

The London School of Economics and Political Science

**UNDERSTANDINGS OF PUNISHMENT AND
JUSTICE IN THE NARRATIVES OF LAY POLISH
PEOPLE**

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Philosophy.

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Declaration

I certify that the thesis I have presented for examination for the MPhil/PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it). The copyright of this thesis rests with the author. Quotation from it is permitted, provided that full acknowledgement is made. This thesis may not be reproduced without my prior written consent. I warrant that this authorization does not, to the best of my belief, infringe the rights of any third party. I declare that my thesis consists of 94,997 words, excluding the appendices and bibliography. I can confirm that my thesis was proofread for conventions of language, spelling and grammar by Kate Helliwell and Matthew Willis.

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In memoriam of my beloved Grandma.

**The end of our exploring,
will be to arrive where we started.
And know the place for the first time.
(T.S. Eliot, 1943)**

Abstract

This research brings to light the Polish context of a post-socialist, post-transformation society of peasant roots and high religiosity which greatly contributes to the comparative criminological scholarship. The purpose of this doctoral research is to explore how a small number of Polish people understand punishment and justice, and how their narratives inform the viability of restorative approaches to justice. In so doing, this research recognises the value of lay opinion in the discussion of punishment and justice, and approaches punishment and justice as social activities, which echoes the argument that stories about crime and punishment are entangled with people's daily routines, and as a result are lodged in their cultural imagination (see Garland & Sparks, 2000). The socialist past, hasty transition from socialism to democracy and from a centrally-planned to free market economy has influenced participants' perceptions of the justice administration and the institutions involved in these processes. Lay Polish people shall be seen as *Homo post-Sovieticus*, whose perceptions of punishment and justice need to be analysed along with the legacy of the previous socialist system as well as post-1989 changes. Participants' perceptions of the Polish criminal justice system, the Polish police and unpaid work assist to understand a number of factors that might influence the development of restorative justice in the Polish context. The findings of this study also encourage broadening the scope of the restorative justice discussion and examining its preconditions against wider sociological and criminological discourses on punishment and justice. Although the relationship might be defined as 'uneasy', restorative justice, since its conception, is interwoven with the two. One of restorative justice's central hopes was to establish an alternative system of crime resolution that would eliminate the infliction of pain. However, the trajectory of restorative practices and demonstrates that the functioning of a majority of them is dependent on the criminal justice agencies and that there is a need to address better the notion of punishment in restorative encounters.

List of tables

Table 1. Recent crime trends in Poland

Table 2. Fear of crime in Poland 1987-2015

Table 3. Attitudes to the death penalty in Poland 1987-2011

Table 4. Public trust in criminal justice institutions in Poland (1987-2011)

Table 5. Routine contact with the Polish police

Table of contents

Acknowledgements.....	3
Abstract.....	4
List of tables.....	5
Chapter I.....	10
1. Justice.....	11
2. Punishment.....	22
3. The paradox and value of lay opinion.....	28
4. The significance of the Polish context.....	34
5. The scope of this thesis.....	36
Chapter II.....	38
1. Introduction.....	38
2. 1944-1989: the time of ‘Komuna’.....	39
2.1. Socialist criminal justice system.....	40
2.2. Lay people in the socialist criminal justice system.....	43
2.3. Parasitism.....	46
2.4. Censorship.....	48
2.5. Attitudes under the communist regime.....	49
3. Post -1989 penal system.....	51
3.1. Post-1989 attitudes among Poles.....	61
3.2. Restorative justice.....	67
In conclusion.....	81
Chapter III.....	82
1. Introduction.....	82
2. An escape from quantitative dominance.....	82
3. Fieldwork.....	84

3.1.	Entering the field	84
3.2.	Theoretically informed sampling.....	86
4.	Focus Groups	88
4.1.	Recruitment strategy in rural settings	90
4.2.	Recruitment strategy in urban settings	91
4.3.	Focus group settings	94
4.4.	Group composition	97
4.5.	Focus group discussions	98
5.	In-depth interviews	99
5.1.	Accessing and selecting one-to-one interviewees	100
5.2.	Face to face meetings	101
6.	Post-fieldwork observations.....	103
7.	Ethical issues.....	105
8.	Analysis and Interpretation	106
8.1.	Coding	106
8.2.	Translation	107
	In conclusion	108
	Chapter IV.....	109
1.	Views of the Polish police	110
1.1	Nostalgia for the militia.....	114
1.2	The wild '90s.....	123
1.3	Contemporary police	128
2.	Courts and sentencing	141
2.1	Delayed justice	141
2.2	Access to justice	142
2.3	The inequality of justice	145

2.4	Lawyers	149
2.5	Chasing the West	152
3.	Media	155
	In conclusion	160
Chapter V		162
1.	Prison labour	163
1.1	Punishment	163
2.2	Economics	166
2.3	Reformation	173
3.	Community reparation	175
4.	Shaming	181
4.1	Reintegration	181
4.2	Stigmatization	187
5.	Work & crime – the case of child maintenance arrears	191
6.	Work in the Polish context	193
	In conclusion	199
Chapter VI		201
1.	Introduction	201
2.	Perceptions of victim-offender mediation	201
2.1.	Knowledge, experience and support	201
2.2.	The civil matter	204
2.3.	Negotiated and conditional receptivity	205
3.	Victim Offender Mediation & Criminal Justice System	207
3.1.	Pragmatic out-of-court solution	208
3.2.	Escape from rigid and controlled criminal justice system	210
3.3.	Mediators as psychologists	214

3.4. The fear of informality	218
4. Mediation as a negotiation of interests	221
5. Beyond victim-offender mediation?	228
6. Apology and victim offender mediation	232
6.1. Why not apologise?	235
7. Media	240
8. The West	241
In conclusion	242
Chapter VII	244
Appendices.....	258
Appendix I	258
Appendix II	259
Appendix III	262
Appendix IV	266
Appendix V	271
Appendix VII.....	276
Appendix VIII.....	277
Appendix IX	280
Appendix X	282
Appendix XI.....	283
Appendix XII	285
Bibliography	287

Chapter I

Introduction

I came to learn about restorative justice in 2009 while studying for my Master's Degree in Social Policy (Research) at LSE. After I completed my degree I began working on a 2-year research project at Kingston University and reviewed the available restorative justice scholarship. My understanding of restorative justice was influenced by the writings of such authors as John Braithwaite, Kathleen Daly, Martin Wright, Joanna Shapland, Declan Roche, Nils Christie, and Albert Dzur. At the time I realised that restorative justice is a significantly broad concept that is interwoven with complex criminological debates on punishment and justice. My understanding of restorative justice evolved such that I understood the concept to mean an immensely popular justice mechanism that is accommodated and practised differently by different countries/societies. The readings raised questions about restorative justice in my own country. Therefore, I decided to pursue these questions in my doctoral studies in which I hoped to answer how Polish people's accounts of punishment and justice can shed light on the viability of restorative justice. Poland is of interest here because of its complex socio-political and economic context in which punishment and justice has been little explored.

Societies differ in their responses to crime, and the volumes of comparative criminological research corroborate this. The difference is manifested in how crime and punishment are constructed, how criminal justice institutions function and whether there is any alternative mechanism of conflict resolution. The purpose of this doctoral research is to explore how Polish people understand punishment and justice, and how their narratives inform the viability of restorative approaches to justice that were introduced post communism in 1989. In so doing, this research approaches punishment and justice as social activities, which echoes the argument that stories about crime and punishment are entangled with people's daily routines, and as a result are lodged in their cultural imagination (see Garland & Sparks, 2000). Then, in light of these narratives, this thesis aims to explore how the responses of lay study participants shed light on the restorative approaches to justice implemented in Poland in the 1990s in the form of victim-offender mediation. Thirdly, this research recognises the

importance of lay opinion in the discussion of punishment and justice. By 'lay', I mean people with and without experience of the criminal justice system, who may not have specialised or professional knowledge of crime, sanctions, criminal justice systems, police or restorative practices but might have experience of it as victims, offenders, witnesses, or through close friends/family members. Last but not least, this research brings to light the Polish context of a post-socialist, post-transformation society of peasant roots and high religiosity which greatly contributes to the comparative criminological scholarship.

1. Justice

Although the concept of justice can be analysed from various perspectives, in this research justice is approached through the interpretation of Rawls' work (1971) – *A Theory of Justice* – where the concept is understood as a social contract about the rights and duties of human beings as citizens in the public sphere. Although such a contract has different meanings, it offers an explanation as to why people create states and remain bound by their rules. While social justice refers to the distribution of benefits in society by social institutions, legal justice, the main interest of this thesis, concerns the creation of laws and their enforcement for example through sanctions. It is within the criminal justice system that principles of justice are being transformed from philosophical ideas into penal policies. The subject of criminal justice deals with the institutional aspects of the social construction of crime and criminal processes; the functioning of criminal justice institutions such as police or courts (Lacey, 2002:265). Furthermore, some have argued that the police in particular are a social institution comprising of cultural mentalities and sensibilities (Reiner, 2000; Loader, 1997). Loader (1997) has emphasised that there is a reciprocal relationship between people's perceptions of the police and the quality of policing. In other words, lay people's views on policing reflect the condition of society and the nature of policing it is addressed at. In this thesis, I develop Loader's observation and argue that there is a reciprocal relationship between people's perceptions of justice institutions in general, and that lay people's views on the police and criminal justice system tell stories about themselves and the socio-political, economic, and linguistic context they live in. I also argue that these stories shed light on the viability of any alternative conflict resolution. Rawls' idea of a social contract is useful for

the Polish context, as Łoś (1988:53) observed that 'law and order' has a different context in Poland than other countries which did not experience totalitarian regime. She argued that due to Poland's socialist past, the law has lost its authority and the respect of Polish citizens. People's legal and moral consciousness was exposed to double meanings of legal standards, which has contributed to the common disregard for law and order among Polish people and the emergence of an ambivalent Polish legal culture (see Kurczewski, 2009). Thereby, the examination of the viability of restorative justice in Poland through lay perceptions of punishment and justice becomes even more interesting.

Restorative justice

The philosophy of traditional justice (also defined as conventional, retributive) is that the state acts on behalf of victims and communities and the state responds to crime through deterrence of and retribution against perpetrators (Zehr, 1990). Since the late 1980s this approach to justice has been challenged by the popularity of restorative justice, which gained worldwide attention due to the perceived deficiencies and failures of conventional justice systems.

Restorative justice is a complex, evolving and contested philosophy, which is frequently referred to as an 'umbrella concept' with many different forms around the world (see Shapland et al. 2006). It is a new way of thinking about crime, justice and punishment that is motivated by a variety of impulses, including healing and reconciliation with victims playing an active role. The restorative perspective not only represents a new way of defining justice but also goes beyond the penal system; as Braithwaite (2003) has argued, restorative justice is a way of transforming entire legal systems, family lives, people's conduct in the workplace, and even the practice of politics. Although restorative justice is attractive because of its ambitious goals and promising outcomes, the concept has been used with no clear-cut and agreed-upon definition, but with a number of working, or 'in progress' attempts to define the concept of restorative justice and its elements.

There are a number of competing definitions of restorative justice as some scholars differentiate restorative justice as a process and as a value conception (Strang & Braithwaite, 2001; Roche, 2001; Johnstone, 2004) or they categorise restorative justice as an encounter conception, a reparative conception or a transformative conception (Johnstone and Van Ness,

2007). However, the main differentiation occurs between ‘purists’ who argue that restorative justice is a process that involves key stakeholders who address the aftermath of crimes (see Marshall, 1999; McCold, 2000, Bazemore & Walgrave, 1999) and ‘maximalist’ who say that restorative justice is an option that encourages outcomes to repair harm caused by the commission of a crime (see Walgrave, 2008). According to Wood & Suzuki (2016) the new approach towards defining restorative justice should include (or expand) a focus on interactions between parties who have caused harm and have been harmed.

One of the most well-known definitions that focuses on the process is the one given by Marshall (1999): ‘restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future’. Marshall’s definition has been recognised as the most acceptable working definition that best captures the core idea of restorative justice. However, the main limitation of the definition is that it does not tell us who and what is to be restored (see Braithwaite, 1999). Moreover, the advocates of process-based definitions of restorative justice risk excluding programmes, defined by the outcomes they provide, that are ‘mostly’ or ‘partially’ restorative (Gavrielides, 2008). On the other hand, Walgrave’s definition of restorative justice is a restricted and outcome-based one: ‘restorative justice is an option for doing justice after the occurrence of an offence that is primarily oriented towards repairing the individual, relational, and social harm caused by that offence’ (Walgrave, 2008:21). While outcome-based definitions of restorative justice might well capture restorative outcomes such as compensation or community service, they might not include central restorative justice procedural rules such as non-violent communication or forgiveness (Gavrielides, 2008). The definition of restorative justice that was adopted in this thesis is the one given by Meredith Rossner. According to Rossner, the purpose of restorative practice is to ‘bring together offender, victim, family, and (sometimes) the community to address what happened, how the parties were affected, and what positive steps the offender can take to make amends with the victim and the community’ (Rossner, 2008:173). Rossner’s definition, to some extent, overcomes the competing perspectives on restorative justice (process v. outcome) and defines the essence of restorative justice without simplifying the nuanced definitional arguments.

Unless one accepts that an entity like restorative justice must have one, true, real meaning, it is clear that the concept of restorative justice is something of a mirror which reflects the

aspirations and experiences of those who practice, and write about it. Restorative justice is subject to multiple attempts at capture, and it is not surprising that it is neither well nor consensually defined. Furthermore, a lack of precise definition of restorative justice may be its empirical reality. The analysis of the introduction of restorative justice in a society should therefore include a close look at the main definition that is adopted. This resonates with Zehr and Mika's observation that restorative justice definitions are products of countries' experiences of the justice system, and that what flows from the definition might guide practice. Restorative justice definitions (and understandings) are put forward by scholars and practitioners whose 'lens' and experiences, socio-political contexts they live in, shape their vision about restorative justice (Zehr & Mika, 2003).

Restorative approaches to justice were implemented in Poland in the 1990s in the form of victim-offender mediation. The most well-known and often-cited definition of mediation in Poland was coined by Czarnecka-Dzialuk & Wójcik (2000:323):

Mediation is based on making attempts to reach a voluntary agreement between victim and offender on compensation for material and moral damages caused, with the assistance of an impartial mediator. It is a process of mutual communication that allows victims to express their wishes and feelings, and offenders to assume responsibility for the results of their crime and start the associated actions.

The conceptualisation of restorative justice by Rossner (especially the element of 'bringing together') reflects the Polish definition that focuses on 'making an attempt to address what happened'. Moreover, Rossner's recognition of 'how the parties were affected' and 'making amends with the victim' corresponds with 'allowing victims to express their wishes and feelings' that is part of the Polish definition. Although there is lack of specification in Rossner's definition in terms of 'positive steps' that can be taken during a restorative encounter, the Polish definition envisages the following outcomes 'compensation for material and moral damages' and 'assuming responsibility [by the offender]', as well as 'starting the associated actions'. This part of the Polish definition aligns with outcome-based conceptualisations of restorative justice. While the first two outcomes are precise and straightforward the last one leaves rather unlimited opportunities for interpretation. The Polish definition also highlights that victim-offender mediation is a process of mutual

communication – something that resonates to a certain degree with Marshall's conceptualisation of restorative justice.

Although the implementation of victim-offender mediation in Poland was inspired by the goals of restorative justice, it is yet to explore how restorative is Polish mediation. Braithwaite (1999) says that for any informal justice to be restorative justice it has to be about restoring victims, offenders, and their respective communities as a result of participation of a plurality of stakeholders, and argues that victim-offender mediation, among other restorative justice solutions can at times be restorative justice. One could argue that cultures must adapt their restorative traditions and definitions of restorative justice in ways that are culturally meaningful to them, and the Polish definition of victim-offender mediation is an interesting hybrid. Although the definition of Polish mediation reflects to a certain extent the outcome and process-focused definitions of restorative justice discussed above, the definition is somewhat limited in its dimensions of restoration which according to Braithwaite should restore property loss, restore injury, restore a sense of security, restore dignity, restore a sense of empowerment, restore deliberative democracy, restore harmony based on a feeling that justice has been done, and restore social support (see Braithwaite, 1999).

In the first part of the Polish definition there is a strong and precise emphasis on restitution in the form of compensation. Restitution is important to victims not only because of the actual loss but also because of it as a symbol to recognise the harm and taking responsibility by the offender (Zehr, 2002). Despite the fact that the architects of the Polish definition highlight that the compensation envisaged, first and foremost, the moral responsibility on the part of the offender, Zalewski (2006) observes that the nature of Polish criminal law is very 'compensatory' and argues that the Polish legislation has 'dangerously' created the provisions for victim-offender mediation to be understood as an ancillary mechanism that aims to help the formal criminal justice system in establishing the guilt of the offender and the amount of compensation (mainly financial) for the victim. Furthermore, there is an interesting linguistic perspective emphasised by Płatek (2007) who has given an insight into the process of translating the term 'restorative justice' into the Polish language:

We really got to the point when we had to decide about the Polish term for those English words. We hesitate between term 'compensation' and 'restoration' – both sound well in Polish. The fact that restoration is more often used is probably

because of the bulk of English literature which helps to make the translation more accurate (Płatek,2007:142) [original translation].

Płatek (2007) points out that the English version of ‘restorative justice’ was considered to be translated either as ‘*sprawiedliwość naprawcza*’ (direct translation as restorative justice) or ‘*sprawiedliwość kompensująca*’ (back translation as compensating justice). This is another observation corroborating the view that there is a significant compensatory side to the Polish model of victim-offender mediation. Although the analysis of the Polish definition already demonstrates a very close relationship between the conventional justice system and victim-offender mediation in Poland, as well as possible understandings of mediation among lay Polish people, one could argue that many justice innovations become hybridised.

As the use and popularity of restorative justice has grown, its definition has continued to expand and to be applied to a widening range of practices. However, the growing plasticity and hybridity of the restorative justice concept has become one of the key challenges in the field that can make the concept potentially meaningless (Wood & Suzuki, 2016). Daly (2016) has emphasised that the cross-fertilisation of restorative justice ideas is harmful as many criminal justice system reforms are being promoted under the umbrella of restorative justice. Daly further observes that restorative justice must be precisely defined because its practices and outcomes must be subject to empirical inquiry. In response, Daly has offered to approach restorative justice as a justice mechanism: ‘restorative justice is a contemporary justice mechanism to address crime, disputes, and bounded community conflict. The mechanism is a meeting (or several meetings) of affected individuals, facilitated by one or more impartial people. Meetings can take place at all phases of the criminal process – pre-arrest, diversion from court, presentence, post-sentence – as well as for offending or conflicts not reported to the police. Specific practices will vary, depending on context, but are guided by rules and procedures that align with what is appropriate in the context of the crime, dispute, or bounded conflict’ (Daly, 2016:21).

Although restorative justice is believed to be a modern response to crime resolution, the concept is probably the most common form reported by social anthropologists (see Gluckman, 1955; Llewellyn & Hoebel, 1941). The Canadian Victim-Offender Reconciliation Programme, modelled after a prototype in a Christian Mennonite community, provides an

interesting example of how the establishment of modern restorative intervention was built upon a pre-modern tradition of restitution (see Rock, 1986).

The introduction of restorative solutions does not happen in a socio-political and economic vacuum. Restorative justice is a complex phenomenon in its own right and this will be discussed later in the thesis. What is of significance is that there is no culture-free restorative justice (Miers & Aertsen, 2012:514). Every society engages with restorative justice in its own distinctive way as it is the society – lay people – that is always on the receiving end of restorative solutions. Daly (2002), while describing how the idea of restorative conferencing was accommodated in New Zealand, has emphasised that it was a bottom-up approach conducted in the context of Maori political challenges to white New Zealanders and their welfare and criminal justice systems. Through this socio-political example, Daly has highlighted that the introduction of restorative justice in various contexts should incorporate degrees of ‘cultural appropriateness’. Only such an understanding of restorative justice will make restorative practices flexible towards, and accommodating of, cultural differences. This important observation is, however, challenged by Blagg (1997) who has argued that there is a risk in adopting a one-dimensional, westernized/‘Orientalist’¹ interpretation of indigenous conflict resolution. In support of his argument, Blagg gives the example of the Australian police-led diversionary schemes directed at Aboriginal youth. Although the Australian response to restorative justice was built in the direction of a New-Zealand/Maori process of conflict resolution, the Australian system fails to address the broader ‘cultural’ context; in particular the problematic relationship between Aboriginal people and the police that has played a significant role in relocating and controlling these populations.

It has already been said that restorative justice is a somewhat ‘widening river’ (Zehr, 2002:62). A widening range of practices that would formerly have been defined as diversion from court, rehabilitative schemes or community-based penalties are increasingly being referred to with the term ‘restorative’ to define their principles (Daly, 2012). As a consequence, some restorative justice scholars prefer to make a clear differentiation between

¹ By the ‘Orientalist’ interpretation of the indigenous restorative practice Blagg means: ‘The Orientalist discourse are, primarily, powerful acts of representation that permit Western/European cultures to contain, homogenize and consume ‘other’ cultures. It is through such techniques of representation that we identify what is essentially ‘knowable’ about them: and our knowledge of them then becomes a kind of cultural capital, the accumulation of which serves to reinforce our nascent cultural superiority (...) Orientalist discourses have the capacity to ‘essentialize’ other cultures and denude them of their indigenous histories’ (Blagg, 1997:483).

restorative justice and restorative practice, with the latter being a wider option. The main difference between restorative justice and restorative practice is that while restorative justice creates an opportunity for those harmed by crime and those responsible for the harm to meet and communicate, restorative practice is a much broader field that can be used anywhere to restore relationships which may not directly involve those harmed and those responsible for the harm (such as in community service or victim awareness programmes)². For example, the International Institute for Restorative Practices (IIRP) has a particular way of defining ‘restorative’ (Wachtel, 2012). The IIRP distinguishes between the terms restorative practices and restorative justice, where the latter is understood as a subset of restorative practices. While restorative justice is seen as reactive, consisting of formal or informal responses to crime and other wrongdoings after the crime occurs, the IIRP’s definition of restorative practices also includes the use of informal and formal processes that precede the wrongdoing (Wachtel, 2012). It is fair to say then that restorative justice is a philosophy that can penetrate different practices to different degrees (Walgrave, 2009). Therefore, it is useful to rely on McCold & Wachtel’s (2002) typology of: fully restorative practices (e.g. circles, family conferencing), mostly restorative practices (e.g. victim support circles, victim restitution, and therapeutic communities) and partly restorative practices (e.g. victim services, offender family work, victim sensitive training, community service). Although restorative practices are based on a belief that restorative processes are ‘better’, ‘more constructive’ or ‘more just’ than the punitive and formal traditional criminal justice system, there is a broad range of different practices that may, or may not, fully articulate the concept of restorative justice (Walgrave, 2009). Furthermore, there are new practices, or new versions, that are invented by committed practitioners and adapted to local circumstances. It is worth acknowledging that none of the current interventions however - even the most prominent ones - guarantee that the practice will be fully restorative (ibid.), and there may be different interpretations as to its level of ‘restorativeness’.

The paradox of restorative justice lies in the fact that, although restorative justice gained its popularity due to the alternative vision of justice administration, most restorative justice practices still function at the peripheries of the formal criminal justice systems.³ Despite the broad interest in restorative justice, it seems to be forever on the verge of making a

² www.restorativejustice.org.uk Accessed 10.11.2017

³ Although Roche (2006) gives an interesting example of peace committees in South Africa and programs in Northern Ireland which are independent from the conventional criminal justice systems.

breakthrough but never quite achieving it. Dzur (2011:371) has argued that it is both a strength and weakness that restorative justice originated in conventional justice institutions, since without criminal justice agencies it would be difficult to put restorative justice practices in motion. In addition, Shapland and colleagues (2006:508) have stated that:

A key difference between restorative justice situated within criminal justice and other forms of restorative justice (such as community restorative justice or peace making) is that the roles are already set by criminal justice. Referrals come from criminal justice agencies, the roles of offender and victim are already assigned as restorative justice does not normally see itself as a forum for determining guilt.

In consequence, restorative practices have to persuade either agents of the criminal justice system or people in general that the offence should be dealt with outside the traditional criminal justice path (Roche, 2006). This also means that restorative justice can be applied at different stages of the criminal process, such as diversion from court prosecution or actions taken in parallel with court decisions, for example, arrest, pre-sentencing and prison release (Daly, 2002). It is not only the variety of practices but also the criminal justice location of these practices that determines the success of restorative justice, but this also contributes to its complexity. In brief, pre-existing criminal justice systems do contribute to the ‘restorativeness’ (or otherwise) of a certain practice, since the place of a restorative practice within the criminal justice process says a lot about how near or far from the restorative ideals the practice is (ibid.). Such inescapable relationships between restorative and retributive justice may lead, for instance, to defining restorative practices like victim-offender mediation as ‘penal mediation’, as is the case in France (see *médiation pénale* Faget, 1999) or ‘out-of-court offence resolution’ as it is in Austria (Wright, 2001). This is especially important for the Polish context, where victim-offender mediation, as a restorative practice, is situated within and significantly dependent on the criminal justice system. In Poland, any mediation outcome is always scrutinised within the Polish criminal justice framework, and proceedings can only be discontinued once the agreement between the victim and the offender is reviewed by a judge. It comes as no surprise that in Poland, victim-offender mediation is therefore frequently called ‘court mediation’⁴ by justice professionals.

The pressure between the retributive and restorative perspectives on justice has been present since the early days of restorative justice and has made the relationship between the two

⁴ This is the term that was frequently used by the mediators I interviewed.

‘uneasy’ (Shapland et al., 2006; Gavrielides, 2008). Here, it is helpful to consider Gavrielides’ (2008) argument which divides the development of restorative justice into two phases: the innovation and implementation stages. The former can be characterised as being when restorative justice was actively compared and contrasted with the criminal justice system; the latter being when restorative justice proponents realised the need to talk about combining restorative ideals with existing traditions of criminal justice systems. The evidence from corporate regulation where restorative justice dominates through civil law mediation (Roche, 2006) suggests that restorative programs work best when parties to the conflict still have the option to resolve the conflict through the conventional justice system (see Parker, 2004). Despite the fact that restorative justice seeks to limit state control and initiate macro-level transformations in the administration of justice, the growing popularity of restorative justice has been mainly expressed in the growing number of restorative practices. Research by Hoyle & Rosenblatt (2016), which involved an evaluation of two restorative interventions in the United Kingdom, demonstrates that restorative justice has a tendency to expand in the number and size of restorative practices without any significant theoretical paradigm shift. Moreover, Wood & Suzuki (2016) has indicated that restorative justice has become an attractive and plastic concept applied to already-existing or new justice interventions, such as the rebranding of ‘community work’ – something that according to Wood & Suzuki has little to do with restorative justice.

Restorative justice is also believed to contribute to the empowerment of victims who are left ‘unheard and out of account’ in traditional criminal justice (Wright, 1996:133). On the other hand, not all victims might be interested in taking responsibility for determining the outcome of their case. For instance, Victim Support and the European Victims Forum were sceptical of restorative justice, arguing that it would predominantly benefit offenders. The Statement of Victim’s Rights states that: ‘the acceptance of responsibility by the State should be recognised as a fundamental right of victims of crime, and no attempts should be made to erode this by returning the responsibility for decision making to victims’.⁵ Although the basic tenets of restorative justice are around positive emotions, such as empathy or forgiveness, Rock (1998) has argued that courts might also be seen as a place in which victims and their

⁵ Available at: <http://victimsupport.eu/activeapp/wp-content/uploads/2012/09/VSE-Statement-of-Victims-Rights-in-the-Process-of-Criminal-Justice21.pdf> accessed 20.11.2016

families find emotional and symbolic relief. Rock⁶, in response to Christie's perspective of restorative justice, observes the following:

Although victims do seem to benefit from restorative justice, it is an extrusion chiefly of the penal reform project, not of victims' demands, designed to reduce the prison population, and there is no evidence of victims clamouring for it. And in that guise, it can, unless we are very careful, represent yet another instance of us doing things to victims in the interests of goals over and beyond those of the victims.

Nonetheless, there appears to be a 'third way' of discussing this issue. There is an important procedural dimension to the legal perspective on justice. Therefore, instead of contraposing restorative and criminal justice systems, it is worth considering whether restorative justice practices, if conducted properly, provide a form of procedural justice (Roche, 2006). A similar observation has been made by Shapland et al. (2006:512): 'what we may be finding is that restorative justice situated in criminal justice, is advocating, attempting to carry out and, in our evaluation, mostly succeeding in operationalizing, procedural principles which participants see as highly desirable from criminal justice itself'. According to Tyler (1990) and his procedural justice theory, criminal justice processes, and procedures leading up to them (like police activity), should be performed in a fair manner. He has argued that people view a fair justice process as more important than a particular outcome with regard to criminal justice, and if restorative justice practices gain their support it is because they believe that the process is fairer than a court experience. It is suggested that if the process is fair people are more willing to comply with the law, and people who hold negative views about the criminal justice system are more likely to disregard the law (Hough et al. 2010). In the Polish context compliance with justice institutions was for many years gained through the coercion of an extensive and brutal police power. This experience is used in the Polish scholarship to explain why Poles express very low levels of trust in justice institutions and the police (see Chapter 2), and whether or not this carries across to their views of restorative justice.

⁶ Unpublished paper given at the launch of Nils Christie's book *A Suitable Amount of Crime*.

2. Punishment

Just as with the notion of justice, I will argue in this thesis that discussing and constructing punishment is a social activity. In so doing, I draw on Durkheim's (1933) foundational argument that punishment is a group phenomenon that can serve as a means to express solidarity in order to preserve shared values and moralities. One of the most influential sociologists, David Garland (1991), has observed that 'for Durkheim punishment serves as a key with which to unlock a larger cultural text such as the nature of social solidarity'. In Durkheim's terms, punishment is understood as a response to violation of collective values and relationships; as a moral institution that entails a ritualistic condemnation of such violation that only reinforces group solidarity. However, I shall be careful in my reference to Durkheim, as one could enquire how much we actually know about the boundary-negotiating role of the courts. Although court settings might be seen as a reserved site where the state performs the public delineation of moral boundaries, Rock (1998) has argued that the dynamics of this performance have changed. Firstly, the administration of justice considers selected cases as not all crimes reach the courtroom. Those ones which are dealt with in a courtroom are re-constructed and discussed in a language that does not express the morality of 'everyday life'. Finally, we know little of how judges arrive at their sentencing decisions, and we probably know even less about how the courtroom performance of the 'moral bounds' of society is perceived by lay people (ibid.).

Equally importantly, in this thesis I will also draw on Garland's (2012:24) macro-sociological argument that 'punishment is not only a reaction to crime; it is a social process with social causes and social effects'. The Polish context will be explored through the lens of Garland's argument (1991:120) that punishment can be seen as a social artifact, constructed and shaped by various social forces, that has its own historical tradition and cultural styles, as well as being intended to perform varying instrumental roles. Therefore, a term that encompasses various dimensions of punishment is 'penality' – a complex set of interwoven institutions, laws, discourses, representations and processes (Garland, 1991:120). At a more micro-level, punishment is seen as a social construct with different purposes: retribution, deterrence, rehabilitation and restoration. This resonates with Wright's (2001) quest to analyse punishment as various sanctions that can be of punitive, rehabilitative, retributive or

restorative nature. Poland's multi-layered penalty has changed drastically in a relatively short period of time. The post-socialist, post-transformation and post EU-access contexts discussed below illustrate the idea of the ever-changing nature of crime and punishment. Therefore, one of the rationales behind this study is to explore whether Poland as a post-communist society has the potential to be receptive to the restorative function of punishment.

There is an interesting relationship between punishment and the condition of society in which the punishment is administered. Garland's examination of the continuing use of the death penalty in the United States is a window onto American culture and social relationships. Writing at length and in depth in *Peculiar Institution: America's Death Penalty in an Age of Abolition*, Garland (2010) has argued that America's death penalty should be seen as a complex field of institutional arrangements, social practices, and cultural forms through which punishment is imposed. He concluded that the discussion of America's death penalty omits the fact that there are major regional and state-level discrepancies within the United States and that two opposite moral viewpoints, expressed in the views of lay people, have always been part of the death penalty institution (Garland, 2010:16). Having acknowledged that punishment is deeply embedded in the specificity of the environment that produces it, it is important to emphasise the role of religion. Mellosi's analysis of the concept and experience of religion in Italy and the United States illustrates the historical and present differences in the countries' punishment distribution (Mellosi, 2001:407). He observed that the rigour of radical Protestantism is different from Catholic paternalism, and that the experience of evangelical forgiveness is not the same as the 'Roman' tradition of indulgence. Undoubtedly, one of the most distinguishing features of Polish society is the role and contribution of the Catholic Church, hence one would expect that the Catholic environment in which punishments in Poland are administered would be more accommodating towards dialogue and forgiveness – something that lies at the heart of restorative justice.

Although both crime and punishment are social constructs shaped by various social factors, Michael Tonry (2005) observed that punishment and crime have little to do with each other, as many countries with similar crime rates distribute sanctions in different ways. After all, very few crimes are punished (see Taylor, 1998). Such a variety of responses to crime and punishment distribution contributed to the development of 'punitiveness', which can be broadly defined as a desire for harsh punishments. Although Daly (2002:61) has noted that punitiveness is a multidimensional and highly complex concept that has remained to a great

extent undefined and under-theorised, Poland, due to its socialist past, is frequently regarded as one of the most ‘punitive’ countries in Europe (see Krajewski, 2002, 2004).

While Cohen (1994) claimed that punitiveness can be characterised by coercion and the infliction of pain on individuals, King (2008) has disaggregated the concept into ‘punitive orientations’ that operate at various levels. It has been argued that there are four dimensions of punitiveness: political rhetoric, laws, policy practices and people’s attitudes – all determined by country-specific characteristics, thus, the discussion of punitiveness should conjoin all four perspectives (Tonry, 2007; Green, 2012). Political rhetoric, laws and policy practices fall under the notion of state punitiveness, which Bottoms (1995) defined as populist punitiveness, which is the assumption of harsh public attitudes used in order to rationalise and sustain rigid crime and punishment policies. Penal populism depicts even deeper political manipulation of public attitudes (Roberts et al. 2003). Despite a lack of definition and paucity of theorisation, punitiveness most of the time carries negative connotations (Matthews, 2005; Green, 2009; Hamilton, 2014). Nevertheless, it is the subject of individual (lay-person) punitiveness that is of primary interest in this research. In my research on Poland, criminal behaviour under the communist regime served as a feature of class conflict and the aim of criminal law was not to distribute justice but to punish and deter ‘the enemies’ (Frankowski, 1996:218). As a result, there is evidence from comparative studies suggesting that the societies of Central and Eastern Europe (CEE) hold slightly more punitive attitudes than Western societies (see Mawby 1998; Kesteren 2009).

The conceptual ambiguity and multidimensionality of punitiveness is interestingly delineated by Matthews (2014) in *Realist Criminology*. Matthews has argued that punitiveness has become a convenient term for thinking about recent changes in criminal justice policies. He observes that the literature on crime and punishment has been divided by a punitive/non-punitive dichotomy of examples that aim to investigate the notion of punitiveness. Matthews (2005, 2014), as well as other scholars such as Hamilton (2014) and Sato & Hough (2013), have observed that the notion of punitiveness has been defined by a number of indicators, such as: imprisonment rate, sentencing patterns and the death penalty. Although recognised as important indicators of punitiveness, they only describe actual penal practice (also defined as subjective punitiveness), and they are still not ideal to capture the complexity of punitiveness (ibid.).

It appears that there are a variety of views as to what ‘feeds’ punitiveness. For example, King (2008) has argued that in order to analyse punitiveness in more depth, rather than considering crime-related issues, it is better to consider people’s interpretations of social change through the events that occur in their private lives and how they make sense of them. Matthews (2005) has explained that among the key processes that have contributed to the rise of so-called punitiveness is the decline of welfarism, the weakening of the rehabilitative approach towards punishment, the increase of ontological insecurity, the demise of communities and expanding individualism and the growth of the mass media. If that is the case, it should be expected that post-1989 changes have reinforced the notion of punitiveness in Polish society.

Although a debate over the relationship between punishment and restorative justice has developed, many restorative justice scholars still see little connection between the two and avoid addressing the notions of ‘punitiveness’, ‘painful consequences’, ‘hardship’ or ‘infliction of pain’ within the restorative justice scholarship (Daly, 2012). Daly elaborates on this point as follows:

How restorative justice sanctions can be distinguished from other types. Typically, ‘non-punitive’ is used to refer to a restorative response or outcome, but this begs the question: when is a response ‘punitive’ or ‘non-punitive’? Is this in the mind of the decision maker, is it implied in any coerced sanction, is it how an offender experiences a sanction, or is it how a victim interprets a sanction?

Although the retributive-restorative justice contrast was an ‘elegant and catchy exposition’ at the time, Daly argues that restorative justice unavoidably contains punitive aspects and major restorative justice proponents acknowledge today that it is misleading to deny it because retribution can and should be part of restorative justice (Daly, 2012). What is at issue in the relationship between punishment and restorative justice is the intention of the decision-makers, the nature of restorative reparation, as well as the perceptions of the relationship by victims and offenders.

Some scholars reject (Christie, 1981; Zehr, 1985; McCold, 2000) any coercion and painful obligation in restorative justice, arguing that restoration should replace the infliction of pain, and that reparation, along with the process of healing, should become a common goal. On the opposite side for example Duff (2002) seeks to redefine the meaning of punishment and

argues that we should recognise restorative justice as an alternative punishment that aims to impose appropriate kinds of pain, and that ‘criminal mediation’ and reparation can become punitive outcomes. Duff (2002) reconciles punishment and restoration, arguing that not only is restoration compatible with retribution but that criminal punishment is necessary for restoration.

One of the most comprehensive overviews of the debate is offered by Walgrave (2008) in his *Restorative Justice, Self-interest and Responsible Citizenship*, in which he argues that restorative justice is neither an alternative punishment nor an alternative to punishment. The crucial distinction is in the intentionality. Walgrave says that it is the ‘mental location’ of the painfulness that counts, and even if there is no intention to inflict pain, there must be an awareness of the hardship of a reparative obligation by offenders. Although Walgrave says that criminal punishment does not work and there is no justification for the intention of inflicting pain, he sees it as a means of achieving restoration. Although restorative justice is clearly different from the predominant punitive apriorism in the current criminal justice response to crime, he emphasises that distinguishing restorative justice from punitive criminal justice does not mean totally abandoning coercion and legalism (Walgrave, 2008). Elsewhere Walgrave (2004) argues that restoration can be seen as reversed retribution and that in restorative justice the offender’s ‘paying back’ role in punitive retributivism is reversed from a passive to an active one. What restorative justice does is that it tries to take hurt away by inverting punitive retributivism into constructive restorative retributivism (Walgrave, 2004).

Roche (2006) has observed that the worldwide popularity of restorative justice is at odds with the general punitive approach in modern penal policy claimed by Garland (2001) – the highly acclaimed sociological discussion surrounding the ‘culture of control’ that has shaped the Western criminal justice systems of late modernity. Garland’s argument about the rise of crime control being based on the penal developments in the United States and United Kingdom, needs to be considered alongside his argument about the internal variability of American criminal justice regimes (see Garland, 2010) and a diverse landscape of restorative practices in American society (see Umbreit et al. 2005). In terms of the popularity of restorative justice, considered by Roche (2006) as discordant with the worldwide trends and so-called punitiveness of crime policies, it is helpful to cite Walgrave’s (2013:160) observation that:

Restorative justice may help to develop a serious countervailing power to the unrestrained, thoughtless, selfish and problematic increase in punitiveness. It does not, however, do away with a public justice system, as was proposed by the abolitionists. Restorative justice, both in theory and in practice, shows that a public justice system must not necessarily give priority to punishment to deal appropriately with crimes.

In light of the above arguments, Polish ‘punitiveness’ has been mainly associated with the nature of criminal justice policies and penal law under the communist regime as well as the ‘wild years’ of transition (see Woolfson, 2006). Despite the scarce available evidence, and the contradictory and sometimes unclear nature of what is available, Polish scholars have attempted to examine the condition of Polish punitiveness. Kwaśniewski (1984) suggested that repressive communist criminal policies originated from the strictness and punitiveness of Polish society, whereas Krajewski (2002) has argued that the totalitarian system created intolerant and punitive attitudes among Poles, sustained today by people’s perception that imprisonment is the most frequently used sanction in the country.⁷ For example, the current high level of public support for the death penalty in Poland is comparable to the levels of support in the UK and USA (see Gray et.al. 2007). Although it was apparent to policy-makers in post-1989 Poland that repressive and harsh communist criminal policies had to be replaced by internationally-recognised standards in order for Poland to join the international community (Krajewski, 2004) – it was an onerous task taking into account the challenging years of transformation. Having integrated Durkheim’s argument that punishment reflects people’s sensibilities and Garland’s idea that punishment is a historical artefact, it is interesting to explore firstly how views on punishment are expressed in a society that has gone from a socialist to a democratic construction of punishment, and secondly people’s views on the ‘soft’ option, as restorative justice is frequently perceived (see Daly, 2000; Johnstone, 2002).

⁷ It is worth noting this is actually true as imprisonment is still the most frequently passed sentence. A suspended sentence is given to between 60 and 70% of criminal cases (80% are 12 months or less) (Skupiński, 2009).

3. The paradox and value of lay opinion

In the preceding paragraphs, I have argued that punishment and justice will be approached in this thesis as social activities. Today, lay people are predominantly referred to as ‘the public’ and their views, for the purpose of generalisability, are usually gathered through public opinion surveys. Due to the qualitative approach in this research, I use the term ‘people’ throughout the thesis and in this section in particular I explain the paradox of lay opinion in criminology and argue the value of lay people’s accounts in more detail. There are three important themes running through discussions on the significance of lay people’s views.

To begin with, although one generally thinks of punishment as a state function, or more precisely that the criminal justice system is the state system of control of its citizens, Garland (2012) refers to Durkheim and encourages punishment to be thought of as a public exercise. Social legitimacy can be interpreted through lay people’s ‘collective consciousness’, defined by Durkheim as ‘the totality of beliefs and sentiments common to the average members of a society’ (Durkheim, 1983:39). Such common norms and constructs, as for example, division of labour, are understood, realised and passed on to the next generations, with their role being to strengthen groups’ solidarity (ibid.). Furthermore, Garland and Sparks (2000) have observed that crime and punishment play integral roles in the politics of contemporary societies, and are densely entangled with people’s daily routines, lodged in their emotional lives and represented in their cultural imagination. Such understanding of lay people’s role within modern penal theory has led to the development of ‘popular punishment’ and ‘popularised justice’, which reflects the role of lay people’s opinion in criminology (see Ryberg & Roberts, 2014; Roberts & Keijser, 2014).

Secondly, a degree of lay approval and trust in criminal justice institutions has come to be seen as essential for the system to be viewed as legitimate. Delivering punishments in accordance with lay people’s sentiments promotes compliance – and such heightened legal compliance can result in greater reputation and moral credibility of the criminal justice system as well as increased co-operation and crime-control effectiveness (Maruna & King, 2004; Robinson, 2014). Roberts (2014) has argued that despite the fact that discussing people’s views in the field of penal policies is a recent phenomenon, ‘public consultation’ has become a general trend in many modern criminal justice jurisdictions – a development that

can no longer be ignored. Moreover, Dzur (2014) has highlighted that the value of lay people's views is central to the financial aspect of punishment and justice, as the functioning of those social institutions is financed by lay people – the taxpayers. The author argues that lay people's involvement in criminal justice decision-making should be regarded through their rights, duties and membership as individuals in a nation-state. Such an approach indicates a more active role for lay people. According to Dzur, people's views should be conducted through 'everyday talk' that sensitises them to the ways their ideals and sensibilities clash with the practice of criminal justice institutions (ibid.).

Thirdly, the subject of lay people also comes to the fore because of restorative justice. Lay involvement lies at the heart of the concept, and this is due to the fact that lay citizens are given back a 'direct and hands-on control of justice decision making' (Dzur, 2008:202) that creates a chance for them to experience the process of conflict resolution themselves. There is recognition that lay people's perspectives can be seen as an indicator of the viability of restorative justice:

What is exciting but also extremely fragile in restorative justice reform efforts is the fluid way that reformers seek to build this civic accountability and public cultural criticism even as community participation is fostered and respected. In practice, this means that alongside traditional evaluation indicators such as victim satisfaction and offender recidivism, some kind of measure of public education and civic accountability is needed to judge the successes and failures of restorative justice programs (Dzur, 2008:203).

Bottoms (2003) quotes Merry (1982:34), suggesting that the efficacy of restorative practices depends on the presence of coherent and stable communities, whose powers of informal social control can be translated into informally-achieved agreements between lay people. In that vein, writings on restorative justice are frequently set against the communitarian philosophy in which individual behaviours are products of community ties. A good example of such an approach is Braithwaite's (1989) argument, which deals with cultural conditions while introducing the concept of reintegrative shaming. Braithwaite has argued that the success of reintegrative shaming depends on certain fundamental societal conditions, such as communitarianism and interdependency⁸. The restorative approach towards lay people's

⁸ However see Blagg's critique of Braithwaite's argument (Blagg, 1997).

involvement is best specified by McCold (1996) and his perceptions of micro-communities as being built upon the social networks to which people belong. These are the communities that Braithwaite (1989) defines as the circle of people who, in a reintegrative (restorative) manner, set in motion the shaming process.

However, the moral significance of lay people's views has been interestingly debated in a collection of essays entitled *Popular Punishment: On the Normative Significance of Public Opinion*, edited by Roberts and Ryberg (2014). The troubling paradox of lay opinion in the field of penal theory lies in acknowledging the normative and democratic value of lay people's views, and simultaneously challenging the reliability of such views. Lay views are frequently described by academics as an unreliable source of information based on a limited degree of knowledge and strongly dependent on media high-profile crime cases. For example, Keijser (2014) says that lay people's opinions may prove to be a wolf in sheep's clothing, since turning to people who are constantly 'getting it wrong', could be considered a characteristic of penal populism. Moreover, Roberts (2014) has questioned the increased legitimacy of lay people's views, and argued that the relationship between lay people's views and sentencing practices should be re-assessed. People's input should be interpreted carefully because compliance with legal institutions can be affected by many other factors such as individual morality, the democratic nature of a society, or an individual's stake in that society (ibid.) In support of this argument, Roberts refers to research on the use of the death penalty in the United States that has shown how jurors can be unreceptive to mitigation and more willing to vote in favour of execution, despite their lay involvement in the justice system (ibid.).

The significance of lay people's views and ordinary wisdom has been probably most challenged by the influence of news and fictional entertainment. The effect of mass media has become one of the themes in attitudinal research and this argument is underpinned by studies from various countries (see for example discussion and review in Mesmaecker, 2010). Although frequently short-lived and dependent on nature and location, media representation of crime and sanctions is usually dramatic and excessive, which contributes to negative views (Roberts & Hough, 2005). Green (2009:530) explained that the increased focus on individual punitive discourses and narratives is due to the fact that the media do not provide people with alternative justice solutions (or case studies) that would give them opportunities to think

differently about crime and sanctions. This resonates with the fact that restorative practices do not attract as much media attention as ‘punitive and sensational’ crime stories (Stalans, 2002). The importance of cultural values or political cultural arrangements has begun to be emphasised with regard to the construction of opinions on crime, sanctions, restorative practices, criminal justice systems and the police; however, there is still relatively little attention given to the effect of media representations of crime on lay people’s views. The notion of ‘detached people’ with little experience of crime or criminal justice as well as the influence of the media requires a more robust investigation, as there is evidence that suggests the majority of people have some direct exposure to various aspects of the criminal justice system, and that people draw on ‘vicarious experiences’ of those close to them to form their opinions about punishment and justice (Feilzer, 2015).

In this thesis, lay people’s understandings are considered social facts like any other; however, the discussion of the nature and complexity of these views still lacks nuance. There is a plethora of research on the attitudes of lay people on crime, punishment and criminal justice, and restorative practices and a number of studies will be discussed in the following chapters. There are also a number of reviews that provide a general account of lay people’s attitudes, where the term ‘public’ has been used to refer to the general population (see for example see Roberts & Stalans, 1997; Maruna & King, 2004; Roberts & Hough, 2005). Although the Polish literature on this subject is in its infancy, whenever possible, available findings on similar issues will be presented. In brief, according to Doble (2002), lay people are capable of holding both punitive and restorative views of sanctions. The existing evidence suggests that it would be misleading to say that lay people’s views are implicitly punitive; other scholars suggest attitudes are ‘contradictory, nuanced and fragile’ (Hutton, 2005; Roberts & Hough, 2005) ‘selectively punitive and selectively merciful’ (Stalans, 2002) ‘malleable or mushy’ (Cullen et al. 2000) as well as ‘not reflective but reactive, non-dialogical, and highly manipulated’ (Dzur, 2011:376). The latter relates to the argument made by Matthews (2005) and Jackson et al. (2011) that lay people’s views might be manipulated by politicians who seek their electoral support in order to pursue ‘electioneering’ strategies. Furthermore, Hough (1996:193) described the phenomenon of ‘public’ attitudes as ‘muddle-minded people’ who want tough deterrent sentencing in order to reduce crime but also restorative approaches as a means to deal with the offender. I align with Feilzer’s concept of public narratives (Feilzer, 2015), which aims at improving our understanding of the complex relationship between

public knowledge, public opinion, and policymaking, and which suggests that the importance of public knowledge of crime and criminal justice has been overstated.

The complexity of individual attitudes, which tend to be patterned according to a variety of criteria, is described by Gaubatz (1995) in *Crime in the Public Mind* – a very rare qualitative exploration of this issue in the field. Through in-depth interviews, Gaubatz explored what a small number of American people think about sanctions. According to their views, she classifies them as ‘believers’ (who express ‘get-tough’ views on crime policies) and ‘dissenters’ (who look for social causes of crime and support alternatives to incarceration measures) and ‘the rest’ whose views are too complex to be labelled. There have not been any equivalent studies conducted in Poland, so it is important to highlight the methodological and conceptual originality of this research. The process of seeking the connection between people’s views and the practice of sentencing has emerged as a significant force in the field of criminal policy; however, people’s views have largely been examined through the use of quantitative methods. Contrary to the dominant methodological trends, this thesis will rely on qualitative interviews that aim to delineate how a number of Polish lay people with different experiences understand punishment and justice.

Another strand to the value of lay opinion considers people’s ‘readiness’ to become a partner in crime resolution. Peoples’ views are especially important with regard to restorative justice and the question of reintegration into a community which may or may not exist. In the Polish context, it is the absence of lay people’s legitimacy historically that shapes this research. It is worth exploring the nature of Polish people’s engagement with punishment and justice but it is also important to look to societal conditions, as reflected in lay people’s views, in order to examine how restorative justice has been received and what the future prospects for restorative justice in Poland are. Pelikan & Trenczek (2008) suggest that because of the weaker democratic traditions in post-communist countries, lay people appear to be less active than those in the West as far as the execution of their rights and duties is concerned. Furthermore, Miers & Aertsen (2012:531) highlight that one of the reasons victim-offender mediation is difficult to ingrain in Central and Eastern European countries is people’s poor involvement in socio-political life as well as the weak social bonds between members of

society. All this is perceived to be a result of the transition from a socialist to market society (see Chapter 2).

It has been argued that the voice of lay people and their civic participation in justice processes can stir self-reflection among criminal justice professionals and encourage discussion about the quality of justice that the system provides (Dzur, 2011:374). However, the nature and dynamic of lay people's views lacks in-depth examination that would capture their complexity and multi-dimensional aspects. While such a complex reciprocal relationship between language and society, where the use of language mirrors and shapes society in its social context, has been the subject of sociolinguistic scholarship, it has been significantly left unexplored in criminology. Language, similar to punishment, is socially, culturally and historically conditioned – the importance of which in a legal process is interestingly delineated in *Sociolinguistics and the Legal Process* by Eades (2010). Moreover, Merry (1990) conducted sociolinguistic research on restorative justice in Massachusetts and analysed so-called 'mediation talk'. Although restorative justice involves informal processes with no restrictions on talk, as are found in a courtroom code of conduct, the question of the inherent paradox of power and whether more powerful disputants have greater chances of succeeding remains open. Despite the fact that Braithwaite (2002) has argued that apology is one of the restorative values that help to evaluate the restorativeness of justice processes, Martin et al. (2009) define the apology language as 'evaluative language of affect, appreciation and evaluation' that does not come from the parties but is in fact provided by restorative justice practitioners. Although Roberts (2014) has indicated that empirical research on people's attitudes to sentencing has been conducted for a long time and a great deal is now known about people's views, this literature has not acknowledged such a simple fact that, for example, lay people speak different languages. As for the Polish context, it appears that from a sociolinguistic perspective, the Polish language does not provide many 'discussion tools' – something that is very important in restorative practices. In research on speech acts, Wierzbicka (1985) demonstrated that Polish linguistic norms, as compared with English ones, prefer directness, and this is deeply embedded in Polish culture. This is before years of censorship under the socialist regime are taken into account, along with the possibility that Polish people might have been conditioned to keep talk to a minimum. It is important to emphasize that, under the communist regime, socialist party officials rejected the idea that people could construct or negotiate realities based on their lived experiences, and

believed that through the development of so-called ‘newspeak’ (*Nowomowa*) people could learn the ‘reality’ of a socio-political environment as a historically and phenomenologically given entity (Harlig, 1995).

4. The significance of the Polish context

The reason Poland provides such an interesting case for exploring understandings of punishment, justice, and the viability of restorative justice is that the Polish context offers an interesting set of social forces that have been influencing people’s perceptions of punishment and justice. Polish society is of peasant origins and, as a post-socialist, post-transformation country, has been exposed to a number of social factors. Among them are: the socialist perspective on crime and sanction, turbulent years of transformation, mass privatisation, the switch to a free market, post-1989 influences of the international community, and the impact of the human rights framework. Poland was under the influence of the USSR (Union of Soviet Socialist Republics) for 44 years, and one of the most distinctive ‘products’ of that influence on Polish society was the Stalinisation (and then Sovietization) of the Polish criminal law and the criminal justice system. Both became a key apparatus of economic and political repression. This experience has left a lasting impression not only on the legislative system and the administration of justice, but some would argue also on people’s perceptions of punishment and justice (Falandysz cited in Kwaśniewski 1984). Although it is an important observation, the nature of this lasting impression has not been sufficiently studied empirically in Poland.

After the collapse of the socialist regime in Poland defined by Ray (2009) as ‘The Revolution of 1989’, along with multiple and simultaneous transformations consisting of political, economic and social developments, the Polish government concentrated on being perceived as a sovereign country by joining international organizations and implementing recommended legal standards, something that has been frequently recognised in the Polish scholarly literature (see Murzynowski, 2005; Płatek, 2005). All the attempts undertaken at the time to change the Polish socio-political and economic landscape could be defined as the process that aimed to ‘chase the West’ (*dogonić zachód*) – the term that frequently appears in public and private conversations in Poland. Nonetheless, it is difficult to determine to what

extent these penal changes were initiated as a result of domestic, organic, political efforts, and to what extent the post-1989 developments were imposed by the international community. What is certain is that since the beginning of the 1990s many post-socialist countries have received policy-related advice and assistance from abroad. In consequence, whether as a matter of external demands or internal decision-making, many Polish penal reforms were influenced by Western experience (Krajewski, 2004). The accession of Poland to the European Union in 2004 initiated the most recent criminal justice developments in the country. While during the communist regime, the Polish criminal justice system remained under the influence of the Soviet Union, contemporary perceptions of punishment and justice are interpreted through the lens of human rights and international legal standards, democratic values, the policy and practice of the European Union as well as the jurisdiction of the European Court of Human Rights (Council of Europe). However, the new post-socialist penal justice arrangements were implemented in Poland at a difficult time. Growing fear of crime, the sudden increase in recorded crime rates, new types of crime (e.g. serious organised crime), the decriminalisation of politically motivated crimes, but also the criminalisation of behaviour that previously had not been punishable by law, an amended repertoire of penal sanctions, new forms of political populism, considerable police reorganisation, and a high imprisonment rate – these are the key features of the transformation period with regard to punishment and justice (see Chapter 2).

The introduction of restorative justice in Poland occurred at a time of significant redesign and modernisation of the Polish justice system following the end of the socialist penal system. Introduced as victim-offender mediation in 1997, this mediation practice could only appear after 1989 because the socialist system made attempts to remove the concept of ‘conflict’ and conflicting social interests from society. Therefore, the introduction of victim-offender mediation, as a novel penal development that aimed to be part of the fundamental change of criminal justice philosophy and response to offence, needs to be situated against broader post-1989 socio-political and economic changes that took place during and after the transformation period. In its early years, victim-offender mediation received little attention from criminal justice professionals, and in 2003 further amendments were implemented to increase the number of mediation referrals, allowing not only courts and prosecutors, but also the police to refer cases to mediation. However, limited use of mediation by all institutions

(see Chapter 2) has led Polish experts to consider the problems with victim-offender mediation and why it has only had limited use (see Czarnecka-Dzialuk, 2009).

There has been limited attention given to how lay people in Poland have been responding to victim-offender mediation. Czarnecka-Dzialuk (2009) emphasised that the most difficult problems that limit the use of mediation lie in the Polish mentality, described by the author as unwillingness to try new solutions and fear of the unknown. In a similar vein, Płatek⁹ (2007:140) offered a more pragmatic view, where she has observed that: ‘there is no reason to think that mediation will solve all the problems of the criminal justice system. It will not also suddenly bring about any general improvement. But we should realise that it is one of the tools that, if used correctly, can help to change public opinion about the courts and about the attitude of judges toward the victim’. Two interesting things appear here, that the so-called mentality of Polish people is acknowledged as the root of the problem, and that restorative justice is identified by Płatek as the means to influence Polish people’s perceptions about punishment and justice. The subject of people’s views and perceptions has been the least explored, and scholars point out that it is of great importance, it is therefore, the narratives of a sample of Polish people that provide the voice in this research. Last but not least, although Poland is a country of high imprisonment rates, it is also a country of high religiosity - 93% of Polish people consider themselves religious (see Picker & Müller, 2009). Nelken (2010) has argued in the case of Italy that the Catholic Church could be seen as the source of ideals in terms of what should be penalised, tolerated and forgiven. It might similarly be argued in the Polish case that, due to Poland’s own Catholic heritage, there is more emphasis on tolerance and forgiveness in Polish people’s penal imagination.

5. The scope of this thesis

This study contributes to the field by presenting findings that emerged as a result of qualitative fieldwork, as opposed to the quantitative research which dominates the field. There are three central questions guiding this research: *How do Polish people understand justice? How do Polish people understand punishment? How viable is restorative justice in*

⁹ Monika Płatek, Professor of Law at the University of Warsaw, is an important figure in the politics of Polish criminal justice, a prominent member of Poland’s Women’s Congress, served as the Adviser to the Polish Prosecutor General, and as the Plenipotentiary of Polish Ombudsman.

Poland? The main questions will be supplemented by the following enquiries: *What is the value of lay people's views on punishment and justice? Is the Polish case distinctive? If so, how and why? How can broader criminology claims be applied to the Polish case? What can other countries learn from the Polish case?* Advancing the main story methodologically and exploring participants' narratives against these theoretical elaborations will greatly contribute to the discussion on broader preconditions for restorative outcomes in specific socio-political contexts. Polish participants' views on punishment and justice situated in this specific historical and social milieu will contribute to the discussion about how people from a transitional, post-socialist society with peasant roots and a strong sense of religiosity understand punishment and justice, and how these narratives can inform the viability of restorative justice.

This introductory chapter provides an overview of theoretical stances and key research findings that will be developed along with interpretations of participants' views on punishment and justice. While the mode in which empirical data was collected in my research was a direct result of the literature findings and existing theories, the organisation of the thesis is a direct result of the data collection and analysis process. Chapter 2 discusses the Polish background in greater detail. After I discuss my methodological choice and present the process of data collection in Chapter 3, the empirical findings will be delineated in three stages. Firstly, Chapter 4 considers participants' understandings of justice – discussed in the form of participants' views of the Polish criminal justice system and police, which are the three main gatekeepers of restorative justice. Then, Chapter 5 explores the narratives on unpaid work and discusses whether participants' understandings of this particular punishment can shed light on the viability of restorative justice. Thirdly, chapter 6 examines participants' views on victim-offender mediation, which is seen as a restorative practice in Poland. Finally, in Chapter 7, I consolidate the main findings of the three empirical chapters and make several final observations about what can be drawn from the Polish case.

Chapter II

Poland - setting the scene

1. Introduction

This chapter provides general insights into the Polish penal landscape that will be contextualized and set against three distinctive periods in Polish history. The investigation of the key penal developments will assist to interpret factors that could have influenced lay people's understandings of punishment and justice. It will also shed light on potential implications of introducing restorative justice to Poland. The 1944-1989 period will be referred to as the time of 'real' socialism, communism, the Polish People's Republic¹⁰ or *Komuna*¹¹, which is a common popular term. Due to the lack of consensus as to whether the Polish version of socialism ever transformed into communism, 'communism' and 'socialism' will be used interchangeably in this thesis. Then the 1989-2004 period will be considered as a period of transition/transformation. Although there is no agreement among scholars as to whether the transformation period ever finished, for the purpose of this thesis, the time when Poland joined the European Union will be recognized as the end of transformation. Finally, the recent times will be framed as 2004 – onwards.

Geographically speaking, Poland is frequently referred to in the literature as a Central Eastern European (CEE) country. Despite the implication that all CEE countries are similar, these states in fact have distinct histories and cultures. Their most distinctive shared characteristic is probably communism and the post-communist experience. It is worth acknowledging that post-communism is not a uniform phenomenon either, as the 28 countries with 400 million inhabitants constitute a unified region in name only (Czarnota & Krygier, 2007:152). Nonetheless, one of the specific features that differentiates Poland and its Central and Eastern European neighbours from other transitional societies is that they all have been subjected to multiple and simultaneous transformations followed by political, economic, social and legal developments (Holmes, 1999).

¹⁰ Polish original: *Polska Rzeczpospolita Ludowa* (PRL).

¹¹ Proposed English translation: commie regime.

2. 1944-1989: the time of ‘Komuna’

Although there was never a communist revolution in Poland, and communist rule was shorter than in the Soviet Union¹², the Polish communist regime is frequently analyzed along with the Soviet one. Krystyna Kersten, a Polish historian, in her book, *The Establishment of Communist Rule in Poland 1943-1948*, provided a comprehensive account of the events that led to the sovietization of Poland and of how communism came to prevail (see Kersten, 1984). After the Second World War, the three allied powers approved Poland's new territory and the Soviet domination of Eastern Europe. This decision was enhanced by the fact that Eastern European countries were already in the Red Army's strategic zone. The Soviet Union used its military successes in the region to realize its political aims – something that became apparent later. Kersten also illustrated how these processes were facilitated by the activity of the Polish Workers' Party and communist Polish émigrés in the USSR. Although many believe that the establishment of communist rule in Poland was a consequence of the war, Kersten argued that Stalin's intention was neither the communization of Poland nor its incorporation into the USSR. The intention was to expand Soviet domination and communist influence beyond Eastern Europe (Kersten, 1984).

For the Soviets, Poland was believed to be the most important of the satellites, a bridge to Germany *through which Lenin hoped to reach the German working class in order to touch off the world revolution, and the obstacle which prevented the realization of that aim.*¹³ As a result of 'these ambitions', Polish society became a 'social laboratory' described by Adam Podgórecki:

After the Second World War, Poland emerged as a 'social laboratory' in which the main, traditional spontaneous processes were blocked and where an entirely new social reality was imposed through an elaborated and alien ideology. Since then, a misleading 'diagnosis' of this social reality has been officially put forward. This diagnosis was perceived through normative and ideological glasses and disseminated by state-owned mass media coverage. (Podgórecki cited in Kwaśniewski, 1984:1-2).

¹² Also The Union of Soviet Socialist Republics – USSR.

¹³ *The Fate of Polish Socialism* in Foreign Affairs (1949) available at: <http://www.foreignaffairs.com/articles/70786/r/the-fate-of-polish-socialism>

Nonetheless, it is important to acknowledge Fidelis' (2012) observation that the time of *Komuna* was full of contrasts and contradictions and, regardless of the definitional issues, the communist period in Poland went through different phases. However, the time of communism was supposed to give rise to 'the New Soviet Man' – or, in other words, *Homo Sovieticus*, which was a term coined in the nineteenth century by Alexander Zinoviev (Kania, 2012). The dissemination of *Homo Sovieticus* propaganda was a social experiment that brought about the cult of labour, but also civic apathy and passive acceptance of governmental decisions (ibid.)

2.1. Socialist criminal justice system

Maria Łoś (1988), in *Communist ideology, law and crime: a comparative view of the USSR and Poland*, argued that despite communism's different beginnings, its fundamental ideas and the mechanisms for its further development, were the same in Poland and the USSR – as were, subsequently, both countries' socialist criminal justice systems. If differences between the two countries emerged, it was owing to distinctive cultural, geographical, ethnic, historical or demographical features of their societies (ibid.). The introduction of miscellaneous 'socialist penal developments' served as a mechanism of bringing the Polish criminal justice system closer to the Soviet solutions. It is important to highlight that Soviet scholars considered crime to be a product of the bourgeois capitalist social system and the causes of crime in socialist societies to be the remnants of that system. Consistent with the Marxist perspective, Soviet scholars viewed even the psychological causes of crime to be consequences of social conditions which are only temporary (Solomon, 1970).

The Stalinization, and then the Sovietisation of the Polish criminal law and criminal justice system was one of the most distinctive 'products' of the aforementioned 'social laboratory' (Krajewski, 2002). As the separation of power into legislative, executive, and judicial branches was non-existent, the communist authorities aimed at subordinating the criminal justice system. The reason for a total control over public institutions was threefold: to legitimise the activity of the Party, to eliminate political opponents and to supervise citizens and their property. As a consequence, Polish criminal law became a key apparatus of political repression and this resulted in the sentencing of those who opposed the State or the Party (Falandysz cited in Kwaśniewski 1984).

In the previous chapter, I indicated that one of the features of the Polish context was its exceptionally punitive response to crime under communism. The following presentation of data somewhat corroborates this observation. Although released recently, the data from the period in question have to be treated with certain caution due to their subjective and ideological influence. To begin with, the socialist criminal justice system in Poland was built around two penal codes: the 1932 Makarewicz Code and the 1969 Penal Code. The latter, along with the 1946 Decree, dealt with the most serious crimes committed during the time of ‘reconstruction of the Polish state’ and was used to establish a new ‘socialist’ state (Ministry of Justice, 2015). The time of socialism was productive in terms of various ‘novel’ crimes the Polish criminal justice system had not previously been familiar with, for example contra-revolutionary crime, which was introduced in 1952 (see Arndt, 2010). The social construction of crimes at the time envisaged, for example, the criminalisation of the dissemination of ‘false news’, the violation of employment law, and activity against agrarian reform and against administration officials (Ministry of Justice, 2015).

In terms of the administration of punishment, the 1932 Code included the following sanctions: fines, custody (1 week to 5 years), imprisonment (6 months to 15 years), life sentences, and the death penalty. Whilst the 1932 Code was in force, the annual number of sentenced offenders varied between 82 200 and 328 500 (the median being 186 300). The most frequently imposed punishment was a custodial sanction (1 960 844) which in 55.8% of cases was long-term imprisonment and in 44.2% a shorter period of custody. Approximately 1 749 694 of the overall custodial sentences at the time were suspended. Furthermore, a fine was ordered on 1 095 046 occasions, and life imprisonment in 1 705 cases. The most severe sentences were imposed for activities that went against law, order and safety in the country, or any action that would weaken Poland’s position outside the country. Between 1946 and 1953 the death penalty had a particularly strong political orientation and was in the majority of cases imposed for crimes against the State (in total, 1 708 people). Only from 1951/52 did the number of death penalty sentences start to decrease (Ministry of Justice, 2015).

Łoś (1988) observed that the 1969 Penal Code was a long-awaited piece of penal legislation that was, unsurprisingly, praised by party officials as a truly socialist and progressive piece of legislation. In fact, the 1969 legislation was recognised as the most punitive penal code in Europe at that time. Its highly repressive character was hidden under a liberal and progressive

rhetoric of decriminalisation, decarceration and rehabilitation (ibid.). According to the report published by the Polish Ministry of Justice (2015), the 1969 Penal Code broadened the list of sanctions by introducing a 25-year custodial penalty, community orders (3 months to 2 years) and other penal measures such as: deprivation of civil rights, termination of parental rights, ban on practising one's occupation, disqualification from driving, asset forfeiture and public announcement of the judgement (5081 sentences of this kind).

Nonetheless, Polish scholars point to the 1969 Penal Code as a piece of legislation that mirrored the power imbalance and misconception of justice:

What did the Codification Commission which produced the 1969 Codes actually create? It collected and amalgamated in a more or less mechanical manner what remained of the way of thinking and the codifying techniques of the prewar legislators with the revolutionary law of the People's Republic of Poland, exhibiting in all this a deep-seated wish to further restrict the judges, increase the rights of the prosecutor and increase the severity of punishments for crime (Falandysz cited in Kwaśniewski, 1984).

The Prosecution Service, or *Prokuratura*, was indeed an institution that enjoyed a wide range of rights in the socialist system of justice, often used for political reasons. There is a significant dearth of analysis in the Polish academic literature on this matter; however, the differentiation between various police forces and their respective roles was carried out by Dariusz Loranty, a Polish police negotiator who joined the Polish police after 1989 but worked with police officers from the following 'previous' forces: ZOMO (Motorized Reserves of the Citizens' Militia), UB (Department of Security) and Milicja Obywatelska (Militia). Loranty (2013), in the book *Confessions of a copper: the brutal truth about the Polish police*, consisting of autobiographical stories, differentiates the above forces in terms of police officers' motivations for joining the police, responsibilities, and attitudes towards lay people. Although the 1969 Code introduced some forms of pre-trial, alternative and diversionary sanctions, Łoś (1988) indicated that these measures served as additional penalties to prison sentences. For instance, the idea of rehabilitation was based on so-called protective supervision or detention in 'centres of social rehabilitation'. Work as a sanction was the main means of rehabilitation in Polish penal institutions for adult and juvenile offenders. For instance, according to prison regulations, refusal to work was one of the most

serious offences and was punishable by one month of solitary confinement (Łoś, 1988). Despite the Ministry of Justice report (2015) indicating that out of all 241 490 imposed community orders, 194 883 involved unpaid work, Łoś (1988:125) observed that the centres of social rehabilitation did not differ much from prison settings and their main ‘educational’ feature was hard labour.

Towards the end of communism, the overall number of sentences imposed between 1970 and 1998 ranged from 93 400 to 227 700 annually (with the median of 153 000). According to the report published by the Polish Ministry of Justice (2015) the most frequently imposed punishment at the time was a suspended sentence (2 034 800), followed by imprisonment (1 261 475). Although the imprisonment rate did not increase in the 1970s, the length of the average prison sentence did increase from 13 months in 1965 to 24.5 in 1979 (Łoś, 1988). Likewise, the frequency of fining rose significantly from 18.9% in 1970 to 27.4% in 1997 (Ministry of Justice, 2015). However, the gradual increase in fines might be explained through Łoś’s observation (1988:49-50) that Polish judges’ income at the time was dependent on total value of fines imposed. Unfortunately there is no available literature that explains how the procedure was carried out. It is noteworthy that although between 1970 and 1987 the death penalty was still imposed in 204 cases, the sanction started to be approached with greater caution¹⁴, and considered alongside the alternative of 25 years of imprisonment. The last execution took place in 1988 (Ministry of Justice, 2015). The aforementioned data demonstrate the different phases of the punitive orientation of the Polish socialist justice system that, first and foremost, assisted the Party to implement socialist policies and fight any political opposition.

2.2. Lay people in the socialist criminal justice system

Under the communist regime there was a variety of distinctive alternative collective and social bodies that aimed to include lay people in administering justice. Łoś (1988) observed that social courts could have been a perfect incorporation of Nils Christie’s idea of ‘returning conflicts to the people’ (see Chapter 1), albeit a socialist version. The involvement of lay people was carried out at two levels: the formal and the alternative justice administration. The former was implemented in the 1940s in the form of lay assessors (*lawnicy*) and was another

¹⁴ For example the death penalty was not deemed as appropriate in cases involving offenders who were less than 18 years old or pregnant women.

example of the Soviet pressure to arrange the Polish legal system after that of the USSR. As a result, in the 1950s, the mixed benches of professional and lay judges had a strong ideological basis as lay assessors performed political control over the courts of law (Łoś, 1988).

The idea of alternative courts was introduced by Lenin in the early days of the Soviet administration and was later revitalised after Khrushchev's announcement in 1959 calling for a progressive transfer of sentencing powers from the state to the various collective bodies (Łoś, 1988:65). Fajst (1998) reviewed and discussed the role of such alternative courts¹⁵ alongside the criminal justice system in the Polish People's Republic. All these 'special courts' served as substitute institutions and were implemented at different times throughout the communist rule, to serve different needs and interests of the Party (State). While Zalewski (2009) argued that the purpose of the involvement of lay people in sentencing participation and justice administration decisions was to increase overall trust in the criminal justice system, Fajst (1998) long argued that the subject is more complex as there were a number of rationales behind the establishment of these courts. First, to fight political opponents and praise the Party's supporters; then, to bring the justice system closer to the Soviet solutions and reflect Marxist ideology; in the 1960/1970s, to stratify the modes of crime resolution through the establishment of various local commissions; and then, finally, in the 1980s, to be perceived as the State's readiness to accept certain democratic solutions and have a dialogue with society (ibid.).

The institution of alternative citizens' courts, such as social courts and social conciliatory commissions, was perceived as a particularly good example of a socialist and collective approach to justice (Fajst, 1998; Muszyński, 2012). The structure and jurisdiction of the Polish social courts were practically identical to the comrades' courts in the USSR (Łoś, 1988). In Poland, social courts and conciliatory commissions were introduced in 1965 and operated alongside each other until the 1980s, when they were abolished (ibid.). Social courts were set up in local enterprises (shop floors/state companies) in both rural and urban areas (Fajst, 1998). The judges, chosen from the work staff, did not need to possess any legal skills

¹⁵ Fajst differentiated the following: jury courts (*sądy przysięgłych*), housing commissions (*komisje mieszkaniowe*), magistrates courts (*sądy lawnicze*), citizens' courts (*sądy obywatelskie*), misdemeanour boards (*kolegia ds. wykroczeń*), friends' courts (*sądy koleżeńskie*), social courts and social conciliatory commissions (*sądy społeczne i społeczne komisje pojednawcze*).

or knowledge and they were supervised by the party committees. The courts' mission was detailed in section 3.1 of the Social Courts Act from 1965 and it read as follows:

[Social] courts process cases with regard to breach of social norms or social order, in particular disregarding citizen duties, family obligations or workers' duties, improper attitude towards employees, disorderly behaviour at the workplace/ place of living, disregarding health and safety issues by the workers, public property infringement or its protection, private property infringement, misuse of shop floors' properties by workers for their personal use, shared housing disputes or disputes related to neighbourhood relations in rural villages.

The powers of the courts and commissions were of an 'educational' nature which mostly involved some warning/reprimand, the obligation to apologise to the victim, and some form of compensation for damage or payment towards social causes as indicated by the court. Statistically speaking, the popularity of the courts and commissions increased over the years. The number of conciliatory commissions expanded from 1800 in 1965 to 5576 in 1970, to 6161 in 1973. The commissions' caseload increased from 26 343 (1967) and 52 031 (1970) to approximately 86 000 (1973). The courts and commissions dealt with 60 000 to 70 000 cases annually, of which 70% ended with agreement between the parties (Kurczewski & Frieske, 1978, Fajst, 1998). Łoś (1988) observed that the structure of social courts involved enormous exposure to public scrutiny and condemnation by peers. According to this scholar, the psychological trauma of being publicly shamed may have had devastating consequences for some of the accused. Despite Łoś's pessimistic view of the functioning of social courts, this is a highly interesting area of study. The informal nature of social court hearings, the involvement of friends/neighbours, and significant public legitimacy suggests that social courts under socialism provided an opportunity for an alternative dispute resolution that might have implications for this study's research questions.

Although Kurczewski & Frieske (1978) observed that commissions adopted certain traces of mediation, arbitration and mandatory conciliation, Łoś (1988) argued that, in reality, social courts served as a widening of state-society control and their purpose was to exercise social pressures upon the defendants and strengthen the community's awareness and understanding of socialist norms. According to Łoś, social courts fell under the philosophy of popular or

'peer' justice and ended with another wave of policy change from the Soviet Union. Furthermore, Fajst (1998) highlighted that the inclusion of words like 'social' or 'citizen' is misnomer as the courts' benches were never democratically elected, and their decision-making was influenced by politicians to an even greater extent than that of traditional courts. More significantly, Fajst (1998) also argued that the experience of the socialist model of 'alternative' courts has affected the courts' prestige since 1989 and influenced people's current distrust of other institutions and solutions aimed at informal conflict resolution (see Chapter 6). A closer exploration of the parallels or continuities between these alternative socialist courts and restorative justice is beyond the scope of this study, however, it would offer a highly valuable historical insight into the viability of restorative justice.

2.3. Parasitism

Among all the characteristic features of the Polish socialist justice system, the criminalisation of unemployment, defined as 'parasitism', requires particular attention. Although the anti-parasite law in Poland had a shorter history than in the USSR, it was on the legislative agenda from the 1960s and would have passed before 1982 had it not been for the opposition of a group of lawyers and academics who were aware of the possible abuse of the criminal law (Łoś, 1988). Szamota (1985) defined social parasitism as an offence committed by a person being neither in employment nor in education, whose reasons for this situation were not sufficiently justified.

In Polish socialist society, citizens were legally granted employment, but this right also obliged them to maintain it at all costs. Iron discipline was imposed on workers with harsh penalties handed down for absenteeism or any other infringement of work regulations. Evasion of work was seen as going against the principles of socialist society and eventually led to unemployment being considered a crime. The criminalisation of unemployment served to reinforce the Soviet-style economy, and Łoś (1988:99) elaborated on this issue further:

The label 'parasite' became a familiar word in Poland, and the desperate public, looking for a panacea in a time of deep economic crisis, did not seem to object to the idea of the application of some clearly punitive measures against those who lived at the expense of the 'honest working people'.

Łoś (1988) observed that the unemployed – called ‘parasites’ – were seen, in opposition to the ‘working people’, as the ones who obstructed economic progress, and thus were blamed for the social, economic and political problems of the late 1960s. The anti-parasite propaganda proved to be convenient for the Party, serving, for example, as a diversion from economic problems. In the end the anti-parasite law became a tool to fight, charge and repress people dismissed from work for their union activities or political opposition, which was defined as acting against the State and the politics of the socialist party (Kossowska et al. 2012).

Another example of communist propaganda and the Party’s attempt to divert attention from the economic situation at the time was the so-called ‘meat scandal’ that occurred in the 1960s. As a result of the ‘meat scandal’, approximately 400 people were arrested and several of them were charged with economic crimes that involved stealing meat, bribery, substituting goods or falsifying invoices. The show trial of the first five defendants, which started on the 20th of November 1964, was meant to send a message to the public that the alleged commercial price speculation and any sort of economic misconduct would be met with exceptionally punitive reactions. The defendants were regarded as political opponents who hindered the implementation of socialist policies and were blamed for food shortages in the country. The sentencing decisions, which were politically motivated, resulted in life sentences for four defendants, and the death penalty for the main defendant, Stanisław Wawrzecki.¹⁶ Although the ‘meat scandal’ supposedly had to do with economic crimes, it had significant political underpinnings. Such a harsh reaction from the Party was not anticipated as any real political opposition was yet to be established. The ‘meat scandal’ aimed at diverting the attention of Polish society from the serious food crisis at the time and political maelstrom in the management of the Polish United Workers’ Party. In the long run, the scandal and subsequent court proceedings for similar offences led to the 1970 ‘Polish protests’ triggered by a sudden increase in food prices.¹⁷

¹⁶ <http://historia.org.pl/2014/06/05/kara-smierci-za-przestepstwo-gospodarcze-w-polskiej-rzeczypospolitej-ludowej-afery-miesna/> accessed 28.11.2016.

¹⁷ <http://www.polskieradio.pl/39/156/Artykul/727929,Kara-smierci-za-mieso> accessed 28.11.2016.

2.4. Censorship

Under the socialist regime, Polish society was accustomed to the State's selectivity in terms of the type of crime information made publicly available. Crime was a sign of malfunctioning in a society that aimed at continual improvement and was held to be a remnant of capitalism which was doomed to disappear in time. Therefore, the Party tried to eliminate or at least camouflage crime, and in consequence also fear of crime, as a manifestation of conflict in society (Kossowska et al. 2012). Modelled on the Soviet Głavlit, the Central Office of Control of the Press, Publications and Events (*Główny Urząd Kontroli Prasy, Publikacji i Widowisk*) was established in 1946 in order to eliminate the circulation of any publication unfavourable to the socialist government. The role of censorship can be described as follows:

The policies of the governments preceding the regime change [towards the end of communism] aimed at using the media to create an image of safety and harmony in society. It was also a time when information about crimes was presented in a way that stigmatised perpetrators, and often victims too, showing them to be the effect of the loss of an individual's social morality; frequently the information was prepared in such a way as to promote the prevailing ideology and show proof of its effectiveness in fighting social evil (Kossowska et al. 2012:39).

Szumski (1993) defined the aim of socialist censorship as being to disseminate a 'calming' propaganda. For instance, the Office published a 'Book of Notes and Instructions' that ordered censors to eliminate certain information concerning, for example, the use of illicit drugs, offences committed under the influence of alcohol, pollution, and even information about road traffic accidents (Strzyżewski, 1977). The institution officials used unknown criteria, such that the censorship of many academic, cultural and media materials was frequently left to the office's discretion (Bagieńska-Masiota, 2013). The activity of the Central Office of Control of the Press, Publications and Events was terminated in April 1990 (ibid.). Nonetheless, Romek (2001) has argued that censorship in the People's Republic of Poland was multi-institutional in nature. Romek observed that censorship in communist Poland should not be associated solely with the functioning of the Main Office, as it really consisted of an interwoven system of formal and organisational activities that involved a wide range of institutions and self-censorship. The notion of self-censorship is also

mentioned by Janine Wedel (1986:126) who says:

Most censorship in Poland is self-censorship. Constantly mindful of the restrictions imposed by formal institutions, most editors and authors censor themselves.

One of the most significant consequences of socialist censorship was that lay people were accustomed to reports of unusually low crime rates and a lack of media representation of crime news. Hiding (or misrepresenting) criminal activity was in the interest of the Party and its intention to disseminate socialist propaganda. Lay people were always assured that the extent of deviant behaviour was significantly lower in Poland than in the West. Despite the problem with the data reliability, it is also possible to argue that the real level of criminality was not particularly high, and in consequence would not trigger any serious public concern (Szumski, 1993).

2.5. Attitudes under the communist regime

It has been long argued in the Polish sociological literature that the process of making the penal system 'socialist' left a lasting impression on the condition of the legislative system, the administration of justice in Poland and individual 'punitiveness' (Falandysz cited in Kwaśniewski 1984). Although there is evidence suggesting that Polish society preferred harsh sentences under the communist regime, this assertion can be challenged on conceptual and methodological grounds. First of all, perceptions of crime and punishment under the communist regime were determined by the ideology imposed. Since Marxism was the only accepted theoretical interpretation, and critical thought was quickly suppressed, any other sociological examination of crime and punishment was difficult to develop (Kwaśniewski, 1984). Although in one of the university-commissioned surveys from the 1960s the majority of respondents indicated that 'cruel punishment' was an effective penalty to combat crime (Kojder & Kwaśniewski, 1981), Krajewski (2009) suggests that the term 'cruel punishment' was not properly operationalised and as a result could have been misleading. Furthermore, 31% of the respondents of another university-commissioned survey carried out in 1976 considered flogging a legitimate punishment, but approximately 73% respondents of the same survey proposed treatment rather than penal sanctions for drug addicts and 35% did so for those committing incest (Kwaśniewski, 1984). Abortion, illegal alcohol distribution and

public criticism of state decisions, as well as bribery, were among the behaviours the respondents wanted to punish the least. Imprisonment was suggested in relation to gang rape, murder, robbery, espionage, theft of private property and robbery (ibid.) which is actually similar to the findings from current studies (see for example Szymanowska, 2008). Although the reasons behind the amount and availability of the data have not been clear, these are the only data that can be traced back to the communist period when the death penalty was retained and used. Between 1960 and 1989, approximately 60% of Poles supported capital punishment (Krajewski, 2009). Between 1964 and 1966 there was an increase in the percentage of people who expressed themselves as being in favour of the death penalty. Then the figure stabilised at about 60%, only to fall again slightly between 1974 and 1976 (Kwaśniewski, 1984).

In light of the above findings, quite surprisingly, some scholars attempted to investigate whether at the time of socialism people would support out-of-court solutions. Research by Kurczewski & Frieske (1978) conducted in 1974-1975 considered the functioning and public perception of the Social Conciliatory Commissions discussed earlier. The study was based on a national and local (in two small towns) public opinion survey, observations of court proceedings and interviews with court members. Out of 972 local survey respondents, 79% favoured such a form of mediation and compromise as a means to promote neighborhood cooperation. The significance of these study findings is nevertheless wider than a simple observation in regards to the percentage of participants supporting some form of mediation. The authors emphasised that Social Conciliatory Commissions concentrated on conciliatory efforts and promoted harmony and neighbourly mediation without the need to resort to state involvement. Moreover, scholars also reported that most of the respondents indicated that the best method of dealing with conflict was 'private mediation', as they found the group exposure uncomfortable (ibid.). It is probably too speculative to argue that these forms of Courts were the predecessors of restorative justice solutions in Poland, but they could nonetheless have exhibited certain traits of restorative encounters. Although it is an interesting finding that could suggest a greater receptiveness to restorative justice, Fajst (1998) has argued the opposite that, due to the political nature of the courts, Polish people might be more unwilling to participate in any alternative conflict resolutions.

3. Post -1989 penal system

The collapse of *Komuna* resulted in rapid regime change carried out in the form of multiple transformations. Cielecki (2009) defined the period of transformation as the ‘European miracle’ – an improvised process that happened without any elaborated policy rationale and framework. However, ‘*neither the masses, nor even the intellectuals, in their Utopian optimism were ready to admit that the valley of tears ‘lies ahead’*’ (Sztompka, 1991:306).

The reconstruction of the Polish state after the end of communism aimed to create the conditions for the introduction of market mechanisms. The dynamic development of the private sector, which gave rise to the first 750 large and medium-size state enterprises, was the main vehicle of change (Bielecki, 1992). Nonetheless, these processes were carried out in dramatic circumstances. Lack of capital, high domestic and external debts, hyperinflation, poor management of the state, lack of practical and professional experience, an over-developed energy sector and catastrophic environmental pollution – these were the defining features of the Polish economy around 1989. One of the well-known policies was the Balcerowicz Plan¹⁸ – a series of reforms which sought to end hyperinflation and balance the national budget. Although the range of goods significantly improved, the beginning of the Polish transformation was also marked by mass unemployment. In December 1991, the number of people out of work reached 2.2 million (ibid.). The nature of the economic reforms and lack of communication with ordinary Polish people led to growing disappointment and disillusionment with market reforms. For example, the name Balcerowicz continued to be not just a symbol of the first economic steps to restructure the Polish economy (Bielecki, 1992), but also a long-lasting symbol of people’s frustration and misfortune.¹⁹ Kołodko (2009) has argued that Poland’s transformation can be seen as a partial success, as the package of economic liberalisation policies, known as the Sachs-Balcerowicz plan, was inspired by wrong economic theories. He explains that the overwhelming influence of external advice forced and imposed on Polish society was not relevant to the Polish reality, and observes that the ‘transformation shock’ could have been implemented at a lesser social cost. Moreover, Kołodko also emphasises that many privatisation processes were ‘successful’ because they

¹⁸ The Plan was named after its founding father, Leszek Balcerowicz who was Deputy Prime Minister at the time.

¹⁹ One of the common Polish sayings till this day is: ‘Balcerowicz has to go’ (Polish original: *Balcerowicz musi odejść*).

were conducted by certain lobbies that had cheap access to the state assets being privatised (see Kołodko, 2009).

Although establishing an accurate picture of crime trends is challenging for several reasons, this endeavour is the first step to gain insights into society’s penal landscape. By way of brief introduction to this, the most recent Eurostat figures on crime and criminal justice patterns show that police-recorded crimes have been steadily decreasing across many EU member states (Eurostat, 2016). However, it must be acknowledged that these figures exclude the crime that goes unreported and do not capture any changes in crime recording that may result from changes in police activity. According to Eurostat data, the number of police-recorded offences of intentional homicide fell overall by 24% between 2008 and 2014 in EU member states. Police-recorded burglary in the majority of EU member states displayed a downward movement in the most recent years. There was also a reduction in the overall number of police-recorded assault offences in the EU-28 during the period 2008–13 (Eurostat, 2016). Similar decreasing crime tendencies have been observed in Poland. The figures below on recent crime levels and trends for Poland are based primarily on police recorded crime data.

Table 1: Recent crime trends in Poland

Year	Recorded crime (in total)	Homicide	Violent crime ²⁰	Burglary	Criminal damage	Road accidents
1999	1 121 545	1 048		369 235	48 244	55 106
2000	1 266 910	1 269		364 786	56 867	57 331
2001	1 390 089	1 325		325 696	59 823	53 799
2002	1 404 229	1 188		304 625	64 309	53 559
2003	1 466 643	1 039		294 654	68 175	51 078
2004	1 461 217	980	74 614	266 591	70 799	51 069
2005	1 379 962	837	68 141	221 020	65 775	48 100
2006	1 287 918	816	61 399	173 762	62 776	46 876
2007	1 152 993	848	54 629	141 606	67 986	49 536
2008	1 082 057	759	52 122	124 066	72 098	49 054
2009	1 129 577	763	51 128	135 383	75 045	44 196
2010	1 138 523	680	49 194	140 085	69 594	38 832
2011	1 159 554	662		135 611	72 591	40 065
2012	1 119 803	582		127 691	67 739	37 046
2013	1 061 239	574		118 420	57 945	35 847
2014	867 855	526		102 817	45 288	34 970
2015	799 779	495		91 328	42 413	32 967
2016	748 464	456		77 190	40 969	33 664

²⁰Violent crime includes intentional homicide, rape, sexual offences, and physical assault (including rape and sexual assault). The data is available from http://ec.europa.eu/eurostat/statistics-explained/index.php/Crime_and_criminal_justice_statistics

The rise in police-recorded crime in Poland between 2000 and 2004 was related to a number of legal amendments to the 1997 Criminal Code that commenced in 2000 and aimed at tightening the penal regulations. These involved, for example, changes in motoring offences, abortion, and money laundering. Buczkowski (2015:32-33) observes that the punitive turn in the form of the Criminal Code amendments began to be seen as ‘a panacea to all sorts of social ills’ and made its appearance just as the level of criminality in the country started to show a downward trend. The available statistics show that for most police-recorded offences in Poland there has been a general downward trend. Siemaszko indicates three main reasons for the decline in criminality in Poland: the changing demographics, emigration and improvements in police work (Siemaszko in Buczkowski, 2015).

Nonetheless, Poland is known to have a very high proportion of drink driving/cycling offences. In 2004, 28% of the most frequently committed criminal acts were traffic offences and in 2010 this figure rose to 31.2% (Buczkowski, 2015). In 2016, the Polish police registered 33,664 traffic accidents, including 3,026 fatalities and 40,766 injuries, which makes Poland among one of the more dangerous places to drive in Europe. There has been a substantial increase in car ownership and usage (from 18,035,047 in 2006 to 27,409,106 in 2015). Factors that contribute to such a high road accident rate are: hazardous and dangerous driving, roads that are poorly illuminated and frequently under repair and consumption. The latter was a contributing factor in 2,967 road accidents (8.8% of the total road accidents) – in which there were 383 fatalities and 3,392 injuries (ibid.).

Although the number of crimes dropped considerably in 2012 and the greatest falls was recorded for armed robbery, homicide and robbery, these downward trends in criminal offences in 2012 were accompanied by an increase in economic crime of 9.6% (Buczkowski, 2015). Furthermore, another type of crime for which the record shows an increase is drug-related offences (an increase from 7 915 in 1997 to 74,535 in 2010). This is undoubtedly due to the criminalisation of drug-related offences under the 1997 Misuse of Drugs Act and the following amendments in the 2000 Act (ibid.).

The examination of recent crime trends in Poland, however, requires further clarification. The widespread access to online content, the instant exchange of information, and the technological advances that have followed (tablets and smartphones), have enabled criminologists to look at criminality from a different perspective, which requires exploring new criminogenic factors. While traditional crimes such as burglary and car theft continue to fall more people are falling victim to cybercrime – the picture of which is still difficult to capture. The widespread access to the Internet provides unlimited opportunities, limited risk and criminal liability (Buczkowski, 2015; Siemaszko, 2015 et al.).

Post-1989 was a time when the shape and condition of the Polish penal landscape also went through a transformation. The end of communism in Poland marked the beginning of

numerous debates about the nature of criminal justice policy and penal law. First, in 1989, a moratorium on death penalty executions was introduced and, in 1998, the death penalty was finally abolished (Krajewski, 2004). The enactment of the 1997 Penal Code signified the emergence of the modern criminal justice system. The Code envisages the following sanctions: the reintroduction of life imprisonment, 25 years of imprisonment, imprisonment (1 month -15 years), fines, community orders (1 month-12 months in the form of unpaid work or pay deduction), and other, less coercive, penal measures. They include: being deprived of one's civil rights; being banned from practising one's occupation, from working with children, from attending football games and from gambling; receiving residential, non-molestation, domestic violence protection, compensation and 'no-go' orders; losing one's driver's license; suffering public announcement of the judgment; and suffering forfeiture (Ministry of Justice, 2015). It is somewhat fair to say that the new 1997 Penal Code abolished the repressive and inhibitory communist penal policies; however, as argued by Szymanowski (2012) the Code has since been amended 60 times – which is also a sign of a certain 'penal' instability and constant proneness to change.

According to data published by the Polish Ministry of Justice, between 1998 and 2014 there were between 207 600 and 513 400 sanctions imposed every year (with the median being 415 300 thousand) – and this is significantly higher than under communism. The most frequently-passed sanction was a suspended sentencing (3 616 006 in total)²¹, followed by a fine (1 301 700), a community order (708 632 out of which 701 173 were for unpaid work), and imprisonment (623 557). The most severe forms of imprisonment, which are 25 years and life imprisonment, were imposed in 1489 and 338 cases respectively (Ministry of Justice, 2015). A long-term implication of the changes discussed above is that the prison population in Poland remains one of the highest in Europe. As of the first half of 2013, it was estimated that 78 403 people were in Polish prisons (including pre-trial detainees/remand prisoners). For comparison, in England and Wales the prison population, at that time, was estimated to be 85 401. In addition, the prison population rate, calculated per 100,000 of national population, was recorded as 203 (England & Wales - 149) (ibid.).

However, the above sentencing patterns must be examined against the broader penal landscape at the time. Despite the penal law reform aimed at reducing the punitive character

²¹ Which means that a suspended sentence is given in between 60 and 70% of criminal cases (Skupiński, 2009).

of the post-communist system, the new criminal justice arrangements were challenged by new types of crime (e.g. serious organised crime), criminalization of behaviour that previously was not punishable by law (e.g. drink driving), an amended repertoire of penal sanctions, growing fear of crime and political populism (Czarnecka-Dzialuk & Wójcik, 2000; Łoś, 2002; Krajewski, 2004), but also a sudden increase (by 85% between 1988 and 1996 as a mean for all CEE countries) in recorded crime rates (Kury et al. 2002). Although the exact figures as well as the extent of this increase are hotly debated, according to the police crime statistics, crime of all types was on the increase throughout the 1990s – rising from 883 346 recorded crimes in 1990 to 1 466 643 in 2003, after which it began falling. Recorded crimes in 2010 numbered 1 151 157 (Kossowska et al. 2012). One of the most visible changes in crime patterns between 1985 and 2011 was the significant increase by 78% of dishonesty offences, which Szymanowski (2012) suggests analysing along with the sudden inflow of material goods and skyrocketing consumerist attitudes among Polish people. Furthermore, the Polish Ministry of Justice (2015) pointed specifically to the number of road traffic offences, which increased from 27.2% to 35.1%, the number of offences against property, which rose from 27.9% to 35.2%, and drug offences, which increased from 18.3% in 2001 to 53.6% in 2014. In the literature, it is frequently stated that these figures have to be explained along with specific economic and political changes taking place in the country at the time. For instance, the criminalisation of drink driving in 2000 as well as the increase in car ownership/use (from 4.5 million in 1988 to 16 million in 2010) must have contributed to such ‘sudden’ crime reporting (Szymanowski, 2012).

Throughout the 1990s, one can observe higher crime rates than under the communist regime; however, it should be recalled that this issue is a matter of degree and requires appropriate contextualisation. Krajewski (2008) suggested the difficulty of correctly estimating the extent of the increase in post-1989 disclosed (registered) and undisclosed crime is the unreliability of the pre-1989 data, which cause many ambiguities. In addition, there are factors that are often neglected in analyses. Among them are ‘sudden’ mass unemployment and the emergence of economic misconduct; both may have contributed to the sudden rise in the crime rate post-1989 (Krajewski, 2008; Kossowska et al. 2012). Furthermore, Szymanowski (2012) has emphasised that the increase in crime reporting, from 45% in 1985 to 76% in 1997, could have been a consequence of the improvement in the co-operation between lay people and police. He has argued that the police under the socialist regime was politicised,

unprofessional, and dismissive towards victims of crime - attributes which discouraged reporting. People's 'sudden' willingness to report crime could thus be viewed as a response to a better police force or the result of improved public perceptions of the police.

Another important feature of post-1989 transformations in Poland was the influence of the West. It was apparent to policy-makers in Poland that pre-1989 criminal policies had to be replaced by internationally recognised standards so that Poland could join the Western international community – the trajectory that has been frequently recognised in the Polish scholarly literature (see Bieńkowska 2012; Murzynowski, 2005; Płatek, 2005; Krajewski, 2004). At the beginning of the 1990s, many post-communist countries received policy-related advice and assistance from abroad. In Poland, there were several foreign exchange visits in order to seek guidance and consultation with regard to developing a new criminal justice system. Likewise, the accession of Poland to the European Union in 2004 facilitated the process of legal adjustments. For instance, one of the particularly important mechanisms in the diffusion of Western criminal justice policies was PHARE – a pre-accession assistance programme commissioned by the European Commission.²² Currently, the perception of crime and punishment is interpreted through the lens of human rights and democratic values as well as the jurisdiction of the European Court of Human Rights (Council of Europe). All attempts that have been undertaken since 1989 to change Poland's socio-political and economic reality, including the Polish penal landscape, could be defined as the process that aimed to 'chase the West' (*dogonić zachód*), as a result of which the current penal system is very much shaped by the European Union and other international legal standards.

One of the developments that aimed to change the Polish penal landscape was to address the role of crime victims in the Polish criminal justice system. The very first provisions assisting victims of crime in Poland can be traced back to the socialist regime when the rudiments of victim assistance originated. That was the time when the following institutions were established: the Post-penitentiary Assistance Fund (Fundusz Pomocy Postpenitencjarnej), the Victim Support Agency (Fundacja Pomocy Ofiarom Przestępstw) and the Child Support Agency (Fundusz Alimentacyjny). Since 1 January 2012 the first two have been merged into the Victim and Post-penitentiary Assistance Fund with a budget of approx. 12 million PLN

²² <http://ec.europa.eu/enlargement/pdf/fiche-projet/multi-beneficiary-programmes/1999/zz9910---1999--justice-and-home-affairs.pdf> accessed 27.11.2016.

(approx. 2 884 476 EURO) annually to be spent on subsidies, and about 2-3 million PLN (approx. 480 746 – 721 119 EURO) for financing information campaigns, research, training seminars, conferences, publications (Brażkowska et al. 2013). Currently, the assistance to victims of crime, financed by the aforementioned agencies, is provided by both public (the Polish police, health care services, prosecutor's office, the judiciary) and non-public institutions (NGOs).

It was only in 1997 with the implementation of the Polish Criminal Code that the provision of interest to victims of crime gained more serious attention from criminal justice professionals. The most comprehensive overview of the existing provisions for crime victims in the Polish criminal justice system can be found in 'Crime Victims' Rights' (*Prawa ofiar przestępstw*) by Ewy Bieńkowska and Lidia Mazowiecka (2009) and the following paragraph outlines the key points of the current discussion in this field.

Overall, there has been an increased recognition of victims' needs and rights in criminal proceedings in Poland. In 1999, the Polish Victim Charter was introduced and since 2003 National Crime Victims' Rights Week has been celebrated every February in Poland. In 2008 the Polish Ministry of Justice also established the Support Network for Victims of Crime that is comprised of 15 separate Support Centres operating throughout the country. Victim Support Centres offer the following services:

- legal advice for victims of crime and their families
- counselling for victims of crime and their families
- referrals to other services that provide specialist help
- food vouchers
- cost of temporary accommodation
- cost of health services
- cost of public transport expenses

Furthermore, in 2009 a victim-dedicated website www.pokrzywdzeni.gov.pl was established in order to provide information on victims' rights and Support Centres in each province of the country (ibid.). The Ministry's '500 Days of the Justice System' programme run in 2010

included a nationwide dissemination campaign providing information about the rights of victims of crime.

Victims' rights were substantially codified in the 1997 Criminal Code and the Code of Criminal Procedure. While many of these developments have aimed to promote victims' rights, the nature of the Polish inquisitorial justice system further enables crime victims to actively participate in criminal proceedings - the detailed description of which is meticulously delineated by Bieńkowska & Mazowiecka (2009).

Victims' engagement with and role in the Polish criminal justice system depends on the type of crime they fall victim to as well as the type of prosecution that follows. Polish law distinguishes between public prosecutors appointed by the Prosecutor General and private prosecutors who are parties to criminal proceedings and who may assist public prosecutors in their work. In a public prosecution the victims are entitled to join the proceedings as 'auxiliary prosecutors'. In so doing, the victim is then entitled to the following rights: making applications, lodging complaints, submitting evidence, reviewing case files, applying for legal representation, applying for help with court costs, applying for non-contact-orders, applying for compensation or damages to be awarded, and appealing court decisions. Another important provision for crime victims is the opportunity to take part either in mediation proceedings or other 'court-based conciliatory proceedings' (section 341 § 3 of the Code of Criminal Procedure) which offer an alternative agreement to the one reached through victim-offender mediation. The difference between the two is that the outcome of the latter is binding while the former has no 'legal power' unless directly incorporated into a judgement. In the case of private prosecution the victim is the only prosecuting party and participation in a conciliatory hearing between the victim and the offender is the first and obligatory judicial step taken before the main hearing takes place (ibid.).

In sum, the 1997 Criminal Code and the Code of Criminal Procedure have significantly advanced the rights of crime victims in Poland. However, Bieńkowska & Mazowiecka (2009) have observed that victims' rights have been subject to a number of changes that are sometimes contradictory and the quality of the changes still does not meet the expectations of Polish criminologists. Despite the fact that a lot has been done to promote victims' needs, the problem of secondary victimisation has not been fully addressed. One of the main obstacles

that remains is access to justice to ensure that victims are aware of their rights and understand them both linguistically and legally. Although the Codes acknowledge the right to be notified of court proceedings these notifications are limited to very basic information such as the date and time. Moreover, there is a lack of satisfactory, consistent and transparent information provision in non-legal and familiar language. Furthermore, those who create the relevant laws are not experts in victimology and their main concern is to meet EU standards. Bieńkowska & Mazowiecka (2009) have argued that ‘a pro-active and knowledgeable victim’ means longer criminal proceedings – and this idea is not enthusiastically welcomed by criminal justice professionals. While legislative measures have been put in place to provide an adequate level for the protection of people who fall victim to crime, the practical measures still have not achieved the full measure of justice as promised in the legislation.

Last but not least, it is yet to be seen how Directive 2012/29/EU (also known as the Victims’ Directive) will influence the Polish criminal justice system's response to crime victims. The Directive was adopted in 2012 in order to establish the minimum standards on the rights, support and protection of victims of crime (Pali, 2016). What is of significance to this study is that restorative justice is acknowledged in the Directive as an important way to take into account the interests and needs of the victim, and to repair the harm done to the victim. The Victims’ Directive introduces an obligation for all EU member states to inform crime victims as to the availability of any restorative justice services and to facilitate referrals to these services. By 16 November 2017, and every three years thereafter, every EU member state must provide the European Commission with data showing how victims have accessed the rights set out in the Directive (Pali, 2016).

Unfortunately the empirical work conducted on the extent to which the victims’ rights have been implemented in Poland has been scarce. The only research that sheds light on this issues is the study carried out by the Institute of the Justice System (2012) in which the impact of the victim on cases of consensual sentencing (sentencing without a trial) was examined based on court file analysis. The examination of 119 court files revealed that only in 8 cases the victims used their statutory rights and challenged the court’s decision to convict and sentence the defendant without the trial based on the prosecutor’s application. The research findings demonstrate that victims of crime usually do not appear at the court hearings. If they do, their activity concerns mostly the subject of compensation which in consequence makes their impact on the sentencing rather insignificant . Although it is not study-based, Brązkowska et

al. (2013) in the following report ‘Assistance to Victims of Crime in Poland’ critically review the current provisions for victims of crime in Poland and highlight that, apart from domestic violence cases, there are no comprehensive proactive mechanisms of reaching out to victims of crime in Poland. Although the authors of the report acknowledge the increasing numbers of victims who are referred to Support Centres by various institutions, they still identify the following pitfalls as far as victims’ support in Poland is concerned: dispersed and uneven national support, poor information about compensation for victims, low amounts of compensation paid to the victims, lack of victim assistance standards, lack of liaison officers dedicated to work with victims of crime, general practice of ‘discouraging victims to report crime’, low level of public awareness about victims’ rights, lack of cooperation between victims’ organisations.

This human-rights-sensitive approach towards crime and punishment in Poland has been regularly limited by media and political discourse in relation to crime and punishment (Płatek, 2007). As interestingly indicated by Kossowska et al. (2012:40) *the transformation gave the mass media, which was previously under tight state control, the opportunity for unrestrained growth*, and as a consequence there has been a significant transition from a socialist society that experienced [the era of] ‘under-information’ about crime stories to one suffering ‘overfeeding’ by the post-1989 media’s ‘panic’ activity (Szumski 1993). Current discourse, as in the West, is based on ‘over-information’ that triggers the perception of a ‘crime wave’ and increased reporting of subjects believed to be of interest to the public (for example infanticide, fatal road accidents etc.). As a result, such media activity proposes to society/the electorate only one type of reaction to perpetrators of crime: harsh punishments (Kossowska et al. 2012).

Last but not least, it is important to mention the post-1989 situation of *Homo Sovieticus* discussed earlier in the chapter. Kania (2012) refers to the writings of Professor Józef Tischner (1990) who argued that the euphoric attitudes that accompanied the process of transformation did not acknowledge the confused post-1989 state of the ‘Soviet people’. *Homo Sovieticus* people who were suddenly confronted with democratic values and the operation of the free market were defined by Tischner as the ‘orphans’ of the previous regime. The post-1989 transformations brought inequality and the perception of deprivation and of losing the race, which formed so-called *Homo post-Sovieticus*. Tischner defined *Homo*

post-Sovieticus as nostalgic-ridden citizens who might see the free market as a place to earn money but still turn to the State for social security. The functioning of *Homo Sovieticus* outside the socialist system made people develop strong sense of entitlement, perceive someone's prosperity as personal harm, and claim financial restitution for their unprivileged status. The situation of *Homo Sovieticus* in the post-1989 socio-political and economic context led to the development of post-socialist nostalgia. Although the phenomenon might not be regime-related, and was certainly not confined to the post-communist countries, it is treated as a cultural practice broadly shared by all Eastern European societies to make sense of post-1989 events (see Todorova & Gille, 2010).

3.1. Post-1989 attitudes among Poles

Given the focus on lay people in this study, in this section I shall address the available research findings on Poles' views on crime and punishment, measured after the fall of the socialist system. Although the rationale behind this task is to discuss any changes (or lack of thereof) in people's punitiveness, I must also remind the reader the problematic understanding of 'the public' and the possibility of dealing with many different publics (see Chapter 1). A quantitative study on public attitudes towards crime and punishment by Szymanowscy (2008) revealed that between 1993 and 2006 public attitudes did not change in relation to which crimes deserved a custodial sentence (murder, rape, drug distribution, assault by beating a family member, driving a motor vehicle under the influence of alcohol and burglary). With the exception of rape and murder, the 2006 survey respondents were more concerned with family, drug and alcohol related offences. Persecution for reasons of race, religion, nationality, abortion, tax evasion, euthanasia and involuntary manslaughter were the behaviours that invited higher levels of public condemnation in the 2006 survey. The increase of public punitiveness in relation to the above-mentioned crimes does not necessarily imply harsher punishment preferences. Non-custodial and non-community punishment were preferred by the public for child maintenance arrears²³, theft involving low value goods and bribing a police officer, but not in relation to bribing a civil servant (Szymanowska, 2008). Moreover, the research demonstrates that at both times of data collection respondents, when asked about the purpose of punishment, favoured deterrence rather than retribution. The

²³ Child maintenance arrears (Polish original: *przestępstwo niealimentacji*) is considered as a criminal offence in Poland.

authors observed that respondents' sanction preferences for the same crimes were milder than for those embedded in the Polish Penal Code.

Another index of people's reactions to crime is their fear of crime. The earliest evidence on fear of crime before the collapse of the communist regime was a survey carried out in 1987 that indicated that only 22% of respondents regarded Poland as an unsafe country to live in (see Table 1). The scholarship on this particular observation has not yet been taken further, but Łoś (2002:169) argued that during the transformation period the well-internalised fear of the party-state from the communist period was transformed into fear of crime – the spectre of which increased significantly after 1989. For example, in International Crime and Victimization surveys and national studies, it is stated that throughout this period approximately 60% of respondents were worried about becoming a victim of crime, and this high level of fear continued until 2004. Since that time, it has been steadily decreasing with only 37% of respondents in 2011 being afraid of becoming a victim of crime. Not only the declining level of fear of crime but also its 'justified' nature is interesting to observe. According to Kossowska and colleagues (2012:18) 'public opinion in a shockingly accurate way, senses the changing picture of crime in Poland.' Based on police statistics, Siemiaszko et. al. (2009) observed that the level of fear of crime in a particular region of Poland reflects the recorded level of crime – a finding that corroborates Kossowska et al.'s (2012) argument. The data presented in Table 1 on post-1989 fear of crime were derived from two sources. The first one is the International Crime and Victims Survey (ICVS). Polish data come from four points of measurement: 1992, 1996, 2000, and 2004. The figures in Table 1 account for a percentage of respondents feeling unsafe or very unsafe on the street after dark. The rows below show the data gathered by a main Polish public opinion research centre (CBOS) between 1987 and 2015. While the second row presents a percentage of respondents answering in the negative: *Is Poland a safe country to live in?* the third row illustrates the percentage of respondents answering in the affirmative: *Are you afraid of becoming a victim of crime?*

Table 2. Fear of crime in Poland 1987-2015.

	'87	'89	'90	'91	'92	'93	'94	'95	'96	'97	'98	'99	'00		'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	'15
ICVS	-	-	-	-	43	-	-	-	34	-	-	-	34		-	-	-	33	-	-	-	-	-	-	-	-	-	-	-
CBOS	22	-	-	-	-	67	-	79	77	75	76	64	70		81	71	62	65	49	53	43	30	29	26	22	31	33	24	28
CBOS	-	-	-	-	-	-	-	-	67	61	62	57	67		65	66	59	63	51	55	44	40	41	46	37	39	39	45	48

Sources: International Crime and Victims Survey (ICVS), N>1000; Public Opinion Research Centre (CBOS Poland) N>1000.

Another frequently used indicator of people's punitiveness is their view on capital punishment and the bulk of the evidence with regard to Poland's punitiveness has been drawn from data on attitudes towards the death penalty. As discussed in Chapter 1 the use of the death penalty is frequently treated as the state's punitiveness, whereas people's support for this sanction can be viewed as individual punitiveness. Although the support for its return increased significantly (70%) during the transformation period, when the death penalty was legally abolished (see Table 3), in recent years this support has waned. It is not surprising that this punitive attitude had more adherents during the turbulent years of transformation, but it is interesting to observe how polarised the public views became. This might indicate that Polish people have become more divided when expressing their opinion on this subject. The group of undecided respondents has been decreasing in size since 1989. Although support for the death penalty remained high throughout communism, the transformation and post-transformation period, there is evidence suggesting that people, when presented with more information on crime occurrence/circumstances, would rarely choose the death penalty in order to punish criminals (Szymanowska, 2008). This is in congruence with research findings from Western countries (see Roberts & Hough, 2005). Nevertheless, the current public support for the death penalty in Poland remains as high as in the UK and the United States (for comparisons see Gray et al. 2007).

Table 3. Attitudes to the death penalty in Poland 1987-2011.

	'87	'89	'90	'91	'92	'93	'94	'95	'96	'97	'98	'99
	-	-	-	-	-	-	-	-	-	-	-	-
Adherents	60	52	63	62	-	64	56	66	74	74	76	77
Opponents	28	27	28	29	-	28	28	26	19	20	15	18
Undecided	12	21	9	9	-	8	16	8	7	6	9	5

	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12
Adherents	77	72	74	-	77	-	-	63	-	-	-	61	-
Opponents	19	23	19	-	19	-	-	31	-	-	-	34	-
Undecided	4	5	7	-	4	-	-	6	-	-	-	5	-

Source: CBOS (1987-2011) $N > 1000$.

When discussing the literature on people's attitudes towards crime, punishment and justice, it is important to mention the evidence relating to people's trust in criminal justice institutions. This exercise is even more important given that the Polish police and criminal justice agencies are the three gatekeepers of restorative justice in Poland. It is believed that Poland is among the countries with the lowest level of trust in justice institutions and the police. According to the most recent European Social Survey (ESS, 2010) less than 40% of respondents in Poland believe that police make fair and impartial decisions, and Poland was one of the countries in which people were the least trustful that the poor and rich were treated equally (Jackson et al. 2011). Although this finding could be interpreted through the fact that the Polish police used to act as a repressive justice institution that protected the communist system rather than ordinary people, this is not corroborated by the data on public perception of the police in Poland (see Table 3). Since 2006 a number of opinion polls have demonstrated an increasing tendency for Polish respondents to express positive opinions when asked about the functioning of the Polish police. A similar observation was made in Szymanowski's study, carried out in 2006, which indicated that 49% of respondents praised the performance of Polish police (compared to 32% who expressed a similar opinion in

relation to Polish courts). These findings for example do not corroborate Reiner’s argument on a certain cultural lag in the perception of the police and policing in England and Wales (see Reiner 2000). In other words, at a time when the Polish police have been least violent, corrupt and politically involved, people’s mistrust in them has not been greatest as the argument would suggest. On the contrary, it appears that Poles might have a good opinion about the Polish police but not necessarily about their performance. Although the ESS survey indicates that Polish people do not trust the police, the same survey findings indicate that approximately 70% of respondents agreed with the following sentence: *the police have the same sense of right and wrong as me* (Jackson et al. 2011) which might be more in congruence with the positive views of the Polish police reported in the Polish studies.

Whilst members of the public may encounter police officers more frequently than any other criminal justice branch, it is the work of the courts that mainly accounts for the negative public attitudes towards criminal justice and sentencing policies (Roberts & Hough, 2005).

Whereas the public perception of the police has improved over time in Poland, trust in courts and the prosecution service has fluctuated significantly and deteriorated overall. In 2011, only 32% of respondents were satisfied with the court and 36% with the prosecution service. Although one needs to treat this finding with caution, some research suggests the trust in courts and prosecution was relatively high under the communist regime (see Borucka-Arctowa, 1978). It was expected that once a fair judicial system had been established in the post-1989 period, it would have only strengthened the trust and positive attitudes towards the judiciary. Nonetheless, the figures in Table 4, which come from the surveys carried out by the CBOS again, demonstrate the opposite trend. The figures in the boxes represent the percentage of respondents answering favourably: *How do you assess the work of the police, courts, prosecution?*

Table 4. Public trust in criminal justice institutions in Poland (1987-2011)

	‘87	‘89	‘90	‘91	‘92	‘93	‘94	‘95	‘96	‘97	‘98	‘99
Police	-	-	-	-	-	-	61	-	60	51	58	54
Courts	-	-	-	-	-	-	-	-	-	30	35	29
Prosecution	-	-	-	-	-	-	-	-	-	31	34	28

	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12
Police	56	46	55	60	56	60	66	71	72	72	71	69	71
Courts	28	21	22	21	18	20	27	39	40	33	33	32	32
Prosecution	27	23	22	21	20	25	31	41	44	38	35	36	32

Source: CBOS, Poland, N>1000

In the latest opinion poll on people's views of the Polish criminal justice system, the overwhelming majority of respondents (61%) assessed the Polish criminal justice system at large negatively, and only 23% held a positive view (CBOS, 2013). This negative trend has been gradually increasing since 2007, when 41% of respondents were of generally positive opinion, compared to 2013. The latest opinion poll has also revealed that almost half of respondents indicated their hesitation regarding judges' impartiality (44% said sometimes yes, sometimes no), only 14% of those polled had confidence in Polish courts, and approximately 35% of all negative opinions were expressed by those who were in a difficult financial situation. Furthermore, 72% of the 2013 respondents viewed foreign judicial bodies, such as the European Court of Human Rights in Strasbourg, as more trustworthy than the domestic courts.

Roberts & Hough (2005) have argued that the difference between levels of confidence in police and courts stems from the fact that public knowledge and experience of court proceedings is less than those of the police. As a result, people form their opinions based on little experiential knowledge and under significant media influence (ibid.). This argument was tested in the 2013 CBOS survey. All the questions in the 2013 opinion poll were analysed alongside any respondents' experiences of the Polish criminal justice system, leading to the conclusion that there was no statistical difference in opinions between respondents who had and did not have experience of the criminal justice system (CBOS, 2013). Furthermore, the same opinion poll included questions on potential criminal justice pitfalls. Among the most frequently indicated problems in the Polish criminal justice system, the respondents pointed to prolixity of court proceedings (84%), high costs (72%), numerous adjournments (72%), complexity of court procedures (71%), courts' leniency (60%), poor court management (59%), bribery (54%), and inappropriate treatment of people coming into contact with the system (48%) (CBOS, 2013).

There are a number of potential interpretations as to why people's trust in courts is so low in Poland. The post-1989 changes in the judicial system brought recognition of human rights but also less punitive sentencing policies. While Daniel (2007) has argued that the low trust in courts/prosecution might indicate widespread expectations of harsh sentencing and, by extension, speak to the punitiveness of society at large, similar results concerning attitudes in the UK were interpreted as the consequence of public ignorance of current sentencing patterns (Hough, 1996). On the other hand, Kossowska and colleagues (2012) have argued that the difference between views on the police and criminal justice system lies in how these agencies have handled their public images. According to the authors, the Polish police, since the beginning of the transformation process, have carefully managed their contact with the Polish media and appointed a number of press officers, while the courts' press service has not developed in such a way, the result being a less favourable view of the court system among lay people.

3.2. Restorative justice

3.2.1. Early days

The introduction of victim-offender mediation, the practice through which the concept of restorative justice was initiated in Poland, took place during the transformation period. For the purpose of clarity, by the introduction of victim-offender mediation it is meant in this thesis the legal standards and regulations providing a basis for the practice. The Polish Code of Criminal Procedure, enacted on 6th June 1997 and in force since 1st September 1998, provided a legal framework allowing for the use of victim-offender mediation.

In Poland, a number of factors drove the introduction of restorative justice. Firstly, one could argue that the first set of interests in victim-offender mediation lies in the fact that Poland, after the fall of communism, not only joined international organisations and implemented recommended legal standards, but also received policy-related advice and assistance from abroad. The 'Western experience/influence' can, however, be looked at from a different angle. The implementation of international standards, among them restorative solutions, could be perceived as a condition of entry to international organizations, *imprimis* the

accession of Poland to the European Union. Karstedt (2002), while discussing the travel of crime policies, separately considers the travel of European Union policies, as in that case certain pressure tactics – of economic and non-reciprocity mechanisms – come to the fore. She illustrated the situation of Eastern European countries and the pressure they are under to change their criminal justice policies e.g. abolition of the death penalty, reorganisation of border policing, commitment to human rights etc. The European Union influence is also emphasised by Miers and Aertsen (2012:531-532) who observed that:

For the post-2005 EU accession states, the introduction of restorative and mediated interventions assumed a far greater political and legal significance. They were matters that required those states' action as part of their compliance with a broader criminal justice agenda concerning the rights of offenders, the proper management of the investigation and prosecution of offences, and the promotion of the interests of victims. For Bulgaria, Hungary, Poland and Romania, the possibility of restorative and mediated outcomes from criminal proceedings was therefore an element in the conditions for their membership of the EU. In devising their responses, these countries have been particularly influenced by the views of experts drawn from jurisdictions with long-established and successful programmes.

Following on from that, the concept of restorative justice travelled to Poland from the West – mainly Germany. At the beginning of the 1990s, a group of Polish academics, government officials and NGOs representatives visited German mediation centres and received financial support from the Heinrich Böll foundation. Although Germany, as a Western country, is in this case the ‘exporter’ of the restorative justice concept, there had been a prior interest in victim-offender mediation, and Czarnecka-Dzialuk (2009) reported that as an early mediation advocate she had visited a number of countries (Finland, Germany, Austria, Belgium, England, Scotland) in order to observe how mediation functioned in other societies. This ‘international aspect’ of victim-offender mediation is frequently addressed when discussing the origins of the intervention in Poland (see Czarnecka-Dzialuk & Wójcik, 2001; Płatek, 2005; Zalewski, 2006; 2009).

Secondly, it is equally important to acknowledge the contribution of Polish restorative justice advocates and their hopes for victim-offender mediation. As a novel solution in the Polish criminal justice system, victim-offender mediation was also associated with a fundamental

change of criminal justice philosophy and policy aimed at the rationalisation and liberalisation of criminal law and of responses to offences (Nielączna, 2012). As Waluk (1999) emphasised, the victim-offender mediation movement was possible thanks to the energy of specific individuals²⁴. Restorative justice as a general movement pushed by a small number of particularly energetic activists was also present in other countries (Braithwaite, 2002); it is a process that could be described as facilitated by ‘elite networking’ (see Jones & Newburn, 2007). In the Polish literature, the role of Janina Waluk is frequently acknowledged for her contribution to the development of mediation in Poland, and, as described by Platek (2009), for her vision of restorative justice as stemming from practical needs and a reaction to the shortcomings of the Polish court system. This observation is echoed in the writings of Marshall (1996:34), who argued that ‘they [RJ advocates] have introduced new practice ideas like mediation, reparation and conferencing, not because they belonged to a new ‘paradigm’ of justice but because they offered pragmatic solutions to everyday problems.’

Mediation as a ‘pragmatic solution’ brings a third set of interests to the surface. Recent scholarship on restorative justice in the West suggests that integrating restorative justice practices may help to ‘re-civilize criminal justice’ (Blad, 2013:240) or make ‘criminal justice more restorative’ (Walgrave, 2013:373). This is partially in accordance with what was expected of restorative justice in Poland in the 1990s. The introduction of restorative justice took place at a time of significant modernisation and redesign of criminal justice institutions occurring in the light of broader post-1989 socio-political and economic change. Therefore, victim-offender mediation could also be seen as part of the transformation process, behind which were bureaucratic reasons such as court case overload, duration and delay of criminal proceedings, and social costs. Considering the transformation struggle, and the sudden increase in recorded crime rates and court cases discussed earlier, victim-offender mediation was believed to be a remedy for the crisis of the criminal justice system, and widely practised (Cielecki, 2009, Juskiewicz, 2010, Politowicz, 2012). Restorative justice might be a convenient solution in an increasingly globalized world, however, as discussed by Jones & Newburn (2007) the transnational transfer of penal policies is equally shaped by the national, political cultures and institutions.

²⁴ The core group of people advocating in the early days of mediation in Poland was comprised of: Janina Waluk, Dr Beata Czarnicka-Działuk, Adam Romański (NGO), Anna Nowicka (Ministry of Justice), Professor Dobrochna Wójcik, Professor Andrzej Murzynowski and Dr Ewa Bieńkowska (Waluk, 1999).

3.2.2. Implementation of restorative justice

The first mediation initiative commenced in 1994 and was aimed at young offenders. Similar steps were taken in other European countries, where it was believed that mediation with young offenders brought higher chances of positive mediation outcomes and higher public support for the practice. For exactly these reasons, as well as the pre-existence of certain legal provisions conducive to the practice of mediation, the first experimental project (carried out in eight family courts²⁵ between 1996 and 1999) was dedicated to young offenders (Czarnecka-Dzialuk, 2009). The intention of the pilot project was also to design a model of mediation that would reflect Polish legal and cultural conditions and prevent the copy-pasting of solutions from a different country (ibid.). This is in accordance with Karstedt's (2002) argument that concepts of crime policies do not diffuse entirely while 'travelling', but take traditional and established trajectories of cultural exchange that the author defines as the 'modelling' stage. Moreover, the examination of three policy transfers²⁶ from the United States to the United Kingdom by Jones & Newburn (2007) demonstrates that large-scale, hard extraction of penal developments from one country to another is a rare form of policy importation. As in the Polish context, Czarnecka-Dzialuk (2009) pointed out that, at the time, the policy-makers reviewed the history of Polish law to find past examples of restorative justice-like solutions. For example, they looked at the Statute of the Grand Duchy of Lithuania (*Statut litewski*) from 1566, where a young repeat-offender was ordered to pay compensation, and, in case of failure, was sent to perform the duty/service to work off the damages.

The Polish Code of Criminal Procedure that was enacted on 6th June 1997 and came into force on 1st September 1998 provided a legal framework that allowed for the use of victim-offender mediation not only with young offenders, as previously, but also with adults. In 2003, further amendments were implemented in order to increase the number of mediation referrals. The series of amendments gave rise to section 23a of the Code of Criminal Procedure, article 325i §2 of the Code of Criminal Procedure, and a separate mediation-dedicated Ministry of Justice decree (Bieńkowska, 2012). These changes allowed not only courts and prosecutors, but also the police, to refer cases to mediation.

²⁵ Young offender cases, including criminal cases are dealt with by family courts in Poland.

²⁶ These included: 'zero tolerance' policy, mandatory minimum sentencing, and the emergence of commercial corrections.

While there has been some research available in relation to court and prosecutors' engagement with mediation, there is an absolute silence with regard to police involvement in referring cases to mediation. The lack of interest in victim-offender mediation on the part of the police was discussed in an interview with a Polish mediator:

There is no such thing as the Polish model of mediation. I think that mediation in our country is understood as something that was imposed on us. No one knows, in my view, how to get it started properly. It's difficult to say why it is the way it is. There is no initiative, or in other words, there is little initiative, on the part of courts, prosecutors, on the police ...the police! Once a police officer made fun of me and said: 'you're such a kiddo, mediation what? They should be hit right in the noodle! Mediation won't get me anywhere!' Yep, this is our understanding about mediation. [Mediator 1]

The above quotation also initiates an interesting discussion about the Polish model of mediation which I will discuss next. As indicated earlier in this chapter Polish law distinguishes between public and private prosecution and the nature of Polish mediation depends on the type of prosecution involved in the case. Let us now consider these distinctions.

Mediation in public prosecution

In public prosecution cases Polish mediation is neither a typical alternative out-of-court procedure nor a diversion practice. Bieńkowska (2009) has observed that under the current circumstances, the Polish model of victim-offender mediation in public prosecution constitutes a practice that runs parallel to the traditional inquisitorial system of adjudicating cases. Although mediation is admissible at every point of criminal procedure and Polish law does not exclude any offence from being sent to mediation, in practice, the nature of offences referred to mediation is non-serious (for sentences of up to eight years of imprisonment) (Juszkiewicz, 2010; Niełacznna, 2012). The Polish legislation envisages three general referring bodies that can send cases to mediation: police officers, prosecutors and judges (courts),

(Bieńkowska, 2009), however, this is better explained by enlisting the actual initiators of the procedure, and stages at which a case can be referred to mediation, as:

- prosecutors at the preparatory (pre-trial) proceedings
- police officers at the preparatory (pre-trial) proceedings
- court (judges) at every stage of court proceedings
- court (judges) or prison governors at the post-sentencing stage
- victims and offenders involved in the case at any stage of the criminal procedure

Prior to making a decision about mediation referral, the relevant referring authority must inform the parties about what mediation is and obtain an informed consent from both the victim and the offender to participate in a mediation session. Once a decision about referring a case to mediation is made, the proceedings are adjourned for a mediation encounter to take place outside of the court settings (and the court case is neither suspended nor discontinued). Victims in these cases do not act as auxiliary prosecutors. Mediators are selected from a court-certified list that is maintained in the office of court clerks (Rękas, 2011). Immediately after receiving the decision of referral to mediation Polish mediators are obliged to:

- contact the victim and the offender to arrange the time and place of individual pre-mediation meetings;
- organise individual pre-mediation meetings with each party and provide them with more information about what mediation is, how it is conducted and what their rights are;
- conduct mediation session(s).

The mediation session can take the form of a face-to-face meeting or shuttle mediation in which the mediator discusses the case (or rather conflict) with both parties separately. Both parties can withdraw from mediation at any stage (Rękas, 2011). The provisions specify that mediation sessions should not last longer than one month. If they do, mediators make a report and notify the authority that referred the case to mediation about the reasons for the delay²⁷.

²⁷ Not only should mediation proceedings not last longer than one month but the duration of these preceding is not counted towards the overall duration of a criminal procedure – this was supposed to convince criminal justice professionals that mediation does not extend already long criminal procedures (something that Polish criminal justice is well known for) and encourage (mainly prosecutors) to refer cases to mediation (Zalewski, 2006).

The authority can then decide whether to prolong the time to complete the mediation procedure (ibid.).

According to Czarnecka-Dzialuk (2004) ‘successful mediation’ is achieved when an agreement between parties is reached, victims express satisfaction about the return of their possessions/or their compensation, and offenders are satisfied when they were not subjected to the usual sentence. The legal provisions do not define specific outcomes of mediation but list the following ‘restorative’ results (Rękas, 2011):

- apologies to the victim
- reparation of damages
- financial restitution
- personal or community service
- obliging the offender to change one’s behaviour
- undertaking anti-drug or anti-alcohol therapy

Apart from the requirement to prepare a report on the mediation procedure and attach the mediation agreement, the organisation of mediation sessions is not regulated by the Polish law. These first two individual meetings are usually followed by a session with both parties present – the outcome of which is always reported to the referring body (Rękas, 2011). If it is the prosecutor who receives the agreement, regardless whether mediation was successfully completed or not, the offender still has to be arraigned and the court proceeding initiated. Bieńkowska (2009) suggests that this situation is unnecessary and should be amended by giving prosecutors the option to apply for (and for judges to make an order about) conditional discharge (*warunkowe umorzenie postępowania karnego*) or to enter a no contest plea (*skazanie bez rozprawy*) as soon as the authorities have made a decision to refer a case to mediation. However, this is not the case yet and the current provisions are that mediation agreements are seen just as a declaration of how the parties would like to resolve the case. If it is the court that the mediation agreement returns to, the decision about mediation outcomes is discretionary and the judge while considering the content of the mediation agreement may incorporate the recommendations that may become part of the final judgment. Szczepaniak (2016) observes that mediation in Poland is more frequently ordered at the court proceedings

than pre-trial proceedings which is against the intentions of those who were implementing mediation in Poland in the 1990s.

The successful outcome of the mediation process may influence the court to decide one of the following (Rękas, 2011):

- a conditional discontinuation of the criminal proceedings
- an extraordinary mitigation in sentencing
- conditional/absolute discharge
- to enter a no contest plea

The ‘unidentified’ legal status of a mediation agreement has become to be seen as a significant shortcoming the origins of which are difficult to explain (Bieńkowska, 2009; Niełacznna, 2012). Although mediation outcomes are always scrutinised by a judge, mediation agreements are not legally binding like court decisions and they are not entered into criminal proceedings. If it was a mandatory part of the sentence, the offender’s non-compliance or breach of the agreement conditions would have further legal implications. Mediation agreements in their current form provide no legal provision to execute mediation outcomes such as financial reparation or unpaid work. Or in more legal terms mediation agreements are not granted an enforcement clause to the writ of execution (Zalewski, 2006).

Mediation in private prosecution

Mediation as a typical alternative procedure to court proceedings is envisaged in Polish law only in private prosecution cases , where positive mediation outcomes are legally binding and the case is discontinued (Szczepaniak, 2016). However, these particular legal circumstances for mediation are almost non-existent. Firstly, private prosecutions account for an exceptional minority of court cases. While in 2013 publicly prosecuted proceedings constituted 3 793 000 cases, private indictments were brought to court only in 137 000 cases (ibid.). Secondly, mediation in cases prosecuted based on a private prosecution is one of the two alternative conflict resolutions that the judges have to consider. In privately prosecuted cases, the judge always has to order a ‘conciliatory’ hearing that is run by the judges themselves – mediation is just another alternative (and competitive to conciliatory hearings) option (ibid.).

Unfortunately there is neither literature nor empirical work in Poland that would shed more light on this type of mediation.

The Polish model of victim-offender mediation is a law-based dependent intervention that can be initiated and finally resolved by criminal justice agencies. The reasons behind legally-oriented restorative practices are argued by Miers & Aertsen (2012) who observed that many parliamentarians and restorative justice advocates either are lawyers themselves or have legal advisors. Although this is one of the reasons that makes the relationship between restorative and conventional justice 'uneasy' (see Chapter 1), there are certain positive outcomes, such as a clearly defined relationship between the two justice processes. Furthermore, setting legal standards for mediation allows for similarity in terms of the case referral system and outcomes management (Pelikan & Trenczek, 2008). Although it is also the case elsewhere, victim-offender mediation in the Polish context came to be seen mostly as an ancillary mechanism to traditional sentencing conventions which is still rarely used. Gil (2014) describes Polish mediation as a 'superficial mechanism' that aims at reaching a legally defined consensus that will be used towards offenders' mitigation once the case returns to the court. According to Gil (2014) any 'restorative outcomes' are just side effects of the mediation encounter.

I would like to now present a mediation case which I observed to enhance the understanding of victim-offender mediation in Poland.²⁸ The session I observed was arranged by one of the mediators (lawyer by training) who took part in my exploratory study. The mediation took place in an urban area and involved parties from the same area. The case was referred by a judge (known to be mediation-friendly), and considered a dispute between two male neighbours who were both in their early forties. One evening, they had met to drink vodka together; however, this initially friendly get-together ended with an argument and physical fight as a result of which one of the men suffered serious injuries and had to be hospitalised for a few days. The session was in the form of direct victim-offender mediation and lasted two hours. The mediator explained in detail the purpose of the meeting and facilitated the discussion throughout the meeting. The session started with a very heated conversation between the two men, fuelled by the complainant's request for an exceptionally high amount of compensation for his injuries, in the value of 50 000 PLN (which is approximately £10

²⁸ The observation was carried out in the mediator's office on 19.12.2016.

000). Although the mediator skilfully managed the parties in the hope that they would reach a degree of consensus, the ‘mediation talk’ comprised of what is and is not envisaged by the Penal Code. The parties did not reach an agreement, and the case went back to court, however, towards the end of the session they exchanged a handshake and left the room together.

3.2.3. Lost in translation

Due to the fact that there have been different institutions involved in promoting restorative justice in Poland, there are different understandings of victim-offender mediation (academic, legal, policy) which is, for instance, reflected in how mediation is defined and understood. While the academic approach refers to mediation as a restorative justice practice, the governmental perspective has adopted the language of alternative dispute resolution (hereafter ADR). While the origins of mediation implementation were clearly inspired by restorative justice ideas, the current government perspective on victim-offender mediation adds an additional layer of difficulty to interpret the condition of the practice in Poland. The definition of mediation that appears on the Ministry of Justice website is as follows:

Mediation is an attempt to reach an agreement satisfying both parties in order to resolve a conflict. It is based on voluntary negotiations conducted by neutral third parties, namely mediators, who facilitate the negotiations, help to ease the tension and reach a compromise without imposing their own solutions (Ministry of Justice²⁹).

Niełacznna (2012:287) explains that this definitional complexity with victim-offender mediation at the government level might be due to the termination of a dedicated post of expert advisor that commenced a ‘period of inaccurate understanding of mediation within the Ministry.’ A quite telling example that corroborates Niełacznna’s observation is what happened in 2005 – the Polish Ministry of Justice proclaimed it a year of restorative justice and simultaneously created the Council for the Alternative Methods of Disputes and Conflicts Resolution.³⁰ On the other hand the problem with understanding victim-offender mediation must have also mirrored the newness and as yet unresolved nature of the process.

²⁹ <http://ms.gov.pl/pl/dzialalnosc/mediacje/>

³⁰ See Chapter 1 for discussion on Alternative Dispute Resolution and restorative justice.

Similar definitional issues in relation to restorative practice have been observed in other countries as well. For instance, Roche (2006) notes that restorative programs in New Zealand were not defined under the restorative justice umbrella at the time of their introduction in 1989. In the French context, victim-offender mediation is defined as penal mediation, and such lack of definitional rigour is explained by the Anglo-Saxon dominance that has not gained popularity in France (Bonafé-Schmitt, 2013). Definitional issues are an intrinsic difficulty in the transfer of crime policies which need to move from one institutional setting into a different legal and public culture (see Karstedt, 2002; Jones & Newburn, 2007).

One of the implications of understanding victim-offender mediation in Poland as an alternative dispute resolution practice is mirrored in research on mediation. Although Polish scholars had previously attempted to investigate public attitudes towards mediation, in 2008 and 2011, the Polish Ministry of Justice commissioned a survey on people's perceptions of criminal justice institutions with a set of questions dedicated to 'ADR'. Despite the Ministry of Justice's efforts to promote mediation and a widespread media campaign on this subject in the meantime, the survey findings revealed that public awareness had not increased between 2008 and 2011 (Ministry of Justice, 2011). In 2008, 51% of survey respondents had heard about ADR, whereas three years after, the number had fallen to 43%. What is noteworthy is the percentage of people who would still choose mediation rather than court proceedings – it has risen from 19% in 2008 to 38% in 2011 (Ministry of Justice, 2011). However, the question that provided the basis for the findings was as follows: *Have you ever heard about any alternative dispute resolutions (mediation, court of conciliation)?* The manner in which the question was asked was ambiguous, providing inconsistent results. Some respondents might have never heard about courts of conciliation but still been aware of mediation possibilities, and vice versa. A similar situation occurred in the UK in 1983, when one survey's findings showed 40% of respondents supporting mediation. Given the preliminary stage the Polish victim-offender mediation is at, it is important to recall Wright's observation in relation to the UK context, that at the time little was known about mediation and the main question was very badly worded (see Roberts et al. 2005). On the other hand, a wider sociological perspective should not be ignored as both ADR and restorative justice are polysemic concepts, with different audiences and advocates seeking to achieve different objectives.

3.2.4. Polish mediation in practice

Having established the origins of restorative justice in Poland, it is possible to argue that although the mode in which victim-offender mediation operates might have been inspired by the philosophy of restorative justice; at the practical level it is a highly legally oriented procedure with a number of pitfalls and constraints. While Dzur (2011:368) has observed that ‘like many effective social movements in American history, such as the abolition, suffrage, progressive, and civil rights movements, restorative justice is an amalgamation of a number of ideologically diverse elements’, it is difficult to observe the abovementioned processes in Poland. Although Peters (2000:14 in Miers, 2004) observed that the general picture of restorative justice interventions in Europe remains ‘a diversified landscape of competing visions’ it is interesting to add Bonafée-Schmitt’s (2013) remark that the landscape of restorative justice in the form of mediation on the continent remains substantially pragmatic and modest.

The number of cases referred to mediation in Poland is relatively small (see Appendix X). Victim-offender mediation, with a few exceptions, has been recognised as a ‘dead institution’ in Poland (Rękas 2003³¹). It is a similar observation to the one made by Sandra Walklate (2005), who described the situation of restorative justice in the UK as the ‘dead duck’ of the late 1980s that turned into ‘something’ popular. Such limited use of mediation has made Polish experts in the field reconsider what went wrong with the implementation and popularisation of victim-offender mediation in Poland. Czarnecka-Działuk (2009) identified a number of barriers to mediation and among them is a prevailing unwillingness from criminal justice professionals. While Płatek (2002) explained that the lack of trust in mediation among criminal justice professionals might be rooted in the fear that mediation could prolong the already significant length of court proceedings, Salwa (2012:23) argued that among legal professionals (prosecutors in particular) mediation is viewed as an unnecessary institution, another EU recommendation or exotic *idée fixe*. Wójcik (2009) corroborates this observation and refers to her research with Polish judges in 2004. Among reservations towards mediation, the judges interviewed spoke of the possibility of prolonging court proceedings, inefficiency of mediation, mistrust towards mediators, lack of suitable cases for mediation, and limited interest from the parties. Wójcik also suggested that one of the disappointing findings was to

³¹ http://biurose.sejm.gov.pl/teksty_pdf_03/kis-48.pdf

hear from the judges that it is 'easy' to run mediation and they could actually do it themselves.

Another obstacle to victim-offender mediation in Poland is poor infrastructure. Lack of qualified mediators, transparent organization and unified training opportunities, as well as poor salary (approximately £30 per case) has led to what Niełacznna (2012:280) observes as the mediation practice being developed only where 'there are groups strong and determined enough to act in the absence of the state's support'. Furthermore, the mediation processes in Poland can have a form of either indirect or direct encounter that take place in various informal locations such as NGO centres and social services offices (Niełacznna, 2012). Moreover, the organisation of mediation services has remained unregulated and caused a great deal of concern among mediation activists. There is not only lack of clarity as to who is responsible for providing the mediation service, but also there is little co-operation between the Ministry of Justice and mediators, who are mostly accommodated by various NGOs (ibid.).

Czarnecka-Dzialuk (2009) emphasises that the most difficult problem with pursuing mediation in Poland lies in the so-called 'Polish mentality', fear of the unknown and the prevailing unwillingness to try new solutions. However, other research seems to suggest the opposite. In Szymanowscy' study (2006) mediation was preferred by respondents for a number of crimes including: minor theft (30%), euthanasia (30%), child maintenance arrears (25%), abortion (16%) and bribery of a police officer (16%). Previous research conducted in the 1990s by Ostrihańska and Wójcik (1993) indicated that people would approve mediation in cases of theft, or if the stolen property was returned to them. Similar findings were repeated in Bieńkowska's study in 1993, when 46.4% of Warsaw respondents also indicated willingness to have their case resolved through mediation if they were compensated for the damage they had sustained.

Although some Polish scholars still share the view that victim-offender mediation 'slowly but surely is becoming part of the Polish judicial system' (Juszkiewicz, 2010:118), other Polish experts in the field admit that there was little thought given to the way mediation was introduced and whether it reflected restorative justice ideals. Undoubtedly, the Polish model has been operating within the limitations imposed by the criminal justice system and is definitely still at the modelling stage. According to Bieńkowska (2012), the Polish model of

mediation functions only formally and fails to deliver restorative justice ideals, as the legal framework under which Polish mediation operates has raised objections for a long time. She argues that, from the beginning, the Polish model of mediation has been faulty and further amendments (implemented in 2003) have not brought it significantly closer to international standards. Moreover, Czarnecka-Dzialuk quotes Fajst & Niełacznna (2009:113), who write:

The problem that mediation initially encountered in Poland was that it was implemented expeditiously and unreflectively, without an essential logistic base, clear boundaries between proceedings and how this should be integrated into the criminal justice system; meanwhile, a lack of clear instructions on how to work within the system suppresses the development of any new social institution.

A similar observation was made by Fellegi (2011) in relation to the viability of restorative justice in Hungary, where the required legal reforms were made rapidly due to the pressure exerted by the European Union. The introduction of victim-offender mediation in the Hungarian context was implemented by NGOs which, deprived of any governmental support, had to carry out ‘hasty fine-tuning’ on their own. A similar observation can be found in *Reinforcement of the Rule of Law: Final Report of the First Part of the PHARE Project*, in which the authors of the report admit that the Hungarian criminal justice agencies delegated much of their responsibility for victim support to NGOs.³²

Czarnecka-Dzialuk (2009:113) admits that Polish mediation has a number of pitfalls; however, without this ‘desperate attempt’ to introduce mediation in the 1990s, due to the unfavourable political climate in Poland, the idea would not have been implemented until now. Although the introduction of restorative justice in Poland took place at a highly challenging time, ‘policy-making is often a messy result of unintended consequences, serendipity, and chance’ (see Jones & Newburn, 2007:18). The attempts to increase the number of mediated cases, as well as highlighting certain concerns as to the condition of Polish mediation and the extent to which it reflects the restorative justice concept, suggest that there have been some advances in thinking about restorative approaches to justice. Braithwaite (2002:565) says that: ‘we are still learning how to do restorative justice well’. Sandra Walklate poses important questions (2005:170) that should help contextualise the

³² <http://www.cilc.nl/cms/wp-content/uploads/2015/10/Reinforcement-of-the-Rule-of-Law-Final-Report-2002.pdf> accessed 1.12.2016.

viability of restorative justice in any given society: what works, for whom, and under what conditions? Such questions foreground a broader perspective on the viability of restorative justice. The first part of this chapter delineated a number of socio-political and economic conditions in place before the post-1989 establishment of victim-offender mediation, the analysis of which was presented in the second part of the chapter. What these arguments make plain is the dearth of input lay Polish people have had on the research so far. Since much of academics' focus to date has been on technical aspects of the subject, I would like to draw on the voices of 'ordinary' people in order to shed light on the viability of restorative justice in Poland.

In conclusion

This chapter has traced the changing penal landscape of the Polish criminal justice system and discussed the introduction of restorative justice in this context. The rationale behind comparing and contrasting the justice system before and after the collapse of communism in 1989 was to demonstrate the wide range of factors that have been influencing lay Polish people's understandings about punishment and justice. For example, although victim-offender mediation is presented in the literature as a modern policy transfer, motivated by various rationales, socialist social courts should be seen as an important predecessor of informal conflict resolution in Poland. Before moving to the empirical part of this thesis, I shall discuss the choice of research methods and process of data collection.

Chapter III

Methodology

1. Introduction

This chapter outlines the research methods used in the study as well as the process of data collection. I first discuss my choice of qualitative approach, and then the perspective, from which the fieldwork started, as well as my sampling strategies, fieldwork locations and time scale. This will be followed by a detailed presentation of my research methods (focus groups and in-depth interviews). I conclude by describing the analytical process through which the findings were arrived at as well as a discussion of the ethical issues that emerged during the data collection. Throughout the chapter issues of reflexivity will be illustrated.

2. An escape from quantitative dominance

One of the outcomes of ‘surveying the public mind’ is Maruna & King’s observation (2004:85) that ‘researchers most often describe what the public says it wants without providing information about what underlies the preference’. Although the available qualitative studies on lay people’s views bring to light the complexity of the subject characterised as ‘contradictory, nuanced and fragile’ (Hutton, 2005; Roberts et al. 2005), there is still a significant paucity of such studies. The exploratory nature of this study is well suited as the examination of the viability of restorative justice has yet to be properly ascertained. In Poland, the predominance of the mono-method (quantitative) approach to research on lay people’s views is even more apparent. Beginning with a few studies in the 1960s, people’s attitudes towards crime and sanctions in Poland have been researched using surveys. Moreover, whilst Western scholars recognize certain limitations of quantitative studies, such as measurement errors; scholars from post-Soviet countries often ignore the intrinsic constraints of this methodology (Barrington & Herron, 2010). The reason for this can be found in the paucity of relevant Polish qualitative studies producing data of a different nature that would reflect on other, frequently missing, parts of the analysis. Furthermore,

given the Polish socialist past, the avenues for qualitative research as an approach that generates theoretical knowledge were for many years limited to the accepted (socialist) ideology.

My research aims to account for the complexity of people's views on crime, punishment and justice insofar as these help us to understand their views on restorative approaches to justice and investigate their interpretations and the underlying 'drivers' of those attitudes - the constructed knowledge that exists within this specific post-socialist, post-transformation, European context. Taking into account the complexity of the subject and the social, political and economic background that might explain study participants' views, it was important to use a research method that did not impose upon the participants' expectations or prior inferences but elicit expressions of the views in participants' own words (Crossley, 2002). Qualitative research, in the form of focus group and in-depth interviews, was chosen because it allows greater opportunity for participants to express their views and opinions in more depth (Noaks & Wincup, 2004). Both methods offered rich sources of data as the approach of having a 'conversations with a purpose' (Burgess cited in Mason, 1996:38) would ensure data generation in order to answer the research questions.

The study was conducted within a constructionist framework that emphasizes how knowledge of the studied social reality is subjective, situationally and culturally variable (Marvasti, 2004:5). This particular approach enables researchers to construct knowledge and investigate people's interpretations, which are valid in a given context. Furthermore, such knowledge construction requires an account of the reflexivity process. Researchers must be transparent on the social, ethical and ideological position they take (Walgrave et al. 2013) - to the extent that this is possible and necessary. On the other hand it is important to acknowledge that there is a risk that studies of this kind might not actually report, but in fact bring about the articulation of participants' attitudes that do not exist. Therefore, it has to be emphasized that conducting a qualitative study is not only about an in-depth exploration of an issue but also it is a self-reflective observation. As Byrne (2004: 184) writes:

Reflexivity involves critical self-scrutiny on the part of researchers, who need, at all stages of the research process, to ask themselves about their role in the research. Reflexivity involves a move away from the idea of the neutral, detached observer that is

implied in much survey work. It involves acknowledging that the researcher approaches the research from a specific position and this affects the approach taken, the questions asked and the analysis produced. In the immediate context of the interview, reflexivity involves reflection on the impact of the researcher on the interaction with the interviewee.

Having raised the above arguments, it is important to address my position as a researcher throughout the thesis. As qualitative research has its strengths, it also has its own limitations, and I shall take a very cautious stance towards the way I phrase my arguments in this thesis. Ragin and Becker (1928:2) argued that ‘every study is a case study because it is an analysis of social phenomena specific to time and place’, however, the challenge I face in conducting this study is that I attempt to gain insights based on a case study rather than analyse the whole context. Nonetheless, this methodological choice can be justified by the fact that this research is original work that has been limited by the practicalities of lone novice research. Making sense of participants’ narratives and providing interpretations of these narratives is the main methodological focus of this thesis; however, very little of what will be discussed in the subsequent empirical chapters should be regarded as definitive. Analysing a case study is a continuous process that is deemed successful when it results in a refined theoretical concept (Ragin & Becker, 1928). Although the nature of my methodology will not allow for generalizations, it will still assist to identify similarities and differences with the available literature in the field. The ‘fluidity’ of this case study should be seen as a feature of qualitative research, which will allow for a possibility to revise the approach in the future. Hence, the purpose of this study is to explore participants’ understandings of punishment and justice and phrase useful questions that can be a matter for future research.

3. Fieldwork

3.1. Entering the field

This study is based on focus groups and in-depth interviews with sixty nine participants. Although the details of each fieldwork stage will be explored in the following paragraphs, the table below presents an introductory overview of the number of participants in the research and the form of fieldwork in which they appeared.

Form of fieldwork	Number of participants	Number of interviews/focus groups
Exploratory research – interviews with mediators	4 interviewees	4 interviews
Focus groups	41 FG participants	10 focus groups
In-depth interviews	<ul style="list-style-type: none"> - 27 interviews with FG lay participants - 14 interviews with new lay (non-FG) participants - 10 interviews with people who had experience with the Polish criminal justice system 	51 interviews
Total	69 participants	55 interviews & 10 focus groups

This study envisaged going to Poland for six months and carrying out fieldwork in my home country. The process of data collection was conducted from a perspective of a young unmarried Polish woman based at a prestigious London university, who prior to the fieldwork had lived in the United Kingdom for five years and worked as a research assistant and court and police interpreter. In order to illustrate the experience of ‘going home’ research this section draws on Narayan’s article (1993) on native anthropology and the terminology of ‘indigenous’ (also defined as ‘at home’ and ‘native’) fieldwork that relates to doing research in one’s country of origin, as opposed to the ‘non-indigenous’ data collection process. There is an interesting literature in which a number of researchers shared their own experiences as so-called native researchers (see Alcalde, 2007; Wüstenberg, 2008; Ronnen, 2011; Kempny, 2012). Wüstenberg (2008) lists a number of benefits of ‘native’ fieldwork such as: linguistic, familiarity with local traditions and habits and cultural nuances as well as more practical advantages such as the ability to stay with family and friends or sharing modes of transport. According to Wüstenberg the risks of such fieldwork are rarely acknowledged, nonetheless,

the ‘indigenous fieldwork’ should not be perceived as more accessible and uncomplicated than the non-indigenous one.

One of the prominent issues while conducting any qualitative fieldwork is the process of negotiating the Insider/Outsider status. In indigenous fieldwork, the Insider and Outsider status is not a straightforward stance, as people may actually have more trust in those who do not share local characteristics and are not directly involved in local matters. Moreover, the native researcher may not recognize certain patterns during the process of data collection and analysis because they are accustomed to the culture, and as a result there is a risk of not exploring the full picture of the research. In addition, due to the familiarity with certain social norms, the researcher may identify oneself with the group and overly engage emotionally. Furthermore, existing social relationships might be put at risk due to the research perspective (Wüstenberg, 2008). The experience of conducting this type of research proves that a ‘going home’ fieldwork can be as problematic as the non-indigenous type and relevant issues will be outlined throughout the chapter.

Prior to the main fieldwork an exploratory study took place. This was arranged at the time when the research questions and study design were in their infancy. Qualitative interviews were carried out with four mediators in Poland in July 2012 in different cities: Polsk, Nic, Awar³³. The choice of cities was dictated by the need to make links in each in order to undertake the main fieldwork at a later stage as well as the mediators’ availability and willingness to meet. Once the final design was completed and the research questions formulated, the remaining issues such as recruitment possibilities or interview locations were thoroughly explored during a visit to Poland in December 2012. These were planned in order to identify any problems with the study design.

3.2. Theoretically informed sampling

When conducting a qualitative study, it is evident from the very beginning that the sampling technique that is to be used is a non-probability one. Therefore, because of the small sample size of this study, the interview data can only suggest possible perspectives and interpretations, not views of the general population in Poland. There is, of course, the

³³ Awar is a Polish city with a population of over 1.5 million, Nic is another city, located in close vicinity to the Baltic Sea, with a population of approximately 400 000. Polsk is located in Western Poland and populated by approximately 130 000 inhabitants. The real names of the locations were anonymised.

additional standard argument about trading breadth for depth. Although the onus of the research is to explore and illustrate data in a given context, this process does not preclude observing common themes within and between the group discussions or one-to-one conversations.

The sampling strategy was based on theoretical requirements and considerations. While selecting focus group members, the researcher should distinguish so-called break characteristics – categories that differentiate one group from another (Tonkiss, 2004:200). Having reviewed the literature on restorative justice and lay people's views on crime and sanctions, a number of break characteristics needed to be taken into account in order to sample study participants: age, gender, geographic location, and prior experience of the criminal justice system as research suggests these factors could influence participant's views on crimes and sanctions.

In discussing the demographics of punitiveness one needs to be aware that they are not absolute, categorical differences but only tendencies. For example, studies of the relationship between age and punitiveness have indicated that age can be a predictor of punitiveness (Hough & Roberts, 1998; Allen, 2002; Roberts & Hough 2005; Roberts & Indermaur, 2007; Wheelock et al. 2011) suggesting that older people tend to be more punitive. Secondly, whereas some studies have revealed no gendered differences when it comes to punitive attitudes (Sanders & Hamilton, 1987), others have suggested that men hold more punitive attitudes than women (Allen 2002; Roberts & Indermaur, 2007). However, the 1996 British Crime Survey³⁴ suggests that women support harsher sanctions than men for rape offenders (Hough & Roberts, 1998). Thirdly, contrary to popular opinion that urban life is more anonymous whereas informal control can be stronger in a rural setting, Braithwaite (1993) has argued that shaming as a restorative mechanism has greater potential to function in urban rather than rural settings. This is because in an urban environment people are exposed to various audiences, whereas in a village society there is a limited range of audiences for people to interact with. When an offence is committed and becomes public, the shaming of wrongdoing is greater in audience-partitioned societies that know only certain sides of our personality than in a close-knit community that knows its members well and is not 'shocked' by the wrongdoing (see discussion in Braithwaite, 1993:15).

³⁴ Since 2012/3 called Crime Survey for England & Wales.

In consequence, my research was conducted in two settings: one rural, the other urban. I set up the following focus groups in each setting: one group of young and one of older participants (unisex) and one group of female-only, and one of male-only participant groups (mixed age). The main fieldwork was carried out between April and September 2013. I began this by conducting focus groups, initially in the rural and then urban locations, and then between July and September 2013, I undertook 41 in depth interviews with focus group participants (hereafter FG interviewees), as well as additional interviews with people who did not participate in group discussions (hereafter non-FG interviewees).

The choice of fieldwork locations was pragmatic (such as geographical familiarity or the existence of a network of people who helped to recruit study participants) and corresponded with sampling criteria. The rural focus group participants were from the following villages³⁵: G (411 inhabitants), L (432 inhabitants), P (240 inhabitants), S (302 inhabitants) (all villages were located in a county of 49 789 inhabitants). The urban focus groups were conducted in the following cities: Awar (1 711 324 population), Bolt (722 022 population), Polsk (125 149 population)³⁶. All non-FG urban interviewees were from W, whereas the remaining interviewees were from the same rural and urban locations as the focus group participants. An additional ten interviews were undertaken with people who had experience of the Polish criminal justice system in May and June 2015 in the same locations.

4. Focus Groups

Focus groups are open-ended group discussions that explore socially shared knowledge and the framing of a topic, where various positions can be taken by the participants (Marková et al. 2007). Focus groups enable the ‘researcher to access tacit, uncodified and experiential knowledge and opinions that would lead to the recognition of previously ignored factors (Johnson, 1996). This type of method provides rich multilateral exchanges of conversation between participants (Johnson, 1996) and helps to contextualise and categorise peoples’ views on crime and sanctions rather than just recording the first ‘superficial’ layer of views that are described by Indermaur et al. (2012:149) as ‘top of the head’ preferences.

³⁵ The real names of all fieldwork locations were anonymised.

³⁶ Data in the brackets represent the number of inhabitants. Information was obtained from the National Census of Population and Housing (2011), the Central Statistical Office, available at: http://www.stat.gov.pl/gus/index_ENG_HTML.htm accessed 03.07.13.

The focus group methodology provides richer knowledge on a phenomenon not only due to the fact that views and attitudes are revealed but also opinions are negotiated (Kitzinger, 1994). It is unsurprising that the nature of the focus group method particularly resonates with social constructionist approaches (Crossley, 2002), as this tool, through the combination of individual and collective views, connects those opinions with wider social, economic, cultural and political forces. Nevertheless, no recruitment process is perfect and conducting any focus group can be time consuming and requires forethought and skill (Peek & Fothergill, 2009). While constructing the recruitment strategy for this research the approach proposed by Peek and Fothergill was applied (see below). As a consequence all the focus group participants were selected by means of non-probability convenience sampling, and the overall strategy consisted of one or a combination of more than one of the techniques discussed below.

Recruitment mode	Characteristics
<i>Researcher-driven recruitment</i>	The researcher solely (or almost solely) recruits research participants (through telephone calls, emails, letters, study leaflets, or personal contacts) and schedules the group discussion time and location.
<i>Key informant recruitment</i>	Key informants or other individuals with strong connections to the relevant community support the research effort and assist with participant recruitment. Key informants are often vital to the success of the research project, as without their support, recruiting participants for the study would be much more difficult, or even impossible.
<i>Spontaneous recruitment</i>	At times, focus groups may be unplanned and occur somewhat ‘naturally’ as a result of several individuals offering to be interviewed at once. This is called ‘spontaneous recruitment’. It is

especially likely to occur in settings where friends and colleagues move in and out of public spaces where interviews may occur.

Source: Adapted from Peek & Fothergill (2009)

Due to the fact that the recruitment strategy in rural and urban settings varied, the account of the recruitment stage in these locations will be discussed separately.

4.1. Recruitment strategy in rural settings

It is important to acknowledge the degree to which researchers share certain characteristics (gender, socio-economic status, age etc.) with study participants as this can influence the recruitment of participants, interactions and content of interviews (see Kitinger, 1994; Smithson, 2000). All of these characteristics played a role in my field research and could have influenced the recruitment process as well as the quality of data collected. Despite the fact that a major part of the Polish senior military, government and intellectuals had moved to England in the early 1940s, there is a more prominent and well-established stereotype in Poland about the Poles who live and work in the United Kingdom that they mostly work as kitchen porters (commonly referred to in Polish as '*na zmywaku*') or builders. While it is difficult to describe the impact of this factor, it was clear that the status of a doctoral researcher came as surprise to many of the people that were approached during the recruitment stage. Similar to Kempny (2012) who conducted an ethnographic study with Polish people living in Belfast, I explained my work experience (as a research assistant and court interpreter) during the recruitment stage, as this information strengthened my position as a mature and trustworthy adult, and helped to gain respect and trust among potential study participants.

In order to maximise the number of people included in the study and ensure optimum participation, the recruitment strategy comprised of impersonal and personal techniques. Small study posters were circulated at various public locations such as town halls and community centres in order to advertise the research and make it visible to local villagers (see Appendix I). It was decided against recruiting research participants solely through advertisements in public locations as other studies have proven its inefficiency (see McCormack et al. 2012). For this reason, frequent conversations about this PhD research

took place at various locations and times: churches before Mass began, community centres and on various occasions with village administrators³⁷/gatekeepers, while going for a walk or bike ride etc. As in Kempny’s study (2012) using the ‘baby talk’ strategy, to gain trust among Polish women, also proved to be successful in this research. Overall these strategies proved to be very beneficial even in recruiting young and male focus group participants – the groups of people that were the most difficult to recruit in rural settings.

Although a number of people expressed interest in taking part in my research, they were still quite suspicious about its purpose. The main reasons for this was their unfamiliarity with participation in general (and with qualitative interviews in particular), and suspicion of sharing, and having recorded, one’s thoughts in a group discussion. Nonetheless, there were several techniques that helped to gain participants’ trust. The assistance of two relevant village administrators was very helpful at the recruitment phase. While introducing the topic of the study, it was meticulously explained that this was neither about recruiting experts in the field nor offenders/victims themselves. The final sample of rural focus group participants comprised of 20 people.

Drawing on Peek and Fothergill’s (2009) typology, the recruitment strategy adopted in the rural area was predominantly researcher-driven and the table below demonstrates the adopted recruitment mode in rural settings in more detail.

Group	Focus group abbreviation	Extension	Recruitment mode
1	FG R Y	Focus Group Rural Young	researcher-driven recruitment key informant recruitment
2	FG R W	Focus Group Rural Women	researcher-driven recruitment
3	FG R M	Focus Group Rural Men	researcher-driven recruitment key-informant recruitment
4	FG R S	Focus Group Rural Senior	researcher-driven recruitment

4.2. Recruitment strategy in urban settings

³⁷ Village administrator – an elected head of a village (Polish original: *soltys*).

Initially it was planned to recruit the urban focus group participants solely in one large city due to my familiarity with the location and reliance on existing social and organizational relationships. At the beginning a similar recruitment strategy to the rural area was adopted, and the quick process of finding young participants (through a study information letter circulated at W universities) was successful. Although it was anticipated that university settings would be more accessible in terms of recruitment strategies, it has to be acknowledged that this group comprised of very well-educated and relatively open minded participants, living in a vibrant and stimulating environment.

In order to recruit older focus group participants various universities of the Third Age and community centres for senior people were contacted. For the female-only and male-only focus groups contact was made with different companies, organizations and public institutions. Despite the support and assistance from relevant gatekeepers and key informants (such as my previous university lecturers, journalists, NGO advocates) I was unable to establish the remaining focus groups. Although a date and time was set for a senior-only group discussion at one of the universities of the Third Age, none of the people who had previously agreed turned up on the day of the discussion. In terms of male and female-only groups, the prevailing reasons given were lack of time, being a little suspicious of me approaching people at their workplace and the unfamiliarity with the method of group discussion. A couple of times the following remark was made: '*Why don't you just give us a questionnaire to fill in?*' In one of the companies where attempts were made to recruit male participants, one manager agreed to take part along with four other colleagues, but this had to be organised in another city, L, as he was going to be seconded for a few months to work there. The group was supposed to consist of five participants but only two of those who initially consented to take part attended on the day. On one hand, this suggests that people found it difficult to commit time to participate in research as well as unfamiliarity with qualitative methods of data collection. On the other hand, this also illustrates a legacy of living in a closed, suspicious society where one does not speak too freely to outsiders.

In the meantime the recruitment activity was spread to another city (G W). While advertising the study in one of the local universities, a faculty administrator suggested organizing a female-only group through inviting her friends and neighbours. On the day of the focus group, after the group discussion with women, two men (both husbands of female

participants), came to pick them up. They became interested in the research through their partners' experience and offered to take part. It was also one of the situations that proved men needed more information than women in order to participate in the study. Drawing on Peek and Fothergill's (2009) recruitment typology this group discussion was classified as a very much spontaneously-organized small male-only focus group (two participants).

Due to the fact that my fieldwork took place during the summer and people in Poland spend much of their spare time in the countryside, in terms of the focus group with senior urban participants it was decided to recruit those at a holiday resort near G W. Again through a gatekeeper, a person who was in charge of entertainment activities at the resort three couples from G W aged over 65 were recruited. However, this also did not go according to the initial plan. On the day of the group discussion one of the participants did not feel well, therefore one couple asked to be interviewed separately at their house. As a result there were six group discussions conducted in urban settings.

The literature indicates that quite often focus groups are difficult to arrange due to a number of people withdrawing at short notice (Crossley, 2002). There are a number of possible explanations as to the difficulties encountered in urban settings. Firstly, it could have been that people living in the cities are 'busier' and such research participation was perceived as a 'waste of time'. Secondly, it might have been the consequence of the position of a well-educated (home and abroad) woman that limited the chances of more successful recruitment. Similar observations were recognized by Alcalde (2007) who conducted qualitative fieldwork in Lima, Peru after years of living and studying in the United States. Lee (2001) argued that in the indigenous fieldwork type it is common to observe that researchers can feel distant from the study setting due to their education and metropolitan ways acquired in another country. Finally, Wüstenberg's (2008) argued that 'native researchers' may hold the belief that shared characteristics like the language or nationality are sufficient to successful participant recruitment. I had appreciated the recruitment difficulties in urban settings and I tried to remedy my approach in my 2015 visit. For instance additional time was invested to discuss the purpose of the research, with male participants in particular.

Taking all the issues into account, the urban recruitment strategy was essentially key informant-driven and the final sample of urban focus group participants included 21 people.

The table below summarises the implemented recruitment strategies in urban settings.

Group	Focus group abbreviation	Expansion	Recruitment mode
5	FG U Y	Focus Group Young	researcher-driven recruitment key informant recruitment
6	FG U W	Focus Group Women	key informant recruitment
7	FG U M GW	Focus Group Men	spontaneous recruitment
8	FG U M L	Focus Group Men	key informant recruitment
9	FG U S	Focus Group Senior	key informant recruitment researcher-driven recruitment
10	FG U S	Focus Group Senior	key informant recruitment researcher-driven recruitment

4.3. Focus group settings

Agar and MacDonald (1995) have argued that any situation that is planned and artificially set up and where interactions are to a certain extent induced and controlled should never be seen as natural. This resonates with the social constructionist approach as, although the knowledge that derives from the interactions is constructed, the synergy amongst participants remains non-natural (ibid.). The focus group method then becomes just as constructed as all other interactions.

Having considered this, it was important to make the study participants feel as welcomed and comfortable as possible. Although the topic of the study seemed to be interesting to study participants, they were asked to commit their time to the subject which was not a priority for them and no incentive was offered. The participants were given the option to decide about the venue as the purpose was to provide a familiar and secure setting and encourage open discussion. As a result all rural group discussions were carried out in public locations (community centres) whereas the urban focus groups were conducted in the participants' own homes or gardens (with the exception of the one with young participants that took place on university premises).

The focus group participants might be an already existing group or a group of people who have never met before (Överlien et al. 2005) and in this research there was a combination of possibilities but in the majority the focus group participants knew one another to a certain extent. In the literature on focus group research it is recommended to use already existing groups (Kitzinger, 1994). Although, it is difficult to state which setting generated a more participant-friendly environment, Kitzinger's argument was somewhat mirrored while conducting group discussions in urban settings. The recruitment process in these settings required more involvement of gatekeepers who invited participants from already existing circles of friends and neighbours. I observed that such settings had an impact on participants' greater well-being and openness. It is also worth adding that, apart from one focus group (female-only in rural settings); the researcher-participant relationship was mainly unfamiliar.

One of the frequently discussed problems with focus groups is the issue of 'dominant voices' in discussions, and the consequence that some group members may remain silent. Smithson (2000:108) argues that: 'it need not be viewed as a problem if some of the focus group remains silent throughout the time'. Although there was no participant who remained entirely silent throughout any of the discussions, there were a number of people who could have been categorized as 'semi-silent'. However, this issue should not be perceived as an obstacle, as suggested by Smithson (2000). Because the fieldwork also included the in-depth interviewing stage, a number of participants were provided with another opportunity to express their opinions and views. Nonetheless, it is equally interesting to ask oneself why people do not participate in a discussion or do not want to express their opinions, rather than just creating a different setting that would encourage the expression of opinions. Although the two methods were complementary and revealed similar views on the subject in question, the modes of expressing them were different. The group dynamic helped to elicit various subjects spontaneously, and construct collective understanding of the subject whereas the individual interviews contributed to understanding and tracking how personal views were formed and changed.

Although it was not the purpose of this investigation, it was interesting to observe how the focus group participants shifted between different modes of discussion, from representing their views as individuals without ever becoming a group to talking on behalf of the group (or

couple), as indicated by Hydén & Bülow (2003). Nevertheless, this observation had consequences for the quantification of the patterns that emerged during data collection. During the process of data analysis, the frequencies of themes that occurred during fieldwork were manually calculated in order to systemize the conclusions from qualitative data. Thus, in the empirical chapters that follow, every time an overall number of participants is mentioned it refers to both focus group participants and interviewees (each person counted once). This indicates that individuals even in group discussions were classified as representing their own views. Notwithstanding, when referring separately to focus groups and interviewees, this will indicate that a certain pattern was discussed by all focus group participants (representing a group perspective on the subject) and then it was mentioned individually during one-to-one interviews.

The table below summarizes the main characteristics as far as group discussions are concerned.

Group	Focus group abbreviation	Relation researcher-participants (R-P)	Relation among participants (P-P)	FG location
1	FG R W	familiar	mixed	public/community centre
2	FG R Y	unfamiliar	familiar	public/community centre
3	FG R M	semi-familiar	familiar	public/community centre
4	FG R S	semi-familiar	semi-familiar	public/community centre
5	FG U Y	unfamiliar	familiar	public/university
6	FG U W	unfamiliar	semi-familiar	private
7	FG U M GW	unfamiliar	familiar	private
8	FG U M Ł	semi-familiar	familiar	private
9	FG U S	semi-familiar	familiar	private
10	FG U S	unfamiliar	familiar	private

4.4. Group composition

Each group was created in order to share two out of three of the following characteristics: location (rural/urban), gender (female/male), age range (18-24, 25-64, 65 and over). In each setting two separate groups of young and older participants (unisex) and two groups of female and male participants only (mixed age) were conducted. The final sample of focus group participants consisted of 18 men and 23 women.

	<i>Female</i>	<i>Male</i>
<i>Rural</i>	10	10
<i>Urban</i>	13	8

Although the recommended size of focus groups varies from four/six to eight/twelve individuals (Stewart & Shamdasani, 1990, Wilkinson 2008), the number of participants in this research varied between two and seven. The number of participants in these two mini focus groups was determined by the intrinsic nature of qualitative research and the fact that the number of participants changes in the field. This echoes Lee-Treweek & Linkogle's observation (2000) that dealing with the unexpected is a constant feature of qualitative research. Therefore, even the groups that comprised of only two people should be seen as an aggregation of individuals that share some social features or experiences (Hydén & Bülow, 2003). See the table below for more detailed information on group composition.

Group	Focus Group Abbreviation	Gender	Age	No Participants	No shows	Shared characteristic
1	FG R W	6 female	33, 39, 45, 61, 61, 71	6	0	gender, location
2	FG R Y	1 female 3 male	18, 18, 20, 22	4	2	age, location
3	FG R M	5 male	37, 43, 51, 53, 56	5	1	gender, location

4	FG R S	2 male 3 female	65, 65, 67, 70, 70,	5	1	age, location
5	FG U Y	3 female 1 male	19, 20, 20, 23	4	2	age, location
6	FG U W	7 female	37, 39, 54, 57, 59, 60, 61,	7	0	gender, location
7	FG U M GW	2 male	63, 64	2	0	gender, location
8	FG U M L	2 male	33,36	2	3	gender, location
9	FG U S	2 female 2 male	65, 66, 67, 69	4	0	age, location
10	FG U S2	1 female 1 male	65, 69	2	0	age, location

The key characteristics of all ten focus groups convened for this study are summarized in Appendix XII. In terms of educational background the majority of focus group participants had completed secondary school (14), or university level study (13). The remaining participants had completed vocational (9) or primary (5) education. There was almost equal number of focus group participants who were married (15) and single (14). The remaining participants were either divorced (6) widowed (4) or separated (2).

4.5. Focus group discussions

At the beginning of each session, it was explained to the participants that the purpose of their participation was to find out what they thought and felt about a number of issues relating to punishment and justice. The participants were also told about the procedure of the study; that they were allowed to discontinue their participation at any time during the group session, and that their participation was voluntary. They were also told that the data would be confidential and that it was important that the group participants did not reveal the content of the discussion to others outside of the group. I observed that the fact that the thesis and study findings were said to be disseminated in the English language, strengthened the feeling of confidentiality and anonymity among participants.

It was emphasized particularly that the purpose of the discussions was not to examine, judge or evaluate any participant (or their families) and that there was no right or wrong views. Moreover it was explained in great detail the purpose of recording the discussions and the participants were reassured that no one would access the recordings. Informed consent was obtained from each participant in writing (see Appendix II).

A semi-structured focus group interview guide was used during the first phase of the fieldwork (see Appendix III for the development of focus group questions and interview guide). The focus group schedule consisted of three parts and was inspired by questions previously asked in Polish and other studies (see for example Pranis & Umbreit 1992; Roberts & Hough, 2005; Szymanowska, 2008) and modelled into a qualitative format to elicit in-depth discussions. Although it is another example of how difficult it is to ‘escape’ from the dominant quantitative stance in this field, it was helpful to familiarise oneself with the mode of asking questions by other scholars on similar subjects.

5. In-depth interviews

Focus groups are particularly useful when combined with other methods (Morgan, 1988; Tonkiss, 2004). Moreover, Roberts & Hough (2005:24) have acknowledged that focus groups allow researchers to ‘explore the general environment’ before deciding on specific questions. In consequence of this argument, my fieldwork was split into two phases: focus and in-depth interviews. Although both tools enabled participants to have a voice on a range of topics that revealed their opinions, experiences and interpretations, one needs to be reminded that an individual might still not express views in private that s/he would be loath to offer before others in public.

Based on particular themes that emanated from focus group discussions, the purpose of subsequent in-depth interviews with focus group members and a number of non-focus group interviewees was to explore individual narratives. In-depth interviews aimed to delve into the subject from the individual participant’s point of view and to elaborate on as well as uncover what could have been hidden during the focus group discussions. It was believed that through one to one conversations the study can be enriched by individual accounts of people’s views which quite frequently may be restrained or silenced by focus group dynamics (Belzile & Öberg, 2012).

Qualitative interviews provide a multi-understanding of the studied topic as the ‘deeper self’ produces interesting data (Johnson, 2002). Moreover, in-depth interviewing has the potential

to bring to light the complexity of the studied phenomenon and explore the perspective and avenues that provide wider explanations (Marvasti, 2004). These explanations could be elicited due to the extemporaneous character of the method which allowed for design flexibility, new themes to be generated and follow-up questions asked when there was a need to explore them further (Creswell, 2003; Roberts et al. 2005).

5.1. Accessing and selecting one-to-one interviewees

Once the focus groups were conducted and in-depth interview schedule designed, the phase of gathering personal accounts through face-to-face interviews commenced. In terms of interview arrangements this was less problematic than with focus groups. The sample size for the second stage of the fieldwork using in depth interviews consisted of focus group participants and other community members who did not take part in the first phase of the study. In total, out of 41 focus group participants 34 consented to be interviewed at a later stage. Of those who initially consented to take part in the second stage of the fieldwork, 27 focus group participants were eventually interviewed. The fact that this second phase of the fieldwork took place in summer could have had an impact on interviewees' availability. The additional ten interviewees were recruited through the same gatekeepers as the main part of the fieldwork. Furthermore, people could have initially agreed to take part in the second stage of the research due to peer pressure or to meet my expectations to see them again; however, one of the reasons why they withdrew later was that they had no more to contribute. The non-FG interviewees represented 14 interviews. The sampling technique comprised of using the already given contact details by the focus group participants as well as adopting snowball sampling to arrange interviews with new participants. In order to recruit the latter, interviewees or informants (e.g. village administrators, gatekeepers in urban settings) were asked whether they could refer other people who could potentially contribute to the study. Anyone who at the beginning of the fieldwork wanted to take part in the study but was not willing to participate in a group discussion was also contacted at this stage.

The overall sample size for this phase of the study was determined on the basis of theoretical saturation (see Glaser & Strauss, 1967: 61-63) where new data no longer brought additional insights to the research questions. The exact same number of focus group participants and interviewees in the final study sample is a coincidence.

In-depth interviews (n= 41)

	<i>Female</i>		<i>Male</i>	
	<i>FG</i>	<i>Non-FG</i>	<i>FG</i>	<i>Non-FG</i>
<i>Rural</i>	8	5	5	3
<i>Urban</i>	9	2	5	4

Additional interviewees (recruited specifically because of their experience of the Polish criminal justice system) came from the same areas and with the help of the same key informants as during the main fieldwork. None of these interviewees had experience of group discussion and all were recruited on the basis of their contact with the Polish police or criminal justice system agency. The origins and gender of the interviewees are depicted in the table below.

Additional interviews (n=10)

	<i>Female</i>		<i>Male</i>	
	<i>FG</i>	<i>Non-FG</i>	<i>FG</i>	<i>Non-FG</i>
<i>Rural</i>		1		4
<i>Urban</i>		2		3

While recruiting the additional interviewees no differentiation between victims and offenders was made. Their experience of the criminal justice system varied significantly, from those who came into contact with the police as victims of low-value theft to one who served a long term prison sentence under the communist regime. See Appendix VII for further details.

5.2. Face to face meetings

As with focus group settings, location and time of the interviews was left to the interviewees. As a result all interviews were conducted in the interviewees' preferred locations (own homes, workplaces, coffee shops, community centres, libraries). The average length of the interview was approximately 40 minutes and each interview was recorded. Similarly to the focus group procedure, at the beginning of each interview, the purpose of the meeting, anonymity and confidentiality issues were explained. At this stage informed consent was

obtained in writing from the new interviewees. One of the observations was that the focus group interviewees would frequently refer to what they had said in group discussions (even quoted the same examples). While the new urban-based interviews comprised mainly of stories full of views and opinions with only a few questions needed to be asked to elaborate on certain issues. Moreover, the interviewees were again informed that the research was being conducted at an English university, and the final thesis would be produced in English. As in the focus groups, the new interviewees found this fact reassuring. The reason for this could be twofold. Firstly, people may have thought that their comments, although anonymised, when translated into a different language would strengthen the anonymity and confidentiality of the research process. Similar logic was observable when participants were expressing unfavourable, punitive views (e.g. support for the police using violence) and when some of them would lower their voices and whisper, as they believed that by doing so it will not be picked up by the digital recorder. The other reason for viewing the Englishness of the research as an advantage could have been the belief that if the project or idea came from the West (or a Western university) it must be more legitimate and serious, and even be prestigious to take part in.

The in-depth interview schedule (see Appendix IV & VIII) was semi-structured and generated from the themes that emerged in focus groups. The in-depth interview questions were still iterative but more broadly framed. The rationale behind this approach was once again to give the interviewees space to freely express their views but this time at the individual level. Some focus group interviewees, mostly men, said they felt like they were repeating themselves and did not feel that at this stage their comments would contribute further to the study.

At the time of the fieldwork, and in-depth interview stage in particular, I expected to conduct extensive interviews. However, the majority of the interviews were rather short and 'to-the-point' and on a number of occasions I was even asked to 'be brief'. This happened even with well-educated urban participants and interviewees who had a significant criminal history. In consequence the average length of an interview was approximately 40 minutes. A similar problem was reported by Ronnen (2011) in her study on how individuals engage in peaceful dispute resolution in Israel, a country labelled by sociologists as a conflict society. She illustrates how translation from Hebrew into English misses a range of characteristics for the

Israeli society gestures, such as extensive use of facial expressions, and intonation, possible and impossible tones. In relation to this research perhaps for Poles ‘talking’ or ‘discussing’ things is not something they are particularly familiar with. The fact that study data produced short and concise answers might have been the consequence of years of censorship, limited freedom of speech under the communist rule and poor history of qualitative studies in the field. Nevertheless, on two occasions participants said that the interviews were somewhat liberating for them. One comment in particular greatly summarizes how these study participants reflected on themselves as discussants: a female participant said at the end of her interview *‘I didn’t know I had opinions myself’*.

6. Post-fieldwork observations

Each study participant was asked to fill in a brief demographic questionnaire. Although this mainly helped to describe study participants’ characteristics, an interesting observation emerged during data analysis. Given that the population in Poland is predominantly Roman Catholic and religion is a central aspect of the lives of many Polish people, I considered the religion factor while analyzing peoples’ views on crime and sanctions. All rural dwellers indicated their religion as Catholicism, whereas in the urban settings a number of interviewees did not want to declare their religion with one interviewee presenting themselves as an atheist. However, the religious aspect remained overwhelmingly salient in participants’ accounts, and I shall elaborate on this finding in my final chapter.

It was interesting to observe how my perception as a researcher varied across the group and individual interviews and how these perceptions were determined by the age, gender and profession. Older participants looked at me as a young inexperienced student who should be advised by them about certain ‘tacit’ knowledge or wisdom I was looking for. Some of their comments reminded me of conversations that grandparents would have with their grandchildren. The young participants perceived me as someone senior from a university and interactions with them were more of a teacher-student nature. Their opinions were vaguer and less experience-based and aimed more at meeting my expectations rather than expressing their well and deeply considered views. For example, the issue of drug offences in the villages was hotly debated at the time of the fieldwork, thus my presence and research could have been seen as a mode to find out who was taking and dealing drugs. Furthermore,

discussions and conversations with male participants caused certain discomfort that turned problematic at times. Rural-male dwellers would frequently make sexist comments and stressed the fact that I am a female. For example one of them suggested at some point terminating the group discussion and 'going for a walk'. Perhaps my gender could have been an obstacle while gaining their consent and then arranging one-to-one interviews in particular. It can be assumed that as long as they felt comfortable to participate in a group discussion run by a woman, there was more 'tension' and hesitation to meet face-to-face. As this type of research was unknown to them, they could have perceived such an encounter as a 'date'. When one of them agreed to be interviewed at his home, we were quickly accompanied by his wife who stayed till the end of the interview. With another one, the interviewee's wife left their son in the room, who later reported to his mum what we were talking about. All this could have influenced the recruitment process, but also limited the full value of qualitative interviewing.

There are a number of observations that make leaving a 'home fieldwork' an interesting research process as well. Although conducting a 'native fieldwork' may feel like researching well-known norms and opinions, it can still be somewhat of an unknown territory for the researcher. Due to the qualitative orientation of this study certain views, such as the intensity and frequency of suggesting for example work as a sanction, surprised me. In terms of the familiarity with culture as benefit, it was surprising to observe how the subject of alcohol is deeply present in the daily lives of many Poles. Although Wüstenberg (2008) describes one of the risks of 'native fieldwork' as looking at things that seem to be obvious to us and thus influence data elicitation and analysis, the role of alcohol in Polish society is reported in one of the substantive chapters (see Chapter 4 & 5). Although the purpose of this field research was to gather people's perspectives on crime and sanctions, insofar as these views reflected on the restorative approaches to justice, the final realization of how complex and multi-dimensional peoples' attitudes are, was overwhelming. This might be another consequence of the dominance of quantitative studies and the fact that quantitative data is devoid of these cultural nuances, socio-economic contexts, which may cause the impression among the readership that these factors are non-existent. If one creates a space for open questions, the complexity of these attitudes is greatly exposed, and the scarce qualitative research in the field does not acknowledge the complexity of the attitudes well enough.

As noted by Wüstenberg (2008) familiarity with the studied society, may cause the researcher to identify with the group and overly engage emotionally. This argument reflects one of my fieldwork diary entries that summarized dealing with the '*uncomfortable findings*'. Having a strong interest in human rights and justice issues it was difficult, for example, to hear a comment praising Hitler for creating gas chambers or approaching victim-offender mediation as a business-like encounter.

7. Ethical issues

The nature of qualitative interviewing means that participants will be discussing various experiences, also those of being victims of crime. In such situations extra measures should be taken to ensure participants are comfortable to continue with the interview and they are not subjected to increased risk of physical or psychological harm through taking part in the study. Apart from minor crimes like theft, criminal damage, motoring offences, there were no severe cases of such experience in this research. And throughout the fieldwork process the primary consideration was to ensure the dignity, rights, safety and wellbeing of all participants.

Participants' identities were anonymised. Therefore, no individual participant will be identified in the thesis or any other publication. The electronic research data and primary research materials are being stored on password-protected computers and hardcopies are being held in lockable filing cabinets. A brief letter with the results of the project will be mailed to all participants after the completion of Ph.D. Throughout the research process the Statement of Ethical Practice for the British Sociological Association³⁸ was followed.

Nonetheless, on one occasion a serious ethical risk was encountered. It was at the in-depth interviewing stage when I arrived at the previously agreed time and location (private accommodation). Upon arrival the interviewee acted strangely and her speech was slurred. At the beginning the cause of this behaviour was not clear, therefore, the interview went ahead as arranged. However, during the course of the conversation alcohol could be smelled on the interviewee's breath. At some point the interviewee started to be irritated by some of the interview questions and verbally abusive. She said 'silly' questions were being asked by an

38 See: http://www.britisoc.co.uk/about/equality/statement-of-ethical-practice.aspx#_rela

inexperienced 'student'. After a few such remarks I terminated the interview. Facing a drunk interviewee caused a reaction that ranged from initial shock to confusion, which was in line with Van Ginkel's (1998, cited in Kempny, 2012) observation that native researchers are unlikely to experience culture shock, however, they might experience the 'subcultural' one.

8. Analysis and Interpretation

8.1. Coding

Qualitative analysis aims to structure findings by means of using a thematic approach which is based on identifying, highlighting and describing themes that emerge from the data (see Strauss & Corbin, 1998). The group and one-to-one interviews were audio recorded and then transcribed from audio recordings. The transcription process consisted of two stages. The aim of the first cycle transcription was to transcribe the text whereas the purpose of the second cycle transcription was to capture things like emotions, behaviours, pauses etc. (see Appendix VI for transcription conventions). The analytical process was divided into two parts. As I transcribed all the interviews myself the transcription stage was considered as a time when a general feel of the fieldwork data was gained and when first general ideas about the data developed. Each transcript was analysed separately where each datum was assigned a code. Therefore systematic data analyses were achieved by manually developing a codebook (see Appendix V).

There are two types of coding process— a priori and a posteriori categorisation of data. A priori coding involves the use of preconceived theories and concepts in order to derive codes, whereas a posteriori coding is based on codes from the data (Sinkovics et al. 2005). This study codebook emerged solely inductively from the fieldwork data that helped to formulate the main concepts and themes of this thesis. The coding process was conducted without the use of computer software. When a number of robust themes emerged it was important to connect them and generate 'a storyline' (Creswell 2009), and this was carried out manually in my study. In doing so, each chapter of the thesis is based on a number of themes that aim to contribute to the story. The purpose of the storyline is to respond to research questions, to examine a new level of complexity but also challenge and raise new questions that may

contribute to the field in the future.

8.2. Translation

It is equally important to discuss the task of translation in this research and its role in the analytical process. Temple & Young (2004) rightly note that the discussion around the act of translation has been neglected in cross-cultural social science research. The authors give example of studies on minority ethnic communities in the UK that rarely include reference to any language issues that can give the impression that there were none and interviews were conducted solely in the English language. Inspired by her own sociological study on Chinese state-owned enterprise where translation process occurred, Eyraud (2001:279) observed that language represents a particular social reality and linguistic labels organize peoples' constructions of those culturally-dependent concepts and experiences that are obvious outcomes of historical processes, shaped by broad socio-economic and political factors. Therefore, the translation process requires not only linguistic but also cultural skills to provide meaningful bilingual interpretations. Furthermore, on a cognitive level, in recent years there has been growing evidence that the mother tongue influences people's perceptions of the world (see Lera Boroditsky's publications). According to Wilson (2001) translation processes are differently situated in quantitative and qualitative research. While discussing issues in relation to social policy data he argues that quantitative studies take for granted the meaning of concepts across societies and the importance of translation is forgotten, whereas qualitative research accommodates the possibilities of acknowledging that there are words or concepts that cannot be easily translated.

Although I am a qualified interpreter, the quality of the excerpts translation was consulted with another bilingual (Polish/English) UK-based interpreter/translator. As illustrated in Chapter 1 and 2 this research considers highly culture-laden concepts that have been shaped by history, culture, socio-economic and political forces. My court interpreting experience gave me the opportunity to become involved in the intrinsic dilemmas of translated worlds and the problematic nature of meanings in various languages and I paid special attention to the translation dilemmas in the research process.

In conclusion

The chapter has detailed the rationale for a qualitative investigation and presented the chosen research methods. It has described how this study was approached practically and this includes recruitment strategy and data collection for both focus groups as the first and in-depth interviews as the second phase of the main fieldwork. Furthermore, it was explained how the findings could have been affected by the mode of study as well the challenges that were faced while conducting the fieldwork. Given limited resources and the nature of this study, I shall reiterate the main methodological claim. This research is an exploratory study which cannot claim to have done more than raise some interesting questions about punishment and justice in the Polish context - which is the task of the following substantive chapters.

Chapter IV

Understandings of Justice

This is the first of three empirical chapters that will inform the arguments made in the thesis. It analyses participants' views on the police and criminal justice system in Poland in order to explore their understandings of the administration of justice. Justice processes have their own existing legal, organisational and professional culture and constraints that happen in a specific socio-economic and political context. Friedman (1989) has offered to explore the mind set of lay people who interact directly and indirectly with legal institutions through the concept of popular legal justice. According to Friedman there is a reciprocal relationship between popular culture (which consists of so-called lay consumers) and legal systems, because law is shaped by the culture in which it occurs and shapes people's understandings of justice. Friedman (1989) has emphasized that legal systems are built and flow out of the same societies that produce and sustain popular cultures. However, it appears that modern criminal justice flows from the practices of the small social worlds of policy-makers, practitioners and politicians whose links with popular legal culture are often obscure and complex. In attempting to understand participants' views on the criminal justice and the police (or in other words their legal culture), it is worth asking how these observations can then advance the discussion on restorative justice – as it is the criminal justice system (and the police) that remain the gatekeepers of restorative justice, not only in Poland, but in many other countries too.

Before I discuss the findings of my research I would like to refer to the claim made in the introductory chapter, which relates to the importance of people's experiences of the police and criminal justice system. Although the rationale behind this research has already been explained in this thesis, it is important to acknowledge that out of 65 participants who took part in this study, 40 had come into contact with the police and 21 had appeared in court as victims, witnesses or defendants (see Appendix IX for further information).

1. Views of the Polish police

The police are the most noticeable and visible institution in a justice system (Hough et al. 2010). In order to interpret study participants' attitudes towards the Polish police, this part of the thesis will significantly draw on Reiner and Loader's sociological framework that relates to the social meanings of policing. Although lay people may encounter police officers more frequently than any other criminal justice branches, Loader (1997) has argued that the police are not just an instrument of social control; the police are a social institution comprising cultural mentalities and sensibilities. Not all policing lies within the ambit of the police, as the sources of order are located in the political economy and culture of societies, if not in the very diverse and diffuse operations of informal social control in particular (Merry, 1990; Reiner, 2000). In other words, people's views on policing can serve as an avenue to explore the condition of society they live in.

Participants were asked about their contact with police and criminal justice system at the interview stage of the study. In response to the following questions: *Have you ever been to a court? Have you had much contact with the police?* 22 study participants acknowledged having some type of routine police encounters, other than as an offender or victim. While the former did not trigger any comments about routine contacts with the criminal justice agencies, the latter revealed the type of contact with the Polish police and experience that it brought to the participant. Table 5: *Routine contacts with the Polish police* provides more detailed information in terms of interviewee characteristics, circumstances under which the contact took place, interviewee's experience with the contact as well as the type of police activity. Police work can be divided into two types, 'reactive' and 'proactive'. Reactive policing, which accounts for the majority of officers' time, are those activities that are initiated by lay people themselves (this includes calls for service or reports of crimes). Proactive activities are those that are initiated by the police officers, such as stop and search, patrols of crime hotspots, enquiries made by community police officers (see Black, 1971; Bayley, 1990). Anytime a routine contact with the police was acknowledged this was classified in terms of the outcome of the contact (positive *v.* negative experience) and who initiated the contact (interviewee *v.* police).

Table 5. Routine contacts with the Polish police

Interviewee code	Interviewee characteristics	Circumstances	Experience	Type of police work
P1	female, 71 years old, rural area	Traffic police	Positive	Proactive
P5	female, 33 years old, rural area	Traffic police	Positive	Proactive
P6	female, 45 years old, rural area	Community police	Negative	Proactive
P7	male, 18 years old, rural area	Traffic police	Negative	Proactive
P13	male, 37 years old, rural area	Traffic police	Positive	Proactive
P17	male, 65 years old, rural area	Patrol police	Negative	Proactive
P18	male, 70 years old, rural area	Community police (under communism)	Positive	Proactive
P19	female, 70 years old, rural area	Stop and search (under communism)	Negative	Proactive
P21	male, 23 years old, urban area	Traffic police	Positive	Proactive/ Reactive
P22	female, 20 years old, urban area	Community police	-	Proactive
P24	female, 19 years old, urban area	Community police	-	Proactive

P28	female, 60 years old, urban area	Stop and search (under communism)	Negative	Proactive
P30	female, 61 years old, urban area	Community police	Positive	Proactive/ Reactive
P31	female, 59 years old, urban area	Community police	Negative	Reactive
P32	male, 63 years old, urban area	Traffic police	Positive	Proactive
P35	male, 67 years old, urban area	Response police	Positive	Reactive
I47	male, 72 years old, urban area	Community police	Positive	Proactive
I49	male, 21 years old, urban area	Response team	Positive	Proactive
I50	male, 31 years old, urban area	Community police	Positive	Proactive
I53	female, 30 years old, urban area	Traffic police	Positive	Proactive
I54	male, 24 years old, urban area	Traffic police	Negative	Proactive/ Reactive
I55	female, 22 years old, urban are	Response team	Positive	Proactive

It is difficult to depict common themes about the nature of the contacts as participants' experiences varied regardless of their gender, age or location and the information given was scarce routine contacts with the police were simply 'acknowledged' by the interviewees without going into details about the circumstances. Most of these encounters were related to traffic offences (such as exceeding the speed limit or careless driving) or minor incidents involving responses on the part of community police officers (such as making enquiries in a neighbourhood or requiring to stop drinking alcohol in public places). Only on two occasions interviewees mentioned their routine contacts with the Police that were related to emergency incidents. Although interviewees' satisfaction with those encounters was rather non-reflective, their encounters were classified as either positive or negative. The literature suggests that the character and consequences of those encounters might shape people's attitudes towards the police as well as their willingness to cooperate with law enforcement agencies. Citizen-initiated contacts are more likely to be seen as supportive, on the other hand police-initiated encounters are more likely to be perceived as suspicious (see for example Hough et. al. 2002; Skogan, 2005). Contrary to the literature (see Black, 1971; Bayley, 1990) it was predominantly the proactive type of policing (police- rather than citizen-initiated encounter) that my participants experienced which may indicate certain unwillingness on the part of study participants to approach the Polish police first. This corroborates to a certain extent the study findings in relation to the dark figure of crime and lay people's unwillingness to report crime to the police in Poland (see Siemiaszko, 2009). Despite well-embedded legal provisions as well as widespread governmental and non-governmental activities to raise awareness about victims' rights, victims' willingness to cooperate with the criminal justice institutions has not improved. According to Siemiaszko and colleagues (2009) the dark figure of crime in Poland reaches 60%, even 70% in several provinces. Between 40 to 55% of respondents who took part in the 2009 Polish Crime Survey (*Polskie Badanie Przestępczości*) reported crime to the police, and apart from car theft that is reported to the police in approx. 86.6% of cases, it is fair to say that victims' willingness to report crime is exceptionally low in Poland. The most frequently given reason for such low crime reporting, 67% of respondents indicated issues with the police activity such as: low trust in the police ability to catch the offender (26%), low trust that the police would be interested in recording the case (20%), or that police procedures would last too long (16%).

1. 1 Nostalgia for the militia

One of the first characteristic features of participants' views on the Polish police was a nostalgic sentiment after the type of police (and policing) that functioned under socialism. There are three themes through which I explore this subject in greater depth: socialist community policing, a sense of security, and the use of force. The policing from the previous regime was to some extent romanticised in my participants' accounts, therefore this finding could be analysed along with Reiner's (2000) observation on policing as a general romantic symbol. Also it is the case that, because the past is now closed and settled, and because one survived it, it appears safer than the uncertain present. Despite the fact that policing has been undergoing a fundamental change in many countries, the police still stand as a romantic symbol of order and morality. Therefore, community policing is an oxymoron as the romantic perception of the police prevents people from acknowledging certain of inherent limitations of policing (Reiner, 2000:10). However, in the Polish context, this romantic perception of the previous form of policing is rather surprising due to its bad reputation in the past.

While discussing their views on the Polish police, seventeen study participants expressed a longing for the presence of a militia-like local community police officer³⁹ (*dzielnicowy*). Although the institution of *dzielnicowy* has remained in place over the years, people noticed a change in how the role is performed. The past image of such a policeman was of an officer who was known in the neighbourhood, was frequently deployed to conduct police patrols, (and was thus highly visible to local people), talked to ordinary people and was 'known by name'. The following excerpt from a focus group⁴⁰ with female participants in a rural area illustrates this point:

P2: I used to know who my local police officer was and now I don't (...)

P5: I remember how a few years back the police would come to my dad to talk because he was a village representative.

P4: It was the same when my grandad and uncle were village representatives, they [the police] would constantly come, first it was XY, then YZ and also ZX, they would come so often, write reports and check whether everything was fine ...

P6: They knew people!

³⁹ Also translated as a local patrolman (see Ivkovic and Haberfeld, 2000).

⁴⁰ The quotation comes from a discussion between a number of women from different walks of life: P1 (71, widow, retired florist), P2 (61, married, housewife), P3 (61, widow, retired chef), P4 (39, divorced, unemployed), (P5 (33, married, cashier), P6 (45, divorced).

P4: They knew people. They knew village representatives and the village problems.

P2: Sometimes they would come every week (...)

P5: When we went to ZZ we saw a police foot patrol and my son was surprised that they were walking like that. A police foot patrol used to be more common, but now it is different.

P4: Now you won't see them, usually they are in a car.

[FGRW]

Unsurprisingly, the tendency to view the Polish police nostalgically was more present among the senior study participants. Similar findings were reported in Mawby's cross-national mixed method study with burglary victims in six cities and four countries⁴¹ at the beginning of the transformation period in 1993/1994 (Mawby et al. 1997). The authors observed certain nostalgic views in the narratives of a number of victims who interpreted the work of the previous police as more efficient, and also perceived crime to be under control.

However, it is important at this stage to explore the purpose of foot patrols further. Historically, the significance of a simple police presence on the streets has been greatly exaggerated. For instance, the Metropolitan forces were most effective against crime indirectly as argued by Durston (2001) in his thesis *Criminal and constable: the impact of policing reform on crime in nineteenth century London*. Policing in the form of foot patrols was also discussed in Banton's classic scholarly work on policing *The Policemen in the Community* (1964). Banton based his understandings of policing on a qualitative study with police officers conducted in Scotland and the United States in the 1960s. One of the main observations was that peace-keeping in the form of foot patrols was the primary police task for the police officers at the time. One of the study conclusions was that crime control lies at the peripheries of policing, and that the actual policing lies within informal processes and sources of social control. In the context of the Polish socialist past, it is the 'policing the politics'⁴² that is most relevant when it comes to reflecting on the nature of foot patrols and other social initiatives that were routinely infiltrated. The role of the police under the communist regime was to enforce obedience to the state. The socialist militia under the communist regime maintained a Soviet-style functioning and performed actions of social and political control that aimed at serving the needs of the party rather than communities (Mawby

⁴¹ The following countries were included in the research: England (Salford, Plymouth), Germany (Mönchengladbach), Poland (Warsaw, Lublin) and Hungary (Miskolc).

⁴² It is a reversed observation by Marx (1974) 'the politics of policing'.

et al. 1997). The nature of policing at the time was based on secret police and militia as well as an extended network of informants. Uildriks and Van Reenen (2003), in their very informative book *Policing Post-Communist Societies*, noticed that part of the undercover work of the militia was not crime prevention or maintenance of social order as such, but the prevention of the development of political dissidents. They argued that in spite of frequent and close contact between the militia and lay people, the intention of maintaining such close relationships was to prevent the risk of political opposition to the state and to the socialist party. This argument is interestingly echoed in the above quote, where one of the discussants confirmed how police officers, without any specific reason, frequently visited her grandfather, who was a village representative at the time.

The confidence in ‘the police that were seen as closer to ordinary people’ was interwoven with another perceived advantage of the old system – people’s personal sense of security. Although this sense of security, articulated by sixteen study participants, was often maintained by the militia through fear and the use of force, this finding also echoes the nostalgia for socialism. The following excerpt, which comes from a group discussion⁴³ with senior participants in an urban area, illustrates this point:

P36: Under Komuna or the time of real socialism, or the previous era, in any case the time we complain a lot about, I think that people felt more confident when they were going out. The law was a bit different, even an ORMO officer⁴⁴ ...//

P34: We didn’t have any contact with the outside world

P36: There was a saying ‘ORMO on alert, state militia on our tail, everybody else on remand’

P34: But P36 you didn’t have any contact with the outside world ...//

P35: Actually P34 did

P36: Not at all! I didn’t!

[laugh]

P34: No thug from the East or somewhere else would now make it here

P35: Bulgaria and the Golden Sands [laugh]

P34: An ordinary Pole wouldn’t go anywhere

(...)

P36: Half a year and you could get a passport

⁴³ The composition of this focus group was as follows: P34 (65, female, married to P35, mathematician), P35 (67, male, married to P34, retired sociologist), P36 (69, male, married to P37, retired manager), and P37 (66, female, married to P36, retired chef).

⁴⁴ ORMO (transl. Volunteer Reserve Militia) – a paramilitary unit of the police forces in operation under the communist regime.

P34: Don't say it like that, it was only the elite who would get it

(...)

P34: Our children are in New York now, before it would be unthinkable

(...)

AM: Can I return to what P36 said at the beginning that people felt more confident. What did you mean by that?

P36: I meant they were more secure, because there weren't such you know, unless it wasn't all official ... but you weren't bothered on the street

P35: P37 can you tell how many rowdies you can see when you go out?

P37: Yes, yes, it wasn't like that before

P36: Rowdies, baldies it's turning into a tragedy!

P34: We all lived the same life. There wasn't such freedom, there was greater pacification of society. And this is it. Everyone would get by in the same way. People didn't go abroad, and now the world is wide open ...

P35: And you know what I remember? The role of a local police officer, he simply talked to people, he knew where they had fights ...//

P37: Yes and he knew his own ...

P35: They knew that they can turn to him, and when something was happening he knew where

P37: Yes he knew immediately and now no way! Absolutely!

[FGUS]

At first glance, the quotation demonstrates how in participants' eyes the socialist militia was something more than a repressive state apparatus as they showed the knowledge of different police activities at the time (see Chapter 2). Presumably the police under communism performed many of the same functions as the police under post-communism. However, there is an interesting background to this observation. The exchange of views between P36 and P34 demonstrates the perceived benefits and disadvantages of the socialist regime. The female frequently challenged P36 (and his argument on the sense of security under socialism) and reminded other group discussants about the lack of free media coverage, or limited opportunities to travel abroad. However, she then said that 'we all lived the same life' which also refers to the perceived sense of equality under socialism.

Another component of the nostalgic militia account was the use of force and the support for its continuation by the Polish police nowadays. This view was elaborated on by six participants and the following example comes from an interview with a male former

professional who provided further insights into the responsibilities of militia officers and contextualized his support for the use of force using his experiences from the United States:

AM: And what is your opinion on the Polish police?

The police nowadays are ... well there are two types of police. The first one is the one that is scared; the contemporary police know that there are consequences for the misapplication of law. Let me give you an example of the use of weapons. Yes. If you don't use any weapon you are doomed because your offender runs away. If you use a weapon, and if this somehow turns into some fatal incident, you can be liable to prosecution. Although you might say that it was in good faith, somehow you can be found guilty. On the other hand, what I think after all, I'm not a fan of the American legal system, the use of weapons comes too easy to the police but this involves something else. It means that the offender knows that the police might use the weapon immediately and without a second thought. Our police are definitely scared of doing this. And the second thing is certainly there is some sort of degeneration among some police officers, where a suspect or defendant is maltreated during the interview. And then there is 'my word against your word' where the suspect or defendant's defence has no chance of success if he wants to rely on the fact that he was maltreated during the interview, this is absolutely difficult. In the past, the police were unpunished and that's it. They wouldn't use weapons as such but they went totally unpunished. What we know from other people's stories, 'fitness course'⁴⁵ etc. extracting confessions were the order of the day and that's it.

AM: What do you mean by 'fitness trail'?

Fitness trail was a game, there were two lanes of police officers on each side, the police officers were armed with batons and the defendants had to walk between them so the police officers could cosh them along the lanes. So it was ... so it was called fitness trail but in quotation marks, at the end of the lane the guy was already remorseful. Let's say he had to run for 40, 50 metres, even 20 and he was properly coshed, when they put him in a meat wagon⁴⁶, wait a minute why did they call it a meat wagon? Well, anyways, in that moment he had a bit of a different perspective on the world. But there were cases where things weren't entirely resolved, a few fatal cases when the police were extracting confessions. On the one hand it is an open secret, on the other hand these people were never charged with anything, never convicted of anything.

[I/I52]

⁴⁵ Polish original: *ścieżka zdrowia*, other proposed translation: *fitness course*.

⁴⁶ Polish original: *policyjna suka*.

The above not only presents the interviewee's support for the use of force but also provides some insights into the police methods and tactics under the socialist regime. The preference for the police's use of violence rather than other 'modern' methods is further exemplified in the following quotation that relates to a domestic violence incident. Here, another senior female in her interview retreats back to the old days while discussing the purpose of the Blue Card⁴⁷, and explains how violent methods can teach a domestic violence perpetrator a lesson. This excerpt demonstrates how past techniques came to be inherited by the police (note how the officer is praised for using violence and not leaving any marks), and how, despite many changes, these methods may still be part of daily practice:

AM: so what would you like them [the police] to be allowed to do?

For example, when there is an intervention, and he is resisting it, they should hit him a couple of times with a baton. So then he could understand how it feels when you beat your wife. This perhaps would make a difference. Otherwise they just arrive and set him up with the Blue Card and so what? Blue Card means nothing to him, if he was hit the same way he had hit his wife, then he would understand how it hurts! Right? Yeah (...) the other day I saw when the police arrived to a call, it was a domestic incident, they came once, second time. I think once they came six times during a day. They eventually lost it, he started talking back, and then when no one was watching the police officer packed him a punch. He left no injuries and said to him can you see now how it feels? The guy started threatening him that he would go to court with it. The police said: do you have witnesses? You don't, and you have no injuries. And then it calmed down.

[I/P20]

Participants' acclamation of the use of force was strong in my research, however, Uildriks & Van Reenen (2003) have argued that, apart from suppressing nationalist or religious mass movements, the actual level of force used by militias in the former Eastern European communist countries was probably low, as the states had other, less visible and formal, ways of enforcing obedience. This might not be a distinguishing feature as differences in police practice implied by the variation of social location of crimes were argued as early as in 1960s. Stinchcombe (1963), for example, observed that in large cities, as compared to rural areas, public spaces are scarce, population density is higher, and thus the police are more

⁴⁷ The Blue Card, introduced in 1998, is a standardized police intervention to deal with families experiencing domestic violence in Poland. The Blue Card scheme is based on filling out, in the presence of a perpetrator, so-called blue forms after every police intervention in a domestic matter.

[http://www.theadvocatesforhumanrights.org/uploads/poland_domestic_violence_\(2002\)_10-18-2002_2.pdf](http://www.theadvocatesforhumanrights.org/uploads/poland_domestic_violence_(2002)_10-18-2002_2.pdf)

likely to react to crime more quickly and with a greater likelihood of using force. Nonetheless, participants' confidence in the use of violence by the police challenges the notion of procedural justice. According to Tyler (1990) every justice procedure can be viewed not only in terms of the outcome but also from the point of view of the treatment/process. The foundations of procedural justice envisage that the key aspects of procedural justice (which is fair decision-making and fair interpersonal treatment) significantly contribute to increased respect and trust in authorities. Although the preference for the use of force is embedded in a broader nostalgic overview, it is still interesting to consider that it is the opposite to the theory of procedural justice.

The above interpretations are worth contrasting with the following two quotations from participants who actually experienced violence at the hands of militias during the socialist regime:

They surrounded the whole barn, it's good that I was wearing a donkey jacket⁴⁸; otherwise they would have run me through. But when they brought me back to prison, then whatever they could get hold of ... a chair or something else ... they were beating me up until they broke one on me. They were coshing me. My ribs were so badly broken that I could barely breathe (...) They were beating me up very badly. They were trying to convince me to plead guilty, and I said plead guilty to what? Since I hadn't done anything. But this was the time when a prosecutor would say 'just bring me any man and I'll serve him right'⁴⁹.

[I/IE3]

While the first interviewee accepts his harrowing experience as part-and-parcel of the previous penal policies but not of the present, the second interviewee expressed his continued approval of the method:

Under Komuna the police were like this, they came, I was a young, brave youth, you know, under the influence of alcohol. I vividly remember as if it was yesterday, when I was hit in the face by a police officer. They brought me here. They called my father. They trampled all over me, they called my dad. My dad picked me up from the station, it was like that. I don't think it was such a bad

⁴⁸ Polish original: *kufajka*.

⁴⁹ Polish original: *Dajcie mi człowieka, a paragrafsię znajdzie*. Under the communist period it was a very common saying, coined by Andriej Wyszyński.

experience. Back then I was angry, but with hindsight, now I think that it is how the police should behave.

[I/IE5]

Support for the use of repressive techniques also appeared in a previously mentioned comparative study conducted with burglary victims in Poland and England in the '90s. (Mawby et al. 1997). Approval of the use of force by the police is shared in other societies too. Likewise, based on the Northern Ireland example, McEvoy and Mika (2002) defined maintaining order through the use of paramilitary repressive methods as punishment violence and point to the role of communities in this context. Moreover, a similar observation was made by Marks (2000) who analysed the case of the South African Police Service in Durban. Marks reports that 56.6% of police officers surveyed expressed nostalgic feelings for the apartheid times and said that they preferred working in the unit before the 1994 elections (*ibid.*). It is, of course, the case that policing in the old South Africa would have been simpler and less tightly regulated, and therefore less fraught in some regards. Nonetheless, the above examples have demonstrated that 'citizens of a post-conflict society might become anaesthetized to the effects of violence' (Dias, 1997; Hicks, 1997 quoted in McEvoy & Mika; 2002:549).

In order to understand participants' support for the police use of force, it is necessary to hear further evidence. The next quotation comes from an interview with a senior female participant from a rural area. She explained how the use of violence as a means to gain respect among ordinary people penetrates other spheres of life, such as parenting or education:

The police in the past were ... in the years immediately following the war it varied. You couldn't discuss politics; you could end up in custody for nothing really. This was in the '50s. And after that it changed a bit. Although people under Komuna were more fearful, they had respect towards the police, nowadays they don't have any. They respect no one, they respect neither priests nor police officers, even the army is not the same as it used to be, we have this freedom now, freedom all around us.

AM: *Why do you think people respected the police more in the past?*

Perhaps because they used violence as well. Whether they only wanted to threaten or actually use it ...the whole generation was like ...was raised this way, you see there used to be rigour in families, and respect and nowadays ...when your mother or father said something it meant that it had to be this way, everyone would obey, and what it also meant is that if a police officer said something, you had to obey it too, right. And nowadays no, nowadays you can discuss things, appeal things. A police officer can't do much, he can't do much because he can be charged with battery, defamation, and before, when someone grabbed a police officer's cap, would have been punished immediately. And there was more respect, people had more respect towards one another (...) It depends on your family values, what kind of family values were passed down by your parents, right, some authority figures, how to do things in moderation, because you know. Parents are now busy working, don't spend much time on... teachers too ... they pay too much attention to teaching, they teach so meticulously and it's too much of it for such young people. This should be more general and if you want to know more you can search for more information yourself, or watch a movie about nature or something.

[P16/I]

The aforementioned quotation strongly resembles the central argument in *Hooligan: A History of respectable fears* by Geoffrey Pearson (1983). Pearson argued that the striking contrast between the stability of the past and the awfulness of the present has a long tradition in England. He examined the supposedly new forms of moral failure of British people that led to crime and concluded that lawlessness, or new and shocking features such as weakened family ties, is a continuous process and that perpetual nostalgic feelings for the past times are repetitious. On the other hand, one could argue that the 'world that we have lost' was in fact a 'better world' as crime rates in Britain for example were lower in the past. It would be difficult to put forward a similar argument in the Polish case as there are no reliable data that would corroborate whether crime rates were also lower in socialist Poland. One thing is certain though. Post-communist nostalgia has been well documented and recognized as a distinctive phenomenon (see Todorova & Gille, 2010). Participants' nostalgic views on the militia convey a broader longing for security, stability, prosperity, and quest for dignity. This particular attitude occurs only because the past is irreversible, as argued by Pine (2002) when people evoke the 'good socialist times' they only choose to remember the good aspects of the system (e.g. full employment, universal healthcare and education, economic security), post-communist nostalgic sentiments do not indicate that the bad aspects of the system were forgotten (e.g. corruption, food shortages, infringements of the state) (ibid.).

1. 2 The wild '90s.

In Chapter 2 I depicted the state of affairs after the fall of the socialist regime. The end of communism in Poland resulted in rapid transformation processes from a state-controlled to free market society. Post-1989 changes involved the privatization of property and a significantly reduced role of the state, and the implementation of economic freedoms, in a weak society with limited law enforcement powers (Skąpska, 2011). Undoubtedly, the post-1989 period was a peculiar time in modern Polish history that, after Dahrendorf's (1985) interpretation of anomie, could be better defined as a state of anomia – a social condition in which the norms that govern people's behaviours lost their validity and breaches of the norms went frequently unpunished. The post-1989 anomia was also a time of significant reorganization of many Polish public institutions, including the police forces. The meaning of policing at the time underwent significant adjustments, but there was a dearth of research documenting and explaining these transformations (Mawby et al. 1997). To the advantage of this thesis, the post-1989 transformations did not go unnoticed in my participants' narratives.

The time that followed the collapse of the socialist regime was vividly discussed by eleven participants; for example, in the following quotation from a conversation⁵⁰ between two males from an urban area, the beginning of the transformation period was described as the 'Wild West', by which it was meant a time of unpredictability and lawlessness:

P40: It's better than before.

AM: Better than when?

P40: Than in the '90s. I think yes, I think now it's better than it used to be.

P41: Yep. The beginning of the '90s or throughout the '90s there was such a mess, unlawfulness!

P40: Wilfulness! This is how it was. The '90s was the Wild West.

P41: Exactly the Wild West.

P40: The police meant nothing to people. The police could do nothing; they didn't even want to do anything. They were bribers.

P41: Do you remember when this friend of ours said they were hiding in the bushes for weeks to catch some car thieves? And when they finally caught them, by the time they finished the report their boss had already discontinued the case...

P40: Right!

P41: They were in some sort of hand in glove with each other.

⁵⁰ The composition of the aforementioned male-only focus group was as follows: P40 (33, single, project manager), P41 (36, single, salesman), P42 (40, divorced, salesman).

[FGUML]

Kozłowski (2007) emphasized that the Polish police at the beginning of the 1990s were in a poor state. The institution had to redefine its objectives and develop new measures in order to develop the new concept of accountability, increase police transparency, rebuild relations with the Polish Catholic Church, and gain public trust (see Meško & Klemenčič, 2007, for parallel observations in the police reorganization in the Slovenian context). Moreover, the conditions in which the Polish police had to operate were dramatic. Kozłowski (2007) said that shortly after the collapse of the socialist regime, ordinary Polish police officers struggled to take care of basic needs such as finding money for petrol, and in 1990 there was not a single fax machine in the whole country. It was common knowledge that the police were in a significantly worse situation than the fast-developing serious organised crime groups (ibid.). Perhaps this is why the ban on the use of force by the police was so vividly remembered by some of my participants. This point was interestingly marked by a senior female participant who identified this post-1989 period specifically as the time when the Polish police were not allowed to use violence:

AM: so this was after 1989?

Yes, it was when the police were not allowed to use violence any longer.

[P20/I]

The establishment of the new government in 1989 was followed by a series of personal and structural changes that aimed at separating the police from the political scene (Mawby et al. 1997). The Polish Parliament implemented the Police Act in 1990, which emphasized the new role of the police and their absolute independence from political influences. The Polish police reoriented its principles towards human rights-oriented policing that is accountable and democratic; this was a necessary step to obtain democratic legitimacy and join the Western international community (Uildriks & Van Reenan, 2003). One should recall that, although not in the most challenging time, but shortly after in 2003, the Polish police also became one of the institutions which could refer cases to victim-offender mediation.

The next male interviewee's comment echoes the background of the post-1989 police reorganization. This 64-year-old economist, who lives in an urban area, defined the police transformation as an ill-considered 'purge' that aimed at the unnecessary elimination of all officers who had worked under the communist regime:

I think that they sacked professional police officers from this whole criminal justice system and now these are the consequences of this.

AM: When do you mean?

At the time of the purge, during the institutional changes, right? Not everyone was a communist as it was described. They rushed to get rid of professionals, they didn't train any new staff and these are the consequences. The same applies to prosecutors, police, judges, the whole justice system. In general I think that a judge who is 30 years old and ... has no experience and deals with such serious cases!

[P33/I]

Ivkovic & Haberfeld (2000) analysed the process of post-communist police transition from the perspective of Poland and Croatia. The scholars argued that, contrary to the situation in Croatia that did not go through such drastic changes, in the Polish context between 30 and 50% of police officers from various forces were dismissed. The authors also acknowledged that while the drastic post-1989 police reorganizations led to the elimination of higher-up communist militia officers from the new force, the process did also involve the elimination of a number of experienced and highly-skilled officers – a finding that corroborates my participant's observation. Unfortunately there is no available publication in which one could find more information about the nature of the process and selection criteria for dismissal.

Throughout the period of socialism, the police was the institution that maintained the political regime; thus, it was believed that its structural and personal reorganization should also improve the public perception of the police. Nonetheless, Ivkovic & Haberfeld (2000) also concluded that the Polish police found it more difficult than the Croatian police to gain trust among lay people. The Croatian police, in order to gain popular acceptance for the idea that 'the public are the police, and the police are the public', concentrated not only on training new officers but first of all on improving their manners and attitudes towards their citizens. As a result, the Croatian police appear to have a better relationship with lay people, something that the Polish police have been struggling with (ibid.).

Likewise, Mark's (2000) study on the South African context of police transition poignantly illustrates the difficulties with such reorganizations. The transformation of police organisations consists of many layers that aim to shift from repressive to human rights sensitive orientations. The process envisages sub-changes in the following areas: structure (the police are expected to be representative of the population they serve), behaviour (police services must to be community-oriented), and attitude (people should be treated with care and respect). Marks argued that police transformations are relatively easy to achieve with regard to the first two issues, which could be described as mechanical changes. It is the changes in relation to values, attitudes and assumptions that are significantly more difficult to bring about (ibid.).

Kurczewski (2007) observed that the new criminal justice system in Poland started to be implemented at the most challenging time; however, as a state of necessity it was also the most important time to introduce the changes. The rapid journey from socialism to democracy and a free market must have had an impact on the quality of policing as well as people's perceptions of the police. By way of comparison, in the early 1990s, there was also a decline in popular confidence in the police among English people, however, these changes in public attitudes and police misbehaviour were not in phase with one another (Reiner, 2000). While the weakening of public confidence in the English police was caused by a decline in police standards and systematic malpractice, despite generous salary and work conditions compared to other public services throughout the 1980s, in the Polish context there might be other, transformation-related reasons. Given the difficult post-1989 circumstances, people's trust and confidence in the Polish police were put to a greater test.

The performance of the Polish police was weakened at the time by a sudden increase in recorded crime rates, growing fear of crime, the early days of a new political populism (see Chapter 2), but also the sudden race in chasing the capitalist West. In the narratives of study participants, much was said in relation to the economic malpractice and misconduct in privatization processes that occurred at the time. Thus, the perception of police performance, which was expected to be more efficient and effective than before, appeared even worse against these sudden and widespread financial abuses. Such police lethargy is interestingly described, for example, in the following quotation:

I'm not sure it's the right place to say these things. They broke the law, they incredibly broke the law, and there were scams worth millions of zloty.

AM: Do you mean financial, economic scams?

Yes, the economic ones. It really is an incredible story.

AM: yes?

All of it was very international.

AM: Are you talking about what happened after 1989?

Yes, yes, all in the '90s. For example, you had to come and collect such-and-such, 800 tonnes of goods, you arrived and there was nothing. All gone. They only needed one Saturday or Sunday to take everything away. The police and their indolence ... There were two of us, we would wake up at 5 or 4am, and look for the culprit because the owner vanished into thin air. We were searching and searching, then we even indicated his address. We reported this to the police and they said no. But because I had some connections, I mean my son had, they eventually took it up and caught him. He was convicted for two years.

[P36/I]

Uildriks & Van Reenen (2003) argued that policing in transition is constantly challenged by political instability and all-encompassing changes. Policing during transformation is particularly difficult for the type of police that are little experienced in taking the initiative and bearing responsibility; police that are oriented towards direct political imperatives. In other words, the police 'double struggle' consists in policing the transition while being subjected to the process of transformation themselves. Furthermore, in the first quotation that was used to delineate the views of policing after 1989, one of the participants (P41) said '*They were in some sort of hand in glove with each other*'. This requires referring to the study by Łoś & Zybertowicz (2000). The state of anomia in which Polish society functioned after 1989 was a time of the new distribution of property, and, as argued by the authors, this process was controlled by the former secret services and high-ranking militia officers. Based on secondary data analysis, the authors concluded that the Polish secret services created institutional channels, and provided necessary intelligence, international contacts, skills and protection, for the communist party to get involved in intricate economic enrichment schemes (ibid.).

1. 3 Contemporary police

1.3.1 Invisible and financially constrained

The participants' understandings of contemporary policing were to a certain extent their reverse perception of socialist policing. The Polish police of today are seen as invisible, constrained, ineffective and distant. For instance, lack of 'police visibility', a theme in opposition to the views on 'visible' socialist community militiaman, was mentioned in six group discussions and 13 interviews.

When I walk on the street in the evening, someone may attack me, and there is no police, no sign of a police officer, no foot patrols, they are somewhere but not at the places where there is some real danger. I am not sure myself if they have such guidelines, or they decide themselves to hide in places where nothing is happening. And let's say ... if they parked a police car somewhere, perhaps it would have a positive effect, don't you think?

[P17/I]

The effectiveness of police patrols has already been discussed. I will, however, refer to another important research experiment on this subject. The Kansas City experiment, carried out in 1972/1973, looked at the impact of traditional routine patrol in marked police cars on crime rates and public's feeling of security. The study found that increasing or decreasing the level of police patrol had no significant effect on the level of crime, or people's perception of safety. In other words, routine preventive police patrol has little value in preventing crime or making people feel safe (Kelling et al., 1974).

Despite the criticism of police conduct in Poland, study participants were more understanding of the problems in policing than what they see as a poorly-functioning judicial system, and somehow they were more eager than with the court performance to excuse the police of their shortcomings. This corroborates Tonry's (2007:5) observation that 'people in general express greater confidence in the police than in the courts'. For example, 11 study participants noticed that the administrative maladies such as staff shortage or bureaucratic procedures might influence the police's visibility and performance in Poland:

Let's put it this way, these people [police officers] are not caught in an accidental roundup⁵¹ anymore, they are not the people who believed so much in those batons, just to beat up a citizen. But now they are usually polite, know their stuff, and help people over and over again. And this is why people wish they had more police officers. In my opinion, the police are overwhelmed by bureaucracy and paperwork. They have frequently less time to watch over properties and people because they have to fill out these little forms etc. So perhaps this is one of the reasons that they are little visible on the streets. Well that's what I think [laugh]

[I47/I]

Police visibility (or lack of thereof) was discussed by 8 study participants on the basis that the Polish police have become 'money-makers' and that one of the police's current tasks is to generate revenue. For example, according to the following male focus group participants⁵², the visibility of policing traffic offences has a hidden financial agenda:

P33: You can't see them!

P32: You can't, you can't.

P33: Where can you see them? On the outskirts, in the bushes popping out with vehicle radar, then you can see them!

P32: Yes, yes. He takes his vehicle radar⁵³ out just to catch [people] for speeding because it's the simplest thing to do. These are the consequences of how police officers get promoted. If he wants to get promoted he needs to show how many drivers he has checked, how many penalties he has issued. He won't get promoted when there is nothing in his notepad.

P32: It means that he hasn't been working, this is why they don't take into account giving someone a piece of advice, let's say you give someone a piece of advice ... directions ...and then write it down in your notepad, this doesn't count...

P33: This doesn't make money.

P32: Exactly, this doesn't make money!

P32: This [thing about] what makes money is linked with promotion, bonuses, and it shouldn't be like that.

[FGUMGW]

The financial dimension to policing also appears in the Mawby study (1997). One of the differences between the English and Polish victims of burglary was that the latter blamed the

⁵¹ Polish original: *lapanka*; description: selected at random.

⁵² The males who participated in this discussion were P32 (63, married, builder) and P33 (64, in partnership, economist).

⁵³ Polish original: *suszarka*. Back translation: *hairdryer*.

police for not catching the offender and returning the victim's property. Although the authors said that similar findings came up in the English context, the frequency of these negative views was more significant on the Polish side.

Another police shortcoming discussed by study participants was bribery, which emerged in conversations with five participants. Although it might be declining, in the eyes of this male interviewee who lived in rural area, bribery is still a remnant of the socialist era that continues to affect the Polish police performance:

It has always been like that, under Komuna, I remember the time of Komuna. When you were stopped it was expected to nobble him, perhaps they no longer take bribes or they just pretend that they don't see anything.

[I45/I]

Bribery should be analysed along with another police weakness, which is poor salary – something that was also highlighted by Ivkovic & Haberfeld (2000) as one of the main challenges faced by the Polish police. Although Mawby et al. (1997) observed in their comparative study that the rapid development of the private security industry after the collapse of communism created opportunities for additional income for police officers, bribery continued to function as an additional source of income. The next excerpt, which comes from a group discussion⁵⁴ with senior participants in a rural area, illustrates the issue of poorly paid police officers:

P20: It used to be different, now they [the police] are, everywhere. And these people are not sufficiently paid.

P16: And there is supposedly freedom. Right?

[FGRS]

The end of the quotation deserves further comment. The remark about the 'supposed freedom' appealingly mirrors the post-1989 expectations related to many spheres of people's

⁵⁴ Just by way of introducing the aforementioned focus group, the participants who took part in this particular group discussion were: P16 (67, widow, retired farmer), P17 (65, male, divorced, retired merchant), P18 (70, male, single, retired welder), P19 (70, retired housewife), and P20 (65, retired housewife).

lives. It is interesting to observe how failure to succeed in one area connects with an overall disappointment and lack of confidence in the post-1989 democratic changes.

1.3.2 Ineffectiveness

The way in which my participants framed and addressed their perceptions of the police was also driven by perceived western experiences of policing⁵⁵. The perception of police ineffectiveness in Poland, discussed in four focus groups and nine interviews, was occasionally founded upon the perceived experiences of other countries. For instance, the image of the ‘weak’ Polish police was set against the perception of the police in other Western countries, as in the following narrative with a male interviewee from a rural area:

AM: Now I am going to ask you a little bit ... what do you think about the Polish police? What is your view on this?

By ... by the Western police standards, London or France, our police forces are still a little weak, zero.

[143/1]

Although it is important to address the timing of Mawby’s study and the particular challenges the Polish police faced after the collapse of socialism, Polish victims were already more critical of the police than English victims (Mawby et al. 1997). The victims in Poland were more concerned about ‘property not being recovered’ and were more eager to blame the police. As a result of this direct contact with the police, only 6% of respondents said they had positive experience compared to 23% who indicated the opposite. The next quotations demonstrate how lack of trust in the efficiency of the contemporary Polish police stems from the fact that police are not allowed to use more stringent methods such as force. This female interviewee supported her view based on her migrant experience and observations in Canada:

You know, I think the police are losing, they don’t get any respect, definitely there is no respect for the police, these are the times we live in, people are not fearful, they’re not afraid of anyone. And I think that nowadays they are in a more difficult situation than we are, that’s my opinion.

AM: why do you think it’s like that?

⁵⁵ The centrality of this theme was broadly defined as the ‘looking outwards’ attitude which occurred 17 times in group discussions and 36 times in face to face interviews. I shall elaborate on this finding later in the chapter.

No one respects them. That's what I think, based on what I hear and see it's just like that, what can this person or the other one do to me? The police are really limited, when I was in Canada when someone is stopped by the police on a routine check, and there is something suspicious, this person is taken out of the car, put on the floor, hands behind his back. They are standing over him and holding guns, they have the laws for that, and here, a police officer has to fire into the air three times, as long as he has time to do so and no one would kill him in the meantime, because he's not allowed to do anything else.

[P4/I]

The above quotation should be looked at along with certain comments made by interviewees who had frequent dealings with the police under the communist regime and how their experience influenced their opinion on the contemporary Polish police:

The police now get cold feet (...) Back then it was enough that they shouted; now it's different. The thief is not afraid of them, it's they who are scared.

[IE3/I]

It amuses me that a police officer can't use force. You can't rely on them. People make a mockery of the police, the police have their hands tied. I got hit by a police officer in the past so much that I stumbled. But it wasn't so bad in the end [laugh] (...) The German police were more ruthless, people were afraid of the German police more than the Polish ones.

[IE5/I]

However, people's confidence in the police effectiveness is worthy of closer consideration at this stage. Research from the United Kingdom suggests that people think about their local police in ways less to do with the risk of victimization and more to do with judgments of social order, cohesion, trust and moral consensus. In other words, attitudes towards the effectiveness of the police are located in lay assessments of cohesion, social control and civility rather than concerns about safety and crime (see Jackson & Bradford, 2009; 2010). Furthermore, according to Tyler and colleagues (2007), legitimacy is central to the effectiveness of the authorities; legitimacy makes lay people feel that the police and courts have the right to rule, as their actions are appropriate and just. As a result, people voluntarily, not out of fear, become compliant with the law, which helps the legal authorities establish and maintain social order. Braithwaite (2007) extended this understanding of legitimacy and

argued that restorative justice contributes to the aforementioned law-making dialogue by communicating personal stories.

This is why perceptions of contemporary policing should not be discussed in isolation from the notion of legitimacy in post-communist societies – as this might contribute to the viability of restorative justice. Uildriks & Van Reenen (2003) argued that, contrary to western democratic countries where legitimacy is perceived as an essential requirement for the police to be able to operate in a predominantly non-violent manner, post-communist democracies face a difficult process of building legitimacy in the absence of the fear factor. Drawing on Jackson and Bradford's aforementioned argument I would add that the process of constructing legitimacy in the Polish context might be hindered by a dominant assumption that 'elsewhere is better'. As Meško and Klemenčič (2007:97) observed in the Slovenian context: 'countries emerging from an authoritarian system of governance, in an effort to reform their law enforcement institutions in a short period of time, rush (or, as is often the case, are rushed by the international and donor community) to embrace 'Western' models of policing without a complete comprehension of the underlying philosophy and requirements of such models'. Although participants' understanding of police effectiveness was interwoven with their nostalgic sentiments after socialism and compared with the perceived experiences of other countries, Reiner (2000:136) has argued that there is a growing expectation of the police to be increasingly efficient, and that the decline of overall effectiveness of law enforcement in England since the 1970s, is due to pressures on crime rates from wider social and cultural processes.

The prevailing theme of police ineffectiveness has led to a number of comments that ordinary people need to take matters into their own hands – a view that was expressed in eight group discussions and 16 interviews:

[laugh] *Fine. So what are my views on the Polish police? They don't really look like they hit the ground running. Because there are plenty of cases when, for example, people investigate things themselves, like when someone stole something from somebody else ... by the time they get cracking, you know ...*

[P19/I]

Kurczewski (2007) has argued that ‘playing a lone hand’ in resolving crime issues is part of Polish popular legal culture. Kurczewski describes popular legal culture as a set of general legal attitudes, perception of rights and duties as well as expectations of law and justice agents on the part of lay people. He argued that Polish popular legal culture is distinctive in claiming ‘one’s own right’, using legal and illegal means to achieve justice. The ambivalence of the attitude lies in the choice between trusting the authorities and respecting their decisions, and knowing the rights, not respecting them, even influencing their decisions (ibid.).

The above quotation, as well as the previous ones that relate to the use of violence, are good examples of what has been argued by Hough et al. (2009), that systems of justice can be effective (in controlling crime, in responding to emergencies) without being particularly fair; and they can be fair without being particularly effective. Having applied this frame of reference, it appears that for some of my study participants, police efficiency as well as the administration of justice by the Polish police might translate into the application of unfair methods. Nonetheless, the importance of informal problem resolution and the use of police discretion have long been at issue. An early statement in this regard can be found in *Justice without trial: law enforcement in democratic society* by Jerome Skolnick (1966). Skolnick studied a police force in a California city and looked at the relationship between the ideal and the actual nature of police operations. He argued that enforcing law is a police product of three social forces: the legal rules governing police practice, police professional training and leadership, and the social environment that is being policed. Skolnick concluded that the police develop professional orientation as efficient administrators of criminal law rather than of legal actors. Police functioning is bound by limiting conditions that are beyond the reach of any policy reform, and police internal procedural laws will always conflict with public procedural law.

1.3.3 Police ‘out of touch with ordinary people’

In this section I will delineate a paradox that appeared between the perception of the contemporary Polish police and the functioning of Polish society itself – something that was argued by Loader when he said that views on the police remain the principal way by which lay people of a given society tell stories about themselves (Loader, 1997). For eleven study

participants the contemporary Polish police represented a distant, formal, unapproachable and out-of-touch institution. This finding goes hand-in-hand with participants' nostalgia for the old 'socialist' form of community policing and the perceived 'closeness' of militia officers. On the other hand, there is another way of interpreting these accounts, since what 'police formality' meant to study participants could be just police officers performing their duties:

P15: In the past, frankly speaking, everything slipped through the fingers.

P14: Nowadays it is like that, bring me a man and I will serve him right.

AM: That's how it used to be?

P14: Before, now and it will continue this way.

P15: But let's say you were cycling, he saw that you had been drinking or something, he asked you to let out the air [from the tires], and end of story – and nowadays no chance!

[FGRM]

The above quotation comes from a group discussion between male participants who lived in a rural area and the group comprised of: P11 (56, married, farmer), P12 (53, married, bricklayer), P13 (37, married, warehouse supervisor), P14 (43, married, welder), and P15 (51, married, labourer). While one of the discussants (P14) said that there has been no change in the quality of justice administered in Polish courts, the other one (P15) suggested that in the past 'everything slipped through the fingers' – meaning that the police under socialism was more 'flexible' and willing to overlook breaking the law, such as drink-cycling. Another example comes from an interview with a senior male interviewee who was repeatedly charged with drink-driving. He spoke highly of one particular police officer with whom he came into contact while drink-driving. Upon further inspection, this positive opinion stemmed from the fact that the officer signalled a possibility of avoiding punishment:

Such a shame dear Mr IE2: only half an hour later and you see there would be no alcohol in your blood.

[IE2/I]

Such a strong popular preference for the police to be 'close and friendly' might also convey another preference, which is the longing for the police to use their discretion and turn a blind eye to citizens' misdemeanours. Although this study demonstrates that the way people talk about the police translates into how they understand social control and legitimacy, there has

to be a demarcation between the understandings of the police articulated by young and senior participants. In order to understand this argument, it is worth looking into the following excerpt that comes from an interview with a young male participant from an urban area. His understanding of ‘distant policing’ was noted as actually a positive feature:

Hmm I think that... it's different ... the police have a definitely different approach in the cities. It's different than in a small town and when a police officer drives past, everyone knows him, they have like five police officers for a larger area....So when they arrive everyone knows who they are. And here they are more anonymous and perhaps it's a big advantage for them, because they don't have to bother if they offend someone or if they say something to someone and he doesn't like it. Perhaps it's a much better system when people don't know their local police officer.

[P22/I]

It might well be the case that the difference between the young and senior perceptions of police discretion is that the concept is more curtailed under a new, more legalistic system. Although this young person sees the police as a constructive rather than restraining force, the above quotation demonstrates how strong the practice of ‘informal negotiations’ is in the Polish context, and how these expectations may be still projected onto instances of contact with the police. The culture of ‘informal dealings’ was also interestingly depicted in an interview with a young working mother who talked about her family member, employed as a prison guard. The quotation illustrates how in contemporary times some Polish people would not risk their job security for any informal dealings:

The worst thing is when someone he knows comes up to him, like parents or some other family members, and tells him to do something so he [the inmate] could get a home leave, or something to make his life easier or get some privileges. He doesn't like it because he knows that these people are there to serve their sentence, not to make their lives comfortable, the conditions need to be decent but that's not holiday. So he doesn't like it. He's a bit of a jobsworth, no means no. Even when it comes to passing a parcel. He then says 'I can't do it and that's it'. Maybe it's not a very stressful job but working hours are flexible, his shifts are 12 or 24h but then he gets three days off. He likes it and salary is good too. So he said that he wouldn't risk his job for one single parcel.

[P5/I]

The Polish culture of ‘informal dealings’ was described by Janine Wedel in her anthropological study entitled: *The Private Poland: An Anthropologist's Look at Everyday*

Life. Wedel researched the private exchanges between Polish people under socialism and argued that these ‘informal exchanges’ held together the economic tapestry, as well as were the source of pride for many Poles interviewed by her (Wedel, 1986). She observed the following:

Informal exchange is based on a complex network of social relationships and elaborate etiquette. ‘Black market’ carries connotations of shady, yet direct transactions. Exchange within the Polish informal economy, however, is respectable; it takes time and involves long-term commitments. In the absence of Western-style business relationships, Poles use social networks to solve their everyday problems and to accomplish day-to-day tasks ranging from buying batteries to resolving bureaucratic impasses to bailing out arrested friends or family members. Private arrangements and exchanges-sometimes between private persons, sometimes reaching into official circles-are the very threads that hold together the tapestry of Polish life (Wedel, 1986:37).

Next, the following comment, shared by a female interviewee who came into contact with the police and criminal justice system, reflects on the functioning of the Polish police over the decades. She observed that the police’s activities should be seen as ‘*their job and duty and no one should have a problem with it*’. In this part of the interview it appears as she distances herself from common perceptions of the police and explains why (other) Polish people might complain about the police:

For a start one must say that now we have different police than some years ago. A lot of them are young people. Some of them are very ambitious and very formal. But I think this is exactly what they are supposed to do, and all this blabbing that they are standing somewhere with a vehicle radar or breathalyser, I’m of the opinion that it’s their job and duty and no one should have a problem with it. They come across as more and more humane. Back then, under Komuna, the sort of police we had, this has to be said very clearly, they were random guys in uniforms who humiliated people. They were uneducated, gauche, they were given a uniform and baton and they behave as if they were gods. Nowadays they’re the same kind of people as you and me. But I have to admit that there used to be greater respect towards the uniformed services. Perhaps they used more violence, not like today, but in the past when a parent didn’t keep his/her children in check, there was this guy who made sure that the youth stayed home at night.

[IE4/I]

Although she critically assessed the quality of policing under the socialist regime and acknowledged the benefits of the police transformation, the end of her comment illustrates again the nostalgic post-socialist longing after a greater respect towards the police.

Participants' understanding that Polish police are 'out of touch' with lay people might also be interpreted as an intended consequence of a deliberate police policy designed to make a break with the socialist past. Uildriks & Van Reenen (2003) said that a lack of a long-term policing perspective might result in the organization distancing itself from the population. Based on their research with Lithuanian police officers conducted in 2001, the authors concluded that the Lithuanian police, apart from organizational constraints, constantly felt mistrusted and not valued by society (see Meško & Klemenčič, 2007, for similar observations in Slovenia). Furthermore, Ivkovic & Haberfeld (2000) contrasted the performance of the Polish and Croatian police and argued that there is no tradition of the police serving the needs of citizens in the Polish context. The scholars suggested that the goal for the Croatian police has been to achieve a common ideal: 'the public are the police, and the police are the public'. While the transformation of the Croatian police resulted in greater openness and politeness towards Croatian lay citizens, it has been more challenging to achieve the same by the Polish police due to their stronger and longer dependence upon the political order (*ibid.*).

Haberfeld (1997) argued that in post-communist Poland the police were never the public and the public were never the police. Nonetheless, I would like to draw on Loader's argument on how views on policing reflect the condition of societies, and challenge the aforementioned observation by presenting a comment made in a face-to-face interview by a male study participant who said the opposite:

The police they are ... as I am saying, the same people as we are.

[P14/I]

Another self-critical comment comes from an interview with a senior male participant. While discussing the Polish police performance he turned his attention to Polish society at large, defining it as a society with certain 'deficiencies' – a society that is not easy to 'be policed':

P35: I think that we have the kind of police we deserve.

AM: What do you mean by that?

P35: We are a specific society (...) We are a terrible society.

AM: *Could you expand on your remark?*

P35: *I suspect that we are a difficult society to bring discipline to, that's what I think.*

AM: *Yes?*

P35: *Throughout all those years we have been taught how to circumvent, evade. Law is there to wangle benefits, report something somewhere, leave, then come back, and register. That's what I think, that ... We have the police that ... We have the kind of police that have a problem with it. Because these are difficult cases.*

[P35/I]

Similar observations were made by Wright and Mawby (1999) who looked into the Hungarian case of policing soon after the regime change. The research findings suggest that the relationship between the Hungarian police and lay people required a long-term process of building confidence and trust on both sides. One of the author's recommendations for better police-people communication was to consider greater involvement of the press and other media, as these are important means through which people could 'exercise their oversight of the work of the police' (Wright & Mawby, 1999:347).

However, I would also like to highlight the significance of the interviewee's words: *Throughout all those years we have been taught how to circumvent, evade. Law is there to wangle benefits, report something somewhere, leave, then come back, and register* – as this particular excerpt strongly resonates with Janine Wedel's study findings. She observed that:

[Polish] *people operate in both legal and illegal levels of the system. In the mind of the average consumer, the distinctions are not only blurred, they are unimportant. In a society in which people find it necessarily to slight the system, the boundaries between legal and illegal are understandably fuzzy* (Wedel, 1986:61).

This particular observation reflects Kurczewski's (2007) point about the Polish popular legal culture, who in a different publication says 'as for law and justice in the communist system, it led a double life' (Kurczewski, 2014:212). Klicperova-Baker (1999) has argued that the double standard of truth and confusion about the reality in totalitarian societies led to double standards of morality cultivated by 'totalitarian minds' – lay people. The 'totalitarian mind' varies in subtypes, however, it is defined by Klicperova-Baker as a set of specific cognitions, attitudes, and behaviours developed in order to adapt to life under the socialist regime. Klicperova-Baker observed that the roots of the 'totalitarian mind' originated in people's attitudes towards previous regimes. In the Czech context, the prototype of the 'totalitarian

mind' can be found in a novel *The Good Soldier Švejk and his Fortunes in the World War* by Jaroslav Hašek, which was published in 1923. The main character of the novel uses his lazy con-artist strategies to face the oppressive Austro-Hungarian regime, outwit his superiors and the secret police surveillance. Similarly to Kurczewski's view of the Polish legal culture, Klicperova-Barker says that with regard to justice, 'totalitarian minds' accept immoral behaviours and favour benevolent law 'non-enforcement' that results in letting criminals go unpunished. The reason why people in socialist countries perceive stealing from businesses, not as a reprehensible act but as a natural retaliation against the state, is this totalitarian heritage of 'double legal standards'. This particular part of the chapter illustrates again how experiences of, and views on, the police are entangled in a wider array of understandings of law, social order, authority, legitimacy, and moral consensus (see Jackson & Bradford, 2009). This section also mirrors Loader's argument that there is a reciprocal relationship between lay people and the police/quality of policing, and that views on the police remain an avenue by which lay people of a given society share stories about themselves (Loader, 1997).

Reiner (2000), based on his observations in English speaking jurisdictions, argued that police functions are becoming more diverse, fragmented and complex. As a consequence such a complex nature of policing could influence people's perceptions of the police. This also might be true in the Polish context. However, policing in the Polish context has inherited post-socialist consequences that bring significant implications for lay people, the police themselves and their role in restorative justice. Despite the fact Ivkovic & Haberfeld (2000) and Kossowska et al. (2012) argued that the perception of incompetent and ineffective police in post-socialist societies comes from the image of an oppressive and intimidating socialist militia, I argue that this perception also stems from the nature of post-1989 police transformations and their endeavours to re-establish legitimate policing functions. Blagg's observations about the police role in restorative meetings with Aboriginal populations in Australia also resonate with these particular study findings. In Australia the police were for a long time the principal agency of dispossession, relocation and control of Aboriginal people, and giving the police more powers (by way of allowing them to run restorative meetings) raises a number of concerns (Blagg, 1997). The lessons from Australia as well as previous observations might help in understanding why the Polish police have not taken any part in advancing restorative justice in Poland.

2. Courts and sentencing

Christie (2004) argued that criminal justice systems are, to a certain extent, mirrors of societies because justice processes reflect the context in which they occur. In the western literature, it is argued that what happens in a courtroom attracts a great deal of people's attention, however, 'for most litigants, the resort to court is too time consuming, too complicated, and too expensive' (Roche, 2006:225). Another well-known feature is that people's interest in the criminal justice system is high but that levels of public confidence and trust in the justice system are rather low (see Hutton, 2005; Indermaur & Roberts, 2005; Hough et. al, 2013). To a certain extent, similar views were articulated in my study. When interviewees spoke about the Polish courts, it was common for them to describe their performance by using a plethora of negative words and expressions such as: 'down the tube' or 'farce'.

2.1 Delayed justice

According to a well-known legal maxim 'justice delayed is justice denied'. One of the very first deficiencies of the Polish criminal justice system, raised in five group discussions and twenty-five interviews, was the length (formally defined as prolixity) of court proceedings in Poland. This male focus group participant from an urban area said:

Yeah, swift and speedy justice, also the inevitability of punishment. You can get the impression that there is some kind of law out there, and that the courts need to be guided by the law, apply this law. But there are always some exceptions, or you can just endlessly drag your case out if someone knows well how to manoeuvre.

[P41, FGUML]

The concern with the length of court proceedings has also been emphasized in the Polish criminological literature. Kurczewski (2007) has argued the excessive length of court proceedings is one of the characteristic features of the Polish criminal justice system. This could be due to the sudden and significant increase in the volume of court cases post-1989. Between 1989 and 2002 there was a 333% increase in the number of cases filed in court (from 2 006 000 to 8 696 000), while the number of judges increased by only 80% (ibid.).

Furthermore, the Polish court system was not prepared logistically and financially for such an increase. The sudden increase in the courts' workload involved dealing with new matters, for example, related to privatization processes and involving companies and corporations. On the other hand, the prolonged length of proceedings was also caused by strengthening the position of Polish judges and lawyers, as well as providing defendants with more fair trial guarantees⁵⁶ – something that they were constantly deprived of under socialism (ibid.). Nonetheless, the delay of court proceedings has remained a significant (and quite distinctive) problem of the Polish penalty. According to the European Court of Human Rights data, out of a total of 1099 judgements issued in relation to Poland, 434 considered unreasonable length of proceedings⁵⁷. Krajewski (2004) acknowledged that some of the criminal justice reforms that were implemented after 1989 produced undesirable outcomes. Nonetheless, he argued that many penal decisions at the time of the transformation had to be taken intuitively:

Many Polish reforms of the 1990s were largely guided by western experience, experts with specialist knowledge of systems in the West were therefore very valuable. This led to a situation in which many discussions about reforms lacked any clear-cut empirical foundation (Krajewski, 2004:404).

Although people's experiences with the Polish criminal justice system increased significantly at the time, a survey carried out in 2002 suggests no statistically significant differences in negative attitudes between those who had and had not experienced the system (Kurczewski, 2007). It is a very interesting finding; however, no further explanations are provided as to why that would be.

2.2 Access to justice

One of the predominant findings of public attitudes research in many western countries is that people believe the courts are too lenient (see Roberts & Stalans, 1997, Eiffers & de Keijser, 2006), and this 'misperception' tends to be formed by the construction of crime by the media whose primary interest lies in reporting the 'most newsworthy' crime stories (see Roberts & Hough, 2005). In my research, rather than leniency, participants' understanding of the administration of justice in Poland was that it is based on inadequate and inconsistent

⁵⁶ Polish original: *gwarancje procesowe*.

⁵⁷ Available at: http://echr.coe.int/Documents/Stats_violation_1959_2015_ENG.pdf accessed 13.07.16 .

sentencing which, initially, could sound like miscarriage of justice. Such opinion was discussed in eight focus groups and twenty-three interviews.

It sounds like we all are aware that for sure masses of innocent people are in prison, it looks as though there are a lot of inadequate convictions compared to what has been done.

[I47/I]

The perception of sentencing inadequacy has to be analysed along with the three main criminal justice flaws indicated by study participants: connections (*znajomości*), political influence (*wpływy polityczne*) and bribery (*łapówkarstwo*). While the thread of being ‘well connected’ emerged separately in four group discussions and seventeen one-to-one interviews, fifteen study participants were strongly convinced that Polish politicians are in a position to influence sentencing directly. On three separate occasions such a state of affairs was specifically idiomized as *you scratch my back and I'll scratch yours* (*ręka rękę myje*). Such an understanding corroborates again, the impact of the well-ingrained culture of informal dealings delineated in Wedel’s study (1986). The third criminal justice flaw indicated by study participants was corruption, which was discussed by thirteen study participants. This senior male participant said in his interview:

It is, let's say ... judges, as well as the police [laugh], a judge is supposed to impose a fair sentence, but from what we can see, these sentences vary. Two judges – two different sentences, three judges and you can even get four different sentences! He is supposed to be impartial, and sometimes I think that there are some other things involved (...) One of these other things [laugh] could be ‘friend of a friend’. Some political sympathies or just the opposite – antipathies. So these are the things, perhaps little ones, but it's not how it should be, a judge should rather be independent, but [laugh] I'm not sure if this independence can be found anywhere in courts.

[P17/I]

In the following interview, a female senior participant expressed her frustration with the current condition of Polish sentencing patterns, which she struggled to explain:

You get to hear about corruption, bribery and it happens, and it does happen very often, I can't stand it when for example you have a fatal case, a man got killed by a drunk driver, and he [the

driver] *is found not guilty. I can't comprehend it! And they prosecute a man who had a beer and was only riding a bike. Where is the logic, where is the sense of punishment?*

[P30/I]

The theme of criminal justice maladies corroborates the observation of Ray (2009), who cites Szalai (1992), saying that the aforementioned perception is a characteristic relic among post-communist societies where social order and the 'culture of favours' was particularly grounded in informality, reciprocity and networks.

The perception of sentencing inadequacy also needs to be discussed alongside another theme that emerged in my study – the importance of being in possession of money. A similar observation was found in a quantitative study conducted in 2002/2003 where the money element, second after lawyers' services, was mentioned by survey respondents as something that matters the most in the Polish justice system (Kurczewski, 2007). The following quotation comes from an interviewee who contrasted his opinion with the so-called 'sad' Polish reality, in which the value of money is high:

AM: What is most important when it comes to sentencing?

When it comes to sentencing ... The circumstances of the incident. Whether this person is aware of one's actions, consequences, whether is willing to submit oneself to penalty. Yes, it should depend on this.

Unfortunately, in our country it depends on whether this person has money or not, and this is sad.

[P21/I]

The confidence in money as a cure-all gained significant attention among study participants – this view was highlighted in five focus groups and fifteen interviews. In the following excerpt a female 39-year-old interviewee said that these days, money is a commodity needed 'to win':

In my opinion, nowadays, those who have money, they win.

[P4]

The aforementioned quotations indicate that limited trust in the efficiency and fairness of the Polish criminal justice system might be also interwoven with certain materialistic/consumerist attitudes which were reported by Szymanowski (2012) along with the sudden inflow of material goods after 1989.

2.3 The inequality of justice

Moore has argued that the origins of criminal justice systems were built on the premise of inequality and the administration of justice in the justice settings has always been distorted and reinforced by structural inequalities (Moore, 2014; 2016). The alleged built-in inequality of the justice system was interestingly contextualised by my study participants. The understanding of justice as a privilege of the rich, who can effortlessly evade justice, and as oppression for the poor as the ‘easy prey’ occurred in the narratives of twenty-three study participants. In all group discussions and twelve interviews, the ‘poor in the Polish criminal justice system’ were interestingly articulated under the phenomenon of a drunk cyclist. Below I present a quote from a focus group that involved male participants from a rural area:

It's shocking! He can pay 60 thousand, 1.5 million and get bail [£1 = approximately 5 zloty at 2017 rates]. This is sick, it's obvious that he's not ... you know he's not a victim, but an offender, no money should come into consideration. This is sick, it's just sick. And then you have a poor fellow who stumbles into something, doesn't pay because can't afford it so he is the one to get caught. For a bicycle sent to prison, for drink-cycling sent to prison!

[FGRM: P11]

The offence of drunk cycling is in fact another characteristic feature of the Polish penal landscape and deserves further attention. The offence was criminalized in Poland in 2000, and sentences ranged from a fine to two years of imprisonment. Łączek (2012) based his analysis on police data from 2011 and concluded that the situation of the drunk cyclists was reminiscent of a witch-hunt. He compared the number of accidents involving drunk drivers, cyclists, and pedestrians and observed that the number of stops, in contravention of Article 178 of the Penal Code, between 2001 and 2010 involving drunk drivers and cyclist were very similar (670 000 and 600 000 respectively). However, it is drunk drivers who pose a significantly higher risk to third parties. While drunk cyclists cause injuries to other parties

only in 7.5% of all accidents, for drunk drivers this number equals 42%. Drunk cyclists and pedestrians pose a risk mainly to themselves (in approximately 98% of cases they are both victim and offender). Given the fact that drunk drivers pose a significantly higher threat on the road⁵⁸, Łączek (2012) analysed the sentencing patterns and observed that the sentencing guidelines for drunk cycling were highly disproportionate compared to the risk posed by drunk driving. According to the Polish Prison Service (*Centralny Zarząd Służby Więziennej*), approximately 50 000 prisoners each year were sentenced to imprisonment for drunk cycling⁵⁹. After thirteen years in operation the relevant legal provision was overruled, and drunk cycling became partially decriminalized (from offence to misdemeanour) which resulted in a prison amnesty for many ‘cyclists’ who were behind bars at the time.

Participants’ use of the image of a ‘drunk cyclist’ as shorthand for a typical defendant bearing the burden of the Polish justice system also points to the ‘drunk cyclist’ as typical post-1989 transformation consequence. In participants’ accounts, the drunk cyclist was a harmless occasional drinker who only drowns his sorrows. The risk such a cyclist could pose was never mentioned at any point in the fieldwork. Drunk cyclists were perceived as those whose financial means, including the means of transport, were greatly limited. In people’s accounts the drunk cyclist symbolized a poverty-driven offending, rationalised in light of the draconian and strict regulation envisaged by Polish law.

Participants’ perceptions of inequality within the justice system are worth discussing with their previously delineated views on the Polish police. Reiner (2010) argued that police powers have throughout history been mainly used against the most marginal and least powerful groups in societies. He defined these groups as ‘police property’, the growth of which has been a major factor in undermining police effectiveness, legitimacy and any discriminatory use of power (Reiner, 2010:137). Reiner also argued that the composition of the groups is susceptible to economic and political changes, and that the unequal impact is most marked at times of economic or political conflict or crisis (ibid.:9). Drawing on this line

⁵⁸ For example, in 2011 there were 2118 accidents caused by drunk drivers compared to 213 caused by drunk cyclists in Poland.

⁵⁹ Juliusz Ćwieluch, *Nietrzeźwy układ artykułów (The intoxicated deal of sections)*, *Polityka* - no 46 (2933), date of publication 2013-11-13; p. 16-18.

of thought, it is apparent that the ‘drunk cyclist’, due to the dynamic and social location of the crime (see Stinchcombe, 1963) became a convenient ‘police property’ particularly after 1989.

At the other end of the Polish criminal justice system are the rich – perceived as the ones who first of all accumulated their wealth through fiddles and skulduggery, made the best connections and now can afford to pay financial penalties as well the best lawyers. In participants’ narratives the rich appeared as unreachable by the Polish justice system:

P33: From the one who stole a bottle worth 12 (PLN), they would take damn everything, and the one who stole millions using a scam gets nothing.

P32: Because there is a linkage between political, business elites and the courts. I know people who work at the Prosecutor’s office; sometimes we drink vodka in the garden. So what he said is this: there are some situations when you can do something and no one is bothered. For example my friends’ daughter died when she was 18 years old. She went camping with other people and apparently she drowned. There were fifteen people from one class, it was a post-graduation camp and these kids were children of prosecutors, judges, directors of big companies. And while we were sitting and drinking vodka in the garden this prosecutor told me that my friends shouldn’t waste money on lawyers because they would achieve nothing. So there is a linkage between political, business elites and the courts. And as P33 said earlier, there is no democracy ...

P33: There is none, no democracy and no justice in the courts.

[FGUMGW]

Firstly, the aforementioned story can be read two ways: that the possible perpetrator (if there was one) was too well-connected to be touched; but the participants talked about a high status victim who might be an object of concern to the police and others. Secondly, a similar perception that people with wealth and influence are better treated than the poor in the Polish justice system was also expressed by 84% respondents in 1998 and 83% in a 2002 opinion poll (Daniel, 2007). This finding is probably not limited to the Polish context, however, despite the issue of data gathering and reliability, lay people’s trust in courts performance was still greater under the socialist regime. While in a survey conducted in 1978 by Borucka-Arctowa 65.7% of respondents said that people are treated equally in courts, in a more recent study entitled *Courts in the opinion of the public* carried out in 2002 only 19% believed that all people are treated equally in the criminal justice system. What might be distinctive in the context of a post-communist country is, as indicated in the above quotation, that ‘no justice’

for some participants is equal with ‘no democracy’. Similar comments were made by six other participants in different parts of the interviews.

Similarly to the views on the Polish police, the reasons for the disappointment with the Polish criminal justice system might be found not only in the socialist past, but also in people’s interpretations of post-1989 transformation events. The participants’ perception of the divide between the poor and the rich in the Polish justice system aptly reflects Czarnota’s (2009) observation that there is an indisputable split between the winners (beneficiaries) and losers of the Polish transformation. The post-1989 times of transition in Poland brought not only the reduction of state involvement in the economy and privatization of property, but it was also a time that attracted a significant increase in white collar crime (Jasiński, 1999). A description of the immediate post-1989 events was detailed by a Polish sociologist, Jadwiga Staniszkis (1999) who highlighted that privatization of the state also meant the exploitation of considerable state resources and institutions for private ends. She argued that post-socialist economies were prone to international organized crime due to general chaos, blurred lines between legitimate and illegitimate businesses, well-established cultures of corruption, clientelism, poorly defined property rights, and currency and foreign exchange fluctuations, as well as opportunities for safe money laundering. The process of dismantling the socialist system was, according to Staniszkis (1991) a controlled power conversion process which is a conversion of political assets of the nomenklatura into economic ones. High-ranking communist politicians were well prepared for the shift towards capitalism: they capitalized on their privileged position and participated in privatization processes, capital formation and the creation of new economic and financial institutions. As a consequence, they filled the new capitalist class and maintained its dominant position even after the collapse of socialism. Skąpska (2011) compared the post-1989 privatization and implementation of economic freedoms to colonialism, when the conquistadors participated in the accumulation of capital in order to legalize it, and later became prestigious, law-abiding entrepreneurs. As the aforementioned literature suggests not all Polish citizens participated in post-1989 privatization processes, and this unequal privatization of property strongly affected the sense of social justice that, as this research aims to demonstrate, is projected onto people’s understandings of the administration of justice. While the losers substantially became ‘police property’, the beneficiaries became the new ‘entrepreneurial’ people (Kossowska et al, 2012).

It is noteworthy that the Polish word ‘*prywaciarz*’, which translates as ‘private entrepreneur’, has to some extent taken on a negative connotation up till now.

2.4 Lawyers

One of the central themes of the theories of punishment and justice (and restorative justice in particular) is the role of advocates, whom Christie provocatively characterized as a group of ‘thieves of people’s conflicts’ (Christie, 1977). The history of Anglo-Saxon jurisdictions demonstrates that although trials in the past were conducted without the assistance of lawyers, they later came to dominate the system (see Langbein, 2003). Although my study participants expressed their views in relation to a number of justice professions, such as judges or prosecutors, none of them gained the level of attention as did the profession of lawyers that was discussed in eight group discussions and 15 interviews. In participants’ accounts lawyers signified a necessary evil, mainly identified as a group of merciless intermediaries who knew perfectly how to navigate litigants, prevaricate and search for loopholes in the law to win their clients’ cases. In a rather amusing manner in three interviews lawyers were compared to parrots, as in this interview with a middle-aged woman:

A lawyer is like a parrot, he should deal with a case in such a way to make everyone satisfied. So justice would be on his side.

[IE4]

The above excerpt echoes Kurczewski’s remark that one of the features of Polish legal culture is the notion of ‘the ordinary person’s right’⁶⁰ flowing from the overall feeling that the law is good when it is on our side but bad when others benefit from it. Despite low confidence in the Polish criminal justice system, study participants perceived lawyers to be part-and-parcel of the administration of justice. The comparison to parrots conveyed participants’ understanding of the role of lawyers – as blind intermediaries whose primary duty is to repeat their clients’ words and wishes. A similar remark was made by Kurczewski (2007) who referred to the findings from a quantitative study carried out in 2002/03; 40% of Warsaw-based respondents said that having a lawyer is what matters the most in the criminal justice system.

⁶⁰ Polish original: *prawo szarego człowieka*.

The image of lawyers as ‘money-mad, heartless sharks’ whose presence in court is perceived to be necessary has long been argued by Friedman (1989). Given participants’ sense of division between the rich and the poor, and their confidence in the value of money, it is also interesting to observe how lawyers equally appeared as people who could provide safety and surety that defendants have to pay for. The following excerpt from an interview with a senior male illustrates how lawyers’ accessibility and availability was discussed against the theme of financial means:

We have been complaining a lot about the functioning of the courts. We tend to say the mills of God grind slowly, yet they grind exceedingly fine. This applies to some deistic sayings, but you have to wait, for example civil cases take years to conclude. It takes years to get someone convicted. And this is not good about our criminal justice system. When it comes to convictions, it’s been said that we shouldn’t dispute them, but when you compare some of them, for example appropriation of property and murder, when someone gets so many years or months, it’s just a pure misunderstanding, right? You just need to have a really good lawyer, which simply means you need to have money to pay him and then your sentence is just symbolic. Fortunately, I don’t know it from my experience but from what I hear from my friends and friends of friends etc. In my opinion, our judiciary does good between E and C. That’s how I think.

[I47/I]

The ‘necessary presence’ of lawyers in people’s narratives requires further elaboration. Kurczewski (2007, 2009) has highlighted that lawyers used to be greatly trusted by the Polish public. He explains this confidence by the fact that under socialism lawyers were widely known and respected⁶¹ as they performed an overarching mission of protection from injustice and political oppression. Secondly, he says, they played a key role in introducing and leading post-1989 transformation changes. However, I doubt whether this interpretation has broader implications. It is questionable whether lay people were familiar with the incarceration of all high profile political opponents, or who was behind the implementation of post-1989 policies. Therefore, it is better to ask what place in the life of the community the legal profession had. Undoubtedly, there was a profound difference between the role played by the legal profession in the West and the Soviet countries. While advocates in the West established their position through a long tradition of independent and courageous affirmation of the rights of the individual, the Soviet lawyers were expected to act as ‘bold defenders of socialist truth and

⁶¹ For example Aniela Steinsbergowa, Jan Olszewski or Kazimierz Szczuka.

justice' (Razi, 1960). Their role to defend the rights of the individual was greatly limited to the areas of strictly private matters such as divorce, alimony, or housing (ibid.). These type of court cases frequently attracted financial compensation, and this is something that could better explain participants' confidence in lawyers. Nonetheless, Agacka-Idecka (2009) made an observation that the performance of lawyers changed significantly during the transformation period. She has emphasized that, after 1989, many lawyers became influenced by the 'American' style of practising law that was based on three dominant factors: efficiency, ruthlessness and money. Moreover, a number of incidents of corruption and dishonesty among lawyers, broadly covered by the media, have influenced public perception of lawyers⁶².

Although the presence of lawyers will also be discussed in relation to participants' perceptions of victim-offender mediation (see Chapter 6), the following excerpt interestingly presents how the perception of lawyers can be projected into out-of-court solutions:

If it's all about an impartial mediator, but how to get an impartial mediator! Impartial mediators can be also bought [laugh], someone once said, every man has his price.

[I/I50]

AM: and now I would like to talk a little bit more about mediation, so the situation when there is an impartial mediator, a neutral person ...//

P14: it depends how much the mediator takes ...

[FGRM]

Chapter 6 will examine participants' views on victim-offender mediation in greater depth, however, it is important to indicate at this stage the relationship between the perceptions of the criminal justice agents and those involved in alternative practices. This finding mirrors Trankle's (2007:404) argument that mediation participants may still 'stick to the logic of a penal procedure' and as a result imitate the judicial/court practice or the perception of such. Despite the fact that the view that mediation facilitators can be corrupted was expressed on

⁶² Interview with Joanna Agacka-Indecka, Polish lawyer, in *Polityka* - no 18 (2703), date of publication 2009-05-02; p. 42-46.

only two occasions, such a perception of criminal justice professionals not only diminishes trust in lawyers but also in Polish mediators because they may be seen as lawyers.

2.5 Chasing the West

Participants' understandings of justice operated at different levels, and I define one of them as the level of chasing the mirage of Western justice standards; a feeling that could be encapsulated by a common Polish saying that 'we [the Poles] must chase the West'. Krajewski (2004:377) observed that, after 1989, the major aim was to 'get rid of the Soviet inheritance and to join or (as some prefer to say) rejoin Western Europe in every possible respect'. Therefore, since the end of the socialist regime, there has been a general aspiration among the members of Polish society to catch up with the rest of the western world. Participants' opinions about the criminal justice system, or to be precise participants' overwhelming approbation of other countries' criminal justice solutions was articulated exactly in this spirit. The following remark made by this young male interviewee illustrates this point:

AM: How do you find this village? What is life here like?

P7: Fine. But I have been in Germany recently and it's much better over there.

AM: Yes? You were there for work?

P7: No, I went there for my sister's wedding.

AM: I see. So how was it there?

P7: It was safer. The police respond only ... what I mean ...the police are wherever they're needed.

It's peaceful everywhere, there are no dangers.

[P7/I]

The understanding that criminal justice policies and policing are better in the West was strongly interrelated with the perception that the living standards and life opportunities are better there. The idealisation of 'western criminal justice solutions' is therefore interconnected with the idealisation of 'western living standards'. The following quotation, which comes from an interview with a senior male participant, demonstrates this point:

But I think, if we had those kinds of people like you in this country, maybe something would start to change. To change this criminal justice system ... but I doubt it. Big question mark. What we need

is to have wise leaders. And there are no wise ones at all. Look at how they get offended! How could we keep things in neutral, living a relaxing life, this kind of life people live elsewhere, like in the West, it's not important to say where exactly. There is a completely different system, everything is created for people, and everything is for, the most important thing in the whole context is the individual. And they care about the individual, from the cradle to the grave. There is no problem with having a kid, they look after the kid, there is no big problem with getting a job, and the married couples make basic money hand over fist, get a flat or something else. A graduate gets immediately a better job. They look after the individual over there. And over here paszół won⁶³! There is an organisational inertia. And the state knows this.

[P36/I]

A similar remark was made by Janine Wedel who observed that: ‘so disbelieving are Poles of their own official media that they tend to accept uncritically any word from the West’, as well as: ‘many Poles admire and envy the West, not only for its ideology of freedom and democracy, but also for the abundance and prosperity it represents’ (Wedel, 1986:134/163). While the media influence is discussed in the next section, this ‘looking outwards’ attitude can be further explained through Kurczewski’s observation that:

The frustrations of the majority of Polish society in the second decade of post-communism came from the fear that, although the race was on, we were losing a place in the race [with the rest of the world about the place in global economy]. This is not the state of mind that would encourage legalistic bases, it would rather encourage the rigorism towards those ones who succeeded and as a result of which they now feel ill at ease (Kurczewski, 2007:41).

Kurczewski (2007) observed that despite the post-1989 expectations that the exceptionally low level of trust in the justice system in Poland might change after the fall of communism, it has remained at the same level since the early days of communism. He has attempted to explain this circumstance and argued that the nature and pace of the transformations did not encourage ‘chasing the West’ through legal channels. Participants’ views on the Polish police, and their recollection of the ‘Wild West’ in particular, already shed light on the nature of the transformation processes. The emergence of ‘new’ crimes, such as benefit fraud, embezzlement of different sorts, or *juma*⁶⁴, manifest Kurczewski’s point further. The

⁶³ *Paszół won* – a borrowing from the Russian language frequently used in Polish everyday speech. English translation: begone!

⁶⁴ A specific criminal activity among Polish youth on the western border, it involved going to Germany to steal petty goods and then selling them in Poland. In the mid-1990s, approximately 30% of young males declared themselves to be involved in *juma* (see Klaus, 2015).

foregoing discussion suggests that after 1989 ‘the West, as an all-encompassing term, has become an overarching goal to achieve, and the present to this day idealization of Western living standards might have affected the Polish popular legal culture and people’s choice to use illegitimate opportunities to achieve this goal.

Nonetheless, the ‘looking outwards’ attitude also assists in understanding participants’ critical stance towards the Polish justice system, and how constant reference to western penal solutions gives Polish people hope for fairer and more trustworthy justice institutions. The next excerpt illustrates how membership in international organizations comes as a safeguard and alternative justice administration to my participants when compared to a domestic ‘Polish’ reality that did not satisfy their sense of justice:

Yes. They simply cover each other’s back. With Mr Kowalski we have ... This is not an isolated incident, it’s a common case. As with the doctors, the police officers, prosecutors, judges they all care about themselves. They cover each other’s back because they’ve the same background, but shouldn’t there be someone to watch over them? Should we draft some neutral people in from other countries? If we have the European Union, it means we have a court somewhere in Strasbourg. And I think that those serious cases should be adjudicated abroad. Because here you can be beheaded and they’re not bothered over there, they don’t give a damn. They search for the truth. And here one after another makes calls to the government. I will never ever believe that Leper committed suicide, I’ll never ever believe that. Today there are such things available that after some time no one can prove anything. They could have injected him with something, no one will prove him, and no one will let anybody do anything.

[P28/I]

This 60-year old female participant, who lives in an urban area, referred to the case of Andrzej Lepper – a Polish politician, Deputy Prime Minister and Minister of Agriculture and Rural Development between May and September 2006. In 2011 he committed suicide, and the circumstances of his death triggered further mistrust of the justice institutions in the account of the above participant. Participants’ confidence in foreign (western) justice agencies may reflect general post-1989 aspirations to join the international community and admirations for policies and practices developed in western countries.

3. Media

There is a strong argument in the literature that the lack of extensive experience with the criminal justice system can make lay people rely on the mass media as a primary source of information (Roberts et al 2003). The media influence on people's perceptions of crime, punishment and justice has been frequently discussed alongside the theory of moral panic by Stanley Cohen (1972). This theoretical stance was developed in light of Cohen's research into the British youth known as 'Mods' and 'Rockers', conducted in the 1960s. Cohen argued that, whenever societies become alarmed about a particular event or activity, the media may construct the representations of crime that inspire 'moral panics' among lay people. Although Cohen's theory of moral panics has been challenged and defined as a possible description rather than explanation (see Howitt, 1998), the eagerness of my study participants to refer to high-profile media cases was obvious. Participants' views were enmeshed with various 'news' comments and such media references occurred fifteen times in group discussions and twenty-four times in one-to-one interviews. For instance, this 80-year-old male interviewee, who was very sceptical about the effectiveness of Polish justice institutions, mentioned one of the hotly-debated, high-profile media cases in Poland:

AM: What are your views on sentencing in Poland?

I43: Have you heard about our recent judgements?

AM: What do you mean?

I43L But have you heard about them? I mean the Papala case ...⁶⁵

AM: Papala yes ...

[I43/I]

The above and similar news citations constituted a list of high-profile crime stories that hit the headlines at the time of the fieldwork. There were twelve different media cases⁶⁶ that were mentioned thirty-four times at various points. Although the theory of 'moral panics' has gained a widespread popularity in Western literature, the functioning of criminal justice systems has been increasingly recognized as media-dominated, where the contemporary

⁶⁵ Marek Papala was a former chief of Polish police who was shot dead in 1998. His death was linked with the sudden rise in serious organised crime during the transformation period in Poland. It is believed his murder was a contract killing and has remained one of the most well-known and unresolved crime cases in post 1989 Poland.

⁶⁶ List of the cases in Appendix XI.

crime rhetoric is reconstructed in the form of newsworthy ‘infotainment’ (see Levi, 2006, Blad, 2013). Lay people become the audience for such ‘news’, which in consequence makes the media, especially television, the main source of people’s understandings of crime, punishment and justice (see Ericson, 1991, Levi, 2006). Research suggests that people with prior criminal justice experience are less likely to be media-reliant when seeking information about the justice system (see for example Pickett et al. 2015). Although it was impossible to examine the exact media influence on my participants’ perceptions of punishment and justice, the presence of media constructed stories in their accounts needs to be acknowledged.

On the other hand, Katz (1987) has long argued that crime news is of widespread interest to lay people because media cases provide opportunities for lay people to engage in a ‘daily ritual moral workout’. Katz made his observations after examining 1400 crime articles that appeared in the Los Angeles Times between 1981 and 1983. He concluded that so-called newsworthy crimes did not appear to be especially surprising or unexpected. Lay people become alerted to certain media coverage not because they fear becoming a victim of crime but because media representation of crime allows them to question certain existential challenges. Katz referred in his theory to Durkheim and argued further that the reading of crime news is a collective, ritual experience; thus, the real purpose of newsworthiness lies in the act of breaking the widespread sense of order. Katz emphasized that ‘public viewing of punishing the deviance’ used to be public. The role of contemporary media is thus to maintain, though through different means, this ‘public viewing of crime stories’ that allows individuals to confront various moral questions. Interestingly, Katz’s argument is a continuation of the two-step flow of communication – which is an idea developed in the 1960s that the mass media influence is in fact a two-stage process. The media might spread the ideas to ordinary people, but there is a primary group of so-called ‘opinion leaders’, who access the media information first and then project them onto other people, with whom they maintain everyday relationships (Katz & Lazarsfeld, 1964). Moreover, media consumption varies culturally and geographically, and theorizing about media influence has produced inconsistent and inconclusive conclusions. Mass media technologies can also serve as a means to integrate people’s private lives into the broader public (political) sphere. Ericson (1991:242) particularly argued that ‘mass media do not distort reality, but rather provide a discourse – an institutional mode of classifying and interpreting reality that helps people to construct their own organizational realities. Therefore, Kitzinger (2004) proposed reversing

the well-known and frequently-asked question: *What do the media do to people?* - and focusing instead on the following one: *What do people do with media?*

Drawing on the above arguments, I would like to argue that, in my study, media coverage of crime stories can be approached as an opportunity for the participants to discuss their views on (or rather disappointment with) the Polish criminal justice system. For example, this young male participant, who lives in a rural area, perceived journalists as active parties in publicising crimes and trusted that they played a key role in crime detection or justice administration. This was because he believes that within the Polish criminal justice system, ‘things can be covered up’:

TV does a lot, because when something gets publicised on TV they come back after two or three weeks and something is happening with this case. Otherwise the profession may hush things up. But the journalists are so tenacious these days that they don't give up easily; they get things out to the finish.

[I54/I]

High trust in the role of journalists was also evidenced in a 2006 opinion poll, in which 57% respondents said they trusted journalists, a score significantly higher than in relation to Polish politicians or judges (Kossowska et al. 2012). Although the advantages of the media’s involvement in the administration of justice were obvious to many participants, this 37-year old male participant, from a rural area, believes that media efforts do not always succeed:

The news has gone viral, a lot is going on, but what turns out later is poor punishment and poor results.

[P13/I]

Levi (2006) has observed that in many societies like those of Central and Eastern Europe, the media eagerly report news (or scandals) about people in positions of power and influence. The following excerpt, which comes from a focus group with senior participants from an urban area, echoes how media coverage is valued when it relates to crimes committed by the poor versus those by the rich:

P34: yes this was well known, this story hit the headlines, the story about a female ticket cashier who sold the ticket to someone who was in a hurry so she didn't use a till. And because all this happened in the presence of a revenue officer,

The case was blown up out of proportion. For a ticket that was worth 2.6PLN.

P35: And the other thing is that this lady didn't make a copy of the receipt worth 0.30PLN, it wasn't checked, but classified as a criminal matter and she was convicted!

P37: but when it comes to big bucks then everything gets blurred.

P34: exactly, everything gets blurred. But on the other hand it has to be said that our Polish mentality is a little bit like ... that since the time of PRL [Polish People's Republic] ... at the time a lot of things were done without ... to put it simply they were done illegally, taking a free ride on a tram was so to speak pretty normal.

[FGUS]

Although, at the beginning, the excerpt demonstrates how the media are believed by participants to depict the failures of the Polish criminal justice system, towards the end of the excerpt one of the female discussants critically reflected on Polish society and people's compliance with the law. The purpose of her comment was to remind the rest of the group that there are reasons for people's non-compliance today with Polish law and these can be found in the socialist past where non-compliance was seen as 'normal'. This remark reflects the already-discussed argument in which participants said that '*We [the Poles] are not an easy society to police*' and manifests again the nature of the Polish popular legal culture. This particular example demonstrates that participants' reliance on media crime stories can serve as a binding element in articulating their wider views on the administration of justice.

Last but not least, high confidence levels in the media among participants might also result from the fact that the notion of 'free media' is a relatively new concept in Poland. For senior study participants the trust in media was even greater when compared to the times when censorship was widely practised in Poland. For instance, while discussing the brutality of the Polish police, this 60-year-old female participant suddenly recalled the censorship and the advantage of now having 'freer' media. It is also worth highlighting that she did not agree with the other participants cited earlier in the chapter, who were of the opinion that contemporary Polish police are inefficient:

They are more brutal [the Polish police], perhaps because their brutality has been exposed more frequently. There is more freedom; I am not saying they weren't brutal previously. They've always been brutal it's just that the world is now more free from ...the media are more free and they publicise it.

[P28/I]

Freedom of the press is central to freedom of speech and the purpose of the pre-1989 censorship in Poland was to amend or eliminate the circulation of any publication unfavourable to the socialist government. Modelled after the Soviet Głavlit, the Main Office for the Control of Presentations and Public Performances (*Główny Urząd Kontroli Prasy, Publikacji i Widowisk*) was established in 1946 in order to manage Polish censorship. The officials used unknown criteria, so the censorship of many academic, cultural and media materials was frequently left to the office's discretion (Bagieńska-Masiota, 2013). Nonetheless, Romek (2001) has argued that censorship in the People's Republic of Poland was multi-institutional in nature. The author observes that the censorship in communist Poland should not be solely associated with the functioning of the Main Office, as there was an interwoven system of formal and organizational activities that involved a wide range of institutions and individuals to censor the content of many publications. Although censorship symbolizes the infringement of free expression, this male interviewee pointed to certain advantages of the limited access to information at the time of socialism:

But Komuna gave us ... gave us censorship, Komuna gave us limitations Komuna limited access to information, but I think that people back then were hanging out in small groups and they protected those groups more. I don't know, you could even call it the clan system which descended from the medieval times where your own interests were protected. They protected their own interests, supposedly there was no vodka, but in fact vodka was flowing everywhere. Supposedly people were complaining, but among themselves, among themselves they knew how to rejoice and find some joy in life. In my view, this frustration right now is mainly caused by the access to information, people can access it, and the more broadly, the more broadly you look the more stupid and ignorant you want to become.

[I50/I]

The interviewee's opinion on the access to information interestingly leads back to already discussed themes. The importance of knowing the right people under socialism is expressed

through the comment about the culture of informal dealings and cheating the system (*'they protected their own interests', 'supposedly there was no vodka, but in fact vodka was flowing everywhere'*). Although the interviewee acknowledged the media censorship under the socialist regime, his narrative, again, included certain nostalgic sentiments and the perception that the years of selected, limited information available to the public made ordinary people safer, more protected and part of the community.

In conclusion

This chapter has analysed the nature of participants' views on the Polish police and criminal justice system. The presentation of the findings has demonstrated how people's understandings of justice shed light on a wider socio-economic and political context, in which justice processes operate. The purpose of this research was not to examine how true participants' observations are, but to elicit their perceptions that are understood in their complexity. It is evident that participants' views on justice and policing are embedded in a wider perception of the 'world that they have lost', post-socialism nostalgia, or disappointment with post-1989 transformation processes. This research demonstrates how the course of events has affected participants' legal culture, which is manifested in their ambivalent perception of the police, limited trust in the fairness of court performance, and confidence in lawyers. The extent of participants' disappointment with Polish criminal justice is further echoed in their willingness to compare and idealise the western experiences of criminal justice policies as well as place their faith in the media coverage of crime. Some of these features were indicated as distinctive of the Polish context and some as similar to the ones argued in western criminological literature. Although I asked my participants about their contact with the Polish police and the Polish criminal justice system, they barely referred to it in their accounts. The experience that people have with the criminal justice system is argued as one of the most significant factors that shapes people's perceptions of the justice institutions (see Roberts & Hough, 2005). The reasons as to why the participants said so little about their contact with the policy and the criminal justice system in Poland could be explored in future research. Although, the reasons as to why the participants said so little about their contact with the policy and the criminal justice system in Poland could be explored in future research, it is fair to say that most of my participants did not feel

comfortable to discuss their experiences. One could speculate that due to the Polish past or the Polish mentality it may be even a ‘terrifying thought’ to share one’s experiences about the contact with the Polish police or the Polish justice system in public. Nonetheless, the significance of participants’ views on the Polish police and criminal justice institutions lies in the fact that these views constitute the notion of Polish popular legal culture and the discussed agencies remain the main three restorative justice gatekeepers. Therefore one has to consider how participants’ understandings of justice are accommodating towards restorative justice. Before exploring participants’ views on victim-offender mediation, I will discuss another peculiar feature of participants’ views that will advance the discussion on the viability of restorative justice – which is their confidence in unpaid work.

Chapter V

Understandings of punishment

While the previous chapter examined participants' perceptions of the Polish police and criminal justice system the purpose of this chapter is to explore their understandings of punishment, because there is no justice without sanction, as 'the criminal court operates through punishment' (Rock, 1998:590). In the introductory chapter I discussed in detail the notion of punishment and argued that one of the rationales behind this research is to explore whether Poland as a post-communist and post-transformation society has the potential to be receptive to the restorative function of punishment. By doing so, I would like to argue that unpaid work in the Polish context can be seen as a meaningful restorative practice that might contribute to the development of restorative justice in Poland. Moreover, I would like to widen the discussion on the painfulness in restorative encounters as many restorative justice advocates 'see little or no connection between punishment and restorative justice' (Daly, 2012:1) and argue that the restorative practice of community work can be seen as a restorative measure that may produce a restorative pain – the type of pain that is welcomed and justified, is a natural by-product of a restorative practice that aims to cleanse, restore, construct, repair and reintegrate (Gavrielides, 2016). Due to the fact that work was overwhelmingly viewed as the most appropriate and beneficial form of punishment, the task for this chapter is to delineate participants' confidence in work and investigate whether this support has any restorative character. Work as punishment has a long tradition in many countries. For example, in *A view of the hard labour bill* by Jeremy Bentham (cited in Sieh, 1989, first published in 1779) work performed in Panopticons served as a tool to make institutional punishment more rational and humane, but also more punitive. While the major penal function of work in the past was to instil discipline, the current rationale is to prepare prisoners for life after release, or when in the form of unpaid community sanction, constitutes an essential part of most countries' sentencing policies.

Participants' trust in work as a response to crime was built on a number of intertwined themes. In order to explore this complex phenomenon, the chapter will be developed as

follows: first, I will independently analyse participants' narratives on work as prison labour and community sanction, where some traces of a restorative rationale behind the support for work can be found. Next, I will explore the notion of shame and stigmatization in participants' confidence in work, and engage with Braithwaite's theory of reintegrative shaming. Then, I will discuss how the case of child maintenance arrears, the most frequently associated 'crime' with regard to participants' advocacy for work, should be seen as a punitive feature of the Polish penal landscape. Finally, I will situate work in the Polish context and argue that there are a number of distinctive societal and historical features that might explain why work has such overwhelming support.

1. Prison labour

1.1 Punishment

Prisons have always been multipurpose institutions and prison labour has always been a substantial feature of imprisonment. Historically, there have been three main principles behind work in prison settings: discipline and deterrence, a commercialised form of industry/self-sufficiency, and moral reformation/rehabilitation (Hawkins, 1983; Matthews, 2009). In addition, Sykes, in *The Society of Captives*, observed that prisoners' labour had long been treated as a duty, privilege, economic necessity or cure (Sykes, 1958). The variety of rationales behind prison labour was also mirrored in my study. The close relationship between work and prison settings was expressed in five focus groups and 21 interviews. Below is an example, from a conversation between two male participants living in an urban area, of how work was discussed within prison settings:

P40: Generally speaking, every time there is a prison sentence it should be combined with work for society. That's it.

AM: What about those who don't get custodial sentences?

P40: They should do unpaid work as well.

[FGUML]

Penal labour, either under the name of galley slavery, deportation, or penal servitude, partially replaced capital and corporal punishment in the late sixteenth century. However, it has been argued that this was not a result of humanitarian considerations, but the confidence in forced labour as an answer to the pressures of rapid economic developments (Rusche & Kirchheimer, 1968; Łoś, 1988). In some of my participants' accounts, penal labour retained a highly punitive and exploitative nature. The next quotation comes from a young female interviewee who proposed hard labour as an alternative to the death penalty:

AM: Fine. And tell me now...Because we have already discussed unpaid work, fines, the only thing that is left is for me to ask you about the death penalty.

P22: Well, I am against it. I am against, because I am rather a humanitarian person, so I would be able neither to sentence someone to death nor ...I am not sure, if I heard that someone was sentenced to death, it would be for me ...It would have a significant impact on my mental health, because ... Because I am actually a Christian etc.⁶⁷, and I think that it is not people who give us life, apart from our parents [laugh], that it is not people who give us life, so they don't have the right to take it away from us. No matter what we have done. Maybe there is actually an extremely difficult person, and maybe there is a real difficulty to come to terms with him, but he might be actually a sick, psychopathic murderer etc. but I wouldn't kill anyone. Perhaps, I would give him very tough labour to do, to put up with for the rest of his life, but I wouldn't decide to kill anyone.

[P22/I]

In a similar vein, hard labour was discussed by this thirty-year-old male interviewee:

AM: Fine. And now could you tell me what you think about unpaid work as a punishment?

I50: Very good idea. In one of the Arab countries, some years ago, they introduced a combined punishment that consisted of the death penalty and unpaid work. This way they introduced labour law in one of the prisons. So he was getting paid for his work, but if he was not able to earn his keep, he was simply executed. I don't mean mixing those two sanctions, but prisoners themselves say on TV that, people who are there for minor offences, well it depends how we classify this, but for example for theft, these people were quite often happy that they can you know, can go outside, clean a bit, have a smoke, have a smoke in a park, so I think that this is very positive. Another issue is that, knowing about such cheap labour, some companies would be satisfied to take prisoners to work on motorways, build motorways, buildings.

⁶⁷ Although at the outset of this thesis it was acknowledged that one of the main visible features of Polish society is that over 80% of Polish people identify themselves as Roman Catholic (see Chapter 1), the mention of religion occurred only once during data collection, and it happened in the aforementioned interview with this young female student. This paucity of reference to Catholicism in participants' narratives is a finding in its own right and I shall elaborate on this at the end of the thesis.

[I50/I]

Although penal labour has been a prison feature in many countries, some scholars argue that there are distinctive characteristics when it comes to prison labour in Eastern European countries. While Bárd (1994) argued that ‘reformation through labour’ is more associated with Eastern European countries, Piacentini (2008) observed that the Soviet construction of crime and punishment was based on the ideological foundations that unpaid work performed by prisoners contributed to national economic projects. Nonetheless, due to lack of real economic profits, modern prisons in the region abandoned the employment of prison labour and began to isolate prisoners while simultaneously excluding them from the mainstream economy. The above argument, as well as Soviet-era subjugation and its influence on participants’ perception of penal labour, was echoed in the following account of this young Polish male, who lived in urban area:

AM: So are you saying that you would also like to see those in prison work, am I right?

P23: Yes.

P21: Definitely. I think that is the best punishment for the worst crimes ... It is easy to punish someone by taking one’s life, isn’t it? It’s very simple because it does not overburden society, but taking one’s life should not be left up to anyone’s decision, no one should decide about someone’s life or death. This kind of person must be punished but the question is how? Exclude him from society? This sort of punishment was practised in Tsarist Russia, people were sent to Siberia. Maybe these days ... it also would be a good solution? [Laugh]

[FGUY]

The comment was made in a group discussion with university students: P21 (23, male), P22 (20, female), P23 (20, female), and P24 (19, female). What was suggested by this young male participant was in-exile imprisonment – a social experiment of dealing with criminality in Russia where rehabilitation and repression existed side by side and were embedded in the Russian culture of punishment (Piacentini & Pallot, 2014: 23-25). Initially hard labour and exile served as one punishment but in the nineteenth century only those recidivists who were beyond hope of reformation would be sent to Siberia (Piacentini & Pallot, 2014). The idea of exile and hard labour then re-emerged with the Bolshevik Revolution in 1917, when the notion of re-education through labour was mirrored in the relevant law and implemented after the revolution in 1918 (Andrejew, 1981). Labour camps were highly promoted by those in power in the late 1920s/early 1930s due to the use of prison labour for the construction of the

White Sea-Baltic Canal in 1933 (Booth, 2006). A great illustration of the relationship between prison and labour camps is the *Gulag Archipelago, 1918-1956: An Experiment in Literary Investigation* by Aleksandr Solzhenitsyn. Nonetheless, the first prototypes of the Russian in-exile penal camps were established in the nineteenth century, and this form of punishment existed in Poland only between 1772 and 1918 when the country was partitioned between Russia, Prussia and Austria. I will refer to this particular historic period later in the chapter.

2. 2 Economics

Throughout prison history, both economic and non-economic factors have shaped the functioning of prison labour. To illustrate this point Hawkins (1983) pointed to the work of Sidney and Beatrice Webb, who documented the condition of English prisons and penal labour in the nineteenth century England. The scholars demonstrated the diversity in the organization of prison labour based on their comparison between Coldbath Fields Prison, as an example of an unproductive system of punitive labour, and Wakefield Prison, as an example of a developing prison industry. It was the Home Office 1865-77 policy that undermined profitable prison employment in English correctional facilities and reinstated the penal character of prison discipline (Hawkins, 1983). It has already been touched upon in this chapter how the idea of penal labour as punishment was interwoven with an economic rationale, however this theme requires a broader theoretical interpretation. In my study, the economic orientation of prison labour was vividly discussed in five focus groups and sixteen interviews. The description given by this senior female participant during a focus group⁶⁸ shall be the point of departure for a further discussion:

In closed shop floors where you are involved in production. Hard production, steelmakers. Everything can be learnt. Such a steelworker, we lack ... And on such a closed shop floor they would have to earn their keep and pay the State. Taxes ... make him work and live. He wouldn't get a single brass farthing, why would he need money in prison?

[P28/FGUW]

⁶⁸ The female participants who took part in this discussion all lived in an urban area and were: P25 (37, single, unemployed), P26 (57, divorced, admin worker), P27 (54, separated, teacher), P28 (60, married, admin worker), P29 (39, single, police officer), P30 (61, in partnership, gardener), and P31 (59, divorced, technician).

As illustrated above, it was the high costs of prisoners' upkeep that was the most often-cited reason for participants expressing their support for work. Legge (1978) argued that the issue of a mounting tax burden, due to the cost of prisoners' maintenance, was never electorally popular. Yet despite this, since 2000 the world prison population has increased by almost 20%; for the year 2016 there were about 10.35 million prisoners around the world⁶⁹. The increasing incarceration rate has also been observed in Poland. Although one of the goals after the fall of socialism was to change the nature of Polish penalty, and the intention behind the post-1989 general amnesty was to lower the imprisonment rate, Poland is currently among the countries with the largest prison populations in Europe (Maculan et al, 2013). In terms of financial impact, in 2001 the cost per place in a Polish prison was 1 354, 13 PLN (approximately £270.83 monthly) and it increased to 2 606, 44 PLN (approximately £521.29 monthly) in 2013⁷⁰. Thus, participants' concern about the rising prison costs seems well-founded.

Another underlying reason for participants' support for penal labour was the perception of prison conditions. Beliefs concerning the conditions in which prisoners should serve their sentences have also a long history (see Sieh, 1989). People's perception is based on the idea that prisons are full of unnecessary luxuries, such as physical comforts, food, TV or books. These things are treated as commodities that only 'normal', law-abiding people deserve. The view of prison as a 'holiday resort' has also been well documented in Western research (see Sieh, 1989; Stead et al. 2002; Rogers; 2015), and was also emphasized in my study, for example by this young female interviewee:

AM: And tell me what you think about prison as a punishment?

P22: It depends on what kind of prison it is. But what I think is that our prisoners, prisoners in general, they have too much. Obviously, there are some prisons that are not so luxurious etc., but there are some prisons where really, prisoners are better off than ordinary people. So I think that it is very unfair because they have done something bad and really then they are in a warm room, they are provided with food, beverages, everything and they have to have an acceptable standard of living – fine, but what about the people who really try to live by the rules etc. and they do not have such acceptable standards of living? I think it is unfair that they...They also should earn their keep,

⁶⁹ ICPR, Institute for Criminal Policy Research, the World Prison Population List available at: <http://www.prisonstudies.org/news/more-1035-million-people-are-prison-around-world-new-report-shows> accessed 16.05.16.

⁷⁰ *The prison cost per prisoner* available at: <http://sw.gov.pl/pl/o-sluzbie-wiezionej/statystyka/statystyka-roczna/> accessed 17.05.16.

work even in this prison. And I am not sure, I have recently watched a documentary, however, it was not in relation to our country, that they simply create separate centres, that employ only serving prisoners or ones who have just been released from prison. And really, these people really change their attitude a little bit, because they see that they are not such a lost cause etc. And then something starts to change.

AM: Because of the work, yes?

P22: Yes. I think that they should really work for the conditions they live in, because ...Because many people don't have it, although they deserve it.

[P22/I]

Although the female interviewee also went on to praise the rehabilitative side of work collectives and their reformative impact on the person, her condemnation of current prison conditions is at odds with the actual state of affairs. As far as the number of working prisoners is concerned, according to official government statistics between 2001 and 2013 the employment of Polish prisoners rose from 24% to 31.5% respectively⁷¹. Secondly, Poland is among five⁷² European countries with the highest number of complaints made to the European Court of Human Rights about alleged human rights violations. Out of 1099 judgments handed down from 1991, when Poland joined the Council of Europe, to 2015, 299 related to the right to liberty and security, which includes poor prison conditions. The main basis for the complaints has been prison overcrowding, insufficient hygiene and sanitary conditions, and poor medical care particularly in relation to prisoners with a disability or long-term condition⁷³. As far as the perception of prison conditions is concerned, my participants' knowledge was rather limited.

Furthermore, participants' confidence in work also echoed their nostalgic sentiments after socialism. The following excerpt demonstrates how one of the female participants (P30) expressed a nostalgic longing for the past, when 'prisoners used to work in shop floors', and then indignantly criticized the improvement of the prison conditions:

P30: But prisoners used to work in shop floors.

P28: Absolutely!

P30: And why did they abolish this? And created such conditions?

⁷¹ <http://sw.gov.pl/pl/o-sluzbie-wieziennej/statystyka/statystyka-roczna/> accessed 19.05.2016

⁷² Poland comes fifth after Italy, Romania, Russia and Turkey.

⁷³ Statistics of the European Court of Human Rights (1959-2015), available at <http://www.echr.coe.int/Pages/home.aspx?p=reports> accessed 17.05.16.

P28: TVs, books, they can study!

P26: Normal people don't have such organized ...//

P25: But they work, they work now as well

[FGUW]

Although another female (P25) tried to contribute to the conversation by reminding the rest of the group that nowadays offenders still have the opportunity to work, her remark seemed to remain unnoticed by the other participants. Before I offer my further interpretation of the above quotations, I suggest looking at one further quotation, which also illustrates the perception of the 'do-nothing culture' and idleness of Polish prisons. In two focus groups and five interviews in particular, participants expressed the view that prisons should be self-supporting, and that prison work in particular should be performed in the form of hard labour to fight 'prison lethargy'. However, what is of particular interest here is one of the male participants' (P40) reference to the prisoners as 'parasites', which evokes the language of the past and reflects one particular aspect of the socialist criminal justice system in Poland – namely the history of the anti-parasite legislation that was copied from the Soviet system (see Chapter 2).

AM: And what do you think about prison as a punishment?

P40: With work – positively! Without work it is ...//

P41: It doesn't need to be a custodial sentence.

P40: Definitely but it has to be combined with work, to make sure that this brigade would do something for society, not that these parasites sit and ... pump iron. Worms!

P41: That would be the best; I don't know exactly why or whether unpaid work is actually practiced.

P40: Rather sporadically. They hire cleaning companies and they actually could take this brigade, give them a kick in the butt and ...

P41: Exactly!

P40: Go out into the streets!

[laugh]

[FGUML]

Under the socialist regime those charged with ‘social parasitism’ were sentenced to do unpaid work (Łoś, 1988). Although it should be treated with caution, research conducted during the socialist era suggests that social parasitism was highly condemned by Polish society and work as a remedy was often recommended. In a 1971 Polish opinion poll, conducted by an opinion poll research centre, 36% of respondents said that people should be given compulsory work to do, 32% said that society should try to persuade workless people to get a job and 18% believed that out-of-work people should be placed in dedicated labour camps (Kwaśniewski, 1984:60).

It has been repeatedly recognised in this thesis that being part of the international community and meeting international (human rights) standards was one of the central objectives in Poland after 1989 (see Chapter 2). However, one of the senior male interviewees, while referring to current prison standards in Poland, said that the high cost of imprisonment is caused by international obligations that Poland had to meet in order to join the European Union. In his view, meeting these standards is something that Polish society cannot afford at the moment:

147: So I think that...On the other hand, there might be not enough time to deal with real offenders or it is being delayed, correct? I think that is ... hmm. Furthermore, I am not sure this answers your question but we have entered the European Union. And we are trying to meet their standards. But we are not a rich country. And here it is like that, what people dislike so very much, is that each prisoner needs to have certain square metres of space in a cell, he needs to have this and that in his cell, and he needs to eat this and that. Having a diet makes people outraged... The amount of money that is spent on one prisoner is much higher than, for example, on a patient in the hospital. This makes people outraged. This is the law, and so on, so on, so on. Poland can't afford it, probably, because we are not a welfare state. And if we are not a welfare state, then we must resign from something. The same applies when you work, and you can't afford everything, so you must give up on something. Perhaps it should work this way that the prisoners ...the European prison standards will take effect in a few years' time. Maybe it is better to take care of nurseries, patients and so on, and so on. You can find the real shortcomings there.

[147/I]

All the aforementioned quotations illustrate Matthews’ (2009) argument that prison labour has always been looked at through the ‘less eligibility’ principle – a rarely-explored and referred-to concept. The notion of ‘less eligibility’ originated in the writings of Jeremy

Bentham and was embedded in the English 1834 Poor Laws, which called for the standard of prison conditions to be below the minimum standard of living for those living outside prison (Hawkins, 1983). Likewise, profitable employment and training of prisoners attracted a certain antagonism during the Great Depression in the United States in the 1930s, when the employment of prisoners on the open market was changed to work on public projects or at agricultural work (Sieh, 1989). Hawkins (1983) argued that the logic of the concept significantly influenced the operation of criminal justice systems in terms of prison reforms, prison work conditions, rehabilitation and parole conditions; long-term failure to develop effective and profitable prison industries is not due to economic constraints but the persistent influence of the principle of ‘less eligibility’, deeply rooted in people’s minds and embedded in Western penal policies.

One of the prime opponents of prison labour in England and Wales in the twentieth century was the trade unions that considered penal labour as a cheap competition in the free market. Matthews (2009) also argued that the less eligibility concept, in the form of challenging prison labour, is especially sound in times of high unemployment – an observation that is corroborated in the next excerpt. An interesting moment in the following group conversation arose when the dominant participant (P28) was challenged by another, but much younger, participant (P25), who was unemployed at the time of the fieldwork and expressed the opinion that prison labour could be seen as a competition, especially in times of high unemployment⁷⁴. The discussion between female friends and neighbours who lived in an urban area started with financial estimates made by one of the participants (P28) who dominated the discussion and focused the group’s attention on the financial dimension of prisoner ‘maintenance’:

P28: Let’s say I get 1700zł [approximately £340 per month] salary and to maintain one prisoner costs more than 2 000zł [approximately £400 per month].

AM: Yes ...?

P28: I beg your pardon, how am I supposed to feed my family when I have three kids or so? Because prison herders [meaning prison staff] must be kept, directors, and others, this is all connected.

P31: Yes.

⁷⁴ At the time of the fieldwork the unemployment rate in Poland was 7.4% and since 2008 the number of unemployed Poles had been steadily increasing. Ministry of Family, Labour and Social Policy, Poland <https://www.mpips.gov.pl/analizy-i-raporty/bezrobocie-rejestrowane-w-polsce/rok-2013/> accessed: 16.05.16.

P28: If we need to punish, let's build shop floors! They should earn their keep, not have it collected from us. And that's all I want to say.

P25: Fair enough. But then they have a job and we don't. And what now?

P28: But these would be some sort of shop floors, you know ...

[FGUW]

This research demonstrates that the concept of less eligibility is also rooted in the minds of people from a post-communist society. The post-1989 transformation was undoubtedly expeditious at the policy-level, but as it emanates from the fieldwork data, the process did not allow people to comprehend the nature of these changes and adjust to them. Along with socio-economic and political changes came the obligation to respect international standards which, in participants' opinion, interfered with the previous approach to penal labour – something that many participants felt nostalgic after. This observation interestingly echoes Mannheim's observation made many decades ago that 'every deterioration in the economic conditions of the population at large, as well as every improvement in prison conditions, was bound to lead to an approximation of the conditions to an undesirable equality' (Mannheim 1939, in Hawkins 1983:100). It was demonstrated in the previous chapter how participants' feelings of social injustice were projected onto their view of the Polish criminal justice system. Something similar can be argued here as well – participants' support for work for economic reasons demonstrates again how the wider socio-economic landscape affects peoples' views on punishment.

Finally, there was a strong feeling among study participants that work in prison can release the financial pressure from lay people (the 'taxpayers') and make prisoners contributors to their own upkeep. This resonates with the point I made at the outset of this thesis that the value of lay people's views is central to the financial aspect of punishment and justice, as the functioning of those social institutions is financed by lay people and their engagement with criminal justice policy making should be regarded through their rights, duties and membership as individuals in a nation-state (see Dzur, 2014).

However, it is worth asking about the nature of such work. Although Hawkins (1983), based on his observations in the United States, argued that it was feasible to develop productive prison industries, Legge (1978), based on British and American prison research, argued that rehabilitative aims were not compatible with economic goals when it came to penal labour,

because prison was not a normal employment reality. Firstly, prisoners are classified according to age, sex, previous convictions and length of sentence, their past work experiences and future employment potential are not a consideration. Secondly, prisoners are predominantly engaged in institutional upkeep activities, and their job preferences strongly depend on their modes of adaptation to prison life. For example, rather than improving their skills or employability, prisoners may choose to work simply to beat the monotony of prison life (see Guilbaud, 2010; Rogers, 2015) or to access illegitimate opportunity structures. Furthermore, prison jobs are of a simple, repetitive nature, often involving traditional ‘female’ activities, such as cooking and cleaning, and there is a relaxed attitude to work as the value of time is diminished (ibid.). Matthews (2009) also observed that prison work has always been ‘pre-capitalist’, and therefore unlikely to attract the form of discipline and co-operation necessary for capitalist production. The prison world is a closed, self-contained microcosm that houses people who have been removed from social life by a judicial decision, so prison work should not be compared with work outside prison (Guilbaud, 2010). To put it mildly, work in prison settings might not produce the anticipated economic effects that lay people imagine and hope for – this study shows that participants wanted prisoners to work in the worst conditions, and at the same time produce the best results⁷⁵.

2. 3 Reformation

It is important to appreciate that prison work was, at different stages in prison history, believed to be an instrument of rehabilitation and a way of turning offenders into law-abiding citizens. Although such views appeared to be voiced by a minority in my study, below is an excerpt from an interview with a male who in fact believed that prison labour, when understood as a ‘lesson’ had a great deterrent effect:

AM: But what do you think, what would it give? What kind of advantages does this sanction have?

[discussing unpaid work]

⁷⁵ At the time of final write-up of this thesis the Polish government introduced in September 2016 the first of two pieces of legislations that aimed to enhance the employment of Polish prisoners. The main rationale behind this policy was to lower per-inmate costs. The policy envisages broadening the scope of employment opportunities, granting certain tax allowance to potential employers, and building 40 prison-based production lines. Available at <https://www.ms.gov.pl/pl/informacje/news.8619.program-pracy-wiezniow--rzad-przyjal-projekt.html> accessed 30.09.16.

P21: First of all, in my opinion, maybe it is not as much of a preventative sanction but rather, hmmm...Maybe such an offender would think twice next time before he committed another offence, because he knows that he will have to work in the streets, and he might not really fancy doing it. That's one thing. So you know...in other words – it is a lesson, right? A lesson, punishment. On the other hand, this would be of benefit to society. Let's only consider these uncleared pavements, unploughed streets, or some road works and their slow progress. Obviously, it would carry significant costs. The prisoner would need to be transported; he would need to be provided with...first transportation. Secondly, and most importantly, he would need a lot of guards, right? These guards should be armed with live ammunition. So here are the costs, costs as well.

AM: Fine.

P21: But I think it is...I am not convinced whether in other countries it is a routine, but...it means it would look strange to have, let's say, ten prisoners digging a ditch in Central Warsaw, and fifteen other armed people would stand and watch them. This would be a little pointless; because of the costs to maintain the guards or...inclusive of prisoner transportation etc. this would probably exceed the costs of hiring a normal building or road team. So hmmm... But clearing streets or pavements – why not?

[P21/I]

Although this young student acknowledged the reformatory side of work and went on to exemplify his opinion, he then balanced his view with the financial burden of pursuing such an idealistic claim. The following quotation, which comes from a female-only group discussion, illustrates how prison work can occasionally be depicted as a means of survival and rehabilitation. One of the female participants (P4) shared an example based on a true story:

AM: And let's take the example of a drink-driving case that ends up in an accident where someone gets hurt because the driver had a drink before. Do you think that this type of case should be referred to mediation?

P5: Rather treatment.

P4: Treatment. But there was a situation like that in our family, the boy was of impeccable conduct in general. And this single stupid incident caused that ...yeah an incident ... disappointment in love led him to get drunk, get behind the wheel, and the rest, you know, it was a famous case in Poland and everyone must have seen it on TV. He got behind the wheel and he had a head-on collision with a pregnant woman. She was pronounced dead at the scene, they did try to save her on the spot but ... Yeah in the ambulance. So then 12 years of imprisonment. He was sent to prison where he mentally dealt with it ...well ...because he really supported and helped the

family out, he did help this family a lot because they weren't in a good situation. He was really ... he was of good repute. The people from his locality were quite surprised that it was actually him, that he could do such a thing. He suffered a lot from this, mentally. Every single day when he called, my aunt was worried that he might have actually done something to himself. I very often had to deal with him because when the time when he had to stay there had passed, sometimes I would pick him up from jail, bring him home and so on. He was so resigned that he kept saying that he would simply go to another part of Poland, because here he is a murderer. That's it! For him life was over! This is it; he would never have a family! And so on. In total he spent, including ... he got time off for good behaviour, work, work in prison helped him a lot. Thanks to this he didn't run out of steam.

[FGRW]

Using Syke's language, prison labour 'as a cure' was coded in my study only in the above discussion.

3. Community reparation

Restorative justice indicates a more active role for lay people. Lay involvement means that people are given back a 'direct and hands-on control of justice decision making' (Dzur, 2008:202) that creates a chance, for them as a community, to experience the process of conflict resolution themselves. Although making reparation is part and parcel of restorative justice, Strang & Braithwaite (2001) rightly observed that the concept of community and reparation gains the least attention in the discussion on restorative justice. This part of the chapter will illustrate how participants' views on work as a community service assist to understand the difference between restorative justice and restorative practice as discussed in Chapter 1.

This part of the chapter will examine participants' confidence in work performed in community settings and investigate any restorative traces in such approach. In the literature (Durnescu, 2008; Robinson et al. 2013), it is argued that performing work of benefit to the community by wrong-doers has evolved over the years in all European jurisdictions and, alongside electronic monitoring or community justice innovations, unpaid work has become one of the new forms of community sanction. Western research suggests that most members of the public are unconvinced about the productiveness of community-based measures on the basis that they are not tough enough (Roberts, 2002). For instance, despite the fact that with

the release of the Casey Report, *Engaging Communities in Fighting Crime*, improving confidence in community penalties has become a central concern for British policy-makers (Casey, 2008), British people and criminal justice professionals remain sceptical about the advantages of community penalties (Maruna & King, 2008).

The debate on unpaid work in the Polish context invites contrary observations. The particulars of work as a community order are detailed in Article 35 of the Polish Penal Code. The Polish law envisages the sanction as unpaid, supervised community work, carried out from 20 to 40 hours a month. This type of work is provided and coordinated by companies, health and social care institutions, or charities; however, the recommended work needs to benefit the local community (Janus-Dębska, 2014). The amendment of the Code from 2009 further highlighted that the intention behind work as a community service was to teach offenders conscientiousness and discipline. Undertaking unpaid work in places such as hospitals, care homes, hospices or homeless shelters, aims at influencing offenders' life goals and seeking to change their attitudes. Although Janus-Dębska (2014) acknowledged that the execution of unpaid work still encounters certain obstacles, such as unwillingness on the part of offenders, the rate of successfully completed hours has increased from 85.4% in 2010 to 97.3% in 2013⁷⁶.

Work as a sanction performed in community settings was mentioned on 45 occasions at different stages of the fieldwork. One of the themes that recurred throughout participants' accounts was how work, as reparation, can help offenders to restore their relations with their communities. As indicated previously, in the field of restorative justice, '[unpaid] work' falls under the heading of reparation or restitution and is performed by the offender and addressed directly to the victim. Although, participants' confidence in work as a community service creates a certain space to explore restorative dimension to it, this support allows to consider community service as a certain restorative practice, not restorative justice. First, a restorative tone can be found in the following quotation, where a more humane approach towards offenders ('educate and talk to offenders') was indicated in the discussion with male participants:

⁷⁶ In 2010 there were 13 849 327h of unpaid work referred to monitor by the Polish Probation Services, out of which 11 832 104 were completed (85,4%). In 2013 the completion rate was 97,3% (17 619 790, out of which 17 152 443 were successfully completed (Janus-Dębska, 2014).

AM: I am wondering what you think about sending people to prison. Imprisonment as punishment? You started saying that we should talk to offenders, am I right?

P32: Of course we should. They should be given punishments, do not isolate them, how to put it? ... Educate them.

P33: Rehabilitation

P32: This type of rehabilitation, where they report to a certain meeting place or work, sort of ... or workshops, where they could realize ... that they can return to society through work! Oh! This way, I would see it this way, not to lock them up in prisons and have nothing out of this. The State pays without making him realize ... and he could be educated ... he doesn't participate in generating national income, I would never be in favour of prisons. For some big offences, murders, robberies yes, but otherwise ...

[FGUMG]

My study participant's support for work in the community resonates with findings from the 2005 European Survey on Crime and Safety, which shows that 49% of survey respondents in Poland opted for community service in contrast to 34% who chose imprisonment. By comparison, in the United Kingdom the support for unpaid work was 29% and 52% favored imprisonment (see Maffei & Markopoulou, 2013). One of the advantages of work as a community service, as articulated by seven study participants, was that work could serve as a better means to redeem one's wrongdoings:

I would also prefer them to work. Wherever there are any needs, shortfalls, where there is no money to finance some public works, they should work there, ho-hum, whoever can afford to pay, won't feel the restriction. And the ones who can't afford to pay, so to speak, it's a bit of a vicious circle for them and what next? How to force him to ...? He got a fine but doesn't pay, he is sent to prison and what? He should get a chance to rehabilitate himself through some community work. There are so many needs, for example in orphanages, you can arrange a lot of things, it is just important that they work and become helpful.

[I51/I]

Work in community settings was also identified as a necessary route to stay up-to-date with rapidly changing technologies and help with the burden of early release from prison. This perspective was expressed, for example, in an interview with a male living in an urban area (the same participant who previously recommended hard labour along with the death penalty):

I50: In prisons there are fantastic...fantastic, also, professionals. My father was in such situation, he was on a call-out, a unit broke down, a pump, a fuel pump in the unit in the Białoleka prison. And then when he was just about to get dressed and go, to go to work, his boss called him: Listen, don't worry, they found a mechanic in the cells and he has just replaced the old pump. So you know, I think, that there are, there can be...

AM: Experts.

I50: Of course. It is a matter of development, it is also about giving this person a chance to be rehabilitated and see how the world looks. There is an example in the 'Shawshank Redemption', an example of a guy who is released after 20 years and sees how the world has changed. It is a matter of, a matter of technology, let's imagine a person, who was locked up, locked up in the late '90s, when a mobile phone was a luxury, and these days this mobile phone, which he stole umpteen years ago, these days it is something normal.

[I50/I]

The above excerpt particularly demonstrates how in one single interview work can be discussed in both prison and community settings. When the interviewee recalled his father's experience to illustrate that the contact with the community is crucial in offenders' rehabilitation and post-parole life, the perception of work as a hard labour switched to that of work as a rehabilitative tool. This particular example documents a well-known finding in the literature – that people's attitudes are fluid as well as 'contradictory, nuanced, fragile' (Hutton, 2005; Roberts & Hough, 2005), 'selectively punitive and selectively merciful' (Stalans, 2002).

In three focus groups and 15 interviews, participants demonstrated a certain non-punitive view of work, saying that work generates some sort of 'thinking processes' in offenders that could teach them a lesson and affect their future decisions and actions:

P20: Yes, this what else? Prison for defamation? No, let him work it off before he insults someone again.

P17: For example make him clean the main square in ZZZ [name of the town] for a month or so.

P20: Yes, yes something like this.

P17: Exactly, some useful jobs.

P20: Don't put him in prison! Let him see for himself. If he insulted someone, let him see how much effort it costs to put into work! Make him restore it at his own expense!

P20: Make him clean the stadium after a match! That's it! He won't shout at anybody a second time!

P20: This way, right? Through education you need to teach them manners.

P19: Also, also.

P17: Educate them ...

P20: Parents don't educate them because they're busy working

P17: Parents don't have time.

P16: School doesn't have time.

P17: School doesn't have time, what matters now is to be quick and brief.

P20: A teacher used to be an authority figure to students.

P16: And now we don't have any authority figures.

[FGRS]

The above described 'thinking processes' involves acknowledging one's actions, taking responsibility and feeling remorseful, which corresponds with the core restorative justice objectives. Restorative justice has long been argued for as a process of respectful dialogue, where offenders are held accountable for their actions, harm is repaired and offenders are reintegrated into society (Zehr & Mika, 1998). One of the important features of restorative justice is the expressions of remorse that are essential components of any restorative practice (see Roberts et al. 2005; Stalans, 2002). This observation was made in one focus group and three interviews, where it was indicated that work can enhance remorse in offenders, leading to their reintegration into society:

First thing, unpaid work means a lesson in remorse and cooperation with other people. That's what I think.

[P22/I]

Another interesting outcome of the data analysis is the participants' view that work might activate a feeling of guilt, and so break the denial of responsibility among offenders – something known as neutralization techniques. These techniques were described by Sykes & Matza (1957), who argued that most delinquency is based on justifications for crime that protect the individual from self-blame and the blame of others after the wrongdoing. When there is no disapproval from the social environment, these rationalisations are lightly neutralized and the individual can engage in further delinquency. A similar understanding of

the issue appeared in conversations with young study participants living in an urban area, in which P24 shared his view that work can be seen as an avenue for the offender to realize the consequences of his actions and, as a consequence, prevent any denial:

AM: Fine. Those of you who indicated the second option as the better one [in relation to a case scenario], so what was it exactly that appealed to you? Was it that he acknowledged his guilt, that he wrote an apology letter, or that he would get a financial penalty because he agreed to compensate all the damage, or that he would do unpaid work? What was it ...//

P21: That he acknowledged his guilt, and that he agreed to cover damages.

P24: Essentially the fact that he would compensate financially, and that he would work for a bit as this way he could feel that he had done something wrong. If he apologized and only gave it back, that wouldn't be enough.

[FGUY]

Below, a female participant gave an example of child maintenance arrears (I shall elaborate on this issue later in the chapter) and illustrated in her interview how work perceived as community payback could contribute to a father's realization of his parental financial negligence:

Child maintenance arrears ... I would consider various scenarios, why is he not paying and so on. However, what I think is ...If this person really doesn't feel obliged to ... doesn't recognize that it is a child, and is not paying because he doesn't want to pay, then I think it would be good to offer unpaid work, it should be ordered that this person needs to do something for the community. Alternatively, this person could be obliged to show interest in the child, because it doesn't happen often I think with this type of case. This perhaps would affect him somehow, he would notice that actually it is his own child, and this child needs this and that, maybe then something would change. Alternatively, if someone doesn't have money, then unpaid work so he could get back on his feet to pay it off or something.

[P22/I]

Although this view was articulated among young study participants, there is some indication that lay people might perceive work as a powerful sanction to disable the neutralization techniques described by Sykes & Matza (1957).

Lastly, although this suggestion was indicated only twice (in one group discussion and one interview), it is worth looking into how victim-offender mediation (see Chapters 1 & 6) could gain people's interest if it was made clear that there would be a work element to it:

P40: I would consider mediation if only this turd does some unpaid work.

P41: Or replace your roofing felt.

P40: At his expense.

[FGUML]

The above observation illustrates specifically how unpaid work, seen as a restorative practice, might potentially contribute to the development of victim-offender mediation, which is how restorative justice is currently practised in Poland.

In this part of the thesis I set out how participants' support for work in community settings might reflect a certain restorative potential for work in the Polish context. Fellegi (2010) notes that in the restorative justice literature, seeing community service as having a restorative element came to be seen as a risk (see for example Bussu, 2016). However, she has argued that in Central and Eastern European societies community work could actually be seen as providing the basis for further developing restorative justice. According to Fellegi, community work has a more established structure in those countries; what is needed is to strengthen the process conceptually and provide relevant practitioners with a better understanding of the restorative concept in order to convey restorative ideas through community service (ibid.). The findings of this study, and the above section in particular, indicate that work in the form of community service, conceptualised first as a restorative practice, might indeed be of assistance to the viability of restorative justice in post-socialist countries in the future, as it attracts significant support on the part of lay people. Moreover, the discussion I present at the end of this chapter extends Fellegi's point, as I also argue that Poland may be considered as a society with certain historical receptiveness to work.

4. Shaming

4.1 Reintegration

In *Crime, shame and reintegration*, a classic reading in the field of restorative justice, John Braithwaite (1989) introduced the concept of shaming as a process that can produce two

opposite outcomes: reintegration and stigmatization. Both outcomes will be discussed in this part of the thesis, due to the fact that shaming came through as another interesting theme in participants' narratives on work as a sanction. Braithwaite (1989) has argued that shaming imposed by relatives, friends or personally relevant circles, whom he defined as 'significant others', is a much stronger deterrent than shaming in criminal justice settings. Marshall (1996:38) extended Braithwaite's perspective on reintegrative shaming and said that this is the case because judicial sanctions shame without offering any chance of reconciliation or direct contact with victims; it is a process that can only generate alienation and crime-reinforcing results. It is the social disapproval from people who retain a strong social bond with the offender that, according to Braithwaite, becomes a powerful method of controlling misbehaviour. It is because this type of shaming supplies the morals which build conscience. Thus, once shamed reintegratively, the wrongdoer is more likely to be susceptible to reintegration. Braithwaite has emphasized that:

Reintegrative shaming is shaming which is followed by efforts to reintegrate the offender back into the community of law-abiding or respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant (Braithwaite, 1989:101).

The findings of this study resonate, to a certain extent, with Braithwaite's argument: in three focus groups and ten interviews, work was mentioned as a vehicle for restorative-like shaming. The following excerpt from a conversation between two male participants who lived in an urban area illustrates this point:

P40: That's it. I think that work would help them to find some goals in their life, and even in a fucking jail.

AM: And why work?

P40: Because every person, I think, that everyone has something like, some sort of internal instinct to create, to produce, and if they were given this chance, you know, to work, at some point they would understand that they are leaving something in their wake, they would have a goal in their lives, I don't know. They would work; they would get a minimum wage.

AM: But also you mentioned earlier on, that other people should see them, what would it mean?

P41: Well some sense of shame in the society and lack of anonymity.

P40: Precisely.

P41: And in my view it actually works, you know, what would my neighbour say? My friends?

P40: Exactly, some people get punished but no one knows about it.

P41: Yes, your friends don't know about it, even from your inner circle no one knows.

[FGUML]

Here, work is discussed as a universal value that could provide goals for offenders and turn their lives around. Then, what P41 suggested, and the other male participant (P40) agreed with, is that work could produce shame that would deprive 'working' offenders of anonymity. The section in which the participants discussed 'the inner circle' of friends and neighbours then echoes to some extent the role of the 'significant others' and their influence on the process of reintegrative shaming argued by Braithwaite (1989). The 'significant others' are also defined by McCold (1996) as micro-communities whom Lemley (2001) described as communities constructed anew each time an offence is committed. Community should be seen as a sum of social relationships injured by the offender's actions on those who provide support for victims and offenders (ibid.).

The powerful consequence of shaming in the presence of a circle of familiar people was illustrated in an interview with a male living in a rural area (P14). Although the interview had been arranged as a face-to-face follow-up after a focus group session which the male had attended, we were unexpectedly joined by his wife (W) and occasionally also their children. Nonetheless, at one point the interviewee shared his history of previous convictions and experience of being sentenced to do unpaid work:

AM: And now I would like to ask you - what do you think about unpaid work as a punishment? It's been mentioned earlier that you are in favour of this ...

W: Yes, I am in favour.

AM: Why?

P14: And oppressive.

W: Well I wouldn't release a murderer, I wouldn't create a possibility for an escape, no.

P14: No, we don't mean this type of offences here.

W: But for something like child maintenance arrears, minor thefts, and then I would be up for it.

P14: Because when they offered me ...

AM: Unpaid work?

P14: Unpaid work instead of paying, well, I preferred to pay.

AM: *Why?*

P14: *For example...*

W: *You know, just to relieve the State that pays alimony for these people, let them work it off, and let the monies be returned to the State, which has paid on their behalf.*

AM: *Fine. Can I ... ?*

P14: *But the thing is that it doesn't work exactly this way. For example, a village administrator receives the order and has to confirm the type of works that are being conducted, how many hours, yes.*

W: *That this person has completed the hours of unpaid work.*

P14: *If he were headstrong, and counted every single hour, 50 hours – then there would be a lot to do in the village.*

AM: *Hmmm.*

P14: *Or even more.*

W: *And this is how they should do it, they should do it this way.*

AM: *And why did you not agree to do unpaid work, why did you prefer a fine?*

P14: *Oh no, I'd prefer to pay twice as much [laugh]*

AM: *Hmm, but could you tell me why?*

W: *Shame perhaps [laugh].*

P14: *Shame in the first place.*

AM: *Really?*

W: *Quite embarrassing in front of people.*

P14: *I prefer to help out some people just like that, but...*

W: *But just to have this awareness, that it is my punishment, that I have to go and clean the streets or...*

AM: *Did you have to do this unpaid work in your village?*

P14: *I think this would be the most convenient.*

AM: *Most convenient.*

P14: *Yeah. It's the nearest, no need to go anywhere. But I am saying, here in our village there were a few who changed it to... [a fine]*

W: *A fine. (...) Well, if they hadn't had any money to pay, then indeed, they would have preferred to work it off. And overlook...*

AM: *Interesting.*

P14: You will not find anything really tough to do over here. Mr Y [the village administrator] would ask to clean here or there. He would deduct a few hours, and...But then these people don't express gratitude to him.

AM: No? Why?

P14: They just don't, they are not...when he asked them to do something, it even happened they didn't do it at all.

W: Or he didn't do it correctly, he only went there, did something but not as it was supposed to be done.

AM: Not entirely.

P14: No.

W: So he would add an extra hour or two, the time would fly quicker. And they take it as...only some titters, giggles behind his back.

AM: But do you see any positive sides to unpaid work, working off, shame – can it be positive? [laugh]

P14: Yes, certainly.

W: Yes, yes.

AM: And even you admit it, yes? [laugh]

P14: Yeah. I can go when Mr Y [the village administrator] calls me. He says: let's do this and that. I don't have any problem with it, I will go and...

W: But not as a punishment [laugh].

P14: As a punishment – no [laugh].

[P14/I]

The interviewee revealed he was afraid to be seen by anyone who would recognize him while doing unpaid work and so preferred to pay a fine. The above interview excerpt is a good example of how the presence of close circles of people can awaken the offender's conscience and set in motion the shaming mechanism. However, it is worth asking is it reintegrative? Braithwaite (1989) emphasised that the deterrent effects of shaming in this context would be the greatest because close relationships generate more interpersonal costs for the offender. Although the quoted above excerpt comes from an interview with a male who lived in rural Poland, Braithwaite indicated that reintegrative shaming has even more potential in large cities due to many different circles of people who could participate in the process of shaming.

However, what is worthy of note in the Polish context is that unpaid work appears to be a subject of transaction and can be exchanged for a fine – something that was discussed in one group discussion and three interviews. The following excerpt comes from a discussion between a married couple who were in their late sixties. They had both graduated with a degree in law under the communist regime. While the husband (P38) had had a successful career as a lawyer, the wife (P39) had never practised. They said:

AM: And what about unpaid work?

P39: Well we don't practise it as much, and it should be practised more often.

P38: Definitely.

P39: If this man is already in prison, let him earn his keep at least. Mind you, there are prisoners doing unpaid work, they help in flooded areas or ...

P38: But it is not about prisoners working.

P39: You mean work done by prisoners, don't you?

AM: I mean unpaid work.

P38: No. Community sentence means that you are on the loose ...//

P39: Sure, I know what it means...

P38: A court can impose either a fine or six months of unpaid work on the streets. And in my view this is the punishment that teaches something because it brings shame. Not once the clients would come, well this is a sort of a nuisance after all, because one wants to work abroad, earn some money and instead needs to do unpaid work. And some do not want to do this because they are ashamed, aren't they? Because I am visible to other people ...but there are some provisions, that allow the court to vary the community sentence, change unpaid work to a fine.

AM: Really?

P38: And there are cases like that ...//

P39: Where people prefer to pay.

P38: Simply when one doesn't do it, the court needs to impose a fine.

AM: So you can buy yourself out of the shame?

P39: More or less yes [laugh].

P38: Yes, it's allowed.

[FGUS]

Firstly, the quotation demonstrates how the imagery of a 'working prisoner' (articulated by the wife) was contrasted with a community version of work (articulated by the husband). This might be due to the wife's limited work experience and limited chance to see in practice the post-1989 development of unpaid work as a community sanction. In contrast, her husband became a well-known local lawyer, who practised law long after the fall of the previous regime. Secondly, the excerpt interestingly illustrates the provision for converting community work to a fine; or, in other words, an opportunity to 'get out of shame' that was embedded in Polish law until recently⁷⁷. This observation ties in with remarks made in Chapter 4, where one of the strongest themes was the perception that justice can be avoided if only one can afford it. Unfortunately, I could not find any statistics that would shed light on how frequently this actually occurs. Nonetheless, this particular procedure might be an interesting anomaly of the Polish penal landscape.

4.2 Stigmatization

The visibility of work and its shaming aspect also had a punitive and stigmatizing implication in participants' narratives. This type of shaming was depicted by Braithwaite as follows:

Stigmatization is disintegrative shaming in which no effort is made to reconcile the offender with the community. The offender is outcast, her deviance is allowed to become a master status, degradation ceremonies are not followed by ceremonies to decertify deviance (Braithwaite, 1989:101).

The stigmatizing rationale behind the visibility of working wrongdoers was observed in four group discussions and thirteen interviews. The excerpts from two focus groups (with senior and female-only) participants highlight this finding as follows:

AM: Let me go back to the subject of unpaid work because it was mentioned that it would be good if others could see that someone has done it. Is it the way you understand it that through unpaid work ...//

P36: Also punishment!

⁷⁷ At the time of writing the Polish government had initiated changes to the provision, meaning that those sentenced to do unpaid work will no longer be able to convert their sentence to a fine.

AM: Exposed to ...//

P37: Of course!

P36: Yes

P34: Simply to redeem, for society...perhaps both. But where they can see you! Who knows, that ... has he got something written on his back...

P36: Well there should be a poster. An advertising poster.

P37: Well not necessarily, but to see him cleaning and that's it! To make him visible!

P34: But you don't know, P37, that he is an offender. Someone does the job, you walk past and you still don't know!

[FGUS]

AM: And what sort of work would it be?

P28: Work that is very hard and is easy to learn.

P26: In winter clearing of snow, now roads.

P28: But no, you can't let them out like that.

P31: So tag him like a cow, oh yes!

[FGUW]

Clearly, the intention of making defendants visible through tagging, advertising, or the 'marking [of] something' on their backs was to stigmatise them rather than reintegratively shame them. Such public disapproval by non-significant others does not bring into existence pangs of conscience, is not followed by reintegration, and is the type of shaming that Braithwaite (1989) has strongly argued against. He observed that there are some crucial societal conditions conducive to effective reintegrative shaming: interdependency (social bonding/attachment) and communitarianism. While the former is a condition ascribed to an individual, the latter represents the condition of a society. In communitarian societies pressures for stigmatization are less because people are involved in each other's lives and care more about the relationships between them. Although it is a highly interesting point, it is beyond the scope of this research to explore how 'communitarian' the participants of my study were.

The concept of reintegrative shaming, or rather its limited viability due to the prevailing superiority of stigmatization, can also be interpreted through the lens of ‘less eligibility’ already explored in this chapter. The notion of ‘less eligibility’ was for example articulated in an interview with a well-educated senior male interviewee who suggested that the nature of the work in question must be unpopular and ‘despised by normal citizens’:

AM: Let me follow up on your comment and ask you now about unpaid work. So do you think it would be an interesting option for offenders?

I47: What I think is that those who are in custody ... there is a sentence, a valid judgement, so they shouldn't live even in relative comfort. We simply can't afford it. They should be punished. Not only so that they become isolated. Let's notice that, ok 'isolated', but he has the right to receive visitors, sometimes he is discharged for a day or week, or something like that. I am not even mentioning the right to meet ladies etc. because it's a different story. This is how it works, am I right? On the other hand, there are various types of work, which are not popular in particular; on the contrary, these kinds of work are despised by normal citizens, let's make prisoners do them. Let prisoners do them. At least they will be of some benefit for the time they are here. This is my opinion; I think this kind of work are very rarely given to prisoners, correct?

(...)

AM: Really? So what do you think would be the value of such reparation, that it would be worked off in public?

I47: So I am up for it. I am in favour of, let's say, letting more people know, not only the court and those involved in the proceedings. Social stigmatization of certain offences, from my perspective, could be beneficial. Not for this person [the offender], but for other people, who would know, that if one commits a crime, and is caught, then he will be stigmatized not only in his own but also other environments. This would be, let's be honest, he would probably fear this.

[I47/I]

This particular part of the interview is an example of how public stigmatization can be trusted to make ‘work’ a successful deterrent. However, stigmatization, as opposed to social integration, combined with the attitude of ‘less eligibility’, can actually generate counter-productive outcomes. Roche (2006:223) has observed that ‘probationary schemes that require offenders to join work crews responsible for sweeping streets and cleaning public areas is not a great example of restorative justice practice’ as such activity does not lead to reintegration. Furthermore, the American scheme of chain gangs revealed the exploitative and unsafe nature of performing work in public (see White & Graham, 2015). According to Pratt (2000)

both forms of shame are signs of a so-called ‘new punitiveness’, which involves the return of punishment performed in public. Pratt has argued that the kind of punishment that was once imposed ‘behind the scenes’ has resurfaced in the penal landscapes of many Western criminal justice systems. Regardless of whether shaming is of restorative or stigmatizing nature, the new trend envisages increased public involvement and administering punishment in the community.

In the previous chapter I discussed the participants’ reliance on the media when discussing the deficiencies of the Polish criminal justice system. Although this mechanism was significantly less apparent in relation to discussing unpaid work, one of the focus group participants used the media framework in order to spread and advertise the perceived advantages of the sanction. In this particular case this senior male participant wanted the media to get involved in the popularization of unpaid work:

P17: As I have said, for the illegal alcohol trade, send him to a distillery to pack crates, for free for a month, or to pump something or to do something else.

(...)

P17: You could even produce a news reportage based on these unpaid works and publicise it somewhere.

[FGRS]

Despite the fact that Braithwaite’s theory of reintegrative shaming has profoundly influenced the field of restorative justice, the aforementioned quotations have shown how difficult it is, at the level of lay people’s preference, to demarcate between the reintegrative and stigmatizing nature of public shaming. Blagg (1997:484) has suggested that Braithwaite’s attempt to give reintegrative shaming a universal currency fails to address certain contentious propositions: that accepting reintegrative shaming might involve the questionable notion of collective shame and the non-reintegrative influence of the agency – that is the process through which the theory is realised.

Braithwaite (1989) has indeed indicated that although the two types of shaming can be made to contrast sharply, in reality, wrongdoers tend to experience each in varying degrees. However, there are no other studies that research this particular line of enquiry. Although there is still a risk that public involvement in administering punishment in the community

might be a sign of the new ‘punitiveness’ (see Pratt, 2000), the lack of any stark separation in practice between restorative and stigmatizing shaming requires a better understanding of the notion of ‘painfulness’ even in restorative encounters. Wright (2013:396) has argued that: ‘the restorative justice process aims at causing internal pain, through physical effort of constructive work for the victim or the community, or the effect of courage to face the person who has been harmed or both’. Participants’ confidence in unpaid work and the restorative practice of community work can be seen as a restorative measure that may produce a ‘restorative pain’ – the type of pain that is welcomed and justified, is a natural by-product of a restorative practice that aims to cleanse, restore, construct, repair and reintegrate (Gavrielides, 2016). For that reason, the relationship between restorative justice and punishment needs to be better addressed in the literature.

5. Work & crime – the case of child maintenance arrears

In participants’ narratives, unpaid work was believed to be suitable for a wide scope of offences. It ranged from the most serious to most minor crimes. However, non-payment of child maintenance, which is a criminal offence in Poland, was highlighted exceptionally frequently. Child maintenance arrears⁷⁸ is specified in Article 209 of the Polish Penal Code for which one can be sentenced to a fine, community order or up to two years of imprisonment. It was the prospect of incarceration for parental financial negligence towards children that caused outrage among study participants and triggered their support for work as a sanction, as indicated by this senior male interviewee from an urban area:

In my view I think that, well, yes. Starting with the fact that our remand centres and prisons are overcrowded. Undoubtedly, in my opinion, the courts deal with things, those kinds of misdemeanours and minor offences that they shouldn't deal with. And I think that...Actually I think I know. My son worked as a chief accountant in a remand centre in the city where I have always lived, and there are plenty of people put in custody for those minor things. Where, in my view, forced labour, or a fine or something similar, would be enough. And they are kept there for months. For example, for child maintenance arrears. I don't know, it's debatable whether a husband who doesn't pay alimonies should be kept in custody or should he be forced to work and half of his

⁷⁸ Polish original: *przestępstwo niealimentacji*.

salary deducted, am I right? Because when he is in custody, he is there at the State's expense, correct?

[I47/I]

The tendency to punish persistent non-payment of alimony has a long tradition in Polish criminal law and dates back to the time of the Partitions of Poland in the nineteenth century (Sosnowska, 2012). It appears that the scale of the non-payment of alimony has always been a considerable issue in Poland and currently it is still a significant problem. For example, in 2011, out of 423 464 sentenced offenders, 16 138 (3.81%) were charged with child maintenance arrears. It is not surprising that child maintenance is still linked with the possibility of a custodial sentence, since fully 76.2% of offenders who do not clear the arrears receive a suspended sentence, while only 16.5% are sentenced to community order, 6.5% to prison and 0.8% to paying a fine (Gruszczyńska, 2014). According to the KRD Economic Information Bureau⁷⁹, for every 1 000 debtors in Poland, seven fail to pay outstanding alimony and the total amount of overdue child maintenance as of 2015 was estimated at 8.2 billion PLN (which is approximately 1.5 billion pounds sterling)⁸⁰.

The punitive response towards child maintenance arrears in Poland can be viewed as a peculiarity of the Polish criminal justice system with deeper anthropological roots. Fidelis (2012) has argued that the role of the Polish father was significantly limited under the communist regime. Although this trend is known in many countries, Fidelis says that in Poland it was the mother who was more widely expected to run the household and take the primary role as parent. The exclusion of fathers from mainstream full-time parenting was greater in the Polish context and might have influenced the number of fathers who became alimony debtors. It is therefore not surprising that work as a solution to child maintenance arrears was more eagerly discussed and more frequently recommended by female participants of this study.

Participants' responses to child maintenance arrears illustrate Garland's argument (1991:120) that punishment can be seen as a social artifact, constructed and shaped by various social

⁷⁹ KRD Economic Information Bureau (Polish original: Krajowy Rejestr Dłużników), established in 2003 to provide an economic information exchange programme for all business partners: individuals, sole traders, secondary creditors, small and medium enterprises, and large corporations. Since 1st July 2015 all child maintenance debtors have to be registered with the KRD.

⁸⁰ http://en.krd.pl/Home#_ga=1.197246892.2057287873.1463752898 accessed 20.05.16

forces. The custodial response to non-payment of alimony has its own historical tradition in the Polish context, which has remained in place despite the change of regime and still intends to perform a punitive role. In the introductory chapter, it was acknowledged that there are four dimensions of punitiveness: political rhetoric, laws, policy practices and people's attitudes. Moreover, it has also been recognized that, based on traditional indicators of punitiveness, the literature on crime and punishment has been divided by a punitive/non-punitive dichotomy (see Matthews, 2005; 2014; Hamilton, 2014; Sato & Hough, 2013). However, the case of child maintenance in the Polish context demonstrates that punitive elements might be found in the most unexpected places of a country's penal practice. Participants' support for work in cases of child maintenance arrears appear as a sensible call to soften the state's punitive response and consider a more restorative approach.

6. Work in the Polish context

Garland (1991, 2012) has argued that punishment is not only a reaction to crime; it is a social construct shaped by various social forces that has its own historical tradition and cultural styles, as well as being intended to perform varying instrumental roles. The preceding quotations shed light on how this could be observed in the narratives of lay people. Moreover, punishment can serve as a key with which one can unlock a larger cultural text (Garland, 1991). This understanding of punishment was, for example, adopted when Garland analysed the peculiarity of America's death penalty.

Drawing on Garland's definition of punishment and its applicability in examining the peculiarity of a society's penal landscape, I consider [unpaid] work as a tool that unlocks a broader picture in the Polish context. Andrzej Leder, in his historical study entitled *An over-dreamed revolution: an exercise in historical logic* [*Prześniona rewolucja: ćwiczenie z logiki historycznej*] (2014), drew on Charles Taylor's general concept of social imagery, and investigated contemporary values, and symbols through which Poles imagine their society. Leder has argued that the mentality of Polish society has been mainly shaped by a deeply-embedded agricultural mind-set, as well as the influence of the ideas which originated during the Romantic period towards the end of the eighteenth century. Polish society was in a political vacuum at the time due to Poland's partition and foreign rule of Russia, Prussia, and

Austria. Ziemkiewicz (2012) pointed out that, as opposed to the Germans, French or English, the hopeless involvement of Polish society in numerous nineteenth-century uprisings against the invaders precluded them from learning how to do 'citizenship'. On the other hand, the failures of the nineteenth-century uprisings led to rethinking how to come to terms with the existing political order. It was believed that the best initiative to remedy the situation was to renew Polish society, and revert to the defence of national interest through social, economic, and cultural initiatives – something that had already been somewhat of a tradition in Poland and was known as 'organic work' (*praca organiczna*) (Blejwas, 1970). The tenets of 'organic work' became an element of nineteenth-century Polish political thought, and aimed at neutralizing the revolutionary attempts to restore Poland's independence, and instead, encouraging capitalistic entrepreneurship and improving the economic wellbeing of the nation (*ibid.*). According to Leder, the socialist era and the strongly-advocated ideal of the 'working people' further preserved the agricultural attitude and resulted in a Polish middle class that is now deprived of class-awareness and status due to its still-dominant peasant mentality. The author has emphasized that work, among many other features, has always served as a distinctive symbol in Polish social imagery that stems mainly from both peasant heritage and experience of the socialist regime.

The peasant origins of Polish society were also interestingly depicted by Wasilewski (1986), who observed that Polish society's awareness, culture and ideology are determined by its peasantry, and that, regrettably, the social sciences in Poland have ignored the consequences of the influx of peasants into urban areas⁸¹. Due to the fact that the Polish intelligentsia was either the main target of the Germans during the Second World War, or immigrated to the United Kingdom and other countries, post-war society was mainly composed of peasants whose position was strengthened by subsequent agrarian reforms. In post-1945 Poland, peasants were the potential reserves for the 'new' working class and intelligentsia, and the increase in the urban population in Poland was predominantly caused by the intra-country migration of people from rural areas. Similar observations were made by Janine Wedel:

Many peasants have urban relatives. The government's social policy of transferring the labour force from agriculture to industry resulted in post-war migration to urban areas. Though, before World War II, 65 percent of the populace resided in rural areas, now 65 percent lives in towns and cities (Wedel, 1986:100).

⁸¹ The author defines the process in Polish as '*chłopienie miast*'.

Having acknowledged this phenomenon, Wasilewski (1986) outlined the key characteristic features for peasant societies as: direct contact with nature and dependency on nature to a high degree, field attachment, self-help, humility before the forces of nature, risk-averseness, high religiosity, mistrust of the outside world, and a very strong work ethic.

Wasilewski's description of Polish society greatly assists in delineating my participants' confidence in work. For instance, in all group discussions and 21 interviews, unpaid work was said to be good for morale. This view was for example emphasized by the following senior man from an urban area, who believed that work educates and shapes people's character:

AM: And are there any offences that should go unpunished? Are there any people who should not be punished by the courts?

P36: No, like that no. If you commit a crime, you have to be punished. But there needs to be a variety of punishments. The range of punishments should be like, the starting point ... from cleaning the streets to scaffold. It should be this way. How many sanctions do we have? And so many needs, there is so much work to get done in XY or mines. Work educates, work moulds one's character.

[P36/I]

The next quotation, which also comes from an interview with a senior male living in an urban area, demonstrates how trust in work, articulated very naturally and spontaneously, can be passed from one generation to the next:

My father told me this when I was little. Really. He was telling me about different delinquents on the other side... So I have always had this confidence in work, that work is always good for various things. That's what I think (...)

[P35/I]

For another male participant, who was in his thirties and from an urban area, work symbolized a feature that defines 'Polishness' and to some extent sets Poland apart from other nations:

Yeah. And it was funny to hear, why you know...why there are so few Muslims in Poland, who have spread all over Europe – because of our poor benefit system, you simply have to work here [laugh].

[I50/I]

Then, according to this female interviewee, such hard work should not be feared by the Poles:

Because he would have to physically earn it, right? Nothing effortless, nothing like ... only physically. Perhaps it would be a bit shameful if he was doing it, but no job is beneath you⁸², right, everything is doable.

[P16/I]

The saying ‘no job is beneath you’ refers to the idea that there is no job that brings dishonour to the person performing it. The Polish language comprises many other work-related proverbs that are deeply embedded in Polish culture. For instance, another well-known maxim is ‘I am a working woman, not afraid of any kind of job’⁸³. This saying comes from a Polish actress Irena Kwiatkowska who, in a television comedy drama *Czterdziestolatek* (transl. *The Forty-year-old*) produced in the '70s, played the memorable part of a working woman who performs various unusual or absurd jobs.

In four focus groups and nine interviews, the origins of the support for work as a suitable sanction were directly or indirectly associated with how ‘things used to be’ under the socialist regime. It was senior participants who more frequently associated unpaid work with the previous regime, and the following excerpt from a focus group with senior participants, living in an urban area, interestingly illustrates this point:

[Discussing the exercise on matching crimes with suitable sanctions]

AM: And where have you proposed unpaid work?

P37: Exactly! For all minor offences there should be unpaid work. Cleaning and so on ...

P34: I have suggested a lot of unpaid work!

P35: I am not so sure.

P36: But hey, under the communist regime everyone had to do some unpaid work!

[FGUS]

What the participants meant by the previous form of unpaid work was something called ‘*czyn społeczny*’, also known as the Russian *subbotnik*. This type of work was a volunteer community service that involved work in various public projects, for example, cleaning the

⁸² Polish original: *żadna praca nie hańbi*, back translation: *there is no such a thing as a shameful job*.

⁸³ Polish original: *bo ja jestem kobieta pracująca – żadnej pracy się nie boję*, back translation: *because I am a working woman – I'm not afraid of any job*.

streets, collecting recyclable material, and other community services. Nonetheless, one of the interviewees indicated that the current nomenclature for unpaid work in Poland is negatively-connotated due to the socialist past and should be re-branded:

AM: OK, fine. And coming back to our own backyard?

P35: And as far as our own backyard is concerned I think the same, that...for example there are some work activities for the unemployed, they have. I think it's good.

AM: Why?

P35: Because people have something to occupy themselves with, they should get paid for it. Those in job-centres also have something to do, because they have to manage this whole thing and...the resources come from the State's budget, perhaps they could be dedicated to something else. When you look at this budget shortfall, 24 billion went missing. So if we could get one billion that comes from something else and create this kind of work...Don't name them unpaid work, because it has negative connotation. Call them work activities or work for public good. Public works. Pay for it. Or for example work towards your rent, why not? Some housing associations practise this – and this is good. Generally speaking work is good. That's what I think [laughter].

[P35/I]

The straightforward translation of 'unpaid work' from the Polish language into English would be 'social works'. If translated exactly in this manner, however, it would convey the wrong impression to an English-speaker, because the meaning of 'social work(s)', for example in the United Kingdom, is completely different. The word 'social' is, in the interviewee's view, too reminiscent of socialism. Therefore, the interviewee suggested that the current definition of unpaid work should be changed in order to lose its socialist ring. 'Sanction rebranding' was also observed, for example in the United Kingdom, where work as a sanction was initially defined as community service, then a community punishment order, and, although at some point it was defined as unpaid work, there have been plans to rename it community payback (Maruna & King, 2008). Such 'sanction rebranding' reflects Garland's (2012) definition of punishment and its ever-changing style as well as Wright's (2001) observation that it is better to use the terminology of sanctions rather than punishment. Sanctions, according to Wright, can be punitive, rehabilitative, retributive or restorative, and this terminology indicates more clearly the intention behind a punishment.

The subject of field attachment and nature dependency as key features of peasant societies discussed by Wasilewski (1986) were illustrated by the quotation below, which comes from a

group discussion between male participants living in a rural area. Here, unpaid work is depicted as useful for the community, but there is also a strong focus on the quality of the environment more generally (mowing ditches, taking care of local forests etc.). Such direct references to nature occurred in four group discussions and sixteen interviews from both rural and urban areas:

AM: (...) apart from this situation, where else do you think unpaid work is the right punishment to give?

P11: All of it should be unpaid work, when a cyclist is caught, or because it is about punishing.

P12: For theft.

AM: For theft.

P11: This Jobseeker's Allowance, by no means giving them cash, but to work and then pay, we have dirty ditches, we have polluted forests, everyone should go and work it off, mow those ditches, so let's say to include all those on Jobseeker's Allowance, there are thousands of them, so ...

P12: Yes, sure.

P11: If they give us 4 people, XY, XZ, all of them with scythes, these ditches would gleam, and while scything he would even pick a can and so on.

P12: And forests, yes, all that.

(...)

P14: He should be punished for these thick bushes.

AM: Ok, so such untidiness, mess, something like that, yes?

P14: There were some people on a tour walking past, and they thought it was an abandoned house.

AM: Fine and how would you punish him then?

P14: Unpaid work!

[FGRM]

Such closeness to nature within criminal justice settings has been recently described by White & Graham (2015) as 'greening justice'. The authors reviewed recent initiatives in English-speaking jurisdictions that aimed at advancing a more sustainable relationship between offenders and the environment, and stressed that environmental rehabilitation or ecological

justice may serve as a catalyst for social and moral rehabilitation and social justice. Various conservation and restoration projects could help offenders to develop a work ethic and restore their relations with the community.

Although Wasilewski (1986) anticipated that the ideological and cultural determinants of the Polish peasant mentality would become blurred with time and lose their dominance due to inevitable demographical changes, Leder (2014) has observed the opposite. The time of communism served as a social incubator where work as a symbol of Polish social imagery was strengthened. The class of *Homo Sovieticus* – the new Soviet people – was composed of workers who were mainly of peasant descent. Trades such as miner or steelmaker were particularly praised and honoured by Party officials. ‘Working people’ under the communist regime in Poland functioned in a socio-economic and political reality with no competitiveness or economic failure but with a strong perception of stability and security (Leder, 2014). According to Leder (2014) the liberal rhetoric of the 1990s deprived the previously-praised ‘working class’ of its symbolic capital, appreciation and pride. The once-glorified ‘workers’ were left alone, and their previous status and symbolic meaning were lost in the process of multiple transformations. Leder acknowledges that some of them did not know how to function beyond this socialist ‘peasant/agricultural industry’ and thus found themselves in a hopeless situation (Leder asks a question: what could one do if the only workplace in town was shut down?). As a result, the post-1989 changes, according to Leder, brought about the division between the old Soviet people (now perceived as losers) and ‘new’ beneficiaries (elites from the former communist networks) – a division that has already been discussed in Chapter 4. The foregoing discussion suggests that confidence in work, of many sorts, has a long tradition in the Polish context. A more nuanced illustration of this point is beyond the scope of this study, however, it might become an interesting point of departure for future research.

In conclusion

The overwhelming confidence in work among study participants helped to unlock a broader socio-cultural context of Polish society. Support for work as a sanction might stem from Polish society’s peasant origins, a nineteenth-century alternative to foreign rule as well as a

more general perception of 'working people', whose value was promoted especially strongly under the socialist regime.

The confidence in work was discussed as both penal labour and community sanction. While the former might never produce the outcomes desired by participants due to the less eligibility concept, the latter provides an interesting discussion on restorative practice and restorative justice in the Polish context and elsewhere too. While participants' narratives on work might be seen as a symbolic feature of Polish society, their confidence in work could serve as an avenue to develop unpaid work as a restorative practice, and perhaps in consequence contribute to the popularity of restorative justice in Poland. The restorative potential of unpaid work in the Polish context can transform the traditional understanding of community service as well as the meaning of compensation in victim-offender mediation.

Among all the crimes for which unpaid work was recommended, the case of child maintenance arrears not only gained the most attention among study participants, but also appeared as a distinctive feature in the Polish context. Furthermore, study findings demonstrate significant difficulty in differentiating between restorative and stigmatising shame with regard to performing work as a sanction. Participants' narratives on work as a sanction included certain traces of restorative orientation towards punishment; therefore the proponents of restorative justice should better address the relationship between punishment and the concept of restorative justice. The next chapter independently discusses the understandings of restorative justice in the form of participants' views on victim-offender mediation.

Chapter VI

Understandings of victim-offender mediation

1. Introduction

In the light of the two previous chapters that have explored the nature of participants' views on justice and punishment it is now important to examine their perception of victim-offender mediation as this is how restorative justice is practised in Poland. As introduced in Chapter 1, restorative justice is in an 'uneasy' relationship with the criminal justice system, and the connection between restorative justice and punishment has been little explored. Chapter 4 has established that participants' confidence in justice was rather low. It has been argued by Tyler (1990) that people who hold negative views about the criminal justice system, are not only more likely to disregard the law, but if restorative justice intervention gains their support it is because they believe that the process is fairer than the court experience. Therefore, the task for this chapter is to explore whether this holds true in the case of this study. First I consider the nature of the initial responses to mediation based on the participants' knowledge of, support for, and any experience of, victim-offender mediation. Then, participants' views on mediation are discussed in the context of the Polish criminal justice system. Next, views of mediation are considered against the factors that play a key role in the field of restorative justice such as perceptions of harm and compensation. I also explore participants' views on the role of community and whether there is any possibility of practising restorative justice interventions other than victim-offender mediation and discuss the perceptions of apology.

2. Perceptions of victim-offender mediation

2.1. Knowledge, experience and support

In terms of people's knowledge about restorative practices, focus group research with lay

people conducted in England (see Her Majesty's Inspector of Constabulary research, 2012) and New Zealand (see New Zealand Ministry of Justice, 1996) suggests that the concept of restorative justice tends to be poorly understood, as police, courts and prisons are the components of criminal justice lay people are usually familiar with (see Doble and Greene, 2000; Roberts et al. 2005; Tränkle, 2007). Due to limited knowledge and poor understanding, scholars emphasize that people would be (or would be more) receptive to restorative justice practices, if the aims and nature of these practices were made clear (Stalans, 2002). Researchers' expectations that people should be better informed about the justice system, have led to the development and use of deliberative methods that aim to provide participants with a certain amount of information while conducting a research project⁸⁴. It is worth considering whether the 'poor knowledge and understanding' relates solely to restorative justice terminology (e.g. mediation, conferencing, circles), lack of universally agreed-upon definition, or difficulties in imagining that there are other methods of conflict resolution besides the traditional criminal justice solutions.

Although the trend is increasing, the use of mediation is still very limited in Poland (see Appendix X). Both the review of the literature and my interviews with four Polish mediators demonstrate the limited awareness of victim offender mediation among lay people. For this reason a definition of victim-offender mediation in both interview guides was included and read out to study participants once it had been established that they did not know what mediation was. Although there are a number of competing definitions of restorative justice, the implications of which I discussed in Chapter 1, the following definition of victim-offender mediation was read out to all study participants, as this one was coined by Polish scholars and reflects the nature of the restorative practice currently available in Poland:

Mediation is based on making attempts to reach a voluntary agreement between victim and offender on compensation of caused material and moral damages, with the assistance of an impartial mediator. It is a process of mutual communication that allows victims to express their wishes and feelings, and offenders to assume responsibility for the results of

⁸⁴ Mainly as deliberative opinion polls that aim at creating an event where citizens are provided with information, time and space to collect 'informed' opinions on the subject. Contrary to focus groups, the deliberatively gathered viewpoints are surveyed (usually pre and post-event), therefore the findings can be generalized (Roberts et al. 2012:292).

their crime and start the associated actions (Czarnecka-Dzialuk & Wójcik, 2000:323 – original translation).

It came as no surprise that the majority of participants knew very little about mediation and only two of them had any experience of mediation. In one case a young urban female participant revealed that she had mediated while dealing with a family matter, however she did not wish to discuss it further. In the other, a middle aged female rural participant said that on one occasion she had informally acted as a mediator between neighbours, and this experience made her consider mediation as a promising solution. Although a definition of mediation was provided, a number of ‘native’⁸⁵ responses that reflect the unfamiliarity with mediation were captured. For example one of the youngest participants asked:

And what is this? The second thing?

[Whispered comment in reaction to mediation by P9 to another study participants in FG R Y]

The uncertainty about victim-offender mediation made me repeat the definition on a few occasions. During the one-to-one interviews this reaction was less common. This could have been due to either many interviewees already being familiar with mediation (because of their group discussion experience) or the particular interview settings (face to face, lack of group pressure, taking time to answer questions). Interestingly, two participants said they knew of the concept of mediation from films⁸⁶ they had watched – a source not frequently discussed in the literature. The lack of knowledge as well as general understanding of what mediation is about was also indicated by mediators.

People come to mediation with no knowledge whatsoever.

[Mediator 3/I]

Another mediator made an interesting comparison between people’s knowledge of mediation and of alternative medicine.

It’s like with seeing a doctor and using alternative medicine [personification of lawyer and mediation services]. Fine, I’ll go to see the doctor. And with this alternative medicine, you never know what will come out in the wash. So if I go to see a lawyer, then it will work, if I choose to see a mediator, it’s like seeing an old herbalist lady.

⁸⁵ By ‘native’ responses I mean pre-definition responses and spontaneous reactions to mediation.

⁸⁶ One of the movies was *12 Angry Men* by Sidney Lumet.

[Mediator 1/I]

Although it is not surprising to observe that my participants did not know much about mediation, mediators' comments illustrate that even participating in a mediation session does not guarantee that people understand what they are taking part in. Study findings from France and Germany also demonstrate that even if mediators explain the purpose and aims of mediation, many of the participants still do not know what mediation involves and what people's roles are in such an encounter (see Tränkle, 2007).

2.2. The civil matter

Although throughout all interviews the focus was on criminal offences, the discussion on mediation frequently drifted into the context of civil rather than criminal cases. This is surprising because mediation is not more frequently practised with civil cases. This line of thinking was expressed in six focus groups and emphasized by eight interviewees. The extract below demonstrates both the participants' poor knowledge (even in the case of two senior lawyers) and the tendency to associate mediation with civil matters:

P38: Fine. But when I think of mediation I think of civil proceedings.

P39: It is so-called settlement proceeding, correct?

P38: But what is it about if I can ask?

[FGUS2]

Associating mediation with civil matters rather than criminal ones could explain the surprisingly high percentage of people who had heard about mediation⁸⁷ in the Ministry of Justice surveys as no differentiation between civil and criminal cases was made in the questionnaire. The Polish Ministry of Justice has twice commissioned quantitative studies (2008, 2011) on people's perceptions of criminal justice institutions which included a set of questions on mediation. The research was titled: *Public Awareness of Alternative Dispute Resolutions*, and mediation and courts of arbitration were included in one question on out of court dispute resolution. In 2008 51% survey respondents said they had heard about out of court dispute resolution. Three years later the figure had fallen to 43%.

⁸⁷ It should be specified that in this case mediation was used to describe an out of court solution. Due to the definitional inconsistency in this particular study I have reservations about its findings.

Moreover, my study participants were more willing to suggest victim-offender mediation with broadly defined ‘family matters’ including procedures regarding divorce, child maintenance arrears, post-nuptial agreements, but also domestic violence (this particular offence was indicated in four focus groups and two interviews). Niełacznna (2012:279) highlights that domestic violence ‘has been routinely practised and, as a result, has dominated the Polish mediation field.’ It has been estimated that domestic violence cases that are dealt with through mediation account for 28.8% (Czarnecka-Dzialuk, cited in Wright, 2009). Restorative justice as a solution for domestic violence has been an exceptionally thorny subject heavily criticised, predominantly by feminist scholars who claim that this approach is highly inappropriate for domestic abuse cases. Concerns relate to the involvement of both perpetrator and community in the restorative justice process. While the former issue touches upon victim safety, the latter includes a risk of victim-blaming. In other words, the feminist critique of using restorative justice when dealing with domestic abuse cases is predominantly based on women's safety, offender accountability and the politics of gender (Ptacek, 2010). According to Frederick & Lizdas (2010) the battered women's movement has achieved a lot in promoting women's expectations and this has translated into increased attention in mainstream criminal justice systems. Despite the scepticism about a restorative approach to intimate violence, Daly & Stubbs (2006) suggest that there needs to be some feminist engagement with restorative justice as there is an indication that informal justice alternatives can advance the situation of domestic violence victims.

2.3. Negotiated and conditional receptivity

Apart from two study participants who were willing to accept mediation for all offences and under any circumstances, most of the time the nature of the receptivity or support for mediation varied and was strictly conditional. Like Doble and Greene's (2000) study of people's reactions to a number of restorative practices in Vermont, participants became quite receptive to the intervention when they understood its intent. My research demonstrates that such receptivity to mediation varied at the group and individual level. In five focus groups the idea of mediation was debated by participants. In interviews participants were more open about supporting mediation (twelve interviewees strongly supported, ten moderately) with only two participants strongly condemning mediation in criminal cases. Indeed group discussions were dominated by ‘punitive rhetoric’ while individual interviews were rich with

a variety of opinions, including mild and ‘restorative’ views⁸⁸. The following fieldwork entry sheds light on this observation:

I am coming towards the end of my fieldwork. I see the difference between how people expressed their views at these two stages. Even when they give comments that can be regarded as punitive during a face to face interview, their accounts do not include very strong statements, expressions e.g. ‘the galleys’, but also all these ‘loud behaviours’ like laughter, showing off – that were apparent in group discussion. The individual interviews are still less extensive than I anticipated but I am finally getting a broader context to my research questions.

[Fieldwork diary, 30.08.2013]

Study participants were overwhelmingly cautious about the applicability of mediation for serious offences but indicated strong support for mediation for minor offences (mentioned in seven focus groups and firmly accentuated by 25 interviewees). Marshall (1998) has emphasized that support for restorative justice for minor offences should be seen as a major limitation because restorative justice brings better results when applied in serious offences. This view is shared by Rossner (2013) in her study on the processes and emotions involved in restorative conferences. Study participants also suggested that mediation is a good idea for first time offenders (mentioned in three group discussions, six interviews) and when the crime was committed unintentionally (three focus groups, seven interviews).

As I said before, mediation can be applied when a crime was committed unintentionally. Then it can be discussed with him ... he has to be punished. The form of this punishment can be discussed. And you have to be convinced to a certain degree that it will have an effect, right? In these kinds of situations I believe mediation is better than punishment.

[FGUM: P33]

People’s receptivity to restorative justice is rather problematic because what it means to be receptive to victim-offender mediation is not unequivocal. According to a Polish Ministry of Justice survey the percentage of people who would favour mediation over court proceedings to deal with an offence has risen from 19% in 2008 to 38% in 2011 (Ministry of Justice, 2011). The Ministry of Justice study overlooks important information that my study

⁸⁸ The ‘punitive rhetoric’ was not only articulated verbally but was frequently accompanied by laughter. The overall picture was that those who expressed punitive views were paving the way to become group leaders.

illustrates - mediation is associated more with civil cases and people's receptivity to mediation depends on various factors, for instance the seriousness of the offence. As explored above, mediation was not seen as an adequate solution for offences that included the use of violence (five in group discussion and seven interviewees). Although similar findings were found by Pranis and Umbreit in Minnesota (1992), the view that mediation should not be practised when conflicts involve the use of violence draws attention to the anomalous position of domestic violence among these study participants. This could be an indication that domestic violence may not be perceived as a sufficiently serious (criminal) offence to be dealt with by the courts.

3. Victim Offender Mediation & Criminal Justice System

The paradox of restorative justice is that its worldwide popularity stems from offering an escape from traditional criminal justice mechanisms, however, the majority of restorative practices still function on the verge of the criminal justice system. This close and 'uneasy' relationship between restorative and conventional justice approaches was also vivid in my participants' interpretations of mediation, which were frequently layered within the interpretations of the Polish criminal justice system. The relationship between restorative practice and the conventional justice system can be discussed in the light of Duff (2002) and Daly's (2002) argument that restorative justice processes should be seen as 'alternative punishments' rather than 'alternatives to punishment'. The findings presented in Chapter 5 corroborate this approach. However, it is in opposition to the view taken by Wright (1991) who claims that only non-punitive penal measures are intended to be constructive and victim offender mediation is one of them. In the light of this discussion, in five group discussions and three interviews, mediation was indicated by study participants as an alternative to punishment.

P5: I think that mediation is not, is not a punishment and everything. That this outside person should know how to assess if this offender has come here because he feels guilty, wants to redeem his sins or he has come because ...

P6: Because that was his punishment.

P5: Because this is a must. If one sees that it doesn't make any change to him, then try some other solutions. But start from something like this.

[FGRW]

Then, at the interview stage participants were more willing to talk about mediation as an opportunity to have a conversation. Twelve interviewees suggested that mediation can serve as an opportunity to have a dialogue with an educational purpose:

We should talk to everyone. Even with the worst offenders. Why he committed it, reach consensus, to satisfy both parties. We shouldn't punish let's say when someone was influenced by emotions or some sort of other outside factors. He assaulted me, well, there could be various scenarios. This is why this mediation is good, to make this offender ...because you never know whether it was his first, second time, right? Perhaps it was by accident, right? This is why it is good to talk.

[P32/I]

Although mediation was viewed as a process involving dialogue, for study participants mediation was more of an offender-skewed encounter highly dependent on the offence committed and previous criminal history of the offender. For example, the majority of participants expressed their support for victim-offender mediation in cases involving young offenders who commit minor crimes. Harris *et al.* (2004) have argued that emotions such as empathy, remorse and guilt are central to restorative justice practices as they provide the possibility for the offender to take responsibility, apologize and compensate the victim. Nonetheless, it is important to emphasize that restorative justice is equally about the victims' participation in the dialogue (see Wright 1991, Bottoms, 2003). However, there was little said by my study participants on the benefits for victims once offered the opportunity to resolve conflict through mediation.

3.1. Pragmatic out-of-court solution

Another issue raised in the discussion on restorative justice is the boundary between its practice and the criminal justice system. Shapland *et al.* (2006:524) have argued that restorative justice is necessarily situated and operates in the shadow of conventional criminal justice systems and this makes for an uneasy relationship. Marshall (1998:721) has maintained that 'restorative justice should be integrated as far as possible with legal justice as

a complementary process that improves the quality, effectiveness and efficiency of justice as a whole (...) in this way the two processes reinforce one another to mutual benefit, and evolve towards a single system in which the community and formal agencies cooperate'. In the light of this argument, it is worth noting that mediation as an opportunity to divert cases from courts appeared as a strong theme in my study as the majority of participants saw mediation as a smoother, time-efficient solution avoiding lengthy court proceedings. This view was expressed in five group discussions and highlighted by twenty five interviewees.

Let them sort things out themselves, if they don't need to go to courts, no need to have ten trials or so.

[FGRM: P14]

The pragmatic and 'economic' side of mediation was expressed in an interview with a senior male interviewee from an urban area who praised the solution as a great tool to cut the costs of the criminal justice system:

I think that this is one of the best ideas in the whole court system. There are a number of reasons. First of all is that these parties do not try to prove they're right, and stick to their opinions. Generally speaking, every conversation makes sense, makes sense in as much as people exchange views, arguments etc. To say nothing of the economic side of this undertaking, that it doesn't cost as much, because it costs a fraction of the cost of a court trial. Secondly, it doesn't engage as many people, my background is economics, therefore, I easily convert this into benefits, and here I can see great benefits. If this was possible I would send 75% of all cases to mediation.

[I52/I]

These perceptions also mirror Juskiewicz's (2010) observation that one of the main purposes of introducing victim-offender mediation in Poland was pragmatic, namely to lower court case overload (see Chapter 2). Similar expectations were observed in England in the 1980s but they were dashed when it was realised that victim-offender mediation was actually likely to be quite expensive (see Rock, 1991).

Although the benefits of mediation in the Polish criminal justice system were also acknowledged by an older married couple who were both retired lawyers, their perception of mediation was exclusively instrumental and aimed at mainly acknowledging the benefits for

the court system. More interestingly the wife also recalled a similar ancillary-to-the-court system that had been in place in the past:

P38: We didn't have it before. But it is ... it should be seen positively because it decreases the courts' caseload...

P39: In the first place! Exactly!

P38: Right? A lot has been said about the excessive length of proceedings ...

P39: The lengthiness.

P38: ... many, and this always shortens.

P39: In general with all these minor offences the courts should not ...we used to have hmm the Boards. I am not sure ... do they still exist?

P38: No, we don't have Boards any longer. We have courts.

P39: Exactly. And courts deal with these minor offences. In the past they didn't, that was the role of the Boards.

[FGUS2]

The institution mentioned here is defined in the literature as the Misdemeanour Boards (*Kolegia ds. Wykroczeń*) which functioned under the communist regime⁸⁹ between 1951 and 2001. Misdemeanour Boards served as out-of court filtering institutions mainly dealing with petty offences. Although the Boards were presided over by lay people (the equivalent of the English Magistrates), they had powers to impose a similar range of punishments as ordinary courts⁹⁰. This was a similar institution to social courts, features of which were discussed in Chapter 2. What struck me in the aforementioned interview was that, despite being a lawyer, the wife did not know that the Boards were no longer functioning and both participants perceived mediation mainly as a tool to relieve the backlog of court cases.

3.2. Escape from rigid and controlled criminal justice system

In my study, there were also views expressed concerning the inhospitable nature of courtroom settings and the feelings of dissatisfaction created by traditional justice processes.

⁸⁹ Although Kwaśniewski (1984) offered to translate *Kolegia* as citizens' courts, I decided to retain the term Misdemeanour Boards, as in my view this translation better reflects the functioning of the institution.

⁹⁰ Dziennik Ustaw [Journal of Laws] (1971), No. 12, item 118.

Similar motivations were the primary force in the increased popularity of restorative justice in Western countries. As discussed in Chapter 1, restorative justice emerged as an avenue to seek alternative informal solutions following a crisis of confidence in the formal legal process. Restorative justice is a process that is believed to allow the potential for honesty and humanity to emerge in ways that are precluded in a courtroom (Daly, 2002).

Senior participants, from a rural area, pointed out that court proceedings are, in the first place, expensive (due to lawyers' fees) and there is a lack of information and assistance. Furthermore, the incomprehensibility of legal jargon contributes to the disappointment with the criminal justice system.

P18: Well yes, it's well known that you need money if you want to go to court.

AM: Money ...?

P18: Yes money.

P20: And older people you know, not everyone has savings or can afford it. And later they suffer...

P16: It would be good to get advice.

P19: By the time you make head or tail out of something.

P18: It's too late.

P16: Explain what it is all about and ...

(...)

P16: now what we read in the newspapers, because now there is a lot of advice in the papers but it is all written in such a language that you don't always understand what it means (...) they use such words that I don't know where they take it from!

[FGRW]

There were also comments that demonstrated people's disappointment with the criminal justice system, that corroborate the above reasons as to why restorative justice initially gained popularity in many societies around the world. In the field of restorative justice one of the key issues is the perception of crime as conflict - a theory that has given rise to the question whether criminal justice professionals as strangers or 'thieves of peoples' conflicts' should resolve private matters (see Christie, 1977). Although this was not a frequent reflection among study participants, it is worth acknowledging that on a few occasions participants did recognize how their conflicts are 'stolen' and decided upon, not by themselves but, by others.

The following comment was articulated in the context of the applicability of mediation to divorce:

I am thinking how it is with divorce. How strangers can decide if two people should go separate ways? I think that these people should decide themselves. If someone doesn't want to be with another person in a relationship then this is it, it's over, don't go to courts and let the judge decide in terms of your children, then who pays how much, division of property. They should sort things out themselves ...

[FGUY: P21]

Nonetheless, the quote below indicates that even when the 'theft of conflict' is obvious to people, lack of information about victim-offender mediation and familiarity with known formal procedures lead people to turn to the conventional criminal justice system.

P16: But someone would have to suggest it. People don't know, sometimes in these kinds of situations I don't know myself where to go to and what to do.

P20: Exactly. There is little information on this subject.

P16: Little information. And then you go to a lawyer. Most of the time to a lawyer, legal advisor, lawyer. And you entrust them with your case, and this is not good sometimes because they make mistakes, they sort things out ...

[FGRS]

It is worth noting again that restorative justice, and practices built upon it offer an escape from traditional criminal justice mechanisms and the dominance of lawyers in dispute resolution. However, in the eyes of young urban participants, the benefits of leaving the courtroom and dealing with crimes through mediation were constructed on a different (emotional) level. They pointed out that emotions are a driving force in court proceedings; this is in line with Karstedt's (2002) observation of the increased emotionalization of people's attitudes towards crime and the criminal justice system. Moreover, the same view can be found in Hartnagel & Templeton's (2012) analysis of the influence of emotions on punitive attitudes. Research suggests that the emotions of fear and anger have direct effects on punitive attitudes, with anger predicted to have greater effect on people's desire for harsh punishment.

P23: At the beginning when something like that happens everyone wants to go to court with it and so on but when you give it thought ...

P21: First emotions ...

P23: When adrenaline stops running high and then.

P21: First reaction is to do exactly the same but then we can find ourselves in trouble.

[FGUY]

Having acknowledged how criminal proceedings are emotionally-driven, the young participants also recognised the psychological harm that accompanies a criminal procedure and saw mediation as an opportunity to avoid it:

P23: The problem with aggression is that it doesn't come from nowhere, it can have childhood undertow. Maybe someone was beaten and treated very badly when he was a kid. Now he is an adult and is doing the same. Psychologists would get to the core of the problem and maybe would help him (...)

P24: Mediation ... I have rather positive feelings, that it is possible to avoid some psychological harm ... solve ...and avoid courts.

[FGUY]

Young urban participants felt mediation might provide a way to avoid mental harm caused to victims in a long drawn-out and intrusive court battle. They additionally felt there was a possibility of appointing a psychologist in this setting which would provide added protection to participants and allow them greater control of the wrongdoing. Although these profound opinions were most distinctly mirrored in the narratives of young urban study participants, another interviewee indicated that mediation might also reduce the 'general hatred':

I am totally in favour of mediation. I'll repeat myself – they would help courts to reduce backlogs of cases, there wouldn't be so much hatred etc. People would leave reconciled or at least would reach some sort of agreement, perhaps the parties would not be entirely happy but the case would be sorted out, yes?

[I47/I]

The nature of participants' 'disappointment' with the criminal justice system reflected concerns about, and the need for, a psychological service as part of the criminal justice system. Although these views were in a significant minority, it is important to report that some study participants viewed mediation as offering the possibility to channel negative emotions that are associated with traditional litigation procedures. This view is echoed in an

interview with one of the mediators who compared the mediation encounter to Matryoshka dolls⁹¹:

People like to talk when they come to mediation, and through talking they diffuse their emotions. They talk their harm through to an outside person who listens. In that sense mediation is like a Matryoshka doll.

[Mediator 1/I]

At this point it is important to refer to the research conducted at the micro-sociological level by Rossner (2013) that interestingly demonstrates the importance of the emotional dimension of restorative conferences. She observed the rituals of restorative processes that provide short and long term effects. Short term effects include a post-conference increase in emotional energy for conference participants, and long term effects include a reduction in offending.

3.3. Mediators as psychologists

Following on from the above thread, I would like to explore the concept of the ‘psychologist’ that emerged in participants’ accounts. The need for a psychologist in the (Polish) justice system appeared in four group discussions and six interviews. Initially this theme was analysed independently as a personification of a more human approach to justice. In two interviews the presence of the psychologist was directly linked with the mediation process. This gives rise to another line of interpretation. The following quote comes from an interview with a senior female professional living in an urban area:

But I think that with such mediation sessions there should be another person invited, not only third but also fourth, fifth and sixth. And what do I mean? That if today there are practically speaking four parties: the accused, judge, prosecutor, and lawyer, in cases where there are fatalities I would engage sociologists, psychologists or people of other backgrounds, this kind of people who would help to assess the appropriateness or severity of punishment. These people, standing aside and not involved in trials, would suggest whether a given sentence is proportional and whether it will influence the convicted. Four parties are not enough.

[I51/I]

⁹¹ A type of a nested, wooden Russian doll.

The excerpt above demonstrates again the participants' willingness to associate victim-offender mediation with civil matters. It also illustrates a certain overlap in the perception of the roles of psychologist and mediator, and how this view is constructed in the background of well-established criminal justice professions. This aspect of the study findings suggests further examination of the views on mediators is required. Earlier in the chapter it was delineated how the receptivity to mediation as well as the role of the mediator were debated among study participants. The mediator was considered as 'a better person to talk to' than a criminal justice professional. In the following quote, where again, it is demonstrated that mediation was more frequently associated with civil rather than criminal cases; the mediator is viewed more as a conciliator:

I see mediation as a way to deal with divorce proceedings. And I think that in these situations mediation should help to decide what will happen with kids, I think it's better than courts. Especially because court proceedings can take a lot of time and from what I have heard it is easier to sort difficult problems out with a mediator, especially when a partner, or ex partners can't even look at each other.

[FGUS: P34]

This comment as well as research from other countries suggests that the perception of mediators as psychologists poses a risk of wrongfully transforming mediation into psychotherapy or counselling (see Tränkle, 2007). The next quote, which comes from an interview with a senior female participant, suggests that the mediator may be perceived as a person to control and manage the offender:

I think that ... this is ...this is great when it comes to 'small-calibre' cases, and of course, if the person doesn't lie, just genuinely wants to change one's behaviour. Then I think that this mediator, if experienced, can sense this person because you never know ... it may happen that this person thinks he can avoid a trial just because he says 'I'm sorry' five times, plus he can afford to pay a few thousands zloty and then do the same thing.

[P34/I]

In this study mediators were not seen as officials as their professional standing was questioned by another interviewee, a young urban female professional who feared informality could bring about the risk of secondary victimization:

But what guarantee do we have that this impartial mediator is really impartial? And how can we be sure that the offender after all will not put pressure on the victim to agree to the proposed agreement? With some cases it would be fine, but there are situations when not everything is so objective and I am definitely against solving all cases this way, because for me it's like sweeping the conflict under the carpet. I think that there has to be a clear message sent to the public that there are some sorts of behaviours and crimes that have to be looked at objectively. And such a mediator should not have entirely the same prestige as an independent judge.

[I53/I]

Mediation is a new profession that has emerged to provide an alternative -competition- to traditional lawyers (Roche, 2006). As in Tränkle's study (2007), it was also apparent in my research that the judiciary is respected more than the profession of mediator whose status remains unknown to the majority of population. On closer inspection it might be that the role of the mediator is not as clear and transparent to lay people, as the roles of other more traditional criminal justice professionals, commonly discussed and featured in the media. Interestingly, such a view was echoed in my conversations with Polish mediators:

I think the word mediation ...courts, police, prison these are the kind of words that can be automatically visualised. On the other hand if I asked the average Joe: shut your eyes and tell me what you think when I say mediation? That would be interesting.

[Mediator 1/I]

Mediators in France have either a law or psychology background, whereas in Germany mediators come from the area of social work (Tränkle, 2007). In Poland in order to qualify as a mediator, one has to meet certain criteria, namely must be a Polish citizen, over 26 years old and educated in psychology, education, sociology, or law (Czarnecka-Dzialuk, 2009). What is perhaps distinctive in the Polish case is the juxtaposition between the role of mediators and lawyers in the process of mediation. For example, the same mediator whose view is quoted above, and trained as a lawyer, said that a legal background should be a precondition to entering the profession of mediation because the nature of Polish mediation is legally-dependant:

When it comes to mediation in criminal cases there has to be a requirement of having a law degree. It does matter, really. You see, at least I know how to read the Penal Code

and how to interpret its sections. I don't want to sound like I am downgrading their professions but if it is up to a pedagogue, or sociologist, I'm not sure whether they can explain to people what they can expect from mediation.

[Mediator 1/I]

However, the other mediator believed that the legal knowledge required of a mediator can be learnt, whereas interpersonal and communication skills are non-teachable soft skills:

There is this issue about mediation being run by a lawyer or non-lawyer. I would say like this, there are pros and cons of each of situation. Because someone can have interpersonal, communication skills, know how to moderate and properly direct such dialogue, and another person will know all the legal regulations, which are no matter what equally important (...) but as I say this can be learnt.

[Mediator 3/I]

The perception that a legal background might help mediators to do their job might also stem from the unknown status and low prestige of mediators. Another mediator (who works full time as head of a secondary school and occasionally runs mediation sessions on school premises) expressed the opinion that people respond to her with more respect when she introduces herself as head of the school:

When I say to them to come to school and ask for the director, they come with some sort of greater respect. I don't know if there is some magic behind it. It's somehow different, whether there is more trust, or respect, I don't know what it is.

[Mediator 2/I]

Fellegi (2015), based on her research in Hungary, has argued that, such a close relationship between the criminal justice system and restorative justice can result in the over-professionalization of restorative justice interventions, or 'lawyerisation' of victim-offender mediation. However, not only the process of lawyerisation might be seen as a hindrance to the development of restorative justice, but also the mutual antipathy between the two professions. This was very interestingly illustrated by this mediator:

It might be a conspiracy theory, but that's how I see it, perhaps it is because of the lawyer lobby who doesn't like us, mediators. It's about money. I have a friend who is a lawyer.

When he gets a client, who is a defendant, he would give the client such a fright that the poor fella goes home to his family, they raise money and he brings 5 000 PLN [approximately £1000]. If my friend referred this case to mediation, for which the State pays a mediator 140 PLN [approximately £28], then he had 5 000 PLN disappeared from the table. It's a conflict of interests. He will never tell his client: go and see a mediator because it's worth it. Instead, for 5 000 PLN, he will pretend that he can do everything to win his case. Generally speaking no one has an interest in mediation, but mediators themselves [laugh].

[Mediator 1]

The above argument has to be looked at along with the participants' perceptions of justice and their high confidence in lawyers, discussed in Chapter 4. Although there might be distinctive features of this finding (e.g. the socialist origins of lay people's confidence in lawyers) the relationship between the legal profession and restorative justice has more general implications and could serve as a basis for future research in this area.

3.4. The fear of informality

Shapland et al. (2006) have noted that restorative justice theorists such as Johnstone (2002) and Strang (2002) have advocated the informality of restorative justice programmes, as opposed to the enforced formality of the conventional justice system. Restorative practices are often criticised for lacking safeguards to protect people's rights and for the potential loss of equality and proportionality during the process (Marshall, 1998). As has already been illustrated, people who participated in this study valued mediation as an out-of-court solution for a number of reasons. However, they also expressed the fear of informality that such practice, in their perception, brings about. This view was expressed in four focus group discussions and reiterated later in one interview. It was suggested that victim-offender mediation sessions should be attended by a probation officer or supervised by the court. For example one senior urban woman when asked about mediation supported the idea of conducting mediation sessions in court buildings as she feared the informality of mediation conversations and doubted whether people would be able to 'sort things out' between themselves:

Yes, a conversation. But I didn't think it was a conversation between the offender and the victim, only a conversation for example in court or somewhere there ...or in the office. An official conversation. Because such sorting things out ... (...) Probation officer or something.

[FGUW: P28]

Another example comes from a young male participant living in a rural area who questioned whether mediation encounters are safe:

P9: Confrontation? But this has to be safe!

AM: Let's assume it is.

P10: Is there any police or something?

[FGRY]

It is worth mentioning that the aforementioned comments were made in a focus group comprised of young people, born after 1989, and they were: P7 (18, male, single, locksmith), P8 (22, female, single, babysitter), P9 (20, male, builder), and P10 (18, male, student). These examples highlight that mediation without the presence of established and known professionals may be perceived as too informal and detached from the conventional justice proceedings for lay people. The selection of words such as: court, conversation, office, official suggests that mediation in the Polish context still needs essential formality and safeguards in the form of criminal justice professionals or institutional settings.

Although the selected quotations strengthen the paradox of the restorative justice concept described in Chapter 1, in the Polish context it is interesting to explore further the presence of 'conventional justice safeguards' – as already reflected in relation to lawyers. Despite the fact that one mediator recognized that people who come to mediation sessions frequently prefer to be accompanied by their lawyers, she had reservations about this solution:

I try to avoid it as much as I can [to run mediation sessions in the presence of lawyers or proxies], but parties feel safer when there is someone else ... in any case I am not sure what they know and hear about mediation.

[Mediator 1/I]

The fear of informality has a twofold significance. First it appears that despite the socialist past and low trust in the criminal justice institutions (see Chapter 2, 4) people have high hopes for, and expectations of, formal justice procedures, and the agencies, such as the police, might still be associated with safety. Furthermore, as Tränkle's (2007) research demonstrates, victims do not necessarily see court proceedings as something to avoid and restorative justice as beneficial; people might not be interested in taking on such responsibility as Christie suggest in his theory on 'stolen conflicts'. Moreover, Rock's study of victim impact statements in England and Wales suggests that bereaved relatives might be anxious to find indications of remorse in the offender (see Rock, 2010).

On the other hand this finding also brings about the subject of obstacles to mediation practice. A lot has been said about the potential limitations to the use of mediation in Poland (see Chapter 2) and some of these observations are in line with concerns voiced by western scholars. One of the obstacles to practising mediation is the reluctance of the legal profession who see alternatives as threatening their livelihood (Pelikan & Trenczek, 2008). Braithwaite (2002) has observed that the strongest opposition comes from lawyers and judges and their criticism of the informal processing of crime. In the Polish context, not only the presence of lawyers but also people's preference to be accompanied by them during mediation procedures can be seen as a substantial obstacle. Wright's (2001) observation should remind the reader that the restorative justice programmes allow parties to not be limited to answering lawyers' questions, have lawyers to speak on their behalf but represent their conflicts and experiences in their own words. The outcome of a mediation session with a lawyer 'at the door' might be completely different than when victims and offenders are primary decision-makers in their own cases. This view was echoed in an interview with the same mediator as quoted above, who said that when she runs mediation sessions attended by lawyers she knows from the start that they will be unsuccessful:

When these lawyers sit down in front of each other, and start strutting like two ganders. [Laugh] Then it seems to me that it's more about them than anyone else, that they're like boxers before a fight. And they make me both laugh and angry because I already know that nothing will come out of this session.

[Mediator 1/I]

Another mediator said that lawyers are not familiar with the nature of such victim-offender encounters and pointed out the consequences of this as:

He, the lawyer, he doesn't cope with the whole emotional burden, because he is not interested in this. They look at their watch. Their focus is on the effect, some specific sections. They have a different schedule, different approach.

[Mediator 2/I]

The fear of the informality of mediation and the support for lawyers to attend such sessions falls within a great quote by Cain (1985:335 cited in McEvoy & Mika, 2002) that 'the devil of formal justice whom we know may, after all, be better than his dangerously unfamiliar informal brother'. While the Northern Ireland context has proved that informalism of restorative justice is possible due to genuine commitment to the restorative values based upon accepted human rights principles and located in communities that are well managed by dynamic volunteers (McEvoy & Mika, 2002:556), my research suggests that a complete separation of victim-offender mediation from the formal justice proceedings and its rituals may not, for the time being, function well in the Polish context.

4. Mediation as a negotiation of interests

While discussing restorative justice it is not only important to view crime as conflict but also to acknowledge and respond to the harm experienced by victims in the form of reparation as this makes a restorative approach to justice (Van Ness & Strong, 1997). Trenczek (2013:409) addresses reparation as a broader element that also includes non-material damages and symbolic actions, while restitution in his view is a narrower idea that means to replace or repair only material damage. Shapland et al. (2006), while evaluating the restorative justice schemes in England and Wales, reported that financial reparation was a rare form of outcome. Other research findings suggest that victims perceive an apology, as more, or as equally important, as financial reparation (see Umbreit et al. 2005). The restorative orientation of financial restitution needs to be explored further by researchers in the field as Daly (2002) points out that compensation is already part of sentencing, therefore restitution in the restorative justice setting must incorporate other restorative values. Furthermore, Braithwaite (1996) has proposed a broader view of reparation that falls under the process of restoration - a

process that can restore property loss, injury, a sense of security, dignity, a sense of empowerment, deliberative democracy, harmony based on a feeling that justice has been done, and restoring social support.

In this study, participants' main perception of mediation as an encounter to decide on financial restitution emerged in eight focus groups and emphasized in fifteen interviews. In this study reparation through the mediation process was more likely to gain people's support when harm falls into the category of property loss or criminal damage rather than psychological injury or death. The excerpt below clearly demonstrates this:

Indeed, when the harm that was caused is not, let's say irreversible, where the harm is more of financial rather than moral nature. When no one lost his life, then it [mediation] could be ok. But in cases where a serious offence was committed, then ...

[P35/I]

The above excerpt presents a view where victim-offender mediation can be perceived as an out-of-court solution that should deal with offences where harm can be somewhat 'calculable'. Although Van Ness & Strong (1997:91) have argued that 'a reparative sanction such as restitution then is one that requires the offender to recompense the victim for the harm sustained (...) restitution is made by returning or replacing property, by monetary payment or by performing direct services for the victims' the narratives of this study's participants suggest that there is a risk of seeing mediation as a way to decide mainly on financial compensation. Such perception of mediation does not necessarily reflect the restorative concept and the following quote from a male interviewee interestingly illustrates this point:

Where mediation would be effective, for example ... let's say that the victim agrees to, for example, to get something repaired, the offender smashed through the victim's fence for example. What I am saying is based on my own experience and what I have seen, and for example, it is not necessary to take the police and court's time, you know. The offender accepts it: I was driving too fast, my car skidded, I damaged the fence, how much does it cost? ... and someone estimates that 1000zł – here you are, I pay 1000zł and this is how they sort things out. And in this case they don't get involved, the police can fine him for careless driving, but neither the prosecutor is involved nor the case is continued, because there are more important things and the case is sorted.

[P17/I]

It is worth looking into how participants perceived harm and what in their views could be restored but also how they discussed mediation encounters in general. In their narratives the subject of money or calculation would be frequently included and the verb used most commonly to describe the purpose of mediation meetings was to ‘sort something out’ (Polish transl. *dogadać się*). The next excerpt comes from a senior male interviewee from a rural area. His comment was cautiously articulated, however by using the verb ‘hustle’⁹², he demonstrated that people might misuse the mediation practice for the purpose of financial gain:

Yes, there has to be a mediator. One-to-one, why not? But he [mediator] should be there, otherwise it would be like ‘I won’t give him this, I won’t, and this and that ... you know. People can hustle.

[I43/I]

This particular comment is also interesting because it demonstrates how difficult it was sometimes for me to make sense of the interviewees’ accounts. Issues such as short answers, indirectness, finishing sentences with ‘*this and that*’ or ‘*you know*’ still makes me question whether participants did not want to openly express their views or they just did not know how to articulate them.

The implications of the definition that the participants were provided with need to be recalled again as the Polish definition of mediation significantly emphasises the compensatory element of mediation. Nonetheless, people’s perception of mediation as an avenue to decide mainly on financial gain was also mirrored during the conversations with all four mediators. One female mediator remarked on how frequently victims came to mediation sessions and demanded enormous financial compensation and how ‘this attitude’ still surprises her:

[Laugh] *and the other thing is about the victims, hmm oh they are various people. It depends what happened, because it depends on the case and how big is the harm that was caused. But sometimes they smart off, they know that they could be quids in ... What do you think Miss how much I can gain out of it?* [Laugh]

[Mediator1/I]

⁹² Meaning: making money quickly through illegal means.

Another female mediator said:

I couldn't say which cases are more, those that you can tell that parties are content or those when you know we just came, sorted it out but not entirely because perhaps we could have squeezed something better out of this case. That's the way it is sometimes. This is my impression, feeling ...this case; however, it started from big money and ended up with a few thousands, I saw how completely content this person was, the person who got the money. Seriously. So you see it's difficult to tell what was more important.

[Mediator 3/I]

In terms of people's support for restorative justice research demonstrates that restitution and compensation are key issues that attract significant support among lay people (see Ministry of Justice NZ 1996; Doble, 1987; Roberts et al. 2005), however, there is still little known about the nature of this support. The above reflections do not reflect for example McElrea's observation (2013) that the situations when a victim does not agree to a mediation outcome, due to insufficient compensation, are rare in restorative justice. A similar observation to the view taken by some of this study participants was made by Tränkle (2007:402) who says: 'the first risk is that the mediation process may be reduced to a simple negotiation of interests (...) some victims try to make money by claiming more compensation than would be appropriate'. This observation is analogous to the one that appears in the report on restorative justice in New Zealand, also based on focus group discussions with lay people (Ministry of justice, 1996). The authors warn that the success of restorative justice can be challenged by the vindictive attitudes of some of the people.

4.1. Why financial reparation?

The Polish context provides an interesting avenue to explore possible explanations for the perception of victim-offender mediation as a negotiation of interests. In one of the in-depth interviews a 30-year old male interviewee living in an urban area said:

I think that this would be great, but unfortunately in many cases ... with such a strange you know, strange Polish mentality, I don't know, triggered by frustration you know, salary frustration, it could lead to the situation where the victim, despite already having received ... restitution for the damage, somehow still tries to scrounge and ... still stands fast to gain something else ...

[I50/I]

The reflections on ‘strange Polish mentality’ and ‘salary frustration’ open the door to a broader understanding of the socio-economic context in which victim-offender mediation operates. This craving for financial gain can be viewed as a consequence of post-1989 political and economic policies and the transformation from a socialist to a market society. The influence of the post-communist changes was reflected in another interview with a senior female rural participant who said about mediation that:

I48: It'd be good, but you know nowadays people are very bitter, so I am not sure if ...

AM: And why do you think this way?

I48: This change in general, this change is so enormous! Do you realise?

AM: Under the communist rule ...//?

I48: The change is so enormous! And it is not sure whether this change has changed the people because ... priests are different, and church services are different and the weather is different, and the environment, the whole world is different! And the weather... even the weather has changed! [Laugh] and this influences people, you know, it does, it does influence!

[I48/I]

The above quotation is a powerful illustration of the widespread, multidimensional changes that have been observed by lay Polish people after the collapse of communism. It would have been impossible for ordinary people not to be affected, as the interviewee described they have become ‘bitter’ about their social status. Another male urban participant suggested that the post-1989 changes made Polish society ‘nervous’ because of the lack of transparent regulations applied in public administration and the rise of nepotism:

Because in administration and in economy ... being on edge ... nervousness. Because administration is the economic nervousness (...) another thing is that the way we hire is not through how you call it ... open competition ...but ... through mates, connections and that's all.

[P36/I]

The next excerpt illustrates how significant the financial aspect was in participants’ accounts. In disbelief, I needed to confirm with this male middle-aged interviewee his observation that ‘money’ is currently doubly glorified as a lifesaver and a means of advancement:

AM: So this is what you think that having money is so important in the whole criminal justice system?

I45: What can you do without money nowadays; I think money is important nowadays. And you could somehow redeem your sins, couldn't you? At least partly. [Laugh]

[I45/I]

Another explanation as to why people see the financial side of the victim offender encounter was given by a male mediator who indicated lack of work as the predominant force behind such an attitude:

If this person had a job, s/he wouldn't demand so much money. The issue is ...I often ask, actually I always ask: why do you think this hmm why do you think this particular amount of money would cover your moral damages? Oh because you know, my daughter has told me that. And how would you make a valuation of it? Then he starts to think ... actually it really looks stupid. Two thousand zloty, would you be able to pay this money yourself? No. Perhaps one thousand? Or maybe another form of compensation? You know the word of apology is also enough in society, can be enough. What do you think about that? Just so.

[Mediator 3/I]

The aforementioned views of study participants and mediators have led to an interesting discussion about the financial side of reparation and (mis)perception of the purpose of victim-offender mediation. This theme demonstrates that mediation encounters and the perception of harm do not happen in a social vacuum. Walklate (2005:174) has argued that some socio-economic conditions might facilitate restorative justice, while others might not. Moreover, economic dislocation, unemployment and deprivation may contribute to punitive attitudes as criminals serve as convenient scapegoats during times of economic distress (Hartnagel & Templeton, 2012:457). While Chancer & Donovan (1996:52) argued that offenders provide an opportunity for the 'channelling of anxious insecurities into rage', in this study exploring participants' views on victim-offender mediation provided them with an opportunity to 'channel their economic insecurities'.

Another line of interpretation lies in the concept of restorative justice as a 'travelling concept' discussed by Karstedt (2002). As presented in Chapter 2 the very first idea of mediation as a restorative justice solution came to Poland from Germany. Miers and Aertsen (2012:523) have observed that in Germany the generic term for victim-offender mediation translates as

‘offender-victim’ settlement. Furthermore, the interest in mediation on the part of victims in Germany might be related to the notion of the victim as auxiliary prosecutor in criminal proceedings⁹³. This would also resonate with the finding that study participants frequently associate mediation with civil rather than criminal matters. Therefore, the idea of ‘settling’ cases rather than ‘discussing’ them might be one of the consequences of the policy traversed to Poland from Germany in the first place. As in Germany, similar legal victims’ prerogative exists in the Polish criminal proceedings (see Chapter 2); however, this does not affect victims’ increased interest in Polish mediation. The case may well be that, as Braithwaite (2002:10) cites Clifford Shearing: ‘restorative justice seeks to extend the logic that has informed mediation beyond the settlement of business disputes to the resolution of individual conflicts that have been traditionally addressed within a retributive paradigm’. Nevertheless under the guise of interest in restorative justice intervention, such as mediation, there is a risk of pursuing individual intentions to perceive mediation more as a practice to gain compensation and perhaps seek a degree of economic justice – something that was already echoed in participants’ narratives on the Polish criminal justice system.

Furthermore, there is an interesting linguistic perspective and Płatek (2007:142) has given an insight into the process of translating the term restorative justice into the Polish language:

We really got to the point when we had to decide about the Polish term for those English words. We hesitate between term ‘compensation’ and ‘restoration’ – both sound well in Polish. The fact that restoration is more often used is probably because of the bulk of English literature which helps to make the translation more accurate [original translation].

Although the majority of study participants had no experience of mediation, their views indicate what sort of attitudes and expectations people may come to mediation sessions with, as was demonstrated in the mediators’ accounts. A similar remark was made by Fellegi (2010) in the context of the Hungarian system of mediation. She observed that cases with no financial loss are rarely referred to victim-offender mediation, and the Hungarian authorities underestimate the significance of non-material reparation. This study suggests that there is a risk in perceiving mediation as a mode to decide on compensation rather than restore ‘non-calculable’ harm – a perception that is rather distant from the main principles of restorative justice.

⁹³ <http://karne.pl/en/auxiliary-prosecutor.html> accessed 19.11.16.

5. Beyond victim-offender mediation?

While in the conventional justice system lay people and victims are represented by the state, restorative justice solutions provide the opportunity for greater citizens' involvement. The presence of lay people creates a chance for collective local responses that lead to a collective experience of conflict resolution. The nature of micro-communities in restorative processes is undetermined as it is a different group of people affected each time the offence occurs (Braithwaite, 1993; McCold, 1996). Marshall (1996) noted that the social nature of crimes and their consequences provides even greater rationale for restorative justice. In addition Braithwaite (2002) suggests that people's engagement in restorative interventions that require taking responsibility for matters that have previously been the state's responsibility leads to community empowerment. Therefore, apart from views on victim-offender mediation, one of the additional avenues that this study aimed to explore was to ask my participants about the involvement of others (family, friends or other directly affected parties) in the mediation encounter. It was hoped firstly, to explore the viability for dispersal of restorative justice values, and the degree of support for different (broader) restorative justice programmes such as restorative conferences or circles and secondly, to examine people's views on the viability of community presence in such restorative justice practices. Similar questions were asked in a number of studies conducted in New Zealand (see Cameron & Kirk, 1986; Maxwell & Morris, 1993). The overwhelming rejection of such opportunity emerged as another strong finding in this study. As the excerpt below illustrates one of the reasons participants were against other forms of restorative justice was the partiality of families and friends:

P40: By other people do you mean other victims?

AM: I mean the offender or victim's family, friends.

P40: Both of them?

AM: Yes.

P41: I am not sure; it is rather difficult for me to comment on this.

P40: Yeah, I don't know if these families are necessary.

AM: Why do you think so?

P40: Birds of a feather flock together.

P41: Exactly, family, friends they could be less objective, but I am not sure if this somehow works in other countries so there must be something positive about it! I don't know, difficult to say.

[FGUML]

A further argument behind rejecting community participation was participants' concerns over the current hard times and how people's frustrations may make them act. Even when it was pointed out that some of the participants previously supported mediation with minor offences; their views still remained strong on this issue. In the following quote there is also an interesting reference to the profession of lawyer:

P29: They would kill each other.

P28: It shouldn't be like that. This would be a fight not mediation! Absolutely these families must not meet ...

P29: Yeah this would be awful.

P30: In case of a fatal accident.

AM: What if this was a minor offence?

P28: Even with minor offences. People are so nervous these days, few can stay calm, so they shouldn't be mixed. Rather some institutions should be involved. Talk to one group first, and then with the second one, like the lawyers do, in separate rooms. Who knows how this would end up, right?

[FGUW]

Finally the possibility of involving other people in mediation was rejected on the basis of the perceived Polish temperament. This was observed by one of the male participants and followed by a question from another participant whether such practices exist in other societies:

P36: No! This wouldn't go along with our national temperament.

P34: I think it doesn't make sense, too many people. Besides I don't know ... does it function elsewhere? And it really works?

[FGUS]

The aforementioned quotation interestingly illustrates again the point about participants' inclination to look out elsewhere while discussing their views on punishment and justice. Although there were only two favourable views for extended forms of mediation, it is important to refer to Braithwaite's (1989) concept of reintegrative shaming. Braithwaite (1989) has argued that the role of communities in restorative justice is to set in motion the shaming process in a reintegrative (restorative) manner. Both Braithwaite (1989) and Harris et al. (2004:196) agree that when the disapproval of the wrongdoing comes from the micro-community of respected people that assist victims and offenders, the influence on the wrongdoer's behaviour is greater. The quote below demonstrates a restorative approach towards the offender when the community is involved:

P33: It could be if these people who stand behind the offender had a real influence on him. So they would do something to make him not to do it again.

AM: Ok, I understand.

P33: In that sense. Not to defend him.

P32: So they could supervise him. So he couldn't do it again ...

P32: Then such families can participate in mediation, otherwise if they can't influence him what's the point.

[FGUM]

One mediator in particular provided an interesting line of interpretation that delineates a number of issues that may contribute to the involvement (or lack of thereof) of Polish people in restorative justice:

When you have all these aunties, sisters and brothers, they are all so clever that this is it, they will pull it down. [Laugh] I'm not sure myself, does it come from our character, you know, I have given this a bit of thought myself. We are a nation that when we are told to do something we spit and talk but we will do it. But we are not so mature as citizens, we don't have this thing that is related to being active in NGOs, something that you do not only for yourself but also for others (...) I have a feeling that in Poland we do things only for ourselves, and we are happy when someone is in a worse situation, and here I fear that our skills ...or maybe I'm wrong! Oh gosh I hope so! Our skills ... is it a result of poverty? Perhaps this is the case, because there is a lot of poverty in this country, this goes without saying. And also this sort of envy that comes from the fact that we really struggle to live here. So it's difficult to expect people to care about the public interest when they have

problems paying the rent, it's a different perspective to see the world. I think it relates to many factors, also with the economic situation. We are less world-friendly, and we don't give a damn about restorative justice, and we are harsher in our judgments, opinions; when it comes to high-profile media cases, these comments on the Internet are horrible. How people can write these things? It's just ...there is nothing ... just to say nothing about our Christianity, Catholicism; there is absolutely nothing at all (...) we just really need to have some witches burning at the stake all the time.

[Mediator 1/I]

The above quote illustrates the legacy of totalitarianism which aimed to destroy the independent institutions of civil society – which in consequence is a powerful illustration of a number of possible obstacles to restorative justice in Poland. First of all the mediator refers to Polish people as citizens and the absence of approval of the community element in participants' narratives can be interpreted from different angles. A similar observation was made by Wedel (1986) whose interviewees said the following:

A basic feature for Poland, which differentiates Polish society, is that there exists a different level of societal integration. The lowest level is the family and, possibly, the social circle; the highest is 'the nation'. 'Society' identifies with 'the nation', and in the middle is a huge social vacuum. (...) We have too little experience in community life ourselves (Wedel, 1986:115-116).

According to the mediator, Polish people are not 'mature enough' as citizens to exercise their rights in relation to the criminal justice system and mediation in particular, as it is suggested in the writings of Dzur (2008, 2011, 2014) more generally. The mediator pointed to the Polish 'national character' as a problem, but then she also underlined economic reasons, media influence as well as the deficits (or even inutility) of the Polish Catholic Church. The latter is an interesting observation I shall return to in the concluding chapter.

Marshall (1998:722) observed that 'communities are not as integrated as they once were. There is a greater emphasis on individual privacy and autonomy where one of the limitations is the existence of social injustice and inequality in and between communities'. Similar observations can be derived from Merry's (1993) research on private neighbourhoods and Putnam's study on civic disengagement – both related to the United States. Merry suggests that the romantic vision of community can be challenged by the increased urbanisation and mobility. Putnam's (2000) argument considers the notion of social capital and its degrading

value in American society for the past five decades. All this corroborates Crawford's (1999, 2002) argument that academics take people's openness and tolerance for granted.

An important argument that can be raised is that the condition of communities might be even weaker in Eastern European countries, as Pelikan & Trenczek (2008) observed, due to weak democratic traditions and apathetic public attitudes. Although they argued that this part of Europe can be characterised as experiencing a spirit of awakening with a new understanding of participation that may actually accommodate the restorative community element, this was not reflected in participants' narratives. Furthermore, in post-communist Germany the concept of lay people's involvement in crime control would be reminiscent of a totalitarian perception of 'volunteers' practiced under the communist regime (Karstedt 2002). Miers & Aertsen (2012:531) noted that one of the reasons why mediation is difficult to embed, for instance in Hungary, is the erosion of the micro-social trust that can be viewed as a result of the switch from a socialist to market society and the deterioration of previous social networks. This line of interpretation can be summarised with the following quote: 'in Poland we urgently need solidarity that would be simple and human. The previous two – from 1980 and 1989 – helped to build Polish capitalism. The third one should make it human'⁹⁴.

6. Apology and victim offender mediation

Apology is a speech act uttered by a wrongdoer to acknowledge responsibility for the offence and request forgiveness (Tavuchis, 1997:17). Roberts et al. (2005:134) observed that when 'someone steps on your toes, or bumps into you on the underground, your reaction will be quite different depending upon whether they apologize or not'. From the restorative justice perspective, Braithwaite (2002) has argued that apology is one of the elements that help to evaluate the restorativeness of justice processes. Therefore, one of the questions put to the study participants concerned the issue of apology and whether it matters when dealing with offenders.

⁹⁴ Ewa Wilk, Polityka 44/2014 (Polish original: *w Polsce pilnie potrzebna jest solidarność. Zwykła, ludzka, przez małe s. Tamte dwie – z 1980 i 1989 r. – pozwoliły zbudować polski kapitalizm. Trzecia powinna go uczłowieczyć*).

Although participants' opinions on the importance of apology varied widely, overall the practice of apologising did not lie at the heart of their views. At first glance, study participants in four focus groups and twenty interviewees viewed an apology as important; however, this support was limited by certain conditions and doubts. Only a minority of study participants viewed mediation as a moral obligation (see quotation below) and four interviewees firmly stressed that an apology is not important at all. The strongest point as far as the importance of apology is concerned was whether it is genuine or heartfelt. This was emphasised in seven group discussions and underlined in fifteen interviews:

If someone feels guilty and realizes what he has done, this person by himself should apologize. Apologize, make amends. Whether this should influence the sentence? Not really. Not really, because it is like a moral obligation. Every human being should have such a moral obligation to apologize for harm that has been caused.

[P21/I]

Roberts et al. (2005:134-135) reviewed a number of studies that suggest that people attribute less blame to people who commit minor offences and apologise; in brief apologies decrease the severity of punishment. Apart from one young male (I54) who suggested that an apology makes more sense with serious crimes, a number of study participants believed that the appropriateness of an apology depends on the crime that was committed. This view was pointed out in six focus groups and strongly emphasised by six interviewees:

Apologies with serious cases are even out of line, this can only hurt the victims (...) so apologies can sometimes cause more harm than ...because it makes you feel like...that he dares to apologise me!

[P28/I]

The fact that offenders' apologies are viewed with scepticism is also reflected in the evaluation of restorative justice practices in England and Wales (see Shapland et al. 2006). Where the authors argued that apology in serious cases or with adult offenders should become a more complex and evidenced act addressed to several audiences.

Although these study participants expressed uncertainty in relation to apology, there were a few comments that interpreted apologising as a powerful and influential process. One interviewee mentioned that contrary to the general opinion it takes courage to apologise:

Fine it happened, fine, but have courage to ... sometimes they drink, then drive and cause an accident or something, have courage to say sorry! To the family. You were brave enough to get drunk and drive that car so now have the courage to look into these people's eyes and say sorry. You have to be brave to apologize to someone. When he was drunk he was a dare-devil, wasn't he? And when he's sober it's difficult, isn't it? Saying sorry doesn't happen often.

[P20/I]

In the individual interviews some study participants pointed out that offenders sometimes become disconnected from their actions and as a result unaware of the consequences of committing a crime. This corroborates the argument on techniques of neutralization presented by Sykes and Matza (1957). They have argued that delinquency is 'based on unrecognised extension of defences to crimes, in the form of justifications for deviance that are seen as valid by the delinquent but not by the legal system or society at large' (Sykes & Matza, 1957:666). This theory is perfectly echoed in the following interview excerpt:

You see there are a handful of people, that can't even say a word or show compassion, don't even say I am sorry, it's so hard for them that the words stick in their throat. But I think it is normal, that they should ... if he feels guilty, he should apologize to the victim, their families or, or ... he should. But it depends on his character, upbringing. He might have never said sorry in his life, he doesn't know what it is and what it's for. It happens like that too. He has never apologized to anyone, and suddenly he has to, for what? Well it is him who made a mistake.

[P1/I]

Furthermore, Shapland et al. (2006) have suggested that restorative justice interventions may bring a 'feeling of closure' enabling the parties involved to move on. Any encounter between interested parties can prevent victims and communities from retaining the destructive effects of unresolved feelings of anger and revenge. This view was also echoed in two interviewees' narratives that mirror the importance of an apology from the victim's perspective, in one of them the interviewee said:

Well I think it's rather important. Maybe at the beginning when ... well it depends what it is all about, cos if someone steals something and apologizes then it's definitely much easier to swallow. But someone commits a more serious crime; I think that despite the time lapse it's still important for the victims that someone apologised. I don't know. It

seems that some things have to be closed even after many years. It will never be possible to strictly close it but ...it's perhaps important that this offender understands something.

[P34/I]

The above comment also reflects the argument that apology can be perceived as a mechanism to trigger remorse in offenders. Although Braithwaite (2003) has argued that apology, forgiveness and mercy occur under certain conditions and reintegrative shaming should be seen as a dynamic that aims to enhance these conditions, Duff (2002) questions whether shame can occur during a victim-offender encounter and that perhaps only some signs of remorse can be induced.

6.1. Why not apologise?

The perception of apology among study participants as less meaningful may be a consequence of interpreting apology within the framework of the conventional justice system where the expression of apology is limited and frequently managed by lawyers. Three interviewees in my study interestingly pointed out that making an apology is 'just' an act; it is just an etiquette to follow, especially if it is within a court setting. Below is a comment made by a male interviewee that shows how the importance of apology can be perceived through the lens of court settings:

Apologies, remorse. No this is just etiquette. That's what I think, he showed remorse, no remorse - perhaps it works in a way. Today I have seen a case of a Polish couple, who beat their child in England⁹⁵, they didn't show any remorse. It's not only that it's a very serious crime but not showing remorse is like the last nail in their coffin in this case. So probably yes, it's important though.

[P35/I]

This observation resonates with Gruber's (2014) point made in *I'm Sorry for What I have Done*⁹⁶ where research findings suggested that apology serve as a ritualised formula that can influence the defendant's sentence. Therefore, Shapland et al. (2006:514) encourage to

⁹⁵ The interviewee referred to Daniel Pelka's case, whose parents were found guilty of murder in July 2013 at Birmingham Crown Court. More information available at <http://www.bbc.com/news/uk-england-coventry-warwickshire-24106823>

⁹⁶ The author examined a variety of US-based allocutions - a formal speech directed at the judge by the defendant prior to sentencing.

differentiate court- and ‘other’ settings-based apology and argue that: ‘in restorative justice situated within criminal justice system there are at least two audiences for these apologies, so apologies are an even more complex task, needing to reach out in two directions, to the victim and to the court/society’.

Furthermore, the quotation below that comes from a discussion with two senior participants (lawyers) illustrates again how the act of apologising is undermined by participants who are also criminal justice professionals:

P38: Apologies have to be genuine.

P39: Exactly!

P38: And sometimes they are not genuine so the court does not pay attention to them. When you have a trial in criminal proceedings then the court should of course take remorse as a mitigating factor, right? Then the lawyer tells the person ...//

AM: Show remorse.

P39: Yes! Eat humble pie!

P38: What to say? – well, that you regret and you say sorry. And then such a hoodlum stands up and says boldly that he is sorry for what he has done. And deep down ...

P39: With face that he will go out and do the same. Most of the time it is like this.

P38: This is why the court has to look at what is the nature of this apology (...)

AM: Do you recall any case where someone very genuinely showed remorse?

P38: Somehow I don’t recall it.

[Laugh]

P38: Perhaps it happened but I didn’t pay attention to it.

[FGUS2]

In the light of the aforementioned quotations, it came as no surprise to hear from one of the interviewees that fair and efficient criminal procedure may take priority over an apology:

When it comes to apologies – I think that the most important thing is to effectively conduct the whole criminal procedure, sentence the offender, and if there is a family or a person that has been harmed, I think the best reassurance for this person would be to sentence the offender efficiently and proportionally to the crime committed (...) So what I am trying to

say is that the best apology victims could get is to punish the person who caused harm to them.

[I49/I]

The above comment resonates with Tränkle's (2007) observation that mediation participants stick to the logic and principles of a penal procedure and project courtroom procedures onto mediation sessions. Therefore, when discussing the role of apology within other (restorative) settings, the perception of apology through the court lenses might limit its importance among lay people.

Next, it is important to acknowledge that apology is also culturally constructed. Roberts et al. (2005:134) suggest that 'apologies for reprehensible conduct are expected in most cultures and have an effect on public perception of fairness and sentencing preferences'. Even though the notion of apology is discussed in the literature as having the same meaning around the world, it is worth examining the extent to which apologies are used and if the meaning they have is the same in every society (Dundes, 2008). For instance South Africans strongly expect a gesture of apology and remorse as they believe this is essential for a victim's process of healing (Gibson, 2001). However, Hickson (1986) gives the example of Iran where apologies are frequent but the purpose of making them is actually to excuse the offender from responsibility. The unimportance of apology in the Polish context was illustrated in one focus group:

I don't think people often apologize to each other ... that's what I think (...) they wouldn't speak to each other, no one says sorry and that's fine.

[FGRY:P8]

The limited confidence in apology was also interestingly discussed in an interview with a male participant who said that Polish people just do not know how to apologise:

We don't know how to apologize, but perhaps we don't know how to forgive so this would be, because I suspect that if one was to apologise this had to be in someone's presence. Whether there is a probation officer or someone else who is supervising this person who committed the offence, as a proof. So I think ... that these apologies that people say it, this

wouldn't be natural because this person has to apologize and the other has to say ok. How do I forgive you? ... go and sin no more⁹⁷. [Laugh] so I don't know.

[P4/I]

A similar remark was made by one of the mediators, however in his narrative lack of support for apology is contextualised against difficult Polish history, socio-economic changes as well as the pressures of globalization:

Taking into account our past 300 years, it's difficult to say whether Poles know how to reconcile, at least we have been trying to have a culture of reconciliation based on norms and standards, that we, and them, can be in control of or influence it at the very least. And do we know how to reconcile? It seems to be that yes. But simple 'sorry' seems to be the hardest word to say. For starters, it's so obvious in mediation (...) we have to start talking to one another at home. Well the economy, society is developing, we have to keep up with the rest of the world, and without changes in our thinking or attitude this won't be possible. Someone else will outdo us again. We will be like with the quality of road infrastructure rankings, just behind Chad and other African countries. It's like with the culture of family life. It is different in Germany, different in France, and in England it is different. In every single country it will be different. And in Poland it is different. It's the same if let's say we go to Belarus to find people who want to be mediators and expect to see hands in the air.

[Mediator 3/I]

At this point it is worth recalling the observation made by Shapland et al. (2006:507) that 'restorative justice is not a ready-made package of roles, actions and outcomes', and although in the light of the restorative justice literature the restorative encounter can be seen as ritualistic, these rituals may vary across societies. Perhaps a more restorative form of apologising in the Polish context of mediation would be a handshake as mentioned in three interviews and echoed in my discussions with mediators:

⁹⁷ These are the words from the Bible when a woman caught and charged with adultery was brought to Jesus. The crowd wanted her to be stoned to death. Then Jesus said to the crowd: "go ahead... but let the person without sin throw the first stone." When the crowd resigned and walked away he said to the woman: "Neither do I condemn you; go and sin no more" (John 8: 3-11).

I always aim for the parties to shake hands. For me it is the gesture. Be as it may, it's a shame, shake your hands and look into each other's eyes. Because mediation is also about this.

[Mediator 1/I]

I would also like to turn to the Polish scholarly literature and Leder's observation (2014:100) that the mindset of Polish society as a proud and haughty nation rooted in the mentality of *Sarmacja*⁹⁸ (Sarmatism). He has argued that this part of Polish history has helped to create the culture of humiliation where people often display antipathy towards others. In light of this it is worth challenging Braithwaite's theory on reintegrative shaming (1989) and asking a broader question whether Polish society is a culture where apology can serve as a mode to reintegratively shame the wrongdoer?

Last but surely not least, the inter-cultural component of cross-linguistic analyses seems to be of considerable importance. For example, in research on speech acts Wierzbicka (1985) demonstrated that Polish linguistic norms prefer directness, and this is deeply embedded in the Polish culture, compared to English norms. The next quotation illustrates that people might prefer actions rather than emotional or symbolic gestures when it comes to the act of apology:

We could give it a try. And what kind of result it would bring who knows, I seriously don't know, because it can be the same like with these apologies (...) as you see [Laugh] I am not good with these wordy things, I prefer actions.

[P4/I]

The above quotation provides another avenue for the interpretation of apology that could be explored in the sociolinguistic and cultural fields of study. Although a more thorough exploration is beyond the scope of this study it is important to acknowledge that the viability of restorative justice might also depend on linguistic prerequisites. Wierzbicka (1999) has observed that English speakers tend to think that the concepts of anger, fear, or contempt are universal categories. However, every culture has its own 'cultural linguistic scripts' which suggest to people how to express their feelings and how to think about other people's feelings (ibid.). For that reason, Wierzbicka has emphasised that the classification of emotions

⁹⁸Sarmatism functioned as the dominant lifestyle, culture and ideology of the *szlachta* (nobility) of the Polish-Lithuanian Commonwealth from the 15th to the 18th centuries.

depends largely on the language through the prism of which these emotions are interpreted, and argued that emotions should also be studied cross-culturally. In contrast to the English language, in Polish there is a greater use of 'straightforward' and 'confrontational' expressions, as Poles expect people to be direct with emotions, views and reactions. The Polish 'cultural linguistic' script reflects a tendency to spontaneous emotional expression, without trying to analyse, shape or suppress them (ibid.). Whereas in English there are many common speech routines that encourage the demonstration of 'positive emotions', even if displayed 'artificially' (ibid.). The significance of this finding is that the bulk of restorative justice research was carried out in contexts where people speak English as a native language, and the English language might not have equivalents in other languages (cultures). Wierzbicka (1999) has pointed to the fact that Anglo-cultural scripts encourage people to be careful, considerate, and thoughtful to avoid hurting other people's feelings as the focus is on the feelings of the other person. On the other hand Polish cultural scripts have no equivalents, and the focus is not on the feelings of the addressee but on those of the speaker. Participants' ambivalent view of apology and Wierzbicka's research in particular shows that linguistics might in the future contribute to the cross-disciplinary study of emotions, and in consequence restorative justice.

7. Media

In similar vein, it is worth looking at the paucity of any media reference in participants' narratives on victim-offender mediation. This lack of media reference can be substantially explained on the basis of limited knowledge about victim-offender mediation among study participants. However, Niełacznna (2012) gives another interesting explanation for such state of affairs. She underlines that when the core group of Polish restorative justice advocates was championing mediation in the '90s. they deliberately avoided any contact with the media as they feared media subjectivity and hostility, and that it could result in negative publicity on the matter. Therefore, Niełacznna (2012) suggests that the initial decision about media avoidance caused a paucity of media attention in relation to victim-offender mediation that has continued over the years. At the time of the fieldwork there was no media representation of restorative practices. Two years later, in 2015, there was a series of semi-documentaries entitled *Wesołowska and Mediators (Wesołowska i Mediatorzy)*, with the aim of promoting awareness of victim-offender mediation. The titular Anna Maria Wesołowska, a judge, was

already known from a long-running Polish reality court show, which was modelled after *Judge Judy*. In spite of the noble intention to increase people's familiarity with out-of-court solutions, the format of the show demonstrates again the 'inseparable' relationship between restorative justice and the Polish criminal justice system. Due to low viewing figures, the programme was cancelled after three episodes.

8. The West

The appreciation of Western influences was also very interestingly expressed in a group discussion between senior participants living in an urban area. While discussing the option of the involvement of friends or family member in victim-offender mediation all focus group discussants initially stated that it would not be a good idea due to the purported Polish temper. However, there was a significant shift in the attitude after one of the female participants turned to me and asked in disbelief whether such encounters were being practised in other countries. When I answered in the affirmative the participants started to consider this option from a different perspective:

P34: So there would be some other people too?

P36: Family.

P37: Family members

P36: No! This wouldn't go along with our national temperament.

P34: I think it doesn't make sense if there is too many people. Besides I don't know ... has it really been implemented elsewhere? And does it really work? Really?

AM: In other societies.

P34: Yes? Listen perhaps some sort of group catharsis is not a bad idea. Perhaps that's the point.

P35: It's a different perspective, everyone behaves differently.

inne spojrzenie wtedy wszyscy sie inaczej zachowuja

P37: Yes.

P34: Then everyone can see different things. In fact it can make sense.

[FGUS]

This particular part of group discussion sheds further light on the point made about ‘Chasing the West’ – a powerful post-1989 ambition to join the international community in the West (see Chapter 2).

In conclusion

Despite limited knowledge of victim offender mediation among study participants it is clear that support for mediation is conditional. Although victim-offender mediation was mainly perceived as not a punishment, the role and purpose of this solution was discussed against the background of the criminal justice system. Study participants valued the pragmatic reasons behind such restorative justice; however the informality of the encounter as well as the unknown status of the mediators made some of the participants challenge the idea of victim-offender mediation. Then, as it emerged in the fieldwork, study participants’ perception of harm suggests that mediation might be seen as an avenue to focus on the financial side of the reparation and as result achieve something other than restorative goals. However, one can argue that there are significant implications of using the Polish definition of victim-offender mediation in this study and the nature of the definition might have influenced participants’ understandings of victim-offender mediation. In Chapter 1 I discussed the ‘compensatory’ sound of the Polish definition and Zalewski’s argument in relation to the dangerous ‘compensating’ orientation of victim-offender mediation in the Polish legal system. Given that my participants had rarely heard of victim-offender mediation, or any other restorative justice solution, it has to be emphasised that the definition used in the study was the main source of information about mediation and may have influenced the ways participants discussed victim-offender mediation.

The narratives of these study participants also explore the difficulty of acknowledging apology as a genuine element of the encounter. This could be due to looking at apology through the lens of court apology, and sociolinguistic and cultural reasons. Lack of support among study participants for family/friends presence in mediation encounters suggests limited possibility for other restorative practices in Poland that involve wider people’s participation.

Although the Polish model of victim-offender mediation was inspired by the restorative justice concept, the narratives of my participants suggest the need for maintaining a close relationship between practicing mediation and formal justice proceedings. Given the close and inseparable relationship between the two, I argue in this chapter that the ways in which lay people perceive the criminal justice institutions affect their perceptions of alternative conflict resolutions. The understandings of restorative justice are then further influenced by broader socio-economic, political and linguistic factors. Brathwaite (2002:565) has rightly indicated that 'we are still learning how to do restorative justice well'. Nevertheless, the question whether a perfect restorative justice programme is ever possible remains open. I shall now reflect on the three empirical chapters and present my concluding observations.

Chapter VII

Conclusions

The purpose of this doctoral research is to explore how a small sample of Polish people understands punishment and justice, and what their narratives tell us about the viability of restorative approaches to justice in Poland. In this thesis, I have attempted to broaden the scope of the restorative justice discussion and examine its preconditions against wider discourses on punishment and justice. Although the relationship might be defined as ‘uneasy’ (see Shapland et al. 2006), restorative justice, since its conception, is interwoven with the two. One of restorative justice’s central hopes was to establish an alternative system of crime resolution that would eliminate the infliction of pain. However, the trajectory of restorative justice solutions in many countries demonstrates that the functioning of a majority of them is dependent on criminal justice agencies and that there is a need to address better the notion of punishment in restorative encounters. In order to predict the likelihood of successful adoption of restorative practice Rossner (2013) has argued that a micro-sociological perspective informed by interaction ritual theory can help to determine what success means in restorative conferences. I propose to consider a macro-sociological perspective, and how lay people’s understandings of punishment and justice should be seen as an avenue by which to explore certain preconditions for the viability of restorative justice.

Western democracies dominance in the criminological literature has resulted in a situation in which theories on punishment and justice are predominantly discussed in the light of penal cultures and evidence from Western countries. This thesis brings the Polish perspective to the field and reflects Nelken’s (2010:14) observation that it is essential to examine whether ‘broad criminology claims are more than just local truths’. The thing about ‘local truths’ is that they are also multi-layered and nuanced.

A number of lessons can be drawn from the Polish case in order to explore people’s views on punishment and justice, understand the viability of restorative justice programmes, and analyse the extent to which people’s attitudes towards punishment and justice are such that restorative justice could work in Poland. Its socialist past, change of political regime, post-communist ‘accession’ to the international community in the West and high level of

religiosity (among many other factors) make Poland a fascinating object of study that can, at the same time, offer insights about restorative justice in other societies.

To date, when scholarly attention has been given to the Polish context, the discussion has been mainly limited to the country's socialist past. In this thesis, I have attempted to treat post-1989 changes and their consequences as being of equal importance. In order to explore the notion of punishment and justice, I contend that the Polish case requires in fact the contextualisation of three periods: socialism, post-1989 transformations, as well as post-2004 EU accession. Although the harsh socialist penal policies were replaced during the transformation period by international standards emanating from the West, the punitive penal rhetoric in Poland has, since then, made a U-turn: the short-lived human-rights-sensitive approach to crime and punishment has been weakened by political discourses and media representation of crime and punishment which, similarly to the West, favour one type of reaction to crime – harsh punishments (Płatek, 2007; Kossowska, 2015). While Western societies have experienced an extended period of modern, non-retributive penalty, Poland managed to separate the criminal justice system from its socialist residues and initiate new, progressive penal developments only briefly post-1989.

Restorative justice, introduced in the form of victim-offender mediation, was part of the post-1989 political ambitions to change the Polish penal landscape and join the international community in the West. There were a number of forces behind the establishment of restorative justice in Poland (see Chapter 2). Given that the concept was introduced at a time when Polish society was dealing with the socialist legacy and creating a new democratic reality, it was also hoped that mediation could serve as a fast-track remedy and act as an ancillary mechanism to reduce the sudden spike in court workloads after the fall of communism. Although the implementation of victim-offender mediation in Poland also reflected broader changes that aimed at recognizing victims' rights, the Polish model of mediation is very limited in its restorative potential (see Chapter 2). Nonetheless, this study has also indicated that the tradition of informal conflict resolution, which existed under socialism in the form of social courts, requires further examination as it might greatly contribute to the discussion on the viability of restorative justice in post-socialist societies.

Given the pace of the post-1989 transformations, little thought was given by advocates of restorative justice in Poland to the level of restorativeness of Polish victim-offender

mediation, and only recently have Polish scholars reflected on the nature of the practice and concluded that mediation fails to live up to restorative ideals (see Płatek, 2005, 2007) . As discussed in Chapter 2, the nature of Polish mediation in public prosecution is that of an ancillary mechanism that aims at meeting the expectations of the justice system and ‘restorative outcomes’ (other than compensation) are seen as ‘mediation side effects’. Stanley Cohen (1985) once said that even well-intentioned interventions can produce unexpected outcomes. In the case of Poland, it seems that the exceptionally limited interest in mediation and paucity of anticipated outcomes of victim-offender mediation is the problem. In order to explore the viability of restorative justice in the Polish context, one must therefore look beyond the legal basis and formal logistics which have been already in place for many years.

This thesis develops the discussion on the future of victim-offender mediation in Poland and explores the viability of restorative justice through the lens of lay people’s narratives. In Chapter 1 I argued that there is an interesting paradox when it comes to discussing the role of lay people in the criminal justice system. On one hand, it has been argued that a degree of public approval and trust in criminal justice institutions is essential for the system to be viewed as legitimate and to enhance compliance with the law. Moreover, lay people’s views are now also seen as a new approach to democracy. On the other hand, the reliability of lay people’s views is frequently challenged on the basis of people’s limited experiences of the criminal justice system, and their poor knowledge about the system that is additionally skewed by the media representation of crime (see Hough & Roberts, 1998). The above criticism somehow seems to play a lesser role when lay people are conceptualised as the ‘public’, and their views are subject to a quantitative investigation. This might be related to the fact that quantitative studies have more credibility at the policy-level, and qualitative studies in this field are still a rarity. This research has demonstrated well that when investigated qualitatively, it is even more evident how dynamic, nuanced and complex people’s views are – and only qualitative research can expose these characteristics.

Nevertheless, there are a couple of methodological observations that require to be acknowledged in this final chapter. The sampling strategy, discussed in Chapter 3, was based on theoretical requirements and considerations. The following break characteristics were taken into account in order to sample study participants: age, gender, geographic location, education and prior experience of the criminal justice system as research suggests these factors could influence participants’ understandings of punishment and justice. Whenever

possible, I tried to indicate the differences between groups/participants. For example, it is interesting that the group of young participants (students), born after 1989, who live in an urban area, expressed the most restorative/rehabilitative views. Likewise, as is the case in other former communist countries, nostalgic, post-socialism sentiments were most frequently articulated in the narratives of senior participants. Another distinctive difference in participants' accounts would be the support for work as a punishment in cases of child maintenance arrears which was vividly expressed among females. However, lack of any significant variance in opinions (particularly in relation to geographic location, education or previous experience with the criminal justice system) is an interesting finding in its own right that deserves further investigation in the future. No statistical difference in opinions between respondents who had and did not have experience of the Polish criminal justice system was also reported in a 2013 opinion poll which asked questions about attitudes to various criminal justice institutions in Poland (CBOS, 2013). Another methodological consideration is that, despite the use of qualitative methods to explore these social facts, one could argue that participants' views may just be artefacts generated by the research process – and this point is viewed as a limitation of the study.

People's engagement with punishment and justice is now seen as a new approach to democracy, in which lay people, as citizens, are expected to be more responsible for, and engaged with, the work being delivered by criminal justice institutions (Roberts, 2014). This study has demonstrated that lay people's understandings of punishment and justice can add detail to our well-established understanding of general penal concepts and also delineate a number of issues specific to a given society. It was apparent that participants' understandings of punishment and justice were influenced by the media representation of crime. It might be argued that in the Polish context the experience of past censorship could have made lay people even more susceptible to the influence of the media. However, the findings presented in Chapter 4 also demonstrate that lay people can be critical towards the media representation of crime – which is consistent with a long tradition of media research (see Katz et. al, 1966). What might be distinctive in the Polish (or post-communist) context though is the finding that participants' narratives were notably affected by the perceptions of Western approaches in the criminal justice systems and that their accounts were filled with references to other Western countries. Participants' applause for Western penal policies reflect the broader socio-political landscape, the post-1989 desire to 'chase the West' in order to catch up with trends in

Western Europe. Clearly, such appreciation of Western solutions was expressed without any in-depth understanding of Western criminal justice policies and was associated with a certain idealisation of Western living standards. Although one may say that these findings demonstrate that human nature is unstable and responsive to external influences, I argue that the use of ‘Western’ examples and media-reliance may be seen as the means to enhance an open debate and participants’ engagement in subjects such as punishment and justice. More specifically, in the Polish context, lay people are seen as *Homo post-Sovieticus*, whose perceptions of punishment and justice need to be analysed along with the legacy of the previous socialist system, their nostalgic sentiments for ‘the world that was lost’ and bitter disappointment with the post-1989 changes. The events of 1989 opened a horizon of expectations on the part of lay people whose mentality is described in the literature as being of peasant origins (see Wasilewski, 1986; Leder, 2014). However, so far little has been said about how lay people’s views are articulated.

This study and Chapter 6 in particular, has shown that language, similarly to punishment and justice, is culturally, socially and historically constructed. One of the most original findings of this study is participants’ limited preparedness to apology, especially the finding that Polish cultural scripts have no English equivalents of being considerate, and thoughtful to avoid hurting other people’s feelings – something that might serve as the basis for another interesting research study in the future. Therefore, the socio-linguistic input in the debates on punishment and justice would also shed light on the viability of restorative justice in different socio-political, economic - and linguistic - contexts.

Having considered all that has been discussed, it is worth asking the question again – how viable is restorative justice in Poland? Under what conditions is restorative justice produced and practised effectively, and under what conditions it is not produced or does it fail? What can other societies learn from the Polish case? Participants’ understandings of justice were approached as the exploration of a social contract between lay people and the state on the subject of criminal justice and the police. The significance of participants’ views on the criminal justice system and the police is that they constitute the three main authorities that can refer criminal matters to victim-offender mediation in Poland. Restorative justice has been introduced and mainly discussed by scholars as an alternative vision of justice administration; however, most restorative justice interventions worldwide operate within formal criminal justice systems that administer punishments. Dzur (2011:371) argues that it is

both a strength and weakness that restorative justice originated in conventional justice institutions, as without criminal justice agencies it would have been difficult to put restorative justice practices in motion. Although Dzur's comment is true only up to a point⁹⁹, this argument is especially important for the Polish context, where victim-offender mediation, as a restorative solution, is situated within the criminal justice establishment and significantly dependent on the criminal justice system (see Chapter 2). In Poland, any mediation outcome is always scrutinised within the Polish criminal justice framework, and the case proceeding can only be discontinued once the agreement between the victim and the offender is reviewed by a judge. As a result, the language of Polish mediation is of a legal nature. Furthermore, in Chapter 1 I discussed how the implementation of restorative justice was identified by Płatek (2007) as the means to influence Polish people's perceptions about punishment and justice. However, the findings of this study demonstrate that, due to the nature of Polish mediation, it is the participants' perceptions of the Polish justice system that might influence someone's willingness to take part in a restorative encounter.

Chapter 4 highlighted that one of the key characteristics of Polish legal culture is lay people's chronic distrust of the justice system. The hasty transition from socialism to democracy and from a centrally-planned to free market economy has influenced participants' perceptions of the justice administration and the institutions involved in these processes. For example, the current excessive length of court proceedings has undoubtedly contributed to participants' limited confidence in the performance of Polish courts, as it interferes with people's right to trial within a reasonable time. However, the prolonged length of proceedings was also caused by the sudden post-1989 increase in court workload, the reorganisation of the justice administration and the strengthening of the position of judges and lawyers, as well as reforms that provided defendants with guarantees of a fairer trial – something that they were constantly deprived of under communist rule. However, it is participants' perceptions of sentencing as being different for the poor and rich (along with an interesting example of drunk cyclists) that reflect a wider sense of social (in)justice and the post-1989 consequences of the transformation struggle.

The split between losers and beneficiaries of the transformation period has created a strong feeling of social disparity that has affected how participants understood the administration of

⁹⁹ Restorative justice originated in religious institutions on the Canadian-American border and tribal practices (see Llewellyn & Adamson-Hoebel, 1941; Gluckman, 1967).

justice in Polish courts. In consequence, when it comes to achieving justice, participants placed hope in ‘merciless’ lawyers – trust in whom was strengthened under communism. These findings are connected with observations about the post-1989 divide between Polish people who benefit socially and economically from the transformation (Czarnota, 2009), and their ambivalent legal culture that facilitates the application of ‘double standards’ (Kurczewski, 2007, 2009). Participants’ perception of disproportionate or inadequate sentencing clashes with the still present ‘culture of favours’ - another characteristic relic among post-communist societies where social order was particularly grounded in informality, reciprocity and networks. Although this could be seen as a chance for other forms of conflict resolutions, I argue that, given the close relationship between the Polish criminal justice system and victim-offender mediation, participants’ overall disappointment with the system should be seen as a significant obstacle to the viability of restorative justice. Participants’ narratives in Chapter 6 suggest that, despite limited trust in justice institutions, people might still stick to the logic and principles of a penal procedure and project courtroom perceptions onto how they view restorative justice. For instance, despite low confidence in the Polish criminal justice system, study participants perceived lawyers to be part and parcel of the administration of justice and their presence a safeguard in mediation encounters. Furthermore, fear of mediation informality, or rejection of community involvement, might indicate that people are not necessarily interested in resolving ‘conflicts’ themselves. Moreover, participants’ perception of mediation as being that of a business-like meeting, with the promise of compensation as a primary advantage, might be considered a feature that echoes the nature of post-1989 transformations. It is important to emphasise that the Polish definition of victim-offender mediation provided in this study significantly highlights the element of compensation that could have influenced participants’ understandings of mediation. Furthermore, in Chapter 1 I refer to Zalewski (2006) who observes that the nature of Polish criminal law is very ‘compensatory’ and argues that the Polish legislation has ‘dangerously’ created the provisions for victim-offender mediation to be understood as an ancillary mechanism that aims to help the formal criminal justice system in establishing the guilt in the offender and amount of compensation (mainly financial) for the victim. Under these circumstances, restorative justice may be perceived as an opportunity for ‘channelling economic insecurities’ and perhaps seeking economic justice. This therefore poses a substantial obstacle to further development of restorative justice in Poland, and might be an impediment elsewhere too. Although participants’ appreciation of the criminal justice

systems of Western countries leads to the suggestion that post-socialist countries might be particularly receptive to so-called ‘Western solutions’, the complexity and ambivalence of Polish legal culture might be an obstacle to accommodating these solutions in the same form as in their original countries.

Another important implication of this study is the bearing of participants’ views of the Polish police. This is not only because the police are one of the restorative justice gatekeepers in Poland, but also because there is existing scholarship on how lay people’s views on the police and policing tell stories about social order, moral consensus and society in general - in which these views are expressed (Loader, 1997; Jackson & Bradford, 2009; 2010). The literature discussed in Chapter 5 already highlighted that Polish people are highly unwilling to report crime and this is mainly due to their perceptions of the police work (see Siemiaszko et al. 2009). Therefore it should not be seen as surprising to report that while there has been some evidence available in relation to court and prosecutors’ engagement with mediation, there has been an absolute absence of police activity on this matter, as well as an extreme paucity of publications or comments about police-referred victim-offender mediation in scholarly and non-scholarly literature. Salwa (2012) indicated that this is because Polish officers lack adequate training and skills to select the right cases for mediation. However, the findings presented in the second part of Chapter 4 present a more nuanced analysis of the relationship between lay Polish people and the Polish police, and that Polish society ‘is not easy to be policed’ – something that again would be an interesting point of departure for future research.

The perception of an incompetent and ineffective Polish police nowadays was intermeshed with mostly senior participants’ nostalgic sentiments for the ‘strong’ communist-era militia. Nostalgia for the old ways of policing, meaning the militia-style community policing, the use of force or the perceived sense of security, outweighed the fact that these methods were often maintained through fear and that the main role of the police under the socialist regime was to ‘police politics’, enforce obedience to the state and eliminate any political dissidents. Another important observation is that participants’ perceptions of the police have also been influenced by the post-1989 events. It was the time when new economic freedoms were implemented in a weak society subject to different law enforcement powers, and police forces were seeking to ‘reinvent’ themselves, increase transparency, redefine their objectives and develop a new concept of accountability. Although the post-1989 police reorganisation meant putting an end not only to militia-like policing but also to the culture of ‘informal dealings and favours’,

there is evidence that certain sectors of the Polish police were involved in the post-1989 economic malpractice and misconduct in privatisation processes (see Łoś, 1988). Given these landmark changes and obstacles, it was an ambitious aim to make the Polish police, alongside the courts and prosecutors, one of the three referring bodies that were allowed to send criminal cases to victim-offender mediation – as this requires a close and trustful relationship between the police and lay people. Although Mawby and colleagues (1997) observed that various changes occurred in the 1990s in order to transform the police from an agency of social and political control into an institution more responsive to the public, Chapter 4 illustrated the ambivalent relationship between the two in post-socialist societies. Furthermore, the limited accounts of participants' experiences with routine police activities do not assist to explore this matter further. The process of 'police reinventing' in the Polish context that involved the change of tactics and strategies in order to eliminate bribery, nepotism and 'jobs for the boys', compared to the 'old times', may be seen by lay people now as formal and distant policing. More community-friendly police would sit well with the participants' support for mediation of minor offences, as the latter was discussed in the previous chapter. However, any police involvement with victim-offender mediation requires a significantly more advanced debate on the relationship between the Polish police and ordinary citizens.

In the introductory chapter of this thesis I said that punishment is a social construct with different purposes: retribution, deterrence, rehabilitation and restoration. What is of significant interest in this doctoral research is the question whether Poland as a post-communist and post-transformation society has the potential to be receptive to the restorative function of punishment. The Polish context of work as a sanction corroborates the idea that punishment is a social process that is not only a reaction to crime but can be seen as a social artifact with social causes and social effects, shaped by various social forces, with its own historical tradition and cultural styles – as well as being intended to perform various instrumental roles (Garland 1991, 2012). Quite early in my fieldwork it was apparent that participants' deep-seated and overwhelming confidence in unpaid work, articulated through many well-known work-related Polish sayings, reflects wider social and cultural specificities. Garland (1991), drawing on the Durkheimian concept of the role of people's sensibilities, observed that punishment can serve as a key with which to explore society. As a distinctive symbol in Polish social imagery, work in participants' narratives has revealed a deeply

embedded peasant mentality as well as still-vivid perceptions of socialist ‘working people’ that was discussed in Chapter 5.

In Chapter 5, I indicated a number of participants’ quotations in which work was discussed as a vehicle that could enhance remorse and activate the feeling of guilt among offenders – something which corroborates the notion that work as a community sanction might attract restorative perspectives, and in consequence unpaid work may be considered as a restorative practice. While the inseparable relationship between Polish victim-offender mediation and the criminal justice system might be seen as an obstacle to popularising the intervention further, increasing the work element in mediation outcomes perhaps would bring better chances for success. This argument, however, is contrary to some of the restorative literature, which suggests that there is a risk of branding community work as a restorative practice. Nevertheless, due to the ingrained nature of, and strong support for, community service, I align myself with Fellegi (2010) who argues that in Central Eastern European societies, community service can be seen as the basis for further development of restorative justice. While acknowledging the difference between restorative justice and restorative practice, I see participants’ confidence in unpaid work as a two-stage process aiming at transforming community work into a restorative practice – something that could potentially contribute to the development of restorative justice in Poland in the long term. Such an approach would reflect Daly’s (2002) argument that the introduction of restorative justice in various contexts should incorporate degrees of ‘cultural appropriateness’. Only such an understanding of restorative justice will make its practices flexible towards and accommodating of cultural differences. Although I argue that the origins of participants’ support for work might be distinctive for the Polish context, the nature of this support might have relevance in other countries.

Participants’ accounts of shame and stigmatisation in particular have more theoretical implications. The concept of reintegrative shaming that serves as a vehicle for a successful restorative encounter has been introduced by Braithwaite (1989), who has argued that shaming as a process can produce two opposite outcomes: reintegration and stigmatisation. Although the theory of reintegrative shaming has been enthusiastically welcomed as a central feature of restorative justice, the complexity of participants’ views on shame has shown how difficult it is to demarcate the boundary between the reintegrative and stigmatising aspects of public shaming. Therefore, this study greatly contributes to the discussion on reintegrative

shaming and corroborates Braithwaite's observation (1989), that although the two types of shaming are presented in a rigid dichotomous contraposition, in reality the offenders respond to varying degrees of each type of shaming. Such 'paper-thin' distance between the understandings of stigmatisation and reintegrative shaming also recalls the 'uneasy' relationship between restorative justice and punishment more generally. Although there is no intention to inflict pain on the part of restorative justice advocates, there must be an awareness of the painful process, or effects, that restorative encounters might bring about – something that strongly resonates with Gavrielides' concept of 'restorative pain' (see Gavrielides, 2016).

Despite the fact that study participants overwhelmingly rejected the idea of the involvement of micro-communities in restorative practices, the notion of community returns in their narratives on work as a sanction. Nonetheless, the suggested nature of these collective local experiences in crime resolution is rather passive. Participants' views on performing community services are not directed at the respective victims, which is again something that defines the restorative process. It is worth emphasizing that there was very little reference in participants' accounts to the victims' involvement in restorative meetings and how these can benefit the affected party. Acknowledging that community service could enhance the viability of restorative justice in Poland would require, however, a more advanced and nuanced debate on the role of communities, the infliction of pain in restorative encounters and how to address reintegrative shaming better. Furthermore, the discussion around community is where I expected to find differences between rural and urban participants. Lack of any significant variation may be explained through the scholarship on the peasant (also unified and homogenous) features of Polish society (see Wasilewski, 1986, Wedel 1986).

Punitiveness, which can be defined as a desire for imposing harsh sanctions, originated in the observation that punishment and crime have little to do with each other. As discussed by Tonry (2007), King (2008) and Green (2012), punitiveness operates at different levels, but the literature on crime has been divided in a stark contrast (Matthews, 2014). In order to examine the notion of punitiveness, or to classify societies as less or more punitive, it has been widely accepted to use the same indicators, such as imprisonment rate or presence/absence of the death penalty. These study findings have demonstrated that the debate on punitiveness also requires amplification. Poland, due to its socialist past, is frequently said to be one of the most 'punitive' countries in Europe (see Krajewski, 2002, 2004). I argue in this research that

too much emphasis is put on Poland's socialist legacy, as the post-1989 rapid changes and unequal privatisation also significantly contributed to some of my participants' punitive preferences (for example, articulated in their punitive views on work). On the other hand, participants' restorative orientations on work also pointed to relatively little-explored punitive area of the Polish criminal justice system – the criminalisation of child maintenance arrears. The diffusion of restorative practices can only be effective if it adapts to the cultural and legal contexts of each country, since a single standard restorative justice intervention, applicable to the whole of Europe, for example, is not, and will never be, realistic (Bussu, 2016:483). Therefore, the resolution of a specific (and perhaps highly context-dependant) crime of child financial negligence could serve as an enhancer of restorative justice in the Polish context.

Next, the parts played by high religiosity and the influence of the Catholic Church were one of the features of the Polish context that was introduced at the beginning of this thesis and was expected to play a role in the examination of the viability of restorative justice. Rather than discussing the contribution, I must report the absence of any references to Catholicism in participants' interviews. This 'silent' finding poses a broader question about the influence of the Polish Catholic Church in people's understandings of punishment and justice and whether its teachings are receptive to restorative practice, as well as challenges Nelken's (2010) observation that the Catholic Church could be seen as a point of reference in terms of what should be penalised, tolerated and forgiven. Punishment and justice are developing concepts deeply embedded in the specificity of the environment that produces it, and religion is an institution that can assist us in understanding the historical and present differences in countries' punishment traditions (see Mellosi, 2001). Furthermore, Philpott (2015) observes that the notion of restorative punishment can be found in traditions and teachings of Judaism, Christianity and Islam, and that the Catholic Church and many Protestant churches advocate for more restorative practice in the criminal justice system. Just as with Mellosi's insightful comparative analysis between Italy and the United States, it was anticipated that the Catholic environment in which my participants live would be referred to in their discussions on punishment and justice. However, one out-of-fieldwork conversations with a Polish priest might help to understand this observation. In Poland, there is a well-established ritual of *Koleđa* – which is an annual visit of the local priest to all households in the parish. The purpose of this ritual is threefold: blessing the household, collection of money and updating the information the parish holds on each family (see Mishtal, 2015). While visiting my family

at Christmas, during our local *Koleđa* visit in December 2015, the priest asked about my professional life as well as the subject of my doctorate. While I was explaining what restorative justice is about, he was rather incredulous and uninterested, and, once I finished, he commented with an unconvincing face that ‘Polish people will not be interested in this because of our mentality’ – meaning that there is something about the national character of Polish society that would not welcome restorative solutions. Undoubtedly, the Polish Catholic Church played an important role in facilitating the political opposition under communism, and its influence has remained dominant over time. This is interestingly delineated for example in *The Politics of Morality. The Church, the State, and Reproductive Rights in Post-socialist Poland* by Joanna Mishtal (2015). Although the main contentions of the book relate to a different subject than the one of this thesis, Mishtal demonstrates how the Polish Catholic Church is capable of targeting a specific group of society, enforcing the policies of interest through a number of mechanisms, and embedding them in religious rituals. The ‘silence’ of religious comments in my participants’ accounts might indicate that restorative justice, which corresponds with the Catholic notion of forgiveness and apology, has never been of interest to Polish priests. This suggests that societies with high sense of religiosity, such as Poland, should not be immediately considered as more receptive to the ideals of restorative justice.

The rationale behind this research was to explore qualitatively how lay people, from a post-socialist and post-transformation society, view punishment and justice more broadly. In light of these understandings, this thesis also aimed to explore the viability of restorative approaches to punishment and justice. Restorative justice scholars are fond of imagining a world built on the principles of restorative justice (Roche, 2006:235) but restorative justice would probably do better if we promised less (Daly & Immarigeon, 1998) and accepted that every society has its own restorative justice story to tell. Although my research is not a classical restorative justice thesis, it echoes Daly’s (2001) argument about telling the ‘real story’ about restorative justice, its ‘cultural appropriateness’, or in other words its preconditions. In addition, Braithwaite (2003:1) has strongly encouraged the realisation that restorative justice is about struggling against injustice in the most restorative manner possible, and thus also within the rigidity of the criminal justice system. This thesis demonstrates that there are a number of cultural values and attitudes that might be seen as prerequisites for restorative justice success in Poland and other countries too. Although this research has demonstrated the complexity of such an academic endeavour, it has also

indicated the benefits of exploring people's views qualitatively. Although the study participants did not have specialised or professional knowledge of crime, sanctions, criminal justice systems, police or restorative practices, interestingly their accounts shed light on a number of issues that open up new avenues of thinking about the role of societies in the criminal justice system and how the paradox of the value of lay opinion can be challenged. This study corroborates Feilzer's call to move away from the importance of people's knowledge and explore the notion of a 'public narrative'. Whenever possible, I have attempted to address how my findings are of theoretical as well as practical importance, and which strands of my study could serve as an interesting basis for future research projects. Ragin and Becker (1928:225) long ago observed that 'the two main problems social scientists face as empirical researchers are the equivocal nature of the theoretical realm and the complexity of the empirical realm'. As they would suggest, my scholarly intention was to use the Polish case to sharpen and refine the question on the viability of restorative justice. Cross-national and cross-cultural research is a fundamental way to show whether criminology's claims are more than local truths. Trying to understand one place in light of another contributes to having a holistic picture of how punishment and justice operate. Being aware of methodological, definitional and conceptual challenges, I limited this empirical endeavour to a small number of Polish people and made an effort to connect it to a number of theoretical ideas. It has been a complex and challenging task but I believe that this is just the beginning of an academic journey that will make the findings even more meaningful and useful in the future.

Appendices

Appendix I - study poster

**Department of Sociology
London School of Economics and Political Science**

**PARTICIPANTS NEEDED FOR
RESEARCH PROJECT**

I am looking for volunteers to take part in a study that aims at exploring the views of people in Poland on crime and punishment. As a participant in this study, you would be asked to attend a group discussion and share your opinions on criminal justice institutions, police, sentencing as well as your attitudes towards different crimes and sanctions.

Your participation would involve one session,
this will take approximately 90 minutes.

For more information about this study, or to volunteer for this study,
please contact:

Anna Matczak

a.matczak@lse.ac.uk

+48 (0) 536 321 308

**This study has been reviewed by, and received ethics clearance
through, Research Degrees Unit, London School of Economics and Political science.**

Appendix II - information letter and consent form



INFORMATION LETTER

Before you decide whether to take part in this study, it is important for you to understand why the research is being done and what it will involve.

I am Ph.D. student in the Department of Sociology at the London School of Economics and Political Science. As part of my thesis, I am conducting research under the supervision of Dr Janet Foster and Professor Bridget Hutter. The purpose of the study is to examine the views of people in Poland on crime and punishment. Specifically, I would like to find out what your opinions on criminal justice institutions, police, sentencing are as well as your attitudes towards different crimes and sanctions.

The first part of the research is to participate in a group discussion with 4/5 other participants. This will take approximately one hour. After conducting the group discussion I would like to meet you for a one-to-one discussion where I can explore your views on crime and punishment a little more. If you agree to take part, I would arrange a meeting at a place and date that is convenient to you. The interview will last approximately one hour.

I would like to record both the focus group discussion and one-to-one interview as this will help me to transcribe, translate and analyze the data at a later stage. Your views and any other information collected during the study will be kept strictly confidential. Any personal information about you (name, address) will be removed. If you become upset by questions, the interview will be stopped and time given to rest and recover. You can withdraw from the study at any point without giving a reason.

I hope that the information I get from this study will help to understand people's views on crime and punishment in more detail and this can potentially influence other academics and criminal justice staff when planning sentencing guidelines or interventions for offenders and victims of crime.

The results of the study will be analyzed and written up as a thesis in the English language. The findings might also be disseminated as publications in academic and professional journals or news briefings in the community. I want to remind you that all documentation and records relating to participants will be anonymised and it will not be possible to trace back the participants of the study. You will not be identified in any way. I can also send you a separate information sheet providing the key findings of the research.

This research has met the requirements of the LSE's Research Ethics Committee.

Contact details for further information:

Anna Matczak

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Dr Janet Foster

j.a.foster@lse.ac.uk

Professor Bridget Hutter

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CONSENT TO PARTICIPATE IN A RESEARCH STUDY

1. I confirm that I have read and understood the information sheet for this study.
2. I understand what my involvement will entail.
3. I understand that my participation is entirely voluntary, and that I can withdraw from this study at any time without giving a reason.
4. I understand that all information obtained will be kept strictly confidential, all participants will be asked not to disclose anything said within the context of the discussion.

5. The only people who will have access to the information will be the researcher carrying out this study. After the completion of the project, all raw data that can identify individuals will be safely destroyed.
6. I agree that research data gathered for the study may be published provided that I cannot be identified as a participant.
7. Contact information has been provided should I wish to seek further information from the investigator at any time for purposes of clarification.

By signing this consent form, you are indicating that you fully understand the above information and agree to participate in this study.

Participant's Signature

Date

Signature of investigator

Appendix III - focus group schedule

1. Background and introduction.
 - About the research
 - Confidentiality and recording
 - Introduction of participants
2. General question – a warm up exercise.
 - What is it like living in your village/area?
 - Do you feel safe walking alone in this area after dark¹⁰⁰?
 - Are you ever worried about becoming a victim of crime in your neighbourhood¹⁰¹? If so, what type of crime?
 - How do you feel about the level of crime nowadays?
3. Views and trust in criminal justice institutions and the police.
 - What do you expect of the criminal justice system?
 - What are your views on the work of the courts and the probation service?
 - What are your views on the police?
4. Attitudes to sentencing.
 - In general can I ask you how do you feel about sentencing nowadays? (prompt for specific cases recently presented in the news)
5. Specific crimes/sanctions.
 - How worried are you about the following?

<i>Range of crimes</i>
Abortion
Bribery (various cases)
Grievous bodily harm
Burglary (dwelling)
Burglary (non-dwelling, state property)
Car theft
Domestic violence
Drink driving

¹⁰⁰ Crime Survey for England & Wales

¹⁰¹ Jackson 2004

Euthanasia
Infanticide
Kidnapping
Murder
Organised crime
Possession, use, or distribution of illicit drugs
Rape
Robbery
Shoplifting
Tax evasion

- Any other crimes that have not been mentioned?
- What kind of sanctions would you impose for those crimes?

<i>Range of sanctions</i>
25 years imprisonment
Alternative dispute resolution (Mediation)
Community order – unpaid work
Death penalty
Fine (compensation)
Imprisonment
Life imprisonment
Probation
Suspended sentence

6. Mediation.

- Have you ever heard about mediation of criminal cases?

Article 23a § 1 of the Code of Criminal Procedure¹⁰² ***Legal definition***

102 The Code of Criminal Procedure was enacted on 6th June 1997 and came into force 1st September 1998.

The court, and in a preparatory proceeding the prosecutor, may on one's initiative or with the consent of defendant or aggrieved party, refer the case to a trustworthy institution or person in order to conduct mediation procedure between the aggrieved party and the defendant.

Definition by Czarnecka-Dzialuk & Wójcik (2000:323)

Mediation is based on making attempts to reach a voluntary agreement between victim and offender on compensation of caused material and moral damages, with the assistance of an impartial mediator. It is a process of mutual communication that allows victims to express their wishes and feelings, and offenders to assume responsibility for the results of their crime and start the associated actions.

- What is your opinion on mediation/this type of dispute resolution?
- Suppose you were a victim of crime. Would you be willing to participate in a programme like this? (prompt for: a non-violent property crime¹⁰³, young person has stolen something from you, an offender assaulting you in a bar, an offender who has stalked his ex-girlfriend and violated an order of protection, etc.).
- What would be your reaction to the following sentence¹⁰⁴? (retributive sentencing v. restorative sentencing)

Consider the case of a young offender, aged 17 who is convicted of breaking into someone's home and stealing property worth £300.

1. Magistrates have imposed a brief term of custody in a prison for young offenders followed by a period of six months' community supervision.
2. The offender admits to the crime and has accepted responsibility for his actions. He has written a letter of apology to the owner of the house, and has agreed to pay the money back over the next three months. In addition, he has agreed to perform 200 hours of community work for a local charity.

- In your opinion how important would an apology or an expression of remorse by the offender to the victim be?
- What is your view on mediation involving other members of the community,

¹⁰³ Case scenario from Pranis & Umbreit (1992)

¹⁰⁴ Case scenario from Hough & Roberts (2004)

for example, family or friends affected by the particular crime/behaviour under discussion?

7. Questions and comments

Thank and Close

Appendix IV - in-depth interview schedule

Theme	Main question	Subsidiary questions
Warm-up question	1. <i>What is it like living in your village/area?</i>	Are there any specific problems in your area?
Attitudes to/perceptions of crime	1. <i>Is there much crime in your area?</i>	<p>What kind of crimes do you fear the most in this area?</p> <p>What kind of crimes do you fear the least here?</p> <p>What impact do you think crimes have on the victim and the offender?</p> <p>Apart from the victim and the offender, do you think that crimes can affect anyone else?</p>
Criminal Justice System	<p>1. <i>Have you had much contact with the police?</i></p> <p>2. <i>Have you ever been to a court?</i></p> <p>3. <i>Would you like to comment on the work of any other CJS agency?</i></p>	<p>Do you have any views on policing in your area?</p> <p>How do you think policing in your area compares to other areas in Poland?</p> <p>Do you have any views about the court system in Poland?</p> <p>[probe for prosecution, probation officers, prison service]</p> <p>What do you think about current sentencing policies in Poland?</p>

	<p>4. <i>Do you know anything about sentencing in Poland?</i></p> <p>5. <i>Where do you get information on the police/crime/CJS from?</i></p>	<p>What should sentencing achieve?</p> <p>[probe for various kinds of media, family/friends]</p>
Attitudes to punishment	<p>1. <i>Do you have any opinion on how the state should respond to those who are convicted of crimes?</i></p>	<p>Do you think that punishment is necessary for all offenders/types of crime?</p> <p>What is your view on prison as punishment?</p> <p>What is your view on the death penalty?</p> <p>How do you feel about unpaid community work?</p> <p>How important do you think it is that offenders apologise for their actions?</p>
Mediation	<p>1. <i>Poland like many countries has introduced a system called mediation</i></p>	<p>[Definition by Czarnecka-Dzialuk & Wójcik,2000:323]</p> <p>Mediation is based on making attempts to reach a voluntary agreement between</p>

	<p><i>(definition provided). What do you think about this approach?</i></p> <p>2. <i>Do you think this approach might be better than the traditional CJS approach? If so, for what types of crime?</i></p>	<p>victim and offender on compensation of caused material and moral damages, with the assistance of an impartial mediator. It is a process of mutual communication that allows victims to express their wishes and feelings, and offenders to assume responsibility for the results of their crime and start the associated actions.</p>
<p>Exercise crime/damage/rep aration</p>	<p>1. <i>Now I would like you to have a look at the list of crimes (that we discussed in the focus group). This time, however, I would like you to think of how the commission of the crime from the first column can be repaired and indicate some examples of how (if relevant). As a start I would like to give you an example of what I mean by reparation.</i></p>	<p>[probe for damages & reparation to the victim/community]</p>
<p>Question for FG- only participants</p>	<p>1. <i>What was it like participating in the group discussion last month?</i></p>	
<p>Closing question</p>	<p>1. <i>Is there anything else you would like to say that we have not discussed and that you think is important?</i></p>	

Exercise crime/damage/reparation

Example: In case of a young offender who is convicted of breaking into someone's home, it is expected of him to do the following reparation: painting outside and decorating inside one of the local public buildings, preparing meals for elderly residents in a sheltered accommodation as well as financial reparation to the victim.

<i>Range of crimes</i>	<i>Would you consider possible reparation? yes/no/sometimes</i>	<i>2. If yes, what sort of reparation?</i>
Possession or distribution of illicit drugs		
Bribery (police officer, clerk)		
Grievous bodily harm		
Burglary (dwelling)		
Burglary (non-dwelling, state property)		
Theft (private v. public)		
Domestic violence		
Drink driving		
Euthanasia		
Infanticide		
Kidnapping		
Murder		
Organised crime, terrorism		
Abortion		
Rape		
Assault		
Illegal alcohol distribution		
Squatting, illegal land occupation		
Abuse of national or religious symbols		
Persecution for reasons of nationality, race or religion		

Child maintenance arrears		
Tax evasion		
Social benefits fraud		
Purchase of pirated products		

Appendix V - coding structure

Heading	Theme/Categories	Codes
Polish society	Democracy	Democracy
	Looking outwards	Reference to practices/cases in other countries
	Society	Lack of resources
		Today's youth
		Multicultural society
		The role of alcohol
		Drugs
		The worth of money
		Contemporary Poland/ in comparison to the past
		Sense of community
		Polish people in general
		Poverty-driven crime
		Bribery
		Domestic violence
	Connections	
Drink driving		
Fear of crime	Fear of crime (sense of security)	
Criminal justice system	CJS general	Negative views (not human approach)
		Positive views (human approach)
		Law
		CJS and emotions
		Connections
		CJS today
		CJS in the past
		Justice
		CJS and people's health
		Prosecution
		Lawyers
		Magistrates
		Political influence
		The rich
		The poor
	CJS and media	
	Taxpayers	
	Bribery	
	Sentencing	Disproportionate sentencing
		Previous forms of sentencing
		Good sentencing
		Financial penalty
		Lack of transparency
		Death penalty
	Courts	Courts not prepared
		Courts difficult for victims
		Courts-unfairness
		Court-fairness
		Not enough knowledge
		Proximity in courts
		Courts expensive
		Inexperienced judges

		Courts in the past
		Need for dialogue
	Drunk cyclist	Poor drunk cyclist
Police	Police	Human approach
		Not human approach now
		Connections
		Police in the past
		Police nowadays
		Police making money
		Community policeman
		Short of staff
		Police beyond the law
		Lack of knowledge
		Mental health issues
		Bribery
		Violence
		Ineffective
		Effective
		Lack of visibility
		Visible
		Police in the '90s
		Martial Law
		People don't respect police
		People now trust the police more
		Police not flexible
		Paperwork
Police poorly paid		
No money for modern police		
Media	Media	Media Reference
		Media Cases
		Media coverage of community work
		Media as a source of knowledge
		Role of media
		Media warning
		Movies
Work	Work as a sanction	Work order
		Work as a communist relict
		Work reduces reoffending
		Public visibility of work
		Work as education
		Work as rehab
		Work in prison
		Work provides sense of purpose
		Work makes you think about your actions
		Work saves money
		Work as an alternative to financial penalty
		Work value
		Community work
		Clean environment
		Work brings shame
		Work is a mental punishment
		Work brings remorse
		Labour camp
Mediation only with work		
Unemployment		
Prison	Prison	Prison as holiday

		Winter in prison
		Isolation - not good
		Innocent people in prison
		Prisons have to stay
		Prison expensive
		Prison and mental health
		Isolation - good
		Shame in prison
		Prison as a place to think
		Prison for those who commit crimes intentionally
		Prison overcrowded
Mediation	Responses at first glance	Knowledge
		Support
		Experience
	Suitability	Civil cases
		Minor offences
		All offences
		Not with violence
		Mediation for first time (young) offenders
		As a start
		Mediation prevent reoffending
		Mediation prevent from prison
		When crime committed unintentionally
		Mediation and domestic violence
		Mediation for child maintenance arrears
	Role of mediation	Alternative to punishment
		Mediation as punishment
		Diversion from courts
		Mediation as dialogue
		Rehabilitation
		Restorative role
	Mediation and CJS	Reference to the past
		Fear of informality
		Disappointment with CJS
		Stolen conflicts
		To avoid psychological harm
		Mediation and bribery
		Mediation only if with community work
		Mediation as a human way
		Mediation is cheaper
		Risk of second victimization
	Compensation mediation	Business like encounter
		Compensation
Bribing mediator		
The worth of money		
'Sorting things out'		
Beyond VOM	Definite yes	
	Strong No	
	Moderate No	

		Perhaps
		Group/shame
	Mediation and apology	Importance of apology
		Sincerity of apology
		Crime-dependant apology
		Person-dependent apology
		Form of apology
		Apology and CJS
		Apology as a sign of remorse
		Apology as a moral duty
		Apology for serious offences
		Apology and culture
	Restorative apology	
	Mediators	Prestige of mediators
		Psychologist

Appendix VI

Transcription conventions:

[] – clarification

... - unfinished sentence

// - interrupted sentence

Laughter – loud laughter

FG – focus group excerpt

I – interview excerpt

yyy – stuttering

hmm – indicates a pause to think

PXX – focus group participant/ FG-interviewee

IXX – non-FG interviewee

Appendix VII - additional interviewees (with the experience of the Polish criminal justice system)

1	E1	Female	33	Urban	Both
2	E2	Female	30	Urban	Victim
3	E3	Male	25	Urban	Victim
4	E4	Male	27	Urban	Offender
5	E5	Male	40	Urban	Offender
6	E6	Male	59	Rural	Offender
7	E7	Male	65	Rural	Offender
8	E8	Female	40	Rural	Victim
9	E9	Male	41	Rural	Both
10	E10	Male	21	Rural	Offender

Appendix VIII - in-depth interview schedule

Before we start the interview I would like to emphasize that the purpose of this interview is to listen to your story; to have a chat about your experiences with the Polish criminal justice system. I would like you to know that my intention is not to test your knowledge, and it is perfectly fine if there is any question you do not want or know how to answer.

Theme	Main question	Probing	Subsidiary questions
Warm-up question	<p><i>What is it like living in your village/area?</i></p> <p><i>Can you tell me about where you grew up and what it was like?</i></p>	Are there any specific problems in your area?	
Criminal Justice System	<p><i>How do you get to hear about the police/crime/CJS?</i></p> <p><i>Do you have any views of the criminal justice system in Poland?</i></p>	<p>[probe for various kinds of media, family/friends]</p> <p>Have you had much contact with the police?</p> <p>If not – do you know anyone who has?</p> <p>Have you ever reported a crime?</p> <p>If not – do you know anyone who has?</p> <p>Have you ever been to a court?</p> <p>If not – do you know anyone who has?</p> <p>If not – why?</p>	Could you tell me what your/his/her experience was like?

	<p><i>How do you think Poland's criminal justice system and crime problems differ from those in other countries?</i></p> <p><i>Do you have any opinion on the work of any other CJS agency, such as prosecution, probation, prison service?</i></p>		
Attitudes to punishment	<p><i>Do you have views on how the state should respond to those who are convicted of crimes?</i></p> <p><i>What do you mean by punishment?</i></p>	<p>What do you think prison is relevant for?</p> <p>What do you think about the death penalty?</p> <p>What do you think of fine as punishment?</p> <p>How do you feel about unpaid community work?</p> <p>How important do you think it is that offenders apologise for their actions?</p> <p>[probe for: different crime, types of offenders]</p>	

Mediation	<i>Poland like many countries has introduced a system called mediation, what do you think about this approach?</i>	[Definition provided only when the interviewee does not know what mediation is at all. Definition coined by Czarnecka-Dzialuk & Wójcik,2000:323]	
	<i>Are there any crimes or offenders where this approach would be better /more appropriate than traditional approaches to crime?</i>	Mediation is based on making attempts to reach a voluntary agreement between victim and offender on compensation of caused material and moral damages, with the assistance of an impartial mediator. It is a process of mutual communication that allows victims to express their wishes and feelings, and offenders to assume responsibility for the results of their crime and start the associated actions.	
Closing question	<i>Is there anything else you would like to say that we have not discussed and that you think is important?</i>		

Appendix IX - participants' contact with the Polish police and criminal justice system

Number	Code	Experience CJS	Experience Police
1	P1	yes	yes
2	P2		
3	P3	yes	yes
4	P4		yes
5	P5		yes
6	P6	yes	yes
7	P7	yes	yes
8	P8		yes
9	P9		yes
10	P10		yes
11	P11	yes	yes
12	P12	yes	yes
13	P13		
14	P14	yes	yes
15	P15		
16	P16	yes	yes
17	P17		
18	P18		yes
19	P19		
20	P20		yes
21	P21		yes
22	P22		
23	P23		yes
24	P24		
25	P25		
26	P26		
27	P27		yes
28	P28	yes	yes
29	P29		yes
30	P30		
31	P31		yes
32	P32		
33	P33		
34	P34		yes
35	P35		yes
36	P36		yes
37	P37		
38	P38		

39	P39	yes	yes
40	P40	yes	yes
41	P41		
42	I42		
43	I43		
44	I44		
45	I45		yes
46	I46		yes
47	I47		
48	I48		yes
49	I49		
50	I50		yes
51	I51		
52	I52		
53	I53		
54	I54		
55	I55		
56	E1	yes	yes
57	E2	yes	yes
58	E3	yes	yes
59	E4	yes	yes
60	E5	yes	yes
61	E6	yes	yes
62	E7	yes	yes
63	E8	yes	yes
64	E9	yes	yes
65	E10	yes	yes
In total	65	21	40

Appendix X - mediation referrals in Poland (1999-2009)

Year	Mediation			
	Prosecution		Courts	
	Referrals	Agreement	Referrals	Agreement
1999	42	32	366	232
2000	53	43	771	481
2001	40	30	786	471
2002	35	30	1021	597
2003	71	46	1858	1108
2004	211	230	3569	2123
2005	721	522	4440	2755
2006	1447	1074	5052	3062
2007	1912	1438	4178	2753
2008	1506	1225	3891	2551
2009	1296	1042	3714	2505

Appendix XI - examples of media crime news discussed by participants at the time of data collection

1. The case of Katarzyna W. – a young mother who was charged and found guilty of the murder of her 6-month old daughter.
2. The case of Amber Gold – a para-bank that declared bankruptcy, as a result of which its clients prepared a class action lawsuit, the founding fathers of the bank were charged with fraud and money-laundering.
3. The case of Beata Sawicka – a Civic Platform MP who was arrested and charged with corruption, the case made the news also because of so-called ‘police bribery provocation’ and unethical methods used by the Polish Central Anti-Corruption Bureau (CBA).
4. The case of Otylia Jędrzejczak – a Polish swimmer who was charged and tried for a road accident resulting in the death of a passenger.
5. The case of Tadeusz Jędrzejczak – a mayor of Gorzów Wielkopolski, charged with and convicted of conspiracy to offer a bribe and document forgery.
6. The case of Igor Tuleja – a Polish judge who dealt with a high-profile bribery case of Mirosław G., Tuleja while sentencing indicated a number of malpractices on the part of the Polish Central Anti-Corruption Bureau - for which he was criticised by the Polish far-right political parties.
7. The case of Radosław Agatowski – a mentally disabled teenager who was sentenced to imprisonment for low-level theft.
8. The case of Marek Papala – a Polish police officer and Chief of Police, shot and killed in 1998, his murder is believed to be a contract killing that involved communist secret services, mafia-like organizations and Polish politicians.
9. The case of Anders Breivik – a Norwegian far-right extremist who was responsible for the 2011 Norway mass shootings.
10. The case of Mariusz Trynkiewicz – he was first sentenced to death in 1989 for the rape and murder of four underage boys, after the end of communism his sentence was changed to 25 years of imprisonment, towards the end of his sentence a national debate took place on whether he should ever be released from prison.
11. The case of Pruszkow mafia – one of the most well-known Polish serious organised crime groups established in the 1990s .

12. The case of Bartłomiej Bonk – a Polish weightlifter who took legal action against the hospital for wrongful death of his new-born daughter.

Appendix XII – focus group composition

Group 1 – a group of female rural inhabitants

Rural, women only, aged 33-71, public settings (community centre)

R-P familiar

P-P mixed

Group 2 – a group of young (born after 1989) rural inhabitants

Rural, mix of men and women with men majority, aged 18-22, public settings (community centre)

R-P unfamiliar

P-P mixed

Group 3 – a group of male rural inhabitants

Rural, men only, aged 37-56, public settings (community centre)

R-P semi-familiar

P-P familiar

Group 4 – a group of retired rural inhabitants

Rural, mix of men and women with women majority, aged 65-70, public settings (community centre)

R-P semi-familiar

P-P semi-familiar

Group 5 – a group of young (born after 1989) students living in an urban area

Urban, mix of men and women with women majority, aged 19-23, public settings (university)

R-P unfamiliar

P-P familiar

Group 6 - a group of female urban-living neighbours and friends

Urban, women only, aged 37-61, private settings (home)

R-P unfamiliar

P-P semi-familiar

Group 7 – a group of male urban-living friends

Urban, men only, aged 63-64, private settings (home)

R-P unfamiliar

P-P familiar

Group 8 – a group of male urban-living professionals

Urban, men only, aged 33-36, private settings (home)

R-P semi-familiar

P-P familiar

Group 9 – a group of retired urban-living neighbours

Urban, mix of men and women, aged 65-69, private settings (home)

R-P semi-familiar

P-P familiar

Group 10 – a married urban-living professional couple

Urban, mix of men and women, aged 65-69, private settings (home)

R-P unfamiliar

P-P familiar

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