

FROM COMMUNITY SANCTIONS TO RESTORATIVE JUSTICE THE BELGIAN EXAMPLE

*Tony Peters, in collaboration with
Ivo Aertsen, Katrien Lauwaert and Luc Robert**

I. INTRODUCTION

The following text aims at giving a view on the recent developments in the debate about the penal reactions to crime.

In this development there is a clear shift in the focus of the action of punishment. Whereas the classic repressive retributive reaction takes the crime and its qualification in the center of attention, punishment follows as a logical legally defined reaction and as a moral obligation.

Little diversification was provided (18th/19th century). A fine, a prison punishment or a combination of both, were the available sentences.

The introduction of a rehabilitative complementary approach shifted the interest partly to the offender and has led to a growing number of penal reactions, which allowed it to take the personal characteristics and needs of the offender into account. The rehabilitative model has widened the scope of the action of sentencing and has led to the introduction of a diversified set of measures and sanctions which include community sanctions but also measures of security to be taken against dangerous offenders. Individual and general prevention were the drive behind the new measures and sanctions.

The development of a victimological approach within the context of the criminological sciences has put the victims of crime, the consequences of their victimization and the reparation of the harm provoked by the offence, in the center of the attention.

Victimology and victimological research has imposed on criminologists and other penal scientists to rethink the concept of punishment. The sentencing process has to address the crime, its consequences, the victim as well as the offender and the community in which they function.

This article concentrates the discussion especially around the development of a restorative approach within the context of punishment and the sentencing process.

As a point of departure, a first overview concerns the available community sanctions within the Belgian practice of penal reactions to crime.

The second part is built up around the central point of interest, namely the influence of victimology and the development of a restorative approach and the broadening of the aims and practices of punishment.

In a third part it is made clear that also prison punishment should be the subject matter of a restorative approach. This will be illustrated by presenting the Belgian pilot project on restorative prisons.

The text which follows has been composed making use of three articles written by members of the Research Group on Penology and Victimology, Department of Criminal Law and Criminology of the Catholic University of Leuven, Belgium.

* Research Group on Penology and Victimology,
Department of Criminal Law and Criminology, Faculty of Law,
Catholic University of Leuven,
Belgium

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

Community Sanctions and Measures in Belgium by Ivo Aertsen and Katrien Lauwaert, published in *Community Sanctions and Measures in Europe and North America*, edited by Hans-Jörg Albrecht and Anton Van Kalmthout, *Kriminologische Forschungsberichte* 101, Max-Planck-Institut für Ausländisches and Internationales Strafrecht, Freiburg I Br. 2002, pp. 43-77.

Towards 'Restorative Justice': victimization, victim assistance and trends in criminal justice, by Tony Peters and Ivo Aertsen, published in *Crime and Criminal Justice in Europe*, Council of Europe, chapter 2.

How restorative justice is able to transcend the prison walls: A discussion of the project "restorative detention", by Luc Robert and Tony Peters.

This article is based on documents and reports written by different members of the action-research project on "restorative prisons". The text will soon be published in the proceedings of the Tuebingen Conference on Restorative Justice (September 2002).

This overview focuses on community sanctions and measures (CSM's) which are available in Belgium for adult offenders. 'Community' because the offender stays in the community during the execution of these sanctions and measures. The term 'sanctions and measures' indicates that the overview will detail both mechanisms which are imposed before trial by a public prosecutor or a judge to avoid further prosecution or pre-trial detention, as mechanisms imposed by court decision, and mechanisms used after trial to enforce part of the prison sentence in the community.

II. THE DEVELOPMENT OF COMMUNITY SANCTIONS AND MEASURES IN BELGIUM

The introduction and the development of community sanctions and measures has been influenced by the changing perceptions on what crime is and how society should react to it. Most of the CSM's currently existing in Belgium were designed according to the way of thinking about crime and crime control which was predominant at the time they were introduced (Peters, 1996). Fines are imposed in accordance with the repressive-retributive model. Conditional release, suspension of the sentence, postponement of the execution of the sentence, probation and praetorian probation were adopted in accordance with the rehabilitation model. Penal mediation was introduced in accordance with the victim-oriented model. Some community sanctions and measures, however, have been introduced for mainly very pragmatic reasons, such as the growing overburdening of the courts and the overcrowding in the prisons. This is true for provisional release, transaction and conditional pre-trial release.

A. Community Sanctions and Measures Regulated by the Law

1. The Fine

The fine was introduced in the modern Code of Criminal Law in 1867 (Lauwaert, 1998). At that time, punishment was meant to inflict pain and to deprive the offender from illegally acquired advantages. The fine was the main form of punishment that was executed while the defendant was staying in the community (Peters, 1996).

A fine is a punishment which consists of the payment of a certain amount of money to the State. The amount of the fine depends on the legal categorisation of the offence. The criminal code always indicates a minimum and a maximum amount. Between these boundaries, the judge can freely determine the exact amount. Doing so he can take into account the objective seriousness of the crime, the kind of crime, the legal past of the offender and his financial capacity. Each time the judge imposes a fine, he also has to pronounce an alternate prison sentence. This alternate sentence will be executed if the offender does not pay the fine that was imposed on him. In Belgium there is no system of day-fines.

2. Conditional Release

Mainly under the influence of the social sciences, the person of the offender became the focus of attention from the end of the 19th century. Crime control became a matter of removing from society dangerous and 'incurable' offenders. Harmless or occasional offenders received milder punishment, which had to be adapted to their circumstances. In this context the 'conditional release' was introduced

by the law of May 31, 1888. After different piecemeal changes, the system of conditional release has been completely revised in 1998. The new regulation has improved considerably the position of the victim in the conditional release procedure.

Conditional release is a transitional phase between being in prison and complete freedom, during which the convicted person finds himself in a 'supervised freedom'. Being released under conditions is a privilege, not a right.

Three major conditions need to be fulfilled for a prisoner to be released conditionally. *First*, the prisoner must have served one third of his prison sentence with a minimum of three months. If the sentence was imposed for a repeated offence, conditional release can be granted after he has served two thirds of the prison sentence, with a minimum of six months and a maximum of fourteen years. Prisoners serving a life sentence can be released conditionally after ten years or, when convicted for a repeated offence, after fourteen years. *Second* (and this is new), the prisoner has to present a 'rehabilitation plan' which shows his willingness to reintegrate in the community and establishes the efforts already made in this regard. *Third*, there must not be counter-indications, which show that a release entails a serious risk for the community or which reasonably obstruct the social reintegration of the prisoner. These counter-indications concern the possibility of rehabilitation of the prisoner, his personality, his conduct during imprisonment, the risk he will commit new offences or the attitude of the prisoner towards the victim(s) of the fact(s) for which he has been convicted.

Unlike previously, when the minister of Justice was competent to decide conditional releases, since 1998 the decisions about conditional release are made by a commission. This commission consists of a judge of the court of first instance, an assessor-expert in the execution of sentences and an assessor-expert in social reintegration. No appeal of the decision of the commission is possible. In certain cases the commission will hear the victim (or his rightful claimant when the victim is deceased) when he/she requests this and can show a legitimate interest. The hearing will only concern the conditions that should be imposed in the victim's interest.

3. Provisional Release

Provisional release is another form of releasing prisoners before they have served their full prison sentence. It concerns mainly prisoners with short sentences who can not benefit from the system of conditional release. This mechanism has never been regulated by any statutory provision, but is a praetorian measure, which has been set out in a number of Ministerial Instructions.

4. Suspension of the Sentence, Postponement of the Execution of the Sentence and Probation¹

After World War II the idea that the sentence should be adapted to the person of the offender and should serve his or her reintegration was further implemented. This was done through the introduction, by the law of June 29, 1964, of the system of suspension of a sentence, postponement of the execution of a sentence, and probation (which consists in the attachment of conditions to one of the two previous possibilities). These modalities stimulate the offender to make amends under the threat of pronouncement or execution of the sentence. The suspension of the sentence prevents the stigmatisation which is inherent in 'not having a blank criminal record'. The postponement of the execution prevents de-socialising effects such as loss of a job, separation from one's family, etc. The attachment of conditions of probation allows the imposition on the offender conduct which will help him to not re-offend and/or to reintegrate. In 1994, the scope of application of these three modalities has been considerably enlarged and the possibility of imposing community service or training as probation conditions was inscribed in the law (10.02.1994).

A suspension of the sentence means that the sentence will not be pronounced and the prosecution will be ended provided that the defendant is not sentenced to a criminal punishment or a punishment of at least one month during a probationary period of one to five years following the judgement. The judge can impose a suspension of a sentence of up to five years of correctional imprisonment and when the defendant has previously not been sentenced to a criminal punishment or a correctional prison sentence of more than two months. The suspension of the sentence can not be imposed without the consent of the

¹ Demet, 1998

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

defendant. The suspension of the sentence can be revoked if the defendant is sentenced to a criminal punishment or a punishment of at least one month during the probationary period.

The postponement of the execution means that the sentence is pronounced, but will not be executed provided that the defendant is not sentenced to a criminal punishment, or a correctional punishment of more than two months without suspension of the execution, during a probationary period of one to five years following the judgement. The postponement of the execution is possible for sentences of up to five years and when the defendant has previously not been sentenced to a criminal punishment or a prison sentence of more than twelve months. The defendant needs to consent to it. The postponement of the execution is automatically legally revoked when the defendant is sentenced to a criminal punishment or a correctional punishment of more than two months without suspension of the execution during the probationary period.

Probation means that the judge imposes either a suspension of the sentence or the postponement of the execution of a sentence and attaches conditions the offender has to respect during the probationary period. The conditions necessary to impose probation are the same as for a suspension of the sentence or a postponement of the execution. This means that each time the judge imposes either a suspension of the sentence or a postponement of the execution, he can attach probation. When probation is attached the grounds for revocation stay the same, but in addition there can be revocation when the probationer fails to respect the conditions imposed and when the probation commission considers this serious enough to bring it to the attention of the prosecutor. Probation can only be imposed when the defendant agrees to the proposed conditions. It is left to the discretion of the judge to decide which conditions he will impose. The law just indicates the possibility of imposing training or community service and describes under which conditions this can be done. Community service can, for example, be imposed for a minimum of 20 hours and a maximum of 240 hours and has to be executed within twelve months during the spare time of the probationer. For training a maximum duration is not indicated, but it also has to be followed during spare time and within twelve months.

A suspension of the sentence, with or without conditions of probation, can be imposed by the investigating courts and the trial courts (except for the Assize Court). A postponement of the execution of the sentence, with or without probation, can be imposed by all the trial courts (including the Assize Court).

The probation assistants and the probation committee are the two entities which monitor the respect of the conditions by the probationer.

The prosecutor, the investigating judge, the investigating courts and the trial courts (except for the Assize Court) may have a probation assistant prepare a social enquiry report. This can be done at the defendant's request or with his consent. When the judge wants to impose training or community service as a condition for probation, a prior social enquiry report is obligatory.

5. Penal Transaction

The mechanism of transaction (provision 216bis Code of Criminal Procedure) was introduced in 1984. A new vision of criminal policy was not at stake here. The transaction had been introduced almost solely to fight the backlog in the courts after the political pressure to do something about that problem had escalated. This measure does, however, also serve the interest of the victim. The enlargement of its field of application in 1994 meant a further accommodation for the victim.

In a penal transaction the prosecutor proposes not to prosecute the offender if he/she agrees to pay a certain amount of money for the benefit of the State. If the offender accepts the proposal and pays, the public action is dropped formally. The offender must have compensated the victim before a transaction can be proposed.

6. Conditional Pre-Trial Release²

In 1990 the Belgian parliament voted for a new law on pre-trial detention (20.07.90). The aim of its introduction was the reduction of the high number of inmates in pre-trial detention in the Belgian prisons. This same law introduced the system of conditional release in its provisions 35 through 38.

Conditional pre-trial release is a measure by which an investigating jurisdiction, an investigating judge or in certain situations a trial judge, instead of locking a suspect up or keeping him in pre-trial detention, decides to leave this person in the community or to release him under certain conditions. It is a substitute measure for the pre-trial detention.

The law does not give a limited list of conditions the magistrate can impose. But, there are some restrictions. The law itself states that the magistrate has to show that the conditions he imposes serve to prevent that the suspect would commit new crimes, would flee, would try to destroy evidence or would organise a collusion. According to the Council of State, conditions that concern the physical and/or the psychological integrity of the suspect (e.g., undergo drug rehabilitation treatment) can only be imposed if the suspect agrees to it.

Different instances control whether the offender respects the conditions imposed. When pre-trial release is granted by an investigating judge or an investigating court, it is the investigating judge who is responsible for this control. When pre-trial release is granted by a trial judge, the prosecutor's office is responsible for its control. In practice, the supervision is done by the police when the conditions have a character of merely controlling the conduct of the offender (e.g., not leaving a certain area, not consuming drugs or alcohol, keeping away from football games...). When the conditions relate to getting social assistance (e.g., undergo detoxification, meet weekly with a social worker), the supervision is done by a probation officer, who works personally with the offender or keeps in contact with the social service who works with the offender.

7. Penal Mediation³

Since the 1980s, victimology, victim movements and certain public events have led to more attention to the plight of the victim. In addition to providing a quick social reaction to common city crime, this concern was at the basis of the introduction of 'penal mediation' (provision 216ter Code of Criminal Procedure) (10.02.1994).

In penal mediation the prosecutor can propose that the suspect fulfils one or more conditions. If the suspect accepts the proposal and fulfils the conditions, the public action will be officially extinguished.

Penal mediation is possible for offences for which the prosecutor deems a penalty of more than two years of correctional imprisonment or a more severe penalty is not necessary. This means that, through application of mitigating circumstances, penal mediation can be applied for offences for which the Criminal Code provides twenty years of (correctional or criminal) imprisonment.

The conditions under which the prosecutor can propose penal mediation are the following:

- (i) reparation of the damages caused to the victim or restitution of certain goods; in this case the prosecutor may convoke the victim and the offender for a mediation to settle the case;
- (ii) undergo medical treatment or a suitable therapy, if the offender attributes the offence to a disease or to an alcohol or drug addiction;
- (iii) follow a training programme of up to 120 hours;
- (iv) execute community service of up to 120 hours.

The maximum time to carry out the proposed conditions is six months for measures 2, 3 and 4, and undetermined for measure 1.

² Lauwaert, 1998

³ Aertsen, 1998

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

In order to implement penal mediation, three new positions have been created, all three within the prosecutor's service. In each court of first instance a deputy public prosecutor has been designated as liaison magistrate for penal mediation ('mediation magistrate'). He/she is not doing the concrete mediation work, but is responsible for the selection of cases, the supervision of the mediation work and the final session at his/her office. In the public prosecutor's service of these same courts, one or more social workers function as 'mediation assistant'. They are doing the practical work for the four possible modalities of penal mediation: contacting the parties, preparing the conditions, mediating in cases where a victim is involved and follow-up of the agreements. At each court of appeal, within the prosecutor-general's office, two 'mediation advisers' have been appointed to co-ordinate the work of the mediation assistants, to support them and to develop a criminal policy for mediation.

While the mediation assistant does most preparatory and mediation work, the mediation magistrate leads the formal session which concludes the procedure. Both the offender and the victim have the right to be assisted by a lawyer and the victim can be represented. The stipulations of the reached agreement or conditions are laid down in an official report (a *procès-verbal*). When the offender fulfils the conditions, a second *procès-verbal* is drawn up, stating that the public action is extinguished. If he does not fulfil the agreement, the mediation magistrate can summon the offender to appear in court but he has no legal obligation to do so.

B. Application and Evaluation Data

1. General Findings

In Belgium, community sanctions and measures are rarely used compared to what is legally possible. One exception may be the fine, which constitutes about 70% of all sentences. Only the public ministry at the police level applies the penal transaction in a considerable way, and this mostly for traffic offences. At the level of the court of first instance penal transaction remains a rather marginal practice.

There is very little or no tracking of the use of conditional pre-trial release. From explorative interviews with practitioners we do know, however, that generally, conditional pre-trial release has a very low implementation rate.

Data on the conditional pre-trial release decisions that were referred to the probation service for follow up are presented below. Table 1 shows a rising number of those referrals in the period 1994 to 1997.

Table 1. Number of Conditional Pre-trial Release Decisions Referred to the Probation Service

	Number of cases referred
1994	514
1995	609
1996	no data
1997	1209

2. Suspension, Postponement of the Execution and Probation

The yearly number of sentences with suspension or postponement of execution, and certainly with probation, is rather limited. In the year 1994 14,758 sentences with postponement of the execution were registered, of which 1435 (10%) accompanied by probation conditions. The number of suspended sentences in the same year was 6146, of which 689 (11%) were with probation. Nevertheless, the total number of probationers has increased significantly in the 1990s, as Table 2 shows.

Table 2. Number of Probationers

December 31 of the year:	Number of probationers:
1980	2287
1985	2754
1990	3733
1995	5664
1996	6533
1997	7007

3. Penal Mediation

Penal mediation has developed quite fast and in a quantitative way it is successful. This may be explained by the localisation of penal mediation within the prosecutor's office. Tables 3 and 4 provide an overview of cases selected for penal mediation in the first years: from November 1, 1994 (when the law on penal mediation came into force) until December 31, 1997. From this data we can conclude that one mediation assistant deals on average with more than 100 cases a year.

Table 3. Number of Cases for Penal Mediation

	offenders	files
Nov. 1994 - Dec. 1995	5393	4839
Jan. - Dec. 1996	5880	5266
Jan. - Dec. 1997	6738	(-) not available

Table 4. Type of Cases in Penal Mediation (November 1994 - December 1996)

	%
property offences	37,0
violent offences	33,5
drug offences	14,5
sexual offences	3,0
other	12,0
total	100

Table 5 below shows which measures or conditions are imposed, in order to obtain an extinction of the public action.

Table 5. Measures Applied in Penal Mediation (November 1994 - December 1996)

	%		%
Only one measure	74,6		
specification:		reparation	33,7
		treatment	12,4
		training	8,7
		community service	9,9
		other	10,2
Combination of measures	25,4		

Despite the success of penal mediation in a quantitative way, there are important concerns, most of which are formulated by the mediation advisers:

- The law on penal mediation lacks clear and uniform objectives. Different rationalities underlie the law and its application in practice: to demonstrate a visible reaction to minor offences, to help victims, to restore the confidence of the public in the criminal justice system, and, to a lesser extent, to handle the overcrowding of the prison system.
- Practice shows that penal mediation is highly offender-oriented and tends to confirm unilateral punitive approaches. The first modality of penal mediation (reparation to the victim) is applied in only about 50% of the cases. Reparation concerns almost exclusively the financial aspect of the damage. Mediation is rarely done face to face. The mediation session with the magistrate is often carried out in a moralising way; in most cases there are no victims involved at all. An increased number of failures to respect the combined conditions has been reported.
- Finally, the advisers stress the risk of netwidening. There are indications that penal mediation is primarily applied as an alternative for an unconditional waiver, and not as an alternative to prosecution.

4. Community Service

As was explained above, since 1994 community service can legally be ordered in two ways: as a condition for penal mediation or as a condition for probation. We try to summarise some general findings about the application of community service in the two models together. Table 6 is indicative for the modest, but growing quantitative success.

Table 6. Total Number of Community Service Orders

Year	
1994	199
1995	487
1996	1002
1997	1738

C. Discussion on Further Perspectives

1. Ambiguous Developments

The preceding parts of this overview refer to some fundamental problems regarding the origins, the conceptualisation and the implementation of community sanctions and measures, which have wider applicability than Belgium alone.

First, community sanctions and measures are, overall, used in a very limited way. The reasons for this are not always clear and have to do with a mix of factors. Among these are the attitudes towards and the restricted knowledge about alternatives for police, prosecutors, judges and lawyers. A second reason lies in the weak co-operation between judicial authorities and non-judicial agencies. A repeatedly mentioned problem concerns the classic, punitive way of thinking shared by different professional groups in the criminal justice system. Whereas Belgium experienced more than three decades of under-utilisation of the legal probation system until now, the new alternative measure of penal mediation has been implemented quantitatively in a fast and significant way within less than two years since legislation.

But even from the perspective of an increased use of community sanctions and measures, we have to face some fundamental questions. Do we know sufficiently how this multitude of new programmes is operating in practice? Which groups of offenders are reached? What is the nature and the quality of the intervention? What about the effects on the persons involved, on their surroundings and on public opinion? How do these alternatives relate to the formal justice system? What is the impact on incarceration rates? For the Belgian situation essential information about most of these questions is missing. There is no doubt about one point: community sanctions and measures do not currently function as an alternative to custody. Their introduction did not curb the increasing prison population rates in Belgium. On the contrary, findings suggest that community sanctions and measures, by the effect of unintended mechanisms, have become one of the facilitating factors for the expansion of the prison sentence. In the near future, we may expect a further increase in the prison population (Snacken, 1997).

One of the effects of the implementation of community sanctions and measures referred to in the last paragraph is that they may indirectly cause a supplementary prison input, since these alternatives keep a structural or a de-facto link with the prison sentence. This might be the case with Belgium's measures and sanctions of penal mediation and probation because they may impose on offenders who failed to perform their community sanction, a conditional or an effective prison sentence. The provisional conclusion of this paradoxal development seems to be that an increased use of community sanctions and measures goes hand in hand with an expansion of the prison population.

In Belgium, community sanctions and measures are applied mostly for relatively minor offences. The legal conditions for transaction, penal mediation and probation link the applicability of these measures or sanctions to certain upper limits of a possible prison sentence in a given case. And even when the legal range is relatively broad, prosecutors or judges tend to use these alternatives in a restricted way, limiting them to less serious crimes, to first or young offenders, or to petty drug offences. The overall result of this is a 'two-track development'. Community sanctions represent the soft option; they are seen as a favour or a last offer to the delinquent who committed a rather minor crime. 'Serious' cases then, such as violent offences and organised crime, are dealt with in a harsh way, because these cases are not deemed appropriate for a community approach. The evolution of the Belgian prison population – an increase of long-term inmates with sentences of five years and more – seems to confirm this dualism in penal reactions. In any case, practice shows that even community sanctions can be executed in a very punitive and stigmatising way.

2. The Need for a New Approach

During previous decades, a new element has entered in the debates on crime and criminal justice: the attention to victims of crime. This is totally new in criminal justice policies, compared to the unilateral orientation to the offender in both the traditional repressive and rehabilitative models. This evolution might have far reaching consequences. In all western societies the care for victims of crime is present now, sometimes in a pronounced way. Victimology and the victim movement indubitably have

affected the way society and penal systems react to crime. The recent laws on penal mediation (1994) and penal transaction (1994) have clearly been influenced from this perspective. The new Belgian Code of Criminal Procedure (1998) and the new Law on Conditional Release (1998) also integrate the position of the victim in their procedures. Talking about sanctions or alternative sanctions without taking into account the position of the victim has become hardly possible (Dignan and Cavadino, 1998). The victim is also represented in the European Rules on community sanctions and measures (Recommendation R(92)16), where Rule 30 stipulates: *'The imposition and implementation of community sanctions and measures shall seek to develop the offender's sense of responsibility to the community in general and the victim(s) in particular'*. The interest of the victim as well as the importance of community involvement are also stressed by the U.N. Standard Minimum Rules for non-custodial measures. The so-called Tokyo-Rules (1990). For example Rule 1.2.: *'The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society'*. The rights of the victims are mentioned in several Rules, dealing with the legal safeguards, pre-trial dispositions and the avoidance of pre-trial detention, sentencing dispositions and conditions of non-custodial measures. Rule 8.1. on sentencing dispositions stipulates: *'The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender; the protection of society and the interests of the victim, who should be consulted whenever appropriate.'*

There is, of course, the risk that the attention to the victim and the strengthening of his position within criminal justice procedures again reinforces the retributive justice model. Therefore, a balanced approach is needed, which guarantees the right concern for the victim, the offender and the society. This new model might be found in the concept of *'restorative justice'*. Restorative justice is not a new sanction, measure, or a programme. Restorative justice refers to a set of principles and values, which represent a specific way of defining crime and elaborating adequate social reactions. Crime is no longer seen as a violation of abstract state rules, but as a conflict, which causes harm to people and relations. Within this rationale, the answer of the criminal justice system should primarily focus on the needs of victims and local communities.

III. VICTIMOLOGY AND RESTORATIVE JUSTICE

This part aims to give a clear and well articulated view on victimization, its consequences and the answers developed by the criminal justice system. These topics, presented in a European context, refer to complex developments in the criminological sciences and in social and criminal policy during the last three decades.

It is our intention to discuss the policy changes as resulting from scientific analysis and research. More than other parts of the criminological sciences, victimology became an outspoken applied approach. This includes a great diversity of practices and actions oriented towards the protection, the support, the assistance and the strengthening of the legal position of the victims of crime. These practices have been realized within different policy frameworks and offer legitimacy to several types of groups of professionals and citizens to have their say in this field. Victimology and restorative justice are on top of being an important field of application in the criminological sciences, a battlefield or meeting place where many interest groups clash.

When developing this overview references are in the first place made to what happens in Europe, putting the accent on Western-Europe. Nevertheless we will also have to discuss North American practices and policies, partly to reintegrate the origins of the victimological thinking, partly to contrast European approaches with the North-American way of working.

A. Victimology and the Victim Movement

1. A Short Historical and Anthropological Comment

The fact that victimization since the last two decades became a topic of first criminological interest and is given a top priority on policy agendas is only remarkable because the opposite, the absence of a victim perspective, has been a general rule in the proceeding years. Of the three protagonists of crime,

the offender, the victim and the community, criminal justice has always focused on the relation between the offender and society (Verstraeten, 1990). Research in criminal justice mainly focuses on the problems of legal protection of the suspect or on the problems of the effectiveness of the system. The interests of victims of crime have been for a long time “*quantité négligeable*” (Van Dijk, 1988). Punishment and the social reintegration of the offender polarize the powers of criminal justice (García-Pablos, 1991). From the moment of denouncing the offence the victim experiences *a victimization by administrative runaround* (Ash, 1972). *Once a case enters the criminal court system, the victim-witness becomes susceptible to a myriad of problems and needs* (Knudten, Meade a.o., 1976).

However, the history of the administration of criminal justice shows that in non-state societies the victim had an equal position compared to the offender. To finish or to avoid vendetta, revenge and even war, the private arrangement of the damage, taking into account the talio principle (proportionality) became a usual practice in which mediation was not an exception. *Once the state monopolized the right to criminal prosecution and converted the “wergeld” or the compensation, that used to be paid to the victim, into a fine destined to the King's coffers, the victim became the “forgotten figure”, a legal nonentity* (Fattah, 1992). *The reduction of the victim to an inconsequential figure coincided with the emergence of the public prosecutor* (Gallaway and Hudson, 1981). *The real decline started with the emergence of a criminal law which viewed the criminal act not as an offence against the victim but as an offence against the Sovereign and later the State* (Fattah, 1992).

2. The Etiological Victimology

The first systematic criminological attention given to the victims of crime was subordinated to the traditional etiological questions (about the causes of crime) of the positivistic criminology. Since the forties some criminologists, who are now seen as the “founding fathers” of the victimology, focused their research on the role of the victim in the construction of a criminal act. Mendelsohn and Von Hentig developed a victimogenetic typology (the process of becoming a victim) in which the degree of guilt or innocence and the degree of resistance to or collaboration with the offender became the criteria to distinguish between the victims (Mendelsohn, 1956; Von Hentig, 1941 and 1948). *“The study of the victim, his characteristics, his relationships and interactions with the victimizer, his role and his contribution to the genesis of the crime seemed to offer great promise for transforming etiological criminology from the static, one sided study of the qualities and attributes of the offender into a dynamic, situational approach that views criminal behaviour as the outcome of dynamic processes of interaction.”* (Fattah, 1979). Mendelsohn proposed victimology “as a new branch of science” concerned with the study of the factors which influence the behaviour of the victim (Shafer, 1968). Ellenberger (1954) analysed the victimogenesis like the criminogenesis and studied factors such as social marginality and social isolation which diminishes the protection of a potential victim. One of the important phenomena he was interested in was the changing roles of offenders becoming victims and vice versa.

The empirical approach of the victimological perspective in the positivistic criminology has been the study of Marvin Wolfgang (1958) “Patterns of criminal homicide” in which he develops the concept of “victim precipitation” to express the contribution of the victim in the realisation of the crime. Using the same concept in a study of rape by Amir (1967) provoked strong negative reactions from the side of feminism. His study was not seen as an objective analysis of the relation between offender and victim but as a moral judgement of blaming the victim. That was the end of the etiological victimological approach and an important step in the direction of a new victimological movement typified by Fattah (1979) as “from a victimology of the act to a victimology of the action”.

The further development of victimology has been influenced during the sixties and seventies by two different backgrounds. Next to feminism as a political movement, criminography through “dark number” research turned into its victimographic basis.

3. From Criminography to Victimography

Since the sixties there has been a clear shift within the criminological sciences from a clinical-psychological to a sociological-interactionist perspective. One of the important critical reflections concerned the study of the quantity of crime in society. The classical sources of crime statistics have been questioned in a fundamental way by the social reaction approach of crime (labelling theory), which concentrated on the understanding and analysis of the selectivity of the action of the police and the

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

criminal justice system in dealing with crime. The statistical model as developed during the 19th century by Quetelet and Guerry, portrays the functioning and intervention capacity of “criminal justice institutions”, which has to be distinguished from the reality of the types and quantity of crime (Van Kerckvoorde, 1995).

To be able to measure the crime phenomenon researchers embarked on the so called “dark number of crime”, using self report studies in which a citizen is approached as a potential offender who is asked to report about eventually committed crimes during the last 6 or 12 months. Discussing the results of these studies and especially the methodological problems when trying to get adequate information from potential offenders resulted in a step further in the direction of asking citizens to report as potential *victims* of crime. After a short time a fast growing practice of “victim surveys” developed.

Nevertheless the fact that victim surveys mostly concentrate on surveying traditional property crime, violent and other street crime and have few or no relevance for measuring sexual aggression and especially for intra-family violence (Van Kerckvoorde, 1986, 1995; Zedner, 1997), victim surveys have generally been accepted as “the least worse measure of crime” (Phipps, 1987). Step by step victim surveys became important for victimology as a part of criminology. Victim surveys have been filled up with questions concerning the different experiences of victims, the consequences of this victimization, the reactions to the victimization by the police, the prosecutor, the judge and the attitude of potential victims towards crime, insecurity in the neighbourhood and feelings of fear. Victim surveys become full fledged instruments of victimological research and allow an extended victimographical analysis which is much richer than a pure measurement of crime. However, crime analysis remains an important function of the victim survey.

Special attention has to be given to the International Crime Victims Surveys introduced and coordinated by the Dutch Ministry of Justice. They have been organised in 1989, 1992 and 1996 and have the exceptional advantage that an important number of countries from different continents have participated in its implementation.

4. Feminism and Victimology

Feminism is a political emancipative movement which had a decisive influence in the shift in the content of victimology in the seventies. Amir, a disciple of M. Wolfgang, provoked with his study on forcible rape (1967) strong negative reactions from the side of the feminists. They defined that type of victimology as “the art of blaming the victim” (Clark and Lewis, 1977). The shift in the victimological thinking can be defined as an explicit orientation of victimology towards actions and interventions in favour of women-victims of sexual aggression, of intra-family violence and of rape. At the same time there was the growing attention for the many ways of neglect, abuse and maltreatment of children. The action oriented approach of the victim did hardly distinguish the ideological moment from the academic one. Victimology was the same as victimagogy (Van Dijk, 1984). Theorists and empirical researchers have been directly confronted with the social facts which stimulated research concerning the moral, material, physical and psycho-social consequences of the victimization (Martin, 1989). The thematic development of the cultural legitimation of the victimization of women unmasked the socio-cultural justifications of physical violence against women as a part of the socialisation of men and the prejudices among police and justice personnel as its correlative (Weiss and Borges, 1973).

B. Victims and the Role of International Organisations

1. Victims and the Council of Europe

The victims' of crime interests and needs have been answered and taken care for from the early seventies in Europe as well in North America by local initiatives in which at the beginning feminist inspiration and conviction have determined it's flavour and colour. From the eighties victim assistance made its way under the wings of national umbrella organisations which acted as the partners of the government. In Europe different national organisations started their international meetings as soon as 1986 and founded a European umbrella organisation, “The European Forum for Victim Services”.

The Council of Europe has, already from an early moment, played a role in supporting the development of victim compensation schemes, of victim assistance and of orienting police and the

judiciary towards the problems of victims of crime. We consider this development as a dialectical process in which the eminent and pro-active role of the Council of Europe has to be recognized. Taking into account Resolution(77) 27 of the Committee of Ministers of the Council of Europe on the compensation of victims of crime, the member states have been invited to sign the “European Convention on the Compensation of Victims of Violent Crime” of November 24, 1983. While in some member states there were already laws on victim compensation available (e.g. in Great Britain, The Netherlands, France) and in other countries like Belgium the debate was still going on, the convention functioned as a type of minimum standard for victim compensation. Countries lacking such a regulation have been strongly stimulated to introduce their own compensation scheme. Belgium accepted a state compensation law for victims of intentional violent acts on the 1st of August 1985.

Another important initiative from the side of the Council of Europe is the foundation of a group of experts which reported in an extensive way about its investigations and observations concerning the situation of victims of crime in Europe (Council of Europe, 1985). This state of the art of the research on the consequences of victimization has given a strong impulse to the communication among scientists and policy makers. The publication offered a substantial basis of knowledge for the future scientific research and for the development of a victim policy in Europe. In 1985 the Committee of Ministers of the Council of Europe adopted Recommendation R(85)11 concerning the position of the victim in the framework of criminal law and procedure. In 1987 the committee of Ministers adopted Recommendation R(87)21 concerning assistance to victims and the prevention of victimization.

2. The Role of the UNO

The ideas and concepts for a victim policy as developed by the Council of Europe since 1977, translated in a convention and two recommendations, have also inspired the UNO. Thanks to the preparatory work of the World Society of Victimology held in Milano in August 1985, the victims of crime problems have been introduced during the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The General Assembly of the UNO adopted the recommendation of the congress on the 29th of November 1985 (General Assembly Resolution 40/34). The recommendation includes, like the convention and the recommendations of the Council of Europe, a plea for a better access for victims to the criminal justice system. There is a call for a more just treatment, for the use of restitution, compensation and the development of psycho-social assistance. More preventive measures are recommended against crime and against the abuse of power. Next to all what was already present in the European recommendations, the UNO-declaration opens a broader perspective for the protection of victims of ideological, political and cultural abuse of power.

In the U.N. Standard Minimum Rules for non-custodial measures (the Tokyo-Rules, 1990), there is also an explicit recommendation to care about the victims of crime when alternative (non custodial) sanctions are imposed. The same concern about victims is included in the Council of Europe Recommendation R(92)16 on community sanctions and measures.

3. The Role of the International Victimological Conferences, Societies and Revues

In 1973 I. Drapkin organised in Jerusalem an International Symposium during which scientific discussions and exchanges concentrated on the definition and the state of victimology and its relation to criminology. Questions about the policy of victim prevention, victim restitution and victim assistance received broad attention. Similar meetings have been organised on a three yearly basis in Boston-USA (1976), Münster-Germany (1979), Tokyo/Kyoto-Japan (1982), Zagreb (1986), Jerusalem (1988), Rio de Janeiro-Brazil (1991), Adelaide-Australia (1994), Amsterdam-Netherlands (1997), Montreal-Canada (planned for the year 2000). During the International Symposium in Münster (1979) the World Society for Victimology was founded. In 1976 Professor E. Viano at The American University in Washington started the revue of “Victimology. An International Journal”. He has organised many international victimological seminars and published the proceedings. The World Society of Victimology has published since 1993 The International Review of Victimology and the proceedings of the different International Symposiums.

C. The Impact of Victimization

1. The Fear of Crime

A first important remark is the fact that the theme of the fear of crime not completely coincides with the problems of the consequences of victimization. Research has clearly demonstrated that it is an entirely new area of criminological inquiry. Zedner refers to research of Maxfield (1984), Garofalo (1979) and Skogan (1986) which confirms that "fear of crime is now recognized as a distinct social problem extending well beyond those who have actually been victimized, to affect the lives of all those who perceive themselves to be at risk" (Zedner, 1976, 587). Measuring crime by crime surveys, the construction of special prevention projects and neighbourhood watch, all seem to sharpen the sensibility for problems, especially among certain groups of the population taking into account the age, the gender, the neighbourhood and ethnic belonging. Zedner (1997) stresses in this context the so called non rational fear of women. She refers to Stanko (1988) who says that women, more than it is demonstrated by victim surveys, are confronted with "hidden violence" from the side of people they know, which is a more acceptable explanation of their fear.

2. Consequences of Victimization

The consequences of victimization are not easy to estimate on the basis of the seriousness of the crime. Victim surveys have widely demonstrated that the majority of the people interviewed experience no or few consequences following a victimization, since what happened is mostly not something very serious. However qualitative studies demonstrate that in a limited number of cases the consequences may be very serious also in the long run and difficult to survive and to cope with (Gottfredson, 1989; Lurigio and Resick, 1990).

The characteristics of the victims, their behaviour and coping capacities, their possible experiences with crime, even in the past and the eventual influence of other emotional problems are, combined with the social context in which they live, the most important factors which determine the impact of the victimization. However, the risks of far reaching consequences are in the first place dependent on types of crimes such as murder, homicide, violence, abuse and rape. These crimes provoke almost always a cumulation of effects ranging between the loss of life, serious physical damages, the loss of psychological integrity and financial or other material consequences. Often these effects provoke an irreversible loss or the quality of life for the victim and his milieu.

The results of research carried out by Maguire (1980) and Maguire and Corbett (1987) show that the impact of burglary is comparable with the effects of crimes of violence (feelings of intrusion and emotional upset) and of rape. The consequences of rape and other sexual crimes have been detected, analysed and described in the context of initiatives by feminist groups in favour of victims. The attitude of distance of these action groups in relation to government and governmental policy has, however, curtailed the development of scientific research in this area (Mawby and Gill, 1987; Mawby, 1992). A mainly theoretical research which has described, analysed and discussed in great detail and in depth the results of many different publications on victimization is the standard piece of work published by Ezzat Fattah, "Understanding Criminal Victimization", of 1991. Victimization has been approached as a dynamic interrelational phenomenon and human experience.

D. Victims and the Criminal Justice System

Whereas the early victim movement in Canada and the USA has concentrated its actions on the problems of the legal rights of victims and their position in the administration of criminal justice, the same happened in Europe lately, during the nineties. However, there have been initiatives taken before which forecasted already this interest.

1. State Compensation

Programmes of State compensation were introduced first in Great Britain (1964) and elsewhere since the late seventies (e.g. in Holland and France). At this moment most European countries have followed these examples. These practices introduced by law aim at financial compensation for victims of (intentional) violent crimes in case the offender remains unknown or insolvent. Although remarkable differences exist between the many national systems especially when defining the group of victims who may receive compensation and the maximum compensation, there are however clear points of

resemblance. The most important one is that no one of these programmes gives the victim a formal right to financial compensation. State compensation for victims of crime is based on the principle of solidarity. The financial compensation is a discretionary decision of a commission which judges on the basis of fairness. These principles have been consolidated also when some of the countries changed the law (some several times) in the direction of more flexibility towards the compensation (e.g. through providing an advance loan).

Critics remain everywhere almost the same. State compensation is a complex, long lasting procedure leading to a successful result in a rather limited number of cases. Frustrating for victims are the many administrative obligations, the uncertainty about the decision, the long lasting waiting and the lack of information about the determination of the amount of the compensation. All this is added to the frustration which many victims experience in their contacts with the police and the judiciary (court system), the state compensation procedure is often a continuation of the 'secondary victimization'.

'Secondary victimization' as a concept refers to a continuation of negative experiences of the victim following the first shock at the moment when the crime is committed. The way the immediate surrounding of the victim, but especially official institutions, react to the "primary victimisation" often provokes negative effects which may be more traumatizing than the initial crime experience. These phenomena are extremely important and belong to the total picture of the consequences. Research focusing on the problems of secondary victimization has been the basis for the demand and the construction of a legal position for the victim in the procedures of criminal justice.

2. The Role of the Police and the Criminal Justice System

Depending on the type of crime, victims report their victimization between 20% (for sexual aggression), 88% (for burglary) and 91.4% (for a stolen car) (figures of the International Crime Survey 1992), it is evident from this that contacts with the police are of paramount importance. They are the gate keepers of the system. The access to justice for victims starts with contacting the police. That is why these contacts have been in the center of the attention of victim policy since the eighties. The European Recommendation R(85)11 concerning the victim in the framework of criminal law and procedure explicitly discusses what should be done by member states at the level of the police, the level of the prosecutor, the questioning of the victim and at the level of the court proceedings. The main message is the duty of information. At all levels the access to information about the way the case is handled is the basic expectation of all victims. During the last decade there has been a lot of work done in preparing, training, supporting the police and more recently prosecutorial services are concerned about the way victims are received, treated, informed and when necessary referred to more specialised services.

Recommendation R(87)21 concerning assistance to victims and prevention of victimization stresses the need to coordinate the relations between victim assistance and the agencies of the criminal justice system. More recently Recommendation R(98)13 on intimidation of witnesses and the right of the defence the accent is put on the development of appropriate legislative and practical measures to protect witnesses, often the victims of crime, to be able to testify freely. Special attention is given to problems experienced in relation to organised crime and in cases of crime within the family.

Especially at the level of the training of the police a lot of progress has been made. The general opinion is that all police officers have to receive basic training about the way they work with victims of crime. Care for victims is everybody's concern in the system, not just the special duty of some specialists.

E. Victims and Restorative Justice

1. A Response to Victims' Needs

Research on victimization and the practice of victim assistance have revealed specific needs of victims in their relation to the offender (Dignan and Cavadino, 1996; Peters and Goethals, 1993; Reeves, 1989; Young, 1996). For victims of violence, at least as important as obtaining financial compensation is to find answers to questions concerning the offence and the offender. Victims in general express a need of understanding about what happened and in many cases they wish to make clear to

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

the offender the consequences of the crime. These elements are often important issues in coping with the event and its aftermath. When questioned about the desirability and the possible consequences of a meeting and discussion with the offender, a significant group of victims confirm that they would like to make use of such an opportunity. Several studies show figures between 30 and 50 per cent of all victims interviewed, and this percentage is still higher when the possibility of indirect (not face-to-face) mediation is offered (Aertsen and Peters, 1998).

Initiatives regarding mediation between victim and offender have been solicited by the above mentioned Council of Europe Recommendations R(85)11 and R(87)21. The interest for mediation was in line with the content of the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985). Above all, we must refer to Recommendation R(99)19 by the Council of Europe concerning mediation in penal matters. The recommendation recognizes, *inter alia*, “the legitimate interest of victims to have a stronger voice in dealing with the consequences of their victimization, to communicate with the offender and to obtain apology and reparation”. One of the benefits of mediation can also be that the victim “may get a more realistic understanding of the offender and his or her behaviour”. Victim-offender mediation need not be limited necessarily to a diversion practice. Whereas in victim assistance programmes the victim mainly stays in an external position vis-à-vis the justice system, mediation allows him or her to integrate his/her needs and interests into the criminal justice process. “Mediation therefore shows that satisfying the interests of the victim, the offender and society at large is not incompatible. The conciliatory nature of mediation can assist the criminal justice system in fulfilling one of its fundamental objectives, namely contributing to a peaceful and safe society, by restoring balance and social peace after a crime has been committed.” (Commentary on the preamble of the recommendation). The recommendation states that victim-offender mediation should be a service available at all stages of the criminal justice process. Besides a definition of victim-offender mediation and the mention of some general principles, the recommendation deals with the necessity of a legal basis for mediation, the relation to criminal justice and the operation of mediation services. Much attention is given to the qualifications, selection and training of mediators and the development of standards of practice.

2. Victim-Offender Mediation Programmes

The recognition of specific victim issues, together with the search for a more meaningful and effective way of working with offenders, led to the creation of victim-offender mediation or reconciliation programmes in many countries. After the first initiatives came about in Canada and subsequently in the USA in the 1970s, at the beginning of the 1980s the movement spread to Europe. This was visible first in Britain. However, it must be noted that some Nordic countries simultaneously developed initiatives in a more or less independent way. Norway and Finland are now two countries with an extensive mediation practice that in both cases strives for a volunteer model. Members of the local community are active in mediation – both in criminal and civil cases – and are supported by a paid co-ordinator from the municipal services.

Whereas in Norway and Finland mediation has developed apart from probation and victim assistance programmes, we find that in Austria, Germany and the U.K. probation services have taken the lead in organising victim-offender mediation. Austria has played a pioneer role in developing a mediation model for juveniles and has created a well-organised network of services for “*Aussergerichtlicher Tatausgleich*”. The largest number of mediation services, however, is found in Germany: some 300 services for “*Täter-Opfer Ausgleich*”, of which here also the large majority (260) are directed to young delinquents.

The fact that in some countries offender-oriented services such as probation have been the driving force behind the early developments has initially placed the victim movement in a somewhat defensive position. Victim Support in England, for example, but also in the U.S., initially exhibited much resistance to mediation. The fear was that the victim could be “used” in furtherance of the interests and the treatment of the offender. As the practice of victim-offender mediation progressed and mediation methods were tailored more to the needs of the victim, and research results about the positive effects for the victim were made known, this resistance decreased. In France, victim support has played the most important stimulating role from the beginning in founding mediation services. In addition, in

Belgium a mediation model has been developed for more serious crimes, with as a point of departure, with the focus being largely the needs of the victim.

Besides the above mentioned European countries where victim-offender mediation has undergone the strongest development, other countries have taken initiatives in the form of pilot projects. Included here are Denmark, Ireland, Italy, Luxembourg, the Netherlands, Spain and Sweden. Central and East European countries in recent years have been active as well and started mediation programmes: for example Albania, the Czech Republic, Poland, Russia and Slovenia.

A large majority of victim-offender mediation cases in the European countries concern relatively minor property offences or less serious violence committed by juveniles who are mostly or often first offenders. Violent or more serious crimes by adults or youngsters, however, are not excluded, and some programmes focus especially on these types of cases (Aertsen, 1999). But it must be admitted that the quantitative impact of victim-offender mediation programmes in the different European countries remains rather limited (Weitekamp, 1997).

In a number of European countries victim-offender mediation has received a legal basis, as a part of the Juvenile Justice Act (Austria, Germany, Finland, Poland), the Code of Criminal Procedure (France, Belgium, Finland, Poland), the Criminal Code (Germany, Finland, Poland), or as an autonomous "mediation law" (Norway).

Concerning the process and the effects of victim-offender mediation, much evaluative research data, both of a quantitative and a qualitative nature, has become available (see, for example, Dünkel, 1996). We cannot go into detail here, but the most important and promising findings concern the degree of satisfaction of the parties, the willingness to participate, the number of agreements reached and the content of the agreements, the compliance rates, the effect on re-offending, the work and time intensive process of mediation and the cost-effectiveness.

3. Restorative Justice

This new development of bringing together the victim and the offender often has been identified with "restorative justice". But the concept of restorative justice, as there is a growing consensus in the last few years in literature and practice, is a broad one (Bazemore and Walgrave, 1999; McCold, 1998; Wright, 1996). This concept, Anglo-Saxon from origin, is not restricted to a concrete method, a programme or a technique, but goes rather in the direction of a new paradigm or a global vision, a "changing lenses" (Zehr, 1990). What is meant here is the (pursued) development of another view, not only of the social or criminal justice reaction that must follow a crime, but also and primarily of the nature of the crime itself. A crime is not seen so much in terms of violating abstract rules of law but rather as a violation of persons and relations. Based upon this vision, the fundamental reaction is then also aimed at the restoration of the damage: the damage to the victims, their environment and possibly to the wider society, and also the damage which the offender provoked in his own social surrounding. For many "restorative justice" is a "third way" resolutely to be chosen in place of (neo) retributive criminal law and after the collapse of the rehabilitation model (Peters, 1996; Walgrave, 1995).

A generally accepted definition of restorative justice is given by Tony Marshall in an overview of restorative justice published by the U.K. Home Office (Marshall, 1999): "*Restorative justice is a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future*". Or put another way: "*Restorative justice is a problem-solving approach to crime which involves the parties themselves, and the community generally, in an active relationship with statutory agencies. It is not any particular practice, but a set of principles which may orientate the general practice of any agency or group in relation to crime.*" Also helpful in clarifying the concept is the objective put forward in its standards by the British Restorative Justice Consortium (1998): "*Restorative Justice seeks to balance the concerns of the victim and the community with the need to reintegrate the offender into society. It seeks to assist the recovery of the victim and enable all parties with a stake in the justice process to participate fruitfully in it*".

From these definitions it is clear that "restorative justice" is not a movement alongside or against the current criminal justice system. More and more voices can be heard to maximally integrate this

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

approach within the existing criminal justice system in order to modify the foundations of the system itself. A second clarification concerns the growing tendency to de-individualise restorative justice. Where in the beginning restorative justice was strongly associated with victim-offender mediation, we now see models that not only involve the two immediate parties to the conflict but also a number of persons or bodies from their surroundings. Nevertheless, within Europe, victim-offender mediation is by far the most important expression of restorative justice. Group-oriented models of restorative justice such as "Family Group Conferences", initially developed in New-Zealand and Australia, in 1999 are only operating in an experimental way in England.

Restorative justice in Europe at present meets with at least three important challenges. The first one is the threatening recuperation of this line of thinking into the dominant conceptions and methods within the administration of criminal justice. A second challenge in the actual realisation of restorative justice lies with the possibility of expanding victim-offender mediation to more categories of (also serious) offences and offenders and applying a victim approach in the successive stages of the administration of criminal justice, including corrections and after-care. A third task concerns the further establishment of legal frameworks and safeguards and a clarification of the relation of restorative justice programme towards, or the position into, the criminal justice systems of the different countries (Van Ness, 1999).

4. Mediation for Redress. A Belgian Example of Restorative Justice

'Mediation for redress' started in 1993 as a local programme in Leuven and was extended to other judicial districts by the end of 1998. The programme deals exclusively with crimes of a certain degree of seriousness and operates parallel to prosecution. The central objectives of the programme were initially the development of an appropriate methodology for mediation in serious crimes and the verification of the effect of mediation on the sentencing process. The mediator focuses on in-depth communication and exchange (of information) between victim and offender. Through several separate contacts with victim and offender, the mediator carefully prepares a direct meeting. The result of the mediation is laid down in a written agreement, which contains all elements of the material and immaterial restoration. The programme operates in a close relationship with the public prosecutor's service and with the investigating judges, but the mediation itself is done independently from the judicial system. The mediators are professionals and their work is organised and supervised by an independent local steering committee, consisting of representatives of all partner-agencies. 'Mediation for redress' is recognised as one of the 'national pilot programmes' for alternative sanctions and measures, which implies full financing by the ministry of Justice. The programme is run by the Flemish non-governmental organisation 'Suggnomè'.

The total number of files in the experimental project 'mediation for redress' remains limited: 140 selected cases (files) in the period 1993-1997. This relatively limited number is due to the time consuming mediation work in this type of case and the restricted staff (two full time mediators, no volunteers involved). In table 7 the types of cases are mentioned.

Table 7. Type of Cases in 'Mediation for Redress' (1993-1997)

	N	%
violent offences	69	49.3
property offences	57	40.7
sexual offences	14	10.0
total	140	100

When calculating the average number of contacts per file, excluding administrative contacts (making appointments, sending a first information letter, locating a person ...), we find the following figures for 1997: 6 home visits per file; 1.4 meetings at the mediation office; 9.2 telephone contacts; 6.3 contacts by letter.

Of all cases in 'mediation for redress', 50% result in a written agreement. The contents of these agreements can be categorised as follows: information about the offence, its reasons and circumstances; the personal meaning of the facts and their consequences for the victim, the offender and their surroundings; each party's (changed) perception of, and attitude to, the other party; the issues and possibilities of reparation or compensation; the amount of financial restitution or the way material or symbolic reparation should be done; the preferred reaction from the judicial system. Excuses can be offered and accepted by the other party. The agreement can mention that the victim is prepared to drop the claim for compensation.

Evaluation interviews, after a first experimental period, with involved victims and offenders demonstrate a high degree of general satisfaction with mediation for redress. This result is congruent with what was found in most evaluative research. The Leuven programme however showed that mediation in more serious crimes is workable and that it puts specific elements in the communication between the victim and the offender, and also that this kind of mediation offers opportunities to implement a new relationship between the justice system and citizens.

IV. RESTORATIVE DETENTION – A BELGIAN PILOT PROJECT

Since the beginning of 1998 the pilot project 'restorative detention' has been active in six Belgian prisons. In 2000, quicker than expected, the policy makers saw to it that the project 'restorative detention' had 'taken root' in the global Belgian penal establishment. We will only briefly sketch the start up and development of the project 'restorative detention'.

The project name itself, 'restorative detention', seems to embrace a *contradiction in terms*. It is also clear that the introduction to and the underlying vision for such a 'provocative' project requires explanation. That is done in the first part. The second part sheds light on a few aspects of the purpose of the pilot project. To provide the discussion of the project with more 'substance', we will then focus our attention on a range of activities at the level of the prison. We will then conclude with a few considerations.

A. The Contextual Framework of the Project 'Restorative Detention' ⁴

This project did not appear out of the blue, but is situated within a *research tradition* and a *policy on criminality*. On the one hand the project represents a 'logical' step in the development of the research activities at the Katholieke University Leuven (KU Leuven) concerning mediation and restorative justice. On the other hand external influences play a significant role in the genesis of this research project. Continuous reciprocity between internal and external influences has given the project the form it currently has.

1. The Internal Run Up to the Project

The initiative for 'restorative detention' came from the penology and victimology research group. The somewhat strange sounding combination of punishment-oriented and victim-oriented research is part of a tradition that spans 3 decades.

In the beginning the scholarly focus of the research group was on studies of the prison system, studies of punishment in general and also – as a forerunner to the present, attention was given to restorative justice initiatives – the (too marginal) use of community sanctions was subjected to critical reflection.

With the study and analysis of violent property crimes the need arose for *victimological* research. Beginning in 1986, the victim-oriented approach attracted much attention. Both qualitative and quantitative victimisation studies brought into view the problematic position of the victim in the administration of criminal justice. Especially victims of violent property crime were the focus. The judicial marginality of the victim was one of the most important policy themes. One of the first Belgian victimological handbooks received the title 'the reverse side of criminality' due in part to establishing the neglect of the victim (Peters en Goethals, 1993).

⁴ Peters, 2001

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

A shift in the approach taken in research occurred around 1990. Based upon the experience obtained and findings in victimological research, beginning in the 1990s a more *proactive* approach was taken. On one hand thematic development was initiated of new practices designed to meet the needs of victims. On the other hand an examination was made of how criminal prosecution practice can be influenced and how the routine answers to criminality could be challenged.

The *action research* method implied a change in course in the approach to research. Action research is concentrated on the development and evaluation of new practices and is also focused upon the fine tuning or restructuring of existing practices. This allows the researchers to approach the criminal justice system from a more problem solving point of view. At the same time, this method has also won approval due to its *inclusive* character. Action research allows several (all) parties to be actively involved in the (search for a) solution to the problem. This method was employed until the end of 2000, also in the project 'restorative detention'.

Reflections concerning imprisonment led to the realization that while for many years prison had appeared as a last resort in the government rhetoric, the actual practice revealed a completely different picture. Many Western countries, led by the U.S.A., have been acquainted with the phenomenon of a 'prison tree' for several years now (Cayley, 1998). The administration of criminal justice in Belgium is also far from immune to the excessive use of the deprivation of liberty.

The *stock* in the Belgian prison system has increased by almost 40% in the last decade. The 1980s were characterised by an average of approximately 6,000 prisoners. During the last 10 years this has increased to approximately 8,500 prisoners. The *flux* decreased from around 22,000 prisoners per year in the 1980s to 14,000 in the previous decade. From this it can be concluded that the average prison sentence has increased significantly. Suspects are on remand up to 30% longer, while the group with the longest prison sentences (more than 3 years) grows steadily. Thus by no means can we speak of prison as a last resort. Actual practice in Belgium differs little from that in neighbouring countries.

Among the research group penology and victimology, the view is prevalent that to deal constructively with criminality an appeal must be made to both the offender and the victim, and that the criminological and the victimological cannot be separated from each other. To that end, answers in the direction of restorative justice constitute the initial pretext for action in the reaction to criminality. Restorative justice is a remedy for a number of shortcomings in the 'retributive' criminal justice system, which is strongly characterised by a profound dichotomy between offender and victim. This dichotomy still receives its strongest manifestation in the prison. The societal exclusion of both victim and offender confirms this.

The research group has thus gradually evolved into an *integral* restorative justice approach to criminality. For the moment, the project 'restorative detention' is here a final link. When imprisonment is unavoidable, then the means must still be made available to victim, imprisoned offender and the broader societal context in which they are located, to search for a constructive problem solving approach. In other words restorative justice may not be allowed to end with punishment or at the walls of the prison.

2. External Motivation

The start-up of a project in which restorative justice penetrates the furthest corners of the criminal justice system, can be seen as the ultimate test for the restorative justice movement. Such an enterprise only has a chance of success against the background of a *policy on criminality* that is favourably disposed to restorative justice. Here a short clarification of a few of the steps in restorative justice thinking in the context of Belgian criminality is appropriate.

Before the Dutroux affair took hold of Belgium, the then Minister of Justice had injected new life into the government's discourse on punishment. With his 'Orientation Memorandum on Penal and Prison Policy' of 19 June 1996, the wind suddenly changed directions. The ministerial memorandum made clear the basic objectives of imprisonment (ensuring safe and dignified punishment; preparation for reintegration and the prevention of relapse) and subsequently associated itself with the ideas of restorative justice.

This important document allows us to deduce that restorative justice thinking is slowly but surely seeping into government discourse. For that matter, the present Minister of Justice also considers restorative justice of paramount importance. In the 'Federal Safety and Detention Plan' of 31 May 2000 he endorses the view that the criminal justice system, including the prison system, must have a restorative orientation across the board.

At all levels of the criminal justice machine for that matter, the cogs are beginning to demonstrate an affinity for victims. And although the Dutroux affair as a catalyst has quickened certain developments, many victim-friendly initiatives saw the light of day before August 1996. Thus article 46 of the Act of 5 August 1992 on the Duties of the Police, for the first time in the history of Belgian police legislation mentions the task of assisting the victims of criminal offences. The Act of 12 March 1998 improved the position of the victim at the level of the investigation and judicial inquiry. The search for new regulations concerning parole was also begun before the Dutroux crisis, but it certainly received a boost from it. The acts of 5 and 18 March 1998 put into force a more victim-sensitive arrangement for parole. As already mentioned, a victim must be informed if the offender requests parole. Also the Parole Commissions may consult the victims in reaching a decision regarding the granting of parole.

This enumeration of shifts in policy on criminality provides the framework in which the project 'restorative detention' saw the light of day. At the same time it demonstrates the setting of the project in a changing approach to punishment. In addition, a number of foreign restorative justice initiatives have already found their way to the '*society of captives*'. Among others, the *Wiedergutmachungsprogramma* of the Swiss penitentiary of Saxerriet and certain *Victim Offender Reconciliation Programmes* (VORPs) in Canada, England and the U.S.A. provided examples of a restorative justice approach that transcended the prison walls.

The project 'restorative detention' has developed its own character precisely due to the important link with and reciprocity between policy and research.

B. The Purpose of the Project 'Restorative Detention'

Before making the jump to the action research, restorative justice still needs some conceptual clarification. A strong definition comes from the hand of Tony Marshall (1998): "*Restorative Justice is a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future*". Restorative justice can thus be understood as "the interaction between offender, victim and society, in which all parties make an effort and an investment in order to arrive at a certain level of pacification via communication". The local community, the broader society and the societal institutions (as representative of the society) may be constructively involved in this.

Central to the pilot project is the search for an answer to the question concerning how punishment in general and the prison context in particular can contribute to a more just and more balanced administration of criminal justice for offender, victim and society. This central issue can be reduced to the challenge to give imprisonment a more victim-focused and restorative justice orientation.

The project took the form of action research. The point of departure was always the specific context of each penal institution. The action research was carried out in 3 Dutch-speaking prisons in Belgium. The researchers required a good view of the operation of 'their' respective institutions, before proposing focused initiatives. Each of the three Dutch-speaking prisons thus functioned as an experimental site for concrete restorative justice initiatives. And that brings us to the importance of the method used.

In action research, the two dimensions of action and research are connected to each other like Siamese twins. The '*action*' dimension is aimed at the phased or cyclical implementation of change. The '*research*' dimension is focused upon both the procedure and the result. The action is regularly evaluated and fine-tuned if needed. Action research thus makes it possible to react quickly to changing situations.

Not only does regular reflection on the action taken form an integral part of this approach to research, but the interaction between theory and practice also contributes to a process of *theory formulation*. The research has a direct impact on the actors in the field (e.g., prisoners, victims and

prison personnel). They are able to gain new (learning) experience, which then affects the *agodic* aspect of action research.

C. Activities at the Level of the Prisons

In order to constructively influence the prison context, all aspects of the '*prison community*' need to be addressed. Essential here is a *restorative justice prison culture* in which not only a few key figures are involved but in which restorative justice is supported by all aspects of prison life.

From this follows the importance of the initiatives with respect to *prison personnel*. This constitutes the subject matter of a first point. Prison personnel make a large contribution to the success or failure of 'restorative detention'.

A second sub-section shifts the accent to the *prisoners*. Several activities designed to stimulate responsibility appeal to the prisoners regarding their (potential) perception of and processing of guilt. The accomplishment of this includes ensuring the presence of a victim dimension in the punishment.

Moreover, restorative justice may not be an isolated event. This implies a deliberate linking of the project to the *periphery* of the prison, the 'outside world'.

A final point of interest focuses upon a specific issue, namely the *financial problems* of prisoners (insolvency, impoverishment, debts, fines, legal costs, the civil action settlement and the lack of possible remedies). It is not without reason that this problem has received much attention.

1. Education of Prison Personnel

For restorative detention to have any chance of success, personnel from all prison departments must be personally and constructively involved. During the first years of the action research project, much attention and energy also went into the education of personnel in the three pilot prisons.

The first steps of the project can be reduced to an *introduction* to the theme 'restorative justice during detention'. Providing information and sensitising prison personnel was given form in various ways. In the three pilot prisons much importance was attached by the project workers to *informal* contacts with prison personnel. At the same time, somewhat *formally*, information days were organised and introductory texts drawn up. Information was disseminated via the existing channels as much as possible (for instance via an internal newsletter, an existing study group,...).

Demand quickly surfaced for more information regarding victimisation and restorative justice. An educational programme 'victims and restorative justice' was the answer to this. This course had 4 objectives. First and primarily the programme should provide prison personnel with the knowledge and insight concerning the issue of victimisation. The development of restorative detention was also explained regarding vision, objectives and methods. A third objective to this extra programme was providing a forum for discussion and reflection concerning the issue discussed. In addition, the course provided a good opportunity to explore and stimulate the interest, openness and readiness to take action among prison personnel.

The educational programme 'victims and restorative justice' consisted of three different parts. Regarding methodology the choice was made to make the theoretical explanations as lively as possible. Thus among other things victims came to testify. The evaluation forms that the participants filled in after the course indicated that it was precisely this testimony that made the greatest impression.

'Victims and restorative justice' was able to count on an enthusiastic audience. Yet the researchers chose to change this course. The unilateral introduction of (more) victim sensitivity to prison personnel contained a possible negative effect, a more repressive attitude with respect to prisoners. Another motivation for changing the focus comes from E. Fattah (1991). He states that "yesterday's victims are today's offenders and today's victims are tomorrow's offenders". Moreover, restorative justice consists precisely in bringing together both dimensions, victim and offender. "It is important that in addition to a victim focus, there is also an offender focus and that personnel deal respectfully with prisoners". The course was also then renamed 'offenders and victims'.

The Psychosocial Service also underwent a degree of reorientation with this project. The Psychosocial Service is responsible for detention guidance and until recently has been focused exclusively on the world of the offenders. It is not easy within this offender-focused world to obtain a victim-oriented dimension in dealing with individual prisoners. For them it indeed comes down to introducing the victim dimension without harming the trust – or at least the level of cooperation with the prisoners.

The staff members of the Psychosocial Services in the three 'restorative detention' experimental sites thus also had questions concerning methodological support. This has led in the first place to the development of an educational programme based upon the *contextual therapy* of Nagy. Furthermore a training session on *systems theory* provided an opportunity for a response to the methodological challenge.

To provide the Psychosocial Service staff with an instrument that allows incorporating the perspective of the victim in working with the offender, an appeal was made to a fundamental attitude in contextual therapy. *Multilateral bias* locates a person within the context and the relations in which s/he lives. This framework allows the social worker to alternate between positions of bias for his or her client and bias for other parties.

A contextual therapist led a three-day training programme for the Psychosocial Service staff members of each of the three prisons. In addition a day was also organised around the theme 'Introduction to multilateral bias'. These programmes were also open to social workers from the judicial social work sector who assist offenders, and to social workers who assist victims.

Systematic thinking provided another framework to integrate the newly introduced victim dimension into offender-focused activity. In systems theory the person is seen as a junction of relations imprisoned within a complex of communication systems, various meaning-giving systems and social expectations.

For three half-days, a staff member of the Interaction Academy provided commentary and answers were sought to pressing questions.

Both training programmes, given in 1999, brought with them additional requirements. By improving the recognition of psychological problems among prisoners, referrals could be more focused. But precisely here was the rub. The counsellors were not sufficiently aware of the therapeutic offerings available. Furthermore, the need also arose for skills training to motivate the prisoners to make use of the therapeutic offerings.

2. Activities for Prisoners

The essence of imprisonment lies in the fact that the basic right to move where they want and to participate in a self-selected part of society is taken away from people.

Imprisonment can then also be best described as 'a total sanction'. A series of 'processes of mortification' attack the identity of the prisoners in a thorough way. Their environment is reduced to the immediate prison context.

The introduction of the victim and the community leaves the door open to prisoners for processing what has happened and taking up responsibility. To throw the door to restorative justice wide open, structural aspects of the Belgian prison system need to be readjusted. This was already moderately seized upon in the action research. A number of initiatives already provide prisoners with the possibility to give their punishment a restorative justice touch.

In the first year of the action research, the approach to the prison personnel was at the center. Only a few sporadic activities took place with the prisoners. Via the Leuven Auxiliary prison newsletter and in a presentation to the central group of prisoners at the Hoogstraten Penal Educational Center, restorative justice and the role of the project worker/researcher were introduced. At the same time, education on victimisation and the needs of victims was organised. In Leuven Auxiliary there was a

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

discussion evening held on mediation for redress. Using role-playing, the 15 participating prisoners received an experiential interpretation of empathy and victim perception. Other offender-oriented initiatives concerned a discussion evening with volunteers from the Victim Support Service, making juridical office hours available to prisoners and initiating the course 'The Portrayal of the Victim'.

In 1999 and 2000 the level of activity with the prisoners was increased. After a first year of operation, the time was ripe to approach the prisoners in a more focused way. Thus to provide information to as many prisoners as possible and to increase sensitivity, attention was in the first place firmly focused upon providing both general and specific *information*. Posters and brochures relating to 'restorative detention' were disseminated in each of the three trial prisons. This gave prisoners immediate access to information concerning the project. Via information evenings, specific information was provided on topics that included the redress fund, civil action and mediation for redress. Furthermore, the action researchers tried to sensitise prisoners by showing and discussing films with themes such as victimisation, the needs of the victim and restorative justice.

Secondly, the *juridical office hours* were the subject of further follow-up. This met a number of basic rights of the prisoners, more specifically, the right to information regarding their juridical situation, while juridical advice and procedural assistance was also provided for.

Parallel to the personnel training, prisoners were given the opportunity to become acquainted, in a non-confrontational way, with the experiences of victims. In 1999 the *course* still bore the name 'victims and restorative justice', but the following year this programme received the name 'offenders and victims'. This shift in accent was here motivated by the fact that it was also desirable to give prisoners the space to be able to reflect on their own life and experiences and on their own victimisation.

With respect to content, the course consisted of examining and discussing a film on themes around the issue of victimisation. Video testimony and the contribution of a volunteer from the Center for Victim Support increased the impact of the programme. This programme was open to all prisoners.

The two-day *workshop* 'victims and restorative justice' emphasised the importance of the dialogue between the prisoner and his victim, while also underscoring the importance of dialogue between the prisoners and the criminal justice system. This rather short workshop had a higher level of intensity and more selective entrance qualifications.

An increase in knowledge and insight on the one hand, and stimulating the ability to empathize on the other, were the primary objectives. At the same time communication skills were emphasised and the workshop attempted to stimulate a change in attitude with respect to victims and restorative justice.

The first day of the workshop included an introduction, a proposition game, looking for associations with the word 'victim' and a reflection on one's own experience as victim. During the second day, a police officer explained the restorative justice approach at the police department and victims testified regarding their experiences and needs. Evaluations by the participating prisoners and victims indicate that the workshop was always held in high esteem.

Then we focused our attention on the intensive *course* 'The Portrayal of the Victim', a course that asks much of its participants. This was organised for the first time in 1998 at Hoogstraten Penal Educational Center, but during the following project year the course was also given at the two other project prisons.

Before prisoners may participate in 'The Portrayal of the Victim', an admission interview takes place. Thus each prisoner is evaluated regarding his suitability and motivation regarding the course. The course 'The Portrayal of the Victim' generally covers 7 days. There are phases. First comes the acquisition of knowledge and insight, then the strengthening of the ability to emphasize. A third phase is focused upon bringing about a change in attitude among the prisoners. The *consciousness-raising of the offender* regarding the effects of his or her offence functions as *leitmotiv* throughout the three phases of 'The Portrayal of the Victim'. To that end use is made of newspaper cuttings, video

testimonies, group discussions, discussions with guest speakers up to and including the writing of a letter to the victim.

3. Working at the Periphery of the Prison or 'Introducing Society'

'Restorative detention' as a project, and since the Ministerial Circular of 4 October 2000 as a new objective of prison *praxis*, will only succeed if supported by 'the outside world'. The project must then also strive to stimulate interaction between the prison milieu and 'the outside world'.

In discussing the periphery of the prison, two major components are relevant. On the one hand there are a number of external *services* for (forensic) social work and work in socio-cultural education, whose contribution within the framework of a more restorative justice oriented detention can be significant. On the other hand, possibly more significant, '*fellow citizens* from free society' can become involved with the project. We will discuss both components.

Already before the pilot project there was of course collaboration between the internal prison Psychosocial Services and external social services. This collaboration received an enormous boost by adding the victim to the picture at the level of the punishment. Indeed, until then care for the victim and a client-centric treatment of the offender were strangers. Via this project the researchers were charged with the task of finding initiatives to bridge the gap. This task is now further filled in by the restorative justice consultants.

During the first project year, the main goals were bringing the social workers 'from within' and 'from without' in *contact* with each other, *informing* them as much as possible, allowing them to reflect on the project, its positioning, the methodological and deontological problems and obstacles and to search for feasible forms of collaboration.

A *consultation platform* provided the required space to sensitise the relevant actors, to assess their attitude regarding restorative detention and to achieve feasible forms of collaboration. Partners in communication around this consultation table were the Psychosocial Services of the involved prisons, the directors of the Psychosocial Service at the level of the Directorate-General of Penal Institutions, the services for Victim Attention at the offices of the public prosecutor and the centers for Victim Assistance.

Social workers dealing with victims and counsellors of prisoners quickly experienced the need for methodological support. In this respect it was already indicated that a search was underway in the field of contextual therapy and in systems theory. Both approaches were explained by external organisations. Here again reference can be made to the 'open' character of this *educational activity*. Thus the three-day training on contextual thinking was followed by two mixed groups, namely on the one hand the Psychosocial Service workers from the pilot prisons and a group of social workers who work with offenders from the community and on the other hand a number of social workers who deal with victims.

Several 'external' organisations were mobilised primarily to tackle the issue of debt among prisoners. This is treated in more detail below, but it can already be stated here that the project constitutes a significant bridge between the prison and the *Public Social Welfare Center*. Thanks to the Social Stimulus Fund, beginning September 2000 a social worker has been working on the debt issue half time at Leuven Auxiliary.

The reciprocal communicative repositioning of offenders, victims and society is a objective that in the course of the project was realised by concrete initiatives designed to bring 'people from outside' in touch with the prison world.

At the start of the project, the Hoogstraten Penal Educational Center was the experimental site par excellence to bring 'society' inside. The Penal Educational Center indeed enjoys a strong reputation regarding regime and a tradition of volunteer help. The first initiative brought volunteers from a Center for Victim Support to the Hoogstraten Penal Educational Center. After this followed two discussion evenings between prisoners, prison personnel (the board, Psychosocial Service and prison

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

officials) and visitors. Each discussion was a window into the world of the discussion partner. Contrary to the often-heard cry for more severe punishments and the complaint about prisons being three star hotels, many volunteers were impressed with the prisoners' stories. In the evaluations of these evenings, only positive reactions were heard from all corners.

The following year a further step was taken. The group of volunteers from victim support was expanded to include teachers, persons from youth protection, punishment mediators, a lawyer, police officers and some ten direct or indirect victims. Concerning the participants from the prison system, it seemed more interesting (at least based upon the evaluation) to involve a number of prison officials and prisoners. The participating parties were prepared for the discussion evening. The evaluations indicated again that the initiative was well received.

A final initiative worthy of mention concerns the layout of an information brochure on various aspects of the prison sentence. The inspiration for this came from Canada, where the brochure 'Questions and answers on the prison system and parole' has been used since 1993.

The brochure has a two-fold purpose: meeting the need for information on the part of the victims of the crimes for which the offender is behind bars, and sensitising and broadening the outlook of victims. A survey informed the researchers about the most important themes of specific interest to the victims in connection with the punishment. The surveys revealed that victims desire more information on the differing conditions relevant to the punishment and especially on the decision concerning the early release from prison.

In a press conference on 20 October 2000, the Minister of Justice presented the brochure "When the offender disappears behind bars ...What to expect as victim?"

4. The Issue of Debt Among Prisoners

In our modern society the prevailing method to quantify damage is in terms of money (loss of income, work disability, value of stolen articles). While in the personal experience of victims certain losses are irreplaceable (due to the high emotional value attached to them), in the official discourse everything receives a monetary value. This is also the case with criminal offences.

When a person who commits an offence is convicted by the criminal judge to the payment of compensation to one or more civil parties, then the offender is obliged to pay this compensation. Given that it concerns a civil conviction, in the settlement of this payment, the rules of civil law apply. Central here is the principle that 'debt payment is feasible'. If the convicted person does not spontaneously pay, the aggrieved party must then take legal steps to force payment.

From the beginning of the project 'restorative detention' a number of important decision makers have emphasised that payment of compensation is a form of restorative justice. The researchers themselves underlined the fact that the payment of the civil action settlement *can* be only a part of restorative justice activity, and that compensation implies a sign of admission only if it is also the result of *commitment* on the part of the prisoner. Similar views constitute the foundation for the initiatives concerning civil action.

When the researchers in the three trial prisons also involved the civil action in their approach, a number of bottlenecks were quickly identified. These were brought together in a 'civil action bottleneck memorandum'. Payment of the civil action settlement from prison is problematic, if only because prisoners are *poorly or not at all informed* of their civil sentence. Furthermore, reference can also be made to the *insolvency* of many prisoners, the high *rate of unemployment* in the prisons and the *low salary levels*. In addition, prisoners often have other debts to pay and in their eyes the support of their own family is often a higher priority.

The attention paid to these problems is thus fully justified. We will successively examine two initiatives that address a number of aspects of the debt issue. First the redress fund and then we will focus attention on the 'debt settlement' project.

Redress oriented working within the prison context means, among other things, the creation of possibilities for prisoners to assume their responsibilities. The project 'restorative detention' checked whether it might not be possible, to establish a fund for prisoners. After a preliminary investigation, the not-for-profit organisation Welzijnszorg (Care for Welfare) came forward as sponsor for a fund and a 'redress fund committee' was established that would handle the preparations required to finally start a *redress fund*.

The committee decided to locate the redress fund with the not-for-profit organisation Suggnomè. The reasons behind this are easy to understand. It seemed better that a neutral external organisation decide upon the admissibility of an application.

The fund is meant to provide prisoners with the possibility for some degree of rapprochement with their victim. The amount that can be granted remains limited to half of the amount owed, with a ceiling of 1,250 EURO. This limitation is after all in line with the principles of restorative justice. The first objective of the redress fund is the promotion of communication between prisoner and victim. The limit emphasises the *symbolic* significance of the repayment, not the immediate paying off of the civil action settlement.

If a prisoner wishes to appeal to the fund, she can submit an application to that end to the committee. When the committee approves an application, the prisoner must perform a number of hours of community service in exchange for the money.

If the committee gives its blessing, a mediator is appointed who will submit the proposal to the victim. The decisive voice lies finally with the *victim*. If a positive answer is forthcoming from this side, the prisoner may begin the community service. The prison must do all that is required to make the community service possible.

If the prisoner completes the community service successfully, the committee will pay the amount agreed to the victim. If both offender and victim desire direct contact, this can be organised by the mediator. Further settlement of the balance of the debt can also be arranged in an indirect way by the mediator.

To date the redress fund remains framed in an experimental setting. An attempt is made to engage as many prisoners as possible in the making and distributing of folders, the organising of information evenings and the hanging of posters. The initial findings provide a completely positive picture of this initiative.

Another activity strikes back at the entire burden of debt borne by prisoners. An initial requirement in tackling one's own debt is to obtain an overview and to come to grips with it. In the Auxiliary Prison of Leuven there was the desire to make the burden of debt manageable and to include the civil action settlement in the list of debtors. But managing the debt, negotiating with creditors and the drawing up of payment plans is an almost impossible task for the staff members of the Psychosocial Service.

This was the occasion for initiating a 'debt settlement' project that was a bridge to the Public Social Welfare Center of Leuven. The intent was to work out whether it was possible from prison to manage debt, negotiate with creditors and draw up payment plans.

Within the framework of the 'debt settlement project', the Public Social Welfare Center actually takes upon itself the assistance and education at the level of the individual. In addition to individual assistance, there is also an educational package that treats themes connected with budgeting. It is after all the intent to provide prisoners with sufficient instruments to manage their budget as independently as possible.

V. A FEW CLOSING REMARKS

This broad ranging and yet still superficial – i.e. too selective – description of the project 'restorative detention' perhaps leaves the impression that the penal context itself does not have many problems.

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

With a prison system derived largely from the 19th century, we encounter enormous structural shortcomings. Most Belgian prisons were built according to the philosophy of cellular confinement. Too many of these old buildings must still be modified to finally allow elementary comforts such as running water and a toilet in the cell. Moreover, due to this history, possibilities to organise communal activities are often lacking. A considerable number of prisoners spend more than 20 hours per day in their cell.

That also the Belgian prison system continues to suffer from a crisis of legitimacy (Peters and Goethals, 1981) can best be understood when one realises that within the last decade alone the prison population has increased by 30%, while work continues on initial basic legislation regarding the principles of confinement that safeguard the basic rights of prisoners.

At this moment the restorative justice consultants already have ample knowledge of prison *praxis*. They are charged with an enormous task in which expectations are equally as great. That is why they are always able to count on support from the universities. But the research teams have few ready-made answers. The actual position of 'restorative justice' in Belgian 'detention' situations must gradually receive form in collaboration with restorative justice consultants and research teams.

REFERENCES

- Aertsen, I. and Peters, T., 'Mediation for Reparation: The Victim's Perspective', *European Journal of Crime, Criminal Law and Criminal Justice*, vol. 6/2, 1998, 106-124.
- Aertsen, I., 'Mediation bei schweren Straftaten – auf dem Weg zu einer neuen Rechtskultur?', in *Mediationsverfahren: Horizonte, Grenzen, Innensichten (Jahrbuch für Rechts- und Kriminalsoziologie)*, Pelikan, C. (ed.), Baden-Baden, Nomos Verl.-Ges., 1999, 115-138.
- Aertsen, I., Victim-offender mediation in Belgium: legal background and practice (unpublished paper). Seminar on victim-offender mediation, Popowo, Poland 1998.
- Amir, M., 'Victim Precipitated Forcible Rape', *Journal of Criminal Law, Criminology and Police Science*, 1967, 4, 493-502.
- Amir, M., 'Patterns of forcible rape', Chicago, Ill. University of Chicago Press, 1971.
- Ash, M., 'On Witnesses: A Radical Critique of Criminal Court Procedures', *Notre Dame Lawyer*, 1972, 48, 386-425.
- Bazemore, G. and Walgrave, L., 'Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systemic Reform', in: Bazemore, G. and Walgrave, L. (eds.), *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, Monsey, Criminal Justice Press, 1999, 45-74.
- Cayley, D., *The Expanding Prison. The Crisis in Crime and Punishment and the Search for Alternatives*, House of Anansi Press Ltd., 1998, 15- 88.
- Clark, L., and Lewis, D., 'Rape: the Price of Coercive Sexuality', *Toronto Womens Press*, 1977.
- Demet, S., Opschorting, uitstel en probatie. In: Meyvis, W. e.a.: *Alternatieve maatregelen en straffen. Penologisch vademecum*. Heule, UGA 1998, 79-105.
- Dignan, J. and Cavadino, M., 'Towards a Framework for Conceptualising and Evaluating Models of Criminal Justice from a Victim's Perspective', *International Review of Victimology*, 1996, vol. 4, 153-182.
- Dignan, J. and Cavadino, M., Which model of criminal justice offers the best scope for assisting victims of crime? In: Fattah, E. and Peters, T. (Ed.): *Support for crime victims in a comparative perspective*, Leuven, Leuven University Press 1998, 139-168.

Düinkel, F., 'Täter-Opfer Ausgleich. German experiences with mediation in a European perspective', *European Journal on Criminal Policy and Research*, 1996, n 4.4., 44-66.

Düinkel, F., Krainz, K. en Wurger, M., 'Victimization and Incidence of Delinquency, an International Comparison, in Kaiser, G., Kury, H., Albrecht, H.J., (ed.), *Victims and Criminal Justice*, Freiburg, 1991, 883-929.

Ellenberger, H., 'Relations Psychologiques entre le Criminel et sa Victime', *Revue Internationale de Criminologie et de Police Technique*, 2, 1954, 1 a.f.

Fattah, E. and Peters, T., *Support for Crime Victims in a Comparative Perspective. A Collection of Essays Dedicated to the Memory of Prof. Frederic McClintock*, Leuven, Leuven University Press, 1998.

Fattah, E., 'Restorative and Retributive Justice Models - A Comparison', in: Kühne, H. (ed.), *Festschrift für Koichi Miyazawa*, Baden-Baden, Nomos Verlagsgesellschaft, 1995, 305-315.

Fattah, E., 'Some Recent Theoretical Developments in Victimology', *Victimology*, 1979, 4, 2, 198-213.

Fattah, E., 'The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', in: Fattah, E. (ed.), *Towards a Critical Victimology*, London, MacMillan, 1992, 401-424.

Fattah, E., 'Victims and Victimology : The Facts and the Rhetoric', *International Review of Victimology*, 1989, 1:43-66.

Galaway, B. and Hudson (eds.), *Perspectives on Crime Victims*. St. Louis: C.V. Mosby, 1981.

Garafalo, J., 'Victimization and the Fear of Crime', *Journal of Research in Crime and Delinquency*, 1979, 16:80-97.

Garcia-Pablos, A., *Manual de Criminologia*, Espasa Calpe, Madrid, 1988.

Hindelang, M., Gottfredson, M. R., and Garafalo, J., '*Victims of Personal Crime: An Empirical Foundation for a Theory of Personal Victimization*', Cambridge, Mass.: Ballinger, 1978.

Hough, M., *Taking Account of Crime : Key Findings from the Second British Crime Survey*, London: HMSO, 1985.

Johnson, J., a.o., 'The Recidivist Victim: a Descriptive Study', *Criminal Justice Monographs*, Sam Houston State University, Huntsville, Texas, 1973.

Knudten, R.D., Meade, A., Knudten, M. and Doerner, W., 'The Victim in the Administration of Criminal Justice: problems and perceptions', in McDonald, W. (ed.), *Criminal Justice and the Victim*, London, Sage Publications, 1976, 115-146.

Lauwaert, K., De strafrechtelijke geldboete. In: Meyvis, W. e.a.: *Alternatieve maatregelen en straffen. Penologisch vademecum*. Heule, UGA 1998, 107-124.

Lauwaert, K., De vrijheid of invrijheidstelling onder voorwaarden. In: MEYVIS, W. e.a.: *Alternatieve maatregelen en straffen. Penologisch vademecum*. Heule, UGA 1998, 59-78.

Lurigio, A.J. and Resick, P.A., 'Healing the psychological wounds of criminal victimization: predicting postcrime distress and recovery', in Lurigio, A.J., Skogan, W.G. and Davis, R.C. (eds.), *Victims of crime: Problems, Policies and Programmes*, Newbury Park, C.A.: Sage, 1990.

Maguire, M., 'The Impact of Burglary upon Victims', *British Journal of Criminology*, 1980, 20, 3:261-75.

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

- Maguire, M., Corbett, C., 'The Effects of Crime and the Work of Victim Support Schemes', Aldershot Gower, 1987.
- Marshall, T., *Restorative Justice. An overview*, London, Home Office, 1999.
- Marshall, T., *Restorative Justice. An Overview*, unpublished, 1998, 1.
- Martin, D., 'Le Mouvement d'Aide aux Victimes en Belgique Francophone: Tendances, Problèmes Actuels et Perspectives', *Revue de Droit Pénal et de Criminologie*, 1989, 787-807.
- Mawby, R. I., and Gill, M. L., *Crime Victims: Needs, Services and the Voluntary Sector*, London: Tavistock, 1987.
- Mawby, R. I., and Walklate, S., *Critical Victimology*, London: Sage, 1994.
- Maxfield, M. G., *Fear of Crime in England and Wales*, HORS 78, London: HMSO, 1984.
- Mayhew, P., and Aye Maung, N., 'Surveying Crime: Findings from the 1992 British Crime Survey', *HORS Research Findings No. 2*, London: HMSO, 1992.
- Mayhew, P., and Aye Maung, N., Elliot, D., and Dowds, L., *The 1988 British Crime Survey*, London: HMSO, 1989.
- Mayhew, P., and Aye Maung, N., Mirrlees-Black, C., 'Trends in Crime: Findings from the 1994 British Crime Survey', *HORS Research Findings No. 14*, London: HMSO, 1994.
- McCold, P., 'Restorative Justice - Variations on a Theme', in: Walgrave, L. (ed.), *Restorative Justice for Juveniles. Potentialities, Risks and Problems*, Leuven, Leuven University Press, 1998, 19-53.
- Mendelsohn, B., 'Une nouvelle branche de la science bio-psycho-sociale: victimologie', in *Revue Internationale de Criminologie et de Police Technique* 1956, 11 (2), 95-109.
- Mirrlees-Black, C., Mayhew, P. and Percy, A., *The 1996 British Crime Survey*. London, HMSO, 1996.
- Peters, T. and Goethals, J., "De legitimeitscrisis van de gevangenisstraf" [Imprisonment's crisis of legitimacy] , *Streven*, 1981, 316- 327 and 364- 365.
- Peters, T. en Goethals, J. (eds.), *De achterkant van de criminaliteit. Over victimologie, slachtofferhulp en strafrechtsbedeling*, Antwerpen: Kluwer Rechtswetenschappen België, 1993.
- Peters, T., 'Probleemoplossing en herstel als functies van de straf', *Panopticon*, 1996, 555-569.
- Peters, T., *Restorative Prisons: A Belgian Practice*, a paper presented at the 5th International Conference on Restorative Justice, Leuven, 16-19 September 2001, 24 p.
- Phipps, A., *Criminal victimisation, Crime Control and and Political Action*, Middlesex Polytechnic (Ph.D. thesis), 1987, 604.
- Pieters, F., De alternatieve straffen en maatregelen in de Oriëntatienota. In: Peters, T. en Vanacker, J.: Van Oriëntatienota naar penaal beleid? Leuven, K.U.Leuven, Faculteit Rechtsgeleerdheid 1997, I.10.
- Reeves, H., 'The victim support perspective', in: Wright, M. en Galaway, B. (eds.), *Mediation and criminal justice: victims, offenders and community*, London: Sage, 1989: 44-55.
- Restorative Justice Consortium, *Standards for Restorative Justice*, London, National Council for Social Concern, 1998.

Rock, P., 'Helping Victims of Crime. The Home Office and the Rise of Victim Support in England and Wales', Clarendon Press, Oxford, 1990, 442p.

Skogan, W. G., 'The Fear of Crime and its Behavioural Implications', in E. Fattah, ed., *From Crime Policy to Victim Policy*, London: Macmillan, 1986.

Skogan, W. G., 'The Impact of Victimization on Fear', *Crime and Delinquency*, 1986, 33: 135-54.

Smaele, S., Homogeneous Victim-Offender Populations: A Review and some Research Implications. *The Journal of Criminal Law and Criminology*, 1981, 72 (2), 779-788.

Snacken, S., Surpopulation des prisons et sanctions alternatives. In: MARY, P.: Travail d'intérêt général et médiation pénale. Socialisation du pénal ou pénalisation du social? Bruxelles, Bruylant 1997, 367- 401.

Snacken, S., Surpopulation des prisons et sanctions alternatives. In: MARY, P.: Travail d'intérêt général et médiation pénale. Socialisation du pénal ou pénalisation du social? Bruxelles, Bruylant 1997, 382.

Stanko, E. A., 'Hidden Violence Against Women', in M. Maguire and J. Pointing, eds., *Victims of Crime: A New Deal ?*, Milton Keynes: Open University Press, 1988.

Van Dijk, J.J.M., 'Eigen schuld, dikke bult ? Over de neiging om het slachtoffer verantwoordelijk te stellen voor zijn/haar lot', Soetenhorst - De Savonin Holman J., (red.) *Slachtoffers van misdrijven. Ontwikkelingen in hulpverlening, recht en beleid*, Gouda Quint, Arnhem, 1989, 11-24.

Van Dijk, J.J.M., 'L'évaluation de l'impact des régimes d'indemnisation et des programmes d'assistance aux victimes d'infraction', *Annales de Droit de Liège*, 1984, 211-216.

Van Dijk, J.J.M., 'Strafrechtshervormingen ten behoeve van het slachtoffer in internationaal perspectief', *Justitiële Verkenningen*, 1988, 7-27.

Van Dijk, J.J.M., 'Victimologie', *Tijdschrift voor Criminologie*, 1992, 65-69.

Van Dijk, J.J.M., Mayhew, P. and Killias, M., *Experiences of Crime Across the World: Key Findings of the 1989 International Crime Survey*, Arnhem, Kluwer, 1990.

Van Kerckvoorde, J., 'Slachtofferenquêtes', *Handboek Politiediensten*, IX, E/3, 1986, 1-17.

Van Kerckvoorde, J., *Een maat voor het kwaad?* Universitaire Pers Leuven, 1995.

Van Ness, D., 'Legal Issues of Restorative Justice', in: Bazemore, G. and Walgrave, L. (eds.), *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, Monsey, Criminal Justice Press, 1999, 263-284.

Verstraeten, R., 'De burgerlijke partij in het gerechtelijk onderzoek. Het slachtoffer in het strafproces', Maklu Uitgevers, Antwerpen/Apeldoorn, 1990, 534.

Viano, E., 'Victimology: A new focus of research and practice', *Victim's rights and legal reforms, Oñati Proceedings 9*, Oñati, 1991.

Von Hentig, H., 'Remarks on the interaction of Perpetrator and Victim', *Journal of Criminal Law and Criminology*, 1941, 31 (3), 303-309.

Von Hentig, H., *The Criminal and his Victim*, New Haven, Conn.: Yale University Press, 1948.

Walgrave, L., 'Restorative justice for juveniles: just a technique or a fully-fledged alternative?', *The Howard Journal of Criminal Justice*, 1995, 228-249.

121ST INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

Weiss, K., Borges, S., 'Victimology and rape: the case of the legitimate victim', *Issues in Criminology*, 1973, 8, 71-115.

Weitekamp, E., *The paradigm of restorative justice: potentials, possibilities and pitfalls. Keynote lecture for the 9th International Symposium on Victimology* (unpublished), Amsterdam, 1997.

Wergens, A., *Crime Victims in the European Union*, Umeå, The Crime Victim Compensation and Support Authority, 1999.

Wolfgang, M., *Patterns in Criminal Homicide*, Philadelphia, University of Pennsylvania, 1958.

Wright, M., *Justice for victims and offenders. A restorative response to crime* (second edition), Winchester, Waterside Press, 1996.

Young, M., *Restorative Community Justice: a call to action*, Washington, National Organisation for Victim Assistance, 1996.

Zauberman, R. and Robert, P., *Du côté des victimes un autre regard sur la délinquance*, 1995, L'Harmattan Paris.

Zedner, L., 'Reparation in Criminal Law', in A. Eser and S. Walther, eds., *Wiedergutmachung im Kriminalrecht: Internationale Perspektiven*, 1996, 109-227, Freiburg: Max Planck Institute.

Zedner, L., 'Victims', in *The Oxford Handbook of Criminology*, 2nd ed., 577-612.

Zehr, H., *Changing Lenses: A new focus for criminal justice*, Scottdale, Herald Press, 1990.