



# Conferencing *and* Restorative Justice

International Practices  
and Perspectives

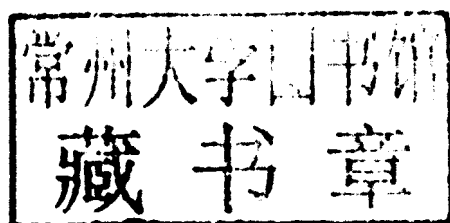
Edited by  
Estelle Zinsstag and Inge Vanfraechem

OXFORD

# CONFERENCING AND RESTORATIVE JUSTICE

INTERNATIONAL PRACTICES  
AND PERSPECTIVES

EDITED BY  
ESTELLE ZINSSTAG  
INGE VANFRAECHEM



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Inge would like to dedicate this book to Ghislaine Michiels-Debrouwer who passed away during the last weeks of writing this book, and who would have been proud of her grandchild.

Estelle would like to dedicate this book to her mother Evelyne Remund Zinsstag and her daughter Charlotte Pavlakos-Zinsstag.

## PREFACE

As an intellectual tradition, restorative justice scholarship has been rather dominated by anglophone scholarship. This collection is a nice balance in that regard, even as an English language publication, including distinguished researchers from the anglophone tradition as well as thinkers from spaces that attract less attention.

A good example of the counterbalance is Chapter 10 by Daniela Bolivar et al. on the 'vertical' connection of restorative justice to democracy in South America, for example through conferences that are a platform for citizen critiques of institutional practices. Bolivar et al. speak of a need for a Latin American restorative justice that responds to the context of the tenuous hold of Latin American democracy, to the extremes of inequality, poverty, violence and civil war that are much greater than in the United States and much, much greater than in the rest of the West. Naturally, this is a context where one would think in a very different way about how restorative justice might acquire a useful foothold by giving voice to institutional critiques of inequality. As in many of the contextually attuned chapters of this volume, the authors do this well.

The author of this Preface is one of those anglophone scholars whose writing on restorative justice is cited much more than is deserved. A Nordic scholar whose work is deservedly cited a lot, and not because he has an anglophone orientation, is Nils Christie. Yet how interesting it is that the restorative practice innovations of the 1980s, described by Anna Eriksson in Chapter 13, that were partly inspired by Christie's 'Conflicts as Property', have such a marginal place in the restorative justice literature. Perhaps one explanation is that Nils Christie maintained a critical stance toward the very innovations he inspired, rather than being an uncritical booster of them. Perhaps it was because the Nordic reforms were not marketed with the 'restorative justice' brand in their early decades?

In Finland at least, restorative mediation combined with diversion became part of a package of reforms that very sharply reduced imprisonment rates during the height of Christie's theoretical influence in the Nordic countries. This is not something even New Zealand can claim for adults, though perhaps it can for juveniles as a result of its conferencing reforms. In Australia, one of my deepest disappointments about restorative conferencing is that it has not contributed to a reduction in the shockingly high indigenous imprisonment rates that are cause for such national shame for Australia. Doubtless Anna Eriksson's interpretation of the restorative justice role in the struggle against punitiveness in the Nordic countries is a controversial one in various ways. I do not have the local knowledge to evaluate that. My point is about why debate about the empirical effects of restorative justice in a part of the world where punitive justice has fluctuated more dramatically than elsewhere is not a more central theme in our literature (notwithstanding the interest of some thoughtful anglophones like John Pratt).

A final reason Eriksson's contribution is so interesting overlaps with the appeal of the Bolivar et al. chapter, and with the discussion of empowerment and storytelling in the Northern Ireland restorative justice journey in Tim Chapman's Chapter 5, and with Estelle Zinsstag in Chapter 11. It is the idea that Nordic rationales for restorative

youth justice, according to Eriksson, have their roots in a quest for solutions to inequality and exclusion and a rejection of criminalization, at least for younger teenagers, in favour of a welfare model. Those of us who write about this path from within the anglophone tradition of restorative justice research have that aspect of our work dismissed as unworldly. One way into a better conversation on structural inequality, exclusion, and a vision for restorative justice reforms is through reflection on the ups and downs of the Scandinavian welfare model attempts at social democratic transformation of the justice system. It is so instructively different from the anglophone experience of social democratic parties. These parties seek to outdo conservative parties in law and order auctions informed by unsophisticated opinion poll politics that in the long run enfeebls social democratic electoral success.

Joan Pennell and Elizabeth Beck's chapter (Chapter 9) has the instructively different lens of the fear of the State in the United States restorative justice tradition that is so different from Scandinavian harnessing of volunteers to state restorative projects. It is also a chapter that picks up a refreshingly biographical lens to look at the struggles within and without the State by inspiring 'planters' of American restorative justice, Kay Pranis and Lauren Abramson. Even as programmes are shut down from withdrawal of funding support, the planters, the networking of ideas, remain and the programme shut-down becomes an opportunity for 'replanting' with new seeds germinated from the experience of the collapsed program. So long as the network and the conversation is sustained among the folk who are readers of a volume like this, hope of renewal and transformation endures. As one of those network builders with our editors, Lode Walgrave argues in Chapter 3, there is no 'real story' of restorative justice; there are many stories. We can reflect upon different regional, national, and sub-national stories through varied lenses. Then we can ponder options for restorative justice reforms that supply alternatives to 'punitive apriorism' (a term from Walgrave's earlier work with Gordon Bazemore) within a particular space.

There are few things more tedious than a Preface that seeks to discuss every chapter in a book before the reader gets their own chance to digest them in their own way. Perhaps it is better to attempt to whet appetites with morsels of reflection on the kind of insight on offer throughout the text. In this case, I can assure the reader that across all the chapters there are many equally rich engagements with the big questions of restorative justice awaiting them, which will doubtless be richer when viewed through their own lenses, rather than mine. There are also engagements with countless micro-questions of restorative practice that demand critical engagement and much more high quality empirical research. These micro-questions matter a lot. This volume is a rich new resource in relation to them. It is a particularly rich resource on conferencing as an approach to restorative justice that can come in the many forms discussed in this volume. It is a broadened approach with many potential advantages over more dyadic mediation encounters between a victim and offender facilitated by a mediator. Overall, this book is another fine example of a big European contribution to restorative justice that is interested in learning from parts of the world that are very different from Europe.

John Braithwaite  
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## ACKNOWLEDGEMENTS

This edited collection is the result of the collaboration, commitment, and hard work of a number of people, who we wish to acknowledge and show our appreciation to.

First we would like to express our special thanks to Ivo Aertsen for his unwavering support and availability to discuss the work. We would like to thank the European Forum for Restorative Justice for instigating and supporting the important research project on conferencing and therefore allowing this book project to be born. In particular we would like to name Marlies Teunkens, Brunilda Pali, Carmen Borg, and Karolien Mariën, who have all worked with much commitment on the project, as well as all the members of the steering group (some of them writing in the book). In addition we would like to acknowledge the support of Niall Kearney and the board members of the Forum.

We wish to make a special mention of the participants to the expert seminar on conferencing which took place in Leuven in September 2010, where a number of the ideas included in this book first emerged, were discussed, and debated upon.

We would like to thank all the individual authors for their enthusiasm towards the project, their good humour towards our repeated comments and suggestions on their chapters, and for having accepted our time pressures (fairly) diligently!

We would also like to acknowledge the very kind support of John Braithwaite and Shadd Maruna, who both were very helpful guides and supporters in this quite new endeavour for us.

We would like to thank warmly the team at Oxford University Press, in particular Peter Daniell and Lucy Alexander, whose support and enthusiasm for our project, but also patience, have helped us greatly in bringing this book to completion. We would also like to thank the three anonymous reviewers, who made encouraging and helpful comments and suggestions on our book project.

Last but not least, we would both like to thank our respective families. Estelle wants to thank both her husband Georgios and daughter Charlotte for being in her life and making any of this possible. Inge wants to thank her husband Koen and Mirthe, Stinne, and Maurice for bringing laughter in her life and supporting her in her work.

Estelle Zinsstag and Inge Vanfraechem  
Leuven, April 2012

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# CONTENTS

<i>List of Contributors</i>	xiii
-----------------------------	------

1 CONFERENCING: SETTING THE SCENE	1
<i>Inge Vanfraechem and Estelle Zinsstag</i>	

---

## PART I CONFERENCING: BROADENING THE SCOPE OF RESTORATIVE JUSTICE

2 CONFERENCING: A DEVELOPING PRACTICE OF RESTORATIVE JUSTICE	11
<i>Estelle Zinsstag</i>	
3 THE NEED FOR CLARITY ABOUT RESTORATIVE JUSTICE CONFERENCES	33
<i>Lode Walgrave</i>	
4 COMPARING CONFERENCING AND MEDIATION: SOME EVALUATION RESULTS INTERNATIONALLY	47
<i>Joanna Shapland</i>	
5 FACILITATING RESTORATIVE CONFERENCES	65
<i>Tim Chapman</i>	
6 CONFERENCING AND VICTIMS	83
<i>Heather Strang</i>	

---

## PART II CONFERENCING: INCEPTION, CHALLENGES, AND NEWER DEVELOPMENTS

7 REVOLUTION, DECLINE, AND RENEWAL: RESTORATIVE YOUTH JUSTICE IN NEW ZEALAND	101
<i>Ashley Shearar and Gabrielle Maxwell</i>	
8 CONFERENCES AND GENDERED VIOLENCE: PRACTICES, POLITICS, AND EVIDENCE	117
<i>Kathleen Daly</i>	
9 DECENTRALIZATION AND PRIVATIZATION: THE PROMISE AND CHALLENGES OF RESTORATIVE JUSTICE IN THE UNITED STATES	137
<i>Elizabeth Beck and Joan Pennell</i>	

- 10 CONFERENCING IN SOUTH AMERICA AS AN EXERCISE OF  
DEMOCRACY? AN EXPLORATION OF THE 'VERTICAL' ROLE  
OF RESTORATIVE JUSTICE 153  
*Daniela Bolivar, Leoberto Narciso Brancher, Ivan Navarro Papic, and  
Manyori Vega Gutiérrez*

---

PART III CONFERENCING:  
EUROPEAN PERSPECTIVES

- 11 CONFERENCING IN NORTHERN IRELAND: IMPLEMENTING  
RESTORATIVE JUSTICE AT THE CORE OF THE CRIMINAL  
JUSTICE SYSTEM 173  
*Estelle Zinsstag and Tim Chapman*
- 12 CONFERENCING AT THE CROSSROADS BETWEEN  
REHABILITATION AND RESTORATIVE JUSTICE 189  
*Inge Vanfraechem, Katrien Lauwaert, and Mélanie Decocq*
- 13 RESTORATIVE JUSTICE IN THE WELFARE STATE:  
CONFERENCING IN THE NORDIC COUNTRIES 205  
*Anna Eriksson*
- 14 MOST THINGS LOOK BETTER WHEN ARRANGED IN A CIRCLE:  
FAMILY GROUP CONFERENCING EMPOWERS SOCIETAL  
DEVELOPMENTS IN THE NETHERLANDS 217  
*Rob van Pagée, Jan van Lieshout, and Annemieke Wolthuis*

- 
- 15 CONFERENCING: CONCLUDING COMMENTS 231  
*Ivo Aertsen*

- Index* 243

# 1

## CONFERENCING SETTING THE SCENE

*Inge Vanfraechem and Estelle Zinsstag*

### THE CONTEXT

Restorative justice in general and conferencing in particular have in the last two decades developed extensively. They have during this time established themselves as valuable potential alternatives to a problematic criminal justice system, or as an ideal partner through which coordination with a more punitive type of justice attempts to bring a fairer sense of justice to all stakeholders of a crime. However, restorative justice in Europe is still mostly equated with victim-offender mediation (VOM) (Miers and Willemsens 2004). The European legislation passed in early 2001 has encouraged such views, since it referred principally to 'penal mediation'.<sup>1</sup> Nevertheless, the inexorable developments of conferencing around the world, as are discussed in this book, led to a heightened interest for the subject at a European level. Therefore, some years ago, the European Forum for Restorative Justice applied for an Action Grant to the European Commission to encourage a comprehensive reflection on the topic. The grant was awarded and a project entitled 'Conferencing: a way forward for restorative justice in Europe' was conducted between 2009 and 2011, guided by three main research questions:

- To what extent has conferencing been developed internationally?
- What are the processes used in, and outcomes achieved by, conferencing, and how do they compare to victim-offender mediation (sometimes referred to as VOM)?
- How could conferencing practices be developed further in Europe?

In order to get a good overview of conferencing in Europe, partners were found with an extensive knowledge on the topic, namely the Leuven Institute for Criminology (KU Leuven, Belgium), the National Institute of Criminalistics and Criminology (Ministry of Justice, Belgium), the University of Sheffield (United Kingdom), the Youth Justice Agency of Northern Ireland (United Kingdom), and the Eigen Kracht Centrale (Netherlands).

<sup>1</sup> Article 10, Framework Decision on the Standing of Victims in Criminal Proceedings (2001/220/JHA) of 15 March 2001.



The outcomes of the project were a large report (Zinsstag et al. 2011; see also Zinsstag in Chapter 2), a practical guide on conferencing (Shapland et al. 2011), and this book. Indeed, in the context of an expert seminar on conferencing which took place in September 2010 in Leuven (Belgium), this book was conceived: experts from around the world had been invited to present a paper on the state of affairs of conferencing in their respective countries. For the book, we asked selected authors from the seminar and other invited authors to write chapters taking into account the developments in their own countries combined with a specific focus relevant to their country and research interests.<sup>2</sup> The aim was to provide a broad and original picture of conferencing. That is how we came to have 13 unique chapters, some more thematic and some more geographical, but all portraying a different picture of conferencing.

## CONFERENCING AS A CONCEPT

Before describing the content of this book, it is important to sketch a framework to the concept: what does conferencing mean? First of all, conferencing is a restorative justice practice. Restorative justice has mainly been described through two approaches: the 'purist' approach focuses on the communication process and refers to Tony Marshall's definition: 'Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future' (1996: 37). The 'maximalist' approach considers restorative justice 'as an option for doing justice after the occurrence of an offence that is primarily oriented towards repairing the individual, relational and social harm caused by that offence' (Walgrave 2008: 21).<sup>3</sup> It therefore considers restorative justice as another paradigm compared to the criminal justice system. In the context of the conferencing research project, we have adopted the United Nations definition: 'Restorative justice is a way of responding to criminal behaviour by balancing the needs of the community, the victims, and the offenders' (2006: 6–7). We have decided in this book to focus mainly on conferencing in the framework of criminal justice affairs, while being aware that conferencing has been and still is practised in many other areas such as schools and workplace conflicts.<sup>4</sup>

Family group conferences (FGC) started in New Zealand in 1989, both for youth justice and youth care cases (Hudson et al. 1996). It was the model for various practices throughout the world (Morris and Maxwell 2001) and is therefore often used as a common term (see also Walgrave, in Chapter 3). In this book, we use the more neutral term of 'conferencing' to point to those communication processes that involve victims, offenders, their supporters, and possible others such as professional actors. The European Forum research (Zinsstag et al. 2011; Zinsstag in Chapter 2) shows that, although in theory the restorative justice practices of conferencing and mediation

<sup>2</sup> We would like to acknowledge some colleagues whose contributions to the seminar or project in general also helped shape the final product, in particular Otmar Hagemann, Bas Van Stokkom and David O'Mahony.

<sup>3</sup> For more extensive explanation on the differences, see (Walgrave 2008).

<sup>4</sup> Chapter 14 by van Pagée and colleagues takes a broader approach.