

EDITORIAL

Imagination and experiences: some forethoughts and afterthoughts on the 10th conference of the European Forum for Restorative Justice in Tirana

*Christa Pelikan**

1. Introduction

In June 2018, the tenth international conference of the European Forum for Restorative Justice (EFRJ) took place in Tirana, the capital of Albania. Its central theme was ‘Expanding the restorative imagination’, focusing on the intersections between restorative justice and the criminal justice system, juvenile justice realities and social movements. More than 300 participants from 47 countries attended the event. These biannual conferences are one of the main activities of the European Forum and they have reached importance in the field of restorative justice. The focus remains with developments in Europe though, as this is the realm of attention of the EFRJ. However, the organisation was from its foundation – initiated in the aftermath of issuing Recommendation R(99)19 of the Council of Europe ‘On Mediation in Penal Matters’ – closely connected to worldwide efforts of the United Nations. The Recommendation exerted a marked influence on the work and the final draft of the United Nations Economic and Social Council (ECOSOC) ‘Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters’ (2000 and 2002). This was the result of cooperation, deliberately sought and established, between members of the Council of Europe ‘Committee of Experts on Mediation in Penal Matters’ and the NGO Drafting Group of the ECOSOC Resolution led by Daniel Van Ness from ‘Prison Fellowship International’. There was an exchange of ideas and considerations that became manifest in the UN Basic Principles following the provisions laid down in the Council of Europe Recommendation to a large extent, with those modifications that were deemed necessary to take care of the wider and more general notion of ‘restorative justice’ and its worldwide field of application. Within the EFRJ, exchange with developments on restorative justice all over the world has increased in the course of the last few years but the tendency to a certain Eurocentrism becomes visible time and again.

* Christa Pelikan (PhD) is Senior Researcher at the Institute for the Sociology of Law and Criminology (IRKS), Vienna, Austria.
Contact author: christa.pelikan@irks.at.

Christa Pelikan

In this editorial, I would like to reflect on restorative justice developments in Europe and internationally as a 'privileged witness', having participated in research endeavours, theoretical work and practice and policy developments in my own country (Austria), at the European level and beyond.

2. Recurring problems of implementing restorative justice and the 'grand vision'

During the Tirana conference, we became aware that there is the recurring experience of being confronted with the same obstacles and difficulties we had at the very beginning of 'the movement' and the following questions still lurk in the background: Are we moving in circles? Is there a real forward movement discernible? Are we approaching the aim of making restorative justice a significant new way of dealing with those conflicts that own the 'quality' of 'Unrecht', of wrongdoing? Or do restorative justice programmes remain just a tinsel to the ways and the workings of the dominant criminal justice system and are they becoming by and large co-opted by this system? This is an apprehension expressed from the very beginning and written down as early as 2002 by Trenzcek and then in 2006 in several contributions to the book *Institutionalizing Restorative Justice* by Aertsen, Daems and Roberts (2006). In addition, there is the recurring lament that we see no real move forward, that 'we' are treading on the spot or even are reduced to rearguard action.

3. Reviewing the scenario of contemporary developments

3.1 *Expanding restorative justice by building the legislative and organisational structures required*

Such a pessimistic perspective would not do justice to some of the more recent developments in Europe (and beyond). We find highly dedicated groups of people working in countries at the fringes of Europe, for example. One of these countries going through remarkable developments is Georgia. What struck me most, when visiting its capital Tbilisi in February 2017, was the inclusion of young professionals from the judiciary in these efforts and how they got convinced, together with young mediators, of the appropriateness of restorative justice as an adequate way of going about conflict and 'crime'.

Another remarkable development has taken place in the Netherlands. In Tirana, we heard the report on the efforts by a group of non-parliamentary experts and citizens to draft and to introduce legislation related to restorative justice (see also 'Notes from the Field' in this issue). Considering the complicated history of restorative justice in this country that has been very aptly analysed by Antony Pemberton and the disappointments restorative justice advocates had met with in the course of many years, this is more than 'good news' (Pemberton, 2015). Furthermore, there is the initiative of 'Restorative Cities' spreading from the United Kingdom to other parts of Europe, e.g. Italy and Belgium, or the world, e.g. Canberra in Australia or Whanganui in New Zealand (Liebmann, 2018).

This latter initiative points beyond the position of restorative justice in relation to the criminal justice system. In the course of the history of restorative justice and especially of the EFRJ, we have seen European projects expand the field of application of restorative justice beyond petty crime towards crimes such as domestic violence, sexual offences, gross human rights violations and terrorist acts. We have extended the scope of restorative justice programmes through all phases of the criminal justice process including the administration of the prison sanction. We have been expanding geographically to the east and to the south of Europe and to the Baltic states; we have, of course, been expanding methodologically, including a wide variety of restorative justice procedures beyond 'simple' victim-offender mediation, most important conferencing, various circle formats as well as procedures that are geared towards an indirect involvement of the parties concerned. Moreover, we have gone beyond criminal law, developing models to build societal support for restorative justice and to explore the potential of restorative justice to conflict situation in complex intercultural settings.

We can summarise all these quite remarkable developments under the heading of structural changes and initiatives. It is about providing the ground for people to gain access to restorative justice and to take part in restorative justice processes. However, is there still a place for the grand vision? Does the idea of overthrowing the traditional criminal justice system make any sense at all? For whom?

3.2 *Striving for a balanced approach*

In fact, what stands out most, when discussing the aims and goals of restorative justice programmes, is the concept of the balanced approach. It was there from the very beginning. It resonated the voice of reasonableness, of being realistic and well balanced. No complete overthrow, no revolution, no thorough abolition, but finding a well-defined place for restorative justice efforts inside, outside, vis-à-vis the criminal justice system. We might doubt whether restorative justice was at any time considered a truly radical alternative to the conventional criminal justice system. Together with Brunilda Pali, I had explored the question of the abolitionist roots of restorative justice in the context of an article for *Restorative Justice: An International Journal* (Pali & Pelikan, 2014). We had started from Nils Christie's initial 'Big Bang' article that served as an introduction to the first issue of the journal: 'Words on words' and the responses written by ten colleagues of Nils, myself included. We had made an attempt at sharpening the profile of restorative justice, of drawing such a clear line between the workings of the penal law process and the restorative justice procedure. We accentuated three core elements of the restorative procedure that are to be juxtaposed with core features of the penal procedure: the lifeworld element (as different from the legal system's element), the participatory element (as different from the element of delegation) and the restorative element in the more narrow sense (as different from the punitive element). I contend that this approach provides a good orientation for restorative justice programmes and practices. They might be located within the criminal justice system, or at least closely attached to it, but they ought to remain different, following a different rationale. A concrete restorative justice programme might be

Christa Pelikan

reduced to a clearly circumscribed sphere of action – but it has to attend to the three core elements named above: the lifeworld element, the participatory element and the restorative element. One could call this a ‘balanced’ stance, arguing for a concept – and a practice of restorative justice – that does not aim at a replacement of the working of the criminal justice system but intends to clarify and insist on the specific alternative rationale restorative justice is grounded in, on tending and preserving this rationale.

I would like to contend that more recently there are new and quite exciting endeavours under way to redefine the relationship between the criminal justice system and restorative justice in the direction of a balanced approach. At the Tirana conference, we found Claudia Mazzucato’s excursion into Jewish law and the image of straight lines and circles derived from it highly inspirational. She is talking explicitly of an ‘alliance between criminal law and restorative justice’. Her core idea is that law is a direction to follow, a straight line; justice seems to stand where the straight lines of the rule meet the winding contorted lines of people’s stories and lives. Straight lines and curves are reconciled in circles. She calls for a ‘circling of the straight lines of criminal law’ on the one hand and of ‘squaring the circles of restorative justice’ on the other hand – resulting in upholding a tension that consists of mutually curbing and nourishing each other.

Whereas Claudia Mazzucato lets herself – and her readers/listeners – be inspired by philosophy, history and poetry and the images created by thinkers and artists, we might interpret developments in the realms of lawmaking and laid down in the documents produced by relevant international bodies also as expressions of this strive for a balanced approach. This applies to the ‘new’ Recommendation of the Council of Europe (CM/Rec (2018) 8) concerning restorative justice in criminal matters. It had started from the diagnosis that

Restorative justice is rarely used to its full potential. Many countries do not have the capacity or the desire to afford victims and offenders a right of access to restorative justice. (Marder, 2018)

The revised recommendation was to, first, *enhance the awareness, development and use of restorative justice in relation to member states’ criminal justice system*; second, *to elaborate on standards for its use, thereby encouraging a safe, effective and evidence-based practice and a more balanced approach to the conceptualisation and development of restorative justice than is implied by the ‘Victims’ Directive’*. Admittedly, the balanced approach here is set against the conceptualisation of restorative justice as stretched out by the EU Victims’ Directive 2012/29/EU. We still regard this as a further confirmation of the option to tread the middle way – or as Claudia Mazzucato has formulated – for holding up the tension between straight lines and circles.

There remains one concern though: even if the doors to restorative justice have opened wider, will this stimulate people, victims, offenders, members of an affected community to knock on those doors, to go through them? I have the impression that we have not made so much progress towards winning the hearts and the minds of people, of making restorative justice the ordinary and the pref-

erable way to choose when confronted with the experience of conflict and of being wronged or having done wrong.

4. Winning the hearts and minds of people

4.1 Of public prosecutors and judges and the general public

Despite efforts made in the past to increase the number of cases, e.g. by way of training projects for public prosecutors and judges, in most countries the number of cases dealt with through restorative justice procedures remains low – with a few albeit remarkable exceptions: for juvenile offenders in Northern Ireland and to some degree in Flanders, restorative justice has become the standard, the ordinary reaction to juvenile crime. Finland and Norway still show overall high numbers of cases, based on a nationwide practice of referrals from the courts and the public prosecutors. However, in mentioning prosecutors and courts, we are already addressing the important bottleneck: the referral practice of the agencies of the criminal justice system; even in Norway, most cases come from these referrals. In Germany and in Austria where this is the exclusive way to access restorative justice, their number is decreasing (Gläser & Stangl, 2015). Are we therefore, first of all, still left with the task to win the hearts and minds of the protagonists of those agencies, of judges and of prosecutors? This is also a time-tested problem: restorative justice's dependency on these agencies. As early as 2004, on the occasion of the German Juvenile Justice Conference in Leipzig, Gerd Delattre has argued for overcoming the restrictions of this bottleneck by finding ways for self-referrals, for making restorative justice better known to the general public and have them ask for, or even demand, immediate access to restorative justice procedures.

Information about restorative justice, or rather public awareness of restorative justice as a first precondition for citizens to demand access to this alternative, is generally rather meagre. As a matter of fact, knowledge regarding penal procedures and the role of criminal justice actors to refer cases to alternative approaches is extremely poor amongst 'ordinary' people throughout. Mediation in penal matters has sometimes made its way to the top news. But most times, it appears there as the story of some extraordinary event of forgiveness and reconciliation. Only rarely is it perceived by the general public as an option to react to the experience of having become a victim or an offender of ordinary, 'everyday' crime. It is interesting to note that the women's movement has been more successful in independently drawing attention to the pressing problem of violence against women and the need to counteract this phenomenon on legislative, organisational and practical levels. There are certainly very good reasons for this difference and for the restorative justice movement lagging behind regarding the publicity it has gained amongst the general public.

Certainly, the EFRJ has made remarkable efforts to promote awareness, for example, through its project 'Building Social Support for Restorative Justice', which was meant to identify agencies in society at large that could and should be addressed and with whom cooperation could be established in order to spread the

Christa Pelikan

knowledge and awareness on restorative justice.¹ The recently established working group on 'restorative cities' within the EFRJ might contribute to this endeavour as well. Attention for working with the general public was also asked in the *Practice Guide on the Victims' Directive* (EFRJ, 2016).² In this guide, three groups of potential addressees are listed: victims, practitioners and the general public. Moreover, the Practice Guide is outlining 'Actions' aimed at raising and enhancing awareness. A first action is defined as 'Change attitudes and gain trust'; another one reads 'Keep the general public informed'. One of the tools mentioned to achieve a change of attitudes relates to designing campaigns. This is probably as specific as an international document might become. But we know that nothing is more difficult than to change one's own and another person's or even a group of persons' attitudes! Gaining trust – well, there we might know of ways to achieve this – all of them affording a lot of time, energy and patience.

At this point, I would like to venture into the contention that the task of changing attitudes does not take place in an empty space. It is bound to experiences people go through (in fact, this is also the lesson gained from Austria's 'Protection against Domestic Violence Act' and the effect it had on the application of victim-offender mediation procedures in cases of partnership and family violence (Haller, Pelikan & Smutny, 2004; Pelikan, 2010)). A change of attitudes does not take place through teaching and preaching. It takes place when alternative experiences become available.

4.2 Turning to the 'basics' of restorative justice

Back to the Tirana conference, I have a most vivid memory of the workshop led by the colleagues from Hungary, the Foresee Research Group, the winners of the biannual European Restorative Justice Award. The Foresee Group has for many years (ten!) worked in an extremely difficult field (to go into it in more detail would be beyond the scope of this short editorial). We have seen their approach at work in the course of the ALTERNATIVE project.³ The members of Foresee themselves have characterised their work as preparing the ground for restorative justice by attending to the basic communicative qualities this approach is based upon. One could say that this is not only about expanding the imagination, but also about sticking to the essentials of restorative justice. The presenters had closed their session in Tirana by showing a film produced by Amnesty International, Poland, titled *Look beyond borders*. Many might know it by now: it features several pairs of people distributed over a large room, in fact an old empty warehouse in Berlin. People were asked by the organisation to sit opposite each other and to look into each other's eyes – without speaking – although this rule was not supposed to be followed too closely. The pairs consisted of one person from any

- 1 See for its final report: www.euforumrj.org/projects/previous-projects/building-social-support-for-restorative-justice/.
- 2 The *Practice Guide on the Victims' Directive* (2016): www.euforumrj.org/wp-content/uploads/2017/03/Practice-guide-with-cover-page-for-website.pdf. See also the recently published *Practice Guide on Values and Standards for Restorative Justice Practices* (2018): www.euforumrj.org/wp-content/uploads/2018/11/EFRJ-Values-and-Standards-manual-to-print-24pp.pdf.
- 3 For more information on this European FP7 project: www.alternativeproject.eu.

one European country, most of them from Poland, their partners were refugees, from Syria or from Somalia. There were men and women, young persons and elderly and there were also two children, two girls. The camera wandered from pair to pair catching silent moments, catching eyes momentarily shut, tears starting to flow, smiles exchanged. The effect this film produces on the spectators is hard to describe: several of the participants, myself included, were in tears towards the end, when a short comment said that ‘over a million refugees were crossing into Europe last year’.

I interpret this experience as digging into one’s imagination as to what it means to come as a stranger to a strange country, what it means to be confronted with a strange person and what it means to try to relate to one another in a very basic way – just by eye contact. I will also always remember Borcsa Fellegi, my Hungarian friend, laying her hand on my shoulder when she saw my tears, and me wanting to do the same when I saw the Belgian mediator and trainer Kristel Buntinx crying. Kristel, who works in an admirable restorative way with cases of severe crime, was also the one who asked finally – half serious and half ironic: ‘Can it be *that* easy?’ This example, this story is about setting off imagination, about using imagination in order to recognise ‘the other’ as different and at the same time close and similar to me. In this case, it is done by renouncing talk and words, by being silent. The silence stirs the imagination, and the imagination engenders empathy.

This brings to my mind a story that illustrates the dynamics, the basics of restorative processes in a similar way, albeit with a different, even contrary shape or stamping. It is my recording of a mediation session that took place with a man and a woman in Carinthia in the south of Austria, applying the methodological device of the ‘mirror of stories’ and moreover the social work method of ‘doubling’. What I saw and heard was the following:

Violence had happened within the relationship between a young woman and an older man: they have a child together but do not live together. The relation was marked by fights, by jealousy, by stark discrepancies in lifestyles and what they respectively deemed a good and right way of living. And there were also bouts of violence coming from both partners. At the beginning of the single talk, Frau Laskiewicz had declared her resolution to end the relationship, but in the course of the session it became obvious that there was still love and a strong bond that held her. On the other hand, Herr Brendl had felt badly treated by his partner, who for him was especially important because he was still mentally ravaged by the tragic loss of an older son from a previous relationship. The mediation session with two mediators and the couple (according to the arrangement that is used in Austria following the method of the ‘mirror of stories’) consisted for a long time of mutual accusations and complaints about the faults, the neglects and the deficiencies of the other and about the disappointments he/she had caused. Herr Brendl closed up more and more under the attacks of Frau Laskiewicz. Then Alice, the social worker who in this case was responsible for Herr Brendl (the male social worker was not available), turned to the man and asked, ‘May I speak for yourself?’ He

Christa Pelikan

nodded. Alice stood up, went besides Herr Brendl, knelt down, her head now at the same level as his and started to talk, addressing Frau Laskiewicz: 'I have felt very miserable after the death of my son and it was you who gave me support and something to lean on. I now want to ask your forgiveness for what I have done to you and I want us to stop digging into the past. I want us to try something new together – and together with our boy. Maybe we can do this.' When she ended, there was an endless, complete silence (I did not even dare to turn the page of my writing pad). Frau Laskiewicz was close to tears, then uttered, 'I can't say anything.' Alice (still as Herr Brendl): 'It's not necessary for you to say anything.' Then Alice went back to her place and asked Frau Laskiewicz, 'Can you imagine him thinking this way sometimes?' She nodded. Alice again, 'How do you feel now?' 'Shit', uttered Frau Laskiewicz with a lot of feeling. Alice: 'It hurts to see what things have come to' – a nod again. Alice turning to Herr Brendl, 'It's hurtful for you as well?' 'Yes' he answered, 'very much so!' From there, they were able to make an arrangement for going to a carnival event together with their child; and the mediators arranged for another meeting after a period of observation. I have been told that they have decided to live together again and they are trying to 'live' the new way that Alice had been talking about.

I have interpreted this case as giving a voice to a man who is not used to express himself with words: this inability leads him and his partner ever deeper into mutual misunderstandings and the hurt and suffering flowing from it. Hearing him speak through a third person and expressing both his pain and his enduring love for her helped the young woman to open up her own pent-up feelings and make the decisive step towards 'Let's try to do something together and together with our child.' The mediator refrained from telling the man and the woman how they should behave and talk to each other, she did not order them to 'let go' and to become more open; she led them through an experience – trusting that this would do the transformative work.

Both examples illustrate 'basics' of restorative justice communication. In both cases, an experience is provided that triggers imagination and this imagination engenders mutual empathy. In the film, it is the deliberate 'reduction' of communication, dwelling on silence that creates the space for imagination. With the Carinthian couple, it is the substitution of words by a third person, the mediator thus breaking a stifling silence or muteness that again prepares the ground for imagination and, from there, for mutual empathy.

In both cases, providing experiences is a path towards a change of attitudes – that in itself is a prerequisite for wider societal change. The tricky part lies in the fact that we need settings that enable acting out such experiences, that is, we need the structural preconditions for alternative ways of dealing with conflict and crime. In other words, to think radically different has to be based on providing radically different experiences. To do this affords the opening up of opportunities for these experiences. We seem to be caught in a catch 22 predicament. The only solution, if there is any at all, is to work both at the head and at the tail: the crea-

tive and courageous invention of persuasive experiences and the provision of enabling structures.

Turning to the basics of restorative justice and the sometimes laborious creation of the structural preconditions for them to enfold, we must also keep in mind the cultural context. I have been referring to European or 'Western' conceptions and practices (although one might doubt whether the dynamics inherent in 'looking into each other's eyes' is indeed restricted to Europe and the West). Searching for the 'restorative basics' of communication, of stirring the imagination and engendering empathy can stimulate a wider understanding of restorative justice. It can contribute to fertilise the European imagination and help find a way to the hearts and minds of people.

Let's look once more at Christie's seminal article 'Words on words' and the responses it evoked, more specifically the one by John Braithwaite. He had titled his contribution, 'Western words' and he writes

[...] seeing all the concepts in the Christie paper – offender, mediation, justice, restoration, reconciliation – as from the North and West. Most of us live in the South and East. So if we are from South Africa it will be more useful to think in terms of ubuntu than reconciliation; if from Rwanda, better to think in terms of gacaca than restorative justice.

Some of the innovative and persuasive experiences might come from those regions.

References

- Aertsen, I., Daems, T. & Robert, L. (2006). *Institutionalizing restorative justice*. Cullompton: Willan Publishing.
- European Forum for Restorative Justice (2016). *Practice guide for restorative justice services. The Victims' Directive. Challenges and opportunities for restorative justice*. Retrieved from <http://www.euforumrj.org/wp-content/uploads/2017/03/Practice-guide-with-cover-page-for-website.pdf> (last accessed 14 January 2019).
- Gläser, B. & Stangl, W. (2015). Wider die Abkehr von Opferorientierung, Ausgleich und Wiedergutmachung. Restorative Potentiale im österreichischem Strafrecht. *Österreichische Juristenzeitung*, 81(13), 605-616.
- Haller, B., Pelikan, C. & Smutny, P. (2004). The Austrian protection against domestic violence Act 1996. In Council of Europe (ed.), *Crime policy in Europe. Good practices and promising examples* (pp. 37-46). Strasbourg: Council of Europe Publishing.
- Liebmann, M. (2018). *Towards restorative cities*. Workshop at the 10th Conference of the EFRJ, Tirana. Retrieved from www.euforumrj.org/wp-content/uploads/2018/06/1506-PWV-Towards-restorative-cities-UK-Liebmann.pdf (last accessed 14 January 2019).
- Marder, I. (2018). The Council of Europe Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters: an opportunity for progress. *Newsletter of the European Forum for Restorative Justice*, 19, (printed issue), 5-7.
- Pali, B. & Pelikan, C. (2014). Con-texting restorative justice and abolitionism: exploring the potential and the limits of restorative justice as an alternative discourse to criminal justice. *Restorative Justice: An International Journal*, 2(2), 142-164.

Christa Pelikan

- Pelikan, C. (2010). On the efficacy of victim-offender-mediation in cases of partnership violence in Austria. Or: men don't get better, but women get stronger: is it still true? Outcomes of an empirical study. *European Journal on Crime Policy and Research*, 16, 49-67.
- Pemberton, A. (2015). Changing frames? Restorative justice in the Netherlands. In I. Vanfraechem, D. Bolivar Fernandez & I. Aertsen (eds.), *Victims and restorative justice* (pp. 126-152). London, New York: Routledge.
- Trenczek, T. (2002). Victim-offender reconciliation: the danger of co-optation and a useful reconsideration of law theory. *Contemporary Justice Review*, 5(1), 23-34.