



KATHOLIEKE  
UNIVERSITEIT LEUVEN

# THE INSTITUTIONALISATION OF RESTORATIVE JUSTICE IN A CHANGING SOCIETY

LEUVEN, 5-6 NOVEMBER 2004

VENUE: DEPARTMENT OF CRIMINAL LAW AND CRIMINOLOGY,  
KATHOLIEKE UNIVERSITEIT LEUVEN. TIENSESTRAAT 41, 3000 LEUVEN, BELGIUM

## SCIENTIFIC REPORT

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WITH THE FINANCIAL SUPPORT OF COST – EUROPEAN COOPERATION IN THE FIELD OF SCIENTIFIC AND TECHNICAL  
RESEARCH AND THE KATHOLIEKE UNIVERSITEIT LEUVEN, DEPARTMENT OF CRIMINAL LAW AND CRIMINOLOGY

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## 1. Introduction

### 1.1. Concept and objectives

In the framework of COST Action A21 the Department of Criminal Law and Criminology, Catholic University of Leuven, organised a workshop which dealt with the mapping of, and reflection on, the institutionalisation of restorative justice practices starting from developments in three different European countries. By focusing on the ways in which restorative justice practices have found their way into the penal landscapes of Belgium, the Netherlands, and England and Wales, the aim of the workshop was to enhance our understanding and critical appraisal of these processes.

The workshop aimed to foster debate amongst invited European and overseas scholars and practitioners on processes of institutionalisation of restorative practices. Set up as high level seminar, it was the explicit objective to invite well known scholars in the field of criminology and sociology, who would be able to analyse, from a certain distance and using their theoretical and conceptual approaches, the phenomenon of the institutionalisation of restorative justice. Restorative justice is increasingly recognized at national and European policy levels to provide an inspiring set of ideas to redirect our ways of responding to crime. At the same time, recent work within the criminological discipline has aimed at coming to grips with punishment and control developments in late or postmodern societies. The workshop tried to build bridges between the *practical* institutionalisation of restorative justice on the one hand, and the *theoretical/normative* reflection on penal developments on the other.

The proposed workshop fitted into the framework of COST Action A21. The main objective of this Action is to enhance and to deepen knowledge on theoretical and practical aspects of restorative justice in Europe, with a view to supporting implementation strategies in a scientifically sound way. In order to meet this objective, COST Action A21 has identified three subdomains: evaluative research on restorative justice practices; policy oriented research on restorative justice developments; and theoretical research. Even though the workshop touched upon each of these research topics, either directly or indirectly, it aimed to stimulate in particular the work that has been done and has been scheduled for the future in the subdomain of theoretical research. The institutionalisation of restorative justice raises important questions for its theoretical conceptualisation. The theoretical research working group of COST Action A21 has set out to explore the relationship of restorative justice to societal developments, to criminal law and punishment, and has identified the issues of responsabilisation and risk, and the problem of governmentality as two key theoretical themes. The workshop inscribed itself explicitly within these objectives.

### 1.2. Organisation

The workshop was held in the Law Faculty of the Katholieke Universiteit Leuven, Belgium, and scheduled over one day and half (Friday 5 – Saturday 6 November 2004). Local organiser of the workshop was the Department of Criminal Law and Criminology at the K.U.Leuven. The organising committee consisted of:

- *Ivo Aertsen* – Chair of Management Committee (MC) COST Action A21, and professor of criminology at the Katholieke Universiteit Leuven
- *Tom Daems* - Researcher at the Katholieke Universiteit Leuven

- *Luc Robert* - Researcher at the Katholieke Universiteit Leuven
- *Kris Vanspauwen* - Member of evaluative research working group COST Action A21, and researcher at the Katholieke Universiteit Leuven.

Apart from the COST grant, support by the K.U.Leuven in terms of facilities, and the participants' personal financial contribution, the workshop was also assisted by the K.U.Leuven Master in European Criminology Programme. More in particular, administrative and practical support was received from the administrative staff of the Department of Criminal Law and Criminology at K.U.Leuven.

All presentations by the keynote speakers (8) were videotaped, and discussions registered on audiotape. Professors of the Department of Criminal Law and Criminology acted as session chairs.

Participants received a personalised workshop folder, which contained the following documents: the programme; the workshop concept presentation; practical information on lunch, dinner, location and reimbursement; participants list and full contact details; a presentation document on COST; and a presentation document on COST Action A21.

As social event a workshop dinner was organised in the Faculty Club of the K.U.Leuven, which was attended by 34 participants and highly appreciated.

### 1.3. Participation

In order to meet the high level objectives the workshop was only open to invited participants. In order to facilitate discussion, the number of participants was limited to about 50 persons. As a result, several candidates had to be refused. Finally, 53 persons in total participated in the workshop, including keynote speakers, organisers and session chairs (see list in annex). Seventeen of them were COST Action A21 members. One of the registered participants finally was not able to attend.

Distribution by nationality was as follows:

Belgium	23
Brasil	1
Bulgaria	1
Canada	1
Germany	3
Greece	1
Hungary	1
Israel	1
Macedonia	1
Netherlands	9
Portugal	2
Spain	2
United Kingdom	5
USA	2

Distribution by professional background:

Academic or research	35
Practice or policy	13
Students	5

## 2. The scientific programme

### 2.1. Session one: Punishment, restorative reform and social change

#### 2.1.1. Context

There is a broad consensus among social scientists that the closing decades of the Twentieth Century were a time of profound social change. The critical moment is usually situated in the late 1960s – early 1970s and the mapping and analysis of social change has given rise to fierce debates on post/late/high/liquid modernity, risk society, post-Fordism, governmentality, and the like. More recently criminologists have joined the debate on *what* has changed, and *how* to account for it. Issues of punishment and crime control have not only moved to the centre of public debate, but are also increasingly recognized by social scientists as having a tremendous impact on how ‘the social’ is governed - thereby shaping the world and its inhabitants in distinctive ways.

For criminologists these changes usually take the form of the demise of the rehabilitative paradigm which prevailed in the immediate post-war period, followed by the punitive turn in the 1970s. Penal developments are interwoven into, and seen against the backdrop of changes in related fields of the social domain: the crisis of the welfare state, the rise of the New Right, the changing relationships between ‘labour’ and ‘capital’, the further freeing of the market and the extension of the profit principle to other domains, processes of globalisation, the social impact of the mass media, etc. The question to be asked, then, is: What are the prospects of penal reform in a world that has gone (and is still going) through these profound changes? To what extent are our existing responses to deviance and crime adequate and desirable? And is it not the case that these new challenges call for new responses?

Since several decades advocates of restorative justice have questioned the penal status quo and have called for a profound reform of our existing ways of dealing with crime thereby focusing on the restoration of different kinds of harm. Since the first pioneering steps in the 1970s a worldwide social movement has developed which, whatever the different backgrounds of its participants may be, aims at restorative reform. As a result restorative justice has made its first inroads into the existing penal system in different parts of the world. This first session of the workshop aimed at placing these developments of restorative reform on a wider socio-penal map. How do restorative initiatives relate to the profound changes that were outlined above? What are the prospects for restorative reform in the world as it stands? Is there any indication that restorative justice might form a progressive response to these changes, or does it remain at the level of window-dressing?

In addressing these (and other) questions the first session aimed to provide a general framework for the two other sessions which dealt with the institutionalisation of restorative

justice on the one hand, and the theoretical/normative reflection on these processes on the other hand.

### 2.1.2. Presentations

*Lecture 1: Michael Tonry, University of Cambridge, UK*

Michael Tonry started with a critical, but significant, comment on the title of the workshop, which he found misconceived: instead of 'society' we rather should speak of 'societies'. 'The society' has a too generalising meaning and does not acknowledge sufficiently the diversity in and between our societies.

However, a general trend in western societies seems to be that penal policies have become more punitive during last decades. Countries as the US and the Netherlands have seen their prison population multiplied by five since the Seventies. By comparing the evolution of the prison populations with the evolution of crime figures in different countries, Tonry concluded that both don't show a linear relationship. Different countries develop different answers to comparable evolutions of crime. The US opted for tough policies resulting in the incarceration of more than 2.000.000 people at the century's turn. Countries as Germany and France kept their prison population under control, through the abolition of short term prison sentences and the granting of collective pardon. Finland was able to reduce its prison population rates. England and Wales witnessed a decrease between 1989 and 1992, but a strong increase afterwards.

These findings – according to Tonry – underline the role of policy and policy options in the construction of a society's penal identity. This also means that general explanations on global evolutions in western societies have a rather limited relevance in this respect. Societies with similar social developments show different ways of dealing with crime. Therefore, the focus should be more on the specific characteristics of a society which shape penal policies. Tonry illustrated this position with materials from his two most recent books, 'Thinking About Crime' (2004) and 'Punishment and Politics' (2004). Somewhat different from Garland ('The Culture of Control'), he tried to explain evolutions in penal policies – at least in the US - by referring to historic cycles of tolerance/intolerance and sensibilities, to particular constitutional arrangements and to the emergence of individualised moralism. This picture will be different in other societies, such as Canada or England.

*Lecture 2: Hans Boutellier, Verwey-Jonker Institute, Netherlands*

Hans Boutellier based his approach on the analysis he developed in his book 'The Safety Utopia' (2004), in which he sketched recent evolutions in Dutch society. This society underwent strong qualitative evolutions in the Nineties. More in particular there was the transformation of crime problems into (in)security problems, and safety became a number one issue on the public agenda. Safety concerns were – according to Boutellier – nourished by a real increase of crime. But this 'cry for safety' is not appearing on its own. It is part of a new life style which we find in the 'risk society' (Ulrich Beck). People are liberating themselves from traditional patterns, they become more responsible for their own life project and experiment with their freedom. This is a form of 'vitalism'. The combination of safety and vitalism results in the safety utopia, this is the tension between the desire for a maximum degree of freedom and the need of a maximum protection. This safety utopia has a central place in current society, and provokes an enormous pressure on governments. Criminal justice

systems, with their limited capacity, are confronted with a growing demand. Hence the ‘criminal justice paradox’.

Referring to the search for new forms of crime management, Boutellier presented a prevention model, based on the metaphor of the football team. The criminal justice system functions as the goal keeper. In order to avoid attacking football, he has to organise his first defence line. This consists of risk institutions, such as youth care and private security, which operate before the criminal justice system has to intervene. In the mid-field are other, normative institutions located, such as schools and companies. On the frontline we find citizens, with their volunteer organisations, churches, sport clubs, etc. Restorative justice can have a perfect place in this constellation within the new society, amongst others because of its flexibility and space for the narrative of victims and offenders. Moreover, restorative justice fits better a democratic model of crime control.

### **2.1.3. Discussion**

Questions and themes dealt with in the discussion concerned, amongst others, potentially different (than presented) crime rates in the US on the basis of victimisation studies; the missing public character of morality; additionally to be included dimensions such as the difference between common law countries and civil law countries, and the decisive factor of size of country; the probably too defensive approach of the presented prevention model and the isolated position of the goal keeper; the determining factor of globalisation of capitalism; the very different meaning restorative justice can have in different legal traditions; the importance of showing counter examples of pretended influential factors; the unreliable character of ‘fear of crime’ as social indicator and the lacking notion of citizenship complementary to the notion of subject.

## **2.2. Session two: Mapping the institutionalisation of restorative justice**

### **2.2.1. Context**

Restorative justice emerged out of a group of social movements aimed at developing new and more satisfactory strategies to deal with the consequences of crime. It has produced a plethora of practices whereby the relationship with the criminal justice apparatus varies from independent non-governmental initiatives, cooperative partnerships with criminal justice actors, or the direct implementation of restorative practices into the classical criminal justice system. Slowly but surely restorative justice schemes have found their way into policing, prosecution, sentencing, detention, and probation. This session focused especially on the institutionalisation of restorative justice in the criminal justice system. How did the implementation come about in different countries?

The session zoomed in on the following countries:

Belgium – The Belgian version of the Kitchener-experiment of the Flemish NGO Oikoten was one of the first grass roots initiatives in the late 1980s. It has inspired academics to further explore the possibilities of restorative justice. Besides the institutionalisation of penal mediation into the criminal proceedings in 1994, it is certainly the challenging approach to introduce – and later even to implement – the idea of restorative justice in the prison system, that has led us to call Belgium a fertile breeding ground for testing challenging approaches to restorative justice.

The Netherlands – The minimalist approach of the Dutch penal policy of the 1970s suddenly vanished into thin air when the government decided to make a U-turn. Since 1985 this penal instrumentalist approach seems to leave little room for a restorative justice approach. These developments, however, stand in contrast with the growing interest in restorative justice practices that are emerging in the Netherlands. Civil society and NGOs in the Netherlands take up a lead role in schemes such as neighbourhood mediation, real justice conferencing with juveniles and the like.

England and Wales – A qualified example of how new ideas transform into new policies applies to the restorative justice developments in England and Wales. A steady growth of its practices and a common understanding on its principles characterises the evolution of restorative justice throughout the 1980s and 1990s. The challenge to mainstream this practice is at least encouraged by the legislative incentives in the juvenile justice system at the turn of the Century. One of the important steps in the institutionalisation was certainly the installation of the Youth Offending Teams in the Youth Justice System.

By mapping the state of affairs in Belgium, The Netherlands, and England and Wales, three distinguishable and challenging examples were offered, that fostered a broader debate on the feasibility and the consequences of the institutionalisation in the context of current developments on crime, punishment and penal policy.

### **2.2.2. Presentations**

*Lecture 3: Ivo Aertsen, Katholieke Universiteit Leuven, Belgium*

Ivo Aertsen started from a sketch of the Belgian landscape of restorative justice initiatives and developments. Their origins and features were presented, both in the field of juvenile delinquency and in adult criminal law. Different models of victim-offender mediation were presented, at different stages of the criminal justice process. The implementation of restorative justice in prisons was discussed, the role of legislation and influential actors was highlighted.

Hereafter, the notion of ‘institutionalisation’ was defined from three different angles: how institutions emerge, how private life is institutionalised (through mediation), and how new (mediation) practices are incorporated or co-opted by existing social structures. The issue whether restorative justice lends itself to one of these forms of institutionalisation was discussed. Aertsen argued that at least there was a strong impact on restorative justice practices from certain institutional frameworks, such as juvenile assistance services.

Furthermore, the attention was drawn on the role of an ambivalent societal context. Restorative justice practices develop against the background of at times very partial or conditional models of participation and community involvement. Another ambivalence relates to the security context, and to the potential place of restorative justice within the ‘new regulatory state’ (Braithwaite). This ambivalent societal context invites us to conceptualise restorative justice not from an instrumental point of view or as form of substantive law, but rather as form of procedural law. This option has clear consequences for the organisation of restorative justice services. Aertsen defended an organisation model that theoretically can be founded in some more recent streams of the sociology of law, such as the new legal pluralism.

*Lecture 4: John Blad, Erasmus Universiteit Rotterdam, Netherlands*

John Blad started – referring to the former speaker – by elaborating a definition and conceptual model of institutionalisation. He described the consecutive phases in institutionalisation processes: externalisation, habitualisation, legitimation, internationalisation. The historical process in which an institution is produced must adequately be understood. Institutions bring social control both at a primary and a secondary level. The process of institutionalisation itself implies that we are all at least indirect participants in conflict resolution, and the challenge of restorative justice – according to Blad – is the further democratisation of conflict resolution.

When we apply the definition, we must conclude that we are institutionalising restorative justice. But we need clear identifications, in order to be able to pass restorative justice on to new generations. Furthermore, it has been argued that ‘restorative practices’ exist ‘in many rooms’, with identical practices having different meanings depending on the context.

Restorative justice in its different forms in the Netherlands was presented: neighbourhood conflict mediation, school mediation and conferencing, restorative practices used pre-trial, restorative practices used post-trial, and restorative justice in prisons. At a theoretical level, Blad considered the integration of restorative justice into the ‘symbolic universe of Justice’, in which the general characteristics of the legal discourse are affirmed. As a next step, he discussed the relation between restorative justice and punishment, and formulated some conditions for a non-punitive system of restorative justice and for penal reductionism.

*Lecture 5: Adam Crawford, Leeds University, UK*

Adam Crawford analysed for England and Wales the institutionalisation of restorative practices in the youth justice system. First, he discussed, against the background of national politics, youth justice reforms from 1998 onwards. The organisation of youth offender teams and youth offender panels was explained, as well their functioning within legal procedures and more precisely within the context of the ‘sanctions escalator’. This whole new organisation reveals competing dynamics infusing youth justice, such as managerialism and restorative justice and administrative tensions; local justice versus centralised control; greater interventionism and the quest for cost reductionism. Moreover, the new restorative justice models appeal to a wider notion of ‘stakeholders’, by expanding the notion of victimhood, through the involvement of local community members, and through expectations towards the community as moral authority.

One of the critical factors in the new restorative justice models in England and Wales is the involvement of the victim – who is often under-represented. Youth and criminal justice remains a ‘reluctant system’ with regard to victim involvement (Shapland). On the other hand, integrating victims within criminal justice clearly shows the ends to which their input may be used: in the service of severity, in the service of offenders, in the service of systems efficiency, or in the service of deliberative justice.

Some findings of evaluative research on the pilot phase of the new youth restorative justice models were discussed, amongst others on the role of lay panel members. How lay involvement might increase legitimacy in the context of justice was dealt with on a theoretical basis, and – also empirically – to what extent victim’s involvement may accord with

legitimacy. Finally, Crawford presented some further questions on current criminal justice developments and evolutions in society.

### **2.2.3. Discussion**

The (short) discussion concluding this second session touched upon further developments of restorative justice in the countries that were covered during the presentations, and to questions of legitimacy (at the personal or institutional level, and in a prison environment). The question was raised where the limits are for restorative justice to be institutionalised – which refers to different concepts or definitions of restorative justice itself. Recommendations were made on how to avoid doubtful practices to be labelled as restorative justice: this can be done by good theorising and providing adequate services with proper evaluation.

## **2.3. Session three: Questioning the institutionalisation of restorative justice. Analytical and normative reflections**

### **2.3.1. Context**

The last session aimed to reflect on the ways in which restorative justice has been, and continues, to be institutionalised. The maps of institutionalised restorative practices in Belgium, the Netherlands, and England and Wales that were established in the previous session provided the ‘raw material’ for a thorough-going analysis and normative evaluation of these developments. Scholars sought to capture this trend from a range of different perspectives and backgrounds. The third session consisted of two parts. In a first part restorative practices and talk were analysed under the heading of ‘risk and governance’. In a second part reflection was fostered from the perspective of informal justice.

#### *Part One: Risk and Governance*

In the current flux of (scholarly reflections on) changes in society, ‘risk’ and ‘governance’ have become concepts of focal concern. How do these concepts and the apparently (new) configurations of knowledge and practice centred around them relate to the ongoing institutionalisation of restorative justice?

Institutionalised practices allow for a surveillance of those participating in them. This knowledge can be used in different ways. Does restorative justice offer a way out of the impasse in current practices of punishment? Are notions of risk intertwining with restorative justice, thus allowing for a better ‘management’ of deviant groups? How should we look at the possible new configurations of restoration, justice and risk which might surface?

Since the late 70s, the concept of the welfare state was increasingly challenged. Consequently, we have witnessed shifts in the state, but also in governmental approaches. How, in the light of these changes, should we understand the institutionalisation of restorative justice practices? Do these practices constitute yet another particular way to ‘govern at a distance’? Does the institutionalisation of restorative justice fulfil the promising claims of responsabilising the people involved in conflicts? What kind of responsibility, what kind of accountability is being pursued?

These and other questions invite for an analytical reflection, centred on notions of risk and government.

### *Part Two: Informal Justice*

The second part of this session sought to normatively challenge the institutionalisation of restorative justice.

In the 70s and 80s, 'informal justice' already gave support to ideas and practices which, at least in part, now befit the common denominator of restorative justice. In fact, restorative justice embodies many of the values that informed the 'informal justice'-movement, e.g. the search for forms of conflict resolution outside the formal justice system, the idea of returning conflicts to its rightful owners, the reduction of the role of the 'professional thieves', a 'return to the community', etc.

Now, two decades after 'informal justice' (as such) has reached its moments of glory, a (re)new(ed) reflection seemed to be a very interesting assignment. Given the experiences with the institutionalisation of 'informal justice' practices, (how) *should* restorative practices be organised and institutionalised? How do 'informal justice' scholars anno 2004 look at the current institutionalisation of restorative justice?

### **2.3.2. Presentations**

#### *Lecture 6: Pat O'Malley, Carleton University, Canada*

Pat O'Malley first referred to the distinction, already made by Ulrich Beck, between risk and uncertainty. The notion of risk has a negative connotation, as something to be avoided. Uncertainty has an ambivalent status, but at the same time is seen as an innovative approach. Criminological analysis usually gets back to the negative notion of risk. Several authors (Garland, Rose and Simon) observe a 'risk sort', which bifurcates the administration of criminal justice: processes of incapacitation and exclusion for high risk offenders, processes of inclusion (e.g. restorative justice) for low risk offenders. O'Malley criticises these analyses, because they ignore the very abstract nature of the concept of risk. 'Risk' can only be used in a specific context of social, moral and political settings and practices. Actuarial justice, for example, is not just focused on incapacitation as such, but is part of clear political objectives.

Then, some similarities and differences were drawn between restorative justice and the model of 'drug harm minimisation' (as post-social risk model). Common characteristics, which are responsabilisation, future-oriented, focus on harm and the search for inclusive approaches, show a possible productive relationship between restorative justice, risks and criminal justice. Criminologists can refer to current risk factors, such as low social-economic status, to create more space for social justice.

#### *Lecture 7: Barbara Hudson, University of Central Lancashire, UK*

Three thematic issues were presented, which for Barbara Hudson revealed a common, underlying concern: in the search for justice a balance should be strived for between the ethical and the political dimension (the notion of 'ideal political dualism', referring to Derrida). A first issue relates to the shift from risk management to risk control. In risk management, crime is accepted and risk is something to work on (by risk assessment,

rehabilitation programmes, etc.). In risk control, crime is not tolerated and risk is something to be eliminated. Risk control now shows some problematic elements, because of the combination of ideas on dangerousness and persistence. This combination forms a new penological fact. This can have far-reaching consequences for property crime, for example: repeat offending results in higher degrees of exclusion.

A second issue concerns the dominance of ‘the white male perspective’ in law. Masculinity thinking determines how offences are constructed and judgements made. Gender and race should be taken into consideration to challenge legal thinking. Risk control relates to gender and race as well: increasing numbers of females and minority groups in detention can partly be explained by the blurring of boundaries between violent and property crime.

As third issue, Hudson argued that restorative justice, on the one hand, calls upon the community, whereas social theories, on the other hand, clarify how ‘the community’ is disappearing and fragmenting in smaller entities, with an increasing intolerance to ‘the different’. Finally, restorative was placed within the tension between the political and the ethical. Hudson fears a capitulation for the political (e.g. the strong emphasis on reducing re-offending), but hopes that the ideal political dualism can offer a framework for the debate on restorative justice.

*Lecture 8: Roger Matthews, Middlesex University, UK*

The major part of Roger Matthews’ lecture was devoted to the discussion of 10 arguments for a sceptical attitude towards restorative justice. A weak theoretical basis is the first one. According to Matthews, three approaches underpin restorative justice: abolitionism, ‘reintegrative shaming’ and religious beliefs. The dualistic concepts, used in these approaches, are far too much simplifying social reality. Another argument relates to the lack of attention – in restorative justice – for social justice: some restorative justice practices affirm or strengthen existing social inequalities. A third argument deals with the lack of evidence for a real de-professionalisation within restorative justice. Mediation is mostly done by professionals, and new forms of expertise emerge. Still other arguments relate to the unclear political alliance; the lack of empirical evidence; not functioning as an alternative to formal procedures; eroding legal safeguards and rights; the absence of victim-centered empowerment; not enhancing community safety or reducing recidivism; and lack of clarity about aims, organisation and operation of restorative justice schemes.

Despite this scepticism, restorative justice grows steadily, which necessitates a (start of) explanation. For Matthews, new modes of punishment in late modernity give room to forms of subjectivity, and thus allow restorative justice. Another reason could be the re-birth of morality and the highly moral character of restorative justice answers.

### **2.3.3. Discussion**

The discussion at the end of this third session, amongst others, called for more empirical evidence to underscore arguments and statements. Critical arguments against restorative justice are applicable to the traditional system of criminal justice as well. The relation of restorative justice to crime reduction was discussed again. From another perspective, justice was defined as ‘a promise’, often unrealised (Ricoeur). Against the background of an instrumentalistic approach, more attention was asked for moral issues and the meaning of

moral emotions in restorative justice, as well as the possible symbolic function of restorative justice.

### **3. General observations and further perspectives**

#### **3.1. On the concept and contents of the workshop**

The global concept of the workshop turned out to be very attractive to the participants. There are several indications for this:

- the responses to our letters of invitation were very positive and we received many requests for participation in the workshop outside of our list of invitees;
- the website of the workshop was visited more than 600 times, by people from all over the world;
- we had to refuse people who were willing to attend because of the limited amount of places;
- during the coffee breaks and the reception we received reactions of participants about how much they enjoyed the workshop and how fruitful they thought the presentations and discussions were for their own agenda;
- after the workshop we received emails and letters of participants expressing their gratitude and sharing their experiences of the workshop.

However, there are two points which we have to keep in mind for future projects:

- A majority of the presenters were native speakers, yet the majority of the participants did not have English as their mother tongue. We sometimes felt that participants (especially practitioners) were not always as much involved in the discussions as we would have pictured it in our ideal concept of the workshop (cfr. a meeting between theory and practice). Possibly this might be explained by the strong impression the speakers made to those who are not that comfortable speaking in English. On the other hand, during the breaks, the dinner and the reception we clearly felt that participants were able to make the link with their own professional activities as practitioners. In that sense, we want to stress the importance of these kinds of informal discussions outside of the formal workshop setting.
- The programme was a bit overloaded. Especially the afternoon session of Friday and the morning session of Saturday, with three speakers each time, did not leave enough room for discussion.

#### **3.2. On the practical organisation**

The practical organisation - before, during and after the workshop – went well. For the whole organisation, we clearly benefitted from the infrastructure of, and assistance by, the K.U.Leuven.

Contacting the keynote speakers, discussing their contribution and arranging their stay and travel was time consuming. Also after the workshop, the further preparation of the publication already required a considerable amount of work. One main problem at the administrative level must be mentioned here. It relates to the reimbursement system of COST. We regretted not having the possibility of pre-financing, and felt embarrassed vis-à-vis our keynote speakers to ask them to advance their expenses for travel, hotel accommodation and meals themselves. Finally, we found a partial solution, after consultation with the COST Office, that expenses of

hotel and some meals would be advanced by the university, and reimbursed afterwards by COST to the university. For the future, we propose that, once a workshop (or conference) be approved, a part of the grant would be paid in advance to cover some important costs.

### 3.3. On the dissemination of the results

A written agreement has been made with Willan Publishing (Cullompton, Devonshire, UK) for the publication of a book by the summer of 2005. Willan has already published several volumes on restorative justice, and is taking a high international profile on criminological literature. All keynote speakers at the workshop agreed – and confirmed - to write their paper as chapter of the book. The structure of the workshop programme – with its three sessions – will be kept for the book as well. Moreover, five other authors were asked to write an additional chapter: one has to be integrated in the first part, two in the second part, and two more in the third part. The purpose of inviting these additional authors – all well known researchers or academics – was to deal with some more important, theoretical approaches, and to cover some more countries as far as it concerns the implementation of restorative justice models (France and Canada).

The title of the book will be *'Institutionalising Restorative Justice'*, edited by Ivo Aertsen, Tom Daems and Luc Robert. The content synopsis is as follows (Introduction + 13 individual chapters) :

Introduction (by the editors)

Part One: Punishment, Restorative Reform, and Social Change

- Michael Tonry, Cambridge University, UK
- Hans Boutellier, Verwey-Jonker Institute, The Netherlands
- John Pratt, Victoria University of Wellington, New Zealand

Part Two: Mapping the Institutionalisation of Restorative Justice

- Ivo Aertsen, Katholieke Universiteit Leuven, Belgium
- John Blad, Erasmus Universiteit Rotterdam, The Netherlands
- Adam Crawford, Leeds University, UK
- Jacques Faget, Centre national de la recherche scientifique, France
- Kent Roach, University of Toronto Canada

Part Three: Questioning the Institutionalisation of Restorative Justice. Analytical and Normative Reflections

- Pat O'Malley, Carleton University, Canada
- Barbara Hudson, University of Central Lancashire, UK
- Roger Matthews, Middlesex University, UK
- Lode Walgrave, Katholieke Universiteit Leuven, Belgium
- Rob Mackay, Perth College, UK

For more information, see annex 3: Book Proposal for Edited Collection (as sent to Willan Publishing for approval).

## 4. Annexes

### 4.1. Programme

#### Friday 5<sup>th</sup> of November 2004

- 8.45 Registration  
 9.15 Welcome  
 9.30 *Session One: Punishment, Restorative Reform, and Social Change*  
 Chair: Tony Peters, Katholieke Universiteit Leuven, Belgium  
 Introduction  
 Lecture 1: Michael Tonry, Cambridge University, UK  
 Lecture 2: Hans Boutellier, Verwey-Jonker Institute, The Netherlands  
 Coffee break  
 Plenary debate  
 12.30 Lunch  
 14.00 *Session Two: Mapping the Institutionalisation of Restorative Justice*  
 Chair: Lode Walgrave, Katholieke Universiteit Leuven, Belgium  
 Introduction  
 Lecture 1: Ivo Aertsen, Katholieke Universiteit Leuven, Belgium  
 Lecture 2: John Blad, Erasmus Universiteit Rotterdam, The Netherlands  
 Coffee break  
 Lecture 3: Adam Crawford, Leeds University, UK  
 Plenary debate  
 17.00 End  
 19.00 Dinner at the Faculty Club, Groot Begijnhof 14, Leuven

#### Saturday 6<sup>th</sup> of November 2004

- 9.30 *Session Three: Questioning the Institutionalisation of Restorative Justice. Analytical and Normative Reflections*  
 Chair: Stephan Parmentier, Katholieke Universiteit Leuven, Belgium  
 Introduction  
 Lecture 1: Pat O'Malley, Carleton University, Canada  
 Lecture 2: Barbara Hudson, University of Central Lancashire, UK  
 Coffee break  
 Lecture 3: Roger Matthews, Middlesex University, UK  
 Plenary debate  
 12.50 Closing Words: Ivo Aertsen, Katholieke Universiteit Leuven, Belgium  
 12.55 Reception

## 4.2. Participants list

AERTSEN Ivo, Belgium	MARAIN Tine, Belgium
ARSOVSKA Jana, Macedonia	MATTHEWS Roger, United Kingdom
BEYENS Kristel, Belgium	MEYER Silke, Germany
BLAD John, The Netherlands	O'MALLEY Pat, Canada
BOUTELLIER Hans, The Netherlands	PARMENTIER Stephan, Belgium
CLAES Erik, Belgium	PEMBERTON Antony, The Netherlands
COKER Dale, USA	PETERS Tony, Belgium
CRAWFORD Adam, United Kingdom	ROBERT Luc, Belgium
DA FONSECA Fernanda, Brasil	SOUSA PEREIRA Sonia, Portugal
DAEMS Tom, Belgium	STAMATAKIS Nikolaos, Greece
DAENINCK Philip, Belgium	TONRY Michael, USA
DEPUYDT Anouk, Belgium	VALIÑAS Marta, Portugal
DE SOUTER Vicky, Belgium	VALL RIUS Anna, Spain
FELLEGI Borbala, Hungary	VANACKER John, Belgium
GOETHALS Johan, Belgium	VAN CAMP Tinneke, Belgium
GUFFENS Hilde, Belgium	VAN DER DOES Vera, The Netherlands
HEINRICH Stefanie, Germany	VANFRAECHEM Inge, Belgium
HONTORIA Marisa, Spain	VAN GARSSE Leo, Belgium
HUDSON Barbara, United Kingdom	VAN LIESHOUT Jan, The Netherlands
HUTSEBAUT Frank, Belgium	VAN STOKKOM Bas, The Netherlands
JACOB Beni, Israel	VERBRUGGEN Frank, Belgium
KELLENS Georges, Belgium	VLADIMIROV Grigor, Bulgaria
KOOL Renée, The Netherlands	WALGRAVE Lode, Belgium
LAUWAERT Katrien, Belgium	WEITEKAMP Elmar, Germany
LEEST Judith, The Netherlands	WOLTHUIS Annemieke, The Netherlands
LEMONNE Anne, Belgium	WRIGHT Martin, United Kingdom
LIEBLING Alison, United Kingdom	

### 4.3. Book Proposal for Edited Collection, as accepted by Willan Publishing, UK

Title: The Institutionalisation of Restorative Justice

Editors: Ivo Aertsen, Tom Daems and Luc Robert

#### Description

In November 2004 the Department of Criminal Law and Criminology, Katholieke Universiteit Leuven, Belgium will organise a conference which deals with the mapping of, and reflection on, the institutionalisation of restorative justice practices starting from developments in three different European countries (Belgium, the Netherlands, and England and Wales). The conference aims to foster debate amongst invited European and overseas scholars and practitioners on processes of institutionalisation of restorative practices.

Restorative justice is increasingly recognized at national and European/international policy levels to provide an inspiring set of ideas to redirect our ways of responding to crime. At the same time, recent work within the criminological discipline has aimed at coming to grips with punishment and control developments in late or postmodern societies. The conference aims to build bridges between the *practical* institutionalisation of restorative justice on the one hand, and the *theoretical / normative* reflection on penal developments on the other.

Eight speakers have been invited to present a paper: Michael Tonry (Cambridge University, UK), Pat O'Malley (Carleton University, Canada), Adam Crawford (Leeds University, UK), John Blad (Erasmus University Rotterdam, The Netherlands), Hans Boutellier (Verwey-Jonker Institute, The Netherlands), Barbara Hudson (University of Central Lancashire, UK), Roger Matthews (Middlesex University, UK) and Ivo Aertsen (Katholieke Universiteit Leuven, Belgium). All of them have confirmed to participate.

We aim to publish the papers of our speakers in an edited collection. In addition to the eight confirmed papers of our speakers we will invite ca. five other scholars to contribute a paper and we, as editors of the collection, will write an introduction to the collection of essays.

The edited collection will consist of three different parts which reflect the three components of our conference. The contributors have been invited to write a paper that falls within the ambit of the general framework as we have outlined it when we got in touch with them. The general frameworks of those three parts are as follows:

#### *Part One: Punishment, Restorative Reform, and Social Change*

There is a broad consensus among social scientists that the closing decades of the Twentieth Century were a time of profound social change. The critical moment is usually situated in the late 1960s – early 1970s and the mapping and analysis of social change has given rise to fierce debates on post/late/high/liquid modernity, risk society, post-Fordism, governmentality, and the like. More recently criminologists have joined the debate on *what* has changed, and *how* to account for it. Issues of punishment and crime control have not only moved to the centre of public debate, but are also increasingly recognized by social scientists as having a tremendous impact on how ‘the social’ is governed - thereby shaping the world and its inhabitants in distinctive ways.

For criminologists these changes usually take the form of the demise of the rehabilitative paradigm which prevailed in the immediate post-war period, followed by the punitive turn in the 1970s. Penal developments are interwoven into, and seen against the backdrop of changes

in related fields of the social domain: the crisis of the welfare state, the rise of the New Right, the changing relationships between 'labour' and 'capital', the further freeing of the market and the extension of the profit principle to other domains, processes of globalisation, the social impact of the mass media, etc. The question to be asked, then, is: What are the prospects of penal reform in a world that has gone (and is still going) through these profound changes? To what extent are our existing responses to deviance and crime adequate and desirable? And is it not the case that these new challenges call for new responses?

Since several decades advocates of restorative justice have questioned the penal status quo and have called for a profound reform of our existing ways of dealing with crime thereby focusing on the restoration of different kinds of harm. Since the first pioneering steps in the 1970s a worldwide social movement has developed which, whatever the different backgrounds of its participants may be, aims at restorative reform. As a result restorative justice has made its first inroads into the existing penal system in different parts of the world. In the first part of the book we aim to place these developments of restorative reform on a wider socio-penal map. How do restorative initiatives relate to the profound changes that were outlined above? What are the prospects for restorative reform in the world as it stands? Is there any indication that restorative justice might form a progressive response to these changes, or does it remain at the level of window-dressing?

*Confirmed papers: Michael Tonry and Hans Boutellier*

### *Part Two: Mapping the Institutionalisation of Restorative Justice*

Restorative justice emerged out of a group of social movements aimed at developing new and more satisfactory strategies to deal with the consequences of crime. It has produced a plethora of practices whereby the relationship with the criminal justice apparatus varies from independent non-governmental initiatives, cooperative partnerships with criminal justice actors, or the direct implementation of restorative practices into the classical criminal justice system. Slowly but surely restorative justice schemes have found their way into policing, prosecution, sentencing, detention, and probation. Part two of the book focuses especially on the institutionalisation of restorative justice in the (wider) context of criminal justice. How did the implementation come about in different countries?

Three European countries will feature in this part of the book:

-Belgium – The Belgian version of the Kitchener-experiment of the Flemish NGO Oikoten was one of the first grass roots initiatives in the late 1980s. It has inspired academics to further explore the possibilities of restorative justice. Besides the institutionalisation of penal mediation into the criminal proceedings in 1994, it is certainly the challenging approach to introduce – and later even to implement – the idea of restorative justice in the prison system, that has led us to call Belgium a fertile breeding ground for testing challenging approaches to restorative justice.

-The Netherlands – The minimalist approach of Dutch penal policy of the 1970s suddenly vanished into thin air when the government decided to make a U-turn. Since 1985 this penal instrumentalist approach seems to leave little room for a restorative justice approach. These developments, however, stand in contrast with the growing interest in restorative justice practices that are emerging in the Netherlands. Civil society and NGOs in the Netherlands take up a lead role in schemes such as neighbourhood mediation, real justice conferencing with juveniles and the like.

-England and Wales – A qualified example of how new ideas transform into new policies applies to the restorative justice developments in England and Wales. A steady growth of its practices and a common understanding on its principles characterises the evolution of restorative justice throughout the 1980s and 1990s. The challenge to mainstream this practice is at least encouraged by the legislative incentives in the juvenile justice system at the turn of the Century. One of the important steps in the institutionalisation was certainly the installation of the Youth Offending Teams and Panels in the Youth Justice System.

By mapping the state of affairs in Belgium, The Netherlands, and England and Wales the second part of the book offers three distinguishable and challenging examples that can foster a broader debate on the feasibility and the consequences of the institutionalisation in the context of current developments on crime, punishment and penal policy. What are the promises and the challenges of this evolution?

Confirmed papers: Ivo Aertsen, John Blad and Adam Crawford

### *Part Three: Questioning the Institutionalisation of Restorative Justice. Analytical and Normative Reflections*

The third part of the book aims to reflect further on the ways in which restorative justice has been, and continues to be, institutionalised. Contributors seek to approach these processes from different perspectives and backgrounds. Two themes will get special attention:

*-Risk and Governance:* In the current flux of (scholarly reflections on) changes in society, ‘risk’ and ‘governance’ have become concepts of focal concern. How do these concepts and the apparently (new) configurations of knowledge and practice centred around them relate to the ongoing institutionalisation of restorative justice? Institutionalised practices allow for a surveillance of those participating in them. This knowledge can be used in different ways. Does restorative justice offer a way out of the impasse in current practices of punishment? Are notions of risk intertwining with restorative justice, thus allowing for a better ‘management’ of deviant groups? How should we look at the possible new configurations of restoration, justice and risk which might surface?

Since the late 70s, the concept of the welfare state was increasingly challenged. Consequently, we have witnessed shifts in the state, but also in governmental approaches. How, in the light of these changes, should we understand the institutionalisation of restorative justice practices? Do these practices constitute yet another particular way to ‘govern at a distance’? Does the institutionalisation of restorative justice fulfill the promising claims of responsabilising the people involved in conflicts? What kind of responsibility, what kind of accountability is being pursued?

*-Informal Justice:* In the 1970s and 1980s, ‘informal justice’ already gave support to ideas and practices which, at least in part, now benefit the common denominator of restorative justice. In fact, restorative justice embodies many of the values that informed the ‘informal justice’-movement, e.g. the search for forms of conflict resolution outside the formal justice system, the idea of returning conflicts to its rightful owners, the reduction of the role of the ‘professional thieves’, a ‘return to the community’, etc.

Now, two decades after ‘informal justice’ (as such) has reached its moments of glory, a (re)new(ed) reflection seems to be a very interesting assignment. Given the experiences with the institutionalisation of ‘informal justice’ practices, (how) *should* restorative practices be organised and institutionalised? How do ‘informal justice’ scholars anno 2004 look at the current institutionalisation of restorative justice?

*Confirmed papers: Pat O'Malley, Barbara Hudson and Roger Matthews*

As soon as the publisher decides to cooperate with us we will get in touch with other potential contributors. These additional contributors will be asked to work within one of the three frameworks of the book. The book itself will contain 14 chapters (an editorial introduction, 8 papers of the invited speakers, 5 additional papers of selected contributors).

### **Specifications**

We aim to submit 14 chapters, consisting of a substantial editorial introduction, eight chapters of the keynote speakers and 5 chapters from other interested academics and/or practitioners (some having already agreed to write a paper).

Proposed length of each chapter: ca. 8,000 words

Ca. 8,000 x 14= ca. 112,000 words

### **Market / Audience**

The market / audience for this collection consists of at the least four segments:

First of all, **academics** interested in current debates in penalty and in criminological theoretical issues (processes of institutionalisation, restorative justice, sociology of punishment, analytical and normative frames such as 'governmentality', 'risk' and informal justice).

Secondly, **practitioners** and policy makers working in the criminal justice system. It will provide them with insights about, and reflections on, important (new) aspects of criminal justice, in concreto restorative justice practices and their highly debated place in/next to the criminal justice system.

Third, the members of the three working groups and the Management Committee of the **COST** (European Cooperation in the field of Scientific and Technical Research) Action A21 (a European wide network of academics and researchers from 18 countries interested in restorative justice). COST Action A21 is funding our conference and many of its members will be interested in our topic.

Fourth, undergraduate and postgraduate **students** in the social sciences (criminology, sociology, social policy, etc.) who are interested in criminal justice policy, restorative justice, and criminological theory. The book will be ideal for supplementary reading on courses covering criminal justice policy, sociology of law, punishment, penology, etc.

### **Competitors**

We do not see a real competitor for the edited collection we have in mind. Perhaps one book that comes close to it is Howard Zehr and Barb Toews' (2004) *Critical Issues in Restorative Justice*, Cullompton: Willan Publishing (June 2004, 412pp., paperback: £24.99). This is a collection of 31 papers dealing with issues and concepts in restorative justice. The major strength of their book is its reflection on key concepts and issues *in* restorative justice.

Contrary to their collection, our proposal deals with a sociological/criminological reflection on the place of restorative justice *in* contemporary penalty: it focuses on how restorative justice finds its way into contemporary societies and their respective criminal justice systems. It does *not* deal with restorative theory, practice or evaluation research as such (which has been the central focus of most publications on restorative justice thus far). Classical themes

in restorative literature (eg discussions between restorativists and retributivists, debates on the effectiveness of restorative interventions, theoretical discussions on the restorative model, etc) will have no place in our book. Rather it aims to highlight how restorative justice fits into the contemporary societal context and it seeks to broach critical issues concerning processes of institutionalisation by means of analytical and normative reflections on (the institutionalisation of) restorative justice practices.

The major strengths of our book are therefore twofold. First, the book aims to build bridges between the *practical* institutionalisation of restorative justice on the one hand, and the *theoretical / normative* reflection on penal developments on the other. This implies that the book brings together two main strands within criminology (those working *in* the field, trying to reform existing ways of dealing with crime on the one hand, and those reflecting on these developments on the other hand). This is a unique feature of the book because thus far there has not been any attempt to make this happen. Secondly, it deals with a *central theme* within contemporary debates on the failures and futures of criminal justice. Within different *national* territories, and even at a *supra-* and *international* level (eg European Union and United Nations), we see the first steps towards the institutionalisation of restorative justice. The theme is featuring in political, policy, academic and broader societal debates. People working in the field and academics observing these processes ask themselves questions about these developments and are looking for conceptual tools and theoretical frameworks to make sense of these developments. This is exactly what our book aims to offer.

### **Writing Schedule**

The conference is planned for early November 2004. We will ask the contributors to deliver their manuscript by early March 2005. We hope to send the manuscripts and our editorial introduction to the publisher by April 2005.

### **About the Editors**

Ivo Aertsen is professor of Criminology at the Catholic University of Leuven, Belgium. Within the Department of Criminal Law and Criminology he is teaching Victimology and Penology. He has carried out several research projects on victimology, mediation and restorative justice. Previously he worked as practitioner in the prison system as well as in victim support. He wrote a manual on victim assistance for the Belgian police services and co-operated in another one on implementing restorative justice in a prison context. Furthermore, he published on the psychological needs of victims of crime, on victim assistance and on victim-offender mediation. His Ph.D. thesis (2001) was on the relation of victim-offender mediation to criminal justice. His educational background is psychology and law. Dr. Aertsen is chair of the European Forum for Victim-Offender Mediation and Restorative Justice, and leads COST Action A21 on Restorative Justice research in Europe.

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Tom Daems is a Ph. D. candidate in criminological sciences at the Department of Criminal Law and Criminology of the Catholic University of Leuven. He holds a candidate degree in political sciences and a licentiate degree in criminological sciences. In 2002 he obtained his M.A. in European Criminology degree (Magna Cum Laude) from the Centre of Advanced Legal Studies of the Catholic University of Leuven and in 2003 he received his M.Sc. in Crime, Deviance and Control degree from the Department of Sociology of the London School of Economics (Distinction). He is a member of the editorial board of the Flemish journal on prisons and penal policy and has published on prisons, restorative justice, the sociology of punishment, electronic monitoring and repeat victimisation. Currently he is working at his Ph. D. project entitled: "Punishment, Victimisation and Society: Incorporating the Victim in the Social Analysis of Penalty".

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Luc Robert is a Ph.D. candidate in criminological sciences at the Department of Criminal Law and Criminology of the Catholic University of Leuven. He studied in Leuven (Belgium) and in Vancouver (Canada). He holds a licentiate degree in criminological sciences (summa cum laude). In 2003 he obtained his M.A. in social and cultural anthropology (magna cum laude). He has published on prison sociology, restorative justice in prison and on victims. In 2002, he participated in the action-research on 'restorative justice in prison' financed by the Belgian Ministry of Justice. He is a member of the editorial board of the Flemish journal on prisons and penal policy. Currently he is working on his Ph.D. project "Detention inside out. The Central Prison of Leuven", a prison ethnography drawing on Foucault and 'governmentality' writings.

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#### **4.4. Workshop folder (hard copy)**