Interview with Christa Pelikan

In this issue, we have published an article about the TOA forum 2018, in which you participated. From your point of view, and considering your background and experience, what did you find to be particularly thought-provoking and worthwhile to consider in retrospect?

I have participated in quite a few TOA-Forums, doing workshops and sometimes also plenary presentations. This way I could follow the developments of restorative justice in the German speaking countries, especially in Germany, for almost 20 years. Against this background the 2018 TOA Forum was of great interest from the outset. Altogether I was impressed by the spirit of innovation and of increasing diversity within the TOA (or RJ) movement. The workshop of Kim Magiera: ‘Was hat der TOA mit Bildung zu tun?’ (‘What has TOA to do with education?’) in which I participated proved really interesting, offering new insights even for an oldie like myself. But I admit that I was touched and ‘moved’ most strongly by the plenary presentation of Gerd Delattre, head of the TOA bureau for many years, who had recently taken his farewell.

At this point I have to say a few words about my special relationship with Gerd. We started to get involved in the TOA, or in my case the ATA (Out-of-Court Offence Compensation) in Austria, at about the same time, at the end of the 1980s. The connection between Germany and Austria was always close and important for both partners. On a personal level I had developed a very high regard for Gerd and his work. He was — and is — for me a representative of those ‘reflective practitioners’ I deem the ‘salt of the earth,’ the salt of the movement. The exchange with him, drawing on his experience and his reflections on this experience, were extremely valuable for my own empirical work and contributed to my theoretical thinking. With Gerd I could establish the kind of discourse between theory and practice that is at the core of an effective promotion of RJ as part of a new criminal policy. Therefore, when Gerd presented his assessment of the status quo within the TOA and TOA’s position within recent criminal policy developments, I listened very attentively.

Those who are familiar with you and your work know that you are willing to critically reflect on topics that are considered ‘carved in stone’ for others in relation to RJ and its foundational principles. What issues are important to you regarding victim orientation in RJ today?

There were indeed several critical and sceptical strands of observation and thought to be found in Gerd’s presentation. There was his apprehension, his scepticism regarding an increasing tendency towards the ‘therapeutisation’ of TOA interventions that had found its expression in striving for the requirement for TOA-workers to show some kind of degree in one of the psychological or therapeutic disciplines.

The other — more sensitive and problematic — apprehensions that Gerd voiced were related to the victim orientation; there again he warned against concentrating too strongly or too exclusively on the victim, neglecting the core task of the RJ effort, namely to follow a balanced approach or, as I myself would have it, to focus on the interaction, on what has happened and what is to happen between the victim and the perpetrator.

At this point I have to go into some detail and I have to go back into the history of the TOA. When establishing the first pilot projects, we had to take care to emphasise the ‘third track-quality’ of RJ. We had to make clear — especially to the representatives of the criminal justice system — that this is not another measure or programme for a more effective and efficient rehabilitation of the offender, at least not in the first place. Paying attention to the plight and to the concerns of the victim was the most striking innovative feature of this policy. This was something new also to many of the TOA workers who — in Germany and in Austria — were recruited to a considerable degree from the ranks of probation workers.

I remember vividly the DIKÉ conference in Lisbon in 2003 ‘Protection and promotion of victims’ rights’ where Gerd Delattre did a presentation. In the course of it he made a strong argument for carefully listening to the concerns and to the wishes of the victim and for strictly abstaining from persuading, or even softly
pressing, a victim to agree to participate in a TOA. ‘A “no” is a “no” and this has to be accepted!’ In the years to come I have often quoted this statement of his. I would therefore contend that the high importance of the victims’ interests in Gerd’s thinking and in TOA politics are beyond any doubt.

All through the 1990s and the first decades of the this century efforts were going on to come to a satisfying agreement between Victim Support and Restorative Justice. During work on a new European Victims’ Directive of the EU (European Parliament and Council, 2012), the EFRJ got involved in discussions that aimed at reconciling the perspectives of the two outlooks. According to the representatives of the EFRJ the first drafts had put exclusive and heavy emphasis on warning against an abuse of the victim by RJ practices and procedures; it was mainly concerned with introducing safeguards to prevent such abuse. Whereas on the side of the RJ group the necessity of safeguards was acknowledged, they fought for the inclusion of more positive statements regarding RJ, for stressing its benefits and for providing victims with the necessary information and enabling access to RJ procedures. At the 10th conference of the EFRJ in Tirana in June 2018 the last edition of this Victims Directive was presented and discussed. It is now regarded by the EFRJ protagonists as a partly satisfying version — with some apprehensions remaining.

At the same conference we heard from plenary speaker Claudia Mazzucato that, within her idea of ‘circling the straight lines of criminal law’ on the one hand and of ‘squaring the circles of restorative justice’ on the other hand, victim-orientation would find a well-balanced place, eschewing an exclusionary victim orientation.

But let’s turn again at the situation in Germany and the struggle to establish a victim’s perspective within the TOA and within criminal law. In the seminal book *Verbrechensopfer, Gesetz und Gerechtigkeit* (Victims of crime, law and justice) (Hassemer and Reemtsma, 2002), Hassemer, many years vice-president of Germany’s Supreme Constitutional Court, introduced the difference between the real and the virtual victim (*wirkliche und mögliche Opfer*). He sees the ‘use’ of the virtual victim as an instrument for retributive-minded lawyers and politicians, an instrument to induce fear and to support the call for harsh punishment. Rather than the virtual victim, the real victim and the urge to attend to her needs would call for different strategies; it would call for procedures for confirming the norm (*Normbestätigung*) complemented by a host of victim friendly procedures and victim services. RJ would decidedly figure as an important means of furthering the real victim’s interests.

It seems from what Stephan Barton said at the TOA-Forum that he has, sixteen years after Hassemer & Reemtsma’s book, introduced the virtual victim as looming over any victim-oriented strategy, forestalling adequate dealing with crime and conflict. And this is what he warns against. At this point I might add that in the cases I have researched more intensively, namely cases of partnership violence, we can see that becoming very real as concerns the incidence of violence as well as the life circumstances of the victim (as well as the offender’s). The RJ procedure opens the way for finding a solution — either through leaving a relationship or through working towards its transformation. Focusing on what somebody has done to another person and on what has been done to the other, the victim — the real sufferings, hurts and irritations — is the path to follow. This exactly is one of the great assets/achievements of the RJ procedure: becoming real, attending to the life-world instead of the prefabricated definition of the criminal law as well as any prefabricated, media-managed images of events and of the people involved in it as victims and as offenders.

Having said this, I still can understand Gerd Deltatre’s apprehensions concerning a too strong and too exclusionary victim orientation. It reflects my understanding of becoming ‘real’ and of working towards transformations. I understand Gerd as pleading for the TOA to preserve the quality as a third track strategy and not to become absorbed as one of a plethora of rehabilitative measures — whatever their merits might amount to. And Gerd had repeatedly in his speech insisted that he has a high regard for these rehabilitative measures and the professional knowledge and skill that goes with them. It is not the whole story of RJ though — and we should be aware of that and we should watch out.

In many countries, RJ is a recent phenomenon and people in this emerging field are yet to experience their first debates and dialogues on controversial issues. When you look back at the processes related to the development of RJ that you have experienced or observed, what issues and discussions do you feel were the most central to the emergence and development of RJ in Europe?

Looking at RJ developments in Europe I will now concentrate on some of the more recent developments, on promising examples and on those countries where any kind of reform strategy — not only in the legal field — appears threatened. I could of course talk about the Austrian experience but this is in fact long ago; the socio-political circumstances of the 1980s and 1990s are gone and I am afraid it is of little use to tell you how wonderful it was at a certain point in time to experience a great wave of interest within the judiciary and also in the general public to try out something new regarding reactions to crime and conflict. We were lucky indeed and I have in several places talked about the possible reasons for these developments.

At the moment I myself am struck on the one hand
by the development taking place in Georgia, where a group of young and dedicated people (mostly women) together with representatives of the prosecution services and the judiciary is striving for the establishment of RJ procedures, as usual first of all for juveniles, but meanwhile also considering an extension to the general criminal law. They have succeeded in getting considerable financial support from the EU, they have established contact with the EFRJ and it seems that they might serve as an example and a model also for the neighbouring countries. Why did this happen, how did it happen and what will emerge in the future? I do not have the answer, but I share the hope the Georgian colleagues are carrying with them.

On the other hand I want to draw your attention to Hungary, where the Foresee Research Group around Borbala Fellegi is still carrying on — under increasingly difficult social and political circumstances. In an interview for the TOA-Magazin (2018) (therefore it is available in German only), Borbala has attempted to describe and to explain: ‘I have learned to be patient,’ she said and moreover: ‘I do not think that our work has become redundant and has lost any importance.’ Borbala like many other people active in the movement received the inspiration for her work with RJ from her practice as a probation worker and — also in parallel with quite a few other RJ activists — had seen and felt the lack of a concern for the victim. She says that she was looking for the ‘bridge’ that would bring together the perpetrators, the victims and the community. This interest of hers brought her into contact with the European Forum. She had started to study criminology, and worked for the European Forum in Leuven. Back in Hungary and drawing on the contacts she had established while working on her thesis about RJ, she decided to found Foresee. In the following years they cooperated in several international (EU) projects but did also smaller local research projects; ALTERNATIVE was one of the big international projects targeted at specific groups that seek out their experience.

Nowadays Foresee receives little financial support and its more general recognition in Hungary is threatened. The group has come to rely on small projects targeted at specific groups that seek out their expertise. Borbala stated that she can perceive advantages attached to such a marginal position. She says:

We are still there for those that seek us out and as long as we are not prevented from doing this, we will remain there.

She has also come to find understanding for people in a marginalised position and to understand their reluctance themselves to confront their opponents, to enter in a dialogue. Given this situation Foresee is starting to work more strongly on an individual level, doing biographical work and inducing a deep interest and concern for the situation of these people. This might then enable them to see commonalities with others and with former opponents and to enter into mutual exchange. One has to be aware though that this approach requires a lot of time and a lot of patience.

In your opinion, which other, possibly controversial, topics would be important to subject to critical reflection in the future?

‘Becoming modest and becoming patient’ I would like to espouse as important challenges for RJ in Europe in the future. I do not see this as a purely negative perspective, or a reduction, an abandoning of former high-flying hopes. It implies also a return to the roots, or rather to the basics of RJ, to its interactive core. It is about qualities of relating to one another, of listening and of ‘seeing’ the other. Therefore, the video from Amnesty International Poland: ‘Looking into each other’s eyes’ that was shown by Foresee at the EFRJ conference in Tirana in June 2018 has deeply moved me.

Yes, it is these ‘basics’ that we should attend to in the years to come — but at the same time not losing sight of the broader political challenges, forging alliances where- and whenever this is possible — and sometimes it is possible — as we can observe in Georgia.

And finally, also not losing sight of the essence of RJ, meeting the challenge evoked by people like Gerd Delattre that tells us to find a kind of inclusion and attention to victims’ need that is truly restorative and not another brand of refined rehabilitation. I guess this issue will keep our attention for quite some time to come — and it is about ‘the heart of the matter,’ isn’t it?

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