

events that legally permit criminalisation. Among them, young men from the most disadvantaged sections of the population are heavily over-represented.

Within the concept of criminality a wide range of situations are linked together. Most of these, however, have separate properties and no common denominator: violence within the family; violence in an anonymous context in the streets; breaking into private dwellings; completely divergent ways of receiving goods illegally; different types of conduct in traffic; pollution of the environment; and some forms of political activities. Neither in the motivation of those who are involved in such events, nor in the nature of the consequences, nor in the possibilities of dealing with them (be it in a preventive sense, or in the sense of the control of the conflict) can any common structure be discovered. All that these events have in common is that the criminal justice system is authorised to take action against them. Some of these events cause considerable suffering to those directly involved, quite often affecting both perpetrator and victim. Consider, for example, traffic accidents, and violence within the family. The vast majority of the events which are dealt with by criminal justice however, would not score particularly high on an imaginary scale of personal hardship. Matrimonial difficulties, difficulties between parents and children, serious difficulties at work and housing problems will, as a rule, be experienced as more serious both in degree and duration. If we compare criminal events with other events, there is — on the level of those directly involved — nothing intrinsic which distinguishes those “criminal events” from other difficulties or unpleasant situations. Nor, as a rule, are they singled out by those directly involved to be dealt with in any way which differs radically from the way other events are dealt with. It is therefore not surprising that a considerable proportion of the events which would be defined as “serious crimes” within the context of the criminal justice system, remain completely outside that system. They are settled within the social context in which they take place (the family, the trade union, the associations, the neighbourhood) in a similar way as other “non-criminal” conflicts are settled. All this means that there is no *ontological reality* of crime.²

² L. Hulsman and J. Bernat de Célis, *Peines Perdues* (Paris, 1982); L. Hulsman, “Critical Criminology and the Concept of Crime” (1986) 10 *Contemporary Crisis* 63-80.

Thus, from an abolitionist perspective, I experience some difficulty with the way in which the organising committee has phrased certain parts of the program. A terminology in which we speak about “alternative social responses to crime” and “non-punitive responses to crime” seems to convey that there is an *ontological reality of crime independent of the defining activities of criminal justice*. In an abolitionist approach it is specifically that idea that is, in the first place, challenged.

Criminalisation and criminal justice

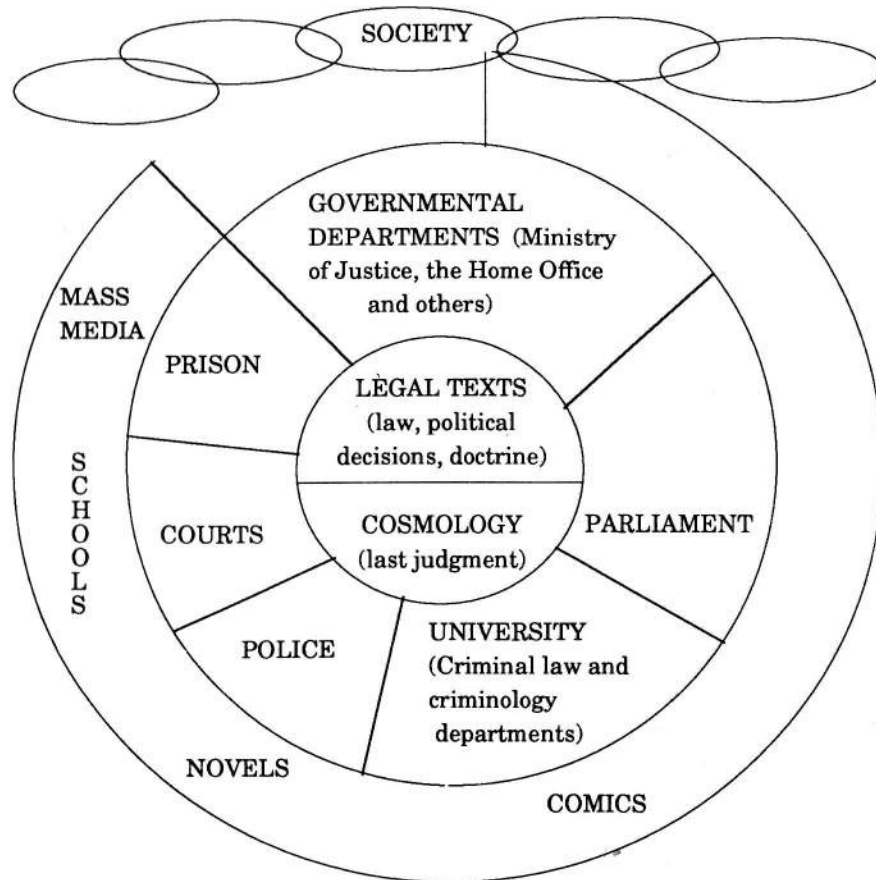
What is criminal justice? For us, criminal justice is a specific form of cooperation between a certain number of agencies such as the police, the courts (in the broadest sense, i.e., not just the judges, but also the public prosecutor, solicitors, etc.), the probation and the prison service, law and criminology departments in the academic world, the Minister of Justice and Parliament. We can make our definitions of the criminal justice system visual by means of the figure on the next page. None of these organisations are in themselves married to criminal justice; they have (even if they are so married to an extent) a life of their own. Most of the activities of the police for example, do not take place within the framework of that special form of cooperation. Similarly, most of the activities of the courts do not take place within a criminal justice framework. Often they act in the frame of civil or administrative justice.

What then is that specific form of cooperation or — in other words — of *cultural and social organization*³ which produces criminalisation? I will be very brief and only highlight a certain number of aspects which seem to me important for our immediate topic.

The first specific thing of *the cultural organization* is that criminal justice is the act of constructing (or re-constructing) reality in a very specific way. It produces a construction of reality by focusing on an incident, narrowly defined in time and place and it freezes the action there and looks in respect to that incident to a person, an individual, to whom instrumentality (causality) and blame can be attributed. The result is that the individual then becomes separated out. He is in certain important ways isolated in respect of that incident from his environment, his friends, his family, the material substratum of his

³ J. Gusfield, *The Culture of Public Problems. Drinking and Driving and the Symbolic Order* (Chicago/London, 1981).

world. He is also separated from those people who feel victimized in a situation which may be attributed to his action. Those "victims" are separated in a comparable way. So, the cultural organization of reference artificially sets certain individuals apart from their distinctive environment and it separates people who feel victimized from people who are considered in this specific setting as "perpetrators". In this sense the cultural organization of criminal justice creates "fictitious individuals", and a "fictitious" interaction between them.



Another feature of the cultural organization of criminal justice is its focus on "blame allocation". There is a strong tendency within criminal justice to assemble events and behaviour dealt with and sanctions applied in a consistent and coherent pattern around a hierarchy of "gravity". This hierarchy of gravity is mainly built on experience of a limited range of events *within* the actual (or considered) competence of the system. In this pyramid practically no comparison is made with events and behaviour outside that range. Grading takes place to a large extent in a separate universe determined by the structure of criminal justice itself. Consistency of the scale *within* the system necessarily leads to inconsistencies with the scales of those directly concerned *outside* the system, in so far as values and perceptions in society are not uniform. The "program" for blame allocation typical for criminal justice is a true copy of the doctrine of "the last judgment" and "purgatory" developed in certain varieties of western Christian theology. It is marked also by the features of "centrality" and "totalitarianism", specific for those doctrines. Naturally, those origins — this "old" rationality — is hidden behind new words: "God" is replaced by the "Law" and the "consensus of the people".

I come now to the special features of the *social organization* of criminal justice. I will mention two: the first feature of the social organization of criminal justice is the very *weak position* which "victims" — and by victims I mean the person or person who feel troubled by an event or a sequence of events — have in its frame of reference.

We would argue that the activities of professions and bureaucracies can be only useful to clients when they are guided by an active participation of all the people in whose behalf they are working. In a criminal justice frame of reference, there is — in principle — no room for such an active participation and guidance. When the police is working within a criminal justice frame they tend not to be directed any more by the wishes and desires of the complainant, but by the requirements of the legal procedure which they are preparing. The complainant — the person who asked for action from the police — becomes instead of a guide for their activities a "witness". A witness is mainly a "tool" to bring legal proceedings to a successful end. In a comparable way the frame of court proceedings precludes — or makes it anyway specially difficult — that the victim expresses freely his view on the situation or enters in an interaction with the person who is standing as a supposed offender before the court. Also in that situation he is firstly a "witness", even in those legal systems in which a special position has been created

for victims. The evaluation studies which have up till now been done into the result of changes in legal procedures which tend to reinforce the position of victims *within a criminal justice frame* have up till now shown a very disappointing result.⁴

A second feature of the social organization of criminal justice is its extreme division of labour oriented on a centralized criminal law (written law or common law). This makes it very difficult for the functionaries to gear their activities to the problems as experienced by those directly involved. And it makes it extremely difficult for them to assume personal responsibility for their activities in this respect. *One of the main characteristics of criminal justice is that it preaches in its discourse "personal responsibility" for "offenders" and that it suppresses "personal responsibility" for the persons which work in its frame of reference.*

In an abolitionist approach "criminalisation" (definitions of events and responses to events thus defined above) tend to be rejected as untrue, unjust and ineffective under a preventive, a controlling and a remedial perspective. This does not imply that all the activities of the agencies — even when they are defined formally as criminal justice activities — are rejected. Abolition of criminalisation may take place under the official label of criminal justice. It is not the official name but the real social and cultural organisation of the activities which determines if an activity is to be considered as "criminalisation".

Crime policy

Debates about crime policy (and also activities provoked by decisions on crime policy) may be classified into three different categories:

1. Problematic situations as they are supposed to or claimed to exist in society.

This category consists of those (supposed) undesirable events which are the object of a claim that criminalisation could help control them or deal with them (robbery, drugtrafficking, speeding, beating of women, fiscal fraud, pollution of the environment, etc.)

⁴ J. van Dijk, "State Assistance to the Victim of Crime in Seeking Compensation", in *Towards a Victim Policy* (Helsinki, Heuni Publication Series 2, 1984).

2. Problems as they are supposed to or claimed to be created by criminal justice in society.

This category consists of the (supposed) "social costs" of criminal justice, e.g., the creation of suffering and stigmatisation, the reinforcement of existing inequalities, the alienation experienced by those directly involved in events which are subsequently criminalised and the fear-of-crime issue.

3. Internal problems which affect the organisations "belonging" to the criminal justice (police, courts, prison services, probation, legislator) and the personnel working in those organisations.

We can distinguish internal problems within the organisation (e.g., lack of manpower or training within the police to fulfil certain tasks) and internal problems *between* organisations (e.g., a discrepancy between the sentencing policy of the judiciary and the places available in the prison service).

Very often debates around these three categories of problems are pursued and are decided upon in a fragmented way. Thus the issue of the role of criminal justice with respect to sexual violence against women may be dealt with without taking into account claims relating to the second category, as, for example, the reinforcement of social inequality resulting from criminal justice intervention. Very often activists in a particular field (feminists, militants for the environment or safety in the streets) are not aware of the claims relating to the second category. They are hardly to blame since the problems included in this category seldom appear in a coherent way in the official discourse on criminal justice. The possibilities of criminal justice dealing with problematic situations are generally overestimated in the official discourse, and its "social costs" underestimated.⁵ The reporting in the mass-media often reinforces this distortion.

Fragmented claim making in the first category is often answered by a fragmented study of the object of the claim. When this study takes place in an official governmental context or in an academic context dominated by consensus criminology, claims belonging to the third category (internal problems of criminal justice) will possibly be taken into account. It is however improbable that claims belonging to the

⁵ European Committee on Crime Problems, *Report on Decriminalisation* (1980) 22-24.

second category (general aspects of social costs) will be adequately dealt with.

Claims in the second category are generally in a very weak position both in the preparation towards decision making as well as in the actual decision making. Only when the three problem areas are taken into account *together* in the decision making can we consider criminal justice legitimised (as accepted by the official world).

'Crime policy' is often understood as a "policy with respect to crime and criminals". The existence of "crime and criminals" is generally considered as a "given", as a natural social fact, not a process of (selective) definition, the responsibility and the object of policy. It would be a fundamental error in our debate to define "crime policy" in such a limited way. One of the necessary conditions for a useful discussion on crime policy is to problematise the notions of "crime and criminals". The degree to which "events and situations" should be subjected to criminalisation will be one of the main issues in our debate.

"Crime policy" is, on the one hand, part of a wider social policy, but, on the other hand, must retain a certain autonomy with respect to this wider field. *A useful approach in this respect* — taking into account the necessity of looking at the three categories of problems mentioned earlier and their interrelationship in the process of criminalisation — *is to consider "crime policy" as a "policy with respect to criminal justice systems"*.

Such a policy with respect to "criminal justice systems" would be multi-focused: (1) it would address itself to the development of the organisations which form the material base of the system (police, courts, prisons etc.) and the systems of reference they use; (2) it would address itself to the question as to which type of events could be dealt with by the system, under which conditions and in which manner (under this category the "gate-keeping" function of crime policy would require particular attention); (3) it would voice recommendations about social reorganisation in other areas of society with respect to problematic situations which have become the object of a crime policy debate.⁶

⁶ For a concrete application of such an approach to crime policy, see, the 15th Criminological Research Conference of the Council of Europe (1984), especially the adopted recommendations and conclusions of the conference. Council of Europe, "Sexual Behaviour and Attitudes and Their Implications for Criminal Law" (Strasbourg, 1984).

What should be controlled and remedied? How do we point out what we want to deal with when we cannot use the word "crime" any more? Should we perhaps control "trouble" or "problematic situations"? When does trouble occur? Pfohl defines it as follows:

- Trouble can be defined as that situation which occurs when
- (1) people are not ritualistically linked to a relatively similar sense of how life is and should be structured, and
 - (2) the lack of such links result in conflict over ways of thinking, feeling and acting.⁷

Pfohl restricts himself in this definition to a "trouble" whose source is in social conflict. We can extend his approach, however, to the way our lives relate to "nature". Trouble also occurs when "nature" reacts in a different way than we expect it to "behave".

Pfohl distinguishes two types of rituals which are essential to minimize trouble. The first, when successfully enacted, prevents trouble. These are *rituals of primary ordering*. The second deals with the presence of trouble. They are *rituals of reordering*. When successful they curtail or contain trouble.

Trouble (or problematic situations) are thus defined as negative events which deviate from the order in which we see and feel our lives rooted.

Creative social cohesion often forms itself around "trouble", around "problematic events", but a high density of those events may become destructive for creative cohesion and social interaction. Under those conditions an activity which diminishes the *frequency* of those events may be useful. It also seems useful to try to diminish the degree of "harm" which is involved in certain events. It may, under certain conditions, be considered a positive event when people physically fight each other, but the fact that they fight each other with knives or guns instead of their fists, can lead to harmful consequences which are not conducive to a better understanding. This harm, once inflicted, must be prevented from being aggravated either by the type of intervention used or by the lack of intervention.

Dealing with "trouble" or "problematic situations" insofar as they are "criminalisable" (in other words: insofar as they can become "crime"

⁷ S. J. Pfohl, "Labelling Criminals", in H. D. Ross, ed., *Law and Deviance* (Beverly Hills, Sage, 1981).

when they are looked upon from the point of view of criminal law discipline and are constructed in the special cultural and social organization of criminal justice) is not different from dealing with other "trouble"; as we have seen, there is no ontological reality of crime and crime has no properties which separate it from other troublesome events. Nevertheless, dealing with these situations, in this case has an additional dimension. In the manner in which we defined criminal justice earlier in this paper, "criminalisation" tends to give an unrealistic construction of what happened. It therefore also tends to give an unrealistic answer, and to exclude the community from dealing with those events in a creative way and learning from them. It means that when dealing with troublesome criminalisable events, we should not only try to influence their *frequency* and the *degree of harm* involved, but also to prevent them from triggering processes of criminalisation which will cause additional harm (second problem category).

Control and remedial activities may be pursued in many contexts. The Report issued by the Council of Europe on decriminalisation⁸ distinguishes *four dimensions*:

- 1) Change in the *symbolic environment of the events* — an increase in the tolerance for different life styles in communities.
- 2) Changes in the forms of *social control* — an approach in which an event is attributed to an individual and the answer contains normative elements and is addressed to individuals.

With respect to "social control" it distinguishes different *styles* of social control, each with its own language and logic, and its own way of defining an event and reacting to it: penal, compensatory, therapeutic, educational and conciliatory.

We can also distinguish between more positive and more negative ways of exercising social control. The different emphasis may be expressed in the following list of keywords:

Positive	Negative
Providing ways and means	Setting up barriers
Solving, restoring, compensating	
Rewarding	Punishing
Helping	Repressing
Guiding, informing	Preventing
Appeal to duty and solidarity	Splitting up and dividing

⁸ Council of Europe, "Report on Decriminalisation" (Strasbourg, 1980).

The following is another division of the ways in which social control may "work":

	External		Internal
	Formal	Informal	
Vertical	law (also civil law) surveillance punishment reward	morality supervision	fear, guilt, conscience, stigmatisation
Horizontal	comrade court	mutual aid, guidance by peers	feelings of solidarity seclusion, ostracism and shame

We accept as a rough and ready rule that more "positive" ways of social control are preferable to negative ones.

3) *Technoprevention* — changes in the physical environment in which events take place.

4) *Social (re)organisation* — an approach to prevent problematic situations and sterile and divisive ways of dealing with them which can take place at various levels:

a) at the *deepest level* there are forms of social reorganisation which influence general living conditions and help to create an integrated society in which people have a chance to grow up in conditions which favour their passage to adulthood and their search for a meaningful and respected place in society. Such conditions diminish the number of events which could be "objectively" regarded as "undesirable"; they make it easier for people on their own to cope sensibly with undesirable events. Social (re)organisation of this type is desirable and put into practice for reasons much more fundamental than those specifically related to our topic. We shall leave it aside, therefore, although it has a strong impact on the number of events likely to be treated as crime.

b) a *second level* of social reorganisation is concerned much more specifically with problems now defined as crime. The Report on decriminalisation gives several examples, such as a reorganisation of the system of cheques, and deals with topics such as theft in factories and shoplifting.

c) a *third level* of social reorganisation may be defined as the organisation of the institutions and mechanisms of social control. The Report recommended, as desirable social reorganisation of this type, new combinations between phases of the penal process (the police phase) and phases of the civil process. Other measures could be inspired by the procedures followed for shipping or aircraft accidents. A broader analysis of a specific category of events (and the way communities together with the system world deal with it) can contribute to such events.

Preventive and remedial activities will often be pursued in a combination of the contexts mentioned above.

II. *Why an Alternative Crime Policy: The Negative Sides of Criminal Justice and Criminalisation*

The wish to have an *alternative* crime policy finds its source in the feeling of dissatisfaction with the present crime policy: dissatisfaction with its basic assumptions but also dissatisfaction with the concrete consequences of criminal justice functioning. We will now deal with this last aspect of dissatisfaction. Those feelings of dissatisfaction are also important for giving us the direction in which to look for alternatives. So, to an important degree, what we have defined earlier as our problem category "two" (problems as they are supposed to or claimed to be created by criminal justice in society) is now the direction for our search of alternatives.

Naturally, it is not possible in the framework of this paper to give a comprehensive overview of the problems which, in our opinion, criminal justice creates in society. Nevertheless, a rough sketch of the main dimensions of this problem, as we see it, should be outlined here.

Everyone knows (and, because we shall not say much about it, this should not be taken as a sign of any dissent on our part) about the negative consequences which criminalisation, and in particular sanctions such as imprisonment, have for offenders and the groups they mainly belong to. That much is well known.

What is much less widely appreciated and is increasingly being put forward as a major criticism of criminal justice systems, is the difficult position in which it puts "victims" (people who feel themselves damaged or menaced by criminalisable events).

"Criminalisation", as we have seen, puts concrete victims into a position in which they lose control over the situation defined as criminal, and this adds considerably to the problems they experience. Nils Christie puts forward the view that conflicts can be viewed as property and that criminal justice and other professional systems may be seen as "stealing" conflicts from the people to whom they properly belong.⁹

There is also another point which concerns the negative images of social life which criminal justice creates in *the population at large*. We know from a number of studies how fear of crime can be created as a result of certain links between criminal justice and the mass media, and how this fear deeply affects the lives of certain groups in the population who can become isolated because of it.

A further negative correlative of criminalisation to which I will draw attention is the tendency for the framework of criminal justice to considerably limit the creativity of *those people working within these systems*. As the infrastructure of criminal justice develops, people working within the system find it more and more difficult to think imaginatively about the problematic situations seen by others in the outside world, because they are increasingly engaged in finding solutions to the internal concrete problems they encounter.

To develop this latter point, I refer to Leslie Wilkins, who summed up matters as follows:

It now seems well established that whatever is done to those offenders who are identified and processed by the system it is most unlikely to make more than the very slightest impact upon the amount of crime in any society. We now realise that in criminal justice we have two distinct problems. The first problem: what to do with those offenders who are brought into the decision network. The second problem: what to do about reducing crime — two quite distinct problems. We can no longer simplify the problem of crime to the problem of the criminal.¹⁰

He talks elsewhere in the same paper of the primary task of criminal justice being that of "blame allocation" — what we do with those

⁹ Nils Christie, "Conflicts as Property" (1977) 17 Br. J. of Criminology 1-19.

¹⁰ Wilkins, "Rationality and Morality in Criminal Justice", in *Effective Rational and Humane Criminal Justice* (Helsinki, Heuni Publication Series 3, 1984).

offenders who are brought into the system. Later in the paper he says: "Blame allocation does not provide data useful for control or remedial activity with respect of these types of events". Furthermore, he underlines the fact that, when you are looking at problematic situations which can be criminalised and are therefore criminalisable events, it is necessary to take not only a micro-view, as is presently done in the process of blame allocation, but also a broader, macro-view of the events in question.

As a conclusion we can summarise our criticisms of the criminal justice system as follows: Our deepest reproach to criminal justice is that it tends to give an unrealistic construction of what happened, tends therefore also to give an unrealistic answer and therefore tends to exclude the formal organisations such as the police and courts from dealing in a creative way with those events and learning from them.

"Criminalisation" is *unjust* insofar as by its very structure it denies the existing varieties in social life and the different "meanings" thus generated, and because it is unable to perceive them and cope with them. It is also *unjust* — on its own terms — because it cannot deal equally with perpetrators and victims: most of them do not even appear inside criminal justice (dark figure); as a rule they are dealt with elsewhere in a way which is not even known inside criminal justice.

III. Alternatives to Criminal Justice

A. Some caveats

Before we give some examples of different "alternatives" we must stress that discussions about alternatives to criminal justice often take place in a context in which the presuppositions of criminal justice, as we criticized them earlier in this paper, are not really challenged. In most of those discussions the existence of crime and criminals is considered a given natural fact, and not the outcome of selective defining processes which are also open to social choice. Therefore, we would like to formulate here a certain number of "caveats", against these often made errors:

(1) When we are talking about alternatives to criminal justice, we are *not* talking about alternative sanctions, but about alternatives to the processes of criminal justice. Those alternatives may be of a predomi-

nantly legal, or of a predominantly non-legal, nature.

(2) Very often, alternatives to criminal justice are seen as an alternative *answer* to criminal behaviour. When we take that view, we do not take into account that every legal approach is firstly a way of constructing (or, if you want, re-constructing) an event. Looking for alternatives to criminal justice, is in the first place looking for *alternative definitions* of events which can trigger criminalisation processes. The alternative *answer* given in an alternative to criminal justice is therefore *an answer to a situation which has a different "shape" and different "dynamics" from the events as they appear in a criminal justice context.*

(3) In many discussions on alternatives to criminal justice, we are confronted with the misunderstanding that what is called the "prevention of crime" is a good and desirable thing. It is, in my opinion, not necessarily so. And this for two reasons. In the *first* place, what is called in a certain phase of legal development "crime", is not necessarily a "bad thing". It may be neutral or indifferent. It may even be desirable or heroic. Criminal law and the practice of criminal justice systems cannot be used as an ultimately authoritative standard to judge the "right" or "wrong" of behaviour. In the *second* place, even when "crime" refers to something which is according to all those concerned rightly defined as "trouble", it may, for societal and human development, be harmful to try to eradicate it.

(4) The last subject we want to draw attention to as being important for a realistic discussion on "alternatives" is the factor known as the "dark figure" of crime. It is widely known that this phenomenon arises, first of all, because certain events which could give rise to criminalisation are not reported to the police by those directly involved (or in the case of the so-called "victimless-crimes" are not discovered or reported by the police) and then, secondly, because even where the events are known to the police, they are dealt with in ways which do not result in prosecution. Many "crimes" are not cleared up at all and others, where persons are suspected, do not result in action through the criminal justice system.

When you examine closely victim studies, self-report studies and other data in a country like Holland you find that this "dark figure" is very high. In the field of traditional crimes — and we are not talking about unimportant events which the average policeman or prosecutor would never think to criminalise, but of events "rightly" drawn to the attention of the prosecutor as *prima facie* examples of crime, such as property offences (theft and fraud), offences involving physical violence

and sexual offences — far less than 1% of all the events which could be criminalised are, in fact, effectively criminalised. Even if the figure of less than 1% would be different in another national context (less than 10% or 30%), one thing remains for sure, *namely, that alternatives to criminal justice are the rule rather than the exception.*

Now the strange thing is that we do not know much about the other 99%, (or 90% or 70%), of criminalisable events which are not criminalised. One consequence of this is that these events do not feature in public debate about criminal justice, since the latter is based on public, rather than private knowledge. Actually, we all have quite a lot of knowledge — private knowledge — about things which could be criminalised and are not, but we have no public knowledge about these matters and no agreed framework of language within which they could be discussed. For this reason, they are not “on the table” for debate.

B. *Unveiling the world of alternatives*

Nearly all events problematic to someone (a person, an organisation, a movement) may be approached in a legal process in one way or another (criminal justice, civil justice or administrative justice), but very few of them are, as the dark numbers in criminal justice as well as other forms of justice show. Most of the alternatives to criminal justice are of a predominantly non-legal nature. These alternatives are generally not “inventions” of people involved in crime policy or legal policy in general, but applied daily by those involved directly or indirectly in problematic events. Non-legal approaches are “statistical” and also “normatively” (in the normativity of the people involved) the rule; “legalisation” is a rare exception. This has always been so, is so now and will be so in the future. This reality is obscured when we take as a starting point the “normativity” implied in the traditional criminal justice debate. Because only there we find a normativity in which criminal justice is the rule and is often (unconsciously) supposed to be — contrary to all scientific knowledge — also a statistical fact.

I will now present three examples to throw some light on the world of the “hidden” alternatives. Not with the intention to claim that I have — or would ever be able to give — an accurate and representative description of what is going on in this world. I am firmly convinced that it is completely impossible to do so. What I am setting out to do with these three examples is to convince my audience, insofar as necessary,

that the frame of criminal justice is distorting the way in which we “imagine” criminalisable events, and to show possible ways of dealing with them, so that we will be able to change our discourse and our practices in this respect. Alternatives are not faraway utopias but are part of the daily life continuously invented by the social actors.

I will develop three examples: (1) A case study of a collective remedial action by those directly involved (it is the story of a burglary in which my family was involved); (2) Some results of an empirical research in the use of civil law by women who feel victimised by sexual violence; (3) Some results of an action research as a means to trigger and support community involvement in dealing with criminalisable problematic situations.

1. *A case study of a collective remedial action by those directly involved*¹¹

“A few years ago, we had three burglaries in our house within the space of two weeks. The first of these, at least, was one of those nasty sorts of burglary in which little is actually taken but many things are destroyed. I came home, entered the house and saw broken eggs everywhere — (and no birds in the house!) — and then I noticed that a painting and some furniture had been smashed and that there were heaps of cigars on the floor. Gradually, a certain picture of what had happened dawned upon me. In circumstances such as this, you go through the house, taking in these scenes and you get angry; at least I got very angry and felt a need to break eggs over the head of the person who had done this, and to take their things and destroy them and ask them how they liked this happening to them.

But, as a victim, I found my feelings to be more complicated than that, because as I went around I also thought: “Thank God, they have not destroyed that!” and there was some relief. They had destroyed much less than there was to destroy and had shown some signs of restraint, so later on I felt relieved, even happy, that more had not been lost. So, alongside anger there was relief and even curiosity — why did they do this, what does this mean — the eggs, the heaps of cigars, these other strange things?

¹¹ On this case see also Stijn Hogenhuis, “The Disappearance of a Victim Position”, in J. R. Blad, H. van Mastrigt, and N. Uildriks, eds., *The Criminal Justice System as a Social Problem: An Abolitionist Perspective*, *supra* n. 1.

Then, the police came to take fingerprints and they did this a second time a few days later. The policeman, who was very helpful, said that, although he was taking fingerprints, this did not necessarily mean that an arrest would be made since the prints were often of poor quality and even where this was not the case, the culprits may be youngsters whose fingerprints would not be recorded. They have to be given a chance, he suggested, and we agreed fully with this idea. All in all it was something of a ritual but it was nice to talk to the police and to ask them questions such as whether they thought that it might be young people who were responsible. Since this kind of thing does not happen frequently to houses in Dordrecht, and in view of the amount that had been damaged, could it perhaps be the work of someone with a personal grudge against us?

A few days later, my wife came home in the afternoon and heard people in the house and it was apparent that the intruders were there again. She could see people but not well enough to identify them. This time they did not do so much damage but, once again, broke a lot of eggs and took some items. The police came again and we began to feel quite well acquainted with them! Following each of these burglaries we took new precautions to prevent a recurrence but, after a few more days, we came home to discover that the intruders had been for a third time. This time, nothing had been destroyed and only a few things were missing. Strange though it may seem, we began to get used to the intrusions and to feel that we could picture the culprits in our minds. We knew that there were probably three of them and I began to wonder what I would say to them if we should meet; something which I hoped might be possible. Naturally, my wife was rather apprehensive at this prospect.

Following the third incident, I began to think that the perpetrators must be quite courageous to return to the very place in which they had been disturbed only two days previously. I also thought that it showed a strong attraction on their part to the house and a fascination for the strange objects within it. This gave us something in common since I, naturally, am fond of my home and possessions. The fact that less had been destroyed on this most recent visit perhaps meant that they were coming to love the place in a way not unlike myself. I say this, not to suggest that I did not have the angry reactions of which I spoke earlier, but rather to emphasise the highly complicated nature of the feelings one experiences in such circumstances. I have always had an interest in reflecting on the ways in

which I myself, and others, react to criminalisable events and have discovered this always to be a complicated and ambiguous process to which there are many different facets.

Since this case was evidently not different and because I believe that you should not, as I mentioned earlier, "steal" conflicts from others, I asked the police if, when they found out who was responsible, I might be allowed to talk with them. Some two weeks later and against all odds, since only a small proportion of city burglaries in Holland are successfully cleared up — (in Dordrecht this would be about 25%) — the police telephoned to say that they had identified the culprits because of their involvement in a case of vandalism in a nearby town. They indicated that some of our possessions had been recovered and asked me to come down to identify them. As it turned out, the police were holding a large number of items from the house, some of which I had not even realised had been stolen. Nearly all of the stolen goods had been recovered with the exception of a knife which I shall mention later. It is not an expensive knife, but a very sharp knife which I had recently brought back from Finland and which I like to use for cooking. It has a special value for me.

Of the three youths concerned, two were sixteen and the third seventeen, and I made a request to speak with them. The police said that provided the parents consented, they would have no objection. Consequently, the parents of one boy were contacted and agreed and I went off to visit that family the same evening. I had no idea of how this would turn out, since we do not have models for use on such occasions. Also the boy himself was much smaller than I had imagined the burglar to be; he seemed so small, with spectacles, almost birdlike. I had an idea that I would show him how I felt and get him to show remorse for his actions but I found that I could not do this and it remained difficult for us to talk to each other. It was, however, much easier to identify with the parents for whom the whole thing had been horrible. After the offences had been discovered, two of the boys had run away and the parents had spent many anxious hours unsuccessfully looking for them. They now had real drama in their lives in many ways similar to the drama I had and this made it easy to identify with them.

Compared to what happens to you as a parent in those circumstances, the burglary was a small matter and this had a significant impact on my feelings about the events. I started to talk to the boy with a view to his making some kind of reparation for what he had

done. When I asked him if that was something he would like to do, he answered "not really" and that created a sort of link between the two of us because he came across as real and authentic. I could understand him replying in this way to the strange man who had come to his house. I asked him about the knife — perhaps an insignificant matter in view of the large amount of damage in the house, but of essential importance to me — and this proved the starting point for a common understanding. He then understood that I wanted the knife and that was something he could do something about; he would try to find it for me. Then we all went off to meet the other two boys and their parents where we encountered the same kind of difficulties in communication. Finally, as a group, we went to my house where the parents sat with us in the kitchen whilst the boys searched in a deserted hotel next door for the missing knife. During the discussions I said: "Now that you have found my house, you should enter it by the front door; that is the way to come in". It gave me satisfaction to say that. I was then told the sad story of the other family. At this important moment, it was apparent that the criminal justice frame of reference was indeed artificially segmenting the situation in every possible way. It was cutting the links between people who ordinarily belonged together and was, in a sense, making the situation unreal at a social level. For the parents it was a big drama and they were talking about it the whole time, but they did not have a clear or complete picture of what had happened. They had snatches of information from the police and from their children, but no coherent picture of the events. It was only after being gathered together in our house that, for the first time, they got a picture of the whole sequence of events which could then become the subject of discussion between themselves and their children. It was at this point that the whole thing began to have a concrete reality. The involvement of the criminal justice system resulted in a tendency for the parents to say "it is not my child, but the others who are responsible". This meant that we were inclined to deal with the youths individually, cutting them off from each other in an unhelpful way. After all, it was as a group that they were involved in the common affair which had brought us all together in my kitchen. The kids found the knife and the parents, who were far more practically skilful than I, started to repair things in the house. This gave us all a good feeling of being involved in a shared activity and of getting to know each other better. I could see that the problem

between the parents and the children was that the parents were continually referring back to the burglaries so that, without a doubt, the kids were sick to death of hearing about them. For this reason I decided that it would be a good idea if they could get away on holiday and find a new stimulus; we had, I thought, been engaged for long enough in infertile debate. One was a middle-class boy and the other two were working class, and one was unemployed with practically no money, so they said that they could not possibly afford a holiday. I pointed out that camping was relatively inexpensive but they had no tent, so we lent them a tent and the three of them went away on holiday for a short time.

So the parents helped us and the kids came on Sundays or more often to do work in the garden. They seemed to enjoy coming and there were times when the frequency of their visits became something of a nuisance because we had other things to do! One of the reasons they had got into house-breaking was that they were bored at school — a common enough reason — and had begun truanting. On one such occasion they had been playing about in the deserted hotel and had noticed our house which had attracted them by its variety of contents — a mixture of Aladdin's Cave and Ali Baba and the Forty Thieves! As a result of the crisis precipitated by the break-ins, certain aspects of the relationship between the youngsters and their parents had become clearer and they had moved to a school where they were getting on rather better.

We were covered by insurance which met the costs of all the material damage and we have become a sort of aunt and uncle to the kids and friends of the parents. As for me, I learnt a lot about people living in situations about which I previously knew very little. All in all it finally turned out to be a fruitful experience for those of us concerned and I am not exaggerating when I say this. If matters had not taken the course they did, we could not have gained in these various ways, but I did not organise things thus, I merely triggered them off by going as a victim to see the boys and their families. Things then took their own course and the only specific part I played was a result of my knowing about the criminal justice process.

It was six months before the kids were charged with the burglaries and seven or eight months before they came to court and, in all that time, I was never once approached by any of the several social service agencies involved. I had not approached them because I was interested, from a research point of view, to see what would happen. The

families were visited by a number of social service personnel, from different agencies according to their social status. They were given quite contradictory advice and guidance and often came to seek our views on these matters. By the time the charges were brought, neither I nor my wife could see what was to be gained from this course of action. It seemed to make no sense at all to have a hearing so I telephoned the public prosecutor who lives opposite me and, since the court building is also nearby, I went along to speak to her personally, not as a professor of criminal law and criminology but as a victim. She was touched by the account of events but insisted that, with three burglaries and the other matter of vandalism to be considered, there would have to be a prosecution. However, after initially having in mind a custodial sentence, she now said that she was prepared to recommend a conditional discharge. Despite my arguments, she insisted, that criminal justice is not simply a private affair and that public interest had to be considered. My wife started to laugh; after which we — the public prosecutor and myself — joined her in this laughter.

Then there was the judicial hearing which was, I thought, a moving event. The public prosecutor had prepared her case well and said that she knew about, and fully accepted, the way in which the matters had been dealt with and that the only reason she was pursuing them was to underline the seriousness of burglaries of this kind; as an important matter of symbolism. The judge, I considered, was also very understanding and spoke in a way which everyone could comprehend but which also preserved a sense of dignity and upheld important legal safeguards; an interesting skill in itself.

We had all gone to the court together from our house, a party of eight or nine, because everyone was a little nervous so we had coffee and drinks together beforehand to ease the tension a bit. We sat on the same bench in the court-room and, despite being a little deaf, I heard perfectly and though that everyone spoke very clearly. The others, however, complained afterwards of the officials speaking too softly and it was clear that they had not understood much of the proceedings at all, presumably because they were still so tense. In spite of the favourable circumstances — we knew each other well and I had explained to them everything that would take place — they understood virtually nothing. One of the boys said that he had been nervous for weeks about the court appearances so it was not a lack of concern. Another said that he had nearly fallen asleep and I

recalled that, when I have a serious row with my wife, I sometimes feel very tired — a sort of safety valve against emotional overload”.

Now that is the story and it taught me much about the way in which the criminal justice system artificially segments our concerns. Naturally I do not wish to unduly generalise from this one experience, although I do not believe that it was all that special — it merely seems so in these circumstances because I have shared it with you in some detail. I do know of comparable examples in Holland (it is, of course, not easy to get to know about them). There was, for example, a Dutch murder case in which the parents of the murdered girl and those of the murderer met together and formed a relationship which was important both to them and to the offender. Think also at the example of the Moluccan train affair in which the former hostages continue to befriend and to visit their former captors in prison.

These examples support the experience in our case, i.e., that under certain conditions where events are initially reacted to in such a way that a more collective, less fragmented response is made to criminalisable events, then an enormous potential is created for members of the community to take actions which are fruitful, remedial for perpetrators and victims alike, and which permit them to overcome the victim-perpetrator antithesis in their relation.¹²

By contrast traditional responses to criminalisable events provide excellent examples of what Nils Christie refers to as the “stealing of conflicts”, since they frequently inhibit the natural uniting together of people around a crisis and prevent the consequent social and personal development which can occur in such cases. Now this means, we think, that one of the important aspects of the notion of “community involvement” — an idea to which most people subscribe, but of which only a few have anything but the vaguest images — is an attempt to recover the opportunity for ordinary people to become directly involved in social responses which are victim-oriented.

To return for a moment to what Wilkins has suggested, we have in the micro context the processes of blame allocation — and remedial action related to *this* particular event — and in the macro context the processes of remedial action and control — the question of how to deal with this type of event and how to change social organisation in such

¹² See S. Hogenhuis, *supra* n. 11.

a way that it makes this easier. Bringing both these spheres together, it is important that all the organisations which have to do with criminal justice — the police, teachers, the public prosecutor, social workers, the courts and academic researchers — should suggest and make clear the positive possibilities of responding to criminalisable events in ways which encourage a wider public involvement. After all, if you do not have the knowledge or possess initial ideas of how to go about it, then it is difficult, perhaps daunting, for people to even get started. Once started, however, the process may have a momentum of its own.

It is our firm conviction that what we are doing when we pursue such a course of action is simply to re-activate the potential which already exists in society. The development of this potential is not dependent on finding answers to the problem of crime — those involved do not perceive themselves as being concerned with such matters — but rather as dealing with an immediate crisis situation which requires action. It is, however, dependent on the attitudes and activities of the police service, because of their key position as the entry point to the criminal justice system on the one hand, and as a resource to directly involved people, on the other hand. It was the police that really made possible my own actions, since if they had not cleared up the case, and given me the information they possessed, I could not have visited the family.

2. *Sexual violence and the use of civil law*

Since March 1984 we have been studying a development in the Netherlands in the direction of making more use of civil justice in cases where a certain type of criminal justice might be applied. An example of this development is the use of civil summary procedures by victims of sexual violence. Women who are continually troubled or threatened by their ex-partner, or more recently, victims of assault or rape, can request a court order which prohibits the man to enter the area where the woman lives.

In our empirical study we found that the possibility of a civil court injunction was a far better answer to the needs of the women victims than the criminal justice system ever gave them.

Three elements made the court injunction very useful as a (strategic) way of handling cases of sexual violence by feminist lawyers and their clients. In the first place this specific kind of summary proceedings appears to be highly attractive and accessible to people who have no

non-legal means left to deal with their problems. To women in Holland who are dependent upon social welfare, for instance, it is a low cost, easily understandable, quick and flexible procedure with a relatively high rate of success. At the same time it also deals with the victim's definition of threat in her daily life. She also remains in control of the procedure from the beginning to the end. At any time she can decide to withdraw from the proceedings, to bargain with the other party, to execute or not to execute the sentence of the judge. She is not at all dependent on other institutions as, for instance, in the case of a criminal justice affair.

She only needs an attorney, and the kind of attorneys who specialize in these proceedings are highly motivated and supporting to their clients. This brings me to the second reason that makes the court injunction so suitable for handling sexual violence cases. From a victim of sexual violence and from a pitiful humiliated, dependent state she becomes an active party, a claimant in a civil law case. By doing this she shows not only the one who threatens her, but also herself and the outside world, that she has her own life and her own identity, and that she is able to draw her own line. And this alone increases her defensibility. Therefore being a claimant in civil proceedings means personal growth and brings with it an individually emancipating function.

The third element we want to refer to is publicity. Not only victims of sexual violence but also journalists find summary proceedings and, specifically, the civil court injunction, an accessible law suit. This means a lot of publicity. Feminist lawyers made deliberate use of this publicity to bring attention to the problem of sexual violence, and to show the world and other women that it is really possible to draw the line and to make an end to this problem. We can call this a structurally emancipating effect, whereas the combination of the first and the second element to which we referred, created an individually emancipating effect.

Also in other problem areas we found interesting examples of the possibilities of civil law to fulfil an emancipating function in dealing with criminalisable events. It permits integration of activities of communities and social movements of a legal and non-legal nature, and combines preventive with remedial effects.¹³

13 J. Hes, "From Victim of (Sexual) Violence to Claimant in a Civil Law Case", Paper for the 5th International Symposium on Victimology, Zagreb, 1985; J. Hes and L. Hulsman, "Civil Justice as an Alternative to Criminal Justice", Paper for ICOPA III, Montreal, 1987; M. Spector and S. Batt, "Towards a More Active Victim", in J. R.

3. Action research as a means to trigger and support community involvement in prevention

In a neighbourhood of a middle-sized Dutch city serious trouble arose; part of the population felt seriously menaced by other groups in the area, and the quality of life deteriorated. This gave rise to numerous claims of criminalisation and extensive dramatising press coverage. The increased police activity in the neighbourhood — of a criminalizing and surveillance type — did not improve the situation but made the situation worse. People started to leave the neighbourhood.

We advised the neighbourhood committee to take matters more in their own hands, and offered to help with an action-research in the framework of a conceptualisation as developed in this paper.

Our proposal was to start with an independent research under the auspices of the neighbourhood committee in which we would try to make an inventory of (1) the different groups ("tribes") inhabiting the neighbourhood and their life style, (2) the interactions between those groups, (3) the good things and the bad things they experienced in the area, (4) to which persons, groups, institutions or structures they attributed the problems they experienced, (5) what they thought should be done about these problems, and (6) what they themselves did about these problems. In the same way (7) we would make an inventory of the opinions of the different *institutions* (different types of police, different types of social work, the medical sector, housing authorities) working in the area about the questions under 3-6.

We would use as research method: (1) documentary analysis also of an historical nature, (2) observation and (3) open interviews.

We would present the "map" which would be the result of this research for discussion in the neighbourhood, and adapt it on the basis of this discussion. Eventually we would formulate certain recommendations about ways in which improvement could be reached. Things proceeded according to our proposal.

On the basis of our data we distinguished nine different groups in the neighbourhood and described their life styles and the interactions between them. We gave each of those groups positive names (the group

which was seen by some of the others as hardened, dangerous criminals — we called "the strong men") and in the further discussion those positive names were accepted by all.

The research showed great differences between the different groups, between the institutions, between the groups and the institutions on the question what the problems were, to whom or to what they were attributed, and what should be done about them.

Between some groups there was considerable overlap in their life styles; they were in daily direct interaction. Between other groups there was no such overlapping. Quite often the same problems arose in intragroup interaction and in intergroup interaction.

When those problems arose in an intragroup setting or in intergroup settings with overlapping life styles, the directly involved were able to deal with these problems themselves in a contained and remedial way. When they occurred in intergroup settings without overlapping life styles they gave rise to claims of criminalisation and sometimes escalated out of control.

The main thrust of our recommendations was to promote social reorganisation in such a way that life styles would overlap more.

The fact that the neighbourhood committee took responsibility for the situation in the neighbourhood and the research worked from the beginning as a "reordering ritual", indicated that social reorganisation was on its way. The primary problems have diminished in frequency and intensity, while the secondary problems, related mainly to the criminal justice interventions which aggravated the primary problems, have ceased to exist as the negative press coverage. The inhabitants are not leaving the neighbourhood any more. The relation between the different institutions and the different groups in the neighbourhood has been much improved. The research was a contribution to the emancipation of the different groups in the neighbourhood and the emancipation permitted the neighbourhood to deal with the crisis.¹⁴

A comparable research in a more rural area showed similar results.¹⁵

14 H. van Ransbeek, *Het Noorderkwartier, ergernis en plezier* (Rotterdam, Erasmus Universiteit, 1985).

15 H. van Ransbeek, *Kleine Criminaliteit?* (Rotterdam, Erasmus Universiteit, 1987).

IV. Conclusion

From an academic point of view, it is not possible to give a ready-made formula for alternative crime policies.

We subscribe to the way in which Foucault¹⁶ defines the role of the academic (the specific intellectual, as he calls her/him) in these issues. According to him, the academic should not strive to play the role of the intellectual-prophet who tells the people what they have to do, and prescribes for them frames of thought, objectives and means (which he develops in his head, working in his study surrounded by his tools — the traditional way in which many criminal law academics have worked). Instead, the role of the academic is to show (1) how institutions really function, and (2) what are the real consequences of their functioning in the different segments of society. In addition, he has to uncover (3) the systems of thought which underlie these institutions and their practices. He has to show the historical context of these systems, the constraints they exercise on us, and the fact that they have become so familiar that they are part of our perceptions, our attitudes and our behaviour. Lastly, (4) he has to work together with those directly involved and with practitioners to modify the institutions and their practices and to develop other forms of thought.

I have tried in this paper to be faithful to this model. Consequently, I did not provide you with fixed models of "alternatives" nor with an inventory of developments in "alternatives". Instead, I tried to offer a conceptual scheme, which I hope will be helpful to contextualize the ideas on alternatives to criminal justice and the concrete projects developed in many countries which are founded on such ideas or refer to them.

If we want to make progress in the field of alternatives we have to abandon the cultural and social organisation of criminal justice. Criminal justice is perpetrator-oriented, based on blame-allocation, and on a "last judgment" view of the world. It does not therefore provide us with information and a context in which problematic situations can be defined and dealt with in an emancipatory way.

What we need — if we wish to make progress — is an approach which is in the first place oriented towards those directly involved (persons or

groups which directly experience problematic events), and which compels us to look at all the resources which could be mobilized to deal with such events and situations. This is only possible if we free ourselves from the idea that the extremely diverse situations which are criminalisable have something in common. We have to redefine each problem field independently of the definitions of criminal justice (and of criminology insofar as it is part of criminal justice). Only then does it become possible to recognise and to encourage (elements of) alternative practices and get rid of measures legitimized as punishment, which are necessarily and blatantly unjust.

16 M. Foucault, "Qu'appelle-t-on punir", in F. Ringelheim, ed., *Punir mon beau souci* (Bruxelles, Presses universitaires de l'université libre, 1985).

Israel Law Review

LOUK HULSMAN

THE ABOLITIONIST CASE: ALTERNATIVE CRIME POLICIES

A Reprint from Volume 25, Nos. 3-4, Summer-Autumn 1991

THE ISRAEL LAW REVIEW ASSOCIATION
under the auspices of
THE FACULTY OF LAW, HEBREW UNIVERSITY OF JERUSALEM

ALTERNATIVES TO PUNISHMENT

THE ABOLITIONIST CASE: ALTERNATIVE CRIME POLICIES

*Louk Hulsman**

I. Introduction

A. Some important themes and concepts in an abolitionist analysis¹

Crime

We are inclined to consider "criminal events" as exceptional, events which differ to an important extent from other events which are not defined as criminal. In the conventional view, criminal conduct is considered to be the most important cause of these events. Criminals are — in this view — a special category of people, and the exceptional nature of criminal conduct, and/or the criminal, justify the special nature of the reaction against it.

People who are involved in "criminal" events, however, do not in themselves appear to form a special category. Those who are officially recorded as "criminal" constitute only a small part of those involved in

* Professor Emeritus in Criminal Law and Criminology, Erasmus University, Rotterdam.

1 For recent literature on the abolitionist perspective in the English language see: (1986) 10 *Contemporary Crisis* 3-106; H. Bianchi and R. van Swaaningen, ed., *Abolitionism, Towards a Non-repressive Approach to Crime* (Amsterdam, Free University Press, 1986); J. R. Blad, H. van Mastrigt, and N. Uldriks, eds., *The Criminal Justice System as a Social Problem: An Abolitionist Perspective* (Rotterdam, Mededelingen van het Juridisch Instituut van de Erasmus Universiteit Rotterdam, nr. 36, 1987); J. R. Blad, H. van Mastrigt, and N. Uldriks, eds., *Social Problems and Criminal Justice* (Rotterdam, Mededelingen van het Juridisch Instituut van de Erasmus Universiteit Rotterdam, nr. 37, 1987) W. de Haan, *The Politics of Redress: Crime, Punishment and Penal Abolition* (London, Unwin Hyman, 1990).