Restorative justice and Mediation

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Editorial

Modern nations, defined by constitutional civil rights, dominance of market-economy and free elections, seem to generate high rates in crime and deviance. At the same time the criminal justice system is lacking in its capacity to counter the social problems that lie behind these figures. The great demand for criminal justice cannot be fulfilled by the traditional criminal justice system; it is too limited in scope, means and effectiveness. This situation results in efforts to formulate alternatives beyond the classic criminal justice procedures. The search for alternatives is no longer a feature of abolitionists or of critical criminologists. It is felt as a common impetus among policy makers, politicians, criminologists and the public. The traditional criminal justice process can be characterized by the duality of state and offender. The alternatives are to be found in a more prominent role of the victim and the community: mediation, compensation, restoration, shaming and community service.

These paragraphs are taken from the introductory article of Hans Boutellier – managing editor of this journal. In his view the alternatives, among which mediation and restorative justice are the most prominent, can be judged as a new normative policy. This policy fills the gap between traditional criminal justice with imprisonment as its cornerstone and social policy which concentrates on equality and well-being. They show, according to the author, the settling of a new 'equilibrium between law and morality'.

Other articles in this issue deliberate on mediation and restorative justice in several countries. Tony Marshall’s article summarizes the history of attempts to use mediation in relation to criminal matters in Britain since 1980. It shows the current state of play in 1996. Two major models of mediation are in existence. The social work model is part of a more general programme of work with offenders and attempts to affect their behaviour. The independent mediation model is a service in its own right, offering both the victim and the offender the chance to resolve any issues arising out of the offence. The different implications of the two models are explored. It is argued that the development of mediation in criminal justice in Britain has been largely pragmatic and that theory has played only a minor part.

At the end of 1990, a new juvenile court law was enacted in Germany. In addition to other new probationary sanctions, this law provided a legal framework for both victim-offender mediation and judicial reformatory measures and alternative prosecutory strategies. Frieder Dünkel’s article discusses this development. The author describes the legal and conceptual framework of mediation and the organization of several projects. The article ends with a
European perspective on the development of victim-offender mediation. Dünkel concludes that 'the role of restitution and victim-offender mediation through dialogue and mediation, reconciliation and peace-making in criminal justice during the 21st century depends on their solid entrenchment in criminal justice theory and practice.

Lode Walgrave and Ivo Aertsen discuss the concepts of shaming and restorative justice. They illustrate their point with the project 'Mediation for reparation' which was started in Leuven in 1993. The pilot study investigated the possibilities for re-orienting the criminal justice system itself in a restorative way. The project produced many findings regarding the methodology of mediation. Both the participating victims and offenders were highly satisfied with the results. This positive effect could largely be attributed to the fact that they were able to play an active and responsible role in the criminal justice decision-making process.

Jane Dullum informs about the mediation boards in Norway. In this country mediation was introduced on a national scale – thanks to Nils Christie. The first Norwegian Mediation Board was established in 1981. As we shall see later, this measure was aimed at preventing juvenile delinquency. After this, the Mediation Boards went into a long trial period. For several years it was voluntary for the municipalities to establish Mediation Boards. This was changed in 1991 when the Mediation Boards Act was passed. According to this Act, the mediation board-system became the responsibility of the State, under the Ministry of Justice. The Act made it mandatory for the municipalities to establish a Mediation Board. A municipality may either establish a single board, or two or more municipalities within a county may jointly establish a board. Mediators are appointed in each municipality. Today there are 42 Mediation Boards in Norway, and 710 mediators. The author concludes that there has been a shift in aim from finding alternatives to prison for young offenders towards a normative measure of justice.

Anke Zandbergen endeavours to show that a Dutch diversion project for juveniles (Halt) can be construed as an application of Braithwaite's theory of reintegrative shaming. This interpretation can provide guidance for the redesigning of the project and help to increase its effectiveness. The first section of this article describes the development and the theoretical background of the Halt-procedure. This is followed by a brief description of the theory of reintegrative shaming. In the second section the emotions 'shame' and 'guilt' are discussed. Finally the outcome of a small research project is presented. This study explored whether the application of the shaming-concept within the Halt-approach can indeed help to increase the effectiveness of this procedure.
Beyond the criminal justice paradox

Alternatives between law and morality

Hans Boutellier¹

According to J.Q. Wilson there are only two restraints on behaviour: morality and law. 'If society is to maintain a behavioural equilibrium, any decline in the former must be matched by a rise in the latter' (or vice versa) (Wilson, 1994, p. 489). This statement is as simple as plausible. It considers material causes of crime – social deprivation, strain, opportunity – as given, and focuses in addition on the normative inhibition of criminal behaviour. More important, it seems to be a promising starting point to get some grip on recent developments in criminal justice policy.

Western cultures have shown an increasing plurality in subcultures and lifestyles, that is to say in moral codes. Within a few decades most western countries have transformed from relatively stable normative cultures into cultures of explicit moral pluralism. And in line with Wilson's statement, law – and more specifically criminal law enforcement – has indeed attained a more prominent role in enforcing social order. Social order depends more and more on the judicial institutions. In almost every single western country there has been a tremendous rise in detention rates (Kuhn, 1996; Tonry, 1996). In general, 'security' seems to have become the leading concept in organizing social order (Boutellier and Van Stokkom, 1995).

This situation has led to what I would like to call 'the criminal justice paradox'. Modern nations (defined by constitutional civil rights, dominance of market-economy and free elections) seem to generate high rates in crime and deviance.² At the same time the criminal justice system is lacking in its capacity to counter the social problems that lie behind these figures. The great demand for criminal justice cannot be fulfilled by the traditional criminal justice sys-

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² It is beyond the scope of this article to elaborate on this statement.
tem; it is too limited in scope, means and effectiveness. This situation results in efforts to formulate alternatives beyond the classic criminal justice procedures.

The search for alternatives is no longer a feature of abolitionists or of critical criminologists. It is felt as a common impetus among policy makers, politicians, criminologists and the public. The traditional criminal justice process can be characterized by the duality of state and offender. The alternatives are to be found in a more prominent role of the victim and the community: mediation, compensation, restoration, shaming, community service. They can be positioned somewhere between criminal justice and social policy.

The alternatives have of course their own backgrounds and conceptualizations. They cannot be lumped together in one and the same category. It would be interesting to see, for example, which alternatives, under what conditions are adopted by the state. It is not my aim, however, to evaluate them in this way.

In this article my aim is to understand the alternatives in general as an effect of the criminal justice paradox. They demonstrate the settling of a new 'equilibrium between law and morality'.

Firstly, I will elaborate on the criminal justice paradox of much demand and limited supply. In the next section I will try to diagnose the moral situation in (post)modern society. This diagnosis is based on my book Solidarity and Victimhood; The Moral Significance of Criminal Justice in a Post-Modern Culture. In addition I will argue that the mentioned alternatives are mainly focused on norm confirmation and try to bridge the gap between social policy and criminal justice policy. In the last section I will give a critical reflection on this development.

The criminal justice paradox

The crisis of the traditional penal system is in a paradoxical way characterized by its growth. Criminal justice seems on the one hand to have lost its position as the ultimum remedium because of the categorical figures of conviction and imprisonment.

At the same time the cases that are dealt with by the criminal justice system are very few in number in relation to the total amount of crime. An absolute increase in imprisonment goes in tandem with a relative decrease in the impact on the crime problem. This can be illustrated by a flow chart of the Dutch criminal justice system (figure 1).

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3 An English translation is forthcoming.

4 See the previous issue of this journal on Developments in the use of prisons (vol. 4, no. 3).
Figure 1: Crimes, criminal cases, and sentences (1994)

Estimated number of crimes based on victim surveys at least 8 million

Known to the police/RMAB
1.5 million

Official report made up 1.3 million

Solved 250,000

Suspected Individuals

HALF settlement: 14,000

Cases settled by PPD and courts: 260,000

Cases settled by PPD: 128,000

Dismissal on discretionary composition: 34,000, dismissal 30,000

Sent by courts: 136,500

Joint actions: 37,000, not guilty: 8,000, conviction: 91,500

Sentences imposed: 130,500

Fine: 47,000

Prison sentence: 47,000

Community service: 15,000

Disqualification: 14,000

Other: 7,500

Unprovisional: 49,000
(average NLG 1600)

Non-suspended: 27,000
(average 6.3 months)

Unsusp: 8,000

Source: CBS/Ministry of Justice estimates based on victim surveys of individuals/businesses
CBS police statistics
PPD Gouden Delta-systeem
HALT-Nederland
probation service
On an estimated total of eight million crimes – based on victim surveys – only 240,000 cases are dealt with by prosecution officers. According to registered crime-statistics, about 17 per cent of all crimes are followed by judicial intervention in one way or other. This means that only a minor part of the criminal situation in the Netherlands is handled by criminal law. Historically there is a relative decrease in the impact of the repressive system. In 1965 the clear up rate was 51 per cent, in 1980 this had decreased to 29 percent, and in 1993 only 19 per cent of all crimes known to the police were solved.

The committee that used this scheme, was set up by the Dutch Ministry of Justice in order to investigate the possibilities for expanding the use of alternative sanctions. The committee concluded that a further reduction in the use of prisons was no longer feasible. The detention rate was, in spite of its growth over the last decades, seen as the absolute minimum. Contrary to its assignment, the committee's advice was to build more prisons (Commissie Heroverweging Instrumentarium Rechtshandhaving, 1995). This conclusion reflects the depth of the criminal justice paradox. Social order cannot be achieved by the criminal justice system, without a further increase in imprisonment rates.

This criminal justice paradox is reflected in the critiques on the traditional criminal justice system. It is simultaneously criticized for its impotence and for its power. On the one hand there is the incontrovertible comment that its scope is too small to deal with socio-economic problems of equality and welfare: poverty, unemployment, ghettoization, racial discrimination. The real problems are supposed to be outside the realm of 'crime and justice'. From this perspective crime control can be no more than confirmation of unequal accessibility to socio-economic resources.

This critique was strong in the sixties, and has been nourished by the punitivism of modern states over the last two decades. Nevertheless this criticism was not very effective because of the breadth of its alternatives in terms of macro-social politics. At the same time it was not entirely convincing because crime was rising while equality and welfare were increasing. The social policy of the welfare state was evidently not able to counter the growing crime problem. The severity and urgency of the crime problem required more specific responses. This recognition was reflected for example with the turning of the critical criminology of Jock Young c.s. into so-called left realism. He realized that victims of crime were mainly found among the poor and the minorities. The legitimacy of criminal justice was recognized next to social policy in terms of maximizing social equality.

5 Some offences (e.g. violent offences, drug offences) have of course a higher impact on the criminal justice system. Public order offences, vandalism and bicycle theft for instance do not penetrate very far into the law enforcement system.
Beyond the criminal justice paradox

An additional critique on the impotence of the criminal justice system is to be found in the view that 'nothing works', the provocative statement of Martinson (1974). It articulated a common feeling among members of the 'criminal justice community', that attempts at rehabilitation and incapacitation of criminal offenders could not stop recidivism and the crime wave in general. The optimism that accompanied the growth of the welfare state, with its emphasis on social work and socio-therapeutical healing of societal problems, turned into pessimism about the ability to counter the crime wave. Most prison regimes in western countries have reduced their efforts to rehabilitate.

It was, among other reasons, this sense of powerlessness that gave birth to the neo-retributivism of the 'just desert'-movement of Von Hirsch c.s. (1976). This movement has been very influential in the United States. It professed scepticism about the rehabilitative potential of the criminal justice system, cynicism regarding the determinism in criminological thinking and criticism relating to the inequality of justice (especially in relation to race). It recaptured the idea that the offender was accountable for his deeds and concentrated on a due process in which the same offences were punished in the same (fair) way: just deserts.

This neo-retributivist philosophy can be seen as a revitalization of liberal criminal justice. In a milder form this kind of politics has been imported into European countries, where the rehabilitative ideal has been ousted by a more punitive ideology. The development of neo-retributivism showed the other face of the criminal justice system, its power. Many theorists hold this view accountable for the getting-tough-on-crime-politics in the United States (e.g. Braithwaite and Pettit, 1990; Kuhn, 1996).

The critique on the power of the criminal justice system concentrates on the domination of the state in controlling social order. It is not so much the impotence but precisely the omnipotence of the system that is criticized. The Dutch abolitionist school (Hulsman, Bianchi, De Haan (1990) and Van Swaaningen, 1996), as well as Stanley Cohen, Nils Christie and others, are some of the main proponents of this movement.

These critiques reflect two sides of the same coin. On the one side there is a growing societal pressure on the criminal justice institutes. This expresses itself in the stronger position now hold by the traditional criminal justice system. On the other side there is the limited position of this system to actually deal with the forces which lead to the high crime rates of liberal welfare democracies, and the new forms of crime that emerge (fraud, organized crime, cyber crime). Between the critiques on the power of the system and the impotence of the system there has been a growing interest in the prevention of crime, and more recently in the normative possibilities of preventing crime. It is amazing how long – since Durkheim – the relationship between normative social aspects of
culture and criminal law was ignored. The criminal justice system is by definition narrow in its scope. It cannot cope with socio-economic problems and it should not be judged in these terms. Criminal justice operates given the material conditions of a society and not in order to change them. More specifically, there seems to be a call for a community-based way of coping with deviance, crime and social order. The severity of the crime problem and the limits of traditional criminal justice have given birth to the cited efforts to find alternatives. I would like to understand these alternatives as an attempt to recapture the normative function of social policy, inspired by the criminal justice paradox. Criminal justice and social policy seem to merge into a new normative policy. For that we need a further insight into the actual moral situation of (post)modern culture.

Morality and criminal law

During the last decade there has been an increasing interest in the relationship between morality and criminal law. Previously, criminology was almost completely focused on the debate between socio-economic backgrounds of crime on the one hand and crime control by situational devices on the other. From the former point of view morality was seen as a rather obscure concept that was to be understood as a by-product of material or cultural forces. By proponents of the latter position morality was sometimes merely seen as just another instrument in crime control. Interest in the normative function of criminal law was a conservative option to promote restorative tendencies. At the same time there was a minimal interest in the crime problem from the side of social philosophy and social policy. This field of enquiry was dominated by debates on social equality and self realization. It is surprising how little interest was shown in moral matters of daily life, such as the crime problem. This mutual disinterest in criminology and social policy in the relationship between public morality and criminal law seems to have changed. In order to acquire a better understanding of the emerging alternatives to criminal justice procedures it is important to give a modest diagnosis of the moral situation in western post-modern culture. Nowadays it is widely accepted that the main ideologies of religious or socialist origin play a minor role in today's politics. Fukuyama (1992) has even proclaimed 'the end of history' on the ideological level. Liberalism, in more and

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6 J.Q. Wilson, for example, has published the impressive book The Moral Sense; Hirschi and Gottfredson have theorized on self-control as the major element in deviance; there is a tremendous amount of literature on the role of education and the family in generating criminal or conformist behaviour; see for Germany for example Papageorgiou, 1994.
less social variants, was the one and only ideology that could survive. Long before him in the sixties, Daniel Bell had already foreseen the decline of an ideology based culture. And in the seventies, Lyotard attributed the concept of postmodernism, taken from the field of architecture and arts, to the expert knowledge based culture where dominant political 'narratives' no longer exist. This transformation has considerable consequences for the moral codes of daily life. Until the sixties these were ideological and institutional based prescripts on how to love, how to live, and how to cope with daily matters. The ideological structures were related to hierarchical structures that had a clear institutional base. Criminal justice was just an ultimate remedium in cases where people deviated from the dominant norms. Especially in European countries – and the Netherlands might have been an outspoken example of this – a radical transformation took place from ideology based ethics to a pluralistic, subjectivistic morality.

Alisdair MacIntyre has called this kind of morality 'emotivism': 'all evaluative judgements and more specifically all moral judgements are nothing but expressions of preference, expressions of attitude or feeling' (MacIntyre, 1983, pp. 11, 12). He judges this situation as 'a grave cultural loss' (1983, p. 22), and traces it back to the Enlightenment, where the rational individual – and no longer God – became the deciding entity in moral matters. In reaction to the post-modern era, in which this emotivist morality was radicalized, one can see nowadays a call for moral considerations and standards. The question is what this can be based on in a culture which has lost its generalizing concepts. In such a situation there are – to speak with to Durkheim one century ago – two candidates: the individual subject and the community. Durkheim chose the latter. This concept is also central in the so called communitarianism of authors like Etzioni, MacIntyre, Sandel, Bellah and others. They try to revitalize the idea of the community as the determining force of morality. The community itself strives for a common set of moral codes and standards. In my opinion such a hope for communal inspiration in moral development is rather gratuitous and illusory. Post-modern times are characterized by plurality and conflicting life styles. The community as such does not have the appealing power to unite citizens into a common lifestyle. And if not illusory it might even be undesirable to see the community as a base for morality, given the achievements in terms of self development of post-ideological times.

I would prefer to understand post-modern morality from the point of view of the other candidate: the individual subject. Liberal humanism has put the individual on the throne. As far as a counterweight must be found in the emotivist situation that has grown out of this central position, it can be found in the vulnerability of the individual subject. As Richard Rorty (1989) has said, the only moral question that really matters in our times is: 'Are you suffering?'. In a
pluralistic liberal society which can be characterized by its variety of lifestyles, it is hard to define what a good life is for all. But it is not so difficult to understand what kind of behaviour we want to reject, because we are all 'fellow sufferers', as Rorty describes human beings.

According to Rorty, harm and compassion are the basic terms in the morality of the individualized, fragmented, multi-cultural, out-of-ideology welfare state. In this type of state it is difficult to reach consensus on the classic moral questions like: 'What is a good life?' 'What is virtue?' 'What is justice?' 'What is a good community?' It is much easier – but still difficult – to reach consensus on the negative side of morality: 'Who is suffering?', 'Who needs protection?', 'Who is a victim?'

Suffering, humiliation, pain, and discrimination are the common experiences we would like to avoid. According to an other American philosopher, Judith Shklar, in a liberal world cruelty is experienced as the worst vice. This rejection of cruelty is the other side of emotivism; it is on a state level reflected in the Declaration of Human Rights; it can be found in the harm principle of John Stuart Mill; it is the base of solidarity in post-modern times. And for that matter, it explains why 'the victim' has gained such a lot of attention in just a few decades. 'The immediate impulse and strategy of those who put cruelty first is to look to the victim for moral reassurance' (Shklar, 1984, p. 13).

'Victimalization'

In an emotivist moral situation compassion for other people's suffering becomes the central force behind solidarity. A morality of principles becomes substituted by a morality of sensitivity and empathy. This situation can be regrettable as MacIntyre finds it, but it can also be seen as new direction in post-modern moral concern. It can even be evaluated as the breeding ground of a new communal morality, which is not to be found in a presupposed 'community'. At least it can explain why the victim of crime was neglected about twenty years ago, and has gained a central position in deliberations in criminal justice nowadays. For that matter I would like to speak of the 'victimalization' of morality.

This development has also been recognized but criticized, for example by Robert Hughes who speaks of the culture of complaint (Hughes, 1993). He especially attacks the hype of political correctness at the American universities. It is also criticized by Charles J. Sykes in A Nation of Victims (1992). In his view the plaint of the victim has become the loudest and most influential voice in America. He particularly blames the exculpating tendencies that accompany the 'victimization' of culture for 'the decay of the American character'. I would prefer to speak of the emancipation of the victim, that is a victim no
longer caught in paternalizing structures but seeking his or her rights using the existing institutions or finding new ways in political organizations or social movements, like the women's movement. A culture in which compassion has become the primary virtue is vulnerable indeed, because it is not ideologically embedded. But compassion must be seen as a minimal claim of liberal society; people can make their own choices for a maximal philosophy of life. For Christians, for example, compassion is part of their religious identity. This means that people have to be educated in this minimal moral imperative of post-modern culture. Compassion is, according to Bauman (who is inspired by Levinas), given in relation to the face of the Other, but is has to be socialized as a moral force in daily life. Compassion has to be fostered by social circumstances. According to Rorty security and prosperity are the necessary conditions for treating other human beings as oneself. A post-modern multiform society needs a moral minimum, that in my opinion can be found in the vulnerability of the subject. The victim of crime serves as the outspoken moral agent in a post-modern culture.

**Legitimacy of criminal justice**

The crime problem seems to confront society with a fundamental moral inadequacy. The main interests of criminal law – protection of physical integrity and property – were strongly anchored in the religious and political denominations of western civilization. Morality has lost its unity however and is no longer, in a natural way, in line with criminal law. It seems as if liberalism with its emphasis on individual freedom and belief in the rational control of social development cannot substitute the disciplinary force of religion and other ideological systems.

Because of the breaking down of the religious and socio-political barriers, the legitimation of the do's and don'ts of the penal code has increasingly become a matter of criminal law itself. This new relationship between morality and criminality leads to the problem of the legitimacy of the modern state. If criminal law cannot be legitimized any more by the self-evident social cohesion of a community, it can at least be understood as the protection against victimization. In a fragmented culture, where no consensus exists about 'the good society', there can at least be some consensus about suffering and victimization. From this point of view criminal law is seen as a meaningful construction; it is determined by tradition and culture but it refers to experiences of suffering, harm and cruelty. The offender has to be seen to be accountable for his deeds. In the 'victim' we find a criterion that draws a line in moral relativism and pluralism that is dominant in post-modern culture. That the victim has become the central object of morality, does not mean that there is always consensus.
about who the victims are. The 'victimalization' of morality refers to the sociological processes of describing, discovering, defining or even constructing some people or groups of people as victims. Against this background one of the major developments of the last decades in criminal law can be understood: criminal law practice and policy have discovered the victim. This development can be referred to as the 'victimological' turn in criminal law. During the last twenty years, after being neglected for ages, the victim has gained an unprecedented status. In the absence of the old ideology-based institutions, criminal law was in need of new legitimizing powers and found them in the victims' movements. The women's movement played a particularly significant role in putting the victim of crime into the limelight. Criminal law and policy need the victim nowadays as they needed religion until the 1960s.

'Victimalization' refers to the cultural process by which people who are suffering or are humiliated are described as in need of compassion and protection. In cases of predatory crime there is no doubt about the suffering that is caused and in line with this about the legitimacy of criminal law to intervene. But in cases of non-predatory crime criminal policy in post-modern culture is indecisive. That is the cultural background of the discussion on victimless crimes, as initiated by Schur in 1965. The 'victimalization' can also be seen as the driving moral force behind the search for alternatives to the traditional criminal justice procedures.

Pragmatic moralism

In the early eighties the cry for public security and the pressure on the criminal justice system resulted in the formulation of crime prevention strategies. This policy was mainly inspired by theories on reducing opportunities for crime and increasing (social) control in the public domain. They can be typified as an extension of the surveillance function of the modern state (Giddens, 1985). The crime prevention model of the eighties is mainly characterized by situational measures. In addition to this form of prevention a new perspective on the crime problem in normative terms seems to have developed. Some authors even speak of a new paradigm, which can be labelled by several concepts. Dignan and Cavadino (1996), for example, mention at least eleven different denominators, which include 'communitarian justice', 'informal justice', 'reconciliation', 'relational justice', 'reparative justice' and 'restorative justice'. Many of these alternatives to the criminal justice system are initiated

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7 See for example the issue on environmental criminology of this journal (vol. 3, no. 3).
by institutions in the area of social policy. The community boards in San Francisco, for example, are inspired by ideas on community work. The mediation centres in Norway operate independently from the state’s criminal justice system.

Other initiatives have been started by the criminal justice system itself. In the US there is a serious development towards neighbourhood justice. In the wake of community policing the judicial function is also decentralizing to the community. In France one speaks of ‘justice de la proximité’. In order to make the justice system more problem oriented and more visible for citizens so-called ‘maisons de la justice’ were founded in problematic suburbs. In the Netherlands and Belgium there will be experiments with comparable bureaus of neighbourhood justice (Boutellier, 1996).

In line with these alternatives other methods of penalizing harmful behaviour have been developed. Junger-Tas (1994) analyzed the effectiveness of serious alternatives to the traditional penalties, imprisonment and fines. Among the most prominent ones are compensation, community service and mediation. Braithwaite (1989) has proposed and implemented so called family conferences. In these conferences the offender is invited to apologize and to restore the relationship with the victim and with his relatives.

In relation to the alternatives for criminal justice mentioned before, there is a growing interest in early intervention in criminal careers, even before any crime is committed. In the US, Great Britain and other European countries – including Germany and the Netherlands – programmes have been launched which aim to detect anti-social behaviour in young children, and families are supported in raising their children. One of the best known programmes is the Perry pre-school project in Great Britain. The Council of Europe has initiated the establishment of an expert committee on the subject of early intervention. Social work methods are used to divert potential criminal careers.

The community and the victim are the keywords in this search for alternatives beyond the criminal justice paradox. This development can be judged either in a negative way as increasing state control or as a necessary adaptation of social policy and crime control to (post)modern times. In my opinion it is a necessary and inevitable consequence of the new equilibration between law and morality. Crucial to this evaluation is the question as to whether this development remains open towards the liberal achievements of modern society. It needs to remain a choice for pragmatism instead of a law and order moralism.

Conclusions

The growth of the prison systems in all modern nations can be judged as the failure of social institutions to guarantee social order in other ways. Vivien
Stern wonders for example if it is 'inevitable that democratic societies will come to depend more and more on imprisonment to achieve social order and peace?' (Stern, 1996, p. 20). In my opinion this is not necessarily the case if society in one way or another can reinvent the normative function of its social and welfare institutions. 'Overcrowded times' (as a new journal on detention is called) force towards more normative social approaches to the crime problem.

In a morally pluralistic society 'security' gets a more central position in controlling social order. Ericson (1995) has analyzed how the expert systems of security agents penetrated other areas of social policy. In this frame of reference he is speaking of a 'security state'. A comparable analysis has been made by Feeley and Simon (1994). They use the term 'actuarial justice', that is defined by a growing orientation towards risk prevention from the viewpoint of security. Van Swaaningen (1996) speaks with a similar voice about risk-justice, which stands for a new orientation of modern states in controlling the evil instead of policing social justice. The welfare state is slowly transforming into a security state by adopting new ways of social control.

In this article I have tried to elaborate a more optimistic view on the actual situation in the criminal justice field. In my opinion there is indeed a utilitarian movement visible in criminal justice policy. This movement is inevitable however if one wishes to prevent a development towards increasing imprisonment. It is implausible to ignore the demand of citizens for security in modern democracies. Policy makers cannot close their eyes to the real threat of violent behaviour. Post-modern societies stand for the cynical choice between a preventive state and a police state.

I have purposely made my analysis in terms of morality. In this way it must be possible to counter a mere technocratic turn towards supposed consensus on prevention measures. For that matter I am suspicious about the categorical communitarian approaches to the crime problem. It presupposes too easily the existence of a coherent community. Our post-modern era is characterized by cultural plurality, and tolerance towards deviating life styles is a striking achievement of liberalism. The state must be prudent in the moral forces that must be facilitated.

In this respect shaming, as proposed by Braithwaite, must be rejected as an instrument of norm conforming procedures (see also Watts, 1996). Shaming is a form of psychological pressure that is not compatible with the liberal conditions of western culture. Nor is it, in my opinion, in line with the republicanism that is supported by Braithwaite and Pettit. Republicanism favours a kind of civil participation that is based on personal accountability and moral freedom ('dominion' in their terms). Blaming and restoration can be part of the communal reaction towards harmful behaviour. But people need to remain free in their fantasies and their own moral justifications of their behaviour – even if
no single other person is convinced by their motives. This does not mean that
the local community cannot play a role in the reaction towards criminal be-
haviour. Community justice, restorative justice, community service and medi-a-
tion are justifiable reactions to criminal behaviour because they are integrative
in themselves. Braithwaite and Pettit have rightly pointed at the ignorance of
Von Hirsch c.s. on the caring aspects of 'preventionism'. His philosophy of just
deserts has restored the moral accountability of criminal offenders, but ignores
the moral obligation of society to care for the people involved.
Social policy and criminal justice need to be complementary to each other in
order to attain a better equilibrium between law and morality. As Braithwaite
and Pettit have formulated: 'we can never catch enough criminals to reduce
crime substantially through incapacitation' (1990, p. 3). 8 This insight must be
powerful enough to motivate us to strive for a safer society, in which criminal
justice is a dynamic force in moral debates with a normative minimum.

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The evolution of restorative justice in Britain

Tony F. Marshall

Out of the primeval swamp

The first experiments with mediation in criminal justice occurred in Britain during the 1980s. Until then, mediation had only been used, in a formal or semi-professional way, for international and labour relations and in certain civil justice matters (mostly divorce settlements). The 1980s not only witnessed the first victim-offender mediation projects, but also the first community mediation programmes for neighbour disputes, the first conflict-resolution training classes for schoolchildren, the beginning of a major expansion in the use of mediation in civil justice cases, and the formation of an umbrella voluntary organisation representing these new initiatives and promoting the use of mediation for all types of conflict (initially called the Forum for Initiatives in Reparation and Mediation, since re-named MEDIATION UK).

Victim-offender mediation began in isolated cases when individual probation officers or social workers perceived suitable opportunities in the normal course of their casework. They were exceptional practitioners who were motivated, generally because of their religious beliefs, to promote reconciliation and seek alternatives to what they saw as a destructively punitive approach inherent in criminal justice. The reaction against a retributive system was not new, but until this time had been solely represented by a general advocacy of disengagement of offenders, generally juvenile, from the criminal justice system, whether by diversion from prosecution altogether (via police cautions) or by diversion from custodial sentences to community-based provision such as Intermediate Treatment and other rehabilitative projects. The most extreme representation of this movement in academic thinking was 'abolitionism' (Bianchi and Van...
Swaaningen, 1986), which promoted an end to the use of imprisonment altogether and a minimisation of the impact of formal criminal justice. The popularity of ‘diversion’ came to a head in the caring professions in the 1960s and 1970s, but was soon to encounter a reaction from a general public that remained wedded to punitive beliefs, saw signs of increasing crime all around them and were not in a position to appreciate that a purely retributive approach might reinforce criminal careers to a greater degree than it inhibited crime. ‘Diversion’ most often appeared to stand for ‘letting them off scot-free’, and this did nothing to satisfy those who felt themselves to be neglected victims of crime.

Over the same period victims had also come to greater recognition in criminal justice through legislation to provide for court-ordered compensation (payable by the offender) and a Criminal Injuries Compensation Scheme (where awards were made by the State), and it was the time when the national voluntary organisation Victim Support came into being to represent victims’ interests and to oversee a rapid expansion of local victim support services. Victim Support did not in itself oppose policies of diversion, indeed it adopted a deliberately neutral and non-interventionist policy towards the treatment of offenders. Nevertheless, it was part of a successful movement to make the interests of victims more apparent and more influential, to be incorporated even into academic criminology as a distinct sub-discipline of ‘victimology’.

This heightened awareness of victims’ needs made it apparent that even if diversion policies might reduce re-offending, they seemed to do nothing whatever to assist victims, who might even lose their chance of being awarded compensation (because the offender was never brought to court) and in some cases lost the vicarious satisfaction of seeing offenders severely punished. This might have carried less weight if it had not been that those same diversion policies did not even seem to be delivering what they promised in terms of crime reduction. A ‘do-nothing’ policy had been popularised among social workers by such works as Growing out of Crime by Andrew Rutherford (1986), who argued that much crime was a temporary juvenile ‘phase’ that most would quickly grow out of, and that one did more harm than good by reacting to it. This simplistic view has been very persistent in social work ideology, even though it was always evident to many that the reason why most ‘grew out of it’ was precisely because they were caught and it was made evident to them that such behaviour was unacceptable. While the full weight of the law could be a damaging over-reaction, doing nothing proved to be an equally damaging reaction against over-punitiveness.

In this situation it was not surprising that some social work and probation practitioners tried to steer a more pragmatic and realistic line between the two policies. Victim-offender mediation provided a chance for the victim to receive
satisfaction from a direct apology and reparation and it still made evident the wrongness of the offence (in a more personal and direct way than the court), while also having a potentially reformative impact upon the offender, and providing the latter with a chance of atonement and re-acceptance (in religious terms, redemption).

This development was reinforced by direct observation of victim-offender mediation in North America by some probation officers and others on study trips abroad, and by the publication of works by John Harding (1982) and Martin Wright (1982) that introduced these ideas to an even wider range of practitioners and related them to victimological concerns. The structure and organisation of victim-offender mediation in Britain, however, was basically a matter of practical experimentation and reinterpretation of these ideas in the context of a social, political and justice system very different from that in America. Thus Martin Wright's (1983) feasibility study for a project in Coventry followed closely the lines of the Earn-It programme in America, but the final shape of the Coventry project was to be very different from this.

The first systematic use of victim-offender mediation was by the Exeter Youth Support Team, established in 1979. (For more on the early history of British mediation see Marshall, 1984; Marshall and Walpole, 1985.) It was run by an inter-agency working group of police, youth work, social services, education, etcetera and advised the police on whether to prosecute or caution juvenile offenders. It supplemented a caution, in cases where this was considered too limited a response, by the offer of a meeting with the victim or the chance to have an apology, and perhaps an offer of reparation, transmitted to the victim. The intention of the project was to increase the rate of cautioning, while still attending to victims' needs and trying to make an impact on offenders' attitudes.

This model of victim-offender mediation is one that has persisted and projects like it, although not the original one, exist to this day. Research carried out by the Home Office in the late 1980s (Marshall and Merry, 1990) demonstrated that projects of this kind have certain limitations.

- Intervention is limited to a narrow range of relatively minor offences (those that may be considered for diversion).
- There is a danger of net-widening, of drawing cases from those where a simple caution would have been an adequate response, rather than from those which would otherwise have been cautioned.
- Victims' needs for reparation or a meeting with the offender are often very low in such minor crimes, leading some mediators into the temptation of 'schooling' victims to pretend more anger than they really felt, in order to have more impact on the offender, and even pressurising them to take part as if they 'owed' such an opportunity to the offender (see Davis et al., 1988).
— Offenders may take part for cynical reasons to avoid prosecution, and, worse, may be tempted to admit the offence even though not guilty because they fear being prosecuted.

— If diversion is conditional on the results of mediation, this might put offenders under pressure to accept an unfair burden of responsibility, but if it is not there may be little reason for an offender to take part. This dilemma led some projects to be deliberately vague about the nature of their decision-making and its relation to mediation.

— Reparation often took the form of no more than a perfunctory (and rehearsed) apology, given that either the victim had suffered no material loss or the offender, as a juvenile, was in no position to offer compensation.

Some of these problems could be overcome with good practice, but others seem to be inherent to the model as applied in the context of the current criminal justice system. The persistence of the practice, however, indicates the need that is felt in many criminal justice agencies (police as well as social work) for some response between caution and prosecution, what has come to be labelled 'caution plus', which may take the form of a variety of additions to a caution, such as family casework, personal counselling or participation in some 'therapeutic' programme.

The other main line of development of victim-offender mediation in Britain was in conjunction with prosecution. While the above diversion projects applied initially to juveniles only, the 'court-based' projects began by working with adult offenders. The earliest example was a pilot project for several years by South Yorkshire Probation Service which was eventually discontinued, although apparently successful (Smith et al., 1985). By this time, however, similar projects in other areas had emerged that were to survive until the present day.

Most of these programmes were run by probation services, some using their own staff assigned to the project as mediators, others by recruiting non-professionals as mediators, whether staff or volunteers. Most referrals occurred at the point when the offender was convicted at court, but before a decision on sentence had been taken, this gap providing a few weeks' 'window of opportunity' for the mediation to occur. One of the main intentions of such projects, and the reason why they were instituted by probation services, was to affect sentencing in the direction of a less punitive response, or even, in more serious offences, to provide a case for a community-based disposal rather than a custodial one.

Despite the fact that this might be the dominant rationale for such intervention, the operators of these projects believed that they could be credible only if they offered a genuine service to victims and if they seemed to be having an impact on offenders' attitudes and subsequent behaviour. Indeed, for other agencies and for the public generally, they would be judged purely on the latter two criteria - satisfaction of victims and prevention of crime - and many came
to see any attempt to influence sentencing (or to influence it only in one direction) as an inappropriate aim. On this view the criminal justice system should take its course according to the dictates of (retributive) justice, with mediation as an adjunct to it.

In the mid-1980s the Home Office took an interest in these new developments and funded four new projects for two years each as a pilot experiment to be evaluated by a substantial programme of research. It funded one diversion project (Cumbria) and three court-based, at Coventry, Wolverhampton and Leeds. The latter was aimed explicitly at more serious offences and worked mainly with the Crown Court; the other two court-based services worked with the magistrates' courts. Both the Coventry and the Leeds projects have continued uninterruptedly since (although not without changes in management and policy), while Wolverhampton was wound up but later revived.

The research (Marshall and Merry, 1990), which included a number of other similar projects in existence at the time as well as the specially funded ones, showed that all these projects were viable in the sense that they could attract sufficient custom to continue. The limitations of the diversion schemes have been mentioned above. As far as the court-based schemes were concerned, the research showed that:

- levels of victim-satisfaction and rates of material compensation were both quite high;
- offenders appreciated the opportunity to make reparation and were often clearly affected by the experience (at least in the short-term);
- re-offending rates for offenders taking part were slightly lower than those for comparison groups of non-participants;
- sentencers were usually influenced by the reports on the mediated settlements to take into account more fully the needs of both victims and offenders, in a few cases avoiding custodial sentences that would otherwise have been quite certain, in other cases awarding more probation and community service orders and even conditional discharges rather than fines, and in most cases being more likely to order compensation (usually accepting the settlement agreed between the victim and the offender);
- victims were often as much concerned with influencing the offender's future behaviour as they were with their own needs, and would often engage spontaneously in a discussion of how he or she might be helped to avoid getting involved in crime.

The research did not show such serious limitations to the court-based schemes as it did for the diversion ones, but a good number of problems were still noted. The need to deal with an impressive number of cases (as this might affect future funding and hence survival) led most projects to be relatively un-
selective and this raised the question whether they were spending their
time in the most productive ways.

— Limitation to a particular stage of the criminal justice process prevented
more sensitive timing of intervention according to the needs of the parties,
especially the victim.

— The best results followed careful preparation of each of the parties for a
meeting, but this did not always occur.

— Very few cases were followed up several months later to check how the
agreement had held up and whether participants were still satisfied.

— Mediation was, more often than not, 'indirect' (the mediator acting as a
go-between and the parties never actually meeting), although direct medi-
atation was associated with more influence on re-offending and greater victim
satisfaction.

— Low levels of resources were limiting achievements (a point reinforced by a
later study in Scotland – Warner, 1993 – which showed that optimum cost-
effectiveness was only achieved if the caseload was about 200 cases a year).

— Projects had difficulty maintaining their neutrality and basic aims in the
face of pressures from traditional criminal justice agencies on which they
were dependent for referrals and which tended to impose their own aims
(e.g. limiting them to the more minor offences). In particular, there was too
little involvement of victim support schemes and no chance for victims to
request mediation.

— A basic ambiguity of aims was encountered in mediation between promot-
ing a productive emotional exchange or reconciliation and ensuring that
adequate material reparation was achieved. While the projects rightly felt
that the former was crucial to achieving their full potential, and was indeed
that which made what they had to offer most distinct from the traditional
criminal justice system, they could at times be led to be more perfunctory
about material reparation, whereas this was important to victims, if only as
a symbol of the offender's repentance.

— The aims and philosophy of victim-offender mediation were distinct from
those of criminal justice, sometimes even in apparent opposition to them,
and this made for an uncertain relationship between the two which limited
the achievements of victim-offender mediation and which could only be
resolved by a more general acceptance in criminal justice of the value of
offenders being held directly accountable to their victims, personal involve-
ment of the parties in criminal justice and reconciliation between offenders
and their home communities.

With confirmation that victim-offender mediation could be beneficial, such
projects continued to evolve, taking on many of the lessons from the research
to help shape current practice, reinforced by MEDIATION UK's promotion of good practice principles (Marshall, 1989b), mediation ethics and practical advice on starting and managing a project (MEDIATION UK, 1994), based on the experience of the more well-established schemes (see also Quill and Wynne, 1993). This evolution was not, however, assisted by government policy which, by the time of the publication of the research, was dominated by concern for the costs of criminal justice, which victim-offender mediation could only expect to relieve in the longer term (if at all). While not being opposed to victim-offender mediation, government policy was that they should be funded out of current resources of criminal justice agencies and not from additional money. This placed the survival of victim-offender mediation in the hands of probation service managers faced with a multiplicity of reasonable demands on their limited budgets and with higher priorities to meet than a new practice that still remained esoteric and marginal to many and had not succeeded yet in entering into the mainstream, even in those areas where it was most prevalent. As a result there has been only slow growth in the availability of victim-offender mediation in Britain, with the number of new schemes each year not greatly exceeding those discontinued, especially in comparison with community mediation which started at around the same time and has now expanded to very many more areas. Community mediation has benefitted from the fact that it was not dependent on criminal justice budgets for funding and because local authorities have increasingly become persuaded that its practice can substantially relieve the work of their own Housing and Environmental Health officers. Paradoxically, community mediation services have often succeeded in obtaining Safer Cities funding which was available for community crime prevention and provided by the Home Office, but which was not available to victim-offender mediation programmes!

After the dinosaurs – the landscape today

The evolution of victim-offender mediation in Britain has been marked by a great expansion in the diversity of programmes. Involvement of victim support is now more common, and many programmes are able to receive referrals from victims who would like to be involved. An adult diversion project was begun at Kettering in Northamptonshire which eventually expanded to cover the whole of that county (Dignan, 1992). In Scotland, victim-offender mediation is used with adult offenders referred by the public prosecutor (the Procurator Fiscal), which cases may be discontinued if mediation is successful, unlike most of the English diversion projects where a decision to caution is made by the police before offering mediation (because of fears of the due process implications of a conditional caution). Most projects also diversified internally by accepting
referrals from many agencies and at different stages of the criminal justice process, on diversion, parallel to prosecution, and post-sentence. They have also diversified beyond victim-offender mediation itself. The West Yorkshire mediation service visits long-term prisoners pre-release and contacts their victims to see whether there are any issues that need to be resolved. Other parties than the victim and the offender may be brought into mediation, taking on relations between the parties and their communities as well as between themselves, and there are many proposals now to incorporate procedures akin to the Family Group Conferences of New Zealand (Brown and McElrea, 1993; Hudson et al., 1996). Although some of the latter were influenced directly by the New Zealand practice, more have been influenced by the Australian Wagga Wagga project, based on the New Zealand ideas but, unlike the latter, run by the police (Alder and Wundersitz, 1994). The Australian model was publicised in Britain by a visit from its coordinator at that time, Terry O’Connell, and by John Braithwaite (Martin, 1995). The original Wagga Wagga scheme has since been abandoned because of concerns about the police acting as mediators, and it is now run by an independent but well-established community mediation service, the New South Wales Community Justice Centres, on behalf of an inter-agency group (see Community Justice Centres, 1995). Finally, a number of programmes incorporate victim-offender meetings into a wider programme of activities aimed at reforming the offender, so that it is one element of a package related to the offender’s reasons for offending. These programmes take on more of the appearance of a broad-brush social work approach which already typifies, for instance, Intermediate Treatment (IT). Their concern is with crime-prevention rather than victims’ needs per se. The most notable projects have good training packages and written procedures that protect the neutrality of the mediator, and multi-agency steering groups that reduce dependence on the lead agency. There are even a few community-based victim-offender mediation projects that have formal independence, and this is the model most favoured by MEDIATION UK. For instance, one of the first community mediation projects, at Sandwell, Birmingham, has always taken a few victim-offender mediation referrals from the local juvenile justice panel, and it has recently contracted to expand this work. There is still general reluctance, however, on the part of criminal justice agencies, to give up control over such work by funding independent organizations.

Two lines of development

Current projects are dominated by two models of victim-offender mediation: those where it is used as part of a programme of work with offenders, confronting them with their behaviour and its effects in an attempt to reform them
The evolution of restorative justice in Britain

(social work model); and those where it is a service in its own right, offering victim and offender equally the chance to resolve any issues arising out of the offence (independent mediation model).

The first of these models is orientated to offending behaviour and therefore to offenders. While victims may be served by meeting the offender, this is not the primary aim of such projects, and only very few victims will get such an opportunity. These projects either operate as an addition to a caution (caution plus) or in the context of post-sentence work, such as Intermediate Treatment. They are largely operated by social workers and form a natural extension to their normal casework. Indeed, 'offence-confrontation' is now a recognised tool for both social workers and probation officers working with offenders. It can take place without the trouble of locating, and negotiating with, victims, the social worker representing the victim viewpoint or using surrogate victims (as the Milton Keynes Retail Theft Initiative uses any local store manager to confront a shoplifter, or when groups of offenders meet with groups of victims to listen to their experiences and feelings).

The second model is not offender-dominated in the same way as the first and lends itself better to the operation of independent mediation services and personnel who are not necessarily social workers by training, although many such services are in fact operated by probation services. They can be applied at all stages of the criminal justice process, and there are generally few limits on the type of case accepted, so that all types of victim or offender theoretically have a chance of participating. Most act in parallel to prosecution, although some projects of this kind are involved in diversion (e.g. the SACRO projects).

When one looks at the projects in the planning stage, most are along the lines of the second model, but a third model is also coming into view – that of conferencing, where meetings do not simply include victim and offender, but may include members of their families, other interested community members, and so on. This extension of victim-offender mediation is a natural development from either of the other two models, but the emphasis is different in each case. Conferencing arising out of model one centres on relationships between the offender and his or her family, and it is not crucial to have a victim present – indeed the victim may complicate matters unnecessarily. Family group conferences between offenders and their families have been used by social workers in Britain for some time, without victims present, and there are fears that victims might be 'used' selectively to reinforce such processes without any genuine concern to serve the victim. In the early days of Family Group Conferences in New Zealand there was a tendency to marginalise the victim (Morris et al.,

2 A full list of existing projects using victim-offender mediation in Great Britain can be obtained from the author.
1993), and this was a cause of much criticism, now fortunately improved by making the victim much more integral to the process. The NACRO Working Party promoting Family Group Conferences has also tended to marginalise the victim role in its planning to date, dominated by the social work viewpoint.

Conferencing arises out of model two as a natural extension of the problem-solving that many victims and offenders find themselves engaged in. In the early research on victim-offender mediation in the 1980s in Britain it was observed (Marshall and Merry, 1990) that victims often tried to address an offender's problems, even to the extent of suggesting membership in a club in which they were involved, offering personal friendship at times of crisis, or even giving them a job. In most cases there would be community members much better situated than the (incidental) victim to support and help the offender in rehabilitation, and it would make sense to involve them in a similar process. Those who come to conferencing from this perspective have begun to refer to them as Community Group Conferences to differentiate them from the often therapeutically-orientated Family Group Conferences. (It should be noted, however, that Family Group Conferences in both New Zealand and Australia follow the independent mediation model.)

The tension between these two basic models therefore runs right through the criminal justice mediation scene in Britain, depending on the orientation of the organisers to either a social work or an independent mediation model. It is not, however, a simple split between professional social workers and others – some social workers (by training) work with the independent mediation model (more prevalent among probation officers than among staff of social services departments), while the social work model may also attract other professions (e.g. some of the police initiatives like that at Milton Keynes).

The two models are quite different in practice, even if there is a tendency to gloss over the differences (both types of project may be members of MEDIATION UK, for instance, even though that body clearly represents the independent mediation model). The social work model preserves control for the professionals, who design suitable interventions according to their own judgement, and who tend to use a directive or manipulative style of 'mediation' which is subjugated to the overall ends of the intervention programme. The independent model hands control over the content of meetings to the parties, the mediator assuming an impartial facilitator role.

For those who have not been formally trained in mediation, and who do not have the skills to manage confrontations without directing them, this model presents fears of 'things getting out of hand', and they may dislike the 'messiness' of a typical mediation session where ordinary people work their way spontaneously through emotions, ideas, ambitions and practical issues that are not fully formed (but thereby learning much more in the process).
The feeling for the parties is very different. In the social work model they are passive recipients of professional guidance, which they may value or they may reject. In the independent model they are given opportunities for shaping their own lives and influencing events, which again some people are ready for and some are not, although careful preparation for meetings can maximise the abilities of parties to take advantage of the opportunities on offer. Independent mediation encounters at their best have a greater feeling of spontaneity, naturalness and genuineness about them - they are more like ordinary social encounters in the community than attendance at a therapy session, to which meetings along the lines of the social work model are akin. For those parties who tend to reject, or at least be suspicious of, authority and the pretensions of professionals, independent mediation may present a more genuine and influential experience.

The ultimate test between the two models will be in terms of their results, although this is not straightforward, as they tend to have somewhat different aims. On the social work model the primary aim is offender reform and the prevention of offending. While this is also one of the aims of the independent mediation model, this also assumes the equally important aim of providing a service to the victim (a chance to relieve fears and anger, a chance to understand, a chance to have some influence, a chance to have their status and equanimity restored – see Marshall, 1989a) and to offenders (a chance to atone, to relieve their guilt and to normalise their relations with the community, a chance to start again). The more the mediation sees itself as providing an opportunity for parties' own use, the less it can manipulate events to any further end - crime prevention, if it happens, must be because the parties themselves, and their communities, are the only ones who can really make a difference, not because the mediator is able to determine it. Those who espouse the independent model, indeed, would question whether any professional, however skilled, can really hope to affect offending, when its causes lie in much more powerful forces in the community and society generally.

Seeking an ecological niche

The co-existence of two prevalent models in this way is a function of the government policy context in which such programmes have developed in Britain. This policy is one of 'benign neglect' which has more of neglect about it than of the benign. While there is no official opposition to mediation ideas, there is no legislative framework to encourage them, no directives to agencies that would bring such activity into their mainstream jobs, nor any pot of money dedicated to encouraging further development. This has meant that if such ideas were to be put into practice at all, this would only happen on the basis of voluntary
efforts of individuals or departments who had the necessary motivation and beliefs, and the way they put the ideas into practice would be shaped by their own concepts and aims, as well as by the vagaries of whether, and under what circumstances, they could obtain the managerial and financial support to maintain a programme of new work. This has meant the flowering of a great many ideas, many of which never had a chance to be fully appreciated before they were allowed to wilt for lack of refreshment. There has been a great deal of experience gained, but this has not been put systematically into practice, and we still have new projects starting that repeat the mistakes of the earliest ones, long since vanished.

MEDIATION UK does its best to promote good standards and models that reflect the latest experience, but it does not represent a constituency other than the practitioners themselves, those who already have a belief in the process, and they are a small minority of members of each of their separate professions. If mediation in criminal justice is to develop more impressively in Britain it will have to develop a constituency that feels it has a need for it, as community mediation has gained the backing of a significant number of local authorities. The latter has not been a matter of preaching the gospel of mediation, winning over minds and exposing the vision of the masses to the one true light. It has been a matter of hard-headed practical officers with heavy responsibilities coming to realise that community mediation services could save them time and money and achieve results they could not hope to obtain through other administrative procedures or through a hopelessly expensive and inordinately slow legal process.

So also with victim-offender mediation: it needs a constituency that will be willing to advocate it because it serves their ends in some practical way. Such a constituency might, one would think, have been found among victims, as represented by the national umbrella Victim Support. (In France, victims’ organisations took the lead in promoting mediation.) But the attitude of Victim Support in this country has been not dissimilar to the government’s ‘benign neglect’, although it has been slightly more benign and slightly less neglectful. Some of its members have, indeed, promoted mediation and its annual conferences usually represent such activities among its workshops. Some local victim support schemes have been instrumental in helping to develop new mediation programmes, or even instigating them. But in terms of general policy there has always been a suspicion about how genuine many victim-offender programmes have been in seeking to serve the victim. The domination of most programmes by professionals, social workers and probation officers, traditionally seen as representing the interests of offenders, has certainly not helped. Nor has the fact that there have been more than a few badly-designed projects that were
'using' victims in order to influence offenders, without any genuine regard for what the victims themselves might get out of it. There is no excuse for such a mistake these days, but it still happens. Apart from this suspicion, there is also the perception in Victim Support that mediation, although possibly a good thing, is in practice very marginal to the needs of most victims – the majority of whose crimes will never even be solved, and even where they are, the chances that they will be offered a meeting with the offender are so remote, even in those few areas with relevant programmes, that it hardly impinges on the consciousness of victim support workers. Moreover, what mediation offers to victims – emotional satisfaction more than anything else – is not so easy to put one's finger on as financial compensation, and there are ways of working for the latter which are less troublesome for the victim, even if they may be less effective and less satisfying than a directly negotiated settlement with the offender. An inherent problem with mediation is that it tries to satisfy more than one party, so that it is not uniquely for any one side. So victims may not accept the good it may do them, because it may also be favourable to the 'other side'.

The only other real constituency that might have adopted mediation more wholeheartedly consists of those professions that are dedicated to assisting the reconciliation of offenders with their communities – statutory workers like probation officers and social workers, or voluntary agencies like NACRO. Insofar as victim-offender mediation has advanced in Britain it is certainly because of its adoption by certain members of these professions, but they have not so far been able to persuade the mainstream. There is also the danger that were the mainstream to run with the idea it would be more likely to be consistent with the social work model than the independent mediation model, and this would only alienate the alternative constituency, Victim Support, even more. However, there is some light upon the horizon. Many of the probation-run victim-offender mediation programmes (or those supported through Probation Partnership Funding) do operate according to an independent model, and some of these have expanded to a county-wide (e.g. West Yorkshire) or almost county-wide (West Midlands) remit. Moreover, the job of the probation service has been changing radically over the last few years as a result of government policy. It has been steered away from a social work model of operation towards offender-management. It has also been charged with responsibility for victim enquiry work – reporting to the court on the effect of crimes upon victims and contacting victims just before the release of long-term prisoners who might become a threat to them again on return to the community. Local probation services are now seriously developing plans for taking forward these tasks (see e.g. Kosh and Williams, 1995, on Shropshire Probation Service; and Social Information Systems, 1996, for a more general survey). The fact that the service now
has to relate to victims, and is less identified with alleviating the effects of punishment upon offenders, provides it potentially with a much greater rationale for seeing practical use in victim-offender mediation. Indeed, the West Yorkshire mediation centres have taken on responsibility for pre-release contacts with victims (West Yorkshire Probation Service, 1996) and the West Midlands projects engage in victim enquiry work. The Association of Chief Officers of Probation is coordinating a general strategy towards the development of victim-related initiatives, including victim-offender mediation. If probation services really do take this on board, then we could experience in the near future an expansion of victim-offender mediation services of the order that we have recently seen in local-authority supported community mediation services.

If this were to be the future scenario, one would see a shift towards the independent mediation model for victim-offender mediation and conferencing. The social work model would no doubt survive, as it may well suit caseworkers attempting to reform their charges, and is particularly suited to the more complex problems, such as the healing of families in the wake of incest. There would be nothing wrong with this, as long as it was recognised that the involvement of victims should not be obtained by pretending the process has more to offer them that it does – which is primarily a chance to have an impact upon the future behaviour of their offender, an opportunity that some victims will certainly welcome. Such offence-confrontation work with offenders, however, should not be seen as 'mediation programmes' or as representing the values or orientation of such programmes. The social worker in the context of this kind of work is not operating as a mediator, but as an organiser of an encounter which is dedicated to the social worker's own ends (impact on the offender's attitudes). No doubt the work of handling a confrontation between two potentially conflicting parties shares some of the skills of mediation, and would benefit from appropriate training, but it should not be confused with a neutral mediation role.

Restorative justice

So far I have discussed mediation in criminal justice in terms of practical developments, because this is how it has evolved – individual practitioners attempting to improve on what is being done within the constraints imposed by the structure of criminal justice within which they must work. To this end they have introduced new practice ideas like mediation, reparation and conferencing, not because they belonged to a new 'paradigm' of justice (cf. Zehr, 1990), but because they offered pragmatic solutions to everyday problems, especially for those who believed that the current system was failing to accomplish all that it might in terms of relieving the suffering of victims or preventing
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further crime. The theory of all this has been built on as an afterthought, and has not been, in my experience, a cause of innovation at all. It is not necessarily an unimportant task to give intellectual coherence to practice in retrospect, but its importance should not be exaggerated. Indeed, in some respects, the theory has done more damage than good.

The most prevalent theory of relating to mediation in criminal justice is that usually termed ‘restorative justice’ or ‘reparative justice’ (e.g. Zehr, 1990; Wright, 1991; Cragg, 1992; Weitekamp, 1992; Marshall, 1994; Consedine, 1995). The Jubilee Policy Group (1992), whose ideas were essentially the same, disliked this term because of its ‘backward-looking’ character, and replaced it with ‘relational justice’, choosing to emphasise the role of relationships as central to the theory. While this is undoubtedly so, it is saying little, as it is difficult to imagine how any social policy would not involve relationships. A new British pressure group for non-punitive justice alternatives, including mediation, calls itself ‘Positive Justice’, another attempt to find a more suitable name for the same ideas. Whatever one calls it, this restorative justice theory (as I shall persist in calling it here, as the most established term) has tended to have certain deficiencies. The first is the difficulty of saying what it is, defining the central term. A recent worldwide Delphi process among ‘experts’ on the subject, run from America by Paul McCold, has failed to establish anything like consensus on the term, and has produced definitions that ramble on for whole paragraphs. The second deficiency has been the tendency among commentators (myself included) to define restorative justice in terms of its opposition to what it is not. There is a famous and much reproduced table constructed by Howard Zehr (1985) which sets down, element by element, the characteristics of traditional criminal justice (e.g. backward-looking, blaming, adversarial) and counter-balances each element with the opposite feature of restorative justice (e.g. forward-looking, reaffirming, collaborative). For one thing this is an almighty over-simplification which fails to do justice to the traditional system – it is not, after all, entirely backward-looking; nor is victim-offender mediation entirely forward-looking. For another thing, this table fails to include those characteristics of criminal justice that one might value (e.g. taking much of the burden off victims, its certainty and predictability, its denunciation of crime). Is restorative justice also to be defined in opposition to these, and, if so, does it therefore have some negative qualities? But the most damaging feature of all is that such oppositional thinking embodies precisely that adversarial stance that restorative justice is meant to replace.

A third deficiency is the confusion of what restorative justice is with value-systems and world-views that might be consistent with it, but are not essential to it. Much of the writing on restorative justice is from an explicitly religious perspective for instance (Zehr, 1990; Jubilee Policy Group, 1992; Umbreit, 1985),
off-putting for those who do not share such views but who might see value in restorative justice on quite a different moral basis. But the single most confusing value ascribed to restorative justice is the anti-punitive ethic. Most of us involved with restorative justice are indeed opponents of the ideas of retribution and punishment. But, for reasons I will explain shortly, such beliefs are not inextricably bound up with restorative justice, and if they were then the chances of restorative justice ever being accepted by more than a very small minority of the population would be non-existent. Given the way restorative justice is talked about by its proponents, given the values these proponents espouse, it is no wonder that the average police officer, lawyer, judge, magistrate, policy-maker, administrator, lay citizen and even probation officer, finds it difficult to accept the idea as woolly weak-kneed starry-eyed wishful-thinking. And yet these same people generally do recognise the deficiencies of current justice processes, they are fully open to new ways, as long as those ways seem practical, as long as they square up to realities.

The final deficiency I shall note here is the over-individualised nature of most restorative justice theory, which has been criticised already by Mika (1992). An argument, common to almost all restorative justice theorists, and stemming from Christie's seminal article (1977), is that criminal justice represents the theft of crime by the State out of the hands of the victim and offender, that the real problem lies between those individuals and the State should keep out. For one thing we would certainly all regret it if the State did keep out, and in any case the idea is basically flawed, because the State (or less provocatively, society generally) does indeed have a stake in right behaviour and stable social relationships. The victim could have been any of us, and we are all victims; moreover crime is a product of social processes for which all collectively bear responsibility. The over-individualised conception emerged from a concentration on victim-offender mediation as the major practical expression of restorative justice. The earliest expositions of the theory came very much from the American VORP school (Victim-Offender Reconciliation Programs). But valuable as victim-offender mediation may be as a complement to what else goes on within criminal justice, it cannot be pretended that this is sufficient. By concentrating on the relationship between the individual victim and the individual offender, we fail to deal with the much greater issues that arise out of the relationships between both those parties and their communities, society generally, and, yes, the State.

If we note these deficiencies, if we take them seriously, then we can more clearly see what restorative justice really is. For a start it is not an alternative paradigm of justice that can replace the processes of criminal justice. Well, perhaps in paradise, but we ain't there yet, and anyway there is no crime in
paradise (there was once but they got sent to Hell, a retributive response if ever there was). Criminal justice represents the application of force by society in protection of its members. Ultimately there is no getting away from the fact that we are not so perfect a society that we can do without such a system. Most of the trappings of criminal justice stem from this single definition—legislation to define when it is legitimate to apply force and how much force, due process to protect citizens from abuse of authority, etcetera. To pretend that this is something we can replace with some other thing called restorative justice is to doom the latter to complete insignificance. However, to pretend that the application of force is a sufficient response to crime is also erroneous. We all know that plainly enough; it has been demonstrated throughout history and across all cultures. Much goes on in our current criminal justice system that is in fact an attempt to do something more—probation work with offenders, for instance, or compensation orders. But these are haphazard additions, tacked on here and there, and they fail to cohere to any systematic policy to undo the effects of crime, to undo the bad, if often necessary, effects of criminal justice, or to create a less crime-ridden future. This is where restorative justice comes in. I will present a simple definition which I believe is quite sufficient: Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future. One could add all sorts of qualifications or expansions to this definition, but I believe it is quite sufficient and robust in itself to serve.

Parties with a stake in an offence include, of course, the victim and the offender, but they also include the families of each, and any other members of their respective communities who may be affected, or who may be able to contribute to prevention of a recurrence. Coming together may occur as one event, as in Family (or Community) Group Conferencing, or it may occur through a series of less all-embracing meetings (e.g. victim-offender mediation and a separate conference between the offender and his or her family), depending on the complexity of the case and other practicalities. The coming together may also occur just once, or may happen repeatedly over a more or less extended period of time.

In order to effect the coming together and a collective resolution, there is a crucial role for the neutral facilitator (mediator) with the skills to prepare people for the process, ensure that it progresses in a safe and civilised manner, guide parties through difficult phases, and encourage them to enter fully and creatively into the process. The aftermath of the offence includes ensuring the material well-being or satisfaction of the victim, the re-affirmation that they are not to blame, attention to the victim’s emotional needs, resolution of any conflict between the victim and the offender (whether because of the offence
or existing beforehand), the resolution of similar conflicts between their families or communities, resolving any difficulties between the offender and his or her family and other friends as a result of the offence (e.g. being ashamed to know him or her), and giving the offender a chance to absolve his or her own feelings of guilt through apology and reparation. The implications for the future include tackling the reasons for the offending, producing a plan for rehabilitation, and agreement among the family and community members present on a system of support for the offender to ensure that he/she is able to adhere to the plan.

The rationale for restorative justice lies in the communal or social nature of crime and its effects (that is, it is not an individualised concept at all). The reasons for offending in most cases lie within an offender's current and past social experiences and any lasting improvement can only come from tackling these and with the help of those people who are directly important to that person (Marshall, 1994). Similarly, processes of atonement and reparation can only be really effective and meaningful in a personal context and through direct interaction. Court-ordered compensation paid anonymously is no compensation for a real emotional exchange competently mediated.

His definition is also void of values; it is a practice-oriented definition. Values are important in crime, but they are the values of the local community, of the people involved and impinging from society generally. If those involved (including the offender) feel that some punitive sanction should be applied as a recognition of the wrong done and as a token of regret, so be it. The process of restorative justice is not in itself retributive, but it has to recognise that some kind of denunciation or penance is necessary to assuage people's feelings and is therefore part of the resolution of crime. The negative implications of judicial punishment are avoided in such cases because the penalty is accepted by the offender as due and it occurs in a context of reconciliation and support. This last remark brings us to Braithwaite's (1989) theory of 'reintegrative shaming' - that judicial sanctions shame without offering reconciliation and are therefore alienating and crime-reinforcing, but that shaming may be positive in a natural community or family context, and therefore conducive to reform. These ideas fit very well the notion of restorative justice as defined above, because they are communitarian, and not value-laden (except that the importance of 'community' in Braithwaite's work is directly ascribed to a political adherence to what he calls 'republicanism' - Braithwaite and Pettit, 1990). The only unfortunate aspect of Braithwaite's work is not inherent in his theories so much as in the use others have made of them in practice. 'Shaming' has now entered the social work vocabulary in Britain, dropping the all-important 'reintegrative', to describe offence-confrontation work with an offender. As this is carried out by a social worker and for the most part does not involve crucial members of the
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offender's own social network, this practice does not accord with the community process envisaged by Braithwaite. Restorative justice as defined above embodies a certain kind of endeavour, incorporating certain aims, but does not specify exactly how this endeavour should be taken forward. It is capable of being applied in many ways and in many contexts. Victim-offender mediation and Family Group Conferences are both techniques that are applicable, but traditional social casework by professional workers has its role to play as well, as does community support for victims through voluntary organisations. The police and courts could also reinforce such endeavours or even participate in them. Even prisons can be viewed as having a positive role to play, as temporary refuges from the pressures of everyday life which provide inmates with a chance to take stock and where preparations for returning to the community can be made (cf. Bianchi, 1994). Community rehabilitation projects have an important role – motoring projects for young offenders, alcohol and drug rehabilitation, family counselling, anti-bullying projects in schools, etcetera. These are crucial resources to back up offence-resolution plans. The techniques used and how they are to be reconciled with the existing criminal justice system are matters to be worked out pragmatically on the ground. The crucial matter is to hold on to the basic principles implied in the definition – that real people need to be directly involved with the resolution of crime and only those measures will endure that have their willing commitment. And in the longer term, by re-involving members of society in practical matters to do with crime, we can hope that communities learn to drop their prejudices and unreasonable fears and begin to support and protect their less fortunate members before they turn to serious crime.

Current practical issues

One of the most prevalent issues for victim-offender mediation has always been how to resolve its relationship to the traditional criminal justice system (see Messmer and Otto, 1992). The latter impacts in many ways on mediation practice, because it assumes conditions – such as decisions removed from real social contexts, due process, equal treatment for similar offenses – that mediation tends to violate. It also takes a more limited view of justice – adjudication of responsibility, followed by allocation of blame and application of punishment – than is implied in restorative justice thinking. The following difficulties are continuing issues in this relationship.

- Whether the outcome of mediation should influence criminal justice decisions – this may apply to court sentences or decisions to prosecute. There are equity issues here, as offenders may stand to be treated more or less harshly according to whether the victim will participate in mediation.
or how 'tough' he/she is in negotiation. The chance of avoiding prosecution may also put the offender under pressures that may violate due process.

— Should certain offenses be denied to victim-offender mediation, such as those implying power differences between the parties that may prevent fair negotiation (e.g. sexual offenses, domestic violence, racial harassment, child abuse) or in what circumstances might they be acceptable?

— Powerful agencies may convert victim-offender mediation processes to their own ends, violating the basic conditions of restorative justice, such as voluntariness, independence of operation, and the balance between victims' and offenders' interests.

— Justice agencies often seek to marginalise victim-offender mediation by referring only minor offences.

— Victim-offender mediation in association with diversion from prosecution may lead to net-widening, as is the danger with all diversion programmes. The additional problem in this case is that net-widening from the offender perspective may be increasing the rights of victims from another.

Other issues are internal to victim-offender mediation itself and concern the proper procedures that should be adopted. The major issue here is the quality of mediation and how this can be protected, raising questions concerning: selection of mediators, training, and certification; defining the skills of mediation in distinction from other humanitarian professions such as social work; guarantees of impartiality and neutrality (especially if mediators also act as criminal justice agents in other roles); accreditation of victim-offender mediation programmes; and codes of practice for mediators.

A second issue of this kind is the balance between direct and indirect mediation. Restorative justice theory leads one to expect direct meetings to be much more desirable and successful than go-between mediation, which never allows the parties to gain personal experience of each other, and some research (Marshall and Merry, 1990) bears out the fact that direct mediation is more successful in having an impact on the parties. Nevertheless, in cases where the parties find it difficult to meet or do not wish to do so, but where some form of indirect exchange may still be of some benefit, it is difficult to find a rationale for denying such a service. This is a prominent issue for British projects, which have low rates of direct mediation compared with those abroad, at least in the USA (Umbreit and Roberts, 1996).

The issue of indirect mediation raises another important issue that victim-offender mediation practice has yet to face properly in this country, and that is its cost-effectiveness. If victim-offender mediation is regarded as a service to the parties to an offense, then it is difficult to find a rationale for denying it to anyone who wants to take part, but in many of these cases the outcome may hardly seem to justify such labour-intensive activity. The problem mainly applies to
those programmes that find criminal justice agencies referring minor cases that are not cost-effective – an example would be first-time shoplifting offenders. Where the parties themselves request mediation, it is usually for more serious offenses. Victims, for instance, will often feel most motivated to meet their offender when their encounter has been particularly traumatic or problematic (e.g. sex offenses). As there is no difference in the success rates of mediation for minor and serious offenses, it would make sense to target the more serious ones, and Umbreit (e.g. 1994) has long argued for more substantial involvement in serious violence offenses. The potential payoffs in serious cases are more likely to outweigh the cost of the work involved.

Cost-effectiveness considerations raise in turn the problem of measuring the achievements of victim-offender mediation. There is a need for more substantial research on re-offending rates – current evidence varies from no effect to significant ones across different studies (see, most recently, Nugent and Paddock, 1995). There is, however, the question of whether re-offence rates should be the main criterion. If victim-offender mediation is seen as a service to the parties, perhaps their satisfaction with the process should be the main criterion. This argument, however, neglects the matter of financial cost. It would be difficult to justify spending money on victim-offender mediation programmes that made people feel happier but had no other measurable effect. Ultimately, therefore, the assessment of victim-offender mediation is going to rest on its demonstrating an impact upon crime.

The last issue of importance at the present time is that of the relationship of restorative justice to the Victim Support lobby. It is difficult to see how victim-offender mediation can progress to a mainstream role until it is accepted in these quarters, and this will almost certainly rest on mediators being able to demonstrate their impartiality and programmes indicating clearly that they benefit the victim as much as the offender.

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At the end of 1990, a new Juvenile Justice Act was enacted in Germany. In addition to other new community sanctions, this law provided a legal framework for both mediation as a judicial educational sanction and as an alternative prosecuting strategy (diversion). The legal justification referred to the favourable experiences with assorted pilot projects launched since 1985, which increase consideration for the victim's special circumstances and 'settle the conflict between the offender and the victim that results from the criminal act more appropriately and more successfully (...) than traditional sanctions have done in the past' (Bundesratsdrucksache, No. 464/89, p. 44). The legislator thus focused on restitution in dealing with crimes committed by 14 to 21 year olds. This trend is especially surprising because the experiences with mediation projects are quite recent. The first pilot projects concerning juvenile law began in 1985. In the late 1980s, about twenty major projects existed, including a few dealing with adult criminal law (Bannenberg, 1993; Hering, 1993; Hering and Rössner, 1993; Netzig and Petzold-Bergner, 1994). Mediation covers a broad scope for an individual measure (especially for the 1990 legal reform). In the early 1990s, 224 institutions in a nationwide survey (of the old Federal states) indicated that they had already implemented or that they had concrete plans to implement mediation (Schreckling et al., 1991). Among juvenile welfare departments, 60 per cent subsequently implemented mediation. An additional 19 per cent were drafting a comparable programme. Eighty-five per cent of the institutions worked with juveniles or young adults. A growing range of projects catered to adults over 21.

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Recently, a poll conducted by the department of Criminology at the University of Greifswald at the assignment of the Federal Ministry of Justice revealed that mediation was available virtually everywhere in the old Federal states (and also in the new ones, since the reunification) during the period 1993/94. Seventy per cent of the youth welfare departments surveyed in the old Federal states and 88 per cent in the new ones reported that either social workers at the juvenile welfare departments or private juvenile aid services offered mediation. This option is available in about three quarters of all youth welfare districts (74 per cent) in the context or rather as a strategy before criminal punishment (diversion). Nearly half of all juvenile welfare departments (48 per cent) offers mediation independently. An additional 11 per cent provides this service in conjunction with or alongside a private service, and in 14.5 per cent of the cases mediation was implemented exclusively by a private service (a regional comparison of the availability of mediation appears below; Dünkel et al., 1997). Empirical studies have repeatedly confirmed the widespread German acceptance of mediation (or the spirit of restitution; e.g. Kilchling, 1995; Sessar et al., 1986; Voß, 1989, p. 43 ff.; Sessar, 1992). This sentiment extends from rather conservative political factions (stressing the interests of the victims) to movements pursuing abolitionist trends (viewing mediation as an opportunity to re-privatize conflicts; Pfeiffer, 1992, pp. 338, 345). In 1992, the 59th Assembly of German Legal Scholars (a gathering that is especially important for drafting legislative reforms), advocated increasing mediation efforts in adult criminal law.2

Legal framework for mediation

Current German law – especially criminal justice for juveniles – offers many opportunities for arranging or considering damage restitution and mediation. Juvenile courts may waive prosecution if reformatory measures have already been implemented or introduced (§ 45 II JGG). The 1990 reform act explicitly equates mediation with such a reformatory measure. Significantly, the legislator already recognizes sincere efforts by juveniles to resolve conflicts or to provide restitution (analogous to a comparable Austrian provision, § 7 Austrian JGG; for a commentary, see Jesionek, 1995). This arrangement protects juvenile and young adult offenders if the victim of the crime refuses to cooperate. Successful damage restitution more frequently leads to a dismissal because of reduced culpability (pursuant to § 45 I JGG or § 153 StPO in adult criminal law). Under the same conditions that apply for juvenile prosecutors, juvenile court judges may waive prosecution to enable subsequent consideration of media-

2 The relevant resolution of the assembly of legal scholars appeared in NJW 1992.
tion efforts by the young offenders. Peculiarities associated with German juvenile law concern the material losses restitution, as well as mediation and the judge's order or precept (as an independent sanction; see §§ 15, 10 JGG). Adult criminal justice lacks such means for judges to respond. Both juvenile and adult criminal justice provide for damage restitution in conjunction with a suspended term of detention in a remand home or imprisonment (the same applies for release on probation) (for a summary, see Dünkel and Rössner, 1987 and 1989).

The preceding legal stipulations have been applied throughout Germany since the reunification in October 1990. Unfortunately, the continuation of the widespread practice of informal conflict resolution through internal conflict- or neighbourhood committees of arbitration, that used to prevail in the GDR was not possible.³

Restitution as a juvenile court sanction remains quite limited: in 1994 only 2.2 per cent of the sanctions imposed on convicted juveniles involved a restitution order (Strafverfolgungsstatistik, 1994, p. 65).⁴ Including mediation as a sanction in juvenile justice was rightly criticized for violating the tenets of juvenile law, thereby contradicting the voluntary principle of mediation efforts. Generally, negotiating a settlement with the injured party is ordered only if the offender reveals a basic willingness to this effect (e.g. Kerner et al., 1990; Bannenberg, 1993).

Conceptual framework of mediation projects

Despite selective organizational differences, several points of common ground exist, especially regarding the goals and procedures in concrete negotiations. All Federal German projects are based on the context of criminal justice and thus rarely involve neighbourhood disputes pertaining to civil law, which are the focus of the well-known Neighbourhood Justice Projects in the United States (see on this subject Dünkel, 1990). The consistent point of common ground in the Federal Republic is that juveniles or young adults conform to a relevant pattern of delinquency. The projects focus on the conflict rather than on criminal justice. This perspective leads to subjective consideration of the party directly affected, instead of on the conventional judicial criteria of the

³ See on this subject Buchholz, 1986; Eser, 1993, which refers to the GDR arbitration tribunal ("Schiedsstellen") law of 13 September 1990 that dissolved such committees. The arbitration committees intended as replacements achieved no practical significance, especially since their area of jurisdiction was limited to decidedly trivial cases.

⁴ Since the mid-1980s the figures have been increasing, for earlier statistics (at the time only ca. 1 per cent of the convictions involved restitution), Dünkel and Rössner, 1987, p. 856.
action’s seriousness and guilt, prior offences by the offender and the like (Wandrey, 1989; Messner, 1996).

Mediation highlights direct negotiation efforts between the offender and the victim (who has generally suffered personal injury). Although the meeting between the offender and the injured party and the reconciliation conversation mediated by an impartial third party are the main components of mediation, other indirect forms of conflict resolution are available (especially if the victim does not desire a personal meeting but is interested in restitution; Schreckling, 1988, p. 216). Mediation serves three purposes:

- reconciliation between the offender and the victim regarding the conflict resulting from or manifested by the criminal offence;
- financial or symbolic restitution of material and immaterial harm (e.g. money for pain and suffering) by the offender;
- consideration of restitution services in the proceedings by waiving an official criminal trial or at least reducing the judicial sanction (Schreckling, 1988, p. 215; Schreckling et al., 1991).

The decisive moment of conflict resolution is not so much the outcome of corresponding restitution agreements as the mediation process that actively involves the offender and the victim, thereby restoring the autonomy and authority to act that have disappeared in classical criminal proceedings. Experience in the Federal Republic shows that interaction achieved between the offender and the victim (without actually culminating in a reconciliation that settles the conflict) may virtually eliminate the victim’s need for criminal punishment of the offender. Even material restitution is less meaningful than symbolic acts, such as an apology. The following forms of conflict mediation have also proven worthwhile:

- joint conversations followed by an apology or payment of material losses (generally less than DM 200);
- services rendered to the injured party to compensate for the harm done;
- community services rendered, to be paid through a fund: the offender passes the proceeds on to the victim;
- joint actions by victims and offenders;
- gifts as symbolic reconciliation gestures (Kuhn et al., 1989; Wandrey, 1989, p. 23).

Such services must relate exclusively to the acts and should not entail long-term socio-pedagogical intervention. Aside from active restitution, the offen-

der should not become the object of socio-pedagogical care' (Kuhn et al., 1989). Nor does this method target comprehensive care or therapy for the victim. The anticipated outcome is a long-term learning impact on the offender (clarifying the injustice committed, deterring the offender from additional similar acts) and comfort for the victim to relieve the feeling of injury or trauma resulting from the offender's act.

Organization of mediation projects

Mediation in Germany is organized in various ways. The relevant conceptual considerations stress greater independence from the courts for projects transferred to private services than is the case with juvenile court aid (that is, social workers assigned to the juvenile public prosecutor), which is obviously more closely connected with the law. Moreover, juvenile court aid has traditionally handled more offender-oriented assignments.6 Juvenile court aid and private services differ in other respects as well. Some pilot projects for juvenile court aid arrange mediation through social workers who are also responsible for conventional assignments, such as the projects in Braunschweig (Hassebrauck, 1987; Viet, 1988, p. 22) and the court aid for adults (e.g. in Hamburg, Düsseldorf and Tübingen).7 There is a growing awareness that the offender-oriented operating procedure, traditional in juvenile court aid, cannot compare to the qualities expected from an impartial negotiator.8 Accordingly, many projects on the level of juvenile court aid (local youth departments) now provide juvenile court aid associates with specialized training and concentrate exclusively on case work for mediation (e.g. the projects in Landshut and Munich).9 Frequently, more extensive results are desirable. In such cases, assigning mediation to private services is preferred.10 Nevertheless, the projects with private services,

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6 § 38, paragraph 2 JGG: 'The representatives of juvenile court aid consider juvenile courts from a reformatory, social and caring perspective. They assist the authorities concerned by investigating the personality, development and surroundings of the accused and formulate measures to be taken. If no probation officer is assigned to the case, they ensure that the juvenile complies with instructions and orders (...).'

7 Regarding the Tübingen project, see Rössner and Hering, 1988; Rössner and Hering, 1990, p. 189; regarding Hamburg, see Biel, 1990; for a summary, see Schreckling et al., 1991; Hering and Rössner, 1993; Rössner and Bannenberg, 1994.

8 For instructive literature on the practical problems with case work in mediation, see Arbeitsgruppe TOA-Standards in der Deutschen Bewährungshilfe, 1989; Delattre, 1989.

9 See the contributions by Görlach, Hartmann, Koop, Scheuring and Zeiler in Marks and Rössner, 1989; also Görlach, 1987; Hartmann, 1996.

10 E.g. Frehsee, 1987, p. 226; Grave, 1988, p. 84; Schreckling, 1988, p. 219; like the Deutsche Jugendgerichtstag (juvenile court assembly) 1986 (thesis by Arbeitskreis VII: 'mediation is an entirely new operation and therefore requires a new institution and staff'), see Deutsche Vereinigung für
especially the one in Cologne,\textsuperscript{11} proceeded in close cooperation with the courts and generally involved suitable case selection and assignment by the public prosecutor or by juvenile court aid. This procedure was especially common with projects that emphasized the private, extra-judicial nature of conflict mediation, such as the one in Reutlingen (Kuhn et al., 1989; Wandrey, 1989, pp. 20, 29).

Regardless of the organizational regulation, specialized training for conflict mediators, as well as elaboration of specific guidelines for the negotiation process, seem imperative. The Deutsche Bewährungshilfe (juvenile probation aid association), which runs a special service agency, is examining the subject systematically and has developed standards for mediation projects (\textit{Arbeitsgruppe TOA-Standards in der Deutschen Bewährungshilfe}, 1989; Marks and Schreckling, 1990; Schreckling et al., 1991; Netzig and Wandrey, 1996; Schreckling and Wandrey, 1996).

How can the costs in manpower and funds of a mediation project be assessed? The Federal German projects show that a social worker can handle about eighty to one-hundred cases a year, which involves meeting with about 150 offenders or victims. Mediation is thus fairly costly in terms of manpower and time. Of course, keeping the operation within the original court aid system does not entail any significant added costs. Considering the marked drop in juvenile court aid cases because of the declining birth rate and both the relative and the absolute decrease in juvenile delinquency since the 1980s, especially for serious offences (the area of emphasis in juvenile court aid),\textsuperscript{12} some additional manpower has been available for mediation. However, with increasing crime rates since the end of the 1980s on the one hand, and the reduction of social budgets on the other hand, many problems for the court aid associates have emerged. Some structural changes in the local youth departments have led to shortcomings in the provision of mediation schemes, social training courses and other socio-pedagogical community sanctions according to the Juvenile Justice Act.

Funding is also a common problem with projects involving private services. Generally, however, the municipalities or the courts (which allocate the proceeds of fines to similar non-profit institutions) or other private services (churches, private foundations, etcetera) provide resources. Nevertheless,

\footnotesize{Jugendgerichte und Jugendgerichtshilfen, 1987, p. 327; for literature covering experiences with juvenile court aid projects, see e.g. Viet, 1988.}\textsuperscript{11} See on this subject Schreckling and Pieplow, 1989; Schreckling, 1991; likewise, on the Lüneberger Handschlag project: Peterich, 1990.\textsuperscript{12} New juvenile court aid cases dropped from 358,000 in 1982 to 281,000 in 1986 (-22 per cent). Demographic change accounted for a decrease of only 8 per cent, see Dünkel, 1990a.
the lack of money has recently became more serious. The general recession has reduced the financial means of cities and communities, along with the resources of labour exchanges for employment programmes. Several projects have proved the value of setting up a fund for victims.\textsuperscript{13} Destitute offenders are remunerated for community service from this fund, and are thus able to settle material damage by passing the fee on to the victims. Juveniles (who are more likely to be penniless) are especially interested in work options to avoid being at a disadvantage with respect to their counterparts with access to such funds.

New cases and assignment criteria

As indicated above, all Federal German mediation projects – provided they do not operate within the court system (juvenile court aid) – involve close cooperation with the juvenile public prosecutor or the juvenile courts. Accordingly, most cases are preselected by social workers employed by the juvenile court aid or the juvenile public prosecutor. Sometimes, such as in Braunschweig since 1986,\textsuperscript{14} the police help select suitable cases. The public prosecutor for juveniles, however, bears chief responsibility for selection. Selected projects, such as the ones in Cologne and Reutlingen, provide for mediation within the courts, albeit before or during the trial. In Cologne, even the juvenile court occasionally seeks a settlement (as part of the trial) (see Schreckling, 1988, p. 218; Schreckling et al., 1991). The following four criteria apply in Federal German practice.

- A confession by the offender or clarity about the circumstances is required. This information ensures that mediation does not prejudice the accused's right to a defence or the conventional principles of a fair trial (e.g. presumption of innocence; see for a critical comment Kondziella, 1989).
- The petty crimes clause: mediation is considered only in cases that will not be readily dismissed for lack of significance (§ 45 I JGG or § 153 StPO). This criterion precludes extension or intensification (net widening) of social control in the juvenile court system.
- A victim who has suffered personal harm is generally necessary. Mediation, which is primarily based on a personal meeting or an act-related confrontation between the juvenile and the victim, seems to rule out cases of shop-
lifting from department stores, fraud and traffic violations not involving any material damage or personal injury. Occasionally, small shop owners or institutions (kindergarten and other public facilities) may be involved in victim-offender exchange.

Willingness of offender and victim alike. The agreement of both offender and victim – without any outside pressure – is crucial. All the same, the concept of willingness is questionable if the offender's alternative to agreeing to mediation is a criminal trial. Willingness should therefore not be defined as positive. Rather, it should emphasize the absence of external pressure, like the regulations in Austria concerning sincere remorse with property offences (§ 167 öStGB).

Federal German projects have also shown that more specific exclusion of offences is of little value. Restricting mediation to petty crimes or misdemeanours (thus excluding felonies) is especially inappropriate. For example, some crimes that are considered felonies, such as robbery and even serious sexual offences, are eligible for mediation. Such cases account for 5 to 10 per cent of all settlements in the field of juvenile justice.\(^{15}\) Mediation is also useful for repeat offenders. In September 1989 in Göttingen the 21st German Juvenile Court Assembly concluded that practical experience indicates progression from minor to serious offences (e.g. severe physical injury, aggravated theft, robbery, even sexual offences in exceptional cases). About 20 to 50 per cent of the juveniles in mediation projects are repeat offenders. Some juveniles or young adults even participate in the projects more than once. 'The chance of involving juveniles or young adults who have repeatedly committed serious offences will increase if mediation is not only offered as an alternative as stipulated in § 45 or § 47 JGG but is also presented to the court as a service willingly rendered by the offender for consideration in the judgment.'\(^{16}\)

Experience has revealed the possibility of including a very broad range of offences. In addition to theft and property damage, physical injury, threats, insults, coercion, deceit, embezzlement and document forgery are especially common. Statements by the project managers indicate that according to experiences in the juvenile justice system up to 10 per cent of the incoming case load in juvenile public prosecution departments or 30 per cent of the work load

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15 See Rössner and Bannenberg, 1994, p. 69; in the late-1970s in Mönchengladbach, an alternative project focused on department store theft, Dünkel and Rössner, 1987, p. 867; this project has become superfluous since then, as the public prosecutors have become less reluctant to dismiss criminal proceedings.

in juvenile court aid is eligible for mediation (Schreckling et al., 1991, p. 33; Hartmann, 1995, p. 211). Including other types of compensation will considerably increase the potential for restitution in juvenile and adult criminal justice.

**Evaluating the mediation projects**

The research reports about the pilot projects in Braunschweig, Cologne, Reutlingen, Munich and Landshut are primarily limited to statistical evaluation of cases handled in the project. The data tend to omit important selection issues and a comparison with other reactions or sanctions. Current comparative research on sanctions indicates that the specific and general prevention effect of mediation is at least as high as that of conventional sanctions (Albrecht, 1990, p. 70; see for penal law aspects Roxin, 1987). Some reports even indicate a reduced rate of recidivism.

In terms of internal project efficiency (that is, the predictability and acceptance of mediation), the German results were generally positive. At the time, 80 to 90 per cent of the offenders or victims approached by mediators agreed to mediation (Hartmann, 1995, pp. 212-246). Settlements were reached in 67 to 81 per cent of all cases, an average of 75 per cent (Dölling, 1993; Rössner and Bannenberg, 1994, p. 69; Schreckling et al., 1991; Pfeiffer, 1992). The same share of offenders fulfilled the commitments made (Dünkel and Mérigeau, 1990; Rössner and Bannenberg, 1994).

The offences committed by both juveniles and adults primarily involve physical injury, theft and property damage, as well as felonies such as robbery, in exceptional cases. The offenders tended to be first-time offenders. The share of recidivists varied from 21 per cent in Landshut to 48 per cent in Cologne (Schreckling et al., 1991, p. 36).

The few data currently available in Germany on the satisfaction among offenders and victims with mediation outcomes are hardly representative. For example, the finding that two thirds of those surveyed were satisfied reveals little about the selection method. Victims are interested in whether the mediators are offender-oriented or neutral (Schreckling et al., 1991). This concern demonstrates the importance of linking the organization of mediation with juvenile

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17 For basic information on this subject, Albrecht et al., 1981; Dünkel, 1987; Dünkel, 1990a.
18 Dünkel, 1990a; Anglo-American studies generally cover restitution as a sanction, although very little comparative evaluation research on mediation is available abroad; Weigend, 1989; Trenczek, 1996, on the system in the United States.
19 Cologne's Waage project in particular, which arranges mediation for the juvenile court, has handled increasingly serious cases, see on this subject Schreckling, 1991; Schreckling et al., 1991, pp. 34-35 (11.8 per cent robbery and extortion); the projects for adults, however, did not deal with felony offences at all (Rössner and Bannenberg, 1994, pp. 76, 81).
court or offender aid on the one hand (danger of excessive offender orienta-
tion) and private services equipped exclusively for mediation on the other
hand.

The project is considered successful if an out-of-court settlement is achieved
through the objectives of mediation; this occurs in 70 to 90 per cent of all cases
(Schreckling et al., 1991, p. 44). Where charges were not dropped (because of
the severity of the crime), the sentence was at least reduced (e.g. probation or
other minor probationary sanctions).

Notwithstanding the favourable experiences and assessments, many method-
ological questions concerning empirical evaluation research remain unan-
swered. Given the considerable expenses associated with mediation and settle-
ment, the options for expanding mediation are rather limited (Dölling, 1992;
frequently do not require the costly procedure of a personal meeting between
the offender and the victim. Often, a simple written apology or payment of los-
ses will suffice. Quantitatively, restitution may be more worthwhile as an in-
dependent sanction (§ 15 of the German JGG) aside from mediation. At present,
the pilot projects for mediation cover a maximum of 10 per cent (often far less)
of all juvenile criminal cases (Dünkel and Mérigeau, 1990, p. 114). Substantiat-
ed estimates indicate that 10 to 30 per cent of the indictable offences are intrin-
sically suitable for mediation (Dünkel and Mérigeau, 1990, p. 114; Schreckling
thus leaving 'a vast reservoir' of opportunities (Wandrey, 1989, p. 32).

Results of a nationwide inventory

As stated in the introduction, the current survey of juvenile welfare depart-
ments and private juvenile aid services for 1994 reveals that mediation is avail-
able nearly everywhere in the old and especially in the new Federal states
(see for the efforts of a nationwide implementation, Rössner, 1991; Kerner et
al., 1994; Marksel, 1994; Bundesministerium der Justiz, 1991). Only five years
after the reunification, the juvenile aid systems have largely adjusted to the
new situation. Nevertheless, selective regional differences remain. While in
the Eastern Federal states at least three quarters of the juvenile welfare depart-
ments either practise exchange or arrange such cases through private services,
the corresponding rates in the West are only 62 per cent for North Rhine-
Westphalia and 66 per cent for Rhineland-Palatinate. In Saarland only one
of the six juvenile welfare departments reported offering mediation. East
and West Germany also differ in the increased presence of private juvenile aid
services offering mediation in addition to the juvenile departments.

The study by the University of Greifswald focused not primarily on mediation
but rather on the new educational sanctions overall (e.g. social training courses, supervisory directive, community service and finally mediation) that became part of legislation following the 1990 reform of the JGG. This measure should considerably reduce custodial sanctions, such as a juvenile detention centre (Jugendarrest) or detention in a young offender institution (Jugendstrafe). Considering the current trend in new educational sanctions, rather than the system of availability, conveys a far more modest impression. Most juvenile departments process only a few cases of mediation each year. Like supervisory directives or social training courses, mediation is of a very minor quantitative significance in sanction practice. The approach is more based on ad-hoc measures than on deliberate areas of emphasis. Community service is a different matter, as this system has acquired considerable quantitative importance (probably because it requires relatively little investment in organization and time for juvenile court aid).

The case figures indicate that half the juvenile departments reporting mediation reached no more than eight settlements in the old, and seven settlements in the new Federal states in 1993. Seventy-five per cent of the juvenile welfare departments handled no more than fifteen or sixteen such cases per year, respectively. Accordingly, we investigated the number of juvenile welfare department districts providing mediation through either the juvenile welfare departments or private services. Of the questionnaires providing usable information from 531 districts (= 85 per cent of all juvenile welfare department districts), 76 per cent reported offering mediation. Only in 16 per cent of the cases, however, did the departments focus on this option. The new Federal states, with an availability rate of 88 per cent and an emphasis rate of 20 per cent, compared favourably with the old Federal states (where the corresponding rates were 73 per cent and 15 per cent, respectively). A project was considered an area of emphasis if at least 30 such cases were handled annually or – in the event of fewer cases – if it was a social worker's area of specialization (e.g. training in conflict resolution by the German juvenile probation aid association or the like) or if a fund for victims was established. The 61 emphasis projects in the old Federal states were mainly in Lower Saxony, Hamburg, Baden-Württemberg and Berlin. In East Germany, most were in East Berlin and Saxony. Examining the emphasis projects alone clearly revealed the emergence of specialization in mediation within the juvenile welfare departments in practically all Federal countries.

20 The projects for new educational sanctions operate within state working groups and one federal working group which enables regular exchange of experiences. For an inventory of individual projects including brief descriptions, see Bundesarbeitsgemeinschaft für ambulante Maßnahmen nach dem Jugendrecht in der DVJJ, 1992.
In the past fifteen years, sanction practices in juvenile law have changed dramatically, especially regarding the new educational sanctions. An increase in alternative measures (informal sanctions or diversion) from 44 to 67 per cent of the indictable felonies can be shown (Heinz, 1997). Simultaneously, juvenile arrest sentences (that is, detention for up to four weeks in a special institution) have decreased by more than 40 per cent from 11.4 to 6 per cent. Conversely, the share of detention at juvenile prison has remained relatively stable, which is hardly surprising considering the rise in sentences for violent acts. Growth is apparent in juvenile court sanctions both with purely reformatory measures and with community service as a disciplinary measure. This information corresponds with the findings from our survey of juvenile departments indicating that community service is quantitatively the most significant among the new educational sanctions. Probation has also more than doubled since 1965.

Unfortunately, the official statistics for criminal prosecution lack any data on the frequency of mediation, especially regarding the role of public prosecutors in alternative sentences. Clues are available, however, as hardly more than 5 per cent of indictable felonies are dealt with through mediation.

Crime policy prospects

Notwithstanding the limited prospects for quantitative growth, mediation and damage restitution play a central role in crime policy. Accordingly, a team of German, Swiss and Austrian criminal law scholars and the leading expert (Schöch) at the 59th Assembly of German Legal Scholars have suggested transforming restitution in general criminal justice into an independent track (with priority) in addition to punishment and therapeutic measures (Arbeitskreis deutscher, schweizerischer und österreichischer Strafrechtslehrer, 1992; Schöch, 1992; Rössner, 1992). Voluntary and full damage restitution (§§ 1, 2 AE-WGM) should be the preferred response to minor and moderate crime (e.g. prison sentences up to one year; § 4 AE-WGM) (Arbeitskreis deutscher, schweizerischer und österreichischer Strafrechtslehrer, 1992). In cases incurring a sentence of more than a year, a compulsory sentence reduction will apply. Elsewhere, the court will waive the penalty and merely find the offender guilty.21 If a victim is unavailable or unwilling to settle, symbolic acts of restitution (com-

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21 The procedural basis of this model should come about through cooperative means, especially the in-depth instruction of the concerned parties regarding the opportunity for restitution and the freedom to take part in this process (§§ 10, 14, 15 AE-WGM). The trial may be stopped to enable settlement negotiations (§§ 13 III, 16 I AE-WGM), extra-judicial mediators may be called in (§§ 13 II, 16 II AE-WGM), and, finally, a judicial restitution negotiation in intermediary proceedings is possible (§§ 17, 18 AE-WGM), Rössner, 1992, p. 415).
community service, payment of fines to non-profit organizations) to restore the legal order may also be applied (§ 2 AE-WGM).

While the 59th Assembly of German Legal Scholars basically agreed with these suggestions, it rejected restitution as a ‘third track of sanctions’ as well as compulsory exemption from penalty in the event of active remorse in accordance with the Austrian example (§ 167 österr. StGB). The group advocated expanding restitution through existing arrangements in criminal procedure (§§ 153, 153a StPO) as optional means for adjusting the proceedings (NJW 1992, pp. 3021 ff.). The group also rejected the suggestion to implement community service as an independent sanction.22 As part of the 1994 act to eradicate organized crime, the legislator changed these demands for reform only slightly upon implementing § 46a of the StGB. If the offender ‘through his efforts to reach a settlement with the injured party (mediation) has compensated entirely or partially or has genuinely tried to atone for his act, or if the restitution requires considerable individual service or sacrifice on his part to compensate the victim fully or mostly, the court may (...) reduce the punishment’ or – in the event of acts incurring up to one year of imprisonment – waive punishment entirely. This sentencing measure, which allows the court extensive discretion, is insufficiently binding and therefore offers little incentive (see Brauns, 1996, who proposes the introduction of obligatory rules for sentencing reduction). Moreover, it adds little to the regulation implemented as part of the 1986 victim protection act in the basic sentencing regulation § 46 StGB, which stipulates special consideration for the offender’s conduct after the act – ‘particularly his efforts to atone for the damage and his efforts to reach a settlement with the injured party’ – in sentencing.

Juvenile law comprises many extensive (but perhaps equally unfeasible) reform considerations. According to Austrian practice (§ 4 II Nr. 2 österr. JGG), juvenile acts are not punishable if their consequences are non-existent or insignificant or essentially eliminate, compensate for or otherwise offset the act (‘Tatfolgenausgleich’) (Kerner et al., 1990, p. 172; see also Bannenberg, 1993, p. 159). Likewise, a reform committee of the German association for juvenile courts and juvenile court aid has called for more extensive decriminalization through both the expansion of mediation and restitution as a preferred response.23

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22 In Germany, community service in adult criminal law exists only as a substitute sanction to avert imprisonment in case of failure to pay fines and as a sanction associated with probation.

23 The reform proposal appeared in the DVII-Journal no. 1-2, 1992, pp. 3-39 and was the subject of deliberations at the 22nd German Juvenile Court Assembly in 1992. The decisions taken there are generally a reliable indicator of the acceptance of reform considerations in juvenile law matters and are thus significant to the legislator.
In Germany, mediation has become an increasingly widespread contemporary response. In the new Federal states, mediation figures prominently in the new social services of the justice department and private organizations for the resettlement of offenders. The role of the German juvenile probation aid association (Bewährungshilfe), which runs a specially equipped service agency for victim-offender exchange projects and has designed training courses for mediators, is especially significant. Finally, similar trends of expansion are emerging in adult criminal justice. The continued limited individual funds as a result of general socio-economic problems compromises the feasibility of widespread availability.

Moreover, the preliminary related empirical research conducted in Germany should address the implementation problems well beyond pilot projects. The budget reductions currently being discussed and pursued by the government, especially within the Federal Department of Labour (affecting the ABM employment measures, which have enabled many private services to recruit staff) and the social or juvenile welfare spheres will complicate the continuation of the previously satisfactory availability of mediation through juvenile law.

Summary theses on mediation from a European perspective

1 Restitution and mediation relate directly to the conflict-solving, peace-enhancing quality of criminal law, which has, like classical rehabilitation law, been neglected under the primacy of the retribution model.

2 Restitution and mediation are appropriate and feasible responses that greatly relativize and possibly even eliminate – in the event of crimes of minor or moderate significance – the state's right to impose punishment.

3 Restitution is an inherent principle in criminal justice practice in most European countries. It justifies any conditions demanded by law and order for dismissing the proceedings, such as judicial terms of probation or restitution designed as independent sanctions by some countries. Clearly, judicial practice does not make full use of these restitutive elements of criminal law. Greater utilization of the legal opportunities provided by mediation is therefore desirable.

4 With crimes of minor to moderate significance (especially offences involving property damage and minor injuries), restitution should be based on an independent extra-judicial reparation or reconciliation procedure. The objective should be a restitution agreement between the injured party and the offender. The extra-judicial realignment of dispute settlement high-

24 For an international comparison see Dünkel and Rössner, 1987; Dünkel and Rössner, 1989; Dünkel, 1990b; Eser and Walther, 1996
lights the specific source of disagreement between the offender and the victim and provides a meaningful sphere of activity for laymen and associates at offender and probation services. Persons involved in mediation efforts require training. Such pre-court negotiating rounds should be considered conducive to decriminalization. The abandonment of repressive punitive measures does not necessarily compromise the interests of society, the victim or the offender's rehabilitation. Inordinate criminality may also be dealt with by regarding sincere remorse as a legal social obligation to waive the sanction, in accordance with the basic principle in § 167 of the Austrian StGB (criminal code).

5 Like in England, Wales and Scotland and in German criminal justice for juveniles and young adults aged 14 to 21, restitution should have the status of an independent criminal sanction. In criminal justice, restitution takes precedence over impartial damage mediation in civil law. It requires that the offender acknowledges the wrongfulness of his action, is aware of his social responsibility and actively recognizes prevailing norms and values. In addition to restitution as a sanction, community service should always count as an equivalent alternative to avoid placing destitute offenders at a disadvantage. As a criminal sanction, restitution (like community service) should, by virtue of the guilt principle and the proportionality requirement, not exceed sanctions (fines) that might otherwise be imposed.

6 The scope of restitution as an exclusive sanction is limited to the satisfaction of the victim's interests and in serious cases (e.g. of violence) does not cover general preventive aspects necessary to clarify standards and to restore the social order. This requirement concerns very violent crimes and killings, despite the impression that the underlying personal disagreement in these cases makes mediation especially desirable. Any recognizable efforts by the offender should be ground for considering sentence reduction (possibly a special one). On the other hand, attempts to expand restitution within criminal justice should not impede the defendant's legitimate right to defence.

7 Mediation projects are designed primarily for juvenile law or with regard to young offenders. By the 1970s, comparable pilot projects arose in Canada and the United States, whereas similar trends got under way in Europe only during the 1980s. This situation applies mainly in England and Wales, Germany, Austria, Norway, as well as to individual projects in France and Finland. In the Netherlands, however, victim assistance programmes are one area of emphasis and mediation efforts involving the offender by the juvenile probation aid association are another. By now, there is a relatively broad distribution of mediation projects in several countries, such as Germany, Austria and Norway. The number of cases tends to be low com-
pared with the case load of indictable preliminary proceedings and is *rarely of any quantitative significance*. Lately, mediation has expanded into adult criminal justice (Germany and Austria).

8 Mediation projects are especially intended to demonstrate that:

- victims largely accept offers of restitution, apologies and the like and frequently consider full compensation for material losses as secondary;
- offenders generally fulfil restitution agreements;
- both sides usually appreciate victim-offender contacts (alleviation of the victim's hostility and fear, construction of deterrents and concrete settlement of the victim's suffering by the offender, conclusive conflict resolution or reparation for the act); exceptions are very serious crimes and cases with long personal histories of disagreement (Voß, 1989; Kilchling, 1995);
- even without official criminal proceedings, the principles of justice, equality and protection of the victim (from intrusive inquiries and pressure to agree to mediation measures, etcetera) and the offender (from forced confessions, unreasonable demands by the victim, etcetera) may be guaranteed;
- even within a trial, restitution is feasible as an independent sanction or probation instruction while upholding the right to due process;
- restitution ranks on a par with conventional sanctions with respect to it's rehabilitation potential and general preventive value (clarification of standards, etcetera).

9 *Mediation projects* are still undergoing general evaluation, at least in Europe. It is remarkable that the growth of mediation projects has been accompanied by systematic research, especially in Germany, England and Wales and Austria. The first European and North American research results reveal that such projects can resolve a great variation of conflicts (even serious crimes or repeat offences) and generally achieve a satisfactory outcome for both the offender and the victim. Assorted studies from the United States reveal favourable results with respect to special prevention compared to traditional sanctions. At least, recidivism is no higher than with other measures involving probation or detention. Similar findings apply for community service, which is becoming an increasingly popular alternative to brief terms of imprisonment, especially in a few countries in Europe (see the favourable research findings from the Netherlands).

10 Criticism expressed thus far about mediation projects seems to be based more on ideological reservations *than on empirical evidence*. Nevertheless, disconcerting trends, as borne out by individual cases, merit consideration. They may involve indirect pressure to participate in mediation negotiations or to agree to such mediation proposals. Problems are especially
likely if a serious discrepancy in social power exists between the offender and the victim. Another source of criticism is the expansion of state measures of coercion to restitution, for example as an additional rather than as a substitute sanction (net widening). Last but not least, the compensation (which is often small in material respects) and limited suitability of the mediation system with respect to groups of offenders, have also been mentioned. Especially in the United States and England, such criticism has highlighted the importance of training the mediators. In comparable projects in Germany, specially trained social workers or psychologists generally conduct the mediation negotiations. Other important aspects include the system's mutually voluntary nature and the presence of a confession by the offender. The German experiences indicate that heavier sanctions in the absence of confessions or refusal to participate in mediation negotiations are unlikely.

11 No restrictions currently apply with respect to the scope of offences suitable for mediation. While mediation projects originally concerned mainly property offences and minor insults, physical injury or property damage, the extension to serious crime has been noted in recent years. Violent crime in particular (robbery or serious physical injury) is increasingly included. Many such projects started as prisoner treatment methods (e.g. individual cases in Germany, England and Wales, Switzerland and the United States). A preliminary transfer or extension to the courts seems useful, as borne out by a pilot project involving rape victims in Tübingen, Germany. This procedure requires sensitivity and primary consideration of the victim's interests. Mediation is not restricted to crimes against individual victims. More general offences (e.g. environmental crimes or property damage) are also suitable for restitution work including community service. Nor should offences harming multiple parties be intrinsically excluded whereas the mediation procedure might be time-consuming and difficult.

12 Criminological research should bear chief responsibility for critically examining the extent to which the forms of restitution within and outside criminal justice and the mediation projects actually benefit reconciliation and settle disputes in a manner satisfactory to both parties. Moreover, the projects oppose punishment intended to be repressive. The role of restitution and mediation through dialogue and mediation, reconciliation and peace-making in criminal justice during the 21st century depends on their solid entrenchment in criminal justice theory and practice. Hopefully, constructive reparative actions through mediation will become a viable instrument in the current dilemma of crime policy between repression and prevention without leading to unrealistic expectations. Admittedly, victim-offender contacts beyond material restitution will be neither necessary nor...
worthwhile in most cases. If material reparation denotes a *quantitative* value, individual mediation (involving direct victim-offender contacts through mediation) is a more *qualitative* measure.

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Reintegrative shaming and restorative justice

Interchangeable, complementary or different?

Lode Walgrave and Ivo Aertsen

This article is not a finished product. It is the result of some rather 'dishevelled thinking' following John Braithwaite's visit to Leuven and Maastricht (February 26 to March 1 1996). He repeatedly confirmed then that he would now replace the term 'reintegrative shaming' with 'restorative shaming'. At first sight, this seems to be no more than an attempt to update the terminology but, on closer inspection, it throws up a number of problems. Reintegration and restoration have different meanings. The shift in terminology, therefore, also seems to suggest a shift in thinking.

This raises three key questions: to what extent are the terms 'reintegration' and 'restoration' interchangeable or, at least, complementary? Does shaming play the same vital part in the restorative response to delinquency as the reintegrative response to delinquency (at least according to Braithwaite)? Is there a difference to be made between the role of shaming in an informal reintegrative (or restorative) process and its function in a formal system of restorative justice?

We shall begin by considering the paradigm of restorative justice, then examine the meaning of the concepts of shaming as an active process and shame as a socio-psychological emotion, before describing what really can happen in a mediation process.

Finally, we shall be asking ourselves to what extent these elements can be combined within a context of judicial coercion.

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Restorative justice

The concept of 'restorative justice' means more than simply a series of techniques that can be used within the existing systems of criminal justice and criminal and protective justice for juveniles.

Restoration as a legal paradigm

Originating from a series of techniques, the idea of restorative justice has become a movement aimed at replacing traditional penal justice (Barnett, 1977; Wright, 1996; Galaway and Hudson, 1990; Messmer and Otto, 1992; Walgrave, 1994, 1995; Bazemore and Umbreit, 1995; Weitekamp, 1995). According to that movement, the main objective of judicial intervention against an offender should not be to punish, not even to (re)educate, but to repair or to compensate for the harm caused by the offence. The concept of restorative justice can easily be understood as victim/offender mediation (Peters and Aertsen, 1995). The harm caused by the offence to the individual victim is visible and the way of amending or compensating for it can be negotiated. An agreement can be observed. The implementation of the agreement can be monitored.

However, the societal reaction to an offence cannot be restricted to reparation alone. Pure mediation would reduce the official response to delinquency to a regulation between two parties according to civil law. However, criminal behaviour is more than a problem between two parties. An offence involves three parties: the victim, the offender and 'the community' (Thorvaldson, 1990; Braithwaite and Pettit, 1990; Bussman, 1992). Even if specific victims do not complain, society can intervene in order to preserve respect for these 'fundamental values' and for 'social life' (Van Ness, 1990). The community has been 'victimized' by the disruption of public order and by the threat to public values, and it can demand compensation for this by imposing a (compensatory) service for the community. Compensation will only be symbolic, but is no less important.

Both mediation and community service are complementary parts of an ethico-juridical tendency denoted as restorative justice. They have in common: a definition of crime as an injury to victims (concrete and societal); the orientation towards restoration; the active and direct implication of the offender in the restorative actions; and the judicial framework, making possible the use of coercive power and of legal moderation as well.

As empirical evidence and theoretical reflection on restorative justice increase, confidence in it is also growing. There are many juridical, socio-ethical and empirical arguments for developing restorative justice, not as part of the existing
retributive and rehabilitative justice systems, but as a fully fledged judicial model on its own. Among others we developed arguments for this 'maximalistic' view on restorative justice in earlier articles (Walgrave, 1994 and 1995). The question now is to what extent shaming can play a role in the restorative process.

**Reintegrative shaming, shame and restoration**

*Shaming, reintegretion and restoration*

'Reintegrative shaming' means inducing a sense of shame with a perspective of reintegration ('shame on you'). It is not the same as 'reintegrative shame' ('I am ashamed'). In reintegrative shaming the active part is not played by the offender, but by the person inducing shame, who may be the representative of society, the mediator, the judge or, possibly, the victim. The offender is the object of this action. The purpose of inducing shame is to promote reintegration, which can best be achieved if the shaming is followed by 'gestures of reacceptance into the community of law-abiding citizens' (Braithwaite, 1989, p. 55). Braithwaite assumes, probably rightly, that providing an opportunity for restoration through offender-victim mediation, or through community service, is a gesture that will promote the 'reacceptance' or reintegration of the offender. The most important aspect of reintegrative shaming is, however, that it affects the offender. Repairing harm is, in fact, no more than one possible way of promoting reintegration: the offender can influence goodwill to his own advantage through his reparative efforts. But other ways of promoting reintegration are possible: offering a treatment, simple forgiveness, etcetera. From this point of view reintegrative shaming should be classified first and foremost as a rehabilitative intervention. The concept cannot then simply be renamed as restorative shaming, because that has a different meaning. Restorative shaming would, by analogy with reintegrative shaming, have to be understood as 'inducing shame with a perspective of restoration'. The inducement of shame then becomes a means of making restoration possible. The concepts reintegrative shaming and restorative shaming are not simply interchangeable.

To what extent can the process of shaming itself have a restorative function, setting aside the question whether the process has succeeded (that is, whether the offender actually feels ashamed as a result of the shaming process)? One way of making the shame felt is to load the offence, the consequences of the offence and/or possibly the offender himself with negative values, that is to blame them. Can blaming in the shaming have a restorative function in itself? For the victim, the blame placed on the offence and the offender implies a gesture of solidarity. By disapproving of the offence the representative of
society confirms that the victim has a value that must not be infringed. The victim is thereby confirmed as a member of the community, whose rights will be defended. This confirms the right of the victim to his *dominion* and to its defence if that right is infringed. In this sense, the shaming of the offender by social institutions implies an element of restoration of the victim's social position and the subjective way in which he experiences this.

For society as a whole, blaming in the shaming signifies a confirmation of the norm. As in criminal justice, this confirmation of the norm can have a restorative effect on the public feelings of unrest that have come into being as a result of the crime (Bussman, 1992). It is made clear to the public that the norm is being maintained and that there is a sanction for infringing it, which assures the public that its 'dominion' is being taken seriously: in this case it will experience the same sense of solidarity as the specific victim mentioned above. This public confirmation of the norm can only be achieved, however, if the concrete blaming in the shaming also takes place in public, which increases the risk of stigmatization.

Finally, one more point: shaming is not the same as moralizing. With moralizing an attempt is made to demonstrate the value of a norm and/or system of values and norms. It is a rational attempt to persuade. Shaming has an effect on feelings. It is an attempt to make someone feel uncomfortable with the image that other people have about his actions and/or the way he is.

*From shame to reintegration and/or restoration?*

If the shaming process succeeds, then shame is the result. Shame is a feeling of discomfort due to a supposed failure in another person's eyes. Even if this criticism is not expressed in words, shame can arise because of the assumption that others have, or may have, criticisms, hidden or otherwise. Shame is the opposite of pride, in the sense of 'justified pride' (Scheff and Retzinger, 1991). Pride is a feeling of well-being due to the supposition of having done well or having been good in another person's eyes. These are typically interactionist-based concepts, therefore the concepts of Self, significant others, generalized others are also important if one is to gain a full understanding of the meaning of shame and pride.

The distinction between shame and guilt causes difficulties for several authors. Scheff and Retzinger (1991), for example, invoke Elias and see guilt feelings as a defence mechanism directed against oneself as a result of shame. There cannot,
therefore, be any guilt feelings without shame. They consider that the distinction, which has now become popular, between guilt cultures and shame cultures is meaningless.

Braithwaite (1989, p. 57) does consider that a distinction exists: 'guilt as a failure to live up to the standards of one's own conscience and shame as a reaction to criticism by other people'. Guilt is an individual feeling and shame is a relational feeling. In politico-judicial systems that are geared towards individuals as separate entities, guilt inducement will be central. Societies that see subjects mainly as members of groups and of society itself will also induce a feeling of shame.3

There is, however, a second distinction between shame and guilt. Guilt has to do with failure to meet obligations according to moral and legal norms. Shame has a wider meaning. It is possible to be ashamed of behaviour that has nothing to do with moral norms, but that does involve the experience of reduced status. Even if innocent intimate details come to light people can be ashamed. Bodily shame is an example of this, but not the only one. Shame and guilt can only be complementary feelings of discomfort (one relational and the other internal) if they relate to moral or ethical actions.

The question is, therefore, whether shame that arises as a result of shaming will always have a moral or ethical element. The delinquent may also be ashamed, not because he has infringed a norm, but because he has been caught, because he feels weak and defenceless when he wanted to appear strong (and macho). If there are no feelings of guilt, however, the question remains as to what extent there really is a willingness for restoration. Shame, even about mistakes made, does not necessarily result in a willingness for restoration. In order for this to be the case there must be feelings of guilt as well. In addition to 'reintegrative shaming' there should also be a kind of 'restorative denouncement'.

Shaming only results in actual shame if the relationship between the offender and the shame inducer is such that the one does not want to fail in the eyes of the other. That is not always the case. For example, much of the provocative behaviour of adolescents can be called 'ill-mannered' but they make it clear that they are not ashamed about this in order to show that they could not care less about the potential 'shamers'. They want to demonstrate that their father, for example, is no longer a 'significant other' for them and that conforming society is not a 'generalized other'. As Braithwaite (1989, pp. 89-90) says: ‘When

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3 The distinction between shame and guilt may also be evocative of the stages of moral development referred to by Kohlberg. Shame then arises in the second stage of development (where being a 'good boy' or 'doing one's duty' in the eyes of other people is the most important thing), whereas guilt mainly arises in the third stage (where one's own conscience becomes more important).
parents lose the respect of their children, it is peers who often come to have the greater capacity to shame'.

Something similar happens in the stigmatization process. Stigmatization only has an impact on the offender's self-image if the labeller has authority in the eyes of the person being labelled. A show of pure power by a court has less effect on the self-image than negative labelling in more significant and proximate networks such as the family or the school (Aultman and Welford, 1979; Zober, 1981), or, as Braithwaite (1989, p. 97) says: 'Shaming by the state is less potent than shaming by proximate communities'. Shame is not socially constructive in itself. 'Shaming is a dangerous game' (Braithwaite, 1989, p. 12). It all depends what is done with the shame. It is an unpleasant feeling that one wants to get rid of. This can be done by avoiding situations in which there is a risk of feeling shame (for example by reclusive behaviour), by seeking out situations where the source of shame is redefined as a source of pride (as in certain peer groups), or through aggression against the shame inducer (described by Scheff and Retzinger as 'rage', leading to 'destructive conflicts'), etcetera.

If the shame is to lead to a constructive result, there must be rather more. Shame must not be induced within a relational context of social alienation (Scheff and Retzinger, 1991) but rather within a network system of interdependencies and within a society with a strong sense of communitarianism. 'A communitarian society combines dense networks of individual interdependencies with strong cultural commitments to mutuality of obligation' (Braithwaite, 1989, p. 85). Only in such a situation can the inducement of shame be followed by the necessary 'gestures of reacceptance'. The shame inducer not only induces an uncomfortable feeling of shame, he also immediately provides a constructive way out in order to put an end to that feeling.

One important question that now arises is whether gestures of reacceptance must, necessarily, be equivalent to restorative processes. Probably not. In a gesture of reacceptance the shame inducer is still the active party. A mother, for example, can cause her child to feel shame because it has done something that is not allowed, and then she can immediately follow this with a friendly gesture of love. In a restoration-oriented context, on the other hand, the gesture of reacceptance is conditional: the offender against the norm is given a chance of reacceptance on condition that he makes a restorative effort. The active party is now the offender, who must show that he is prepared to make an effort to gain reacceptance.

The inducement of shame may, therefore, motivate the offender to avoid further exclusion or stigmatization and, hence, to make an effort to achieve reintegration: the gesture of reacceptance can provide a pathway along which this can take place, but neither of these are the same as a restorative interven-
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They may be ways of promoting a willingness for restoration in the offender, but they are not themselves restorative. Shaming is related differently to restoration than to reintegration. The following section will make clear how strong the impact of shaming can be in a restorative interrelational process.

Shaming and restoration in the mediation process: an illustration

Mediation for reparation: a Belgian pilot study

Programmes on victim-offender mediation or reconciliation are mostly set up for a restricted target group. The large majority of programmes is oriented to young or first offenders who have committed minor property crimes. Although victim-offender mediation programmes have proliferated in many western industrialized countries during the last twenty years, their position and their impact on the formal criminal justice systems has been rather marginal. Even where mediation has become a more readily accepted practice, it is often 'used' in order to deal with all kinds of social problems, serving many goals besides making concrete reparations to the victim or the community. We can foresee a 'two-track' scenario in which victim-offender mediation programmes (and community service) will be accepted on a large scale for minor offenses or for a wide range of social conflicts, while violent or more serious crimes will be dealt with exclusively in the traditional system in an evermore harsh and punitive way.

This problem formed the point of departure for an experimental project in Leuven, called 'Mediation for reparation'. Over a three year period (1993-1996) a pilot programme and research project was carried out. This was done in a partnership between the Public Prosecutor's Service, an independent non-profit welfare organization already working in separate programmes with victims and with offenders, and a criminological research team of the University of Leuven. It was an option of the programme to deal exclusively with adult offenders and with crimes of a certain degree of seriousness. Only crimes for which the prosecutor had already made the decision to prosecute were considered. Files could not be waived. The offenders were often recidivists, who realized they had to go through the full trial and sentencing process. Contrary to most other VORP experiments, the Leuven project is not a diversionary one, conceived as an alternative to prosecution. Mediation runs while the investigation is going on. It is of course presumed that the outcome of the mediation will influence the further judicial sentencing.

For more detailed information about this pilot study see Peters and Aertsen, 1995. Two successive research reports about this experiment are available in Dutch.
This option has been taken for two reasons. First, it augmented the chances to involve serious cases in the mediation experiment. Second, it allowed to investigate from the inside the potentialities for reorienting the criminal justice system itself in a restorative way. The central issues were the following: to what extent is the criminal justice system beginning to accept reparation as one of its central objectives? Can restoration become an intrinsic part of the mainstream criminal justice process? Which conditions must be fulfilled for restorative justice to achieve this central position?

The pilot-project produced many findings regarding the methodology of mediation in these cases which chiefly involved physical assault. Both the participating victims and offenders were highly satisfied with the results. This positive effect could largely be attributed to the fact that they were able to play an active and responsible role in the criminal justice decision-making process. Both victim and offender felt more accepted by each other and by the judicial authorities. Dialogue not only took place between the victim and the offender, but also – when they presented their joint proposal for a solution – between them and the justice system. Several conditions are presupposed in this method of working.

Mediation is not limited to financial restitution or mere arrangements. Although financial restitution forms an integral part of the mediation, the primary focus is on the immaterial aspects and on communication between victim and offender. Mediation can be done directly (face-to-face) or indirectly (the mediator as a go-between). In this exchange the psychological, relational and social consequences of the crime are discussed. Talking about the facts – how it happened and why – leads parties to a re-definition of the crime. Stereotypes of each other are reviewed. Besides the financial restitution, victim and offender discuss other ways of making amends: apologies, personal commitments or community service. Finally, the role and optimal reaction of the justice system are discussed ('What would be your decision if you were the judge in this case?'). All these material and immaterial elements of the 'solution' are written down in an agreement, which is signed by both parties and added to the judicial dossier at the court.

Mediation should not be restricted to an interaction between two individuals. Many cases reveal an impact of the crime on the social environment of both victim and offender (partner, children, family, friends, colleagues, employer, larger environment). Also, the elaboration of the solution is subject to many influences from this environment. The systematic involvement of supportive persons in victim-offender mediation is a logical consequence and corresponds on a very concrete level with the option of a community-oriented justice system. Mediation cannot be seen as a static or a single event, it is a process. Through the consecutive contacts and permanent communication, the views, expecta-
tions and commitments of the victim, the offender and their surroundings evolve. The restorative procedure does not finish with the mediation agreement but must be integrated in the further judicial handling of the case. It is crucial that during the sentencing process victim and offender can keep communicating with the judge and other decision-makers.

In this kind of intensive mediation the role of the mediator is extremely important. He offers recognition to both parties and creates an empathic and non-defensive climate between them. He operates in a proactive way and contributes significantly in the search for a solution. The mediator monitors principles of neutrality, independence, confidentiality, voluntary participation of parties and the power balance between them.

The judicial context

The Leuven project of Mediation for reparation demonstrates that victim-offender mediation can be extended in a meaningful way to serious crimes and that it can be implemented through the administration of justice as a whole. Other recent restorative justice initiatives for mediation in more serious crimes give support to this approach. Examples are: the Victim-Offender Mediation Programme of the 'Fraser Region Community Justice Initiatives Association' in Langley, BC, Canada; the Leeds Mediation and Reparation Service in England; several initiatives in the United States, such as the Genesee Justice Programme in the State of New York, the Center for Restorative Justice and Mediation at the University of Minnesota, the Victim-Offender Mediation and Dialogue Programme of the Texas Department of Criminal Justice, and the Victim-Offender Reconciliation Programme involving drunk-driving fatalities in Portland, Oregon.

This development brings about a completely different relationship between mediation and the judicial system. As in the Leuven experiment, mediation is not an alternative to the court process, rather it operates as a complementary method which provides new elements of 'justice' for the system. This approach of victim-offender mediation goes beyond interpersonal conflict-resolution. Each case offers a unique opportunity to confront the rationalities of the criminal justice system with the very concrete needs and expectations of citizens as well as with the present norms and standards in society.

Here is a potential for a consistent and structural change of the criminal justice paradigm. This influence is effective, if the mediation provides an active process of interaction between the victim, the offender, the community and the formal judicial system. In this way, a dynamic interaction between victim, offender, the formal justice system and the social context leads to a solution that is seen as 'just'. In-depth case-studies have shown that this is a workable
process. Our findings also suggest that compared with the traditional unilateral process, this kind of mediation leads to a much higher level of acceptance of the judicial decision by the participants and to a more effective impact on the offender.

The Leuven experimental programme required intensive daily co-operation between the (prosecuting) magistrates and the mediation staff. The high threshold nature of the cases, and the autonomous position of the mediator as part of an independent service for forensic social work, made a merely pragmatic, diversion-oriented administration of the files impossible. To select and proceed with each dossier, an open discussion between prosecutor and mediation staff was necessary. This opened a forum for permanent reflection and re-thinking of the existing approach within the system. Maintaining intensive and constructive co-operation with the mediator is an other way of making members of the judiciary more effectively committed to the new, restorative paradigm.

The role of shaming

How can we define the relationship between the above described model of mediation and the notion of 'shaming'? Does shaming have a function in the process of mediation? Although the Leuven experimental programme did not elaborate systematically the influence of shaming, case-studies provide some reflections in this regard.

The communication between victim and offender offers a framework for shaming. Here, direct mediation is preferred to indirect: the personal meeting gives the victim 'a face and a voice', which confronts the offender in an intrusive and very concrete way with the consequences of his behaviour. A genuine feeling of shame can be the result. One might expect a greater impact of this shame-inducement when the victim and the offender were already 'significant others' to each other, because they knew, or were close to each other. 'It won't be easy to see these people. I'm at odds with myself.' (An offender who committed a burglary in the house of his friend). 'When did you get the whole idea? How did you know there was money in our house? Why did you try to involve the other guy? Where did you find the key?' (The victims of the burglary in a face-to-face meeting with the offender).

Together with the impact of the direct meeting of victim and offender, shaming can be reinforced to a large extent by the involvement of relatives or friends of the offender. In the confrontation with 'his folks' the self-image and the relational network of the offender will be threatened. In the presence of these persons, the offender will listen in a less avoiding way to the words of the victim. Going through this experience, a feeling of shame can arise in relation to his beloved. Because the seriousness of the offence (and of the charge) may create
a strongly defensive or minimizing attitude in the offender and his 'significant others', the mediation process needs to be prepared and managed in an active way. These observations confirm what has been found in other programmes (see e.g. Braithwaite and Mugford, 1994). ‘That's the point. These people (his parents) are too good to me. I live here in a palace. But what can I do for them?’ (A young offender, who committed an armed robbery with his friend, in a preparatory conversation with the mediator in the presence of his parents).

'It's hard for me to face up to the facts. I have indeed stolen money several times from Ms. V. I don't understand why I have done this, I'm not a thief! I don't dare to meet Ms. R. (employer) after what happened. She knew me all that time and she always trusted me. I'm ashamed of what I have done to my husband and my son. Until today our family was absolutely blameless. ' (From the written agreement between a woman who committed several thefts at her workplace, the victim and the employer of the offender).

Inducement of shame by official representatives of the community, for example a police officer, a public prosecutor or a judge, needs to be based on the outcome of a former meeting of the victim, the offender and their supporters. We do not expect a profound shaming effect by the intervention of the official alone. Practice shows that their approach to the offender very often is characterized by a moralistic or punitive attitude, even after a positive mediation outcome. A defensive reaction from the side of the offender is again very likely. This observation is a prefiguration of the problems we will meet with shaming in the formal police system.

**Shaming and restoration**

Even if shaming has a role to play in a mediation process, its significance for the victim and the possible restorative effect is still debatable. We presume that active shaming - by the victim or by relatives of the offender - has a psychological releasing function in the process of working through the experience of victimization. Mediation in more serious crimes points out the importance of anger. These feelings must be expressed and communicated to the offender. After this phase, experiencing a real impact on the offender permits the victim's feelings and attitudes to evolve, but observation also reveals that when the offender does not show any involvement the victim can feel very disappointed. After or besides the process of active shaming, the effect of shaming can be positive for the victim, if the offender demonstrates a real or growing understanding. Highly important in the mediation process is the moment of the offender's admission of his wrongdoing to the victim. The personal experience of seeing – in a face-to-face meeting – that the offender is affected by a genuine feeling of shame, has a healing effect and a restorative meaning for the victim.
For the offender, shame can be a pre-condition for concern for the victim and an incentive to take up his responsibilities. The victim on his part, aware of this evolution in the offender's attitude, will be more willing to discuss concrete ways of restoration. An agreement on the reparation to the victim or the community can be the result.

A case study

A man of 45 is under suspicion of sexual assaulting a 5 year old girl who lives next door. In his first contact with the child's father he denies the facts. After a complaint by the victim's mother, the investigating judge takes the neighbour into remand custody. When the child's father is told that the suspect admits the offence, he tells the mediator he is open to a reconciliation with the offender ('but he must make the first move'). In prison the offender tells the mediator about his feelings of confusion about what happened. He tries to understand why he came to commit such a crime. He feels guilty for the suffering he has inflicted on his own family, because of the possible loss of his job and his arrest. In a separate conversation with the mediator, the offender's wife tells about her husband's shame; he is not able to talk to her about this.

In a second meeting with the mediator the offender agrees to a personal meeting with the parents of the child: 'This finally will give me the chance to apologize and to talk to them. This is a real concern for me.' In the face-to-face meeting with both parents of the victim and his wife the offender apologizes for what he has done. He acknowledges he made a serious mistake and he emphasizes his attempt to understand his behaviour. At the end of the meeting both parents of the child express positive feelings about the meeting. The child's mother adds that at times she was ashamed of having lodged a complaint with the police, because of the impact on the offender's family. The offender feels relieved; he now knows the victim's parents do not reject him.

Coercion, shaming and restorative justice

Most offenses cannot be dealt with without the authorities compelling the offender to account for his actions. This means that coercion is being exercised. In such cases, the formal rules must be well-established and it is important to look carefully at the principles on which they are based. As long as public intervention is limited to creating conditions so that the offender and the victim can deal with the situation constructively themselves, there is actually very little involved. The process that takes place remains, essentially, informal. There is plenty of room for relational, emotional and affective communication, for the inducement of shame, for a request for reintegration and restoration and for
negotiations on this subject, so that the reintegrative power of the networks of 'interdependencies' can be fully exploited. The effects of shaming can also be kept under control, because only those who are directly involved are aware of it and no public shaming takes place. The only task of the public institutions is to create the conditions so that all this can take place internally and correctly. We have just described an example of this. Another very good example can be seen in the so-called reintegrative or family conferences (Braithwaite and Mugford, 1994).

Coercion and procedural requirements

The position of shaming is different, however, if the offence cannot be settled informally, or if it is not considered desirable to do so because public order has been so badly disturbed that public proceedings are deemed to be necessary: ‘(...) the state is needed to shame incidents of such low frequency and high seriousness as to be otherwise beyond the direct experience of most community members’ (Braithwaite, 1989, p. 97). In many cases, (an attempt to) mediate is not excluded, but it should at least be completed by a public sanction. Within the restorative justice approach, consideration should first be given to the imposition of community service.

In principle, community service needs the implementation of full legal proceedings. This is, firstly, because community service does not directly connect the offence and the sanction, hence making the link between them more tenuous and more difficult to perceive. Secondly, it is no longer only a question of an agreed compensation arrangement as the result of mediation. Community service explicitly involves a restriction of freedom imposed as the result of an offence. Thirdly, in this case the Public Prosecutor's Office acts as the plaintiff, as representative of the society, considered as the victim. The conflict between law and order and the offender cannot be settled by the Public Prosecutor's Office itself, but must be decided by an independent third party. The blame for the offence and the extent of the restriction of freedom must, therefore, be determined, and in our legal system this can only be done at court level. This creates the need for a more formal procedure, which is also public.

To what extent does this still involve some restorative shaming, that is a form of shame inducement that could promote restoration? We are discussing now the judicial handling of offenses and we can make use therefore of the republican theory of criminal justice put forward by Braithwaite and Pettit (1990). According to this theory the main aim of criminal justice is to protect and promote the 'dominion' (defined as the whole range of societally guaranteed rights and freedoms for all citizens) of all the parties involved (victims, offenders and all
Every provision in theory and every decision in practice must be evaluated in terms of its consequences for the 'dominions' of all citizens.

**The public character**

One important aspect of criminal justice is its public character. 'Denunciation is a central justification for the criminal justice system' and the imposition of punishment is 'an important reprobative message to the community' (Braithwaite and Pettit, 1990, p. 177). Public confirmation of norms may be a way of enabling the specific shaming of norm-infringing behaviour ('state shaming can trigger much of the community shaming', Braithwaite, 1989, p. 97). Furthermore, the public response to the infringement of a norm shows the public that the defence of the dominion is being taken seriously, which may promote the restoration of feelings of security and have a preventive effect.

If the public proceedings have to go hand in hand with shaming, this does, however, entail one great danger. As soon as shaming goes beyond a relatively informal and enclosed environment, there is no longer any control over what 'people' will do with that shaming process. 'The public', having been '(dis-)informed' by the media, is not involved in the specific exchange of feelings and opinions and will therefore adopt a position towards the offence (and the offender) that is relatively unrelated to the reintegrative aims of the process. Stigmatization of the offender then would become an obvious consequence. Braithwaite provides two ways of preventing this: even public shaming must be aimed at the offence rather than the offender, and the shaming must be followed by public 'gestures of reacceptance'. It is by no means certain whether this is achievable and whether it will be sufficient to prevent the shaming rituals from degenerating into 'degradation ceremonies' (Garfinkel, 1956). How is it possible to guarantee that the public will accept reintegrative shaming and not go down the path of stigmatization?

This is actually only possible in communitarian societies, according to Braithwaite (1989, p. 86). Three elements are essential in these societies: '(1) densely enmeshed interdependency, where the interdependencies are characterized by (2) mutual obligation and trust, and (3) are interpreted as a matter of group loyalty rather than individual convenience'. It is very doubtful whether our urbanized, (post)modern societies meet these requirements. Braithwaite also sees problems here. In *Crime, Shame and Reintegration* he says on various occasions that the decline in communitarianism is partly the fault of urbanization. In a later article entitled 'Shame and modernity', he writes that 'late modernity has involved a frontal assault on shame wherein everything – nakedness, sex, violence, rage, fidelity – is turned into a consumer item' (Braithwaite, 1993, p. 6). Braithwaite points to the 'reintegrative shaming'-potentialities of the
multitude of different networks in which the modern societies involve their citizens. This however does not seem to offer any solution to the lack of reintegrative potentialities of the formal judicial system. Hence our suspicion that our societies do not currently provide an appropriate environment to allow public shaming sessions to lead to opportunities for reintegrative shaming.

The formal character

The public proceedings in relation to an offence are highly formalized. And rightly so since the coercion that is exercised constitutes an infringement of the citizen's dominion and that must only take place under strict and controllable conditions. The judicial authorities are bound by 'the recognition of uncontentious criminal justice rights' and must demonstrate that they 'take the rights seriously' (Braithwaite and Pettit, 1990, p. 75). Formalizing the proceedings is the most important way of achieving this. Shaming, however, does not lend itself to formalization. Shaming has an effect on the emotions and these cannot be formalized. Formalizing the proceedings does not make it possible to, as it were, force shaming and guide it in a reintegrative direction. Of course, no-one can stop a judge delivering a 'shame-inducing lecture, intended to achieve reintegration', along with his verdict, and a probation assistant can constantly send out 'shame-inducing and reintegrative signals', but as a formalized ritual it is impossible.
Hence our tentative conclusion is that in the legal proceedings following an offence, the necessities for formalized, public administration of justice must constantly be considered. There is, in principle, no room here for reintegrative or restorative shaming. When this comes into the wider public domain there are more grounds for fearing stigmatization, rather than an offer of reintegration. It is noticeable that in Not Just Desert (1990), the work in which the republican theory of criminal justice' is presented, shaming is no longer a central concept. Reintegration is discussed, however. Maybe, the authors felt that shaming cannot be expected to have much of a constructive effect within the formal judicial framework.

Republican theory of criminal justice and restorative justice

The republican theory of criminal justice does provide an excellent framework in which to locate the model of restorative justice. The orientation towards restoration creates an opportunity to contribute towards the fundamental purpose of the republican criminal justice theory, which is to protect and promote dominion of all citizens. Material and psychological reparation following offender/victim mediation and also symbolic and (partly) material reparation through
community service, contributes towards the recognition and restoration of the other individual's dominion and towards confirmation of the society as an ordered community, secure in its rights. In their comments, Braithwaite and Pettit expressly give preference to 'punishments' that include a restorative option. 'The reprobation and reintegration presumptions lead us to favour restitution as a form of punishment; it symbolizes the harm, connoting through its content the wrong that was done' (Braithwaite and Pettit, 1990, p. 127). Both direct restitution to victims and community service are indicated as the most preferable sanctions.

One essential condition for a good criminal justice system is that it must be 'satiable'. That means that the principles of criminal justice must also comprise clearly defined upper limits of intervention. This requirement is met by a principle of proportionality, which places emphasis on the relationship between the seriousness of the crime and the upper limit of permissible state intervention. The obligation to restore allows the introduction of a form of proportionality. The reference to the harm caused provides an indication of the extent to which a restriction of freedom is permissible through imposed restoration (Walgrave and Geudens, 1996).

And there is more. No restriction of freedom is self-evident, but must be positively justified by the demonstrable gains in terms of dominion for those involved. This leads to the principle of 'parsimony in punishment': 'the state should use those legislative, enforcement and sentencing options which are minimally interventionist until the evidence is clear that more intrusive practices are required to increase dominion. More than that, the state should actively search for alternative ways of promoting dominion to such interventionist policies as criminal punishment' (Braithwaite and Pettit, 1990, pp. 79-80).

Restorative justice, very probably, indicates a direction in which 'alternative ways of promoting dominion' should be sought. In the long term, the republican theory of criminal justice may have to be transformed into a 'republican theory of restorative justice'.

Restorative justice is not inconsistent with the concern for reintegration. On the contrary, the offender's restorative efforts show that he is willing to accept society's offer of reintegration. Nevertheless, reintegration cannot be the main aim of judicial intervention. Calling upon justice only makes sense because of the legal framework of coercion that is possible there. The judiciary monitors laws and rules, enforces observance of them and sanctions violations. Reintegration is not enforced, it is offered and/or sought. Reintegration is a process that is mainly promoted in societies with a strong sense of communitarianism. Otherwise it is the informal networks and welfare and assistance agencies that have to make the most significant contribution towards reintegration. In the same way, rehabilitation cannot be enforced, despite the many well-intended
but failed attempts at 'pedagogical' criminal or protective justice for juveniles. 'Republicanism rejects any attempt to enforce rehabilitation through the criminal justice system' (Braithwaite and Pettit, 1990, p. 134).

Conclusion

Shaming can be a powerful aspect in the informal process that brings the victim and the offender together in their search for a just restorative solution to their conflict. If, however, it is judged that an offence has to give rise to coercive judicial action, then the role of the justice system must be clearly defined. As far as we can see, it cannot and should not be expected that the judiciary will engage in shaming, nor that the reintegration of the offender should be the principal aim of intervention. Justice should neither shame nor reintegrate, it should simply establish responsibilities and contribute towards the conditions that promote restoration. Besides that, one can only hope that the cultural climate in society as a whole, and in social institutions in particular, will evolve in the direction of more communitarianism, leading to the emergence of a climate that allows for the inducement of shame because harm has been caused, the creation of a willingness for restoration and, if necessary, an obligation to restore as an opportunity of reintegration. This cannot, however, be established through formal public rules, but only through the human and relational ways in which they are applied.

Reintegrative shaming is about the positive power of human relationships to deal with offenses and other types of behaviour that jeopardize harmonious community living. Restorative justice concerns the way in which the formal social response to offenses should contribute towards a context in which a constructive response can be made to these offenses. These are complementary concepts, but they should not be fused together to form a single concept of 'restorative shaming'. This area is complicated and confused enough as it is.

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The socialisation of adolescence into juvenile delinquency
There are different alternative models for conflict resolution, and they serve different purposes. On the one hand there are models that are established to compensate for the effectualness problems in the traditional justice system. These models achieve their end by channelling the petty cases away from the traditional justice system. These types of projects are closely connected to the traditional justice system. They cannot be seen as alternatives to the justice system, but rather as existing parallel to it, or as a part of it.

On the other hand, there are models that are based on more ideological grounds. A socio-critical perspective forms the basis here: the justice system is an inadequate resolver of everyday conflicts, and does not cover the needs of ordinary people. These projects are concerned with strengthening the local community by resolving conflicts locally. Projects that have this point of departure, aspire to function independently of the traditional justice system. In addition, these projects are often concerned with being an alternative to the penal system. They do this because punishment has a number of problematic aspects to it, and ought to be used minimally. As punishment is stigmatizing, and can contribute to a further marginalization of people into a career of deviance, it is important that alternatives to the penal system are found.

We are dealing here with some of the main concepts that have been particularly important for the Norwegian Mediation Boards. Christie presented these ideas in his article ‘Conflict as property’ (1976). In the article, conflicts are seen as important elements in society. He maintains that industrialized societies do not have too much internal conflict, they have too little. We have to organize social systems so that conflicts are both nurtured and made visible and also see to it that professionals do not monopolize the handling of them. Victims of crime in particular have lost their rights to participate. Christie outlines a court procedure that restores the participants’ rights to their own conflicts. This can increase local self-government, strengthen the community and improve solidarity.

1 Researcher at the Department of Criminology, University of Oslo, P.O. Box 6872, 0130 Oslo, Norway. This article is based on an evaluation of the Norwegian Mediation Boards concluded in October 1996. The evaluation was initiated by the Norwegian Ministry of Justice.
In recent years, Christie has further underlined the need for real and viable alternatives to the penal system. There has been a definite increase in the numbers of prisoners worldwide, and therefore there is a need to find alternative methods. (This is dealt with in Christie's book *Crime Control as Industry.*)

We can also say that these two perspectives are different starting points for the Mediation Boards. On the one hand, the boards are part of the traditional justice system. On the other hand, we have the ideology that requires the boards to be free-standing and local fora for the resolution of all types of conflicts between people, and an alternative to punishment. In this perspective, the Mediation Boards contribute to a dialogue on values, bringing conflicts back 'to the people'.

The question that arises is: Where in this picture do the Norwegian Mediation Boards stand? In what direction are the boards moving? Do they function as a local measure and as an alternative to punishment, or do they function as part and parcel of the traditional justice system? I will now present a brief overview of the Norwegian system and some of the most notable results from the statistics of the Mediation Boards in 1995.

**A brief overview of the Mediation Boards Act**

The first Norwegian Mediation Board was established in 1981. As we shall see later, this measure was aimed at preventing juvenile delinquency. After this, the Mediation Boards went into a long trial period. For several years it was voluntary for the municipalities to establish Mediation Boards. This was changed in 1991 when the Mediation Boards Act was passed. According to this Act, the mediation board-system became the responsibility of the State, under the Ministry of Justice. The Act made it mandatory for the municipalities to establish a Mediation Board. A municipality may either establish a single board, or two or more municipalities within a county may jointly establish a board. Mediators are appointed in each municipality. Today there are 42 Mediation Boards in Norway, and 710 mediators.

According to the Mediation Board Act, the Mediation Boards accept referrals concerning disputes which have arisen as a result of one party causing damage, loss, or other violation against a third party. This means that the Mediation Boards can deal with criminal as well as civil conflicts between people. The civil aspects of the boards were underlined in the preliminary stages of the law, strengthening the civil function of the boards. The law does not place an age limit on those who can meet as parties before the Mediation Boards.

The Public Prosecution Authority (PPA) can refer criminal cases. The parties themselves can also do so. Private persons, official bodies such as schools and the Child Welfare system, can refer disputes to the Mediation Boards. These
cases are called 'civil cases'. Disputes referred by either (or both) of the parties themselves may be dealt with by the Mediation Board if the case is deemed 'appropriate' by the Coordinator. The criminal cases referred by the PPA, however, have to be dealt with by the Mediation Boards. The Mediation Boards cannot refuse to deal with a criminal case referred by the PPA. The legal aspects of the criminal cases are regulated by directives issued by the Attorney General (see below).

A Coordinator is in charge of the Mediation Board. The main tasks of the Coordinator are to deal with the cases referred to the boards, and to appoint a mediator to each individual case. The Coordinator keeps the local community informed, so that the boards can be used by as many groups of people as possible. The Coordinator is also responsible for establishing cooperation between the Mediation Board, the police and the PPA.

The Mediators play a decisive role in the mediation process. Their task is to assist the parties in reaching an agreement, but they do not determine the content of the agreement. It is the parties themselves who attempt to resolve the dispute. They may agree to make a compensation in money or in kind, or the case may be resolved without any form of financial transaction being made. In order to prevent an unreasonable or unfair agreement, the Mediator has the power to refuse approval of the agreement.

One of the basic principles of mediation is that the Mediator has a non-professional status and is a member of the local community. Each municipality has a number of mediators, preferably from a diversity of social backgrounds. The mediators are appointed for a four-year period by a board consisting of the Coordinator, one representative from the local council, and one representative from the police. The post of Mediator is a voluntary, but salaried position. Responsible persons over the age of 25 years, who have the right to vote in municipal elections, may be appointed. Those who have received a suspended prison sentence within the past five years are ineligible. Those who have been released from prison, unconditionally or on parole during the past ten years, are also ineligible.

The consent of both parties is a pre-requisite for mediation. In the event of a party being under the age of 18 years, consent of the parent or guardian is also required. The parent or guardian has the right to be present during the proceedings. Mediation shall normally take place in the municipality in which the offender resides. The parties must meet in person. They may not meet in the presence attorney, but the Mediation Board may allow the parties to be assisted by a person who is not a lawyer. Either party may, by informing the Mediation Board, withdraw from the agreement within one week of the agreement being approved by the Mediator.
As far as criminal cases are concerned, mediation is concluded by the Mediator approving of the agreement in writing. When mediation is completed, the board sends the case-documents to the Prosecuting authority informing them that an agreement has been made and approved. The Prosecuting authority is informed if the offender breaches the agreement. The prosecuting agency may only instigate criminal proceedings in the case of a serious breach of the agreement.

As mentioned, the legal aspects of criminal cases are regulated by Directives issued by the Attorney General. The Directives determine the kind of criminal proceedings that can be brought before Mediation Boards. Mediation can only be an alternative to a waiver of prosecution, a fine or a suspended sentence. Mediation cannot be an alternative to unconditional imprisonment. The Directives also determine the kind of crimes that are suitable for mediation namely, less serious crimes such as theft or larceny and damage to property. Violent crimes, with the exception of less serious instances of bodily harm, cannot be referred to the boards by the PPA.

The next question that arises is: What kind of cases are dealt with by the Mediation Boards? Do they deal mainly with civil conflicts between people in the local community, or do they deal mainly with criminal offences? Who refer cases to the boards? Who are the parties involved? In the next section I will give some main figures for 1995.

Some main figures from the statistics of the Mediation Boards in 1995

In 1995, 4387 cases were mediated by the Norwegian Mediation Boards. Table 1 shows the kinds of cases that were mediated by the boards in 1995. We see here that the offences dominate in the cases brought before the Mediation Boards. Cases of a more civil character, such as conflicts between neighbours, or other civil conflicts, constitute only approximately 6 per cent of the cases mediated in 1995. Shoplifting and petty larceny dominate. These offences constitute 31 per cent of all mediated cases in 1995. If we merge the categories shoplifting and petty larceny, simple and aggravated larceny and motor vehicle theft, the cases involving larceny constitute 50 per cent of those dealt with by the boards in 1995. If we add damage to property to this figure (21 per cent), we see that more than 70 per cent of the mediation carried out by the Boards is concerned with a few particular categories of crimes. The Norwegian Boards today deal with very few types of crimes of a less serious nature.

If we compare the cases mediated by the boards with offences investigated by the police, we see that the registered crime picture is reflected in the cases that are mediated by the boards. Crimes of profit also dominate the offences investigated by the police. This shows that there is a close connection between the
Table 1: Cases mediated by the boards in 1995, in percentages (N=4,387)

<table>
<thead>
<tr>
<th>cases mediated</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>shoplifting / petty larceny</td>
<td>31</td>
</tr>
<tr>
<td>other simple and minor larceny</td>
<td>7</td>
</tr>
<tr>
<td>aggravated larceny</td>
<td>10</td>
</tr>
<tr>
<td>damage to property</td>
<td>21</td>
</tr>
<tr>
<td>housebreaking and burglary</td>
<td>4</td>
</tr>
<tr>
<td>motor vehicle theft</td>
<td>3</td>
</tr>
<tr>
<td>mobbing/defamation of character/threats</td>
<td>3</td>
</tr>
<tr>
<td>assault</td>
<td>5</td>
</tr>
<tr>
<td>economic cases</td>
<td>3</td>
</tr>
<tr>
<td>other criminal offences</td>
<td>3</td>
</tr>
<tr>
<td>more than one criminal offence</td>
<td>5</td>
</tr>
<tr>
<td>conflicts with neighbours</td>
<td>3</td>
</tr>
<tr>
<td>family quarrels</td>
<td>1</td>
</tr>
<tr>
<td>other conflicts</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: Mediation Board Statistics 1995, Ministry of Justice

Table 2: Age of offenders in 1995, in percentages (N=5,242)

<table>
<thead>
<tr>
<th>age</th>
<th>% (N=5,242)</th>
<th>% of which boys/men, % (N=4,030)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- 12 years</td>
<td>3</td>
<td>85</td>
</tr>
<tr>
<td>12-14 years</td>
<td>26</td>
<td>71</td>
</tr>
<tr>
<td>15-17 years</td>
<td>39</td>
<td>82</td>
</tr>
<tr>
<td>18-24 years</td>
<td>15</td>
<td>83</td>
</tr>
<tr>
<td>25-34 years</td>
<td>5</td>
<td>69</td>
</tr>
<tr>
<td>35-</td>
<td>9</td>
<td>65</td>
</tr>
<tr>
<td>unknown</td>
<td>3</td>
<td>-</td>
</tr>
</tbody>
</table>

Source: Mediation Board Statistics 1995, Ministry of Justice

penal system and the Mediation Boards. This picture of the boards is strengthened when one realizes that 75 per cent of the cases mediated by the boards are referred by the police. It is rare that people come directly to the boards with civil conflicts.

It is difficult to say whether mediation by the Mediation Boards is established as an alternative to other penal sanctions. We do have indications though, that the public prosecutors use mediation as an alternative to the milder forms of punishment, such as a waiver of prosecution or a fine. Table 2 shows the 'offenders' in 1995. Young persons under 18 years of age constitute more than two-thirds – almost 70 per cent – of the 'offenders' in the boards in 1995. Most of them were young boys. Juveniles under the age of 18 were heavily over-repre-
The Norwegian Mediation Boards

Table 3: The victimized party in 1995 in percentages

<table>
<thead>
<tr>
<th>the victimized party</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>firms</td>
<td>10</td>
</tr>
<tr>
<td>shops</td>
<td>34</td>
</tr>
<tr>
<td>private persons</td>
<td>36</td>
</tr>
<tr>
<td>public institutions</td>
<td>16</td>
</tr>
<tr>
<td>others</td>
<td>3</td>
</tr>
</tbody>
</table>

Source: Mediation Board Statistics 1995, Ministry of Justice

sentenced in those appearing before the Mediation Boards when compared to their representation in the registered crime statistics. Eighteen per cent of the persons charged for crimes in 1994 were young persons under the age of 18 years, while 70 per cent of those who were referred to the boards as offenders were under the age of 18 years. This shows that in practice mediation has become a special measure for dealing with young offenders.

The group under the age of 15 years is also noteworthy. Almost 30 per cent of the offenders were under 15 years of age. In Norway the age of consent is 15. Thus, children under the age of 15 cannot be punished in the traditional penal system; their cases have to be dropped by the prosecuting authority. If mediation is meant to function as an alternative to punishment, we see that this does not happen in these cases. It does not serve as an alternative to punishment, but rather as a reaction to these children. We see here that in these cases, mediation represents a 'net widening' – an expansion of the formal control mechanisms in society. Table 3 shows the victimized parties in mediation meetings in 1995. We see that 60 per cent of those who appeared as injured parties were representatives either of a firm, a shop or a public institution. One third of the victims were private persons. The meetings almost always result in an agreement between the parties. In 90 per cent of the meetings in 1995 an agreement was made. Table 4 shows the types of agreement that were made.

Financial compensation is the most common agreement made at the meetings with the Mediation Boards (43 per cent). Altogether, the financial agreements and labour agreements, or a combination of these, constituted 78 per cent of the agreements made in 1995. Seventeen per cent were purely negotiated reconciliations. Almost all the offenders met the conditions of their agreement; 95.8 per cent of the agreements were fulfilled in 1995.

To summarize, using the stated figures as corroboration, we see that the Norwegian Mediation Boards, as they function today, have to a great extent become an institution for dealing with juvenile delinquency. The boards cannot be characterized as widely used conflict-resolving organs in the local community. Most of the cases handled by the boards are referred by the police. A typical
The question that arises here, is: Why have today's Mediation Boards taken this direction? In order to understand the activity and functions of the boards, we need to study all the participants involved. On the one hand, we need to look at the guidelines the Ministry of Justice and the Attorney General as authorities present. We then need to study the practice of the institutions that refer cases to the Mediation Boards. For what reasons do these institutions use the boards, what expectations do they have of the boards, and what do they hope to achieve through mediation. Finally, we need to consider the Mediation Boards themselves. What do they see as their goals, and how are these goals reflected in their practice. In this analysis we also have to consider the historical background of the boards.

To start with the historical background, the first Mediation Board in Norway – the Mediation Board in Lier – was set up as a measure aimed at the prevention of juvenile delinquency. The Mediation Board was meant to be for first-time offenders, not the more 'experienced' juvenile delinquents. The idea of the Mediation Board being a realistic reaction to juvenile deviance, was also introduced at that time. There was much less weight placed on the boards being a free-standing, conflict-resolving alternative in the local community.

After the first Mediation Board in Lier was established, the Mediation Boards in Norway went into a long trial period – right up to when the Mediation Board Act was passed in 1991. During this period the Mediation Boards handled few cases. Neither the local community nor the PPA referred cases to the boards, and the few cases that were referred to the boards, were petty crimes committed by juveniles.

The Act of 1991, introduced a new phase in the history of the boards. As mentioned, the Law makes it possible for the boards to be alternative fora for conflict resolution where the parties involved, with the help of a non-professional mediator, can resolve conflicts.

### Table 4: Types of agreements in 1995 in percentages (N=4,659)

<table>
<thead>
<tr>
<th>Type of Agreement</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Compensation</td>
<td>43</td>
</tr>
<tr>
<td>Compensation in form of labour</td>
<td>27</td>
</tr>
<tr>
<td>Reconciliation</td>
<td>17</td>
</tr>
<tr>
<td>Financial and labour compensations</td>
<td>8</td>
</tr>
<tr>
<td>Other agreements</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Mediation Board Statistics 1995, Ministry of Justice
However, the Ministry of Justice, as the governing authority, has on many occasions, connected the boards closely to the traditional criminal justice system. The Ministry has maintained that the boards constitute a part of a differentiated criminal justice system. The Ministry sees mediation also as a crime prevention strategy. Although the Law has not set any age limit as to who can meet at the boards, both the Ministry of Justice and the Attorney General, have on various occasions pointed out that the boards are especially suitable for dealing with youth. The Attorney General has pointed out that the boards are best suitable for law-breakers under the age of 25 years. The Ministry of Justice has even encouraged the boards to mediate in cases where the offenders are under 15 years of age; children under the age of consent. In this manner, the Ministry of Justice, projects the idea that the Mediation Boards are organs that deal with the prevention and control of juvenile delinquency. The Attorney General, in his guidelines, maintains that the boards are to be used by the PPA for specific types of crimes of a less serious nature, and that they shall function as an alternative to the milder forms of sanctions. These guidelines from the Attorney General, can thus explain the practice and the types of cases that appear by the Mediation Boards.

The Attorney General also seems to want to use the Mediation Boards for penal purposes. His Directive says that '(...) as with other penal measures, mediation has as its primary goal the prevention of new cases of crime. (...) For many young offenders, it might be experienced as more serious to be confronted with the victim than to meet before a judge. And by having to fulfil an agreement reached in the boards, the offender might receive a sanction that is perceived as more severe than if he had received an ordinary suspended sentence (...) In more serious cases, it is - due to concern for general prevention - to be wished that the agreement contains a resolution that is strongly felt.' (Riksadvokatens Rundskriv, 1993)

With respect to the PPA, it looks as if they do not wholly follow the Directives from the Attorney General. In the main, it seems as if the PPA use the boards as an alternative to a fine or a waiver of prosecution. Mediation as an alternative to a suspended sentence, is very seldom used. In addition, the PPA seem to use the boards largely in cases where young persons are involved. This is because they see the boards as a preventive and educational measure in the case of young offenders. This then has an influence on the kind of cases appearing before the Mediation Boards.

The internal priorities of the Mediation Boards, give us another explanation for the types of cases mediated by the boards. The Mediation Boards Act gives the boards the opportunity to choose their own profiles. Among the boards themselves there are different priorities as to the kinds of conflicts in which they wish to mediate. Several boards define their role first and foremost as a meas-
ure to deal with juvenile delinquency. Their intention is to prevent young people from committing crimes. These boards, therefore, aim at drawing young offenders into mediation. Some boards do this by encouraging local shops and firms to approach the boards directly in cases of shoplifting and petty larceny committed by young offenders. A large number of cases of petty larceny are mediated in these boards, and a considerable number of the offenders are young persons.

These are some of the main explanations as to why the Norwegian Mediation Boards at the moment function mainly as dispensers of special measures directed at the young and towards the prevention of juvenile delinquency. The Norwegian criminologist Kjersti Ericsson captures the main essence of the boards as they function today: ‘The solution changed from being an alternative to the traditional justice system, based on an ideology of seeing crime as a conflict between two parties, into a means of forcing young rowdies who would otherwise have gone free, to "make up for their crimes". (...) The problem changed from being an attempt at finding alternatives to prison for young offenders, into a search for ways of reprimanding young people who would otherwise never land in prison. The Mediation Boards became society’s moral pointed finger at the young.’ (Ericsson, 1996).

It is too early, however, to clearly define the Norwegian Mediation Boards. The Mediation Boards Act has been in force for a relatively short period of time, some of the boards having been established as recently as 1994. Many boards are now working at making themselves known and seen also as civil organs in the local community, that the local people can approach directly with different types of conflicts. Since 1992, when the Act came into force, some cases with adult offenders have also been brought before the boards, and the range of conflicts that are mediated, have been slightly widened. Thus there seems to be a new way of thinking among many of the boards that could lead towards bringing them closer to the original concept of the Mediation Boards, as community-based alternatives.

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Shaming in a Dutch diversion project

Anke Zandbergen

In this article we will endeavour to show that a well known Dutch diversion project for juveniles called Halt can be construed as an application of the theory of reintegrative shaming (Braithwaite, 1989). This interpretation can provide guidance for the redesigning of the project and help to increase its effectiveness. The first section of this article describes the development and the theoretical background of the Halt-procedure. This is followed by a brief description of the theory of reintegrative shaming. In the second section we discuss in some detail the emotions 'shame' and 'guilt' which are important in the perspective of reintegrative shaming. We will argue that the concept of 'shame' remains somewhat unclear. Finally the outcome of a small exploratory research project is presented. This study explored whether the application of the shaming-concept within the Halt-approach can indeed help to increase the effectiveness of this procedure.

The Dutch diversion project

The sharp increase in vandalism in the Netherlands during the second half of the 1970s, the overloading of the Dutch judicial system and the failure of traditional types of sanctions for juveniles form the background for the development of a diversion project called Halt (meaning The Alternative). Moreover, the juvenile justice system was criticized for its emphasis on the social care and the protection of juveniles. The attention was not focused on the correction of delinquent behaviour but on the treatment and education of the juvenile delinquent. Basically, 'the needs of the juveniles' were the main focus and juveniles were considered to be victims of negative community and family influences (Junger-Tas, 1994).
The rather patronizing nature of this model was criticized more and more (Van der Laan, 1991) and proposals for changes in the juvenile justice system were made (Commissie Anneveldt, 1982). The changes were meant to put more emphasis on the responsibility the juveniles must accept for their misdeeds and less on care and protection. At the same time a stronger emphasis was put on the rights and needs of victims and reparation of the harm done to victims (Junger-Tas, 1988). Halt was therefore an alternative in several ways. These arguments, however, do not imply that the idea of protection and care for juveniles is completely forgotten. The Dutch judicial system for juveniles is still characterized by a focus on the training and rehabilitation of young offenders. This dual focus has led to a search for alternative sanctions. The need existed for new sanctions which raised the feeling of responsibility of the juveniles and also offered an element of training. The Halt-project contains both characteristics.

Halt is a diversion project for young offenders (aged 12-18), who because of vandalistic acts or petty theft (for example shoplifting) are arrested by the police. These young offenders can avoid criminal prosecution by performing specific community services under the guidance of a member of Halt-personnel. The first Halt-office started on an experimental basis in 1981 in the city of Rotterdam. Since that time the number of Halt-offices has been increased to seventy. The original theoretical foundation of the Halt-procedure was that juveniles should learn from the imposed sanction. This idea is reflected clearly in the contents of the Halt-programme. The offenders are invited to carry out a service for the community which is somehow related to the offence committed (e.g. cleaning up graffiti). There must be an obvious relationship between the nature of the offence and the type of activities the offender is supposed to carry out. This confronts the offender with the consequences of his behaviour. Moreover, as little time as possible should elapse between the offence being committed and the sanction. The idea is that this approach 'teaches the young offenders a lesson'.

Besides this a member of the Halt-staff attempts to arrange the payment of compensation by the offender for the damage inflicted on the victim. If the young offender carries out the work as agreed, he or she is not registered in the judicial documentation. In principle the police refer the offenders to the Halt-office and then forget about the incident.

Learning theories

The theoretical basis of the Halt-approach consists of several elements of the learning theories. Both social learning and instrumental learning are relevant for the Halt-procedure. Social learning means learning in interaction with (sig-
significant) others. Children learn especially from their parents and when they grow older also from teachers. Parents serve as a model for the future behaviour of their children. If the parents show criminal behaviour the possibility exists that children will show similar behaviour (Sutherland).

Instrumental learning takes place through a process of positive and negative sanctioning (reinforcement) and is therefore directed at the consequences of behaviour. People tend to repeat behaviour if it is positively sanctioned (meaning: rewarded). On the contrary, people tend to stop their behaviour in case of negative sanctioning. With respect to criminal behaviour this means that punishment is considered to be a negative reinforcement of criminal behaviour. If an offender succeeds in escaping punishment the criminal behaviour is positively reinforced and the chance of recidivism will be great. Whether a sanction has the desired positive effect depends on another condition: there should only be a short time lapse between the commission of the offence and the sanction. In principle: the shorter, the better (Bol, 1991).

Positive and negative sanctioning are important elements of the Halt-approach. The Halt-offenders should repair what has been damaged, and pay compensation for the damage done to the victims. An example of positive sanctioning within the Halt-procedure is the avoidance of criminal prosecution by the offender or the appreciation shown by the victims (Eggermont, 1993).

After young offenders are referred to Halt by the police they must carry out activities which are in principle related to the crime. In several respects, then, the Halt-approach applies basic principles of the learning theories. However, in empirical research no relationship could be established between either the time lapse after the commission of the crime or the nature of the sanction and the effect of the Halt-approach on recidivism (Kruissink and Verwers, 1989). In other words, the principles of learning theories did not seem to work out as expected in practice. It is proposed here that the perspective of Braithwaite's reintegrative shaming offers an specification of the theoretical underpinnings of the Halt-approach.

The theory of reintegrative shaming

In developmental psychology the fostering of a balanced conscience is considered to be essential in crime prevention (Kohlberg, 1964). Processes of instrumental and social learning play an important role in the development of a balanced conscience. When a conscience is well-balanced it contains inhibitions for deviant or criminal behaviour. When in spite of this a person commits a crime, feelings of remorse are the result. A process of shaming (social disapproval or criticism by others) plays an important role in triggering these feelings.
In his book *Crime, Shame and Reintegration* Braithwaite (1989) presents his theory of reintegrative shaming. Braithwaite explains that reintegrative shaming is crucial to crime control by describing how low crime rates, in for example Japan, are related to strong social mechanisms of shaming. The concept of reintegrative shaming is applied in so called ‘family group conferences’ that are – on an experimental basis – part of the judicial system in Australia and New Zealand. A family group conference is a relatively informal meeting in which the juvenile offender, his or her family, the victim and his or her family discuss the offence and the possible responses (Alder and Wundersitz, 1994). Mediation offers the (juvenile) offender an understanding of the consequences of his or her behaviour. The victim is also involved in the conference and can confront the offender (Maxwell and Morris, 1994). The process of social disapproval of criminal behaviour which is a distinctive characteristic of family group conferences is in fact a form of shaming. In the next section the concept of reintegrative shaming is presented in a more detailed way.

*Reintegrative and disintegrative shaming*

The theory on reintegrative shaming (Braithwaite, 1989) distinguishes between two processes of shaming, reintegrative shaming and shaming that is disintegrative, which in fact means stigmatization. For shaming to be effective in preventative terms it needs to be reintegrative (Braithwaite, 1993). Reintegrative shaming implies social disapproval by the community followed by forgiveness and gestures of reacceptance: the wrongdoer is reintegrated into the community after being shamed. It’s over and done with. Reintegrative shaming is a process in which the criminal act is condemned instead of the person. Only if the community considers the person who commits a crime as essentially good, is reacceptance and therefore reintegration possible.

Disintegrative shaming on the other hand implies stigmatization, and creates further estrangement from the community and its norms and values, because reacceptance of the offender by the community does not take place. Stigmatization creates a group of outcasts whose deviancy is an important part of their identity.

Shaming is more likely to be reintegrative in communities where the members are highly interdependent. Interdependency means that individuals are mutually dependent on each other to reach their goals (Braithwaite, 1989). Braithwaite states that people who are enmeshed in interdependencies are more susceptible to shaming. Furthermore societies characterized by individual interdependencies are more likely to possess communitarian cultures. Processes of shaming are more common and more likely to be successful in societies that are communitarian.
It has been argued that modern societies are characterised by a lack of interdependencies and communitarianism and the theory would therefore be less relevant. In his article 'Shame and modernity' Braithwaite, however, asserts that interdependencies in modern urban social relations are more role-differentiated which leads to increased exposure to shame (Braithwaite, 1993). He denies that the concept of shaming is less relevant in a modern context.

The process of shaming in practice

Sanctions imposed by relatives, friends or a personally relevant group have more effect on criminal behaviour than sanctions imposed by a remote legal authority (Braithwaite, 1989, p. 69). The loss of respect from friends and relatives is much more threatening than the opinion of unknown officials. Shaming deters criminal behaviour because as a result people might lose the social approval of significant others, which is what people fear most. An other way in which shaming deters criminal behaviour – and Braithwaite considers this to be more important – is the effect shame has on the mobilization of one's conscience. As was mentioned earlier for prevention of criminal behaviour the building of a balanced conscience is very important. Processes of instrumental learning and social learning play an important role in the development of conscience. The process of positive and negative sanctioning is very important for the moral development (or conscience building) of young people. If a person commits a crime and is caught, 'pangs of conscience' will, according to Braithwaite (1989), become effective punishment for this misbehaviour, because conscience reacts immediately, without interference from others. In fact the person 'shames' himself. So, shaming constitutes a negative sanction which will stop future criminal acts because it inhibits criminal behaviour even in the absence of any external shaming (Braithwaite, 1989, p. 75).

In Braithwaite's view 'shaming means all social processes of expressing disapproval which have the intention or effect of evoking remorse in the person being shamed and/or condemnation by others who become aware of the shaming' (Braithwaite, 1989, p. 100).

Braithwaite does not elaborate on the kind of feelings the person who is shamed should experience. The above stated definition just mentions remorse. Braithwaite's major concern is the process of shaming (or of social disapproval) and not the effect of these processes on the offender in terms of feelings of, for instance, guilt or shame. Braithwaite does not distinguish between guilt-induction and shaming, because guilt-induction always implies shaming. Braithwaite does not deny that offenders can experience feelings of shame and/or guilt, but both feelings are in his view a result of criticism by others, which to him is the crucial factor.
Differentiation between shame and guilt however may be important for constructing an instrument to measure the effects of reintegrative shaming (Zhang, 1995). Zhang points out that most theories of emotions like shame and guilt make a clear distinction between them. In the discussion part of his article ‘Measuring shaming in an ethnic context’ he makes the assumption that Braithwaite meant the role of guilt, rather than shame when looking for mechanisms explaining the low crime rates in certain societies. In the next section we will elaborate upon the phenomenology of shame and guilt. The following question will be addressed in the framework of the theory of reintegrative shaming: which emotion should occur during or as a result of a shaming process (shame or guilt)?

**Shame and guilt**

A much quoted author on shame and guilt, Erikson, remarks that in our civilization the emotion shame lies hidden behind guilt and is therefore insufficiently studied (Erikson, 1963). Does this mean there is confusion about the difference between shame and guilt or that distinction between the two emotions is not deemed interesting (Lamb, 1983)? Considerable disagreement about the definition of shame and guilt exists. Indeed some researchers use the terms shame and guilt as alternatives, while others define them as different aspects of the same underlying emotion. Another group of authors emphasizes essential differences between them (Wicker et al., 1983). Most of us know perfectly well if we are feeling ashamed or guilty. But it is much more difficult to explain or describe what the distinction is exactly (Lamb, 1983). On the level of personal experiences there is not usually confusion about the two feelings, even though both feelings can be experienced simultaneously (Gans, 1988; Lewis, 1987). One and the same incident, for example an offence, can cause feelings of shame and feelings of guilt (Van der Zwaal, 1988). In common language people often use the term guilt when meaning shame because, as Gans (1988) remarks, shame is an intense, painful experience, and people prefer not to refer to it. Confusion about shame and guilt is often created early in life. Children are often ordered to feel ashamed, when they actually feel guilty. They are told to feel guilty with the remark: Shame on you! (Gans, 1988).

It is clear that the concepts of shame and guilt are rather complex. The results of empirical research on these feelings are ambiguous. We will try to clarify the issue in the next section by contrasting the concepts of shame and guilt in several dimensions. The information presented here is based on a study of the relevant literature. This section is concluded with a reinterpretation of the theory of reintegrative shaming on the basis of the distinctions made between shame and guilt.
Differences in intensity

'Several authors describe the feeling of shame - in contrast to guilt - as the more overpowering, painful or incapacitating emotion (Lewis, 1987; Wicker et al., 1983; Gans, 1988). Wicker et al. found in their research that the subjects felt 'more submissive, inferior, inhibited and lacking in status, power and self-confidence when ashamed'. In contrast when feeling guilty they felt more active and controlled (Wicker et al., 1983, p. 36). Gans (1988) states that the experience of shame is more powerful than the experience of guilt. Although shame and guilt differ in intensity, Niedenthal et al. (1994) point out that shame is more than an intense form of guilt.

Rules and ideals

Another difference between shame and guilt becomes clear when we draw a distinction between rules and ideals (Lamb, 1983). Lamb suggests that the feeling of guilt is appropriate to one who is rightly accused of the violation of a rule (norm, law, precept). In contrast, shame is the emotion suitable for situations when ideals have not been lived up to (rather than that rules have been violated). The distinction between rules and ideals is clarified by Lamb (1983, p. 338). Punishment is the usual reaction for the violation of rules. In contrast we cannot speak of violations of ideals. Speaking of rules, 'one should do what the rules prescribe, one follows and obeys, but in contrast one tries to do what is ideal' (or tries to live up to one's ideals). In general, rules govern what one does and ideals govern what one is. Thus, morality rules that we keep promises. But, ideally, we try to be honest.

Identical assumptions about the distinction between shame and guilt are made by Gans (1988) and Van der Zwaal (1988). Guilt is a feeling which occurs in the case of a transgression of a rule or norm. On the other hand shame is experienced as a result of a shortcoming in relation to an ideal. A more specific description is given by Kugler and Jones (1992; see also Kohnstamm, 1995; Zhang, 1995). According to them guilt involves violation of one's own internalized values or social standards. Shame on the other hand emerges as a consequence of observation by others of a violation or failure. So, guilt is a feeling which occurs when a personally relevant norm is violated. In this respect one could say that in the case of shame a collective ideal is visibly not reached, while in the case of guilt a personally acknowledged limit is violated (Wicker et al., 1983).
What we are and what we do

The distinction between shame and guilt can also be related to actual behaviour. In the case of guilt, self-reproaching remarks are: 'what have I done', 'what a terrible thing to do', 'what can I do to make up', 'I should be punished for my behaviour', 'it's all my fault'. Self-reproaching remarks in the case of shame are: 'how could I', 'I am a bad person', 'I'm worthless', 'I would like to vanish from the earth' (Lewis, 1987). Both feelings, shame and guilt, involve negative self-evaluations. When people are ashamed, they feel that the self is humiliated and disgraced (Niedenthal et al., 1994). People feel worthless, small, weak, inadequate (Nathanson, 1987).

The feeling of guilt, on the contrary, relates to specific behaviour, or the violations of rules and norms. A distinctive feeling of guilt is feeling one has done a bad thing. Feelings of regret and remorse over a bad thing that was done is typical for guilt (Niedenthal et al., 1994). In the case of guilt one is called to account for one's behaviour and not for one's character. Consequently, guilt can be compensated. Shame on the other hand cannot be compensated (Van der Zwaal, 1988). A feeling of responsibility and a feeling of guilt go together (Gans, 1988; Wicker et al., 1983). A person who feels guilty considers himself competent, accountable and active. This is not at all the matter in the case of shame (Van der Zwaal, 1988). People who feel guilty understand they have done something wrong, while people who feel ashamed, feel inferior (Gans, 1988).

Other-evaluation versus self-evaluation

Some authors consider shame as coming from outside. As mentioned earlier, Kugler and Jones (1992) state that shame results from public observation by others of a transgression or failure. So, the exposure of oneself to others is crucial in the case of shame. Although it is possible to be ashamed when one is alone, the feeling of shame always relates to the imagination that one has failed in a social setting (Kohnstamm, 1995). Shame is the result of public exposure and therefore involves negative evaluation by others. To feel ashamed, a 'shamer' is necessary (Nathanson, 1987). Feelings of guilt on the other hand relate to self-evaluation of oneself. Guilt results from a conflict between one's self and one's internalized values, or conscience (cf. Van der Zwaal, 1988). Agreement exists about the assumption that feelings of guilt are a personal matter, a result of the negative self-evaluations of specific transgressions (Tangney, 1990). In the case of shame the ideas of some authors are more complex. As we saw some authors envisage shame as coming from outside. Others consider shame as resulting from negative other-evaluation (outside) as well as from negative self-evaluation (Lewis, 1987; Wurmser, 1987; Morrison, 1987). One can
feel ashamed because one fails according to one's own standards; a personally relevant ideal has not been lived up to. One can also feel ashamed because one's failure is exposed to others and negatively evaluated. In the latter case shame is a social, interpersonal phenomenon. The relationship between the self and others is then important in the occurrence of shame. Fascination with or admiration of others makes someone more sensitive to their judgements in terms of shame.

**Differences in causes**

Lamb (1983, p. 335) states that the range of types of things about which it is possible to feel ashamed far exceeds the range of things about which it is possible to feel guilty. We can feel ashamed and guilty about our actions and about our intentions to act and what we take to be our actions. But we can also feel ashamed of for example our involuntary actions, ourselves, our appearance, actions of others, other people, our race. In the latter cases feelings of guilt are not applicable. Others remark that situations inducing guilt and shame are not necessarily different (Van der Zwaal, 1988; Lewis, 1987; Niedenthal et al., 1994). In fact there is a substantial overlap in the types of events and behaviours that give rise to both emotions (Niedenthal et al., 1994). Whether a person experiences shame or guilt partly depends on the attributions he or she gives to one's wrongful behaviour. Was it a matter of one's wrongful behaviour, the quality of one's bad character or just bad behaviour?

**Different feelings**

Feelings associated with shame are humiliating feelings (Van der Zwaal, 1988; Gans, 1988). When ashamed one feels belittled, despised, helpless, paralyzed, small (Van der Zwaal, 1988) and worthless (Niedenthal et al., 1994). And as mentioned earlier shame is described as an overpowering or painful or incapacitating emotion. When ashamed people feel more submissive, inferior, inhibited and lacking in status, power and self-confidence (Wicker et al., 1983). Finally shame is associated with hiding, disappearing and escaping (Wicker et al., 1983; Tangney, 1990; Van der Zwaal, 1988). Guilt on the other hand calls for reconciliation. Feelings associated with guilt are regret (Gans, 1988; Harder et al., 1993) and tension (Niedenthal et al., 1994). A person who feels guilty wants to apologize and to restore. The wish to make up for a wrongdoing can be seen as a positive consequence of guilt. It deters further deviant behaviour by 'stimulating impulses to make restitution and seek forgiveness' (Ansubel, cited by Kugler and Jones, 1992).
Concluding remarks

Summarizing, guilt is a feeling resulting from a transgression of a personal relevant norm or rule. Guilt relates to one's behaviour and conscience. The violation of a rule, a simple act for which a person feels responsible, causes feelings of guilt. Guilt calls for reconciliation. Feelings of shame on the other hand result from a negative self-evaluation. In this case a person considers himself a bad person, a bad character. The result is a painful feeling of inadequacy. When ashamed a person possibly feels inferior, lacking self-confidence and submissive. Another source of shame is the exposure of one's bad character to others (negative other-evaluation).

What do these conclusions imply for the theory of reintegrative shaming? Shaming means social disapproval. This process provides knowledge about norms and values. Through internalization of these norms and values one's conscience is built. Violation of a norm then results in a reaction of one's conscience ('pangs of conscience'). Compliance is still possible in the absence of 'pangs of conscience' because people are afraid to lose the approval of others, especially significant others.

The process of shaming can trigger feelings of both shame and guilt. As shown earlier, reintegrative shaming is a process in which the criminal act rather than the person is condemned. The process of social disapproval must be directed at behaviour. In our view, reintegrative shaming must primarily be geared toward experiencing of feelings of guilt. Stigmatization on the other hand means the labelling of a person as deviant. Stigmatization therefore is associated with shame. In Braithwaite's definition of shaming the intention of shaming is to evoke remorse. As shown, remorse is a feeling associated with guilt. Furthermore guilt seeks reconciliation and reintegrative shaming ends with forgiveness. The conclusion therefore is that – in accordance with Zhang's (1995) suggestion – it is guilt rather than shame that should be evoked by a process of shaming.

This is not to say that shame should always be avoided. The shame resulting from exposure to others might be useful, while it leads to compliance because people fear losing the respect of friends and relatives. It is the painful, self-imposed and destructive shame that should be avoided. A short, limited experience of shame might be a positive learning experience.

Some preliminary research findings

The last section of this article deals with the outcome of a small explorative empirical study. Observations were made to examine whether the application of the shaming-concept in the Halt-procedure could contribute to a positive
effect on this procedure. The pilot-study sought to answer the following basic question: to what extent is the principle of reintegrative shaming already willingly or unwillingly applied in the Halt-procedure? More specific questions were: do the Halt staff members have an attitude which corresponds with reintegrative shaming? And do juvenile offenders who join the Halt-programme experience feelings of shame or guilt?

Three questionnaires and one observation protocol were developed. One questionnaire served to interview the Halt-personnel about their attitude towards the offender. This interview consisted of questions about the topics discussed with the offender. Do they always discuss the consequences of the offence? Do they discuss the victims? Is the attitude of the offender a topic to talk about? One of the assumptions here is that a shaming attitude is stronger and more obvious when discussion about motivation of the offender and other background information of the offence go together.

The second questionnaire – the so-called procedure interview – was developed to collect information from the Halt-personnel about the exact procedure they follow. General rules governing the Halt-procedure do exist, but the Halt-offices are free to a certain extent to establish their own practice.

This procedure interview contains questions like how many meetings with the offender are arranged, and whether parents are supposed to be present during the meetings. And of course questions were asked about confrontations between offenders and victims.

The most important purpose of the latter interview was to get a description of the practical course of the procedures because this enabled the researcher to determine the right moment within the procedure to interview the offenders. For example, in some Halt-offices we found that the second meeting with the offender was the one in which the offender was extensively interviewed about the offence. So, for the researcher this meeting seemed to be the most interesting one to observe and interview the offender about.

Another purpose of this procedure interview was to collect knowledge about the similarities between the Halt-procedure and the successful reintegration ceremonies as described by Braithwaite and Mugford (1994). They formulated fourteen conditions of successful reintegration ceremonies. Some conditions are contrasted with Garfinkel's conditions of successful degradation ceremonies. Other conditions are based on observations and discussions of the researchers.

A third questionnaire was put together to interview the juvenile offenders. This self-report questionnaire contained, for example, questions about the offenders perception of the Halt-procedure in general ('is it a fair treatment'), the attitude of the Halt-staff members, feelings of shame and feelings of guilt and other emotions experienced during the procedure. Finally an observation
scheme was constructed, to observe discussions between Halt-personnel and Halt-offenders and possibly their parents. The most interesting results are presented in the next part of this article. Firstly the opinions of the Halt-personnel about the emotions of the offenders and their mode of operation are presented. Secondly the attention is focused on the Halt-procedure in practice. The results of the self-report questionnaire and the observation scheme conclude this section.

The attitude of Halt-personnel

Halt-personnel endeavour not to focus on the person of the young offender but on the offence. So, they try to differentiate between the person of the offender (his character) and the offence (his behaviour). In the terminology of the theory of reintegrative shaming this means they seek to have a non-stigmatizing attitude. In fact they treat the juvenile offenders who join the Halt-programme as basically good people. Stigmatizing assaults from parents towards their children are not tolerated by the Halt-personnel. It is not their purpose to convince the juveniles that they have bad characters. This attitude is fully in line with the theory of reintegrative shaming (Braithwaite, 1989). The Halt-procedure ends with forgiveness. As a Halt-worker states: 'a boy should be able to start again with a clean sheet'. So, efforts are made to reconcile the offender with the community. This means that painful feelings of shame which, as discussed, are closely connected to stigmatization, are in principle avoided.

How do Halt-workers evaluate the reactions of the offenders to the offence? In the opinion of the Halt-staff members the offenders, generally speaking, have internalized the rule or norm which they violated. So, according to the Halt-workers, most Halt-offenders know perfectly well that they violated a rule, and agree to the fact that they should not have done so. A feeling of shame, which we earlier described as being painful, is uncommon according to the Halt-workers. But most of them declare that at least half of the offenders who join the Halt-programme experience feel ashamed at the moment they realise that others are aware of their deviant behaviour. Their feelings of shame are especially experienced in relation to their parents. To a much lesser extent do the Halt-offenders experience shame in relation to peers. It is in that case more common that feelings of shame result from the fact that they were caught by the police. Future conformity depends on who the juvenile is attracted to most (or whose opinion matters to him most).

Feelings of shame in the above mentioned cases result from the exposure of one's behaviour to others. This is not the shame which results from a negative self-evaluation. It is the kind of shame resulting from social disapproval which
can lead to compliance because people fear losing the respect of friends and relatives.
In sum, the ideas of Halt-staff members correspond with some ideas based on the theory of reintegrative shaming. The Halt-workers believe the offenders feel guilty about their behaviour, but do not feel really bad about it. Serious, painful forms of shame, which in fact leave no space for change of behaviour, are rarely encountered. Some measure of shame, resulting from social disapproval is found.

**The procedure interview**

The confrontation between offender and victim is important in Braithwaite’s family conferences. Victims are in a unique position to communicate the responsibility of the act and therefore play a crucial role (Braithwaite and Mugford, 1994). Looking at the Halt-procedure it is evident that there are differences with family conferences. Victims never participate in the meetings between Halt-workers and the young offenders. In several Halt-offices however confrontations between offenders and victims take place when the offender apologizes for his behaviour. Possibly this type of confrontation has a similar effect as a confrontation during an official conference. However, the setting in which the confrontation takes place is different. Another relevant finding in this context is that the attendance of the offender’s parent(s) varies. This means that a significant other is not always present during the Halt-meetings.

**The self-report questionnaire**

The results of the questionnaire are only indicative, because only 38 Halt-offenders were interviewed. The results serve mainly as pointers for a future research design. The Halt-offenders were asked to fill in a questionnaire right after their meeting with a Halt-worker, but while the Halt-staff member was absent. The meeting was also observed by a researcher. The questionnaire included several themes, such as the fairness of the Halt-procedure and the attitude of the Halt-worker. Feelings of shame and other emotions were also addressed. The quality of the Halt-procedure was measured by questions like ‘were you treated fairly during the meeting with Halt?’, ‘were you able to influence the outcome of the meeting with Halt?’, ‘what do you think about the outcome (sanction) of the procedure?’ The attitude of the Halt-workers was measured with the following questions: ‘did the Halt-worker treat you as a bad person?’, ‘did you feel the Halt-worker did not trust you?’, ‘did you feel the Halt-worker thinks you will commit another crime?’ An important finding for follow-up research is that the offenders had
no difficulty whatsoever answering most questions. It took most of them only half the time to fill in the questionnaire than was expected. Most offenders feel, they were treated in a fair way, and that they were able to influence the decisions made during the meeting. Almost a quarter of the offenders felt that they had been punished too harshly. Most considered the sanction to be just right. More than half of the offenders did not get the feeling that the Halt-worker considered them to be bad persons, and neither did they get the feeling that the Halt-worker thought that they would commit another crime. One third did have this feeling slightly. Most offenders felt trusted by the Halt staff member.

Shame, guilt and other emotions

Much of the questionnaire consisted of questions about the emotions of the offender resulting from the discussion with Halt-workers. The researchers were primarily interested in feelings of shame and guilt. Direct questions were: ‘did you feel ashamed?’, ‘did you feel guilty?’ In addition to these, specific questions were asked about feelings of regret, remorse and anger, humiliation, depression. Some feelings can be seen as indicative for feelings of shame (feeling bad, childish, small, shy, powerless, vulnerable) and some as indicative for feelings of guilt (feeling regret, remorse, responsible, that you have done something wrong) (Harder and Zalma, 1990). Follow up questions about shame posed problems for the offenders. Most of them could not describe what they actually felt when feeling ashamed. This corresponds with findings in the literature; feelings of shame and guilt are difficult to describe. Results indicate that most offenders experience feelings of shame as well as guilt, although feelings of guilt are more common. Furthermore a relationship was found between the above mentioned feelings like shyness, vulnerability and others, and feeling ashamed. The same holds for feelings of guilt and indications for guilt like feeling responsible. An interesting result was that the concept of 'shame' caused embarrassment and aversion among both offenders and Halt-workers.

Observations

An observation scheme was developed to observe discussions between Halt-personnel and Halt-offenders. The observation scheme consisted of several items concerning verbal as well as non-verbal behaviour of both the Halt-personnel and the Halt-offender. The significance of the observations for follow-up research should not be undervalued. The observations offered the researchers the opportunity to compare the behaviour of the participants
during the Halt-meeting with the answers on the self-report questionnaire. The researchers noted that most of the observed Halt-workers exhibited an approach which can be more or less characterized as a shaming approach. A minority used a non-shaming approach. Most interesting therefore is the observation of the diversity of approaches of the Halt-personnel and the reactions of the Halt-offenders. It will be interesting to see how this variation relates to the emotions experienced by the juveniles and their future behaviour.

Conclusions

Finally some conclusions and consequences of the results of an explorative study for follow-up research have been formulated. The main concern was whether the Halt-approach as it is practised by the interviewed Halt-workers includes shaming elements. In other words, whether the Halt-approach offers a platform to examine the effects of a shaming approach and/or whether this approach could be emphasized in the procedure to produce better effects. The outcome of the above presented research allows for a positive answer to this question. Ideas and modes of operation of a majority of the interviewed Halt-workers are similar to ideas formulated in the theory of reintegrative shaming. Most important in this respect is the clear intent of most Halt-workers not to stigmatize; they definitely try to distinguish between the person of the offender and his behaviour. Furthermore Halt-workers consider the end of the procedure as a new beginning for the offender. Forgiveness is deemed very important.

A majority of offenders experiences feelings of shame as well as feelings of guilt as a result, although feelings of guilt dominate. Differences between the emotions shame and guilt are substantial and need attention when constructing an instrument for measuring the effect of a shaming process. In follow-up research the differences between these two emotions should be taken into account.

Victims are not present during the Halt-meetings. Confrontations between victims and offenders, however, do occur. This means that the process of shaming continues during later stages of the Halt-procedure and is not strictly limited to the actual Halt-meeting. As a consequence, to measure the total shaming effect of the Halt-procedure, the offenders should be interviewed at a later time in the Halt-procedure or perhaps they should be interviewed twice. An important source of information were the evaluations of the Halt-meetings by the Halt-workers and the researchers. These evaluations were informal but very useful. In this way the researchers gathered information about the Halt-workers' motivations and intentions in terms of feelings of shame. Finally, in future research the researchers will gratefully make use of the diversity of the Halt-practice.
The existence of different models allows for comparison of the effects of a shaming attitude with that of a non-shaming attitude within the Halt-procedure.

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Crime prevention within metro systems

The subject of crime and crime prevention within metro systems has gained increased attention in recent years. This may come as no surprise, since criminal damage (in direct financial losses, repair costs, security measures, and loss of passenger revenue) often exceeds millions. More and more metro companies have started to look for cost-effective solutions to counter the threat of crime and provide passengers with a higher standard of service. In their efforts to combat crime and insecurity metro companies and security experts have, however, been handicapped by the limited availability of theoretical knowledge on this subject.

There have been studies on the possibilities of tackling single crime problems within the metro (Gaylord and Lester, 1994; Sloan-Howitt and Kelling, 1990), studies on crime control in individual metro systems (Gaylord and Galliher, 1991; Webb and Laycock, 1992), and studies on the effectiveness of individual measures (Clarke, 1993; Eastman and Yuan, 1994). What has been missing, however, is comparative research that provides insight into the factors that influence criminal opportunity within metro systems and a publication that offers a complete dossier on how to build and manage a system that limits the opportunity for crime to the greatest extent possible. To meet this need an international comparative study was carried out among twelve metro systems in Asia, Europe, Latin America, and the US which has recently resulted in the publication of a book. This article provides a summary of the book and gives an overview of the main conclusions.

History

The development of knowledge on crime prevention, construction and management of metros can be seen as a process that evolved in a non-linear fashion. Therefore, these developments can be divided into different distinguishable phases. In the early days of metro construction (1863 till the early 1960s), no consideration whatsoever was given to a preventive design, planning, or management of the metro systems. Crime rates were relatively low and crime prevention knowledge was virtually non-existent. The only form of crime control at the time was repression and that was working fine, both in society as a whole and within the earliest metro systems.

This situation changed, however, in the 1960s when the crime climate in
the Western societies began to deteriorate. Crime rates soared and conventional repressive techniques proved to be inadequate. The then existing metro companies tried hard to combat crime with the tactics of 'target hardening': iron fences, steel doors, and dog patrols were utilized in the hope that they could deter crime. Although these techniques had some effect, they also had serious detrimental repercussions on the appearance and atmosphere of the metro systems, and consequently, the feelings of security and well-being of the passengers and metro personnel.

The mid-1970s can be seen as the dawn of a new era. By then, scientific knowledge on crime prevention techniques had developed to such a degree that it was ready to be put into practical use. Little by little, metro companies started to benefit from the newly acquired knowledge and began to devote attention to a more preventive approach to crime. Target hardening techniques were abandoned more and more and the preventive focus was directed more towards the improvement of visibility, social control, and environmental friendliness. The breakthrough to this latent phase was made in 1976 when the Washington, DC Metro opened its doors. The construction of this system revolutionized metro design as it had given top priority to crime prevention and, therefore, utilized the latest knowledge in that field.

Although there has certainly been an international accumulation of practical and theoretical knowledge on crime prevention strategies which are successful within metro systems, this does not mean that this available knowledge has also been utilized fully. Not every new metro system was constructed in a safer way than its predecessors. Existing systems often had to deal with the handicap of old but influential bureaucratic organizations and original system constructions which impeded their ability to radically reorganize their crime prevention policy and actions. There have been a number of crime prevention studies on specific aspects of the metro. However, overall studies on the scope and nature of subway crime and the possibilities and effectiveness of crime prevention techniques are rare.

Crime prevention plans of metro companies are more often based on the intuition and personal opinions of managers than on in-depth research. The few studies that have been done are based on local information and rarely surpass the borders of the country or even the local system. And saddest of all: crime prevention knowledge is sufficiently available within the international community of metro companies, but scattered among the different systems. This is especially true for knowledge on the various crime prevention strategies. Some metro companies are real masters in the utilization of one crime prevention technique (e.g. the facilitation of policing) but have little or no knowledge of other
Varia

techniques (e.g. stimulation of involvement). They think that they are doing their utmost to combat crime within their system, but what they do not know is that their approach is one-sided and ignores the fact that crime prevention can only be really effective when it is made up of a set of mutually reinforcing strategies. Right now, we are at the threshold of yet another phase in the history of metro crime control: the integration of crime prevention into the general goal for Total Quality Management and a higher standard of passenger service. In this new era, crime control will no longer be seen as a goal in itself but more and more as a cost-effective means to establish a friendlier atmosphere, a better company image, and a higher revenue. Crime prevention measures will become less focused on crime prevention alone. They will become more integrated into the planning and design of the system, the day-to-day management routine of the organization, and less obvious to the weary passenger. This approach will not only prove to be friendlier; it will also be more effective in terms of crime prevention and beneficial to other company objectives such as accident and fire prevention, image enhancement, cost reduction, and revenue increase.

The international comparative study

Exactly when metro systems will be able to enter the new era of crime control depends on a number of factors. First of all, the available but dispersed knowledge on effective crime prevention techniques must be collected and modelled into a new integrated approach. The latest scientific knowledge on criminal opportunity must be pitted against the practical experiences of metro companies. Information on successful strategies must be gathered in different parts of the world and a scientific model must be developed. This scientific model must provide insight into the best combination of prevention strategies within metro systems and their relationship with crime and criminal opportunity. But more important, the model must be translated into concrete and practical guidelines. A set of requirements must be developed that gives detailed information on how the (abstract) scientific criteria can be translated into concrete construction and management of the metro system. These guidelines must be internationally applicable, clearly formulated, and easy to implement. They must be useful for the construction and security organization of new metro systems as well as for the improvement, reconstruction, extension, and reorganization of existing metro systems.

To meet all these needs, an international comparative study was carried out on the relationship between criminal opportunity and the construction and management of metro systems. Objectives of the international comparative research were:
- to gain insight into the factors that influence criminal oppor-
tunity in metro systems (theoretical relevance); 
- formulation of practical guidelines for the improvement of public safety in existing and future metro systems (practical relevance).

To achieve these objectives, a research design was chosen by which lessons were gained from the experiences of existing metro systems in Asia, Europe, Latin America, and the United States. During a period of 21 months a total of twelve metro systems were visited, observed and photographed. These were the metro systems of Tokyo, Hongkong, Singapore, Taipei, New York, Washington DC, Sao Paulo, Prague, Budapest, Amsterdam, London, and Paris. Existing documentation and crime statistics were collected and analyzed. Constructional aspects of the systems were photographed and studied on location. In six of the twelve metro systems, proper authorities were contacted and interviewed on their crime prevention approaches, problems, and experiences. These were the authorities from the metro systems of Hongkong, Singapore, Taipei, Sao Paulo, Amsterdam and London.

Research findings
Gaylord and Galliher (1991) distinguish three factors which explain the low crime rates in the Mass Transit Railway system of Hongkong: the low incidence of crime in Hongkong society, the efficient working method of the MTR police, and the cunning planning and design of the MTR trains and stations. This model is an adequate explanation for the situation in Hongkong but needs further adjustment to gain international validity. The incidence of crime and feelings of insecurity within metro systems can best be explained by the model in figure 1.

The occurrence of both objective ('common' as well as terrorist) crimes and feelings of insecurity within metro systems is conditioned by the amount and nature of crime in the direct environment of the metro system and the criminal opportunities limited or created by the total set of situational and organizational measures within the metro system. The amount and nature of crime in the neighbourhoods where the metro stations are situated are a result of historical, cultural, social, and political factors falling outside the sphere of influence of the metro operators. Because of this, they must be regarded as the given fact of external criminal pressure.

The criminal pressure on a metro system is filtered by the total set of crime prevention measures consciously or unconsciously implemented within the metro system. This total set of measures creates or limits the opportunity for crimes to take place on the premises of the metro system and influences the passengers' feelings of safety. In contrast to external criminal pressure, criminal opportunity within the system can be influenced by the managers and
constructors of the metro system. Successful sets of crime prevention measures are characterized by the fact that they limit criminal opportunity to a degree that the scope of crime within the metro system is considerably lower than the crime level in its direct environment. Inadequate implementation of the measures results, on the other hand, in a rather limited preventive effect or even in the creation of criminal opportunity.

The international comparative study has discovered five different crime prevention strategies which can be applied to limit the opportunity of crime and the feelings of insecurity within the premises of metro systems. These crime prevention strategies are: the stimulation of involvement, establishing perceptible social control, facilitating policing, establishing and maintaining a clear norm, and controlling the flow of public and maintaining a clear norm, and controlling the flow of the public. All of these strategies are known in the international theories of crime prevention and have both a situational as well as an organizational component. In spite of the availability of theoretical knowledge on these strategies they are, however, applied with different degrees of effectiveness by the various operators of the metro systems which have been studied. Practical knowledge on implementation of these strategies within metro systems seems to be scattered among the different countries and their respective metro corporations. Every metro corporation holds a certain amount of knowledge, but only a few have a grip on the whole set of preventive requirements. In virtually all systems, some strategies are implemented to a high degree,
while other strategies are simply neglected. The causes of these inconsistencies can be found in the history of the respective metro corporations and the culture of the country and city in which they are situated. Hongkong, for example, has much more experience with and less reluctance to deploy police officers within the metro system than, for example, Amsterdam. This results in more attention being paid to the facilitation of policing through design and management requirements in the Mass Transit Railway system of Hongkong than in the Amsterdam subway. In most of the metro systems, much can be done to improve the full application of the total set of crime prevention principles.

The theoretical background of the five crime prevention strategies and their practical consequences for the construction and management of metro systems are outside the scope of this article. However, it is important to state that the application of individual strategies will have some effect, but that their real strength will only become evident when they are realized together in a balanced mix of mutually attuned measures. The individual strategies are highly interconnected and mutually reinforcing. Application of the whole range of the five crime prevention strategies will have a big synergistic effect where the combined crime prevention effect is many times bigger than the sum of its parts.

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The publication Crime Prevention Guidelines for the Construction and
Cyber crime: the US experience

While the US authorities will occasionally charge a student or computer consultant with hacking or infecting a public or private computer system with a virus, both police officials and private security professionals concur that few of these cases ever result in a prosecution. In fact, the chances of being prosecuted for hacking in the US are one in 10,000; the likelihood of going to prison, even less. In the current US environment, the odds favour the hacker and not the authorities. However, it would be a mistake to think that this state of affairs will continue unabated. Both the US Congress and the state legislatures are studying legislation that provides for tougher sanctions against hackers and other transgressors. But while such efforts continue, here are some insights into the current status of cyber crime in America.

Detection
Police officials around the US agree that detection is the first step in any criminal prosecution of hackers and other cyber criminals. Currently, the best defence of a cyber criminal is the difficulty that the police have in detecting these crimes; as well as a reluctance on the part of their victims to come forward and assist the authorities. Unlike the victims of traditional crime, the victims of hacking and other cyber crimes rarely complain to the authorities; as a result, the majority of cyber crimes in the US goes unreported. Even when victims are required by law to report the offence to the authorities, they often find ways to circumscribe the law. You might ask, why are the victims of cyber crime unwilling to complain? The reasons vary with each case. But in general, most of the victims – especially the corporate ones – fear adverse publicity, legal liability, ridicule by their peers, lack of confidence in the authorities, and a pervasive feeling that they stand to gain little by complaining to the authorities; since few of these cases result in convictions. Unfortunately, they are correct on most scores. In addition, since losses connected to cyber crimes are frequently passed on to the US public in the form of higher prices and taxes, cyber criminals operate with impunity; finding solace in the reluctance of their victims to complain.

Investigation
The US has more than 40,000 local, state and federal police agencies;
leading some criminologists to compare America’s criminal justice system to a Chinese puzzle. To compound the problem, local and federal US police agencies rarely coordinate their efforts. For example, the FBI is frequently accused by local police officials of being reluctant to assist them in cyber crime investigations for fear of sharing the publicity. Nor are many local US police officials adequately trained to investigate incidents of cyber crime; especially where these are of an international nature. While US government officials frequently pay lip service to the war on crime, they have yet to allocate the necessary resources to fight the growing problem of cyber crime. Currently, with the exception of the FBI and US Secret Service, only a handful of local US police agencies have the requisite training and resources to investigate incidents of cyber crime. Nor is the current situation likely to change in the near future.

Prosecution
While there is no shortage of laws in the US prosecutorial arsenal, many of them are not well suited to addressing the new forms of cyber crime, especially as they relate to the Internet. Add to this many of the outdated rules and procedures that permeate the US criminal justice system, and the prosecution of cyber thieves can frequently prove costly and time-consuming. In addition, few US prosecutors are willing to allocate scarce resources to combat cyber crimes. The focus of the public and political establishment in the US is on drugs and street violence; not Information Technology (IT) crimes.

Trial
America’s criminal courts are backlogged. It can take many years for a case to finally make its way to trial. Even after the verdict is announced, endless appeals frequently follow. The now classic Equity Funding Computer-Assisted Fraud, took over ten years to go through the courts. US defence lawyers know only too well the fallacies of their criminal system. They know that by tying up the prosecution on technicalities, they can drag out a case for years; to the point where it loses its deterrent value. This often leads prosecutors to drop the more serious charges in exchange for a guilty plea to a lesser offence. For cyber criminals, this frequently translates into a slap on the wrist. Few cyber criminals ever see the inside of a US jail.

Restitution
While US corporations are often only too ready to seek restitution from competitors, few ever do so from criminals who have preyed on their automated systems. The practice is to sweep the incident under the carpet and hope that it will go away. This reluctance on the part of victims to seek restitution from cyber thieves is largely connected to the high costs of civil litigation in the US; and the ad-
verse publicity that it often evokes. Most US corporations care little for deterrence when it comes to cyber crime. Their primary concern is with the bottom line and the adverse impact that IT-related litigation could have on their image. This frequently provides hackers and other cyber criminals with de facto immunity from legal liability. This state of affairs is sure to continue until US management changes its perception and approach to the problem of cyber crime.

Legislation
Although the US Congress and state legislatures have made some efforts to address the threat of cyber crime, change has been slow in coming. The US public continues to focus its attention on street crimes. The Pact that professional criminals are increasingly targeting cyber space, has proven of little interest to either the public or legislators.

Ethics
Training in cyber ethics is lacking in most US universities, businesses, and government agencies. The impetus, in those cases where cyber ethics are taught, has been fear of regulation. For the most part management in the US continues to show little or no interest in cyber ethics; relegating it to academic debate.

Judiciary
Most of America's judiciary is schooled in the pre-IT era. Many of them do not grasp the harm that cyber criminals can wreak on business and government. Their views are largely shaped by pre-IT environment and the press; the latter depicts hackers as benign pranksters in search of fun and games in cyber space. This judicial perception, however, is changing as an IT literate generation of jurists comes to the fore; individuals who understand the pitfalls and workings of cyber space.

Training
Both US business and government have come to recognize that combating cyber crime requires a commitment in both money and resources. Words alone will not suffice. US security and police officials are in dire need of training in cyber crime detection and prevention. However, America's war on drugs, has restricted security efforts in cyber space.

Perception
As government and business officials around the world struggle to come to grips with the IT revolution, hackers and other cyber criminals will increasingly pose a serious threat to cyber space. The need to change management's perception of cyber crime will become increasingly urgent and necessary.

Regulation
There are moves afoot in the US Congress and state legislatures to impose regulations on both the private and public sectors, that would prescribe
security guidelines for cyber space. The US Computer Security Act of 1988 already imposes security regulations on federal agencies and their contractors; similar legislation is expected to impose regulation on private computer networks.

International
The IT revolution knows no boundaries; computer viruses, bulletin boards, and hackers are now components of cyber space. Hackers traverse the global electronic pathways at will, preying on business and government systems. In the US there appears to be growing recognition that domestic laws alone—in the absence of cooperation from the international community—will accomplish little in the long run.

Hacking and viruses are now commonplace in cyber space. They are a by-product of the IT revolution. As we move into the 21st century, new approaches will be needed to address the threat of cyber crime. The US experience should serve to illustrate the limitations of the nation-state and the need for international cooperation.

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Penal justice information from France

Penal Issues: Research on Crime and Justice in France, is published annually by Cesdip (Centre de Recherches Sociologiques sur le Droit et les Institutions Pénales), Guyancourt, France. It is the translation of the French Questions pénales which is published four times a year. The English version contains all the articles published in the French version in the course of the year. The Newsletter reports on the research activities of the Cesdip and of GERN (Groupement Européen de Recherche sur les Normativités). It is therefore a very useful source of information on France and on research conducted in a wider European context. The back cover of the Newsletter contains the recent (French) publications of Cesdip and of authors working at Cesdip.
criminal offences; B. Aubusson de Cavarlay, M.-S. Huré, From arrest to sentencing: an investigation of penal cursus.

Penal Issues is published by Cesdip, Immeuble Edison, 43, Boulevard Vauban, 78280 Guyancourt, France, e-mail ZEMB@EXT.IUSSIEU.FR
The Institute of Justice was established in 1992, following the merger of two institutes, namely the Research Institute of Judicial Law (affiliated with the Ministry of Justice), and the Institute of Crime Problems (affiliated with the Public Prosecutor General Office). The Institute is a research and development unit operating on the basis of the R&D Law of 1985. It is affiliated with the Polish Ministry of Justice; however, it enjoys the status of a legal person. The Institute is subject to the supervision of the Minister of Justice. The Institute is divided into a Civil law section, and a Criminal law and criminology section. The former also deals with family law and commercial law, while the latter also deals with victimology. There are 27 employees, including 23 research staff. The authorities of the Institute are its Director and Scientific Board.

The tasks

The main task of the Institute is to carry out research projects in the fields of law making and law enforcement, as well as crime and other forms of deviant behaviour. Most research projects are scheduled in agreement with the Ministry of Justice. In particular, the research work covers the following issues:
- legal institutions in judicial practice;
- courts' decision-making;
- functioning of the law enforcement agencies and those of the administration of justice;
- etiology of crime;
- structure and trends of crime;
- victimology;

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crime institute profile

— effectiveness of sanctions;
— prison system and prison population;
— comparative studies in law and criminology;
— harmonization of Polish law with European standards.

In addition to the above-mentioned research tasks, the Institute organizes seminars and conferences with participation of law administrators, particularly judges and public prosecutors. During such events the outcomes of research projects are presented, and the problems connected with the results of the study are discussed.

The Institute pursues documentation and publishing activities within its fields of interest. No periodicals are currently published. The publications are either in book form, or — in the case of smaller projects — as so-called 'grey literature', i.e. brochures with limited scope. The Institute cooperates with both domestic and foreign research units, and also organizes conferences and seminars.

One of the important tasks is to prepare analyses and expert opinions in the fields of administration of justice, criminal policy and criminology. The Institute prepares opinions on draft laws, and on strategic plans of legislative undertakings. The Institute prepared — among other things — the Polish report to the IXth UN Congress on the Prevention of Crime and the Treatment of Offenders, as well as an extensive report on the Polish justice system (Quo Vadis Iustitia).

Current activities of the criminal law and criminology section – 1996

In 1996 — as in previous years — new research projects have been undertaken, and some projects of the past year are being continued. The projects are briefly outlined below.

The practice of granting leaves of absence

The practice of granting such leave permits (including contacts with family members outside prison, compassionate leaves connected with inmates’ personal problems, leave allowed as award, or in pursuance of the provisions of prison regulations) is being investigated. The questionnaire technique is being utilized. In addition, available prison statistics are being analyzed. The data are drawn from prison files. Over 6,500 applications for the permits are included in the sample (filed by 1,100 convicts from January 1, 1994 to June 30, 1995).

Also, the numbers of failures to return to penal institutions are being investigated and their reasons identified. Moreover, the observance of the law is scrutinized as far as the procedure of granting leave is concerned; the factors conducive to granting leave as well as those that impede the award are also being studied.
Unreported crime in prisons
The project is aiming to analyze the extent of the dark number of crimes committed in penal institutions. The method is a victimization survey based on a stratified random sample of prisoners (1,500 prisoners, serving prison sentences in 1995). The exercise will be completed with an analysis of official prison statistics. This is the first time that such a research project is carried out in Poland.

Conditional release effectiveness
The aim is to analyze the success/failure ratio in the practice of conditional release. The method is to follow up the records of convicts who were conditionally released. The stratified random sample of 1,700 prisoners who were granted conditional release in 1991 will be analyzed. The questionnaire will be filled in on the basis of prison files. The basic indicator of effectiveness of the releases will be the recidivism rates in 1992-1995, arrived at according to the Central Register of Convicts.

Crime, criminal policy and prison policy in Poland in 1995-1996
The aim is to define the general trends and structure of crime as well as criminal policy and prison policy. The social and demographic characteristics of offenders are also to be investigated. The penal law measures imposed on adult offenders are to be characterized. The prison population is to be described by, among other things gender and age, length of sentences being served, and by types of criminal offences. The method is to analyze the available data generated by the police, courts and prison administration sources. The more important trends will be presented as graphs. The project is reiterated on a year by year basis.

Protection of economic and business relations in the judicial and public prosecutors' practice
First, the notion of economic crime in recommendations of the Council of Europe will be studied. Second, the Polish legal provisions will be compared with those recommendations, and statistical data will be analyzed. However, the main exercise will consist of analyzing the sample of public prosecutors' and courts' files. Then, the results of both samples will be compared and adjusted.

The 'square accounts' crime
The aim is to provide overall characteristics of offenders and victims of the so-called 'square accounts' crime, and – as far as feasible – of the perpetrators' principles. The method is to study the files of public prosecutors and courts (200 of both types, proceedings instituted in 1992-1993).
Probation systems in selected European countries
Diverse systems of probation are to be described, e.g. organizational rules and structure, probation officers' position in relation to the administration of justice authorities, their competencies, qualifications, and methods of selection, etcetera.

Prerequisites of refusals to admit or to remit convicts, to serve the sentences in their native countries – in selected European countries
Poland ratified – in 1995 – the Convention that regulates the above-mentioned set of issues. Following the ratification, the new chapter has been added to the Polish Code of Criminal Procedure. However, the provisions contained in this amendment do not cover the whole scope of such issues. Moreover, it may be alleged that they are not perfect. Thus, a possible future amendment should be preceded with comparative studies of the solutions adopted in other countries – parties to the Convention.

Legal and practical aspects of wire tapping
The wire tapping authorized within the penal procedure is a serious encroachment on the sphere of privacy; hence, the processable decisions in this field should be taken with particular care, as well as rigidly controlled. The research project aims to verify the purposefulness of such decisions, as well as verifying compliance with the procedural provisions in force. The method used is analysis of the files of penal proceedings in which the aforesaid decisions were taken, and comparing the outcomes with procedural rules.

International crime survey 1996
The ICS '96 is the third sweep of the survey – the first survey was carried out in 1989, the second one in 1992. The Polish Institute of Justice participated in this programme from the outset. The survey aims to identify the true levels of crime, including an estimation of the dark number. The common methodological approach will make international comparisons feasible. However, some items of particular current interest in Poland have also been added to the Polish version of the questionnaire. In addition to measuring the level of unreported crime, some further information will be obtained, e.g. opinions on effectiveness of the police, on victim assistance schemes and fear of crime.

The new legal provisions on copyrights in prosecutors' and courts' practice
The provisions of the Law of 1994, on Copyright and Neighbouring Rights are to be evaluated within the scope of its criminal law provisions, as well as their relation to the provisions of the Polish Criminal Code. The solutions adopted will be reviewed, as well as possible amendments being proposed. The analysis
of legal provisions will be completed with examination – based on the public prosecutors’ and courts’ files – of cases of violations of copyrights.

The penalty of limitation of liberty in Poland against the background of similar penal measures imposed by the legal systems of European countries (a comparative analysis)
Legal characteristics of the penalty of limitation of liberty are to be provided, and its role within the system of penal measures described. This is to be compared with legal provisions on community service in the selected countries of Western Europe, as well as with the penalty of corrective labour in the former socialist states, also from the viewpoint of practical application of such measures. Finally, the reform proposals will be provided. The method is to analyze the Polish and foreign legal provisions, statistical data, and the results of research projects carried out by other authors.

The cassation proceedings in criminal procedure of European countries (a comparative analysis)
The legal provisions on cassation in the European countries will be analyzed. The following items are to be taken into account: prerequisites of the cassation proceedings; procedural rules of cassation courts; numbers of such cases tried; the types of court’s decisions.

The courts’ decisions taken in cases of failure to pay alimony instalments
The courts’ decisions taken in these cases will be analyzed. Especially, the question of purposefulness of imposing a prison penalty will be addressed. A proposal for a suitable amendment will be put forward.

Placement of foster children out of corrective institutions for juveniles
Decisions of governors of corrective institutions for minors, based on the provisions of art. 90 Law on Treatment of Juveniles, will be investigated; the criteria of such decisions will be scrutinized. Also, the living conditions of the juveniles placed outside the institutions will be evaluated. Finally, the rehabilitation of such juveniles is to be evaluated. The method is to refer to documentation being produced in the corrective institutions. Interviews with the juveniles will complete the picture.

Conventions of Council of Europe – criminal law
The texts of selected conventions and explanatory notes attached to them will be translated into Polish. The commentaries by Polish authors will be added (including those on ratification issues and on the necessary amendments to be made to Polish laws).
Important projects of 1995

**The use of psychological expert opinions in the process of the rehabilitation of juveniles**
The opinions given by Family Diagnostic and Consultation Centres, as well as by juvenile shelters experts have been examined. Moreover, the usefulness of such expert opinions in the process of the rehabilitation of juveniles has been evaluated.

**Factors that impede efficient court proceedings**
Such factors have been identified on the basis of opinions given by the presidents of common courts in response to the questionnaires distributed among them. Sixty presidents of common courts of three levels were asked to fill in the questionnaire. The opinions were grouped and then the conclusions drawn.

**Consequences of Poland's integration with the European Union for the Polish criminal justice system**
The legal instruments of the Union have been referred to in order to identify the necessary directions of evolution of the Polish criminal justice system.

**Quashing of the duty to keep bank secrecy in connection with criminal proceedings**
The Polish legal provisions quashing the obligation the duty to keep bank secrecy have been analyzed and compared to the solutions adopted in other countries.

**Competencies of authorities of administration of justice in the field of prison policy, against the background of practice of granting leave of absence**
Legal provisions on delimitation of powers on the subject have been analyzed.

**New types of economic crime in the light of courts' decisions**
The new types of economic crime have been looked at by scrutinizing the courts' decisions.

**Juvenile crime and delinquency – the policy of imposing educational and corrective measures (the series of projects)**
The structure and dynamics of juvenile crime and delinquency have been examined and presented, as well as the practice of applying some measures. The series included two projects.
- **the practice of applying criminal law measures to juveniles**: Such an option may be exercised in relation to 16-year old juveniles (and older) who have
committed serious crimes (e.g. manslaughter, robbery, rape). The courts' files of all cases in which such an option might be exercised have been examined;

— *the placement of juveniles outside the corrective institution*: It is possible to conditionally place the sentenced juvenile outside the corrective institution despite the original court's decision to place him/her in such an institution. The practice of using this possibility has been studied, including measures designed to control the juvenile's behaviour. The project embraced all the cases in which such an institution was used during one year.

*Crimes against banks in public prosecutors' and courts' practice – the experiences of the early 1990s*

The representative samples of 100 public prosecutors' files and 100 courts' files were analyzed (cases of the first six months of 1994). The main focus was to explore the reasons why the perpetrators of such crimes had not been prosecuted.
Abstracts

This section contains a selection of abstracts of reports and articles on criminal policy and research in Europe. The aim of publishing these short summaries is to generate and disseminate information on the crime problem in Europe. Articles that generate comparative knowledge are seen as being of special interest. Most of the articles have been published in other journals in the English language. More information can be supplied by the WODC Documentation Service. Single copies of the articles mentioned in this section can – when used for individual study or education – be provided by the WODC Documentation Service at your request. A copy charge is made.

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Alberti, A.
Political corruption and the role of public prosecutors in Italy
This paper analyzes the problem of political corruption in Italy and the role public prosecutors have played in unravelling such a phenomenon. The factors that have contributed to fostering systemic corruption as well as those that have contributed to 'uncovering' such a system are given careful consideration. The most relevant conclusion is that whereas endogenous force in the judiciary (prosecutors and judges) – in particular, its low level of institutional autonomy – have prevented it from containing corruption, exogenous forces – which have broken the conditions that had favoured the stability of the so-called 'first' Republic – have led prosecutors to engage in massive investigations.

Arce, R., F. Farina et al.
Empirical assessment of the escabinato jury system
There are two practical applications of the jury system: the jury of lay people and the escabinato jury involving joint decision making by legal experts and lay people. Research undertaken in this field has been almost exclusively centred on the former. This work consists of an empirical study of the role of legal suggest that the toss of a jury of peers implies the dominance of the judge's opinion. The causes and consequences of this domination have been assessed.

Aronowitz, A.A., D.C.G. Laagland et al.
Value-Added Tax Fraud in the European Union
Amsterdam/New York, Kugler, 1996
This report illuminates the phenomenon of VAT fraud in the European Union. The research was carried out in the Netherlands, Belgium, Germany and the United Kingdom. Insight is provided into the markets affected, the modus operandi and the perpetrators of VAT fraud. A brief overview of the control and investigation mechanisms in each country is provided. Furthermore, the basic laws and directives which regulate the taxation of trade in the
European Union, and a number of treaties and conventions promoting intra-Community cooperation between member states, as well as an EU approach to regulating the problem, are presented.


This paper discusses the major findings of adoption studies that have focused on criminal outcome. Results from adoption studies have consistently revealed a relationship between a biological parent's criminal behaviour and an adoptee's criminal outcome. This finding has been noted in the case of property crime, but not in the case of violent crime. Findings from the Danish Adoption Cohort suggest that violent crime may be genetically related to other types of behavioural deviance. In the Danish Adoption Cohort there is an increased rate of schizophrenia in the adopted-away offspring of biological fathers who are convicted of violent crimes.


Some jurists might argue that a European Criminal Code would represent an important and useful achievement for the development of criminal law and justice in Europe, irrespective of the political situation of the European Union or Community. In the author's opinion, such an idea would be misleading. There might be areas of criminal law in respect of which the jurist can suggest proper solutions quite independently from political issues. This is not one of those areas. The problem of a possible unification of criminal law in Europe, and consequently of the usefulness of a common European Criminal Code, is so deeply linked with the political development of Europe, it leaves no room for a purely scholarly, juridical discussion about it. The only way of reasoning from a purely juridical point of view about the question raised by the title of this paper seems to be the following: let us imagine that Europe becomes a total unified Country, say a Federation of States comparable to Germany, Switzerland, Canada or the United States of America.


On 12 February 1987 the Committee of Ministers of the Council of Europe adopted Recommendation (87) 3 on European Prison Rules. The European Prison Rules are a revised version of the European Standard Minimum Rules for the Treatment of Prisoners of 19 January 1973, Resolution (73) 5, which on their part were based on the United Nations Standard Minimum Rules for the Treatment of Prisoners of 31 July 1957, Resolution 663C (XXIV) of the Economic and Social Council (ECOSOC). After an historical background Gonsa discusses the main ideas and contents of the European Prison Rules (the basic principles, the management of prison systems, personnel, treatment objectives and regimes and additional rules for special categories).
Grace, S.  
"Testing Obscenity: An International Comparison of Laws and Controls Relating to Obscene Material"  
Croydon, Home Office, 1996  
The aim of this research was to compare obscenity laws and controls in England and Wales with those in a number of other countries in order to discover the various ways in which countries define and deal with obscenity in printed matter, at the cinema and on video. The report focuses on the respective merits of proactive and reactive approaches.

Gregory, F.  
"Transnational crime and law enforcement cooperation: problems and processes between East and West in Europe"  
The purpose of this article is not to examine the problems of transnational crime _per se_ but to focus on one common response strategy: the enhancement of transnational police cooperation and to examine that strategy in the particular context of police system modernization in eastern Europe and the Russian Federation. The emphasis will be on the problems of policy implementation linked to western expectations and Eastern European and Russian aspirations.

Gunn, J., P.J. Taylor et al.  
"Editorial: capital punishment and psychiatry"  
Criminal Behaviour and Mental Health, vol. 6, no. 1, 1996, pp. 3-48  
The United Kingdom and the United States share a fundamental belief in the rule of law, but they have different beliefs about the relationship between government and the individual. The laws which govern forensic and general psychiatric practice reflect those differences. The two countries differ in forensic psychiatry training and practice and in the organization of forensic mental health services. Strengths in the UK include the extensive training of forensic psychiatrists and the integrated forensic health and social systems. The two countries face common ethical problems, and common problems of service delivery to forensic patients. This editorial forms the introduction to a special issue on capital punishment and psychiatry.

Hodgins, S.  
"Major mental disorder and crime: an overview"  
Psychology, Crime and Law, vol. 2, no. 1, 1995, pp. 5-17  
Hodgins addresses the links between major mental disorder and criminal behaviour. The issue of whether any casual links exist between mental disorder and criminal behaviour has long history. Hodgins reviews the types of methodologies available in evaluating such links and reports on a series of studies of her own and by others. Her conclusion that individuals with major mental disorders are at increased risk for criminality, and particularly for violence, is an important one. Hodgins proposes that two groups exist amongst mentally disordered offenders: early starters whose mental disorder precedes their criminality and later starters who offend only after the development of a mental disorder. This suggestion has considerable significance for management, treatment and the prediction of risk.
Junger-Tas, J.
Youth and violence in Europe
In the first part of the study some specific forms of violent behaviour such as football hooliganism, school violence and violence against specific groups of people are analyzed. In the second part of the study quantitative data on violence in Europe are presented and discussed. Police statistics and victimization studies are discussed in order to answer the important question whether the level of violent offending shows a rising trend in Europe.

Kersten, J.
Culture, masculinities and violence against women
The visibility of male-dominated criminal violence differs substantially from culture to culture. Accordingly, a perception of masculinity and male dominated violence as monolithic categories is misleading. Australian, German, and Japanese data display significant variations in the visibility of violence against women. In the light of this, standard gender neutral explanations of comparative criminology will be reviewed. In a conceptualization of 'hegemonic masculinity' in the context of sexual assault the visibility of the rapist in Australia is interpreted as a consequence of economic and cultural crises of gender relations causing a transformation of hegemonic masculinity. At present, historical and political constellations in Germany and Japan result in the visibility of different features of male dominated violence.

King, R.D.
Prisons in Eastern Europe: some reflections on prison reform in Romania
This paper explores some of the similarities and differences between the prison systems of Eastern Europe since the collapse of the former Soviet Union, and then considers in more detail the process of prison in Romania. Two projects carried out under the auspices of the Netherlands Helsinki Committee and Penal Reform International working in cooperation with the Romanian Penitentiary Administration, are considered: a training seminar for prison governors and the planning of the regime for the new penitentiary in Bucharest.

Koivisto, H., J. Haapasalo
Childhood maltreatment and adulthood psychopathy in light of file-based assessments among mental state examinees
The antisocial and criminal consequences of physical, psychological and sexual abuse and neglect in childhood, have aroused much interest in recent research. Cleckley's psychopathy is often related to antisocial and criminal behaviour. Childhood abuse and neglect experiences were, therefore, examined in a sample of 52 offenders for whom reports on their mental state were available. Childhood experience was rated using a special classification form and a maltreatment index constructed. On the basis of the reports, 48 per cent of the offenders had been physically abused, 52 per cent psychologically abused and 38.5 per cent were neglected in childhood. Only two cases of sexual abuse were found.
Kolstad, A.
Imprisonment as rehabilitation: offenders' assessment of why it does not work
One aim of the present study, conducted in Norway, was to open the dialogue with prisoners as to how to reduce recidivism, to gain experience in how to meet and talk with them, and to become informed about their views on rehabilitation, prison, and society. The results are exclusively based on how the offenders and especially the prisoners, themselves, comprehend and evaluate their situation. Data were collected from two samples: The 'Prison Group' (PG) had to provide community work while living in their ordinary residences. The questionnaire contained a total of sixty variables. This article focuses on questionnaire issues related to imprisonment as a means of rehabilitation and the offenders' attitudes towards society, punishment, and type of sentence. The interviews with the prisoners deal with the same topics. The answers were commented on and explained further.

Kury, H., J. Obergfell-Fuchs et al.
The regional distribution of crime: results from different countries
It is generally recognized that crime and its regional distribution depend on numerous sociopolitical factors. The aim of the study was to investigate crime levels in the federal states (Länder) of the Federal Republic of Germany and ascertain to what extent they differ. The study was based on the International Crime Survey of 1989 and the first German-German victim survey of 1990.

Lakes, G.H.
An overview of the prison systems of the Baltic States
During the last 18 months Lakes has visited the three Baltic States and their prison establishments at least once. The visits were undertaken as part of a Council of Europe programme of co-operation to provide advice and guidance on how the prison systems of the Baltic states might be brought into conformity with European standards. His contribution to this process was to provide a descriptive inventory of the prison systems of Estonia, Latvia and Lithuania, together with proposals for the introduction of reforms inspired by the European Prison Rules.

Lindström, Peter
Family interaction, neighbourhood context and deviant behaviour: a research note
The purpose of this study is to analyze the relationship between family interaction and self-reported delinquency among students in schools in socially stable and unstable neighbourhoods, respectively. Data is taken from the Stockholm Project's School Survey and consists of about 340 boys in seven junior high schools.

Lösel, F.
Increasing consensus in the evaluation of offender rehabilitation?: Lessons from recent research syntheses
Meta-analyses reported and reviewed by Lösel show small but significant effects for rehabilitative programmes. Lösel makes the important point that apparently small
effects still produce worthwhile differences in recidivism between treated and untreated groups, and that effects of this size are accepted as important and cost-effective in medical settings. Particularly important in Lösel's paper is his attempt to specify characteristics which should inform future planning and implementation of rehabilitative programmes for offenders.

Loveland, I. (ed.)
*Frontiers of Criminality*
London, Sweet & Maxwell, 1995
The chapters in this volume were initially presented as seminars in Queen Mary and Westfield College's 1993 Faculty Seminar Series. They are all firmly linked by two thematic concerns: why and how does behaviour become or stop being criminal? Most of the subjects of the papers chosen for this study have been the subject of recent and often intense controversy. The contributors are not exclusively criminal lawyers; some have been drawn towards an analysis of those particular aspects of criminal law which play a significant role in their own specialisms.

**National Legislation**
National legislation and its adequacy to deal with the various forms of organized transnational crime: appropriate guidelines for legislative and other measures to be taken at the national level

*Transnational Organized Crime*, vol. 1, no. 3, 1995, pp. 43-79
This essay, prepared for the UN Conference on Money Laundering held Naples (1995), looks at the components of national policy that are particularly useful in combating organized crime. Arguing that national strategies to counter organized crime have to encompass both prevention and procedural legislation of a variety of countries, this paper draws on the substantive and procedural legislation of a variety of countries, including the US, Italy, Jamaica, Great Britain and Germany, to identify particular measures that tend to be most effective. Emphasis is placed on criminalization of participation in criminal organizations, prohibition of the laundering of the proceeds of crime and seizures of assets. Emphasis should also be placed on intelligence, methods to penetrate criminal organizations, and preventive strategies.

**Problems and Dangers**
Problems and dangers posed by organized transnational crime in the various regions of the world

*Transnational Organized Crime*, vol. 1, no. 3, 1995, pp. 2-42
This essay, prepared for the UN Conference on Money Laundering held Naples (1995), deals with the threat and highlights the reasons why organized crime has taken on a transnational character as well as the kinds of challenges it poses to national and international security. A description is given of the major transnational criminal organizations (Italian mafia, Russian organized crime, Chinese triads, Japanese Yakuza, Colombian cartels and Nigerian criminal organizations). Activities are mentioned like drug trafficking industry, arms and nuclear material trafficking, terrorism, trafficking in women and children, trafficking of organs, and money laundering.

Sigurdsson, J.F., G.H. GudJonsson
Illicit drug use among Icelandic prisoners prior to their imprisonment

*Criminal Behaviour and Mental Health*, vol. 6, no. 1, 1996, pp. 98-104
This study investigates illicit drug use
among new admissions to Icelandic prisons over a 21-month period. Of all new admissions, 344 (96 per cent) agreed to participate in the study. They were asked questions about their previous use of illicit drugs and this was related to the nature of their current offence. Cannabis and amphetamines were the most commonly used illicit drugs, with 62 and 50 per cent of the subjects admitting to having used these substances at some time in their life.

Van Dijk, J., J. Van Kesteren
The prevalence and perceived seriousness of victimization by crime: some results of the international crime victims survey European Journal of Crime, Criminal Law and Criminal Justice, vol. 4, no. 1, 1996, pp. 48-70
In this article the authors firstly present some comparative data on the level of victimization by conventional crime in twenty-three industrialized nations. Victimization rates for car theft, theft from cars, burglaries, contact crimes and aggressive crimes are briefly discussed. Then they focus the attention in the second part of the article on the seriousness of offenses as viewed by crime victims. The opinions of victims from various countries about the seriousness of offenses may or may not be fundamentally different. This issue is of great importance for the viability of comparative criminology.

Van Duyne, P.C.
Organized crime is often perceived in terms of extended, hierarchical crime ‘families’ that extend not only their activities but also their authority structures across national boundaries. However accurate such a view may or may not have been in the United States, where it originated, evidence from a Dutch survey of organized crime enterprises reveals a different picture. For organized crime in northwestern Europe, it is more helpful to think of crime markets of two kinds: those in which the goods and services are themselves forbidden, and those in which legal goods and services are handled in illegal ways. Case studies of the drug trade, and of organized crime in the business realm, offer a detailed look at these two kinds of markets. The evidence suggests that while organized crime enterprises conduct trade across national boundaries, they do not constitute an international authority structure. Crime entrepreneurs constitute a challenge, not to the basic structure of society itself, but rather a more subtle kind of challenge to basic values and morals, particularly when criminal enterprise is linked to power at higher levels of society.

Witte, R.
Racist Violence and the State: a Comparative Analysis of Britain, France and the Netherlands
In this comparative study, state responses to racist violence are described and analyzed for the period between 1945 and 1994. The aim is to describe and analyze the kind of state responses themselves, as well as the influences of broader political, popular and ideological contexts on the phenomenon of racist violence. Witte first describes case studies concerning Britain, France and the Netherlands. The description of each country is presented over different periods of time. These periods
are distinguished because of different key elements in the responses, and in the political, ideological and public discourses that prevail. He portrays the similarities, differences and trends in state responses to racist violence, and compares and analyzes the findings with reference to the ideological, political and socioeconomic context of the three countries.

Zimring, F., A. Ceretti et al.  
Crime takes a holiday in Milan  
*Crime and Delinquency*, vol. 42, no. 2, 1996, pp. 269-278  
Crime of all kinds drop almost by half in Milan, Italy, during the vacation month of August. This article documents the across-the-board decrease and contrasts this pattern with US cities that display very little seasonal variation in offenses.