

# European Forum for Restorative Justice

## Editorial

In 2013, the EFRJ Newsletter has undergone some substantial changes. Perhaps the biggest change was a move away from a printed version to an electronic version. The reason for this was not only to save costs, but more importantly to allow the structure and contents to be much more flexible. We have been delighted with the contents of the three electronic editions produced this year and thus want to begin by acknowledging and thanking the contributors for taking the time to write articles for us.

While we are committed to our new format, we also felt that it was important to produce one printed version of the Newsletter in December each year. The reason for this is twofold: first, we wanted to showcase some of the best contributions from the year and second, we felt that it was important to have an edition which could be used for promotional purposes. As such, this Newsletter will be distributed beyond our membership to other organisations and institutions in order to increase the visibility of EFRJ as an institution and as a network of people working in the diverse area of restorative justice. We hope if you are not currently a member, that reading this publication you will be intrigued to learn more and to become part of a vibrant community seeking to make justice more 'just' for victims, offenders and communities. Information about how to become a member is on the last page.

The structure of this edition is as follows: We begin with 'News from the Board' which is our first new feature. We had decided that it was important for our membership to be kept abreast of projects, discussions and policy debates and lobbying that the Board is involved in. This will become a regular feature in all editions from this point onward. Our chair, Michael Kilchling, reports on the key research projects, policy-related work and collaboration that the Board has been working on over the last twelve months. He also provides an overview of the financial status of EFRJ and draws attention to the upcoming conference which will result in the recruitment of new Board members. I implore all of you to read his overview carefully and to think about how you might contribute in any way to the continuing success of EFRJ in 2014 and beyond.

Next, our second new feature of 2013 is presented which targets senior academic staff to review the state of the field with a contribution that draws on their own work. Our first contributor is Professor Harry Blagg who has recently left Western Australia to take up a post at Plymouth University in England. He provides an interesting contribution which talks about the changing contours and challenges for restorative justice in contemporary society, particularly in relation to the current contradictions in adversarial approaches to justice and the manner in which restorative justice legitimizes impunity and colonial justice practices over indigenous populations. We are very grateful to Professor Blagg for taking the time to write for us.

Our third contribution is drawn from our special edition dedicated to the European project 'Developing alternative understandings of security and justice through restorative justice approaches in intercultural settings within democratic societies' (referred to as ALTERNATIVE). ALTERNATIVE is a large project which forms part of the European Seventh Framework Programme (FP7) and is currently being carried out by researchers and practitioners in the field of RJ in six different countries, with the involvement of the EFRJ and with KU Leuven Institute of Criminology (LINC) as coordinator. In the selected article, Brunilda Pali outlines the theoretical framework of the project and some initial findings that are emerging from the empirical data collection phase of the project.

Our third contribution has been written by Davy Dhondt and his colleagues who report on the findings from their project which sought to implement peacemaking circles in Belgium, Germany and Hungary. This is quite a step outside of the comfort zone of many European countries that have become familiar and comfortable with using victim-offender mediation as their principal form of restorative practice. The authors not only outline how and why an experiment was devised, but also the principles that underpin such practice and the process that circle meetings follow. The article highlights the benefits of such an approach but is also very honest about the limitations of such practice in Europe. We have no doubt that you, the reader, will find this contribution stimulating and interesting to read. Please do let us know your thoughts!

Our final feature draws your attention to the 8th International Conference of the EFRJ which is due to take place from the 11-14 June 2014. We hope that you will be able to attend and contribute to the conference in the form of presenting papers on your work or just to listen to the work of others and meet new and old friends during this time.

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 welcome. We really strive to achieve greater involvement of our readership with the editorial board and other readers. I would also encourage you, the reader, to email me with any thoughts or responses that you might have to the articles in this edition as we would like to develop a new feature which highlights your reactions or feedback on other members' work.

I hope you enjoy this edition and wish you a very merry festive season and a prosperous new year.

With very best wishes,

**Dr Kerry Clamp**  
Chair of the Editorial Board  
K.Clamp@uws.edu.au

# 2013

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## News from the EFRJ Board

**Dear members, supporters, promoters, and friends of the European Forum for Restorative Justice,**

The holiday season is fast approaching – always a perfect opportunity for making a review of the activities of this year and providing an outlook on the coming year which will pose new challenges. Thanks to the commitment and active contributions of many people, 2013 was a good year for the Forum with visibility and recognition further increased. This is a consequence of the activities of the Board, the secretariat with the former and the new executive officer, the research team, the editorial team of the Newsletter, the directors of the summer school program, our senior advisor and many other members and non-members (project partners and members of the projects' steering committees in particular) who contributed in many ways to the progress. Annemieke, Aarne, Beata, Bruno, Eleonore, Vicky, Monique, Kris, Emanuela, Valery, Edit, Katrien, Malini, Tzeni, Kerry, Martin, Robert, Frauke, Niall and Ivo have to be named here explicitly, many others would deserve it as well.

What were the most important activities and achievements of the year? As always, intense work was done in the various research projects. All four studies on (1) Training of the Judiciary, (2) Accessibility and Initiation of RJ Programmes, (3) Desistance and (4) Alternative (FP7) made very good progress. It is the policy of the Forum to give insight into the projects and their findings as widely as possible, thus going beyond 'just' writing reports and editing books. If possible, public events are being linked to the projects and the topics addressed. A prime example is the 2013 summer school in Vienna titled 'Restorative Justice in intercultural settings: business as usual?', which was closely linked to the 'Alternative' project. Strongly supported by the local organizer IRKS, Niall Kearney, Frauke Petzold and Edit Törzs prepared a program that was very well received by the participants who attended from 13 different countries. The 2014 conference (see below) will also be strongly connected to topics and

perspectives related to the 'Desistance' project.

A further field of ongoing activity is the policy-related work of the Forum. Based on the fact that the European Union nowadays is the key actor in many areas of criminal legislation, we have undertaken a number of efforts to strengthen the legal basis of restorative justice in the Union. With the 2012 Directive establishing minimum standards on the rights, support and protection of victims of crime, restorative justice has got such a basis. We will be aware that the scope for application will become as wide as possible during the implementation phase of the Directive.

The general recognition of restorative justice as an inherent or regular component of post-crime (and post-conflict) related measures has also been reflected by the fact that our Forum is part of the Criminal Justice Platform Europe. With this joint initiative the EFRJ, Victim Support Europe (VSE), the Confederation of European Probation CEP and the European Organisation of Prison and Correctional Services (EuroPris) work together on criminal justice related issues of common interest. These four NGOs represent the entire chain of intervention post-crime (and post-conflict) and comprise an important contribution for the development of a more practice-oriented and effective criminal justice system. Through this joint initiative, the work of the participating organisations will become more visible and its impact increased. In addition, the political attention for the different practical aspects of European criminal policy, including restorative justice, will be strengthened. The vision is to reach a better treatment for all parties affected by crime.

All such activities, however, require stable funding. This brings me to the prospects for 2014 which is not as positive as we would hope. Until now, the budget of the EFRJ has always been dependent to a significant portion of subsidies by the European Union. Besides the research-related income covered by action grants, our budget further depends on additional funding provided by annual operating

grants. As a consequence of the long budgetary conflict between the EU Parliament and the EU Commission, it is not clear whether we can rely again on such an operation grant for 2014. The board will of course continue the efforts, in close cooperation with the Criminal Justice Platform partners. However, this situation means that the Forum has to find at least one sustainable additional funding stream that is independent from European policies.

Generating such funds, however, is much more complicated for the EFRJ than for many other NGOs. We do not have national 'branches' that could deliver parts of their income gained from national sources to their umbrella organization. Moreover, fundraising with national enterprises has failed so far since such donors always have their focus on national NGOs. The same is true for public resources provided by states. Therefore I would like to draw your attention on the new 'donate' functionality of our website [www.euforumrj.org](http://www.euforumrj.org). Please support us by promoting the important role of the EFRJ and its urgent financial need.

In addition, any suggestion about possible donators in your countries is highly appreciated. And please, help us to promote the advantages of membership in the Forum by approaching all interested persons you know, and also those you will meet in the near future. Lastly perhaps, you may even consider yourself to increase your membership fee for 2014 by an additional voluntary surplus. We will do our very best to keep the secretariat functioning, but it might happen that the proven membership services will have to be reduced for a certain time span in 2014.

The good news is that 2014 will also bring the bi-annual international conference which has become the Forum's most attractive event. The conference with the general theme "Beyond crime: Pathways to desistance, social justice, and peace building" will take place from the 11th-14th June and will showcase the work of a variety of esteemed speakers. Belfast, the host city, is highly attractive from the perspective of restorative justice as many of you will already know.

In addition to the traditional plenary speeches and presentations, the board and the local organization team have the interest to promote new and innovative workshop formats and performances. All details can be drawn from our website [www.euforumrj.org](http://www.euforumrj.org) where you can find the call.

Please do already note the dates, not lastly also with regard to the AGM which will have to elect three new board members. An additional attraction will be the ceremony of the presentation of the European Restorative Justice Award. Like Ivo Aertsen and Martin Wright, who received the prestigious Award in 2010 and 2012 respectively, the third laureate will again be a person with outstanding merits for the development restorative justice. I am happy that the Board has received more proposals than ever before and came to a convincing and unanimous decision.

With this prospect I'd like to thank everybody for their contributions to the successful performance of EFRJ in 2013.

Neither chair, vice-chair and Board, nor the executive officer and the secretariat can bring forward the vision of restorative justice alone. Active contributions by the members are of the same if not even of more significance. In the name of the Board of the EFRJ I wish all of us a peaceful and hopefully also relaxing Christmas time, and a happy 2014.

**Michael Kilchling**

Chair

[Michael@euforumrj.org](mailto:Michael@euforumrj.org)

# Restorative justice in a crowded market place of ideas: challenges and opportunities for relevant practice in the coming years

Restorative justice has had a significant impact on how many people now conceive of justice in the contemporary world. It offers an important counter-weight to traditional retributive notions of justice, and opens up fresh channels for dialogue and debate about what justice means, how it can be achieved for all parties involved in conflict, and how hitherto excluded parties (such as indirect victims and communities) can have their voices heard. Importantly, restorative justice has demonstrated that justice is something that can be delivered by non-professionals in a multiplicity of contexts, not just within the formal justice system. It has also taken us beyond traditional notions of victim/offender mediation by demonstrating that responsibility for criminal events lies with offenders: victims should not be duressed into sharing responsibility for harms inflicted on them. In doing so, however, it has also challenged the dominant perception that victims are only interested in vengeance and retribution, demonstrating that many are satisfied by a sincere apology, a face-to-face explanation and/or punishments (such as community service) that translate a bad event into a public good.

Yet, there is a sense in which restorative justice has failed to live up to its early promise: perhaps because the promise itself was unrealistic and failed to grasp the profound hold narratives of retribution and punishment have upon the popular consciousness (and collective unconscious); or because populist law and order politics continue to create anxiety and a climate of fear. What Jonathan Simon (2001) referred to as the 'punitive turn' in correctional policies may have blunted the reforming edge typified by restorative justice. In this climate, restorative justice has had to co-exist with, and in many respects remain subordinate to, strategies designed to allay popular anxieties about becoming a victim of crime, fuelled by visceral media-generated moral panics about rising rates of crime and violence, that no rational, 'evidence based' arguments to the contrary can wholly displace.

## A crowded marketplace

There have been other challenges to restorative justice too, and these have been posed, not by the ravings of the popular media, but by proponents of other radical reform agendas, either in the form of entirely new systems of adjudication, censure and redress, or through the significant reform to existing systems and networks of justice.

Restorative justice is now operating in a crowded market place and no longer enjoys a monopoly of the language of transformational change and reform. In this piece I intend to look at number of justice innovations and how they pose challenges for restorative justice, as well as opening up new pathways for collaboration and partnership. The areas I have chosen are: problem oriented courts and the philosophy of therapeutic jurisprudence; transitional justice, and Indigenous justice. Before doing so, a few brief words about my own position.

## From transformation to co-option?

My own interest in restorative justice began in the early 1990s in Australia, but I was involved in research, back in the UK in the 1980s, focused on emerging forms of victim/offender mediation and reparation in both the youth and adult justice systems, as they were about to morph into restorative justice. I consider myself to be an advocate for restorative solutions, but this advocacy is tempered by a belief that restorative justice cannot, on its own, claim to have the answers to the many contemporary conflicts, crimes and harms, and that it should build alliances with other movements without attempting to claim ownership over them, or assume its fundamental precepts are relevant in all instances. Furthermore, despite lofty ambitions to transform the way we do justice, in many societies restorative justice has tended to be employed by lower level functionaries in the police and youth justice to deal with minor juvenile crime. Promoted as a transformational paradigm, restorative justice has been safely co-opted onto the margins of the system it sought to transform.

Problem oriented courts and therapeutic justice innovations such as Problem Oriented Courts (POCs) and therapeutic jurisprudence (TJ) have restored a belief in some quarters that the courts (so often viewed as a key part of the problem for restorative justice enthusiasts) can act as lead agents of change, rather than as just a Plan B when restorative justice fails. There has been growing interest in developing what King et al., (2009) call 'non-adversarial' forms of court based justice, and exploring the potential for courts to take a lead role in resolving the underlying issues that ensure repeated contact with the justice system for particular groups. Non-adversarialism presents a radical challenge to the ways, particularly in the Anglo-Saxon world, we imagine the routine dispensation of justice: away from a bruising

gladiatorial struggle to establish guilt or innocence, towards a collaborative enterprise concerned with healing harms and reintegrating offenders. POCs, according to Berman and Feinblatt (2001), 'employ the authority of the courts to address the underlying problems of individual litigants, the structural problems of the justice system, and the social problems of communities.' While Winick (1997: 23) describes therapeutic jurisprudence as: drawing on 'the knowledge, theories, and insights of the mental health and related disciplines' on the premise that 'the law itself can be seen to function as a kind of therapists or therapeutic agent'.

There are clear points of synergy here connecting problem-oriented courts, therapeutic jurisprudence and restorative justice (Braithwaite, 2002), but they differ in crucial respects. The former retain faith in the authority of the law and courts to deliver change, while restorative justice adopts an essentially subversive stance in relation to existing justice institutions and seeks to dethrone judicial sovereignty: privileging, instead, the communal ownership of conflict 'stolen' by the state, in Nils Christie's (1977) well-circulated phrase.

### Transitional justice

Also, on a global stage, the emergence of transitional justice — while confirming some elements of the restorative justice project (e.g. reconciliation between parties is possible, ordinary people can take a lead in bringing about justice) — also raises serious doubts about the appropriateness of restorative justice philosophy, with its focus on forgiveness and victim-offender reconciliation, in situations of extreme conflict, because the seriousness, longevity and intensity of the crimes may lead victims to seek retribution and significant forms of reparation. Furthermore, solutions to state-sponsored crime may involve structural and systemic change, the creation of a new civil society, the generation of new legal and civil norms, democratization, and new economic structures and opportunities, processes which have tended to lie outside the sphere of restorative justice.

Restorative justice has emerged in societies where criminal events occur against a backdrop of (relative) normality, while transitional justice usually operates in contexts shaped by massive human rights violations, war and genocide. Participants in restorative justice ceremonies (the family conference, the face to face meeting between victim and offender) may return to a world normalized by the encounter — they may look forward to getting on with their lives. Post-conflict societies are often typified by large-scale destruction, social upheaval and anomie: a world 'out of joint,' unlikely to be set right without significant investment. Some

of these tensions emerged during South Africa's Truth and Reconciliation Commission, where Archbishop Desmond Tutu succeeded in placing restorative justice at the heart of the proceedings. However, for every voice like Desmond Tutu, preaching forgiveness and reconciliation, there were many others who could not forgive those who had perpetrated serious crimes, and who challenged requests for amnesty. South African social movements such as Khulumani, with the support of global NGO the International Centre for Transitional Justice, are challenging many of the outcomes of the TRC on the basis that the, so called, restorative outcomes allowed murderers and torturers to walk free, with the complicity of a post-apartheid government intent on burying the past as soon as possible.

Transitional justice recognizes the profound trauma created by state crimes, ethnic cleansing and state-sanctioned rape. Recent critical writing on transitional justice (see Green and Ward, 2004; Stanley and McCulloch, 2013) suggests that transitioning towards stable democracy demands long-term nation building, complemented by a vibrant civil society, and may require bringing powerful state actors to account, and might involve significant elements of retributive justice (Uprimny and Saffon, 2007). It is ironic, but in a number of respects very telling, that in South Africa and many other parts of Africa, South America and Asia, the victims of crimes of the powerful (usually the poor and oppressed) are being asked, with the support of western powers, to forgive and forget in the name of justice, while the retributive justice systems of these societies (western, African etc.) continue to incarcerate and grind down the poor and marginalised in the name of victims of crime.

### Indigenous justice

In a book about Australia's Indigenous people and justice (Blagg, 2008), I wrote a chapter called 'Restorative Justice: A Good Idea Who's Time has Gone?' in which I suggested that, in relation to Indigenous people at least, restorative justice should not claim to have some privileged status, in terms of either being able to articulate Indigenous grievances, or providing a vehicle for resolving them. Indeed, I maintained that, in a number of crucial respects, Australian models of restorative justice (re-packaged and de-radicalized versions of the models being developed in New Zealand at that time) furthered white interests and entrenched white privilege, because they reinforced police powers over Indigenous people (the police being the principal gate-keepers and custodians of restorative justice) and deflected attention away from matters of grave interest to Aboriginal Australians, particularly the recognition of their

own law and culture. Offering restorative justice to Indigenous people was no alternative to land rights and acknowledging that Australia was home to two systems of law, not one.

Restorative justice could not deal satisfactorily with Indigenous concerns about Aboriginal deaths in custody or the historical role played by the police and the justice system in dispossessing them: the justice system has not been a neutral arena, but a highly contested and politicized realm, that has historically supported white annexation of Indigenous lands and legitimated the destruction of Indigenous culture. The complex arena of Indigenous justice needs to be approached by restorative justice practitioners cautiously and with a degree of humility — it cannot be assumed a priori that restorative justice has the answers, although, through dialogue with Indigenous people, we may begin to generate the right questions. Critics such as Daly (2002) and Cunneen (1997) have done much to challenge the notion that restorative justice (at least as it is practised by white justice agencies) is not an Indigenous practice: it arrives in Indigenous communities as part of the familiar wagon train of white laws, policies and practices, in a top down fashion.

Furthermore, it operates with a highly restricted notion of victims and offenders, often refusing to acknowledge the extent to which Indigenous young offenders are themselves amongst the most victimised section of society, with histories of abuse and neglect, from within their own communities and from western structures of power and control. Indigenous people in Australia have tended, in any case, to miss out on access to restorative justice conferencing because they are more likely to be arrested, remanded in custody, and placed before the courts than Non-Indigenous people, which excludes them from diversionary processes. Similar problems beset the creation of restorative justice programs in the European context. Those most at risk of becoming enmeshed in the justice system are usually the most marginalised communities, with little stake in conformity. What is required in these instances is that restorative justice work in collaboration with initiatives designed to build social and cultural capital, increase social participation, reduce social exclusion and build bridges between cultures, as well as create pressure for reform to the justice system that reduces its tendency to label and oppress minority groups. This would make restorative justice appear less like an instrument of what many outsiders see as an oppressive and distant justice.

### **A relevant practice in the coming years**

The future of restorative justice remains a topic of robust discussion. A recent debate between Chris Cunneen and Carolyn Hoyle (Cunneen and Hoyle, 2010), for example, illustrates the divergence of opinion, with Cunneen maintaining that, as

currently practised, restorative justice reinforces existing structural inequalities and injustices, while Hoyle asserts, to the contrary, that restorative justice retains capacity to give a voice to victims, reintegrate offenders and restore community cohesion. Both would agree that, for restorative justice to be relevant in contemporary Europe, as we drift further into austerity and the politics of blame and cruelty (hate crimes against perceived 'outsiders'; the demonisation of immigrants, the young, people on welfare, and ethnic minorities), it must develop a philosophy and practice capable of connecting restorative justice with social justice. To be relevant on the global stage it needs to articulate a set of practices that position restorative justice alongside those growing demands for post-colonial justice, capable of dealing with the multi-faceted nature of crimes against humanity and, at the same time, resist pressures to be simply a cog in an unreformed punishment machine.

### **Professor Harry Blagg**

Plymouth University  
harry.blagg@plymouth.ac.uk

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## Alternative Thinking/Theorising: What is Alternative in the ALTERNATIVE Project?

The ALTERNATIVE project aims to provide an alternative and deepened understanding of justice and security while handling conflicts in intercultural settings. This implies developing, on the one hand, a coherent theoretical framework and, on the other, actions that can respond to such conflicts. This reflection offers insight into what is alternative about our theoretical approach (for a reflection on the action see the reflection by Christa Pelikan and Inge Vanfraechem in edition 2 of the Newsletter from 2013) and provides information on what have we done so far in relation to the theoretical framework and why have we chosen to do it in this alternative way as opposed to a conventional way.

What have we done so far in relation to the theoretical framework?

Developing a coherent theoretical framework for an alternative understanding of security and justice involved two strategies: first, undertaking a critical analysis of existing theoretical frameworks and second, proposing alternative ways about how we might understand justice and security in intercultural settings. Thus, two questions were important for our research:

1. What are the existing epistemologies of doing justice and enhancing security in intercultural settings in Europe, and what are their major limitations?
2. Can restorative justice be an alternative epistemology of doing justice and enhancing security in intercultural settings in Europe, and if so, what are its limits and potentials?

At the onset of the project, we realised a few things. The first was that the constant boundaries between local work (work packages) had to be redefined in the main interest of the whole project. We did not start with a rigorous set of criteria or research plan but worked with general guidelines. These enabled the different researchers to carry out the research in-depth in their own country and its specific cultural context, but at the same time ensured reasonable similarity between the different inquiries.

The second thing we had to grasp with was the fact that the project is based on a collective action research, whereby: theory and action interact and influence each other mutually; knowledge is produced communally (therefore it is not unidirectional); and the knowledge acquired is subsequently used to produce some form of social change (knowledge is thus not an end in itself).

In relation to this understanding, we agreed that we all need to engage in a theoretical way and understand both the safe and the shaky grounds on which we were standing. This meant mainly that we all had to take up theoretical work, instead of making a clear 'I do the action, you do the theory' division, and attempted to create an organic critical and theoretical reflexivity on the practices. At the same time, we will allow the practices and action to feed back on the theory, which is work in progress as the actions are about to start. But 'all taking up theoretical work' is not enough of an indication of a common approach, and especially of a critical approach, therefore we had to make clear efforts to craft a common theoretical approach, which we have called a socio-historical approach.

In our project we situate the process of theory construction in a socio-historical space, rather than in a natural, essentialist, formal, or empirical space, and by doing so we problematise its truth-effects. This leads us to accept the assumption that everything resides on a base of human practice and human history. It also gives us the potential and hope for change, since things that have been made, can also be unmade, especially as long as we know how they were made.

According to such an approach, all discourses can become objects of critique. Thus finding ourselves at the intersections of the restorative justice discourse and security discourse, we started our theoretical exercise by tracing and mapping the main discourses through the interrelation of several key concepts, like interculturality, security, justice, active participation, culture, democracy, crime, conflict and community.

Why have we chosen to do it in this alternative way as opposed to a conventional way? By working at the borders and intersections of issues like interculturality, justice, security, and conflict, we had to make sure that we would not be further reifying or essentialising concepts that were already reified and essentialised, including restorative justice.

First in relation to the security discourse, we had to grapple and come to terms with the fact that we are at this moment actors who find ourselves right in the middle of the security discourse, by having proposed through our project to 'securitise' certain types of conflicts all over Europe and are in this sense very much accomplice to the security discourse. Therefore, in light of this 'trap' we had to come up with normative reasons of why we

have done this and what was on our minds.

In other words, by linking culture with conflict (crime) and security and (restorative) justice, some of the questions we asked ourselves were: are we creating a new nexus (link)? Are we exploring an existing nexus but in a different way? Are we challenging, or de-securitizing that nexus? Are we proposing 'more security' or challenging the concept altogether? What is it that we are proposing that will be better or will make a difference? We therefore need to offer a normative basis to criticise the existing practices and conceive emancipatory alternatives.

By producing knowledge from the framework of restorative justice, our project commits to this way of doing justice as a possible alternative discourse of justice and security. In relation to restorative justice, we also thought that most of the existing literature is not critical and often not put into a socio-historical frame. The result of this has been a reification and essentialisation of restorative justice objects, without giving account of who is behind the discourse and what the intentions and constitutive

interest that have led to its production are.

As a reminder, our project relies overall on a constructivist and critical approach which means accepting two main assumptions: 1. everything resides on a base of human practice and human history; and 2. knowledge does not exist apart from the constitutive interests that lead to its production. The main challenge we have to face is how ready and willing are we in our project to speak of and question restorative justice as a (constructed) discourse, instead of an essentialised one? This implies embracing distance from our own work and critiquing it before we move forward.

### **Brunilda Pali**

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

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## **Implementing peacemaking circles in Europe: a European research project**

Peacemaking circles (further referred to as PMC) are a way of dealing with conflict. At their core, they are an inclusive and non-hierarchical approach to conflict resolution rooted in the tradition of First Nation people of Canada. In recent years, PMC have also been used as a way of dealing with crime in common law countries such as Australia, Canada and the United States, (often referred to as sentencing circles in these contexts). Our project is the first international experiment to use and implement circles in three European countries: Belgium, Germany and Hungary.

In our view, PMC have the potential to fulfil the aims of restorative justice even more effectively than other restorative justice approaches. Therefore we set out to conduct a research study to develop a model which fits the conditions of the European legal and institutional framework, and to explore its possible implementation in criminal justice.

### **Peacemaking circles: more than a method**

According to Bazemore and Umbreit (2001), circles

are a flexible tool that can be adapted to the needs of the local community. Thus, there is not one clear model that would apply to all methods that could fit under the term 'peacemaking circles'. Moreover, circles are also more than just a tool. The essence of circles does not lie in its methodological aspects, such as sitting in a circle or using a talking piece (see below), but lies in the reasoning behind their use. As such, although the uses of circles may differ somewhat depending on the community in which they are implemented, there are some common elements that can be found in all circles; here, we will focus on two key aspects: inclusivity and equality.

### *Inclusivity*

One of the basic ideas behind circles is that you cannot come to a good solution for a conflict, including crime, if you do not include everyone who is responsible for and/or affected by that conflict. Circles try not to individualise the conflict by considering the context and setting of the conflict. In cases of crime this means that not only

is the offender expected to take responsibility for his actions, but action is also expected on the part of the community — those both of the offender and of the victim alongside that of the broader community. The questions asked are: what did the community do (or not) to let such a crime happen and how can the community contribute to the reparation of the harm? These community aspects set circles apart from other restorative methods, such as victim-offender mediation or conferencing, which both have a more individualising approach to crime. Consequently, ‘circles invite not a few but everyone to participate’ (Pranis et al., 2003: 17).

Furthermore, inclusivity also refers to the content of the discussion. A conflict brings imbalance to our lives; to restore the balance a holistic perspective is needed that looks at the conflict as one aspect among others of the people concerned and their lives. Phil and Harold Gatensby (personal communication, October 2011), two experienced First Nation circle keepers, stated that in Western society too much attention goes on the mental and physical aspects of conflicts. However, to create more balance, more attention is needed to their emotional and even spiritual aspects — which are fundamentally part of PMC, more so than of other restorative methods.

#### *Equality*

Another important aspect closely related to inclusivity is that in circles all participants are equal. Everyone participates in the circle dialogue as human beings; titles and professional positions are ‘left at the door’, as it were. This means that no one has more of a right to speak or more decision power in the circle than others, including the circle keepers or judicial actors if present. Though this may be an aspiration of many restorative methods, this is secured in the circle meetings by the talking piece (see further) and consensus-based decision-making. As a result, this adds to their inclusivity as well.

#### **Overview of the research project**

In each of the three member countries (Belgium, Germany and Hungary) a research institution was involved (KU Leuven, University of Tübingen and Foresee Research Group/National Institute of Criminology respectively) who made a partnership with a mediation service provider (Suggnomè vzw, Handschlag and the Probation Service respectively) that could conduct PMC’s.

The goal of this research was to experiment with circles in the three countries. For doing this, a theoretical methodological model for conducting PMC was drawn up, based on the pertinent literature

and training given by the Canadian brothers Phil and Harold Gatensby as well as through interviews with experts in each country. During the course of the project this was further refined and adapted to the specific needs and conditions of the three European countries. This developed; more refined model consists of two main parts: the selection/preparation of cases and the facilitation of circle meetings.

#### **Selecting and preparing circles**

No criteria have been established yet for distinguishing which types of crimes are eligible for PMC. In countries where sentencing circles are used, the cases handled vary from alcohol abuse to domestic violence and even sexual abuse cases (Johnson, 2010; Lilles, 2001; Rieger, 2001). Essentially speaking, any case suitable for VOM is also suitable for PMC and there are no fundamental impediments against it. However, in accordance with our project goal of providing guidelines for circle keepers we started off by outlining basic case selection criteria for finding cases deemed most suitable for circles. The resulting list of criteria can be summarized as follows: The conflict affected multiple victims and/or offenders, or happened within or between groups, or involved people who were not ‘officially’ or ‘judicially’ considered an offender or victim, or the people affected seem emotionally extremely attached to the case.

For preparation, we deemed the following steps crucial for a successful circle meeting: (1) examining if the case is suited to a circle process, (2) informing every participant of the values, goals and basic ground rules of the circle process and (3) giving the conflict parties personal time and space to ‘vent’ and prepare for the actual circle meeting.

#### **The circle meeting**

The circle meeting is the tip of the iceberg of PMC; it is the most visible and apparently the most important aspect of the whole. However, it is built upon a set of values and ground rules that resonate from the preparation phase into the circle meeting and its outcomes. Pranis et al. (2003: 33–47) refer to this as the inner framework of PMC which consists of the core values of love, respect, honesty, humility, sharing, courage, inclusivity, empathy, trust and forgiveness. Our delineated model the circle meeting consists of four stages:

1. Meeting and introduction;
2. Building trust;
3. Identifying issues; and
4. Developing an action plan.

Our developed model places a high importance on

starting the circle through connecting as human beings by not referring to victim and/or offender roles or going into detail about the conflict in the first two stages. As such, all circle participants have the opportunity to speak and listen to each other in a safe setting. By paying attention to the act of speaking and listening itself before looking at the conflict, the space is created to talk about this conflict in a more genuine, respectful and constructive way.

Furthermore, the action plan is not pre-set. In this last stage, the goal is that all circle participants try to find a way of dealing with the conflict and overcoming it, which may include how to prevent similar conflicts in the future. As mentioned before, all circle participants (and not only the offender) can take the initiative themselves regarding ideas or actions they may want to carry out or support in order to change the circumstances leading up to the conflict or those created by the conflict.

In the circle meeting itself, the inner framework becomes visible as its translation into roles and rules, namely the 'outer' framework; this consists of five main elements (Pranis et al., 2003: 81–125):

1. The use of ceremonies;
2. The setting of ground rules;
3. The role of the circle keeper;
4. The use of a talking piece; and
5. Consensus-based decision making.

It would take us too far to go into detail about each element listed here. For the purpose of this article, two elements are selected due to their relevance for our developed model, which also help in differentiating PMC from other restorative dialogue methods: the talking piece and the role of the keeper.

Firstly, the talking piece is an object that is used in each circle meeting. It is passed through the circle clockwise from person to person. The specific use of the talking piece is that only the person holding it may speak. All the other participants — including the keepers — have to listen and wait until the talking piece reaches them before it is their turn to say something. Besides other advantages of using a talking piece, foremost it invites all participants to speak and obliges all participants to listen. As such, it prevents only the verbally strong getting a chance to speak and others listen while waiting for a moment of silence to interrupt.

Secondly, the role of the keeper is specific to PMC and differs from the role of the mediator or facilitator in a conference or VOM. The circle

keeper's primary role is the preparation of the circle meeting. Once the circle has started, he shares the responsibility for the course of the dialogue with all circle participants. As such, the keeper becomes one of the circle participants and consequently has to follow the same rules. Moreover, the keeper can share personal stories and questions with the circle; they take care to remain 'all-partial'.

### Translation into practice

During the ensuing phase of the research we conducted circles with the aim of holding ten to fifteen circle meetings in each country — in (mostly) criminal cases. The keepers used the above described model, although reasonable alterations were allowed. Within the action research framework each circle was observed by the researchers and reflected upon afterwards in debriefings between the keepers and the researchers. Adaptations and refinements of the circle methodology were made as an outcome of these reflections from different perspectives.

Furthermore, we asked all circle participants to fill out questionnaires before and after the circle. We also did in-depth interviews with selected circle participants a couple of months after the circle meeting to see how they looked back at the experience and if the circle meeting had any lingering effects. All this data (observations, keepers' reflections, questionnaires and interviews) was combined in an effort to further answer our main question: can PMC be implemented in Europe, and if so, how?

### Additional findings

We will conclude this article by giving a concise overview of selected results that can be drawn from this research project. In total, approximately 30 circles were held in the three participating countries. This alone made it clear that it is possible to hold PMC in a European context. The enthusiasm of the circle keepers about the effectiveness of circles only strengthens this statement, as they all agreed that circles create added value on many levels. Moreover, the questionnaires also reflected that at least two-thirds of the circle participants were pretty satisfied to very satisfied with the PMC.

Although it became clear that community involvement adds great value to the circles, identifying, reaching and involving community is not an easy endeavour. On the one hand, the conflict parties seem to have some resistance

to sharing their stories, which often include very personal pain, grief and concerns, with others than their own community of care (family members, friends, etc.). On the other hand, it has proven to be difficult sometimes to find community members who are willing to participate. It was also a question to what extent is it the keepers' or the parties' — or a sort of 'peacemaking circle committees' — task to involve the community and how to reach out to them. The group who was the most difficult to include was the geographical community — people living close to the offender, the victim or the place of the crime. Their attitude could be different, dependent on how they are invited and by whom.

Macro-community members, which we defined as the persons who were affected indirectly by the cumulative effects of crime (see also McCold, 2004), and members of the community of care were included with relative ease. In some cases it also happened that we could not identify the community behind the conflict but there were several people affected by the crime and the PMC itself created a community.

When community members do participate, we have ascertained that their presence has a significant added value to the circle meeting, as they bring in a perspective that goes beyond the conflict and helps the conflict parties to see the other point of view. When asking the circle participants afterwards, both victim and offender indicate that they received a lot of support from these community members, e.g. by being offered help, by the expression of empathy, etc. Especially offenders stated that they found the open and non-condemning attitude of the community members helpful and even restorative for them. This finding validates the notion that PMC do not individualise crime and focus more on all circle participants as equal human beings.

As a last point, we want to share some findings on the methodological level. The talking piece was seen by almost all circle keepers as a tremendous added value. The same was true for circle participants, although a few of them criticised its use somewhat. Considering that it requires a lot of patience with everyone and teaches listening, this does not seem surprising.

## Conclusion

This research project not only demonstrated that it is possible to implement PMC in a European context but, more importantly, it provided insights into their added value and confirmed that circles live up to their promise. As a pilot study, it was the very nature of this research to plan, observe,

evaluate and experiment with different ways of implementing and conducting circles accompanied by an elaborate dialogue process at the national and international level. This produced a wealth of data regarding the nuts and bolts of a 'best practice' model for circles that can hopefully help paving the way for others taking similar steps in this direction.

It also raised a number of important questions: who is best suited to select and invite participants to the circle meeting, how can community be involved even after the circle meeting and can PMC really fulfil their promise of 'building community'?

**Davy Dhondt (KU Leuven),  
Beate Ehret (University of Tübingen),  
Borbála Fellegi (Foresee),  
Dóra Szegő (Foresee)**

For any queries regarding this research project, please contact Davy Dhondt at: [davy.dhondt@suggnome.be](mailto:davy.dhondt@suggnome.be)

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# EFRJ International Conference 2014

## Beyond Crime: Pathways to Desistance, Social Justice, and Peace Building

The 8th International Conference of the European Forum for Restorative Justice will be held at Queens University Belfast, Northern Ireland from 11th to 14th June 2014.

The conference this year seeks to go beyond the sometimes narrow focus of restorative justice in a bid to understand and to reflect on the limits and potential of restorative justice in an increasingly complex, intercultural, and divided world. We hope to provide a platform for diverse and alternative papers on restorative justice that range from the personal to the societal and political in discussing desistance, social justice and peace building. The three main topics of the conference are interrelated, but each offer a particular focus for restorative justice. We welcome presentations that address these topics, as well as other original perspectives and approaches to the field. Particular discussions that we are keen to facilitate include positions on:

1. How can restorative justice contribute to desistance and recovery from crime to build safer and more cohesive societies?

2. How can restorative justice contribute to social justice, especially in an increasingly intercultural world?

3. How can restorative justice contribute to peace building in divided, transitional, and post-conflict societies?

John Braithwaite, Distinguished Professor at the Australian National University, has confirmed that he will be one of the plenary speakers. He is embarking on a 20-year comparative project called 'Peacebuilding Compared' with Hilary Charlesworth, Valerie Braithwaite and Kate Macfarlane. His best known work is on the ideas of responsive regulation and restorative justice.

The workshop sessions will this year aim to offer a variety of RJ related topics and activities. We encourage presenters to offer creative workshop sessions based not exclusively on presentations, but offering, for example, debates, role plays or screening of films. Our aim is to enhance the active participation of all and create space for dialogue.

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#### Secretariat of the European Forum for Restorative Justice v.z.w.

Hooverplein 10  
3000 Leuven  
Phone: +32 16 32 54 29  
Fax: + 32 16 32 54 74  
E-mail: [info@euforumrj.org](mailto:info@euforumrj.org)  
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