RESTORATIVE JUSTICE

I feel...

I think...

I am listening.

Dr. Nieke Elbers
Content

1. What is restorative justice (RJ)
2. What are different forms of RJ
3. What are positive and negative outcomes
4. What are barriers and facilitators

Learning goal

• To apply (or not) RJ in different cases
1. What is restorative justice
Restorative justice

- Not one definition
- Promote responsibility, reparation, and healing
- Voluntary participation, preparation, dialogue
- Process and/or outcome
- Severe and non-severe crimes
- Alternative pathway to criminal law, but also applicable in other contexts: families, schools, neighbourhoods, sports, workplaces, universities, cities, societies
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**

(Marshall, 1996)
Restorative justice is not
- primarily about forgiveness or reconciliation
- primarily designed to reduce recidivism
- necessarily the opposite of retribution
- necessarily a replacement for the legal system
- a particular program or a blueprint
- a new or North American development

Howard Zehr
Conflicts are valuable social capital

- An opportunity to reestablish and discuss norms and values in the society
- Segmentation and depersonalization leads to the disappearance of conflicts
- Conflicts are 'stolen' by professionals, i.e. lawyers and treatment personnel
- People should retain ownership of their conflicts > abolish intervention by professionals

Nils Christie
Reintegrative shaming

• **Shaming**: shame the act / behaviour / misconduct, but continue to show respect for the person

• **Reintegration**: the importance of reintegrating the offender back into the group after shaming

• Feeling shame toward people we trust and love can be more effective than a lawsuit

John Braithwaite
<table>
<thead>
<tr>
<th>Criminal law</th>
<th>Restorative justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violation of the law</td>
<td>Violation of people and relationships</td>
</tr>
<tr>
<td>State decides</td>
<td>Victim, offender and community decide</td>
</tr>
<tr>
<td>Guilt and punishment</td>
<td>Needs, responsability, restoring harm</td>
</tr>
</tbody>
</table>
Criminal law

What law was broken?
Who violated the law?
What do they deserve?

Restorative justice

What happened?
Who was affected?
What can be done to repair the harm?
During the summer, Maddie and Alison, two 14-year-old girls, brought Maddie’s chinchilla Chester to the park near Maddie’s house. The two girls decided to take Chester down to the creek in the park to see if he could swim.

They filmed a video of themselves dropping Chester in the water and watching as he struggled to keep his head above the surface. They made Chester “swim” several times and when they finally removed him from the water, his breathing was deep and frantic. Chester survived, but in the video, he appears to be near death.

When the girls got home, they posted the video of Chester in the creek on YouTube. The backlash online, especially from animal rights groups, was extreme. Maddie received death threats through her YouTube and Facebook accounts and terrible accusations. Eventually, the YouTube video was brought to the attention of local Animal Control officers who found Maddie and Alison through their proximity to the park filmed in the video.
2. Forms of restorative justice
Victim-offender mediation

- Dominant model
- Participants: Victim, Offender and Facilitator
- Variations: more participants, two facilitators, surrogate victim or offender
- Direct or Indirect mediation
Comparison RJ and mediation in criminal law

<table>
<thead>
<tr>
<th></th>
<th>Restorative justice</th>
<th>Mediation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Focus</strong></td>
<td>Emotional healing, how to move on</td>
<td>Making agreements</td>
</tr>
<tr>
<td><strong>Initiative</strong></td>
<td>Parties themselves</td>
<td>Professionals</td>
</tr>
<tr>
<td><strong>Timing</strong></td>
<td>Any (before, during, after court)</td>
<td>During</td>
</tr>
<tr>
<td><strong>Duration</strong></td>
<td>Decided by parties</td>
<td>Decided by judge (couple of weeks)</td>
</tr>
</tbody>
</table>
Conference

- Origin: New Zealand, Australia
- Participants: Offender, Victim, Support figures, Facilitator, Government officials
- Used in: Juvenile criminal law, Schools, Social work with families
- Risk: low participation youngsters due to participation adults
Circle

- Origin: North America, Canada (hardly used in Europe)
- Participants: Offender, Victim, Support figures, Facilitator, Government officials, Community members
- Cyclical, iterative
- 'Talking piece'
- Most inclusive
Yesterday an 18-year-old man was stabbed at school. The stabbing took place during the lunch break around 1 p.m. The suspect and the victim are part of the same group of friends. At some point, an argument arose within the group, during which one pulled a knife. The victim was brought to the hospital. The police has arrested the suspect. A large part of the school saw the crime, students are scared and confused. The reason of the stabbing is yet unknown.
3. Proces and outcome
Referral, Participation, Agreement, Compliance

- Referral: < 1%
- Participation: 30-50%
- Agreement: 70-90%
- Compliance: 60-100%
Does it work? Effectiveness

- Satisfaction: high 80%-95% (offenders and victims)
- Less anxiety & anger, better coping & recovery (victims)
- Less recidivism (offenders)
- Forms of RJ and types of crime:
  - Direct mediation (vs indirect)
  - Conferencing (vs mediation)
  - Serious crimes (vs minor crimes)
- Effects on society: safety, cohesion, democracy?
Risks & Problems

• Secondary victimization
• Power imbalance
• Genuity
• Methodological flaws
4. Barriers and facilitators
Knowledge
• Awareness
• Information
• Education

Motivation
• Belief in benefits
• Belief in own capability

External factors
• Availability
• Costs/funding
• Legislation
• Support
Legislation and regulation

- (2002) ECOSOC Basic Principles on the use of Restorative Justice Programmes in criminal matters
- (2012) European Union Victim Directive 2012/29/EU: Benefits (Preambule 46); Services (Art. 2.1); Information (Art. 4.1;4.2); Guarantees (Art. 12)
Societal support

- Soft approach?

- Nearly half of Dutch population positive about RJ
  - A criminal trial can only be called truly successful if the victim is satisfied with the outcome (46% agrees)
  - The best punishment is the one that maximizes the chances of restitution and compensation to the victim (55% agrees)

- Public opinion less punitive than professionals
At the end of this lecture, a serious incident happens. I make a really insulting sexist and racist comment towards one of you. The victim freezes. The rest of you all sort of laugh about it, feeling very uncomfortable. You heard that I have a reputation to make such comments. You also know that I will be marking your final exam. One student has the courage to speak up and says: ‘That it is unacceptable.’ I say: ‘It is just a joke! Don’t be such a party pooper.’

In the working group after this, Lenka and Marise notice that you are all upset. The student that was mistreated is very shy and comes from a hierarchical culture. Some advise the student to lodge an official complaint. Lenka and Marise know you have just followed a lecture on restorative justice and they ask you whether a restorative practice would be suitable to solve the issue.
Title: Justice under a tree
Artist: Carolyn Parton, a designer in Cape Town
Logo constitutional court South Africa