

Mediation in Germany and Other Western Countries

HELMUT KURY
ANNETTE KUHLMANN

Abstract. Empirical studies over the past decades have repeatedly shown the limited usefulness of harsh punishment in reducing crime. In response to these research results, historical approaches to crime reduction, such as mediation and restorative justice, have regained prominence, especially in Germany and other western European countries. The women's movement and the growing role of victimology have contributed to the increased use of these methods as alternatives to incarceration. The debates across these countries vary depending on the historical background of the penal climate in these states, which particularly explains the differences between Eastern and Western European countries in this regard. Empirical studies show the positive impact of mediation on offenders as well as victims. Yet in spite of these results, in most countries, including Germany, the use of mediation remains limited, especially in regard to adult offenders. At the same time, the uses of mediation in non-criminal conflict settings, such as schools, family or work disputes have increased significantly with positive results.

Keywords: Victim-Offender-mediation, Penal climate, Punitiveness, Restitution, Effects of empirical research on alternative penal reactions.

1. INTRODUCTION

In response to the extensive number of empirical studies over the last half century – studies which had repeatedly showed that traditional solutions to crime problems, i.e. harsh punishment, do not substantially reduce conflicts caused by crime – historical practices, such as mediation and restorative

justice, have re-emerged (see for example: Hopt and Steffek 2008a; Johnstone and Van Ness 2007a; London 2011; Weitekamp and Kerner 2002; Dünkel et al. 2015). These traditional approaches have essentially concentrated on the harsh punishment of offenders while ignoring the needs of victims of crimes, using them only as witnesses during court proceedings (Kury 2013). Especially the post-WWII research on crime victims and the establishment of the field of victimology as an essential part of criminology have pointed out correctly that the victims of crimes are receiving too little attention and support (Braithwaite 1989). Over the last couple of decades, several countries have established special legal regulations to improve victim support.

International empirical research shows clearly that most victims, with the possible exceptions of some of those victimized by very severe crimes, are more interested in the restitution of caused damages rather than the severe punishment of an offender (Sessar 1992; 1995). Yet the predominant government reaction to crime is organized in a way that disregards these needs of the majority of victims and of broad segments of the population, who are more concerned with restoring peace in a society and reducing the conflicts caused by crime. In this context, some forms of mediation can help bridge the gaps between opposing interests:

Restorative justice presents a different approach to achieving justice than the traditional court system. Whereas court systems depend on punitive measures and do not attend to victim concerns, restorative justice focuses on repairing the harm caused by an offense, bringing the offender back into society, and giving all actors affected by the crime (the offender, the victim and the community) a direct voice in the justice process (Gromet 2009, p. 40).

Central for the acceptance of mediation in a society is that its structure, process, and opportunities are well understood by the population, and the penal institutions, especially the judges and the courts. Johnstone u. Van Ness (2007b, S. 6) point out in this context: "Yet, despite its growing familiarity in professional and academic circles, the meaning of the term 'restorative justice' is still only hazily understood by many people." Beginning in the 1980s, German professionals began to increasingly discuss mediation on the background of reports from the United States about the successful, time-saving, cost-effective as well as the peace-finding application of this approach. In the following decade, mediation was discussed euphorically as an omnipotent method to

resolve conflicts for all kinds of quarrels and problems. Today this method is established and in a more seasoned view; it is regarded as an important measure to solve conflicts. But the potential of the method is still far from being fully utilized, as pointed out by experts (Hopt & Steffek 2008c, p. 7).

Victim-Offender Mediation (VOM) was introduced in the juvenile penal law in Germany 1994. Schädler (2011, p. 18) comments on this policy change: “This made clear, that the legislator wanted VOM to be a measure of diversion, hence as a way out of the criminal procedure” (see also the beginning of the so-called *Victim-Offender-Reconciliation-Programs* in Canada, Ontario, 1974: Yantzi 1985). VOM was intended to be utilized not only in cases of minor crimes, but for all crimes, including violent criminal acts. In fact, Aertsen (1999) found that results are particularly encouraging in severe criminal cases. Since 1993, Germany has a nationwide Victim-Offender-Mediation statistic, organized by the VOM-Research group at the University of Tübingen (Kerner et al. 2008). According to these data, in more than 80% of the cases both parties agreed to a resolution. Yet at the same time VOM is seldom used in Germany and other European countries (Hagemann 2011, p. 50). The victims are often not informed and not well prepared for this alternative. Nevertheless, according to these results, one third of all victims of severe violent crimes accept VOM. “Despite these findings, hardly any VOM is taking place when severe crimes have been committed” (p. 21).

In this context, Hagemann (2011, p. 35f.) points out that: “[d]espite all positive developments – e.g. in Germany since the implementation of the Victim Compensation Act in 1976 and the Victim Protection Act in 1986 – victims and communities are still not really integrated in the criminal proceedings”. Politicians and justice professionals are generally more punitive in their reactions to crime (see Kury & Shea 2011b). The perceptions of the public are shaped, and accordingly distorted, by the highly selective and sensationalized manner by which the media reports on crime (see Carrabine 2008, Hestermann 2010, 2016, Jewkes 2008, Kappler and Potter 2005). As a result of these misperceptions, restorative justice is seen as a “mild” reaction, ineffective in crime prevention as compared to harsh punishment (Lummer 2011, p. 240f.; Kury & Shea 2011a; Kury 2015a, 2015b). As Krajewski (2014) points out, the “penal climates” in Europe are different. His data show some examples of these approaches:

There are two different models of alternatives to imprisonment in Europe. Solutions adopted in countries of Central and Eastern Europe are clearly based on the traditional, and rather outdated, model of the conditional sentence, while in Western Europe fines are established as the main type of sanctions, accompanied additionally by community service and other similar sanctions (although here differences in patterns of use are much less consistent) (2014, p. 107).

Meanwhile, a large number of studies have shown the counter-productive effects of imprisonment, at least in the form that imprisonment is organized today:

There is no indication that harsher or more intensive punishments lead to greater public safety and peace. On the contrary, the more the public policy relies exclusively on repression and punishment, the more this will lead to more imprisonment, more human and financial costs, less ethics, less public safety and a lower quality of social life (Walgrave 2008, p. 54; see also the meta-analysis by Dölling et al. 2011).

Wright (2003, p. 17) points out: "Punitive sanctions are not very effective in deterring offenders, but once the offence has been committed, they deter them from admitting their actions." Braithwaite (2005, p. 285) agrees when he writes that "criminal justice with its commitment to punishment is intrinsically the major obstruction to good communication, because it encourages cultures of denial." Ostendorf (2011, p. 25) points out: "Society does neither see offenders within their social surrounding and relations, nor in the concrete situation of the offence. Offenders personify the evil, they became offenders without any reason. The offence stands in the focus, from the evil offence it is referred to the evil offender." If victims and offenders communicate, the offender is once again perceived as a human being, "if there are victims, responsibility is shifted, back and forth like wagons at a railway station" (p. 24). This lack of understanding of the potential of VOM is frustrating and not helpful for either party in a penal procedure – neither party feels that their problems have been understood.

Schneider (2009, p. 697) points out that informal crime control measures are more important than formal approaches. He sees the (re)emergence of the restorative paradigm as one response in the crisis of treatment programs and empirical research. According to him, restoration has the advantage that the concept is not as one-sided as the traditional criminal justice programs

(p. 703; see also Weitekamp and Kerner 2002). Retribution and rehabilitation approaches see the offender in a passive role, while victims and society as a whole are excluded from the process. The restoration model relates to victims, community, and the effect of the crime. The traditional system of sanctions gives the offender contradictory information, i.e., rehabilitative and punitive signals. The paradigm of restoration, in contrast, is clear and offers victims, community members and offenders opportunities for active participation in the resolution of conflicts. The traditional punitive model increases the damage caused by the offender by adding additional problems for victims and offenders; it concentrates on the past and points to the personality of the offender first. Restoration, in contrast, focuses on the present and the future, with the goal to reduce the damage ensued.

This article discusses restorative justice as a form of mediation, which is seen as a summarizing expression, often used in different contexts and meanings. It presents information about practices and experiences with mediation in Germany and other (western) European countries. The article focuses on the question whether mediation does indeed have crime prevention effects, especially when compared with traditional punitive reactions of penal justice, so evaluation results of these alternative approaches are presented. A final discussion weights the main results comparatively.

2. DEVELOPMENTS IN GERMANY

Historical reviews of mediation argue that the displacement of restitution in addressing crimes had significant negative consequences in regard to solving conflicts in a society and dealing with crime problems in a community (Frühauf 1988, p. 20). Kaiser (1996, p. 1088) points out that we have to acknowledge that the need to solve conflicts by communicating with the other party is even today deeply rooted in society. At the same time, he points out that the potential to do so in the common official penal procedure is not, or only poorly, utilized (Bussmann 1986, p. 158f.). He sees the concept of victim-offender restitution as a more constructive form of conflict reduction in society and as a central topic in the politics of crime and criminal justice.

After a long fall into oblivion, the mid-twentieth century has seen a re-emergence of mediation in connection with the newly established field of

victimology. Relevant empirical research in this regard has shown increasingly positive results and raised the discussion to an international level, although at first mostly in western industrial countries (Frühauß 1988, p. 63; Hentig 1948; Schneider 1975). In Germany, penal sanctions already began to include a broader network of treatment and diversion measures. This development concentrated first and foremost on the resocialization of offenders while neglecting the needs of crime victims, an approach increasingly criticized, especially by members of the growing field of victimology (Schneider 2014, p. 94; Frühauß 1988, p. 64). Beginning in the 1980s, mediation emerged in Germany and its role expanded based on reports of the positive effects of this approach in the United States. Practitioners and scholars in the US had already been involved in vigorous discussions about “restorative justice” a decade earlier, although this discussion was at times rather controversial (Rössner 1998, p. 889; Rössner & Wulf 1984; Frehsee 1987; Abel 1982; Matthews 1988; Harrington 1985; Kaiser 1996, p. 216ff.).

“Restorative justice as both a philosophy and an implementation strategy developed from the convergence of several trends in criminal justice: the loss of confidence in rehabilitation and deterrence theory, the rediscovery of the victim as a necessary party, and the rise of interest in community-based justice” (London 2011, p. 13). In the beginning in the 1970s, the United States saw two divergent trends; on the one hand, punitiveness toward offenders was increasing, while on the other hand, the development of alternatives to traditional sanctions had increased, too: “Along with their interest in punishment, the public’s interest in alternative nonpunitive solutions has also been recognized” (London 2011, p. 103). Especially if the public is informed about punishment and its weak impact on crime as well as about the more effective alternatives to traditional procedures of harsh punishment, punitive attitudes are decreasing, as shown in a number of empirical research projects (Doob & Roberts 1983; Roberts & Hough 2002; Sato 2013). “In sum, while the public’s support for punishment is well known, its support for alternatives to punishment and sanctions with a restorative quality is also strong,” London contends (2011, p. 104), and he emphasizes that “punishment alone is an extraordinarily poor way of restoring trust either in an offender or in society” (p. 105; see the development in Germany: Schleppe 2014).

At the beginning of this broad discussion about alternative approaches to crime prevention, the advantages of mediation were emphasized and promoted. Mediation has a number of benefits: it supports a broader entrance to penal law systems, a greater satisfaction and acceptance of the results, a solution of conflicts in favour of all parties concerned, more just solutions from the view of the different parties and the community, better chances for compliance, exoneration of penal law systems, and cost savings on the part of the state and the parties involved (Hopt & Steffek 2008c, p. 7; see also Bush & Folger 2005). On this background, the support for mediation increased in the 1990s and reached, in some parts, a euphoric enthusiasm, which praised mediation as an omnipotent procedure to solve conflicts all sorts (Hopt & Steffek 2008c, p. 7). At the same time, Hopt and Steffek (2008b, p. 9) point to the tradition in mediation of being informed by foreign penal law systems.

Several simultaneous paradigm shifts led to new orientations in the theoretical discussion and changes in penal practice, beginning with the 1960s. Goodey (2005, p. 102) discusses three main reasons for this shift and the emerging discussion of victims of crime, initially in the United States and Great Britain. These discussions also had strong influences on the development in Germany. First, increasing crime rates, together with the emergence of intense criticisms of the prevalent offender treatment concepts on the background of missing empirical proof of their effectiveness, led to the worldwide formula of “nothing works” (Martinson 1974; Lipton et al. 1975; Kury 1986; Austin & Irwin 2001; Schneider 2009, p. 703). Second, the beginning of increasingly right-wing punitive crime policies in the United States, as well as in Great Britain, led to a harsher treatment of offenders, resulting in dramatic increases in incarceration rates, beginning in the early 1970s in the US. Thirdly, the emergence of the women movement focused the discussion on the need for increased empathy for women and children as victims of mainly male violence, particularly in the US. In this context, victims of crime increasingly obtained rights, including some within the penal process. In this changed circumstance, they could, at least partly, overcome the role of being only witnesses or spectators in the criminal procedure.

Soon empirical research could show that restitution and compensation must be seen as needs that are broadly accepted by the population and

victims of crime and so deserve more attention in a modern penal law system (Kaiser 1996, p. 1088). Schwind (2013, p. 442) argues that restitution is part of mediation, which, since mid-1980s, belongs to the central themes in criminal policy (Hartmann 2004, p. 77). In Germany, pilot projects in mediation, in the form of victim-offender restitution programs with juveniles, began in 1984/1985, after the German probation organization, Deutsche Bewährungshilfe e.V., established the working group *Täter-Opfer-Ausgleich* ("Victim-Offender Mediation"). It was in that same year that the first German pilot project in adult penal law was established in Tübingen (Schmidt 2012, p. 187). Since then, the development moved quickly (Rössner & Wulf 1984). By 1988, victim offender mediation (Täter-Opfer-Ausgleich, TOA) was included in the recommendations of a Bund/Länder-Adhoc-Kommission (government/state-adhoc-commission) as diversion (see to the discussion of diversion Kury & Lerchenmüller 1981). Beginning in 1991, an increasing number of pilot-projects for victim-offender restitution with adults emerged and enlarged the movement (DeLattre 2010, p. 88). The first official, government-level organization on mediation began its work in January 1992 through the Bundesarbeitsgemeinschaft für Familienmediation (BAFM, a federal working group for mediation in family affairs) (Hopt & Steffek 2008c, p. 7). In September 2008, the German annual national conference for judges (Deutscher Juristentag) focused on the topic of mediation (Heß 2008).

The German penal law (Strafgesetzbuch, StGB) mentions the topic of restitution (Wiedergutmachung) twice, once in regard to duties in the context of probation (§ 56b part 2 StGB) and a second time as part of a definition of punishment (§ 46 part 2 StGB). § 46 gives a definition of the rules of punishment, the basis for which is that the offender is taking responsibility for the crime. Part 2 of the Paragraph lists the most important aspects of punishment, pointing to engagement of the offender in restitution; for example, s/he may pay some money to the victim on his/her own accord, prior to the ruling of the court (Frühauf 1988, p. 66). The offender can be punished with a form of probation, that includes the requirement to repair the damage caused by the crime. § 46a defines the possibility to halt the penal procedure after successful victim-offender restitution if the punishment for the crime would be less than one year. If the punishment would be more than one year, victim offender mediation can reduce the punishment meted out by the court.

On December 15, 1999, the German government implemented the *Gesetz zur Förderung der außergerichtlichen Streitbeilegung* (law to enhance conflict resolution outside the courts). With this law, victim-offender restitution (TOA) became an official part of the penal procedure (DeLattre 2010, p. 90). As defined in § 155a StPO (Strafprozessordnung, i.e., Penal Procedure Law), prosecutors and judges were now required to consider the option to resolve cases through mediation between the offender and the victim in all stages of a penal procedure. If suitable, they are asked to use mediation. If the expressed motivation of the victim is lacking, it cannot be assumed the case is suitable for mediation (Bundesministerium des Innern/Bundesministerium der Justiz 2006, p. 590).

Beside this definition, no other restrictions in regard to the use of mediation in specific cases are given. But the problem is the definition of “suitable” (*geeignete*) cases. Often an offender and victim must first be informed and motivated to participate in mediation before cases are deemed “suitable.” Based on experiences since 2000, most of the offenders and victims who were asked to participate in a victim-offender restitution program are doing so willingly. After the decade between 1993 and 2002, cases addressed through TOA show the following resolution rates: in 69% of all cases, the offender apologized for his/her crime to the victim, in 30% of all cases, s/he paid damages (restitution), in 19%, s/he paid for causing pain and sufferings, in 13% of cases, there were other benefits, while there were no other specific benefits in 7% of cases; finally, in 6%, s/he did various services for the victim (cleaning a garden etc.) (Bundesministerium des Innern/Bundesministerium der Justiz 2006, p. 594). Only 2.5% of the agreements had failed.

Juvenile penal law (Jugendgerichtsgesetz – JGG) places education squarely at its centre. From this perspective, restitution or mediation play a central role, because these approaches allow the offender to clearly understand the negative impact of his/her crime by listening directly to the experiences of the victim(s). So, the juvenile penal law introduces the idea of restitution and victim-offender mediation (Heinz 1993, p. 376). Already in 1923, the JGG provided the opportunity for the court to require a separate restitution by the offender. The intent here was to teach young offenders through restitution that they had committed mistakes and caused pain, all of which had negative effects for them (Frühauf 1988, p. 76). Victim offender restitution was thus

first implemented in the juvenile court system (1. JGGÄndG from the 30th of August, 1990; BGBI I, 1853) and only several years later, in 1994, in the adult penal code (§ 46a StGB, § 10 part 1.3 No 7 JGG).

To promote victim-offender mediation in Germany more widely, justice institutions were required to offer TOA by 1999 (§§ 155a, 155b StPO). In accordance with this regulation, the prosecutor and the court have to make the option of (voluntary) victim-offender restitution available in all cases and are required, in certain cases, to engage professional institutions to do so (Schwind 2013, p. 442f.).

Today the procedure for victim-offender restitution remains uniform across the various states in Germany. Criteria for the application of TOA are as follows: exclusion of petty crimes, no net widening of social control, presence of an individual victim, clearly defined circumstances of the crime, the offender's expression of remorse and acceptance of responsibility for the crime, and, finally, both party's (victim and offender's) acceptance of the prescribed procedure and willingness to cooperate (see DeLattre 2010, p. 93, Kury & Lerchenmüller 1981). Johnstone (2007, p. 609) expresses concern that serious cases are brought to court while petty crimes are dealt with through victim-offender mediation programs, which may have the effect of net widening. He believes that "[l]ess serious cases will be diverted to informal restorative processes and sanctions. But, because they are less formal and regarded as more benign, these processes will be extended to cases which previously would not have given rise to penal interventions. Overall the reach of the system of penal control will be extended rather than cut back" (also see Zehr 1990, p. 222).

Victim-offender mediation is correctly seen as a great pedagogic opportunity for the offender, which also shows successful incidences of reducing the harm incurred by the victim, yet in practice it was only used relatively rarely in Germany, until recently. More often courts impose punishments that require the offender to pay fines to a non-profit institution. Frühauf (1988, p. 77), for example, points out that the duty for restitution by the offender has been discussed broadly on a theoretical level in the juvenile code, but in praxis it is used only in relatively few cases. This may be related to the training of jurists, especially judges, in juvenile cases.

Heinz (1993, p. 375) argued already several years ago regarding Germany that there is not yet a solution to the problem of addressing the interests of victims on the one hand, and the defence of the offenders on the other. The question here is to what extent are the rights of the offender reduced if the rights of the victims are included in the penal process? It is difficult to find a balance and the question as to the kind of support available for victims in the penal process, focused as it is on the crime and punishment of the offender, remains open. Kaminski (2012, p. 198) is pessimistic when he writes that “the formalization of new rights for victims in criminal proceedings cannot but exacerbate disappointment, increased by a belief in the value of these rights.” Some experts ask for an inclusion of restitution as a separate “third track” (*Dritte Spur*) in the criminal code (*Alternativ-Entwurf Wiedergutmachung* 1992, Frehsee 1987) alongside traditional punishment, like incarceration and fines. Heinz further pointed out that regulations to promote restitution in praxis are used relatively rarely. In 1989, only 0.8% of all sentences passed by the court according § 153a, 1 of the penal code were related to restitution. The most prevalent sentences imposed by the courts continue to be fines.

In 1992, based on a decision by the Federal Government (Bundestag und Bundesregierung), the German Probation Organisation (Deutsche Bewährungshilfe e. V.) has a service bureau for victim-offender restitution as a supraregional counselling bureau, financed mostly through the Ministry of Justice and the states (<http://www.toa-servicebuero.de/>) (Bundesministerium des Innern/Bundesministerium der Justiz 2006, p. 589).

TOA statistics were first organized in 1993 by Kerner et al. (2005) and the Ministry of Justice. Since then, an increasing number of neutral agencies for conflict resolution have been established by non-governmental organizations and by social service agencies in connection with the justice system (*Gerichtshilfe und Jugendgerichtshilfe*). These institutions can be utilized by the prosecutor before the beginning of a penal trial or by the courts during the trial to promote restitution. Experts who facilitate restitution are usually social workers and mostly have relevant additional training as mediators (DeLattre 2010, p. 90). Schwind (2013, p. 442) points out that about 400 of such mediation bureaus exist in Germany by now. DeLattre (2010, p. 90f.) reports that more than 300 institutions use TOA (Victim-Offender-Restitution) in Germany

alone, which thereby becomes the most important crime-policy initiative of the last 25 years employing full-time professionals (Germany has about 82 million citizens). TOA is used effectively in about 35 000 cases per year. According to Trenczek (2003, p. 104), these institutions deal, on average, with about 25 000 cases per year. This shows that Germany has the highest number of TOA cases in Europe. Yet with about 550 000 criminal charges per year, this number remains, nevertheless, relatively low (Schwind 2013, p. 442ff.).

Kerner et al. (2005) show that, in 2002, cases handled by TOA were mostly crimes with bodily injuries (47%, also see Jehle 2005, p. 40); of these cases half were conflicts related to domestic violence (Trenczek 2003, p. 105; Vázquez-Portomene 2012; also refer to mediation in cases of partner conflicts, for that see Rössner et al. 1999). Similarly, Schmidt (2012, p. 189) explains that, in Germany, TOA is used primarily in cases of bodily harm, in addition to cases of property damage, insult, threat of a crime, intimidation and trespassing. The focus of victim-offender restitution is not the regulation of material damages, but of personal conflicts between human beings (Walter 2004, p. 339). As Jehle (2005) reports for 2002, the results of mediation were as follows: 69.8% led to an apology, in 25.1% damages were paid, in 13.6% punitive damages were paid for pain and suffering, and in 5.7% of the cases the offender worked for the victim. 80% of the instances of victim offender-restitution were successful and the prosecutors finalized the penal process, so the case did not proceed to court. In other situations, the court reduced the punishment or dropped the charges (§§ 46.2; 14a; 49 StGB; Jehle 2005, p. 39, summarizing: Schwind 2013, p. 442f.).

Efforts to regulate disputes in non-judicial ways are used in ever expanding areas of conflict, including those outside the penal system. Hopt and Steffek (2008c, p. 7) point out that mediation in Germany is increasingly included as one of the approaches used in conflict resolution, but the opportunities inherent in this method are not yet fully utilized. DeLattre (2010, p. 90) points out that victim-offender restitution, as a new perspective in dealing with crime, is still emerging and should be more consistently included in penal procedures.

3. DEVELOPMENTS IN OTHER EUROPEAN COUNTRIES

Together with the German Ministry of Justice, Hopt and Steffek (2008b) published a reader on mediation that provides an overview of the current issues in mediation in Europe and other countries (see also Rössner 1998, p. 881ff.). The authors argue that mediation, as a form of conflict reduction, needs to be promoted further. One important aspect is an easier access to the law for citizens. Mediation provides a number of other advantages, i.e., an opportunity for more effective conflict resolution, increased support for the parties involved, constructive approaches to crime reduction, diminished court overloads, and a reduction of costs for all parties involved, including the state (Hopt & Steffek 2008b, p. VIIff.). The volume by Hopt and Steffek (2008b) presents regulations and research from the United States, Austria, France, England, the Netherlands, Japan, Australia, Bulgaria, China, Ireland, Canada, New Zealand, Norway, Poland, Portugal, Russia, Switzerland, Spain and Hungary; i.e., it addresses not only western industrial countries, but also former Soviet states. Lummer, Hagemann and Tein (2011) included in their reader chapters about Germany, England and Wales, Estonia, Hungary and Belgium. Especially positive reports on successful results of mediation from countries such as the US encouraged several states to increasingly include these alternatives in their respective penal systems. Bush and Folger (2005) distinguish in their report on the United States between the “satisfaction story,” the “social justice story” and the “transformation story” (see Hopt & Steffek 2008c, p. 10).

Miers (2007, p. 447ff.) reports on the developments in the US, Belgium, England and Wales as well as New Zealand. According to him, there existed already 289 victim-offender-mediation programs in the US in 1996, but only a few of them included juveniles (Umbreit & Greedwood 1998). Five years later, Schiff and Bazemore (2002, p. 180) found 773 programs, including conferencing. In 1998, Griffiths (1999) found more than 200 programs in Canada. Umbreit et al. (2001, p. 121) estimated that about 1.300 programs involving juvenile offenders existed in about 20 countries in 2000. Mestitz (2005, p. 13) found significant differences in the distribution of mediation programs in Europe, especially concerning juvenile offenders. While Germany and France offer about 200-300 victim offender restitution programs each,

other countries, such as Ireland or Italy, only have a few. The authors also point out differences in the nature of these programs based on different legal backgrounds. Extensive differences can also be seen between the “design and delivery” of these programs (Daly 2003b); to put it in Weitekamp’s words, restorative justice “means different things to different people” (2002, p. 322).

Hopt and Steffek (2008c, p. 12ff.) emphasize the clear differences in the procedure of mediation between the different countries, which are not surprising given the great variations in the definition of the concept and the different legal cultures. The theory clearly lays out that cooperation on a voluntary basis is a key element of mediation, but some states nevertheless discuss the question whether the parties can be forced to cooperate under certain circumstances. Also, the role of the mediator is defined differently, for example, in regard to the question if a person is allowed to bring in suggestions and solutions. Extra-legal problems, such as family matters or the work place, can similarly be handled through mediation (see, for example, Montada 2004, p. 184). The positive impact of mediation can be seen in all societies where the procedure is concentrated on the social conflict and the legal regulation is limited to supportive function. All legal systems accept that mediation is not intended for spontaneous or random support but for the facilitation of communication between the different parties by experts (Hopt & Steffek 2008c, p. 13). Hopt and Steffek (2008c, p. 13) point out that, in spite of their differences, the definitions of mediation in various countries concentrate on four areas: conflict, voluntarism, systematic support of communication between the parties and a solution identified by the parties with the support of a mediator who has no decision-making power. Confidentiality of the procedure and neutrality of the mediator play a central role in the success of this process.

As mentioned above, the regulations organizing mediation vary greatly between different countries. Some countries even offer financial support and most countries report positive results of their mediation programs. Hopt and Steffek (2008c, p. 42) argue that in order for these positive results to occur, conflict reduction cannot be pressed into rigid structures, but, instead of that, the parties and the mediators have to be able to remain flexible in their approach to respond to the characteristics of a given conflict. This flexibility of the concept is a central characteristic, which not only refuses rigid procedure but also requires specialized education of the experts as mediators. In Germany,

for example, the *Bundesarbeitsgemeinschaft Täter-Opfer-Ausgleich e. V.* (BAG TOA e.V.) gives a diploma of quality to educated experts that should guarantee high standards in the praxis (Lippelt & Schütte 2010, p. 66). Jung (1998, p. 921) warns that the procedure can lose its specific character, including its potentials to present more humane regulations of conflicts, from the moment it is incorporated into the penal justice system. Under such circumstances, mediation can easily degenerate into a poor variation of the decision-making process of judges. Nevertheless, the potential of this procedure within the process of penal decision making should not be neglected. Walgrave (2007, p. 570) points out in this context: “It is now almost generally accepted that a state-controlled legal framework is needed to locate restorative justice within the principles of a constitutional democracy.”

Tränkle (2007, p. 335) compares the German *Täter-Opfer-Ausgleichs-Verfahren* (Victim Offender Mediation Procedure) with the French model of *Médiation Pénale* in regard to adult penal law and the probability of implementation under the conditions of the respective penal procedure. She critically discusses the actual probability of implementing mediation under the current conditions of the traditional penal procedure. She points out that mediators have to accomplish a difficult task, namely the transformation of the traditional penal court procedure into one that can offer a chance for effective mediation (p. 336). Mediation, according to her study, is hindered when the parties act with a view towards the penal procedure (p. 338). The orientation of the parties toward their role in the traditional penal procedure is not an opportune starting point for open conversation. Chances for an open conversation first have to be clarified before the real mediation can begin. On this background, the author comes to the conclusion that a structural docking to the penal procedure hinders the development of mediation (p. 340). The influence of the traditional penal procedure on the shaping of mediation cannot be excluded because the practice itself is dominated by the law. So, the author argues that mediation can only partly, if at all, transgress from the traditional penal court procedure.

As mentioned above, international studies have found that the training of mediators differs greatly between countries (Hopt & Steffek 2008c, p. 70ff.). Only a few countries have defined clear training programs. Similarly, professional groups active as mediators vary widely internationally. Common problems with

mediation occur in connection with penal regulations. Especially in countries where the concept is not very well known or those which have limited experiences in this regard, implementation is more problematic, conceptualization tends to be faulty, institutional support – limited, and misuse – in the sense of prolongation of penal procedures – common (Hopt & Steffek 2008c, p. 71). There was initial resistance even in Germany (see Hammacher 2008, p. 30). It is central for the success of this approach that the public and the professionals involved are informed about this approach. The more the public is informed, the greater the chances that mediation is accepted as an alternative (see, for example, the development of attitudes to alternatives in the region of the former German Democratic Republic after the reunification of both parts of Germany: Kury et al. 1996; Ludwig & Kräupl 2005).

International comparisons of penal law have shown, on the one hand, that voluntarism as the central principle of mediation is widely accepted, yet, on the other hand, actual free decisions of the parties involved are substantially reduced in some countries (Hopt & Steffek 2008c, p. 87). Many countries first require special conferences or court decisions, which then have to be followed. The coercion of a voluntary solution of conflicts, the so-called Mediation-Paradox, is in any case counter-productive (Hopt & Steffek 2008c, p. 88). There are many different ways in which mediation is organized and practiced in different countries.

Since the beginning of the 1980s, restorative justice has been increasingly employed in practice and discussed theoretically. However, these alternatives are less well-known in Eastern European countries, even in those countries that orient their penal policy towards the West. Willemsens and Walgrave (2007, p. 491) point out in this context: “Although a number of countries in Central and Eastern Europe already have well established victim-offender mediation practices (for example, Poland, the Czech Republic and Slovenia), others are still struggling to take the first steps.” The European Forum for Restorative Justice was created within the frame of the AGIS2-Project, titled *Meeting the Challenges of Introducing Victim-offender Mediation in Central and Eastern Europe*, to support this development.

On the background of their experiences of cooperating with Eastern European countries, Willemsens and Walgrave (2007, p. 491) point to problems and opposition:

A highly punitive attitude among the public and policy makers, an uncritical reliance on incarceration, strong resistance within law enforcement, prosecutors and judges who fear competition from alternatives, a passive civil society and weakened public legitimacy of the state and its institutions, limited trust in NGOs and in their professional capacities, lack of information about restorative justice and of restorative justice pilots, low economic conditions making it difficult to set up projects, lack of a tradition of co-operation and dialogue in several sectors and professions, a general loss of trust in a better future and a mood of despondency and cynicism, forms of nepotism and even corruption in parts of the criminal justice system, heavy administrative and financial constraints on the agencies preventing investment in qualitative work.¹

Chankova and Van Ness (2007, p. 530) emphasize correctly: “The strength of restorative justice as a global reform dynamic is based on more than local dissatisfaction with criminal justice. The recognition that new approaches are being adopted, expanded, and evaluated in different parts of the world has encouraged and equipped local practitioners and given them credibility with policy makers”. This is the background on which the discussion about restorative justice now has also emerged in Eastern European countries.

On the background of the reports by Hopt and Steffek (2008a), we want to refer to some information regarding the role of mediation in Russia and Hungary. Kurzynsky-Singer (2008, p. 837ff.) reports for Russia that mediation in that country is a relatively new development, without specific legal foundations or regulations. In the professional discussion, the introduction of the procedure was first seen in economic controversies. As of yet there exists no special legal regulation of mediation. In 2007, a draft for a law on mediation was formulated and presented to the Duma (the parliament), which included provisions about mediators and the use of this approach in conflict situations, in the workplace and family affairs. But as Kurzynsky-Singer (2008, p. 842) reports, there is yet no legal regulation of mediation in Russia and therefore no specific regulation of the procedure.

The Russian court has to accept the result of a mediation, but the procedure is not confidential and is not defined by law. The mediator can be ordered to appear in court as a witness and has to testify. A penal procedure can be closed after mediation. To begin a mediation process, the parties can get information

¹ Also see Kury & Shea 2011a; Krajewski 2014.

and support for a mediator or a mediation center. The job of a mediator can be done by anybody, there are no requirements for special training. Most mediators are not jurists and the procedure is not standardized, so the use of the procedure is not defined (Kurzynsky-Singer 2008, p. 846).

There is only little statistical information available in this regard. One example is the Saint Petersburg Center of Conflict Resolution. Between 1994 and 2006, 520 mediation processes were implemented at this center, 364 of which related to interpersonal conflicts, 104 to economic disputes and 42 to problems in the work place. In 89% of these cases, an agreement was found: 69% of them were voluntary. Overall mediation is still rarely used in Russia (Kurzynsky-Singer 2008, p. 846). The costs are not necessarily lower than in the traditional penal procedures and, unfortunately, quality standards are still missing. Mediation does emerge in Russia particularly as an alternative to the traditional penal law system. The Russian literature emphasizes one positive aspect in that the risk of corruption of the court and the risk of false court decisions can be reduced through mediation. Consequently, in many situations, the conflicting parties prefer mediation over help by governmental institutions to reduce their influence and restrictive control (Kurzynsky-Singer 2008, p. 848).

Jessel-Holst (2008, p. 906ff.) reports on the situation of mediation in Hungary. In March 2003, a special law regulating mediation was passed in that country. The procedure is so far limited to civil cases. The law provides only little motivation to begin mediation; nonetheless, the procedure was established to reduce the caseload of the courts. Mediation in Hungary was first used to regulate conflicts in the health care system. Mediators must have a university diploma; a requirement for special training does not exist. Overall mediation is used rarely. Of all registered mediators in 2005, 51% were jurists, 16% teachers or persons with a technical education. The number of mediations increased in 2004 to 721, 532 of which were successful, 189 had no positive outcome; 254 cases were family conflicts, 34 problems at working places and 433 included other civil disputes. Overall the mediation procedures are regarded positively.

Meanwhile, mediation has become international and is used in Germany and other countries not only in penal or civil law cases but also to address other conflicts, such as controversies within families (Bannenberget al. 1999),

in schools (Morrison 2007), at work places, within communities (McEvoy & Mika 2002), between commercial companies (Young 2002), within law enforcement (Senghaus 2010; see also the chapters by DeLattre 2010 and Röchling 2010) or in prisons (Walther 2002; Matt & Winter 2002; Van Ness 2007; Sasse 2010). But overall it can be said, "it is within criminal justice that it is fast becoming most influential" (Green 2007, S. 183).

The English Ministry of Justice, for example, reports, in a press release from 3 14 2013, that it is committed to using this approach to help couples who are separating (2013b). "The Government strongly supports mediation – a quicker, simpler and more effective way for separating couples to agree how they divide their assets or arrange child contact, which avoids the traumatic and divisive effect of courtroom battles." The Ministry of Justice wanted to provide 25 million English pounds that year to support mediation programs in this regard and to develop new legal regulations, which would require that couples must, before they go to the court, "consider mediation to sort out the details of their divorce" (2013a). The Ministry points to cost reduction and reduction of time needed: "The average cost of resolving property and financial disputes caused by separation is approximately Pound 500 through mediation for a publicly funded client, compared to Pound 4,000 for issues settled through the courts. The average time for a mediated case is 110 days compared to 435 days for non-mediated cases" (Ministry of Justice 2013a).

Morrison (2007) discusses mediation programs in schools. "As the field of restorative justice began to define itself in the 1990s, the role of schools in promoting restorative justice was seen as central to developing a more restorative society as a whole" (p. 325). Meanwhile, there are many programs that internationally "focus on developing social and emotional intelligence in schools" (p. 327), in the sense of, for example, Sherman (2003), who sees restorative justice as "emotionally intelligent justice." Evaluations have shown positive results in that "the use of restorative measures, across a range of levels, is an effective alternative to the use of suspensions and expulsions" (Morrison 2007, p. 340).

Van Ness (2007, p. 314) reports on mediation programs in US-American prisons, particularly in the context of changes in the attitudes of prisoners toward their victims in the context of "victim awareness and empathy programs" and on solutions to conflicts between inmates and prison staff.

In some programs, victims or their substitutes are also included; in case of the latter, the victims themselves do not participate (for a similar program in Hamburg/Germany, see Hagemann 2003, p. 225). Restorative justice and victim offender mediation is used in prisons in some European countries like Belgium, Germany and others. Buntinx (2012), for example, discusses results from Belgium. She works in the organization *Suggnome*², which offers victim offender mediation in prisons, including severe cases, such as homicides. On the basis of a 2005 Belgian law, “a mediation process can be started on the demand of everybody who has a direct interest in a criminal procedure, and this is possible during the whole criminal procedure” (p. 2). Mediation in Belgian prisons began in 2001; since 2008, each prisoner in that country or his/her victim can ask for mediation (p. 2). In the time between 2008 and 2012, there have been 1 792 requests, 614 mediations, and 167 face-to-face meetings. The author summarizes: “[...] the most important conclusion is of course the very great level of satisfaction on the part of the parties that have participated in mediation. This satisfaction is found both on the side of the offender and that of the victim” (Buntinx 2012, p. 6).

Some mediation programs focus primarily on reconciliation between a prisoner and his/her family members or the preparation of the community for the re-entry of a prisoner after release. In “prison-community-programs,” the intent is to reduce the isolation between inmate and community. Another important topic is the reduction of prisonization (Clemmer 1940; Sykes 1958; Ortman 2002, pp. 198ff.). “Prison subcultures are typically deviant, making rejection of deviance more difficult for prisoners. Inviting them to participate in a process of restoration and transformation requires tremendous strength on their part to move against the prevailing culture [...] Prisons use or threaten physical and moral violence, making adoption of peaceful conflict resolution difficult” (Van Ness 2007, p. 319).

Gelber (2012, p. 441ff.) reports from Germany that the state of Northrhine Westfalia created a position of expert for prison affairs (*Justizvollzugsbeauftragter*). One of the responsibilities of this expert is to develop victim-oriented programs within the state’s prison system. In the context of a

² “[An] ancient Greek word which means looking from different perspectives at the same reality” (Buntinx 2012, p. 1).

victim-offender restitution program in Switzerland, prison staff visit victims of crime in their homes. This program made clear that it is a fundamental human need to retribute, not only on the part of the victims but also on the part of the offenders (p. 441). In the Swiss prison Saxerriet, 10% of the income of prisoners working in the prison is transferred to a special bank account reserved for restitution. Very often offenders themselves have been victimized by violent crimes as children or as juveniles. In the model project *Seehaus Leonberg* in Baden-Württemberg, established in 2003 for juvenile offenders, the staff engages in a victim-empathy program for the prisoners, which includes restitution. In Lower Saxony, mediators are trained to work in prisons, concentrating on solving conflicts between inmates and the staff. Literature repeatedly shows that victims of crime need to play a more central role in modern prison systems (p. 447; also see Gelber & Walter 2012; Krause & Vogt 2012). The results show that the victims are more often willing to participate in mediation programs than it is generally assumed.

Young (2002, p. 136) discusses the question of victim-offender mediation in commercial companies and points out that shop owners are often “forgotten victims.” The owner of a shop is usually not personally victimized, so they are not “ideal victims.” “The victims that most easily attract attention and sympathetic treatment are those who are socially constructed as vulnerable, worthy, individuals who did not contribute to their own victimisation.” Businessmen are usually not seen in this light or as possessing these qualities. Yet the first British Commercial Victimization Survey of 1993, conducted by the Home Office, has shown that 44% of shop owners and 36% of producers have been victimized by crimes, including thefts by staff. This can be a serious problem for the owner, which is often neglected by the public who, at times, tends to see business owners as “capitalists” only.

4. RESULTS OF THE EMPIRICAL EVALUATION OF MEDIATION

Until a few years ago, empirical research results and the evaluation of mediation on the international level, including restorative justice, have been quite sparse (Bazemore & Elis 2007). In recent years, this body of literature has expanded greatly and the research overwhelmingly documents “the positive

impact of restorative practices at multiple levels, with case types ranging from first-time offenders and misdemeanants to more serious chronic and violent offenders” (Bazemore & Elis 2007, p. 397; also see Hayes 2007). The authors argue that in contrast to empirical research about treatment programs for offenders the outcomes of which are not uniformly successful, the positive research results of restorative justice programs are more consistent: “Most studies of restorative programmes, including recent meta-analyses (Bonta et al. 2000; Nugent et al. 2003) indicate some positive impact [...] and some suggest that restorative programmes may have equal or stronger impacts than many treatment programmes.” The data on the positive impact for the victims of crimes are particularly strong. There is an ongoing debate surrounding the question of whether the positive effects are the result of the restitution or of the experience of a just treatment during the penal process.

To this day, few studies address the preventative effect of participation in victim-offender restitution programs through reduction in recidivism rates. Comparative studies analyzing recidivism after participation in victim-offender restitution programs in contrast to the traditional penal procedure were carried out primarily in the US, UK and Australia (Hayes 2007, p. 433). A discussion of these research results is difficult insofar as there are many methodological problems associated with these studies, often reducing their validity. In particular, it is difficult to generalize the results found – problems we have already seen decades ago in regard to the evaluation of other offender treatment programs (see Lipton et al. 1975).

Schneider (2009, p. 716) summarizes the results of two Australian experiments about the impact of the method in Canberra (Strang 2002). Offenders of property crimes under the age of 18 and offenders of violent crimes not older than 30 years of age were not charged by the court but instead cooperated in a conferencing program. The offenders were permitted to return to the court at any time during the process. A control group, selected at random, was established, where offenders underwent a regular court procedure. During the conferencing, an expert facilitated a discussion of the crime with those affected including the offenders, victims, families and members of the neighbourhood. The agreement in the group was accepted by all members. In contrast to the penal procedure, the conferencing program had a healing and helping effect in regard to emotions, respect and self-confidence. 93% of

the experimental group agreed on such a helping impact of the conference: 88% said they were able to explain and present their situation. Victims and offenders were winners (p. 717). Both sides had the opportunity to be heard and to experience understanding. 66% of victims and offenders reported a positive effect overall. Schneider (2009, p. 718) comes to the conclusion that mediation does not guarantee a positive effect, but it has a good chance to be helpful, a success “which cannot be given up in crime control.”

Restorative justice is a broad concept, with procedures varying widely between programs, and these programs, in turn, are used in different parts of the penal procedure. In many cases, the conferences, and so the direct “treatment” of the offender, only last 60 to 90 minutes per session, far too short for consistently high impacts. Consequently, the effect might be low, especially given that many other factors can influence recidivism, like unemployment, inclusion in different social networks after release and related problems, special life events, or possible drug and alcohol issues. There can also be a “self-selection bias,” because offenders and victims have to agree to participate in the programs, so motivated offenders with an already better prognosis might volunteer more often (Gromet 2009, p. 41). Furthermore, mediation programs are frequently not implemented because of opposition, so there may be a discrepancy between programs as described in the literature and their reality (Hoyle 2002, p. 116). The development of experimental studies is often not possible, which might reduce the validity of results. In addition, the criteria of recidivism are often not clearly defined and thus not comparable (Menkel-Meadow 2007).

On this background, Hayes (2007, p. 440) summarizes the outcomes:

Despite results that show restorative justice effects no change [...] or in some cases is associated with increases in offending [...], the weight of the research evidence on restorative justice and reoffending seems tipped in the positive direction to show that restorative justice has crime reduction potential. I am not making a definitive claim about restorative justice’s ability to prevent crime because, at this stage, we simply do not know enough about how and why restorative justice is related to offenders’ future behaviour. I am however, suggesting that, on balance, restorative justice ‘works.’ This approach can contribute to reductions in recidivism [...] but post-intervention experiences are important.

In this context, Johnstone (2007, p. 598) points out that the larger number of current, overwhelming publications about restorative justice is written by experts who support the procedure and this, in itself, can be a background for a bias in evaluation of the results. In his view, by summarizing more critical international evaluations, he shows that especially the following deficiencies are pointed out:

1. Proponents' descriptions of restorative justice are vague and incoherent.
2. Proponents make exaggerated claims about what restorative justice can achieve.
3. A significant move away from punishment towards restorative justice will undermine the policy of deterrence.
4. A significant move away from punishment towards restorative justice will result in a failure to do *justice*.
5. A significant move away from punishment towards restorative justice will result in systematic departures from axiomatic principles of justice.
6. While presented as a radical alternative to conventional approaches to wrongdoing, restorative justice actually shares a great deal with conventional approaches and their introductions will simply extend the reach of conventional systems and penal control.

The most frequent critique of restorative justice focuses on the possible problem of a reduction of, or detrimental effect on, the deterring impact of (harsh) punishment. But proponents of restorative justice point out in this regard that deterrence has not proven to have substantive effects:

It is of course true that the deterrent effects of punishment tend to be greatly overestimated and its tendency to re-enforce criminality underestimated. However, the average citizen will probably find this response unconvincing (Wilson 1983, pp. 117-144), because the idea that without penal sanctions for law-breaking, many people will succumb to temptations to break the law seems self-evident to most people (Johnstone 2007, p. 601).

This again emphasizes the necessity to educate the public about mediation and its greater success, in many circumstances, in solving conflicts in society and addressing the impacts of crime.

In the context of criminal justice, some critics discuss restorative justice as no more than a supplement to the official punishment by the courts. They argue that in this setting it does indeed have an important role, but that it cannot be a substitute for punishment. Johnstone (2007, p. 610) pleads in his critical appreciation of restorative justice that these programs have to be

implemented as part of a broader pattern of reactions to criminal behaviour. “What is most interesting is that even the most fervent critics tend to regard restorative justice – suitably reformulated and modified – as an extremely valuable contribution to the ongoing debate about how we should understand, relate to, and handle the problem of wrongdoing.”

As Braithwaite (1999; 2009), one of the founding fathers of restorative justice, points out, the positive effects of the programs are impressive, including the reduction in recidivism rates. He cites results of empirical research from different countries, which found a remarkable reduction in recidivism rates. These data include reductions in domestic violence; in some cases, even the reduction of alcohol consumption after participation in restorative justice conferences. “Restorative justice is more successful in getting offenders to take responsibility for their wrongdoing. This happens because they experience greater remorse than in traditional criminal law process.” Similarly, bullying in schools has been successfully reduced through this procedure (Olweus 1993).

According to Gromet (2009, p. 41ff.), not only does the recidivism rate of offenders after participation in restorative justice programs decline, but another important effect was that the victims were more satisfied than after going through a traditional penal process. They report that they had felt treated more fairly and experienced better emotional health, had fewer fears of repeated victimization and expressed fewer feelings of revenge. “There is evidence that, overall, offenders who participate in restorative justice procedures are less likely to reoffend than those who participate in a more traditional court-based process [...], particularly for juvenile offenders” (p. 41). These positive effects occur because the parties involved, including offenders, are treated with more respect. This approach creates a context in which the offender can experience empathy for the pain caused to the victim; s/he can develop shame and other emotions that can be relieved through an apology; in this way, s/he is able to take over more responsibility for the crime (Gromet 2009, p. 42). Especially those offenders who showed emotional expression and transformations had lower recidivism rates later on (Tyler et al. 2007). Some other studies, however, also showed an increase in the recidivism rate after participation in restorative justice programs.

Hopt and Steffek (2008, p. 77) argue that the effects and importance of mediation in a country have to be seen in combination with the legal situation

in a country and the culture of dealing with disputes. This is an important point, especially in comparing results from different countries. For example, the legal conditions and the attitudes of people toward this form of conflict solving are different, given the background of the historical developments, in the states of the former Soviet Union (Kury & Shea 2011a). With the exception of the United States, the populations of Western countries have, overall, more lenient reactions towards crime; they have had a long time to experiment with these forms of conflict resolution and to become familiar with these procedures. Tonry (2014, p. 15f.) emphasizes:

The explanations for why countries have particular penal policies and practices are general and particular. They are general in the sense that some structural features of government and society such as income inequality, trust, legitimacy, and consensual political systems seem to be associated with particular kinds of crime control policies and punishment practices. They are particular in the sense that the details of national history and culture powerfully affect both those structural features and their effects.

A population's attitude towards punishment is influenced by the country's practice of dealing with crimes. When the German government abolished the death penalty in 1949 after WWII, nearly 75% of the population voted to retain the death penalty in cases of severe crimes; today this rate is reduced to about one fifth of its former value (Kury & Shea 2012). In the former Soviet states, the experiences of penal justice professionals, as well as the population with alternatives to traditional punishment, is more limited, public discussion and media reports are more oriented towards harsher punishment, which is aimed at crime prevention (Ludwig & Kräupl 2005). Mediation in many countries, including the former Soviet states, is a new method to reduce conflicts and not yet a well-known one. Hopt and Steffek (2008c, p. 42) argue that the fact that mediation shows positive outcomes in many countries is the result of not pressing these approaches into rigid structures, but allowing the parties and the mediators to deal flexibly with the conflict and to respond to the particulars of a dispute.

In Norway, mediation was practiced in 20-25% of the civil cases in 2000; in 70% to 80% of these instances, a compromise could be found. The acceptance of mediation in countries like Great Britain or the US can similarly be seen in the high rates of success. Results from Poland and Russia, but also from

Switzerland and partly from France report a lower acceptance of the procedure (Hopt & Steffek 2008c).

Worldwide empirical research increasingly shows that restorative justice is seen in a positive light by victims and that it has greater positive impact than traditional penal procedures (Green 2007, p. 177). The well-known Thames Valley Police Project in London (see Hoyle et al. 2002) showed that “the vast majority of victims felt that the meeting had been valuable in helping them recover from their experiences.” In this initiative, organized by the police, two thirds of the victims reported that their way of seeing the offender had changed in a positive way after participating in the program (Hoyle et al. 2002). Comparable results were found in the evaluation of the “Youth Justice Panels” in Great Britain (Crawford & Newburn 2003, p. 213). “Panels received high levels of satisfaction from victims on measures of procedural justice, including being treated fairly and with respect, as well as being given a voice in the process” (Green 2007, p. 178).

An important aspect here is the openness of the victims to mediation and the willingness to cooperate: “the general conclusion of most restorative justice studies has been that when victims participate in some form of victim-offender mediation the majority find the process helpful” (Green 2007, p. 178). The author continues:

What is evident is that the attitudes of victims who take part in the restorative process are largely positive when compared with those victims whose cases are tried and sentenced in the conventional way. At this level at least, restorative justice appears to fulfill its promise to the victims of crime – for the first time in recent history they have been given both a role and status in the resolution of their victimization.

Despite these positive results, some victims are nevertheless dissatisfied with the method (see, for example, Daly 2001; 2003a).

Hopt and Steffek (2008, S. 79) come to the conclusion that mediation is a useful and helpful method to reduce conflicts and that it should be promoted. Mediation has the most positive impact if it is part of a larger system of conflict resolution. This method is also less time-consuming and less costly when compared to traditional penal procedures (p. 80). Research results not only from England and the Netherlands, but also from Germany show that mediation, in comparison with traditional court procedures, requires only

one third to one half of the time. The inclusion of mediation into the official penal process has no effect on the positive results (p. 82; but also see, critically, Tränkle 2007). The authors also point out that mediation has a more intensive effect on reconciliation than the official penal procedure. Agreements are more often kept than after traditional penal processes (p. 84). This is also proof of the fact that positive impact is not only promised in literature, but can also be seen in practice. Even in the cases of failed mediation conferences, the parties report satisfaction with the experience.

The main studies for Germany have been summarized by Lippelt and Schütte (2010, p. 43), including the methodologically sophisticated studies by Busse (2001) and by Dölling et al. (2002). They also come to the conclusion that, in most cases, victim-offender mediation shows lower recidivism rates than traditional penal procedures; this applies even to unfavorable cases. These studies show as well that the costs were lower, particularly in the cases of juveniles (Kumpmann 2007). The studies show again the greater satisfaction rate of all parties involved as a central positive effect of TOA. Bals (2006) was able to show that over 90% of the offenders and of the victims evaluated mediation positively; 80% of victims and 57.1% of offenders felt being treated very fair.

Schmidt (2012, p. 190), in contrast, argues that the efficiency of TOA in Germany has, to this day, only been assessed for individual projects or limited to local areas. According to him, the results available today cannot be generalized. The author (2012, p. 188) emphasizes furthermore that the results of mediation and the duties of the offender agreed upon during the conference sessions are, in most cases, discharged by the offender (Kunz 2007, pp. 466, 471ff.). DeLattre (2010, p. 85) points out that the most formal evaluations of victim-offender mediation projects show a clear positive effect.

Current research results may still be incomplete in regard to systematic evaluations of alternative responses to crime, but they do lay out, repeatedly and clearly, the limitations of (harsh) punishment in regard to crime prevention:

[...] that punishment alone may not bring about significant improvements to the emotional and psychological recovery of crime victims. On the contrary, the results from the analysis of sentencing models indicate that the “punitive model” of punishment alone is less conducive to emotional recovery than the “non-punitive model” of apology and restitution without punishment. When punishment was combined with apology and restitution, however, the

resulting model was considered to be the most conducive to victim recovery. Indeed the “comprehensive model” was the only model that showed a significant increase in victim recovery for all scenarios (London 2011, S. 115).

Gromet (2009, p. 47) similarly emphasizes in this context that “[t]he empirical evidence indicates that the best solution is a combined procedure that contains both restorative and retributive elements” (see above).

According to London (2011, p. IX), “restorative justice began as a vision of a better way to do criminal justice and, in hundreds of programs throughout the world, it has proven to be just that. It has helped victims to feel more satisfied with the process and more secure in their personal safety. It has increased offenders’ compliance with restitution orders without adversely affecting recidivism rates.”

5. FINAL DISCUSSION

This overview of international publications on mediation and restorative justice in European countries has shown that the body of literature has grown exponentially, especially for western industrial societies. Since the end of WWII and the acceleration of the 1960s and 1970s, the legitimate discussion about more comprehensive ways to include the interests of victims in penal prosecution promoted the rediscovered and fast-growing importance of victimology. In the traditional, state regulated penal procedure, the victims’ role is limited to that of witnesses – the compensation for the damage they had incurred is seen as their personal problem. Considering the fact that a majority of offenders have no property and a low, if any, income, the probability for restitution is small or non-existent; the victims then receive nothing, unless they are insured. Traditional penal law is not concerned with the victims’ needs and instead focuses only on the sanctioning of offenders. In cases where the offender is punished with a fine, this money is paid by him to the state or to non-profit organizations, not to the victim. On this background, it is not surprising that many victims are not satisfied with the results of the penal procedure. They only have the “satisfaction” that the offender is punished – more or less severely. This also promotes the desire for a harsh punishment.

Modern penal policy is predominantly focused on the restoration of “penal peace,” (Rechtsfrieden) which does not automatically recreate social peace

(Sessar 1992, p. 21). The penal peace is primarily concerned with control, the prestige of penal law and the authority of the state, so social peace has been promoted separately. This includes the effort to halt the shifting of these problems to the penal law level, instead of addressing them where they occurred, namely in the social community, and to look there for solutions (p. 21). The regulation of the interpersonal dimension of crime has positive effects on socialization and peace in a society, and if the public is aware of these effects, the role of penal law is reduced.

Public support is central for the implementation of penal innovations; without it, the process is exceedingly difficult. As DeLattre (2010, p. 91) points out correctly, victim offender restitution was promoted as the most important and positive initiative in crime policy over the last 25 years. To this day, the opportunities inherent in this new approach to dealing with crime are not fully utilized despite obvious positive results. The need for dialogue with the public has been a neglected element in the promotion of the procedure and has to be intensified (p. 101). The most important partners here are the police, because, in most cases, they are the institution of first contact between offender and victim.

Hoyle (2002, p. 104) reports that in some cases victims, including those in the “Thames Valley-Project,” choose not to participate in mediation. But it is even more problematic when many do not even have the opportunity to do so due to a lack of information about this form of conflict resolution. A main aim of restorative justice is to reduce the stereotyping of victims and of offenders about each other (p. 110). The availability of accurate information for both parties also increases their willingness to participate. “Restorative justice holds the promise of restoring victims’ material and emotional loss, safety, damaged relationships, dignity and self-respect” (p. 101). Some victims are not motivated to participate, but, more commonly, this opportunity for participation is missed because of lacking information.

Young (2002, p. 137) reports that already in the 1984 British Crime Survey, 51%, i.e., more than half of the interviewed victims reported they would be willing to meet the offender outside the court together with an official, supportive mediator to speak about restitution. Using another formulation of the question in the 1998 British Crime Survey, 41% agreed to a meeting with the offender in the company of a third person to ask him/her about

the background of the crime and to tell him/her about the impact of the experienced victimization. This shows a great willingness of the public to promote mediation with the offender. Sanders (2002, p. 222) emphasizes that research has shown that if offenders understand the penal procedure and regard it as legitimate, they are more able to accept the result, even in cases where they see the result as unjust. The same has been found for the victims. But as Hopt and Steffek (2008, p. 79) point out, the culture of conflict reduction in a society has to be promoted not only by educating judges and prosecutors, but also by informing the public. The procedure has to be explained, judges and prosecutors have to be knowledgeable about the effects, well-trained mediators have to be available and financial support is to be provided to the officials involved in the procedure. These accompanying measures must be established to create a supportive environment in which mediation programs can be implemented and flourish.

Another debate focuses on the possibility of combining restoration and retribution. Sessar (1992, p. 21) questions the extent to which we even need penal law. According to him, it is possible that restitution can overtake penal attitudes. London (2011, p. 180) makes an important argument when he emphasizes that “restoration” has to be combined with “retribution” for the public to accept it:

Neither deterrence, incapacitation, nor retribution offer a strategy for reintegration. Even rehabilitation, by itself, is a poor vehicle for genuine reintegration because it neglects the needs of victims and of society for the satisfaction of justice as a precondition for social acceptance. By subsuming each of these traditional goals to the overall goal of restoring trust, however, criminal sentences can be fashioned that attempt to achieve deterrence, incapacitation, restitution, rehabilitation, as well as retribution not as ends in themselves, but as part of an overall strategy for repairing the harm of crime (London 2011, p. 183).

Tränkle (2007, p. 340) makes the interesting observation that the nature of penal law and the principles of mediation are standing in a contradictory relationship from the point of view of members of penal procedures; participants in mediation have to act within this field of tension. The structural binding to the penal procedure and its context hinders mediation specialists in developing their own distinct logic. At this time, mediation is subordinated to the

dominance of penal law. The implementation of mediation is thereby made significantly more difficult. It may even be necessary to transcend the definition of penal law to bring about an effective resolution to a conflict; that is, to see the conflict in a broader sense, not only as a norm-conflict, but a social conflict, which can often be done successfully (Tränkle 2007, p. 341).

A successful conflict reduction requires a personal element that cannot be demanded, so mediation has, inherently, an idealistic component. Mediation in partner conflicts has to be distinguished from partner therapy. Mediation is structured by the penal procedure, but to solve the conflict, this approach has to transcend the legal definition of the conflict; it has to expand the understanding of the conflict between offender and victim to one of a social conflict. But this step might not be accepted by the parties. The “real” conflict may be situated outside the victim-offender dimension, but the conflict has to be “solved” inside the penal procedure (Tränkle 2007, p. 341).

The procedure is thereby institutionalized in a paradoxical way. There is the offer for participation in mediation, yet if the offer is accepted, it would transgress the penal procedure. The solution has to be seen in the role of support institutions outside the penal system, for example, counselling centers or treatment organizations. This shows also the limitations of mediation, especially concerning the reintegration of offenders into the community. Mediation reintegrates emotions in the search for solutions of penal problems, but this contradicts the penal procedure, which does not promote emotions. Nevertheless, the role of emotions is becoming increasingly a topic of debate in criminology (Karstedt 2002; 2006; 2011; Karstedt et al. 2011).

London (2011, p. 320) emphasizes that all parties benefit from a successful mediation:

For the victim, the restoration of trust approach offers the prospect of genuine repair for the material and emotional harm [...] For the community, the restoration of trust offers the prospect of involvement in problem solving toward the goal of achieving safety and resolving ongoing conflicts. For the offender, the restoration of trust approach enhances the likelihood of regaining acceptance into the moral community of law-abiding people by the demonstration of accountability both for the material losses and the moral transgressions involved in the crime.

On the background of the positive and encouraging results of victim-offender restitution/mediation today, we have to take these alternatives to punishment after law-breaking behavior seriously. All modern penal law systems are confronted with the question of how to relate to the victim-offender restitution within their systems (Rössner 1998, p. 881). The international comparison by Rössner (p. 894) clearly shows the benefits of including restitution in all systems of penal law control. As discussed above, especially victims report, in most cases, positive results. So, mediation is not about using victims to heal offenders, as sometimes criticized; it is a measure that benefits both parties – offenders and victims.

Concerning the impact of mediation on offenders, especially on resocialization, the results are more complex, which is not surprising. Mediation is commonly practiced in short meetings of a few hours, so lasting impacts on offenders with usually strong social deficits, especially in the cases of incarcerated offenders, cannot be expected in all cases. But mediation can play an important role as one element in a comprehensive resocialization program that includes other measures. On this background, including the effective resocialization of offenders, a broader use and an extension of this method has to be supported. The traditional penal procedure has clear disadvantages concerning the reintegration of offenders, which can be at least partly reduced through professional mediation.

REFERENCES

- Abel, R. (1982). *The Politics of Informal Justice*. New York.
- Aertsen, I. (1999). Mediation bei schweren Straftaten – Auf dem Weg zu einer neuen Rechtskultur? In: Pelikan, C. (Ed.), *Mediationsverfahren: Horizonte, Grenzen, In-sichten*. Jahrbuch für Rechts- und Kriminalsoziologie. Baden-Baden: Nomos, 115-138.
- Alternativ-Entwurf Wiedergutmachung (AE-WGM)(1992). Entwurf eines Arbeitskreises deutscher, österreichischer und schweizerischer Strafrechtslehrer (Arbeitskreis AE). München.
- Austin, J., Irwin, J. (2001) *It's About Time: America's Imprisonment Binge*. Belmont, CA: Wadsworth.
- Bals, N. (2006). Täter-Opfer-Ausgleich – Cui bono? Befunde einer Befragung von Geschädigten und Beschuldigten. *Monatsschrift für Kriminologie und Strafrechtsreform* 89, 131-145.

- Bannenberg, B., Weitekamp, E.G.M., Rössner, D., Kerner, H.-J. (1999). *Mediation bei Gewaltstraftaten in Paarbeziehungen*. Baden-Baden.
- Bazemore, G., Elis, L. (2007). Evaluation of restorative justice. In: Johnstone, G., Van Ness D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan Publishing, 397-425.
- Bonta, J., Wallace-Capretta, S., Rooney, J. (2000). Quasi-experimental evaluation of an intensive rehabilitation supervision program. *Criminal Justice and Behavior* 27, 312-329.
- Braithwaite, J. (1989). *Crime, shame and reintegration*. Cambridge, UK: University Press.
- Braithwaite, J. (1999). Restorative Justice: Assessing Optimistic and Pessimistic Accounts. In: Tonry, M. (Ed.), *Crime and Justice: A Review of Research*. Vol. 25. Chicago: University of Chicago Press, 1-127.
- Braithwaite, J. (2005). Between proportionality and impunity: confrontation – truth – prevention. *Criminology* 43, 283-306.
- Braithwaite, J. (2009). Restorativ Justice. In: Schneider, H.J. (Hrsg.), *Internationales Handbuch der Kriminologie*. Band 2: Besondere Probleme der Kriminologie. Berlin: DeGruyter, 53-98.
- Bundesministerium des Innern/Bundesministerium der Justiz (Hrsg.)(2006). *Zweiter Periodischer Sicherheitsbericht*. Berlin: BMI/BMJ.
- Buntinx, K. (2012). *Victim-offender mediation in homicide cases. Opportunities and risks*. Unpublished presentation in Tübingen.
- Bush, R.A.B., Folger, J.P. (2005). *The Promise of Mediation – The Transformative Approach to Conflict*. San Francisco.
- Busse, J. (2001). *Rückfalluntersuchung zum Täter-Opfer-Ausgleich. Eine statistische Untersuchung im Amtsgerichtsbezirk Lüneburg*. Diss. Jur. Marburg.
- Bussmann, K.-D. (1986). Das Konzept "Versöhnung statt Strafe". Konzept und Praxis von Mediationsprogrammen in Kanada und USA – Bericht einer Studienreise. *Monatsschrift für Kriminologie und Strafrechtsreform* 69, 152-163.
- Carrabine, E. (2008) *Crime, Culture, and the Media*. Malden, MA: Polity.
- Chankova, D., Van Ness, D.W. (2007). Themes. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan Publishing, 529-533.
- Clemmer, D. (1940). *The prison community*. Boston: Christopher.
- Crawford, A., Newburn, T. (2003). *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*. Cullompton: Willan Publishing.
- Daly, K. (2001). Conferencing in Australia and New Zealand: Variations, research findings and prospects. In: Morris, A.M., Maxwell, G. (Eds.), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*. Oxford: Hart Publishing,
- Daly, K. (2003a). *Restorative Justice: The real story*. In: McLaughlin, E. u.a. (Eds.), *Restorative Justice. Critical Issues*. London: Sage.

- Daly, K. (2003b). Mind the gap: Restorative Justice in Theory and Practice. In: Hirsch, A. von u.a. (Eds.), *Restorative Justice and Criminal Justice*. Oxford: Hart Publishing.
- DeLattre, G. (2010). Der Täter-Opfer-Ausgleich – die Praxis eines anderen Umgangs mit Straftaten. In: Senghaus, P. (Hrsg.), *Mediation und Polizei*. Rothenburg/Oberlausitz: Sächsische Polizei, 81-102.
- Dölling, D., Hartmann, A., Traulsen, M. (2002). Legalbewährung nach TOA im Jugendstrafrecht. *Monatsschrift für Kriminologie und Strafrechtsreform* 85, 185-193.
- Dölling, D., Entorf, H., Hermann, D., Rupp, T. (2011). Meta-Analysis of Empirical Studies on Deterrence. In: Kury, H., Shea, E. (Eds.), *Punitivity. International Developments. Vol. 3: Punitiveness and Punishment*. Bochum/Germany: Universitätsverlag Dr. Brockmeyer, 315-378.
- Doob, A.N., Roberts, J. (1983). *Sentencing: An analysis of the public's view of sentencing*. Ottawa: Department of Justice.
- Düinkel, F., Grzywa-Holten, J., Horsfield, P. (Eds.)(2015). *Restorative Justice and Mediation in Penal Matters. A stock-taking of legal issues, implementation strategies and outcomes in 36 European countries*. 2 Vols. Mönchengladbach: Forum-Verlag Godesberg.
- Frehsee, D. (1987). *Schadenswiedergutmachung als Instrument strafrechtlicher Sozialkontrolle*. Berlin.
- Frühauf, L. (1988). *Wiedergutmachung zwischen Täter und Opfer. Eine neue Alternative in der strafrechtlichen Sanktionspraxis*. Gelsenkirchen: Verlag Dr. Mannhold.
- Gelber, C. (2012). Victimologische Ansätze im Strafvollzug. *Monatsschrift für Kriminologie und Strafvollzugsreform* 95, 441-450.
- Gelber, C., Walter, M. (2012). Über Möglichkeiten einer opferbezogenen Vollzugsgestaltung. *Forum Strafvollzug* 61, 171-172.
- Goodey, J. (2005). *Victims and Victimology: Research, Policy and Practice*. Harlow: Pearson Longman.
- Green, S. (2007). The victims' movement and restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan, 171-191.
- Griffiths, C. (1999). The victims of crime and restorative justice: The Canadian experience. *International Review of Victimology* 6, 279-294.
- Gromet, D.M. (2009). Psychological perspectives on the place of restorative justice in criminal justice systems. In: Oswald, M.E., Bieneck, S., Hupfeld-Heinemann, J. (Eds.), *Social Psychology of Punishment of Crime*. Chichester: Wiley-Blackwell 39-54.
- Hagemann, O. (2003). Restorative Justice in Prison? In: Walgrave, L. (Ed.), *Repositioning Restorative Justice*. Cullompton: Willan Publishing.
- Hagemann, O. (2011). Restorative Justice: Concept, Ideas and Impediments. In: Lummer, R., Hagemann, O., Tein, J. (Eds.), *Restorative Justice – A European and Schleswig-Holsteinian Perspective*. Schleswig-Holstein Association for Social Responsibility in Criminal Justice; Victim and Offender Treatment, Schriftenreihe

- Soziale Strafrechtspflege, Band 1, 34-59 and 151-178. (http://www.cepprobation.org/uploaded_files/RJ_Band1.pdf)
- Hammacher, P. (2008). Widerstand gegen Mediation abbauen. *Zeitschrift für Schiedsverfahren*, 30-33.
- Harrington, C. (1985). *Shadow Justice: The Ideology and Institutionalization of Alternatives to Court*. London et al.
- Hartmann, A. (2004). Mediation und Verfahrensgarantien. In: Baron, S. (Hrsg.), *Beziehungsgewalt und Verfahren*. Baden-Baden, 77-90.
- Hayes, H. (2007). Reoffending and restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan Publishing, 426-444.
- Heinz, W. (1993). Opfer und Strafverfahren. In: Kaiser, G., Kerner, H.-J., Sack, F., Schellhoss, H. (Hrsg.), *Kleines Kriminologisches Wörterbuch*. Heidelberg: C.F. Müller, 372-377.
- Hentig, H. v. (1948). *The criminal and his victim*. New Haven.
- Heß, H. (2008). Verhandlungen des 67. Deutschen Juristentages Erfurt 2008, Band I: Gutachten, Teil F: Mediation und weitere Verfahren konsensualer Streitbeilegung.
- Hestermann, T. (2010). Fernsehgewalt und die Einschaltquote. Welches Publikumsbild Fernsehschaffende leitet, wenn sie über Gewaltkriminalität berichten. Baden-Baden: Nomos.
- Hestermann, T. (2016). "Violence against children sells very well". Reporting crime in the media and attitudes to punishment. In: Kury, H., Redo, S., Shea, E. (Eds.), *Women and Children as Victims and Offenders: Background, Prevention, Reintegration. Suggestions for Succeeding Generations*. Heidelberg, New York: Springer (in print).
- Hopt, K.J., Steffek, F. (Hrsg.) (2008a). *Mediation. Rechtstatsachen, Rechtsvergleich, Regelungen*. Tübingen: Mohr Siebeck.
- Hopt, K.J., Steffek, F. (2008b). Vorwort. In: Hopt, K.J., Steffek, F. (Hrsg.), *Mediation. Rechtstatsachen, Rechtsvergleich, Regelungen*. Tübingen: Mohr Siebeck, VII-IX.
- Hopt, K.J., Steffek, F. (2008c). Mediation – Rechtsvergleich, Regelungsmodelle, Grundsatzprobleme. In: Hopt, K.J., Steffek, F. (Hrsg.), *Mediation. Rechtstatsachen, Rechtsvergleich, Regelungen*. Tübingen: Mohr Siebeck, 3-102.
- Hoyle, C., Young, R. (Eds.) (2002). *New Visions of Crime Victims*. Oxford, Portland/Oregon: Hart Publishing.
- Hoyle, C. (2002). Securing restorative justice for the ‚Non-participating‘ victim. In: Hoyle, C., Young, R. (Eds.), *New visions of crime victims*. Oxford, Portland/Oregon, Hart Publishing, 97-131.
- Jehle, J.-M. (2005). *Strafrechtspflege in Deutschland*. Berlin.
- Jessel-Holst, C. (2008). Mediation in Ungarn. In: Hopt, K.J., Steffek, F. (Hrsg.), *Mediation. Rechtstatsachen, Rechtsvergleich, Regelungen*. Tübingen: Mohr Siebeck, 906-921.
- Jewkes, Y. (2008) *Media & Crime*. Los Angeles: Sage.

- Johnstone, G. (2007). Critical perspectives on restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan Publishing, 598-614.
- Johnstone, G., Van Ness, D.W. (Eds.) (2007a). *Handbook of Restorative Justice*. Cullompton: Willan.
- Johnstone, G., Van Ness, D.W. (2007b). The meaning of restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan, 5-23.
- Kaiser, G. (1996). *Kriminologie. Ein Lehrbuch*. Heidelberg: C.F. Müller.
- Kaminski, D. (2012). Victims and the criminal justice system: Threat of promise? In: Snacken, S., Dumortier, E. (Eds.), *Resisting Punitiveness in Europe? Welfare, human rights and democracy*. London, New York: Routledge, 190-201.
- Karstedt, S. (2002). Emotions and criminal justice. *Theoretical Criminology* 6, 299-317.
- Karstedt, S. (2006). Emotions, crime and Justice: Exploring Durkheimian Themes. In: Deflem, M. (Ed.), *Sociological Theory and Criminological Research: Views from Europe and the United States*. Amsterdam et al.: Elsevier, 223-248.
- Karstedt, S., Loader, I., Strang, H. (Eds.) (2011). *Emotions, Crime and Justice*. Oxford and Portland/Oregon: Hart Publishing.
- Karstedt, S., (2011). Handle with Care: Emotions, Crime and Justice. In: Karstedt, S., Loader, I., Strang, H. (Eds.), *Emotions, Crime and Justice*. Oxford and Portland/Oregon: Hart Publishing, 1-19.
- Kerner, H.-J., Hartmann, A., Lenz, S. (2005). *Täter-Opfer-Ausgleich in der Entwicklung. Auswertung der bundesweiten Täter-Opfer-Ausgleichs-Statistik 1993 bis 2002*. Berlin.
- Kerner, H.-J., Hartmann, A., Eikens, A. (2008). *Täter-Opfer-Ausgleich in Deutschland – Auswertung der bundesweiten TOA-Statistik für den Jahrgang 2005, mit Vergleich zu den Jahrgängen 2003 und 2004, sowie einem Rückblick auf die Entwicklung seit 1993*.
- Krajewski, K. (2014). Different penal climates in Europe. *Vilniaus Universiteto Leidykla, Mokslo darbai Kriminologijos studijos*, 1/2014, 86-111.
- Krause, M., Vogt, M. (2012). *Gerichtliche Mediation in Strafvollzugssachen. Betrifft Justiz* 110, S. 297.
- Kumpmann, S. (2007). *Kosten und Kostenersparnis im Täter-Opfer-Ausgleich. Praxisheft Täter-Opfer-Ausgleich Nr. 5*. Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung.
- Kunz, F. (2007). *Im Osten was Neues: Täter-Opfer-Ausgleich aus Sicht der Beteiligten. Monatsschrift für Kriminologie und Strafrechtsreform*. 466-
- Kury, H. (1986). *Die Behandlung Straffälliger. Teilband I: Inhaltliche und methodische Probleme der Behandlungsforschung*. Berlin: Duncker & Humblot.
- Kury, H. (2013). *Zur (Nicht-)Wirkung von Sanktionen – Ergebnisse internationaler empirischer Untersuchungen*. In: Kury, H., Scherr, A. (Hrsg.) *Zur (Nicht-)Wirkung*

- von Sanktionen. Immer härtere Strafen - immer weniger Kriminalität? Soziale Probleme 24, 11-41.
- Kury, H. (2015a). Kriminalprävention durch härtere Sanktionen? In: Marks, E., Steffen, W. (Eds.), Prävention braucht Praxis, Politik und Wissenschaft. Ausgewählte Beiträge des 19. Deutschen Präventionstages 2014. Mönchengladbach: Forum Verlag Godesberg, 323-361.
- Kury, H. (2015b). Härtere Strafen – oder mehr Alternativen? Was ist die bessere Kriminalprävention? In: Bannenberg, B., Brettel, H., Freund, G., Meier, B.-D., Remschmidt, H., Safferling, C. (Eds.), Über allem: Menschlichkeit. Festschrift für Dieter Rössner. Baden-Baden: Nomos, 240-258.
- Kury, H., Lerchenmüller, H. (Hrsg.) (1981). Diversion. Alternativen zu klassischen Sanktionsformen. 2 Bde. Bochum: Studienverlag Dr. N. Brockmeyer.
- Kury, H., Dörmann, U., Richter, H., Würger, M. (1996). Opfererfahrungen und Meinungen zur Inneren Sicherheit in Deutschland. 2nd Edition, Wiesbaden: Bundeskriminalamt.
- Kury, H., Shea, E. (Eds.) (2011a). Punitivity – International Developments. 3 Vols., Bochum: Universitätsverlag Dr. N. Brockmeyer.
- Kury, H., Shea, E. (2011b). Punitivity and Punishment – An Introduction. In: Kury, H., Shea, E. (Eds.), Punitivity – International Developments. Vol. 3: Punitiveness and Punishment. Bochum: Universitätsverlag Dr. Brockmeyer, 7-18.
- Kury, H., Shea, E. (2012). Attitudes to Punishment – International results. In: Groenhuijsen, M., Letschert, R., Hazenbroek, S. (Eds.), KLM Van Dijk. Liber amicorum prof. dr. mr. J.J.M. van Dijk. Nijmegen: Wolf Legal Publishers, 247-258.
- Kurzynsky-Singer, E. (2008). Mediation in Russland. In: Hopt, K.J., Steffek, F. (Hrsg.), Mediation, Rechtstatsachen, Rechtsvergleich, Regelungen. Tübingen: Mohr Siebeck, 837-853.
- Lippelt, I. Schütte, D. (2010). Innenansichten und Wirkungsforschung zum Täter-Opfer-Ausgleich im Jugendstrafrecht. Die Zufriedenheit von Opfern und Tätern mit "ihrer" Mediation der Jugend- und Konfliktthilfe der Landeshauptstadt Hannover. Frankfurt: Verlag für Polizeiwissenschaft.
- Lipton, D.S., Martinson, R., Wilks, J. (1975). The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies. New York.
- London, R. (2011). Crime, Punishment, and Restorative Justice. From the Margins to the Mainstream. London, Boulder: First Forum Press.
- Ludwig, H., Kräupl, G. (2005). Viktimisierung, Sanktionen und Strafverfolgung. Jenaer Kriminalitätsbefragung über ein Jahrzehnt gesellschaftlicher Transformation. Mönchengladbach: Forum Verlag Godesberg.
- Lummer, R., Hagemann, O., Tein (2011)(Eds.). Restorative Justice – A European and Schleswig-Holsteinian Perspective. Schriftenreihe Soziale Strafrechtspflege, Band 1, 235-242 (http://www.cepprobation.org/uploaded_files/RJ_Band1.pdf).
- Lummer, R. (2011). Restorative Justice - EU-Projekt. Konferenz an der Fachhochschule Kiel. Arbeitsgruppen - Ergebnisse. In: Lummer, R., Hagemann, O., Tein, J. (Eds.),

- Restorative Justice – A European and Schleswig-Holsteinian Perspective. Schriftenreihe Soziale Strafrechtspflege, Band 1, 235-242 (http://www.cepprobation.org/uploaded_files/RJ_Band1.pdf).
- Martinson, R. (1974). What Works? – Questions and Answers about Prison Reform. *The Public Interest*, 22-52.
- Matt, E., Winter, F. (2002). Täter-Opfer-Ausgleich in Gefängnissen. Die Möglichkeiten der restorative justice im Strafvollzug. *Neue Kriminalpolitik*, H. 4, 128-132.
- Matthews, R. (Ed.) (1988). *Informal Justice. Theory and Practice*. Beverly Hills et al.
- McEvoy, K., Mika, H. (2002). Restorative justice and the critique of informalism in Northern Ireland. *British Journal of Criminology* 42, 534-562.
- Meier, B.-D. (2004). Restorative Justice – Bericht über Deutschland. In: Schöch, H., Jehle, J.-M. (Eds.), *Angewandte Kriminologie zwischen Freiheit und Sicherheit*. Möchengladbach: Forum Verlag Godesberg, 415-428.
- Menkel-Meadow, C. (2007). Restorative justice: What is it and does it work? *Annual Review of Law and Social Science* 3, 161-187.
- Mestitz, A. (2005). A comparative perspective on victim-offender mediation with youth offenders throughout Europe. In: Mestitz, A., Ghetti, S. (Eds.), *Victim-Offender Mediation with Youth Offenders in Europe*. Amsterdam: Springer.
- Miers, D. (2007). The international development of restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan, 447-467.
- Ministry of Justice, UK (2013a). More mediation encouraged as divorce hotspots are revealed. Pressemitteilung des englischen Justizministeriums vom 20. 2. 2013. London: Ministry of Justice (<http://www.justice.gov.uk/news/features/figures-show-divorce-hot-spots>; <http://www.justice.gov.uk/news/press-release/moj/more-mediation-encouraged-as-divorce-hotspots-are-revealed>).
- Ministry of Justice, UK (2013b). Moving Family mediation forward. Pressemitteilung des englischen Justizministeriums vom 14. 3. 2013. London: Ministry of Justice (<http://www.justice.gov.uk/news/features>).
- Montada, L. (2004). Nachhaltige Beilegung von Familienkonflikten durch Mediation. *Familie, Partnerschaft und Recht*, 182-187.
- Morrison, B. (2007). Schools and restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan 325-351.
- Nugent, W., Williams, M., Umbreit, M.S. (2003). Participation in victim-offender mediation and the prevalence of subsequent delinquent behavior: A meta-analysis. *Utah Law Review*, 137-166.
- Olweus, D. (1993). Annotation: Bullying at School: Basic Facts and Effects of a School Base Intervention Program. *Journal of Child Psychology and Psychiatry* 35, 1171-1190.
- Ortmann, R. (2002). *Sozialtherapie im Strafvollzug. Eine experimentelle Längsschnittstudie zu den Wirkungen von Strafvollzugsmaßnahmen auf Legal- und Sozialbewahrung*. Freiburg: edition iuscrim.

- Ostendorf, H. (2011). The Breakup of Dichotomy between Offender and Victim. In: Lummer, R., Hagemann, O., Tein, J. (Eds.), *Restorative Justice – A European and Schleswig-Holsteinian Perspective*. Schleswig-Holstein Association for Social Responsibility in Criminal Justice; Victim and Offender Treatment, Schriftenreihe Soziale Strafrechtspflege, Vol. 1, 24-33 (http://www.cepprobation.org/uploaded_files/RJ_Band1.pdf).
- Roberts, J.V., Hough, M. (Eds.) (2002). *Changing attitudes to punishment: Public opinion, crime and justice*. Cullompton: Willan.
- Röchling, A. (2010). Mediation in der Polizei in Baden-Württemberg. In: Senhaus, P. (Hrsg.), *Mediation und Polizei*. Rothenburg/Oberlausitz: Sächsische Polizei, 149-170.
- Rössner, D., Wulf, R. (1984). *Opferbezogene Strafrechtspflege*. Bonn.
- Rössner, D. (1998). Die Universalität des Wiedergutmachungsgedankens im Strafrecht. In: Schwind, H.-D., Kube, E., Kühne, H.-H. (Hrsg.), *Festschrift für Hans Joachim Schneider zum 70. Geburtstag am 14. November 1998*. Kriminologie an der Schwelle zum 21. Jahrhundert. Berlin, 877-896.
- Rössner, D., Bannenberg, B., Kerner, H.-J., Weitekamp, E. (1999). *Mediation und Täter-Opfer-Ausgleich bei Gewaltstraftaten in Paarbeziehungen*. Baden-Baden.
- Sanders, A. (2002). Victim participation in an exclusionary criminal justice system. In: Hoyle, C., Young, R. (Eds.), *New visions of crime victims*. Oxford, Portland/Oregon: Hart Publishing, 197-222.
- Sasse, A.-K. (2010). *Einbindung der Mediation in die Gerichtsbarkeit. Gerichtliche Mediation in Strafvollzugssachen – ein Projekt*. Hamburg: Dr. Kovac. Diss. Konstanz.
- Sato, M. (2013). *Public opinion and the death penalty in Japan: measuring tolerance for abolition*. Berlin: Springer.
- Schädler, W. (2011). The relationship between Victim Support and Victim-Offender Mediation. In: Lummer, R., Hagemann, O., Tein, J. (Eds.), *Restorative Justice – A European and Schleswig-Holsteinian Perspective*. Schleswig-Holstein Association for Social Responsibility in Criminal Justice; Victim and Offender Treatment, Schriftenreihe Soziale Strafrechtspflege, Vol. 1, 17-23 (http://www.cepprobation.org/uploaded_files/RJ_Band1.pdf).
- Schiff, M., Bazemaore, G. (2002). Restorative conferencing for juveniles in the USA: Prevalence, process and practice. In: Weitekamp, E., Kerner, H.-J. (Eds.), *Restorative Justice: Theoretical Foundations*. Cullompton: Willan Publishing.
- Schlepper, C. (2014). *Strafgesetzgebung in der Spätmoderne. Eine empirische Analyse legislativer Punitivität*. Wiesbaden: Springer.
- Schmidt, A. (2012). *Strafe und Versöhnung. Eine moral- und rechtsphilosophische Analyse von Strafe und Täter-Opfer-Ausgleich als Formen unserer Praxis*. Berlin: Duncker & Humblot.
- Schneider, H.J. (1975). *Viktimologie – Wissenschaft vom Verbrechensopfer*. Tübingen.
- Schneider, H. J. (2009). *Auf Beweis gegründete Kriminalitätskontrolle. Effektive Verbrechensvorbeugungs-, Straftäterbehandlungs- und Mediations-Programme*. In:

- Görge, T., Hoffmann-Holland, K., Schneider, H., Stock, J. (Hrsg.), *Interdisziplinäre Kriminologie. Festschrift für Arthur Kreuzer zum 70. Geburtstag*. Frankfurt/M.: Verlag für Polizeiwissenschaft, 697-718.
- Schneider, H.J. (2014). *Kriminologie. Ein internationales Handbuch*. Band 1: Grundlagen. Berlin: DeGruyter.
- Schwind, H.-D. (2013). *Kriminologie. Eine praxisorientierte Einführung mit Beispielen*. Heidelberg: Kriminalistik Verlag.
- Senghaus, P. (Hrsg.)(2010). *Mediation und Polizei*. Rothenburg/Oberlausitz: Sächsische Polizei.
- Sessar, K. (1992). *Wiedergutmachen oder Strafen. Einstellungen in der Bevölkerung und der Justiz*. Pfaffenweiler: Centaurus-Verlagsgesellschaft.
- Sessar, K. (1995). *Restitution or punishment. An empirical study on attitudes of the public and the justice system in Hamburg*. *Eurocriminology* 8, 199-214.
- Sherman, L.W. (2003). *Reason for emotion. Reinventing justice with theories, innovation, and research*. *Criminology* 41, 1-37.
- Strang, H. (2002). *Repair or Revenge. Victims and Restorative Justice*. Oxford: Clarendon Press.
- Sykes, G.M. (1958). *The society of captives*. New Jersey: University Press.
- Tonry, M. (2014). *Thinking about Punishment across Space and Time*. *Vilniaus Universiteto Leidykla, Mokslo darbai Kriminologijos studijos*, 1/2014, 5-30.
- Tränkle, S. (2007). *Im Schatten des Strafrechts. Eine Untersuchung der Mediation in Strafsachen am Beispiel des deutschen Täter-Opfer-Ausgleichs und der französischen médiation pénale auf der Grundlage von Interaktions- und Kontextanalysen*. Berlin: Duncker & Humblot.
- Trenczek, T. (2003). *Mediation im Strafrecht*. *Zeitschrift für Konfliktmanagement* 3, 105-109.
- Tyler, T.R., Sherman, L.W., Strang, H. u.a. (2007). *Reintegrative shaming, procedural justice and recidivism: The engagement of offenders' psychological mechanisms in the Conberra RISE drinking-and-driving experiment*. *Law & Society Review* 41, 553-586.
- Umbreit, M., Greenwood, J. (1998). *National Survey of Victim Offender Mediation Programs in the United States*. Minneapolis, MN: University of Minnesota Center for Restorative Justice and Peacemaking.
- Umbreit, M., Coates, R., Vos, B. (2001). *Victim impact of meeting with young offenders: Two decades of victim offender mediation practice and research*. In: Morris, A., Maxwell, G. (Eds.), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*. Oxford: Hart Publishing.
- Van Ness, D.W. (2007). *Prisons and restorative justice*. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan, 312-324.
- Vázquez-Portomene, F. (2012). *Vorgehensweisen und Vermittlungsstandards zur Bearbeitung von TOA-Fällen bei häuslicher Gewalt in Deutschland und Österreich*.

- Ein Modell für Europa? *Monatsschrift für Kriminologie und Strafrechtsreform* 95, 413-440.
- Walgrave, L. (2007). Integrating criminal justice and restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan Publishing, 559-579.
- Walgrave, L. (2008). *Restorative Justice, Self-interest and Responsible Citizenship*. Cullompton: Willan.
- Walter, M. (2004). Mediation im strafrechtlichen Bereich: der Täter-Opfer-Ausgleich. In: Henssler, M., Koch, L. (Hrsg.), *Mediation in der Anwaltspraxis*.
- Weitekamp, E., Kerner, H.-J. (Eds.)(2002). *Restorative Justice. Theoretical Foundations*. Cullompton/Devon, Portland/Oregon: Willan.
- Weitekamp, E. (2002). Restorative justice: Present prospects and future directions. In: Weitekamp, E., Kerner, H.-J. (Eds.), *Restorative Justice: Theoretical Foundations*. Cullompton: Willan Publishing.
- Willemsens, J., Walgrave, L. (2007). Europe. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan Publishing, 488-499.
- Wilson, T. (1983). *Thinking about Crime*. New York, NY: Basic Books.
- Wright, M. (2003). Is it time to question the concept of punishment? In: Walgrave, L. (Ed.), *Repositioning Restorative Justice*. Cullompton: Willan, 3-23.
- Yantzi, M.D. (1985). Das Täter-Opfer-Ausgleichsprojekt (VORP) in Kitchner (Ontario), Kanada. In: Janssen, H., Kerner, H.-J. (Eds.), *Verbrechensopfer, Sozialarbeit und Justiz. Das Opfer im Spannungsfeld der Handlungs- und Interessenkonflikte*. Bonn: DBH Schriftenreihe, 329-343.
- Young, R. (2002). Testing the limits of restorative justice: The case of corporate victims. In: Hoyle, C., Young, R. (Eds.), *New visions of crime victims*. Oxford, Portland/Oregon: Hart Publishing 133-172.
- Zehr, H. (1990). *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale, PA: Herald Press.