



Exploratory Workshop Scheme

Scientific Review Group for the Social Sciences

ESF Exploratory Workshop on

**Critical justice:  
an exploration of the limits and  
potential of restorative justice to  
address crimes, conflicts and  
injustices in intercultural Europe**

Leuven (Belgium), 15-17 October 2014

Convened by:  
**IVO AERTSEN <sup>①</sup>, BRUNILDA PALI <sup>②</sup>**

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## **Abstracts**

### **Temporality in restorative justice: The place of restorative principles and values in building sustainable societies**

**Adam Crawford** (University of Leeds, Leeds, UK)

Unlike the retrospective gaze of criminal justice - that attempts normatively to reorder the past - restorative principles and values explicitly look to what is to come. Restorative justice (RJ) has an explicit future-orientation; it endeavours to engender active responsibility and to prevent future conflicts. It is concerned not simply with resolving present conflicts and dealing with past harms but also with governing as yet unknown futures. When we think of security through the lens of RJ, we think not just of the present moment but project into the future. Yet, whilst temporality is central to all security projects and informs experiences and prospects of security (Valverde, 2014), little theoretical consideration has been given directly to issues of temporality in RJ.

This paper will explore some conceptual questions regarding temporality in conceptions of RJ and seek to connect these with notions of 'social sustainability'. It will be argued that the construction of a sustainable social order is one that seeks continuously to provide the basis for human flourishing by reducing social inequalities; ensuring legitimate forms of authority and dispute processing; safeguarding deliberative forms or democracy; and providing foundational security. RJ, it will be contended, has a significant place to play in the construction of a just sustainable social order.

Temporality finds expression in at least three dimensions of RJ practices: (i) in relation to the de-escalation, prevention and harm reduction of specific conflicts and crimes; (ii) with regard to the developmental life-course and pathways of offending and victimisation associated with particular individuals; and (iii) in relation to the reduction of general social conflict. In all three regards, RJ seeks to pre-empt and prevent the escalation of offending and minimise or reduce the harm caused. However, this emphasis on 'up-stream' early interventions, at particular moments in time, raises vexed issues concerning causal assumptions, developmental trajectories, knowledge uncertainties, the fallibility of prediction and precautionary logics that may all have net-widening effects and/or prompt more intensive and extensive regulation.

Central to the notion of 'social sustainability' are the concepts of needs and the idea of limitations imposed by the state of technology and social organisation on the ability to meet and reconcile present and future needs. To furnish sustainable societies, we need to better understand and seek to change practices and behaviours that are unsustainable; those that undermine ethical principles, normative values and promote inequalities that foster future conflicts and insecurities. Sustainable security and justice practices can be defined, therefore, as those that meet the needs of the present without compromising the well-being of the future through adverse societal impacts, depletion of other fundamental social values, such as trust and legitimacy, or erosion to principles of freedom, due process or equity of treatment. Like RJ, sustainability expresses temporality; it is an ongoing process, evincing movement, responding to change and requiring open-ended reflection, not a fixed state to be achieved. Hence, the notion of sustainable security and justice is useful in that it foregrounds the temporal and spatial unevenness of security practices and their implications for peoples' liberties and freedoms, as well as experiences of (in)justice both in the present and in the future.

This paper will explore the intersections between temporality in RJ principles and notions of social sustainability to identify limitations and possibilities for conceptual contributions to social justice. By drawing on developments in social theory, the paper will seek to contribute to revitalising the critical potential of RJ values, principles and practice and, in so doing, highlight possible directions for future research.



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**Restorative justice and the decision-making process: Beyond deliberative democracy**

**Raffaella Pallamolla** (University of Barcelona, Barcelona, Spain)

Based on the idea that restorative justice is a bottom-up way of doing justice, this paper aims at bringing together restorative justice and theories of deliberative and communicative democracy, mainly those of Sheyla Benhabib and Iris Young, respectively. The main objective is to verify whether restorative justice can be understood as a form of deliberative democracy or, more than that, as a form of communicative democracy. Besides that, it is also intended to verify if restorative justice is able to modify the standard (or the logic) of the decision-making processes of the criminal justice system and to change, consequently, the quality of such democratic processes.

The field of the research will be the current restorative justice programs in Brazil, specifically those which are being used inside the Courts or outside them (in the community). On doing that, it is believed to be possible to evaluate whether restorative justice can be seen as an alternative way to deal with criminal conflicts in the sense that the decision-making processes which is promoted by it can be seen as a form of deliberative or communicative democracy in action.

**Restorative justice, procedural justice and care**

**Josep Tamarit Sumalla** (University of Lleida, Lleida, Spain)

Criticisms and strengths of restorative justice can be largely discussed from a theoretical point of view. However, a consistent body of empirical research confirms that restorative justice is able to satisfy participants and communities, particularly victims' needs, by improving their wellbeing and reducing the emotional distress produced by crime. Victims' needs are met better through offering them a sense of justice by solving a conflict. Restorative practices are better able to achieve its objectives when the offence is less related with a conflict. Nevertheless, even in cases of family and partner conflicts victims can obtain satisfaction for participating in a penal mediation.

Justice in a restorative practice can be valued particularly from the procedural perspective, as far as victims can feel that they have been heard and treated fairly, being a secondary contribution the reparation obtained (outcome). Not only procedural justice reveals itself as a dimension of restorative justice, but also therapeutic justice, as a consequence of the recovering potential of restorative practices. Thereby restorative justice can actually be a bridge between care needs and the demands for justice.

**Restorative justice and the potential of 'exemplarity'**

**Claudia Mazzucato** (Università Cattolica del Sacro Cuore, Milan, Italy)

RJ brings about the challenge to really 'take democracy seriously' in dealing with responses to crime. Criminal law – with its traditionally punitive methods – ends up measuring an enormous distance from the noblest ideals of democracy. Persistent criminal justice paradigms (retribution, deterrence, incapacitation) and their 'evergreen' praxis still deal somehow with violence: criminal justice resembles too much to what it wants to control. Strict coherence with democratic ideals in criminal justice seems to be something we cannot afford. RJ, instead, thanks to voluntary participation in the voluntary reparation of consequences of crime, brings about a scandalous proposal: a 'democratic' and 'coherent' response to the quest for justice in 'hard times'.



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A whole new structure of criminal law springs from this perspective. RJ is becoming an important occasion for criminal law to learn how to “work” in a different way, and rethink its aims. Not only ‘sanctions’ are depicted as ‘positive’ and ‘active’ engagements, but the core of criminal law itself moves from the ‘reaction’ to crime to the norm of conduct, in which a request of a spontaneous compliant behavior is actively addressed. Facing criminal norms of conduct, citizens remain *active*, and become precious ‘interlocutors’ of the law, asked to cooperate with it, by complying. Participation and compliance play a central role, both in designing norms and in responding to their violations: this drafts an idea in which the law and the justice system have the primary task to protect, not to control or punish. A new theory of criminal law in which norms of conduct are more important than mere sanctions is put forth.

Learning from the encounter with the «vulnerability of the concrete other», RJ-oriented norms talk about the experience of injustices with the «force of example» (A. Ferrara). ‘Examples’ are «atoms of reconciliation where *is* and *ought* merge, and in so doing they liberate an energy that sparks our imagination» (Ferrara). ‘Examples’ persuade us, thanks to an inner and exceptional congruence that does not need to rely on an *a priori*. The theory of criminal law could greatly benefit from the philosophical topic of *exemplarity* and *exemplary validity*, revealed by RJ theory and practice.

**Beyond restorative justice’s paradigm-shift proposal: The challenge of re-envisioning the role (and the rule) of law**

**Federico Reggio** (University of Padova, Padua, Italy)

In the context of a reflection on the relationship(s) between critical criminology and restorative justice, one of the first elements that might catch the scholar’s attention is the criticism that both those perspectives share not only towards the outcomes of modern and contemporary criminal justice but also towards some of its conceptual premises.

The notorious invitation to a “paradigm shift” that affects the way crime, punishment and criminal justice are envisioned seems to reveal an even deeper and provoking question about the possibility (or the necessity) of rethinking law and justice in light of different conceptual premises and underlying values. If the latter observation is correct, restorative justice’s “alternativeness” appears to be quite a challenging issue, and therefore leads to other challenging questions, including the one that regards the possibility of reframing the conception(s) of law in light of the different (theoretical, ethical, sociological) premises that the restorative approach claims to introduce.

If on one hand much of restorative justice’s criticism towards traditional criminal justice reveals the importance and urgency of moving beyond some of the typical standpoints of the modern and contemporary worldview on law and on the justice process, the possibility of rooting restorative justice’s proposals in solid philosophical and ethical grounds is challenged by the contemporary (“post-modern”) western culture, characterised by a highly secularised and sceptical tendency and by a widespread lack of systemic thinking.

In a context of a dialogue among scholars and practitioners who focus on confronting restorative justice with some of critical theory and critical criminology’s argumentative paths, I would like to draw a few considerations from a recent work on the possibility of consolidating the restorative paradigm in light of the idea of a “dialogical justice”, with the aim of offering both some critical arguments and hopefully innovative philosophical proposals to the current debate.



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**Ambivalent sovereigns and restorative justice**

**Ronnie Lippens** (University of Keele, Keele, UK)

Authors such as Zygmunt Bauman have been able to argue how late modernity is the age when many have come to realize that ambivalence is ineradicable. There is not much that one can do about that. All attempts to eradicate ambivalence only lead to more ambivalence. The only thing that one can do, according to authors such as Bauman, is to accept ambivalence as an ineradicable fact of life, and to learn to live with it.

In this contribution I shall accept much of Bauman's position. However, I shall then proceed to trace the origins of this late modern awareness (i.e. the awareness of the fact that ambivalence is ineradicable) to the emergence, in the immediate post-war years, of a new form of life (a new form of life, for the purposes of this contribution, is a way of seeing, a way of knowing, in short: a way of life that cuts across social divisions). In this new form of life I discern, at the very heart, a deep desire for, or will to personal sovereignty. It is this kernel -at the very heart of a newly emerged post-war form of life- that has subsequently unleashed the late modern sense of ambivalence.

I shall make the connections between this form of life and the sense of ambivalence clear. But in addition I shall also make an effort to argue how this form of life, and this sense of ambivalence, also underpinned, indeed manifested themselves in the emergence and subsequent development of what we now know as the restorative justice movement. But, and this is going to be my point, where once they formed the conditions of possibility for anything like restorative justice to emerge at all, the question arises as to whether or to what extent they have now become its conditions of impossibility.

**Young men in RJ-settings: An offstage performance**

**Ida Helene Assmusen** (University of Copenhagen, Copenhagen, Denmark)

Empirical, qualitative studies in Danish and Norwegian RJ-sessions show, that young men (offenders and victims) are characterised by passive acquiescence, by not expressing opinions, by getting out of their 'turn to talk' as quickly as possible and by silence. The way this type of 'non-acting' has been understood is that youth are subject to adult conceptions and interpretations of the mediation situation, and that the youth have not yet developed empathy and moral reasoning. In other words the young men are seen as taking a kind of 'underdog' position in the RJ-settings.

The interpretation of the "non-attitude" is changing, when applying Goffman's notion of people performing a preferred identity, rather than an inherent or fixed self. That means that the words and actions of the participants in the mediation sessions are largely considered to be embedded in the context. In combination with Foucault and the neo-liberal conception of power as productive - meaning that power does not only repress and limit but shapes and forms the subject - the youngsters' "non-attitude" could be seen as a resignation or refusal of being dictated by the meeting's RJ-script. Such a script expects self-reflection and articulation of personal feelings, which does not correspond to traditional ideals of masculinity as strength, authority and control. From this point of view the young men are not trying to fit in, but actually the opposite: to make a revolt by not entering the "scene" - doing an "offstage" performance. This issue is especially relevant because of the fact that young men are often part of a RJ-setting.

**Juvenile justice in Norway between restorative justice and criminal justice: A critical approach to the implementation of the new RJ laws and regulations**

**Ida Hydle** (NOVA, Oslo, Norway)



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The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment have during the last decade repeatedly sent serious claims to the Norwegian justice authorities. This relates to how Norwegian authorities implement the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in addition to the implementation of UN Convention on the Rights of the Child. In particular, the critique concerned unconditional pre-trial detention and the lack of separation in prisons between very young offenders and the adult prison population.

Relating to these warnings, from 2012 on there have been legislative amendments concerning juveniles in conflict with the law. The new juvenile sentence aimed at reducing the number of imprisoned young offenders between the ages of 15 and 18 and "to give them a better understanding of the consequences of their acts". A new kind of "juvenile prison", *ungdomsenheter*, was planned according to the needs of young people. A number of other legislative amendments relating to offenders between 15 and 18 years have also been adopted, especially those aimed at strengthening the youth's rights following an arrest. At the same time, the penal authorities have in 2013 made restorative justice a key point in all follow-up work in prison. In addition, in 2014, the renewed legislation concerning the Norwegian Mediation Service leads to a new organisation of RJ in all criminal cases with juvenile offenders.

This paper will reflect on these developments based on two different theoretical approaches:

1. Amartya Sen's perspective upon the relationship between the responsible exercise of freedom and learning - as part of deliberative democratisation, and 2. Etienne Wenger's conceptions on participatory learning and community development. Until now, my interviews and other field work data show that these young boys and their professional helpers have considerable difficulties with general Norwegian bureaucratic barriers, at a national as well as a municipal level. This raises general questions for the whole RJ field, concerning ways of co-option which become manifest mainly in increased professionalisation, institutionalisation, and bureaucratisation of mediation services, its increasing net-widening effects, and the lack of genuine deliberative and participatory democracy in the RJ developments.

**Is a critical model of restorative justice possible?: A critical criminology perspective**

**Daniel Achutti** (University of Unilasalle, Unilasalle, Brazil)

The paper addresses the theoretical framework of a postdoctoral research project which aims at investigating restorative justice experiences in three Latin-American (Brazil, Argentina and Peru) and three European (Belgium, Norway and Portugal) countries, to highlight their differences and similarities and to analyze the juridical background which allowed broader or narrower restorative justice experiences. It is also intended to verify the consequences of its development on the judicial culture of each country, focusing specially on the effects resulted of their relation to the traditional criminal justice system. The comparative analysis (Latin America and Europe) will provide a better comprehension on how restorative justice is perceived and applied in countries with higher and lower levels of social inequality and will also allow to check the effects (both short and long term) resulting from the adoption of this mechanism.

The paper will explore the main propositions of critical criminology, especially those of penal abolitionism, to verify whether such approaches are able to offer critical analysis to be considered to avoid that restorative justice programmes becomes another tool for the enhancement of penal control in the Latin-American context. From such theoretical background, the analysis aims to provide a distrusting look at the so-called "alternatives to penal measures" that should supposedly reduce the use of the penal system. The



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central objective of the research project is then to elaborate a diagnosis about the initiatives and experiences on restorative justice in each analyzed country, to verify the potentiality of such mechanism to reduce the use of the traditional criminal justice system in different juridical and cultural contexts.

**Just cherry picking**

**Rene van Swanningen** (Erasmus University, Rotterdam, The Netherlands)

In order to prepare restorative justice for the socio-political challenges of the 21<sup>st</sup> century we don't have to reinvent the wheel. A broader look at some contemporary developments in criminology can already bring us some steps further. One of restorative justice's academic roots is penal abolitionism. Abolitionist arguments about the fact that the kind of outcomes are to a large extent determined by the way we frame a problem seems still valid and valuable. Reframing the drugs problem is one of the 'showpieces' of notably Louk Hulsman's abolitionism. The harm-reduction approach this approach implies, is currently also applied in other domains. Most notably, the question whether penalisation or harm-reduction is the best way to deal with environmental harm is a key-debate in green criminology. The interesting thing about green criminology is that it is embedded in structural questions about powerful actors – most notably multinational corporations – and opaque victims: future generations, bio-systems. Since ignoring unequal power-relations is a weak spot of restorative justice, whilst 'making good' and harm reduction are amongst its main features, it is worthwhile to have a look at how green criminologists seek to tackle these problems.

As regards the 'problematic concept of community' in restorative justice, we could have a look at new conceptualisations of community in global criminology. According to cultural anthropologist Arjun Appadurai, community is currently reproduced through global patterns. Appadurai's idea that communities are constituted by e.g. ethnoscaples, technoscapes, mediascapes and ideoscapes brings more precision in Marc Granovetter's distinction between the traditional strong ties and the late-modern weak ties that shape our ideas of community. Another element from global criminology that is worth digging into is the notion that our ideas of crime and justice are 'colonised' by Western standards. Particularly in current multicultural societies, an open mind for the diversity in views people hold of crime and justice seems pivotal for a contemporary, critically informed theory of restorative justice.

**Restorative justice and democratic citizenship: Towards a new social pedagogy or back to 'social defence'?**

**Leo Van Garsse** (University of Gent, Gent, Belgium)

Looking at the state of art of restorative justice today, the general impression, even in the circles of those who'd rather advocate for law and order, would probably be rather positive. Christies' ideas, while they might have sounded provocative in the 1970s, in the past decades managed to translate themselves in a multitude of methods and techniques, scientifically proven to be effective (or at least not damaging) in promoting restoration in all types of cases and to be applicable in various criminal justice contexts.

In Belgium, as in many other countries, the restorative character of criminal policy is been exposed as an aspect of its quality, not to be contested as such and applauded for nationally as well as internationally. This could be the promising starting point of the radical paradigm-shift scholars such as Christie and Zehr in their theorising of restorative justice put forward. However, looking at recent developments, the popularity of the notion of RJ paradoxically risks to put an end to its critical potential, reducing its promoters to service-providers, constantly refining their methodological tools in function of the desired – individual- output.



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Currently involved in research on the development of 'forensic social work' in Flanders, I would like to briefly reflect this uneasy success of restorative justice in its resonance with the Belgian criminal justice dynamics. Indeed, to maintain its critical potential, restorative justice is in need of finding a proper language and moving away from being a merely instrumental approach. Focussing upon the implicit social-pedagogical potential of restorative justice, could be an attractive option worth considering. Promoting restorative justice as a learning process in democratic and participatory citizenship is most defensible in a context of globalisation and decline of the political sphere under the pressure of macro-economical rules.

But how new exactly is this paradigm, taking into account the whole idea behind the doctrine of 'Social Defence' Belgium during the Inter-Bellum used to be the worldwide laboratory for? And doesn't our actual plea for a pragmatic, individualised approach of justice in function of 'community' relate to the ancient call to defend the coherence of the nation-state through educating people to citizenship? We would agree defending Restorative Justices' innovative character pointing at post-war changes in understanding notions of "State", "democracy" and even "citizenship". But still, what about the origin of the mandate of the restorative justice practitioner as a "pedagogue"?

In this contribution I would like to briefly draw attention to certain lessons that could be learned from history in situating the pedagogical restorative justice agenda in a defensible balance between private concerns and the collective interest (whether the State's or the 'community's'), between pragmatism en legality.

### **Nodal governance and restorative justice**

**Inge Vanfraechem** (Leuven Institute of Criminology, Leuven, Belgium)

In this paper I would like to further study the potential of 'nodal governance' as formulated by Shearing and Wood through linking it to the writings of Boutellier on 'nodal order', to further understand the dynamics of community, rather than the static conception as it is now found in RJ literature. I start from Vanfraechem (2007), an article which brought together the RJ literature with regard to the role of the community, society and state. I will examine whether a more dynamic view on 'community' has repercussions for the role and place for society and state in RJ literature.

Boutellier in his writings links 'nodal order' to the concept of a 'network society' in which there is a need for security. I will build upon the findings of the ALTERNATIVE project on perceptions of justice/security and the possibilities of RJ approaches in order to find out how RJ can offer a different way of providing justice in a neo-liberal society which is trying to exclude all security risks and mostly limiting the idea of justice to increasing imprisonment.

### **Deconstructing empowerment in RJ**

**Daniela Bolivar** (Leuven Institute of Criminology, Leuven, Belgium)

Empowerment is one of the most central notions within the restorative justice (RJ) philosophy. It has been considered a value, a goal and a central safeguard of RJ processes. Empowerment has also been considered to be one of the main indicators of success of RJ interventions. The notion's relevance lies on the fact that it offers an answer to two critical issues in the RJ's theory: a) the criticism towards a criminal justice system that disempowers individuals taking away the conflict from them and b) the fact that feelings of powerlessness experienced as a consequence of the criminal act must be addressed in order to achieve restoration.

RJ's dream of empowerment, however, encounters difficulties to come true. First, and despite its relevance, empowerment is one of the less defined concepts in the field. In





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other words, there is not clarity about what precisely "empowerment" means for all stakeholders and how this should be promoted. Second, RJ has been inevitably developed under the umbrella of the criminal justice system. As a consequence, RJ may be offering not only a paradoxical experience to those involved, but it may also be determining and shaping people's expectations and experiences. Third, RJ advocates have been unable to develop further neither at theoretical nor at practical level the social dimension involved in the RJ's philosophy, and therefore to construct a framework seriously engaged with the transformative aspect that the notion of empowerment is supposed to embrace.

How can empowerment be understood in RJ? What are the risks, paradoxes and possibilities that the institutional setting of RJ may imply for the empowerment of victims, offenders and communities? How can we conceptualise, develop and study the social dimension involved in the concept of empowerment? These are some of the questions this paper aims to address. The author will do so by analysing the concept of empowerment through the lens of the community psychology discipline, deconstructing the notion of empowerment at individual, organisational and community level.

**"It will not shorten the age of exploitation..." (from Bertolt Brecht, 'A Bed for the Night') RJ's failure to address inequality, power and dominance: A critique of the critique**

**Christa Pelikan and Katrin Kremmel** (IRKS, Vienna, Austria)

In this contribution we want to contradict the underlying premises of this workshop on critical restorative justice. We will thus be provocative and challenge the critique of RJ as neglecting the deeper sources and roots of conflict and criminalization embedded in structures of broader society and the critique of mediation as focusing generally "on technicalities, quick fix, short-sighted solutions, because they are blind to issues of power and privilege..." Moreover, RJ in general is charged with having "failed to address societal concerns about social justice and has remained thus a limited discourse focusing on and individualising crime and proposing justice exclusively as an alternative to punishment, without engaging systemically with the complex political meaning of justice. RJ does not offer a strategy to eliminate the causes of crime, like deprivation and inequality, and thus individualises criminal activity both in terms of allocating responsibility and recommending remedies." This is indeed about the 'age'-old question of radical alternatives becoming swallowed and incorporated by the dominant system, the existing relations of dominance and the existing hierarchical structures.

We will pose the question: Is it 'right' and does it 'make sense' to burden RJ with the broad task of instigating, or at least promoting social change – make a better world altogether? We will contend that doing 'individualized' conflict resolution, has its merits and is not to be blamed or deprecated as missing the very mission of restorative justice. We will draw on the praxis experiences in Austria, Hungary, and in Northern Ireland that illustrate the complex relationship with the 'given' societal framework, i.e. within existing political power relations, but might also point to a way out of the dilemma?

**Restorative Justice is not a panacea against all social evils**

**Lode Walgrave** (Leuven Institute of Criminology, Leuven, Belgium)

Critical criminology has made clear that the crime problem (the definitions of crime, the actual criminal behaviour, the functioning of the criminal justice system and the official criminal policy in general) is deeply rooted in structural dysfunctions and injustices in society. Consequently, all tentative to find (partial) solutions to this problem must be based on actions tackling the deeper social inequalities.



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This position leads many scholars to evaluate all social institutions and social movements through their potentials to diminish social inequalities. Accordingly, restorative justice is criticized not to include a strategy to eliminate deprivation, inequality and discrimination, which are – rightly – considered as fundamental causes of crime. At its best RJ would strengthen the status-quo. In the worst case, RJ would extend netwidening, induce a discriminating bifurcation in the pathways through the criminal justice responses, favour neoliberal individualization of responsibilities,...

I will argue that this criticism is based on a misconception of restorative justice and on the complex of social institutions. I explain my social, scientific and strategic reasons to consider RJ as a movement not to change the way we live in society, but to change the way we respond to crime. In the differentiated complex of social institutions, a restorative criminal justice system is the one that plays on the defence. Just like you cannot reproach a goal-keeper of a soccer team not to make enough goals, you cannot reproach RJ not to improve social structures.

However, this “fundamentalist” position does not mean that the RJ movement can remain blind to the structural social problems. As I have explained extensively in earlier publications, the social ethics underlying RJ locate it fully, and with a particular contribution, in the wider social movement for a more participatory and more just society.

**‘Yes, I steal firewood, but I don’t want to be frozen’: The limits and potential of RJ to address social inequalities**

**Borbala Fellegi and Gabor Hera** (Foresee Research Group, Budapest, Hungary)

*[...] ‘any person involved in the killing of animals should take the necessary measures to avoid pain and minimise the distress and suffering of animals during the slaughtering or killing process.’*  
(Quote from the Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing)

As response to the working paper written by Brunilda Pali and Ivo Aertsen, our paper intends to focus on the issue: ‘Responsibilising families and communities: structural critique’ by thinking about ‘the concept of crime as a social problem, closely related to other social conditions, for which not only one individual but the whole society is responsible, and find ways of that conceptualisation can be transposed and influence the RJ field.’

Our main question is whether RJ can challenge existing class and power structures. Data shows that being influenced by social deprivation and discrimination can lead to criminal offences. Restorative justice, in the meantime respond primarily to the crime itself, or more broadly, to the harm that has been caused. Our question is that – beyond responding to the actual wrongdoing – can RJ - in any ways - influence the very social processes that produce inequalities and that can be regarded as main determinant cause of the criminal activity itself?

Firstly, using the referred working paper as a starting point, the paper will examine some of the main structural critical approaches towards RJ. Secondly, stepping to the macro level, we will analyse the main historical and sociological processes that could reproduce over and over, hence have led to the current state of social inequalities in the Hungarian society, with special emphasis on the situation of the Roma population. This chapter will also analyse the emerging discourses that link poverty, ethnicity and criminality. Thirdly,



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moving on the micro-level, we will give a deeper insight into the situation in one particular (and a quite 'average') village in Hungary.

Based on our empirical research conducted at this settlement, we intend to give some answers to the following questions: what is considered as conflict by the villagers and what are the types and volume of criminal activities in this 'local society'? To what extent are the local Roma and other, highly marginalised population are linked to criminal activities as victims and/or offenders? Who is considered locally as socially disadvantaged, at all, and what is their position within the local power structures?

Based on these answers, finally, we will discuss the possible ways in which RJ could be applied in these criminal offences. Through these – real or hypothetical – practices we intend to answer questions, such as: what is the potential and the limitations of the RJ approach in this context? Can RJ (re)influence and possibly change any characteristics of the dominant social structure, and if so, in what ways and by what procedures? What can be the added value of RJ approaches in this context on the micro (interpersonal), mezzo (community, inter-group) and macro (society) levels? Besides its limitations, what are the potential of the RJ approach in this context and what are the policy implications of these concerning both the future development of RJ as well as of other state policies?

**Another Knowledge is Possible' (and Necessary): RJ and Decolonising Currents in Criminal Justice Reform**

**Harry Blagg** (University of Western Australia, Crawley, Australia)

Despite some claims to the contrary Restorative Justice (RJ) has not delivered on its promise to transform the way justice is done in most instances. Instead, it has been safely co-opted onto the margins of a justice system that continues to blithely incarcerate offenders while doing little to improve the lot of victims. While defenders can point to some successes the overall picture is not encouraging. In a 2008 book I described RJ as 'a good idea whose time has gone'.

This paper is based on the supposition that RJ is largely a phenomenon of the Global North and works within what I call the 'white diasporan imaginary' (hence its popularity in 'Settler' colonial societies). It has Orientalised Indigenous worldviews and appropriated the Indigenous sacred as a means of salving its own sense of disorientation and loss of meaning. To be relevant, I argue, RJ has to shed its fixation with individualised victims and offenders and develop what I call a 'restorative vision' that aligns itself with decolonising global movements. In the context of what Paul Gilroy calls 'Europe's Postcolonial moment', where colonial conflicts have been repatriated to Europe, I suggest that some lessons should be learned from global 'decoloniality'. RJ could adopt practices around 'inter-culturality' and 'cultural hybridity' and work within the complex liminal and fluid spaces in-between cultures: without claiming leadership over them. RJ should drop its evangelical pretensions of specialness and, implied, superiority and encourage a diversity of (non-colonising) relationships with the poor, oppressed and marginalised.

**Promising Common Justice**

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Within wider restorative debates, community practices promise to regulate wrongdoing outside the state's criminal justice arenas, empowering individuals to resolve conflicts. When framed by a legacy of republicanism, its techniques (e.g. community conferencing, mediation) offer a way to revitalize communities and strengthen democracy. Despite their allure, however, communities thus conceived are mostly founded on the enforcement of what is deemed proper to a local order, and the attempt to — in Roberto Esposito's terms — immunize community members from threats to such order.



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Adopting a 'dissociative' critique of the community justice measures implicated in such immunization, this paper challenges a boundary-setting political logic by which communities are required to fortify and protect the included from those deemed outside their imagined enclosures. By contrast, it considers a collective logic that recognizes diverse experiences of what is common as pivotal for shaping individual subjects, and their envisaged responsibilities to others. Consequently, instead of claiming one version of community justice as universally necessary, this paper proposes that plural promises of justice be materialized through reflective political mechanisms requiring coterminous enunciation, critical reflection and dissociation of our being in common with others. But what exactly might this mean for justice techniques deployed in the name of such unsettled common promises, and what sorts of practices does it imply today? Responding to these questions, the paper will conclude with speculative reflections on possibilities for current practitioners in restorative justice fields.

**Intercultural RJ between justice and security**

**Brunilda Pali** (Leuven Institute of Criminology, Leuven, Belgium)

The focus of this paper is a critical understanding of the potential and limit of restorative justice discourse to address conflicts taking place in intercultural contexts in Europe, by aspiring both at an enhancement of justice and security. Theoretically and methodologically, the paper relies on the work of Michel Foucault, and mainly his concept of discourse.

Firstly, the paper examines the relation of discourses of security and justice in intercultural Europe, by investigating their discursive contours and intersections, and the ways in which they are cast in cultural terms, around crime and conflict. I focus on the tension between on the one hand operations of 'othering' (especially as reflected in the objectification, criminalisation, and securitisation of migration), both in the social sciences and social control institutions as part of the security discourse and on the other hand emancipation advocated by the politics of difference as part of the social justice discourse.

Secondly, the paper examines the intercultural discourse (or its absence) in restorative justice. While it can easily be argued that both the security discourse and the social justice discourse have produced an 'excess of culture', restorative justice discourse has ignored (almost) completely the question of culture or the politics of difference by producing a very dominant white, Christian, and middle class theory and practice. Furthermore, its relation, correlations, intersections, or divergences from both the security and the social justice discourse will also be highlighted, and reflected upon.