

RESPONSE

The development of restorative justice in France: a Quebec's viewpoint

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In 2010, the first recent French initiatives in restorative justice were born. These initiatives, enshrined in the 'Taubira Law' mentioned in Cario and Sayous' article, are particularly interesting to observe today from a Quebecker's perspective, and allow us a response to the article aforementioned. The first official projects of restorative justice in France are victim-offender encounters (VOEs). The very first experience of VOE in France, in 2010, and known as the 'Poissy experience', was the result of French efforts and collaboration between France and Quebec (Rossi, 2012a; 2012b).

It is difficult, as a Quebecker, to be objective on this subject, because it was the teams in Quebec who, at the beginning, formed the first French practitioners to the 'relational approach' and provided 'train-the-trainers' courses. The 'relational approach' was created in Quebec (ROJAQ, 2004; Rossi, 2015) just like the content of the two programmes deployed by *France-Victimes* and the French Institute for Restorative Justice *IFJR* (namely, VOEs and victim-offender restorative mediations). It is also after Minister Taubira's visit to Quebec on 18 March 2014, and her examining the VOE programmes, that she gave the last impetus to the redaction of the French Penal Code reform, a couple of weeks later.

In order to respond to Cario and Sayous' article, allow us to introduce a new question instead: how is it that Quebeckers, now that they share the same practices as France, are still deprived of laws officialising theirs? Should Quebeckers be envious, as far as the recent Taubira Law puts in motion, after only four years of experiences, practices that have sometimes taken 30 years to exist in Quebec?

Canada's 'bijuralism' (the coexistence of civil law and common law) largely explains that restorative justice is still not institutionalised in the country, including Quebec. The duality of Canada's legal system, as the United States' one, has consequences for the legislative pyramid; in criminal law, the repressive standards are federal while the administration of justice (the execution of sentences and community measures, or anything related to the follow-up of the accused and their victims) is provincial. Nonetheless, the situation is even more complex in Quebec because of its particular history. Quebec once belonged to France and then belonged to England before receiving its status as a Canadian province. This

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fact has created workings of a high complexity: Quebec allows the cohabitation of English Common Law and a codified federal Criminal Code; at the provincial level, Quebec retains furthermore a civil law based on French traditions (the Quebec civil code, unique in the whole of Canada, is based on the French civil code of Napoleon). While too complicated to be explained here in just a few pages, this system means that any attempt of codifying the notion of restorative justice has to be thoroughly thought through and, at present, cannot be properly harmonised. A legalised restorative justice would be at risk to reduce its scope to the accused and not to their victims; or only to direct victims and not to collateral victims; or to minors and not to adults; or at least only to criminal offences to the detriment of civil offences (incivilities, misdemeanours, conflicts in school, problems in neighbourhoods, gender conflicts...).

In France, restorative justice programmes, now part of the French Code of Criminal Procedure, have officially become complementary practices to traditional criminal provisions. In Quebec, these programmes, created in the 1980s, developed outside the criminal justice system, and were meant to be kept alongside it at first. Now because it has not been legalised yet, one could think that restorative justice cannot decently exist in Quebec. Nothing could be further from the truth. If no legal instrument really sanctions the existence of restorative justice in Québec, there is nothing to keep it from existing so far either. The Canadian Criminal Code and the related legislation are filled with a large amount of directives and guidelines, which give a significant place to community initiatives such as restorative justice programmes or alternative measures. Each province has the authority to reinvent and adapt their own ways of organising community services, policing or the administration of justice, in order to meet their local realities. Thanks to this great freedom of action, Quebec community agencies have been able to develop, for nearly 40 years, different restorative programmes. Some of them were created to prevent conflicts in local communities and to prevent people from always reporting simple conflicts as crimes to the authorities; while legal practitioners, for their part, have been trying to implement alternative ways such as civil mediation to address costly and dissuasive legal procedures, in business and family law for example (1).

However, restorative justice has also developed in the field of criminal justice since the 1980s, first by taking the form of alternative measures, mostly in the youth criminal justice system (2). It is only recently that restorative justice has become a part of the criminal justice system (3), and has spread to the correctional procedures by offering encountering and mediation programmes for victims and offenders in case of serious crimes (4).

1. Social and civil restorative measures

The development of restorative justice in Quebec has, originally, received little or no impact from aboriginal justice models (Jaccoud, 1999), not even in the field of mediation, despite what Cario and Sayous often suggest in their writings (see e.g. Sayous, 2016). Indeed, its development is rather explained, despite clumsy efforts

in the 1970s and 1980s (Charbonneau, 2002), (1) by the influence of mediation initiatives in the United States, notably the humanist approach, which would be decisive from the 1990s (Umbreit, 1997; Zehr, 1990); (2) by the Quebecker tradition of 'resistance' to coercive penal models in juvenile justice (Hastings, 2009); and (3) by the increasing emphasis on victim consideration inside the criminal justice system (Rossi, 2015). In this respect, it is still curious to realise that aboriginal justice has had a true impact on the French efforts described by the authors of the article in question, even though it plays only a modest role in the development of restorative justice in Quebec (the situation being different from the rest of Canada, particularly in provinces such as Manitoba).

Restorative justice in Quebec was strongly influenced by the field of mediation. However, this field is far from belonging to criminology or criminal law. It is also far from belonging to the field of restorative justice and on this point, we refer the reader to its classics. In Quebec, the field of mediation is also extremely developed in civil law and was enshrined in the Code of Civil Procedure as a formal dispute resolution programme that avoids cumbersome, costly and harmful procedures for the families or the enterprises (Belleau & Talbot-Lachance, 2008). Do these practices need to be separated from restorative justice? Absolutely not, because they have a direct influence on the work of social organisations. Since 1998, it was in order to overcome the recourse to judicialisation or institutionalisation and to avoid turning mediation into a judicial monopoly, that urban, civic and social mediation programmes, distant from civil mediation, have developed throughout Quebec while respecting the restorative philosophy (Jaccoud, 2009). These programmes still exist today in numerous neighbourhoods, schools, professional circles and housing cooperatives. In 2016, we counted up to more than twenty organisations that offered restorative justice programmes in schools, colleges and universities (mediation, speaking circles, etc.). These practices are deployed by the same organisations that are responsible for restorative programmes in criminal and penal matters; they are based on the same approach.

In France, these social mediations also exist (Bonafé-Schmitt & al., 2003). They have even been the subject of numerous exchanges and discussions with practitioners in Quebec. However, the French programmes of social and civic mediation have never been declared as restorative and are deployed by very different institutions than those mentioned in the article by Cario and Sayous. In other words, in France, on one side lies restorative mediation that has been legalised and seems to have become an institutional prerogative; and on the other side lies social mediation. The two seem to be living in two parallel universes, deployed in competitive environments. In Quebec, all of these programmes follow the same approach and are provided by the same organisation, therefore, their separation would not make any sense.

2. Restorative justice in Quebec: the share of alternative measures

In the same way that it proposes social alternatives to the judicialisation (civil as well as criminal) with regard to private conflicts, the province of Quebec is active

in strictly penal matters since the 1980s, especially with regard to youth justice. In juvenile law, the Quebec intervention network has the originality of advocating for the priority of psycho-social evaluation of every judicial decision, namely to try to avoid judicialising common offences committed by 12 to 18 year old's. In this context, Quebec develops and defends the use of a differential approach and the principle of 'measure mapping', consisting in offering a young accused 'the right measure at the right time' (ACJQ/ROJAQ, 2001), while developing alternative mechanisms in extrajudicial sanctions (alternative measures). In clearer terms, here is what happens: a young Quebecker once arrested, is rarely tried and convicted criminally. In more than 74% of the cases, he/she will be the object of an alternative measure that will allow them to deviate from the criminal system. It is considered that it is most often only common delinquency or youthful indiscretion (only minors that have committed a serious act or who have a problematic history will be considered as delinquents and will be referred to the conventional judicial system).

Now, restorative programmes play an important role inside the Youth Criminal Justice Act (in effect since 2003) and have existed in Quebec for a long time. They have been developed since the 1980s and 1990s within the Quebec network (Charbonneau & Béliveau, 1999; Trépanier, 1999, 2003). They have largely inspired federal (Canadian) policies in juvenile law. Quebec has indeed played a key role, since 1980, on the federal scene with the advent of a programme of alternative measures for teenagers. This model is also particular because of its approach towards more consideration of the victims. The history of the criminal mediation's development in Quebec demonstrates that, far from being satisfied with only diverting young offenders from the penal system, the alternative measures are now based on the necessity of putting the victim at the centre of the judicial priorities (Rossi, 2015).

If one could say that Quebec is lagging behind, it used to be in the field of adult justice, because it was impossible, until recently, to develop a programme of alternative measures equivalent to the one that benefits minors. In the rest of the Canadian provinces, alternative measures have sometimes been available for adults for a long time and are used extensively. Quebec's resistance to establishing a restorative justice system for adults used to have multiple explanations: it is more difficult to imagine giving a 'criminal' some sort of 'second chance'; more difficult even to imagine that victims and accused could agree and propose recommendations to a judge themselves; difficult to escape the repressive or managerial logic that common sense inevitably confers on the penal system. However, these reasons are not so dominant. Quebec has also had, for a long time, numerous tools to allow it to customise the judicial process and to put the advent of alternative measures at the bottom of the list of priorities. These tools are, for example, many therapeutic justice programmes (allowing to exchange legal proceedings for therapy or detoxification); measures of direct non-judicialisation (abandoning proceedings for a simple reprimand or warning); measures to protect the victim (it is possible, for example, to put an accused under surveillance for a year while postponing the prosecution and, if good behaviour follows, simply cancelling the prosecution), etc. That being said, Quebec's delay was adjusted on 1 September

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2017: a programme of alternative measures for adults is, as of now, being piloted in a few regions. It will soon be generalised to the entire province of Quebec (Rossi & Desrosiers, 2016).

3. Integrated restorative measures

No text allows one, in Canada or in Quebec, to force the judge's hand by imposing restorative consultations 'during all criminal proceedings and at all stages of the proceedings'. Restorative justice is nonetheless infiltrated everywhere. Neither an alternate nor a complement, restorative justice can still emerge from the Criminal Code or any related law, because it is literally allowed, even recommended, to create 'advisory groups' that could shed light on different issues to help the judge before he or she announces the verdict. These advisory groups that one could imagine, at first glance, as a group of experts in the evaluation of delinquency, for example, are not, in fact, clearly defined in the texts. This gap inside the definitions is not to be seen as an overview or a mistake, but rather as an opportunity to create. In Quebec, it was very easy to give these 'advisory groups' the form of dialogues, face to face, circles between family members or others, between accused and victims, sometimes including co-victims, just before the decision on the verdict. In 2009 in Quebec, victim-offender mediations have been introduced ahead of the sentencing procedures (Rossi, 2014). Still in testing and experimentation today, these restorative programmes, occurring just before sentencing, concern teenagers found guilty (Rossi, 2014). These groups could end up being able to carve themselves a spot inside the adult criminal justice system; basing themselves on the same relational approach and using the exact same principles as the set of measures previously mentioned, they allow the victim and the accused to exchange directly on reparation before acknowledging the imminent sentence.

4. 'Complementary' restorative measures

Canada, and Quebec, have a lot of liberty: while no official law allows for the existence of restorative justice programmes, the provincial institutions' pressure (community groups, victim services and even university programmes) has enabled the creation of high-quality restorative programmes, now internationally recognised, that not only infiltrate penal procedures. That momentum allowed, in the 2000s, for the now very successful programmes in France to develop. The first of these programmes allowed for federal inmates with the longest sentences or gravest offences to meet their victims inside the penitentiary that they were held in. Invented in British Columbia at the end of the 1990s, it became an official programme of the Canadian Correctional Service in 2003. Baptised as the *Restorative justice possibility PJR* (Rossi, 2012a), it will be renamed in France as *restorative mediation*¹ after being the subject of the first training programmes in France in

1 www.justicerestaurative.org/fr/article/la-mediation-restaurative

2015. The second programme was developed in Quebec in 2001: it consists of a volunteer programme inside the same penitentiaries allowing for victims and inmates, not necessarily bound by the same event (but by similar crimes), to participate in dialogues, in circle with each other. These programmes, named *VOEs*, are the exact same ones that were implemented in France in 2010 (Rossi, 2012a; 2012b).

These two programmes had particularities that the restorative measures programme and social mediation programme did not have and that, obviously, pleased the French. Intervening necessarily during the time of confinement, they present no obstacle to the regular penal procedures and allow for the word 'complementary restorative programmes' to be given to the criminal prosecutions. In France, such a discourse is visibly a winning one: it allows to gain the support of the general public. The public powers this approach a lot more than if, on the contrary, France had implanted restorative programmes that would have forced the re-evaluation of the repressive prosecutions in place at the time. However, they remain extensively impressive programmes (because they take place inside the prisons), because of the nature of the crimes they focus on and the extent of the suffering of the victims that the programmes support. Finally, they demand an extensive training as well as an irreproachable professionalism from the mediators and the moderators. This justifies, in France, the creation of the strict training programmes that prevent all attempts of any institutions other than the ones officially declared competent to gain the mediation mandates.

As a concluding statement, one can affirm that, while French and Quebec practices shine by the similarities in their programmes and approaches, they show very different institutional structures. In this respect, Quebec has all the reasons to envy such an initiative as the 'Taubira Law' that entails respect by the extent of its clarity, its grit and its strength. Yet, the strength of this act could very well become, one day, its biggest weakness, as noted by experts from other countries. Reducing restorative justice to simply serve as a complement to criminal procedures has two major consequences: (1) it will eventually depend on the help of government and institutional structures to develop itself, to deliver and to monitor it, resulting in some sort of mutation of the paradigm; (2) it condemns restorative justice to be underutilised in the long run. Restorative justice is, in essence, a social initiative that should never be content with reproducing the repressive postulates. In France, restorative justice is working to develop itself in a controlled manner, adopting the same guidelines that it should be rethinking. Using this framework, some may fear that its development will remain a marginal one. Let us dare hope that the French strategy, relying on the alliance between state organisations and community associations, will tend to favour, in future times, the creation of restorative initiatives in fields much wider than the simple penal field and that it will not be satisfied with trying to establish a new culture inside the French criminal justice system.

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