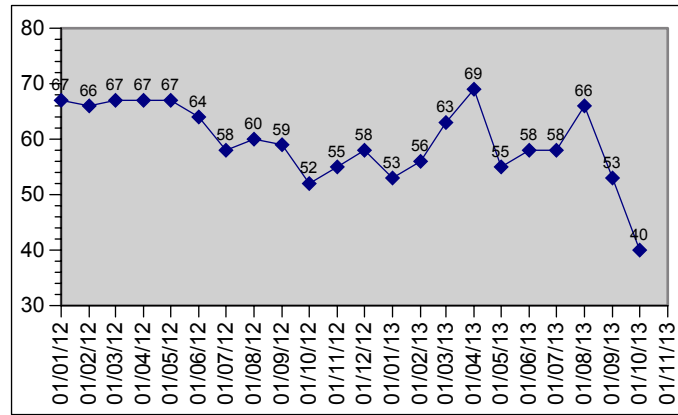


Figure 1: Juveniles in pre-trial custody from 01/10/2012–1/10/2013 (adapted from *Bundesministeriums für Justiz* 2013c, S 14)

Figure 1 shows the significant reduction (approx. 33%) in the number of juveniles in pre-trial custody since August 2013 (final report of the Ministry of Justice, Committee of Experts).

The main objective of a pre-trial custody Social Net Conference as a measure is to shorten the period of time spent in custody to work out a plan of action (plan for the future) for the remand hearing in order for the juvenile to be able to be released from custody. This means that immediately after committing the offence, the juvenile delinquent is confronted with the opportunity to desist from such misconduct. This should be achieved by the juvenile voluntarily moving into the network of ‘Social Control’ through his extended social network, which is characterised by the strengthening of existing ties with friends and relatives as well as people that he trusts.

The structure of a pre-trial custody Social Net Conference

Conferences held in pre-trial custody are carried out within fourteen days after the decision was made by the court. The judge also appoints a preliminary probation officer, who immediately begins with intensive support and supervision.

The preparation of a Social Net Conference is carried out by an independent coordinator who makes contact with all the parties involved. First of all, the coordinator makes contact with the juvenile in custody. He or she then gets in direct contact with the family by making home visits and seeks direct contact with the offender’s school, work-place and friends. The preparation period for a pre-trial custody conference is extremely short — about three to ten days. The accused juvenile person may discover that many people around her or him would like to invest time and energy to discuss future plans with him or her. Through this support system, the juvenile experiences a special kind of

empowerment and support. He or she is encouraged to tackle significant changes.

The juvenile’s social network (family, relatives, and friends, neighbours, supporting persons like teachers or football trainers) is invited to attend the Social Net Conference. The coordinator and the juvenile discuss and decide who should attend the conference. The probation officer and other organisations like juvenile court support or social workers from the juvenile welfare system also attend.

During the Social Net Conference, the participants are supported by the coordinators and encouraged to face the juvenile’s problems, to make decisions and work out solutions together. Social nets and community ties are activated and involved in problem-solving and restoring social peace.

The structure of a Social Net Conference is based on the principles of the ‘Family Group Conferences’

1. Introduction and Information Sharing — Referral
2. Private Family Time — Family Only Phase
3. Discussion of the Plan — Decision-Making Time

Carrying out the Social Net Conferences requires a different role for professionals (probation officers or other social workers). It is not so much a matter of presenting ready-made solutions to problems, but rather a matter of triggering a process in which the persons concerned find solutions.

The plan of action for avoidance of pre-trial custody must include concrete proposals regarding accommodation, daily routines (like when to get up in the morning), education and work, the frequency of meetings with the probation officer and offers to repair the harm caused. The agreements should have the commitment of all parties concerned.

In the case of pre-trial custody conferences, the plans of action must be submitted to the court during the

remand hearing. The decision as to whether the proposed solutions are sufficient for a release from pre-trial custody is made solely by the court.

Results of practical implementation:

During the project period (at the end of 2013), NEUSTART conducted a total of 56 Social Net Conferences.

- 18 Concern Conferences (32%)
- 10 Release Conferences (18%)
- 3 Restorative Justice Conferences (5%)
- 25 Pre-trial Custody Conferences (45%)

By the beginning of June 2014, approx. 80 Social Net Conferences had been successfully conducted in four project locations (Vienna, Styria, Upper Austria and Carinthia).

- For 186 probation service clients a conference procedure was reviewed.
- In 71% of the conferences, the plans were fulfilled or fulfilled for the most part.
- Only four juveniles (7%) re-offended during the project term.



Special case pre-trial custody conference:

Since August 2013, a total of 40 Social Net Conferences have been conducted in pre-trial custody upon request of judges.

Based on the outcome and the action plan developed 30 juveniles were released.

All juveniles who were released as a result of a Social Net Conference are subject to intensive support and supervision by the probation service (contact twice a week). They appear to be extremely motivated to comply with the plans and court sanctions.

Conclusion and Perspectives

Juvenile pre-trial detainees have been a little noticed target group up to now. The Social Net Conference offers innovative solutions. Cooperation with probation officers, judges, prosecutors, juvenile legal support, social services and youth welfare is an essential prerequisite for the success of a conference and is based on a new, professional approach.

The social network also feels encouraged by a system that is not seen as an enemy, but as a support to implement the future plan of the juvenile and his family or social net.

It is also a fundamental aid to finding solutions and making decisions. However, it is important not to over stress the families and to focus on specific problem areas. From the beginning, the social net must realise that they are responsible for developing a plan and not the social workers. Social workers need to develop new perspectives for the families they work with. One result is that they have much more skills than is normally assumed. The task of probation officers is to support and control the plan for the future of the juvenile.

The 'Sozial-Marie Award'

Because of new methodical effects our project 'Social Net Conferencing' has won the international award for Social innovation 'Sozial Marie' in May 2014. The project was chosen out of 261 applications. This award encourages us to establish Social Net Conferencing as new model for decision-making with juvenile offenders and their support systems all over Austria.

Christoph Koss

Geschäftsführer, NEUSTART Wien
christoph.koss@neustart.at

Georg Wieländer

NEUSTART
wielander@system-familie.at

Surveillance and punishment of social precariousness: what has restorative justice got to do with it?³

I would like to reflect on three concerns. One concern is the rise of the prison population in Europe. The average European prison population rate has grown slowly but steadily. Furthermore, statistics show clearly an inverse relationship between welfare and imprisonment;

³This paper is an extremely abridged version of the plenary speech given in June 2014 at the Eighth Conference of the European Forum for Restorative Justice in Belfast.

the Scandinavian countries continue to be at the bottom with the lowest prison population in Europe, while the higher rates are in Greece and Spain. There is another high rate over there: unemployment!

This critique has already been stated by many scholars (among others, Piven and Cloward, 1993; Rusche and Kirchheimer, 2003; Wacquant, 1999, 2001, 2009; Garland, 2001) mainly in terms of the end of penal welfarism and the rise of neoliberal criminology: the prison as an instrument of controlling the working classes, the poor, the unemployed, the drug users, in other words ‘the surplus and the problem population.’ Contemporary political discourse increasingly frames problems of a social-economic nature in terms of security, social control, and social exclusion.

This brings me to the second fact of concern. While Europe has a foreign-born population of no more than 9% of its total population, more than 30% of its prison population are foreigners. The graph on the next page shows the percentage of the foreigners in prison per country as compared with the foreign population in the country.

Often the various EU institutions call this ‘over-representativeness.’ I call this a war. It perpetuates and makes worse the very problems it attempts to solve. Nils Christie (1993) has argued that the more unlike oneself the imagined perpetrator of crime, the harsher the conditions one will agree to impose upon convicted criminals, and the greater the range of acts one will agree should be designated as crimes. Europe is becoming increasingly heterogeneous, which means that the danger of more and harsher punishment lie ahead of us if we take this insight seriously.

The third fact of concern is the surveillance culture and conflictual atmosphere that reigns today in Europe. Extreme security measures based on the security discourse and its increasing direct relationship with a rising discourse of ‘cultural difference’ are creating ‘states of exception’ politically and legally speaking, putting justice at risk today, a risk especially visible in the objectification, criminalisation and surveillance of migration, in practices violating human dignity and human rights, in the restrictions on asylum seekers, racist practices in the deportation of immigrants, increase in hate crimes, etc. There is a rising paranoia and xenophobia in many European countries, as evidenced by the rise of the far right, which blames crime, disorder and unemployment on immigrant populations, and leads other social groups in Europe to view these issues as threats to their ‘communal identity,’ obscuring the necessary role of migrants for demographic and capitalist expansion. While the far right is of course always to blame, this political game is unfortunately played by other parties at all ranges in the political spectrum. Such discourses, imbued with moral credibility and political authority, have been built upon the concept that ‘cultural difference’ leads to inevitable social breakdown.

How can restorative justice counteract some of these prevailing discourses? Under processes of institutionalisation, we have in time come to focus on our own technicalities: how do we develop a certain practice, how do we train, how do we communicate? Whereas, I think our central questions should be: what is the aim of our practice, whom does it serve, what does it challenge or resist, and for what reasons? Restorative justice is not a method, but a field of action producing a normative discourse on how justice should be done in the context of a democratic and legal state. Its main principles, as explicated by Christa Pelikan in several of her writings (see 2003; 2007), are:

1. attending to the life-world of people and not to the criminal justice system’s legal definition of a harmful event,
2. creating participation means for people concerned to counter the alienating and exclusionary effects of the justice system and
3. focusing on reparation of the harm caused and the situation that led to it, instead of causing punishment for the sake of inflicting pain.

With this in mind, I argue that the ties we have with the legal field, while they must not be hampered and jeopardised, have to be on the one hand challenged, and on the other hand loosened. First to the challenging.

Although for a certain range of offences restoration replaces punishment through means of diversion, restorative justice has not been an answer to punishment, rather the two have developed side by side, the more one grows the more the other grows. In many ways, the challenges that face us today are similar to those faced by earlier proponents of abolitionism. There are many things to challenge: one is the event defined as a crime, second the offender as the only responsible agent, third the appropriation of the event by the system, and the consequent lack of participation, and finally the use of imprisonment (whether real or virtual) as a logical and ‘just’ consequence of an event.

I believe we have failed to do these mostly due on the one hand to our being in close proximity with the justice system, on the other hand to not having taken this proximity seriously enough. Taking this proximity seriously means that all the nodes of the entry and exit to and from the system, all decision making nodes have to be exploited.

The case of Belgium offers a good paradigmatic example. Belgium has mediation at every stage of the criminal proceedings, starting with the police, the pre-trial, the trial, the sentence stage, and the post-sentence stages, offered by a relatively autonomous

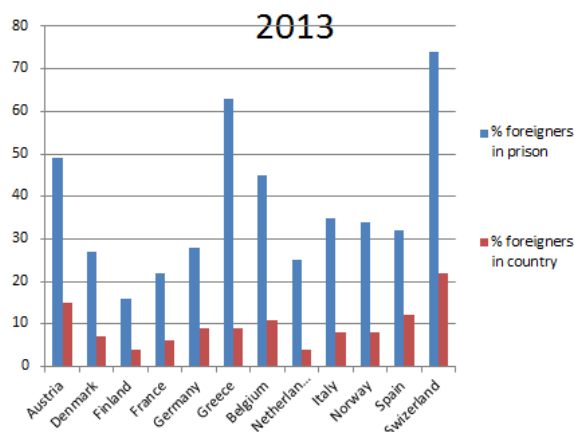


Figure 2: Foreigners in prison versus foreigners in country

body, and in serious crimes. I would like to emphasise here the potential this system offers for the scenarios I mentioned in the beginning, for mediators to be able to discuss cases at every stage of the criminal proceedings and to be able to influence decision making of various actors. By doing so, they can hopefully influence on the one hand to stop the flow within the system, and on the other hand to counteract discriminatory and filtering mechanisms which influence especially the foreigners, who are often not considered suited enough for alternative measures, mainly because of lack of residence permit, lack of job, lack of community ties, language difficulties, and who instead are over represented in remand or pre-trial detention and once there, consequently more likely to go to prison. But to do this, we as a field must not become another filtering mechanism. We have to learn to think outside the language and legal barriers. For this we need support. That brings me to the second argument, what I call the ‘loosening of the ties with the justice system.’

In order to secure our legitimacy with the justice system, we have opted clearly to delimit our field to deal with crime, as this comes pre-packaged from the justice system. We have also opted to professionalise as much as possible, through courses, schooling, securing standards, homogenising practices, etc. These strategic choices have removed us from the world and made of us bureaucrats and officials of some sort, experts in our tiny domain. We have lost connection with the ground. This connection to the ground is necessary if we want to influence the scenarios mentioned above.

Against ideologies and practices of exclusion and of shielding people from each other, we propose participation, encounter and dialogue, and use conflict as a possibility instead of fearing it. Eradicating conflict means moving towards totalitarian forms of government, towards systems that fear difference. At the same time, conflict has to be expressed and released in order to prevent violence. There has been an impressive de-

struction of arenas for social interchange because of a middle class vision of what a comfortable and secure place should really be. As people segregate they will only nurture their anger against others without a forum for expression. In searching for the promise of ‘security,’ people become withdrawn into themselves, and behave as though they are strangers to the destiny of all the others. Against these modes we must react, and propose participation, engagement with the world and its affairs. The first thing to do thus is to set up conversations between people who don’t meet any more, to avoid the ‘other’ becoming a category, an ideology, or a part of fantasy.

The second reason why I mentioned prison and penal developments and their relationship to welfare and unemployment is to make us think of the type of interventions we are offering as a field. While criminal justice and social justice have generally kept their distance, this is an intentional distance which reinforces the reification of crime and sets it apart from other social problems. In restorative justice, we often work with the most marginalised and deprived sectors of our societies, we cannot keep our eyes close to that. Our neutrality to those facts cannot be our strength. Our strength must be our awareness, and our work in the light of this. The apolitical neutrality is far from being politically neutral; justice cannot be neutral — the deprivation of freedom is not neutral. Neutrality of this sort means being silent in view of how things stand.

We have to strengthen ties with other social fields. There are plenty of organisations, skilled social workers, other colleagues who work for social justice in different ways. We have to offer them our skills and insights, we have to use theirs, we have to forge alliances which go beyond the imaginable, beyond the narrowly defined. Restorative interventions of past events, have to turn towards the future and become peace building interventions aiming at answering the question ‘how can we live together.’ Dialogue is one pos-

sibility among a great variety of responses, but alone it can neither change the socio-economic, structural and other cultural factors which give rise to societal conflicts, nor prevent the influences of the media, contemporary politics and broader ideologies. Specific incidents can be used as a 'doorway' to explore underlying issues. We must develop the ability to maintain a balance between the specificity of an act and the immensity of the context in which it occurs.

Our work needs bonds and alliances to be fully meaningful. Our interventions need to be sustained and supported in order to make a real difference. But alone, and by offering only what we are offering, we can't go very far. This is our weakness. Nevertheless, our approach to conflict, our way of understanding dialogue, our restorative interventions cannot be easily replaced with any other type of intervention. We clearly offer an alternative and fundamentally necessary perspective. This is our strength. The true challenges we face today then are overcoming our limits, and realising our potential.

Brunilda Pali

Researcher at Leuven Institute of Criminology
KU Leuven
brunilda.pali@law.kuleuven.be

References

- Christie, N. (1993). *Crime control as industry: towards gulags, western style?* London: Routledge.
- Garland, D. (ed.) (2001). *Mass imprisonment: social causes and consequences*. London: SAGE.
- Pelikan, C. (2003). Different systems, different rationales: restorative justice and criminal justice. In: F.M. Marques (ed.) *Project Dikê seminar: protection and promotion of victims' rights in Europe*, pp. 223–227. Lisboa: Associação Portuguesa de Apoio à Vítima.
- Pelikan, C. (2007). The place of restorative justice in society: making sense of developments in time and space. In: R. Mackay, M. Bosnjak, J. Deklerck, C. Pelikan, B. van Stokkom and M. Wright (eds.) *Images of restorative justice theory*, pp. 35–55. Frankfurt am Main: Verlag für Polizeiwissenschaft.
- Piven, F.F. and Cloward, R.A. (1993). *Regulating the poor: the functions of public welfare*. 2nd ed. New York: Vintage.
- Rusche, G. and Kirchheimer, O. (2003). *Punishment and social structure: with a new introduction by Dario Melossi*. New Brunswick, NJ: Transaction Publishers.
- Wacquant, L.J.D. (1999). 'Suitable enemies': Foreigners and immigrants in the prisons of Europe. *Punishment and Society* 1(2):215–222.
- Wacquant, L.J.D. (2001). Penalisation of poverty and the rise of neo-liberalism. *European Journal on Criminal Policy and Research* 9(4):401–412.
- Wacquant, L.J.D. (2009). *Punishing the poor: the neoliberal government of social insecurity*. Durham, N.C.; London: Duke University Press.

From theory to practice: translating research on restorative justice and sexual violence into practical policy proposals

Sexual assault reform — an ongoing challenge

As a former Attorney-General experienced in reform, I know that innovation is never simple. Good ideas are not always enough when their implementation is competing for taxpayer funds or when an area is especially complex.

Certainly, improving the legal response to sexual violence was one of my biggest priorities in office, with Victoria leading reform to emphasise specialisation and improve support for victims. These reforms increased the number of victims coming forward and prosecutions brought, but have not yet increased convictions. In fact, estimates suggest that less than one per cent of all incidents of sexual assault result in a successful prosecution in Victoria.

The Centre for Innovative Justice (CIJ) aims to develop innovative approaches to challenges in our justice system and involve students in their application. This paper explores the role that restorative justice can play in addressing sexual offending, including discussion of a restorative justice conferencing model which draws on substantial research but is flexible and practical enough to be implemented.

Meanwhile, harsher punitive measures, including sex offender registers, are seeing more individuals accused of sexual assault plead not guilty.⁴ This imposes an additional challenge when prosecutions are already hard to bring, the vast majority of sexual offences involving no corroborating evidence, or committed long before complaints are brought. Accordingly, the needs of the majority of victims go unmet — the offender remaining unaccountable and victims left with no acknowledgement, let alone an admission, apology, or assurance that the crime will not occur again.

Standing on the restorative threshold

With the results not meeting objectives, reformers are conceding that the conventional system may have exhausted its limits. They have therefore begun to scan for a better range of options, with considerable research regarding restorative justice, for example, occurring in recent years. Where we fall behind, however, is in the application of these approaches, with restorative practices operating on the periphery in Australia and generally not extending to sexual assault.

Manifestations are starting to emerge, however, particularly in response to institutional sexual assault. A recent Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Organisations, as well as a national Royal Commission into Institutional Responses to Child Sexual Assault, both allowed witnesses to provide evidence or submissions in a variety of ways. These included in writing, in public hearings, and in private before only one or two Commissioners and officials.⁵

The Chair of the Commission has described this as an obligation ‘to bear witness on behalf of the nation,’⁶ offering victims acknowledgement where the perpetrator or responsible institution may have failed to do so. Australia’s Defence Forces have taken this a step further, with a Restorative Engagement Program which allows complainants who have been sexually or otherwise abused in a defence context to have their experiences heard and responded to by a trained, senior Defence representative.⁷

Around the world, promising programmes are emerging that engage both victims and offenders. For example, [Project Restore](#) in New Zealand has provided restorative justice conferencing to victims of sexual assault since 2005, employing rigorous assessment, pre-

conference preparation and post-conference support, all of which is conducted by a highly specialist clinical team; for an overview, see Jülich et al. (2010).

Committing to a blueprint — the CIJ’s proposal

Examples such as these illustrate that restorative approaches are already working. Beyond a solid evidence base, however, it helps to have something tangible with which to work — a blueprint that seems possible for governments to implement. Those calling for reform are adept at explaining why we should reform, but if we answer the ‘how could we’ as well as the ‘why should we’ — governments are left with less excuse about whether, in fact, they will. This means that it is smart to arm politicians with answers, given that it is they who have the task of selling what can seem like a soft option to the untrained eye.

When commissioned by the Australian Government to examine innovative justice responses to sexual offending, therefore, the CIJ’s aim was to develop a restorative justice conferencing model that would provide a roadmap for others to use (Centre for Innovative Justice, 2014). That meant developing a clear process that was easy to follow. It also meant weighing up difficult issues, taking a victim-centred approach while balancing the community’s expectations of public denunciation; as well as the imperative to protect the rights of the accused. Too often, of course, people assume that the interests of victims and offenders are polar opposites — that we must be as adversarial in our approach to reform as the system we are trying to change. The CIJ believes, however, that it is possible to do both — that giving victims additional options can actually bolster the effectiveness of the underlying system.

Ultimately, the model that we recommended is flexible, but retains significant checks and balances. It can be used as an alternative or addition to prosecution and can apply at any stage in the criminal justice process. This includes at the post-charge stage, but only when prosecution is not deemed viable. It is also not confined to any category of victim, offender or offence, as we considered that this would limit the options for victims. Equally, we did not want to limit incentives for offenders to participate, recommending that admissions should be immune from use outside a conference,

⁴The County Court of Victoria hears the majority of sexual offence matters and, whereas 73 per cent of overall cases before this Court are finalised through a plea of guilty, this figure falls to 45 per cent in relation to sexual offence cases (County Court of Victoria, 2013, 6–7).

⁵Information provided in private sessions can be published in a de-identified form and contributes to understanding of the conduct of particular institutions. Where appropriate, it can also be referred to the relevant police force for further investigation. [The Hon Justice Peter McClellan AM, ‘13th Australasian Conference on Child Abuse and Neglect’ \(12 November 2013\) Melbourne, 5.](#) See also, ‘Private Sessions’, [Royal Commission into Institutional Responses to Child Sexual Abuse.](#) See also, ‘Tell us Your Story’, [Royal Commission into Institutional Responses to Child Sexual Abuse.](#)

⁶[The Hon Justice Peter McClellan AM, ‘13th Australasian Conference on Child Abuse and Neglect’ \(12 November 2013\) Melbourne, 5.](#)

⁷This generally occurs in a face-to-face meeting convened by a trained facilitator, although it can also be conducted via telephone, video-conferencing, email or letter: [Defence Abuse Response Taskforce, ‘Defence Abuse Restorative Engagement Program’.](#)

except where it becomes apparent that a person is at immediate risk. Jurisdictions should give further consideration to whether an offender's participation should be recorded for the purposes of public safety schemes.

Basic eligibility and suitability criteria are suggested to assess whether a victim is adequately prepared and an offender's participation genuine. Legislative support and structural oversight are recommended, as is engagement of specialist personnel and an expert Assessment Panel. Pathways into and out of conferencing are laid out and gatekeepers, such as judges, nominated to ensure that a conference is not pursued when prosecution would be more appropriate, or when a case is simply deemed too difficult. Links to appropriate sexual offender treatment programmes are also addressed, as is the need for a coordinated, properly resourced system. Phased implementation is recommended so that jurisdictions can develop the required understanding and expertise.

Clearly, restorative justice conferencing will not be appropriate in every case. Many victims will not want to confront their offender or may consider prosecution to be their primary need. However, it is precisely the personal nature of a restorative justice encounter that can offer the redress that other victims seek. Answers to specific questions, an agreement about future contact or disclosure to family — outcomes such as this are intensely personal, with restorative conferencing far more likely to deliver them.

Committing to reform

Many worry that extending restorative justice practices to sexual assault may undermine hard-won recognition of this crime or re-victimise participants. These are legitimate concerns which the CIJ addresses in its Re-

port. Reformers around Australia, however, can no longer claim that the conventional system is working. Despite improvements to the criminal law's operation, the needs of most victims are not being addressed. What's more, the commission of sexual offences remains rife, with perpetrators not dissuaded by the rhetoric of politicians or community condemnation.

We must be prepared to make a genuine difference, rather than letting our ideas be a footnote to the wider objective for change. The CIJ's proposal addresses how innovative policy might translate into concrete proposals; and how existing hesitations may be overcome. In doing so the CIJ's aim is to push discussion forward — returning a sense of choice and control to those from whom it was taken.

Rob Hulls

Director, Centre for Innovative Justice,
RMIT University
rob.hulls@rmit.edu.au
Former Attorney-General and
Deputy Premier, Victoria, Australia

References

- Centre for Innovative Justice (2014). *Innovative justice responses to sexual offending — pathways to better outcomes for victims, offenders and the community*. Melbourne: RMIT University.
- County Court of Victoria (2013). *Annual Report 2012–2013*. Melbourne: County Court of Victoria.
- Julich, S., Buttle, J., Cummins, C. and Freeborn, E.V. (2010). *Project Restore: an exploratory study of restorative justice and sexual violence*. Auckland: Auckland University of Technology.

Restorative Justice in Europe — Safeguarding Victims and Empowering Professionals Project

The following papers produced as a result of the Restorative Justice in Europe — Safeguarding Victims and Empowering Professionals Project have been published:

- [The Victims' Directive and the project Restorative Justice in Europe: Safeguarding Victims and Empowering Professionals: An overview](#) (Independent Academic Research Studies)
- [The Victims' Directive and Restorative Justice in Germany](#) (University for Applied Studies for Public Administration, Bremen)
- [Empowering Restorative Justice in Greece: One step Forward for Victims](#) (European Public Law Organisation)
- [Safeguarding Victims and Empowering Professionals in The Netherlands: • State of the Art and Vision for the Future](#) (Restorative Justice Nederland)
- [More Justice for Crime Victims in Bulgaria](#) (Institute of Conflict Resolution)
- [Findings from the United Kingdom](#) (Independent Academic Research Studies)

Sign in to [Restorative Justice for All](#) to access these reports.

Alternative Project blog

Readers who wish to follow the ALTERNATIVE project, which featured in volume 14.2 (September 2013) of the Newsletter may now do so through the ALTERNATIVE project [blog](#).

Restorative Justice in Cases of Domestic Violence

The [First Comparative Report](#) on RJ in case of domestic violence has been published. Further details of the project are available from [the EU Forum website](#).

YouTube channel dedicated to restorative justice

Restorative Solutions CIC has launched a new YouTube channel dedicated to restorative justice. The objective is to collect audio-visual resources that can be used to explain what restorative justice is and to illustrate the benefits it brings to victims, offenders and communities.

The videos are free and can be used by restorative justice professionals during presentations or training to raise awareness of restorative justice in their communities. Find out more on [YouTube](#).

Calendar

Victim Support Europe Annual Conference *Victims of crime in Europe: the future is now* 13–14 May 2015 Lisbon. Further details from [APAV](#).

EFRJ Annual General Meeting 6–8 pm 21 May 2015 room 203, [Polish Academy of Sciences](#), Pałac Staszica, Nowy Świat 72, Warsaw. Go to [EFRJ AGM 2015](#) for further details.

EFRJ Workshop on access to mediation for victims of domestic violence 22 May 2015 Mirror hall, 1st Floor, [Polish Academy of Sciences](#), Pałac Staszica, Nowy Świat 72, Warsaw. The full programme is available from [Seminar on mediation and domestic violence](#).

IIRP Europe Conference *From Dream to Reality: Dawning of a New Social Science* 10–12 June, 2015, Budapest, Hungary. Further details from [From Dream to Reality](#).

EFRJ Summer School *The Victims Directive — challenges and opportunities for RJ* 13–17 July 2015,

Lisbon, Portugal. [Draft programme](#): further details from [EFRJ Summer School 2015](#).

15th International Symposium of the World Society of Victimology 5–9 July 2015, Perth Convention and Exhibition Centre, Perth, Western Australia. Early bird registration to 30 April 2015. Further details from [the conference website](#).

Pathways towards Just Peace: Reinventing security, justice and democracy in Asia-Pacific 9–11 October 2015, Kathmandu, Nepal. Further details from the [Asia-Pacific Peace Research Association](#) and the International Peace Research Association.

IIRP World Conference *Restorative works: share, teach, engage* 26–28 October, 2015, Bethlehem, Pennsylvania, USA. See the [call for presenters](#).

Justice and Security in Intercultural Europe: Exploring Alternatives 16–18 November 2015, Leuven, Belgium. Further details from [Final Conference, ALTERNATIVE project](#).

Call for submissions

Articles

Each edition we will feature a review of the field of restorative justice, reflections on policy developments and research findings/project outcomes. Please consider sharing your perspective with colleagues.

Book reviews

We very much welcome reviews of books and articles from our membership. If you have published a book

and would like to submit it for review, please send it to the Secretariat.

Events

Please let us know about upcoming restorative justice related conferences and events. We are happy to share this information via the Newsletter or Newsflash.

Not an EFRJ member yet?

Join forces with other RJ professionals throughout Europe and beyond and sign up via our website: www.euforumrj.org. The process only takes 5 minutes. You can also contact the Secretariat at info@euforumrj.org or at the address below.

As a member you will receive:

- three electronic plus one printed newsletters a year
- regular electronic news with interesting information
- reduced conference fees and special book prices
- opportunities to learn from, meet and work with RJ colleagues
- reduced subscription fee to *Restorative Justice: An international journal*
- and much, much more ...

Editorial Committee:

Publisher: EFRJ [Coordinator: Mirko Miceli (Belgium), E-mail: clo@euforumrj.org]

Editor: Kerry Clamp, E-mail: Editor@euforumrj.org

Members: Magnus Lønneberg, Branka Peuraca, Nicola Preston, Martin Wright, Diana Ziedina, Robert Shaw

The views presented in this Newsletter are the views of the authors and do not necessarily represent the views of the EFRJ.

Secretariat of the European Forum for Restorative Justice Hooverplein 10 • 3000 Leuven • Belgium •
T +32 16 32 54 29 www.euforumrj.org

With the financial support of
the European Commission.

