

# DEMOCRATISING RESTORATIVE JUSTICE

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Ivo Aertsen

KU Leuven Institute of Criminology

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# Intro: Alternatives to imprisonment

- Community sanctions and measures: European Rules and Tokyo Rules (+ European Probation Rules)
  - Balanced approach: offender and victim
  - Community involvement
- To which extent are these real alternatives to the prison sanction? Penal practices in Western societies:
  - Bifurcation
  - Instrumentalisation

# About restorative justice (RJ)

F. Dünkel, J. Grzywa-Holten & P. Horsfield (Eds.) (2015). *Restorative Justice and Mediation in Penal Matters. A stock-taking of legal issues, implementation strategies and outcomes in 36 European countries (Vol. 1+2)*. Mönchengladbach: Forum Verlag Godesberg

- VOM as most dominant model (provided in 35 countries), Conferencing in 13 countries
- Legislation on RJ in almost all EU member states, but limited role in overall context of criminal justice systems
- Lessons:
  - Countries (5) with VOM as a general service (irrespective of type offence, seriousness, stage of CJ procedure): all started from victim oriented perspective
  - Countries (7) having RJ available in nationwide network with decent caseloads: clear bottom-up development followed by strong legislative framework

# Overall RJ implementation

- Politically endorsed and legally institutionalised, but marginal impact
- Research and documentation well developed
- Role of European Forum for RJ  
(<http://www.euforumrj.org/>)



# Challenges

- Criminal justice agencies as gatekeepers: can make or break the development of RJ
  - (For remedies, see European Commission for the efficiency of Justice - CEPEJ(2007)13 Guidelines)
- Critical note: diversionary character, selective, no right of access, replication of criminal law categories and concepts
- Individualising approach: who are the stakeholders in crime issues?
- Is mediation to be considered as a sanction, a measure, a favor, a service, a right, ...?

# What about 'community involvement'?

## ❖ The model and practice of *Family Group Conferences*

- The 'community of care'
- Lessons from an English research project on Youth Offender Panels (Fonseca Rosenblatt, 2015)
  - Although community panel members play a central role, they do not 'own' the process, they do not determine the direction and outcome
  - Community dynamics are not involved; panel members do not explore or develop any of the dimensions of community (geographical, relational, identity)
  - All share a 'YOT panel culture' – professionalization of panel members
  - Hence a passive conception of community involvement

## ❖ The model of *Peacemaking Circles*

- Involvement of the wider community (and judicial actors)
- Towards a European model of Peacemaking Circles?
  - 2011-2013 EU funded project
  - How to reach and to involve 'the community'?
  - Role of the facilitators
  - Weitekamp, E. (Ed.) (2016):  
<https://publikationen.uni-tuebingen.de/xmlui/handle/10900/68716>

# Our experts

- Probation officers, victim support workers, mediators:
  - Strong expertise in understanding the life world of their clients
  - But do they understand the life world of society?
- No methodological tools available to involve the (wider) community actively:
  - How to address and redress social harm (besides personal and relational harm)?
  - How to empower the community (besides victim, offender and their communities of care)?



# ‘Community involvement’: fields of tension

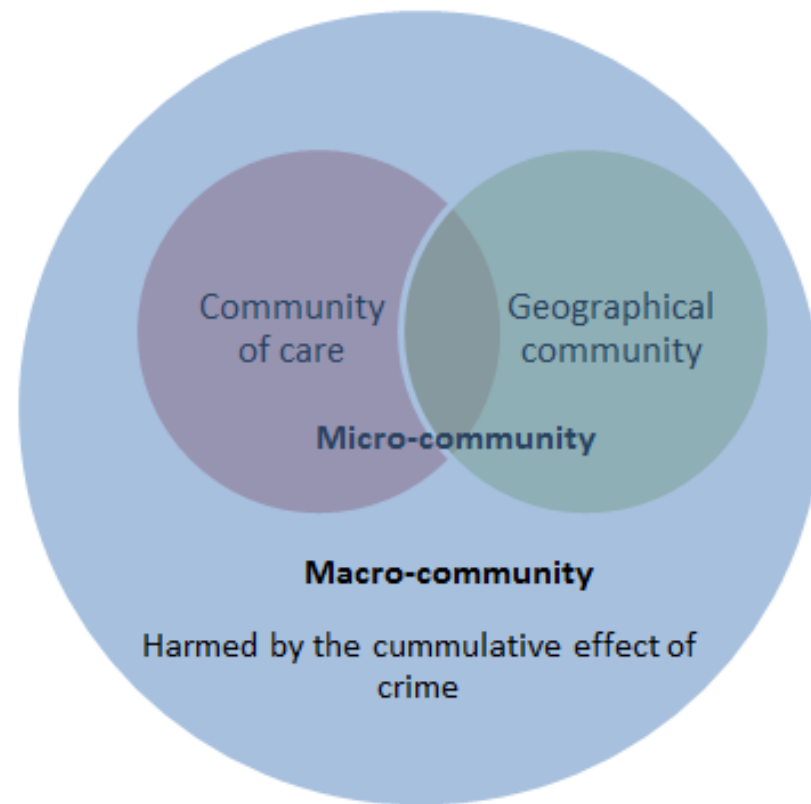
- Role of the community: passive or active (interventions in the community or by the community)?
- Involving lay people or ongoing professionalisation?
- Whose community? Representative or selective?
- The punitive turn: involving the community to do what (community penalties)?
- Micro- or macro-communities? Interpersonal or structural level? Addressing social injustices?
- Community norms: to be imposed, clarified, challenged? Who is educating whom?

# The concept of 'community'

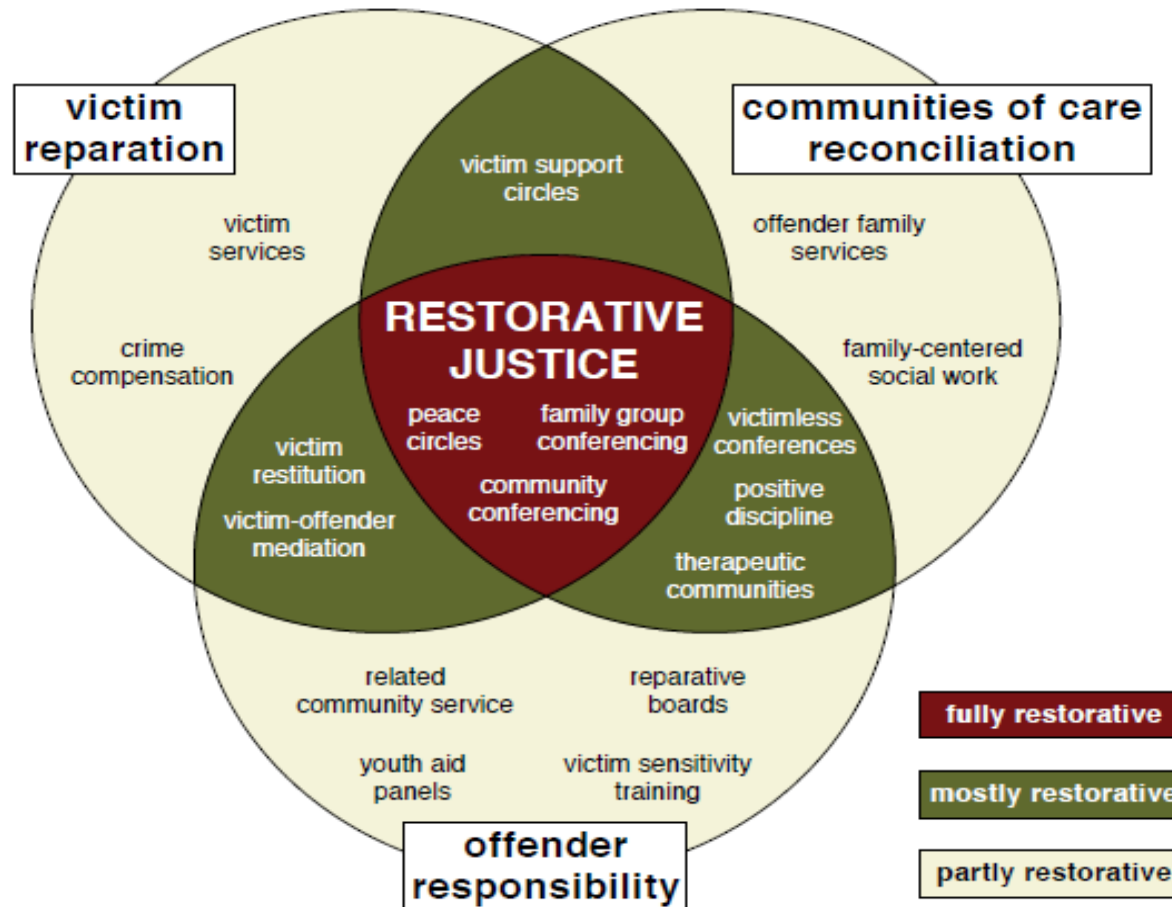
1. 'Community of care' (direct stakeholders)
2. 'Local community' (indirect stakeholders)
3. 'Wider community' (the public)
4. A multiplicity of groups and networks (not geographically bound) (same employer, member of Facebook group, ...)
5. A 'perception of connectedness', an attitude of solidarity: 'communitarianism'

# Dimensions of community

- Geographical
- Interdependency
- Identity



# Degrees of 'restorativeness' (McCold)



# How does the offender experience 'the community'?

- Research on the experience of community service: offenders feel responsible to some degree, but do not feel they have harmed the community/society
- Are offenders oriented to the community as we hope they should?
- When do we bring offenders into contact with the community? After the judicial decision (which is not theirs)
- Can we establish community contact before and involve the offender in decision-making?
- Facilitating this process and broadening the perspective by mediating between offender-victim-community

# Community involvement in RJ practices

- Direct support:
  - 'Communities of care'
  - Wider involvement:
    - Direct citizen participation (volunteers, board members, ...)
    - Cooperation with civil society organisations (referrals, training, awareness building, support): bonding and bridging
- Indirect support:
  - Public acceptance
  - Developing strategic communication towards the public – building cooperation with the media
  - Learning to work with policy makers and politicians

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## Restorative justice

- Handling particular criminal 'cases': 'what happens to victim and offender?'
- Strategy at individual level: participation, procedural justice
- 'Works' when key actors experience satisfaction (process and outcome)
- Restoring communities

## Community justice

- Collective experience: 'what happens to the community?'
- Broader strategies, including crime prevention: to improve community level where this has been damaged by crime
- 'Works' when quality of life in a given place improves
- Transforming communities

(A. Crawford)

# Doing justice: the victim's perspective

- The experience of wrongfulness
- Justice needs and interests (K. Daly a.o.)
  - Participation
  - Voice
  - Validation
  - Vindication
  - Offender accountability
- Meeting victim's needs:
  - Fair treatment: interactional justice
  - Information: informational justice
  - Participation: procedural justice
- Hence RJ interwoven with criminal justice?



# How to include justice in RJ processes?

- What happens when mediation is done in more serious crimes, and in all phases of the criminal justice process?
- The Belgian experience:
  - Mediation contents and dynamics
  - Interaction with the criminal justice system

# Towards a new type of dynamics

- Informal-formal dialectics: can a system be created for continuous bottom-up value clarification, “where the justice of the people bubbles up to reshape the justice of the law and where the justice of the law percolates down to the world of citizens ...”? (Braithwaite and Parker)
- ‘Deliberative justice’: “ ... is about people deliberating over the consequences of crimes, and how to deal with them and prevent their recurrence ... Thus restorative justice restores the deliberative control of justice by citizens.”

# Doing justice democratically

## 1. Dimensions at the process level:

- ✓ Starting from the life world (citizens and their context)
- ✓ Participation: in a deliberative way
- ✓ Community involvement: active and representative
- ✓ Orientation on restoration and peacemaking

## 2. Conditions at the organisational level:

- ✓ Neutral place and autonomy
- ✓ Continuous interplay with CJS: informal – formal justice interaction
- ✓ Social inequalities and the need for social justice: bridging to structural solutions

### 3. Perspectives at broad societal level:

- ✓ Restorative justice as an opportunity
- ✓ Contributing to a more democratic (inclusive, responsive, accountable) system of justice
- ✓ Criminal justice in its original form? Restoring social peace under the rule of law