

RESTORATIVE JUSTICE IN FRANCE: OBSTACLES FOR THE APPLICATION OF A TRULY RESTORATIVE APPROACH TO FRENCH DISPUTE RESOLUTION

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Abstract

Restorative Justice was (re)discovered in the United States in the late 1970s and has been implemented ever since. Founded partially on ancient conciliation proceedings, Restorative Justice today focuses on dialogue between victims, offenders and communities. Although its development has taken place mostly with respect to the criminal law context, it is conceivable to extend its scope to other legal areas, such as civil law matters.

Almost unbeknownst in France until recently, Restorative Justice can be however detected within some of today's French law ADR practices or criminal procedure rules. Recently, both French and EU legislation incorporated mediation-focused policies leading to a growing increase in Restorative Justice awareness, but great efforts still need to be done in this respect.

Introduction

Restorative justice is not a well known concept in France today. Although mediation between victims and offenders is favoured and encouraged, restoration is not yet a leading principle for conflict resolution. Nonetheless, Restorative justice is slowly developing and getting a foothold into the French legal system.

Still at a very embryonic stage, restorative ideals and principles can be unveiled within some of the numerous French alternative dispute resolution practices.

I. Contemporary legal framework for Restorative Justice in France

In France, only penal mediation corresponds to restorative criteria.² However, its thorough analysis shows that implementation of mediation does not really pursue restoration criteria, at least the way they are applied in countries like the United States, Canada, New Zealand or Australia.³

Restorative justice is largely based on social and community-oriented initiatives, which clashes with major French legal principles. More strikingly, French law professionals and policy makers have a hard time integrating restorative approaches mainly because of the lack of legal basis for Restorative justice as an autonomous alternative tool for dispute resolution.⁴

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² Faget, J. (2006). *The French Phantoms Of Restorative Justice : The Institutionalization Of 'Penal Mediation'*, In, I. Aertsen, T. Daems and L. Robert, editors, *Institutionalizing Restorative Justice*. Cullompton, Devon and Portland: Willan Publishing Press, 151-165.

³ Cario, R. (2005). *Justice restaurative - Principes et promesses*. L'Harmattan, 124-131.

⁴ See Willemsens, J., "The needs of the European restorative justice in Europe - The potential role of the EU in the further development of restorative justice in Europe", AGIS 2006 at the fifth conference of the European Forum for Restorative Justice, *Building restorative justice in Europe: cooperation between the public, policy makers, practitioners and researchers*, Verona, 17-19 April 2008.

Mediation thus remains an alternative to litigation which is firmly associated with judicial control and public monitoring.

Mediation, whether applied to civil matters or in a criminal context, is favored both in France and at the European level.

A recent EU Directive⁵ provides at Article 1 that its aim is to:

"Facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings".

Previously, the Ministers' Committee of the Council of Europe also adopted several measures to promote mediation, including Recommendation n° R(99)19 concerning mediation in penal matters.⁶ The Council of Europe also adopted Resolution n° 2 on Restorative Justice, especially focusing on encouraging European Ministers of Justice to support and develop cooperation programs to promote Restorative justice in the member countries.⁷

Legal framework for mediation and the promotion of Restorative justice principles in Europe are evolving and growing and member countries including France have been adapting to supranational legal changes and recommendations in terms of understanding restorative principles and implementing alternative dispute resolution tools such as penal mediation.

French national legislation, to some extent, also embraces Restorative justice ideals, mainly through upgrading and securing victims' rights,⁸ but also by endeavouring to accelerate criminal litigation proceedings in the interest of all parties involved.⁹

Recent works have also been carried out in France regarding the role of mediation in litigation proceedings, especially in view of achieving better quality in justice. The second *Magendie Report*¹⁰ addresses alternative dispute resolution issues and portrays mediation as an incredible alternative process to litigation which should be improved and better implemented.

⁵ On 21 May 2008, Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters was adopted.

⁶ The Council of Europe adopted Recommendation No. (99)19 on 15 September 1999 on penal mediation.

⁷ Resolution n° 2 on The Social Mission of the Criminal Justice System - Restorative Justice was adopted by the Conference of European Ministers of Justice in Helsinki on 7-8 April 2005; paragraph 21 states that Ministers "further invite the Committee of Ministers to support and develop cooperation programmes put in place to promote the widespread application of **restorative justice** in the member countries, on the basis of the Council of Europe's Recommendations in this field" (emphasis added). Recommendation Rec (2006)8 focusing on assistance to crime victims was also adopted the following year by the Committee of Ministers (14 June 2006) at the 967th meeting of the Ministers' Deputies. In particular, Article 13 focuses on Mediation and provides as follows: (i) *Taking into account the potential benefits of mediation for victims, statutory agencies should, when dealing with victims, consider, where appropriate and available, the possibilities offered for mediation between the victim and the offender, in conformity with Committee of Ministers' Recommendation R (99) 19 on mediation in criminal matters;* (ii) *The interests of victims should be fully and carefully considered when deciding upon and during a mediation process. Due consideration should be given not only to the potential benefits but also to the potential risks for the victim;* (iii) *Where mediation is envisaged, states should support the adoption of clear standards to protect the interests of victims. These should include the ability of the parties to give free consent, issues of confidentiality, access to independent advice, the possibility to withdraw from the process at any stage and the competence of mediators* (emphasis added). For further developments on the role of EU in the development and growth of Restorative Justice, see Willemsens, J., "The needs of the European restorative justice in Europe - The potential role of the EU in the further development of restorative justice in Europe", *op.cit.*; as regards Council of Europe guidelines for the implementation of Restorative Justice and cooperation with the EU, see de Biolley, H., Sajonz, C., "Council of Europe work in the field of Restorative Justice" and further focusing on national and international legislation on Restorative Justice, see Miers, D., Willemsens, J., "Building Restorative Justice in Europe", both works presented at the fifth conference of the European Forum for Restorative Justice, Verona, 17-19 April 2008.

⁸ Victims' rights were promoted and increased by French Act n° 2008-644 dated 1 July 2008 by which victims are helped in recovering monetary damages recovery; Decree n° 2007-1605 dated 13 November 2007 also reveals a restorative perspective in so far as it created a judge whose main function is to protect victims' rights. For instance, this judge, whose official "birth" was 2 January 2008, will inform victims as to the future of offenders and more in general as regards the post-sentencing phase of the proceedings.

⁹ See French Act n° 2007-291 dated 6 March 2007 which, among other objectives, aimed at speeding up criminal proceedings.

¹⁰ Jean-Claude Magendie, Paris Court of Appel Chief Judge, submitted to the French Ministry of Justice on 15 October 2008 a wide-ranging report on celerity and quality of justice including works authored by law professionals, practitioners as

Despite proximity with neighbouring countries such as Belgium which go to great lengths to make Restorative justice and mediation as its predominant European application more acceptable and compatible with its legal system, France still finds it hard to promote mediation based on restorative ideals. A comparative research study of Victim-Offender Mediation in England and France identified several reasons which seem to justify such reluctance toward mediation in France,¹¹ among which:

"- Mediation is a form of 'empirical justice', in which solutions emerge in a pragmatic manner case by case. This is the antithesis of the general normative principles at the heart of French legal culture.

- Mediation undermines the sacredness of the text - le code Pénal - in French legal culture and replaced it by the centrality of the parties themselves and their relations.

- Mediation marginalises the role of the law as normative ideal in contrast with what Garapon¹² has called the Catholic tradition of French law.

- Mediation embodies appeals to 'community' norms and values, such diversity fits awkwardly with French legal and political culture.

- Mediation offers less space for symbols of authority, with its emphasis on informal settings".¹³

It appears that there is often an unjustified caution and mistrust in France towards societal and community-based instruments of resolving conflicts and in respect of traditional legal rules being set aside.

Community involvement in Restorative justice implies a major shift as to who ultimately owns the conflict and later attempts to resolve it. Victims and offenders are not the only parties implicated in the conflict; if criminal offences trouble public policy and order and result in law breaking, they also have large consequences on other groups of individuals, such as community members, family or neighbours.

Traditional legal systems like the French one conceive offences as exclusively creating a vertical legal connection between offenders and State interests, represented by the competent prosecuting authority, which endorses the victim's interests and ends up by "stealing" the conflict.¹⁴ Thus victims symbolically delegate their interests to the State.

Quite to the opposite, Restorative justice relies on a horizontal paradigm of justice where conflicts are recaptured by the actual parties. This conceptual shift is the major deadlock that hinders Restorative justice in France.

well as law professors; the Report, called "*Célérite et qualité de la justice - La médiation : une autre voie*" focused on the benefits of mediation.

¹¹ Crawford, A. (1998) "*Victim/Offender Mediation and Reparation in Comparative European Legal Cultures: England and France*", ESRC, University of Leeds.

¹² Antoine Garapon is a French judge.

¹³ *Idem* at 11, p. 6.

¹⁴ Christie, N. (1977). *Conflicts as Property*, Br. J. Crim., 17, 1-15.

II. Obstacles to the Development of Restorative Justice in France

Restorative justice has been rediscovered in the United States in the 1970 and its practices keep on evolving in every State.¹⁵ Restorative justice practices include *victim-offender mediation*, *sentencing circles*, but also *family group conferencing*.¹⁶ Despite their recent developments, Restorative justice processes are rooted in ancient traditions and native community-based approaches.¹⁷ Such origins clearly contribute to Restorative justice being viewed and interpreted as an informal alternative to justice, but also as unrelated to State powers.

Given the federal structure of the United States, the great variety of powers at local, state and federal level and a strong entrustment in community, American society has always been and continues to be a very fertile ground for experimenting and creating new instruments of dispute resolution detached from State influence. Also, the American system is based on consensual policies and decentralized approaches to conflict.¹⁸ The success of Restorative justice today encourages its further development.

Across the Ocean, French legal culture differs greatly in terms of approaching dispute resolution, in particular when applied to criminal episodes. The French system is much more State-centered as regards power balances and dispute management.¹⁹ The State intervenes in almost every step of a legal proceeding and although ADR methods keep developing, such trend rarely includes community participation or effective victim-offender dialogue and interaction, as put forward by Restorative justice principles.

A. Victims' Key Role

Victims, in particular, play a very different role in France than they do in the American legal system. In France, they are much protected and their interests are constantly furthered by legislation. Criminal victims in the United States do not become part of the legal proceedings as they are allowed to do in France.²⁰ American criminal victims' only role is as witness; once and if they are heard in court, victims are left to themselves and cannot access the proceedings anymore. On the contrary, French victims play an active role during the proceedings and they can file for damages before or during the trial.

Through the *Constitution de Partie Civile*, French victims are recognized as such in the criminal proceedings and they are given numerous procedural rights, their voice can be heard and they can accelerate or give some guidance to the pleadings. Furthermore, victim protection in the French criminal legal system has become a guiding principle of criminal proceedings since 2000, when France passed an Act aiming at strengthening victims' rights as well as protecting presumption of innocence for offenders.²¹

As simple witnesses, American victims do not have such rights. As a result, victims' voices and claims have had a greater impact than in France, where the *constitution de partie civile*

¹⁵ Van Ness, D., Nolan, P. (1998). *Legislating for Restorative Justice*, 10 Regent U.L. Rev. 53, 53.

¹⁶ Vanfraechem, I., Walgrave, L. (2006). *Les conférences du groupe familial (Family Group Conferencing)* in Les cahiers de la justice, Dalloz.

¹⁷ Leverton, W. R. (2007-2008). *The Case for Best Practice Standards in Restorative Justice Processes*, 31 Am. J. Trial Advoc. 501-502.

¹⁸ Crozier, M. (1980). *Le mal américain*, Fayard, 295-345.

¹⁹ Bonafé-Schmitt, J.-P. (1986). *La part et le rôle joués par les modes informels de règlement des litiges dans le développement d'un pluralisme judiciaire (Etude comparative France-USA)*, Droit et société.

²⁰ Pugh, G. W. (1994). *Administration de la justice criminelle*, in *Droit des Etats-Unis*, Dalloz, n° 313.

²¹ French Act n° 2000-516 dated 15 June 2000, which was completed and intensified by French Act n° 2008-644 dated 2 July 2008 that created new legal framework for victims aiming at facilitating monetary damages recovery and exhorting offenders to attend court hearings, failing which they will be subject to fines.

seems to be an efficient means of protecting their rights. In America, Restorative justice has found more appropriate ways to meet victims' needs: victim participation, together with strong community involvement, has always been a priority when seeking restorative solutions to conflict.²²

Although their rights still seem to need attention and further recognition,²³ victims in France are given priority over offenders and they are taken into consideration by courts and judges.

Victims' movements are very active in France and they often contribute to launch legal reform initiatives. Given victims' already strong role in the penal context, it appears that French criminal and social policies tend to value and strengthen such approach and do so by exclusively accruing victims' rights within the traditional legal system, at every stage of criminal proceedings.²⁴

Even though focus on victims is also a crucial aspect of Restorative justice internationally, France keeps on inscribing victims' roles within law-derived processes and litigation dynamics, not allowing restorative approaches to penetrate the established legal culture. There does not seem to be the necessity to grant French victims extra-judicial avenues to advance their claims or their various needs.

The "all legal" mindset which reigns in France differs profoundly from the little space that American victims are given when it comes to litigating criminal matters and such opposition partly explains the cautious and doubtful approach to Restorative justice in France.

However, it is undisputed that taking care of victims' needs and furthering their rights is a very restoration-focused approach, no matter what the historic legal context of the country considered may be. Through victims' movements France is moving slowly toward the restorative model.

B. Conflicting French and American ADR Ideologies

Managing conflicts and dealing with offences well off traditional procedural paths is very unusual in France. Indeed, the underlying impediment that prevents Restorative justice from being more abundantly applied in France lies in the antithetic French and American approaches to alternative dispute resolution.

Restorative processes in the United States tend to bring together directly victims and offenders, who will be led to search for suitable solutions to address their conflict through community participation.²⁵ In fact, community members play a capital role in all restorative processes. Victims are often viewed as stakeholders as regards the restorative process. Thus victim-offender dialogue alone is not sufficient for a restorative approach to effectively be applied. Community must intervene and will be often likely to influence the outcome of the process.²⁶

²² Walgrave, L. *La justice restaurative et la perspective des victimes concrètes*, In Jaccoud, M. (Eds.). (2003). *Justice réparatrice et médiation pénale - Convergences ou divergences?*, L'Harmattan, Paris, 161-183.

²³ Cario, R. *Justice restaurative - Principes et promesses*, *op.cit.*, p.124-131.

²⁴ Vandier, C. (2005). *Incidences et revendications de la victime aux différentes étapes du procès pénal*, *Revue Pénitentiaire et de Droit Pénal*, n°3, 608.

²⁵ McCold, P. (1996). *Restorative Justice and the role of community*, in B. Galaway, J. Hudson (Eds.), *Restorative Justice: International Perspectives*, Monsey, NY: Criminal Justice Press, 85-102.

²⁶ McCold, P. *What is the Role of Community in Restorative Justice Theory and Practice?*, In, H. Zehr, B. Toews (Eds.). (2003). *Critical Issues in Restorative Justice*. Monsey, NY and Cullompton, Devon, UK: Criminal Justice Press and Willan Publishing, 155-171.

The restorative model of justice is more likely than the traditional punitive structure to take into account all consequences of a crime and not only deal with offenders by punishing them in the name of some higher power. Through community involvement, specific and more personal aspects of an offence can be dealt with and restorative outcomes are more likely to be complied with and last.²⁷

Alternative dispute resolution processes in France, some of which can be seen as restorative, are rooted in a very different ideology of justice, which has little in common with community intervention. Although the *médiation pénale* model is widespread in the country,²⁸ such process is far from being equivalent to truly restorative Victim-Offender Mediation. Indeed, the *médiation pénale*, when accepted, allows victims and offenders to come together and find an arrangement, but under no circumstances external parties such as community or family members, neighbors or friends may ever be included in such process. Mediation may be proposed to victim and offender by court entities, namely prosecuting authorities and the whole proceeding always remains under judicial supervision and monitoring.²⁹

Moreover, except for the *médiation pénale* model, the majority of French ADR processes applicable to criminal offences are based on negotiation between prosecutor and offender, victims and community being always kept aside. Connections with judicial authorities more or less strongly invade all kinds of alternative processes. Delegating or allowing community members - which formally appear as being external to the conflict - to help resolve a dispute or offer non-legal solutions still seems to constitute a very *unFrench* approach.³⁰

Thus the comparison of French and American alternative processes of dispute resolution shows that the real antagonism between these systems is to be found in the identity of the parties involved in the restorative proceedings and namely in the lack of community participation in France.

As regards American Restorative justice practice, negotiations - both in terms of prosecution and of choice of sanctions - always occur between **Victims** and **Offenders**. Prosecutors' role is limited to inviting parties to participate in the process, the choice of which may be further agreed upon. The prosecuting authority shall not intervene again in the process.

In France, negotiations at all levels always take place between **Prosecutors** and **offenders** (depending on the stage of the proceedings, offender may still be presumed innocent, they may have pleaded guilty or finally they may have already been proven guilty): victims do not take part in subsequent dealings and compromises, let alone in the choice of potential sanctions. At the most, victims are granted the right to be updated on the status of the ADR process selected by offenders and prosecutors.³¹ Paradoxically, except for *médiation pénale*, victims are much more integrated and valued in traditional court proceedings than in alternative negotiation-focused dispute resolution processes.

²⁷ Cario, R. *Justice Restaurative - Principes et promesses, op.cit.*

²⁸ Penal mediation started in France in the 1980s and has become a fairly successful alternative avenue to old fashioned litigation.

²⁹ Lazerges, C. (1992). *Typologie des procédures de médiation pénale*, in *Mélanges offerts à André Colomer*, Cujas.

³⁰ Crawford, A. (2000). *Justice de Proximité - The Growth of "Houses of Justice" and Victim/Offender Mediation in France: A Very UnFrench Legal Response?*, *Social & Legal Studies*, 9(1), 29-53.

³¹ Generally, French law allows prosecutors to offer offenders the option to comply with a number of obligations or to agree to an ADR process; see e.g. Article 41-1 French Code of Criminal Procedure.

C. Community Involvement: an *UnFrench* Approach to Conflict Resolution

No matter which country we live in, no matter by which legal system our acts are defined and sanctioned, crimes undermine our sense of community³². Communities are often stakeholders and should be considered as victims, even if secondary. As such, community members play a variety of roles in a truly restorative process and their involvement is ever more justified by them having been victimized and impacted by the offending act.

Much has been written on why Restorative justice has a hard time being imported into civil law countries such as France. Several reasons can be invoked in this regard. The role community members play in all Restorative justice processes seems to be hardest obstacle to overcome.

Community translates poorly into French and that is a real impediment because poor translations imply erroneous concepts. Defining community is not an easy task even for Restorative justice scholars in English-speaking countries and it seems even harder in France, where its implication in resolving disputes is very much frowned upon. One of the central problems in comparative research is that of translation, be it at a linguistic, institutional or cultural level.

The concept of community may be seen as the French “*proximité*”, but such notion has more implications as justice being closer to citizens than as what community participation really means in a true Restorative justice context. Justice may be *proche* and closer to citizens, victims or offenders, without necessarily implicating community members in resolving disputes.³³ Therefore community cannot be translated into French without depriving it of one or more aspects of its original all-Anglo-Saxon signification. Also, the sense of community contradicts central elements of the French Republican pact, the notion of ‘universal French citizen’ undifferentiated by culture, ethnicity and locality.³⁴

As a consequence, community is a term whose empirical grounding is often denied in the French context, because recognizing the existence of distinct ‘communities’ is interpreted as undermining the efficacy of the republican model to which French political discourse clings.³⁵ The French political system, derived from the Revolution, condemns all forms of communitarianism and forces individuals to renounce their cultural particularities. This ‘society of individuals’ is not particularly favorable to community mobilizations. According to some authors, urban crisis have worsened matters and weakened traditional forms of solidarity, making them even more unlikely.³⁶

Restorative justice was born in countries that were greatly influenced by colonization (such as Australia, New Zealand, Canada and the US). In these countries the post-colonial state was faced with the difficulties of integrating its indigenous people. Thus reevaluating normative community standards and traditions was the only way to accede to the identity claims of their

³² Judge Stuart, B. & Pranis, K. (2001). *Restorative Community Justice: Repairing Harm and Transforming Communities*, Anderson, U.S.

³³ *Justice de Proximité ? : The Growth of « Houses of Justice » and Victim/Offender Mediation in France*, SLSA Conference, Manchester Metropolitan University, 15-17 April 1998; *Justice de Proximité ? : Victim/Offender Mediation and Localized Justice in France*, Centre for Criminal Justice Studies, University of Leeds, 2 December 1997; Anne Wyvekens (2008), ‘Proximity justice’ in France: anything but ‘justice and community’?, In Joanna Shapland, ed., *Justice, Community and Civil Society: A contested terrain*. Devon, UK: Willan Publishing, 30-46.

³⁴ Wieviork, M. (1997). *Commenter la France*, Marseille : Editions de l’Aube.

³⁵ *Ibidem*.

³⁶ Faget, J. *The French Phantoms Of Restorative Justice : The Institutionalization Of ‘Penal Mediation’*, *op.cit.* at 2.

native people.³⁷ The French colonial context was not comparable to those of the United States or Australia.

History and translation misconceptions are not the only barriers to importing Restorative justice into the French system. According to Bonafé-Schmitt,³⁸ France follows a citizen-focused integration model and is a State-centered country. This explains the great development of mediation through legislation. In the early 1980s, several penal mediation programs, comparable to Victim-Offender Mediation schemes already in use in the United States, were created and started functioning. The French Department of Justice started validating and financing mediation projects on a regular basis. The *médiation pénale* became the predominant model and it greatly succeeded.³⁹ Supported by the State, this model has always been linked to the traditional criminal legal system.

The history of mediation in France differs from more restorative approaches to crime and conflict in the United States, where political and State involvement in private disputes tends to be discarded for the benefit of community, which is the basis of social integration. Also, associations and faith-based initiatives have helped Restorative justice grow and develop, both ideologically and financially. Private funds regularly finance Restorative justice programs in the United States. Community mediation is much more developed in the United States as opposed to French court-ordered *médiation pénale*, which still comes across as a very *unFrench* prosecutorial response.

D. Financing Restorative Justice: A Secular Challenge for France

Faith-based initiatives are often valued and prized in the context of Restorative justice expansion in the United States. Since Restorative justice programs are becoming countless, their financing and stability has become a major issue. Privately funded programs aspiring to contribute to justice making, as is the case for some faith-based Restorative justice practices, are very dubious to the eyes of civil lawyers and more importantly French legislators.

Indeed, public funding (at federal or state level) for private initiatives seems to contradict the constitutional separation of church and state and is inconceivable in a French political perspective. The absence of an American equivalent to the French *laïcité* also leads to impede easier import of Restorative justice into France. Financing private justice-related initiatives, which might covertly be faith-driven initiatives, is a risk that no French criminal legal system legislator is ready to take.⁴⁰

Relying upon private entities to which delegate dispute management and conflict resolution is too far-fetched in the secular French political and legal tradition. Thus Restorative justice could only flourish in France provided that public funds are not destined to finance religious parties. In the US, public funds may be available initially to get a Restorative justice program started, but sometimes when they run out, private parties take over and make sure that Restorative justice benefits from the program are maintained.⁴¹ Such configuration is unlikely to occur in France where justice and dispute resolution are still very much a State prerogative.

³⁷ Jaccoud, M. (2003). *La justice pénale et les Autochtones : d'une justice imposée au transfert de pouvoirs*, *Revue canadienne Droit et société*, 17(2), 107-121.

³⁸ Jean-Pierre Bonafé Schmitt is specialized in school and community mediation and alternative dispute resolution; he is a researcher at CNRS-ISH - Lyon 2 Lumière University; he created mediation programs and centers such as *Boutiques de droit* and *Amélys* (Lyon mediation association).

³⁹ Bonafé-Schmitt, J.-P. (1998). *La médiation pénale en France et aux Etats-Unis*, LGDJ, 139-141.

⁴⁰ Concerning faith-based Restorative Justice initiatives in relation to public funding in the United States, cf. K. Pranis, *International Perspectives on Restorative Justice*, National Conference on Restorative Justice, Kerrville, Texas, June 2007 (not published).

⁴¹ *Ibid.*; L. Garret and T. Ruggie, *International Perspectives on Restorative Justice*, National Conference on Restorative Justice, Kerrville, Texas, June 2007 (not published).

In order for Restorative justice to really break through, its implementation must be State-directed, at least initially.

E. Tendency of Criminalization of French Society

A fifth obstacle to implementing Restorative justice in France today is associated with the current French political context, which is less than favorable to softening justice, which Restorative justice however appeals to.

Restorative justice principles are hindered in France by what has been called a normative crisis "*which expresses itself in the growing penalization (or criminalization) of society, whereby the law, and the criminal law in particular, has been called upon to resolve problems of regulation which might otherwise have been dealt with through informal control processes*".⁴²

Conclusion

Several obstacles have been identified within French legal culture and society which go against deeper application of restorative standards to dispute resolution. French ADR however, at varying degrees, are being influenced by Restorative justice and they have great potential in this respect.

French *Médiation pénale* (the most similar process to Victim-Offender Mediation) along with many other ADR processes, if applied in compliance with restorative principles, may concur to increasing awareness and circulation of Restorative justice in France.⁴³

As applications of Restorative justice continue to grow in popularity in numerous countries, France is also adapting its legislation to include dispute resolution approaches which differ from the traditional vertical State-Offender paradigm and that include mediation-driven processes.⁴⁴

Solid legal foundations need to be created in order for Restorative justice to be further understood, developed and applied. Although Council of Europe and EU law create a thorough legal framework for restorative practices to flourish, the *médiation pénale* model still remains in France the leading alternative practice which most reproduces restorative ideals.

While waiting for the consolidation of a legal framework for restorative practices, the best way forward today in France seems to be the application of Restorative justice to penal mediation and to enhance existing restorative approaches within alternative dispute resolution instruments.

⁴² Crawford, A. "*Victim/Offender Mediation and Reparation in Comparative European Legal Cultures: England and France*", *id.* at 11.

⁴³ For a complete study of French ADR processes with a Restorative justice perspective, See Carpentieri, L. (2007), *La justice restaurative : analyse critique d'un modèle américain de règlement alternatif des conflits*, Paris II Panthéon-Assas University, Paris.

⁴⁴ See Anne Wyvekens: "*Concern about proximity is regularly expressed, several things change, but never really in a way that would radically change the French way of dispensing justice, nor the French vertical relationship between institutions and citizens*", In Wyvekens, A. (2008), '*Proximity justice*' in France: anything but 'justice and community'?, *id.*, p. 44.