The Development of Victimology and its Impact on Criminal Justice Policy in the Netherlands

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1. Introduction

In the Netherlands - as in many other countries - the past decade has been an era of reform. The criminal justice system has in a number of ways been modified in order to be able to better meet the interests of victims of crime. In 1987, a new victim-oriented policy was introduced pertaining to the preliminary stages of a criminal investigation. The police and the prosecutor’s office were instructed by the Ministry of Justice to systematically take victims needs into account in their daily routines. The directives in which this policy was formulated, include guidelines concerning the behavior that is required of the officials ("be sympathetic and show empathy") and specific rules as to the way they are supposed to use their discretionary powers ("always take the victims interests into account when making a decision"). During the same period of time, new legislation was being prepared with an eye to the trial stage of criminal proceedings. It was generally felt that crime victims were entitled to more rights to secure adequate compensation and restitution. Finally, this led to a bill adopted by parliament in late 1992, that went into effect on april 1st, 1993. Among the major innovations introduced by this new statute, three key elements should be mentioned right away. First, the traditional limits as to the amount of damages the victim could claim from a

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1 The new policy was laid down in the so-called Vaillant-guidelines. See Staatscourant 1987, no. 67. These guidelines are legally binding for all law enforcement officers involved: C. Bangma, M.E. Bröring, De juridische relevantie van de slachtoffercirculaires voor het optreden van politie en Openbaar Ministerie, in: Delikt en Delinkwent 1990, p. 410-423.

2 The preparation was commissioned to a committee set up by the Minister of Justice and chaired by Mrs. Terwee-van Hilten, now president of the district court of Haarlem. The committee started in late 1985 and issued its final report in March 1988. More information on the report and its background is provided by M.S. Groenhuijsen, Recent developments in the Dutch criminal justice system concerning victims of crime, in: Sarah Ben David, Gerd Ferdinand Kirchhoff (eds.), International faces of victimology, Mönchengladbach 1992, p. 196-219

3 In this paper, the concept of compensation is used to refer to payments made by the government to victims, whereas reparation encompasses all the damages paid for by the offender to the victim.
defendant in a criminal case were abolished. Secondly, the so-called "compensation order" was accepted as a penal sanction in the criminal justice system. And thirdly, the new law provided for a separate section of the code of criminal procedure dedicated solely to the rights of victims.

The reform of the criminal law was partly inspired and fully sustained by the victim support movement that had been developed in the same decade. Psychologists, social workers and lawyers joined forces in establishing a grass roots organisation that proved to be impressively successful. They set up a network of regional victim support schemes that was eventually to cover the entire country. Each scheme operates with one paid coordinator, who in turn runs a number of volunteers actually assisting the victims. From a numerical point of view, the effort has been worthwhile: in 1987 5,500 victims were assisted, and the number has increased steadily to 11,000 in 1988, 17,000 in 1989, 25,000 in 1990, nearly 50,000 in 1991, and some 65,000 last year.

So, a lot of progress has been made. The forces that have propelled the victim into the centre of attention finally seem to have prevailed. The interesting question, however, is whether these changes in the features of the criminal justice system have actually influenced the way the system works on a day to day basis. And even more importantly: do the innovations correspond to the results of empirical victimological research as much as they do to the preferences and ideas of policy-makers and legislators?

In this paper, I will address these basic questions in two sections. First, I will outline a number of key victimological findings that have indeed been taken into account during the recent restructuring of the Dutch criminal justice system. After

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4 In the first Dutch Code of Criminal Procedure (1838), the French system of "partie civile" was adopted to a large extent. Accordingly, the victim was allowed to merge a civil claim for damages into the criminal trial. However, in order to protect the integrity of the trial and warranting the preponderance of the penal aspects of the case, the legislator stipulated that the claim of the victim was not to exceed the amount of Dfl. 1500,- (in 1993 currency the equivalent of appr. US 750 $).
that, some elements of the system will be reviewed which are at odds with the current state of victimology. The paper will be closed with a few concluding remarks.

2. Key victimological findings acknowledged in the present Dutch criminal justice system

a. A quintessential feature of victimisation is a shattered confidence in society.
Research has shown time and again that the impact of a crime upon a victim is usually much more severe than the victim could have anticipated before the act\(^5\). One would have expected that the loss of material goods or the physical injuries would predominate the psychological responses of the victim. In actual practice, however, the most damaging consequences of a crime are often located at a deeper level. The victim is shocked because his expectations as to the behavior of other human beings have not come true. All of a sudden he realizes that he misjudged the state of affairs in interhuman relations. And this knowledge comes as a profound shock. Because the victim knows that when he has once misinterpreted his position vis-a-vis a fellow citizen, he just might do so again. So, on a fundamental level, criminal victimisation primarily shatters one’s world view: it is detrimental to the victims beliefs in the predictability of the various actors in social life and hence it has a very negative effect on the victims trust in the reliability of his counterparts.

\(^5\) See on this topic, among others, G. Smale, Slachtoffers van ernstige vermogens- en geweldsmisdrijven, deel II, De niet-materiële problemen, Groningen 1980.
This - elementary as well as very important - victimological insight has been incorporated in various ways in the Dutch criminal justice system. First, it was recognised that one of the goals of the penal process should be to restore the victims confidence in society. During the course of the investigation and the trial the officials should show their solidarity with the victim. They should make clear that basically he was right and the offender was wrong. Consequently, the Vaillant-guidelines of 1987 included instructions to the police to behave in a careful and sympathetic way when a victim is reporting a crime. Rather than a truism, a self-evident or a superfluous rule, this is a major instrument calculated to protect the emotional interests of victims. It might be appropriate here to point to the doctrine of 'blaming the victim'. It is known that bystanders, regardless of their status as witnesses, friends or relatives of the victim, or officials in the criminal justice system, would like to have a rational explanation why the actual victim was victimised and not somebody else. This ever so understandable attitude - emanating from a psychological selfdefence-mechanism - can cause great trouble and unfairness to victims. Now, of course the most notorious examples of blaming the victim have long since been exposed and abandoned, such as the rape victim being asked what she was doing in a public park after dark. But the practice has remained in a less obvious way, being nevertheless just as degrading for all the victims involved. It is rules like the Vaillant-guidelines just mentioned, that are aimed to prevent secondary victimisation as a result of carelessly attributing the crime to one or more properties of the victim.

The Vaillant-guidelines are also important in this respect in another, more general way. I would contend that the principal goal of any criminal trial is to re-establish what the Germans call so aptly the "Rechtsfriede", meaning a situation in which

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6 I'll give an example of the meaning of this rule. It is well known that many property crimes are committed in large cities such as Amsterdam. Even in such overworked and understaffed conditions it would be intolerable for a police officer confronted with a report of pick-pocketing or car theft, to point to a table in the corner of the room and tell the victim that he can there type his own statement on the official protocol.


8 The good news is reported here. I will deal with the manyfold problems connected with the introduction of the Vaillant-guidelines under the subheading d.

society can have the conviction that the crime has been adequately dealt with. Well now, it appears inconceivable that the penal process can be considered a success if the victim is systematically dissatisfied with it. Consequently, it is important to notice that the contentment of the victim with the outcome of the criminal investigation is first and foremost determined by the way the police handled the case. If the police had been polite, if they had supplied information properly, if they had encouraged instead of neglected them, the victims tended to have a favourable view on the penal process. In fact, the treatment by the police affected their overall judgement more than the severity of the sentence that was eventually imposed when the case came to court.  

10 The police also plays a crucial role in referring victims to victim support schemes. The referral policies have in the last couple of years to a large extend been adapted to the results of empirical victimological inquiries. Sue Moody, Referral methods in victim support: implications for practice and philosophy, in: Guidelines for victim support in Europe, Utrecht 1989, p. 87-96; and Cora de Jong, Onderzoek naar het experimentele verwijssysteem voor slachtoffers van misdrijven, Tilburg/Breda 1991. Since this topic is more relevant for victim support schemes than for the
And finally, the quintessence of victimisation has also been taken into account in the way victim support was organised in the Netherlands. If victimisation is primarily an assault on the victims' views on the reliability and dependability of society at large, there can be no better way of reinvigorating his faith than to have him meet with a volunteer in victim support. The volunteer is an ordinary citizen, not someone just doing his job, but a person showing sympathy as a fellow human being and thereby restoring the victim's beliefs in right and wrong. So if the volunteer offers emotional support, assists in all kinds of practical matters, and gives information on the legal aspects of the case, this contributes directly to the restoration of the faith of the victim in a just and dependable society.

b. The causes of secondary victimisation in the criminal justice process.
It is a well established fact that victims of crime get frequently victimised for a second time in the criminal justice system. Nevertheless, secondary victimisation is an intriguing phenomenon. It is usually inflicted upon the victim by people who act with the most admirable of intentions. It is for instance caused by friends and relatives who are unknowingly and unwillingly under the spell of the 'blaming the victim' psychological defence mechanism. And within the criminal justice system it is brought about by police officers and public prosecutors - and judges - acting in good faith and more often than not honestly trying to promote the interests of the victim.\textsuperscript{11}

\textsuperscript{11} One of the more notorious examples of secondary victimisation in Dutch case law is the decision made by the district court of Leeuwarden d.d. February 16th, 1983, reported in Nederlandse Jurisprudentie 1983, no. 507. A woman was sexually assaulted by two offenders on a deserted road. She resisted fiercely, and in the ensuing struggle she lost a golden necklace. The court, when finding the defendants guilty, ordered one of them to give to the victim "a piece of jewelry worth Dfl. 500,-". The intentions of this court were indeed honorable, but the insensitivity to - or ignorance of - the emotional feelings
that are usually attached to the offering of a golden necklace to a loved one had a distinct counterproductive effect on the victim.
So, what lessons are to be drawn from this experience? Two key-elements call for attention straight away. The first one is that good intentions are not enough when one deals with victims of crime. Officials in the criminal justice system can cause a lot of harm and unnecessary suffering if they act solely on their gut feelings about victims needs. Sheer ignorance of the real anxieties of the injured party can quite easily lead to secondary victimisation. Hence, one of the striking elements of the new victim-oriented policy that was introduced by the Vaillant guidelines was that it was followed up by an extensive training program for all officials involved. Consequently, it was decided that all police officers require specific training in victims needs in their basic education. For more experienced cops and for the officers higher up in the policy hierarchy, additional training material was developed. The same principle was applied to the prosecutor’s office. In order to understand the full implications of this move, one should realise that the public prosecutor's office is in many ways the most powerfull part of the Dutch criminal justice system. So it was an unprecedented breakthrough when in 1988 it was agreed that each and every member of the body of prosecutors in the Netherlands was obliged to follow an instruction course on the specific needs of victims of crime. Whereas secondary victimisation can be prevented by increasing the level of knowledge of all people involved, these training programs have contributed substantially to improving the position of the victim within the criminal justice system. It should be added, however, that the judiciary has declined to adopt the same vigorous attitude as to the need of acquiring more victimological knowledge. Invoking their status as independent magistrates, they have so far consistently refused the idea of compulsory training in this area.

Apart from a lack of knowledge - which can be remedied by training - there is a second, and more structural, source of secondary victimisation. One of the most prominent problems of victims in the Netherlands is that they feel ignored in the criminal justice system. They have the impression that they are just being used as a reporter of crime and as a witness who is to supply the required measure of evidence, but that’s it. They feel as being used as a tool by the government, primarily indispensable to get a conviction by a criminal court. What they are longing for is to be recognised and acknowledged as one of the principals in the criminal trial. Research has shown over and over again, that victims of crime resent the feeling that the conflict with the offender is completely taken over by the government, even when it is claiming to act on behalf of the victim and the legal order. Few things are worse for a victim

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12 This point has been elaborated, among others, by P. Osinga. Transactie in strafzaken , diss. Tilburg, Arnhem 1992.
than the apprehension that they are being left out of the penal process.

The Dutch criminal justice system is particularly vulnerable to this kind of criticism. Usually, a victim reporting a crime gives a statement to the police - which is recorded in a document that can be used as evidence in a criminal court - and in more serious cases he will once more be interviewed by an examining magistrate in the preliminary stages of the trial, but he rarely will have to testify in open court. Of course this is beneficial in so far as the victim is not subjected to volatile cross examination by defence counsel. However, the backside of this practice is that victims very often feel neglected and alienated, as if the criminal trial does not concern their case anymore.

Against this background, it is very important that in the 1993 innovation, a special section of the Code of criminal procedure is dedicated entirely to the victim. In a way, this awards the victim equal status with the other principals in a criminal trial, such as the accused, the defence lawyer, the witnesses, the experts, and the examining judge. In my opinion, the symbolic value of this part of the new law cannot be overrated. Regardless of the specific rights that are enlisted in this section, it has once and for all confirmed the victim's status in any criminal procedure. It follows that this restructuring of the Code of criminal procedure contributes substantively to the structural recognition of the plight of the victim. By acknowledging the victim as a principal actor in the criminal justice system - with rights and interests of his own that should be systematically protected - it takes away a major source of secondary victimisation.

c. The effects of reparation and compensation

During the last decade, many efforts have been directed towards securing a better financial arrangement for victims of crime. How do these initiatives relate to the findings of empirical victimological research?

Two basic results of research have consistently guided the course of action taken by legislators and policymakers alike.

The first one is that some sort of financial amends for the losses incurred is very important in the process of emotionally getting over the crime. Many victims consider it to be an elementary requirement of justice that the offender should be forced to pay for their damages. Among others: J.J.M. van Dijk, Strafrechtshervormingen ten behoeve van het slachtoffer in internationaal perspectief, Justitiële Verkenningen, vol 14, nr. 9, p. 7-27.; J.W. van den Boogaard, Slachtoffers van woninginbraken benaderd, Enschede 1992; J. Shapland et al, Victims in the criminal justice system, Cambridge 1985; J.J.M. van Dijk, M.S. Groenhuijsen, Schadevergoedingsmaatregel en voeging: de
general public: public opinion is heavily in favour of more criminals being compelled to make up for the financial losses of the victims."14

Right in line with these research findings both the legislator and the Ministry of Justice have taken steps in order to promote this goal."15/16 The Vaillant-guidelines are in fact quite distinctly designed from the point of view of reparation being paid to the victim. For instance, the officer taking down the report of the crime is instructed to collect as much information as possible on the financial consequences of the act. He is also required to try and reach a settlement of the damages of the victim. The prosecutor is by force of these guidelines compelled to take the monetary interest of the victim into account whenever he makes any decision in the case. Since the prosecutor has a very wide discretionary power in deciding how to dispose of a case, this rule has a (potentially) significant impact on the actual operation of the minimal justice system. It means, so to speak, that if and when an offender has paid restitution to the victim, it might be very doubtful whether a more severe penal intervention is really necessary. Hence, whenever restitution is arranged for, most cases will be settled out of court, either by a transaction or by simply dropping the case."17

14 Some Dutch empirical research on this matter was conducted by C.H.D. Steinmetz, H.G. van Andel, Meningen over en reacties op criminaliteit: een nieuwe visie op eerdere WODC-resultaten, Justitiële Verkenningen 1985, nr. 1, p. 25-71.

15 R. Elias, Victims of the system. Crime victims and and compensation in American politics and criminal justice, New York 1983 explains why some misconceived schemes have counterproductive effects. This kind of knowledge clearly has to be taken into account.

16 Independent of the central government, quite a few mediation projects were started over the past years, aiming at restitution outside the framework of the criminal justice system. See the report Dading in plaats van strafrecht, Amsterdam 1991; and the evaluative study by J.M. Wemmers, T. van Hecke, Strafrechtelijke dading, Den Haag 1992. These projects will not be discussed in this paper.

17 Of course, in the most serious cases restitution cannot be an alternative to imprisonment as punishment. Even in these cases, however, restitution in the preliminary stages of the trial is encouraged, if for no other reason that refusing to do so could have an adverse effect on the judge in deciding the sentence (of course, this is only applicable to defendants who admit they have committed the crime - in the Netherlands this applies to 85 to 90% of the
defendants).
On the legislative level, the Terwee-bill provides for various devices in order to facilitate the transfer of money from the offender to the victim. The civil claim by the offended party – the ‘partie civile’ as the French call him so aptly – has been made much easier under the new law. Point one: the existing maximum amount of money that can be reclaimed through this means was abolished. Point two: the victim can merge his claim into

\[\text{\textsuperscript{18}}\text{The Dutch have not been the only ones to make this effort. The international trend is revealed in Albin Eser, Günther Kaiser, Kurt Madlener (eds.), Neue Wege der Wiedergutmachung im Strafrecht, Freiburg i. Breisgau 1990. For the present paper a most interesting contribution to this volume is Hans-Jörg Albrecht, Kriminologische perspectiven der Wiedergutmachung. Theoretische Ansätze und Empirische Befunde, p. 43-72.}\]

\[\text{\textsuperscript{19}}\text{In a district court-case (concerning felonies in first instance) the maximum was – quite arbitrarily – placed at Dfl. 1500,- (appr. US$ 750,-). In stead of this quantitative measure, a quantitative criterion was introduced: the criminal court can only deal with claims}\]
the criminal procedure during the preliminary stages, so he is no longer under an obligation to appear in court to this end. And number three: recovering some of the damages in criminal court does no longer preclude subsequent litigation in civil chambers, so that the victim can reclaim some of his obvious losses in one way and later on have a real fight over the damages that are more questionable or more difficult to prove.\textsuperscript{20}

which constitute a "clear case". This means the case has to be relayed to the civil chambers if serious complications arise as to the validity of the claim or the amount of it.

\textsuperscript{20} The new provision is contrary to the traditional adagium
If, for any reason, reparation by the offender is not possible, the government should step in and award the victim adequate compensation. To this end, the Terwee-bill provides for some improvements in the State compensation scheme.21

"electa una via, non datur recursus ad alteram". It is e.g. of great practical meaning to victims of violent crime. When some of the damages are quite clear, like the money that was forcefully taken from them, while the medical fees are still not determined, the easy part of the claim can be handled by the criminal court and the subsequent part can be left to the civil court.

The changes are largely of a technical nature and not really worth reporting in detail in this paper. What is important, though, is to mention the fact that the Dutch legislation conforms to the international standards specifying minimum requirements for state compensation schemes.
The first major research finding discussed in this section was that reparation by the offender to the victim is important in the aftermath of the crime. The second such result of empirical inquiries is that the mere act of reparation being paid is much more important than the amount of money involved. In other words: victims seem perfectly well capable of realizing that many offenders are not equipped to paying the full amount of damages – they appreciate the effort. So, in taking reform measures, the legislator should primarily focus on the bulk of cases in which the offender is of modest financial means and the damage to the victim is within limits, rather than trying to devise a solution for the most exhorbitant cases that could arise in civil

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Research has shown in the Netherlands that victims "relatively rarely" incur more than Dfl. 1500 in damages; See M. Junger, T. van Hecke, Schadevergoeding binnen het strafrecht, Den Haag 1988, p. 47.
This mistake of judging innovations in the criminal law by the inappropriate standard of extremely cumbersome and very rare cases is often made. A very plain example is provided by W.H.M. Reehuis, Schadevergoeding in het strafrecht. Enige kanttekeningen bij de relatie tussen de schadevergoedingsmaatregel en de civielrechtelijke verplichting tot het vergoeden van schade, oratie Groningen, Zwolle 1992. This author cites as an example of shortcomings of the Terwee-bill its inability to deal with
a case of a rejected lover who - in an act of frustration - demolished a large number of cars parked in the street where his ex girlfriend lived, causing damage of several hundred thousands guilders.

In line with the victimological finding that the exact amount of money is not decisive for the beneficial effect upon the victim, the Dutch legislator has also decided to rather increase the number of victims who are entitled to state compensation than to increase the level of compensation for each person already entitled to it.
The Dutch legislator has recognised the need for more reparation being paid by the offender to the victim. It has even gone as far as to designate reparation as a penal sanction in its own right. For ordinary citizens and for victimologists, this may look like a natural thing to do, but for lawyers it most certainly has been a major breakthrough. During the past century and a half, generations of lawyers have been educated to preserve a strict separation of penal sanctions on the one hand and civil litigation on the other. All textbooks explain the differences between the two in painstaking detail. Reparation is supposed to be a natural obligation of the offender, and punishment is sort of an extra burden inflicted because of the infringement of the legal order. And so on, and so forth. For layman - that is to say: for non lawyers - this dogmatic line of reasoning has never been very convincing. Because in the everyday experience of offenders and victims alike, all the goals that are attached to punishment apply equally to forced reparation. Why should deterence and retribution be better served by imposing a fine than by making clear that everyone committing a crime will be held accountable for the financial repercussions of it? This commonsense attitude finally led to the incorporation of a "compensation order" as a new penal sanction in the Terwee-bill.

d. How to make new provisions really work?

It is one thing to create new laws, but to make them work is quite another matter. The Dutch legislator has been keenly aware


27 In legal circles, this insight was in the Netherlands first promoted by G.E. Langemijer. Het strafrecht en de benadeelde, Nederlands Juristenblad 1938, p..
of this problem. Hence, a number of measures were taken to improve the chances of success of the innovations in the criminal justice system.

First, it was decided that the execution of the compensation order should be a responsibility of the government (more specifically: of the prosecutor’s office). Research has shown that even the very best of substantive and procedural rights can be undermined to a large extend if the enforcement of a legal order to pay reparation is left to the victim. It is interesting to compare the French system with the British one in this respect. In France, the victim can play an important part in the criminal trial as a "partie civile". In this capacity it is relatively easy to secure a court order for the defendant to pay a certain amount of money to the victim. But then the trouble starts. Since the plaintiff is not supported by the government in enforcing the decision by the judge, in only 25% of the cases involved, the court order is effectively carried out.\(^\text{28}\) In the United Kingdom, on the other hand, where the government is responsible for the execution of compensation orders, it was shown that 80% of the judicial decisions indeed led to the intended effect.\(^\text{29}\) Against this background of victimological research, the Dutch legislator has pointed to the execution stage as one of the most tangible advantages of a compensation order as a penal sanction over a merged civil lawsuit by a "partie civile".

In discussing this kind of fundamental options within a legal system, one should always keep in mind that one of the outstanding sources of secondary victimisation is to raise expectations with victims which can later on not be fulfilled.

The Dutch legislator has taken extraordinary measures trying to avoid raising unfulfillable expectations. Thus, the second main instrument to maximize the chance of effective change has been to put the Terwee-bill into effect on an experimental basis in two of the nations 19 judicial districts. Starting April 1st, 1993, the new law is in operation in the districts of Dordrecht and ’s-Hertogenbosch.\(^\text{30}\) Meanwhile, extensive arrangements have been made to evaluate the impact of the new provisions. Depending on the results of this kind of research, the exact way will be planned of putting the Terwee-bill into effect nationwide. In order to prevent foot dragging by parties with a vested interest in

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\(^{28}\) Mari-Pierre de Liège, Concrete achievements toward the implementation of the fundamental principles of justice for victims in France, Paris 1988.


\(^{30}\) These districts are more or less representative for the country, since one of them is relatively large while the other is considered to be relatively small.
maintaining the status quo, it was determined by law that the introduction stage should be completed by April 1st 1995 at the latest.

Of course, there are two sides to the gradual introduction of a law aimed at improving the standing of victims within the criminal justice system. On the one hand, it makes sense to be very careful in not raising expectations for victims that could possibly not be met later on. On the other hand, it can be frustrating for victims to be denied rights in the criminal justice system which are already effective in a neighboring judicial district. So, we are really faced with a dilemma here. As in any dilemma, there’s no easy way out. It merely should make the legislators and the policy makers more aware of the conditions that have to be met in order to change not only the law in the books, but also the law in action. In short order, I would like to list three of these. First the attitude of all officials involved should be favourable to the intended changes. Secondly, as mentioned before, good intentions must be backed-up by knowledge about actual victim’s needs. And thirdly, change cannot be effected without supplying adequate resources. It just takes a lot of money to facilitate training programs, to hire personnel to carry out additional duties, etc. Let me mention only one example to underscore this point. According to the Vaillant guidelines mentioned above, the police is instructed to pay special attention to the financial interests of victims. Several years after the introduction of these guidelines, research showed that the actual behavior of police officers had not changed significantly. Worse than that, it was shown that a considerable number of local police forces were not even aware of the bare existence of these guidelines. More or less the same results of research were yielded at the prosecution level. These findings – as well as other critical studies – were taken seriously by some elements within the police organisation and the prosecutors

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32S. Leenders, Zolang de klant maar geen koning is, Apeldoorn 1990 (afstudeeronderzoek Nederlandse Politieacademie).
office. They consequently set up some experiments trying to explore the feasibility of really increasing the number of cases that can be settled out of court after reparation has been paid by the offender to the victim. Various - unlinked - experiments have shown remarkably similar results. It turned out to be possible to induce a claim settlement in approximately 40% of the cases in which the offender was apprehended. This is a very encouraging success-rate, way above the current national average. What is probably even more interesting, though, is the fact that the projects failed miserably in their first stages. After this was discovered one officer within each unit was burdened with the final responsibility for the operation of the experiment, and only then the spectacular successes were achieved. The lesson to be drawn from this experience is that one cannot conceivably expect a major change in the behavioral pattern of a complex organisation like the police force or the prosecutors office if one is not prepared to supply these actors with resources enabling them to perform additional duties.35

Even after additional measures had been taken, the Vaillant-guidelines still weren’t always applied as intended. From this point of view, one could regard the implementation of the Terwee-bill as a new effort at realising the objectives underlying the already existing guidelines. Chances of success are better now because of the experience that was gained over the past years. Apart from the gradual introduction of the new system with two pilot districts, three more steps were taken to increase the effectiveness of the innovation. First, a national working party was set up for internal and external communication of all the relevant information, and for educating all parties involved. Second, in the pilot districts Dordrecht en Den Bosch a special guideline was put in force.36 It contains more elaborate rules than the Vaillant-guidelines. For instance, in the area of claim settlement it calls upon police officers and prosecutors to actively seek cooperation with victim protection agencies and with the probation service. And thirdly, a detailed plan was developed, tackling all the foreseeable consequences of the new law.

35 The best known and most extensively researched experiments discussed in this section are the ones with the police force in Leiden and with the prosecutors office in the district of Middelburg. See M.I. Zeilstra, H.G. van Andel, Evaluatie van het schadebemiddelingsproject bij de Leidse politie, Den Haag 1989; T. van Hecke, J. Wemmers, Schadebemiddelingsproject Middelburg, Arnhem 1992. Some other experiments are described and evaluated in M.I. Zeilstra, H.G. van Andel, Informatieverschaffing en schadebemiddeling door de politie. Evaluatieonderzoek van een experiment bij slachtoffers van misdrijven in Alkmaar en Einhoven, Arnhem 1990.

36 It is a temporary measure and will be in force for two years. See Staatscourant 26 maart 1993, nr. 60.
In conclusion, I think it is fair to say that the Dutch legislator has shown a remarkable consciousness of the fact that it takes more than a few new provisions in the Code of criminal procedure to effectively alter an existing practice. Research will have to be conducted, though, to finally assess the merits and demerits of this sophisticated implementation strategy.

e. A fair trial for offender and victim alike.

Article 6 of the European convention on human rights (Rome 1950) awards the defendant in a criminal case the unconditional right to a fair trial. No one will dispute this very sensible provision. It is, however, rather weird that the European convention does not contain one single syllable covering the rights of victims of crime in the criminal justice system. Later on, international bodies like the United Nations and the Council of Europe issued recommendations and declarations in which the member states were called upon to (re)organize their penal procedures in such a way as to ensure a proper and decent treatment for victims. One of the problems here, of course, is that the standard minimum rights for victims have to be incorporated into vastly different legal cultures. The environment of the Anglo-saxon type of an adversarial system is, for instance, hard to compare to that of the Dutch variety of a modified inquisitorial system. However, all methods of conducting criminal investigations and trials should meet on the ground rule that no unnecessary burdens should be levied upon the victim in the course of the proceedings. On an operational level, it follows that we should permanently pursue ways to eliminate well known sources of secondary victimisation without thereby

37 This was pointed out by Stefan Trechsel, Die Bedeutung des Europäischen Menschenrechtskonvention im Strafrecht, in: Zeitschrift für die gesamte Strafrechtswissenschaft 1989, p. 826.

38 The basic texts are: United Nations Declaration of basic principles of justice for victims of crime and abuse of power (1985); and the Council of Europe Recommendation on the position of the victim in the framework of criminal law and procedures (1987).
prejudicing the rights of a suspect or a defendant to a fair trial.

One telling example of this modus operandi concerns the recurrent interrogations of victims in the various stages of the criminal trial. It is absolutely clear that it has an adverse effect on victims to have to give testimony over and over again to everchanging investigating officials in the penal process. Hence, one should look for ways to limit the number of successive interviews without at the same time diminishing the reliability of the evidence thus procured. In the Netherlands, this goal was achieved to a certain extend by video-taping interviews of very young victims (or other witnesses) of crime. In quite a few police stations studio’s have been installed to record the conversation between the victim and the police officer. The studio is designed in a way as to make the child feel at ease - sort of like a playing room - and the examining officer has received special training in dealing with youthful witnesses. The video tape runs a time showing device at the bottom of each picture, so it can be easily checked by deferce council that no cuts have been made. Now, if the interview leads to a conclusive statement and the defendant does not have well-founded objections as to the way the questioning was done, there will be no need for the victim to have to go through the same ordeal again, first before an examining magistrate and then again in open court. Although there are still some minor legal problems attached to this practice, it looks very promising indeed and there is a strong argument to explore the opportunities to expand it to the area of adult victims/witnesses.

f. Indirect means to further the interests of victims.

Victimological research has had a definite impact on the rights of victims in the criminal trial conducted against the person who actually perpetrated the crime against them. The victimological point of view has, however, also pervaded the criminal justice system in a broader sense. In the Netherlands, some years ago a project was started to introduce a new alternative penal sanction for juvenile offenders. The sanction consists of a learning project and is called "Focusing on victims". It is a training course in which the pupils are instructed about effects a crime can have upon the victim. The logic behind this, of course, is that young offenders will cut their criminal career short if they are well aware of the harm and suffering they cause to other, ordinary citizens. The project was started in a couple of judicial districts, and then spreaded rapidly throughout the country. The first evaluative studies have been encouraging. They

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39 See for a general discussion of the merits and the theoretical background of this project, M.S. Groenhuijsen, F.W. Winkel, The ‘focusing on victims-program’ as a new substitute penal sanction for youthful offenders. Paper submitted to the 7th International symposium on victimology, Rio de Janeiro 1991 (to be published shortly in the proceedings of the symposium).
showed the rate of recidivism of offenders who had taken part in this learning project to be significantly lower than the numbers for their counterparts who had been incarcerated or punished otherwise. Now, since the project has only been run for a few years, it is still too early to jump to general conclusions. Suffice it to say that this new penal practice looks promising. So much so, in fact, that it is now being contemplated to extend this learning project to other areas. First it will be introduced also in cases against adult offenders. Next, perhaps parts of the program will be used for instruction to adolescents who have not (yet) committed any crime. Here we see a close tie between the victimological movement on the one hand and the crime prevention movement – which has been so powerful lately – on the other.
3. Victimological knowledge still not absorbed into the Dutch criminal justice system.

a. The fee-structure for lawyers is of crucial importance for the factual meaning of victims rights. It has long since been recognised that it is not enough to award procedural rights to crime victims. Rights should be backed up by supporting devices. One of these is information. A victim not aware of his rights is by definition not capable of enforcing them. Hence the need for legal assistance was discovered. In many jurisdictions the victim was awarded the right to be assisted by his own lawyer, paid for by the government. In the Netherlands, this opportunity was also made available to victims having a stake in the outcome of a criminal trial. More specifically, when a victim merges his civil claim for reparation into the penal proces, he is entitled to bring free legal counsel of his own. This arrangement looks marvellous. Upon closer inspection, though, it shows serious flaws. When a victim has a supportable claim for damages against an offender, he can either merge it into the criminal trial or he can take the claim to the civil court. Now, the victim is no expert in the law, so in choosing the best course of action he will rely heavily - if not exclusively - on the advise of his lawyer. When the lawyer is about to make more money out of the case if the claim is entered with the civil court, he is very likely to emphasize the advantages of that manner of litigation, and will be extremely reluctant to advise the victim to merge the claim in the criminal trial. This is not to suggest other than honorable motives guiding the behavior of members of the bar, but it is just a fact of life that all people - so lawyers not excluded - tend to have a clearer view of the objective plusses of a course of action that just happens to also be financially attractive for them. Quite a few illustrations of this mechanism can be cited. For instance, the German law on the procedural rights of victim looks very good on paper. In actual practice, not too much use is being made of the provisions of the so-called "Adhäsionsverfahren". One of the most convincing explanations offered for this state of affairs is that the lawyers tend not to advise victims to use this procedure - because it entails certain risks - and instead go the civil court way. Of course, if they do so, the lawyer handling the case for the victim will get a much higher fee. The same is still true in the Netherlands. As long as this seemingly unimportant administrative arrangement in continued, there will be a major obstruction in effecting systematic changes of the criminal justice system on behalf of victims of crime.

b. It is often asserted that after a serious crime has occurred, the perpetrator will be imprisoned for a couple of years but the victim gets a lifetime sentence. Leaving aside the rhetorics involved in affirmations like this, it is indoubtedly true that for a victim the criminal case does not end with a guilty verdict of by the incarceration of the convicted criminal. More often than not, the anxieties continue during - and after - the period of detention of the offender. Quite a few inmates continue to harass, intimidate and even brutalise their former victims. This
happens from behind the prison walls, but is of course made much more easy when they regain their freedom. Therefore, it is of paramount importance that the victim be notified of any major decision regarding the detention of the offender. He should receive prior knowledge of parole, of the date of final release, and he should be informed of any period of furlough. The right to this kind of information rests upon the severe disturbance of the victims' peace of mind when he has to face sudden confrontation in his own neighborhood with the person who has perpetrated a serious crime against him and can still hold grudges because of the testimony that was given in court or because of any other relevant or irrelevant reason. Now, in the Netherlands there is no such unconditional right for victims to be notified about the measures of freedom allowed to a convict. In my opinion, this constitutes a serious shortcoming of the present system which should be remedied urgently.

c. As has been explained before, one of the major troubles of the victim within the criminal justice system is that he feels like an outsider, like an alien whose point of view is not properly taken into account. Partly, this feeling is caused by a lack of responsiveness by the officials to the real victim needs. This origin of secondary victimisation has been researched and documented extensively. Rather less attention has been paid, however, to another— but quite similar— cause of the perceived lack of appreciation of the victims plight. I am referring to the explanations that should be offered by the police and the prosecutors as to the way the criminal justice system really works. Many victims are fully aware of the limitations set by the context of a criminal investigation. Many others could easily be convinced of the priorities which always have to prevail in this environment. The point is, such explanations are usually not being offered. Despite instructions to the contrary, police officers and prosecutors still do not succeed in adequately outlining the rationale of the penal process to victims. They are not able to convey the deeper arguments underlying both the opportunities offered by, and the restrictions necessitated by the context of a criminal trial. It is of paramount importance that the fundamental goals of the system by explained to the victim. He should be made to understand that his interests are well taken into account—indeed will carry a lot of weight— but that they are not the only factors determining the procedure of the outcome of the case. In the Netherlands, police officers are by force of the Vaillant-guidelines instructed to outline to victims the opportunities the penal process offers to them. Over and above that, the public prosecutor is obliged to have a personal conversation with victims of the most serious crimes. In my opinion, these are commendable efforts to reduce the feelings of estrangement with victims. But they constitute only a first step. Both victimological researchers and practitioners should pay more attention to the structural contingencies governing the effectiveness of this kind of basic guidelines. Undoubtedly, much can be gained if our knowledge of the transference of this type of information were increased.
d. Under the heading of victimological knowledge not yet absorbed into the Dutch criminal justice system I also have to list some elements which have - to my opinion - quite rightly not been translated into law.

The first of these is the recommendation to change the rules of evidence in criminal trials for the benefit of victims of sexual crimes, primarily for rape-victims or for victims of racial discrimination. It has been proposed that this type of crime is so difficult to prove - since it occurs so often in a one-to-one situation - that the usual rules of evidence should be loosened and that a stricter type of liability should be introduced for this kind of suspects. This line of reasoning has been firmly rejected by the Dutch legislator. No matter how deplorable the circumstances of any victim may be, this could never provide sufficient reason for the criminal justice system to perform sub-standard. Admitted there is much at stake for a victim in a trial like this, it is clearly obvious that at least the same holds true for the accused. And especially on the borderline between acquittal and conviction society is never to take chances. In this area, even the anxieties of victim will by force of law have to be subservient to the presumption of innocence.

The second point I’d like to emphasize is merely an extension of the first one. Basically, it holds that furthering the interests of victims may never interfere with the right of an offender to a fair trial. No matter how concerned we are with the troubles of victims of crime, it should never deny any suspect a due process of law. It would be plain wrong to sacrifice the basic rights of justice of any defendant to a token of sympathy to the plight of a victim. So, in restructuring the criminal justice system on behalf of victims of crime, the basic rights of suspects and defendants in the penal process - as laid down in the European convention on human rights and in other international documents - will have to remain usefull and worthwhile outer limits of our search for reform.


41 Promoting the interests of victims ought not to be considered as a zero-sum-game.
4. Conclusion.

The key-question debated in this paper is how much influence victimological research has had lately upon the reform of the Dutch criminal justice system. In section 2 it was shown that many of the recent innovations coincide with crucial pieces of empirical research. In itself this doesn't prove that the changes made were actually motivated or inspired by academic findings. They could have been more or less accidental, just emanating from the gut-feeling that finally "something" ought to be done for victims of crime.

There are, however, several signs which indicate that the increasing volume of victimological knowledge has indeed been instrumental in shaping the new victim orientated policies and the Terwee-bill in the Netherlands. I mention three of the most obvious ones.

First, and most significantly, the preparatory acts to the Terwee-bill show many references to victimological sources. The committee first drafting this kind of legislation and submitting it to the Minister of Justice, included members with victimological expertise. It can be taken for granted that many options were rejected by this committee because they were found not to be consistent with the results of empirical research.

Secondly, a certain victimological imput is suggested by the way some of the new policies by the police and prosecutors have been designed and implemented. A lot of use has been made of experiments. Small scale pilot projects, carefully examined in evaluative research, were aimed at gaining experience and knowledge about the conditions which have to be met in order to achieve effective change. As was shown in the preceding sections, this process led to educational facilities for all police officers and prosecutors, it proved that reform is practically impossible without targeting substantial budgets at it, and it led to many other illuminating insights which will turn out to be useful in the years ahead. In a way, this modus operandi not only improved the quality of life for victims in the criminal justice system, at the same time it also enhanced the state of the art within victimology by adding important experimental findings to the existing body of knowledge.

Thirdly, I think, the reform of the system was planned and executed in a careful way by repeatedly consulting the Dutch Association for Victim Assistance for advice. The practitioners in the victim support schemes are not trapped by the traditional lines of legalistic reasoning; they know first hand about the shortcomings of the current way of administering justice. Their opinion about certain measures being contemplated was sought on a regular basis, thus avoiding steps out of line with the every day world real victims live in.

All of this leads me to two general conclusions. The first one of these pertains to the present state of the Dutch criminal justice system. It holds that, all in all, there is a profound awareness that it takes much more than good intentions and much more than new laws in order to achieve effective change of the criminal justice system on behalf of victims of crime. A comprehensive
strategy has been elaborated to make the "law in action" conform to the new "law in the books". Although quite a bit of progress has already been made in this direction, much work is left doing. It will be interesting to witness how the implementation stages of the Terwee-bill - with the attached evaluative research projects - will offer new empirically based knowledge on the best mix of victims rights and victims interests. The second general conclusion concerns a centrepiece of victimological debate. Some years ago it was suggested that a fundamental decision had to be made whether to either pursue more victims rights or strive for more services attended to victims. Perhaps this was a fruitful question at the time it was posed. I feel, however, that the evidence collected since, shows unequivocally that this could no longer be a main issue. In my opinion it is now more than ever beyond dispute that it is not an either-or-question. Rights are important. Period. Additional rights are warranted. Sure. But no legal right is worth the paper it’s written on unless it is supported by an superstructure providing key services to victims of crime. One couldn’t enforce rights one isn’t aware of. Hence the need for legal assistance and servicing information. And so on, and so forth. The foregoing sections of this paper contain many examples of the ways rights and services are intertwined. So at the end of the day, maybe the question will not only be what influence victimology has had on the criminal justice system in the Netherlands, but also what effect the reform of that system may have had upon the basic problems to be researched and hopefully to be resolved within victimology.

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42 J.J.M. van Dijk, Victim rights: a right to better services or a right to active participation?, in: J.J.M. van Dijk et al, Criminal law in action, Arnhem 1986, p. 351-375. See also by the same author: Towards a research-based victim policy, in: Sarah Ben David, Gerd Ferdinand Kirchhoff (eds.), op. cit. p. 16-29.