

ART AND JUSTICE:
INSIDE THE DISTANCE



ART AND SOCIAL JUSTICE

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ART AND SOCIAL JUSTICE



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CONVERSATION WITH SHARON DANIEL, IVO AERTSEN, BRUNILDA PALI, PIETER-PAUL MORTIER AND MARIJN LEMS ¹

ML *We're here today to talk about Sharon Daniel's exhibition **Convictions** that's starting in STUK Art Center but also the cooperation between the different partners within this project. How did this all start?*

PM I was lucky to be able to invite Sharon Daniel four years ago to STUK to participate in *Artefact on Gaps And Silent Documents* and to present some of her work and that's when we met some of the other people around the table.

SD During that exhibition, where *Public Secrets* was shown, I was invited to give a talk, mainly for the researchers and professors at the Leuven Institute of Criminology (LINC), an event which is part of the cultural tradition of STUK. Brunilda Pali and Ivo Aertsen attended the talk. We had interesting and exciting conversations afterwards which created a bond of common interests among us, and which eventually led to this project.

PM We thought of OPAK (Onderzoeksplatform Architectuur en Kunsten) as a potential funder, a programme offering money to small and innovative research projects, where worlds that normally don't meet, meet.

BP The interest in Sharon's work was multifaceted. Consider: one facet was the content of course: the topics she is working on, are also topics we are interested in, like prisons, punishment, justice. The second is the approach. It is a critical approach to the subject matter. The other thing that brought us together is the fact that she is not just an artist, she is also a researcher in a sense. Her art practice is based on interviews, on deep research about the subject matter so I think that links us back as well to our own practice. The other thing that brought us together is that we at LINC, mainly under Ivo Aertsen's guide, always try to bring theory close to the ground. He has always worked with practitioners, for example, they always come and teach in his courses. We are very close to the field, to Suggnomè (The Flemish mediation service), and they are a key partner in this project. So that's another way our interest matched, because Sharon, you do this as well with your students, you send them out in the field, and this is brought back to into the curriculum.

So these are some common threads in our work. In this project, we did not look for something that explained what is restorative

justice. This project has nothing to do with that. I mean that is done through a leaflet, that is done through an information evening or something similar. The choice of having Sharon speak about it really reflects our trust in her way of doing research, which is complex, political and not sentimental. So it is not supposed to be an easy piece to digest. Her art, while strongly based on affectivist strategies, is not sentimental.

IA The question that led the project was what would art mean and do socially, politically and also how could art be a way of communicating the research that happens within restorative justice theory and practice to a wider audience, one that's outside of the university, and make it socially relevant.

ML *Sharon in your practice had you already been struggling with that question?*

SD Yes, questions on the role of art in relation to social justice and art as a form of activism are very difficult and complex questions – ones that I had already been struggling with. I was also at that moment writing an essay for a publication about the question of art and activism, or art as a kind of political activist practice, so this was a rich territory for us to work in together. But I was also very interested in the more focused questions around restorative justice, and the way that it is practiced here in Belgium – and the work that has come out of LINC during its long history – particularly with victim and offender mediation.

ML *In your earlier works had you already come across restorative justice in an American context?*

SD Not very much. Actually I have come across more restorative justice in an American context by working with Ivo and Brunilda – while planning the visit that they made to California to investigate some practices in the US. But it is not practiced in the same way in the US, at least not in California, and not at all in an institutionalized way as in Belgium where it is funded by the government. In the US the practice is left to non-profit organisations.

IA But I think it is important to see the link between the work that you have done around prisons and restorative justice. It is by starting from fundamental criticisms of the prison system and of the criminal justice system as it functions nowadays in Western Europe, that we come to the notion and practice of restorative justice. So we are interested in more fundamental new perspectives on looking at crime and reacting to it. We were, and we are, interested in a kind of fundamental rethinking of crime and punishment.

PM I also think that what is central in your early work is the social context where crime happens, where it comes from, where it exists, and your critique of the prison system.

SD Yes, I have been looking at the criminalization of poverty and difference; the ways in which societies govern by criminalizing behaviors and attempt to solve social problems through mass incarceration; the ways in which societies disenfranchise various populations that are socially, culturally and racially 'other'. But in this project I was interested in doing something that examined alternative practices and I had not found many alternatives in the US, except through non-profit organizations that assist prisoners with their cases against the prison system or non-profit organizations that work with injection drug users and so forth, so when we met Ivo and Brunilda I became really interested in the practice of restorative justice here.

IA I also think that we have found some common ground, if I understood it well. In your previous work you were interested in the voice of the voiceless, marginalized persons, and through art you can give them a voice, and that's exactly what we try to do with restorative justice – the participatory element – giving the victims and offenders the possibility of participating actively – the opportunity to stand up and to say what it meant for them – instead of just waiting until the justice system decides for them, on behalf on them.

ML *So you also see as a secondary objective of restorative justice the opportunity to give voice to the perpetrators?*

IA Of course. If you really take restorative justice and the participants seriously, then I think you must listen to all sides. What happens in a good mediation or conference or peace-making circle, is that you listen to how people see, think, and feel about justice. What their ideas are about justice – criminal justice, social justice – and how these might be related to each other.

ML *Well for me as an outsider that's an important point because that also relates to what you just said about how you can make this process visible, maybe through art and maybe through other means. The manner of communicating the content of these conversations to the outside world is very important.*

IA This is very difficult. It is one of the many challenges for people that work in the field of restorative justice – to make clear to the public, to professionals, to public prosecutors, to police officers, and to other people what, precisely, is going on in mediation. Because, when victim and offender come together, maybe they will reach an agreement on financial compensation, and that can be important as well of course, but what happens in the process is much more

than that. The dynamics are very complicated. What really happens when two people have a conflict with each other? What happens when you bring them together – when you give them a voice and they look in each other's eyes? That is of course a very strong moment, when you are able to meet another human being in this way. And that is an approach that is totally, or almost totally neglected in our court system. If you have not attended a mediation or observed it very closely, it is rather difficult to know how it works and what the strength of this kind of communication is. And it is not so easy to make that clear to other people. You must work with video for example. You must give people the opportunity to talk with a victim who has experienced victim/offender mediation – or with an offender. Then it becomes clearer for people, of course.

ML *But besides the benefit it has for the victim and the offender, it might also have a benefit for the wider world if they can see what this concept and type of justice actually is, and that might have implications for how we use punishment.*

IA It is not only about the victim and offender meeting each other but also about the societal context. And we should not neglect this context. In restorative justice there is not only victim/offender mediation but also conferencing and peace-making circles that are more collective and where you invite other people to participate. When we have a look at the Belgian law on mediation, the 2005 law, then we see that it is not only about the settlement of the conflict between victim and offender, but also about social pacification. So it means that you also aim at reaching a kind of social balance and restoration of peace under the rule of law.

PM But, maybe we can ask Sharon about this. It is clear in your work that you have always been engaged with complex problems. You are working with people that are victims of society and often become offenders. Do you think that restorative justice, while it can obviously help a victim dealing with what has happened to them, could also be a means of making social problems more visible in the US – making some of what you call public secrets, become more public than secret?

SD Yes, I think it could do that. I have found interesting answers to questions along those lines when I have posed them to the mediators here during our interviews. I often asked 'are victims usually willing to reflect on the background of the offender and take that into account in the way that they consider the offender and the offence?' Some mediators said, 'well, in some cases they do but normally not'. But different mediators had very different answers. Some mediators say that they tend to privilege the victim, at least in their own kind of ethical framework around their mediation practice. But I thought it was really interesting what mediators said about how

the needs of the victim and offender in mediation are very much the same. And that they come to an understanding of that fact through the mediation – that what concerns both participants is the question ‘who am I in my case? How did I behave, how did I react? What did I do? Who am I?’ You know, that the question ‘how has this impacted my own self-image and my own self-esteem?’ is important on both sides of the table. And I thought that this represents a step towards a sort of understanding that could be linked to a much more sympathetic point of view regarding the social victimization, the structural inequalities that occur, that put someone into a situation where they become a criminal or their behavior is criminalized.

When we were in San Francisco we went to a program in a jail there that used restorative justice practices. They had a surrogate victim come and speak to a group of prisoners who were involved in an anti-violence education program. And it was very powerful, even for me – and I had been working with this kind of population and trying to understand their issues for many, many years. It was still very powerful for me to sit in the circle after the testimony of the surrogate victim, where they analyzed her testimony using a kind of analytical matrix, a kind of linguistic tool, where they put statements that she made and things that she told them into response categories. It was very moving for me to see that, basically, they were having to be trained to have empathy and sensitivity and to talk about emotion. And even though I knew this intellectually, to see these men very sincerely sitting and trying to learn how to think of others as human beings that must not be objectified, was to me very moving. And it was also shocking because when they were talking, they had a limited list of words they were allowed to use to identify their emotions, or rather to identify an appropriate emotional response, and we were thinking how short the list was, you know like ‘that’s very limiting, they shouldn’t be limited to such a narrow list’. The list had only 8 emotions.

BP And I thought it extremely limiting and in the end we asked these questions ‘why do you limit this list of emotions?’ And the facilitator said, ‘this is a lot for them’. So these are new emotions that they don’t normally have because apparently when they come into the jail they only know two emotions: anger and fear.

SD Because of their circumstances outside jail or prison they don’t have a broader emotional range – this is the context of structural inequality from which these criminal acts emerge. So, yes, I think restorative justice practices, lots of different types of practices, could play a really significant role.

PM May I also say something about that because we have not mentioned it but we have been working with many partners, many people have been involved, some people were involved as collaborators in the project, like Suggnomè and Alba and others. But we also had some meetings with people that were not exactly collabo-

rators, like the prison of the Hulpgevangenis from Leuven, and the director from the Hulpgevangenis was there for one project meeting and you, Sharon, made strong statements against incarceration and we all got along really well, but for him your approach and perspective were not obvious or easy to take in. What does it mean for you in LINC to work with someone who really comes from the perspective that the offender is a victim of society? Was it difficult for you all in relation to your own research?

IA No, I think it was not so difficult. It is a common theme, it is a well-known theme in criminology, the interchanging roles between victim and offender. And I also imagine that many of the prison governors, directors, accept that and know that. There are many people working in the system that are well aware of the fundamental structural problems, the inequalities and the injustices that have been done and are done on a daily basis. But the question for them is, if we work in the system, can we change the system, are we able to improve it – or maybe we would say rethink it – or to improve it in a pragmatic way? That is more their approach, I think. So when you work on human rights for example, when you are involved with the prison governors, you work on bringing more social workers and cultural activities into the prison. And you do this with the help of external organizations. That is very common in Belgium, or certainly in Flanders. In the United States, in the prisons that I have visited there, the divide between the world of the prisons and what is outside the prisons is sharper than in a country like Belgium or the Netherlands.

ML *Why is that so?*

SD Well we were talking about this the other night and I have a theory, just based on my very limited sampling of prisons in Belgium. I visited the two prisons in Leuven, and when Brunilda was walking with me to the first prison visit and I was going to meet the prison director, I thought, 'I'm not sure I want to meet a prison director, how can I have a conversation with a prison director and not end up in a fist fight?'. And then when I met Paul Dauwe (*the director of the Hulpgevangenis in Leuven*) who later attended one of our project meetings, he was wonderful! He gave me a very thorough tour and he introduced me to prisoners. This would never happen in the US. And I asked him in the end, after we had this long tour and conversation where I began very soon to see him as someone with the same sympathies and the same way of thinking as my own, I said, 'I have to ask you, how did you ever become a prison director'? And he said 'everyone always asks me that'. He had studied criminology and psychology at University and he said he had done an internship in a prison during his studies and he had said to himself 'never, I will never work in a prison after this'. But soon they told him 'we have a job for you, we paid for your university, you now must come and work in this prison' and he said 'well okay, I'll do this for two years

and then I will leave' and he was still there, he had been there for 25 years. So he is committed to a certain kind of work from within the system, which is, I think, very interesting.

This doesn't happen in the US, I think, because in the US people who are in the prisons come from policing, from the enforcement side, they are not criminologists, they are police, or they are hired by private companies, that, you know, it's all about an economic model – but the people who have contact with the prisoners are trained as enforcers and not as psychologists, and not with any kind of political analysis. So I think that makes a real difference, that here all the prison employees that I have met, like Mies Beckers and Paul Dauwe, are criminologists, psychologists, people who studied on the social and human science side of things.

IA The atmosphere is totally different. The official way of looking at crime in the United States is, I think, so different from what it is in most Western-European countries.

ML *But do you feel, from your experience maybe, that the difference comes from a sort of a racial or segregation impulse?*

SD Yes, in many cases. I think that the circumstances in the US are so influenced by politics, and politics in the US are, and have been for many years, heavily influenced by racism and the fear of difference and otherness. That fear is exploited through a kind of rhetoric about being tough on crime, and that rhetoric has become so ingrained in the political discourse that no politician feels that they can get elected or have any kind of influence in the political realm without taking up that rhetoric. And it is true – actually, in California, you cannot get elected as governor, or almost anything else all the way down to dogcatcher, if you do not have the support of the prison guards' union. The prison guards' union has a great deal of power, which came out of a whole political movement that exploited very sensational cases of violence by recidivists in order to increasingly punitive sentences and more power for enforcement. That strengthened the prison guards union and, of course, it is in the vested interest of the union to have a steady flow of prisoners in order to have an ever-increasing need for a workforce of very highly paid and not very well-educated prison guards. An entry-level prison guard makes more money than an entry-level professor in the state university system and an advanced-level prison guard makes more than a full professor in the state university system. They only have to have a high school equivalency to qualify, so a high school dropout who has taken the equivalency test can get one of these jobs. They have a lot of power, they have a lot of vested interests and that is all in a policing mentality, it is all about enforcement.

BP That is extremely surprising, but I would like to go back to

that insight that you, Marijn, made because I find it very interesting. I never thought on that difference so explicitly but in answer to the question of whether that difference might reflect an impulse toward racial segregation, I think it does. For example, this has been discussed in the of the work of Angela Davis and other abolitionists. My personal interest in Sharon's work was because Sharon is also looking for an alternative. Our work in restorative justice is grounded in abolitionism, which is basically just the theory, the approach, the perspective, that argues against prisons and attempts to demolish the concept of crime. Abolitionism is rooted in the abolition of slavery, so our work in restorative justice is not unrelated to your question about racial segregation.

Actually, I would like to ask this question back to Sharon. Restorative justice is the most real, to date, policy alternative that has been proposed in the light of abolitionist theory. I mean, the abolitionist discourse has remained such a utopia: prisons have not been demolished, crime has not been eradicated as a concept, but if we think of how this theory could ever be implemented on a more practical or policy level, then I think restorative justice would be, at least partially, the answer today. Because, it does not use the concept of crime but the concept of harm, or wrong. We don't explicitly use the concept of crime, at least in the way it is defined as a violation of law, we see it more as harm among people. And of course we don't explicitly talk against prisons but that's a very implicit claim in the way we try to think about restorative justice. So restorative justice is an alternative, but I wonder about its political effects. For example, it has become also a tool of the system, it has been sort of 'defined in' the system. Things here in Europe of course work within the rule of law and the state is very much involved, so restorative justice could not have become something else here other than an institutionalized practice.

SD Well that is interesting too, because most of the mediators that I interviewed are not prison-abolitionists.

BP No, indeed. Restorative justice has its roots there. It is the most concrete policy application of abolitionism there is, but it is not making a very explicit link with abolitionism, either theoretically or politically. It has taken a distant stance. Or it could also be that restorative justice practice is not really concerned about abolitionism because, as I am sure we will also see in your project, people struggle with different issues when they have to do practice and indeed some of the theoreticians do think about linking this with abolitionism, but the practitioners don't, per se.

IA I think that is correct. Where do the people that work in restorative justice and mediation, where do they get their motivation? I think most of them are interested in doing something fundamentally new, totally different from the existing system. I think that is true. I think most of them implicitly hope that they can replace

the system with a better system, à la restorative justice. But in the meantime they can live with the fact that there is a prison and that the system still exists, as long as restorative justice gets more room, more space in the system. So in order to expand, and maybe on a future day replace the system. I think that's the way many practitioners think.

BP It is also a kind of strategic placement of the field. You cannot go forward with an abolitionist project and say 'here we are' and nobody actually ever took abolitionism seriously because of this radical utopia it seems to be, while restorative justice, you know, step by step is doing little things in that direction without explicitly having this kind of abolitionist agenda. But I think the link to abolitionist utopia is implicit, at least the way I think about restorative justice.

PM At this point, the mediation practice is always something that all parties to a crime have to agree on. It is not a requirement of the system, it is a choice, it is an option that people have. Is there an ambition to get it more structurally anchored in the system, or will it always stay on a voluntary basis?

IA Well, I think restorative justice must be based on voluntary participation. It starts from the idea, the belief or the assumption, that if you invite people in the right way, in a good way, most people in a conflict will agree to participate and to listen to each other. But of course the big problem is we do not actually have this kind of culture, this kind of conflict resolution or legal culture. And that makes it difficult for people to say 'I'm interested in meeting him or her'. So that is one of the big problems of course. On the other hand, you cannot force victim and offender to meet together. That of course would make no sense. We would do more harm than good.

ML *But the alternative practice in the prison in California that Sharon mentioned, went in the direction of imposing the presence of a surrogate victim on the offenders, or isn't that the same thing?*

IA Yes that goes in the same direction, of course. But even that, is not black or white, we cannot think of it as either totally voluntary or entirely imposed. When you are an offender, you have to be in court, or in the prison system, so it is not voluntary to participate in such programs within judicial or carceral contexts. But the most important thing is that the process, the dialogue, or when listening to a surrogate victim, that this is authentic, that this is honest, and that the participants are not sitting there for only opportunistic reasons. A minimal degree of honesty is thus required. And that is the responsibility of the organizers.

There is a little difference I think in the United States. Prisoners are more often expected to participate in these things, so

it becomes a kind of a legitimate expectation: that when you are in prison and you have been found guilty, that you do something. That you make some effort, do something with the time that you are there. But other people would say 'no you cannot impose and cannot expect that. Their punishment is that their liberty is taken away, that their freedom is taken away for 18 months, or for 8 years, and that's it. You do not have to punish them additionally by forcing them to participate in all kinds of educational programs'.

In the Belgian prisons participation in restorative justice is really on a voluntary basis. I think in the central Prison, and in the Hulpgevangenis, the prisoners will never be forced to take part in a victim awareness program. But then of course you have again the risk that you lose a number of potential participants in prison, and that only the most motivated are coming. So at the same time I think you have to work with the less, or the unmotivated as well, to encourage them to go through a restorative process.

SD Both of the prisoners that I spoke with in the central prison criticized the prison system for not working with them on their issues, and their progress towards their release until the last two years of their sentence. But they both also mentioned that they have a counselor, or someone who sort of monitors their progress ...

IA a '*trajectbegeleider*' (a path leader)

SD that would recommend to them that they participate in victim awareness programs, someone to give them that kind of individual attention. I was very surprised to think how each prisoner had someone who is monitoring their progress. This would be very expensive in the US.

IA Well, the law even says that – *de Basiswet van het gevangeniswezen* – that there must be a detention plan for every prisoner. And that presupposes that there is also a person, a social worker or a psychologist, to help you, to make the plan and to guide you, to support you through the plan. But that is not yet a reality, although it is in the law. Then another point is that the Flemish Community has invested a lot of money in programs in the past 10-15 years in the Flemish prisons, and these programs are accessed totally on a voluntary basis because the Flemish Community cannot impose or oblige prisoners to take part in programs. But it is an offer. And the idea is that prisoners should be treated as much as possible as normal citizens and that prisoners should have a legal right of access to all kinds of social services: therapy, social work, cultural activities, just as other citizens outside the prison do. That's the idea. But it is much more complicated than that because it does not mean, even when the provisions are there and there are hundreds of social workers from the Flemish Community working in prisons, that the prisons make use of it, that the offer is reaching the needs of the prisoner. And that is still often a challenge: how to work with pris-

oners so that they really make use of the offer. But it is true that in every prison there are a certain number of social workers or criminologists or psychologists – *trajectbegeleiders* – whose only task is to do intakes with new prisoners – not at the end of the prison sentence but at the beginning and to talk with the prisoner and then to discuss with him/her ‘okay, what would you like to do, what are your needs? Would you like to learn something, or to follow a vocational training, or to write, or to read, or have contact with a therapist or a counselor from outside the prison?’ So the idea is there, the infrastructure is there as well, but research shows, that only 40% of the prisoners make use of this *trajectbegeleider*. So are some prisoners not motivated, and not interested? Or is it that sometimes these *trajectbegeleiders* do not have enough time to see all the new prisoners? I think it is a combination of both.

ML *Right. Maybe we could say more about the substance of the project?*

BP I would like to ask Sharon a question. In your previous work you think very politically about crime and the reasons for crime, the causes of crime, so it is more a kind of a structural explanation you lean towards. While restorative justice focuses a lot on the practice, in the sense of how to do something differently but it takes no issue with the causes of crime, so it remains a very individualizing approach in a way. Which is on the one hand why I was very interested in you taking up the project. We are aware of this critique of restorative justice, so instead of dwelling on it again, I would like to ask you more about its potential. Having done all these interviews with mediators, what is the potential of this way of looking at crime and conflict, I mean slightly outside the structural way of thinking, which is absolutely necessary but which maybe can also have its limitations?

SD That is an interesting question, because I guess I do not think of this structural way of thinking as limiting, though maybe I should. I think what I did see, that I was so fascinated with, is – and I hesitate to call it a more psychological approach but in a way it is – but what I continually felt really interested in was the fluidity of subject position between victim, offender and mediator and the way in which notions of neutrality or fixity get broken down in that process. I find that very interesting.

The thinking in restorative justice about the relationship between the judicial system and the victim – the way the judicial system positions itself in place of the victim – is really interesting to consider and to question, and so that is again a way in which restorative justice does produce a structural critique of criminal justice, or the judicial system at least, imposing itself as an authority against the agency of the individual. It takes away the agency of the individual. So I found myself, in trying to write the introduction, which

is always the last thing I do in a project, returning to statements made by the people that I had interviewed, about how the needs of victim and offender are the same, how those subject positions are fluid. Again, this brings us to the question of how we determine what is criminal and what is not criminal and what kinds of behaviours are criminal and what are not. And victims that I spoke with were not really interested in incarceration as a means of addressing their conflict. So I think in that way it does really produce a structural critique of the system as it exists now, although maybe it doesn't do this through a particular ideology.

I hope that someone who looks at the piece in some depth will reconsider certain assumptions that they might have about the relationship between victim and offender. And I hope, by focusing on that, the piece will raise; larger questions about structural inequality, larger questions about the effectiveness of the criminal justice system, larger questions about the assumptions that we make about 'what is crime' and 'what is not crime'. And hopefully, through that kind of questioning, the work will encourage a greater understanding and a willingness to participate in restorative justice practices.

The project is based on testimony from serious criminal cases where something was gained on all sides through mediation. For all three subjects involved, victim, offender and mediator, something was gained by going through this process. Maybe not everything that was hoped for, maybe there wasn't perfect harmony, but something occurred that gave self-esteem, that relieved suffering that in one way or another resolved conflict – and it was done through an interpersonal exchange as opposed to the imposition of punishment. I hope this will challenge viewers to question 'what is the use of punishment', and 'why do we feel we have the right to punish'? I hope they will think about what we actually should be, as individual subjects, or as citizens, reflecting on as wrong. Because I believe, as I say in the introduction, it is our responsibility to reflect on our own misdeeds, not to punish others for theirs.

Leuven, September 2013

CONVICTIONS



¹ Pieter Van Bogaert is an art critic and curator, who lives and works in Brussels in the Flemish Institute for Visual, Audiovisual, and Media Art.

Pieter Van Bogaert¹

Convictions is the title of Sharon Daniel's exhibition at STUK. It is a misleading, ambiguous title, which can be interpreted in at least two different ways. It can be read as the verdicts of guilt handed down to those who are accused, or as beliefs in a given system. These meanings are interchangeable, and that is what this exhibition invites us to do: to change locations, put yourself into other characters, spaces and situations. It means setting yourself aside, as well as bringing yourself to the fore, stepping back and approaching. Each change of place creates a different meaning. Each meaning creates its own truth.

Convictions brings together four recent works: *Public Secrets*, *Blood Sugar*, *Inside the Distance* and *Undoing Time*. In the first work, Sharon Daniel focuses on the public secrets of prison. The second work is about the secret public of drug users. The third and fourth work are about the fluidity and complexity of subject positions. In each of these four works, it is the interchangeability or reversibility of the ideas of public and/or secret to which the artist gives space. She gives them a body: something that makes them tangible and visible. She creates an exchange: an interchangeability that both comes from and leads to a change of place, body and view.

PLACE

Prison plays a major role here. *Public Secrets* is a website constructed around conversations with detainees at the Central California Women's Facility, the largest prison for women in the United States. *Blood Sugar* is an online archive of conversations with past and present drug users. Most of them sooner or later come into contact with the prison system (one in four prisoners in the United States is serving time for drug-related offenses). *Inside the Distance* – an investigation that began in Leuven – is an archive of videos about mediation between offenders and victims: a possibility that has existed according to Belgian law since 2005. *Undoing Time* collects videos with ex-detainees and reworks the products they made in prison.

The prison is a place. It is space – too much (too many prisons for a society) and too little (too few cells for the prisoners). It is a space that serves as a model: punishment is intended to deter, as a lesson

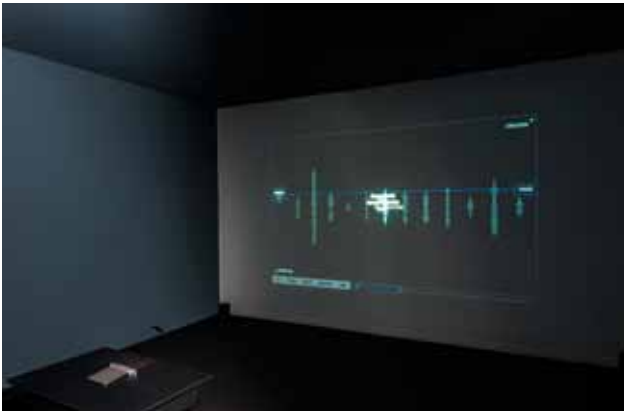


or as correction. The building is intimidating. It is a symbolic space: invisible, hidden behind high walls. Inside, invisible guards watch, hidden behind monitors, cameras and mirrored windows.

Here, the space removed from view, and thus kept secret from the public, is made concrete – not with images, but with words: the only cameras in the prison are those of the prison guards. *Public Secrets* includes 500 fragments of conversations with prisoners. Their voices and stories embody the women inside the prison, but Daniel's own voice is equally important. Just like in *Blood Sugar*, she gives herself a place among the people whom she interviews and consequently moves between the objective and the subjective.

This moving back and forth between spaces and positions is crucial. These works move from the artist to the prisoner (*Public Secrets*), from the addict to the caregiver (*Blood Sugar*), from the offender to the victim (*Inside the Distance*), from the inside to the outside (*Undoing Time*). Daniel seeks her own place amongst all these characters and spaces. She is not a neutral figure, but she creates ample space for the others. She refers to herself as a 'context provider'. The 'content' comes from the other (which she also is herself).

The databases in *Public Secrets*, *Blood Sugar* and *Inside the Distance* are spaces in which to navigate and to transform. These transformations are important. The accents, the content and form of these stories change according to the way the user moves through them. By making new connections, new relationships occur that continually infect one another. Three databases are now completely accessible online. This too is a way of making public what is hidden. It makes secrets public, but it also connects to secret publics. The Internet may seem like a public space, not every public has access to it. That is something Daniel learned from her work with prisoners and addicts.



BODY

Daniel creates in-between space, space that connects. She seeks out spaces that remain hidden. She refers to Alice's looking glass: it is by way of the looking glass that Alice found her way to Wonderland, that 'other' space. She also refers to Michel Foucault's 'heterotopias', the other spaces that exist, non-utopian, other spaces that are actually possible.

Alice's looking glass is an in-between space. Compare it to our skin, which creates a bridge from the outside to the inside of the body. Think of the needle that the drug user pricks through the skin. It makes a hole, which immediately fills up again. This in-between space is elastic, thin, physical, (in)tangible.

Bodies play an important role here. They form a database within the database, as carriers of hereditary, genetic, social and cultural material. The perfect body does not exist. Each body is a carrier of defects that generate contaminating connections. These lead to detours and explorations, and this makes the body itself a space. A battlefield, more specifically, on which a war is being fought: the 'war on drugs', which for Daniel is also a 'war on race', 'on gender', 'on class'. She calls it a war against the mentally ill, impoverished, depressed, weakened and addicted body of the socially different. That body, its form and its formation, is what you carry with you all your life.

There are several references to Giorgio Agamben in this work. The Italian philosopher and author of *Homo Sacer* makes (by way of Aristotle, Arendt and Foucault) a distinction between 'bare life' and 'human life', between 'zoë' and 'bios'. In the first, the body is what remains, the last thing to hold onto. In the second, the body acquires political rights in order to live, work, function and make decisions within a society. The data bodies in *Public Secret*, and the audio bodies in *Blood Sugar*, are in many cases lost bodies, throwaway bodies, worthless bodies (Agamben writes about an extreme form of imprisoned bodies in 'Remnants of Auschwitz', the third part of his *Homo Sacer* cycle).

In prison, these bodies become state property. There are punishments for damaging or crippling that property. These bodies are poorly maintained and assimilated into an economic system. The silent witnesses to this process are the products that Daniel uses in *Undoing Time* (in *Convictions*, these are American flags and shooting targets, but she also uses mirrors, mattresses and other products made in prison). Beverly Henry, one of the characters in a video in the work, stitched these flags in prison for 55 cents (US dollar) per hour. This new economy of the prison as a sweatshop – it has a name: the ‘prison industrial complex’ – has resulted in an increased demand for prisoners, for bodies without rights easily made into cheap labor.



VIEW

All these bodies move and create movement. They not only stimulate an economy, they generate migrations. All these bodies function through exchange and becoming other. They insist on understanding the incomprehensible. You cannot understand everything, but each bit, every small piece of a story brings you a step closer to the other. You cannot know everything: Daniel's interfaces seem to be created to get lost in and to explore. A complete overview is impossible. What remains are small overviews, a collection of personal stories.

Public Secrets is constructed around dichotomies – public secret and utopia, human and bare life, inside and outside – that slowly dissolve, as misleading as they are interchangeable. Along the way, it becomes clear that in every piece of utopia, there also hides a public secret. In every human life, there is also a bare life, and in every inside, there is also an outside. The one cannot do without the other. The one cannot escape the other. This leads to the unavoidable conclusion in each of these works: we are all prisoners (of capitalism). We are all addicts (as consumers). Every desire remains unachievable; the prisoner within yourself is frightened of the freedom that possibly awaits; the addict does not desire to get high, but de-



sires the needle, the promise of getting high; as a consumer, you do not so much want to possess, but to desire. Each desire achieved extends the frontier of that same desire.

These works embody our inability to understand. Instead, they call on feeling. A feeling of recognition: of the addict, the prisoner, the offender, the victim, the mediator in yourself. The introduction of feeling, of recognition, goes through the self. This is the power of the personal reflections on prison and drug users that Daniel makes part of her work. Herein also lies the power of her reference to the insulin injection that her father, as a diabetic, gives himself twice a day in order to survive. That is his drug, the drug with which his daughter has learned to live.

This personal touch turns these works into a hypertext which reaches much farther than the work as such. The user of these databases becomes the co-author of a story of his or her own. In this personal approach, the character of Beverly Henry plays an important role. In the conversations in *Public Secrets*, she is a prisoner. In *Blood Sugar*, she is a volunteer, a mediator and an ex-junkie. In *Undoing Time*, she is the woman who sews American flags and takes them apart again. She is present everywhere but in *Inside the Distance*.

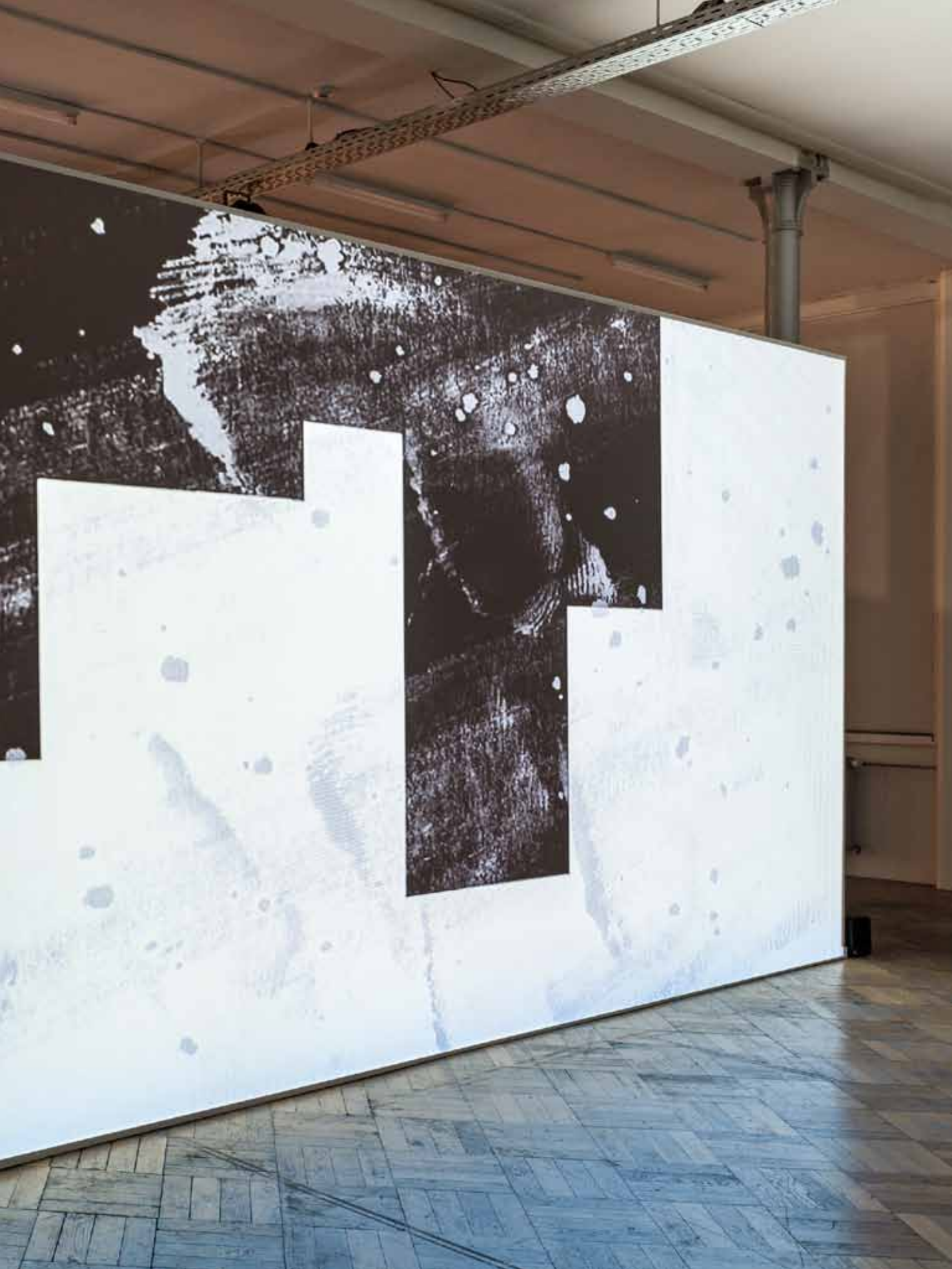
Or is she? Daniel begins *Inside the Distance* in Leuven, far away from Henry's California. Here Daniel works together with the mediators – university criminologists, the staff of the Sugnomè mediation service, and the police – who work with offenders and victims. Back in California, she continues her work with actors who perform the various roles from her conversations in Leuven. Now and then, we see the mediators from the videos in *Inside the Distance*. But the roles of the victims and the offenders (and in many cases the mediators as well) are assumed here by the actors. This reenactment is important. It once again leads to that interchangeability of views. Everyone can play the role of the offender, the victim, and the mediator. We are all accomplices. There is no outside to this network of connections.

This is where the character of Beverly Henry reappears. She is the shadow behind the actors who play the different roles and effec-



tively change places as they do. She is the drug user who becomes the prisoner who becomes the mediator, and ultimately becomes an actress. But it never gets really clear who the offender actually is. Is it herself (she who injects her own drugs: is that her crime)? Is it her boyfriend (who introduced her to drugs: does that make her a victim)? Is it the state (that makes using drugs a crime to be punished and not an illness to be cured)? It is this *aporia*, this undecidedness, that each of these works confronts us with, time and again. And it is to these questions that Daniel forces us, time and again, to formulate answers of our own.





PUBLIC SECRET

"Truth is not a matter of exposure which destroys the secret, but a revelation that does justice to it." – Walter Benjamin – The Origin of German Tragic Drama

There are secrets that are kept from the public and then there are "public secrets" – secrets that the public chooses to keep safe from itself, like the troubling "don't ask, don't tell". The trick to the public secret is in knowing what not to know. This is the most powerful form of social knowledge. Such shared secrets sustain social and political institutions. The injustices of the war on drugs, the criminal justice system, and the Prison Industrial Complex are "public secrets".

The public perception of justice – the figure of its appearance – relies on the public not acknowledging that, which is generally known. When faced with massive sociological phenomena such as racism, poverty, addiction, abuse, it is easy to slip into denial. This is the ideological work that the prison does. It allows us to avoid the ethical by relying on the juridical.

The expansion of the prison system is a public secret – a secret kept through an unacknowledged but public agreement not to know what imprisonment really means to individuals and their communities. As the number of prisons increases, so does the level of secrecy about what goes on inside them. The secret of the abuses perpetrated by the Criminal Justice System and Prison Industrial Complex in the US can be heard in many stories told by many narrators, but only when they are allowed to speak. After a series of news stories and lawsuits documenting egregious mistreatment of prisoners in 1993, the California Department of Corrections imposed a media ban on all of its facilities. This ban prohibits journalists from face-to-face interviews, eliminates prisoners' right to confidential correspondence with media representatives, and bars the use of cameras, recording devices, and writing instruments in interviews with media representatives. Inmates are not allowed access to computers, cameras, tape recorders or media equipment of any kind. Such restrictions preserve the public

secret. Women incarcerated in California are allowed visits only from family members and legal representatives.

For years, I visited the Central California Women's Facility [CCWF], the largest female correctional facility in the United States, as a legal advocate. I worked with the non-profit, human rights organization, Justice Now, documenting conversations with women prisoners at CCWF in an effort to unmask the well known, yet still secret injustices that result from our society's reliance on prisons to solve social problems. Given the ban on conversations with the media, I would not have had access to the women who have contributed to Public Secrets without the support of Justice Now. As a "legal advocate" I was allowed to record my conversations with the women and solicit their stories, ideas, and opinions. The visits required adherence to Kafkaesque regulations and acceptance of invasive search and surveillance procedures. I was registered for each visit in advance and searched on entry. I was allowed to bring in only a clear plastic bag with a clear pen, my drivers license, a blank legal pad and my mini-disc recorder. The recorder had to be approved weeks in advance (the serial number was registered and checked and only factory-sealed discs were permitted in) and the device was inspected on each entry and exit. After our interviews the women were subject to strip search and visual body cavity searches.

Clearly, the women I worked with are highly politicized and were seriously committed to this endeavor. For these women our conversations were acts of ethical and political testimony – testimony that challenges the underlying principles of distributive justice and the dehumanizing mechanisms of the prison system. They are quite literally historians and theorists who speak out in an effort of collective resistance. I collaborated with them first as a witness and then as a "context provider". After soliciting their opinions and collecting their stories, it was my responsibility to create a context in which their voices could be heard across social, cultural and economic boundaries. My conversations with these women form the basis of Public Secrets, which in turn brings their voices into dialogue with other le-

gal, political and social theorists such as Giorgio Agamben, Michael Taussig, Walter Benjamin, Fredric Jameson, Catherine MacKinnon, and Angela Davis. While this is a dialogue that I have constructed between interlocutors whose perspectives originate from very diverse social locations, for me all of their voices emerge out of a shared ethos and converge in critical resistance.

I see the public secret as an aporia – an irresolvable internal contradiction, between power and knowledge, between information and denial, between the masks of politics and the goals of an open society (one in which the state is expected to act for the people as guarantor of human and civil rights). Building on this concept, designer and programmer Erik Loyer and I created the interactive interface to Public Secrets with three main branches, each structured as an aporia; inside/outside, bare-life/human-life, and public secret/utopia. Each aporia frames multiple themes and threads elaborated in clusters of narrative, theory and evidence. Together they explore the space of the prison – physical, economic, political and ideological – and how the space of the prison acts back on the space outside to disrupt and, in effect, undermine the very forms of legality, security and freedom that the prison system purportedly protects.

Years ago, on my first legal visiting day, I walked through a metal detector and into the Central California Womens' Facility. It changed my life. The stories I heard inside challenged my most basic perceptions – of our system of justice, of freedom and of responsibility. Now I ask you to walk with me – to cross this boundary between inside and outside, bare-life and human-life, and listen to the voices in Public Secrets.

<http://publicsecret.net>



“I HAVE NO IDEA REALLY WHERE I’M AT GEOGRAPHICALLY.”

THE PRISON IS A NO-MAN’S LAND THAT PERFORATES THE SPACE OF THE STATE

“I GUESS I WASN’T WORTHY OF PROTECTING”

▶ BROWSE

BEVERLY HENRY

“I SAT IN LOCKUP FOUR AND A HALF MONTHS WITH INFECTIOUS DISEASE BY MY NAME IN BIG RED LETTERS...”

“I BEEN ROBBING MYSELF OF MY FREEDOM”

“SO, I STARTED COMMITTING A LOT OF CRIMES TO HELP HIM... HE MADE ME FEEL LIKE I OWED HIM THIS.”

THE PRISON INDUSTRY AUTHORITY SHOULD PAY FOR A MEMORIAL FUND

READ TRANSCRIPT

“FOR A LONG TIME, I THOUGHT EVERYBODY DRANK.”

VIEW CONNECTIONS

BLOOD SUGAR

“I DON’T BELIEVE I DIDN’T GET NOTHING OUT OF IT.”

“I KNEW I WAS A DIABETIC PRIOR TO EVEN GETTING INCARCERATED.”

“THEY CUT OFF HER TOE, THEN THEY CUT OFF HER LEG”

“I’M THEIR PROPERTY, BUT SO AS YOU WILL, I’M USUALLY BELONGING TO THEM.”

“YESTERDAY MY SUGAR GOT UP TO 427. THEY DIDN’T HAVE NO SYRINGES TO GIVE ME INSULIN AT ALL.”

“THEY WON’T TAKE ME THERE OUTSIDE IN MY OWN HOME FOR DIABETICS.”

“I TELL THEM SOMETIMES MY SUGAR GET SO HIGH, I FEEL LIKE I’M DRUNK.”

“I’VE BEEN IN THAT SITUATION TO WHERE MY SUGAR CAN GET REALLY HIGH AND I’M LOCKED IN A ROOM.”

“THEY DON’T KNOW IF THEY’RE GOING TO HAVE TO AMPUTATE MY BIG TOE OR NOT ON MY LEFT FOOT.”

“SO, YES, I’M SCARED...”

▶ BROWSE

“YOU HAVE THOUSANDS OF PEOPLE DETOXYING AT ONE TIME”

“WAS THERE ANYTHING THAT COULD HAVE STOPPED ME FROM USING?”

GO BACK TO LIFE OUTSIDE

A.C.

“I DON’T CARE ABOUT THE MEDICATION”

▶ BROWSE

BARE LIFE IS PRESERVED AS AN EXPRESSION OF SOVEREIGN POWER

HOMO SACRE

THE CRIMINALIZATION OF POVERTY

▶ BROWSE

ZUNDRE JOHNSON

“I’m saying that people do consent wrong. I know that, I know that, but the majority of the women that are in here - it was survival - just survival you know survival - for whatever reason they had to survive like that they just survived like that. They haven’t done anything horrific. They haven’t been on TV or anything like that. They’re just individuals. That have committed a nobody’s crime and ended up in a nobody’s prison, uh, it’s stupid. They had a ‘look’ in their hand so they’re doing 25 to life - come on - you know - I mean it doesn’t bother them from smoking crack ‘cause people are still not there doing it - so what is the point of taking a mother, a woman, somebody’s child and putting them away because they had a nickel crack - when you really look at it and you go to everybody’s cases three percent of the people have should really be - helped - not so much are locked up but helped because there is definitely something wrong - they need professional help.”

REWIND AUDIO

PAUSE AUDIO

MORE FROM ZUNDRE JOHNSON

CLOSE WINDOW

▶ BROWSE

HOMO SACRE

BARE LIFE IS PRESERVED AS AN EXPRESSION OF SOVEREIGN POWER

“THEY TAKE THEIR LIFE EVERYDAY HERE, THEY JUST DON’T DIE.”

▶ BROWSE

TOPICS

A WORLD WITHOUT PRISONS

BIOLOGICAL SUBJECTS

MORE

CLOSE

ADAPTATION

BLOOD SUGAR

CRIMES OF SURVIVAL

ECONOMIES

ALTERNATIVES

CATCH 22

DRUG WARS

▶ BROWSE

SHARON DANIEL
10:08

TOOM IN

10:08 10:09 10:10

"The last time I saw
her she was on
Methadone again"

"There is no space
outside"

"[It takes all the
running you can do...]"

"Unlike Alice, A
doesn't get to simply
wake up"

PLAY

BLOOD SUGAR

The needle junkie is a magician who can work the conjuring trick of making a hole and simultaneously fixing it – Marek Kohn, Narcomania

In 2000 I lived and worked in part of a converted paint factory on the bleeding-edge of a working class residential district in a part of east Oakland (California) known as “Fruitvale”. My home was in the border zone that runs along the narrow corridor between the elevated train line and the interstate freeway. The loft complex was a kind of bunker in the midst of a post-industrial wasteland. I had moved from an apartment in San Francisco to this relatively raw space but I didn’t actually need a studio with high ceilings and industrial surfaces. At that time I was engaged in the development of systems for collaborative and collective authoring online. I thought of the Internet as a public space and saw my work as ‘public art,’ but I was troubled by the delimitation of who and what could be considered ‘Public’ in this context. Every definition of “Public” I have found includes the phrase “the people”. In modern European languages the phrase “the people” always connotes the poor, the underprivileged, and the excluded. It is a curious contradiction that this phrase simultaneously identifies the citizen or political subject (big “P” people), and the class that is excluded from politics – the marginalized and technologically disenfranchised. The cluster of renovated factory buildings I shared with a population of other well-educated, middle-class artists, was enclosed by a concrete wall – outside the street was strewn with shopping carts, plastic bags and discarded syringes. Gazing over that wall, while I worked in the security of my second-floor studio, I began to wonder how, or if, information technologies and public art practices could effectively create a more inclusive public sphere one that would engage both the big “P” public and the little “p” people just outside.

There was an HIV prevention program down the street that ran an open needle exchange three nights a week. I first heard about it on local radio where the non-profit’s director told of a city councilman’s attempt to force the exchange out

of the neighborhood in an effort towards future gentrification. I believed in the efficacy of needle exchange (albeit in an intellectual and somewhat detached way). I was intrigued by the paradoxical, outsider-subject of addiction, the borderline between dependence on licit and illicit drugs, the mystery and violence of the needle. I had reason to want to escape the privileged isolation of my own sphere to cross over that concrete wall and into another world. This desire was sincere but also driven by curiosity, even voyeurism, and naïveté. Unlike prior artists and intellectuals who have pursued research in the arena of drugs (Freud, Benjamin, Burroughs, and De Quincy), I was interested in the social and biological construction of addiction – not the experience of the drug as such. I would cross over through the point of view of the addicted subject. My desire would be satisfied by listening and observing. And the responsibility I thus assumed would be left unresolved in my unsuccessful attempts to help one of my interlocutors.

I volunteered at the exchange. Eventually I started to interview people who came to the tent site to swap needles. Most of them lived on the street, had no official identification (either because they had a criminal record or no fixed address) and therefore had no access to basic civic or social services. Their absence in the data-space of the Public sphere had serious implications for them in the physical world. They were in a sense invisible – a kind of secret public.

I got to know one of the women rather well the woman that I call A_____ in Blood Sugar. The needle exchange was the last frayed layer of the social safety net for someone like A_____. I learned a lot from her about the third world inside the first. I learned that the realities of poverty, racism, social isolation, trauma, sexual abuse, and sex-based discrimination could make a person, even an extraordinarily intelligent person, vulnerable to addiction and psychosis. I learned a lot from A_____ about desperation and about resilience. I learned that the complex struggle over civil liberties and social rights in electronically mediated information space is materially different from the one on the street. There is another public outside – a secret public that is simultane-

ously visible and invisible, and to most, illegible and incomprehensible. The men and women who spoke with me at the needle exchange, and allowed me to record our conversations, are part of this secret public. They deserve to be heard and understood. The accounts they give are not natural, objective descriptions of an unambiguous reality. No one I met at the exchange described him or herself as a "righteous dopefriend". On the contrary, each self-narrative began with a kind of confession or characterization of addiction as a weakness or disease. The messy details of each life history then unfolded according to the syntax and grammar of the disease-and-recovery discourse learned in the kind of therapeutic setting where we met. But the fact that the telling is inflected by its context and social construction does not mean that the lived experience so related is any less real, or powerful, or deserving of attention.

Blood Sugar presents a public record of this secret public. It provides evidence and testimony through an interface to the many hours of conversation I recorded at the needle exchange. In the interface each individual interlocutor is represented as a waveform or "audio body" these audio bodies are linked together through "parasitic" connections (represented in the interface as a kind of hole or vortex) revealed in their stories of pain, violence, abuse, and despair. Overall, the space these bodies inhabit and the way they are encountered by the viewer is structured in terms of the social and biological construction of addiction at the boundary of the skin. The recorded interviews are framed by a series of texts that I have written in response to a set of somewhat rhetorical questions posed from the perspective of the Public such as «what do we hold against the drug addict?» The texts incorporate my research into the neuroscience of addiction with my experience while interacting with the clients of the needle exchange.

In this work I have been more of an immigrant than an artist or ethnographer¹ – crossing over from the objective to the subjective, from expertise or authority to unauthorized alien. As an academic I was once reluctant to include my own story in my work. But my position is not neutral; in theory

or in practice, that would be an impossible place. So I have crossed over into what theorists such as Jane Gallop and Michael Taussig call "the anecdotal," where theorizing and storytelling, together, constitute an intervention and a refusal to accept reality as it is.

It is my hope that the testimony gathered *Blood Sugar*, will challenge you, as it has summoned me, to refuse and resist the paradoxes of social exclusion and othering that attend the lives of those who suffer from poverty, alienation, and addiction.

<http://bloodandsugar.net>

"The needle junkie is a magician who can work the conjuring trick of making a hole and simultaneously fixing it." —Marek Kahn, Narcosisnia

LOADING DATA...

BEVERLY
10:11

"I was working with
Needle Exchange"

Why can't they just
stop?

What is the secret of
the addict's desire?

What does our
security rely on?

You me

When

ZOOM OUT

HELP OPTIONS HISTORY TRANSCRIPT INDEX

"...well I want some"... that was the first thing
I said. I will never forget it."

"Oh my God, I was so sick. I threw up all day."

"And the next day, I did the exact same
thing."

"But I didn't realize that my addiction was
escalating"

"But addiction has such a grip such a hold
on you"

"It's like you forget because you'll do it all
over again. And then regret it"

"There is no way I'll go back to that again - it
was horrible"

"I felt like this baby was in my throat. Oh my
God"

"And the next day, I
did the exact same
thing..."
"My God, I was so sick
I threw up all day."
"But I didn't realize that my
addiction was escalating"

PAUSE

BEVERLY
11:00

HELP OPTIONS HISTORY TRANSCRIPT INDEX

Is the addict possessed by an 'other inside'?

She said, "I have an addictive personality."

She said, "My addiction has destroyed my life."

She said, "I don't know what I will do. I don't know if I can"

Is the addict possessed by an 'other inside' or wholly other?

An aporia, with no satisfactory resolution, it is a question that
distinguishes between what does and does not constitute a
failure of will. Is addiction a disease in moral, social, and leg-
al guise for sin? Society tends to see Addiction as a condition
with an internal flow - is the flow one of biology or character-
construction or "thing in itself?"

BEVERLY
11:42

ZOOM OUT

HELP OPTIONS HISTORY TRANSCRIPT INDEX

"but there was a
fascination there
also"

"And the next day, I
did the exact same
thing"

illness

dependence

dissipation

JOSEPH

RON

ANICLA

BEA

ZUNORE

LELANI

CHRIS

MARCUS

BEVERLY
11:04

HELP OPTIONS HISTORY TRANSCRIPT INDEX

"my daug-
ter...
she's...
anything like
me"

"I've known her
seven years. I don't
know her for anyone"

"She's God, I mean
she's like a
whole other person"

"It's like you forget
because you'll do it all
over again. And then
regret it"

"I thought everybody
drank"

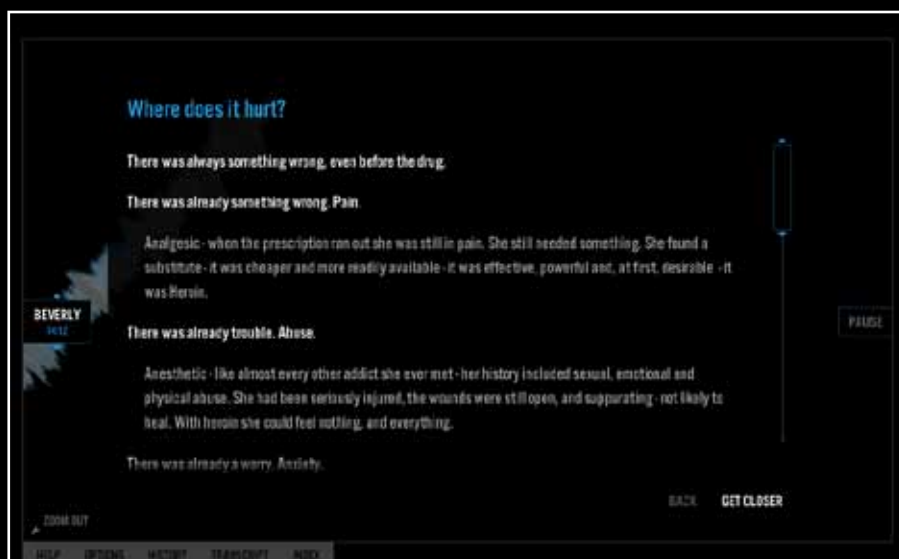
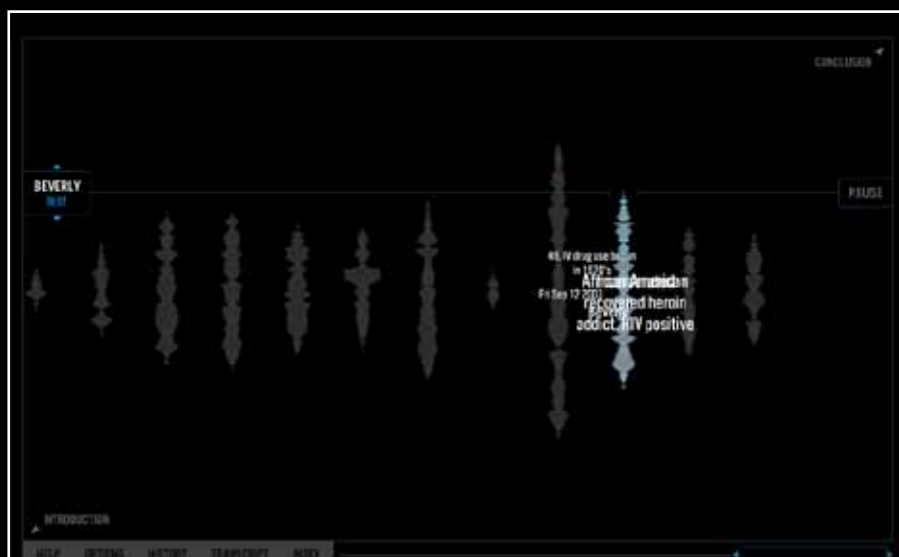
"The human body has
always fascinated
me"

"She did it to save her
grandbaby and to save
my life"

BEVERLY
11:14

ZOOM OUT

HELP OPTIONS HISTORY TRANSCRIPT INDEX







sacrifice



UNDOING TIME

"For criminal law, time is the measurement of a punishment upon the human being, whose temporality is indeed his life...punishment prevails over the reparation of the injury caused by the crime. Injury equals evil: punishment equals suffering... The 'algebra of suffering' comes into play: minus times minus = more; negative times negative = positive. Do we really believe that in order to eliminate suffering we require additional suffering?" – Ana Messuti, Time as Punishment

We have a heritage in America of torture and brutality, first against slaves and secondly against prisoners... And when we abolished slavery, we did not abolish it unconditionally, but with the Thirteenth Amendment qualification that slavery is okay for prisoners. And that pretty much ensured that the qualifications in our understanding of cruelty necessary to maintain an effective system of enslavement would continue to distort the understanding of cruelty in the operation of our penal system. – Jeremy Waldron, forward to The Story of Cruel and Unusual, by Colin Dayan

I met Beverly Henry at the Central California Women's Facility [CCWF] in 2001. Over the years that I visited CCWF I recorded conversations with Beverly many times. Her voice is heard throughout *Public Secrets* – and the history of Beverly's struggle with addiction, which she offered in a special interview conducted for *Blood Sugar*, is one of the most powerful accounts of the causal relations between poverty, addiction and incarceration I have heard.

At the time I met Beverly she had spent 40 of her 61 years locked inside California state prisons. Like more than 70 percent of women in prison in California, she served all of this time for nonviolent, drug-related offenses.

During one period of her incarceration Beverly worked for the Prison Industry authority in a textile factory that produces United States and California State flags.

A historical figure named Betsy Ross is widely celebrated for sewing the first American

flag. There is, however, no credible historical evidence that the story is true.

Beverly Henry was in prison on the 254th anniversary of Betsy Ross's birth when she wrote an op-ed piece that contrasts the realities of her life experience to the symbolism of the flag and the mythology around the figure of Betsy Ross:

Like Betsy Ross, I sew American flags. But I do my work for 65 cents an hour in an assembly line inside the Central California Women's Facility, the largest female correctional facility in the world. I was sentenced to prison for 15 years after being convicted of selling \$20 worth of heroin to an undercover cop. I sew flags to buy toiletries and food. From the time I was a little girl, I was taught to put my hand over my heart when pledging allegiance to the flag. I emphatically believed in the values of independence, freedom and equality the flag represents. But as time went on and I grew older, I learned that these values do not apply equally to all Americans. As a black girl, I attended segregated schools without enough resources to provide a quality education. As an adult, I struggled continuously with drug addiction, but there were no resources available for me to get help. Instead, I was sent to prison. America has become a country that imprisons those it fails, blaming poverty, drug addiction or homelessness on individuals rather than recognizing and addressing the conditions that give rise to them. Betsy Ross sewed a flag that represented a vision of an equal and just society. But to honor this flag we must resolve to make America a country where all people can thrive.

The incongruity and terrible irony of the very existence of the flag factory at CCWF, together with Beverly's reflections on the contrast between her own life experience, the mythology around the figure of Betsy Ross, and the notions of life, liberty and the pursuit of happiness that the flag purportedly represents, provide a powerful critique of the structural inequalities that the Prison Industrial Complex exploits and expands. When I read Beverly's "Betsy Ross" text my first impulse was to see it embroidered into the fabric of every US flag produced at the prison. Then I realized that, because I work for the state as a professor at the University of California, I would be allowed to purchase from the Prison industry Authority (which only sells to state agencies) and, thus, have the opportunity to materialize this gesture of resistance.

This was the initial inspiration for the design of *Undoing Time* – a collection of audiovisual installations based on interviews in which men and women with first-hand experience inside courts and prisons across California, those severely affected by the criminal justice system but whose voices are often unheard in debates on its policies, legislation and governance, have the opportunity to speak and be heard. Their statements are materialized – inscribed into the objects they helped produce as laborers in prison factories. For example, a prisoner’s statement about medical malpractice in the prison is imprinted on a medical technician’s jacket, fragments from prisoner’s stories about prison conditions and long histories of incarceration are etched into steel mirrors and stained into the mattresses used in their cells. Video portraits of released prisoners accompany some of the inscribed objects. In each video portrait, a formerly incarcerated man or woman describes the methods required for the production of the object, as well as how its making is part of “doing time,” and how its meaning or function in a larger social context is “undone” by its origins within the prison.

Thankfully, Beverly Henry is now free. She was paroled in 2009. The following year I had the pleasure of spending a day with Beverly in Los Angeles – our first interview outside prison walls. Beverly Henry is an extraordinarily articulate interlocutor and powerful storyteller – self-aware, fearless and generous – an inspiration. During our day-long video shoot Beverly spoke at length about labor practices at the prison, the process of sewing the flag and her feelings about what it symbolized. At the end of the day we discussed the concept of performing an “undoing” as a kind of symbolic act of resistance – Beverly thoughtfully agreed to “undo” all the stitches in one of the flags produced at the prison. This symbolic “undoing” is recorded in the video portrait of Beverly that accompanies two US flags that are embroidered with the text of her op-ed piece in the installation *Undoing Time|Pledge*. In *Undoing Time/SOS*, targets produced in a prison print shop for police shooting practice are paired with a 20 minute video portrait/interview of “Franky” – a 21-year-old man who, as a member of California’s notorious Norteño gang (both in and out of prison) has been trapped in a cycle of violence and punishment since he was 12 years old. The targets are perforated with

laser-cut texts – quotes that describe Franky’s experience as both a gang soldier and target of state and gang violence inside the maximum security facilities he has inhabited.

We had a big riot on the yard – an inmate was shot on the yard it kept going on for so long – stabbings – you gotta keep stabbing him until all six shots are fired out of the block gun – until the tower fires off a live round.

How the gangs run their programs – If it’s your day to hold the knife – today’s your day – you gotta go stab somebody – and you don’t get off him until they fire or until he’s dead – ‘we want this hit done right and if you don’t do it right we’re going to hit you’

And there’s no getting away with it – the cops are there – They’re sitting up there with mini 14’s – 10 rounds in a clip – block guns, pepper spray, batons – if you’re really unfortunate you might just be going out in a body bag – cause they’re going to execute you – but you got no choice – if you’re like “no” – you’re not going to make it off the yard – you can yell to the tower but it’s maximum security – they can’t just run out there and say “yard down” – all the inmates gotta cuff-up – you’re not going to make it out – you’re gonna get victimized and it’s gonna be brutal – they’ll kill you.

I met Franky while he was in county jail awaiting sentencing on a charge of violence inside. He had been forced to ‘opt out’ of gang status and move to protective custody after he was betrayed by a gang captain who was a long-time friend of his father’s – a trusted elder who ordered him to ‘hit’ the ‘wrong’ person. As he explained how the gang had been his family, had ‘taught him to be a man’, he repeated, over and over again, “I believed in something that didn’t believe in me”. The “SOS” of the title of this video installation has a double meaning – It refers to the distress signal in Morse code which, in this case, becomes an acronym for three kinds of violence – ‘Subjective’, ‘Objective’ and ‘Symbolic’ – which comprise the systemic, social and state violence of which Franky is both a subject and object.

<http://undoingtime.us>





America has become a country that imprisons
those it fails, blaming poverty, drug addiction or
homelessness on individuals rather than recognizing
and addressing the conditions that give rise to
them. In California, more than 70 percent of
women in prison are serving time for nonviolent,
property or drug-related offenses.

The 3,000 women in my prison are disproportionately poor and minority. Prison marks a separation in our society
between the 'haves' and the 'have-nots' - between those who walk free and those of us held captive.

Betsy Ross, who was born January 1st, 1752, sewed a flag that represented a vision of an equal and just society.

And we, as Americans, pledge allegiance to the flag that'll sew, dedicating ourselves to

'one nation, under God, indivisible, with liberty and justice for all.'

To honor this flag we must resolve to make America a country where all people can thrive."

INSIDE THE DISTANCE AND RESTORATIVE JUSTICE





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Ivo Aertsen ¹

How many times did you have an experience similar to the following one? At the end of a stressful working day you find yourself packed with many others in an overcrowded bus, tram or train, going home. No seats left, people tired, nervous, the smell of sweat all around. Suddenly you are pushed hard in your back by another passenger. What a rough, disrespectful person! Aggression starts rising inside you. Then the person turns to you, you look into each other's face, a single glance, he apologizes. A turning point in a possible escalation. The guy looks 'normal', just another passenger, just like you!

THE WAY WE LOOK

Examples like the one above are often used in mediation trainings. They show how differently we can look at daily situations. This is not only true for apparently very banal situations, but also for more serious incidents between people. When harm is done and social norms are broken, we speak of 'crime'. We call such events 'a crime', because the act is 'punishable' and sanctioned with 'a punishment' according to our official laws. This is just one way of looking at the problem, which encompasses a set of assumptions, values and ideas of which we are not always aware.

In our western societies we have gradually adopted a certain perception and a specific pattern of thinking about harmful behaviour and how to respond to it. We have created a body of legal rules and institutions in order to deal with crime in a right, equal, non-arbitrary and proportional way vis-à-vis 'the offender'. But after some time, established institutions and how they work, also shape our thinking. Within society, as it is within organizations and institutions, we can look at relations and positions in different ways, for example in a vertical, hierarchical manner, or in a more horizontal, collaborative direction. At a certain moment, we can decide to adopt a radically different way of looking and thinking, and often we first need a crisis and a thorough feeling of failure before we start developing a new gaze, a fundamentally different perception and a new understanding of the issue at stake.

Such deeply rooted patterns of looking, thinking, speaking and acting are in the history of science called 'paradigms'. Also in social science, and in social movements, paradigms determine the way we look at the world and therefore have an enormous impact. Given the fact that paradigms can change over time, a 'paradigm shift' is often

seen as the most powerful engine behind fundamental social reform. But because a paradigm shift requires a change in personal approach and attitudes, it is often hard to make happen in an environment where we are all grew up as members of a group living with assumptions and meanings about social life, relations and rules. In short, social change to some extent presupposes personal change, the latter only being possible in turn if one's vision can be changed.

PUTTING ANOTHER LENS: RESTORATIVE JUSTICE

This complex interplay between the personal and the social world is also relevant for the way we look at crime and how we respond to it. And this is where 'restorative justice' appears. One of the 'founding fathers' of this new social movement, Howard Zehr, has analyzed and described the needed 'change of paradigm' very well in his seminal book 'Changing Lenses: A New Focus for Crime and Justice' (1990). The metaphor he uses, is the one of the camera: the type of lens you put on your camera will shape the image you see. This is also true for looking at the social landscape of people, relationships, events and institutions. You can look at all these from very different angles, adopting different attitudes, values and beliefs. In his book, Zehr – a former probation officer in the US who later became professor of history – juxtaposes two paradigms: the one of the retributive criminal justice system and the one of a 'restorative justice' system. The comparison between the two approaches is made at two levels: first at the level of the differing lenses that can be used to look at the phenomenon of 'crime', second – on the basis of these different perceptions of 'crime' – at the level of the differing lenses that will form our type of responses to crime.

Hence, a crime can be defined as the violation of a legal rule or rather as a violation of persons and relationships; harm can be defined in an abstract way or rather concretely, looking at the consequences and meaning of what happened for persons and communities; the notion of guilt can be central as it is in criminal justice, vs. the notion of responsibility. The response to crime can predominantly focus on the offender, or on the offender and the victim in a balanced way; the past might dominate, or the future; sanctions can be guided by the principle of pain infliction or by the primacy of restoration; an individualizing approach might prevail, or a more community oriented approach.

Restorative justice stands for a general *approach* to crime and responding to crime, guided by a set of values and principles, which balance the needs of the victims, offenders and communities as the main stakeholders. The primary goal is not just to punish the offender, but to repair the harm to the victim and the community, to make good whenever possible. All the parties are supported to take part actively in the response through guided forms of communication and dialogue. Some of the internationally accepted definitions of restorative justice are the following:

'Restorative justice is a problem-solving approach to crime which involves the parties themselves, and the community generally, in an active relationship with statutory agencies. It is not a particular practice, but a set of principles which may orientate the general practice of any agency or group in relation to crime.' (Marshall, 1999)

'Restorative justice is every action that is primarily oriented toward doing justice by repairing the harm that has been caused by a crime.' (Bazemore & Walgrave, 1999)

Elementary in the restorative justice paradigm, is the inherent criticism of the notion of 'punishment'. What is needed, is a way out of the dead-end street of the current criminal justice system in our western countries – systems that combine: over-criminalization of harmful behaviour and ongoing securitisation of social issues; selective and discriminatory prosecution and sentencing practices; overcrowded prisons, and the extensive use of alternative sanctions not as alternatives to incarceration but as add-ons of punishment practices. And all this confronts us in societies that are *not* characterised by overwhelmingly growing crime rates or increasing insecurity, at all.

This paradoxical 'punitive turn' in our societies requires a more fundamental rethinking of crime and punishment. Crime should be considered not as the problem of 'the other' but as ours, against the background of our interchangeable roles of victims, offenders and community members. In democratic and just societies, we are not that much in need of strengthening images of 'the enemy' and exclusionary practices, but rather resources for building social peace, repairing what happened and including all involved in the harmful event. In what we now call 'punishment', the function of societal disapproval should be exercised in a strong, participatory way: 'censure' about what we cannot accept in terms of norms and values should be discussed and communicated in the most effective way among victims, offenders, community members and public authorities. However, the element of intentional 'pain infliction' in punishment is not needed because of its extremely counter-productive and harmful character for society.

PRACTICAL MODELS

'Restorative justice' might appear as a new philosophy full of promises in the complex world of crime control. The history of criminal justice reform, however, has witnessed many moments of excitement in the past. How can restorative justice be put into practice? Does it make a difference? And how sustainable is this new model?

In the world of restorative justice, three models of how to bring the paradigm into practice lead the scene: victim-offender mediation, family group conferencing and peace-making circles. They are all participatory models, where those immediately involved in the crime come together to discuss what happened and to explore ways of reparation. Victim-offender mediation ('penal mediation', 'mediation in criminal matters') is the oldest model, going back to the 1970s. The

Council of Europe in its Recommendation R(99)19 offers a clear definition: mediation is a *'process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator)'*. Important operating principles in victim-offender mediation (and other restorative justice practices) are voluntariness in participation, confidentiality of the communication, and neutrality of the mediator or facilitator. Usually in a mediation process, preparatory meetings are organised between the mediator and the conflict parties individually, before bringing them together in a face-to-face meeting. Preparation is of utmost importance: the mediator creates an atmosphere of trust and respect, where both victim and offender feel supported and safe to address the other with their questions, concerns, claims and expectations. The process of communication between victim and offender allows for an exchange of non-material issues first (what happened precisely and why, do you understand my fear and anger, who is responsible for this all?), next also financial reparation and other forms of redress and prevention for the future can be discussed. Where mediation cannot be applied face-to-face, indirect forms of communication are possible, where the mediator acts as a go-between for both parties without bringing them together physically.

In a family group conference, more people participate. Besides the victim and offender, support persons of both parties are invited (parents or other family members, a friend, coach or teacher). The presence of these 'significant others' – trustworthy persons for the participants – creates a special group dynamic with a stronger potential of supporting and influencing both victim and offender. There are several models of family group conferences, also depending on the country and the legal context. The 'facilitator' might be a probation officer, a social worker or counsellor, a community representative or a police officer.

Finally, peace-making circles – group conferences inspired by non-western forms of doing justice – represent the third model. Here, the group can be bigger, since local community members are also welcome to join the meetings and to discuss what happened and how such things can be prevented in the future. Peace-making circles (or 'healing circles') take place only after good preparation and guidance by the 'circle keeper'. The circle does not start from the incident, but opens with a round of discussion on which values and experiences unite the people present. Another variation is 'sentencing circles': here also the public prosecutor and judge are part of the meeting.

In Europe, victim-offender mediation is the most frequently used model of restorative justice so far, but family group conferences become more important, and some pilot projects have taken place with peace-making circles. The conferencing model is more popular in common law countries. The practice of restorative justice in European countries and beyond is well documented. During the last decades, no other emerging model has been as much studied as restorative justice. That does not mean, however, that restorative

justice has become mainstream in most of our countries. On the contrary, despite its generally promising results in terms of experiences of satisfaction and fairness, cost-effectiveness and impact on re-offending, restorative justice mechanisms are under-utilised as compared to the potential number of cases that could be dealt with in this way. In most countries, mediation and other restorative justice practices remain limited to minor crimes – for example, crimes for which the maximum penalty is two to five years imprisonment – and therefore take the form of diversionary measures within the criminal justice procedure. In these cases, if the offender is willing to talk to the victim, to explain what happened and to offer his apologies, and if both parties reach an agreement on how things can be repaired and/or prevented towards the future, no prosecution will follow and the judicial file will be closed.

JUSTICE MECHANISMS

Although restorative justice practices at this lower end of the seriousness-continuum can be extremely meaningful for both victim, offender and community members, they can have an even deeper meaning when applied to serious violent offences. In particular for this type of crime, their impact can be the most powerful. We would like to make a reference, here, to the practice of ‘reparative mediation’ (or ‘mediation for redress’) as it started developing in Belgium in 1993. This pilot project – which later was implemented on a broader basis throughout the country and found a legal basis in 2005 – addressed more serious crimes. The practice of mediation is done by well-trained staff members from officially accredited NGOs, in cooperation with local judicial authorities. Here, mediation does not function as an alternative to the criminal justice process, but as a complementary approach that because of its semi-autonomous position might challenge in a critical way existing judicial and societal rationales in dealing with crime. In the Belgium law of 2005, mediation is therefore conceived as an offer – not as a measure to be imposed – to victims and offenders, who can make use of this service during all stages of the criminal justice process. It is, indeed, not rare for mediation to be initiated a long time after the verdict, for example when the offender is serving a prison sentence. Practice has shown that victims even years after the trial sometimes want to address the offender with some of their unanswered questions and concerns. Both victims and offenders might have good reasons to express themselves and to communicate with each other, when this can be done in a safe environment with the help of a third person. It is understandable and not surprising that the need for this type of communication is the greatest in cases where there is a considerable impact on people’s lives.

Practices of restorative justice do not just aim at offering various forms of ‘restoration’ (in a material and non-material way), but also contribute to experiences of ‘justice’. When victim and offender,

backed-up by their communities, speak to each other about the wrongful act and the harm caused, 'justice' is a central notion, at least in an implicit way. The discussion will often deal with what is 'fair' and 'just' in such a case. Starting from the incident, norms and values are clarified and further shaped. A justice mechanism is taking place bottom-up through a deliberative process where the directly involved stakeholders come up with their understanding of what went wrong, what the causes might have been and how preventive action can be undertaken. In the next phase, this shared interpretation can be communicated to judicial and other public authorities, resulting in more structural answers to the problem.

Restorative justice, seen as a set of values and principles, is in its scope of application not limited to criminal offences. The principles of voluntary participation, non-violent communication, inclusion and mutual learning, guide innovative models of intervention in cases of emergent conflict in many fields. 'Restorative practices' are applied worldwide in educational settings, such as schools, for example, through practices of peer mediation and conferencing. Moreover, families, workplaces and neighbourhoods offer fertile soil to apply dialogue driven approaches in case of disputes. In many cases, well-trained community volunteers offer support and act as mediator or facilitator. Not only at the inter-individual level, but also at the group level, restorative principles may prevail. The need for including communities becomes clear when mutual understanding has to be built between different groups – cultural, ethnic, political or religious – in society. These new approaches all contribute to the growth of a new culture of handling conflict, responding to crime and doing justice.

INSTITUTIONALIZING RESTORATIVE JUSTICE

Although far from mainstream, restorative justice has gained a lot of support and credibility in many western countries since the late 1990s. Some of these countries have taken the lead, such as Norway, Finland, Austria, Belgium and Northern Ireland in Europe, and New-Zealand, Australia and Canada at the global level. Nation-wide programs have been implemented in other countries as well, mostly supported by national legislation. Most European countries have adopted national legislation, be it only for some categories of offenders (e.g. juveniles) and for some types of crime.

International institutions have played a major role in the development of restorative justice, and some of their regulatory instruments have been very influential. This is, for example, the case with the UN Resolution on Basic Principles on the use of restorative justice programmes in criminal matters (Commission on Crime Prevention and Criminal Justice, 2002), the (aforementioned) Council of Europe Recommendation R(99)19 concerning mediation in penal matters (1999) as reinforced by its Guidelines for a better implementation of the existing Recommendation concerning mediation

in penal matters (European commission for the efficiency of justice – CEPEJ, 2007), and, finally, the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. All these instruments encourage national governments to implement restorative justice programs and legislation in a sound way, which carefully takes into account the interests of the victims and of the other parties involved.

Closely linked to official international organizations, are the NGOs working in the field of restorative justice at the regional or international level. To be mentioned are: Prison Fellowship International, the International Institute for Restorative Practices, and the European Forum for Restorative Justice, amongst others. Their contribution has been considerable in terms of supporting pilot projects, developing good practices, networking, setting up training programs and influencing policies. There has often been cooperation between these international NGOs and national umbrella organizations. The role of these and other civil society organizations has been crucial in breaking the isolated position of local programs, bridging between the criminal justice system and community organizations, and building the awareness of the whole society.

CHALLENGES

Restorative justice entails important promises, for quite simple reasons. It is – in a certain way – about common sense: how can we deal with conflict, crime, harmful behaviour in a problem solving and sustainable way – by giving priority to repairing the harm, by first letting people talk to each other and supporting them in finding answers and solutions themselves, by ‘giving back the conflict to the owners’, by ultimately ‘restoring peace under the rule of law’. Isn’t this, or shouldn’t this, be the final aim of each system dealing with injustices?

Logical as it might sound, in practice this new approach is not easily realised. Important obstacles have to be confronted. Strong public support is needed, and this is not self-evident at all in a period where social issues and ‘deviant’ behaviour are experienced, in a more and more polarising way, in terms of crime and security threats. Therefore showing how the alternative works to a large public, is imperative. The media can contribute to this greatly.

Another challenge relates to the role of judicial authorities. Public prosecutors are the gate-keepers of the criminal justice process and therefore often also of restorative justice programs. In many countries, access to restorative justice depends to a large extent on these legal authorities, which are often not yet sufficiently informed and prepared to apply this new way of approaching crime. A ‘right of access’ to restorative justice provisions should be guaranteed, without hindrance or bottlenecks in referring procedures. This is not to deny the important role of judicial authorities and legal profes-

sionals, including lawyers, in restorative justice programs. Because of their central position they are well placed to inform citizens about this offer, and to facilitate the initiation of mediation and conferencing processes. Moreover, they can offer or supervise legal protection and safeguards when victims and offenders participate in restorative justice processes. Equal access, legal assistance and proportional agreements are just a few examples of these legal safeguards, which are also important for people participating in mediation processes.

Restorative justice has been criticised because of the pre-dominant offender orientation of some programs, linked to a weak position for the victim. Victim support workers have rightly expressed concerns in this respect. Restorative justice should offer a balanced approach to the needs of both victims and offenders, and victims should not feel pressured or used in the interest of the offender. For this reason, victim support services should offer their support to restorative justice programs at the local level, in order to preserve the right balance and to offer protection to vulnerable victims where needed. The same goes on the offender side: additional support might be needed in some cases. Finally, a restorative justice process should not be reduced to just a process between the victim and the offender. Norm transgressing behaviour by definition affects society, and therefore the community dimension should be included in restorative justice processes whenever possible. But social norms are not static phenomena: they are continuously shaped and refined – in the best democratic way through dialogical processes.

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- National Association of Community and Restorative Justice (USA): <http://www.nacjr.org/>
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- Suggnomè, Forum voor herstelrecht v.z.w. (Belgium): <http://www.suggnome.be/>





INSIDE THE DISTANCE ARTIST STATEMENT/PROJECT DESCRIPTION

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“Punishment and the attribution of suffering is of course legalized, but should be the last possible outcome when dealing with crime” – Leo Van Garsse – interview

Inside the Distance advocates for mediation as an alternative to dominant modes and theories of retributive justice and punishment. Within the project the space of mediation – the mediation table – is represented as a boundary object – a place of cooperation without consensus. *Inside The Distance* explores the subject positions of each participant – victim, offender and mediator – and the many ways in which those positions are fluid. Mediation meetings often begin with a verbal reconstruction – an agreement about what happened – who was hurt and how – and then an attempt to understand why. These conversations are a form of reenactment. For *Inside The Distance* I staged reenactments of these encounters as described to me in interviews with victims, offenders and mediators, and edited the video to sound from the interviews. It is an extensive work that includes over 100 original edited video clips of varying lengths with audio excerpted from over 40 interviews conducted in Belgium during a two-year period.

The structure of the project – a web documentary and an installation with video and a touch-screen interactive interface – is organized into three parts:

“the Accounts” – presents the narratives of mediation cases as described to me in interviews with Mediators. These narratives are visualized through staged enactments that represent the notion of being and holding accountable.

“the Positions” – addresses the instability of subject positions – as articulated by Victims, offenders and mediators through their own personal reflections.

“the Spaces” – takes up the ethical, theoretical, and discursive space of justice and punishment and the public and political space mediated or, perhaps, governed through law and criminalization in statements made by mediators, psychologists and criminologists. Mediation is, in a very literal sense the object of study in *Inside the Distance* – but the idea of mediation is also a “boundary object” for me – a conceptual tool that helps me to grapple with questions of

ethics, aesthetics and activism. The tag-line for the project, “we are all victims I we are all offenders”, suggests the importance of boundary crossing as a means to understanding.

I have viewed all of my work in interactive ddocumentary as a form of resistance, critique, opposition and activism. But I have long held in somewhat uncomfortable tension my somewhat radical political position as a prison abolitionist with my sense of practical ethics – the question of how resistance in a pure, theoretical and political framework can improve the material realities of those who are oppressed by our criminal justices system now. Thinking about Mediation as a boundary object between affect and action helps me hold these competing desires – not in balance but in tandem. My hope is that the work that I do can also function as a mediation – a boundary object for viewers – across conflicting and unequal relations of power and unstable subject positions.



The conversation takes place across a table—

Victim and offender gauge the distance over which they face each other:

The dimensions are not fixed – a span (of time), an expanse (of space) – reach, withdrawal, restraint.

Crime is a social phenomenon – conflicts, estrangements, violations, at once, create distance and proximity—

The act – signaled by the kind of high piercing shudder that ushers in the epileptic's seizure – is an immeasurable, boundless instant of fear and aphasia.

And in the aftermath – as with the seizure – there is a loss of time and space – only the sign and the destruction it announced, remain.

In the aftermath two subjects emerge – there is a victim, there is an offender, and there is the space in between.

In the aftermath, the state intervenes – to protect/ to punish. The prosecutor stands-in for the victim – this casting is not self evident – there is no particular likeness. The state performs its balancing act. Justice is played out – but its retributions do not atone.

Atonement requires a change of identity – a transformation of the offender or of the offense that erases guilt or compels remorse – We are intended to suffer in recognition of our own misdeeds – not punish others for theirs.

After the trial, the conflict is over – or so it appears at a distance – but not for the victim or for the offender – the act, the crime, brought them into a relationship that is, as yet unresolved. They each have questions – why me? What have I done? What actually happened? How did I react? Who am I in this case? Paradoxically, they need each other's help to find the answers.

In boxing "the distance" refers to the scheduled length of a fight, 9 rounds, 12, – for the boxer, as for all of us, the goal is to stay standing, to win, inside the distance.

In the space of mediation "the distance" is materialized in the length of a table – the time of a meeting –

This encounter becomes a kind of reenactment – not a reconciliation but a re-consideration of a fact—

They recall the event, rehearse it's details – measure the intervals, the gaps – struggle to revise the plot – to remember who they were and recognize what they have now become

————

There is a sense of Futurity in reenactment – embodying an inclination toward a second chance – another version of the past that ends up differently

There is a special kind of truth to reenactment – a sense of sanction, authority and consent – creating an agreed-upon version of what happened that is somehow more than the reality it represents

What follows here is also a kind of reenactment – more document than documentary – that stages the accounts, positions and spaces of mediation described to me by victims, offenders and mediators

I asked the actors to change places and assume conflicting subject positions – to perform the transformations, shifts and reversals that occur in lived experience – after all – at some level – at some moment we are all victims, we are all offenders.

ACCOUNTS

MEDIATOR (Kristel Buntinx)

"I also had this woman – she was in her Thirties and she had been the victim of a group rape when she was 15. And she had a mediation 15 years later when the offender was still in prison for other crimes. He was 17 when he committed the crime and she wanted to do mediation with him because he was the first one – and she thought that he was taking care of her and he was in love with her and then he raped – her and he also let his friends rape her. She was going to the youth club on a Wednesday afternoon and together with a friend, another girl, she met the boy and then they all ended up at her place because her parents weren't home. He asked if he could see her room so she went up with him and then there he wanted to have sex with her. She didn't want it so he raped her. And then he called his two friends who were downstairs and, I think in a way, even presented her – just to take her and have sex with her – and they all did. So she told her parents, but they blamed her. The boy was 17, and he was already known in the youth system, so nothing really came out of it afterwards. So for her it's like 'he has never been punished, my parents have never supported me...' And she went on with her life but in her thirties she discovered there were some marriage problems, also sexual problems, that had to do with the rape. She went looking for him because she wanted to talk with him. She still had this one question 'I trusted you so why did you rape me? I thought there was some connection – some feeling of love...' She found his address – she called – his mother answered the phone and she said, 'can you tell him to meet me tomorrow evening?' But at that point he was in prison for other crimes. But, I think through the therapist, she heard about mediation and then she contacted me. I went to visit him and to ask if he wanted to cooperate. He was also minimizing. He said, 'it wasn't really a rape – she never said no,' and things like that – but he said, 'ok I want to meet her.' And so I prepared her – I said, 'OK, you will be able to ask your questions but maybe you will not like the answers' – but for her it was still important that he would admit that he raped her.

I went with the victim to the prison but at the beginning I made a huge mistake. I told the victim, 'it's in

a lawyer's room' and she was thinking like this is a conference room with a big lawyer's table and she's sitting here and he's sitting – I don't know how far away – and she came in and saw the small table and said 'Oh my God, no!' So I asked for another table – a bigger table, like not one meter but two meters, and I got another table and I say to the guard, 'Wait [outside] with the offender until she is feeling comfortable again.' And she decided, 'its ok the room is ok'. And he was brought in.

She started telling things to me and also he did the same he would say, 'Yeah Kristel, can you tell her...' And I said, 'OK, but tell her yourself.' And at some point they started talking to each other so I decided, OK maybe I can try to get out of the conversation. And at some point they were sitting toward each other and talking. She was able to tell him, 'Maybe I never said no but I was so scared I thought that you knew that I didn't want it.' And at some point he recognized and he said, "yeah I think I did know that you didn't want it – and I raped you."

For her that was such – that was the only reason she had come to the prison and she got it from him – and also about why he got his friends involved – but she said, 'The most important was him because he broke my trust and he apologized for it.' And for her it really felt very honest and she believed him. When they turned toward each other – that's the image of what mediation is about – to meet each other and talk to each other about the crime."



MEDIATOR (Leo Van Garsse)

"There was one case of a theft in a shop – which was, of course, a minor event – but the thief was very much under the influence of drugs. The woman in the shop saw that he was stealing something and she intervened and he attacked her with a knife and seriously hurt her – mutilated her in her face. The victim on several occasions had taken contact with the prison staff in order to have the occasion to meet the offender. And the prison staff refused saying, 'OK this is too dangerous, this is not good for you'. But the woman insisted. And the reason she insisted was that she didn't dare to leave her home alone since the event. And she said, 'OK, what I really need is some answers to certain questions because I feel that only this guy can help me out' – however paradoxical it might sound. And I must say I was very worried on this case because it was obvious that she was still very vulnerable – you could see it in her face – by the way, you could really see the marks and signs of this event still there. I was really worried about the possibility of suicide. I thought OK – what could this confrontation cause for this woman. So I insisted that whatever meeting that we should have the representative from victims' assistance should be present – as a witness but also as a support person.

I had to insist a little bit with the prison staff in order to get an appointment with the offender because at first they were refusing. They said, 'He is a strange guy and maybe a violent guy'. It was obvious that he was still using drugs even in prison – and he didn't even deny it. It took him some time to wonder over the possibility of meeting the victim – whether this was a good idea for him – whether he could cope with this confrontation. And then he contacted me again and he said, 'OK, I looked at myself in the mirror this morning and I thought – but if you are really a man then you should go for this.' I had the impression that he also was quite a vulnerable person.

And then we met. And I thought it could be a meeting for like one and a half hours and this meeting took four hours. And what the woman asked us to do in this meeting was to reconstruct the event second by second – to say, 'OK, I was in the shop.

I saw you. What did you think? What did I think? I said this. What did you think? What did I think? And at a certain moment her sister had come down – she was living upstairs. By coincidence, she'd heard something in the shop and she came down and then she discovered – and then the guy ran away. And one of the questions from the woman was 'what would have happened?' And there was a lot of silence and the guy said, 'I don't know. I don't know'. Which obviously was extremely traumatizing for the both of them. They were crying and we were all crying.

And afterwards in the debriefing I asked the woman, 'OK, what did this mean for you – because you didn't get an answer.' And she said, 'Of course I did. From that time on I knew this guy is honest with me. Because, in saying "I don't know" he also said, "I could have killed you". Which means he wasn't playing games with me he was really honest and he was really talking about the event as it happened.'

Would this guy have reoffended afterwards? Would this guy have used drugs still – I think so – and I think he did – and I think the victim also knew. This was not the issue. It was obvious that this guy was in a situation, and also had a background where the possibility, the chances, of leaving the old atmosphere of criminality would be very low. And we all knew and there was no obvious and immediate way out. And of course also this meeting was not an immediate way out. But I think for this guy, at least – I think this was an enormous confrontation. This was not, by definition, a violent guy. I don't think this is a violent guy at all. But he lives in a very marginal atmosphere, relationally. And so, if we don't have a decent job for him – if we don't have another atmosphere for him – other people for him who are willing to live with him on a day-to-day basis – OK, let's be realist, there is no immediate way out for a guy like this – there is not."



POSITIONS

VICTIM (Catherine)

"The accident happened on a Saturday... The children were coming back from horseback riding but they didn't come back. My husband came from the front door with two people, it was a man and a woman from the police, they told us they were – they died at the moment that the accident happened – they died before rescue came – and of course we asked how it happened and they said a young boy from Romania under the influence of drugs was driving far too fast. And I asked how old is he – 20 – and I thought 'oh, he's just a boy – he's a child himself'. It's really strange but I reacted exactly the way rescuers have to act at the scene – they must see who is still alive or who is dead so they know who to help first – the dead people they don't have to take care of. And oh, I thought, 'Oh, dead, dead, dead, the boy is still alive is anyone taking care of him?' It's really strange but in some ways it's like I felt what the boy felt at that moment.

I know within the hour I was thinking 'I forgive you' but I had to keep that inside of me... I wanted to see him but I felt like nobody is going to understand...

So finally we met in the prison... the first thing I told him when I saw him was, 'We go through this together.' And I knew what I wanted to ask him, because, from the moment I knew about the accident I was worried about his parents. I thought, 'He's just a boy. Where are his parents? Are they in Belgium or Romania? Maybe he's rejected from his family.' so the first question I asked was, 'What do your parents think about the fact that you're in jail now... what does your Mum think about this?' and he said, 'I have no mum anymore.' And it touched me – it was like – it took my breath away – so I asked what happened – "suicide" he said – and I asked why – 'bad life with my father' – and I said, 'what about your father what would he say about it?' and he said, 'I don't know I don't talk to my father anymore.' And that's how the conversation started...

Then I had with me photographs of Ann, my friend, and our three children who all died in the accident. And I made a small summary about their

lives and who they were... and for my daughters I used more photographs showing them with their pets, doing their favorite things... and when he saw the photographs he couldn't breath anymore and he had to get up and go to the window – and he was crying a lot and we had to wait until he could come back to the table... That first day we met we were 1 hour and 50 minutes together and I think he was crying all the time. Also after I told him about Ann and the girls I wanted to show something a bit shocking – it's our last family photograph with both the families together – and it was taken before the date of the accident – and then I took exactly the same photograph but I put all black over all the people who died in the accident so you could see the difference – to show – to make him realize – because I didn't know who I was going to meet and I was not sure – you know I came with lots of comprehension and lots of love but at the same time I wanted to show him that it is also bad – it feels bad.

We agreed that we would meet again after the trial. I already knew in my head that I wanted to keep visiting him but I was not sure he would like that. He had several trials to go through, not only for the accident but for drugs and other things. After all the trials were finished I was free to visit him whenever I wanted to – if he agreed, of course. So for several months we saw each other three or four times a week. One day the mediator asked him, "Is that OK for you that this woman comes all the time? Maybe it's not nice for you?" And he said, "I will do it as long as she needs it." And that's really strange because I was feeling that I was helping him and he was doing the same for me, you know. We were each helping the other one but actually we were helping ourselves.

I think my life would have been a lot more difficult if I had stayed with many, many unanswered questions – how it was for him, what happened, and how was his life after. If I had stayed at home and hadn't wanted to see him I would have become very hard and sad. And also I saw him trying to be a better person in jail and that helped me a lot – looking to a better future – I was hoping so much for a better life for him."



VICTIM (I)

"Five years ago I was the victim of a robbery and sexual assault. I had, at that moment, so many questions – how could, why would anyone do this? I needed to ask. I knew that I could never get past this if I could not ask. At victims' services I learned about mediation. I had not known that it existed. I immediately asked if it was possible to in my case. I did not even stop to think of what the consequences might be.

It was important for me to see him but I did not want him to see me during the mediation. We eventually had the conversation through a camera and we were in a separate room. He could not see me, but I could see him on all three sides. It was good to be able to see his face when he responded.

My first question was: "At the time of the assault I saw that it did something to you. That you felt sorry." Is that right? – It was the fact that he had comforted me after the assault – that was something I always kept asking myself so I needed to ask him: "If you commit such acts where does that emotion come from? I think it's an emotionless thing you do and still in the end that emotion was present for you" We could see that he was caught by this question. His face, his body, changed.

Then he answered that he has also been abused as a child – That did something to me – to see that he... That I actually got an answer and that this was actually the reason. That was the whole purpose of the mediation. Once that question was answered I felt a certain peace. Now I know that he did this after what he had experienced in his childhood.

No one in my life understood why I did not see him as a monster or hate him. That's something I never could explain because... they were of course not present during the assault, but to see how his emotions did not fit with his actions, to see that he was sorry even in that moment, that's why I thought of him more as victim than as perpetrator.

I was not present at the time the juvenile court decided to refer him to the adult court and he apologized to the victims. I was not there because I really did not want to hear all the stories of the other victims. The stories I did hear are still in my head. And I've always been a bit afraid of what would happen after his 8 years are up – when he is back in society. How do you manage that?

What happens after he is out of prison? This is the reality. I live in the neighborhood – How big is the chance that I will see him again – So now I want to tell him that I still feel unsafe and that I am afraid of what his plans are after prison – that we, I still suffer as a victim – along with all his other victims – that our lives are completely changed forever. Our lives have been changed, just as his life is changed by prison. So I've written him a letter and in my letter I wrote: "You are a prisoner, literally, but I feel, as a victim, also like a prisoner trapped by my experiences." That's what I want to tell him, that after so many years I still suffer. He should be aware of the impact and know how hard it is for his victims because he is also a victim. So I was hoping to remind him that after all these years the facts still have an impact on me. That is the intention of the letter. It has been 5 or 6 years. He has taken a lot from me. I am more than a victim but I am still a victim nevertheless. I am just really grateful for the entire mediation process and that the people of the mediation services have always been there for me – even now, after all these years."

MEDIATOR (Bie)

"Because I read the file and the emotions of all these girls – I do a lot of mediation in sexual violence and I had to read the file (of the offender in this case) and when I read the file I thought, "what a beast you are – when you are raping these girls you are not a human being you are a monster" and it came into my body like a rush of blood and I thought if I can't talk with him about my feelings – I had to talk of it because I couldn't continue – even though I knew he was also a victim of sexual abuse and so I saw him and there I said I first have to tell you about this feeling I have – I told him I read the file and I thought "what a monster you are and what a beast" and he said "yes. that's right, I am not a human being at that moment" so we could talk about it at that moment and by saying it he admitted it and he recognized himself so we could continue. I saw him as a person who did something wrong and I think if you are a mediator you have to see human beings who are doing something wrong but they are human beings and you have to give them a chance to take responsibility for what they have done."





MEDIATOR (Bram)

"My boundary with offenders is "I can work with this human being because he is a human being but also because I want to understand his actions – and if he's willing to try to explain himself to me so that I can understand him as a human being it's my belief as a human being that I can work with him. But if he is not giving me a sense of taking accountability in explaining why he did what he did – how he sees his behavior – then I have a problem.

When I work with sexual offenders of small children I tell myself I can work with this person because someone else needs me to work with this person. I had a meeting with a sexual offender who said "my point is that I always am attracted to young persons and I know that they are very vulnerable and I only take pictures of them and maybe when I discover there are some homosexual tendencies then I go further" – so he was really trying hard to convince himself and me that he worked within values that he believed in and that were correct – so he said, "I want to use the mediation to see if I was wrong – at that time they were 14 and now they are 40 and maybe they are going to tell me 'you were wrong' – or if they say 'no you were not wrong there was respect there was some kind of love or relationship it was ok' then I can be at ease with my own values and then it is a problem of society." And that challenged me in a lot of ways. And now I'm going to listen to the victims' side and they are going to tell me what they want to tell me. But the thing is, he was willing to try to explain his point of view and that makes it possible for me to work with him and to not see him only as a monster.

What I realized as a human being and as a mediator is that a human being is not a victim or an offender he has a story and in that story there are some responsibilities that are related to the other's story – it is a strength for a mediator to realize that, we say in Dutch "you always fall between two chairs", you go and listen and you think "I have the story now" but by experience I know that the other one is going to tell his story in such a way that I am going to be confused again about what is now the truth what is the most important thing and how can I combine those things – so if people speak out of

a certain position – as either victim or offender – they never see the whole story for themselves and I suppose it is the same for me in my life

After so many years the ugly stories get under your skin – and I always thought 'It doesn't happen to me' but then At one point I discovered I am infected – I have it myself – I didn't sleep any more – so and then I started trying to discover where did it happen and it happened with a case of sexual abuse within the church – a combination of serious cases that were getting under my skin that caused a crisis for me – up till a few months ago what I normally did I would make it a point to gain their confidence as a mediator and as a human being – so I took the time to go to their house – I took the time to literally speak for hours with them – because they start first to discover 'who are you' what do you think about my loss my grief are you willing to look at pictures of the one who is lost – who is dead what are you able to do can you deal with the hurt and the pain – and what do you think of the offender – do you like the offender ? So it takes time and what I learned is I took too much time so now I say to myself I will go to the home of the people but not longer than two hours – I take now less time in one meeting and I do more meetings – so the therapeutic thing I learned there was yes, it is important to focus on the process and on the trauma but I have to take more care of myself – and as a mediator you have to take some distance... because you have to go over to the other side.

And as a mediator you come in contact with every class – in every kind of neighborhood – and that has enriched me as a human being – I can only say that I'm grateful – I'm apparently a person who is curious about other human beings who is interested in the lives and backgrounds of other people – it is interesting for me to work with a murderer who comes from a background mine or one who has led a life where it is clear that he's going to end up there – but if I look back I have to say that this is my education from my family – I'm coming from a middle class background myself – I come from a family where I didn't have to experience trauma – on the other hand I grew up with a lot of opportunities and the dark side of my education is that my parents gave me everything I would need to be happy – so I have to be happy."



OFFENDER (Angus)

"The mediation, it was an experiment, because it was the first time someone who hadn't confessed before, confessed after and then asked to meet his victims. I didn't take responsibility during the trial – after, when I came to this prison, I worked with my counselor and after a while I said, look, I have to tell you something, I want to take my responsibilities, because I didn't do it before. And they were, not shocked, but they looked at me like, "come again?" and then I told them, I said, "I did a few courses here inside and in these courses you share with other people what happened, how you feel about it, how you get through it, what it does to you, what it does to your family, what it does to the victims, and it grabs you. And then at night when the doors are closed you have time to think about it. And so I said to myself (because I was brought up the right way, my parents always told me, it's never too late to do the right thing) I said 'this is the moment to change your life and do the right thing'. I went to the counselor, I said 'look, I was wrong in the past and I want to do the right thing – I never confessed and now I want to confess.' In the course they prepare you to understand that you cannot undo things – they will attack you – they will, with words – they will show their anger – they will – but this is the meaning of it – the only thing you can do for them is take it – it is all you can do. They come here, they show you pictures they ask you questions they come to throw the hate out of their heart and all you can do is catch it and take it – as much as you can you take it away from them – that is what you hope to achieve. And they ask, why did it happen, you had different options. And then they show you pictures – look what you have taken from us – because you took somebody from them that they loved – why did it happen – they ask you again, and again and again and again. I told them, 'I can explain to you what was happening before it happened – how it happened – why it happened – but I have to tell you that I am not looking for excuses – what happened – what I did – there are no excuses for it.' And after about a year they came back. For the first 2 ½ hours it was heavy, with difficult questions, and after a while it was about memories – because they know me and they have some memories about some things that happened – also some good things. And then at the

end – it ends beautifully – there was a smile from both sides – and this I will never forget. It was, for me, also a sign – 'don't regret this – you did the right thing'."

OFFENDER (Koan)

"I'm inside for manslaughter. I've got 25 years – and more I don't want to say about it. I asked for mediation because it's the only thing I can do. I sent first a letter when I was in another prison – I think a few months after the trial – I thought it was useful for the victims and that's why I contacted them – and I know the family also – it's only for them I do this not for myself – and they didn't want to see me – they were happy with my letter but – yeah, I was very drunk at the time that it happened and I can't remember much of it and they are still having the questions "why" and "how" and that I cannot answer – I'm still looking after answers also – and – no – they are not coming – yeah, how it actually happened and why – because I had a fight but there were no troubles before between us – I don't understand why I – how I – I'm able to do something like this – I'm wrestling with this question – how it's possible that I did something like this – I have to live with it – and I mean I did it I'm not a victim – I'm very sorry and – it even makes me sick – I cannot explain why and how and I'm also sorry for that – that I cannot explain and I feel very bad about it every day – that's about it

If they tell me I'm never going out of prison again I don't know what I'm going to do – I was thinking about suicide the first three months – but that doesn't solve anything

And now I'm 5.5 years inside. For me, I think, time does not move in prison – it stands still – I mean I get older but I still feel like I was 32. I mean if you lock people up and you don't do nothing with them it's no use. Locking people up – I think it's pointless anyway – yeah, you understand already I killed somebody and I just accept because it's unforgivable what I did then – yes, but the way of punishment is completely fucked up – but I thought all my life this way – locking people up is state violence in my eyes."

SPACES

MEDIATOR (Leo)

"A criminal event causes a lot of uncertainty – of course that's the case for the victim but in a way it is also the same for the offender – because the offender does something – he has his motives at that particular time but he has no idea in general of the consequences and so he does something and afterwards a lot of other things happen and so also for him it is quite a challenge to try to integrate this kind of event within his own life, within his own identity – to give it meaning, to deal with it, to cope with it – how will I cope with the consequences of what happened – in the mind of the victim there is a lot of mythology after a criminal event – "what happened? What did he think? Oh, maybe the week before I saw this guy, maybe he was already planning to do something – because it couldn't have been by coincidence." But strangely enough you have similar reactions in the offender who on many occasions is very much afraid of what will happen now. You shouldn't underestimate the degree to which offenders are concerned about the victims – what do they think of me – it is also a matter of self esteem, of course – what do you think of me – their interest in mediation lies there – to get some answers to this particular question – to try to cope with the answers – maybe, if possible to try to correct something – in the image the victim has – and it has to do of course with self esteem – who am I – at this point the victim is quite important as one of the elements in the self esteem (of the offender).

The reasoning in mediation is "given that we are so different, given that the event was so cruel, or given that my situation is so perspectiveless, how do we cope? WE plural, how do we cope? How do we give, or try to give somehow a common meaning to this situation. The prosecutor is not the victim and the identification of the interests of the victim with the prosecutors' position isn't self evident at all – which means that the position of the justice system, as such, is far more complicated than the position of mediating between the aggressivity and the vengeance of the victims and the rights of the offender – this is the classical discourse on the position of the criminal justice system – alleviating and civilizing the relations – I think this is very

naïve and a very one-sided view. I think the reality of what is happening now is far more complicated. We are really blaming the victims as a group in this identification of victims with vengeance and the request for harsh punishment, and so on – this is at least not my experience – I can't speak for the whole group of victims but I could illustrate the opposite – I think this is also interesting from the democratic standpoint which means that the position of our criminal justice system in a democratic society as it develops now will be far more interesting, far more political, but far more complicated than it was before.

What we are doing now in our criminal justice system we are like 'maintaining' a certain group of people in this atmosphere – that's what we are doing. We are disciplining a certain group a certain layer within our societies within this criminal atmosphere. That's what we are doing – nothing more. And I think the meaning of mediation in all this could be to reestablish the contact between the public in general and this reality. And so to try to cope in another way – and I think it is a long – term process but it is some public education. The case is an occasion – an occasion for learning – of course for the offender and for people in prison in general but also for the citizen in general."

I'm not afraid of speaking about the responsibility of the victim – not because the victim should be blamed for what happened but on the other hand just because you are victimized it doesn't mean that you shouldn't be able and prepared to be addressed – to speak out to give your opinion to maybe also to negotiate what is next – this way I think mediation is part of the democratic project.



ART FOR SOCIAL CHANGE



EXPLORING RESTORATIVE JUSTICE THROUGH THE NEW MEDIA DOCUMENTARY *INSIDE THE DISTANCE*

1 Brunilda Pali is Researcher at Leuven Institute of Criminology, KU Leuven, and she has been part of the project, especially in its initial phases and in the every end of it. This essay is written in close collaboration with the artist Sharon Daniel.

Brunilda Pali¹

INTRODUCTION

The Californian digital and media artist Sharon Daniel from the University of California in Santa Cruz has collaborated with the Leuven Institute of Criminology, STUK Art Center, Suggnomè (the Flemish umbrella organization for Restorative Justice), and the European Forum for Restorative Justice during the last two years on the arts project "*Art for Social Change: Exploring Justice through New Media Documentary*", funded by OPAK (Research Platform for Architecture and the Arts).

This interdisciplinary, international arts research collaboration has explored the use of new media technologies and documentary strategies to document and actively participate in the practice of restorative justice in an effort to test the potential for activist art practice to have a direct role in changing social conditions. In interacting with Sharon Daniel, we had the opportunity to create a focused dialogue, addressing the intersection of artistic and social practices. This project has brought together, research, art, theory, and practice in a very innovative and interesting way.

The project *Art for social change: Exploring justice through New Media Documentary* has turned to artistic practices to investigate the ways in which art can mediate, enhance, and make tangible new understandings of the notion and practice of justice. The project has culminated in the Exhibition *Convictions* which has taken place in the STUK Art Center. In a broader sense, the exhibition investigated whether a new imagining of affect and responsiveness is possible through the use of specific visual, narrative, poetic, and formal frameworks.

The exhibition *Convictions* brought together four projects by Sharon Daniel. *Public Secrets*, *Blood Sugar*, *Undoing Time* and *Inside The Distance* manifest Daniel's fully engaged and critical understanding of the prison-industrial complex, criminal justice system, and theories of justice and punishment. What characterizes Daniel's work is the belief that complex sites of socio-political experience are best examined by creating a context for multiple perspectives and engaging public participation. The interactive interfaces that are typical of her work allow viewers to find their way through a difficult terrain, become immersed in it, and have a transformative experience. The works in this exhibition introduce marginal and often silenced voices.

es and present alternative visions, enabling public engagement with questions of social justice across social, racial, political and economic boundaries. In this essay I focus in some of the features that characterise Daniel's work (mainly the project *Inside the Distance*), and think of them in relation to the practice and theory of restorative justice.

INSIDE THE DISTANCE: "WE ARE ALL VICTIMS | WE ARE ALL OFFENDERS"

Inside the Distance is an interactive New Media Documentary on restorative justice, an alternative to the criminal justice system, which conceives of crime as a concrete disruption of, and harm to, human relations. New Media Documentary shares many theoretical premises and methods with the practice of Restorative Justice, since they are both founded on democratic participation through dialogic processes. The work examines the practice of mediation in Belgium, by bringing together many interviews with victims, offenders, mediators, prison directors, and researchers.

Her art practice is based on extensive interviews, and deep research about the subject matter. What we see in the documentary is the artist's interest in the fluidity of subject position between victim, offender and mediator and the way in which notions of neutrality or fixity get broken down in that process. This brings us to the point of how we determine what is criminal and what is not criminal and what kinds of behaviours are criminal and what are not. The victims she speaks with were not really interested in incarceration as a means of addressing their conflict.

Inside the Distance will take the visitor through an intimate and at the same time social and political journey of what it means to be a victim and an offender, what it means to address the harm in a meaningful way, and especially on questioning subjectivity and the space in between the distance created by very different and at the same time common experiences. Or in the words of Sharon Daniel, '*crime is a social phenomenon – conflicts, estrangements, violations, at once, create distance and proximity. In the aftermath two subjects emerge – there is a victim, there is an offender, and there is the space in between*'. The tag-line for the project is "we are all victims | we are all offenders".

The structure of the project – an installation with video and a touch-screen interactive interface – is organized into three parts: "*the Accounts*" – presents the narratives of mediation cases as described to the artist in interviews with mediators. These narratives are visualized through staged enactments that represent the notion of being and holding accountable; "*the Positions*" – addresses the instability of subject positions – as articulated by victims, offenders

and mediators through their own personal reflections; “*the Spaces*” – takes up the ethical, theoretical, and discursive space of justice and punishment and the public and political space mediated or, perhaps, governed through law and criminalization in statements made by mediators, psychologists and criminologists.

The mediators she interviewed tell how mediations almost always begin with a focus on the details – victims and offenders confirm each other’s understanding of what happened – who was hurt and how – then finding a way to understand why – acknowledging the instability of the positions they are in. Within *Inside the Distance* the space of mediation – the mediation table – is represented as a boundary object – a place of cooperation without consensus. Sharon Daniel’s hope is that this work can also function as a mediation – a boundary object for viewers – across conflicting and unequal relations of power and unstable subject positions.

THE ARTIST AS A CONTEXT PROVIDER

Sharon Daniel often speaks of herself in relation to her work practice as a ‘context-provider’ (as opposed to a content-provider). She provides the means, or tools that will induce others to speak for themselves, and the context in which they may be heard. She engages with groups of participants who live at the margins, outside the social order, and attempt to create a space and a context for the assertion of their political subjectivity, in which their voices can be heard across social, cultural and economic boundaries.

There are some similarities in this position with the role of a mediator in restorative justice practice. According to some scholars, what takes place in a restorative justice encounter is creating a space that will enable recognition through speaking and being heard. According to Christa Pelikan², the concept of recognition pertains to inter-action, to the act of recognising the other person, of perceiving and understanding his/her words and his/her actions. In the course of the restorative justice process this act of recognition is to be aided by the mediator, who recognises the parties involved, and through this example can set in motion the process of mutual recognition and extend understanding.

Thus a mediator must provide the means, or tools that will induce others to speak for themselves, and the context in which they may be heard. A mediator is not to provide content, which is generally brought in by the parties themselves. A mediator often describes his or her own challenge of finding a position of redundancy, how to make oneself redundant, almost invisible, while at the same time being fully present, for balance.

2 Personal communication with the author.

Providing context can be interpreted in another way. In order to achieve formal equality of citizens before the law, the criminal justice system sets aside the context of the act, the relations of the persons involved, and it is not interested in the victim except as a provider of evidence. Rather differently, in restorative justice, instead of abstractness, we propose to provide a 'context'. It is an attempt of reintroducing a perception of events labelled 'criminal' as connected to concrete people in specific circumstances, as events touching upon their lives and their relationships.

In restorative justice, we propose to go back to the things themselves, back to the *lifeworld*, or the world of the directly lived experience. In restorative justice we believe in the potential of parties to find solutions through deliberation, and opt for procedures in which participants in conflicts are not constrained by the requirements of organisations or professionals.

Thus restorative justice as an alternative process of deliberation recognises the perpetrator and victim in their individuality and in their social context rather than subsuming crime to a general and reductionist legal category. According to this argument the starting point of analysis is not therefore the totalising, objectifying, and abstract categories of criminal justice system, but those concrete situations in the lifeworld which are experienced as problematic by directly involved people and which precede the abstract world of the penal system.

ART AS AN AFFECTIVE, PERFORMATIVE, AND POLITICAL SITE

The works of Sharon Daniel introduce marginal and often silenced voices and present alternative visions, enabling public engagement with questions of social justice across social, racial, political and economic boundaries. For her politics becomes a particular kind of speech situation – when those who are excluded from the political order or included in only a subordinate way stand up and speak for themselves. To draw from Rancière, critical art is 'setting out the encounter, and possibly the clash, of heterogeneous elements' that 'is supposed to provoke a break in our perception, to disclose some secret connection of things hidden behind everyday reality' (Rancière, 2009: 41). Thus critical (political) art is so not because it tackles the issues of political, social injustices, but because this artwork functions as redistributing the sensible, exploring the new potentialities of seeing and thinking. For Daniel, too, this defines the form of artistic work that she calls 'database documentary'. Through this form of practice, she appropriate Rancière's formulation of politics and transpose it into the register of art, thus materializing a space of 'dissensus' – not a critique, or a protest, but a

confrontation of the status quo with what it does not admit, what is invisible, inaudible and othered.

We can make the same parallelism to restorative justice. It can be fully argued that the encounter between victim and offender is a clashing of heterogeneous elements which provokes a break in our perception, redistributes the sensible, and allows ways for new explorations of seeing and thinking. Often mediation is criticized for attempting to create consensus through agreement or reconciliation, but if we think more deeply instead of the true political potential of the act of bringing together a victim and an offender, we can argue that this creates 'dissensus', a real confrontation with how things are done normally through the criminal justice system.

We have to move beyond the terminology of agreement and reconciliation as consensus towards dissensus, and Daniel can certainly help us with that. In *Inside the Distance*, Daniel has used reenactment as a strategy, as a new design and argument tool, which she considers as a parallel to the practice of mediation in restorative justice. This strategy is proposed as a 'fiction', in Rancière's terms – not the opposite of 'real' but a reframing of the 'real'. The notion of reframing is key here to understand what happens in a mediation process. The introductory text of *Inside the Distance* elaborates this point and the parallelism with restorative justice:

*"This encounter becomes a kind of reenactment – not a reconciliation but a re-consideration of a fact. They recall the event, rehearse its details – measure the intervals, the gaps – struggle to revise the plot – to remember who they were and recognize what they have now become. There is a sense of futurity in reenactment – embodying an inclination toward a second chance – another version of the past that ends up differently. There is a special kind of truth to reenactment – a sense of sanction, authority and consent – creating an agreed-upon version of what happened that is somehow more than the reality it represents. What follows here is also a kind of reenactment– more document than documentary – that stages the accounts, positions and spaces of mediation described to me by victims, offenders and mediators."*³

3 Intro *Inside the Distance*

The other element which makes Daniel's work decisively political is her creation of a collective site of experience. For each project she collect the statements and the perspectives of a fairly large number of people who share a particular experience: for example, incarcerated women (in *Public Secrets*), or injection drug users (in *Blood Sugar*), or crime victims/offenders (in *Inside the Distance*). She provides a context that allows their voices to be heard both individually and as a collective voice. Her strategy involves addressing an issue, context or marginalized community as a 'site' (or scene or field) rather than through a story or individual narrative. She collects significant amount of direct testimony from a 'site' and then she de-

sign an interface structured in a manner that will both circumscribe and describe this 'site' of socio-economic and political experience as articulated by the participants. There exists a productive tension between the particularities of individual histories that are, the most compelling aspects of narrative persuasion, and the force capacity of the collective voice.

She argues that where one voice, an individual story, is intended to stand in for a class of subjects, there is a dangerous and disabling tendency to identify the subject as a case of a tragically flawed character or unusually unfortunate victim of aberrant injustice – rather than one among many affected by structural inequality. When multiple voices speak, in a manner that is intimate and personal, collective and performative, from the same experience of marginalization, the scale and scope of injustice is forcefully revealed. She has a firm belief in the power of this approach – as she thinks there's a weight of evidence when you hear one story after another, after another. Speaking from primary experience (as an individual with a particular perspective), and as part of a "class" of shared experience, constitutes a political act. It takes more than one story.

Visitors to *Public Secrets*, *Blood Sugar*, and other works of Sharon Daniel will navigate a multi-vocal narrative that brings the voices of her subjects into dialogue with other legal, political and social theorists such as Giorgio Agamben, Michael Taussig, Walter Benjamin, Fredric Jameson, Catherine MacKinnon, and Angela Davis. For Daniel all of their voices emerge out of a shared ethos and converge in critical resistance. Taken together, the recorded interviews or conversations, the information and interaction design and theoretical framework, materialise the Rancièrian 'political', creating a space of 'dissensus' both for participants and for viewers – one that introduces new subjects into the field of perception (Rancièrè, 2007).

The methodology that Daniel follows includes thus research, inquiry and theoretical exploration. It's about finding the intersections between the fieldwork, and what's collected there, and the core conceptual premise, and the theoretical apparatus that supports that premise. Daniel's work is built on extensive research, consisting of in-depth interviews. She approaches an interview as a performance of something true but not necessarily or always factual. It lies somewhere between emotional truth and constructed memory, it is always inflected by the context of the interlocution and the potential for misrecognition. The interview is also approached as a 'fiction' (thus not the opposite of 'real' but a reframing of the 'real') – a way of building new relationships between reality and appearance, the individual and the collective (Rancièrè, 2007).

In her interviews for the project, Daniel has been clearly influenced by the fluidity of subject position between victim, offender and me-

diator and the way in which notions of neutrality or fixity get broken down in that process. What does it mean to address the harm in a meaningful way, how can we determine what is criminal and what is not criminal and how interested are we in incarceration as a means of addressing conflict? These are all questions she asks and which are central to restorative justice, as an alternative to punishment and retributive justice. The tag-line of the project “we are all victims | we are all offenders” calls for a deep questioning of certain assumptions we might have about the relationship between victim and offender. By focusing on that it would question, larger questions about structural inequality, larger questions about the effectiveness about the criminal justice system, about punishment, etc. The project is based on testimony from cases where something was gained on all sides of the three different subjects. Something occurred that gave self-esteem, that relieved suffering that in one way or another resolved conflict and it was done through this interpersonal exchange as opposed to the imposition of punishment.

In the *Affectivist Manifesto* (2008), Brian Holmes writes that the world society is the theater of affectivist art. According to this thesis, instead of proposing concrete political change, the profound role of the artworks lies in their potential of increasing an understanding of the possibility of change. Using imagination as an artistic device, an artist help thus produce a precondition for politically and socially transformative effects. Only through imagination does one have the freedom to picture otherwise, of thinking ‘what could be’ and not only ‘what is’. Imagining the precariousness of all people and one’s own responsibility and role within such processes, Daniel uses strategies of affect to install a thought-provoking discourse on the possibility and impossibility of justice. As such, the exhibition space truly becomes a dynamic space in which different notions of aesthetics and justice can be experienced, projected, and made visible.

Through various strategies of affect, Daniel which urges the viewer into re-enchantment with and dwelling into the world and with the subject matter, into fields of ‘response-ability’. The notion of ‘response-ability’ is an interesting one. Again there is a parallelism between Daniel’s explicit and implicit call for ‘response-ability’ and restorative justice. Using affectivist strategies in order to wake up the ‘response-ability’ in her audience by offering them spaces of imagination of ‘untold secrets’ through ‘unheard voices’, and alternative paths that can be taken (*We are intended to suffer in recognition of our own misdeeds – not punish others for theirs*⁴) is key to her work. Intersubjectivity reflects the idea that we are fundamentally co-constituted in relationship to each other. In her book *Witnessing: Beyond Recognition*, Oliver (2001) argues that none of us develop a sense of ourselves as subjects outside of our relationships with others. From this fundamentally relational stance, Oliver claims that addressability and ‘response-ability’ are the conditions for subjectivity. The subject is the result of a response to an address from an-

other and the possibility of addressing itself to another. The notion of intersubjectivity-based 'response-ability' is also a central notion in restorative justice. As Daniel articulates:

*"In the aftermath (of crime) two subjects emerge – there is a victim, there is an offender, and there is the space in between. [...] the crime, brought them into a relationship that is, as yet unresolved. They each have questions – why me?, what have I done?, what actually happened?, how did I react? Who am I in this case? Paradoxically, they need each other's help to find the answers."*⁵

5 ibid

In restorative justice processes thus, what often becomes clear is an understanding of justice based on precariousness and interdependency—as a process in which one's responsibility lies in the understanding of the tense and vulnerable relationship to the other, to which one is inextricably bound. According to Judith Butler (2004) to encounter the precariousness of another life, the senses have to be operative, which means that a struggle must be waged against those forces that seek to regulate affect in differential ways. Because such affective responses are invariably mediated, they call upon and enact certain interpretive frames; they can also call into question the taken-for-granted character of those frames, and in that way provide the affective conditions for social critique. Interpretation does not emerge as the spontaneous act of a single mind, but as a consequence of a certain field of intelligibility that helps to form and frame our 'response-ability' to the world.

By providing a context, a political site, a performative space, and an affective frame, Daniel, like a good mediator, offers a space, inside the distance, for intersubjective 'response-ability'. Her work makes it possible for persons – who other wise would remain invisible – to become visible to us.

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BIOS

Sharon Daniel is a media artist who engages in the production of "new media documentaries" -- making the stories of disenfranchised communities available across social, cultural and economic boundaries. Daniel's work has been exhibited internationally at museums and festivals including WRO Media Art Biennial 2011 (Poland); Artefact 2010 (Belgium); Transmediale 08 (Berlin); the ISEA/ZeroOne festival 2006 and 2010 (San Jose, CA); the Dutch Electronic Arts Festival 2003 (Rotterdam); the Corcoran Biennial 2001 (Washington, DC); and in galleries from San Francisco to Sydney. She is a Professor in the Film and Digital Media Department and the Digital Arts and New Media MFA Program at the University of California, Santa Cruz where she teaches classes in digital media theory and practice.

Ivo Aertsen is professor and director of the KU Leuven Institute of Criminology. He holds degrees of psychology and law from the same university. His main fields of research and teaching are victimology, penology and restorative justice. His PhD thesis (2001) focused on the relation of victim-offender mediation to criminal justice. Dr. Aertsen has been chair of the European Forum for Restorative Justice (EFRJ) from 2000-2004, and has coordinated COST Action A21 on Restorative Justice research in Europe from 2002-2006, as well as the European FP7 project ALTERNATIVE (2012-2016). He is involved in various practice and policy oriented partnerships and has acted as expert for the U.N., the Council of Europe, the OSCE and the European Union. He is editor-in-chief of Restorative Justice: An International Journal.

Brunilda Pali is a researcher and PhD candidate at the Leuven Institute of Criminology (LINC), as part of the research team for the project ALTERNATIVE. She has been working for two years in the European Forum for Restorative Justice (EFRJ) on a project on building social support for restorative justice, which investigated ways to work with the media, civil society and citizens in the area of restorative justice. Subsequently she worked in LINC on a project on family mediation in cases of international child abduction, which aimed at creating a European training for family mediators and trainers. Brunilda has studied Psychology in the University of Bosphorus in Istanbul, Gender Studies in the Central European University in Budapest and Cultural Studies in Bilgi University in Istanbul. Before coming to Leuven, she has lectured at the University of New York in Tirana and worked in the Albanian Foundation for Conflict Resolution.

Marijn Lems worked as a programmer in the NWE Vorst Theatre in Tilburg and in STUK Arts Centre in Leuven. He was two years a member of the Dutch Theatre Jury and the selection of the series Blind Date - New Theatre On Tour. Since December 2013 he has worked as a programmer at Flemish Cultural Arts de Brakke Grond. In the summer of 2013 he was a juror for the grant of the Flemish Culture Award for Performing Arts, and in the summer of 2014 for the young creators prizes at Theater Aan Zee.

Pieter Van Bogaert is an art critic and curator, who lives and works in Brussels in the Flemish Institute for Visual, Audiovisual, and Media Art. He has worked for several exhibitions including Bergen Art Hall (Norway), Witte de With (Rotterdam) or Z33 (Hasselt). Recently his focus has shifted from images to the imaginary practice. He writes regularly for H-art and other publications, and gives seminars in academic and non-academic programs.

Pieter-Paul Mortier studied audiovisual arts at Sint-Lukas Brussels and Design at the Sandberg Institute in Amsterdam. In 2002 he cofounded Courtesan association, where he worked until 2006 as programmer and production assistant. From 2005 to 2010 he taught the trade scenario nonfiction at Sint-Lukas Brussels. From 2005 to 2013 he was a programmer of art & media in STUK art center in Leuven. He curated seven editions of the annual Artefact festival for art and media at STUK. In addition, he organised exhibitions which included the work of Harun Farocki, Alfredo Jaar, De Geuzen, Black Audio Film Collective, Ariella Azoulay, Sharon Daniel, Aglaia Konrad, Rotor, ... and organized with KRAAK and QO-2 a series about sound: Displaced Sounds. Since 2013 he has been artistic and coordinator at Courtesan and since 2014 he is also a lecturer of Theory of Media Art and Documentary Screenplay at KASK.

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