
Course: Law

Degree: Bachelor

Branch: Core curriculum

Study plan: Aviso n.º 9088/2019, de 23 de maio

Teaching staff:

Professor in charge of the curricular unit

Dr.ª Marta Sá Rebelo

Other Professors of the curricular unit

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Language of instruction:

English

Functioning:

Theoretical-practical classes

Intended learning outcomes:

Restorative justice has developed in the last few decades as a response to the shortcomings of the criminal justice system. It offers a new way of looking at conflict: crime is mostly seen as the violation of interpersonal relationships rather than the breaking of a criminal provision and the consequences of having committed an offense move beyond punishment and rehabilitation to encompass active responsibility, reparation of harm, and restoration of all stakeholders. This new perspective entails a different approach to legal problems, particular procedures to solve them, and specific criteria to identify the stakeholders who are called to intervene. Because it is easily adapted to different contexts, restorative justice is also being used to deal with non-criminal conflicts happening in schools, companies or within families.

In this context the course seeks to offer students direct contact with the restorative way of thinking and acting. Students are expected to:

- learn key notions about restorative justice;
- understand and apply its specific methodology;
- develop skills to deal with conflicts in a restorative fashion.

Considering that the restorative method is intrinsically interdisciplinary and taking advantage of the fact that the course attendance is open to students from other faculties, the course aims at offering the possibility of interdisciplinary teamwork provided that students from different backgrounds enrol.

Syllabus:

1. Introduction
 - 1.1. Principles, values, and objectives of restorative justice
 - 1.2. Different conceptions of restorative justice
 - 1.3. Critical issues in restorative justice
 - 1.4. The relationship between restorative justice and the criminal justice system
 - 1.5. Developments and new trends in restorative justice; its adaptation to different contexts
2. Restorative justice methodology
 - 2.1. Interdisciplinary character
 - 2.2. Context sensitivity
 - 2.3. Methodological tripod: practice, theory, and empirical studies
 - 2.4. Relevance of public policy
3. Stakeholders and their relationship
 - 3.1. The victims' perspective
 - 3.2. The offenders' perspective
 - 3.3. The Community's perspective
 - 3.4. The State's perspective
4. Restorative justice practices
 - 4.1. Common features; the role of the facilitator
 - 4.2. Prototypical models
 - 4.2.1. Victim/Offender Mediation
 - 4.2.2. Family group conference
 - 4.2.3. Circle
 - 4.3. Restorative justice procedural design
 - 4.4. European and International restorative instruments
 - 4.5. Implementation at the national level: an overview of the Belgian and the Portuguese experiences.
5. The overall restorative framework potentials and limitations; concluding remarks.

Evidence of the syllabus coherence with the curricular units intended learning outcomes:

For the course to fulfil its primary objective – provide skills to think and act restoratively – it is important to begin by learning basic notions: the principles, values, and objectives that frame the way in which restorative justice envisions conflict. Learning about restorative justice flexibility and its ability to adapt to different circumstances will hopefully stimulate the students' creativity and desire to explore the potential of restorative justice but will also raise awareness of

the risks involved and point to the need to mitigate them. The section on methodology presents the tripod where the restorative justice particular way of thinking and acting rests. The following sections develop the role that the 'who' – stakeholders – and the 'how' – models – play in the design of the restorative justice programme that students will be invited to sketch.

Recommended prior learning (or curricular units whose prior attendance is recommended):

None

Teaching and assessment methods:

Student attendance and participation are paramount. Readings and other material will be indicated. Lecturing will be avoided as far as possible. The favoured learning methods are dialogue, active listening, empirical data analysis, viewing and discussion of videos, role playing, creative problem solving and the drafting of a restorative programme. Guests may be invited to share their experience.

The assessment consists of:

1. Class participation – 30%
2. Teamwork for the drafting of a restorative justice project – 30%
3. Final written assessment – 40%

Working students and those having a similar status may choose to take the final written assessment (50%) and an oral exam (50%).

Evidence of the teaching methods and the intended learning outcomes:

Thinking and acting restoratively involves acquiring the skills of attentiveness and active listening. Theoretical concepts, narratives, dialogues, sharing of experiences, empirical data analysis, context analysis, and public policy analysis provide a combination of different angles that enable a more accurate identification of the conflict and a greater likelihood of achieving restorative outcomes.

Role playing and the sketch of a restorative justice project contribute to a 'learning by doing process' where students can use their educated imagination, develop creativity, and reflect on their own experience, setting the basis for thinking and acting restoratively outside the classroom.

Bibliography:

Primary

- Van Ness, Daniel W., Strong, Karen Heetderks, Derby, Jonathan and Parker, L. Lynette, *Restoring Justice: An Introduction to Restorative Justice* (6th edn Routledge 2022);
- Zehr, Howard, *The Little Book of Restorative Justice* (Good Books, 2014).

Secondary

- Aertsen, Ivo, 'Belgium', in Dünkel, Frieder, Grzywa-Holten, Joanna and Horsfield, Philip (Eds.) *Restorative Justice and Mediation in Penal Matters. A stock-taking of legal issues, implementation strategies and outcomes in 36 European countries* (Forum Verlag Godesberg, 2015), 45-87;
- Aertsen, Ivo and Dünkel, Frieder, 'Belgium' in Dünkel, Frieder, Horsfield, Philip Research and Păroșanu, Andrea *Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States* (International Juvenile Justice Observatory, 2015), 25-28;
- Amstutz, Lorraine Stutzman, *The Little Book of Victim Offender Conferencing* (Good Books 2009);
- Braithwaite, John, 'Setting Standards for Restorative Justice' (2002) 42 Brit J Criminology 563;
- Braithwaite, John, *Restorative Justice and Responsive Regulation* (Oxford University Press 2002);
- Christie, Nils, 'Conflicts as Property' (1977) 17:1 Brit J Criminology 1;
- Dünkel, Frieder, Horsfield, Philip Research and Păroșanu, Andrea, 'Introduction' in Dünkel, Frieder, Horsfield, Philip Research and Parosanu, Andrea (Eds) *Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States* (International Juvenile Justice Observatory, 2015), 3-18;
- Johnstone, Gerry, *Restorative Justice: Ideas, Values, Debates* (2nd edn, Willan Publishing 2011);
- Johnstone, Gerry and Van Ness, Daniel W., *The Handbook of Restorative Justice*, (Routledge 2007);
- Latimer, J., Dowden, C. & Muise, D. (2001). The effectiveness of restorative justice practices: a meta-analysis. Ottawa: Department of Justice Canada, Research and Statistics Division.
- MacRae, Allan and Zehr, Howard, *The Little Book of Family Group Conferences New Zealand Style* (Good Books 2004);
- Miranda Rodrigues, Anabela, Cruz Santos, Cláudia and Păroșanu, Andrea, 'Portugal' in Dünkel, Frieder, Horsfield, Philip Research and Păroșanu, Andrea (Eds) *Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States* (International Juvenile Justice Observatory, 2015), 137-140;
- Pranis, Kay, *The Little Book of Circle Processes: a New/Old Approach to Peacemaking* (Good Books 2005);
- Shapland, J., Robinson, G. & Sorsby, A. (2011). *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*. London: Routledge
- Sharpe, Susan, 'The Idea of Reparation' in Johnstone, Gerry and Van Ness, Daniel W., *Handbook of Restorative Justice* (Routledge 2011) 24;
- Sherman, L. & Strang, H. (2007). *Restorative justice: the evidence*. London: The Smith Institute
- Umbreit, Mark, Armour Marilyn Peterson, *Restorative Justice Dialogue: An Essential Guide for Research and Practice* (Springer Publishing Company 2011);
- United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, 2nd edition (United Nations 2020);
- Walgrave, Lode, 'Investigating the Potentials of Restorative Justice Practice' (2011) 36 Wash UJL & Pol'y 91.

Other resources

- European Forum for Restorative Justice - www.euforumrj.org
- International Institute for Restorative Practices - www.iirp.edu
- Restorative justice International - www.restorativejusticeinternational.com
- War | Crime | Regulation, John Braithwaite - <http://johnbraithwaite.com/restorative-justice-3/>

Legislation:

European and International

- Recommendation No. R (99) 19, of the Committee of Ministers to member States, concerning mediation in penal matters (*Adopted by the Committee of Ministers on 15 September 1999 at the 679th meeting of the Ministers' Deputies*);
- Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States, concerning restorative justice in criminal matters (*Adopted by the Committee of Ministers on 3 October 2018 at the 1326th meeting of the Ministers' Deputies*);
- Declaration of the Ministers of Justice of the Council of Europe Member States on the Role of Restorative Justice in Criminal Matters (*Adopted in Venice, Italy on 13-14 December 2021*);
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA;
- United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters;

Belgian

- Belgian Code of Criminal Procedure.

Portuguese

- Regime de Mediação Penal, criado pela Lei n.º 21/2007, de 12 de junho;
- Regulamento do Sistema de Mediação Penal, aprovado pela Portaria n.º 68-C/2008, de 22 de janeiro;
- Estatuto da Vítima, aprovado pela Lei n.º 130/2015, de 4 de setembro.

Lesson's plan:

1st Session – Friday, October 20, 14h00 - 17h00

Course presentation. Introductory notions. Principles, values and objectives of restorative justice. Different conceptions of restorative justice. Critiques. Critical assessment of critiques. The relationship between restorative justice and the criminal justice system. Developments and recent trends.

2nd Session – Friday, October 27, 14h00 - 17h00

Methodology: interdisciplinary character; context sensitivity; methodological tripod – theory, practice (including public policy), and empirical studies. Project launching.

3rd Session – Friday, November 3, 14h00 - 17h00

The stakeholders: the victim, the offender, the community, and the state.

4th Session – Wednesday, November 8, 14h00 - 17h00

Restorative justice practices: common features; the role of the facilitator; prototypical models: victim/offender mediation, family group conferences, circles; restorative justice procedural design.

5th Session – Friday, November 10, 14h00 - 17h00

European and International restorative instruments. Implementation at the national level: an overview of the Portuguese and Belgian experiences. The overall restorative framework potentials and limitations; concluding remarks.

6th Session – Wednesday, November 15, 14h00 - 17h00

Project presentation and discussion.

7th Session – Friday, November 17, 14h00 - 16h00

Written assessment.