CONVERSATIONS ON RESTORATIVE JUSTICE

A talk with John Blad

Albert Dzur

Dr John Blad was associate professor in the field of criminal law sciences at the Law School of Erasmus University Rotterdam until December 2016. His PhD was a theoretical review of Louk Hulsman’s penal abolitionism (Blad, 1996). In 2000, he founded both the ‘Forum voor Herstelrecht’ (now called Restorative Justice Netherlands (RJN)) and the Dutch-Flemish Tijdschrift voor Herstelrecht (Journal for Restorative Justice). He also took the initiative to start a Platform for Restorative Detention, now included in RJN. In 2008, general principles produced by an ad hoc Platform for Mediation in Criminal Matters were published for the integration of restorative justice into the criminal justice system. Since his retirement, he has been involved in developing a set of legal proposals to change the Code of Criminal Procedure, which resulted in a bill that was presented to the second chamber of Parliament in February 2017 (Blad et al., 2017). Work is also focussing now on the provisions in the Criminal Code.

1. From abolitionism to restorative justice

Dzur: You wrote your dissertation on Louk Hulsman, who is often associated with abolitionism, but you understand your own views in terms of restorative justice. What do you value in the abolitionist perspective? What is missing from it that leads you to the restorative paradigm?

Blad: I studied at the Rotterdam Law Faculty where Hulsman was professor of law. What he tried to do first in his career was to make the criminal justice system more effective in terms of crime reduction and crime control by incorporating insights of social science disciplines into the functioning of the criminal justice system, especially to improve corrections. He problematised very early and consistently the use of imprisonment as a punishment. So he was trying to increase the efficacy of the system. In 1976, he came to believe that it would be impossible to accomplish this because the criminal justice system is so politicised. Many people use punishment not as a way to correct offenders and bring them to a lifestyle that is more agreeable to others and less damaging, but, instead, to reproduce a criminal population. He was, to a certain degree, influenced by a Marxist critique of criminal justice systems and their operations (see, e.g., Quinney, 1970).
Dzur: Which actors in the criminal justice system did Hulsman think were politicised?

Blad: The public prosecutors were becoming more politicised in the 1970s and less independent in their functioning. They had more legal choices with regard to the sanctions they could possibly apply, but politically they were losing the liberty to professionally choose the sanctions they would prefer to use. The symbolic meaning of expressing anger or expressing denunciation of the crime became more important in the 1970s in the Netherlands as in Europe in general. That’s why Hulsman started to disbelieve in the possibility of improving the system. And then he started to write that we should abolish it. But in fact, there was a double edge to it because he wanted to abolish it but improve it. He wanted to have a legal system that was sound in terms of influencing behaviour in a direction of law conformity, which is a very interesting position.

Hulsman began thinking in terms of criminal justice as a problem solver and then he started to discuss the degree in which criminal justice produces, maintains, and reproduces all sorts of social problems itself. And one of the social problems that the criminal justice system reproduces is crime, especially by producing people who have a dominant identity as criminals. One of the big problems of the criminal justice system is connected with all sorts of discourses, which are symbolic in nature but have real consequences. The production of the criminal is a production of the criminal justice system itself and if we want to avoid socially producing identities that are criminalised, then we should stop criminalising offenders.

Hulsman wanted to have ways of sanctioning that were non-criminalising and therefore he said we should abolish the language of the criminal justice system. He did not mean abolishing the legal language, which in itself is quite technical, but the symbolic language, which is addressing criminals: criminals are the cause of criminal events and criminal events can be explained by the existence of criminals. He wanted to step out of this language game and develop another language. In the end, he did not succeed. (The problem is – as I see it – that we personally do not own the linguistic system, but language possesses us as a collective phenomenon.)

I came to believe, in studying Hulsman’s work, that we really cannot decide at one moment collectively to abolish that system. If the traditional criminal justice system is abolished, it will be the result of a very long process in which we all become more or less convinced that it is better to do something else. For example, if the prison comes in disuse and then, finally, we can marginalise the use of prisons so much that we can say that we have virtually or really abolished them. That’s the process that should be started somewhere – or maybe it is already under way – in which the end result could be a fundamental change of the system or an abolishment of the old system.

Dzur: So you see restorative justice as this more constructive path that Hulsman failed to develop.
Blad: Yes. It’s interesting to note that he was a supporter of victim–offender mediation. He was in Montreal, Canada a lot in the 1970s and he mentioned it sometimes, but he never wrote anything about victim–offender mediation and never really promoted it. That is strange, but I think it was because Hulsman was a very professional lawyer and had a strong belief in professionals. Change had to come from professionals.

Dzur: He was not thinking of abolitionism as a broad social movement, but in terms of a professional reform movement that would try to get away from politicising criminal justice and gradually abolish the symbolic elements of punishment.

Blad: Yes, I think we should interpret him like that.

Dzur: Do you disagree with that idea of professionals as the central agents for changing the criminal justice system?

Blad: Well they are not so autonomous as you might think. Professionals are, of course, very important players – also, now in developing restorative justice – and we could not do without them. We need them. We need lawyers and good criminologists, and others. But we also need a strengthened role of laypersons, the citizens who are involved in conflicts: to speak out and to express their wishes and interests so that these can be taken into account in developing working solutions for the problems that exist.

This was actually something that Hulsman was also thinking about. He had this theme of social reorganisation in his French book (Hulsman & de Celis, 1982), in which he asked what we could do, when a problem or conflict happens that is criminalised, to go back to the causes and the sources of that conflict or problem. What can we do to change the social situation in such a way that these problems are not produced anymore? I think that is still an underdeveloped element of restorative justice. We do not devote a lot of time or attention to the causal or criminogenic backgrounds of the problematic behaviour we are looking at. And we are not active enough in proposing small social changes, which can help to prevent the next victimisations.

2. Neighbourhood justice

Dzur: I see how you have incorporated but also moved somewhat away from Hulsman’s thinking. You mentioned the importance of lay participation. That was part of your work in putting together neighbourhood justice programmes. Can you speak about that experience?

Blad: When we tried to develop neighbourhood justice schemes in the Netherlands, beginning in Rotterdam, we were inspired by the San Francisco neighbourhood schemes of the 1970s. We started to speak with the local council and the local triangle, which is an administrative body made up of the chief of police, the mayor, and the chief of the prosecution service. In this triangle, the policies are...
developed and made. In the political system, as well as in this policy triangle, people just didn’t believe that it might be possible to get people talking to each other. Why? Because they thought, ‘Well, this is not America here. This is Rotterdam and we have 150 population groups in our city, 150 nationalities. There is an amalgamation of so many different backgrounds that people just don’t understand each other. And they are not willing to do anything for each other. So this will not work.’

So our first task was to create a picture of how it could be a success, using information from the neighbourhood schemes of San Francisco. Then we visited several neighbourhoods and talked to people and asked them if this was a good idea. And the people themselves were very enthusiastic. No matter whom you asked, people said, ‘It is quite logical to try this.’

Dzur: Why do you think people felt this way about neighbourhood justice?

Blad: I think they were experiencing they did not talk enough to each other. They had questions about the behaviour of their neighbours, but did not really address these questions. Why? Partly because in the media there is often anxiety or fear expressed that if you talk to someone and intervene in a neighbour’s behaviour, you might be in danger or you might run a risk. So when we said, ‘Could it be a good idea to come together and talk together with two mediators about the conflicts that you have with your neighbours?’ they all said, ‘Of course, this would be a good idea.’

We were allowed to try some pilot projects in three neighbourhoods and they soon became a success, to many people’s amazement. They were amazed that it worked. And it did work. Nowadays, twenty years later, we have around 125 to 150 neighbourhood schemes in the Netherlands that are running. Yet still, in some of the councils in some of the smaller cities, when there are budget cuts necessary, the first thing they think about are the neighbourhood schemes, which do not cost a lot of money. For a small city they need, in fact, only one professional coordinator and a number of volunteers to do the cases.

Dzur: These operate like victim–offender mediation?

Blad: One of the secrets of why it is working is because the conflicts that are dealt with are not juridified. They are not put in legal documents like police reports. And the police have been very active in avoiding drawing up reports even if they could. They could take a quarrel between two neighbours in which one is hit by the other and draw up a police report and make it a case of maltreatment. But they know this minor offence would be given a minor sanction, and the problems would only increase between the neighbours. So the police are very streetwise and they say, ‘We are not going to draw up a report. We are not going to juridify this case. We will help you. We will send you to our neighbourhood mediation scheme and you can talk together with the mediators.’ They were very instrumental in supporting the mediation schemes, and they still are. They are very enthusiastic.

Dzur: So the police are the gateway to the neighbourhood justice programmes.
Blad: The police are one of the important gateways, along with the housing corporations. The housing corporations want to avoid escalation of trouble between neighbours because they don’t want to dispel a resident, though sometimes they have to. Prior to the neighbourhood schemes, they had a lot of escalating problems between neighbours which all came to the housing corporation: ‘Can you please provide a solution for this. Send him or her away.’

The social housing corporations supported the first pilot project financially and neighbourhood justice is still very important for them, as it is for the police. There are often, however, as I mentioned, local politicians who think, ‘We could easily abolish these schemes. They do not play such an important role.’ And the problem, of course, is that when you prevent escalation, you do not really see it. That’s one of the big problems also for restorative justice. How do you make visible what you are actually preventing?

3. Real people vs. stereotypes

Dzur: What did you learn from your experience developing these neighbourhood justice programmes that you wouldn’t have learned from books, as an academic?

Blad: I learned especially the most important role preconceptions play among the local and national officials who develop policies. Every time you have to confront beliefs, which almost always have nothing to do with the reality between people. I mean stereotypes, for instance, about several ethnic minorities in the Netherlands; Moroccan youth are one example. Not only the media – though the media play an important role here – but also legal officials such as judges and public prosecutors all share the same stereotypes about these heavily criminalised groups of young Moroccan people. This is true also, about companies where they can’t find a job. Experiments done in the Netherlands show that if you apply for a job and you use your Moroccan surname you will not get an answer, but if you write letters with another surname they answer.

The problem is reproduced and maintained on the basis of stereotypes. Every time, you have to discuss these stereotypes, which are sometimes not mentioned, but always play a role.

Dzur: This surprised you because you did not expect legal professionals, with all their academic training, would hold such stereotypes?

Blad: Yes. It should not really have surprised me, perhaps, because it was one of the things that Hulsman was already problematising. He said that this symbolic culture of the criminal justice system is a public possession; it is possessed by the public at large. Judges read newspapers, see the same television series, and watch the same dramatic films. Legal professionals share all the same stereotypes about the criminals, even if they are not very conscious about it. Of course, I am a lawyer and I’ve always been taught to try to abstract from my own stereotypes, but in reality that is very difficult. You have to be aware of the stereotypes you have, as a lawyer, to really neutralise them in your decisions.
Albert Dzur

_Dzur_: How does restorative justice, in the form of neighbourhood justice programmes, serve as an antidote to stereotypes in a way that the criminal justice system cannot?

_Blad_: It is very important that, in the restorative practice we try to promote, real people come together. Real people. Consider a mediation scheme in one of the neighbourhoods in the Netherlands where a mediator with a Turkish background mediates between a Syrian person and a Moroccan person. The stereotypes are there, but so are the real persons who are Moroccan, Syrian, and Turkish. They recognise much easier and sooner that the stereotypes are for a large part wrong. The real person always belies the stereotype.

This also goes for the person who is called ‘the criminal’. He is, of course, massively dressed up with stereotypes. But the person who committed an offence is a real person with many facets – with faults, of course, but also with qualities. One of the most important things about restorative procedures is that people really meet each other. They have, along with verbal communication, also non-verbal communication with each other. They can really have a look at the person. There are so many reports about mediation cases in which people are really surprised at the person they meet: ‘I never thought he would be like this. I thought my burglar was a big guy, very strong, but he’s only a little boy.’ People begin to see that their preconceptions of what persons are involved are in large part wrong. And also, their fears that it would be impossible to communicate with them or to speak the same language, these fears are taken away by the real meeting that they have, in many cases. Not in all, but in many cases. So I think the possibility, the opportunity to meet each other is very important.

4. Restorative justice in the lifeworld and in the criminal justice system

_Dzur_: Talking about restorative justice in the Netherlands, you’ve written that the conditions outside the formal criminal justice system are more favourable to restorative justice than the conditions inside. Is that a good or bad thing? Do you see possibilities for greater integration into the formal system, such as in prisons, for example, or in courts?

_Blad_: To start with, I think it is a good thing that conditions are much more favourable in what Jürgen Habermas would call the ‘lifeworld’ (Habermas, 1984). In all our lifeworlds – we participate in many at the same time – there are many conflicts that could be legalised or juridified but are not juridified. People try to resolve them by talking to each other. They have a small distance between each other so, in many cases, it is very easy to address someone and to begin to speak about a problem or a conflict they feel they have. I think that is a very good thing.

Also, in the Netherlands, mediation schemes have come to life and flourished not only in the neighbourhoods but also in schools. Schools are another context in which a lot of mediation goes on. But here again, there is a warning point: politicians have wanted to reduce violence in schools and have tried to obligate teachers to report even the smallest incidents of violence to the police and not to deal
A talk with John Blad

with them in the school itself. This seems to suggest that the police have the solutions or that the formal system has the solutions. But they don’t. They don’t have the solutions. It works much better to deal even with serious fights between students in the school itself with lay mediators, peer mediators. They understand much better what has happened and what has gone on before the incident. People in schools are learning that it is very good to try to resolve these problems in the school. And, when there is no possibility to come to a solution, teachers and school directors can deliberate together to see if there is another school for someone. Not to push him out into the legal system and diminish his chances at a so-called normal social or school career.

It is very important that this sphere exists as such. And I always feel that it could be instructive for the formal system – instructive in the sense that we don’t leave out the people who are really involved in these conflicts, who know a lot about them. Let them talk, let them propose what they see as necessary to resolve the conflicts, and to move on to a better school or a better neighbourhood.

The instructive potential of lifeworld practices can be improved by writing about them much more and discussing how far they can be generalised, and how we make these practices happen in more contexts. The prison is the most challenging context because it is based on force, restrictions, security measures, and distrust. We are seeing the development in the Netherlands of more mediation in prison between punished offenders and their victims. But also more mediation in conflicts between prisoners and the prison staff, which is very important. We can change, to a certain degree, the culture within prisons by using restorative practices, but the leeway is not very great. We don’t have a lot of space because the space is controlled by security considerations and by distrust between detainees and the professionals. So that is very difficult.

Another thing that is very problematic about the prison is how to communicate about it to the outside world. Let us say you want to stimulate those offenders who went to prison to try to make good, as good as possible, with their victim, with society in general, just like we would like to promote within the restorative justice philosophy. But when they succeed, the problem arises: how can we make this success clear to the general public? The public only sees a person come out of a restricted place they know is a prison. In the Netherlands, most people who have gone to prison have committed very serious acts, not any minor delinquency. How can people who have not participated in that process – the family of the victim or the newspaper readers – how do they know which person comes out in what state of mind, with what quality of morals?

All the old stereotypes, they are not really challenged. If you ask a layperson, ‘Who is a criminal?’ they will often answer, ‘It is a person who comes out of prison.’ And finding a job is still very difficult for people who come out of a prison. You need a government document – a document of good behaviour – and if you have committed certain types of crimes, many types of crimes, in fact, you will not get that document of good behaviour. And if you don’t get this paper, you won’t find a job anywhere. So coming out of prison is a preparation for going back to prison again. Even when you’ve done everything in your power as a punished offender to make good with the capacities that you have.
Dzur: That’s a challenge that restorative justice needs to take up more.

Blad: Yes, it is a very big challenge. And it is very difficult to tackle. I think the first step is to make less use of prisons. If you can avoid short-term imprisonment, avoid it. What remains then is the section of offences for which you could say, ‘Well, long imprisonments are really necessary here.’ But then, to what purpose? Almost always there is a very deep problem in the lifeworld or in the person of the offender, which will take a lot of time to deal with. You need an institution that provides treatment, that provides social work, also with the family system, also with the life system of the offender, on a much more voluntary basis if possible. It might be set up so the result of a mediation in the pre-trial phase could also imply the plan for the offender to go into an institution voluntarily. And then we would have very different institutions than the prison, of course. The prison is so deeply problematic that you should only use it as really the last resort.

A funny thing is traditionally some influential criminal lawyers have said, ‘If we really make prison the last resort institution, then there will only be terrible people there.’ Which is not to the advantage of the prisoners, from a reintegration perspective. Of course, they have a point there, but should this be a legitimation for maintaining large prison populations? I don’t think so.

But there are also a number of cases, incidents of offences, especially, for example, mass murder, for which one cannot imagine doing away with the institution of prison. It is needed. But what kind of prison?

5. Loosening the linkage between crime and punishment and opening spaces for mediation

Dzur: I want to get back to the question of whether it is good that restorative justice is happening more outside the state than inside it – or in Habermas’ terms, restorative justice as a lifeworld practice as opposed to restorative justice as a system practice. You suggest that if restorative justice flourishes in the lifeworld and takes on more conflicts, then the criminal justice workload in the system decreases. But the system still has an enormous impact on many offenders and on the stereotypes that keep bubbling up over time. How can system actors start to shift their attitudes and ways of talking about crime and justice? Is it by greater communication with lifeworld restorative justice people? What kinds of connections are possible such that restorative justice can have a greater impact on the professionals inside the system?

Blad: That’s a very indirect connection, of course, because when we speak about mediation in a criminal case, the case has already been juridified. There is already a public prosecutor involved, who refers the case to a mediation agency or a mediator. In the course of our work today in developing a model law, which we are trying to get proposed as legislation, we are meeting with many judges and many public prosecutors also who have begun to understand that they should not be fixed so much on imposing punishment but should be oriented towards produc-
ing the most sensible solution to what happened. The traditional dogmatic link between crime and punishment is beginning to weaken in the system.

Of course, this weakening was already a long way developed by the 1970s. After World War II, we saw an enormous number of new sanctions in which the punitive character was vague – for example, an alternative punishment in which you have to go to a course to learn something. You could say, ‘How can this be a punishment to learn something?’ But many judges and prosecutors began to see that it is in the public interest to look for resolutions, reactions, dispositions that are not expressly punitive but rather constructive for the future. Restorative justice literature, which they can read so easily today because there is so much around, has also been influential.

Very important in the Netherlands is the fact that many judges had their first experiences with mediation in the Alternative Dispute Resolution movement. ADR is mediation in civil cases, of course, but civil cases do not differ so much from criminal cases in many instances. We meet with many judges today who started in the civil chambers and had worked with civil mediators and saw how mediation worked and had come to understand it. Through the system of job-rotation in the judiciary, these judges are in the criminal courts now and they get cases about which they ask, ‘Why do I get this case? Why has it not been mediated? Why not put these people together? Why not give the mediator the space to come up with a solution, with a proposal and then we will make use of it?’

Many judges – not all of them but many of them – begin to understand that if you want to correct someone, you don’t really need punishment. If you want to be constructive for the future, you don’t really need punishment. Punishment becomes something of a last resort.

Dzur: Is that a core element of this new model law? That punishment is a last resort? Are terms like ‘restorative justice’ and ‘mediation’ mentioned in the model law?

Blad: There was one provision in the Code of Criminal Procedure, a very small legal provision, which was not recognised as very important. And we proposed, with a little booklet and a bill, to include in the Code of Criminal Procedure a number of provisions making sure that it is a fundamental right of each person involved in a criminal case to request a mediation and that when both parties – the victim and the suspect – request it, then it cannot be denied. This also changes the role of barristers. Barristers can now advise their clients, whether they are victims or suspects, ‘Perhaps we can request the public prosecutor to refer the case to a mediator, in order to find out whether the other party is willing to mediate.’ That is how we wrote it in the proposed law. We do not propose a right to have the case mediated: only the right to request that a mediator is appointed to examine the possibility of a mediation between the victim and the offender involved in the case. We hope that barristers become convinced that in many cases mediation might be more constructive and promising for their client than engaging in a fully dressed-up criminal trial. These procedural arrangements...
are necessary to make mediation a more important sort of disposition in the administration of criminal justice.

Now we are working on proposals for changing the Criminal Code and we want to influence the textbook definition of punishment. We want to loosen that up and liberate that from the element of pain delivery. We want to make sure that people understand if they read the Code, that punishment does not mean pain delivery, but means a rejection and denunciation of the behaviour in question, which can be reinforced by several means. The choice of these means should be as constructive as possible.

I have the Canadian laws as one of the examples that also list the aims of punishment and put the more constructive aims at the top of the list and the more destructive aims at the bottom. I myself would like to see the idea of deterrence disappear *tout court*. I don’t think deterrence is a real effect and that the striving for deterrence is very destructive.

6. Politics, policy, and professionals

*Dzur:* And you are finding some support for these ideas in the legal profession?

*Blad:* Mixed. Very mixed. There are, of course, a lot of legal professionals in the criminal law field who are very traditional, very dogmatic.

*Dzur:* How do you speak to more conventional legal professionals? These are smart people, after all, and they’re not monsters. If you are sitting across the table from a traditionalist and you want to have a conversation about restorative justice, how do you get that going? How do you try to communicate your ideas?

*Blad:* In my own Law Faculty, I was a bit of a strange duck, as they say. And people knew that already. I discussed restorative justice and mediation with my colleagues when it was necessary and relevant to do so. Many times, I was confronted with the response that the criminal law had to be followed and that it was not offering much space for mediation. The loyalty of criminal lawyers lies mainly in serving the law as it is. But I found it much more important to have discussions with my students. They are the new generation, who have more flexibility in their thinking – I always hope!

*Dzur:* I’m curious if you could find some common ground with conventional legal thinkers perhaps not on the normative issues but on pragmatic issues such as cost-effectiveness?

*Blad:* Yes, but that is, in the Netherlands, not so much a point as it is, for instance, in America. ‘It costs tax money’ is never an argument in the Netherlands! We are very happy with our tax system and, in general, with our collective provisions, our collective institutions of care, which are facilities with high standards. It is true, though, that the cost-effectiveness numbers from the UK, for example, show that restorative justice is much more cost effective than the criminal justice system.
Daar: Setting aside the economic cost of punishment, you could still make the argument with the traditionalist that punishment has other costs and that it fails, in various ways, to achieve its own ends. Do those arguments work?

Blad: That depends to a large degree on if you are a career lawyer. If you are a career professional in the criminal justice system, you are listening especially to what comes from the higher levels of the system and especially the political levels. Many lawyers and professionals perhaps do think, ‘John, you have a point there.’ But they will never say it because their instructions are to do otherwise or they think they should do otherwise because they want to make a career.

This relates also to the matter of victim support in the Netherlands, which is of a very high level of quality because it has a close link to several political parties. They have victim policies, which keep victims more or less in the role of victims. They work with volunteers who say, ‘Well, if you propose a mediation, my victim is not up to that. My victim is not ready for that.’ They first want to have the victim as victim and they do not recognise or see that it might be possible to have an early mediation, just to step out of the role of the victim.

Daar: Why do they see victims in that way?

Blad: Here, we can surmise that the volunteers who assist the victims share many of the stereotypes about offenders and fear of (re-)victimisation. But there is also a link with the official national victim policies which were heavily influenced by the Christian Democratic Party in the Netherlands: ministers of this party held the Department of Justice in the crucial years between 1977-1994 and 2002-2010, when the Netherlands had to find ways to implement European framework decisions and guidelines with regard to the standing of victims in the criminal procedure. These conservative ministers did two things. First, they promoted victim support as a service to enhance the quality of the criminal justice system. And, second, at the other end, they supported toughness on criminals and toughness on crime. They have heavily invested in this agenda of crime control and have used the fear of crime as a basis for their political legitimacy. This goes very far indeed. One of the directors of victim support in the Netherlands was a member of the same Christian Democratic Party and was very loyal to his party’s politics. When I visited him to convince him of the necessity to develop cooperation between victim support and the restorative movement, I completely failed in that endeavour. This so-called NGO Victim Support Netherlands is subsidised by the Department of Justice to promote victim policies, but they also have tried to keep restorative justice out. They always say, ‘Victim policies are for the victim, but restorative justice is much more oriented towards providing benefits for the offender. And we don’t want benefits for the offender. We want benefits for the victim.’

They could not be too negative about restorative justice because of two important documents issued by the European Council, which supported restorative justice to a large extent. The first of these documents (the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings) was much more positive about restorative justice than the second document...
(the EU Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime, 2012), in which the fear of re-victimisation and the necessity to try to prevent that was much more prominent. In these decisions, you can see a weakening of the support for restorative justice by the same sort of political influences saying that the victim perhaps runs risks when he meets the offender in a mediation scheme. Victims and suspects were played out against each other. In the Netherlands, it has taken a long time to develop trust in the mediation schemes because of the political discourse of the political middle – the Christian Democrats – but also the Liberals, for a large part, and the Socialists in this era of crime control culture. It mirrors exactly what David Garland has described in his *Culture of Control* (Garland, 2001). What he described for the UK is also valid in the Netherlands.

7. Towards an international restorative justice organisation

*Dzur:* This connects to your 2015 editorial for *Restorative Justice: An International Journal* in which you argue that restorative justice advocates need to organise to have greater influence on public policy. It is an interesting full circle because you criticised Hulsman for abolitionism’s ineffectiveness in the political realm and now you’re criticising restorative justice on similar grounds. But you are doing this in a constructive way: you think that restorative justice advocates may be able to organise together and communicate more effectively with political figures. I’d like to hear more about how you think this might be done.

*Blad:* The proposals for changing the Criminal Code and the Criminal Procedure Code we have been working on are developed with the help of the foundation RJN, a voluntary organisation of people interested in restorative justice and who are busy promoting it and studying it. The foundation is run by a couple of academics who call themselves social entrepreneurs. They build up social projects and they also found a sponsor to support our work. They encourage a very inclusive process. As we develop the proposal for changing the law, we meet with many professionals in the system. We had several days of seminars and symposia together with judges, public prosecutors, and barristers to talk about problems in the criminal justice system and how restorative justice could be one of the constructive ways to get out of those existing problems.

For instance, one of the factors that every professional in the criminal justice field recognises is the problem of recidivism. Everyone knows that recidivism is very high after a criminal punishment and often the type of offending escalates, becomes worse. So, many professionals in the system are open to the changes that we proposed. But it is also important that we have had a dialogue: we have discussed together what they see as possible and what they do not see as possible. And what they do not see as possible, we leave out. For example, we had in this proposal that we developed an element that the judge should be able to refer the case to the public prosecutor if the judge thinks that the public prosecutor should promote mediation. But the public prosecutors are fully against that because it
means more work for them. They said, ‘No, we don’t want that.’ So we did not include this. We have only included elements that can count on a lot of support.

We have a new parliament now and perhaps we do not have enough support to really change the law in the way we want. It will be a very long process, but I am convinced that it should be an inclusive and democratic process in which we also talk with judges and public prosecutors. These people are not their stereotypes. We should always avoid thinking, ‘Well he’s a public prosecutor so he will be a crime fighter.’ Some of them are. But you have to find out what type of public prosecutor they are by talking with them, by trying to convince them of your points, of your view of the problems that exist. We should try to work in the common interest. It takes a long time, but it also provides greater political support for what you propose. A lot of judges are for our proposals and a lot of public prosecutors also. And if politicians know that, it is very important.

In the beginning, we had only one of the parties, which was not in the government, supporting us. And now, this party is in the government and another party has joined the support. So support is growing also within the political factions we have.

Dzur: What does that mean to support you, exactly?

Blad: It means they are ready and willing to do their thing, as legislators, to translate our proposals into the positive criminal law.

Dzur: I had read your editorial as encouraging an international movement. We’ve been talking today about your national efforts in the Netherlands. Are you thinking that such efforts need to happen country by country and then reformers would meet in a more international setting with those from other countries to talk about what they have done and share practical knowledge?

Blad: That could be a model, yes. I could also imagine that we establish an international restorative convention, an organisation that takes giving policy advice as one of their main objectives and would respond to developments outside the world of restorative justice. It always strikes me that in the restorative justice movement, we are so willing to be constructive that we sometimes avoid criticism that is really necessary – criticism of the criminal justice system and the policies that are entertained. For instance, there is a United Nations report about the war on drugs, which concludes that the war on drugs has totally failed and is very destructive. And it sums up the damages done by the war on drugs. I think we should respond to that and say, ‘We support what the United Nations has reported about the war on drugs. These policies are damaging. They are causing so many more offences and so many more victimisations than they prevent. So they should be abolished.’ That’s a policy standpoint that has nothing to do with restorative justice, it seems, but it has to do with the same endeavour to live up to a very basic ethical motto: first, do no harm.

Dzur: Are there examples of this kind of organisation that you have in mind that could provide some sort of guidance?
Blad: On the European level, there was the old organisation, the Internationale Kriminalistische Verein (IKV) (later followed by the Union Internationale de Droit Pénale/Association of Penal Law), which was the organisation between academics in the classical criminal law and in the modern criminal law. They discussed a lot about the activity and efficacy of criminal law interventions – what kind of punishments, what kind of law and so on. They tried to agree with each other and in some degree they did agree. The development of measures in our criminal law – security measures – was one of the results of the debate. They never fully agreed with each other, but the debate was very influential in changing the reality of the criminal justice system. In the Netherlands, a bifurcated legal system developed on the foundational idea that not all offenders can be held (fully) responsible for their actions. Our Terbeschikkingstelling (TBS) system, designed to offer predominantly therapy instead of punishment (it is excluded when there is no accountability in the offender), is many times more effective than our prison-system is. I think that could be an instructive example for us to open up the number of issues and the kind of issues on which we speak out.

We could also find perhaps more support among activists fighting against elements of the criminal justice system like the prisons. There are many groups of activists against the prison. Why not contact with them and try to develop an agenda that articulates what is so problematic about the prison and why we should change it? I think this is very important to avoid the risk that we become restricted to mainly or only providing victim–offender mediation. That is too small a field to really have a decisive influence on the system.

I hope to contribute to the development of another sort of positive law, which is based on an anthropology of today. Our criminal law system, with its dogmatic link between crime and punishment, is a result of an anthropology of the eighteenth century, which is very rudimentary and very crude and which is not very effective because it does not take account of the new anthropological knowledge that we have – with our understanding of social psychology and psychology, the elements of identity have shifted. I think we need to broaden out the scope of the issues we talk about as well as the context in which we work as a restorative justice movement.

8. Contributions of restorative justice scholarship to the public sphere

Dzur: I want to conclude our conversation with a question about your experience as editor of the Dutch-Flemish journal on restorative justice, Tijdschrift voor Herstelrecht. Who are the main readers and what sorts of impact do you think it has had?

Blad: Well, the readership changed a lot. We began with a social scientific publishing company, with a very small journal. It was physically very small, but it also had a small number of readers who were mostly youth aid practitioners. In the youth care system, the ideas of the restorative justice movement were already being represented by a number of activists who helped me establish the journal. I
did not do these things alone. And we had, perhaps, 150 readers when we began in 2000.

In 2005, we went to another publishing company, which had a greater readership and which also reached lawyers. At that time, we felt it was necessary to reach more lawyers. We now have a mixed public of readers: mostly practitioners in the mediation field, the youth care field, the probation field, and also in the police; a minor segment, perhaps 30% of our readers, is made up of academic lawyers. We are now in every university library in the Netherlands. In readership, we are just as big as the long established legal journals for criminal lawyers. I’m quite happy with that. It is perhaps the most we could achieve.

The most important effect has been that when we established a journal, people began to write. We had things written about restorative justice that could then be included in textbooks for trainings. We could report on research independently and these reports could be used. So we produced, in fact, discourses that could be used in other contexts and which could be instructive for people who did not know the journal at all but could read what we published there.

I think it is just a means to have a journal. The journal itself is not very important, but the fact that people are writing for it and can bring their written products into other contexts and to make them more known. Of course it is not only this journal, but the journal has helped to promote the whole idea of restorative justice in the Netherlands, which was very unknown in 2000.

It was also unknown to me! I finished my dissertation in 1996 and I had a concluding section in which I criticised Louk Hulsman and developed my own ideas. And then after that I thought, 'Well, what am I going to do now? I criticised the criminal justice system and I criticised abolitionism. We cannot abolish it, but should I now become a fan of criminal justice or what?!' So then I started to look around again and I discovered there was something called restorative justice that was very interesting. So between 1996 and 2000, I began to read and I met Lode Walgrave – I visited him in Leuven – and began to acquaint myself with restorative justice. I thought, 'This is the discourse that I need in order to continue my own path as an academic.'

It was just an adventure. And when we brought out our first issue in 2000, the editorial board and the publisher all thought, perhaps, we could manage four or five years but then it will be ended. But it is now seventeen years later and we still exist and we are becoming more read and more known. I’m happy with that.

References

Albert Dzur

