

Restorative justice as 'fig leaf'?

Reflections from Belgium's youth justice system

Stefaan Pleysier

Leuven Institute of Criminology (LINC)

10th International EFRJ Conference
Tirana, 14-16 June 2018



Content

- Introduction
- A brief history of youth justice in Belgium
 - 1912 Children's Protection Act
 - 1965 Youth Protection Act
 - 2006 Youth Justice Act
 - 2019 Flemish Youth Delinquency Decree
- Restorative justice as 'go between'
 - As 'fig leaf' or in its own right ?
 - Challenges for restorative justice

Introduction

- Reflections from an outsider
 - Not expert in restorative justice
 - Close observer of youth justice system(s)
- Belgium youth justice
 - Probably most welfare-oriented in the world
 - Strong restorative justice tradition
 - Currently ‘under construction’
- Parallel evolutions and questions in other EU countries

Introduction

- Largely based on

Pleysier, S., Vanfraechem, I. & Walgrave, L. (2017). Restorative Justice and Adolescent Health. In A. Cherry, V. Baltag & M. Dillon (Eds.), *International Handbook on Adolescent Health and Development. The Public Health Response*. 115-142. Springer International Publishing.

A brief history of youth justice in Belgium

- 1912 Children's Protection Act
 - Before
 - adults = children
 - gradual changes in child labour, school, leisure...
 - 20th Century
 - discovery of childhood as separate phase in life
 - new academic disciplines
 - Century of the Child

A brief history of youth justice in Belgium

- 1912 Children's Protection Act
 - Children (below 16) ≠ adults
 - Protectionist rather than punitive answer to youth crime
 - not responsible nor capable
 - protect, educate and reform
 - in 'best interest of the child'

A brief history of youth justice in Belgium

- 1965 Youth Protection Act
 - In line with post WOI 'ideals of penal welfarism'
 - Confirmation of welfare protectionist approach
 - Children below 18
 - Who committed 'an act defined as offence'
 - 'Measures' rather than sanctions

Belgium as...

'... the archetypical example of a juvenile justice system based on welfare protectionism'

A brief history of youth justice in Belgium

- However, not without discussion...
- Four different critiques
 - Doubtful effectiveness of the welfare system
 - Too soft on serious crime
 - Legal safeguards and compliance with international standards
 - Where is the victim?

Belgium as...

'... a fairly good example of the hesitations that are reflected in juvenile (criminal) justice developments in Europe'

A brief history of youth justice in Belgium

- 2006 Youth Justice Act
 - Settles political discussions (for the moment)
 - Reaffirms welfare and protectionist model, but ...
 - adds legal rights
 - adds alternative measures
 - introduces a framework with priority for restorative justice practices
 - Hybrid model of youth justice

A brief history of youth justice in Belgium

- 2019 Flemish Youth Delinquency Decree
 - A new (state) reform
 - youth delinquency as a competence of Communities
 - restorative and constructive answers to youth delinquency
 - from protection toward responsibility
 - from 'measures' to 'sanctions'

A brief history of youth justice in Belgium

- 2006 and 2019 reforms
 - In line with broader trends
 - Retreat from welfare
 - Shift towards safety, security and control
 - Shift towards ...
 - ‘child as danger’ rather than ‘child in danger’
 - ‘youth as risk’ rather than ‘youth at risk’



Restorative justice as 'go between'

- Emergence of restorative justice
 - Not coincidence
 - Reconcile 'lines of force'
 - Ideal third way between welfare and punitive answer
 - Central notion of responsibility

Restorative justice as 'go between'

- As 'fig leaf' or in its own right ?
 - Thin line between...
 - supportive, active form of responsibility vs. 'individual responsibility'
 - responsabilisation vs. culpabilisation
 - reintegrative shaming vs. disintegrative shaming



Restorative justice as 'go between'

- As 'fig leaf' or in its own right ?
 - Thin line between...
 - supportive, active form of responsibility vs. 'individual responsibility'
 - responsabilisation vs. culpabilisation
 - reintegrative shaming vs. disintegrative shaming
 - Risk of...
 - passively blaming young people for not (yet) being responsible
 - stigmatizing those who are not able or fit to take up responsibility
 - instrumentalisation of the victim (~ secondary victimisation)

Restorative justice as 'go between'

- Challenges for restorative justice
 - Being clear on conception, aims, objectives and methods of RJ
 - Actively supporting young people to become responsible citizens
 - not just individual responsibility
 - Recognition of victim's needs and interests
 - not alternative offender treatment