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CRIME AND CRIMINAL POLICY IN EUROPE
Proceedings of the II. European Colloquium

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Preface

The second colloquium on crime and criminal policy in Europe was held in Buchenbach near Freiburg in September 1989. The willingness of a group of European criminologists and the generous financial support by the Deutsche Forschungsgemeinschaft (German Research Organization) made it possible to meet here. The motives and the arguments for this colloquium have not changed since the Oxford meeting one year before. As Roger Hood mentioned in the preface to the proceedings of the first colloquium this one too "arose out of the desire expressed by a number of European criminologists for a forum in which a fruitful exchange of views could take place on those developments in research which have a direct bearing on important issues of criminal policy."

Of course, the contents of the second colloquium have changed. In accordance with the mainstream of criminological thinking and the needs of penal policy following problems were selected: environmental crime and environmental penal law, organized crime and its control, international comparative research in criminology, crime prevention policy, and victim-related alternatives and the criminal justice system. These topics are not recent. But the analysis and the crime political functions are in these areas indispensable as ever. This is not only true with regard to the criminological scientific community, but also for the politicians and, in general, for any European society or nation. The very first paper of the reports presented already shows that the problem-oriented analysis - not to speak of an adequate criminal political solution - still requires utmost efforts. But we are grateful and accept this challenge. The materials to hand are informing about what is already known, and also about what is not yet known. They give an opportunity to open one's eyes and to set new priorities in order to contribute as far as possible to a better world.

I wish to thank all participants - especially the rapporteurs and commentators - for their efforts. I am also grateful to Dr. Hans-Jörg Albrecht for preparing and organizing the meeting, to Mrs. Jacqueline Kaspar who assisted me in arranging the Colloquium, to Ms. Isolde Geissler who played a large part in providing the publication of the final text and to Ms. Beate Lickert for typing the manuscript. Fast publication of the colloquium papers is due to her very careful work. Furthermore, we all have to express our appreciation to the Political Education Centre for the standard of service given to the participants.

March 1990 Günther Kaiser

Contents

Commentaries:

5. Victim-Related Alternatives and the Criminal Justice System: Mediation, Compensation and Restitution

Main Report:

Commentaries:

1. Environmental Criminal Law and Environmental Crimes: Consequences and Effects of Implementing Environmental Criminal Law

Environmental Criminal Law in Europe

Legal comparative and criminological research

Günter Heine and Volker Meinberg

There is no doubt that hardly any other field has experienced such worldwide legal-political attention in the last few years as environmental protection. Ozone, wood and sea destruction, threatening of the oceans by oil catastrophes, acid pollution, algae pest, nutriment enrichment of the waters and contamination of the soil - to these major problems of the present nations have reacted, especially by strengthening their legal apparatus. The main emphasis is on shaping administrative law. Yet no country has failed to introduce new or to modify existing criminal regulation to protect the environment. However, different methods of framing criminal environmental law were adopted within Europe (I). Fundamental data of the current effect of the law shows that criminal environmental protection has brought upon new questions which necessitate thorough empirical research (II). The example of West German environmental criminal law shows that the multi-layered levels of analysis and fundamental results have been recognized.

I. A Comparison of International as well as Foreign Environmental Criminal Law

The transnational ecological connections and the new quality of global threats has led to great activity on the international stage. Certainly, at supranational level criminal law is encountered with reserve (A). In comparison, the national legislators have helped criminal law to a new boom - measured by the number of newly created criminal offences (B). But their quantity should not hide the fact that quite different functions are allocated to criminal law and that with implementation a range of difficulties arises.

A. Supranational Environmental Criminal Law

An environmental criminal law legally binding the citizens of all nations does not exist, nor is there an organization to which such a legislative competence could be granted. A **general international criminal law** is actually being discussed, but environmental protectioning encounters reservations: Mainly its already amply recognized protection merit is denied.[1] Also at the level of international agreements, obligations to criminal sanctions are so far only of minor importance. Practically only in the historical fundamental field of pollution of the high seas has it so far been possible to make it an obligation that breaches of agreements by undersigning nations create national criminal offences. Already the international agreement of 1954, set up to prevent the pollution of the sea by oil, declared pollution a criminal act. Similar provisions are contained in the Oslo agreement of 1972, a convention on the prevention of pollution of the oceans from ships and aircraft, as well as the supplementary London agreement of 1972. Also the MARPOL agreement of 1973, a large volume of regulations for the prevention of pollution of the sea by ships, as well as the Paris agreement of 1973 for the prevention of pollution of the sea from the land provide agreements which impose strict sanctions, possibly of a standard which all nations can agree to.[2] It has to be emphasized that agreements under international law, as a rule, do not usually contain fixed concrete measures to deal with offences. The main reason for this should be that there are considerable national differences in importance, function and type of repressive safeguards and referring this to a criminal-political determination is hardly "ratifyable". Probably, also connected with this is the fact that for the region of the **European Community** the Council of Ministers (as "the legislative body") is in principle not entitled to pass direct valid (environmental) criminal law for the member states.[3] It has to be recognized as well that the abundance of

1 See *Oehler* in: Krekeler u.a. (Hrsg.): Handwörterbuch des Wirtschafts- und Steuerstrafrechts, 1987, p.826; *Klages:* Meeresumweltschutz und Strafrecht, 1989 passim. In opposition *Bassiouni:* Draft International Criminal Code and Draft Statute for International Criminal Tribunal, 1987, attributes to environmental crimes a character of "international crimes". It remains open to question how this classification is tolerated by his calculated list of criteria: according to this, the exclusion of sovereign orders as a reason for non-punishment is typical for offences which demand international criminal relevance (*Bassiouni:* International crimes 1986).

2 These international agreements are published by *Edom/Rapsch/Veh:* Reinhaltung der Meere 1986. Compare also *Heine*: Umwelt- und Planungsrecht (UPR) 1987, pp.288 with further reference.

3 For questions about the extension of the national criminal law to foreign data see *Martin*: Strafbarkeit grenzüberschreitender Umweltbeeinträchtigungen. Freiburger Diss. 1989 (in print); *Oehler:* Goltdammer's Archiv für Strafrecht 1980, pp.241; *Tiedemann:* Revue de Science Criminelle et de Droit Penal Compare 1986, pp.270.

multi-national activities has had and will have an indirect influence on national criminal policy.[4]

B. Foreign Models

1. Stages of Reform

In historical development the law was initially allocated the task of regulating the distribution of mineral resources and the cultivation of the environment. Repressive regulations supporting these uses were subsequently found in the rules of repressive police law which was soon extended by special provisions for the protection of the general public and public order, as e.g., criminal sanctions for the prevention of "public nuisances" within Anglo-American legal systems.[5] Coming from Sweden, the Netherlands and Japan since the end of the sixties, a **new international criminalizing** trend can be observed. It is remarkable that in many countries reforms of the reform (sometimes several times) have been executed and also that current reform endeavours characterize the criminal-political discussions in many places - all with the declared aim of creating a greater influence for criminal law within the field of environmental protection.[6] These repressive tendencies and the readiness for modification are, amongst other things, connected with a spectacular destruction of the environment, with a wide effect on the public, which obviously had to be reacted to quickly politically, creating a new kind of criminal problem of who is responsible, and lastly probably also with general steering difficulties of the nations dealing with the protection of a multi-interest-matter like environment.[7] Taken as a measure, the legal discontinuity seems to suggest that sometimes it proceeds more according to the slogan "trial and error" (or pressed by politics) than on the basis that it would be a balanced long-term criminal policy. However, it has to be taken into account that criminal environmental protection moves within a dynamic field which is marked by an assessment of external criminal values where the influence of a multitude of actors becomes potentially noticeable. Arising from this fundamental problem as well as from different criminal-political traditions and ecological as well as socio-cultural conditions distinct differences in the criminal environmental protection programs within Europe result.

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4 See *Heine:* UPR 1987, pp.288; *Heine/Catenacci:* Zeitschrift für die gesamte Strafrechtswissenschaft (ZStW) 101 (1989), pp.163, 165.

5 For the whole see *Heine:* Goltdammer's Archiv für Strafrecht 1989, pp.119.

6 See detailed *Heine* in ZStW 101 (1989), pp.722 with reference to Sweden, the Netherlands, the GDR and USSR as well as to Denmark, Belgium, the Federal Republic of Germany and others.

7 Compare *Beck:* Risikogesellschaft, 1986; *Beck:* Gegengifte, 1988.

2. Fundamental Direction of Criminal Environmental Protection Programmes

a. Environmental Protection: Domain of Administrative Law

In addition to being conditioned by history (as shown), the use of natural resources is in the meantime shaped by a multitude of special environmental administrative laws. To a large extent the burden of stipulating the permissable standard of environmental pollution in individual cases was given to the administrative authorities.[8] In some countries such as Sweden (1969), Denmark (1973), Poland (1980), Norway (1981), Switzerland (1985) and Greece (1986) a central **environmental protection act** was introduced. The aim was especially to set overlapping environmental media a premise on how to apply the law, and to stipulate standardized values for appraising the ecology/economy as far as possible. Others, especially Great Britain, support strict political-environmental decentralization and have left the **environmental administrative authorities "on the spot"** a wide discretion of what to plan and when to intervene, just as in the sense of the classical form of protecting public interests (Polizeirecht).[9] From all these different administrative environmental protection models, the first conclusion is that criminal law is not free in the definition of environmental crime. Rather, it has to principally respect those administrative structures and the resulting decisions concerning permissable environmental pollution emanating from them - if it wants to ensure, as far as possible, a homogeneous law free of contradictions.[10]

8 For the Federal Republic of Germany see i.e. *Breuer:* Die öffentliche Verwaltung 1987, pp.177; *Heine/Meinberg:* Empfehlen sich Änderungen im strafrechtlichen Umweltschutz, insbesondere in Verbindung mit dem Verwaltungsrecht? (Gutachten D zum 57. Deutschen Juristentag 1988 = DJT Gutachten (DJT-report), p.D 119 et seq. with further reference.

9 With this "pragmatic approach", criteria like "technical practicability" and "best practicable means" come totally to the fore. According to these measures for the protection of the environment should prevent "unacceptable damage, whereby the centre of the law politic is to minimise administrative burdens and create a climate in which business can flourish" (compare *Central Directorate of Environmental Protection:* Pollution control in England, DoE October 1987). Further *Haigh:* EEC environmental policy and Britain, 1984; *Richardson/Ogus/Burrows (Eds.):* Policing pollution, 1982, pp.30, pp.124.

10 For the Federal Republic of Germany see *Breuer:* Die öffentliche Verwaltung 1987, pp.178; *Hüwels:* Fehlerhafter Gesetzesvollzug und strafrechtliche Zuordnung 1986, passim; *Winkelbauer:* Zur Verwaltungsakzessorietät des Umweltstrafrechts, 1985, pp.40. For Belgium see the reference to Faure: Die strafrechtliche Durchsetzung des Umweltrechts in Belgien, Freiburger Diss. 1989 (in preparation) chapter 3.2. For Italy see *Heine/Catenacci* in ZStW 101 (1989), pp.165, pp.720 (diagram 1).

b. Criminal Law and Administrative Law

Although a consistent international tendency to criminalize pollution may be observed, **criminal law** has been assigned quite a different role concerning the **protection of the environment** in European countries. This is not so obvious in the location (basic criminal law - subsidiary criminal law - central environmental protection law), but more in the extent of links between the criminal law on the one hand and administrative law on the other hand.

In many places, especially in the Netherlands (1969/1989), the USSR (1970/1982), Poland (1970), Austria (1976/1989), the GDR (1977/1989), the Federal Republic of Germany (1980), Sweden (1981/1989), Portugal (1983), Spain (1983) and in Turkey (1983) it was hoped that by shifting the emphasis of **protection by criminal law to basic criminal law** harmonization of the implementation of the law, and clarification of the meaning of environmental protection could be achieved. In other places there are criminal provisions (partly amended) in the **central environmental protection law** (Switzerland, Sweden, Denmark, Norway, Turkey, Greece). Against this, Belgium, France, Great Britain and Italy have provided only **special environmental administrative** laws with criminal provisions annexed.[11]

Viewing the **relationship between criminal and administrative law** roughly spoken, three models can be isolated, comparing the various justice systems (diagram 1): the classical (subsidiary) criminal law that is absolutely subordinate administratively (aa.) can be differentiated from concepts of criminal offences completely independent from administrative law (cc.). Recently, many countries have tried to arrange protection through criminal law by setting up environmental criminal statutes relatively dependent on administrative law (bb.). Some countries have chosen criminal law programmes which give prominence to all systems outlined above.

aa. With criminal law being **absolutely subordinate administratively** penalties essentially aim to recure administrative authority, control and supervision, or, at least, enforcement of administrative law and co-operation with the environmental administration. This system is typical of, i.e., Great Britain, Italy, Belgium and (with cutbacks)[12] France. The holding back of criminal law and its far-reaching dependence on the administrative system becomes strongly visible when a perpetration of an administrative order itself is not seen as a crime. In these cases such as the "legge anti-smog", the local authority may still exercize the right to give a

11 Individual references with *Heine* in ZStW 101 (1989), p.3.

12 For France see especially *Lascoumes*. In: Aubusson de Cavarlay/Lascoumes/Robert/Zaubermann (Eds.): Le pénal en premier ligne ou en dernier ressort, 1984, pp.221. For Belgium see *Faure*, op.cit. (note 10).

warning with a time limit. Only the repeated offence is then punishable.[13] The environmental administrative authorities "on the spot" have an enormous discretion as to what to plan and when to intervene.

bb. In opposition to those norms backing up environmental administration, the prevailing idea of the only **relatively** dependent **administratively subordinate criminal law** is to emphasize certain environmental resources such as water, air and soil as especially worthy of protection. According to this idea, environmental offences are generally not considered to deserve punishment because of non-compliance with administrative requirements but because of their (at least potential) negative environmental impact. But even the latter concept, which is to be found especially in Austria, the Federal Republic of Germany, Spain, the water protection law of Switzerland and basically also in Sweden,[14] does not prevent from considering legal administrative decisions which fix the permissable measure of environmental pollution as exemptions from punishment.

cc. On the other hand, in some places certain **types of offences constituting a public danger** were created absolutely independent of administrative decisions, i.e., a few "high-ranking wrongs" must be punished even though the administrative authorities do not agree. In these cases, together with an immense pollution and dangerous emissions, particularly grave danger is, as a rule, always required (public danger or concrete danger to life and limb).[15]

c. Control Process and Organizations Structures

Characteristic of criminal environmental law is the interlinking of criminal and legal administrative provisions. This legal technique enables an adjustment of the law to social and technical changes without the need for permanent legislative intervention. On the other hand, with a view to the application of provisions, it has to be realized that this subordination (dependence on administrative decisions)

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13 See sect.20 § 4 law No.615/1966 Italy. Compare also sect.15 USG Turkey. In the similar tendency sect.51 Dekret zum Schutz oberirdischer Gewässer (decree for the protection of surface-waters) Wallonie (Belgium); sect.21 Gesetz über die erlaubnis- und anmeldepflichtigen Anlagen von 1976 France. Compare also the situation in Great Britain: There the local environmental authorities serve a "notice requiring abatement" with offences. Only the violations against it is punishable.

14 See § 180ss. Austrian Penal Code; §§ 324ss. German Penal Code; sect.347 Spanish Penal Code; sect. 37 Swiss GewSchG; chapter 13 § 8a Swedish Penal Code.

15 Compare i.e. sect.140 § 1 No.2 Polish Penal code; § 191a § 1 Penal Code GDR; chapter 20 § 186 Danish Penal Code; sect.269 Portugese Penal Code; sect.169 Croatian Penal Code. Further, § 330a German Penal Code. The provisions in Croatia and the GDR are (despite the specific danger requirements) administratively subordinate.

combines primary creative planning functions (environmental administrative law) with primary repressive purposes (criminal law) and therefore opens hidden fields of conflict. In addition, there are a multitude of actors who are possibly involved in the definition of environmental crime and its control: in addition to possible specialized prosecuting authorities, administrative authorities on different levels - federal government, states (Länder), towns - with different functions (approval - supervision - advising - as appropriate) and on the basis of the principle of legal administrative co-operation, potentially concerned (trade, industry) as well as associations and environmental protection organizations and finally specialists. According to the allocation of institutional competence (also regarding the role and assessment of efficiency of criminal law), problems result in differing shades.

aa. In some countries the **environmental administrative authorities** were in fact granted a **prosecution monopoly**. In Great Britain these authorities (Her Majesty's Inspectorate of Pollution, water authorities, local authorities) are responsible for the execution of environmental administrative law as well as for prosecution. This degree of responsibility is to be seen against the background of a lack of administrative enforcement. On the basis of this type of political system, which grants the "administrative authorities" an immensely wide discretion, and places co-operation strategies well to the fore in implementation, the criminal law is only given the function of a "last ressort": It is only used selectively, and then only against persistent and uncooperative offenders, or when environmental damage creating wide public attention has occurred.[16] On the basis of such environmental co-ordination, points of conflict between administrative law and criminal law are not likely to occur. Nevertheless, the majority of nations have (special safeguards, defense rights and guarantee of the rule of law) introduced some separation of power with good reason.

bb. If prosecution stays in the hands of the police and the public prosecutor's office (or examining magistrate) **close affinities** between prosecuting authorities and administrative authorities arise quite often. This is especially true of those legal systems which have granted far-reaching powers ("Opportunitätsprinzip") to the prosecuting authorities (similar to the flexibility of administrative law). In Belgium **corporations with double functions** were introduced such as the Flamish Waste Disposal Service and organizations for maintaining clean water. They are not only responsible for determining and supervising the conditions for making use of the environment - extensive powers of criminal investigation were also granted to each

16 Compare *Hawkins:* Environmental enforcement (OUP); *Richardson/Ogus/Burrows,* op.cit. (note 9), pp.71.

of the special departments.[17] Parallel to this, the general responsibilities of the police and public prosecutor's offices remain in existence. However, in reality, the special knowledge of the matters concerned, the close links and technical know-how, have resulted in final decisions concerning commencement of proceedings being made by those special environmental authorities. This situation is different when (committed) public prosecutors specialized in environmental criminal law are installed (so far only in Antwerp). In contrast, in the Netherlands the institutional partition of environmental administration and prosecution actually remains stronger, but the aim of the Dutch environmental law policy is to ensure that with "excessive" environmental pollution a pragmatic **model of co-operation** ensures that there is an official reaction. Under the overall control of a specialized pubic prosecutor's office, committees of representatives of the environmental administration and the police were installed. Here lies the final decision as to whether a matter is dealt with (only) by legal administrative measures, or if formal proceedings will be commenced.[18]

In other countries the **competence of the prosecuting authorities to make decisions** stay untouched and **compulsory reporting by the administrative authorities** was tried as a means of improving, as judicial support, the information basis in respect of illegal environmental events. This seems to be successful, in any case, where flexible reactions are possible as, e.g., in Sweden. On the other hand, in Austria a general duty to report on the basis of a strict "Legalitätsprinzip" has proven to be unsuccessful for years.[19] In the Federal Republic of Germany environmental administrative authorities share the duty to report in accordance with administrative regulations. Probably, because of lacking co-operation, rather modest use has so far been made of this duty.[20]

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17 Compare Belgium decree of 28.4.1975, BS 4.6.1975; sect.54 f. Flemish decree of 2.7.1981.

18 Detailed *Heine/Waling* in Juristische Rundschau 1989, p.402 et seq. To ensure a uniform implementation of the law, a criteria catalogue had been introduced. According to it, certain characteristics of "act" and "offence" are weighted by numbers. Unlawful environmental pollution with assumed intention or repetition or where severe damage has occured is awarded two points. If an administrative sanction has already been imposed or enforced two points are deducted. When the total amounts to three or more points as a rule report is made; from five points onwards the commencement of proceedings is obligatory.

19 For Sweden see *Eriksson:* Miljobrott - en dold brottslighet. In: Brottsförebygande radet (Ed.), Forskning 1985:5, 1985, pp.109. For Austria see § 84 Penal Code and *Wegscheider* in Österr. Juristenzeitung 1985, p.486; *Heine:* Umwelt- und Planungsrecht 1987, pp.285.

20 Detailed *Heine/Meinberg*, op.cit. (note 8), p.D 71 et seq, 156s. Further *Meinberg:* Verwaltungsblätter Baden-Württemberg 1987, pp.402.

3. Implementation of the Law: Empirical Evidence

a. The availability of official data relating to the current effect of environmental criminal law is so far (because of different registration techniques and missing homogeneity) only limited, i.e., statistical results from Italy, Spain, Portugal and the DDR are completely missing. Diagram 2 gives (inevitably with gaps) an overall view of the criminal justice output with regard to water pollution (columns A - C) as well as the main sanctions (columns D - F).[21] Environmental offences were summarized in three groups orientated to the aforementioned fundamental structures: Line 1 contains types of offences constituting a public danger including specific risk offences of the Swedish kind: there environmental pollution is punishable if, as a result, a theoretical risk of a danger to health has arisen (Chapter 13 § 8a Swedish Penal Code). The common link for the offences in line 2 is that they are mainly aimed at the protection of the environmental media and their "components" (water, fish) be it that every forbidden former pollution of the water is made a crime (§ 324 German Penal Code) be it that punishability occurs when by contamination fish are killed or their environment polluted (art. 407 n.F. France Code Rural). Finally, line 3 contains provisions which make it a criminal offence to contravene mainly administrative orders or their scope.

Three points have to be emphasized **as a main result:**

- a comparatively small number of sentences and a relatively high dismissal rate - the tendency is that the respective rates are independent of the formulation of the regulations,
- broadly similar structures of sentencing with low-level fines outweighing other penalties (approximately 35 day fine units or DM 1.000),
- the great importance of the implementation of the legal strategies which already show that with similar penal norms certain differences arise.

High dismissal rates obviously point to a demand for flexibility based on structural reasons. With the high completion rates without sentences structural flexibility demands ought to become evident. This demand for flexibility is caused, amongst other things, by the problem of clear-cut environmental crime definitions and influenced by the respective criminal-political strategies and possibilities. Finally, it reveals unsolved social fundamental conflicts concerning the protection of the environment.

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21 Sources of diagram 2: Poland: Verurteiltenstatistik (sentence statistics) 1985; Austria: Gerichtliche Kriminalitätsstatistik (court criminal statistic) 1987; Sweden: *Eriksson (Hrsg.)*, Miljobroo och Straff, 1988; Federal Republic of Germany: Polizeiliche Kriminalstatistik, Strafverfolgungsstatistik 1986; Switzerland: Bundesamt für Statistik.

In part that is why **diversion mechanisms** were institutionalized. In France approximately 90% of the offences concerned are dealt with outside the legal framework by way of the "transactions administratives" (by payment of a fine). In Belgium on the other hand this form of termination is practically unused with an informal discontinuation of proceedings being favoured which obviously enables the imposition of "imaginary" conditions (such as the condition to strictly keep environmental laws or - in a sense of the victim-offender-reconciliation - regular meetings between the heads of commercial undertakings and the imisson suffering public concerned).[22]

b. **Deeper investigations** into the environmental criminal legal systems in European countries are lacking. However, analyses of final judicial orders (*Stumm*) or court files (*Wegscheider*)[23] for Switzerland and for Austria are available. According to these statistics, in both countries - despite differences in the scope of penal norms - the risk of punishment is largely limited to farmers, small businesses and individual offenders. As can be expected when taking into account the comparatively low seriousness of offences and the type of offenders, only lenient sanctions are imposed. A reason for the high number of proceedings being dismissed, especially in the industrial field, is the problem of proving individual criminal responsability, problems of evidence as well as the difficulties which are connected with the administrative subordination of the standards of punishment. Whilst *Wegscheider* reaches the conclusion that there should be a strict tightening and extension of criminal law, *Stumm* estimates that the criminal law as an inflexible instrument is basically not adequate for making provisions for the prevention of illegal water pollution.[24]

For France *Lascoumes* has shown on the basis of an analysis of files that classical offences (art. 434 Code Rural) are used more often and more effectively than

22 According to sect.216 § 1 the Belgian Penal Code provides for this procedure where there has been compensation for the damage. Then a fine (before the public prosecutor - in comparison to France where it is dealt with as a "transaction administrative") can be fixed. For the practice see *Faure*, op.cit. (not 10). For France see *Lascoumes*, op.cit. (note 12), p.368.

23 First results of the unpublished study of *Stumm*: Analyses of the criminal jurisdiction in the Swiss protection of the water are to be found in Plädoyer 1986, issue no.6, pa.11 and Plädoyer 1989 issue no.3, pp.11. For Austria see *Wegscheider* in Österr. Juristenzeitung 1985, pp.485, Österr. Juristenzeitung 1987, pp.356 and Österr. Juristenzeitung 1989, pp.641. There has been in the meantime a reform but it is not expected that the result will in principle lead to any change (compare *Tiegs* in wistra 1989, pp.41). Further, one must refer to the research of *Eriksson*, op.cit. (note 19) for Swedish penal law.

24 *Wegscheider*: Austrian environmental penal law 1987. *Stumm:* Plädoyer 1989, issue no.3, p.13.

administratively subordinate "blank forms". He puts that down to a semi-private system of supervision that is guaranteed by the fishing industry (because of the offence requiring that fish are killed). Collective interests (protection of the water) would finally be guaranteed by instrumentalizing private interests (interests of the fishing industry).[25]

There is no doubt that the need for further research is immense if we want to be able to judge which function criminal law can fulfill with respect to the adequate protection of the environment and without accepting a serious loss of legitimation. This can only be decided within a national framework of legal and social conditions.

II. Criminological Research on Environmental Criminal Law: Questions, Methods and Results Viewed from the German Perspective

The fundamental data presented here to demonstrate the central effect of environmental criminal law already speak their own clear language. However - or also because of this - further questions arise, requiring more profound research, e.g.: Which are the **qualitative** structures of environmental crime? Which are the cases that come to the attention of the prosecuting agencies and the courts, and which are those remaining undiscovered and unpunished? What is the reason for such differences? Is environmental criminal law at all recognized as a suitable instrument by the ordinary recipient (citizen as well as controlling authorities)? Are there possibly certain strategies of "avoidance" or "circumvention"? If so, what are seen as more suitable alternatives? All these questions raise theoretical implications in various respects. Empirical research into environmental (criminal) law is a thoroughly interdisciplinary matter of concern. If there are judicial, ecological, political-scientific, sociological, economical or psychological approaches - only in their totality can one actually do complete justice to the extensive character and importance of the matter.

A. Environmental Criminal Law as a Matter of Criminological Research

We are in any case in Europe certainly far removed from such an integral-interdisciplinary research concept. Moreover, one generally has little knowledge of the actual proceedings and the reasonings behind applied environmental politics, whereby the area of legal sanctions concerns only one of many spheres of inade-

25 *Lascoumes*, op.cit. (note 12), pp.379.

quate knowledge. This basically applies to all countries including the Federal Republic of Germany. However, here we have made some recent improvements, which the following intends to go into more closely.

1. Although research into the system of environmental criminal law completed so far concerned only relatively limited questions, as a whole, however, they already result in a quite informative picture. Three works should be stressed, those of *Rüther* (1985), *Kegler/Legge* (1986, 1989) and *Wittkämper/Wulff-Nienhüser* (1987).

Rüther[26] was commissioned by the Federal Environmental Agency to investigate the "reasons for the increase in environmental protection offences detected by the police". His study, committed totally to the "labelling approach", is impressive, especially on account of the very extensive secondary analysis of criminal statistical material. Furthermore, the experiment was conducted to gain additional knowledge by way of an analysis of criminal files. With this he comes to the essential conclusion that by extending the substantive criminal nature and the prosecution capacity hardly more than quantitive effects have been achieved. All in all, the indisputable growth of the intensity of control has above all affected the area of petty universal crime, where the classical unlawfulness against an administrative order comes to the view of the prosecuting authorities increasingly. *Rüther* sees the cause of this in strategies of legitimation adapted by the police which rely heavily on the "argument of the ever increasing number of cases". Moreover, it is crucial that individual persons report crimes in steadily increasing numbers, although they are hardly in the position of a suitable control of more important behaviour, especially industrial.

This last aspect formed the central theme of the work of *Kegler/Legge*,[27] which dealt with individual reporting behaviour in the area of environmental criminal law. The investigation followed - possibly too closely - the theoretical framework of classical research concerning crime reporting by victims, and consisted of two elements: On the one hand, this research focused on the reporting behaviour of ordinary citizens (organized anglers) based on a questionnaire. On the other hand, it concerned those strategies of private environmental protection organizations, where single representatives of such organizations where interviewed orally. The results, accordingly, confirm *Rüther's* findings in so far as both the legal knowledge and the control competence of the "ordinary citizen" are rather modest. Firstly, minor offences are recognized as punishable, but are often only reported when other alternative ways of complaint cannot be followed. On the other hand, the questioned "environmental protectors": Their degree of organizational knowledge of the

26 *Rüther*: Ursachen für den Anstieg polizeilich festgestellter Umweltschutzdelikte, 1986.

27 *Kegler/Legge*: Umweltschutz durch Strafrecht? Anzeigeverhalten im Umweltstrafrecht, 1989.

subject made them, in principle, highly suitable legal control devices; but actually they pursue far more complex "conflict strategies", in which the co-operation with prosecuting authorities plays only an inferior role for political reasons.

A totally different approach concerning the content as well as the method was taken in the investigation by *Wittkämper/Wulff-Nienhüser*[28] which evolved in the commission by the Federal Criminal Department. It falls into the category of prognosis research and should provide information which developments concernng environmental offences would have to be expected. For this, representatives from "the mediae", "industry", "science", "organizations" and "authorities" where questioned within a two-tier written "expert delphi". Furthermore, a single questionnaire was framed for a population consisting entirely of employees of industry. The investigation resulted in a multitude of single pieces of information, which have not yet been able to be integrated in terms of description and theory. Consequently, the authors' assessment that environmental crime as a quantitive phenomenon will develop, in the middle-term, rather downwards, qualitatively most certainly in the direction of a concentration in the sense of organized crime is not based on solid ground. As an interesting detail the research resulted in a clear confirmation of the central finding of *Kegler/Legge*: Crime reporting occupies a rather inferiour position within the reaction concept of the citizen, and concern, if at all, remains mainly of a close private nature. Personal intervention is first tried before approaching the administrative authorities.

2. A more general concept of the implementation of environmental criminal law is the basis of the investigation by the Max Planck Institute for Foreign and International Criminal Law in Freiburg (*Meinberg et al.*).[29] The project is being conducted with the participation of scientists of various disciplines (several lawyers, an economist, a psychologist, a sociologist) and should be seen in the tradition of basic implementation research relating to environmental law, as already carried out in the seventies by *Mayntz et al.*[30] The work has already been running for a couple of years in a continuous exchange with practical experience, and can therefore be seen as an attempt to evaluate an ongoing process. Accordingy, basic interim results are continuously published. The findings herein contained and their recommendations are to a great extent the basis for the reform of the federal environmental criminal law which is now almost completed.

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28 *Wittkämper/Wulff-Nienhüser*: Umweltkriminalität - heute und morgen, 1987.

29 See *Meinberg*: Empirische Erkenntnisse zum Vollzug des Umweltstrafrechts. In: Zeitschrift für die gesamte Strafrechtswissenschaft (ZStW) 100 (1988), pp.112; *Meinberg/Link*: Umweltstrafrecht in der Praxis, 1988; furthermore *Heine/Meinberg*, op.cit. (note 8).

30 *Mayntz et al.*: Vollzugsprobleme der Umweltpolitik, 1978.

Certainly this research cannot claim to be a really thorough examination of all implementation processes. This already follows from the almost unlimited diversity of levels and interests touched by the "cross-sectional issue" of environmental protection. Naturally, from the economical research point of view there are limits to individual proposals. With regard to the main emphasis, and because of the gaps in the aforementioned study the study of the implementation of the environmental criminal law focused upon the area of government authorities. This again led to the following **sets of questions supposed to guide research:**

- When and why do which events relating to the environment reach the formal legal control process? Which (case-)specific problems arise and how do they affect the outcome of the proceedings? Are there grounds for a practical two-tier division of the total complex of environmental crime into "everyman's" and white collar crime?
- How does the prosecution apparatus approach the special challenges of environmental criminal law? Which organizational adjustments have been made and with what success? What is the efficiency assessment of the environmental criminal law the various levels of the police and the judicial system?
- What role does the environmental administration play in the commencement of environmental criminal proceedings and their final outcomes? Is the intertwining of criminal and administrative substantive law so far reflected in criminal proceedings? What conflicts arise in this area and how are they attempted to be solved?
- What practical alternatives are there to the control of environmentally damaging behaviour by means of criminal law? Which role can be assigned to administrative penalties? Do similar problems occur with respect to the implementation of administrative penalties, and if not, how are they avoided?

In a superior connection the investigation is seen as a contribution to the research into the possibilities and strategies of social control. The implementation process of environmental (criminal) law can here be of special scientific value, as it provides the opportunity to observe new reactions to totally new social problems. Furthermore, through the linking of different norms stemming from criminal and administrative law, it seems to evaluate totally different forms of regulative politics on the basis of a comparative approach.

The diversity of the subject is reflected in the **methodical research plan.** Thereby, according to the said intentions accompanying implementation research, each step of the investigation is mainly aimed at obtaining information from sources as wide and multi-layered as possible. The sequence and methodic realization is not so much the result of a rigid research design, but the consequence of the actual status of research. In the end, a rather flexible research process emerges which could raise

the objection of confused structures from the viewpoint of basic evaluative research. Actually, "reliable" generalized results can be expected, at least for some parts of the investigation. However, here nothing else but the existing uniqueness of each act of implementation is expressed.

The study encompasses the following basic research steps:

- Secondary analyses of official crime and administrative statisics,
- evaluation of iintraadministrative organization plans and statistics,
- informative questionnaires to all Ministries of the Interior, Justice and Environment as well as all public prosecutors' offices of the Federal Republic of Germany,
- two series of expert talks at relevant Ministries of the federal states,
- analyses of approximately 1.200 files of criminal proceedings,
- analyses of approximately 800 files of proceedings against the administrative infraction law (Ordnungswidrigkeitengesetz),
- questionnaires and interviews involving officials (environmental authorities, police, public prosecutors, courts).

With the exception of the questionnaires to officials as well as the two series of expert talks the aforementioned steps are to a large degree nearing completion. In the following, some central findings will be highlighted. They are essentially based on the evaluation of the statistics, the analyses of the criminal files and the first questionnaires. In addition, there are also references to the results of the aforementioned investigations.

B. Fundamental Results of Research so far

1. At first glance the implementation of the revised environmental criminal law seems to be running largely according to expectations. The number of recorded offences is continually increasing and has more than quadrupled since 1980. This points to **improved prosecution conditions** and an **intensification of investigation into the dark field.** Actually, the chances of environmental offenders remaining undetected should, to a great extent, be far less than 10 years ago. This is added to by improved technological measures, as well as by a greatly increased environmental awareness among the population. Also within the organization of the prosecution a good many things have happened. Within nearly all federal states the capacity of the police has been considerably strengthened under the label "en-

vironmental protection". In addition, at all public prosecution offices as well as some courts special responsibility to handle environmental crime has been established.

2. However, on closer inspection, a thoroughly different picture emerges. There is an ever increasing gap between the quantity and quality of the prosecutions and the expenditure and return. The hope for a concentration of more ecologically important actions has not come true. Officially recorded environmental crime is **almost exclusively petty crime**, whereby the emphasis differs regionally with agricultural, private or shipping and harbour cases. Actually, approximately a third of all cases concern events with an industrial background but even so, it is mostly a question of everyday industrial accidents of comparatively minor ecological relevance.

3. Furthermore, **the outcome of the proceedings** become more and more **questionable**. About one half of the investigations already fail because the proof of a criminal offence is missing, about a further quarter are discontinued by the public prosecutor's office because of the trifling nature of the offence. With a steadily declining tendency hardly more than one fifth of the recorded environmental offences reach a court decision at all; only about one tenth reach sentencing. And these do not relate only to the few really important cases. Again these are mainly minor offences with offenders without enough ability, or readiness to defend, for whom a real risk of sentencing arises. Accordingly, the sentences usually lie at the lowest level of the legal specified scale.

4. The most selected registration of recorded environmental crime is on the one hand founded on the specific **deficient awareness and competence of the main reporters, i.e., the police and the general public**. About every second environmental criminal procedure arises from a general public report, initiation of the remaining proceedings is divided approximately in equal parts between the police and the administration. Yet basically the limited control competence of private individuals is obvious (see above). More remarkable is the fact that the police as a whole do not achieve a different concentration of registrations. Surely it should be taken into consideration that according to German law, the criminal prosecuting authorities have only limited possibilities of aggressive control-strategies. Actually they also largely lack sufficient competence to correctly take up already present suspicious circumstances. It has to be recognized that only in a few federal states strengthenings and other structural changes of the police apparatus have led to actual improvements of the prosecution situation. Only where properly qualified special units are present in sufficient numbers are there also increased contributions to important offences recorded. In other places only obvious offences are recorded - moderately or excessively - according to the political pressure for justification.

5. However, what is more critical is the fact that the **environmental administrative authorities largely fail as qualified reporters**. By no means is the above

mentioned 25% share of administrative reports attributable solely to them. Rather, they are predominant informations by general, especially local authorities, mostly in cases concerning damage experienced by themselves. On the other hand, the environmental authorities who automatically become aware of numerous offences during their daily monitoring take an extremely reserved view of criminal law. They view it as a foreign object among their other administrative legal machinery and are anxious not to let matters out of their hands by reporting them to the police. Moreover, they are generally inclined to repress actions and to instead build more on co-operation with the industry, as they hope for more success from this in the long run. Sometimes, this is taken so far that even obligations to report are quite consciously disobeyed and also open conflicts with the prosecuting authorities are accepted. Consequently, the strategy found on their part is to prosecute the officials for their recalcitrance. Therefore a spread of mutual distrust between the legal and administrative environmental protection authorities has arisen, which interministerial co-operation enactments have tried to counteract only recently.

6. Lack of competence on the part of the prosecuting authorities and a problematic relationship with the environmental administration also shape the **further investigation and decision processes.** It is realized that a large proportion of the unsuccessful investigations were carried out rather inadequately, and that this problem increases the less qualified the police units are. Firstly, this applies to the securing of evidence at the location of the offence, where, especially where fast escaping harmful substances are involved, considerable competent knowledge is necessary. Besides, sufficient investigations by the environmental authorities are lacking so that often the administrative background of an event remains completely in the dark. As the administration itself contributes little information, it is mainly dependent on qualified investigations by the police. Again, this can only be expected from an equally qualified staff, which is so far more the exception. Also relevant is the fact that the public prosecutors are often simply overburdened. As previously mentioned there are distributed throughout the Federal Republic specialists in environmental criminal law whose special ability actually exists only on paper. At a closer look, however, we note that competences for environmental crime forms only a limited part of their area of responsibility, and in reality, hardly any time is available for this.

7. However, the prosecution and sanctioning of serious environmental damages do not fail solely because of such discovery problems. About one eighth of all proceedings are dismissed because the suspect turned out to be innocent; in numerous further cases the same result seems to be obvious. There is also a considerable diffusion of crime definitions, a grey zone between right and wrong which obviously cannot be sufficiently cleared up before the beginning of a procedure. The reason for this is mainly the legal-administrative background of the matter which, from the criminal legal point of view, leads at times to rather strange

consequences. This does not mean so much the situation of formal enactments, rather, it is the wide spectrum of informal regulations that generate problems because they do not meet with the (regulatory) demands for definition of criminal law. Within the environmental authorities this problem is well recognized. However, changes are not seen by them as appropriate, at least not with a view to criminal law. This emerges from their reserved basic attitude, whereby it is consciously accepted that the especially large-scale dangerous emissions are, according to the criminal law, hardly ascertained.

8. Finally, we now come to the **reasons for the vast numbers of cases being dismissed because of the trifling nature of the offence.** Certainly - the structure of cases recorded suggests that an overaverage share of proceedings is terminated in this manner. Recorded environmental crime is mainly minor offences. On the other hand, it must be stressed that according to the law, those are also punishable. The "principle of legality" on which the German criminal procedure is based makes it mandatory to prosecute; only in a few non-typical minor cases should exceptions be allowed. Within environmental criminal cases this exception/rule relationship is reversed. In the field of those cases in which a criminal action can be proved at all, dismissal on the ground of insignificance has already become the rule. When looking at the reasons given for dismissing cases something astonishing emerges: public prosecutors and judges express understanding for the actions of the offenders whom they do not believe capable of fully understanding the diffuse standards of action of administratively subordinate environmental criminal law. And the top of the paradox is reached if cases are dismissed because the offence, in comparison to lawful events, proves relatively minor.

9. Summing up, it has to be recognized that West German environmental criminal law in its practice has not only failed in certain objectives, it has also taken a course of development which contains, frankly, rather **counter productive elements.** On the one hand, increasing control activities with accordingly increasingly public attention, on the other hand, implementation structures which end up in a gigantic official exemption from liability: the enforcement of environmental criminal law resembles more and more that of the development and bursting of a soap bubble. Clearly it has on the whole not succeeded in harmonizing the ecological safe-guard of criminal law with the multi-layered necessities of preventive environmental administration. Instead of the constructive indication hoped for, mainly helplessness about the diffuse standards of the system has developed. It can hardly be conclusively judged if so far programme or implementation deficits prevail. It is, however, indisputable that the appropriate official agencies are decisively involved in that development. This applies, on the one side, to the area of prosecution where necessary qualification measures have not only been extensively missed. To the same extent this applies also to the environmental authorities who fail to understand that they do not only implement administrative law, but rather the whole legal

environental programme. The growing conflict between these two institutions throws a depressing light on the situation of governmental environmental protection and reveals that continual programmatic confessions alone are not enough.

C. Criminal-Political Outlook and Prospects for Further Research

Let us link this up with a quick view into the future and at the same time across the borders of our country. For the Federal Republic of Germany the fact that the aforementioned results are in the meantime not only publically discussed but also largely taken up politically is to be welcomed. How far the reforms being prepared will actually lead to an improvement of the present situation certainly remains to be seen. For the time being, the fundamental concept of an administratively subordinate environmental criminal law will be retained. In principle this is acceptable, if care is taken to ensure that the connections become more consistent and at the same time more convincing to the citizen as well as the authorities. Furthermore, environmental criminal law should be freed from the exaggerated claims for protection and limited to actual punishable events. Much, if not all, will certainly depend also on the success in negociating within this system the mutual interests of governmental, criminal and legal adminstrative environmental protection.

Mainly with this the demand for further evaluative criminal research is linked. The knowledge of the actual performance of the implementation of environmental criminal law must consequently be completed. It should become possible, on the basis of the findings so far, to differentiate between virtually general system-intrinsic structural characteristics and short-term steering deficits. The different programmes, in the process of continual change, offer almost ideal experimental conditions, if only the research would use them with sufficient flexibility. Naturally, this also applies especially to the international comparison. It is hoped that the dogmatic findings of traditional legal comparison, find an as far-reaching equivalence at the level of actual legal reality. Certainly this means partly the consideration of entirely different social and legal structural conditions. A rigid uniform research concept would be as useless here as the idea of a detailed universal measure of judgment. On the other hand, for the superordinate questions, namely, the problem of effective governmental care of the environment, initial points of mutual interest for research should be found. The facts indicate that allegedly irrevokable basic principles under the rule of law and order of the different nations often proved to be astonishingly "flexible" at a closer look, and that especially in the practical field there is a great interest in "foreign" experiences. This kind of interest offers an excellent starting point for evaluative implementation research. To make use of it for the advantage of both sides should be in our mutual interests.

Diagram 1: Basic structures of the environmental law in international comparison

System	Guiding criminal concept	Examples
criminal law absolutely dependent on administrative provisions	- securing of control by administrative authorities - enforcement of cooperation with the environmental administration	- offence following warnings by authorities (Great Britain, Italy, Turkey) - offence against duty to submit to supervision by authorities (Belgium, France) - offence dependent on administrative orders (France, Belgium)
criminal law relatively dependent on administrative provisions	- protection of individual environmental resources	- forbidden pollution of the water (FRG) - forbidden harming of fish (France) - forbidden introduction of substances into the environment (Spain, Switzerland)
criminal law absolutely independent of administrative authorities	- protection from general danger - protection from concrete danger to life and limb	- environmental pollution or dangerous emissions *and* general or concrete danger to life and limb (Poland, DDR, Denmark, Portugal)

Diagram 2: Decision Making (focus on Water Pollution)

procedural stages / offence categories, country	A police-recorded offences	B prosecuted persons	C persons found guilty	D prison sentences	E fines	F average fine day fine rate
1. Protection from danger to life and limb						
Poland (1984) (general danger)	-	-	5	-	-	-
Austria (1987) (concrete danger)	-	-	7	(14 %)	(86 %)	40 d.f.
Sweden (1981-1986) (risk offences)	30	3	1	(0 %)	(100 %)	-
Yugoslavia (1987) (concrete danger, great environmental damage	-	-	21	80 %	20 %	-
2. Protection of environmental resources as such						
FRG (1986) (pollution of the water)	9.294	-	901	2,4 %	97,6 %	30 d.f.
Switzerland (1987) (suitable for pollution of the water)	-	-	451	14 %	86 %	100-1.400DM
France (1981) (destroying of fish)	373	47	45	(~2 %)	(~98 %)	1.700 DM
3. Securing the control by administrative authorities, offences against administrative regulations						
Belgium (1985) (Flemish decree against water pollution)	238	-	1	(0 %)	(100 %)	-
Denmark (1985) (central environmental protection law)	-	-	61	0 %	100 %	-
Great Britain (1985) (Control of Pollution Act)	-	43	31	0 %	100 %	1.050 DM
The Netherlands (1985) (Water Law)	1.014	-	118	0 %	100 %	700 DM
Poland (1986) (industrial pollution contrary to administrative laws)	-	-	4	-	-	-
Sweden (1986) (central environmental protection law)	214	30	12	(0 %)	(100 %)	35 d.f.

Commentary

Jørgen Jepsen

I. Introduction

In reading the thought-provoking paper of *Heine* and *Meinberg*, I was struck by the increasingly sharply formulated desperation and scepticism characterizing the tentative conclusions of their empirical and dogmatic works - both of which I have had the chance of following through earlier versions. The intensified call for more research and the cry for more effective reforms reflect our general appalling helplessness vis-à-vis environmental destruction, becoming now so visible, that further attempts to minimize the need for more fundamental solutions are doomed to fail.

Personally, I share the frustration of the authors, and I am sure their description of the situation is correct. The finalization of their research, I predict, will confirm the cautious statements so far put forward, on the impossibility of solving environmental problems through criminal law.

As persons engaged in various fields of criminal law and criminology we can feel sad to have to admit to this failure vis-à-vis the pressing environmental problems. On the other hand, as scientists we have to be modest about the role of our particular field. As empiricists we have to be honest to our own analyses and to recognize that we seem to be close to an inevitable conclusion that criminal law is simply insufficient. Our call for moral condemnation of the destruction of our environment has to take other forms than a call for punishment and the imposition of personal guilt. The difficulties of the implementation of environmental criminal law can no longer be seen as due to minor imperfections that can be redressed through reforms, but must reflect basic system factors, requiring a different approach and other modes of analysis.

II. Sociology of Law and Power - rather than Criminology

As empiricists we must formally be patient and wait until the final results are in before making any definite conclusions. And as dogmatists engaged in forming criminal policy we must still work to do whatever little we can to optimize the modest contribution of our sciences. In my following remarks I shall make a few

suggestions along this line. First, however, I want to issue a general warning that we may in reality be engaging in furthering or supporting unhealthy illusions about the role of criminal law if we do not take care and are very modest.

Personally, I cannot speak on the basis of extensive - and impressive - studies like those of Meinberg and Heine. Nevertheless, on a more limited basis, my own studies of court decisions in Denmark and the operation of the prosecution and control agencies as well as administration and legislative changes lead to practically the same tentative conclusions as those of *Heine* and *Meinberg*. Judging from the international material provided and quoted by the authors, the conclusion seems to be the same as the well-known summing up of results of the individual preventive results of a vast array of treatment experiments in prison: "Nothing works" - as *Martinson* once formulated it.

It seems to me that this general conclusion also goes for the general preventive function of punishment in the field of environmental crime. Seen from the vantage point of international comparative research, the conclusion seems to be in sight: By and large, irrespective of which type of system we look at, the results are the same. I shall return to some of the explanations for this disheartening statement in a moment. But first I might offer for your consideration a way of looking at this situation stemming from Scandinavian research within the sociology of law.

In their study of the effects of the Norwegian legislation on the situation of household aides ("En Lov i Søkelyset") of several years ago (1952) and in their later follow up after the law had been in operation for several years *Aubert, Eckhoff* and *Sveri* came to the conclusion that the protective statute had not reached the aim of raising the situation of household aides - in spite of several proclamations of the intent to do so. The authors notice that the problem stemmed from the imperfect - or nonexistent - mechanisms of enforcement in the law. They venture the following new explanation of the function of the law:

Legislation is not always only a means of achieving stated aims, in many situations it has the function of resolving social conflicts. A "solution" will often not be an either-or solution where one party wins over the other - as in a court case - but an attempt of harmonizing or at least for the time being assuaging conflicting interests. One method may be the use of vague and imprecise wording, making the law open to different interpretations which are then only later made in the practical implementation of the law. The conflict is postponed and left to other arenas than the legislative scene, but for a time both parties can feel their interests to some extent fulfilled by the legislature. Another method may be to express high-sounding aims and values in the text of the law - in particular in its initial sections - to make that party happy who desires the fulfilment of those aims, and who sees it as a victory that the principles are expressed in the law. On the other hand, the law has no

enforcement mechanisms or the enforcement is left to insufficiently staffed agencies. In this way that party is satisfied who wants no real change in the status quo, but is ready to give lip-service to the solemn principles.

According to this view, the law has firstly a symbolic function in expressing basic values and high principles. It may express the sentiments and so-called basic values of a society (as is also the case with some constitutions which, as an example, express the "right" of all citizens to work - but without any statement of guarantees that this aim will actually be fulfilled). Secondly, legislation has the function of easing social conflict, harmonizing opposing interests and furthering a smooth functioning of society - on the surface. In reality, this is a postponement or a diversion of a conflict, combined with ideological mechanisms to avoid the explicit formulation of the conflict.

It is my contention that this view of legislation in the field of environmental protection in general and the use of environmental criminal law in particular is more adequate than any view taking the stated aims of such laws at face value. And it is my more particular contention that this view is even more in point when we look at the various forms of legislation aiming at using the Penal Code itself for such regulation.

The miserable position of criminal law vis-à-vis environmental protection is not so much due to deficits in criminal law as such, but reflects the miserable position of environmental regulation as a whole. The penal protection of the environment can not surpass the limits to protection of the environment set by the legislative and administrative system taken as a whole. It is a dangerous illusion to believe that penal law can be instrumental in changing this situation - on the contrary, it can function as a dangerous diversion of attention from the real problems behind it.

These problems are problems of social and economic interest on the one hand and problems of popular and political determination to give the environment the priority over immediate economic gains and convenience on the other.

III. Social Control and Social Power

It is often contended that criminal law should be used as a means of influencing attitudes in the public in general and among the more specific receivers of the threat of punishment in particular. This is the so-called moral or educative influence of criminal law, as *Andenaes* put it. It is evident that in many of the countries represented here there is a strong demand that criminal law and punishment should be used both in this expressive fashion and instrumentally to steer behaviour. But adherents of this philosophy seem to ignore the fact that there is an even as strong current demanding that "industry should not be persecuted with fire and brimstone"

for its attempts to deliver the goods which the public seems to want so badly. It is exactly this conflict of interests which sets so drastic limits to the possibility of using criminal law as an instrument for environmental protection.

It is a basic fact of environmental control that those to be controlled are much more powerful groups than those to be deterred from committing traditional offences. They are able to put up a strong fight against the criminal justice system on all levels. It is most visible in court cases, where the great polluters are represented by the best lawyers available and where costs are not a problem, but it is more influential already at the prosecutorial level. In addition, even at the level of investigation, the suspect is in a much stronger position than, e.g., theft suspects to put obstacles in the way. But even more importantly: The "offender" has a great influence on the definition of what is legal or illegal.

Here we come to the basic difficulty of environmental criminal law: the definition of offences, and most importantly, the dependence of this definition upon administrative law and decisions - or the accessory nature of environmental criminal law in relation to administrative law. Even in Germany, where the Penal Code since 1980 has elevated environmental crime to the highest level of criminalization, the authors' experience seems to show that prosecution for violations is basically dependent upon administrative law or decisions (see, e.g., *Heine* 1987).

It is noteworthy that most reports we have seen in the international studies show the same picture as that of *Heine* and *Meinberg*: It is the small operators - in particular farmers and households - who account for the great majority of prosecutions and convictions. It should not be forgotten, however, that in most agricultural countries farmers make up the largest number of objects of control, and their offence types are relatively highly visible and indisputable. Nevertheless, it seems certain that their share of cases is disproportionately high in relation to other sources of pollution.

But again, it must be remembered, that it is not absolutely forbidden to pollute, but only to do it without permission or more than permitted. This displaces the focus of interest to the administrative agencies responsible for permissions and for their control. Here again, the influence of the polluters on the regulation itself is the Achilles heel of the whole system. It is here often more relevant to talk about "administrative complicity" than of "accessoriousness". Administration has in its hands the power to disculpate polluters, and in many situations it even has in their hands the power to do this "after the fact" by granting a permission for a certain emission which will, if not totally exonerate, then at least for all practical penal purposes reduce the guilt of the polluter.

IV. Administration is Politics

Furthermore, it is not always precise to speak of "administration" as the villain responsible for teaming up with the polluters. At least in Denmark it is the politicians - mostly on the municipal and county level - who are so eager to please industry (or their own electorate agrarians) that they obfuscate the process of "criminal justice". The local political and economic interest in attracting industry is still today much more powerful than the contrasting interests in preserving the environment. It is one of the common examples of illusion-creating verbiage to talk about "local popular control and self-determination" of the environment. In many localities, the economically strong organizations exert so much greater influence - in numbers as well as in political power - that the (rest of the) people are left at their mercy. Environment is still a weak interest in this battle. In Denmark - as may be the case in many other countries - it is the politicians rather than the administrators that are the important obstacles to environmental protection. It has been proposed to punish administrative officials for deficits in environmental protection, but the real responsibility is that of the politicians. And political responsibility is a much more complex matter.

In Denmark two local politicians have just been fined for violation of the environmental law and for violation of official duties as a first example of attempts at placing criminal responsibility for failure to execute official duties (they had ordered a broad stripe of oil ploughed down on the beach in Western Jutland when it drifted ashore a few days before the commencement of the tourist season - instead of having it laboriously removed). Several such prior reports have resulted in non-prosecution. But the case is as rare as it is spectacular.

The main problem is that a large amount of politically determined destruction of the environment is legal - or can be made so **post facto**. In these situations of negotiation - or mediation - the "victim" is a willing cooperator, not an object of pity as in cases of, e.g., violence. If the "offender" in this way is forgiven his transgression by a political representative of the totality of victims, no basis for prosecution exists - unless outright false statements or other deceit can be proved. Criminal responsibility can hardly go further than politicians and administration allow.

V. Remedies?

The local-political determination of rules and standards seems to be on the increase rather than the opposite. The trend of decentralization - as already full-blown in the British system - will, at least in Denmark, continue and be stronger in the coming years. The state is retracting from the scene, leaving more and more to local

"self-determination", which is a nice-sounding cover-up for leaving the leading role to local power elites. It may be that it is impossible to control the environment from a central agency on a detailed level. But this means that the determination of what is punishable behaviour is left to local decision and variation. Today this also goes for the control of those rules that are in force. In actual practice, it is in the hands of the local authorities to determine the level of technical control and the amount of resources spent on control. They also determine what shall happen, once a violation has been established. In my country we have many examples of local politicians simply determining by a vote that law-violations of a local factory shall not be reported to the police. And if someone else does so (as private persons and environmental organizations can legally do in our system) they may decide to advise against prosecution. This has led to an increasing number of cases being brought before the central environmental authority for consultation by prosecution.

But also simply by drawing out the process, the local authority may in reality cause the case to be dropped because of the lapse of the period of statutory limitation.

In response to such difficulties, it might be a solution to give private citizens - or groups of citizens, including environmental organizations - a **right to bring a private penal suit** against the presumed violator. "Class actions" in criminal law and a right to stop the process of prescription ("Verjährung") for citizens - where the official agencies are too slow - might be a remedy. But it will hardly be very effective, as long as the local authority still has in its power the basic determination of the regulations.

Compulsory reporting by agencies could have the same possibilities - and will suffer from the same deficits. The idea that the courts and the criminal justice system might serve as a control of the legality of administration seems inviting. Again: judicial review may reject outright illegality - but it cannot change the decision based on the discretionary power of the authority.

Special prosecuting authorities, special environmental police forces and **special environmental criminal courts** also may serve as avenues for strengthening the control system. I have made such proposals officially in Denmark, and finally there are some indications that at least special prosecution agencies may be created. Special courts, experience seems to show, will simply not have enough to do - at least for a long time to come. But the experience reported from Germany does not seem encouraging. Thus I am eagerly waiting to hear the explanation from my German colleagues the "environmental police" in Niedersachsen was told not to be too vigorous in their enforcement. To me it seems that we are here dealing with an instance of the clear exertion of social power to depenalize the "crimes of the powerful" - but there may be another explanation.

Coming from a pragmatic country without the impressive and heavy dogmatic conceptual development of the FRG, I might propose as another legal reform that

the criminal responsibility of organizations - **juridical persons** - be recognized here, too. The experience in Denmark shows that under our system it is much easier to have a firm convicted of an environmental crime than to convict an individual.

The idea that only individual persons can be "guilty", as only they have minds and bodies, seems outdated. Sanctions will, as we see from the German experience, practically always have the form of fines. In our system, we can even have them imposed out of court through an agreement between the prosecutor and the firm. The firm is able to react reasonably to such "reactions", and we are able to avoid expensive proof of individual guilt, once a forbidden act has been established. Employees act on behalf of the organization and there is little reason to scapegoat **them**. Their behaviour is more efficiently controlled by the organization itself - which may fire them for misbehaviour - if the economic sanction against the company is serious enough.

Reversed burden of proof and **strict responsibility** are also possible ways of penalizing corporate behaviour without exorbitant costs for the legal system. Such doctrines are recognized in relation to tort law - it is only a matter of dogmatic tradition that we do not use them in criminal law.

Traditional jurists will oppose such a "perversion" of the basic principles of criminal law and warn about its devaluation. But the results of the operation of classical concepts of penal law **are** in themselves perverted. Instead of seeing this from a moral perspective, we might see it from a pragmatic perspective: Will it be efficient? Our experience, however, with using strict liability in cases of labour safety violations, indicated that only symbolic fines are meted out in such cases.

Conversely, it has been proposed to have **higher penalties** - including deprivation of liberty - **for executives and board members** of polluting companies. This may serve the expression of public moral condemnation - the only problem is that it will hardly be applied by the courts. Instead, gains might be won by using other ways to achieve general deterrence and individual prevention.

The use of publicity as a sanction against corporate offenders has been proposed - and illustrated - by *Braithwaite* and *Fisse*. In such cases, out-of-court settlements will probably be pressed for, and should consequently be forbidden. If we are talking of general deterrence, publicity is a must. However - what shall we publicize? It has been suggested by one of the authors that general prevention will only work until it has dawned upon the general public that there are so few prosecutions of environmental crimes and that the sanctions are so trifling.

These basic facts of the deficiencies of our system of enforcement are now being established by the large empirical study of *Meinberg* and associates. But in my country this has long been commonly known in the general public, and only distant theoreticians talk about a general deterrent effect of our system. Repeated legisla-

tive initiatives have been undertaken to tighten up our enforcement of environmental legislation, both on the level of formulation of the legal rules, the resources of the control agencies and the education and training of police and prosecutors. Nevertheless, the results are practically the same, except, possibly, that the farmers now get solid fines for illegal deposits of manure.

Still another type of individual-preventive reaction might be the use of **suspended sentences with threats of closure** and the insertion of "company probation officers" in the corporations to ensure conformity with the conditions of probation. Why not? But who should be the officers? Would they come from the very administrations, so severely criticized? Or would they be provided by environmental organizations? Would they really close down the factory, where they had come close to the management and to the workers who would be laid off when the closure took place?

VI. Conclusion

Both you and I could - and we even may do it in a few moments - go on suggesting reforms and repairs of our system of environmental criminal policy. But I for one - and maybe some of you - will regard this as a futile exercise. Or, at best, as marginal adjustments in our respective national systems.

In returning to my starting point, I shall repeat that the situation is not due to deficiencies in our penal system that can be corrected by getting good ideas from one another. It is not even due to its limitations or to technical deficiencies in other parts of our legal system. It is due, in my opinion, to the valuation that environmental problems have in our social system as a whole. Environmental law and criminal law **can** be used constructively, but this will demand that we give the environment paramount importance in our system of social values. I hope we reach that point before it is too late. One precondition is that we give up the illusion of easy solutions, not touching on our basic economic system, be it capitalistic or socialistic by name.

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Commentary

Matti Joutsen

1. Introduction

The paper by *Heine* and *Meinberg* provides a cohesive, well-researched and timely review of the approaches taken in Europe towards the protection of the environment through criminal law. Some of the essential points in their paper are the following:

- there is an **international trend towards increasing criminalization** of acts that harm the environment (section I1);
- there are **close ties between administrative law and criminal law**, and these ties vary from one jurisdiction to the next (section I2); and
- a statistical analysis of the implementation of environmental criminal law legislation in twelve European countries indicates a **high dismissal rate, a low number of sentences** and a relatively **mild sentencing practice**. This is supported by the results of the few available criminological studies (section I3).

The authors are drawn by these observations to more fundamental questions on the role of criminal law in dealing with a serious societal problem. German research is cited to suggest that attempts to expand the application of criminal law succeed primarily only in bringing in petty cases (section IIA1). This, in turn, raises questions of the role of reporting, the possible distinction between petty and large-scale ("white-collar" or corporate) environmental crime, the function of the prosecutor, and the ties between the administration and the criminal justice system in the control of harm to the environment (section IIA2).

The following commentary shall have two parts. The main body will deal with the difficulties of bringing criminal law to bear on this specific social problem (harm to the environment), and with the possible consequences of expanded criminal law. The second part will deal with international cooperation.

2. The Function of Criminal Law in the Protection of the Environment

2.1 Basic Considerations in Criminal Law

At a time of increased concern with the environment it would seem natural to the man in the street that the heaviest weapon available in social control - the criminal law - is brought to bear on environmental offenders. Traditionally, the criminal law applies to the causing of deliberate harm to person and to property, and to the negligent causing of death or injury. It should therefore also apply to such acts as the deliberate discharge of toxic wastes into the water supply, and recklessness in the operation of chemical plants or nuclear reactors. While the less serious infractions could continue to be dealt with by the administrative machinery, the more serious ones should go to the criminal justice system.[1]

As shown by the paper by *Heine* and *Meinberg*, the countries of Europe have met with considerable difficulties in putting this notion into practice. Even though the countries are becoming very much aware of the dangers of harm to the environment, it has proven difficult to specify what acts actually endanger the values and goals of society in protecting the environment, and to weigh whether or not these acts are reproachable. Special difficulties have arisen in implementing the criminal law and in sentencing. Finally, there remains the question of possible dysfunctions in the use of the criminal law, even as a "last resort" in case of administrative, technical and other measures prove inadequate or inappropriate.

2.2 Identification of Reproachable Activities that Harm the Environment

The principles of predictability and legality in criminal law require that the essential elements of offences are clearly laid out. Regrettably, this has met with considerable

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1 The distinction between criminal law, administrative criminal law and administrative law remains blurred. The subject shall be dealt with at the XIV International Congress on Penal Law. See the collection of reports in Revue Internationale de Droit Pénal, vol.59 (1988), no.1 and 2.
Among the basic differences between the two are their statutory basis, the legal safeguards, the character of procedure (accusatorial/inquisitorial, oral or written, public or in camera), the rules of evidence, the identity of the sentencing authority, the role of subjective guilt, the possibility of corporate responsibility, the type of sanctions, the sentencing principles (equality, predictability, proportionality), and the basic rationale of the proceedings (retribution vs. regulation).

difficulty in practice. In many countries criminalization is based on a blanket provision such as "violation of the provisions of this Act is subject to a fine or imprisonment for up to six months".

Even where specific provisions exist, either in the Penal Code or in separate environmental protection statutes, they are forced to rely on more or less vague references to "harmful" or "injurious" actions that have an "evident" or "considerable" effect on the environment.

The difficulties are closely tied up with the concept of "acceptable risk". Environmental crime often occurs in connection with legitimate and socially useful activity (such as industrial production). It is difficult to set the parametres of reproachable conduct. Some degree of pollution is unavoidable in connection with industry, and pollution per se is harmful - but what is "too much"? This problem is confounded by the fact that we often learn, too late, of the dangers involved in various industries (as has been the case with asbestos, or with the nuclear testing carried out during the 1950s).

2.3 Difficulties Faced in Implementing Criminal Law

Perhaps the main difficulty faced by those enforing environmental criminal law is **lack of expertise**. Special expertise and technical tests are often necessary to determine whether an offence can even be suspected, let alone in determining its scope, or identifying the offender.

The **complexity** of activities that harm the environment is another difficulty. Not only is it difficult to attribute imputability, as in the case of acid rain,[2] it is also difficult for law enforcement officials and prosecutors to demonstrate culpability. The standards of safety/dangerousness change along with our knowledge of the side-effects of various technical processes, thus confounding attempts to demonstrate either negligence or intent on the part of the suspect.[3]

The **jurisdictional** problems are also increasing. The offending corporation may be located abroad (as in the Bhopal incident), and/or the harmful pollution may cross international boundaries (as in the Chernobyl incident).

2 Technological and industrial processes often involve interaction of many people, for example, acid rain is the sum result of the actions of different corporations.

3 Although a reversal of the burden of proof would ease the task of the police and the prosecutor, it would run counter to enshrined principles of justice. Administrative law, on the other hand, may content itself with vicarious liability. For example, the "environment protection charge" in Sweden can be imposed as soon as an infringement of special regulations and conditions has been objectively established, without needing to show intent or negligence. *Victor, D.:* National report for Sweden in Revue, op.cit., pp.389-397, at p.395.

Difficulties such as these suggest several reasons why criminal law appears to be applied primarily to petty cases. Where the pollution was caused by a homeowner or a small company, it may be relatively easy to demonstrate the harm caused, and elicit a guilty plea. Furthermore, such small cases are perhaps more likely to be reported (by neighbours or other citizens) to the police.

In larger corporations, on the other hand, the determination of culpability and imputability is more difficult. Large corporations also have greater resources for defence counsel, who will often argue that the alleged violation (if any) was merely a measurement error on the part of the monitoring agency (if, indeed, it is not the corporation itself that is responsible for monitoring possible pollution!) or was only a random fluctuation in what was otherwise an acceptable level of pollution.

Even if the guilt of the corporation is established, the defence counsel can then march out a number of possible exonerating grounds (justifying circumstances, state of necessity, consent of the victim, force majeure, coercion, mistake of law, mistake of fact). Finally, if a conviction seems likely, the counsel can put the large cost of the defence to good use by arguing that the cost of the proceedings (or perhaps the bad publicity generated by the case) is in itself sufficient punishment.

2.4 Sentencing

Even after the defendant has been convicted, the judge will continue to be faced with problems. He will be confronted with a multitude of factors that must be taken into consideration in sentencing: the potential or actual harm (harm to the public, harm to those in vicinity, costs of cleaning pollution), intent, savings or gain from the offence, the size and wealth of the corporation, corporate "character" and remorse, cooperation and expenditures, the laxity of government agencies, the reasonableness of standards, prior record, and the easing of difficulty in preventing pollution.[4]

Where punishment under criminal law is applied, it is generally seen to have certain functions: general prevention, special prevention (deterrence, rehabilitation or incapacitation), and retribution (which is now largely understood as the expression of society's repudiation of the offence). An increasingly important function is reparation and restitution to the victims of the offence.

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4 See, e.g., *Swaigen, J., Bunt, G.*: Sentencing in environmental cases. Protection of life series. A Study Paper prepared for the Law Reform Commission of Canada. Ottawa 1985.

Of these, rehabilitation and incapacitation would appear to have at most marginal significance in the protection of the environment. Reparation and restitution remain secondary, although they could (should) play a larger role in sentencing. Furthermore, restitution may often be impossible, due to the immense sums involved, the difficulty of assessing the amount of damage, and perhaps also the long time scale involved (as in the case of nuclear testing, victims may have died a long time ago).[5]

Criminal law would thus seem to be important where general prevention, special deterrence and public repudiation of the harm done to the environment are deemed to be needed. Of these, public repudiation of the offence has great symbolic importance. Regrettably, public acceptance of the sanction imposed may prove difficult, since the typical offence brought to court does not resemble society's vision of polluters. As a consequence, the desired internalization of norms may not take place.

2.5 The Consequences and Effects of the Implementation of Criminal Law

Should the problems noted above be surmounted at least on a satisfactory level, what are the possible consequences? In the absence of the research called for by *Heine* and *Meinberg*, the following points can only be taken as indicative.

First, the consequences to the **(potential) offenders (and offender corporations)**. It can be argued that both administrative supervision and control under criminal law have the same goal: to enforce the "polluter pays principle", as defined by the OECD in 1972. This is intended to encourage industries to internalize environmental costs, i.e., to avoid transferring them to various segments of the community.

From the point of view of decision-making in the corporation, therefore, it is largely immaterial whether pressure is brought to bear through administrative or criminal law. In both cases, the corporation is required to restrict its activity or undertake expensive measures in order to prevent (further) harm to the environment. The main difference between the two lies in the element of moral reprobation that is brought in by criminal law. However, often in practice there is only a metaphorical difference between administrative and criminal sanctions, at least from the point of view of the offender.[6] In addition, the use of criminal law often overlaps with administrative law, bringing in the possibility of cumulation of sanctions.

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5 § 10 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/Res/40/34) specifically deals with restitution for environmental offences.

6 This point is made by *Weigend, Th.* in the national report for the Federal Republic of Germany in Revue, op.cit., pp.67-93, at p.91.

Although there may be differences in the reportiang procedure and in the role of the injured party in administrative versus criminal proceedings, the consequences of expanded environmental criminal law on the **victims** (generally, the public) is largely a symbolic one. Indeed, the fact that the offenders who are actually sentenced tend to be petty offenders, and not the serious corporate offenders that make up the popular image of polluters, may lead to a backlash effect: criminal law is regarded as ineffective.

The consequences for the **business environment** depend largely on the identity of the offender and on the type of offence in question. Obviously, if the pollution involved is wide-spread, the case could serve as a precedent, and other corporations using the same technology must change their operations accordingly.

Business rivals might also seek to take advantage of any bad publicity engendered by the proceedings to take over the offender's market share. This strategy, however, can easily backfire. The defendant may succeed in presenting himself as the "little guy" being hounded by the government, and any rivals trying to move in must work very discretely. Furthermore, it is rare that the ordinary consumer is able to identify products on the shelf with the name of the offender (as in the Union Carbide case).

Perhaps the most tangible consequences of expanded environmental criminal law will be felt in the **operation of the criminal justice system**. Obviously, it will bring in more cases, and perhaps overload the system. Because of the higher standards of legal safeguards in criminal procedure, the police and the prosecutor must become experts in environmental law; they must gather firmer evidence and present "better" cases. As a result, there is a greater risk that behaviour will remain unsanctioned.

There is also a clear danger of an inflation of criminal law: should the offence be defined merely as noncompliance with a ruling or sanction imposed by the administration, the label of "criminal" will become quite diffused.[7]

The control system may also lose its leeway in dealing with violations. The use in administrative law of the principle of opportunity eliminates marginal and difficult cases, and makes it possible to negotiate with offenders. (Often, the best possible outcome is simply that the offender ceases an ongoing violation of the regulations and repairs any damage caused).

Finally, a shift towards environmental criminal law may have a deleterious effect on the **cooperation between sectors of the government**. The loss of an administrative monopoly in the regulation of conflicts, as well as the loss of possibility administrative agencies have of penalizing innocuous, albeit inconveniencing

7 See *Delmas-Marty, M.:* The legal and practical problems posed by the difference between criminal law and administrative criminal law, in Revue (op.cit.), pp.21-25, at p.22.

conduct, may make the administrative authorities responsible for the protection of the environment more reluctant to cooperate with the police and the prosecutors. As *Heine* and *Meinberg* point out, administrative officials may regard criminal law as "a foreign object", and they may not want to let the matter out of their hands by reporting it to the police.

3. International Cooperation

The role of the protection of the environment through criminal law has become the subject of intensive interest in international spheres. The Committee of Ministers of the Council of Europe has adopted resolution (77) 28 on the "Contribution of criminal law to the protection of the environment". The United Nations dealt with environmental crime in 1980 as one aspect of the abuse of power. ECOSOC resolutions 42/186 and 42/187 demand more attention to this subject. More recently, a resolution adopted at the 1989 European preparatory meeting for the Eighth United Nations Congress (The role of criminal law in the protection of nature and the environment) essentially demands the criminalization of environmentally dangerous practices.

On September 14-17, 1989, the European Coordination Centre for Research and Documentation in Social Sciences, in cooperation with the Crime Prevention and Criminal Justice Branch of the United Nations, shall organize an international conference on criminal justice and the protection of the environment. Its theme shall be "Is criminal law an appropriate tool to prevent and limit environmental damage and technological risk?".

Various catastrophes around the world have prompted many countries to take a new look at the balance that must be struck between technological development and industrialization, the one hand, and the protection of the environment, on the other. Bhopal provides a crystallized demonstration of the risks that developing nations assume when dealing with multinational corporations. Chernobyl - which was relatively soon followed in the USSR by several transport accidents and a growing outcry over the loss of the Baikal - has led to increased activism by the USSR for international cooperation in the protection of the environment.

Against this background, it is disturbing that criminal law receives only marginal attention outside the community of experts in criminal law. Perhaps the most visible evidence of this is the report of the World Commission on "Environment and

Development" established by the United Nations; even though the Commission was supposed to develop a framework for activity to protect the environment, the report does not deal with criminal law measures at all.[8]

The protection of the environment is and should be also a question for criminal law.[9] Furthermore, because of the increasing danger posed to foreign countries by the international transport of toxic and nuclear wastes, by the risk of international contamination in the event of large-scale "incidents", and by the simple fact that pollution does not respect national boundaries, international cooperation is imperative.

The possibility of a supranational environmental court, backed up by international enforcement through a supranational agency, remains visionary. The best prospects are provided by the present work going on within the framework of the Council of Europe and the United Nations. This includes work on the international harmonization of laws to eliminate lacunae, and the UN's work on a draft agreement on mutual assistance. Furthermore, the United Nations shall presumably soon be working on a draft international agreement that deals specifically with intentional, reckless or grossly negligent environmental offences that have international consequences.

Using criminal law to protect the environment has its risks. However, the values involved are so important that national activism and international cooperation are imperative.

8 Our Common Future, Oxford University Press 1987. A separate report of an assisting group of international legal experts ("Legal Principles for Environmental Protection and Sustainable Development" - see Annex 1, pp.348-351) dealt with a number of other legal measures, but not with criminal law.

9 This becomes particularly blatant in the case of acts which are not only criminal in themselves, but also endanger the environment. One example - so far fictional - is nuclear terrorism. An actual example that combines many aspects of modern crime was reported by the *International Herald Tribune* in an article on 15 August 1989 (p.3): large-scale producers of cocaine in Peru, who use pollutants to clear ground, are responsible for the deforestation of 1,7 million acres in the Amazon - under the protection of local organized crime and terrorist organizations.

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Commentary

Karl-Ludwig Kunz

I. Normative Structures of Environmental Criminal Law

1. Ecological Concerns in Need of Protection by Criminal Law

A criminal law that is mainly geared to individual objects of legal protection is not up to date. In modern society individual liberties can only be preserved if there is a stable framework of safeguards that render the exercise of individual liberties actually possible. Thus the efficient protection of life and health of the individual presupposes the protection of threatened ecological ressources. Accordingly, modern criminal law integrates fundamental ecological concerns in its concept of protection.

2. Models of Regulation

We can say in simplification that, in order to safeguard ecological interests (also) in criminal law, two legal models of regulation are practised. The traditional model of **administratively subordinated (subsidiary) criminal law** (practised by Belgium, France, Great Britain, Switzerland among others) makes qualified disobedience to administrative provisions a criminal offence by adding criminal law provisions to administrative acts. Let me outline the legal situation in **Switzerland** as an example: Apart from constitutional norms that order the protection of the environment (art.24 bis et seq. of the Federal Constitution), there is a host of special acts and decrees at federal level and on the level of particular cantons; these acts and decrees settle particular problems in the protection of the environment either exclusively or (more often) in complementation. The Federal Act on the Protection of the Environment of 7th October 1983 is the most important codification in that respect. The structure of those acts is always the same: In complementation to provisions that specify administrative limitations of environmental degradation, grave infringements of administrative regulations, which are enumerated individually, are declared to be punishable. This model of regulation is controversial. Hiding penal provisions in largely unknown special laws does not do justice to the importance the protection of the ecological bases of existence has; moreover, it is hardly suited to the task of opposing new ethical standards to widely practised behavioural patterns damaging the environment. For that reason, a more modern

technique of regulation provides for the **inclusion of definitions of environmental offences in substantive criminal law** (in the FRG, Austria, Portugal, Sweden, Spain among others). Thus, criminal law protection of the environment is upgraded in the hope that the reception of norms into basic criminal law will have the effect of an advertisement and will stimulate changes in behavioural patterns.

3. The Risk of a Criminal Liability Zone too Vaguely Defined

Of course, when supra-individual ecological matters are introduced as objects requiring protection under criminal law proper, the field of application of criminal law threatens to lose its plastic contours and to become **boundless**. The criminal law zone of protection against individual impairments of life and health is the result of historical growth and is only marginally subject to social change. It is different with supra-individual objects requiring legal protection such as nature. There it is already doubtful whether it deserves protection as such ("Rights of Nature"?) or merely as a factor enabling human existence. In the absence of clarity about which aspects of the environment need the protection of criminal law and when, **any** ecological campaign may, in order to strengthen their case, plead that their concerns are worthy of criminal law protection. Because of the great complexity and fragility of ecological equilibria the area of potentially damaging acts cannot be clearly delimited. This fact collides with the constitutional requirement that it must be foreseeable whether an action will be punishable or not. In order to fulfill this requirement to a certain degree, there are **two alternatives** for the protection of the environment by substantive criminal law: either to further limit the area of criminal law protection by requiring that the infringement of a provision lead to **concrete** endangerment (Austria) or a **close linking of environmental criminal law to administrative law** in the sense that demands generally stated by criminal law have to be specified by the administrative authorities (known in the FRG as "Verwaltungsakzessorietät"; also partly practised in Spain).

4. Criminal Law Accessory to Administrative Law ("Verwaltungsakzessorietät")

Under this system the legal provision in basic criminal law incriminates a certain action that will only be declared to be punishable when it infringes on administrative norms or orders in addition. This compromise solution seems to combine the advantages of other solutions. By creating **abstract** offences of endangerment, it efficiently **advances the frontline** of legal protection; it reckons with the **general preventive effect of basic criminal law**; finally, it defines disobedience against the administration as an admission ticket to criminal liability and thus makes the latter **calculable**. Since the ticket can be issued and withdrawn as the situation

demands, a penalising strategy becomes possible that avoids ponderous processes of legislative change and reacts to quickly escalating and thus no longer controllable accidents.

On the other hand, certain objections against this legislative technique arise: legal objections deriving from the principle of the **separation of powers**, political objections because **the legislative power would deprive itself of its duties** by forcing the task of defining punishable acts, which is originally one of legislation, onto administrative bodies. While environmental criminal law, when associated with administrative law, runs like a tender after the engine of environmental administrative law, criminal law is (as in traditional administratively subordinated criminal law) forced onto the typically administrative track of a balance of interests foreign to it, a balance between protection and commercial utilization of the environment. Frictions are the inevitable outcome thereof. The definition of punishable offences demands a categorical either-or decision. Criminal law cannot weigh economical interests in exploiting the environment with the interest in preserving the environment: if criminal law has to take into account the **per se** legitimate needs of the economy to utilize the environment, it will have to exempt the ensuing pollution from punishment. Accordingly, environmental criminal law threatens to divide into two heterogeneous parts: Where the interest in utilizing the environment is represented by a strong and well-organised lobby, it is to be expected that interference with ecological systems will largely remain exempt from punishment; yet where the degradation of the environment cannnot be justified economically, i.e. in the area of Everyman's delinquency, nothing will, at least theoretically, prevent punishment. In consequence, it is precisely in cases of commercial environmental crime, which are more momentous, that the threshold to the enforcement of norms is raised. This will jeopardise universal acceptance of environmental criminal law and its endeavour to stimulate behavioural changes in the private sphere, too, by setting new ethical standards.

II. Effects of Implementing Environmental Criminal Law

The example of systematic experience with the implementation of environmental criminal law in the Federal Republic of Germany shows that

- environmental crime on police records has growth rates far above the average, while ecologically less momentous offences clearly dominate,
- prosecution is mostly instituted on information from private parties and much less on information from administrative authorities,

- in the settlement of environmental criminal proceedings there is a distinctly marked tendency to decriminalize, and cases are increasingly settled out of court,
- private persons who have been identified as having committed environmental offences, esp. farmers and persons of a lower social status, are likely to be convicted, while the risk of being punished is practically inexistent both in the industrial and in the public sphere,
- trifling sanctions predominate.

These "**implementation deficits**", often deplored, are, at least partly, **conditioned by the normative structures** of environmental criminal law; they can thus not simply be eliminated by changes at the level of norm implementation. The fact that criminal liability accrues only when administrative bodies act first leads to an efficiently working environmental administration producing effects that are dysfunctional in criminal law. The discovery of invisible instances of pollution depends to a large extent on the findings of scientifically and technically specialized departments of the administration. The latter is not primarily interested in sanctioning individual contraventions of the law but in long-term remedies. Collaboration with the management of installations and with licence holders is inevitable in order for the administration to be able to supervise technical installations continuously and to develop concepts for the reduction of pollution within limits that are economically reasonable. As part of the strategy of the environmental administration, which aims at negotiation, criminal law is a mere means of putting on pressure, to be activated when departmental efforts have failed. Especially when grave contraventions of the law have occurred, a restrictive administrative practice in instituting proceedings is an expression of the endeavour to leave scope for negotiation in order to arrive, if possible by mutual agreement, at a solution that is ecologically defensible and will last. In this manner the input into the system of criminal law to examine the legality of administrative acts and under which circumstances holders of public office are liable. The mere discussion of this question fosters insecurity in administrative authorities and strengthens their scepticism towards the suitability of criminal law as a means of safeguarding ecological interests.

III. The Need for Reform

The drawbacks that become evident when the implementation of environmental criminal law is coupled with preceding administrative norms or orders should not bring one to question this model of regulation as a whole. The **retreat of criminal law** in favour of the greater flexibility of administrative or free-market arrange-

ments cannot seriously be considered: To exempt from punishment the historically incomparable threat to the ecological bases of our existence would represent the equivalent of an oath of manifestation for criminological policy. On the other hand, **a swing towards an environmental criminal law independent of the administration** would probably entail more disadvantages than advantages. Such a model of regulation would necessarily have to limit criminal liability by demanding that the contravention of a law lead to concrete endangerment. In the interest of an efficient protection of the environment we can hardly tolerate that a criminalization of the abstract endangerment of the environment is dispensed with. Moreover, implementation deficits would probably multiply: The fact that an interference would have to endanger the environment concretely before it could be prosecuted as an offence would mean that evidence of causation and of attribution would be more difficult to come by; in general, a criminal law independent of the administration, with its rigid rules of attribution, would probably be an obstacle to taking into account ecological matters consistently.

Hence criminological policy has its margin narrowed down to an environmental criminal law that is either subordinate to the administration or accessory to it. Practical experience with the implementation of a model of an environmental criminal law accessory to administrative law and acts in the Federal Republic of Germany shows that such a model is hardly superior to a model where environmental criminal law is strictly subordinate to the administration: The requirement that an act infringe on administrative provisions before it becomes punishable produces similar unwholesomenesses in both cases. There may be an advantage in an environmental criminal law accessory to administrative law: It lies in the stronger **symbolism** of original criminal law definitions of offences. However, this symbolic effect is continuously being diminished as the implementation deficits described become common knowledge. The elimination of these implementation deficits, as far as possible, is thus not only necessary in order to make protection of the environment by criminal law more efficient. It is even urgent in order to make the issue of protection credible: An environmental criminal law that undermines the advertising effect of prohibitory signs in substantive criminal law by a deficient implementation gambles away the chance of sensitivizing our society to ecological matters.

It is possible to offer limited remedies (without involving the guilt principle): For example, by extending the liability of the principal to include omitted interventions in his sphere of influence and by making possible administrative fines sanctioning the firm (see art.6 par.2, art.7 of the Swiss Federal Act on Administrative Criminal Law of 22nd March 1974); by clarifying the criminal liability of holders of public office in cases of faulty administrative acts; by decriminalizing petty cases of Everyman's delinquency, for example in cases of water pollution; by introducing a criminal law duty for administrative authorities to report offences, at least in cases

of grave damage to the environment; by improving scientific and technical equipment and by allotting more staff in specialized investigation departments; finally, by credible international collaboration in the prosecution and reduction of cross-border immissions and of organised "waste material tourism".

The significance of legislating on environmental crime, although, for the moment, it may remain largely "symbolic", should not be underestimated. The medium-term opportunities for environmental criminal law reside less in the prevention of damage to the environment than in a sensitivization for ecological concerns. As long as it is deemed "normal" to egoistically settle the conflict between a generally accepted sensitivity to environmental concerns and particular economic interests in favour of the latter, the creation of social ethical values contrary to generally practised behavioural patterns is dependent on the strong impression behavioural rules invested with the threat of sanctions leave. Environmental criminal law is thus not the **ultima ratio** of ecological sensitivization, but it forms its vanguard.

Nevertheless, it must be said that criminal law is both indispensable and little suited to the protection of the ecological bases of existence: The rigid - constitutionally indispensable - rules of attribution in criminal law prevent their being consistently used in the interest of the ecology. Criminal law protection of the environment can thus only be started with the handbrake applied, so to speak. This does not preclude that we **should** start in order to at least partly escape the ecological threat.

2. Organized Crime: Description, Explanation and Control

Organized Crime:

The forms it takes, background and methods used to control it in Western Europe and the United States

Cyrille J.C.F. Fijnaut

I. Introduction

Organized crime and how it is controlled has become a hot issue in Europe as well these past few years. It is a topic which at present is listed fairly high on the agenda of many national governments, the EC and the Council of Europe. For some time now radical reforms of the police and criminal law have been taking place in the various countries so that a better stand can be made against this form of crime. The media swamp their readers, listeners and viewers almost unremittingly with news and reports about all the different forms of organized crime and what the police and judicial authorities are doing to suppress it.

Scientific research into the background and forms taken by organized crime and methods applied to control this form of crime has not, however, kept pace with the tumultuous growth of the problem. This is not because no historical, sociological, juridical and criminological studies on this subject have appeared in the past years. It is because exhaustive, comparable analyses of the recent evolution of organized crime in the various countries, the development which the police system has gone through in this connection, the reform of criminal law which is in progress here and there on this subject, are all in all very scarce. This is not really surprizing. The carrying out of research in this field, whether of a more juridical or more empirical nature, is a very difficult task due to accessibility to the world of organized criminals and that of police and judicial authorities being so restricted. The result in any case is that anyone at present wishing to write about the problems of organized crime and how it is suppressed in Western Europe has to be satisfied with a hotchpotch of sources: reports by journalists, police analyses, scientific research, etc. From sheer necessity all publications of this kind form the unstable basis for the considerations which are to follow. In addition, they have been supplemented by the preliminary results, which have not yet been published of research which I am

carrying out personally into the evolution of organized crime in the city of Rotterdam, and into the administrative and judicial policy being applied to deal with this form of crime there.

More specifically, I shall first deal with the forms in which organized crime occurs. The description of these forms will not be limited to an analytical review. It is embedded in a historical and geographical analysis of the literature on organized crime, for the good reason that this method of working is extremely well suited to expose the misconceptions, myths and contrarieties which crop up in discussions about this form of crime.

Proceeding from the definition of organized crime which is developed, I shall then be reviewing the background of this kind of crime. I shall be devoting particular attention to the background of mafioso forms of organized crime. What is the reason for that? Because these are the most developed and socially the most relevant forms and also because it is about these forms that the greatest quantity and best scientific literature is available.

In the third place, an analysis will be presented of the measures which have been taken in the various countries or are being considered to control better certain forms of organized crime. I shall, of course, also be going into the policy championed by the EC and Council of Europe on this matter.

I should like to conclude by observing that I shall be making frequent references further on to American literature or American developments with regard to the problems in question. This is not only almost unavoidable but also very desirable. The views which prevail at present in Europe on organized crime and how it should be combatted are strongly influenced by American literature, reports and film material on the subject. A not less important factor is that there is an increasing amount of cooperation both between the underworlds in North America and Western Europe and between the governments in these parts of the world who are directly charged with suppressing this organized crime.

II. The Forms in which Organized Crime Appears

II.1 The Former Ideas in Western Europe about Organized Crime in the Light of Contemporary Historical Research

The term "organized crime" is certainly not an American invention. It has cropped up regularly in various terms in European literature, both scientific and non-scientific, on crime and crime prevention since the middle of the last century. Although the use of that term, the content of this word was somewhat inconstant, in fact no problem about the definition of "organized crime" was made until far into this

century. If we take a retrospective view of the literature from the second half of the last century and first decades of this century, we can say that the significance of this word had the following shades of meaning.

Generally speaking, this term was used to indicate that professional criminals distinguish themselves not only by the efficient and business-like way in which they commit certain crimes, but also by the close relations they have amongst themselves. In the way things were looked at then, they formed with each other a separate social world; an illegal, undesirable, despicable world - an underworld, with its own hierarchical relations, its own division of rights, duties and tasks, its own code of ethics and customs, its own language, etc. But as the description which *R. Heindl* gives of this world in his world-famous book which appeared in 1926, Der Berufsverbrecher: "Die Berufsverbrecher stellen tatsächlich eine organisierte Macht dar," it is also a threatening world, threatening to the "upperworld."[1] With this typification he interprets a view which had already been propagated with enthusiasm in the middle of the last century by *F.Ch.B. Avé-Lallemant* in his equally famous book Das Deutsche Gaunertum. Only this writer emphasized even more strongly that the strength of this power lay in the keeping of its movements secret from the outside world and in the merciless punishment of its members who betrayed the organization.[2]

In the eyes of *Avé-Lallemant, Heindl* and others, this secretive and violent underworld was certainly not only inhabited by professional criminals operating on their own, but also by groups, gangs which often had very many members, their ability to stand their own ground was long-established and their field of operation extensive. It is important to note this here as it then becomes clear straight away why the difference between the description of these groups and the typification of the criminal organizations of Southern Italy which is to be found in the writings of *C. Lombroso* at the end of the 19th century is smaller than one might think. In L'homme criminel not even a strict difference is made: "Au fond, la camorra et la mafia ne sont que des variétés du brigandage vulgaire." *C. Lombroso* did state that the camorra of Naples was "l'organisation criminelle la plus complète." According to him, this association consisted of small, extremely disciplined groups operating independently of each other which were subjected to a strict, hierarchical leadership. Its foremost activity was extorting money from gambling establishments, traders, farmers, etc. That they operated so successfully was partly due to the fact that they counted not only many police officials among their members, but also people from the higher ranks of society. For *C. Lombroso* the mafia was simply the Sicilian version of the camorra. Apart from the fact that this organization was also

1 *Heindl, R.:* Der Berufsverbrecher. Berlin 1929, pp.139-158.

2 *Avé-Lallemant, F.Ch.B.:* Das deutsche Gaunertum; in seiner sozialpolitischen, literarischen und linguistischen Ausbildung zu seinem heutigen Bestande. Wiesbaden 1858, vol.3, pp.1-14.

guilty of criminal practices other than extortion, it distinguished itself from the camorra principally by the omertà - the oath of silence - of its members towards the government, the monopoly of violence of which is disputed. The political involvement of both the camorra and the mafia in the successive power changes which took place in the south of Italy in the 19th century were not, in his opinion, really significant. It was really a camouflage for the real intentions of these groups: the committing of crime.[3]

It is not clear from where *C. Lombroso* derived his views of organized crime, particularly in Southern Italy. Besides references to foreign *(Avé-Lallemant!)* and Italian writers, there are repeated observations in his book which are apparently based upon statements made by authorities from the areas under discussion. But this does not alter the fact that the picture which he sketched of organized crime in Italy in L'homme criminel influenced national and international literature about the camorra and mafia for decades, although this influence should not be overrated. *A. Falcionelli*, for example, in his famous book which appeared in 1936 "Les sociétés secrètes italiennes: les carbonari, la camorra, la mafia", does not refer one single time to *C. Lombroso*. Nevertheless, his final conclusion was more or less the same. Since the end of the 19th century the camorra and the mafia have formed networks of criminal gangs whose strength lies, on the one hand, in the protection which they enjoy from high ranks of society and, on the other, in their own rigorous discipline. But, in contrast to *C. Lombroso, Falcionelli* was of the opinion that the mafiosi were not criminals from origin but people who, just like others, had become involved by force of arms in the continuous struggle for political power in Sicily since the beginning of the 19th century. They started gradually, however, to misuse their organization, means and influence for illegal, criminal purposes.[4]

If we examine these earlier ideas which prevailed in Europe about organized crime in the light of present-day historical research, no great problems arise as to the general description of the underworld as it was then and, more specifically, the criminal gangs which operated in Europe around 1800. Just as the study of *K. Chesney*, for example, revealed that there was indeed an underworld in London at the end of the 19th century, research work carried out by *F. Egmond* and *C. Küther*, for example, has demonstrated irrefutably that large, powerful, loosely organized gangs - criminal networks in fact - were active in extensive parts of

3 *Lombroso, C.:* L'homme criminel: étude anthropologique et psychiatrique. Paris 1895, vol.2, pp.539-558.

4 *Falcionelli, A.:* Les sociétés secrètes italiennes; les carbonari, la camorra, la mafia. Paris 1936. See further a.o. *Falzone, G.:* Histoire de la mafia. Paris 1973.

Europe about 1800.[5] It is rather the case that these historical studies evoke questions regarding more recent criminological views as to the development of organized crime in the 18th and 19th century. In particular, it is open to question whether the very precise difference which *M. McIntosh* made in the seventies between gangs of bandits operating in rural areas and urban underworlds can be maintained.[6] Members of the Great Dutch Gang, for example, not only made their strike all over Germany, the Netherlands, Belgium and France, but they needed the urban environment and the countryside for transporting and selling their "goods", and their protection from the police and the judicial authorities, etc.

An important problem is obviously typifying the camorra and the mafia at about 1900. The criminologist, *H. Hess*, and anthropologist, *A. Block*, writing in the seventies, claimed that in the case of the mafia it was not then so much a question of well-organized criminal associations but rather oppressive, protective and conciliatory practices which were used in an empoverished Sicily, where the state had little influence, by elite groups eager for esteem, influence and money, if necessary with the help of criminals, to make their position of power safe. The sociologist, *P. Arlacchi*, clearly explained again this view of the earlier situation several years ago in his book "Mafia Business". The historian, *Duggan*, however, recently gave again a somewhat different view of the situation. He shares the view taken by *P. Arlacchi, H. Hess, A. Block* and others that, contrary to what *C. Lombroso* claimed, there was no question of a large-scale, secret criminal organization in Sicily at that time. He too agrees with their opinion that the mafiosi as they were then were not just criminals, but "men of honour" who fulfilled various important social functions complementary to the state government. But, unlike them, he does not doubt that at that time in Sicily there were also networks of professional criminals and criminal groups who were ramified in all classes of society. Sometimes they acted very secretly and violently and committed extortion, raids and other crimes here and there on a large scale. What is not clear is what the relationship was between the mafiosi and these criminal networks.[7]

The fact that there is more involved here than a theoretical discussion was shown more clearly than ever in the twenties. Then, according to *Duggan, Mussolini* and

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5 *Chesney, K.*: The Victorian underworld. Harmondsworth 1979; *Egmond, F.*: Banditisme in de Franse Tijd; profiel van de Grote Nederlandse Bende, 1790-1799. De Bataafse Leeuw 1986; *Küther, C.*: Räuber und Gauner in Deutschland; das organisierte Bandewesen im 18. und frühen 19. Jahrhundert. Göttingen 1987.

6 *McIntosh, M.*: The organisation of crime. London 1975, pp.18-41.

7 *Arlacchi, P.*: Mafia business; the mafia ethic and the spirit of capitalism. London 1986; *Block, A.*: The mafia of a Sicilian village, 1860-1960; a study of violent peasant entrepreneurs. Oxford 1974; *Duggan, Ch.*: Fascism and the mafia. New Haven, London 1989; *Hess, H.*: Mafia: Zentrale Herrschaft und lokale Gegenmacht. Tübingen 1970.

his supporters (from the North!) resolutely tackled the question of the mafia, in a manner of speaking, in order to unite Sicily with the Italian state and give the fascist party a strong hold on the island. But in spite of the fact that the prefect whom they elected in 1925 to achieve these objectives, *Mori*, built up in the following years a fine network of informers all over Sicily, had thousands and thousands of suspects picked up, sometimes with relatives and all during razzias, and did all he could to have many of them tried at mass trials, it turned out in actual fact to be impossible to prove that large criminal organizations existed, let alone eliminate them. The involvement of the mafia in the social, economic, political and cultural structures on Sicily was obviously much greater than had been imagined. Nevertheless, the Italian people and the international press had been led to believe meanwhile that *Mori* had defeated the mafia. In the thirties, however, the problem of crime on Sicily was just as great as in preceding years, only it was now unofficially forbidden to talk about it in terms of the mafia. This censure was definitely effective abroad as well where *Mori* was also frequently depicted as a hero. *Falcionelli* still wrote in his book dating from 1936, to which I have already referred, that *Mori* had vanquished the mafia. What he failed to mention was that for all that *Mori* had been removed from office by *Mussolini* back in 1929!

II.2 The Evolution of Research into Organized Crime in the United States

Although the world of the professional criminals had become a familiar phenomenon in the United States as well in the course of the 19th century, it is certain that organized crime was increasingly given the status of an important national problem, especially after the First World War.[8] It is also a known fact that this development was particularly put in motion by the activities of the groups who, during the Prohibition, were given every opportunity to get rich by violence, by illegally distilling and smuggling alcohol. But this historical fact has become so notorious that it has led to a very distorted picture of what was then meant by organized crime in the United States in the twenties and thirties. It has promoted the view that only all kinds of crime syndicates are meant here by the term organized crime. This was and is not, however, the case. What did happen is that from that time onwards a certain division developed into scientific and political literature on organized crime, i.e., literature on earlier professional forms of organized crime and literature on syndicate type forms of organized crime.

The original unity of the literature under discussion can best be seen in the book which *R. Graszberger* published in 1933 on "Gewerbs- und Berufsverbrechertum in den Vereinigten Staaten von Amerika". In this book all forms of crime committed

8 *Hartsfield, L.K.*: The American response to professional crime, 1870-1917. Westport 1985.

by (individual) professional criminals - burglaries, robberies, swindling, etc. - are simply treated together with forms of crime which are committed rather by gangs - prostitution, drugs trafficking, smuggling of alcohol, extortion of the hotel and catering trade, the building industry and flower business, etc. But *Graszberger*, of course, also makes a distinction between the two forms. To put it more specifically, he attributes the following characteristics to the gangs in New York: they have a very rigid hierarchical structure internally, they aim at establishing monopolies in certain areas of the city in certain sectors of legal and illegal business, and they do not shun from the use of brute force against disobedient members of their own gang, members of rival gangs and entrepreneurs who happen to thwart them. But he immediately adds that the gang members usually began their career as burglars, swindlers, perpetrators of acts of violence, etc.[9]

The division which arose later can be very well illustrated by the works which have since become classics by *H. von Hentig*: "Der Gangster" from 1959, and *E.H. Sutherland*: "The professional thief; by a professional thief" dating from 1937. Unlike what is suggested by the title, it is mainly the organization and operation of successive kinds of gangs which is analyzed in the first book: the traditional criminal gangs whose members commit certain crimes on their own such as burglary, extortion and fraud, and the rackets and syndicates whose leaders leave the actual carrying out of crimes (preferably crimes connected with the continuous supplying of very desirable but illegal services and goods, and in connection with the continuous extortion and penetration of legal businesses and organizations) completely to their various kinds of associates.[10] In the book by *E.H. Sutherland*, on the other hand, the individual professional thief with his technical skills, habits and feelings indeed occupies a central place in the first instance, but throughout the entire book, and certainly in the conclusion, the writer nevertheless indicates quite plainly that professional theft is also a form of organized crime. Why is that? Not only because professional thieves have a lot of skills, views and emotions in common, but also because they often help each other by word and deed, often maintain friendships over great distances, etc. One cannot become a professional thief by oneself: "The profession of theft suggests that a person can be a professional thief only if he is recognised as such by other professional thieves."[11]

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9 *Graszberger, R.:* Gewerbs- und Berufsverbrechertum in den Vereinigten Staaten von Amerika. Wien 1933, pp.97-197.

10 *von Hentig, H.:* Der Gangster; eine kriminal-psychologische Studie. Berlin 1959.

11 *Sutherland, E.H.:* The professional thief; by a professional thief. Chicago 1967.

When we now review the extent and importance of the literature which appeared in the past decades in the United States on organized crime in the light of the distinction I have described above, we notice immediately that only a small section of this is devoted exclusively to professional criminals. We can consider here the publications by *N. Polsky*, *W.J. Einstadter* and others about swindlers, robbers etc.[12] What is more important are the studies which deal with both professional crime and organized crime in the strict sense: crime syndicates. Good examples of these are *J.A. Inciardi's* book: "Careers in crime" and *H. Abadinsky's* book: "The criminal elite".[13] The importance of these studies lies more specifically in the fact that they not only emphasize the former ascertainment that organized crime is a phenomenon with many facets, but also make clear that crime syndicates and professional criminals are interconnected in all sorts of ways and benefit from each other. Most of the literature, however, relates to the evolution, organization, effects, suppression etc. of crime syndicates. If this is in itself already reason enough for dealing with this literature further on in this paper, the other is that it is so relevant to current discussions in Western Europe.

When we study this literature more closely we notice that it has been dominated for many years by official reports. To begin with, the report which was compiled in 1950-1951 by a Senate commission chaired by *E. Kefauver*.[14] Further, there is the report of the presidential commission chaired by *N. Katzenbach* which, in the years 1966-1967, tackled the issues of law enforcement and administration of justice.[15] Then there was the report of the commission chaired by *B.T. Byrne* which advised on the objectives and standards of criminal law in 1975-1976 at the request of the Law Enforcement Assistance Administration.[16]

The picture presented of organized crime in the first two reports is more or less as follows. There are definitely smaller and larger crime syndicates operating in the cities of the United States. The hard core of these syndicates is formed by a confederation of 24 Italian syndicates which, in turn, is run by a committee of 7 to 9 persons. The economic basis of this hierarchically structured criminal network is illegal gambling in all its forms. These syndicates have also built up monopolies through corruption, intimidation, arson, etc. in extensive parts of the country in the area of prostitution and drugs trafficking, and have also gained considerable

12 *Einstadter, W.J.:* The social organisation of armed robbery. Social Problems 1969 (17), no. 1, pp.64-83; *Polsky, N.:* Hustlers, beats and others. Harmondsworth 1969.

13 *Inciardi, J.A.:* Careers in crime. Chicago 1975; *Abadinsky, H.:* The criminal elite; professional and organized crime. Westport 1983.

14 *The Kefauver Committee report* on organized crime. New York, Didier, s.d.

15 *The President's Commission on Law Enforcement and Administration of Justice:* Task Force report: Organized crime. Washington 1967.

16 *National Advisory Committee on Criminal Justice Standards and Goals:* Report of the Task Force on organized crime. Washington 1976.

influence in important sectors of legal business, for example, the catering and building trade and the trade unions connected with those industries. It is for this reason as well that it is difficult to break the power of these syndicates. But this problem is also an extensive one because these syndicates are so rigidly organized internally and can count externally on the support of lawyers and other experts. Apart from that it is difficult to undertake any large-scale action against the syndicates, as it is difficult to prove the vicious nature of their practices due to the absence of sufficient, reliable figures. Even when the authorities proceed to take directed action against them there are problems such as the intimidation of witnesses to be dealt with. This picture of the situation is indeed endorsed broadly speaking in the third report which was cited last, but the differences in important points are also indicated. Less emphasis is placed on the dominant role of the mafia and the rise of crime syndicates in circles of the black and Hispanic population is pointed out. It is also suggested that trafficking in drugs could take over the role of illegal gambling. Finally, it is suggested on more than one occasion that organized crime is beginning to take on the form of white collar crime, considering the increasing role played by crime syndicates in fraudulent practices with regard to benefits, subsidies and pensions, and laundering "black" money. It almost speaks for itself that this organized white collar crime is very different from what *E.H. Sutherland* meant by this type of crime in his famous book "White collar crime" which appeared in 1949: "a crime committed by a person of respectability and high social status in the course of his occupation."[17]

As I have already stated, the reports I have cited above have for decades dominated discussion both public and scientific about organized crime. The book by *H. von Hentig* which I already referred to, for example, relies very heavily upon the report of the Kefauver commission. It is also a well-known fact that very influential books by *D.R. Cressey* such as "Theft of the nation" (1969) and "Criminal organization" (1970) are based largely upon his work for the Katzenbach presidential commission.[18] But in the same years that these books captured the scientific market on an international scale, studies began to appear in which writers dissociated themselves in no uncertain terms from what could be called the American view of organized crime: organized crime is a multi-headed monster which is alien to American society, but strives to conquer it in all sorts of illegal ways out of lust for money and power. *D. Bell, F. Ianni, W. Chambliss, J. Gardiner* and *H. Nelli* in particular

17 *Sutherland, E.H.:* White collar crime. New York 1961.

18 *Cressey, D.R. :* Theft of the nation; the structure and operations of organized crime in America. New York 1969; *Cressey, D.R.:* Criminal organization: its elementary forms. London 1972. Compare: *Albini, J.L.:* Donald Cressey's contributions to the study of organized crime: an evaluation. Crime and Delinquency 23 (1988), no. 3, pp.338-354.

showed in the course of the seventies that the "national mafia" is a myth.[19] Not only has the existence of such a mafia in the past never been conclusively proved, but this picture is also in contradiction with the results of empirical investigation into crime syndicates. These rather indicate the absence of mutual connection and uniformity. They also advance the view that organized crime is not un-American but in fact typically American. According to them, the syndicates fit completely into American social, economic and political structures, and they even make an important albeit illegitimate contribution to their upkeep. They also offer their members prospects of a legitimate place in the respectable upper world: organized crime functions like a social ladder, for lack of a better alternative, for marginal groups, in particular immigrants. It is, moreover, remarkable that this criticism of *D.R. Cressey's* views has some points in common with the contemporary criticism of *C. Lombroso's* vision of the mafia and the camorra. This is not, however, surprizing. Both of these writers' views were based more upon imagination than on facts, or is this going too far?

The presidential commission which in the years 1983-1986 under the chairmanship of *I.R. Kaufman* studied the problem of organized crime again proceeds uncurtailed from the picture of the Italian mafia that *D.R. Cressey* presented to the *Katzenbach* commission in the sixties, based mainly on police information.[20] This picture is again based principally on police reports and statements, some of which are confidential. As such it is difficult to deny or confirm it. All the more so as no empirical studies have been published in the past few years on the basis of which an "independent" judgment can be pronounced. The publications on the criminal proceedings against the "Pizza Connection" show that at the beginning of the Eighties there was a kind of cooperation between "families" particularly in New York, Philadelphia and Newark with regard to drug trafficking, but did not throw any more light on the total structure of "La Cosa Nostra".[21] There is now somewhat

19 *Ianni, F.A.J., Reuss-Ianni, E.:* A family business; kinship and social control in organized crime. New York, Russell Sage Foundation 1972; *Ianni, F.A.J.:* Black maffia; ethic succession in organized crime. New York 1974; *Chambliss, W.J.:* On the take; from petty crooks to presidents. Bloomington 1978; *Gardiner, J.A.:* The politics of corruption: organized crime in an American city. New York, Russell Sage Foundation 1970; *Nelli, H.S.:* The business of crime; Italians and syndicate crime in the United States. New York 1976.

20 Here I make use of the un-edited version of the final report.

21 *Blumenthal, R.:* Last days of the Sicilians; at war with the mafia; the FBI assault on the Pizza Connection. London 1988; *Shawcross, T., Young, M.:* Men of honour; the confessions of Tommaso Buscetta; the man who destroyed the mafia. London 1987, pp.213-232.

more clarity about the actual structure of the mafia in New York. At least it is clear that the role which the five "families" play in the various sectors of organized crime in this city is very different. On the one hand, *P. Reuter's* research into the hold of the mafia over the illegal gambling and credit business in this city shows that its control over this sector is fairly loose. The market is not very rigidly organized, there is room for newcomers and conflicts are settled by words rather than force.[22] On the other hand, there has been an intermediate report for some time which was compiled by the New York State Organised Crime Task Force led by *R. Goldstock* which shows that the "families" have gained control over the whole of the New York building industry in the course of the years through extortion, violence, corruption, sabotage, fraud, etc. They brought key industries within their reach. They have a tight hold on an important number of subcontractors and exert considerable influence in the trade unions.[23] We do not know what the situation is in the other large cities at this moment. The report of the Kaufman committee does indicate that the mafia's position of power is not equally great all over the country, and it can differ considerably per sector from area to area. If it is very active in the building industry in some areas, such as New York, its main field of operation in other areas will be in drug trafficking, gambling, real estate, the catering trade and banking.

Fully in keeping with the prediction already made in the report of the *Byrne committee,* a picture is presented in this report of the rise of non-Italian gangs which are also considered as organized crime because, just like the Italian syndicates, they more or less comply with 3 criteria:

- they have a long-established, hierarchical internal organization which aims at making profit, if necessary by using violence;
- they enjoy the protection of corrupt police officials, lawyers and businessmen;
- they can rely on the support of specialists, prominent businessmen, people with high social positions, etc. for technical assistance or social prestige.

The gangs, syndicates which are dealt with in the report are **inter alia** motorcycle gangs, Mexican, Texan and Cuban groups, Chinese triads, Japanese yakuza and Vietnamese groups, and, of course, Colombian gangs.[24] They are by no means spread over the entire United States. They also operate in very diverging sectors of organized crime: drug trafficking, gambling, pornography, prostitution, kidnapping, contract killing, etc. The ties they have with each other appear to be very

22 *Reuter, P.:* Disorganized crime; illegal markets and the mafia. Cambridge 1984.

23 *New York State Organized Crime Task Force:* Corruption and racketeering in the New York City construction industry; an interim report. New York 1987.

24 Compare *Abadinsky, H.:* Organized crime. Boston 1981, pp.54-62.

limited. It is all the more striking, however, that many of these gangs keep in contact with mafia families in different ways; do their dirty work, carry out joint operations with them etc.

Finally, there has been every indication these past years that the *Byrne commission* was correct when it predicted that trafficking in drugs would become very much more important than gambling. This trafficking indeed dominates the scene in many cities.[25] And how could it have been otherwise with the gigantic profits which can be made here! But what this committee failed to include in its observations was the effect of this change on the further development of organized crime. It was no judge of what could be done with all the new capital. And it made no pronouncement about how organized crime was to develop on a more international scale. Yet these are two important aspects of this change, especially for Europe.

II.3 Organized Crime in Western Europe: A Picture of the Present Situation Based upon Research

If after this detour through American literature about organized crime we now look at the forms which this crime takes in Western Europe, we should refer back again to what was stated in the introduction to this paper, i.e., that scientific research into this subject has not kept up at all with the growth of this problem. This means that not only are there no up-to-date research works available on the incidence of this crime in Western Europe, there are also none on the general situation in countries such as Great Britain, France and Belgium. The first and only more important comparative study is still in fact the study which H.-*J. Kerner* carried out at the beginning of the seventies, at the request of the Council of Europe, of the extent and nature of organized crime in the Federal Republic of Germany and the Netherlands.[26] Since then the only publications to appear have been journalistic reports on the recent evolution of organized crime in Europe. These are sometimes interesting and informative but too much laced with anecdotes to allow a certain picture of the situation to be distilled from them. For the rest, it is generally known that not only drug trafficking, but also trafficking in weapons, stolen cars and

25 See e.g. *Eddy, P., Sabogal, H., Walden, S.*: The cocaine wars; murder, money, corruption and the world's most valuable commodity. London 1988.

26 *Kerner, H.-J.*: Professionelles und organisiertes Verbrechen; Versuch einer Bestandsaufnahme und Bericht über neuere Entwicklungstendenzen in der Bundesrepublik Deutschland und in den Niederlanden. Wiesbaden 1973.

women are now (partly) forms of organized crime which for some time now have not been restricted to European countries but are perpetrated on an intercontinental scale.[27]

Another difference from the situation in the United States is that in Europe information about this form of crime cannot be derived from official reports. It is not that no reports have been compiled in the Council of Europe and the EC in recent years which relate completely or indirectly to organized crime in Western Europe. These reports exist. Particular mention should be made of the report which *R. Stoffelen* wrote on the subject for the Council of Europe in 1986.[28] The analysis which is made here of the situation, however, is essentially no more than a nominal enumeration of the forms of organized crime which occur at present: trafficking in drugs, weapons and persons, etc. The problems of how these branches of criminal trafficking are actually organized, what is happening inside these branches on a European scale, and in which areas of Europe they are concentrated are not dealt with. The issue of organized crime is also discussed in a few reports of the European Parliament. *J. Stewart-Clark*, for example, talks in his report of 1986-1987 on the drug problem in member states of the EC about the size and organization of, naturally, drug trafficking.[29] In his report which appeared in March of this year about EC fraud, *P. Dankert* mentions the involvement of organized crime, namely, the mafia and the IRA.[30] Both of these reports have the same purport as the reports made by *P. Stoffelen*. They only point out the problem and do not elaborate upon it.

H.-J. Kerner more or less came to the following general conclusions in his study to which I have already referred. In the first place, expanding on earlier German and other literature on the topic, he established that there are still all kinds of professional criminals operating all over Western Europe. But he added that, on the one hand, more and more international relations are established among these criminals and, on the other, that a number of them are guilty to an ever-increasing extent of white collar crime. In the second place, he concluded that there is no such

27 *Koch, E.R.:* Grenzenlose Geschäfte; organisierte Wirtschaftskriminalität in Europa. München 1988.

28 *Council of Europe, Parliamentary Assembly, Legal Affairs Committee:* Report on international crime (submitted by Mr. Stoffelen, rapporteur), AS/Jur. (38) 14 Part.II.

29 *European Communities, European Parliament,* Working Documents 1986-1987, A Series, Document A 2-114/86/Corr.: Report drawn up on behalf of the Committee of Enquiry into the drug problem in the member states of the Community on the results of the Enquiry.

30 *Europese Gemeenschappen, Europees Parlement,* Zittingsdocumenten 1989-90, Serie A, Document A 2-20/89/deel A en B.: Verslag namens de Commissie begrotingscontrole over de voorkoming en bestrijding van EG-fraudes in het "Europa van 1992" (Rapporteur: de heer P. Dankert).

thing as mafiosi criminal organizations or organizations resembling these outside Italy. Just as others before him and after him, he saw in this last aspect the main difference between the situation in the United States and Western Europe. The question which is now eminent is, of course, whether these conclusions are still valid today.

It should be clear from what I have stated earlier that at this moment, for good reasons, there is little information available about relations between professional criminals acquiring an international character or, on a more limited scale, a European character. I already mentioned above that it is difficult to give any information about the situation in countries such as Great Britain, Belgium and France. This is not because there have not been any publications from which the situation can be deduced.[31] There is in fact adequate literature available about the situation in London in particular. It appears from this not only that professional criminals there still populate the highest regions of the underworld, but it can also be concluded from this literature that criminal organizations have developed in this city in the past 25 years in gambling, the sex business and trafficking in drugs.[32] Nevertheless, there are no specialized studies available about the global situation in this metropolis either, certainly studies in which suitable comparisons are made with the situation in other large British, American or European cities. *J. Albini* is the only one who instigated research of this kind at the beginning of the seventies.[33] His main conclusion then, which he recently repeated again, was that the vast majority of organized crimes in Great Britain are committed by professional criminals, whether or not operating as a group. He added, however, that criminal syndicates had indeed been formed here and there, but that these syndicates differ essentially from their American counterparts. According to him, they seldom or

31 Compare for the situation in France e.g. *Chairoff, P., Le Saint, K.:* La mafia jaune en France. Paris 1987. And for the situation in Great Britain e.g. *Taylor, L.:* In the underworld. London 1984; *Maguire, M.:* Burglary in a dwelling. London 1982; *Walsh, D.:* Heavy business; commercial burglary and robbery. London 1986.

32 *Hobbs, D.:* Doing the business; entrepreneurship, the working class and detectives in the East End of London. Oxford 1988; *Hogg, A., McDougall, J., Morgan, R.:* Bullion Brink's Mat; the story of Britain's biggest gold robbery. London 1988; *Kelland, G.:* Crime in London; from postwar Soho to present-day supergrasses. London 1987; *Pearson, J.:* The profession of violence; the rise and fall of the Kray twins. London 1982.

33 *Albini, J.L.:* Mafia as method: a comparison between Great Britain and the U.S.A. regarding the existence and structure of types of organized crime. International Journal of Criminology and Penology 3 (1975), pp.295-305. See further his contribution Organized crime in Great Britain and the Caribbean, in: *Kelly, R.J. (Ed.):* Organized crime; a global perspective. Totowa, Rowman and Littlefield 1986, pp.95-112.

never use force and intimidation and do not enjoy protection from the police, judicial authorities or other government institutions.

This preliminary and cautious conclusion advanced by *J.L. Albini* regarding the situation in Great Britain probably applies as well to that in the Federal Republic of Germany and the Netherlands, two countries where national analyses have been made by the police following much public discussion about the increase of serious organized crime.

The analysis of the German situation made these past years by the *Bundeskriminalamt* in Wiesbaden indicates that there are mainly networks of professional criminals in which sometimes a single person or group of persons fill key roles on a permanent basis and in which members work frequently together on certain jobs and projects. As an extension of these networks there are also groups here and there which operate more individually. These have a rather rigid hierarchy and a fairly strict division of tasks. These groups could also be called criminal organizations.[34] The criminal activities of these networks or groups are very varied. They cover gambling, prostitution, and drug trafficking, but are also involved, for example, in fraud with cheques, theft of cars and lorries, extortion and robberies. There is also a tendency of these groups to shift their activities in the direction of white collar crime, i.e., economic, financial and fiscal crime.[35] It is beyond all argument that the persons who are active in the inner circle of organized crime attempt in all sorts of ways to shield the tenor of their relations with each other, their actual activities and the financial gains which these yield as far as possible from the outside world, especially the police and judicial authorities. But researchers have not established that the main figures often take recourse to threats of violence against associates or rivals. They did not note either that networks or organizations are systematically "protected" by corrupt police officials or have easy access to important circles of

34 *Rebscher, E., Vahlenkamp, W.:* Organisierte Kriminalität in der Bundesrepublik Deutschland; Bestandsaufnahme, Entwicklungstendenzen und Bekämpfung aus der Sicht der Polizeipraxis. Wiesbaden 1988. For other general impressions, see e.g. *Behr, H.-G.:* Organisiertes Verbrechen. Düsseldorf 1985; *Schuster, L.:* Die Unterwelt des Freihandels; organisierte Kriminalität: Herausforderung für die nächsten Jahre. Kriminalistik 3 (1987), pp.163-164; Das organisierte Verbrechen in Deutschland; die Macht der Syndikate. Der Spiegel 9 (1988), pp.68-83. The situation in Hamburg has been described by *Sielaff, W.:* Bis zur Bestechnung leitender Polizeibeamter? Erscheinungsformen und Bekämpfung der organisierten Kriminalität in Hamburg. Kriminalistik (8-9), 1983, pp.417-422.

35 Compare *Franzheim, H.:* Geschäftspartner, die sich als Geldhaie entpuppen; organisiertes Verbrechen auf dem Wirtschaftssektor. Kriminalistik 5 (1987), pp.237-241; *Lüdders, A.:* Schadenssumme jetzt über 30 Mio. Mark; Euroscheck-Kriminalität: eine Erscheinungsform des organisierten Verbrechens. Kriminalistik 2 (1986), pp.99-102.

high society. Mention is made of individual attempts to corrupt, blackmail and intimidate individual persons in important positions. There are also clear indications which point to the presence of members of the (Italian) mafia in the Federal Republic. They seem to use this country, on the one hand, to hide from the Italian authorities and, on the other, to launder their "black" money.[36]

The analysis which was made by the Dutch police in 1987-1988 shows a situation which is very similar to the situation in Germany. The commission concerned came to the conclusion which was based on material supplied by all police forces that there are about 200 more or less established groups of professional criminals operating in the Netherlands. All of these groups operate at regional or (inter)national level and are involved in several types of crime: trafficking in weapons, drugs and women, all kinds of crimes against property, fraud, etc. A large number (approximately 80%) of these groups have less than 30 members, a small number thus have many more than that. If these groups are screened further as to characteristics such as hierarchical structure, application of sanctions using violence, corruption or intimidation of police officials and others, investment of "black" money in legal transactions and the spectrum of criminal activities, we can say that 92 of these groups have one of these 5 characteristics, 18 have 3 and 3 have 5 of them. There are, therefore, groups in the Netherlands as well which can be typified as criminal organizations, on a limited scale, a gliding scale; but just as in the case of Great Britain and the Federal Republic of Germany, with the following comments. Firstly, there is definitely no question (yet) of systematic corruption, blackmail or intimidation of the government. Secondly, there is no question of organized criminals having a strong hold over certain sectors of industry or certain trade unions. Thirdly, it cannot be said either that there are obvious connections between such figures and high society. There are, however, certain lawyers in the Netherlands as well who enter the lists quite regularly for people who have the reputation of being key figures in organized crime.[37]

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36 *Boeden, G.:* Erscheinungsformen und polizeiliche Bekämpfungsmöglichkeiten der organisierten Kriminalität. In: Schwind, H-D., Steinhilper, G., Kube, E. (Eds.): Organisierte Kriminalität. Heidelberg 1987, pp.23-40.

37 *Centrale Recherche Informatiedienst:* Georganiseerde criminaliteit en inter-regionale groepscriminaliteit. 's-Gravenhage 1988. The results of this general analysis correspond very well with the conclusions of reports concerning such specific problems as women's trade and labour broking. See: *Berghuis, A.C., van Duyne, P.C., Essers, J.J.A.:* Effecten van de Wet Ketenaansprakelijkheid op malafiditeit. 's-Gravenhage, Staatsuitgeverij 1985; *Buijs, H.W.J., Verbraken, A.M.:* Vrouwenhandel; omvang en de kanalen waarlangs vrouwenhandel naar Nederland plaatsvindt. s'-Gravenhage, Ministerie van Sociale Zaken en Werkgelegenheid 1985.

All in all this means that, with the exception of Italy, the situation in Europe is no longer the same as that encountered by *H.-J. Kerner* at the beginning of the seventies. Since then the underworld has started to manifest to a certain extent somewhat more rigid organizational patterns than was the case at that time. The situation here, however, still very much differs in essential points from that in the United States and the situation in Italy. How is the situation in Italy in fact at the moment? In my view, it is just as it was around 1900....unclear.

The confusion is due in the first instance to differences in opinion about the interaction which has existed since the twenties between the Italian mafia in the United States and the mafia in Calabria and Sicily. There is no doubt whatsoever that some of the mafiosi who were driven out of Italy in the twenties and thirties had great influence upon the "modernization" of the Italian crime syndicates in the United States.[38] It has been irrefutably proved in recent times as well that the links between the Italian and American mafia have been very much tightened since the seventies as a result of heroin trafficking.[39] But whether, and if so, to what extent, the degeneration of the Italian mafia after the Second World War into a "mafia gangsterica" whose members' only goal is criminal profit must be ascribed to the return of American mafiosi in the forties, fifties and sixties, and closer relations with the American mafia in the seventies, is very much the question. Some authors are inclined to answer this question in the affirmative.[40] Others attribute this development rather to the socio-economic, cultural and political changes which took place in the first decades in Italy and which progressively undermined the basis on which the old-fashioned mafiosi had built up their power: the depopulation of the countryside, the different attitude towards material wealth, and the growing power of the political parties.[41]

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38 See e.g. *Nelli, H.S.:* op.cit. (note 19), pp.200-207.

39 *Shawcross, T., Young, M.:* op.cit. (note 21), pp.34-78, 113-166, 194-212.

40 This opinion is adhered to by *Hess, H.* and *Block, A.* A specific question in this context is the collaboration between the U.S. intelligence community and the mafia at the end of the Second World War in New York and in Sicily. See a.o. *Block, A.A.:* A modern marriage of convenience; a collaboration between organized crime and U.S. intelligence. In: Kelly, R.J. (Ed.): op.cit. (note 33), pp. 58-77; *Campbell, R.:* Unternehmen Luciano; die Rolle der Mafia im Zweiten Weltkrieg. Wien 1978; *Duggan, Ch.:* op.cit. (note 7), pp.270-274.

41 *Arlacchi, P.:* op.cit. (note 7), pp.57-79.

In the second place, there are still doubts nowadays about the organization of the Italian mafia. Some authors claim that the mafia in Sicily and Calabria consists essentially of a network of important and less important groups (cosca) of which the core is formed by one or more key figures. The turncoat, Th. Buscetta, on the other hand, presented the Sicilian mafia in any case some years ago as a hierarchically structured confederation of "families" which is very similar to the structure of the Cosa Nostra in the United States.[42] The camorra in Naples appears at the present time to be composed mainly of a very large syndicate (approximately 2,000 persons) and a number of groups whose members vary between dozens and hundreds in number.[43]

We may not know exactly how the mafia and the camorra in Italy are organized, but we do know for sure that they are active! And they are gaining ground all the time. Where they used to be involved in the smuggling of cigarettes, etc. gambling, prostitution, systematic extortion and so on (which today is still mainly the case in Naples), they have been concentrating their activities since the seventies on drugs trafficking, and captured all sectors of business, agriculture and industry: the building trade, tourism, the tin industry, the citrus fruit trade, etc. This happened in any event in Calabria around 1970, when the socio-economic depression was rife and the political government was not able to keep control of its monopoly of violence.[44] Many mafiosi appropriated all kinds of businesses at that time, using big money made from trafficking in drugs, kidnapping and extortion and other adroit ways, but also with considerable use of violence, intimidation and corruption. Applying these same practices they then proceeded to eliminate their rivals and brought the labour market, and consequently the wages as well under control. They also managed to launder the vast amounts of money they earned quite illegally in Switzerland and elsewhere, and then used it on a grand scale for investments in their legal enterprises.[45] It cannot, therefore, be disputed that the Italian mafia became just like the American one in the seventies. The fact that its members since then still turn on a large scale against those who threaten their position of power (rival mafiosi, police officials, judges, etc.) with deadly violence does not change anything. This reaction has been and still is peculiar to the American mafia since its expansion in the twenties.

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42 *Hess, H.*: The traditional Sicilian mafia: organized crime and repressive crime. In: Kelly, R.J. (Ed.): op.cit. (note 33), pp.113-133; *Shawcross, T., Young, M.*: op.cit. (note 21), pp.259-289.

43 *Walstan, J.*: See Naples and die: organized crime in Campania. In: Kelly, R.J. (Ed.): op.cit. (note 33), pp.134-158.

44 This account is completely based on the book of *P. Arlacchi.*

45 See also the "memoirs" of *Bernasconi, P.*: Finanzunterwelt; gegen Wirtschaftskriminalität und organisiertes Verbrechen. Zürich 1988, pp.25-54.

III. The Background of Organized Crime

As can be gathered from my exposition on the forms in which organized crime appears, there is not much in the way of literature dealing with research into the explanation for this kind of crime. In my opinion, this state of affairs is not only an implicit result of the fact that little research has been done at all on this topic. It must also be attributed to the fact that it is often difficult to actually define the object of research. Another problem is that organized crime exists in greatly differing forms, and these forms are continually changing with time. Anyhow, there is no such thing at present as a comprehensive explanation for the origin and development of organized crime, and the fragmentary explanations which do circulate in literature are of an extremely speculative character. This is also one of the reasons why I do not talk about "causes" but about "background" in the title of this paragraph. The first term suggests too much that a lot is known about the factors which influence the development of organized crime. Another reason is that a word like "causes" indicates the working of a mechanical kind of causality in the connection at issue whereas, in my opinion, there is no question of this. Here it is rather a question of an unceasing interplay of factors which cannot be pinpointed.

In order to give substance to this conviction which is not only based upon the literature available on the subject, but also my own research in Rotterdam, I shall first of all deal briefly with how earlier developments in the sphere of organized crime are explained nowadays. I shall then give a picture of the explanations which are given in the United States for the more serious forms of organized crime. Finally, I shall examine how these explanations can be applied in Western Europe. The manner in which the explanation is developed is not, of course, so much prompted by an aesthetic need to maintain the construction of the former paragraph as by the consideration that in this way not only is sufficient account taken of the defective state of the research, but also the most justice is done to the multiformity of the phenomenon which is to be explained.

III.1 Search for an Explanation for Earlier Developments in Organized Crime

Both *F. Egmond* and *C. Küther* attempt to explain the origin and development of gangs in the 18th-19th century in their studies to which I have already referred. To sum up, both came to the conclusion that the incessant poverty of the lower classes in the 18th century was the main cause for the coming into being and flourishing of the gangs as they were then. Some of their members revolted against this and, due mainly to the lack of legal opportunities for improving their position, gave this opposition shape in an illegal manner. They were quite successful in this as they had the necessary technical skills and social contacts to form and maintain criminal

networks. On the other hand, around 1800 these gangs found it comparatively easy to stand their ground, as the police and judicial authorities, which were then badly organized anyway, were certainly not capable in the midst of all the political instability and military precariousness of suppressing them effectively on a short-term basis. In these circumstances there could be no question at all of a long-term policy geared at fighting poverty. The organized gangs did not disappear until the states in question were able to organize large-scale judicial repression, but were also in the position to be able to fight poverty and begging and poaching, which were connected directly with it, in an effective manner.[46]

The core of this explanation can also be found in the wide vision expounded by *M. McIntosh* in the seventies with regard to the evolution of organized crime in the West. The basis for her argument is also that the organization of crime is determined by social and economic developments, on the one hand, and on the other by the organization and operation of the police and other institutions whose task is to combat crime: "Crime and law enforcement are simply two sides of a conflict situation; each depends on the other for its existence and its form and neither can be understood without the other." According to her, every form of organized crime is in itself linked to a specific constellation of factors: the tactical possibilities for committing the crime, the extent and nature of counter-measures taken by potential victims, detection techniques used by the police, etc. The conclusion of her argument is: "Criminals and their opponents are thus engaged in an all-out war which has a tendency to escalate as each side improves its techniques to try to outwit the other."[47]

Applied to the developments since the 16th-17th century, *M. McIntosh* along with *F. Egmond* and *C. Küther* is of the opinion that the gangs of bandits were able to flourish in such a way then as the state did not yet have the means to subject the whole territory continuously to police control. She attributes the fact that in the same period professional gangs were flourishing in the cities, generally speaking, to the increasing urbanization as such, but particularly to the fact that this led to many relatively rich people being concentrated as strangers to each other in a limited numbers of places. This presented opportunities for theft, robbery, burglary, etc. until then unprecedented. When in the course of the 19th century society became more and more complex due to industrialization and control mechanisms consequently became more and more refined, the organization of crime gradually became adapted to that. On the one hand arose **project organisation**, and on the other **business organisation**. The project organisation met the requirement to plan

46 See note 5.

47 *McIntosh, M.*: New directions in the study of criminal organization. In: Bianchi, H., Simondi, M., Taylor, I. (Eds.): Deviance and control in Europe; papers from the European Group for the Study of Deviance and Social Control. London 1975, pp.143-155.

the crime long beforehand, coordinate the perpetration of the crime by specialists and accomplices as well as possible, and shield the yield as much as possible from action by the judicial authorities. The business organization which in the view of *M. McIntosh* is the equivalent of the organization of crime syndicates like the ones in the United States and Italy, results from a combination of two factors. Firstly, an increasing number of indirect "victims" (individual citizens who require illegal services and goods), and direct victims (the suppliers of these in the person of whores, usurers, small dealers, public house proprietors, etc.), and, secondly, a state which either has insufficient possibilities for applying criminal legislation effectively, or which can be eliminated relatively easily by criminals by all sorts of methods, such as corruption.[48]

M. McIntosh herself has authoritatively demonstrated the usefulness of this explanation from the evolution of professional theft and how it is suppressed by the police, citizens themselves, insurance companies, etc.[49] To what extent it is also applicable to the evolution of syndicate-like forms of organized crime will be examined below from the American example.

III.2 Search for an Explanation for the Evolution of Crime Syndicates in the United States

As I mentioned already in the paragraph above, Prohibition did much to promote the development of organized crime in the twenties. On the one hand, this was because this radical anti-alcohol policy made it possible for mainly Italian, but Jewish and American professional criminals as well, to earn fortunes which were gradually invested in other (illegal and legal) sectors of business. On the other hand, because this led to these criminals organizing their illegal activities (from distilling or smuggling alcohol to selling it) at a high level and on a large scale. This was for two reasons. Firstly, because this kind of organization was necessary to be able to supply the gigantic illegal market on a regular basis. Secondly, this was necessary to be able to make an end to the violent struggle among the groups for the market which, after all, was contraproductive for "everyone." Not only did it attract repressive action from the authorities, it also made it easier for them to act. The criminals in question in the twenties and thirties naturally succeeded in organizing their illegal enterprises on such a large scale because they had the necessary experience, criminal techniques and financial resources, family and social contacts at their disposal which they had brought with them from a long time past from their home countries. But a factor which was just as important was that the government was not capable by a long way of enforcing law and order and, in many places,

48 See her book that was quoted in note 6.

49 *McIntosh, M.:* Changes in the organization of thieving. In: Cohen, S. (Ed.): Images of deviance. Harmondsworth 1971, pp.98-133.

turned out to be so susceptible to corruption and blackmail that the Lucianos, the Lanskys, etc. could almost do as they pleased. It may easily be concluded that the ideas advanced by *M. McIntosh* form a very suitable reference for explaining the developments in the United States in this period.[50] But do they also hold good for the evolution of organized crime in the past decades?

I indicated earlier on that since the sixties global views have been developed with regard to the position of crime syndicates in American society. I also referred to the different ways in which crime is or can be organized. This diversity, at theoretical and empirical level, already excludes in itself that such a thing as a balanced, detailed explanation for all forms of organized crime would be possible at this time. The explanation scheme which *M. McIntosh* has developed does, however, offer possibilities for "capturing" a large amount of that diversity. An attempt to do this in fact gives the following result.

The general background against which the evolution and differentiation of organized crime in the United States must be reviewed is that of a society which is organized very capitalistically in the economic field, and very democratically in the political field, whereas in the social field very conflicting views prevail as to whether more or less controversial behaviour should be accepted or rejected. In a society of this kind it is easy for situations to arise which can be a vital breeding ground for organized crime.

We should consider firstly the creation of important markets for very desirable but illegal goods and services by prohibiting their legal production, distribution and consumption. There is also the fact of markets for attractive but controversial activities being allowed to prosper because, due to considerable differences of opinion, no clear policy can be developed in one particular direction. Besides the stringent ban on trading in and consuming alcohol in the twenties, the more recent absolute ban on the trafficking in and consumption of certain (other) drugs is a striking example of the situation which I first described.[51] Well-known examples of the second situation to which I then referred are the sex market and gambling.

In the second place, we should consider in this connection how legal sectors of the business world are susceptible to organized crime. Generally speaking, the tough competitive struggle, restricted involvement by the state and dominant striving for profit in the economic world leads to a situation where susceptibility easily occurs. But according to the specific organization of branches of business, the chance is greater or smaller that crime syndicates will actually gain a hold on these to a certain

50 A good review of the evolution of organised crime during and after the Prohibition is given by *Lupsha, P.A.*: Organised crime in the United States. In: Kelly, R.J. (Ed.): op.cit. (note 33), pp.32-57.

51 *Trebach, A.S.*: The great drug war; and radical proposals that could make America safe again. New York 1987, pp.117-178.

extent. Especially those branches of business and industry which differ from others by high labour intensiveness, close geographical spreading and considerable dependence on political and administrative decisions are presumably the most susceptible: the transport sector, the building industry, banks and the waste disposal industry, etc.[52]

What this actually means for the building industry is meticuously described in the report of the New York State Organized Crime Task Force which I quoted earlier. The trade unions fulfil a central role in this sector between labour, capital and government, and so are very much in demand with organized criminals. Once they have control over the unions then it is very difficult to take the power away from them simply because of the very authoritarian structure of these institutions. Seen from the point of view of the entrepreneurs, it is a highly competitive market with many small and large companies, so that managers and owners are prepared to do a lot to scoop contracts, i.e., pay bribes, make gifts, etc. What is also very important is the fact that building is an extremely complicated process in which costly delays can easily be caused but which can then be bought off again....by bribes! There is also the fact that the building industry forms a sector which is difficult to control as regards quality, efficiency and costs. Finally, people have been used for years to ever-increasing prices for things such as house building and roadworks. In other words, they no longer notice that a substantial part of the construction cost disappears illegally into the pockets of the mafia and so do not protest.

It should be clear from this that the rise of organized crime in a society is not only a question of radical or conflicting or ambiguous morals on certain points and unknown moments, and of a capitalistic organization of economic activity, but also a question of persons, groups of persons who are prepared and capable of seizing the chances offered and exploiting them further in illegal, criminal ways. It is rather obvious that the people involved here generally will be people who do not see any opportunity in the first instance for realizing their aspirations and ambitions in a more legal fashion. But not everyone who is confronted with this discrepancy between objectives and means looks for a criminal way of getting out of the deadlock and manages to bridge the gulf. Only those who have the relevant experience, necessary skills, suitable means and appropriate contacts at their disposal manage to develop or have developed criminal activities and sublimate them in time into illegal enterprises. These may be immigrants or children of immigrants, who used to be Italians and Jews. These are now Mexicans, Cubans and Colombians, but may also be members of minority groups or marginal classes of the established majority, such as blacks and whites.

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52 *Anderson, A.G.:* The business of organized crime. Stanford/Cal. 1979; *Jester, J.C.:* An analysis of organized crime's infiltration of legitimate business. Criminal Justice Monograph, vol.5, no.1 1974.

Whoever they are at a certain epoch, at a certain place, around a certain sector, they must all be given the chance by the government to build up their businesses. Sometimes they have this opportunity simply because politicians, administrators, police officials and judicial authorities for some reason or other decide not to enforce preventive and repressive measures against their activities. This is the case especially in traditional spheres such as prostitution and pornography, but applies also in more modern spheres such as tax fraud and illegal waste disposal. Sometimes, however, they have to win this managerial power by force. Methods like corruption, intimidation and violence are then put to use. When this turns out as well to work, which is soon the case in a political system in which all important authorities and officials are elected and so require a lot of money and votes at set times in order to stay in power, the chances given can be fully exploited in the long run, as happens in the building industry in New York.[53] If this is not the case because the authorities and private individuals resist this "takeover," then the criminal entrepreneurs are only left with the choice, to put it extremely, of stopping with the business or going ahead with it. In the second case this means, of course, that the business has to be continued in a manner which the counter-measures which are taken keep overriding as far as possible. This evolution has taken place in the last ten to fifteen years in the United States, especially in the sphere of illegal drugs. The escalation of the duel between drug smugglers and the authorities has meanwhile reached an unprecedented culmination point: on both sides they have militarized the fight on a large scale.

Further to this point we then have to deal with the question why organized criminals change markets within illegal or controversial sectors of the economic or social world, and why they esconced themselves more and more in legal sectors of business in past decades. Both of these were realized straight away in the past by legalizing behaviour to a certain extent which was prohibited before then; after the Prohibition top criminals transferred their sphere of operation largely to the illegal markets and the normal business world. Not only a more tolerant policy, a more repressive policy as well can cause shifts of this kind. It is generally known now that important sections of the American-Italian mafia were in fact always opposed to investing in the drug business because (as has been shown in the **Pizza Connection**) it rightly feared that the stepping up of repressive action by the government against this business would greatly damage its position in American society. Many in its circle were more in favour of expanding investments in other less risky illegal or legal activities.

53 How it works on a (local) level has been pretty well analysed by *Chambliss, W.J.*: op.cit. (see note 19).

This "internal discussion" brings us as a matter of course to the reasons why organized criminals also look for the legal, normal business world of their own accord and commit organized white collar crimes in the trail of traditional criminal practices.[54] This is done, in the first place, to appropriate the large amounts of illegally earned money in such a way that it is inaccessible for the criminal judge and the tax inspector. In the second place, this kind of changeover of the money flow forms a justifiable spreading of the risks involved with illegal enterprises. Thirdly, legal businesses (can) serve as good footholds for organizing all kinds of illegal practices (illegal gambling in catering establishments) and offer just as many opportunities to provide esteem for themselves and rendering respected services on all sides for family members, friends, accomplices, etc.: work accommodation, status. And what should not be forgotten is commonplace profit. Control over the building industry in New York brings in indescribable fortunes for the mafia!

This tendency to "legalize" organized crime, to sum up, evokes the view which so far has not been elaborated upon better by anyone than *D.R. Cressey* and *M. McIntosh* that the organization of crime has much in common with the organization of non-criminal activities.[55] It is only really the illegal character of certain activities themselves or some of the methods which are used which induces an adaptation of usual forms of organizaton in order to restrict the specific risks which this special character entails as far as possible. I should like to add another point. How great is the difference in fact between so-called bona fide entrepreneurs who pay back-handers to officials and so-called notorious mafiosi who bribe straight out?

III.3 Search for an Explanation for the Present Development of Organized Crime in Western Europe

An analysis of the evolution and differentiation of organized crime in the United States shows that they were driven along by a complex and dynamic interplay of economic, political and social factors. This general finding is, naturally, completely in keeping with what I already observed about the explanation for the operation of well-organized gangs, etc. around 1800 in Western Europe. The question is now if it also applies to the present development of syndicate-like forms of organized crime in this part of the world.

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54 See the publications quoted in note 52. Further also *von Trotha, T.:* Recht und Kriminalität; auf der Suche nach Bausteinen für eine rechtssoziologische Theorie des abweichenden Verhaltens und der sozialen Kontrolle. Tübingen 1982, pp.48-68.

55 Cfr. his book "Criminal organization" (note 18). A nice example of the small margin between legal and criminal business is given by *Fabermann, H.A.:* A criminogenic market structure: the automobile industry. The Sociological Quarterley 16 (1975), pp.438-457.

If we look at the recent evolution of the mafia in the South of Italy it is difficult to answer this question in the negative.[56] As I discussed earlier, around 1970 a number of mafiosi families in this area took advantage of a socio-economic depression to capture all manner of illegal and legal markets by applying all sorts of criminal practices. Not only did they succeed in doing this as they had the necessary means, i.e., violence, at their disposal from past times, but also because the police and judicial authorities gave them all the scope necessary for trying out these measures on a large scale. In other words, the state had parted with its monopoly of violence. How this could happen at the level of the police and judicial authorities is not clear. What is clear is that at that time the political parties concluded alliances with powerful mafia families to secure the necessary electoral and (financial?) support. What is very much more difficult to answer is the question about organized crime outside Italy because of the complete lack of relevant research. How should and can its recent evolution here - in Germany, Great Britain and the Netherlands be explained?

In his studies on organized crime in the United States and Great Britain *J.L. Albini* has said time and time again, as I have already pointed out, that organized crime in Great Britain did not achieve the scale, form and influence which have become accepted in the United States for two reasons. The first is, in his opinion, that in Great Britain unlike the United States no attempt is made to radically ban risky customs or satisfy controversial requirements, but an attempt is made rather to channel them to a certain extent, whether or not by legal means, and so keep control over them. The second is that in Great Britain the state, which includes the police and judicial authorities, is not so corruptible as in the United States as it enjoys comparatively great independence from party politics.[57]

These arguments seem to me to apply as well to the situation in countries like Germany and the Netherlands. War situations discounted, there has never been Prohibition on alcohol, commercial sex, gambling or whatever, and independence of local and higher government institutions from party politics has always been just as pronounced as in Great Britain. But I think that a third reason should be added. Unlike the United States, these countries were not or hardly popular with Italian emigrants until the Second World War. It seems to me that this in combination with the two other points I mentioned is an important issue. It emphasizes again that in the near past the conditions for modernizing organized crime in the American style were quite frankly unfavourable in North-Western Europe.

By what I have said above I do not mean that no syndicate-like forms of organized crime began to be apparent in this part of Europe after the First World War. *A. Block* c.s. showed in a noteworthy study last year that the tightening up of restrictive

56 *Arlacchi, P.*: op.cit. (note 7), pp.83-140.
57 See note 33.

policy regarding the use of opium, heroin etc. In the first decades of this century has been instrumental in the realization of such forms. The Greeks, Rumanians, and other Southern Europeans, particularly the Jews, turned out to be drug barons whose trading territory extended as far as China.[58] The fact that the Second World War totally disrupted this development speaks for itself.

After the war the situation gradually became quite different to what it had been before then. This was firstly because large markets for illegal or controversial services and goods progressively came into existence then due to a government policy which was less moralistic in some ways (sex, gambling) and more moralistic in others (drugs). It should be borne in mind, in the second place, that since the sixties, as a result of the streams of immigrants from countries around the Mediterranean, Asia and South America, all kinds of "foreigners" have also been prepared and able to furnish these goods and services, besides autochton Germans, Dutch, etc. As in the case of drugs trafficking, they have the advantage that they are also at home in the producing country. Thirdly, it cannot be denied that, generally speaking, the government in these countries so far has taken action certainly in these areas against "extremes", but has not yet declared war on them. It is not surprizing then that in recent years the forms in which organized crime appears in (Northern) Europe have in some ways become more like those in the United States and Southern Italy, nor that they still differ in important aspects. As I indicated before, we should think particularly of the point of corruption of political and government figures and penetration of the legal business world. These points could change considerably if the repressive suppression of organized crime were drastically stepped up. It will then be straight away necessary economically and politically for organized criminals to organize both of those things on a large scale.

IV. Methods to Control Organized Crime

IV.1 Between War and Peace

Although the rise and flourishing of organized crime also has its positive sides, i.e., the integration of marginal groups on a larger scale in society and a form of rationalization of the functioning of certain branches of (il)legal trade and industry, in public discussion in general the negative implications are considered more important. I am referring to ostentatious violations of all kinds of (criminal) legislation, exploitation of direct victims such as prostitutes, dealers and the like,

58 *Block, A.A., Scarpitti, F., Katkin, D.:* European drug barons; changes in drug trafficking between the Great Wars. Paper presented for the International Society of Criminology Meeting in Hamburg, Germany, September, 1988.

fiscal fraud by not paying taxes and social security premiums, upsetting white markets, in particular by monopolization, and corruption or destabilization of governments. In view of what is going on in the United States, in certain places in Europe and - last but not least - in some of the Asian and South American countries, these and other protests cannot be ignored. In other words, the problem of organized crime is not something one can live with. On the other hand, the question arises as to whether it is wise to wage "crusades" or "wars" against organized crime on the basis of these serious arguments. These campaigns are often highly questionable. Not only since to a certain extent, organized crime is a normal and a very complex phenomenon - a phenomenon not to be easily eradicated. But also because belligerent suppression per se is often a problem from the point of view of democracy and constitutional law. Moreover, in the long run, it could increase rather than reduce the evil. The enemy usually takes countermeasures against a potential attack. Taking all this into account it is not so much a matter of a choice between 2 extremes, but rather a matter of steering a middle course.

However, it is easier said than done to develop a policy in which, on the one hand the different phenomena and background of organized crime are taken into account and on the other hand, the unacceptable side-effects as well as counterproductive effects are overcome. In the first place, since it is very difficult to develop a policy that satisfies the requirements and that is feasible and effective at the same time. In the second place, because the evolution of organized crime is strongly influenced by general political, social and economic factors, which are by nature hardly susceptible to structural manipulation if at all. In the third place, because from the political point of view, there is often no room for a differentiated policy of which the possibly positive effects may only become noticeable after a couple of years. Waging a police war against organized crime is in general more popular: the actions taken are visible, the results in terms of arrests, seizures etc. are clear.

In spite of this the temptation was resisted to discuss hereinafter only the methods that are directed at repressive suppression and containment, particularly of organized crime in syndicate-like organizations. Attention will also be given to the discussion of methods to curtail these forms of crime by preventive measures. The presentation of these repressive and preventive measures will be preceded by a discussion about the general conditions needed for any kind of differentiated policy.

This overview concerning the measures that can be taken against organized crime is not historically structured and differs from the foregoing paragraphs in this respect. Providing a historical structure of this subject did not seem relevant at this stage. However, where necessary, reference will be made to events and developments in the past. In this connection, comparisons will continue to be made between the United States and West Europe. The reason for this is not only the fact that, up to this moment, the United States are the only country that have attempted, already for a number of decades, to pursue a policy at federal, state and local level. Another

equally important reason is that the policy in the United States is of great influence to the present policy developments in West Europe. Finally, it should be borne in mind that - of course - policy-oriented research in this field was mostly done in the United States.

IV.2 General Conditions for a Balanced Policy

More and more the United States have come to realize that in order to pursue a well-balanced policy against organized crime a thorough analysis is required of the way in which this crime manifests itself at different places in different areas, and of the background, the factors that influence the size and nature of crime in these places.[59] Such an analysis of the situation is not only essential in view of the steps to be taken but also in view of obtaining the necessary support from the public, politicians and authorities for the development and implementation of a specific policy. General impressions illustrated by spectacular incidents are not enough to obtain this support, and, what is even more important: to maintain this support.

Usually, most of the information is available at the police departments and it is this information that is the most useful as regards organized crime in a particular area. However, there are often also other institutions and agencies that have important information on this subject such as the public prosecutions departments, ministries of economic affairs, of financial affairs etc. This means that a close coordination between the various agencies is needed, if only for a thorough analysis of the situation. This kind of coordination is also needed for the development and implementation of a differentiated policy. This cannot be trusted to just one of the agencies concerned. On the contrary, this has to be determined at a high level by a committee or a similar body in which at least the most important agencies are represented.

In order to achieve an effective implementation of a policy it needs more than just a publication of this policy with the results of an analysis. This implies that at least the most concerned population group and sectors of trade and industry should be actively informed about the size and nature of organized crime, and about the methods at their disposal to do something about it either with or without the authorities concerned.

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59 This chapter is in general based on the successive federal reports on organised crime (see notes 14, 15, 16 and 20).

I am afraid that the simplicity with which the foregoing conditions have been written down is, almost by nature, misleading. It is often extremely difficult due to conflicting interests and aims to motivate a large number of institutions and agencies to work closely together.[60] The information they have available is usually not suitable as such for analysis and has to be processed first. Also, it is not easy to reach for instance the population in the slum areas and the ghettos and to motivate them to tackle forms of organized crimes of which they are the victims.[61] However, to attempt to satisfy largely the 3 foregoing conditions is not a blind-alley undertaking. This is clearly evidenced by the example of the state of Arizona in which in the beginning of the eighties a large-scale policy was developed and implemented.[62]

IV.3 Preventive Control of Organized Crime

As transpires from the foregoing, steering a middle course by suppression of organized crime implies a structure of preventive and repressive measures on the basis of the results of the analysis of a particular case. From the fact that in this paragraph preventive measures and in the following paragraph repressive measures are discussed it should not be concluded that preventive and repressive control strategies should alternate. The answer is that the aim should be an optimal mix of suitable measures.

With the situation in the United States and Italy as an example, it seems that states in which (local) authorities, formally speaking, are appointed in a very democratic way, organized crime is more likely to exert an influence on these states than where this is not the case. However, this may just be an assumption. It is reported that also in the USSR, where the authorities are not particularly democratically appointed, there are a lot of problems caused by organized crime. As said before: this kind of crime is very good at adapting itself to its constitutional environment. Consequently, it does not follow that for an adequate preventive suppression of organized crime limitation of democracy is a requirement.

However, it is recommendable to make an all-out effort within the democratic framework in areas where large crime problems exist to suppress the control exerted

60 Cfr. *Rachal, P.:* Federal narcotics enforcement; reorganization and reform. Boston 1982.

61 See e.g. *Reuss-Ianni, E.:* A community self-study of organized crime. In: Ianni, F.A.J., Reusss-Ianni, E. (Eds.): The crime society; organized crime and corruption in America. New York 1976, pp.367-377.

62 *Edelhertz, H., Cole, R.J., Berk, B.:* The containment of organized crime. Lexington 1984, pp.1-28, 85-92.

by organized crime on the authorities. Preventive measures in this connection are, e.g., publication of the origin of funds for election campaigns, public registration of additional functions of politicians and civil servants, and independent screening of candidates for political mandates and important functionaries in government, judiciary and police.[63] It is also important in these areas to pursue continuously an anti-corruption policy, in particular with respect to police departments. This policy may comprise such measures as stringent inspection of financial management, clear regulations with respect to the issue of licences, and an efficient complaints procedure.[64] It has to be borne in mind that in places where organized criminals have already managed to create a position of power inside political circles, these measures are not easy to take.

It is impossible to restructure the political organization of a country for the sole purpose of suppressing organized crime; this applies to the economic structure of the country as well. This does not imply that nothing can be done in case legal sectors of trade and industry have great problems with organized crime. For instance, the New York State Organized Crime Task Force report referred to above contains recommendations for a far-reaching restructuring of the tendering system for building projects, reinforcement of supervision by the government on the execution of contracts and for curtailing the monopoly position of the construction unions.[65] Supplementary to these measures are *P. Dankert's* recommendations with respect to suppression of EEC frauds: more simple and less "sensitive" subsidy regulations, a more stringent supervision by the authorities within the European Commission and in the member countries on their implementation etc.[66] In addition, it should be borne in mind that it may be wise to improve the welfare of the "less privileged" in the various countries and towns: improvement of living conditions reduces the urge, possibly necessity, to seek contact with criminal organizations or, as the case may be, to support, actively or passively, these organizations.

Of a more social nature is the issue of (formal) decriminalization or legalization of "crimes without victims": the use of certain drugs, alcohol abuse, prostitution, gambling and the like. In view of the experience acquired in the twenties and the thirties in the United States by the Prohibition, the relevance of this issue to preventive suppression of organized crime in our days is clear, in particular where it concerns the undermining of (international) drug syndicates. It is an established fact that the realization and enforcement of rigid anti-drug legislation has promoted

63 See the report of the *National Advisory Committee on Criminal Justice Standards and Goals*, pp.38-45 (note 16).

64 Ibidem, pp.48-51. Further also *Goldstein, H.*: Police corruption; a perspective on its nature and control. Washington 1975.

65 See the report quoted in note 23, pp.87-107.

66 See the report quoted in note 30, pp.10-11.

the creation of these syndicates, like at the time of the Prohibition which led to an expansion of existing, rather primitive forms of organized crime in the United States. However, it would be foolish to think that abolishment of this legislation in view of public health would mean the end of the existing, well-established syndicates. Like in the thirties, this will not be the case. Not only will these syndicates - as is going on now with respect to smoking (cigarette smuggling) and with respect to gambling (illegal casinos) - retain their grip on a certain part of the market, but also, and this is more important, they will do everything in their power to control new illegal (and legal) markets.[67] It is not surprising that *A.S. Trebach*, who is one of the most influential advocates of decriminalization of drug use in the United States, at the same time strongly supports strong police actions against organized gangs.[68] Moreover, it is a generally accepted fact that in case of legalization of, for instance, gambling, stringent control measures with respect to licences and functioning of legal casinos are needed to prevent organized criminals from penetrating.

Finally, the United States have come to the conclusion that preventive suppression of organized crime can be improved considerably by stringent control measures concerning (inter)national financial transactions through banks and other financial institutions. For instance, by prohibiting accounts that are not registered in a name, obligatory notification of transactions exceeding a certain amount to the authorities (i.e., transactions exceeding $10,000 to the Internal Revenue Service) and a tighter registration of the numbers of bank notes received and issued.[69] These kinds of measures have not yet become common practice in West Europe. Except in Switzerland, where under pressure of all sorts of "scandals" a clear policy has been implemented in this direction.[70] In the European Parliament voices were raised, both in connection with drug prevention and the suppression of EEC subsidy frauds,

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67 *Savona, E.U.:* Prohibition and the transformation of the criminal scene. In: CORA (Ed.): The cost of prohibition on drugs. Roma, Radical Party, 1989, pp.112-118.

68 *Trebach, A.S.:* op.cit. (note 51), pp.355-357.

69 *Langone, A.V.:* IRS criminal investigation tackles money laundering. The Police Chief 55 (1988), no.1, pp.52-54.

70 See notably the articles written by *Bernasconi, P.:* Grenzüberschreitende Wirtschaftskriminalität. Schweizerische Juristen-Zeitung 83 (1987), no. 5-6, pp.73-83, 93-96; Lehren aus den Strafverfahren in den Fällen Texon, Weisscredit und ähnlichen. Schweizerische Zeitschrift für Strafrecht 98 (1981), pp.379-416; Le recyclage de l'argent d'origine criminelle; analyse de cas et mesures de prévention. Revue Internationale de Criminologie et de Police Technique 4 (1981), pp.403-412. Further also e.g. *Hirsch, A.:* "Dirty money" and Swiss banking regulations. Journal of Comparative Business and Capital Market Law 8 (1986), pp.373-380; *Weiss, I.:* Die Einziehung in der Schweiz liegender Vermögen aus ausländischem Drogenhandel. Schweizerische Zeitschrift für Strafrecht 102 (1985), pp.192-209.

to increase in all member states control measures on (inter)national financial transactions by means of the necessary cooperation treaties.[71] If attention is paid to these voices, the effectiveness of this control system will improve considerably; it must be done however on an international scale.[72] But even if this is the case, success is not assured. The possibilities to carry out checks will always be limited whereas the possibilities to avoid them will always remain manifold.[73]

IV.4 Repressive Control of Organized Crime

Since up to this very day repressive suppression of organized crime has always been preferred to preventive suppression, it is a perilous undertaking to summarize the methods applied in the West within the framework of the first mentioned strategy. This is not only almost impossible as the arsenal of methods has considerably expanded, but also because each of these methods has many negative aspects as well. Quite apart from the question whether it would be possible to even discuss the differences and similarities between the various countries. Consequently, we shall have to limit ourselves to general outlines.

In describing these outlines our starting point is the proactivation of the judicial police activities. Also from the time point of view this was the first important development that was set in motion in the United States at the start of the sixties and afterwards in Western Europe.[74] Proactivation in this context means an active orientation of police activities in the direction of professional criminals and their networks and organizations. In the first place it means that the police increasingly collect information through continuous observation, by systematically frequenting informers and planting infiltrators, about persons or groups of persons that at the appropriate moment may be used for instigating an actual criminal investigation within the meaning of the Criminal Code. In the second place, in many countries the use of these investigating methods was coupled with an extension of the arsenal of formal authorizations, e.g., the powers to tap phone calls, and, in addition, electronic surveillance of vehicles etc. On the other hand, it led to special units set up to collect criminal information and of special units to analyze this information for investigation purposes. It is clear that due to these operational, legal and organizational changes the size of the police force in general has increased

71 Cfr. the resolution concerning the fight on drugs adopted by the *European Parliament* on January, 18th, 1989 (Document no.PV 52 II, PE 129.733).

72 *Arlacchi, P.:* op.cit. (note 7), pp.232-233; *Bernasconi, P.:* Finanzunterwelt; gegen Wirtschaftskriminalität und organisiertes Verbrechen, pp.55-74 (note 45).

73 *Wisotsky, S.:* Exposing the war on cocaine; the futility and destructiveness of prohibition. Wisconsin Law Review 1983, pp.1364-1377.

74 See e.g. the recommendations in the reports that have been cited in notes 16 and 20.

considerably in many countries and that its structure has been drastically changed.[75]

Less noticeable but just as important is the fact that this general proactivation has also led to more cooperation between general police departments, special police branches, customs and, like in the United States, the army. It also led to better relations in many places between public prosecutions departments, examining magistrates and the police. This as a result of the fact that in tackling organized crime successfully the investigation departments and prosecutions departments more than ever depend on each other. A start was even made in the United States to set up permanent joint working groups at the beginning of the eighties.[76] Finally, also international police cooperation has considerably increased within Europe and between the United States and Europe. For instance, both by joint observation actions and an (in)formal exchange of information and by coordination of tactics, harmonization of equipment etc. It is remarkable to notice that already for some time the coordination in this area has been going on not only through Interpol but also through TREVI and, reluctantly, when it concerns EEC fraud, through UCLAF (Unité de Coordination de la Lutte Anti-Fraude) with the European Commission.[77]

It is general knowledge that up to this moment this proactivation of the judicial police activities has been subject to criticism from people from various professional circles and political movements in the West. Apart from questions as to the effectiveness of this approach on short or longer term also other questions have arisen about issues such as the lawfulness of these police activities, the consequences with respect to the right of privacy and other fundamental civil rights,

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75 As far as the European situation is concerned, see *Fijnaut, C.J.C.F.:* Ontwikkelingen op het gebied van de reguliere recherche in de omringende landen. In: Fijnaut, C.J.C.F., Heijder, A. (Eds.): Recht van spreken; twintig jaar Recherche Advies Commissie. Lochem 1989, pp.30-44.

76 An example of this evolution is precisely described by *Edelhertz, H., Cole, R.J., Berk, B.:* op.cit. (note 62), pp.29-50. Cfr. for the evolution in Germany especially the article: "Minister Zimmermann stellt Maßnahmenbündel zur Bekämpfung der organisierten Kriminalität vor". Innere Sicherheit 4 (1988), pp.13-15. See further the following illustrations of the actual situation in the United States: *Barton, D.:* The Kansas City experience: "crack" organized crime co-operative task force. The Police Chief 55 (1988), no.1, pp.28-31; *Constantine, Th.A.:* Organized crime: the New York State Police response. The Police Chief 55 (1988) , no.1, pp.36-43.

77 *Fijnaut, C.:* The internationalization of criminal investigation in Western Europe. In: Fijnaut, C., Hermans, R. (Eds.): Police co-operation in Europe: international symposium on surveillance techniques. Lochem 1987, pp.32-56.

the consequences and risks involved for individual police officers and their departments, the controllability of these, often secret, activities etc.[78] Many of these questions have not been sufficiently answered as yet in quite a number of countries, not by the legislators, not by the governments or the departments involved, and not by scholars either. Up to this moment both in the United States and in Europe it has always been the judiciary, including the highest instances: the American Supreme Court and the European Court of Justice for Human Rights that have laid down those "directives" on what is and is not (no longer) allowed.[79] It is not surprising that time and again there has been a lot of dismay when for instance policemen have carried out hazardous actions, died in action or appeared to have chosen the side of the enemy.[80]

Society appears likewise to be divided on the point of developments in the administration of criminal justice which are a logical consequence of the pro-activation on the part of the police, viz., an extension of the possibilities to follow up the informative police activities by instigating criminal investigations against persons and goods which are expressly based on criminal legislation.[81] On the one hand, it concerns changes in substantive criminal law introduced in the various countries in order to be able to act at an earlier stage and in a more effective way such as the further penalization of preparatory activities and the penalization of (criminal) practices in order to be able to control legal enterprises and legitimate organizations as well as illegal undertakings. A clear example of this are the criminal provisions concerning "racketeer influenced and corrupt organizations"

78 For the discussion in the United States see e.g. *Caplan, G. (Ed.):* Abscam ethics; moral issues and deception in law enforcement. Washington 1983. To get a good impression of the debate in Germany, see a.o.: *Arloth, F.:* Geheimhaltung von V-Personen und Wahrheitsfindung im Strafprozeß. München 1987; *Lüderssen, K. (Ed.):* V-Leute; die Falle im Rechtsstaat. Frankfurt/M. 1985. Further the articles of *Schaefer, Ch., Scholz, R., Emmerlich, A.* In: Schwind, H.D., Steinhilper, G., Kube, E. (Eds.): op.cit. (note 36), pp.41-54, 61-96.

79 *Fijnaut, C.J.C.F.:* Het justiti-le politieoptreden in het licht van het EVRM. Delikt & Delinkwent 19 (1989), no.6, pp.524-553.

80 *Fijnaut, C.:* De zaak François; beschouwingen naar aanleiding van het vonnis. Antwerpen 1983.

81 This survey is, as far as the changes in the European context are concerned, mainly based on the comparative study of *Lensing, J.A.W.:* Reacties in wetgeving en rechtspraak op zware, georganiseerde criminaliteit: een vergelijking tussen Nederland en enkele andere landen. In: Fijnaut, C.J.C.F. (Ed.): Georganiseerde misdaad en strafrechtelijk politiebeleid. Lochem 1989, pp.131-159.

(RICO) in the American **Organized Crime Control Act** of 1970.[82] Although on a smaller scale, there is a similar tendency in, for instance, Great Britain and the Netherlands. On the other hand, it concerns the extension of the general and special powers of the police officers such as searching persons, powers to search houses and vehicles, and the power to seize money and goods that are connected with punishable offences against which the action is taken. In particular in the United States, where traditionally these powers were rather limited - at least compared with West Europe -, this extension has repeatedly led to heated discussions. These developments are traditionally regarded in the United States as violations of constitutional rights incorporated in the famous Amendments to the Constitution. In spite of this they are also, up to the present moment, largely supported by the judiciary at all levels, including the Supreme Court.[83]

In view of the extension of the possibilities for effective prosecution and a speedy conviction of organized criminals, specially of those among them who have been active in drug trafficking, in particular in the United States, but also in countries such as Great Britain, Germany and Italy, a lot was done to extend the contribution of incriminating witnesses to the criminal procedure. Why this method was chosen by so many countries is not hard to guess: witnesses from the **inner circle** of organized crime are the best evidence police and justice can think of. Their presence prevents that police and justice have to stand by idly and witness criminal enterprises grow, or at least that difficult, costly or dubious ways have to be followed to obtain information which these witnesses have anyhow about this kind of enterprises. But in many cases these people will not offer their services just like that to the authorities. The least they expect is protection for themselves and their social environment against actions from the underworld to eliminate them. In addition, they require the assurance that there will be no criminal proceedings or at least - in case of a conviction - reduction of sentence. For this purpose, the United States not only enacted regulations concerning the "reward" of witnesses for testifying, but they have also laid down legal provisions for the protection, as much as possible, of threatened witnesses testifying publicly against their previous co-authors. In addition to all merits already listed, another advantage of this policy is that the

82 *Jörg, N.:* De afbouw van het accusatoire karakter van het Amerikaanse strafrecht onder invloed van de RICO-wet (racketeer influenced and corrupt organizations) van 1970. Delikt & Delinkwent (14), no.9-10, pp.852-866, 934-945. Some concrete examples of the potential use of this legislation are presented by *Blakey, G.R., Goldstock, R.:* "On the water-front": RICO and labourracketeering. American Criminal Law Review 17 (1980), pp.341-365; *Cao, L.:* Illegal traffic in women: a civil RICO proposal. The Yale Law Journal 96 (1987), no.6, pp.1297-1321.

83 *Wisotsky, S.:* op.cit. (note 73), pp.1334-1394. From the same author: Crackdown: the emerging "drug exception" to the Bill of Rights. Hastings Law Journal 38 (1987), pp.889-926.

fundamental principles on which criminal law is based such as: open court trial, contestability, completeness etc. are not undermined as is the case when anonymous witnesses are being used on a large scale. It is hard to tell what effect in general the American protection program has on the size and nature of organized crime. It is well-known that thanks to the statements of protected witnesses such as *Th. Buscetta* heavy blows could be delivered to powerful mafia clans in the United States and Italy.[84]

Finally, the matter of adjustment of the variety of sanctions should have undivided attention. In addition to the possibilities to impose high fines and long terms of imprisonment it should be emphasized that a policy is pursued to dispossess organized criminals of financial and material gains derived directly or indirectly from their crimes by means of confiscation or more specific sanctions. In the United States this policy has been taken into account in the RICO legislation mentioned above.[85] In Italy it has been taken care of in the "La Torre Law" of 1982.[86] In countries such as the Federal Republic of Germany and the Netherlands efforts are being made to extend the existing legal means.[87] Also about the effects of this change in the variety of sanctions nothing definite can be said as yet. Some would say the new Italian legislation is a success, whereas others are rather skeptical about American legislation on this matter. Critics say that the American legislation lends itself to gross abuse and that it covers only a very small part of the total illegal capital.

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84 *Montanino, F.:* Protecting organized crime witnesses in the United States. Paper presented at the Xth International Congress on Criminology, Hamburg, 4-9 September 1988; *Levin, J.M.:* Organized crime and insulated violence: federal liability for illegal conduct in the witness protection program. The Journal of Criminal Law and Criminology 76 (1985), no.1, pp.208-250. See for the situation in Germany e.g. *Rebmann, K., Schnarn, K.H.:* Der Schutz der gefährdeten Zeugen im Strafverfahren. Neue Juristische Wochenschrift 42 (1989), no.19 pp.1185-1192. Also *Miebach, K.:* Der Ausschluß des anonymen Zeugen aus dem Strafprozeß. Zeitschrift für Rechtspolitik 17 (1984), no.4, pp.81-86.

85 *Fries, D.J.:* Rationalizing criminal forfeiture. The Journal of Criminal Law and Criminology 79 (1988), no. 2, pp.328-436.

86 *Arlacchi, P.:* Effects of the new anti-mafia law on the proceeds of crime and on the Italian economy. Bulletin on Narcotics 36 (1984), no.4, pp.91-100.

87 *Groenhuijsen, M.S., van Kalmthout, A.M. (Eds.):* Voordeelsontneming in het strafrecht. Arnhem 1989; Macht sich Kriminalität bezahlt? Aufspüren und Abschöpfen von Verbrechensgewinnen. Wiesbaden, Bundeskriminalamt 1987. The recommendations of the so-called Pompidou Group pursue the same course. See the background paper on Confiscation of the proceeds of drug trafficking (Council of Europe, Strasbourg 28-4-1989, P-PG/Min (89) 3).

V. Conclusion

The mirror of literature held in front of the reader shows considerable shortcomings, despite its magnitude. Not only no attention was paid to the phenomena, background etc. of organized crime in Africa, Asia, South America and East Europe, but also not to organized crime in the sense of political regimes trampling on human rights on a large scale. Not mentioned either were a large number of aspects of problems connected with organized crime and its suppression in those parts of the world, in those countries that were discussed.

In spite of this I think that this presentation has made it sufficiently clear that both organized crime and the aspects connected therewith form a problem that cannot be overemphasized. It concerns problems directly or indirectly touching on essential political, economic and social interrelations within our society. Up to this moment these problems have not been given the attention they need. It may gradually have received the attention of politicians, the police and judicial authorities and of the media, but as yet certainly not that of the scholars.

If we do reach the stage that scholars show an interest in these subjects, it would be preferable to orchestrate to a certain extent their attention. I mean to say that it would be recommendable in that case to bring together scholars both from Europe and from all corners of the United States. Likewise it would be recommendable to examine the present problems on a multidisciplinary basis, viz,. in groups in which not only criminologists are represented but also lawyers, police and judicial officers and economists.

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Commentary

Petrus C. van Duyne

Professor *Fijnaut* has given a well documented historic and theoretical account of some of the facts about organised crime in America and Europe. In the first place I agree with him that certainly in Europe our knowledge of organised crime is still patchy at the least, owing to insufficient empirical research in this field. Therefore, I would like to point at the nationwide research of organised crime in the Netherlands which is being done by me and my colleagues of the Ministry of Justice. The project is supervised by a commission of which professor *Fijnaut* is a member. I suppose he may be well aware of that. I also want to mention the continued research in this field by the Bundeskriminalamt, in which some of the criminals themselves are interviewed. Although we are still well behind in empirical knowledge and therefore dependent on journalistic studies and police reports, with all the risks of mythologization, the picture of the research in progress is not that gloomy as professor *Fijnaut* wants us to believe.

As professor *Fijnaut* claims that in Europe in general (and in the Netherlands in particular) there is hardly empirical knowledge of organised crime, I would like to comment on his paper on the basis of the observations being done by my research team. The observations consisted of the analysis of the criminal files, police records, tax documents and finally additional interviews with policemen. Of course, the final analysis has still to be worked out.

I think the value of professor *Fijnaut's* contribution lies most of all in his presentation of the points of view of historical and contemporary authors. Taken together, these strongly indicate that organised crime might be more accurately described in terms of economic behaviour than in criminological, moral or ambitious terms, such as **the** "organised crime" or the "crime **syndicate**". Careful reading of the evidence and arguments presented shows that these broad terms have very little empirical meaning, which simply means that this sort of crime does not exist in the way these terms suggest. **The** organised crime is just an abstract concept, being given flesh and blood by the press and movies and misused politically to raise funds for the law enforcement budget. This is not to deny the existence of factual (forms of) organised crimes, or rather, the existence of criminal entrepreneurs who in some way do very successfully organise their criminal participation in the social-economic life. The question is then: why and how do they succeed so well that they

grow from temporary low level criminal entrepreneurs to something bigger and particularly more enduring which may finally have the appearance of one particular criminal enterprise or a kind of organisation?

On the grounds of my observations I think we have to extend the line of thought of *McIntosh* a step further. I mean, that the behaviour of criminal entrepreneurs, criminal organisations or criminal organisational networks differ so little from normal business life that it might be more appropriate to approach the phenomena from an economic "enterprise theory". Trying to understand my enterprising subjects I found that it is not easier to describe the background and working of the small and middle-class business circles than that of the criminal entrepreneurs on the other side of the economic coin. The criminal entrepreneur with a chance of success is no maniac: he has learned how to adapt himself to the surrounding business environment which he will often deceivingly copy. This may lead to some long overlooked trivialities and outcomes, which will surprise no one.Some of these outcomes have been intriguingly described by *Peter Reuter* in his book "disorganised crime".

- First of all: do not impute more or less rationality to criminal organisers than to their legal counterparts. Both are facing complex and highly competitive markets which are not easily overseen and which are continually shifting. Both legal and illegal entrepreneurs have to weigh opportunities against risks.
- In legal and illegal markets commercial techniques are adapted to the necessities of the "economic niche" the entrepreneur has chosen to work in. It is not surprising to find that (successful) criminals learn from law enforcement activities. That is just as elementary as the learning of the legal business community from fiscal techniques or the learning of anybody to avoid risks.
- In legal as well as in illegal "economic niches" social-cultural characteristics and trading traditions add to the "couleur locale" and may sometimes make inroads into strict rules of "rational economy". After all, both sorts of economic enterprises are "normal" human affairs. This brings us to the last point:
- The individual human limitations: the available energy and intellectual resources to cope with the constraints and complex demands of their economic niches.

Except in *Reuter's* study, the last two points have been unsufficiently worked out. Yet I consider them essential aspects of a descriptive model of organised crime, as the interactions of the "market constraints" and the human and cultural resources to cope with them determine the forms and the extent of the different sorts of criminal organisations. And the constraints are huge indeed:

1) Criminal organisations can be rated as very labour-intensive industries. Means of public communications very often have to be avoided, which forces the organisers to resort to oral communication, to warlike time-consuming code messages or forces them nowadays to leave their house or office to telephone from their cars. One big organiser had to take resort to all the public telephone boxes in the neighbourhood, driving sometimes for more than twenty miles to make a single phone call.

2) Reliable staff or rather the lack of it always forms a problem. All the organisers I have been studying were hard-working do-it-yourselvers, lacking sufficient intelligent and reliable personnel to delegate important tasks. Every member of the organisation is a potential risk: they may rob or betray their partners. Hence, extending an organisation means burdening the "staff" with all sorts of control problems: who should control who?

3) The criminal organisation can keep no record. All sorts of paperwork, book-keeping, the writing down of agreements or contracts etc. is very risky, providing the police or the inland revenue with potential evidence. Again one has to rely on oral communication and the unaided human memory, which is soon overloaded when the organisation extends the number of its business lines. Even in the relatively low risk organised VAT-swindles I have observed few examples of parallel tradelines run by one organizer at the same time. And those who did soon made mistakes by simply forgetting of mixing up things.

4) It is a business without permanent credit facilities: one cannot produce the books and balances to get a bank credit in order to expand (if the "intellectual resources" of the staff could manage that). Hence it remains largely a cash-based industry with an elementary bookkeeping system, lacking credit facilities to develop an "economy of scale". The expansion must be financed with the available cash, sometimes supplemented by temporary "mutual aid" from the family or the same ethnic (sub)group. Joint ventures are mostly ad hoc, as they are too risky for building a more permanent expansion policy. (The criminal "community" would not even permit such a policy).

5) Furthermore, it is a system which has to function without the legal support to enforce "contracts" against unwilling or failing participants. The enforcement by violence has its limitations as it draws the attention of the police: one cannot litter the streets with too many bodies! Hence, stronger than in legal business much more care has to be taken in "opening new tradelines", which means making contacts with new criminals whose credibility is uncertain.

What does this mean for the rational criminal organiser, avoiding the risk of being apprehended? Keep small, unless...! Do not extend your basis, unless... These "unless" contain the conditions to grow, again to a certain extent. Important conditions are (predictably):

- defective law enforcement
- market opportunities: demand of forbidden goods and industrial regulations;
- "niche opportunities" like family connections; ethnicity;
- access to facilitating industries like the financial secrecy market (money laundering); legal advisors; new communication techniques
- the extension of the scale of the legal economy with opportunities for illegal markets.

Leaving the first two points aside it is no great surprise to find that the criminal industry is very much "family-based". This is not just a South European tradition, but a rational way of doing business: in the opening of criminal business contacts one will feel safer if one knows that the other has a line to the family, even if it is a remote one. Of course, the shorter the line the better. Many Dutch criminal organizers work within broad family circles, however, without forming a "mafia" family hierarchy.[1] This feeling of safety can be strengthened by belonging to an ethnic minority. The larger the cultural (and linguistic) gap between the minority and the country of residence the better one is protected against police surveillance. For Europe this may imply that in addition to the original "national" criminal networks new ethnic networks are developing. In the Netherlands this is the case with the Turks and the Pakistani who have the great advantage of access to their drug-producing home countries, often through family channels at home. In addition, they have taken with them their traditional ways of doing (legal or illegal) business: the rules and mores of their "social economic niche", which strengthen their business circle.

The last two points (access to facilitating industries and the scale of the economy) are important for new as well as for established criminal networks or organisations for overcoming the inherent limitations imposed by the necessity to avoid the dangerous "paperwork". The financial secrecy industry enables the black economy to surface with "white money". The growth of the economy, increasing in complexity, together with the growth of the financial communication systems provide new market opportunities to penetrate into the "upperworld", using its façade to do "ordinary" business or to just create outlets for members of the family who are less excited by the tensions of criminal life.

A last word has to be said about corruption. Is corruption of the police a necessary condition for professional criminals to develop into "organised crime?" At least I am very uncertain to confirm this notion. Most criminal entrepreneurs I studied did not need corrupt policemen. The Turks, Pakistanis and the Chinese are already

1 The Dutch society is too egalitarian to favour hierarchical structures. The underworld does not differ from this general cultural pattern.

protected by the cultural and linguistic barriers, while the many frontiers on the continent hamper law enforcement enough to save the criminal the trouble and money for corruption. Moreover, a criminal who shifts his attention and investments towards economic and corporate crime is in very little need to corrupt the police for whom this sort of crime is beyond their grasp anyway, while politically it has low priority. Concerning possible developments in Europe it is not so much the corruption of the police, the judiciary and civil service I am afraid of. It is the venality of the judicial profession, fiscal experts and the top echelons of the business community who provide new opportunities and bridgeheads for criminal entrepreneurs to build real stable and integrated organisations with widespread interests. By entering the field of business and corporate crime they may enter safe hunting grounds, owing to the law priority given to these forms of organised crime.

Commentary from the Perspective of Decriminalising Drug Policies

Ed Leuw

Having been asked to comment on this matter from the perspective of the control of illegal drugs and being no expert on the subject of organised crime as such I may venture a truism in stating that if a society will get the crime it "deserves" it will certainly get the **organised** crime it deserves. *Fijnaut's* comprehensive essay made it quite clear that the extensiveness of organised crime, the nature of the commodities it offers, the economic and social/political power it enjoys and its level of integration in a legal society - those last two characteristics jointly determining the extent to which it is immune to counteracting measures - are intimately linked with the cultural, social, economical and political traditions and characteristics of the society in which organised crime operates. The essay not only confirmed my conviction that the United States form a society of "unlimited opportunities" whether or not legal and respectable, it also clarified some important social, political and economical conditions that are fullfilled in the USA enabling organised crime to flourish to a much larger extent than in Europe. It would be a step forward if we could better understand the dynamic relations between those conditions and the subject we are discussing. Why is Italy the big exception in Europe? Does organised crime, when it has taken the form of a well-established "mafia", become an autonomous and self-maintaining force in society or is it still highly dependent on the conditions that are explained in *Fijnaut's* paper? If the latter hypothesis is true would this for instance have to imply that, other things being equal, a Western European society with more unadulterated capitalistic social-economic features will generate more organised crime than a society with more collectivistic, social-democratic characteristics? In this case we would expect to find much more organised crime in for instance *Thatcher's* England than in Sweden.

As has been pointed out in *Fijnaut's* paper organised crime will traditionally operate to a large extent in markets of goods and services which are either outright illegal or heavily restricted and often morally disputed. To put it more simply, organised crime tends traditionally to provide for the market of vice: drugs, prostitution, pornography, gambling. Of course it is very significant that this is an enterprise of "crimes without victims", which means that the consumers in this market form a cooperative and compliant party and, perhaps even more important, that they will often be vulnerable, morally and/or legally.

Accepting the importance of the vice business for organised crime as a matter of fact it may be promising to study the influence of differing levels of moral stigmatisation and legal repression on the development and the nature of criminal organisations in these areas. If a certain vice in one society is much more heavily criminalised and morally rejected than in an other society, what does that mean for the ways the (illegal) supply for this market is organised? The existing situation of illegal drug use and drug policies in the Netherlands may be a case in point. As is probably well known, especially in this neighbouring country, the Netherlands have for the last two decades adopted relatively non-prohibitionistic drug policies. It has officially been declared to be a pragmatic, non-moralistic policy which does not primarily aim at the repression of the drugs problem, but which instead has the reduction of personal and social harmful effects of illegal drug use as its main objective. This point of departure has eventually resulted in a formal decriminalisation of the use and of the retail market of cannabis. As far as hard drugs are concerned, it has in practice resulted in the depenalisation of the use of hard drugs. As a further consequence of Dutch drug policies, there exists a certain tolerance for some retail markets of hard drugs.

I will limit this discussion to the explicitly decriminalising social control policy towards cannabis and speculate about the consequence of such a policy for the possible criminal organisation of the supply of this substance.

The sale of cannabis is more or less officially allowed in legally operating tax-paying "coffee-shops". For instance in the city of Amsterdam between one and two hundred of these "hasj-cafés" operate quite uninhibitedly. They are controlled by the police, but normally not disturbed as long as they are trusted not to supply or allow the use of other illegal drugs. As far as we know the vast majority of those coffee-shops consist of small scale, single commercial establishments. The "Bull Dog" organisation, well known among many young tourists to Amsterdam, which exploits a small chain of coffee-shops, forms an exception to this rule. In recent years this organisation has expanded its operations to renting bicycles and selling souvenirs to the same segment of the tourist market. Among the local population of cannabis users the Bull Dog coffee-shops are disreputed and avoided, because this organisation employs a not uncommon business strategy in the tourist trade, viz., by selling low quality stuff for fancy prices.

In 1985 the office of the public prosecutor in Amsterdam produced a policy report which was based on registration and investigation by the police of the coffee-shops within their own districts. Out of these one hundred coffee-shops only two were seriously suspected to be involved with hard drugs, although this could never be substantiated by the regular police controls of the coffee-shops. In general, the police of the innercity district reported that "there was hardly any public nuisance in connection with those establishments... and they do not form a dissonance with other pubs and cafés within this area".

Some years later a small wave of discomfort with the permissive policy towards cannabis arose within the city administration and within the Ministry of Justice. Possibly this had developed in connection with the international criticism of Dutch drug policies. The opening of a "hasj-museum" in Amsterdam (in analogy with the "sex-museum" which had opened a few years before) and press reports about an intended large-scale advertising campaign of the "Bull Dog" organisation triggered a law enforcement action. The museum and some "Bull Dog" coffee-shops were closed down. The premises of the latter organisation were painstakingly searched and its bookkeeping was confiscated. The results of these actions may have been somewhat frustrating for the officials involved in the law enforcement action. No illegal substances other than cannabis were found in the coffee-shops. The company's books did not give an occasion for criminal proceedings. Apparently even the fiscal fiddling of the Bull Dog company could not be proven to be worse than is normally expected of medium-sized business enterprises.

After a short period the coffee-shops were allowed to resume business and also the hasj-museum could reopen its door to visitors.

Now we may speculate about the significance of social reactions to vice to the development of organised crime. Will the decriminalisation and destigmatisation of vice "naturally" lead to a conventional and a relatively respectable organisation of the supply-side of the market? The Dutch cannabis experience suggests that under such conditions a retail market consisting of conventionally operating shop-keepers may develop. Obviously the same things cannot be said about the large-scale importation of cannabis to the Netherlands. This segment of the trade is more seriously threatened by penal law actions and consequently it is supposed to constitute a field for more or less criminal organisation. We may also wonder whether the relatively innocuous social organisation of cannabis supply depends more on the traditions of this substance as such than on the specific patterns of social control. It is well known for instance that the supply of cannabis among adolescents in the US is mainly organised within informal user-groups.[1] A comparative study of the social organisation of cannabis supply in the Netherlands and other European countries like the Federal Republic or Great Britain may provide some interesting answers to this matter.

1 *Glassner, B., Loughlin, J.:* Drugs in adolescent worlds. New York 1987.

3. International Comparative Research in Criminology: Theory, Method and Results

International Comparative Research in Criminology: The 1989 Telephone Survey

Patricia Mayhew

This paper offers some new material which has just become available from an international victimisation survey, conducted almost entirely through telephone interviews in 14 countries. This was organised by a Working Group of *Jan van Dijk* (principal organiser), myself and *Martin Killias* (University of Lausanne). Methods and results of the survey are presented after some brief remarks about the background of the survey from the perspective of (i) the conventional method of comparing levels and trends in crime across country, and (ii) attempts to use alternative information from independently mounted victimisation (or crime) surveys.

A fuller report of the survey has now been written by *van Dijk, Mayhew and Killias* (1990). Analysis continued after the present results were prepared for the Freiburg Conference and a number of small changes were made (for example, due to a small revision to weighting). In order to avoid differences with the figures given in *van Dijk et al.* (1990), some figures in this report differ very slightly from those given in the version of the paper presented at Freiburg.

Offences Recorded by the Police

A major enterprise in international comparative research has been to try and assess how different countries compare in terms of levels of crime and variability in trends in crime. The aim of criminologists has been to test theories about the causes and prevention of offending, and they have harnessed this to the abiding interest of criminal justice policy-makers in "league tables" of crime - an interest justified in terms of wanting some broad performance indicators, but which may be as much to show that other countries are worse off. Some case studies and historical analyses apart, most comparative exercises have had to rely on statistics of offences recorded by the police ("police statistics" hereafter). Compilations of these statistics by the United Nations and Interpol have been used for instance, even though they tend to

be incomplete, marred by language difficulties, and often restricted to unhelpfully broad crime categories.[1]

More critically, though, the statistics themselves are of questionable comparative value. They only enumerate crimes which have the chance of getting into police records through being reported to the police by victims - and victim surveys consistently show that more than 90% of the incidents in their count become known to the police in this way. Any differences in the propensity to report in different countries alone will jeopardise comparisons, though little research has been done to put figures on the differences.[2] Measures of recorded offences are also severely undermined by differences in culture and law, and technical factors to do with classification, definition and counting of offences. Technical considerations will bear much on how many offences are recorded, and in what categories, but so too will other things: enforcement and recording styles, computerisation, workloads, staffing levels, and whether ancillary staff are used to filter reports from the police. Research has confirmed differences between and even within police forces at the local level; at national level, the differences will be much greater. These points are, of course, widely known and have been well-documented.

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1 For a history of early attempts to make comparisons see, e.g., *Vetere* and *Newman* (1977), and for a more up-to-date view, *Neuman* and *Berger* (1988). Many studies have been restricted to developed countries and to selected crime types (e.g., *Gurr* 1977), particularly homicide (e.g., *Archer* and *Gartner* 1984). Many studies look not at levels and patterns in criminality, but at the relationship between crime and socio-economic factors (e.g., *Groves et al.* 1985; *Council of Europe* 1985). *Kalish* (1988) presents one recent comparison of levels and trends for a range of countries reporting to Interpol, with additional information on homicide from WHO statistics. *Mukherjee et al.* (1987) present Interpol data for Australia and five other countries for 1972-85. A report on the **First UN Survey on Crime Trends, Operations of the Criminal Justice System and Crime Prevention Strategies** is available showing crime rates and trends, but for grouped countries (*UN* 1977). A final report on the second survey (for the period 1975-80) is nearing completion. Use of the UN survey data at country level has been made by *Adler* (1983).

2 *Skogan* (1984) has examined patterns and levels of reporting crime to the police as evidenced by some national and local surveys. He shows reasons for not reporting to the police to be broadly similar, with seriousness of the incident a major fator. Few firm conclusions could be drawn about levels of reporting because of differences in offence coverage and survey design. A comparison of British Crime Survey data suggested higher reporting in Scotland than England & Wales (*Mayhew* and *Smith* 1985), which is consistent with higher recorded crime in Scotland. Comparing burglary data from the national victim surveys of the USA, Canada and England & Wales, *Mayhew* (1987) suggested there might be lower reporting in the USA.

Victim Survey Comparisons

The technique of asking representative population samples about selected offences experienced over a given time period (whether or not reported to the police) provides an alternative count of crime. Many countries have now mounted such surveys to assess victimisation experience, as well as opinion about crime and criminal policies. They have done much to elucidate the "truer" level and nature of crime, the extent of unrecorded offences for different crime categories, and in particular the distribution of risks across different groups - on which police figures generally say rather little.[3]

Surveys are confined to counting crimes against clearly identifiable victims (nearly always excluding children): they cannot easily cover organisational victims, or victimless crimes such as drug abuse. On the conceptual front are issues to do with the nature of the incidents surveys count - a hybrid perhaps of what questionnaire writers (and coders) include as crime, and what respondents themselves choose to define as crime. Even discounting crime unreported to the police, surveys take a broader and probably more value-free count of incidents than police statistics, which filter incidents which **could** be punished, and which the police regard **should** occupy the attention of the system. This broader count, though, is necessary if surveys are to be able to detect shifts in reporting and recording by the police over time. It is balanced, too, by a probable undercount of many incidents because of response deficiencies.

It is well established that respondents fail to report to interviewers all relevant incidents in the "recall period"; that they "telescope in" incidents outside this period; and that they may under-report various offences, for instance involving people they know, and sexual offences. There is also evidence of response bias, in particular that the better-educated seem more adept at recalling relevant events, and that thresholds for defining deviant behaviour as crime could differ across groups. Adequate representation of the population is problematic, especially as those not successfully contacted may well be the most heavily victimised. Sampling error is a further limitation, especially for rare crimes. These limitations should not be ignored, though the value of crime surveys should be assessed not against a yardstick of perfection, but against the existing alternatives.

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3 A great deal of literature has been generated, but see *Skogan's* (1986) for technical matters; *Block's* (1984a) collection of studies for a useful review of some surveys; *Sparks'* (1982) comprehensive assessment of their origins and value; *Mayhew* (1985) for a review of major findings, and *Gottfredson* (1986) for another coverage of these, albeit from a North American perspective.

Comparisons using survey data have not been extensive. Briefly, surveys designed to be similar have attracted some attention though these have been restricted in country coverage.[4] Recently, there has been some growth in studies which have looked at the correlates of victimisation on the basis of selected surveys. These have principally analyzed relationships between crime risks and lifestyle factors.[5]

Using independently organised, mainly national surveys as the basis for an international index of crime is not really feasible. Many national surveys have used the US National Crime Survey as their template, even adopting NCS questions. But there remain differences in sampling, field procedures, "screening" methods, offence coverage and definitions which jeopardize comparisons of published results. Survey data need to be directly manipulated to improve consistency and produce anything like sound comparisons. Access to the data is but one problem, though even with access some differences cannot be accounted for. *Richard Block* has done some of the most complex work, and I myself compared burglary in the USA, Canada and England & Wales with adjusted data and many headaches.[6] More

4 *Mayhew* and *Smith* (1985) looked at results from the 1982 British Crime Survey, which was conducted in England & Wales and Scotland. The comparison showed similar risks of crime in the two countries, despite the picture from recorded offences of high crime in Scotland. Comparisons have also been done of surveys carried out since the early 1970s in the Scandinavian countries (e.g., *Hauge* and *Wolf* 1974; *Sveri* 1982; and *Aromaa* 1986). One of the first local surveys designed with comparability in mind was carried out by *Clinard* in Zurich, using an early NCS questionnaire (for results, see *Clinard* 1977; 1978). Similar questionnaires were used in surveys in Stuttgart and Göttingen in 1973/74 (see *Kirchhoff* and *Kirchhoff* 1984). Companion mail surveys were conducted in Baden-Württemberg (Federal Republic of Germany) and Texas (see *Teske* and *Arnold* 1982).

5 *Van Dijk* and *Steinmetz* (1983) have considered the relationship between "lifestyle" factors and crime on the basis of the Greater Vancouver and Dutch surveys. The lifestyle informtion in the 1982 and 1984 British Crime Survey has attracted some US researchers (see *Maxfield* 1987a; 1987b). *Sampson* and *Wooldredge* (1987), and *Sampson* (1987). Comparisons of fear of crime in theUS and England & Wales have been made by *Maxfield* (1987b) and *Block* (1987).

6 *Block's* work has concentrated mainly on the USA, England & Wales and the Netherlands (*Block* 1984b, 1986; 1987). He is currently doing more extended comparisons of a wider range of surveys for which he has requested data from surveyors matched as closely as possible. *Mayhew* (1987) showed the most important design differences were counting of "series" incidents and the bounding employed in the NCS; definitions of burglary and rules for their classification were also important in upsetting comparability.

people have compared national surveys without any or much attempt standardisation - risking potentially misleading results.[7]

The case for a standardised survey in several countries has been clear to many. A proposal by the OECD in the early 1970s resulted in some pilot work in the United States, the Netherlands and Finland (*Tornudd*, 1982), but thereafter the initiative flagged. The idea of different countries funding an international polling agency to add victimization questions to ongoing polls has never been seen as attractive, perhaps because of doubts about how criminologically informed such a venture would be. (In fact, *Gallup* included some victimisation questions in polls in 1984, albeit with substantial comparability problems and unhelpful offences definitions - *Gallup International* 1984).

The 1989 Telephone Survey

The climate ripened for a standardised international survey as more was understood about the methodology of surveys, and the value of their information. At a Barcelona meeting at the end of 1987, *Jan van Dijk* formally aired plans for survey highly standardised as regards sampling, method of interview, questionnaire, and

7 *Braithwaite* and *Biles* (1980) compared rates from the 1975 Australian survey with those from the 1975 NCS; robbery, theft and burglary were shown to be higher in the US, though assault and rape were on a par, and motor vehicle theft rates were lower in the US. Looking at offences against city residents in 1977 as measured by the Great Vancouver Survey, the NCS and the Dutch survey, *van Dijk* and *Steinmetz* (1983) found burglary rates to be five times higher in the US than the Netherlands, though there was less difference for Canada; US car theft was lower than in Canada, though higher than in the Netherlands; rates of wallet/purse theft were much higher in the US than in Canada, and - going against *Block* - than in the Netherlands. *Hough* (1986) provides some tentative international comparisons of violent crime. He found robbery to be only slightly higher in the US than in Canada, the Netherlands, or England, though not assault, which *Hough* saw as particularly difficult to compare. *Breen* and *Rottman* (1985) made some comparisons between the 1982 BCS, the 1982/3 Irish crime survey, the NCS and the Dutch surveys, rates of burglary and vehicle theft were shown to be higher in Ireland than in England or Scotland; Irish burglary rates, though, were well below those in the US, the Netherlands and Great Britain.

analysis of the data (*van Dijk et al.* 1987).[8] The momentum was continued through the Working Group who accepted responsibility for the questionnaire, appointing the survey company, issuing invitations, and preparing a report on results.[9]

The strictly comparable information on offer promised to be unique. It was meant to enable individual countries to see how they were faring in comparison with others in relation to crime levels. It was to provide a rough picture of the extent to which survey-measured crime in different countries matches the picture from figures of recorded. And it was to offer comparative data on public responses to crime, and a base for explaining major differences in crime experience in terms, for instance, of demographic and housing patterns.

Participating countries

A formal invitation to join in the survey was sent to some twenty-odd countries in July 1988. Fourteen countries joined in:

Australia (Australian Institute of Criminology)
Belgium (Ministry of Justice)
Canada (Department of Justice, Research and Development)
England and Wales (Home Office)
Federal Republic of Germany (Bundeskriminalamt and Max Planck Institute)
Finland (National Research Institute for Legal Policy)
France (Ministry of Justice)
Netherlands (Ministry of Justice, Research and Documentation Centre)
Northern Ireland (Northern Ireland Office)
Norway (Ministry of Justice)
Scotland (Scottish Home and Health Department)
Spain (Ministry of Justice)

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8 The meeting was the Standing Conference of Local and Regional Authorities which met in Barcelona, November 1987. The Council of Europe also endorsed a multi-country survey in the conclusions of the 16th Criminological Research Conference (held in November 1984).

9 Each country to join was asked to appoint a survey coordinator to ease the administrative workload for the Working Group, and liaise about publication of results. Drafts of the questionnaire were commented upon by a number of criminologists experienced in crime surveys, including: *Skogan, Block* and *Clarke* (USA); *van Kerckvoorde* (Belgium); *Aromaa* (Finland); *Steinmetz* (the Netherlands); *Zauberman* and *de Liege* (France); *Waller* (Canada); *Kury* (FRG); *Reeves* and *Shapland* (England); and *Sabate* and *Pascual* (Spain).

Switzerland (l'Office General de la Justice)
USA (US Department of Justice).

In addition, local surveys using the same questionnaire were conducted somewhat later in Poland (Ministry of Justice), Indonesia (Geru Besar Kriminologi, Penologi, Victimologi dan Hukum Pidana, Surabaja), and Japan (National Research Institute of Police Science). Results from these countries are not presented in this paper.

Survey Methods

To encourage as full participation as possible, it was clear that the survey should be relatively modest in terms of sample sizes and length of interview. Most countries were thought unlikely to be able to afford a large sample and on the basis of preliminary costings, the Working Group recommended 2,000 interviews. Most countries opted for this, though there were smaller samples in Switzerland (1,000), France (1,502), Norway (1,009), and a larger one (5,274) in W.Germany. Samples of this size, of course, produce relatively large sampling error, and restrict the scope for detailed analysis of issues on which a small proportion of the sample would have provided information.[10]

Computer Assisted Telephone Interviewing

Cost was one consideration in deciding to interview by telephone, using the technique of CATI. More important, however, was the scope for much tighter standardisation of questionnaire administration. Telephone interviewing, and in some instances CATI, has been used for some time in victimisation surveys in, for instance, Canada, the Netherlands, Switzerland, and the USA. Methodological work has shown that in general victimisation counts from telephone interviews are similar to those obtained in face-to-face ones (e.g., *Catlin* and *Murray* 1979; *Roman* and *Silva* 1982; *Killias et al.* 1987). The US National Crime Survey switched from ordinary telephone interviewing to CATI at the beginning of 1987 for a proportion of its sample, and ongoing work suggests that CATI is increasing the number of victimisations that respondents are reporting - for reasons which are as yet unclear

10 With samples of 2,000 and an overall victimisation rate of say 5%, deviations of more than 1% will be statistically significant at the 95% level. For an overall victimisation rate of, say 1%, deviations of 0.5% would be significant. When the sample is 100 (of women only for example), deviations from an overall average of 5% of more than 1.4% will be significant, and with an average of 1% deviations of 0.7%. When the overall average is about 50%, with a sample of 2,000, deviations of 2.2% will be significant. Strictly, sampling error should take into account the fact that data has been weighted.

(*McGinn* 1989). There was some concern about the acceptability of being interviewed about crime by telephone in countries where telephone interviewing was uncommon, though work in Switzerland had suggested that problems were fewer than might be imagined (*Killias et al.* 1987) - a supposition which was not entirely borne out (see below).

It was of course acknowledged that those with a telephone in the home might differ from those without. There was little evidence available to pinpoint how this might relate to victimisation experience - effectively precluding the possibility of weighting results to take account of differential telephone ownership. However, all 12 countries where CATI only was used had telephone penetration levels of 70% at the very least, and in most countries the figure was nearly 90% or higher. In Spain, 58% of interviews were conducted by personal interview, and 42% by CATI. In N.Ireland, all interviews were personal. Details of telephone penetration are shown in Table 1 in Annex A.

The merits of CATI are considerable. It allows a sample to be drawn which is geographically unclustered, and based on full coverage of telephone owners, including those with unlisted numbers. Telephone interviewing provides good opportunities to contact respondents who are often away from home since selected telephone numbers can be called at different times at no great cost. It allows all interviewers to work with the same questionnaire on which routing is identically programmed. This produces fewer mistakes and errors in filtering patterns since interviewers have to enter an in-range response for each question before they can move on. Two minor disadvantages are seen as the inability to edit the completed interview and correct mistakes (though these should be few); and loss of face-to-face contact which prevents the interviewer from seeing that a respondent is confused and does not understand the question.

Survey Arrangements

Inter/View (the Netherlands) were appointed as the contractor for the survey as they had experience of using CATI internationally on social science topics and indeed were probably the only company then able to mount surveys on the scale needed (*Burke Source* 1987). Fieldwork was sub-contracted by Inter/View to companies abroad - often their own subsidiaries. Each participating country took out a contract with Inter/View, who prepared the computer-programmed questionnaires in different languages, and had technical responsibility for the performance of the sub-contracted local firms. Piloting of the questionnaire was done in English, French, German, Dutch and Finnish.

Fieldwork and Samples

Fieldwork in most countries started in January 1989 and lasted six to seven weeks. Fieldwork in a few countries (Spain, N.Ireland and the USA) started somewhat later. For each telephone number contacted, one member of the household aged 16 years and over was selected randomly for interviewing. An average interview lasted about 10-15 minutes depending mainly on the extent of victimisation experience.

Response Rates

Response rates were somewhat variable, and in some cases rather low. The average response rate was 41% (i.e., completed interviews with the household members selected for interview out of eligible households successfully contacted). In four countries response rates of over 60% were achieved, while in seven the level was less than 45%. There is some suggestion that good response was positively related to high telephone penetration, though there are exceptions to this (e.g., W.Germany and the USA). A follow-up small study among non-responders in W.Germany suggests that victimisation rates did not deviate significantly from rates of responders. Response rates are shown in Table 2, Annex A.

Public response to the interviews was reasonable. The victimisation questions themselves appeared to cause respondents less concern than those on crime prevention (e.g., burglar alarms and locking behaviour). A proportion of respondents phoned the police or survey coordinators to check the credentials of the survey, though the numbers seemed to vary somewhat by country.[11]

11 Each country was asked to ensure that someone was available during the fieldwork period to deal with enquiries from respondents. The interview started with a preamble explaining local sponsorship of the survey, and emphasising that it was an international exercise. Respondents were given the opportunity before continuing to telephone a survey coordinator, or administrative personnel in the survey company for further details. In England & Wales, an estimated 100 people out of 2,000 did this. More seemed to have phoned the police (who at least in England were alerted), though numbers are unknown.

Weighting

The results presented next are based on data from the survey which has been weighted to make the sample representative of people aged 16 or more.[12]

Coverage of Questionnaire

Eleven main forms of victimisation were covered. Respondents who had been victimised were asked short questions about the place, nature of material consequences of the offences; whether the police were involved (and if not why not); satisfaction with the police response; and any victim assistance given. In addition, some basic socio-demographic and lifestyle data were collected, and some questions were asked about: fear of crime; satisfaction with local policing; crime prevention behaviour; and the preferred sentence for a 21-year-old recidivist burglar.

Results

Selected results from the survey are covered below, mainly on victimisation risks. Others are already available, and more will emerge after secondary analysis is done, to examine from a comparative perspective correlates of crime (age, sex etc.), for example, and how differences in risk might be explained by social, economic and opportunity factors.

Rates of victimisation can be expressed in various ways. The rates following are personal prevalence rates: i.e., the percentage of those aged 16 or more who experienced a specific form of crime once or more. A common alternative is incidence rates, which express the total number of offences experienced over the sample base. Prevalence rates do not allow any calculation, frequently made in national surveys, of the grossed up number of crimes committed - though with the present sample sizes this would be hazardous. Neither are they sensitive to

12 A two-stage weighting procedure was used. To correct for random selection of one person per household, for each country weighting took account of the most recent statistics about population distribution according to household size, sex breakdown, and regional distributions. To ensure a representative sample of persons aged 16 or more, national statistics on age distribution were used to weight the data. Thereafter, statistics from the survey itself were used for other weighting variables (national figures were inadequate or missing). Current international statistics on variables such as income, tenure or urbanisation were too inadequate to allow further weighting in these terms. These variables however were collected in the survey itself and analysis by them is possible.

differential proneness to multiple victimisation. Further work will need to be done on this, though preliminary indications are that country ranking for most crimes are similar whether incidence or prevalence rates are used.[13]

The recall period over which respondents were asked about crime was five years - to increase the number of victims and offences identified so that more could be said about them. Those who replied affirmatively were subsequently asked whether the incident had taken place in 1988 ("last year"), earlier than this, or in 1989. For simplicity, only 1988 rates are presented. Risks over five years are much less than five times as high as 1988 ones, as would be expected in view of memory loss. By and large, results from the five-year measure mirror those for 1988.

Presented below are findings about (i) the relative frequency of different crimes; (ii) the ranking of countries in terms of all crimes combined; and (iii) some rankings in terms of offence groupings and individual offences. The survey measures of crime are (iv) compared to offences recorded by the police (Interpol data).

The Commonest Crimes

Table 1 presents figures of the percentage of respondents who recalled experiencing offences of different types in 1988. The figures are based on the total for all countries combined.[14] Vehicle crime emerges as the most troublesome; vandalism to cars is the commonest offence recalled by 8.4% of all owners.[15] Theft from cars is relatively also common (6.6% of owners experienced one or more incident of having a part taken off their car (wing mirrors, badges etc.), or something stolen from inside it (e.g., stereos, briefcases). Among owners, 4.4% had their bicycles stolen. The frequency of vehicle offences is in accord with findings from individual

13 Taking victimisation of all types, the correlation between country positions as measured by prevalence and incidence rates is close (r= 0.934, n= 14). On incidence measures, Canadians are less at risk than is indicated by prevalence measures (there is only moderate multiple victimisation). Conversely, those in N.Ireland and Belgium are more likely to be multiply victimised than prevalence rates might suggest.

14 Overall total rates are based on figures which treat each country as being of equal statistical importance, with an assumed sample of 2,000. This is so that results from countries with the largest samples do not bias overall figures. Where the total rate for Europe is presented, this has been calculated by means of weighting individual country results according to population size. (If this had been done for the overall total rate, it would have biased results too much in the direction of large countries such as the USA.)

15 Throughout, "cars" refer to cars, trucks and vans. "Motorcycles" refers to motorcycles, mopeds and scooters.

national surveys which have incorporated measures of vehicle crime, particularly vehicle vandalism (not all have). Had the present survey asked about vandalism to other property, the indications are that this too would have been frequent.

Assaults/threats ("assaults" hereafter) and "non-contact" thefts of personal property (e.g., thefts from offices, cloakrooms, around the home etc.) were very roughly half as common as car vandalism. Men were more at risk of assaults, in line with conventional risk analysis. Robbery is a relatively rare offence (overall, only 0.9% experienced it), though again it is more common among men. Pickpocketings (i.e., thefts from the person without force) were slightly commoner than robbery (1.5%), and women were more often victims, no doubt because they more frequently carry handbags and shopping bags. Among women, 2.5% reported a sexual incident. This profile of the commonest crimes is generally similar at the individual country level, though some differences emerge reflecting the patterns of country crime, which are taken up below. For instance, Spanish women were more likely to have a contact theft than a burglary.

Table 1: Percentage of respondents experiencing different crimes, 1988: overall total (14 countries)

	Total	Male	Female
	% experiencing		
Car vandalism*	6.7	7.6	6.1
Theft from car	5.3	5.8	4.9
Assaults/threats	2.9	3.3	2.5
Theft of bicycle	2.6	2.7	2.6
Non-contact personal theft	2.5	2.7	2.4
Attempted burglary	2.0	2.0	2.1
Burglary with entry	2.1	2.1	2.0
Pickpocketing**	1.5	1.3	1.5
Theft of car	1.2	1.2	1.1
Robbery	0.9	1.2	0.7
Theft of motorcycle, etc.***	0.4	0.4	0.3
Sexual incidents****			2.5
Owners			
Car vandalism	8.4		
Theft from car	6.6		
Theft of bicycle	4.4		
Theft of motorcycle, etc.	3.1		
Theft of car	1.4		

Notes:

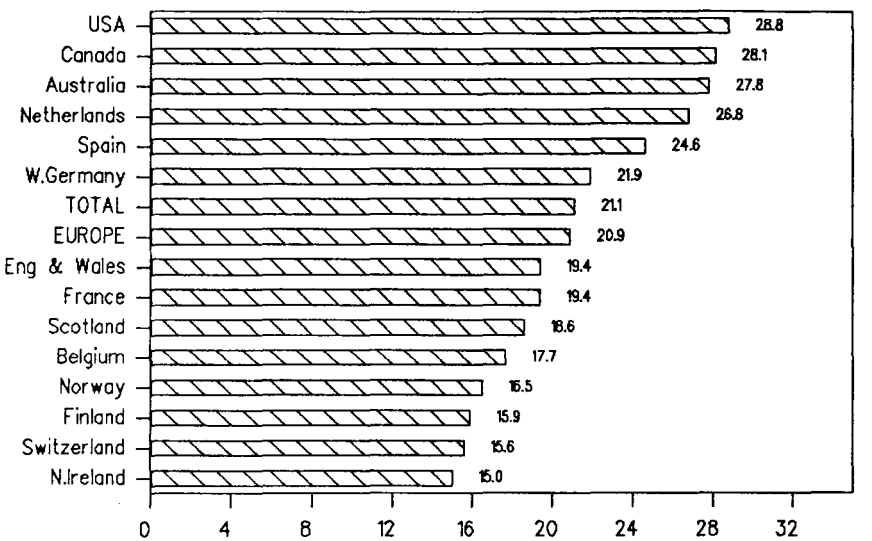
* "Cars" include trucks and vans.
** "Pickpocketing" thefts of property carried on person.
*** Motorcycles, mopeds and scooters.
**** Sexual incidents asked of women only.

Overall Risks in Different Countries

Figure 1 shows the country rankings for all crimes in 1988 which were asked about; figures for Europe and all 14 countries are also shown. The USA, Canada and Australia head the list with very similar levels. The Netherlands, Spain and

W.Germany have higher levels than the European average. N.Ireland falls at the bottom of the list, with about half as many respondents reporting some victimisation as was the case with the most crime-prone countries. It cannot be entirely ruled out that face-to-face interviewing in N.Ireland may have affected its crime count, though it is unlikely to have had any substantial impact.

Figure 1: % victim of crime in 1988, all crimes



Offence Groupings

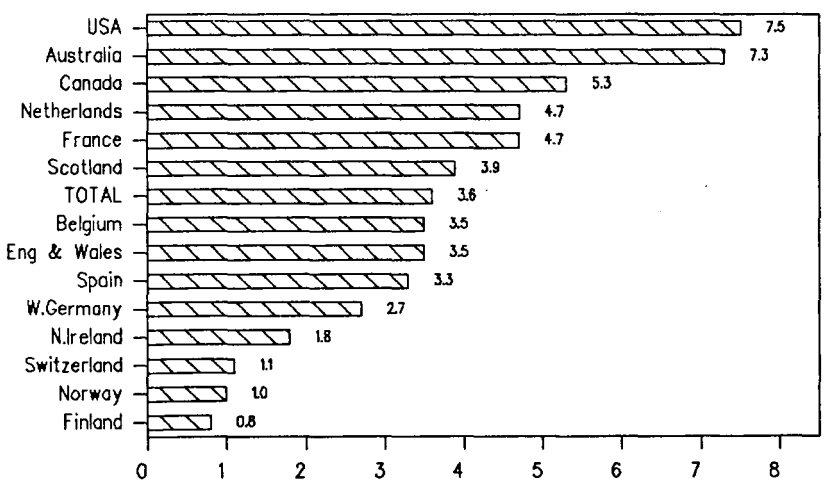
Figures 2 - 5 present a breakdown of four categories of offences, by country. The percentage figures refer to respondents who said they had experienced one or more of the **combined** categories in 1988. (Thus, figures will not match summations of individual offences). The categories are:

1. **Burglary with entry and attempted burglary**
2. **Non-contact thefts of personal property**
3. **Contact crime:** Pickpocketing; robbery; assault/threats; sexual incidents
4. **Vehicle crime:** Thefts of cars; thefts from cars; vandalism to cars; motorcycles theft; bicycle theft

Burglary

People in the USA and Australia had the highest rates of burglary with just over 7% victimised in 1988. Those in Canada, the Netherlands, France and Scotland were above the overall average (of 3.6%), while those in N.Ireland, Switzerland, Norway, and Finland were least at risk (see Figure 2). The country rankings were broadly similar with regard to both the burglary with entry, and attempted burglary (figures not shown). In general, too, the level of risk from attempted and completed burglary was similar. In the USA and W.Germany, however, attempted burglary posed a relatively greater risk, while in contrast burglars were more adept at gaining entry in Australia, England & Wales, Norway and Switzerland (though numbers are small).

Figure 2: % victim of burglary in 1988

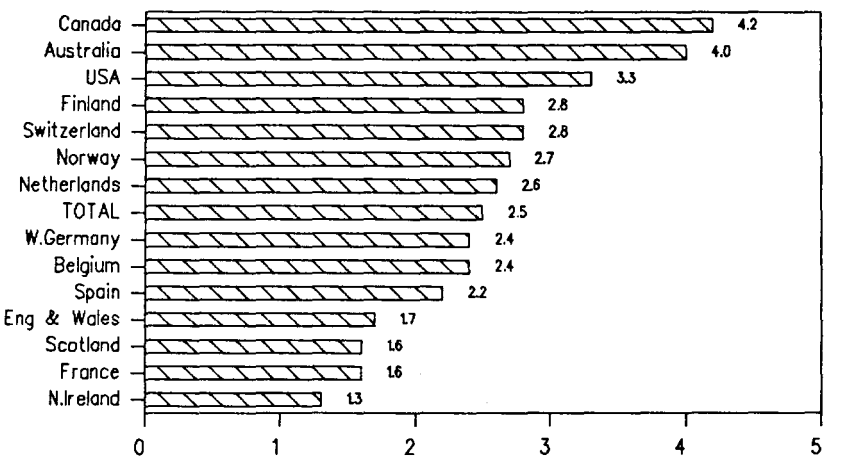


Burglary with entry; attempted burglary

Non-Contact Thefts of Personal Property

There was less variation between countries in risks of non-contact thefts. Risks were highest outside Europe.

Figure 3: % victim of theft w/out contact in 1988

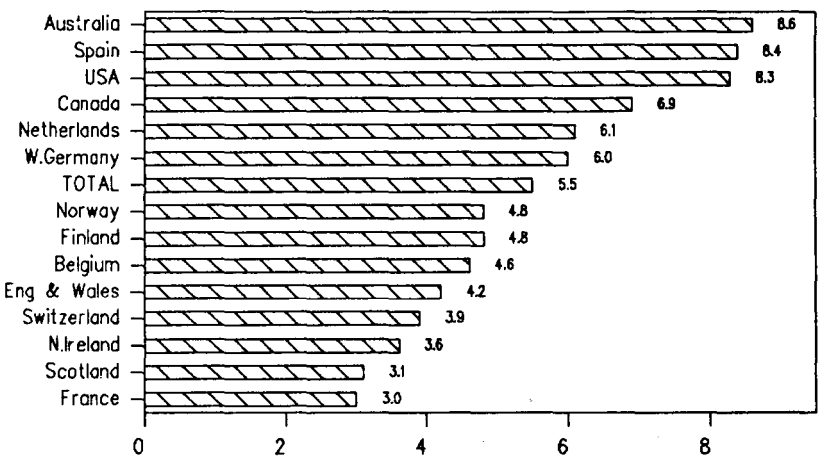


Theft of personal property without offender-victim contact

Contact Crime

Combining offences in which there was some direct contact between victim and offender again shows a relatively narrow spread of risks (Figure 4). However, though the pattern for the constituent offences differs, as is shown in Table 2.

Figure 4: % victim of contact crime in 1988



Pickpocketing; robbery; assault/threats; sexual incidents

Pickpocketing

Spain's position at the top of the ranking on contact crime reflects relatively high risks of pickpocketing: 3.3% of Spanish women reported pickpocketing (overall average for women, 1.5%), Pickpocketing outside Europe was relatively infrequent. Rather, the high rankings of the USA, Canada and Australia reflect more frequent reports of assaults, robbery, and of sexual incidents.

Table 2: Risks of pickpocketing, robbery, sexual incidents and assaults/threats in 1988 (14 countries)

% victim, 1988			
Pickpocketing		**Robbery**	
Spain	2.79	Spain	2.84
France	2.00	USA	1.85
Netherlands	1.85	Canada	1.11
EUROPE	1.82	Belgium	1.02
Switzerland	1.70	EUROPE	1.00
Belgium	1.55	TOTAL	0.94
W.Germany	1.52	Australia	0.89
Eng. & Wales	1.50	Netherlands	0.85
TOTAL	1.49	W.Germany	0.83
Finland	1.46	Finland	0.78
Canada	1.25	Eng. & Wales	0.70
USA	1.25	Scotland	0.55
Scotland	1.05	Switzerland	0.50
Australia	0.99	N.Ireland	0.50
N.Ireland	0.85	Norway	0.50
Norway	0.50	France	0.40
Sexual incidents (women only)		**Assaults/threats**	
Australia	7.26	USA	5.41
USA	4.52	Australia	5.17
Canada	3.99	Canada	3.95
W.Germany	2.83	Netherlands	3.35
Netherlands	2.56	W.Germany	3.05
TOTAL	2.46	Spain	3.04
Spain	2.36	Norway	2.97
Norway	2.14	Finland	2.93
EUROPE	1.87	TOTAL	2.90
N.Ireland	1.84	EUROPE	2.49
Switzerland	1.57	Belgium	2.04
Belgium	1.31	France	2.00
France	1.17	Eng. & Wales	1.89
Eng. & Wales	1.15	N.Ireland	1.80
Scotland	1.15	Scotland	1.79
Finland	0.56	Switzerland	1.20

Robbery

Robbery was again commonest in Spain: 4.1% of Spanish men for instance experienced a robbery in 1988 as against the overall average of 1.2%. Risks in the USA were second to those in Spain. The French emerge as the least prone.

Although numbers are small, there is some indication that Swiss, W.German, and Finnish victims were robbed relatively often abroad. Offenders had a weapon in half the incidents recalled (including 20% with a knife, and 8% with a gun). The sharpest deviations from this pattern were that in Spain 40% of incidents involved knives, and in the USA 28% involved a gun.

Sexual Incidents

The measurement of sexual offences in the survey was approached cautiously because of sensitivity, cultural and definitional differences. The question asked (to women only) was:

> *"People sometimes grab or touch others for sexual reasons in a really offensive way. This can happen either inside one's house, or elsewhere, for instance in a pub, in the street, at school or at one's workplace. Over the past five years has anyone done this to you? Please take your time to think about it."*

Willingness to report sexual offences (in particular those in which intimates were involved) could well differ across countries. In any event, women outside Europe were most likely to have been sexually assaulted, (or be more sensitive to it, or prepared to admit it). In Europe, those in W.Germany, the Netherlands, and Spain reported being most at risk. Multiple victimisation was relatively common: 42% of victims reported more than one incident, and 15% five or more offences. Overall, a third of victims knew their offender by name and a further 15% by sight. The proportion of victims in Scotland (52%) and Canada (52%) who reported knowing their offender by name was significantly higher than the average (33%), and in Spain significantly lower (12%). Most of those who reported sexual incidents choose to describe the incident as "offensive behaviour" (69% were). Of all incidents reported over the 5-year recall period, 3% were described as rape, 9% as attempted rape. It might not have been surprising if the figures had been even lower.

Assaults

The question asked of respondents was:

> *".....have you been personally attacked or threatened by someone in a way that really frightened you (either at home, or elsewhere, such as in a pub, in the street, at school or at your workplace)."*

Risks of assault in the USA and Australia approach double the overall average (of 2.9% victimised). In Europe, relatively high rates emerged in the Netherlands, W.Germany, and Spain. Norway and Finland emerge higher on the assault ranking than they do for most other crimes, with risks slightly above the European average. Overall, offenders were known by name in 27% of incidents, and by sight in 12%. In 22% of assaults by offenders known by name, the offender was said to be a family member. In rather less than half overall incidents, actual force was used (as opposed to threatening behaviour). The figure was lower (about a third) in the USA, Spain and Belgium. On the basis of the findings about robbery this might suggest that threats with a weapon were more common in the USA and Spain. Again, multiple victimisation was particularly common in assaults: a third of victims reported that they had been assaulted more than once in 1988, and 9% five times or more.

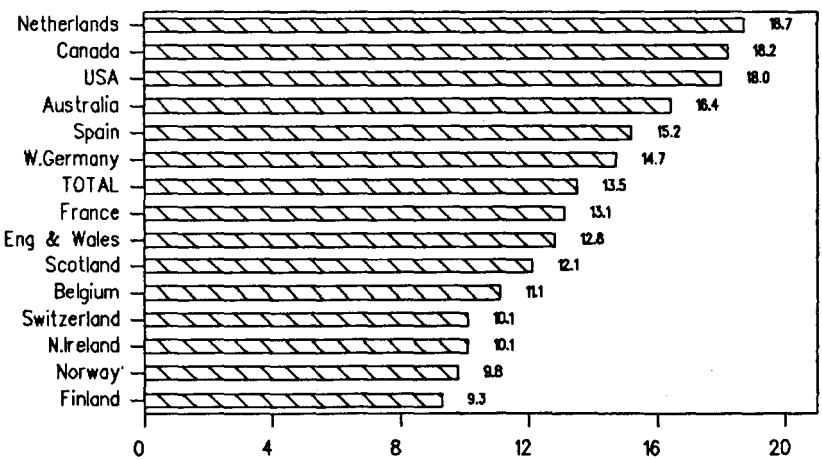
Assaultive crime has been shown in methodological work to be particularly susceptible to response bias, with better educated respondents implausibly reporting more assaults (see, e.g., *Skogan* 1986). (As said, explanations of this is that they complete questionnaires better, or have a lower threshold of what they regard as criminally assaultive behaviour.) Further analysis will be able to establish the relationship between educational level and the reporting of assaults in the present survey.

Vehicle Crime

Looking at all vehicle crime combined, the USA and Canada emerge high on the list (Figure 5), in particular because of crimes involving cars rather than motorcycles or bicycles. Figures for the Netherlands are boosted in particular by the high rate of bicycle theft and car vandalism, Spain has a high level of thefts from cars, and W.Germany a high level of car vandalism. Parochially, on the overall vehicle crime measure, England & Wales had only average risks, although relatively high levels of thefts of and from cars. People in Scotland are, again, near the overall average, but are vulnerable in particular to thefts from cars and motorcycle thefts. Switzerland is consistently low as regards offences involving cars, though motorcycle owners have higher than average risks.

Table 3 presents individual vehicle offences based on car owners. (There is a similar distribution of relative risks using a sample population base, though risks based on owners alone are of course higher.)

Figure 5: % victim of vehicle crime in 1988



Theft of cars; thefts from cars; damage to cars; motorcycle theft; bicycle theft

Table 3: Vehicle crime risks among owners in 1988 (14 countries)

	Theft of cars		Theft from cars		Damage to cars
		% owners victim, 1988			
France	2.8	Spain	14.6	Canada	11.0
Australia	2.6	USA	9.7	W.Germany	10.8
Eng. & Wales	2.4	Canada	8.1	Netherlands	10.6
N.Ireland	2.2	Australia	7.8	Australia	9.9
USA	2.2	Scotland	7.7	Scotland	9.4
Spain	1.9	Eng. & Wales	7.3	USA	9.3
TOTAL	1.4	France	7.1	Spain	9.2
Norway	1.4	Netherlands	6.8	Eng. & Wales	8.8
Scotland	1.2	TOTAL	6.6	TOTAL	8.4
Belgium	1.0	W.Germany	5.8	Belgium	8.0
Canada	0.9	N.Ireland	5.5	France	7.6
W.Germany	0.5	Finland	3.5	N.Ireland	6.1
Finland	0.5	Norway	3.5	Norway	5.7
Netherlands	0.4	Belgium	3.3	Switzerland	5.2
Switzerland	0.0	Switzerland	2.4	Finland	5.2

	Motorcycle Theft		Bicycle Theft
Scotland	7.1	Netherlands	8.3
Switzerland	4.8	Canada	5.4
Spain	3.9	Switzerland	4.6
N.Ireland	3.7	Belgium	4.6
France	3.6	USA	4.6
Canada	3.4	TOTAL	4.4
Netherlands	3.2	W.Germany	4.4
TOTAL	3.1	Australia	4.0
Norway	3.1	Norway	3.8
Belgium	2.9	Finland	3.5
Australia	2.6	N.Ireland	3.5
W.Germany	1.8	Scotland	3.2
USA	1.0	Eng. & Wales	2.8
Eng. & Wales	0.8	Spain	2.6
Finland	0.0	France	2.5

On average, about half incidents of thefts from cars took place near to the respondent's home, and a third elsewhere in the local area. Offences happening abroad were commoner in countries with lower risks. A full 41% of incidents involving the Swiss were committed outside their country, 17% among Belgians, and 11% among Finns. Risks for these countries, therefore, exaggerate the amount of thefts from vehicles for which residents are responsible.

The number of households with cars, motorcycles and bicycles is of course variable across country. For instance, 95% of the sample in the USA owned cars (the mean number for the USA sample was 2.2), as against less than 70% in Scotland and Spain (mean 0.8). In general, countries with high rates of ownership have the higher rates of vehicle crime, suggesting that the simple availability of targets is a factor in the number of crimes committed.[16]

As regards crimes targeted at cars, Spain is the main exception to this with low ownership but relatively high rates of thefts of cars and thefts from cars (particularly). Conversely, relatively high ownership in W.Germany is not well matched by high risks except for damage to cars. Damage is possible in the course of an offender trying to gain entry into a car to steal it, or from it. Data comparing the average age of cars on the road in different countries might indicate whether the vehicles of W.Germans were, if newer and better designed, harder to break into.

Switzerland, Spain and France have the highest rates of ownership of motorcycles and are among the countries with high risks. Scotland however had the highest risk of motorcycle theft of all (7.1%) with low motorcycle ownership. The USA has moderately high motorcycle ownership (15%), but low risks. Age eligibility for driving cars and motorcycles would be a useful statistic to have across countries to test, for instance, whether US youngsters drive earlier and are in a position to take advantage of the abundant supply of cars for theft.

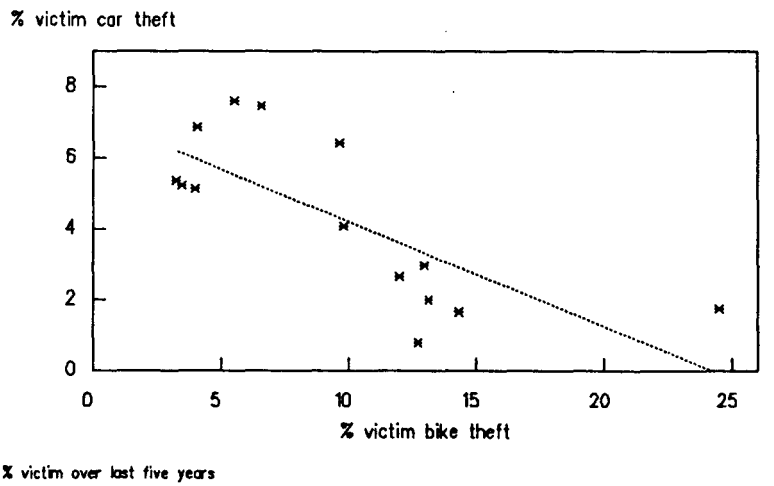
Bicycle Theft

The highest rate in the Netherlands (8.3% had a bicycle stolen) matches the 91% of the sample who said they had a bicycle, the mean number of bicycles among respondents being 2.5, as against an average for other countries of 1.3. Bicycle ownership is also high in Finland and W.Germany, though overall risks of thefts are only moderate, especially in Finland. Spain, England & Wales, and Scotland have low ownership and low risks.

16 For instance, the correlation between risks of thefts of cars and ownership of cars was r= .363; for thefts from cars, r= .226; and car vandalism, r= .648. For motorcycle thefts and the ownership of motorcycles, r= .741, and bicycle thefts and ownership of bicycles, r= .890.

Bicycle theft risks are negatively related to risks of car theft (see Figure 3). Vehicles will be stolen for various reasons (e.g., financial gain, joyriding and a means of temporary transportation) - though it is difficult to substantiate empirically the contribution of each (cf. *Mayhew et al.* 1989) Where transport is the purpose of theft and there are plenty of bicycles around, the finding suggests that many offenders will make do with a bicycle. Consistent with this would be that in countries where thieves wanting transport have few bicycles to draw upon, more cars will be stolen, used temporarily and then left to be found by the police or owners. The data bear this out. High rates of recovery of stolen cars are found in Australia (84%), Scotland (78%), England & Wales (77%), and France (76%) - where car theft is commonest and bicycle ownership low. Lower rates of recovery are found in Switzerland (51%), W.Germany (56%), Belgium (61%) and the Netherlands (67%).

Figure 6: National rates of car theft and bicycle theft, 14 countries



Survey Figures and Recorded Crime

Are the survey results at all in line with what figures of recorded offences suggest? Only certain offences can be matched, and then somewhat imperfectly.[17] The comparison made was between average figures from Interpol returns for 1982-86 for recorded offences (to iron out year to year fluctuations), and the five year victimisation rate from the survey. Because of differences in coverage and problems with Interpol data, this could best be done for theft of vehicles, burglary, robbery, assault and sexual incidents.[18]

The picture from the survey rankings is not closely in accord with that from recorded crime figures. The rank order correlations between assault is 0.037, 0.371 for robbery, 0.442 for burglary, and - the best - 0.786 for vehicle theft. Recorded crime shows England & Wales and N.Ireland high on assaults, not borne out by the survey. N.Ireland and Scotland are also high on Interpol figures for robbery, but relatively low on the survey, while for W.Germany and Belgium the reverse is true. Burglaries in France are relatively higher according to police figures than according to the survey, while the opposite is the case for the Netherlands and W.Germany. For theft of cars, the main discrepancies between the two measure for Norway (relatively lower risks according to the survey than according to police figures), and Belgium (relatively higher risks according to the survey). Two countries -

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17 Police statistics are based on total population size, while survey rates are based on people aged 16 or more; this may affect comparisons of sexual offences and assaults most. Police rates are incidence one (crimes per 100,000 population), whereas the only survey measure for the 5-year period is a prevalence one. Police statistics count crime within the country, whether against residents or not, whereas the survey counts crime against residents where they were victimised inside the country or not; this may affect robbery and vehicle crime counts most. There is also sampling error on the survey figures.

18 Specifically, the comparisons were for:

Theft of vehicles:	Excluding motorcycles and bicycle - survey
	Commercial and private vehicles (often undefined) - Interpol Category 4.2 Switzerland excluded
Burglary:	Completed residential burglaries - survey
	All burglary (residential and commercial) - Interpol Category 4.1.2
Robbery:	As defined - survey
	Robbery and violent theft (excluding burglary) - Interpol Category 4.1.1
Assaults:	Assaults and threats - survey
	Serious assault - Interpol Category 3

Spain and Scotland - are out of line on police and survey measures of sexual offences: in Spain, there are relatively higher risks on survey figures than police ones, while in Scotland, the survey risks are relatively lower. Work in the USA looking at city measures of crime according to police figures and results from the US National Crime Survey appear broadly in line with these results (*Cohen* and *Lichbach* 1982; *Cohen* and *Land* 1984): there is closest correspondence for vehicle theft, and weakest for assault; burglary and robbery (particularly with a weapon) show modest associations at city level.

The survey offers results on the degree to which offences are reported to the police in different countries. Suffice it to say here that there was a much **closer** correspondence in relative risks of crime on police figures and survey data when the latter were adjusted for the level of reporting. This is an important result, confirming the belief that levels of recorded offences are likely to be unstable for comparative purposes **simply** on account of how often the police are told about crime by victims. However, even taking reporting into account still leaves many discrepancies in the two pictures of relative risks. Measurement error on the survey figures will play a part here, but so too will police recording practices and definitional inconsistencies.

Conclusions

The possibilities for comparative research which independently mounted national victim surveys appeared to offer are actually limited because of technical difficulties in accommodating differences in survey design. The 1989 telephone survey was a way of surmounting this problem. It was mounted when the climate was right, and take-up was higher than might have been expected. In terms of sample sizes, nonetheless, it was a relatively modest exercise.

The Working Group has now published an overview report of the key findings from the Survey (*van Dijk et al.* 1990). All countries made their findings known at the same time. In consultation with country representatives and other selected academics, the Working Group may subsequently prepare a further report on the survey, containing more detailed analysis of the survey data. For instance, each participating country may be asked if they want to contribute a chapter on their own results, supplementing this, if they wish, with other local research data on crime. In due course, a data-tape containing full results for each country will be made available to any interested academic party for further secondary analysis.

Sexual offences: Sexual incidents against women - survey
Sexual offences - Interpol Category 2. USA excluded
Missing Interpol data included where figures known from other sources.

Annex A

Table 1: Telephone penetration in survey countries, 1988

	% households with telephone*
Australia	93
Belgium	72-75
Canada	97
England & Wales	82-85
Finland**	>94
France	93-95
W.Germany**	>94
Netherlands	95
N.Ireland	<70
Norway	92-94
Scotland	82-85
Spain***	70-73
Switzerland	97-98
USA	94+

Notes:

* Where ranges are shown, this is for rural and urban areas respectively.

** *Trewin* and *Lee* (1988) give a figure for W.Germany of 94% in 1985 and for Finland 94% in 1986. Their figure for Canada is 97% in 1986.

*** Urban areas only.

	Response rates in survey countries, 1988 (%)		Response rates in survey countries, 1988 (%)
Norway	71	Eng. & Wales	43
Finland	70	Scotland	41
Switzerland	68	Belgium	37
Netherlands	65	USA	37
France	52	Spain	33 (CATI)
Australia	46	W.Germany	30
Canada	43	N.Ireland	na

Note: Final valid sample as a percentage of relevant contact.

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Commentary[1]

Harald Arnold

1. As a starting-point the discussion of international criminological research makes necessary a limitation of the issue under consideration and, if possible, a consensus of the participants on these restrictions. Otherwise, the frame of reference would be too broad to guide the discussion in a meaningful manner thereby minimizing the chance of common acceptable results.

From this general point of view the restriction of the subject of international comparative research to the discussion of the 1989 Telephone Survey is a strong limitation on the one side, on the other side it is to be hoped that it will help to direct the dispute more into depth by concentrating on a narrowly circumscribed issue.

In addition it seems appropriate to implicitly or explicitly recapitulate the conception of the topic and confront the discussants with the three seemingly simple but basic questions:[2]

a) what is international comparative criminological research,

b) why do we do this type of research, and

c) how does this type of research, if at all, differ from other criminological research?

Even if these questions are not discussed nor answered explicitly, they will be an adequate frame of reference or guideline to the dispute.

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1 This commentary was invited only a short time before the colloquium. Therefore, the chance to add some additional information has been used meanwhile to extend the text somewhat; several footnotes and references as well as a table have been supplemented which explain some of the short comments more detailed.

2 This point is a strong parallel drawn to *Frey's* (1970, p.175) introduction to cross-cultural survey research, the conception of which is still appropriate and plausible.

From this new point of departure it easily becomes evident that international comparative criminological research is above all a question of methodology[3] because it is defined by the application of a more or less specialised method, i.e. the comparison of nations, and motivated by the necessity to get insight and to deepen knowledge in a way that is thought to be possible in no other way. International comparative criminological research in this perspective is not merely an alternative but a very unique way of analysis.[4]

Again, it proves acceptable and justified to base the discussion of international comparative criminological research on the 1989 Telephone Survey.

Incidentally, this comparative study is done by using a surveys approach, i.e. a victimization survey by (computer assisted) telephone interviewing, that in itself is loaded with a bunch of methodological and technical difficulties, so that the discussion may be biased toward these problems leaving aside those aspects that give reasons for international comparative criminological research including questions that are focused more on theoretical interests.

2. A key problem in international comparative research is the degree to which equivalence can be established. Equivalence in comparative research does not mean identity. Therefore standardization in various aspects may be a necessary prerequisite for an international comparative study but does not guarantee equivalence by itself. Restrictive criteria are necessary to guarantee that this relevant aspect in international comparative research has been considered adequately.[5]

3. Periodically given evaluations of victim surveys as a tool of empirical criminological research come to the conclusion that it is one of the major and substantial contributions to the field of criminology in the last decades. At the same time this statement has been differentiated by critical experts with the additional remark that the full potential of victimization surveys is still to be developed. Reasons for this can be found in methodological discussions as well as theoretical disputes showing

3 For an survey of the strategy and method of comparative research in the social sciences see the contributions in *Szalai* and *Petrella* (1977), *Berting et al.* (1979), *Nießen* and *Peschar* (1982); *Kohn* (1989); focusing on crime-related issues see, e.g. *Hauge* (1983), *Peyre* (1983) and *Klein* (1989).

4 Researchers differ largely in their opinion and appraisal of this aspect depending on the underlying conception of comparative research and methodology; see, e.g. *Frey* (1970, pp.183, *Ragin* (1987, pp.1).

5 See, fundamentally, *Przeworski* and *Teune* (1970); also the references in note 3.

that the criticized weaknesses are not seriously biased towards one of the two basic aspects.[6]

4. Not seldom one can find in research reports a tendency to recapitulate the well-known methodological problems given with victimization surveys or international comparisons in a way to immunize against criticism, intentionally or not. On the other side, in presenting and interpreting descriptive results at the same time reference to the before mentioned sensitivity for shortcomings of the method is not made any more, at least not in a way it seems necessary to put the research results in a sceptical view. Therefore consistency is required between methodological awareness and analysis of data.[7]

For example, researchers using the telephone methodology should take into consideration that despite a fairly high telephone coverage in the countries surveyed differences of the household population by telephones are still a problem, not only with regard to international comparisons but within nations.[8] Thereby a relationship between telephone ownership and socio-economic status/social strata is most

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6 For a general methodological discussion of victim surveys see, e.g. *Skogan* (1981) and *Zauberman* (1985); more into detail, see the contributions in *Lehnen* and *Skogan* (1984).
First experiences with comparative victimization surveys have been reported from the Scandinavian countries (*Aromaa* 1985; *Sveri* 1982); also the OECD has tried to develop an international comparative project measuring victimization in different countries (*Törnudd* 1982); to our knowledge, the first predesigned cross-national victim survey undertaken with the specific intent to make comparative analyses has been carried out by the author together with *R. Teske* and in co-operation with *L. Korinek* (see *Teske* and *Arnold* (1982); also *Arnold* (1988), *Arnold, Teske* and *Korinek* (1985; 1988) with further references); these surveys have been replicated using the same methodological approach in Switzerland (*Schwarzenegger* 1989). Several secondary analyses with a comparative perspective using data from national victim surveys have been carried out by *Block* (1987; 1989). Both later approaches make clear that replications as well as secondary analyses have their justified position among the scientific tools of comparative research and can make strong and independent contributions. Also *Kohn* (1989, p.19) gives no preference to primary or secondary analyses, "both of which can be useful".

7 Cf. recently *Mitovsky* (1989) on methods and standards, especially the remarks on sampling, weighting of data and disclosure requirements.

8 As *Trewin* and *Lee* (1988) have shown, recently, telephone coverage is low among (a) rural areas, (b) one-person households (as well as very large ones, e.g., more than 6 persons), (c) low income households, (d) unemployed and nonskilled, (e) younger population (and again somewhat more among the older age groups, i.e. those aged 65 or more), (f) single and divorced persons, (g) ethnic minorities.

evident.[9] According to a report from the U.S. Office of Management and Budget nonownership of telephone is not only more common among various "deprived subgroups", but those live also more often in areas of high crime victimization.[10] In addition, people with some of the characteristics mentioned are hard to reach and to get on the phone because of a higher mobility and "out-of-home behaviour", such as the younger, which altogether results in increased bias.[11] Finally, in part, these persons are also those ones that are more prone to victimization because of lifestyle or other attributes. All these sources of error as well as those referred to below have to be taken into account as affecting and disturbing risk estimations of this victimization survey.[12]

5. Even if a highly standardised international survey would yield strictly comparable information as planned, thereby enable the participating nations to compare with each other in relation to crime levels, there still remains the unsolved problem how these results could be compared to the officially recorded crime rates in the respective nations. If national crime statistics, in general, or more specifically police statistics are difficult to compare among nations for different reasons discussed explicitly elsewhere then, logically, these problems should be similar in regard to survey-produced measures.[13]

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9 Sykes and *Hoinville* (1985, p.3) state that "non-membership is increasingly concentrated amongst the worse-off in society".

10 See *Trevin* and *Lee* (1988, p.23).

11 It will be interesting to see how the unweighted samples compare to the respective demographic statistics of the nations. A simple reference to a somewhat representative distribution of basic variables will not be sufficient for an evaluation, finally.

12 For Great Britain, *Collins* and *Sykes* (1987) have concluded that it would be rather inacceptable for public policy oriented research and social surveys to be based on the population with telephones, especially when focused on subgroups with low coverage. *Trevin* and *Lee* (1988, p.21) confirm the doubts raised in their discussion of some studies of bias: "In many countries it is clear that most surveys would suffer from significant bias if only the telephone population was covered". Therefore, special precautions have to be met against bias introduced through the noncoverage as well as nonresponse (see the contributions in *Groves et al.* (1988) with further discussion and references).

13 Problems in validating respondents' victimization reports arise also on a different level that is closer to survey data, i.e. by checking official records. Explorating the validity of victimization reporting by means of matching survey responses to official records, *Miller* and *Groves* have been rather critical and less optimistic in their evaluation of the methodoloy and results of reverse record check studies. One of their conclusions is not to use record evidence as the "arbiter" of survey response quality because they "do not believe that record check studies offer a panacea for assessing error in survey data" (*Miller* and *Groves* 1985, p.379).

More generally, there exists a validating problem. How can official crime statistics be used to validate crime survey results, or vice versa? And, in addition or besides, can each of the methods of crime measurement be used to gauge the shortcomings of the other? Even if some comparison should be possible and allowed within some uncertainty, the result could be at best only a proof for validity in the sense of concurrent validity. At least, it is to be made clear that measurement validity is dependent on the criterion used and that official records are differently reliable criterions in the respective nations. Keeping in mind that according to a nowadays widespread conception, if not an empirically supported consensus, official records are primarily records of the activities and work-load of an agency, organisation or institution, what would be gained in terms of criminologically relevant knowledge and insight from the results of such a comparison? Does the result of comparing the outcomes of the two methods of crime measurement, anyway if it shows similarity or dissimilarity, not make necessary another, more thorough endeavour that explains the result?

As difficult and complicated as it may be, researchers can make valid cross-cultural comparisons of criminal statistics if certain guidelines are followed. Arriving at the final guidelines for making such comparisons required a meticulous review of crime reporting procedure in the countries compared, as well as a careful review of the respective penal codes. The final aim could be a differentiated comparison of criminal justice systems in different nations. Suggestions for research in these directions including advice how to overcome the problems which arise have been made.[14]

Figures of the 1989 Telephone Survey have been checked if they are in line with results of officially recorded offences by using the Interpol data which can only be seen as a compromise because of the well-known difficulties given with these data sources. Not surprisingly, the correlation is only weak and not significant, but in total the association is smaller than may have been expected, esp. when using only rank correlation. It is not clear if prevalence or incidence rates have been used for that test and if the respective indicator would change the picture somewhat. - The correlation of both indicators is not too close, i.e. r= .77, leaving some variation unexplained. - In addition, taking account of the place of occurrence of the event, i.e. by subtracting victimizations that occurred abroad, may have another smaller effect. Using a rather long 5-year period of reference for the survey data can also diminish reliability because recall problems increase and thereby accuracy decreases. At last, the national reporting rates could be considered using a multivariate approach for correcting the relation between surveys measures and offical data.

14 See e.g. *Teske* and *Arnold* (1982; 1982a); also *Burnham* and *Kalish* (1988); *Kalish* (1988); *Sveri* (1988); more general *Albrecht* (1988; 1989).

Victimization rates, global as well as differentiated with regard to offences, are very close for some countries in the survey. Taking into account the sampling errors, this can yield tied ranks in the calculation of the correlation coefficient and thereby inflate or distort the strength of relationship, additionally. At least it complicates to establish a valid ranking order.

The problem is how to interpret those minor differences in victimization rates between several of the nations, some of which are neither substantial nor significant, rather then resulting from sampling error and change.[15]

Given that the samples are drawn by pure random sampling, confidence intervals can be calculated that give an estimated range of values covering the true population value with a high probability.[16] Similar values are possible for differences between proportions.[17] To make it concrete: Looking at Figure 1 in *Mayhew's* article one can conclude that - according to statistical inference - there is no significant difference as to total victimization rate between Belgium and Norway, or Belgium and France, for example. Therefore with some certainty one can state that the differences between the samples will not hold true for the nations as whole, or other way stated, we cannot generalize these results by the survey to the nations and are not allowed to reject the basic hypothesis that victimization rates in these nations are not different. All other figures could be checked with a similar result showing that a large number of differences are not significant. Hence the task remains to work out which differences are relevant, at least in terms of significance. If they are substantial beyond that will be a further question. Noteworthy, for example, are the differences in variation of different victimization rates as well as some outliers, e.g. the robbery rate in Spain; similarly remarkable, although less surprising, is the value for bicycle theft in Holland, whereas the low car theft rate in Switzerland (0 %!) is

15 *Mayhew* (above, note 11) gives some rough guidelines to check for the significance of the differences without forgetting to point to the fact that some prerequisites regarding sampling design have to be met.

16 Other probability sampling - than simple random - complicates the condition, also the weighting of the data; quota sampling, for example, would not be a sufficient basis, as *Mitovsky* (1989) pointed out, recently.

17 The difference between victimization rates can rather easily be tested for significance with the Chi 2-statistic. Although one has to keep in mind that samples of some nations differ with regard to size which affects the power of the statistical test. Differences will become significant more easily with increasing sample size.

statistically spoken less notable[18] though political valuations of the significance of these results may somewhat differ from the statistical one. Because of the political importance that the results of the survey may have in some countries it is highly recommended to give some statistical assistance in reading and interpreting the data in order to avoid wrong conclusions, for example, based on nonsignificant differences.

Interestingly, a rank correlation between national response rates and victimization measures can be calculated that shows a correspondence that is closer than those with official records: the correlation between response rate and prevalence rate for all crimes (in 1988) is -.46 and shows closest correspondence for robbery with -.66. Also the strength of relationship between response rate and damage to cars (-.61) as well as theft of cars (-.54) is significant and substantial (see Table 1). With the exception of theft of motorbikes, all signs of the correlations are negative which means that higher response rates go with lower victim rates, and vice versa.[19] Overall, the national victimization rates are in closer relationship to survey response rates than to the official statistics used here which requires further analysis and consideration.

18 Although it should be noted, and this refers to other values, too, that an estimated victimization rate close to zero results in an estimated variance close to zero which probably causes a substantial understatement of the width of the true confidence which consequently affects the detection of significant differences between sample means and proportions, too. Also multiple comparisons, i.e. multiple applications of a statistical test to the same data set have to be considered regarding their effect in determining valid confidence intervals.

19 Note: these and the following figures are calculated by the author based on the results displayed in the article by *Mayhew*. Calculations are made for reasons of demonstrating an analytical perspective. Some statistical requirements are not fully met and some problems not sufficiently solved within this procedure, e.g. regarding the randomness and the weighting of the data. Therefore some caution may be necessary. A one-tailed test has been used because this seems appropriate according to the test of the saliency hypothesis which makes a clear prediction in regard to the relationship expected. Coefficients with a tendency towards significance are marked (+), too, because of the instability of coefficients due to the small numbers and to remind of the chance of making a Type II error; generally, the power of a statistical test is lower if sample size is small.

Table 1: Correlation between response rate and crime survey measures

	Response rate	
	a)	b)
Victim 1988 (all crimes)	-.455+ (.059)	-.525* (.033)
Burglary	-.355 (.117)	-.528* (.032)
Theft (w/out contact)	-.145 (.318)	-.203 (.253)
Contact crime	-.425+ (.074)	-.468+ (.053)
Vehicle crime	-.463+ (.055)	-.500* (.041)
Pickpocketing	-.075 (.404)	-.039 (.450)
Robbery	-.659** (.007)	-.507* (.039)
Sexual offences	-.209 (.246)	-.361 (.113)
Assault/threats	-.254 (.201)	-.382+ (.099)
Theft of cars	-.244 (.211)	-.386+ (.096)
Theft from cars	-.543* (.028)	-.559* (.023)
Damage to cars	-.612* (.013)	-.728** (.002)
Theft of motorbikes	.195 (.262)	.065 (.417)
Theft of bicycles	-.059 (.424)	.092 (.264)

Note: a) rank correlation; b) Pearson r; significance (p, 1-tailed, n=13).

** p<.01

* p<.05

+ p<.10

If it holds true that lower response rates are correlated with the detection of relatively more victims - which is consistent with the hypothesis that the crime issue is a more salient subject to those victimized and therefore reduces the reluctance of respondents - then the victimization rates in those nations will be overestimated and corrections are required.[20]

Without any more sophisticated method for matching survey responses to official records, analyses will reveal more or less marked differences in the level of survey-record correspondence depending on how restrictive match criteria are. Therefore, the use of official records like Interpol statistics for the exploration of the validity in victimization reporting is not recommendable in the meantime.

How the structure of the data changes if one takes into account the different response rates in the nations can be shown, for reasons of demonstration, by using partial correlation controlling for response rate and comparing it to the simple correlation coefficient.[21] For example, the correlation between burglary rates and theft from car is .56; controlling for response rate the relationship r12.3 decreases to .37; the former value is significant (p= .047), the latter is not (.230). To give another example: the relationship between theft from cars and damage to cars decreases from .62 (.002) to .38 (.219) when controlled for response rate. But the opposite direction is possible, too. The correlation of damage to cars and bicycle theft increases from .30 (.321) to .65 (.021) when one controls for the influence of the different response rates. The bias induced due to differential response rates correlated with relevant dependent variables, e.g. victimization rates, affects especially inferences about population means and estimations of parameters which seems to be one of the major interests of this survey.[22] But the comparison of basic data, e.g. victim rates, is only a first step within the procedure of an inter/cross-national/cultural analysis with regard to a "most different systems design: "Systems do not differ when the frequency of particular characteristics differs, but when the

20 With the same conclusions *Killias* (1989a, p.7) in a recent commentary: "Thus victimization surveys will tend to overestimate the crime rate since more victims respond than non-victims, particularly when the overall response rate is low. It seems that many experts of victimization surveys are not sufficiently aware of this problem".

21 To make it easy, "normal" partial correlation, i.e. those based on the product-moment correlation, has been used as an example and therefore these coefficients have been included in Table 1 in addition to rank correlation. A partial correlation based on rank correlation would have been possible, too, but this coefficient is not included as an option in the SPSSX program which has been used to calculate all the figures shown here.

22 The testing of theoretical models would be less a problem; in general, multivariate models are affected by the problem mentioned to a minor degree; see also *Lavrakas* (1987, pp.29) with regard to valid sampling designs for different purposes.

relationships among variables differ".[23]

6. "Eliciting responses, either in person or by phone, from a nationally representative sample of American citizens about their experience as victims of crime is a very delicate exercise in data collection", as has been stated recently by a statistician[24] of the Bureau of Justice Statistics which is responsible for the US National Crime Survey (NCS), the largest victim survey worldwide. Since its beginning the NCS has been continually evaluated over the years following the major recommendations of the National Academy of Sciences which has claimed a program of methodological research.[25]

Among the methodological problems of concern was included "the fundamental question of the extent to which survey respondents would accurately remember, and accurately report to the interviewers, incidents that had happened to them".[26] Most other problems discussed have been related to that aspect more or less, e.g. effective screening/lead-in questions and strategies to maximize accurate recall, use of computerized interview technology to improve the quality control of victimization survey data, etc.

In the phase of the recently completed extensive redesign tests of the changed screener were conducted that showed that the "refinements to the new screening strategy ultimately produced an overall improvement of 28% in victimization reporting"[27] which amplifies that a lot of variation in the data is induced by the method.

The recall of retrospective data is a central feature and a necessary prerequisite for victimization surveys. On the other side, the limitations of human memory and the resulting implications for the design of retrospective surveys are well-known. Failure of respondents to recall events (forgetting, omissions, underreporting) and to recall correctly the date when the events occurred (forward and backward telescoping) are major sources of error in the collection of survey

23 *Przeworski* and *Teune* 1970, p.45; as *Klein* (1989, p.19) states, comparative research is "well beyond needing to demonstrate that nations and cultures differ; it is time to explain these differences"; see, e.g. *Arnold* and *Teske* (1988), *Arnold* (1990) concerning similar basic models explaining fear of crime in Germany and the USA; likewise with regard to victimization models *Teske* and *Arnold* (1988).

24 *Taylor* (1989, p.1).

25 *Penick* and *Owens* (1976); see also *Lehnen* and *Skogan* (1984).

26 *Penick* and *Owens* (1976, p.32).

27 *Taylor* (1989, p.4).

data.[28] Such memory-related errors together with other response errors and bias impose severe problems upon the method.[29] Although some research on these aspects has been carried out within the methodological studies accompanying the National Crime Survey project, a lot of the difficulties still exist.[30] Recently researchers have begun to use knowledge from cognitive psychology and other fields of cognitive science to come to a better understanding of the problems with recall, memory, retrieval and related phenomena.[31] Regretfully these contributions have not been fully recognized by those conducting victimization surveys.[32]

7. The NCS redesign also examined data collection modes and plans to implement the Computer Assisted Telephone Interviewing (CATI) technology for eligible respondents in 1990 but with the noteworthy restriction that the technique will not be utilized in certain circumstances, e.g. "no household will receive its initial NCS contact from a CATI facility"[33] which, for reasons of establishing a rapport with

28 In a methodological study on the sources of response effects in self-administered and telephone surveys *Schwarz et al.* (1989) tested recall of information from memory as a function of mode of data collection. They found that "respondents who received the self-administered questionnaire were significantly more likely to provide a correct answer than respondents who were asked the questions on the telephone" and that "recall increases as respondents have more time to search memory and to generate appropriate recall cues" (*Schwarz et al.* 1989, p.10). In addition, errors due to forward and backward telescoping are less likely to be obtained under self-administered than telephone conditions which is also true with regard to primacy and recency effects in general.

29 See also *Cannell, Miller* and *Oksenberg* 1981; *Moss* and *Goldstein* 1979; *Sudman* and *Bradburn* 1974; 1983.

30 *Penick* and *Owens* (1976, pp.34), *Skogan* (1981); also the papers in *Lehnen* and *Skogan* (1984) give an overview.

31 See, e.g. *Jabine et al.* (1984), *Strube* (1987), *Schwarz* (1988), *Schwarz et al.* (1989), with further references.

32 Otherwise, e.g. long reference periods and data collection by means of a telephone survey would need some additional justification.

33 *Taylor* (1989, p.1); see also the conclusions by *Waltman, Turner* and *Bushery* (1980, p.542).

respondents, primarily, will be conducted in person.[34]

The variable response rates of the 1989 Telephone Survey, partially rather low, may be a consequence of the fact that respondent cooperation was not sufficiently guaranteed in the different nations. It is probable that an informative advance letter, as suggested by the methodological text-books,[35] would have minimized non-response as well as lessened respondent concern as has been caused in some countries. In addition, there may be other reasons for the rather large differences in the response rates, e.g. differences in the respective national interviewer staffs regarding personal characteristics (sex, age, speech, interviewer experience, etc.). The relationship between interviewer variance and response bias deserves increased recognition in international comparative research. There are still other reasons possible that show that standardization of data collection method and situation may be only a necessary but not necessarily sufficient precondition for achieving (functional) equivalence. In addition, these and similar causes may result in variable item-nonresponse or will seriously bias response distributions. Altogether, the differences in respondent behavior, formal or with regard to the contents, jeopardize the validity of the single national findings as well as the comparability of the results.

34 Comparing reactions of respondents to telephone and personal interview surveys *Groves* (1979) found that telephone interviewees are much more willing to report preferences for personal (23%) or mail questionnaires (29%) to the factual telephone interview (39%) whereas those interviewed face-to-face seemed to be rather satisfied with their mode (78%) compared to the alternatives of mailed questionnaire (17%) or telephone interview (2%!). Asked for the reason of mode preference "telephone respondents most often praised mailed questionnaires because they allow more time to think about the questions" (*Groves* 1979, p.194). In addition, nonresponse was somewhat higher with telephone survey and more respondents reported feeling uneasy about discussing specific topics compared to personal interview.

35 See *Dillman* (1978); with regard to victim surveys also *van Dijk* (1978, p.13); "In general, interviewing by the phone seems not to be advisable without a preceding letter".

8. Despite the well-known advantages of the telphone survey methodology the possibility of alternative modes of data collection[36] need especially with regard to victimization surveys[37] some consideration. According to our own experiences,[38] e.g. mail surveys, not only as an survey approach, have several unique advantages:

a) rather inexpensive compared to face-to-face or telephone interviewing; (this is noteworthy in the discussion of international comparative research because funding problems arise for the less wealthy countries or the respective institutions and organisations that conduct the research; CATI technology is extensive and still sparsely found within scientific research units; a mail survey, in contrast, can be carried out by one person in the extreme case);

b) makes it less complicated to standardize the situation of data collection regarding the minimization of interviewer distortion and induced response bias; question order effects, and primacy and recency effects in general, are less likely to occur; (the aspects mentioned are relevant to national and international comparative research likewise);
further characteristics of mail surveys are of special relevance in regard to the subject studied by the survey under discussion, i.e. criminal victimization;

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36 Comparing mail, telephone and home interviews, *Siemiatycki* (1979) found no difference on missing data regarding nonsensitive items between the methods, but on the sensitive questions, the telephone or face-to-face interviews produced higher item nonresponse rates than mail questionnaires.
Even experts and advocates of the telephone survey methodology as *Groves* and *Kahn* (1979, p.222) are critical with regard to the use of the method asking for "sensitive material". They report "a greater uneasiness among telephone respondents about discussing some subjects" and refer to the "lack of trust that is evident in greater uneasiness and suspicion about the survey among telephone respondents". (See also *Mangione et al.* 1982). In a more recent meta-analysis of the research literature on data quality in mail surveys as compared to face-to-face and telepone interview *De Leeuw* and *Van der Zouwen* (1988, p.8) state as clear finding that "mail surveys result in more accurate answers. And, in general, mail questionnaires perform 'better' with more embarrassing questions".

37 In the Dutch Mail Screening Pilot Study - which was part of the OECD Mail Screening Project together with a Finnish and US study (see *Törnudd* 1982, Annex I, II and III) - *van Dijk* (1978, p.7) found in the telephone follow up that "in no instance did a respondent come up with another non-reported incident during the telephone interview". With regard to the nonrespondents the finding did "not indicate an overrepresentation or underrepresentation of victims among the nonrespondents". Also the response rate has been successful so that he concludes: "On the basis of these findings the use of a mail screening questionnaire in the final study seems to be advisable since this would mean a considerable reduction of costs" (*van Dijk* 1978, p.12).

38 See *Arnold* (1988), *Arnold, Teske* and *Korinek* (1985; 1988) with further references.

c) reduced recall problems because of easier retrieval in the absence of time pressure; memory access is better and recall increases with the amount of time available to search memory; recall of information from memory is more accurate; (because victimizations, at least the more serious ones, are relatively rare events as well as generally more trivial and of less salience or significance to respondents this feature to increase productivity is noteworthy);

d) the less personal situation of data collection helps to admit information on sensitive topics and threatening or embarrassing questions; higher likelihood that social desirability bias can be avoided; (this is supported in our survey by a comparatively larger rate in intimate victimization, e.g. rape).

The most common objection against mail surveys that they produce higher non-response rates can be adequately rejected by a well-done survey that will realize sufficient respondent cooperation; (the response rates in our comparative victim survey have been between 64% and 77%).

The few mentioned aspects are supportive in regard to alternative procedures of data collection in international comparative criminological research, in general, as well as victimization surveys in particular.[39] Especially the aspect of validity deserves recognition. In general, validity increases with completion resp. response rate.[40] In addition, every effort to maximize accurate recall and reporting of victimization has to be made.

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39 In a NCS methodological study it was found that telephone interviews are less productive than personal interviews for reporting criminal victimization and that "the decreased productivity is characteristic for males, young middle aged adults, and comparatively less serious crimes" (*Woltman, Turner* and *Bushery* 1980, p.542); see also the papers by *Woltman, Bushery* and *Turner* in *Lehnen* and *Skogan* (1984). Comparing the different modes of data collection, i.e. face-to-face, telephone and mail surveys, as to their usefulness for victimization studies see *Niemi* (1985) with a quite positive result for the mail survey approach. Suggestions with regard to mixed mode designs in surveys deserve some consideration; see *Dillman* (1978), *Dillman* and *Tarnai* (1988) in general; also the conclusions on the OECD mail screening project by *Törnudd* (1982, p.61) which was essentially a recommendation for mixed-mode design; also *van Dijk* (1978, p.13).

40 Reference was made to several sources of error and bias. Unfortunately, the direction of influence regarding the estimation of victimization rates has been different, i.e. contrary. Some effects favour an overestimation, e.g. such as the bias caused by low response rates, others further an underestimation, e.g. the mode effect, i.e. the telephone interviewing. Especially estimations for subpopulation will be affected which are already less reliable and valid because of smaller numbers, i.e. larger confidence intervals.

Less has so far been said about the theoretical aspects and goals of the project, but it has been argued in the beginning that the focus will or should be on methodological aspects.[41] Even the relevant technical and methodological aspects have not been mentioned in total, so enough is left for discussion.

9. To conclude: the 1989 Telephone Survey deserves recognition as a considerable effort in empirical international comparative criminological research, especially in regard to administrative and organisational results. Whether it will be a substantial contribution to the body of knowledge in criminology will be dependent on further efforts in regard to careful and adequate data analysis which takes account of the many difficulties inherent in the methodology of international comparative research as well as victimization surveys.[42]

Closer cooperation of the national researchers with regard to analysis will be necessary to bring together the specific knowledge on national and cultural char-

41 The number of cases (nations) included in this study is somewhat a problem that raises a question: according to common standards the number of nations in the survey is too large for a small-N comparative research. Therefore, it is not expected that the study will be one of the intensive type that looks for the single nation as a unit. As can be readily calculated the number of comparisons between each two nations given a total number of 14 is 91 - according to formula I (N) * (N-1) I/2 - which is too high for individual comparisons. On the other side, the number is too small for many applications of multivariate statistic, for example, if interactions between variables are looked for; see *Ragin* (1989) with further considerations and concern about the gap between extensive studies on many nations and intensive studies of very few ones.
See *Nowack* (1989) with regard to the utility of cross-national research for generating and testing social theory.

42 Generally, future research should more explicitly discuss and consider the type of comparative research that is necessary or required according to scientific interests and/or political needs. This reflection would include topics like the countries/societies/nations/cultures included, the issues covered, the methodological approach chosen, e.g. quantitative vs. qualitative methods, large scale vs. small scale projects, cross-sectional vs. longitudinal or panel studies, national vs. regional or local surveys, random or purposive samples, etc. See for a discussion of the future directions of cross-national research in self-reported crime and delinquency *Klein* (1989) with some interesting and helpful references.

acteristics which is required for comparative research.[43] Because of the potential of the approach of the study presented and the common interest in research of this type, endeavours like those of *Pat Mayhew* and her colleagues deserve support of the international scientific community.

43 Because this paper has been focused on the Telephone Survey also less has been said up to now on the alternatives to primary comparative research. It has been argued above that replications as well as secondary analyses have their justified positions in comparative research and can make independent contributions; more critical is the so-called "safari type" of comparative research (e.g., recently *Balvig* 1988), which can have some stimulating effect on comparative research, nevertheless; see also the discussion in *Klein* (1989a) which includes a prospect of future directions. *Kohn* (1989, p.19) is convinced that "there are no superior or inferior types of methodology, only methodologies more or less appropriate to the analytical task, more or less competently and imaginatively employed".

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Commentary*

Ulla V. Bondeson

The paper gives a prompt and interesting account of an international victimisation survey from 14 countries. This so-called 1989 Telephone Survey has not yet been fully analysed by the Working Group nor by the collaborating researchers from the various countries.

Comparisons by Official Statistics

One legitimate scientific and political enterprise has been to find out how different countries compare in terms of levels of crime and variability in trends. Most comparative studies have had to rely on statistics of offences recorded by the police. Compilations of police statistics have been carried out by the United Nations and Interpol, but these are said to be "incomplete, marred by language difficulties, and often restricted to unhelpfully broad crime categories" (p.112).

It is further said that police statistics only encompass crimes that get into police records through being reported to the police by victims, which seems to be a truth with some modification.

It is added that "victim surveys consistently show that more than 90% of the incidents in their count become known to the police in this way" (p.112). There is no description of, however, how many of the crimes from the victim surveys are accounted for by the police statistics and vice versa.

Although police statistics are considered to be much better than judicial statistics, since they encompass so much more of the total criminality, they are plagued with a lot of errors. Police statistics are of course a good indicator of police behaviour but not always of criminal behaviour. Some of the well-known differences in enforcement and recording styles are mentioned briefly in the paper.

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* I have tried to adjust my commentary after the revisions made by *Mayhew* in her final paper. This means among other things that most figures have been changed.

Comparisons by Surveys

One advantage of a victim survey is that the stimulus in the form of a standardized questionnaire to the respondents is the same in the different countries which makes comparisons easier. Another advantage is that the crime categories can be made up in such a way as to make them convenient for testing different criminological theories, a topic that seems to be outside the scope of the present paper. A related, even more important, advantage in this type of research is that the scientist can break down the total population into various groups in order to test hypotheses related to background variables such as sex, age, education, occupation etc. A multivariate analysis of police statistics across countries seems not so feasible.

The paper does not go very deeply into various methods of making comparative research on crime trends. It does not at any length compare victim survey with self-report survey nor compare various ways of making victim surveys. Some short methodological remarks are made by way of introduction in the last section of page 113 but the conclusion, surely sound in itself, comes quickly: "the value of crime surveys should be assessed not against a yardstick of perfection, but against the existing alternatives" (p.113).

It is also correctly remarked that "Comparisons using survey data have not been extensive" (p.114). This deficiency of comparative research is probably due to the large amount of effort and costs involved.

The 1989 Telephone Survey

It was therefore a laudable initiative taken by *Jan van Dijk* when he suggested a survey that should be highly standardised as regards sampling, method of interview, questionnaire, and analysis of the data. Out of 20 countries invited 14 responded positively. Most of these are European but in addition the USA, Canada and Australia participated (see *van Dijk/Mayhew/Killias* 1990).

Sample and Method

The Working Group recommended a sample of 2000 interviews which was followed in most of the countries. It is remarked that samples of this size produce relatively large sampling error and restrict the scope for analysis in detail of issues on which only a small proportion of the sample gives information.

We do not get to know how long the interview questionnaire is or whether it had the same number of questions in every country.

Cost is said to be one consideration in deciding to interview by telephone, using the technique of CATI (computer assisted telephone interviewing). However, we are not given the costs of the studies in any of the countries nor are we told how much cheaper this CATI technique would be on the average as compared to personal interviews.

In the countries where CATI only was used, the telephone penetration level is said to be more than 70%. It is further stated that CATI gives a full coverage of telephone owners, including those with unlisted numbers. Are really confidential numbers given out for research activity in all the 14 countries?

One must assume that households not having telephone differ from those having. Since telephone penetration seems to differ about 25% between the countries, there must be a source of error introduced here when making comparisons. This is not dealt with in the article but will hopefully be treated in the final report.

The average response rate amounts only to 41% which is a very low figure. There is also a large variation between the countries, going from 71% for Norway and down to 30% for Germany. How much this constitutes an error in each particular country and especially on a comparative basis we do not know.

In victimisation and self-report studies a distinction is usually made between prevalence and incidence rates. Prevalence is the more simplified measure, taking account only of whether an incident has happened or not. Incidence rates on the other hand count the total number of incidents over the time sample. The rates given in the report are personal prevalence rates, "i.e., the percentage of those aged 16 or more who experienced a specific form of crime once or more" (p.120). The recall period was five years but was also specified to the last year; only the 1988 rates are presented in the paper.

Results

Percentages of respondents experiencing different crimes for all the 14 countries are given in table 1. It is striking how vehicle crimes emerge clearly as the most frequent. This picture coincides incidentally with some calculations done by the Crime Preventive Council in Sweden concluding what a great proportion of all crimes are connected with cars in one way or another. The other most common crimes have been reported by only in between 1 to 3% of the populations.

The rank order of the different countries for victimisation to all types of crimes, discloses, as can be seen from figure 1, that the Scandinavian countries, Norway and Finland, together with Switzerland come on the top having the lowest figures around 15% (I look away from North Ireland where the methodology was different, using face-to-face interviews). At the bottom of the figure we find the USA and

Canada having the double rates. One might speculate why two small, neighbouring countries like Belgium and Holland are so far apart with the first disclosing 18% and the last 27%.

The offences have been grouped in combined categories. For the different countries four crimes are portrayed in figure 2 and four other crimes in table 2.

Looking at what is called contact crime, i.e. pickpocketing, robbery, assault including threats, sexual offences, we find an interesting picture where Scotland has the lowest rate of 3% and Spain the highest of almost 9%. Spain comes on the top for both pickpocketing and robbery, with Norway and France landing on a several times lower rate, respectively. For both sexual offences against women and assaults more generally, the USA come on the top and Switzerland at the very bottom. Here Norway and Finland come in positions more in the middle of the scale.

Regarding vehicle crimes it can generally be stated that countries with high rates of ownership also have the higher rates of vehicle crime, indicating that the availability of targets is an important factor in the number of crimes committed. Spain is here an important exception with low ownership and high rates of thefts from cars, where it comes at the very top, and also high rates for thefts of cars. Looking at theft from cars there is indeed a wide variation from Spain with 14.6% to Switzerland with 2.4% (table 3). Evidently the figure for Switzerland is still much too high, since it is reported that 41% of the incidents involving the Swiss cars were committed outside this country.

Some sort of utility function can be read out from the fact that bicycle theft risks are negatively related to risks of car theft. We are not astonished to find the highest bicycle thefts from the owners in Holland amounting to 8.3% and the lowest in Spain and France of 2.6% and 2.5% respectively. As to theft of cars France tops with 2.8% and Holland comes next to the bottom with 0.4%, only followed by Switzerland which shows 0.0%.

Comparison between Surveyed and Reported Offences

Mayhew finally makes a comparison between survey figures and recorded crime. Average figures from Interpol for the years 1982-86 are used for some comparable crimes. The correlations between the survey rankings and the recorded crime rankings are quite low. The rank order correlations for assault is 0.037, for robbery 0.371, for burglary 0.442, and for vehicle theft 0.786. Some American studies are also said to show the closest correspondence for vehicle theft and the weakest for assault; burglary and robbery come in between with modest associations.

No explanations are given why the correlations are so low. We are left freely to speculate about the reasons for complete reversal of the rank ordering of several countries for various crimes.

The survey has figures as to what extent offences are said to be reported to the police in different countries. But it seems that there is no consistent pattern for countries which come high on Interpol rankings that they also have higher reporting rates (I assume these refer to the survey results). It is said not to be unlikely that unknowns of police recording practices and definitional inconsistencies may play a larger part than reporting behaviour in explaining rankings on the basis of recorded offences.

The paper ends in an optimistic tone suggesting that the telephone survey has surmounted many of the difficulties in comparative international research. We are all looking forward to the final report and are happy for the promise that a data-tape will later be available to any interested academic party for further secondary analysis.

Further Methodological Remarks

Some basic reflections will be made about primarily the methodology of the study. My impression is that more research ought to be done on the reliability and validity of the survey method in victimology.

Methods of Administration

Probably some lessons could be learned from the studies being done in **self-report studies** in criminology. I want here in particular to draw attention to the newly published book **Cross-National Research in Self-Reported Crime and Delinquency**, edited by *Malcolm Klein* (1989).

An excellent paper in this volume is written by *Elliott* and *Huizinga* (1989). Concerning methods of administration the authors refer among other studies to one of *Hindelang et al.* (1981), which compared results from anonymous and non-anonymous interviews and questionnaires. They found that the test-retest reliability and internal consistency was essentially the same under all four conditions for both variety scores and last year frequency scores. However, some other studies, e.g. by *Bayless et al.* (1978) and *Gold* (1970) present evidence that interviews generate more valid self-report data than questionnaires.

Type of sample may be an important factor and partly accounting for differences in outcome. For example *Erickson* and *Empey* (1963) found early that habitual offenders had difficulties in estimating the number of times that they had committed offences and that some probing was required to reach reasonable estimates.

I had similar experience when administering self-report questionnaires to different institutional clienteles (*Bondeson* 1974). Sophisticated criminals in the internment centers reported the fewest offences while young fairly innocent pupils in the training schools reported higher frequencies of various offences. Here we certainly had an underreport among the sophisticated criminals and maybe an overreport among the youngsters. Relating self-report figures to criminal attitudes and particularly to argot knowledge revealed fairly high correlations, but argot knowledge was for every population showing the highest validity; e.g. it was the best instrument to predict later recidivism (*Bondeson* 1989).

As far as telephone interviewing is concerned I guess we have a long way to go to find out what the assets and drawbacks of this particular interview method are.

Bradburn and *Sudman* (1979) have reported that for a question about arrests for drunken driving, there were no substantial differences between telephone interviews, face-to-face interviews, and self-administered interviews. According to *Elliott* and *Huizinga*, also *Klecka* and *Tuchfarber* (1978) found that telephone interviews give results in relatively long victimisation surveys similar to those obtained in face-to-face interviews. Again samples from a NYS panel showed fairly similar results from telephone interviews and face-to-face interviews. But here it is important to observe that the telephone interviews were not initial interviews with the respondents; they had almost all been interviewed six times previously with face-to-face interviews. It should be added that about one out of five in the youth sample had no phone and among the blacks this figure came up to 40%. This suggests a potentially serious differential loss rate associated with telephone interviews although this has not been sufficiently studied.

Elliott and *Huizinga* recommend caution when using telephone survey for cross-sectional studies. Their analyses also suggest that the cost-saving associated with telephone interviews is not as great as was originally anticipated.

Self-Reported and Official Delinquency

In an article in the same volume *Junger-Tas* (1989) remarks that only a limited number of researchers have tried to attack the problem of self-reported delinquency in relation to official delinquency. The importance of separating different types of crimes is illustrated in an article of *Veendrick* (1976) mentioned here: Four offences showed greater frequencies in police records than in the self-report data and these were burglary, assault, joy riding and hit-and-run offences. However, for the

majority of the other offences the frequency of self-report data was vastly greater than the police data. Another study referred to also raises the question whether the self-report method is adequate in the case of adult samples. A study by *Angenent* (1984) is said to show that only half of the respondents who had completed the questionnaire mentioned offences that had been recorded by the police. This was a sample of males with a court conviction.

Generally it seems to me that we have much more of a problem with validity than reliability in self-report studies. For example *Sparks et al.* (1977) found no difference in overall reporting accuracy for a twelve as compared to a six months reference period. Even tests with test-retest reliability coefficients from the NYS studies show fairly high coefficents for different ways of counting the scores. Thus category scores run up as high as .9 for males and .8 for females.

A longitudinal study by *Farrington* (1989) shows some more optimism when relating self-reported studies to official statistics. "The relationship between self-reported offending and official convictions was strongest for burglary and for theft of and from vehicles, but it was also significant for shoplifting, theft from machines, assault, and drug use" (p.417). The two measures were not however significantly related for theft from work, vandalism, and fraud. Here the crime specificity does not seem to be the same as the one reported in the telephone survey.

The Scandinavian Scene

If at the end I may be a little parochial I would also like to point out that I think that there is a lesson to be learnt from the Scandinavian countries. Both self-report and victimisation studies had an early start even for comparative studies in Scandinavia. Moreover, the official statistics are of relatively high quality and many efforts have already been made to make them comparable. I would like to draw particularly attention to the **Nordic Criminal Statistics** assembled by *von Hofer* (1988) at the Bureau of Statistics in Sweden.

It is a pity that only Norway and Finland seem to have participated in the telephone survey. Sweden and Denmark differ having crime rates about the double of Finland and Norway. However, the relatively smallest difference between Finland and Norway does hardly come out in the telephone survey. Looking at all offences against the penal code in the official statistics for 1986, Finland has about 8,000 reported offences per 100,000 population while Norway has about 5,600; in Figure 1 in the paper for all crimes the difference is only 0.2%. It is hard to compare the countries on the type of combined categories that are reported in the paper. Looking at recording for all theft offences Norway comes somewhat higher than Finland, while Scandinavian victim surveys by *Balvig* (1980) and *Sveri* (1982) show a

reversed order where Finland comes somewhat higher than Norway. This latter ordering is the same as for pick-pocketing in the telephone survey although the difference here is much larger.

Let me remind you that the legal control systems are widely different in Finland and Norway. Comparing Finland and Norway for the last 25 years the trends have been very much the same looking at all offences against the penal code. Still the rates of cleared crimes have been at least twice as high in Finland in the entire period. Also two to three times as many persons are found guilty. The penal system has moreover been much harsher with almost no waiver of prosecution and about twice as many custodial sentences. In addition the prison sentences have been considerably longer in Finland than in Norway. These comparisons force us to put some interesting questions as to the result of police effectivity and different levels of punitivity in the control system.

To continue the comparison between Finland and Norway we can as far as robbery is concerned find the same rank order in the telephone survey as in the official statistics, although Finland has the double rate of robbery per 100,000 in the population. For assaults, however, the comparison is less favourable for the telephone survey. Here Norway comes only somewhat higher than Finland, but according to the official statistics Finland has more than twice as high a figure than Norway (482 as compared to 187 for 100,000 population). Scandinavian victim surveys here portray the same rank order as the official statistics between the two countries, with Finland having 10% threats or violence as compared to only 4% for Norway.

Although we cannot compare the category sexual offences from the survey, we can still notice that comparing with rape there is a parallelity in the data, with Norway coming somewhat higher than Finland. However, a study of Nordic living conditions surveys shows that four times as many Finnish women as Norwegian harbour fears about violence outside of the home (not only rape).

These preliminary comparisons between just two Scandinavian countries according to telephone survey and the official statistics in addition to some other victim studies show some unexplained for similarities and dissmimilarities. More such systematic research has to be carried out in order to find out whether these are random or more systematic errors.

Purpose and Theoretical Perspective

It is a little hard though to come up with recommendations for improvement or continuing research for the victimisation project when we have not been told more in detail what are the **goals** of the study. If I dare assume that the aims would be identical with those suggested by *Hindelang et al.* in 1981 that is 1) the construction

of a measure of delinquency identical to the official measure but without its shortcomings; 2) the testing of theories of criminality; 3) the construction of a social indicator reflecting incidence and prevalence of criminal behaviour in the population.

The difficulty of finding **identical crime categories** has been well documented by *Albrecht* in the cited volume on cross-national research.

If there is a theoretical interest in the project besides comparing victimisation and official crime rates one would like to know more about what types of criminological **theories** are being tested.

To find some sort of **social indicator** has been tried by the Council of Europe and this research, reported among others by *Törnudd* (1982) will also have to be dealt with in the continuing research.

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Commentary - Comparative Criminology in Italy

Uberto Gatti

In the field of Italian criminology, the comparative approach has been stimulated by the presence of a few scholars such as *Ferracuti* (1987) and *Canepa* (1986), with a great interest in extending their study and research beyond national boundaries. This process has been facilitated by the existence of a few international centres for criminological research in Italy.

In order to evaluate the development of comparative criminology in Italy, some methodological considerations should first be made.

According to *Szabo* (1986), criminology is to a great extent **implicitly** comparative in that research data are utilized to increase global knowledge, which may then be applied in different contexts and in different countries. On the other hand, there exists a kind of criminology which is **explicitly** comparative, and which makes systematic use of comparable data drawn from two or more countries. It is the most recent contribution of this method which I shall try to outline here.

According to the classification drawn up by *Kohn* (1987) for cross-national research, four main types of research may be considered:

1. research in which particular nations constitute the **object** of study and whose primary aim is to understand the characteristics of those nations better, by means of comparison;
2. research in which nations constitute the **context** of study and whose primary aim is to test the generality of findings and interpretations;
3. research in which nations constitute the **unit of analysis** in that each nation is classified according to parameters (such as gross national product, average level of education etc.) which are then correlated with the phenomenon to be studied; in such cases the elaboration of data and the evaluation of results are carried out without even naming the countries involved;
4. intrinsically trans-national research, in which nations are studied as **component parts** of larger international systems. The aim here is to examine such systems (e.g. the international drug market).

Comparative criminology research in Italy has mainly been concerned with the second type of study (in which nation is context), with a view to comparing how institutions of social control operate in different countries, and with the fourth type, in order to analyze trans-national criminal phenomena.

In recent years Italian criminology, and hence also comparative criminology, has broadened its means of interpretation; the traditional clinical approach, which dominated the scientific field for a long time, has now been supplemented by others, such as the sociological approach.

Moreover, the subject of comparative research has gradually changed; the emphasis has shifted from studies on criminal behaviour to investigations of social and judicial reaction to crime.

Awareness of the difficulties and possible errors arising from the comparison of crimes (whose definition is heavily conditioned by the judicial and social context in which they occur) has led researchers to concentrate on the study of crime control mechanisms and limit the study of delinquent behaviour to those phenomena such as drug trafficking and organized crime, whose international scale prevents a single-nation analysis.

In Italy, comparative research work has mainly been supported by a few international centres. The most notable of these are:

- the Centro Nazionale di Prevenzione e Difesa Sociale, in Milan;
- the UNICRI (United Nations Interregional Crime and Justice Research Institute), formerly UNSDRI, in Rome;
- the International Centre for Clinical Criminology, in Genoa;
- the ISISC (Instituto Superiore Internazionale di Scienze Criminali), in Siracusa;
- and the International Centre of Sociological, Penal and Penitentiary Research and Studies, in Messina.

The Centro Nazionale di Prevenzione e Difesa Sociale in Milan, which plays an extremely important role in the area of international relations, has financed and conducted numerous surveys. In 1985, the Centre organized the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Milan; and in 1989 in Bellagio, it held the Seventh Joint Colloquium on "Effective National and International Action against: a) Organized Crime; b) Terrorist Criminal Activities".

The UNICRI, which was founded in 1968, frequently works to find concrete solutions to specific problems in the developing nations and has recently promoted a series of interesting comparative studies based on empirical data drawn from numerous countries.

The International Centre for Clinical Criminology in Genoa, which was founded in 1975 within the Institute of Criminology and Forensic Psychiatry of the University of Genoa, follows a multidisciplinary approach and draws contributions from clinicians, sociologists and jurists. The Centre has organized numerous international studies and congresses on many topics within comparative criminology. These initiatives include the series of meetings "Journées Internationales de Criminologie Clinique Comparée", held alternately in Montréal and Genoa (Santa Margherita) in collaboration with the COCC (Centre International de Criminologie Comparée - Université de Montréal); the criminogenesis section of the International Criminology Congress in Lisbon, chaired by *Bandini* (1978), and the "Séminaire international sur l'expertise criminologique", held in Siracusa in collaboration with the ISISC (Canepa, 1981). In 1985 the Centre worked with the International Society for Criminology to organize the Ancillary Meeting of Non-Governmental Organisations entitled, "Women as Victims of the Law", as part of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (*Canepa and Marugo* 1986).

The ISISC in Siracusa carries out a great deal of work on an international level by promoting congresses, studies and research involving jurists, criminologists and lawyers from all over the world.

This work often concentrates on trans-national crime on international agreements and regulations designed to prevent and control such crime.

The International Centre in Messina, which has an advisory statute from the Council of Europe, organizes international meetings and research on questions of punishment and treatment of criminals as well as prison organization.

In Italy, research in comparative criminology mainly involves the following areas:

1. crime prevention and treatment;
2. the working of the criminal justice system, with particular regard to its reaction to the mentally ill criminal;
3. organized crime and drug trafficking.

The preventive potential of informal mechanisms of crime control has recently been investigated in an important comparative study published by the UNSDRI (*Findlay, Zvekic* 1988) and which analyzes data collected in ten countries. This report points out that, despite the importance modern criminologists attach to informal mechanisms of crime control, such mechanisms have rarely been systematically described or assessed. On the basis of their data, the authors caution against making a clear-cut

distinction between formal and informal mechanisms of control. Moreover, they argue that there is no conclusive evidence that a clear relationship exists between informalization and crime control potential.

The prevention of juvenile deviance has been the subject of some interesting comparative research (*Gatti* 1986).

In the field of judicial preventive measures, *Carrer* and *Gazzola* took part in an international comparative study coordinated by *Lahalle* (1987) of the CRIV (Centre de Recherche Interdisciplinaire de Vaucresson). By means of an empirical survey, the researchers examined how civil procedures for the protection of minors were applied in France, Switzerland and Italy. Their results showed a marked similarity among the three countries in terms of evaluating the "risk" which motivates the measure, the characteristics of the populations examined and the institutional practices and solutions adopted.

A comparative study of the systems of control of juvenile deviance was carried out by *Gatti* and *Verde* (1987), who analyzed the relationships between the penal system and the extra-judicial welfare systems which have developed in various European countries. The authors noted that the debate over assistance versus punishment, which once came exclusively within the domain of the juvenile courts, has gradually shifted outwards and now concerns, in general, the relationships between the authoritative judicial apparatus and the new agencies of the welfare state. From an analysis of legal regulations and established practices in the European countries, the authors discerned three main models.

These could almost be defined as three "ideal types" since real situations approximate to them with varying degrees of success. The first model regards the objectives of criminal law as paramount. The second considers welfare to be the dominant concern. The third sees criminal law and welfare as strictly separate.

The first model, which subordinates welfare agencies to the juvenile criminal law system, was asserted in England and Wales in 1982 by the Criminal Justice Act which restored to the Juvenile Court much of the power that had been placed in the hands of local authority social services in 1969. In this way, supervision and care, which had originally been intended as welfare instruments available to juvenile delinquents as well as other minors, took on the character of punishment administered by social workers (*Jones* 1983; *Reynolds, Williamson* 1985).

By contrast, the second model delegates far greater responsibility to social service institutions, which take on the task of handling many of the problems connected with minors who break the law. The system used in Scotland approximates to this model and has introduced some radical innovations such as the establishment of Children's Panels. Problem children under the age of sixteen, whether depraved or deprived, may be placed under the jurisdiction of these Panels, which are made up

of volunteers from the community at large. The Children's Panels deal with youngsters referred by "the Reporter", an official whose task is to filter and select cases. Only when a particularly serious crime has been committed, or when the consent of the minor or his family is withheld, does the case pass on to the traditional legal system.

Both of these models stand open to criticism in that they are characterized by an ambiguous mixture of objectives: on the one hand, help and socialisation; on the other, control and punishment. Moreover, in their practical application, they appear to lead to an increase in repressive intervention.

The third model advocates the abolition of status offences and a clear-cut distinction between punitive intervention and assistance. The systems adopted in Norway and Denmark approach this model. In these countries, reform schools were closed down at the beginning of the 1970s and juvenile prisons were abolished in 1973 and 1975. Moreover, welfare systems have been completely separated from the judicial system, though they still offer young offenders help and support during the trial (*Dahl* 1976). The results of this model seem to be positive (*Pratt* 1986), especially because the separation between the two systems has been accompanied by the abolition of residential structures, by the independence of welfare boards from the formal judicial process and by the decentralization of social services (*Jensen, Mednick, van Dusen* 1984).

One of the most highly developed areas of comparative research in Italy concerns the working of the justice system and in particular its reaction to mentally ill persons who commit crimes.

Interest in these topics led to the organization of the Seventh Criminological Colloquium of the Council of Europe (Strasbourg 1985), which was chaired by *Canepa* (1986) and which dealt with the themes of responsibility and psychiatric treatment of the mentally ill criminal. The subject was tackled from a comparative criminological point of view, in a perspective of criminal policy, with particular regard to theoretical aspects and practical procedures currently in use in the member nations of the Council of Europe.

The questions under debate concerned the definition of criminal responsibility and of the psychological or pathological factors which may mitigate or exclude such responsibility; the problems involved in carrying out psychiatric examinations, and the influence of the assessment of criminal responsibility on the treatment of the mentally ill offender. Among the conclusions which emerged from the congress was the finding that a striking lack of uniformity exists among the various nations for what concerns both terminology and fundamental concepts relating to criminal responsibility and the factors that may mitigate or exclude it. The need to work towards greater uniformity in national laws and practices was also stressed.

In the field of forensic psychiatry mention should be made not only of the important contribution of *Ferracuti* and *Wolfgang* (1983) concerning procedures for clinical evaluation of offenders in several countries, but also of the UNICRI research project "Pathways of Management of Mentally-Ill Offenders in the Criminal Justice System".

With reference to the study of the treatment of offenders, two research projects deserve consideration. The first, commissioned by the Italian Justice Ministry from the Institute of Criminology and Forensic Psychiatry of Genoa University, is currently under publication and examines the training of prison staff in several countries both inside and outside Europe. The second is the UNICRI project "International Survey on Prison Labour".

In the area of comparative research on the justice system, we should finally note a study carried out by the UNSDRI and published in 1988 in a report entitled "The Death Penalty". This project analyzes the trends of research on the death penalty and includes an international bibliography.

Organized crime and the international drug trade represent another important subject of comparative criminology in Italy.

Particularly noteworthy in this field are the studies carried out by *Arlacchi* (1988). The underlying assumption here is that organized crime in Italy cannot be examined in isolation from its international frame of reference, and hence these studies attempt to trace the outline of illegal world markets.

A comparative survey of drug-related penal measures was recently conducted by the UNSDRI (*Cotic* 1988). By focusing on penal provisions, procedures and trends in criminal policy with regard to drug-related offences in 31 countries in different parts of the world, this investigation picked out two parallel tendencies in penal legislation: first, a continuous and rapid change in legal provisions, and, second, a departure from general principles of penal law accepted by almost all states in the international community. This latter trend poses serious problems for the criminal justice system.

Although significant steps forward have been taken, comparative criminological research in Italy still faces considerable obstacles. Resources are scarce; methodological tools require further refinement; theoretical analysis takes priority over empirical investigation, and social and legislative proposals emerging from research lack efficiency. What is needed is a new scientific policy; a policy which would increase resources, improve links between scientific organs and political and social institutions, and constantly upgrade training programmes for researchers.

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Commentary

Josine Junger-Tas

1. Introduction

Reading *Pat Mayhew's* paper one can sense the excitement of the researcher being able for the first time to present really comparative data on crime in a number of very disparate countries. As is recalled in the paper, efforts have been made earlier to compare police statistics of a great number of countries. This has mainly been done by researchers working for the United Nations. But of course, all the drawbacks attached to national police statistics and the difficulties in comparing them over time, are multiplied in international comparisons, making these more than hazardous. For these reasons it is an excellent initiative to try to improve comparisons between countries by using a standardized instrument measuring victimization of a number of selected offences.

As may be known, victim surveys are now used in several countries, not in order to **correct** official police statistics but to **complement** them. Victim surveys, when done regularly on sufficiently large representative samples of a population, probably give a better picture of changing trends in crime over a specific period than do police statistics.

Of course they too have their shortcomings. They inform us about personal crimes but do not give any information about so-called victimless crime. Nor can we get clear insight in the number of offenders, their distribution in the population, their characteristics, their "productivity" in crime and their versatility. In fact, by concentrating on the victims one loses sight of the offenders, and this means there would be a need for additional forms of research to fill that gap. My position is that official statistics should be complemented both by victim surveys and by self-report surveys among juveniles and young adults. In that respect I would like to mention that our Centre has now for the second time, within two years, conducted a national self-report study among a representative sample of Dutch juveniles (*Junger-Tas* and *Kruissink*), and we are preparing, together with a number of other countries and colleagues, an international comparative self-report survey among juveniles and young adults.

It is clear that for comparative purposes great efforts should be deployed to devise a standardized instrument as well as a standardized method of administrating the

instrument. But even then there are all kinds of problems, related to social, economic and cultural differences among countries, that may impede the possibility of drawing valid conclusions based on the research.

Commenting on *Pat Mayhew's* most interesting paper, I would like to make some remarks on methodological grounds and some warnings with respect to the inferences one may make on the basis of the results.

2. The Method Used

In the first place, and there we probably all agree, the samples are very small. When the WODC set up its victim surveys, the original sample was 15,000 respondents. Then gradually the sample size was reduced, because of financial constraints. The last survey took place in 1988 and had a sample size of 8,000. There are two reasons for a large sample size. One is that some victimizations are so rare that one needs many people in order to get a group of victims of some significance, especially if one wants to avoid empty cells in making further analyses. The second reason is the confidence interval one wishes to obtain. The WODC decision to have such a large sample size was motivated by the consideration that, victimization rates being so low, researchers did not want the confidence interval to exceed 0.3% (at a probability level of p= 95%). Given these confidence intervals as well as low victimization rates, comparisons over time within one country are to be handled with utmost care.

Now the international crime survey is comparing victimization rates between countries. Samples of 2,000 respondents have confidence intervals that are twice as large as is the case with samples of 8,500 to 11,000 respondents and consequently comparisons become much more hazardous. With victimization rates for a number of offences, that range from 0.4% (theft of motorbike) to 2.1% (attempted and realized burglary) and relatively large confidence intervals, it is extremely risky to make too conclusive inferences on the basis of the ranking of countries on some sort of "crime-scale".

A second remark concerns the response rates. Response was rather low in England and Wales, Scotland, Spain and Belgium, and it was very low in Germany and in the USA. The problem with low response is that there is inevitably considerable bias in the sample, but one does not know in what ways and to what extent. Moreover, bias may exist with respect to a host of variables, not merely with respect to victimization.

A positive observation concerns the administration of the instrument. The method used was Computer Assisted Telephone Interviewing, a method which apparently

yielded good results. Interestingly, research comparing ordinary telephone interviewing with CATI suggests that CATI increase the number of reported victimizations.

In our own self-report survey, part of the sample has been interviewed as usual and part by Computer Assisted Personal Interviewing. Comparing the two methods we found that three offences - out of a total of 17 - gave higher scores with CAPI than with ordinary interviewing: vandalism (including window breaking), vandalism to cars and harassing/threatening behaviour. These findings would suggest that despite a standardized instrument as well as adequate instruction of interviewers, making exclusively use of the human being in administrating a questionnaire, may result in less information than is available.

A last remark concerns the recall period. It seems to me 5 years is a very long period in view of both telescoping and memory loss. The point is not so much that one gets an inaccurate picture of total victimizations in any one group. Anyway, in this type of study one cannot expect to get a truly accurate picture. The difficulty is rather that there may be **selective** memory loss, and there is no way of knowing how much is forgotten and what kind of incidents are forgotten. Still less do we know whether there are differences in memory loss across countries related to different value systems. The safest way therefore seems to me to use only the 1988 rates.

3. The Results

I think it is absolutely essential for researchers engaged in comparative research to recognize the important social, cultural and economic differences between participating countries. These differences can have quite an impact on the research results.

In the first place there can be problems of conceptualization and problems of operationalization. For example the terms "area" or "neighbourhood" may have a different meaning in different countries. The same is true for concepts such as "gang" or even "arrest": in some countries such as Sweden, juveniles are not handled by the police but by a special board. These are just illustrations of the difficulties one can run into when one translates and transfers concepts and definitions from one country to another. Also there is the problem of the definition of crime. We know that a researcher's definition of crime is not necessarily the same as what ordinary people consider as crime. The way that problem is generally solved is to describe the offence as precisely as possible so that respondents understand exactly what the question is all about. This is not an easy matter even within one's own country, but it is much harder to do for different cultural and

linguistic settings. In fact this may mean that for comparative purposes one has to limit the study to the most simple and unambiguous acts, acts that are obviously considered as criminal in all participating countries.

As has been stated by *Levinson* (1977), cross-cultural studies have to control at least the following problems: unit definitions, sampling, regional variations, data paucity, untrustworthy data, validity, reliability, and group significance.

One of the problems in this respect is the differential response rate. One does not know of course why it is that the response rate in some countries is so much lower than in others, but there may exist a relationship between response rate and important variables, such as willingness to report victimization either to the police or to anyone else, willingness to report any contacts with the authorities, willingness to report one's own activities to prevent crime - such as insurance or alarms and the like -.

I would suggest that response rate may be related to culturally defined differential attitudes among the public towards authorities and to what they expect from them as well as towards their fellow citizens. It is clear that all these factors may have important consequences for research results.

Related to this problem is the possibility that differential responding to questions about victimization may not only vary globally across countries, but it may also differ with respect to certain specific victimizations. This possibility has been recognized concerning sexual offences, but it cannot be ruled out with respect to other offences such as assault, burglary or robbery. Similarly even memory loss may be differential and may be influenced by culturally defined norms and values as well as by the attitudes already mentioned.

As far as assaults are concerned, I must admit I am unhappy with the wording of that question: "...have you been personally **attacked or threatened** by someone in a way that really frightened you..." Having been really attacked or having been (just) threatened is by no means the same thing and I think it is unwise to have put these two offences in one question, leading to a lack of uni-dimensionality that can only confuse the results.

Efforts have been made to compare the survey results with figures of some selected recorded offences, leading to generally low correlations for assault, robbery and burglary and a reasonable one for vehicle theft. This result probably is a reflection of the fact that offences such as vehicle theft and burglary are often covered by insurance under the condition of official notification of the offence to the police. On the other hand, as far as violent offences are concerned, there generally is quite some underreporting.

4. Conclusions

My main conclusion would be that in comparative victim surveys all the research problems and drawbacks that plague any national victim survey and that introduce biases, the extent of which probably differs across countries, do add up in unknown ways and may thus seriously impair the validity of the study.

These problems have to be faced and great efforts should be deployed in the near future to overcome them. This is all the more necessary as the "opening up" of Europe will no doubt lead to a growing number of contacts between researchers and to more initiatives in the field of comparative research. I have already mentioned the initiative undertaken by our Centre to conduct a comparative self-report study and I am sure other projects will follow.

Therefore my paper is not meant to be overly critical of the comparative study or to suggest that, because of its imperfections, it should have been delayed until all the problems at hand had been solved.

On the contrary, I think this type of study is extremely useful and should be repeated. I am convinced that it is by conducting such research that we do get a real insight in the nature and scope of the problems that arise, and only then will we be able to work out solutions.

Every new research field means exploration and exploration means making mistakes. Without mistakes there is no progress in research methods and in knowledge.

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Commentary

Roger Hood

As 1992 approaches international comparative research on crime and its relation to criminal policy has taken on a new lease of life. It has been fuelled by a growing number of opportunities for scholars to exchange ideas and information; by the work of international bodies seeking to promote a common ground for policy and for research, including international agreements to create minimum standards and safeguards relating to the treatment of suspects, offenders and victims; by the growing amount of business and contacts generally between nations; and, of course, by the prospect of a far greater degree of political and socio-economic integration in Europe.

In following this vogue it could perhaps be too easily forgotten that the comparative approach has deep roots in criminological investigation and policy analysis. The emergence of criminology and of penal policy in England, as I soon discovered when I began my collaboration with *Sir Leon Radzinowicz,* could not have been understood without taking into account the foreign influences upon it. The same is, no doubt, true for many other countries. To take just a few illustrative examples from the field of criminological investigation: *Quetelet's* and *Guerry's* pathbreaking statistical studies spawned a number of similar inquiries including the latter's **Statistique Morale de l'Angleterre comparée avec la Statistique Morale de la France,** first published in 1860; *Augusto Bosco's* impressive and comprehensive survey **La Delinquenza in Vari Stati di Europa** (1903); *Enrico Ferri's* bold but flawed attempt to demonstrate the existence of an invariable inverse relationship between homicide and suicide in his **L'omicida** (1925); and *Gabriel Tarde* peppered his **La Criminalité Comparée** (1886) and **La Philosophie Pénale** with materials about many countries.

Penal policy makers have also been attempting to learn from the comparative approach for nearly two centuries. In relation to the spread of separate confinement one has only to refer to the fact-finding visits to Philadelphia of *Dr. Julius of Prussia, of Beaumont and de Tocqueville,* (of course), and to *William Crawford* of the Society for the Improvement of Prison Discipline. In relation to the development of the juvenile reformatory *Demetz's* Mettray was the Mecca. To trace the form which long-term imprisonment took in the late nineteenth century and the introduction of the indeterminate sentence one must look to those who visited and lauded Captain *Crofton's* Irish system of progressive stages. To those who sought a

solution to the vagrancy problem the Dutch Labour Colonies, and especially the Depôt de la Mendicité at Merxplas in Belgium, were the exemplars. Commissions of Inquiry, not only in Britain, still ritually look abroad in the hope of discovering panacea.

One has also to remember that in the latter part of the nineteenth century international meetings, the agendas of which covered a very wide spectrum of issues to do with crime and its control, were held on a regular basis and were the scenes of intensive controversy and debate. This is obviously not the place to try to review what was achieved by the International Penitentiary Congresses, the International Association of Criminal Law, or the International Congresses for Criminal Anthropology. But a great deal more could still be learned from them about the problems which are endemic in the comparative approach, not least the danger of intellectual imperialism.

One thing, however, does stand out. There was, and still is, a vast gulf between studying what goes on in a variety of other countries, and a truly comparative analysis of why those countries may have different legal and social definitions, forms and amounts of crime, different perceptions of and reactions to it, different legal and administrative structures for dealing with it, and different avenues and modes for developing, re-inforcing and changing policy.

This is quite a different purpose from that which often informs international comparisons, especially when driven by political considerations. As *Pat Mayhew* rightly points out, the production of tables of recorded crime or of the daily average number of prisoners per 100,000 population, and the rest of the over-simplified data that have been taken up by governments and penal reform groups, may be motivated as much by a desire to show that other countries are better or worse off as it is by a desire to obtain satisfactory "performance indicators".

As has often been noted, it is far easier to study a foreign system so as to set it alongside one's own country's system, than it is to devise a comparative strategy which will hold some variables constant while seeking to establish whether the relationship between other variables is similar or different.[1] This is particularly a problem when the legaî and administrataive cultures and structures vary between States, as they do most notably between the countries of the continent and England with its doctrine of separation of powers, lack of a Ministry of Justice, and distinctive system for appointing and "training" the judiciary. It suggests that differences between the definition and response to crime may have as much to do with the history and structures of the machinery of justice and their operating cultures as it has to do with the sorts of socio-economic "causal" variables which

1 See, e.g., *John Graham's* forthcoming article "Decarceration in the Federal Republic of Germany: how the practitioners are succeeding where the policy makers have failed". British Journal of Criminology (forthcoming).

are generally employed in comparative statistical analyses. Indeed, it suggests that it is upon these structures and the impact on crime of the differing relationships and balance between them that comparative work should concentrate if the results are to yield any lessons of value to policy makers.

As far as statistically based comparisons of the relationship between crime and punishment is concerned, the reason for their general failure to produce results which carry conviction has long been obvious. The main obstacle has undoubtedly been the failure to obtain a valid and reliable measure of the dependent variable, i.e. crime, in studies which have attempted to measure the influence of policy and practices on the production of crime, and/or alternatively the influence of levels and manifestations of crime on policy and practices. It has not been for want of trying. Several brave attempts were made to try to bring uniformity to the criminal statistics of all countries, beginning with the International Statistical Congress held in Brussels in 1853. Both *James Fitzjames Stephen* and Professor *Baron von Holtzendorff* were consulted on how to make the "points of comparison" so that identical legal definitions of the major offences could be established but they gave up in despair.[2] Whilst there can be no doubt that such efforts did inspire improvements in the statistical returns of a number of countries, notably England and Wales, they signally failed to meet the canons set for valid comparative analysis.

There have recently been some interesting studies of foreign penal systems undertaken by persons from other countries. A few of them, such as *David Downes'* book on the Dutch penal system, "Contrasts in Tolerance", have tried to take account of cultural and structural factors.[3] Yet the reader is still left with some uncomfortable questions because of the absence of important comparative data on certain key facets of crime and criminality. For example, there was no data available to make possible a comparison between the sub-cultural supports for criminality in Holland and England and therefore of the relationship of persistent patterns of criminality to the different criminal justice structures and penal policies of these countries. For example, is the English system more punitive because of a different quality of criminality and, if so, is that quality of criminality itself a product of its criminal justice structure and penal practices? And is the recently noted "presence of a larger group of habitual or professional criminals in Dutch society", to whom is attributed some of the increase in more serious crime, a consequence of the very low rate of imprisonment and the relatively short sentences which have been characteristic of

2 On this and other historical references above, see *Radzinowicz, L., Hood, R.:* A history of English criminal law. Vol.5, The emergence of penal policy (Stevens, 1986), esp. pp.50-54, 95-97, 102-103, 124-128, 155-161, 362-372 and 515-521.

3 *Downes, D.:* Contrasts in tolerance. Post-war penal policy in the Netherlands and England and Wales. Oxford 1988.

Dutch penal policy since the 1950's?[4] These are the sorts of questions which criminologists who hope to shed light on the nexus between crime and public policy by comparative analysis will need to find ways of answering.

It has to be recognised too that cross-national statistical comparisons run the risk of masking or ironing out the very considerable variations in crime and penal responses which exist within one national jurisdiction. *Farrington* and *Dowds*, e.g., have shown how striking variations in police recording practices between contiguous English Counties accounted for much of the variation in the official crime rates between them.[5]

The problems of drawing inferences from statistical studies which attempt to control for the influence of variables which might explain differences in penal practices are also well known. *Warren Young*, who has mounted an extensive collaborative study of the factors which might explain variations in the prison populations of a substantial number of countries, has noted the absence of systematic cross-jurisdictional studies which control for any more than two or three variables.[6] Yet the problems have been proven to be formidable even when sophisticated multi-variant techniques have been employed to try to isolate the impact of crime on punishment and **vice versa**, holding constant quite a wide variety of variables. Witness the enormous controversy generated by the cross jurisdictional time-series analyses of the relationship between the rate of execution and the murder rate in the United States. Here there is a simply calculated independent variable, and a relatively homogeneous category of crime. Yet disputes abound: which are the relevant factors to control for and can all of them be reduced to statistical indeces - the degree of communal integration for example?; what theoretical assumptions should determine the statistical methods employed - for example is the econometric model appropriate?; are the data which estimate homicide and execution reliable over time and between jurisdictions?; is any statistical relationship discovered sufficiently stable between different samples and over different time periods? Differences of opinion and interpretation on all these questions have led many observers to endorse the view of the American National

4 *Netherlands Ministry of Justice:* Society and crime. A policy plan for the Netherlands, 1985, p.11.

5 *Farrington, D.P., Dowds, E.A.:* Disentangling criminal behaviour and police reaction. In: Farrington, D.P., Gunn, J. (Eds.): Reactions to crime: the public, the police and the courts. 1985, pp.41-72.

6 *Young, W.A.:* Cross-national prison rates: a comparative study of the use of custodial sanctions. Wellington 1986.

Academy of Sciences that such non-experimental research will almost certainly fail to reach the standards of scientific proof necessary to be used to resolve the dispute on the deterrent effect of the death penalty.[7]

What then is likely to be the fate of studies which seek to explain, for example, variabilities in the rate of imprisonment? As *John Graham* has pointed out, fluctuations in these rates are a "product of a wide range of judicial, penal, social and economic variables":[8] a list which must subsume variety in cultural definitions of crime, in citizen reactions to it, in the forms and effectiveness of other modes of social control, all of which need to be interpreted within the context of distinctive national histories, cultures and social structures. Will it therefore ever be possible to disentangle the relationship between the phenomenon of crime and a complex strucutre of criminal justice and administrative processes? After all, we have not yet in England satisfactorily understood why it is that our own penal system has expanded so greatly over the last fifty years and has remained so impervious to the many attempts to reduce it.

Does this mean that international comparative studies of crime and criminal policy are doomed from the scientific point of view? No. But what it does mean is that, recognizing the methodological problems of research design and inference, they should set realistic goals. This is why the initiative reported by *Pat Mayhew* is to be welcomed. The telephone survey is the first such international collaboration to use a common methodology to obtain victim-based measures of crime and to compare them with police recorded crime: an essential basis for comparative analysis of crime rates. Those who organised such a complex operation deserve congratulations. What can we learn from this first excursion? And what problems will have to be overcome if this method is to realise its potential?

First, it has to be acknowledged that this concerted and consistently applied approach is a great improvement on previous attempts to compare various victimization studies which have been carried out in different countries. Secondly, some caution needs to be exercised in interpreting the outcome given the modest size of the samples and, more particularly, the shortness of the telephone interview and the quite low response rate obtained in some countries. Some of the findings are likely to be greeted with scepticism. For example, the fact that only 0.2 per cent of women questioned about sex attacks reported having been raped over a five year period. It is questionable whether issues so delicate as this can be, or even ought to be, raised on the telephone. Something needs to be done to reassure respondents if the response rate is to be improved. It might, for instance, help if they were to receive an official letter prior to a telephone call.

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7 For a discussion of these problems see *Hood, R.:* The death penalty. A world-wide perspective. Oxford University Press, forthcoming, 1989.

8 Op.cit.

Any attempt to compare the seriousness of crimes must take into account the variability in the definition of deviant conduct in different cultural settings both within and between countries, especially if it is to be used as a means of understanding the politics of penal policy and its impact on the punitive responses of the criminal justice system. In this respect, several findings from the telephone survey are of considerable interest. To mention only a few: the great part played by crimes connected with vehicles in most countries; the lack of consistency between levels of vehicle ownership and levels of vehicle theft between countries, which gives rise to a number of different hypotheses about crime causation and prevention; the group of countries found to have low rates of victimization is itself interesting - Switzerland (really true to its "snow-white" image?),[9] Norway, Finland, and seemingly whitest of white is strife-torn Northern Ireland; the comparatively high level of crime in Holland, particularly of burglary, threats, violence and sexual misdemeanours. And the study as a whole raises a very large question as far as international comparisons between statistics based on victims' reports and offences recorded by the police are concerned. Why were the rank order correlations between survey-reported crime and police recorded crime so low and so variable between countries? The study suggests that it was not because higher levels of recorded crime were related to a higher propensity of victims to report offences to the police. This leads to the conclusion that there were probably very substantial differences in the definitions of offences adopted by the survey respondents on the one hand and the police on the other. *Pat Mayhew* is right to say that a lot more work needs to be done on this issue if telephone surveys are to prove to be a valuable tool for international comparisons.

Another important question relates to the scope of studies of this kind. By their nature they cannot tap information about the new crime concerns of many European countries. The murky waters of economic, organizational and so-called victimless crimes are never dredged by victimization studies. Now that there will be a loosening of national barriers and a consequent further interlocking of economic organizations, both legitimate and illegitimate, across national boundaries, international comparisons of criminal activity in this area will become imperative. This will pose a stiff challenge to the methodological inventiveness of criminologists.

Finally, the very success of the co-operative venture raises the question whether work of this kind is best done as a result of initiatives which arise out of international meetings on specific topics or whether some more permanent organization would be better able in the long run to marshall the resources, stimulate the work, and secure the necessary co-operation of various agencies in the different countries being compared. Is there a case to be made for a European Criminological Research Council, on the lines, say, of the Scandinavian Research Council? Or what about

9 See *Balvig, F.*: The snow-white image. The hidden reality of crime in Switzerland. Scandinavian Studies in Criminology 9 (1988).

an international committee to promote comparative research, such as the one set up by the sociologists of law? Is the Scientific Committee of the International Society of Criminology the appropriate vehicle, or could it be made so? Whatever organisational structure were chosen it would need to be funded by national research councils or more directly by governments, but within a framework which would secure sufficient academic independence. It could perhaps begin work on a rather modest scale with one major project, and if it proved to be a successful enterprise subsequently expanded into a proper organization with its own secretariat. If comparative research on an international level is to forge ahead on a truly co-operative and methodologically sound basis it will need some such impetus. This seminar could be the catalyst.

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Commentary

Philippe Robert

Rather than presenting a synthesis on international comparative research in Europe, its surplus value, its difficulties, its recent results, *Pat Mayhew* has chosen to focus on a concrete example. An original idea indeed: this comparative design is innovative and the data are exciting. Making a comparison, for instance, with our own results - as far as comparison is possible - I was specially interested in the French high scores of burglary and car thefts in her data as in owns.

Naturally, it is possible to discuss certain points, and specially the stability of the figures: categories of offences are many and the size of sample is limited, so that each of these categories contains only a small number of cases. The slightest change may produce important modifications in the absolute numbers of some small categories.

But I shall refrain from discussing technicalities, other commentators have pointed out pertinent technical matters. And we have to wait for more complete data, specially gross figures.

Beyond these remarks, it seems to me that the main outrouse of this experiment is to open the way for standardized local surveys in different European cities. I feel it is now the right time for such gain and I congratulate the promoteurs on this first step.

I would now like to consider some issues included in *Pat's* presentation by enlarging my perspective to general comparative strategy. Now and in an European Colloquium, it might be as important to discuss these problems of international comparisons.

Comparison is perhaps the underlying principle of any scientific approach. It might probably be argued that research necessarily proceeds by comparison, if only implicitly, although such comparison is far from always being international.

It may be chronological, based on historical material, as is the case with many paradigms on which sociology was founded, from *Durkheim* to *Weber*. And even if the terms of comparison are synchronous, they may very well be chosen within a given national entity. In fact, this is the usual procedure, be it for groups, institutions or regions... If only international comparisons are discussed here, these

are nonetheless simply a specific solution within a wide range of possibilities, and by no means the easiest one, particularly in a field of the like of ours, which strongly upholds national characteristics.

I am increasingly sceptical as to the feasibility of conducting such comparative research in countries with extremely heterogeneous ways of life and cultures. Several attempts have convinced me that either the issues are then necessarily enourmously simplified, to the point of being caricatured, or the original goals cannot be made operational, or again, the signification of the data cannot be controlled. In any case, the added scientific value seems to me to be quite minimal, in the last analysis, in regard to the amount of energy and money expended.

The most favorable enterprises are those that investigate values, images or attitudes, and to a lesser degree, those pertaining to behavioural patterns or life styles. Even there, the national situations must not be overly heterogeneous.

The difficulty in our field is mostly due to the influence of institutional characteristics and legal categories. Crime is not a behavioural category, but a normative one. And this legal normativity is deeply connected with national law. What can be more peculiar to each nation? Despite borrowing between legal systems, criminal law embodies the characteristic of each national tradition. It is extremely difficult to master these obstacles to comparison, even between relatively similar nations, and when the societies involved are too different, the task is herculean.

For this reason, intra-European comparisons represent a relatively satisfactory solution, not only because the countries are culturally quite similar, but also because national characteristics are attenuated by the gradual development of a shared institutional structure - among members of the EEC - despite the fact that criminal law and justice institutions are not within the direct jurisdiction of the Community, for the most part.

Comparative criminological research still encounters serious difficulties, however, even within the European context.

For instance: when designing a questionnaire in The Hague for victimization surveys in cities located in different countries, we were blocked, last January, by the formulation of questions dealing with the role of the police in metropolitan areas. It was apparently impossible to ask the same questions in countries with a national police force, others with a municipal police force, and still others with both. That part of the questionnaire was finally left open to local formulations.

Similarly, European Council correctional statistics contain a category of pretrial prisoners who are detained but not convicted. The concept seems evident, and is generally evocative of prisoners on remand. In fact, there are major inter-country variations in actual cases included, and despite considerable efforts, it has been impossible to achieve a truly comparable definition.

There is no use in multiplying examples. While these problems are difficult to solve within a limited, relatively homogeneous region, they soon become insurmountable when investigations deal with extremely heterogeneous cultural areas. At worst, findings become uninterpretable.

The chances of coherence are greatest when an international comparative research project is conceived, developed and implemented by a single investigator or a single centre, since all responsibility is in the same hands. It seems quite dubious, however, that any such entity could be capable of single-handedly overcoming the traps of national characteristics.

I have memories of an international research project on the cost of crime, whose American instigator was practically unable to perceive the differences in composition and weight of the overall public contributions collected in the different Western European and North American countries.

This can be remedied, to some extent, by consulting local correspondents and using the resources of international organizations. The researcher in charge of a European survey of correctional statistics consults the administrative correspondents of the CDPC, for instance, not only to obtain data, but also to determine how they were collected, concretely. Similarly, a statistical survey by the HEUNI makes use of a network of local analysts. In these cases, the goal is the collection of pre-existing data, and the surplus value is derived by putting them together, making sure they are sufficiently comparable, and then commenting on this confrontation.

The task is more delicate when national data are not available, and must first be produced by the survey. Local correspondents are apt not to be very enthusiastic about participating in a project that is completely prepared in advance, and in which their only role is to follow directions. The greater their competence, the less prone they will be to accept such work. To take one example, I was unable, some time ago, to find a single French specialist in the sociology of the police who was willing to participate as a national correspondent in a survey project coming from Great Britain in a completed form.

In the face of these difficulties, it may seem preferable to replace individual responsibility by collective responsibility assumed by a consortium of research workers from the different countries involved in the comparative project. Another difficulty then arises, in practice: the risk of a loss of coherence. A network cannot be improvised on short notice. For this reason, I am now involved in the gradual construction of a permanent network.

A consortium set up for the needs of a specific comparative research project is often artificial and disappointing. It seems preferable, then, to make an effort to develop the network in advance, before beginning comparative research.

It is this avenue that we have chosen, in any case, with the creation of the "Groupe Européen de Recherche sur les Normativités", or GERN, a scientific network connecting several centres in different European countries. Its first objective was not the implementation of comparative research; it seemed preferable that its members first learn to work together.

In this process of the gradual construction of a network, **ex post** comparison seems to be a useful intermediate phase. What research projects and data are already available in the different countries on a given topic or a given issue? To what point is it feasible to base comparisons on these?

The type of structure chosen by the GERN to deal with these questions is the research seminar. For example, for the past two years, René Levy and Dominique Monjardet have organized meetings between specialists from different European countries to compare approaches and data on the police.

Following this phase of **a posteriori** comparison, actual comparative research may be planned, if the need is still felt. Responsibility for it will rest on a network that has been developed gradually, whose members will have learned to work together. In some instances, however, this will be superfluous, since the **ex post** comparison will have provided sufficiently satisfactory results. And in any case, research projects will preferably be coordinated around a shared conceptual framework.

4. Crime Prevention Policy: Current State and Prospects

Crime Prevention Policy: Current State and Prospects

Jan J.M. van Dijk

1. In this paper, I will not try to give an overview of the current body of knowledge about crime prevention. Neither will I give detailed guidelines for future policies or experiments. I understand HEUNI has commissioned *J. Graham* of the Home Office to prepare a draft of such a comprehensive report, in preparation of the next UN Conference on Crime Prevention and the Treatment of Offenders. Instead, I will just try to make a contribution to the debate by reflecting upon some current trends. In the course of this, I will argue for a new conceptual model, covering both various forms of crime prevention, victim assistance and the activities of the criminal justice system.

2. Subject Matter

Crime prevention is an often used concept with a loosely defined meaning. According to *Johnson* (1987), prevention is based on four interrelated ideas: 1. that something evil, unpleasant or destructive is impending; 2. that this eventuality can be forestalled by human insight and ingenuity; 3. that much of the preventive activities are outside the boundaries of the criminal justice system; and 4. that human intervention should be initiated **before** the undesirable event occurs.

Building upon these ideas, I propose the following tentative definition of crime prevention: **the total of all policies, measures and techniques, outside the boundaries of the criminal justice system, aiming at the reduction of the various kinds of damage caused by acts defined as criminal by the state.**

This definition covers fear reduction programmes, since fear can be seen as a damaging result of (perceived) criminality. It also covers, as we will argue later, victim assistance policies, since these can be viewed as forms of damage control.

The most contentious part of the definition is the term "outside the boundaries of the criminal justice system". In the 20th century, criminal lawyers in Europe emphasize the constructive, preventive effects of criminal justice interventions (the influence of just desert philosophers being largely limited to the USA). In this view, criminal justice itself is a form of crime prevention. Although the capacity of the criminal justice system to prevent crime seems inherently limited, its activities can

indeed be interpreted de facto as a kind of crime prevention. In fact, the term "crime prevention" in the title of the United Nations' conferences on the Prevention of Crime and the Treatment of Offenders seems to refer primarily to the deterrence effects of criminal justice interventions upon the general public.

In our view, the administration of criminal law and crime prevention in its narrow sense are both essential parts of an all-encompassing criminal or crime policy. In practice there will often be an overlap between both kinds of interventions. Drugs treatment programmes, for instance, will often be made available for both convicted offenders as a special penal measure and for other categories of addicts as a voluntary option. For both analytical and organizational purposes it is important, however, to distinguish sharply between crime prevention and criminal justice. In order to make this point, the Dutch government has introduced the term **administrative** or **social crime prevention** for what is defined here as crime prevention. In the USA the term community crime prevention is often employed for similar reasons (*Rosenbaum* 1988).

3. Primary, Secondary and Tertiary Prevention

In the literature, a distinction is often made between primary, secondary and tertiary prevention (*Kaiser* 1988; *Friday* 1983; *Lab* 1988). This typology is inspired by the public health model. Primary prevention involves attempts to lower rates of new cases by initiating some measures directed at the general public to counteract perceived harmful circumstances before the onset of the problem. Secondary prevention involves some form of intervention directed at groups or individuals diagnosed as having early symptoms of the problem. Diagnostic techniques are supposed to discover the especially crime prone (the risk groups). Tertiary prevention is directed at offenders to forestall further crimes. As discussed above, we prefer to keep prevention through punishment (or involuntary treatment of convicted offenders) outside our concept of crime prevention. Some forms of voluntary aftercare could rightly be seen as tertiary crime prevention in our view, though.

According to *Lab* (1988) primary prevention is directed at the elimination of conditions of the physical and social environment that provide opportunities or motivation for criminal acts. This definition includes opportunity reduction by potential victims. Secondary prevention are measures directed at conditions in selected environments with high crime rates (*Lab* 1988). *Kube* (1986), unlike *Lab*, defines all forms of opportunity reduction by potential victims as secondary prevention.

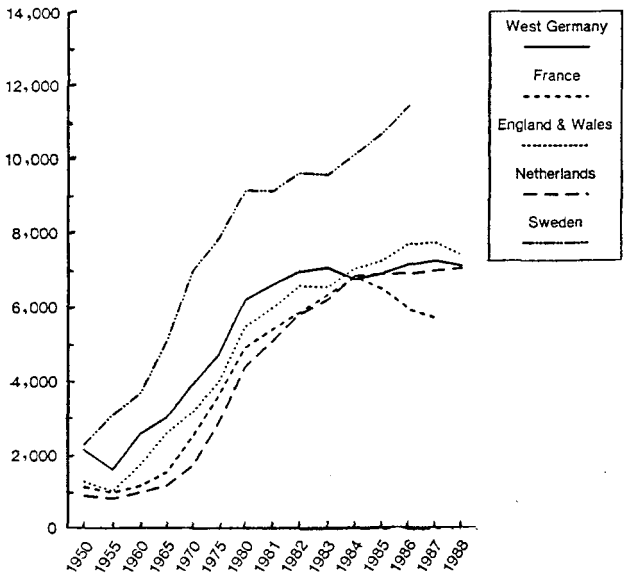
Lab and *Kube*, like *Brantingham* and *Faust* (1976), do not differentiate between policies directed at victims and those directed at offenders directly. They define victim-oriented prevention as part of either primary or secondary prevention in general.

In this paper we will argue for a conceptual model distinguishing from the outset between victim-oriented and offender-oriented crime prevention. We will also argue for the retention of the distinction between primary, secondary and tertiary prevention.

4. Victim-Oriented Crime Prevention

The recent history of crime prevention policies has not been quite the same in the various Western countries but some general patterns can yet be discerned. In the sixties crime prevention was often equated with programmes of social reform (*Jeffery* 1977). It was advocated as an alternative to the punitive policies of the criminal justice authorities. The dominant notion was that crime could be cured by better housing, schooling, welfare and employment policies. As *Wilson* (1975) has pointed out, it is ironic that this ideology was most popular in a period experiencing both rapidly improving social and economic conditions and exploding crime rates. The development of registered crime rates clearly showed that more prosperity did not lead to less crime. To underline this argument, it can be pointed out that in Western Europe registered crime started to rise first and foremost in Sweden (precisely the country whose economy was less damaged by the Second World War and which was the first to build a welfare state). An overview of the trend of registered crime in five European countries is presented in Figure 1.

Figure 1: Crimes known to the police in five European countries



As a commentary to the Swedish crime boom *Svensson* (1986) observed **"In the 20th century - the criminality of the destitute has been superseded by what may be called welfare criminality"** (cited by *Young* 1988).

In the seventies, the concept of crime prevention through social reform gradually lost its credibility. Since the preventive concept had failed, the expenditures for the criminal justice system were expanded in many countries (*Young* 1988). In the same period a new kind of crime prevention activities became fashionable which did not aim at (pre)delinquents but at those at risk to be **victimized** by crime. Crime prevention became victim-oriented.

The new buzz words were: target-hardening, crime prevention through environmental design, defensible space, situational crime prevention and opportunity reduction (*Newman* 1972; *Mayhew et al.* 1976; *Brantingham* and *Brantingham* 1981). It was subsequently understood that, in order to be effective, such measures need to be combined with organized surveillance (*van Dijk, Junger-Tas* 1988; *Rosenbaum* 1988). A second wave of crime prevention initiatives in the eighties aimed to strengthen informal social control by means of neighbourhood watch, private security, caretakers etc. (*Hope, Shaw* 1988).

The common element of victim-oriented crime prevention is that potential victims are exhorted to take measures to protect themselves against criminal risks. Crime policy is no longer the exclusive responsibility of the state. Several typologies of such protective, defensive or community crime prevention measures are proposed in the literature. A distinction is often made between technical and social measures (technoprevention and socioprevention). Another important distinction is between measures taken by individuals and those taken by social groups.

On the basis of these two criteria a typology can be construed as presented in Figure 2.

Figure 2: Typology of victim-oriented crime prevention strategies

	individuals	social institutions
technical	locks and bolts burglar alarm	CCTV urban design
social	neighbourhood watch	private security professional surveillance

5. Primary, Secondary and Tertiary Victim Policies

The public health categories of primary, secondary and tertiary prevention are rarely applied to victim-oriented prevention as such. It seems useful, however, to distinguish between three different policies, targeted at groups of the population with a varying degree of exposure to criminal victimization.

Some measures are recommendable to the public at large. Examples are the installation of adequate locks in houses and steering column blocks in cars and the taking of elementary safety precautions. General social measures like adequate street lighting, surveillance in public transport systems, and responsible planning and design also fall in this category of **primary victim-oriented crime prevention**.

Special measures must be taken by groups of the population with high victimization risks such as personnel of banks or petrol stations and owners of expensive property living in detached houses. Several businesses are by nature of their activities

exposed to crime (e.g. department stores, soccer clubs). The protective measure against such special risk can be defined as **secondary victim-oriented crime prevention.**

Tertiary victim-oriented crime prevention, finally, consists firstly of protective measures taken by actual victims to prevent further victimization. The prevention of victim recidivism is indeed an important subgoal of many victim assistance programmes. In our view, the emotional and legal support given to actual crime victims are also part of tertiary prevention, since such activities seek to minimize the harm done by a crime. In public health prevention at this level, individuals suffering an advanced stage of disease are treated to prevent death or permanent disability. Interventions which try to help crime victims to overcome their victimization with as little lasting effects as possible seem very similar.

The borderline between primary and secondary crime victim-oriented prevention will often not be clear. Protective measures taken by young women to prevent sexual harassment can be seen as either primary or secondary prevention.

The distinctions at issue have several theoretical and practical implications. It brings into focus that some measures seek to lower average victimization risks (primary prevention) and others try to reduce special risks to an average level (secondary prevention). Displacement effects can perhaps be better understood if a distinction is made between primary and secondary prevention. Operationally, there are several important implications. If the special risks are generated by commercial activities, the responsibility for preventive measures will usually lie primarily with the institutions itself. Most governments require banks, for example, to install a reasonable level of security precautions in their offices. Secondary crime prevention policies will often be facilitated because the target group can be made aware of its special risks (and so of its interest in prevention). Insurance companies promote secondary crime prevention amongst their customers. The task to reach a limited target group is also easier than in the case of primary prevention programmes aiming at larger parts of the population. By and large, secondary victim-oriented crime prevention seems to be an easier avenue for preventive policies than primary, overall prevention campaigns. A long-term crime prevention policy, however, should also seek to reduce criminal opportunities created by the public at large, including businesses and state institutions.

6. Prospects and Limitations of Victim-Oriented Crime Prevention

Prospects

Crime prevention in Western Europe has been dominated since the seventies by the concept of protection against criminal threats, just as in Northern America. Interestingly in France, but also in Italy and Spain crime prevention of the social reform type seems to have retained its appeal (*Waller* 1989).

Much progress has been made so far with secondary prevention in particular. Banks across Western Europe have improved their security. Largely without any initiatives by the state, private security firms have grown in number and size. In the area of primary crime prevention, the developments may have been somewhat slower. However, various forms of target-hardening are much more widely applied now than fifteen years ago. In order to get some indication of the distribution of crime prevention measures, we have collected data about the expenditures on private security firms, the purchase of household security equipment and state-run crime prevention programmes of five European countries (see Figure 3). We have added data on expenditures on police and prisons.

Figure 3: Indicators of annual expenditure on crime policies in five European countries in the mid eighties, per 100,000 inhabitants in million $

	police officers	private security officers	prisons	household security measures expenditures	expenditure on crime prevention	total
West Germany	12.4	8.0	1.5	0.42		22.30
France	10.4	5.2	0.8	0.42	0.01	16.79
England/ Wales	10.0	8.4	2.2	0.34	0.25	21.21
Netherlands	9.6	3.0	1.0	0.28	0.04	13.96
Sweden	7.2	10.0	2.7	0.42	0.02	20.39

Note: The annual costs per police officer and private security officer are estimated at $ 40,000 for all countries.

Source: HEUNI 1985/Council of Europe 1988; Frost and Sullivan 1988; Ministry of Justice 1984; Van Dijk 1988; Home Office 1988.

Private security is much more prominent in Sweden, FRG and England and Wales than in France and Holland. The rates of household security sales are less divergent, but somewhat lower in England and again Holland. Government expenditures on crime prevention are modest in comparison to those on prisons and police forces across Europe. The expenditures on crime prevention are extremely low in the FRG, since federal programmes do not exist and only some of the states have developed concrete policies. The expenditures in the UK are largely part of other government programmes such as employment schemes. Expenditures on Home Office crime prevention projects are of marginal importance (app. 0.02 million dollars per 100,000 inhabitants, mainly spent on massmedia campaigns). By comparison the annual expenditure of around 0.04 million dollars in Holland seems rather high. The Dutch expenditures have been politically justified with reference to even higher expenditures which would be required for criminal justice if prevention were not promoted adequately.

Although expenditures on crime prevention by both the private and public sector have gone up in the eighties, there is still ample scope for further growth. Insurance companies seem ready to promote secondary crime prevention more actively. Marketing research predicts a continuous annual growth of 10 percent in household security firms. Plant managers are becoming increasingly aware of the economic importance of crime prevention as a part of a wider risk control policy, also covering computerized data processing (*van Soomeren* 1989). Local governments have likewise been sensitized to the importance of crime prevention as part of their efforts to improve the quality of life in urban areas. The number of neighbourhood schemes is rapidly expanding in the UK. On the continent surveillance is strengthened by the employment of more caretakers, bus conductors, city wardens etc.

Victim-oriented crime prevention seems not yet to have reached its full practical potential. Many governments are still hesitant to invest serious money in it. *Field* and *Hope* (1989) have persuasively argued on economic grounds for government subsidies in the market for primary crime prevention. Other important priorities for the government are research and development, the development of European standards and a better regulation of the activities of private security firms.

Effectiveness

Evaluation research on target-hardening and other forms of victim-oriented prevention has so far yielded ambiguous results (*Mayhew* 1984; *Rosenbaum* 1988; *Lab* 1988). The ability to reduce specific types of criminal activity in specific situations has been demonstrated clearly. The value of such effects is often limited, however, by a displacement of the avoided crime to other locations or by the substitution by new types of crime. Displacement or substitution effects are no

ground for a general debunking of victim-oriented prevention. It should yet be acknowledged that successful offender-oriented prevention may have more lasting benefits for the community at large.

Fear

Fear reduction has been defined here as part of crime prevention. In practice, the relationship between crime and fear reduction is far from simple. Some measures or policies may serve both goals. Some may serve one of them exclusively. Another possibility is that certain policies have positive results in one area but compound problems in others.

Several victim-oriented policies have been found to reduce fear without having a measurable impact upon crime levels (*Fowler et al.* 1979). Security surveys, crime prevention information campaigns, the redesigning of neighbourhoods and community projects have sometimes been found to lead to intensified fear (*Winkel* 1987; *Rosenbaum* 1988). Fear or anxiety should not always be interpreted as a social loss. In some situations it may even have important benefits. The fear-inducing side-effects of some victim-oriented prevention policies need always to be made part of their cost-benefits-equation (*Shapland* and *Vagg* 1988). The gradual greying of the Western European population in the next decades may make the side-effects of intensified fear more important, since the elderly are particularly sensitive to fear-invoking information.

Saturation and Resistance

Although there is still scope for further growth in the purchase of security measures in most Western countries, it will become increasingly difficult to change the attitudes of those remaining parts of the population who have not yet been persuaded. To the extent that primary prevention has become more common, larger investments are required to bring about further growth. Mass media campaigns tend not to reach, or to affect, those least inclined to apply security measures (i.e. the ultimate target group of such campaigns). The younger population has a large share of individuals with an easy-going lifestyle. Risk taking in all fields of life is part of their way of life. This part of the population seems to be highly resistant to the idea of protective measures.

7. A Renaissance of Offender-Oriented Crime Prevention

In recent years a series of criticisms has been levelled against victim-oriented crime prevention. *Currie* (1988) criticizes the use of an often superficial concept of

"community" and the tendency to see criminals as dangerous outsiders which must be kept out of one's territory (the exclusionary vision). He also mentions the lack of awareness that offenders too are members of a community living in particular neighborhoods.

Interestingly, similar ideas are floating around in the world of business security managers and consultants. Recent publications in the Netherlands and the UK about business security focus upon the internal sources of crime: theft and fraud by employees have become a new priority (*Shapland* and *Wiles* 1989). Crime prevention is consequently redefined as a part of broader social policies of companies and not as a specialized response to threats from the outside.

There are signs that crime prevention in at least some Western societies will once again become oriented towards tackling the social problems, constituting the background of (serious) crime. The pendulum may soon start to swing back. In France, the UK and the Netherlands crime prevention is now relaunched as part of integrated urban renewal projects tackling both unemployment, housing problems and crime in deteriorated city areas. In this new stage, some of the older preventive solutions may be given a better - and perhaps fairer - chance. More emphasis will probably be put on the importance of adequate socialization processes and social control than in the "anarchistic" sixties (*Currie* 1988). Future buzz words may be normative training, self-discipline, (electronic) surveillance and risk control.

New forms of crime prevention through social reform will lead to a renewed interest in offender-oriented crime prevention. This makes it worthwhile to reconsider the conventional distinction between primary, secondary and tertiary offender-oriented crime prevention and the various relationships with criminal justice.

8. Criminal Justice and Offender-Oriented Prevention

According to *Steenhuis* (1986), insufficient attention is usually given to the various target groups of criminal justice actions. Distinctions should primarily be made between actual offenders, potential offenders and what might be termed the conformists (i.e. citizens who are law-abiding). In *Steenhuis'* view, the resources of the criminal justice system should be allocated in such a way as to have maximum impact upon all three target groups. The arresting, sentencing and treatment of actual offenders should not be the sole priority of the system. The other two target groups must be catered for as well. Potential offenders need to be deterred from offending. Reasonably high perceived detection rates are the essence here. Random road checks may be waste of time as a means to arrest actual drunken drivers, but they can be quite efficient in reminding potential drunken drivers of the risk of an arrest. The third target group of the conformists does not need to be deterred. Their

natural support of the law needs to be fostered, however. Service-oriented policy is an important policy here. Good public relations can help to retain a conformist's respect for the law.

The three target groups, discussed by *Steenhuis*, bear a close resemblance to the target groups of primary, secondary and tertiary offender-oriented crime prevention. Examples of such primary offender-oriented crime prevention programmes are normative training programmes and truancy prevention in primary schools (*Kury* 1988; *van Dijk, Junger-Tas* 1988). In my opinion, general social, economic, health and housing policies should not be viewed as crime prevention (such policies may have crime prevention side-effects but have quite other principal goals). For the criminal justice system itself the public at large may be a more important target group than is generally recognized.

Examples of secondary offender-oriented crime prevention are employment, training and recreational programmes targeted at special high-risk groups such as school dropouts or drugs addicts or other socially marginalized groups. Several of the conventional child protection measures belong to this category as well. The same group is also the target of formal social control and deterrence by the criminal justice system.

Actual offenders are a prime concern for the criminal justice systems. Tertiary prevention is important in the form of conventional aftercare for ex-prisoners. Other examples are diversionary justice within the community or private justice exerted by businesses in cases of fraud or theft by employees. In the Netherlands community service or compensation is arranged for young vandals and shoplifters as a diversionary option (*van Dijk, Junger-Tas* 1988). The latter programmes are generally viewed as crime prevention, but are supervised by the prosecutors and the police.

9. A Comprehensive Conceptual Model

Some authors have tried to fit in opportunity reduction measures in the three overall categories of primary, secondary and tertiary prevention. Others have included criminal justice as well. In my view, it is difficult to qualify opportunity reduction logically as either directed at the public at large (primary prevention), at potential offenders (secondary prevention) or at recidivists (tertiary prevention). Most forms of such situational crime prevention are supposed to deter both ordinary citizens, prae-delinquents and experienced offenders from committing crimes. The health model distinctions do not seem to make much sense for this type of crime prevention. However, the public health model can be applied usefully to victims as a separate category. A distinction can be made between the general public, those at risk to be victimized and actual victims. Such an application is indeed rather

obvious, since victims can be seen even more readily as persons with a health problem than offenders (violent crime actually being reognized by the medical profession as a major health problem). A major advantage of this analytic approach is that it gives victim support a logical place within crime prevention as tertiary victim-oriented prevention.

Criminal justice activities are traditionally interpreted as being offender-oriented and can indeed be qualified according to the three target groups law-abiding citizens, potential law-breakers and actual offenders. As stated in the beginning, we prefer to reserve the concept of crime prevention for activities outside the criminal justice system. Our main arguments are that most criminal justice activities are oriented towards the infliction of punishment upon offenders and for that reason are organized differently from crime prevention.

In Figure 4 we have presented a comprehensive conceptual model or typology of crime prevention along the lines discussed so far.

Figure 4: A conceptual model of crime prevention including criminal justice

	primary prevention	secondary prevention	tertiary prevention
victim-oriented	locks and bolts CPTED neighbourhood watch caretakers	preventive measures of the elderly high-risk groups risk control by companies	victim support **legal aid** **state compensation** **restitution**
offender-oriented	**general prevention*** **surveillance** normative training truancy prevention	**deterrence** youth clubs (street-corner) drug treatment	**rehabilitation** **treatment** aftercare halfway houses diversion

* Items printed in bold letters refer to activities of the criminal justice system.

We acknowledge that some information policies and surveillance activities of the police are a form of non-punitive crime prevention. In the Netherlands crime prevention stricto sensu is divided into **police-based crime prevention** and **social crime prevention**. Police-based crime prevention **(politiële criminaliteits-preventie)** consists of the giving of advice to the public/business about security precautions and of supporting social crime prevention by police forces, e.g. by assisting in crime analysis, backing up community projects with special activities

of patrol units or the CID. This distinction is reflected in the organizational structure of the newly established Directorate for Crime Prevention of the Ministry of Justice. The Directorate possesses one main unit responsible for social crime prevention and one responsible for police-based crime prevention. Victim support is a responsibility of both units.

10. Discussion

The proposed model or typology is unfortunately rather complicated. However, in my view, the different dimensions of offenders and victims must be reflected in any sophisticated conceptual model concerning crime prevention. Even in the epidemiology of crime one-dimensional measures of crime do not suffice. Offences, offenders and victims need to be measured separately. The prevalence rates of active offenders are quite different from the rates of persons coping with effects of past victimizations. The one-year incidence rates of criminal acts and criminal victimizations differ as well. We also think that the distinction between interventions directed at the various stages or degrees of being either an offender or a victim are analytically useful for both categories. We finally want to argue that crime prevention and criminal justice should be seen as related but conceptually different activities.

I want to finish with a few thoughts about the policy implications of the propsed model. In many countries crime prevention policies in the period 1975 till 1985 was largely of the primary and secondary victim-oriented type (locks and bolts, neighbourhood watch). In this stage, responsibility for crime prevention was largely put in the hands of the police as part of their public relations policies. Within an overall crime policy such activities were of marginal importance. A new situation arises if tertiary victim policies and offender-oriented prevention policies become additional priorities. These new activities need to be coordinated with various activities of the criminal justice system (with the uniformed police, CID, prosecutions, aftercare et al.). The concept of an integrated crime policy, the dream of 19th century positivist criminology, becomes topical again as does the question of organizational "ownership" or control over such a policy.

In my view, an integrated crime policy needs to be based upon a partnership between local government and the police. In many countries, the prosecution office will be the third party. At national or state and federal level the Minister of Justice should be made responsible for coordination and support of local policies.

At all levels, concrete policies should start with an empirical assessment of the crime problem as issue. Victimization surveys and self-report delinquency studies are indispensable tools for such an assessment. Subsequently, the proposed model could be used as a checklist for the formation of a policy plan to tackle the existing

crime problems. Each of the identified crime problems will require a special mixture of the various types of interventions set out in the model. For instance, in the case of a high rate of armed robbery, the optimal mix might consist of a. secondary victim-oriented prevention (sophisticated protection of local banks, training of bank personnel concerning coping strategies); b. tertiary victim prevention (victim support to actual victims); c. criminal justice activities (special squad of the CID to investigate local gangs); and d. tertiary offender-oriented prevention (aftercare programmes for bankrobbers released from prison). In the case of a high rate of vandalism against public property the optimal mix will of course be quite different. It may consist of special courses in primary schools (primary offender-oriented prevention), target-hardening of public buildings at vulnerable spots (secondary victim-oriented prevention) and community service orders for young vandals (criminal justice and tertiary offender-oriented prevention).

The proposed model can be used in the same way in courses on crime prevention planning.

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Commentary

Claude Faugeron

For this commentary I would like to take up the issue of the redefinition of the notion of crime prevention raised by *Dr. van Dijk* and have a fresh look at it in the light of the prevention policies which have been applied in France for several years. But first of all, we have to start with the two terms of the expression "crime prevention". In a behavioural conception of delinquency, prevention is the sum of the techniques used to prevent delinquent behaviour. A broader vision is probably necessary, taking into consideration the fact that crime is a socially constructed object. The particularity of the concept of crime in a sociological perspective lies in the social processes of incrimination and of bringing the penal system into play (*Robert* in *Arnaud* 1988, pp.81-84). From that point of view, decriminalization and depenalization fit into the framework of the crime prevention policies by preventing the social construction of the "crime" category.

In a similar manner the notion of prevention is constructed by the actions and representations of the social actors: prevention exists only if organized collective behaviour named crime prevention can be identified. It is then only a political and symbolic operation aimed at making social activities visible under a common name. When these activities are considered from a sociological point of view, it is possible to analyse the social interests and strategies behind prevention policies. This method may be applied to other prevention policies as well: unemployment, illiteracy, drug addiction for instance, all of these are social problems at the intersection of several modes of intervention.

To understand the particularity of the crime prevention policies, we have to look at their limits, their targets and their actors.

1. The Limits of the Crime Prevention Policies

The limits of a crime prevention policy are set by the intervention of an authority regarded as an expert who says that the object of the prevention policy is delinquency. The identification of this expertise corresponds firstly to the identification of the State agencies which define the field of operation of the policies. In the area of crime prevention in post-war France, the Ministry of Justice had a quasi monopoly with the mechanism of the juvenile correction service and the Act of

February 2, 1945 (*Têtard* 1986). The situation became more confused from the sixties on, when certain government departments with social attributions made a notable appearance on the stage of juvenile delinquency prevention with their own set of youth policies; in particular the **Haut Commissariat à la Jeunesse et aux Sports** (High commission for youth and sports) and the Health Ministry within which the prevention clubs and teams were instituted (*Lascoumes* 1977). The social policy of the late sixties shifted the target of social work from the correction to the prevention of maladjustment (*Renouard* 1988). The VIth and VIIth plan reinforced the trend toward preventive social work. At the same time - from 1971 on -, the discourse on exclusion became dominant (*Lenoir* 1974) and community work developed. The professionals in the field of juvenile delinquency prevention, judges and social workers of the juvenile correction service of the Ministry of Justice had to accept the rules of competition and adjust to new forms of intervention, which did not go without difficulties.

The blurring of limits has been subsequently increased along with the growth of the unemployment rate among youths and the decline of the welfare state, which has led to the creation of new forms of social work. A large number of organizations arose in several areas in the early eighties, for instance the **commission nationale pour le développement social des quartiers** (CDSQ, national commission for the social development of the boroughs), the **délégation interministérielle à l'insertion sociale et professionnelle des jeunes** (local branches of the interministerial task force for the social and occupational adjustment of youth) or initiatives of the education department such as priority education zones. They hardly call to mind the notion of crime prevention but try to intervene in a damaged urban social fabric or among underprivileged populations. The summer prevention programmes (called **anti été chaud**) are more specifically crime prevention operations; they were set up in 1982 in an emergency context to prevent the repetition of incidents which happened the year before in the Lyon area (*Dubet et al.* 1986).

The National Commission for the Prevention of Delinquency (CNPD) was set up in 1983, marking an explicit shift in the prevention issue; largely arising from the inability of the State to handle the delinquency problem in a satisfying way for public opinion (*Robert* 1985; *Robert* and *Zauberman* 1985), the CNPD mechanism aimed at reducing social and political tensions focused on the delinquency issue as much as on prevention. It had been intended as a relay between the various ministerial departments to decentralize some of the policies and as an interlocutor for the municipal power. At municipal level, the various mechanisms intersect, complement or compete with each other (*Duprez et al.* 1986; *Chevalier* 1989). The CNDP provided funds for the municipalities covering many activities: training, recreational activities, communication, street lighting, victim support, equipment

of police stations etc... The pragmatism recommended at national level (interview of *Bonnemaison* in *Donzelot* 1985) corresponds to a variety of practices at local level, depending on the actions or the source of funds favoured by the mayors.

The CNDP was left out in 1986-1988 but the local network of the CCPD has continued. In 1988 the CNPD disappeared as such and its budget went to the **Conseil National des villes et du développement social urbain** (National Council of the cities and of urban social development). At present the prevention of delinquency is only a programme run by the **Délégation Interministérielle à la Ville et au développement social urbain** (interministerial mission group for cities and urban social development) and it is gradually fading away into a structure where the local programmes aimed at conurbations, cities or borough are preponderant. The preventive action contracts of the crime prevention program are bound to disappear, as they are absorbed into the city contracts.

This evolution marks the decline (temporary or final?) of the debate about insecurity which is less profitable politically. There is a return to an organization of prevention policies more in line with those practised in the French context since the sixties, depending more on social policies than on specialized institutions. Yet in these rearrangements the Health department has lost its preponderance in the field of social work to the benefit of the departments of urban development, vocational training, education and youth and sports (*Chevalier* 1987, 1988)...

It may be said that what characterizes this rather heterogenous set of structures, which are sometimes grouped together under the name of "new prevention mechanisms" (*Peyre* 1986; *Ion* 1987), is that they give a specific response to local problems ("civil war" atmosphere in a suburban district for instance) or to emergency situations (youth unemployment, growth of the security ideology) and more broadly to try to provide a remedy for the crisis of social work and the welfare state in the context of the new powers granted to the local authorities by the decentralization laws.

2. New Mechanisms, Targets and Actors of Prevention

The blurring of the limits results in a similar blurring of the targets. First restricted to the juveniles at risk called "pre-delinquants", they have been extended to the underprivileged youth within the framework of the social policies of the sixties and seventies. The arrival on the scene of the new prevention actors has not changed the preferential target: urban youths coming from underprivileged categories, most of the time the children of immigrants, but it has added to it others. Reducing the tensions created by the growth of the security ideology involves programmes for victims, actions at block level, urban development, aid for the elders, information

and communication; fighting against the growth of the prison population involves help to pre-sentential care for those who might be remanded in custody (*Faget* 1989).

The application of these specific actions, carried out in a context of financial decentralization, aims at the education of the community. As a result, the new mechanisms have added the community to the traditional targets.

Some of the former actors hardly felt they were concerned by the new prevention mechanisms. This has been the case for the former clubs and teams of prevention which intervened mostly within the framework of the "anti hot summer" programmes. On the other hand, other long-established actors have been looking not only for a new legitimacy (such as the juvenile correction service of the Ministry of Justice), but have been unexpectedly successful: the police particularly with their mobilization for the "anti hot summer" operations. However, the role of the police in these new mechanisms suffers from the uncertainties surrounding the definition of police work (*Monjardet* 1985, 1987); community policing has not succeeded in changing the habits and practices of the institution (*Monet* 1988). In the field of deterrence through the visibility of its agents, the police is facing a serious challenge from private security firms (*Ocqueteau* 1988).

The really new actors of these policies are the locally elected people, those who are responsible for an association, and some social workers who see an opportunity to carry out a participative ideology already thought through and matured in previous experiences (*Ion* 1987).

The Ministry of Justice has carried out its own strategy so that its services are involved in the social policies through some of the new mechanisms: judges for the juveniles, judges for the application of penalties, juvenile correction boards, probation boards (CPAL) prison service... particularly within the local coordination groups. This must be regarded as a policy intended to combat isolation and to promote the participation in local social and preventive actions, even though innovation in that varies greatly among the different courts (*Robert* 1989) and services.

Conclusion

What happens to the notion of delinquency prevention with these structural and organizational changes?

To borrow an expression from *Chevalier* (1988, p.178) "the prevention of delinquency is fading into a socio-preventive macro-concept" with several targets or, as another author wrote, the object is "not only complex and without well-defined limits, but also moving and changing before our eyes" (*Peyre* 1987, p.161). In the

new discourse being constructed about delinquency, the concepts derived from the expertise of specialized actors (the professionals in the penal field: magistrates, social workers, policemen, specialized institutions and criminologists) are no longer operational in the field of sociological research. General prevention has rejoined social action aimed at youth, specialized prevention has seen its targets change and the community is just as much aimed at as the populations at risk. Specific actions carried out by institutions specialized in delinquency control remain, but they have a future only if they rejoin the intersectorial policies which are the source of funds. In the new territorial organization under way, the notion of urban restructuration policy becomes more significant than that of crime prevention. Social policies are shifting toward public policies.

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Commentary

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Crime prevention, both in terms of policy and practice, varies considerably between European countries according to cultural, political and intellectual traditions. There are substantial differences between countries in the way in which crime prevention is perceived and conceptualised and even where perceptions are similar (e.g. the UK and the Netherlands or Denmark and Sweden) policies and practice are often still quite different. Broadly speaking, there are three main approaches to crime prevention - situational, social and community prevention[1] - but there are not only wide variations between European countries in terms of which approaches are favoured but also in terms of the structures devised for planning and co-ordinating crime prevention at the national level.

In the Netherlands and the UK, Inter-ministerial forums devise, plan and co-ordinate crime prevention strategies, whilst in France, Denmark, Sweden, Belgium and Norway, crime prevention is the responsibility of an independent National Council with representatives from various public and private bodies (*Council of Europe* 1988). In other countries, crime prevention is predominantly the responsibility of the Ministry of the Interior/Justice (e.g. Italy, Finland and Greece), the police (West Germany, Austria and Switzerland) or the Public Prosecutor (Poland, Czechoslovakia and Rumania).

Another difference between the countries of Eastern and Western Europe is the extent to which the former tend to perceive the functions of law enforcement and crime prevention as complementary rather than separate entities. In at least some of the Eastern Europe countries (e.g. Bulgaria, Hungary and the USSR) the courts take responsibility not only for adjudication, but also for identifying and resolving the underlying causes of specific offences. So, for example, where an offender is found guilty of theft from the workplace, the employer will be issued with a directive to prevent such thefts from recurring. Failure to comply can result in the

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1 Situational crime prevention is primarily concerned with reducing opportunities for committing offences and consists largely of security and surveillance measures. Social crime prevention consists of measures which tackle the root causes of offending, such as family discord, school failure and unemployment, and the resultant dispositions of individuals to offend. Community crime prevention is concerned with improving the capacity of communities to reduce crime through environmental and community development.

employer being penalised. Thus the courts, rather than merely punishing offenders and relying on the principle of general deterrence to prevent others from committing similar offences, actively try to change the conditions and situations which generate criminal behaviour.

A further and crucial dimension which distinguishes the approach of European countries to preventing crime concerns the role, and in particular the degree of intervention, of the state and the criminal justice system. In Eastern Europe, responsibility for crime prevention is traditionally perceived as the responsibility of the whole of society. Citizens are expected to be involved in the control of crime and the boundary between the role of the criminal justice system and the general public is somewhat blurred. Many of the functions carried out by the police in Western European countries are performed by volunteer citizens in the East. In the USSR, for example, there are more than 300,000 public order squads, consisting of volunteeers who patrol local neighbourhoods, acting as the "eyes and ears" of the police.

There is possibly much to be learnt from the way in which citizens work together in partnership with the police and other agencies of the law in Eastern Europe. But there are also inherent dangers in shifting from a predominantly reactive response to crime as enshrined in the law, to a more proactive response which can lead to "private justice and vigilantism". The Federal Republic of Germany has painful memories of joint police/citizen action and it is perhaps not surprising that the Germans are wary of promulgating the greater involvement of ordinary citizens in neighbourhood policing and crime prevention.

In addition to assisting the police, citizens in Eastern Europe also play an important role in the adjudication of petty crime. Informal tribunals, which are run by ordinary citizens and exclude professional lawyers, carry out some of the functions of what the lower criminal courts in many Western European countries would normally do. Located in the work place, the school or the local neighbourhood, such tribunals can provide an important link between the formal system of crime control and informal sources of social control in the community.

In some respects, the Eastern Europeans practice what some Western European countries are groping towards - the greater involvement of ordinary citizens and non-criminal justice professionals in preventing crime or, more optimistically, enhancing community safety. *Tuck* (1988) comments on this emerging approach with respect to the UK:

> "...there is some ideal not in the past but in the future towards which we are groping, which is a world in which authority and law and the prevention of crime are not solely the responsibility of the state, but emerge from living associations of citizens who control themselves because it is in their joint interest so to do."

Traditionally, the task of preventing crime in Western Europe has been confined to the work of the criminal justice system and in particular the police. In West Germany this still largely holds. However in other countries this has begun to change, most notably in Sweden, Denmark, the Netherlands, the UK and France. In these countries, crime prevention specifically encompasses broad areas of social and public policy, and is increasingly implemented at the local level by individuals, agencies and institutions outside the criminal justice system.

In Denmark, the central thrust of the work of the Danish National Crime Prevention Council consists of combining environmental planning with social and community development. It stresses the importance of empowering local citizens to determine the quality of their lives and special committees are responsible for initiating different aspects of community development. One such committee, the SSP committee, has the task of preventing crime committed by young people and has been established in more than 230 municipalities throughout Denmark.

The SSP committee, which is headed by four local Department chiefs - Police, Education, Social Services and Cultural Affairs - approaches crime prevention through a combination of crisis intervention and the setting up of a more permanent structure to deal with the "root causes" of crime. The SSP committee acts as a kind of catalyst to stimulate the work of local agencies and co-ordinate the efforts of voluntary bodies with that of the public sector. According to *Jensen* (1987), an important strength of the Danish approach lies in the extent to which the police are integrated into local service provision to the community, which has improved both day-to-day and emergency policing.

In France, based on the premise that repressive measures produce diminishing returns and fail to reduce crime or enable people to feel more secure, a social action approach to crime prevention has been developed. An elaborate three tier administrative structure has been set up at national, regional and local levels and in nearly half of all towns with more than 9,000 people Communal Crime Prevention Councils now exist (*Kind* 1987). The emphasis of the Councils is to reduce crime through improving the urban environment, reducing unemployment among the young, improving facilities for education and training, combatting racial discrimination and encouraging social integration.

A key concept in the French crime prevention programme is the assimilation and integration of marginalised groups, particularly youngsters and immigrants. To facilitate this process, a national network of Youth Centres (Mission Locales) has been set up in more than 100 towns and cities. Similar to the Social Units (Sosjale Joenits) in the Netherlands, these centres try to bridge the transition between school and work for the unemployed and the unqualified by offering youth training and advice and assistance on matters such as improving literacy and finding accommo-

dation. They also encourage young people, particularly the unemployed, to set up their own projects as an important way of giving them self-confidence and telling them they are worthy in spite of their difficulties and limitations.

One of the most important features of the French network of Youth Centres concerns the way in which it is embedded within a locally-based, multi-agency network. The difficulties associated with the integration of marginalised young people are firstly how to reach them, secondly how to build up a trusting relationship with them and thirdly how to then do something about meeting their needs and helping them to resolve their problems. Too often the solution to juvenile crime is reduced to providing more or better leisure facilities. But in France, by linking up with other agencies, youth workers can act as intermediaries between young people and the institutions in society from which they feel estranged and the agencies which can alter the social and material conditions that underpin their dispositions towards offending.

It is still early days in France and there are no data as yet which serve to illustrate whether what amounts to the institutionalisation of crime prevention has substantially reduced crime. The only available information comes from the 1987 annual report of the National Council for the Prevention of Crime, which shows that those districts which have CCPC's have experienced slightly larger decreases in crime than those without. But then they may have had more crime to begin with, or crime may have declined in these areas for reasons other than the explicit policies and programmes of the CCPC.

In the Netherlands, community-based crime prevention which focusses on the "root causes" of crime has been endorsed by a Government policy plan entitled "Society and Crime". Produced in 1985 in response to rising crime rates and fears about the erosion of standards of social control, the policy plan outlines current and future organisational and operational measures in the field of crime prevention. In addition to strengthening the traditional institutions of crime control - the police, the courts and the prisons - the policy plan clearly differentiates petty crime from serious crime and with respect to the former sets out three guiding principles:

a) the development of an urban environment according to town-planning and architectural criteria which will present the fewest possible opportunities for crime;

b) the strengthening of the bond between the younger generation and the rest of society;

c) the strengthening of occupational surveillance by drivers, janitors, shop staff, sports coaches, youth workers etc. in respect of potential offenders.

To encourage the implementation of crime prevention projects at the local level, the Dutch Government set up a fund of 45 million guilders (approximately US $ 20 million) for the period 1986 to 1990. A range of projects are being implemented, including projects in the field of urban development, architecture, youth work, education and the retail trade. The emphasis is on trying to encourage local authorities to work together with local schools, shops, residents and voluntary associations in a joint effort to reduce crime.

According to *van Dijk* (1989), victim surveys carried out in 1980, 1986 and 1988 show that crime in the Netherlands has fallen, although police statistics are less favourable. Evaluation reports on projects which encourage surveillance by officials such as tram drivers and concierges are effective, at least in the short term. The Dutch have also had some success with projects which employ unemployed youngsters to repair vandalised property. The Ministry of Justice is responsible for monitoring and evaluating the policy plan and hopes to publish the results by the end of this year.

Turning finally to the UK, the last few years have witnessed a shift in emphasis away from situational crime prevention and towards the development of community crime prevention. During the last decade, attempts at social engineering in Western Europe, during a period in which the welfare state and the principles of welfarism have been in general decline, have tended to be more low-key and grass roots led. The approach to crime prevention in Denmark and France illustrates this trend well. But in the UK, community development initiatives aimed at curbing dispositions towards offending have been largely confined to ad hoc juvenile delinquency projects and the work of the National Association for the Care and Resettlement of Offenders (NACRO). The former tend to target young people at risk, but rarely impinge upon the social and economic conditions which shape their lives (see *Blagg* 1988). There are one or two exceptions, however. One is the wide range of schemes funded by the Department of Education and Science to "promote social responsibility".

Some twenty projects have been funded which vary considerably in their primary orientation. Some are located in schools, others within the remit of the Youth Service; some focus on reducing racism, some on social dissaffection and others on the prevention of vandalism and other forms of delinquency. Most projects are administered through multi-agency forums, involve the wider community and are being evaluated for their effectiveness in reducing juvenile crime.

Another exception concerns developments in the field of urban planning, particularly in relation to slum clearance and housing re-development. Here, criminal policy makers have been led towards attempting to identify the largely unintended consequences of public housing allocation and management practices on crime and victimisation rates. Run-down public housing estates which have received priority

status from the Department of the Environment have received a package of measures to improve living conditions on the estate. Physical improvements and the decentralisation of management, caretaking and maintenance functions have restored a sense of community and improved the capacity of the community to exert a greater degree of informal social control (*Rock* 1988). Some estates which have been prioritised in this way have experienced substantial declines in crime, although not without a suspicion of displacement to surrounding areas (*Power* 1988). A more thorough evaluation is currently in progress.

The work of the National Association for the Care and Re-settlement of Offenders' (NACRO) Safe Neighbourhoods Unit is not dissimilar to the above, except that crime prevention is an explicit goal in their efforts to improve community safety. Co-ordinators are employed on demoralised, run-down public housing estates to act together with local agencies and the police to improve the physical and social conditions on the etate and reduce its vulnerability to vandalism and other forms of petty crime. Again, there is not enough sound evaluative evidence from which to draw firm conclusions about the crime reductive impact of their projects.

It would appear that, in different ways, criminal policy makers in Europe are beginning to unravel the complexities of designing and implementing policies for preventing crime through social development. In contrast to the earlier, large scale community development initiatives, what is emerging is a more low key, small scale, **approach** to community-based crime prevention based on the mobilisation of community resources from the bottom up. The following features are some of the main elements which make up this emerging approach:

1. The development of an effective working partnership between the police, the local authority and local residents.
2. The decentralisation of policy and programme implementation to the neighbourhood level through the setting up of neighbourhood offices and the construction of inter-agency networks.
3. The patient construction of public confidence in the police based on improved methods of community and "beat" policing.
4. The design of preventive programmes which include not only measures to reduce opportunities for offending, but also measures to reduce propensities to offend.
5. The construction of an effective response to violent offending, especially domestic violence, utilising informal dispute resolution techniques where possible.
6. The co-ordination of diversion from court and custody schemes for young offenders with initiatives for providing alternatives in the community.

7. The use of detached or "street" workers as intermediaries between young people at risk in the community and the agencies which can provide some of the resources for alleviating the social and economic deficits underpinning their propensities to offend.

A key task for crime prevention programmes in the future will be to refine the techniques required for differentiating communities according to their needs, their problems, their socio-economic and cultural structure and their resources. Crime pattern analysis is necessary but not sufficient; community analysis is essential too if resources are to be used wisely. Communities which experience very different conditions need to be targetted accordingly. And once a community, as well as a crime profile has been established, then and only then can the process of planning appropriate measures for developing or enhancing community safety begin.

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Commentary

Heike Jung

I. Introduction

The approach to such a wide and basic topic as crime prevention will largely depend on scientific and professional standpoints, positions, perceptions and preferences. Furthermore, differences in the socio-cultural and legal background impose themselves upon the issue. Therefore, it should not be easy, even among a group of experts, to agree on a concrete agenda. Underneath the surface of some commonplace understandings we touch slippery ground, a phenomenon which is not altogether new. Rather, we can detect some controversies of old standing. This does not mean that we should surrender to the complexity of our topic and to the uncertainty as to whether anything new might turn up in the course of our discussion. Not only the widely described fear of crime and the renaissance of the victim's perspective call for a re-appraisal. Also, the development in areas such as economic crime, environmental crime, drug offences, organised crime and the respective official response may have added new tunes to the old melody. Furthermore, the privatisation debate might have its impact. And finally, the continued discussion on the role of the criminal law within the context of prevention policies certainly deserves a closer scrutiny.

II. Crime Prevention, Personal Safety and Fear of Crime

Having learned our lesson from sociologists and victim surveys we know that crime can never be prevented altogether. Therefore, our purpose can only be to hold the system in balance, i.e. to keep an equilibrium between liberty and personal safety. It is therefore as false to nourish the idea of a limitless demand of personal safety as to back such a notion by propagating an individual right to a maximum of safety (see for further discussion of the right to safety *Robbers* 1987). Crime control can only guarantee a certain safety level. As a matter of fact, absolute safety would not even be a desirable goal, for neither society nor the individual would be prepared to pay for the social costs. This is in conformity with the fragmentary approach of the criminal law (*Kaiser* 1985).

It would be worthwhile from a psycho-analytical as well as from a political point of view to look deeper into the question why we tend to locate safety gaps primarily in the crime area. I tend to agree with *Kunz* (1983) who considers fear of crime only as **one** articulation of the general and abstract "Lebensangst". Bearing in mind the general nature of this "Lebensangst", it comes by no means as a surprise that - in our fear of crime - we tend to derive comfort from mere symbolic actions such as the symbolic presence of the police. At the same time, even such symbolic actions may be subject to misinterpretation: They could convey the message that the situation is much worse than the public authorities would admit (*Kunz* 1987; *van Dijk* 1989). Hence, since measures of criminal policy will not really alleviate the general "Lebensangst", a crime prevention strategy should not be unduly concerned with registering every oscillation on the fear of crime seismograph.

III. The "Preventive Overload" of the Criminal Justice System

The instrumentalisation of the repressive criminal justice system for preventive purposes is not altogether new. Much is to be said against the approach to transform built-in preventive mechanisms into strategic goals. I am even more concerned about the fact that it has become all too popular in modern societies to try to achieve more safety via additional criminalisation. The extent to which we rely on criminalisation as such may have to do with the said symbolism. The enactment of a criminal statute may also cover up the growing inability of society and the legislator to cope with the increasing complexity of conflicts and the dimension of risks. Recourse to criminal law may, however, impede the implementation of a more effective system of administrative or private law control mechanisms and other more social forms of regulation. Of course, we cannot, from the individual's point of view, trade in criminal law for other forms of social regulation if that would boil down to the loss of the grown body of legal safeguards inherent in the criminal justice system. This holds true in particular with regard to visions of new forms of social regulation which are supposed to be more democratic, more effective and more social (*Carlen* 1988). On the other hand, being smothered by an elaborated risk-prevention criminal law is no alternative. The preventive overload of the criminal justice system has become the target of critique (*P.-A. Albrecht* 1986; *Beste* 1989; *Krauss* 1989). This preventive overload has been produced by the ambitions of the modern welfare state, which are not easily or at all reconcilable with the liberal concept of the criminal justice system. In a way, we are therefore being thrown back upon present days' ambiguities of the theory of the state (*Grimm* 1986).

IV. Prevention, Planning and Forecasts

Crime Prevention models dwell on planning. *Comte's* programmatic formula "... à voir pour prévoir, à étudier ce qui est afin d'en conclure ce qui sera..." (*Comte* 1844) governs planning in all fields of social activity. However, such planning has always fallen short of positivism's optimistic expectations. Only recently, *Heinz* (1988) has underlined that this is largely due to the limits of forecasts. Our present-day knowledge calls for a prudent assessment with regard to the quality of forecasts as an instrument of crime prevention policies. Of course, this does not mean that we should give up refining on our methods and tools in order to arrive at more valid and meaningful forecasts.

However, the inevitable margin of uncertainty requires a certain flexibility. Also, we have to consider potential "detrimental side-effects" of our actions. Thus, a crime prevention policy will, to a certain extent, operate as a rolling-system pledged to a few fixed points, otherwise reviewing its priorities from time to time.

V. The Role of the Private Element

In this sense, *van Dijk's* thesis to combine the prevention concept with a victim-oriented policy points into the right direction. Within this larger framework, private initiatives for self-protection and for the protection of common goods (e.g. environment) may be regarded as an expression of the citizen's responsibility for himself and the community. Generally speaking, crime prevention policies will have to be more conscious of the private element in crime control. In a way, crime prevention will always be a common effort of the private sphere on the one hand and public authorities on the other. Therefore, more attention will have to be paid to the links between the public and the private sphere and to those interweaving patterns of crime control which have developed despite the traditional dividing line between the public and the private domain (*Jung* 1989; *Ocqueteau* 1988; *Rosenthal-Hoogenboom* 1988). Yet, victim-oriented defensive strategies of prevention such as the concept of defensible space must be viewed in the light of potential detrimental side-effects on the social climate in general (*Kunz* 1987). Likewise the rise of private vigilantism should not be encouraged; it should rather be taken as a signal that the system of crime control appears to be somewhat deficient. If the private element gains too much ground, we risk continuous "law and order"-campaigns, social inequality and a refeudalisation of the criminal justice system. Therefore, the public authorities cannot be discharged from their ultimate responsibility for the peace of the land.

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Commentary

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Jan van Dijk has, with typical style and zeal, undertaken two ambitious tasks. Firstly, he has provided a new conceptualization of crime prevention; and secondly, he has attempted to locate crime prevention within a model of criminal policy. We are greatly indebted to him for the fresh perspective he has brought to a burgeoning and as yet ill defined area of activity.

My general criticism is that *van Dijk* takes an unduly holistic view of criminal justice, and seeks to close circles that would be better left open. At the outset of his paper, *van Dijk* locates crime prevention as being outside the boundaries of criminal justice. In fact, he insists that for both analytical and organizational purposes it is important to distinguish sharply between crime prevention and criminal justice. His approach to victim-oriented activities does not breach this framework and, as *van Dijk* argues, it does give victim support a logical place within crime prevention. It is with regards to aspects of his approach to "offender-oriented" crime prevention that the dificulties, at least for me, begin.

The tripartite approach (primary, secondary and tertiary) to the construction of the crime prevention model works much better with regards to victims than to offenders. Primary offender-oriented crime prevention programmes (*van Dijk's* examples are normative training and truancy prevention in primary schools) certainly have claim to a place within the model. The same might be conceded for secondary offender-oriented crime prevention but that is where the line would have to be drawn. Even with respect to secondary programmes (the examples here are employment training and recreational programmes targeted at high risk groups) there is the likelihood of overlap with criminal justice activities and a very real danger that targeted people will be drawn into the formal apparatus of criminal justice. The huge literature on the net-widening effects of diversion programmes should at the very least make us wary. With respect to tertiary programmes the dangers are even more stark with crime prevention activities "co-ordinated with various activities of the criminal justice system".

While *van Dijk* seeks an "integrated crime policy" I prefer that the stress be placed upon functional fragmentation. Criminal policy is of course concerned with the reduction of crime but it has other purposes, such as safeguarding individuals rights, as well. The "integration" school of criminal justice may in their enthusiasm for harmonic effectiveness for criminal justice undermine crucial protections (*Ruther-*

ford 1986). The crime prevention model set forth by *van Dijk* takes us too far down the slippery road that has been identified by some commentators on criminal justice in the Netherlands (*Peters* 1988). Had *van Dijk* drawn the line at primary offender-oriented crime prevention the connections could then be clearly made with policy and practice outside the criminal justice process. While it may be possible to sustain *van Dijk's* notion that general social, economic, health and housing policies should not be regarded as crime prevention, it is crucial that it is these areas of activity and not the criminal justice apparatus that connect most closely with crime prevention. In brief, the model is unduly pointed in the direction of criminal justice and pays insufficient attention to those aspects of social and economic policy that impinge on the level of crime. As *Leslie Wilkins* has reminded us, what to do about crime and what to do about offenders should be treated as separate questions (*Wilkins* 1984).

In conclusion, my preferred model of crime prevention has a sharper focus on crime events, fear of crime and victims, but goes no further than embracing what *van Dijk* calls primary offender-oriented programmes. The *van Dijk* model is, however, a valuable stimulant for clarifying our thoughts about crime prevention and also criminal policy generally.

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5. Victim-Related Alternatives and the Criminal Justice System: Mediation, Compensation and Restitution

Victim-Related Alternatives to the Criminal Justice System: Compensation, Restitution, and Mediation

Martin Killias

1. Introduction

In all Western legal systems, the victim has lost a lot of its formerly strong position in the criminal procedure over the centuries. The more the criminal justice system cared about finding appropriate ways to deal with the offender, the less it devoted its energies to issues related to the victim and his/her interests. This state of affairs already characterized the criminal justice system in the 18th century (*Weigend* 1989, pp.90-93).

During the 19th century, the victim's position within the criminal process found some new interest. The most important step certainly was *Bonaparte's* "Code de l'Instruction criminelle" of 1808 which introduced the "action civile" as a general feature of the French criminal procedure. The "action civile" entitles the victim to start criminal prosecutions and to bring his/her case to court; if the public prosecutor decides to take the case into his own hands, the victim has, before the examining magistrate ("juge d'instruction") and the court, the position of a subsidiary prosecuting party. As such, he/she is entitled to seek restitution of stolen objects and/or compensation of damages before the criminal court by filing a civil law suit within the criminal procedure (*Stephani et al.* 1984, no.229-253). The basic accomplishment which made the action civile system feasible was the creation, during the French Revolution, of a justice system which attributes criminal and civil cases to the same court (*Stephani et al.* 1984, no.81). All these features still characterize the modern French criminal justice system.

In many countries where the French influence was substantial during the 19th century, the action civile system shaped to some degree the reforms of the criminal procedure during the early 19th century. This was true, to some degree at least and among others, for Italy, Spain, Portugal, Belgium and about half of the Swiss cantons (*Clerc* 1955, p.76; *Killias* 1986). In the German states, however, the victim continued to play a marginal role; when the Law of Criminal Procedure became centralized, in 1877, he/she even lost the possibility to sue the offender for civil damages before the criminal court (which had been introduced by some German

principalities during the early 19th century, cf. *Weigend* 1989, pp.139-140, 164-166). The German system had a lasting impact on the legislation of many European countries.

This may explain why, at the end of the 19th century, several authors criticized the criminal justice system for forgetting the victim and his/her needs. Among the first who wrote in that sense were *Garofalo* and *Ferri*. During several penological meetings of the last century, *Garofalo* and others expressed the view that compensation of the victim should be among the first priorities of the criminal justice system (*Harland* 1983). Some of these ideas had been taken over in *Ferri's* proposal of a new Italian Criminal Code (of 1921). He suggested, for example, that fines should be paid into a special fund out of which the State whould compensate victims who have no chance to get payments from other sources, i.e. especially from the offender (*Clerc* 1942), and that the benefits from prison work should be given to the victim (*Exner* 1929). Among the actual legal provisions directly influenced by *Ferri* is section 60 of the Swiss Criminal Code (of 1937) which allows to compensate needy victims out of the fine paid by "his" criminal. The rather narrowly defined conditions which have to be met made, however, that section 60 has hardly ever been applied in 50 years. It shares the fate of other suggestions made by GAROFALO and others at the turn of the century, which, generally, seem to have shaped the rhetorics rather than the practice of victim-related policies (*Harland* 1983).

The last twenty years have, once again, brought a renewed interest for the victim and his/her needs. It is likely that victimization surveys have played an important role in this change of climate (*Dünkel* 1985). Some authors such as for instance *Christie* (1977) and *Hulsman* (*Hulsman* and *Bernat de Célis* 1982) have vigorously criticized the State and the criminal justice system for "robbing" the victim and the offender of "their" conflict. Mediation and reconciliation of the victim and the offender are among the suggestions resulting from that (partially abolitionist) perspective. Others have rediscovered the victim's need for compensation. All this movement has resulted in a bulk of papers, committee reports, legislative initiatives, and new laws.

Within this report, it will not be possible to follow these developments in the several countries in detail. We shall try, however, to discover some communalities among the national trends which may allow to evaluate the actual state of affairs. Did the changes over the last years really improve the situation of victims, or have some other goals been met? Are policies which are said to be in the victims' interest merely rhetoric and symbolic (*Elias* 1983)?

Since any evaluation has to start by identifying goals and expectations (*Glaser* and *Erez* 1988, pp.9-19), we shall try to see, in the next section, what goals the several

reforms are expected to serve. In the third paragraph, we shall see to what extent current research allows to assess whether these expectations have been met. In a final section, we shall address the question of where to go from here.

Our focus will be on compensation and mediation. Restitution is indeed a special case of compensation and does, therefore, not need special attention. (Restitution means, in continental terminology, that the victim gets back a specific object, i.e. usually a stolen good, whereas compensation is the payment of an amount of money or any other performance for damages including pain and suffering.) Even in this restricted field, it is, unfortunately, beyond the author's possibilities to give a full account of the existing literature. The following review should, therefore, be viewed as highly selective and subjective; its purpose is, indeed, to initiate a debate on how to assess the current situation, and this necessarily implies a somewhat one-sided perspective. Besides leaving aside many important writings on the subject, this report will not deal with other relevant topics such as, for example, the effectiveness of victim support schemes. Even with such limitations, there remain, as we shall see, many difficult questions to be dealt with in this seminar.

2. Goals of Existing Compensation and Mediation Schemes

2.1 Compensation of the Victim

When *Garofalo* and *Ferri* in the 19th century, as well as *Schafer* (1968, pp.105-115) and many modern writers on the subject criticized the criminal justice system for not caring about the victim, they were concerned particularly about the victim's difficulties in getting compensation.

Therefore, most initiatives and schemes addressed in one way or another this issue by offering the victim better chances of getting compensation, either from the offender or from the State. Most Western countries do have State compensation programmes for needy victims or are about to introduce them. In many legislations, the victim has been offered new ways to get compensation from the offender, either through compensation orders or through mediation between the parties.

Implicitly, all these initiataives take for granted that victims seek compensation or that this goal is among their first priorities.

2.2 Conciliation between the Victim and the Offender

In many countries, special mediation programmes have been established in order to facilitate the conciliation between the parties involved in a crime. In some countries, private organizations have been established which try to mediate be-

tween the parties (for details, see *Weigend* 1989, pp.257-273). In other countries, special mediating bodies have been established which serve as a kind of governmental branch, such as the "gesellschaftliche Gerichte" in the German Democratic Republic and in other countries of Eastern Europe (*Weigend* 1989, pp.244-257). In a third group of countries, the police and/or prosecutors care about mediation in the course of the investigation, i.e. usually before bringing the case before the court. This kind of "plea bargaining" seems to be rather common in many Western countries and particularly in Europe, as a survey undertaken by an Expert's Committee of the Council of Europe revealed (Committee on the position of the victim in society and in the criminal procedure). Interestingly, such practices do exist even in countries with the so-called legality maxim, since in those countries many offences which are directed against individual victims are prosecuted only if the victim brings a charge against the offender (which can be withdrawn in the course of prosecution).

In some countries, such as in France, the victim support schemes seem to care also about mediation, as the name of their central body indicates: Institut national d'aide aux victimes et de médiation (INAVEM). This means that the French victim support schemes serve a dual function, namely assistance to victims and, at the same time, mediation between the victim and the offender.

Most mediation programmes seek to reach an arrangement between the parties involved in a crime without the intervention of a formal procedure. Such an arrangement may, of course, satisfy the victim's claims for compensation in a short and informal procedure. Besides, it is hoped that it will help to (re)conciliate the parties, i.e. reduce mutual anger and frustration and, hereby, prevent future conflicts and offences involving the same parties.

Implicitly, mediation programmes admit that many offences brought before the courts are the result of lasting private conflicts, and that bringing about peace between the parties is the best way of preventing future crime. In the abolitionist perspective, it is even hoped that the mediation of private conflicts will, in the long run, replace the criminal justice system (*Christie* 1977; *Hulsman* and *Bernat de Célis* 1982; *Hanak* 1982).

2.3 Discharge of the Criminal Justice System

Mediation may also serve some hidden purposes such as saving costs (*Stangl* 1988, pp.147-150) by discharging the criminal justice system of some minor, but time-consuming cases. Assault and injury often are the result of some conflict, i.e. an interaction between two or even more persons involving many ambiguous situa-

tions. Even when the roles of the persons involved were rather clear-cut, which by no means characterizes all such cases, it is soften energy- and time-consuming to gather the evidence necessary for a conviction.

Under such circumstances, the police are, as a German participant observation study revealed (*Kürzinger* 1978), very reluctant to take up a charge of assault, but prefer dealing with it informally, i.e. by seeking some kind of short-term arrangement. This seems, according to the same study, to be particularly true in the case of lower class complainants. There is reason to suspect that some police and criminal justice officials view the creation of mediation centers rather positively, since it may help to reduce their case-load (*Weigend* 1989, p.198). Besides, the police are constantly asked to intervene in situations which are not related to crime (*Southgate* and *Ekblom* 1984, pp.11-15). Since the police do not particularly appreciate this kind of duties (and might wish to concentrate more on what they see as their primary task), they may welcome the possibility to refer some of these service problems to victim support schemes (*Southgate* and *Ekblom* 1984, pp.25-27). Domestic disputes and conflicts between neighbours may be among the kind of affairs the police would like most to refer to mediation services.

3. Evaluation of Compensation and Mediation Schemes

In this section, we shall try to assess to what degree the existing compensation and mediation schemes meet the goals and expectations which have been identified in the preceding paragraph.

3.1 Compensation of the Victim

3.1.1 Action Civile Systems

Unfortunately, there is only little research evaluating the action civile and its effects upon victims in France and in other countries which took over, into their legislation, some features of the action civile system. As far as the law entitles the victim to bring a civil law suit for damages against the offender before the criminal court, there are some indications that this redress is rather frequently used in some countries such as in France (*Sabatie* 1985, p.40) and in Switzerland (*Killias* 1986, pp.20-23), but not at all in some others as, e.g., in Germany (*Kühne* 1986; *Weigend* 1989, pp.164-167). Given the lack of evaluation research in this field, the reasons for this difference in popularity are not entirely clear. Among the weaknesses of this redress seems to be that, except in France, the criminal court can refuse hearing a civil law suit without giving reasons. As far as the success rate of "actions civiles" before the criminal courts is concerned, a study from a Paris court revealed that

only one in four victims who file such a suit get at least partial compensation payments from the offender (*Trioux* 1985), but over 90 per cent succeed in obtaining legal satisfaction (concerning their civil claims) from the criminal court (*Sabatie* 1985, p.44).

3.1.2 Compensation through "Plea Bargaining"

In several countries such as France, Holland and Germany, the prosecutors use increasingly their discretion in order to dismiss cases when the offender has paid appropriate compensation to the victim, or when he has accepted to do so (*Killias* 1986, pp.6-15, using the survey by the Council of Europe Expert Committee on the victim and criminal and social policy). Other countries consider extending or introducing such procedures into their law, such as Germany (*Weigend* 1989, pp.284-291) and Switzerland (section 66ter of the Criminal Code, as proposed by the Committee who prepared the draft of a Law on Victim Assistance in 1986). Since in Germany prosecutors are not obliged to pay attention to the aspect of compensation, only few cases are dismissed under such a condition, i.e. less than 10 per cent of the eligible cases (*Sessar* 1983, p.148; *Riess* 1984, no.47). As far as the offender can be required to pay damages to the victim before being paroled or in order to get his sentence suspended, the experience seems to be comparable in Germany (*Riess* 1984, no.47; *Sessar* 1983, p.148; *Albrecht* 1982, p.167) as well as in Switzerland (*Switzerland* 1986, pp.137-138; *Gisel-Bugnon* 1984, pp.52-57). Again, the reason might be that the decision-makers (judges, correctional authorities) are not obliged to consider the compensation of the victim.

Overall, there is a serious lack of evaluation research in this area. In some countries and under certain conditions, compensation of the victim may be achieved where prosecutors, judges and/or correctional authorities are entitled to offer the offender some advantage in exchange, i.e. the dismissal of the case, a suspended sentence or parole. In other countries, very similar legal provisions seem to produce no such effect. Given the lack of evaluation research, it is not clear what factors may account for this differential success, but it may be that criminal justice officials are not too willing to seek compensation of the victim unless they are obliged to do so. Thus, it seems that they dismiss cases or suspend sentences for reasons which are not related to the victim, but to organizational needs of the criminal justice system.

3.1.3 Compensation Orders

Since, following *Margret Fry's* and *Schafer's* (1968, pp.112-115) suggestions, compensation orders have been introduced in Britain in 1972 (*Jung* 1987, pp.501-504), this new type of sanction has provoked a strong international interest and some competent evaluation research.

Shapland et al. (1985, p.136) evaluated the amounts awarded to victims by compensation orders in 1979-1980. In their sample, most victims received only minimal amounts, i.e. £ 44 on an average in cases of injury and £ 22 in cases of theft; only in one case did that amount exceed £ 100. Since that time, the amounts awarded increased substantially. But in 1982, more than half of the compensations did not reach £ 100 (*Jung* 1987, p.512). Besides, only in 7 to 15 per cent of the sentencing decisions do English courts impose a compensation order (*Jung* 1987, p.511). In this light, it is not so surprising that victims are much less enthusiastic about compensation orders than scholars and policy makers. Among the frequently expressed reasons for disappointment are also the delays in the payment of compensation (*Newburn* and *de Beyrecave* 1988).

Similar results concerning the disappointment of victims have been found in the United States (see the review of evaluation research by *Elias* 1983, 1984).

Independently of what victims may feel about compensation orders, the amounts awarded, according to the study by *Shapland et al.* (1985, p.136), should remind that, by this system, victims do by far not get full compensation; at best, a minor fraction of their damages will be covered. Therefore, this system leaves the question largely unanswered how victims can get compensation.

3.1.4 Compensation by the State

Over the last ten years, many (if not most) western countries have introduced State compensation programs. These schemes share some common features. For example, only victims of crimes against the person who cannot get reparation from other sources and who are really needy, are eligible for this support (*Lombard* 1983, pp.94-102).

Compared with the amounts awarded by compensation orders, the average amounts victims receive from State compensation schemes are substantially higher. In 1984 and in U.S. dollars, the average amount paid (rounded and approximate figures) was around 2,000 in Germany, around 5,000 in Austria, around 8,000 in France, around 2,500 in the United Kingdom (see *Switzerland* 1986, pp.22-28), around 2,500 in Canada (*Department of Justice of Canada* 1986, p.37) and around 2,000 in South Australia (in 1980; see *South Australia* 1981, p.112). According to the same sources and for the same years, the number of successful applications (i.e. awards granted) was 5,627 in Germany, 79 in Austria, 201 in France, 22,923 in the United Kingdom, 3,732 in Canada (p.14) and 87 in South Australia (over 6 months). Thus, the number of successful applicants is rather restricted in most countries, and only a few out of all victims of crimes against the person get compensation from the State. In Germany, for example, 5 to 19 per cent of the victims of violent crimes apply in the several provinces, and the rate of successful applications varies from 11 to 40 per cent (*Villmow* and *Plemper* 1984, p.79).

Overall, there is some reason for scepticism. Compared with the considerable praise these schemes received a few years ago, they do by no means respond to the need for compensation produced by crime in modern societies. Only victims of a few types of offences are compensated, and the amounts awarded may cover only a small part of damages. Nor is it clear to what extent payments awarded by State compensation schemes do replace support from other governmental sources such as welfare programs and health insurance (*Villmow* and *Plemper* 1984, p.81). In sum, compensation of victims by the State is not the panacea as which it used to be presented a few years ago.

3.1.5 Compensation through Civil Procedures

In theory at least and in all countries, every victim is entitled to seek compensation through a damage suit before the civil law court. This redress used to be the classical way offered to victims who wish to sue the offender. In practice, however, this alternative is, in most cases, useless or even counterproductive. Civil procedures are extremely expensive; whenever the amounts at stake are not very substantial, say about 50,000 dollars or more, the costs risk easily to exceed what the successful party might get in case of the best possible outcome. If the defendant happens to be an offender, there is a high chance that he will be unable to pay the damages awarded to the victim. In that case, the victim will not only lose any chance of getting compensation, but he/she may even have to pay his/her lawyers (since the defendant may be unable to honor their services). In sum, the civil procedure has developed, over the last few decades, to a game designed for companies or exceptionally wealthy parties.

These defects of the civil procedure may be so obvious to all observers that, to this author's knowledge no evaluation research has been undertaken on the outcome of suits for damages brought by victims before the civil courts. Nonetheless, the ineffectiveness and irrelevance of civil courts in the field of victim compensation should not make us forget that all claims of victims for compensation are, basically, founded in civil law and that our concern with the compensation of victims is, ultimately, rooted in a crisis of civil law and civil procedure.

Logically, one might react to this state of affairs by calling for a reform of the civil procedure. Obviously, such an approach might not be realistic, since the defects of the civil procedure are deeply rooted in its actual strucutre and historic development. Implicitly, virtually all observers seem to share this impression, since they are consistently looking for totally different victim compensation schemes and never considered reforms within the law of civil procedure.

3.2 Conciliation of Victim and Offender

In an abolitionist perspective, mediation of conflicts is the corner-stone of a new approach to social peace. It is hoped that mediation occurring outside the setting of formal procedures will reconcile the parties and settle the conflicts which have resulted in a criminal offence. Among the ways to bring about this understanding, meetings between the offender and the victim are considered especially desirable (*Brenzikofer* 1986).

As *Weigend* (1989, pp.322-324) concludes his review of such programmes in the United States and in Canada, there is not much empirical support that they do really meet these goals. It is true that many victims express their satisfaction with the services offered by mediation centres, but this may be due to the kind of cases which are selected for mediation, as well as with the respondents' gratitude for the services offered without costs (*Weigend* 1989, p.312). There is also some indication that meeting the offender does not necessarily reduce conflict and feelings of frustration. According to data from the crime survey in German and Italian-speaking Switzerland, victims of personal crimes who did not know the offender personally expressed more resentment and frustration after having met him, than those who never saw him again (*Killias* 1989b). It is true that victims who knew the offender do not express more anger and frustration after having met him again, but they do not express significantly less such feelings either. In other words, meetings between the parties involved in a crime do not necessarily reduce frustration and conflicts, but may even increase them under certain circumstances. Although the data reviewed here do not allow to assess mediation programmes, since the questionnaire did not ask specifically about the circumstances of the meeting, they still may put into question the general desirability of meetings between the victim and the offender, particularly if they did not know each other before. *Schultz* (1987, p.142) may be right in expressing some reservations about such a policy in his draft of a new Swiss criminal code.

Whatever the effect of meetings between the victim and the offender may be, this form of mediation will definitively remain ineffective in all cases where the offender is not known to the police. In other words, in most cases of burglary, larceny and mugging, there is no known offender with whom the victim could be reconciled. And even if the police succeed in identifying the offender, it remains doubtful whether there remains much room for mediation whenever the offender chooses the victim for no obvious reason (*Voss* 1989, p.48). In conclusion, it seems very doubtful whether interpersonal conflicts are at the roots of much crime (*Hanak* 1982). Even if this were the case, it seems obvious that crimes among persons who know each other tend to be reported to the police rather rarely (*Skogan* 1984; *Killias* 1989a, p.127). And if they are, it is likely that the victim is no longer interested in restoring a relationship with the offender (*Voss* 1989, p.48).

Therefore, even if mediation procedures were highly effective, conflict management could never become the favourite response to the kind of crimes the police usually have to deal with. And even if mediation were highly effective in restoring peace after interpersonal conflicts and, hereby, preventing future offences involving the same parties, it never would produce more than a marginal reduction in crime. Thus, mediation may not be inappropriate in itself, but the expectations behind it may be unfounded.

3.3 Discharge of the Criminal Justice System

In his review of American evaluation research, *Weigend* (1989, p.317) concludes that mediation schemes have, so far, not reduced the case-load of the criminal justice system to any substantial degree. Two reasons may be responsible for this outcome: first, most mediation centres suffer from too few cases being referred to them; second, many of the cases they deal with would not have been brought to court. This may lead to believe that mediation schemes produce a widening of the net of social control. Following *Weigend* (1989, p.332), we may say that this consequence is not inacceptable in itself: as far as "private'" conflicts are a matter of serious concern for some people, it may be justified to offer them a body to whom they can turn, particularly if they prefer not to see the police involved.

So far, it is not clear to what extent the various forms of mediation outside the criminal justice system do produce net-widening effects, and of what kind and with what implications.

3.4 Are Victim-Related Alternatives in the Interest of Victims?

So far, we have been concerned with the question whether the existing compensation and mediation schemes meet their goals as they have been identified under paragraph 2. In this section, we shall try to see whether these goals are in line with the expectations of victims, as they have been assessed mainly through victimization surveys.

It may be important to clarify whose point of view should be considered in this connection. According to some surveys, most people seem to favour some sort of mediation and reparation of damages (*Sessar et al.* 1986, concerning a survey in Hamburg). In some way, this comes as no surprise, since compensation and reconciliation are, among the sanctions available, by far the most constructive options. When victims are asked about the reasons which led them to report a crime to the police, some rather different motivations appear which justify some scepticism about the general popularity of victim-related alternatives. This becomes even more apparent when victims are invited to really come to a mediation meeting (*Voss* 1989, p.43).

In virtually all victimization surveys, victims who had not reported a crime were asked why they had failed to do so. Whatever the type of offence and the circumstances of its occurrence, the modal reason given is that the matter was not serious enough, or the like (*Skogan* 1984). Unfortunately, most victimization surveys did not include questions on why a certain offence had been reported to the police. In the few surveys which did so such as the American National Crime Survey (*Jamieson* and *Flanagan* 1987, pp.156-157) and the Swiss Crime Survey (*Killias* 1989, pp.115-116), an interesting and consistent pattern becomes apparent: among victims of theft and other property offences, the main reason given is the hope to get compensation (either from the offender or an insurance company); among victims of offences against the person (i.e. robbery, assault, rape), about two thirds give reasons which express their expectation that the offender will be punished, or that something will be done about him - to use the expression coined by *Wilkins* (1984, p.1). Since victims of personal crime have, in most cases, not suffered from substantial material damages, the low priority given to this aspect seems feasible, as well as the strong interest in compensation among victims of property offences.

This may shed some doubt upon the State compensation programmes and the way they operate. Since only victims of crimes against the person, but not victims of property offences are eligible for financial support from the government, the question arises whether these schemes do not exclude victims who might be the most interested in this kind of help, and offer compensation to those who may have other priorities. When Swiss victims of personal crime were asked whether or not they might have applied for compensation if such a scheme had existed in Switzerland at the time they were victimized, only 34 per cent turned out to have suffered from physical and/or psychological damage which might suit for compensation, and only 7 per cent said they would probably have applied. Given other restrictions of the proposed Government compensation scheme such as the financial need of the victim, we may conclude that this programme will improve, at best, the situation of perhaps 2 per cent of all victims of personal crime (*Killias* 1989a, pp.108-109).

State compensation programmes do have to restrict the eligibility of victims in order to prevent abuses. The doubts which are expressed here should, therefore, not be understood as a demand for a less restrictive policy in this area. Compensation by the State may also have its merits. Even if such programmes are of marginal interest to victims of personal crime, they may offer important benefits to some of them who might also be the most needy. But there is reason to doubt whether good victims' policy should focus that much upon compensation (by the State or the offender).

Of course, compensation may play a much more prominent role in the case of property offences. As we have seen, victims of theft and other such offences are foremost interested in compensation, and they are, according to British data, much

more interested in mediation programmes (which they may see as an appropriate way to get payments from the offender) than are the victims of personal crime (*Maguire* and *Corbett* 1987, p.227). In property offences, however, the offender is likely to be unkonwn; if he has been arrested, there is often no room for mediation (as a way to informal compensation), since many property offenders have criminal records which make an informal settlement unlikely, if not impossible. Indeed, there seems to be wide consensus that prosecution dismissals and other informal dispositions should not be offered, as a "reward" for compensation paid to the victim, to serious or multi-offenders.

Again, our conclusion is not that the criminal justice system should not care about compensation of the victims' damages, or that mediation as a means to reach an agreement with the offender concerning compensation should be dismissed. Rather, the conclusion is that compensation and mediation should not be the only corner-stones of policies designed to improve the position of victims, given the many restrictions which operate in practice upon such schemes. Besides, victims and policy makers may have unrealistic expectations concerning the possible outcome of mediation. Indeed, in Germany (*Sessar* 1986; *Sessar et al.* 1986) as well in Britain (*Maguire* and *Corbett* 1987, p.227-231), many victims say that they would like to meet the offender (although less so victims of personal crimes). When asked about their expectations, most among the British respondents said they would like to learn the reasons why the offender had committed the crime, and/or hear his excuses. Such expectations are likely to end in disappointment and frustration. As we know from daily experience, many offenders tend to rationalize their acts, sometimes even by blaming the victim. Hearing this kind of defence can, of course, only exacerbate existing resentments. This may explain indeed why, according to Swiss data, victims of personal crime express more feelings of frustration after having met the offender again (see above 3.2).

Beyond all these critiques of compensation and mediation, we should perhaps turn again to the views expressed by victims. When asked about the reasons for having reported a crime to the police, we have seen that most victims of personal crime did so because they felt that something should be done about the offender. Indeed, answers like "to prevent him from doing it again", "because I felt obliged to do so", and "that he gets punished" can be interpreted as expressing some underlying expectation, namely that the criminal justice system should care about the offender. Such an expectation goes beyond the immediate individualistic concerns of the victim; indeed, it seeks the common interest and joins almost perfectly other goals of the criminal justice system.

The criminal justice system hardly meets that kind of expectation by offering mediation and compensation. It may be ironic that by rediscovering the victim and his/her individualistic needs, we may have forgotten that the criminal justice system's general concerns are very much shared by the victims.

Good victims' policy may, therefore, care about the common interest as much as about the victims' individualistic needs. In future research, we should pay more attention to the reasons of dissatisfaction among victims. According to the yet preliminary data of the International Crime Survey, as well as according to British (*Maguire* and *Corbett* 1987, p.232) and Swiss data (*Killias* 1989a, pp.137-143), it seems that victims of personal crime are significantly less satisfied with the police and the criminal justice system than victims of property offences. This may be due to a more reserved attitude among the police towards personal crimes in general and assault in particular (*Kürzinger* 1978, p.236, see also above 2.3), but it could equally well be explained by the expectations held by victims of personal and property offences, respectively. Since victims of personal crime are by far more concerned about the treatment of the offender, it seems feasible that the lack of a credible response on the side of the police and the criminal justice system leads to dissatisfaction. The failure to keep the victim informed about the progress of his case (*Shapland et al.* 1985, pp.48-50; *Maguire* and *Corbett* 1987, p.234), as well as releasing the offender (or a suspended sentence) may provoke feelings of frustration (*Shapland et al.* 1985, pp.72-74; *Killias* 1989a, p.143) for reasons which are, given the lack of research, not entirely clear so far, but which might have to do with the victims' impression that the criminal justice system does not respond as expected. It is true that victims are, in general, not more punitive than non-victims, and victims of personal crime are no exception to this rule (cf. e.g. *Killias* 1989a, pp.180-181). This should not lead us to assume, however, that victims are totally uninterested in punishment. It rather seems that there is, overall, more consensus than divergence of views between victims, the general public, and the criminal justice system.

Thus, victims may be less interested in alternatives to the criminal justice system, than in a better consideration of their individualistic needs within existing procedures and schemes. In the following paragraph, we shall see what could be done in this respect.

4. Are there Alternatives to the Alternatives?

If compensation and mediation are no alternative to the criminal justice system, our conclusion does not necessarily imply that nothing should be changed. As we have seen, compensation and mediation schemes have their merits in particular domains. Therefore, the question arises as to how these innovations could be extended and improved within the given criminal justice system. We shall address this issue in two steps.

4.1 Should Compensation become a Penal Sanction?

In England and Wales as in many American jurisdictions, compensation (restitution) has been introduced as a penal sanction which can be imposed upon the offender, alone or in combination with other punishments. It can usually be enforced according to the rules governing the execution of fines (*Jung* 1987, pp.509-510).

This solution may be appropriate under an Anglo-Saxon legal system where penal and civil law jurisdictions are strictly separated, i.e. where the criminal court is absolutely unable to hear civil law suits (*Jung* 1987, pp.501-504). In some way, one may say that the British compensation order is, functionally speaking, an equivalent to the French "action civile" or the German "Adhäsionsklage", since it entitles the criminal court to rule that the offender should pay damages to the victim. However, given the civil character of damage suits, it seems to have been easier, under the Anglo-Saxon legal system, to introduce it as a punishment, instead of extending the jurisdiction of criminal courts to civil law matters which are related to a crime. Given these constraints of the Anglo-Saxon legal tradition, the introduction of compensation orders may have been a pragmatically sound response to the given problem.

Nowadays, many countries on the European continent consider introducing the compensation order into their law. It also figures among the recommendations of the Council of Europe on the position of the victim in the framework of criminal law and procedure (1985, section 11). Interestingly, the current debate on the European continent is centred more around this new penal sanction than around ways to develop existing equivalents of the continental law. This is astonishing because the penal and civil jurisdictions are much less strictly separated on the European continent, and civil law suits (for damages connected with a crime) could easily be dealt with by the criminal courts. Indeed, this system has been in operation in many continental European countries for a very long period, particularly in France where it had already been introduced in 1808 (see above paragraph 1). This approach also seems to be the most appropriate one for several reasons. For example, there is a highly sophisticated jurisprudence concerning the assessment of damages which is directly relevant in awarding compensation to the victim. Civil damages also avoid complex issues which arise when civil claims are to be enforced according to the severe rules which usually apply to fines; is it, in other words, in line with our constitutional principles when debts are ultimately commuted into prison terms? And how should the compensation order rank within the hierarchy of existing penal sanctions? Is it, for example, more or less severe than a fine?

Again, these remarks are not written to criticize the new British compensation order, but to remind continental Europeans that there might be a better alternative available in their existing law. Even if many victims in France seem to display little

interest in the criminal procedure, it is noteworthy that a very substantial proportion among them file an "action civile" which is successful in more than 90 per cent of cases (*Sabatie* 1985). Even if many of those judgements cannot finally be enforced, it seems that the proportion of victims who get payments from the offender is, overall, far from being negligible. Keeping the French experience in mind, it is surprising that many continental authors writing on this subject seem to assume that such alternatives are beyond redemption. Perhaps it may be good to rediscover that the Atlantic Ocean does not begin just behind the Rhine River.

Of course, the current "action civile" system may need some reshaping in several countries. In Switzerland, for example, attempts are currently made to oblige the criminal courts to decide on the civil law suit of the victim, and to prevent them from referring such suits to civil courts, except if the amount at stake is very substantial. Another proposal suggests to amend section 60 of the Criminal Code in order to pass the amount of fines paid by the offender to the victim in almost all cases, i.e. the restrictions under the current law (see above paragraph 1) should be repealed. Similar steps are currently being studied in other countries as well. Thus, the "action civile" is likely to become much more effective in not too far a future.

4.2 Should We Care about Mediation?

Countries with the opportunity maxim have a long tradition in mediating between victim and offender. Also, countries with the legality maxim are increasingly interested in such procedures. According to sections 42 and 167 of the Austrian Penal Code, for example, the offender is no longer prosecuted for minor offences whenever he has compensated the victim and his record does not call for a penal intervention. Similar reforms are currently under study in Switzerland (*Schultz* 1987: proposed section 55).

Such procedures are appealing in many aspects. The question is, in this author's eyes, not so much whether we approve of them or not, but rather under what conditions they should operate. A few general principles may be presented here:

- Whenever the other legal requirements are met, it may be preferable to allow prosecution dismissals and similar settlements not only when the offender has fully compensated the victim's damages, but whenever he has paid what could be reasonably expected, given the parties' condition and the seriousness of damages.
- The victim should have an appeal to a court whenever the police or the prosecutor refuse to take up a charge, or decide to dismiss a case. Otherwise, those procedures are likely to serve the discharge of the criminal justice system rather than the interests of the victim.

- This right to appeal may also oblige prosecutor's offices to develop internal guidelines covering the dismissal of cases (see on this *Weigend* 1978). Such guidelines may be desirable in themselves, since they help to control discretion in this particularly sensitive area.
- Instead of setting up special mediation centres, or leaving this task to the police (*Kunz* 1987), it seems preferable that prosecutors and judges take mediation into their own hands, as they do routinely in civil law cases. Such meetings can be rather informal in nature, without too much risk of jeopardizing the parties' right to a fair trial. Indeed, this risk cannot be ignored if such negociations take place at the police level or in a priate mediation centre (*Weigend* 1989, pp.334-339; *Kondziela* 1989).

Taken together, these measures may allow the realisation of most of the feasible goals of mediation and still preserve that minimum of due process which we consider indispensable.

5. Conclusion

Victim-related alternatives to the criminal justice system have been welcomed very enthusiastically over the past ten years, particularly in Europe. One may suspect that continental criminology, criminal law and crime policy alike were in need of a new myth after the fading away of rehabilitation as the central theme of scholarly debate (*Feltes* 1985). As we have seen, many expectations in connection with compensation and mediation have been excessive and unrealistic, and many proposals have been ill-suited to continental criminal law and procedure. It seems as if compensation and mediation owed their attractiveness to the climate surrounding continental criminology rather than to their empirical effectiveness. Obviously, compensation and mediation are attractive to virtually all tendencies which currently exist within criminology and criminal law, from abolitionists to thinkers in the line of "just deserts" and late defenders of rehabilitation. But most of all, compensation and mediation are highly plausible (*Beste* 1987) and morally desirable. Since continental criminology used to be constantly concerned about improving the morality of offenders (and people in general) through rehabilitation and social work, it makes sense that it welcomes such a new form of promoting morality much more than new approaches such as situational crime prevention which, in *Ronald Clarke's* words (*Clarke* 1983, p.251), reduce crime "without any moral improvement". The systematic invocation of deplacement problems illustrates quite well how morally inacceptable such an approach may be to many continental criminologists.

For compensation and mediation as well as for the victims' interests, the moral bias of European criminology may be threatening in the long run. The new topic may fade away (as did rehabilitation of offenders) once its ideological attractiveness has gone. As in the case of rehabilitation, it may well be that dropping victims' policies will go far beyond what might be empirically justified. There are many useful, realistic and empirically sound ideas behind compensation and mediation. When carefully implemented, they could substantially improve the criminal procedure in many Western countries. Let's give these ideas a chance, by being modest and realistic!

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Commentary

Tony Peters

Introductory Considerations

Professor *Killias'* balanced paper is a stimulating document which contains in several parts of it a presentation of a broad selection of fact-finding linked up with a series of clearly articulated perceptions and views on the meaning and the value of compensation and mediation as victim-related alternatives.

Since he perceives continental criminologists' interest in a victim-centered approach of criminal justice as a morally loaded and desirable development, it is to be feared that the inevitable disappointment about the outcome of a lot of such programmes may in the long run provoke a policy in which victims lose more of the attention than evaluative research justifies.

The author is in favour of a modest and realistic use of carefully selected and implemented ideas behind such programmes in order to improve the criminal procedure.

I'd like to question and to comment on a few of the central ideas presented in the paper.

Although joining very much with the way the analysis is carried out and appreciating the evaluation of the available research outcome, one gets the feeling that the author's perspective on the possible impact and the further development of victim-centered alternatives is a rather pessimistic one.

A systematic confrontation between, on the one hand, the pursued goals formulated on an ideological basis and supported with sympathy by various groups and, on the other hand, the poor and weak results of the programmes in action, is a suitable technique to cool the enthusiasm. The cumulative presentation of a series of unmet expectations and the qualification of some programmes as ill-suited to continental criminal law and procedure must have the effect of a cold shower for those believing to be able to influence the criminal justice system in a fundamental way by developing victim-centered alternatives.

Without fighting the conclusions as such, I'd like to question, comment and put forward some remarks in order to present some different views on the problems discussed in the paper. The same facts can be commented and analysed in a way

that stresses much more the preliminary character of the findings. Suggestions for further research may be formulated in a way in which more attention can be payed to assess the development of a project over a sufficient period of time.

A more easy but, nevertheless, meaningful way of criticising this paper is to have a look at comparable developments within and in the margin of the criminal justice system in Belgium. This will be done in the second part of this commentary.

Questions in between the Aims and the Outcomes of Programmes

The assessment of a programme, the evaluation of the fulfillment of the expectations are complex tasks since the empirical basis to answer the questions is rather small. General statistical information has a very limited value for that purpose; the results of empirical research allow us to answer strictly formulated questions, especially questions which can only be answered by comparing statistical information collected in different countries or by bringing together the findings of empirical research carried out on the same topic in different countries. These questions offer many possibilities to context interpretations and conclusions.

Killias' presentation of compensation by the state on p.255, mentioning the average amount paid and the number of successful applications for a number of countries, offers such a possibility.

Without contesting the general conclusion that these schemes do by no means respond to the need for compensation, there is a need to have a better view on the development of the different types of such programmes over a certain period of time. When and how was the programme introduced? How were possible changes put into practice? What sort of assessments have been carried out?

For France, a high average amount (8,000 $) is mentioned as having been paid to a very limited group of victims (201).

In France, the state compensation programme was introduced in 1977 but has been changed since 1981 and 1983. Victims of burglary and larceny have been included in the programme, and compensation was finally provided for all physical injuries. Victims eligible for compensation have to meet strictly formulated conditions concerning their income. The maximum allowances were raised several times. Victims of traffic accidents and of terroristic acts profit from easily accessible special compensation programmes introduced in 1985 and 1986.

The evaluation of the relative success of the French system compared with such programmes in other countries has to be based on a detailed overview of the impact of the different changes in the system over a sufficient period of time.

Maybe the general conclusion does not have to be changed, but a thorough analysis of the development of a scheme over a given period will allow us to discover the progress that has been made and powers opposing the implementation of the scheme.

Killias' remark that these schemes provide compensation for categories of victims (personal crime) who seem to have other priorities (e.g. the concern about what has to be done with the offender) has already been taken into consideration in France and resulted in including victims of property crime into the scheme. The evaluation should therefore be continued in order to assess if and how such corrections result in a broader practice of compensation.

Here we touch on another problem of the paper. As far as crime policy is concerned, there is a strong need to know why such programmes have failed to meet the expectations. The enumeration of a series of negative results does bring us very near *Martinson's* exclamation concerning offender rehabilitation programmes that "nothing works".

What is lacking is a firm interest in the analysis of the reasons why programmes fail to fulfil the aims. Should expectations be reformulated in a more realistic way? Does the criminal justice system support or oppose the implementations of such programmes?

A lot of research still has to be done on the barriers which function inside and outside the criminal justice system resulting in a modest or almost symbolic enforcement of victim-centered alternatives.

To me it seems a plausible suggestion that this type of research will be able to detect some fundamental problems inside the criminal justice system which can explain to a certain degree the difficulties hampering a desirable implementation of such schemes, but explaining at the same time the very poor results of the "action civile" system. This type of research has to go into a deep analysis inside the criminal justice system to the rooted characteristics which can help to explain the resistance of the system against different types of propositions and projects which intended to bring about some movement in the priorities of the goals at which the system is aiming.

Although the "action civile" has been integrated in the system since 1808 in many Western European countries and although it, theoretically spoken, guarantees the victim a simple way to compensation, a concern has neither existed within the system to find better ways to enforce the decision nor has there ever been a special concern about the problems the victim experiences in taking part in the penal procedure. How to explain such a lack of interest, whereas at the same time the system has developed a steady growing power on the side of the investigation and the prosecution of crime?

Crime fighting has been the motto to enlarge the power of the police and the prosecutor. This process of a growing authority of the prosecutor's office includes, as far as victims are concerned, the introduction of compensation through "plea bargaining". *Killias* concludes that "justice officials are not too willing to seek the compensation of the victim unless they are obliged to do so ... it seems that they dismiss cases or suspend sentences for reasons which are not related to the victim, but to organizational needs of the criminal justice system".

Here it may be that we touch on the hard core of the resistance within the system against attempts to orient the system towards newly formulated goals.

A comparable analysis of the marginal use of alternatives to incarceration in Belgium finally arrived at the same conclusions, enumerating the resistance within the criminal justice system against such alternatives. No implementations unless they are obliged to do so ... e.g. because of prison overcrowding.

This comment brings us back to *Killias'* concern formulated in the conclusion. He stresses how much continental criminology, criminal law and crime policy are in need of a new myth. The victim has replaced rehabilitation as the central theme of scholarly debate. Like the rehabilitation movement, the victim movement is based on a moral concern, this time getting support from abolitionists, as well as from "just deserts" thinkers.

Killias fears this as a threatening situation in the long run. The new topic may fade away once its ideological attractiveness has gone.

Here, I think, we have to bear in mind that there may be, next to a moral bias explaining the relative success of victimology among criminologists, some practical reasons which can explain the growing interest in the victims of crime within and outside the criminal justice system.

For more than a decade "fighting crime" through criminal policy has enlarged the traditional basis of the penal reaction by a strenghtening of the "pro-active" approach. This includes a growing number of police officers and a growing power of the prosecutor's office.

Whereas for fighting organized, international and financial crime the police forces are developing European networks, the fighting of ordinary crime needs a different approach.

Crime analysis, especially through victim surveys, has discovered the key position of the victim as far as information about crime is concerned. The police and the criminal justice system depend very much on the information of the victim to be able to take action against crime. In the meantime, it has become clear that a well-organized action to get (some) control over ordinary crime in society presup-

poses the collaboration of the public. Victims of crime are within the public, at large, a special target group. A preventive crime policy needs the victim as a driving force (a lever) to implement its programmes successfully.

This is, of course, no guarantee for a policy in which the needs of the victims will be met or in which the problems of the victims will be taken into consideration. Especially the narrow scope of situational crime prevention seems to result in no long-lasting utilitarian relations between the police and some neighbourhoods.

On the contrary, more hope is justified when a preventive crime policy becomes the concern of a democratic elected body such as a municipality, in which preventive action is developed as a multilateral programme in which different interest groups have to collaborate. In such an approach victim-orientied schemes may be promoted by the police as well as organizations for victim assistance. Here, there seems to be a better chance to develop programmes which combine the interests of the victim with the interest of a preventive crime policy. As far as both the needs of the victims and of the crime policy can be linked together, there seems to be a broader and realistic basis for the development of victim-centered alternatives. Recent developments in the crime policy in France seem to offer such a perspective.

A final remark concerns the evaluation of mediation. In my opinion, a fundamental distinction has to be made between mediation integrated within the criminal justice system as part of the procedure in order to dismiss the case and to discharge the system and mediation programmes which aim at bringing about peace among the parties by conciliation. Evaluative research on mediation has to take into account such a basic distinction between programmes in order to assess the results and future perspectives.

Mediation based on plea bargaining gives priority to the goals of the criminal justice system. An agreement between the parties has to meet the strict conditions of the procedure. Very often these conditions offer insufficient time and space to come to an agreement, although there will be a strong guarantee to respect the minimum conditions of due process.

Mediation programmes stressing conciliation between the parties have to be more selective as far as types of crimes are concerned and need much more freedom (outside the criminal justice system) in order to work out an agreement between the victim and the offender. The role of the mediator is a complex one and can never be based on a power derived from the criminal justice system. Such programmes, however much restricted in quantity their implementation may be, fulfill an important role in order to change the quality of the problem-solving capacity of the criminal justice system without its direct intervention. Just offering openness and space, allowing settlements outside the ordinary procedure and guaranteeing both parties to rely upon the criminal procedure if no agreement can be found, are

the necessary surrounding conditions. The study of the development of mediation schemes to settle conflicts and problems others than crimes is of great value to broaden and enrich mediation between victims and offenders.

Some Recent Victim-Centered Alternatives in Belgium

- The law of June 28, 1984.
  This law permits the prosecutor not to prosecute crimes punishable by a maximum of five years' imprisonment on the condition that the criminal pays an amount of money to the State as defined by the prosecutor (transaction). Reparation of the damage by the offender (restitution) is a "conditio sine qua non".

- The law of August 2, 1985, State compensation for victims.
  Within a general fiscal law, the articles 28 through 41 introduce a system of state compensation for victims of violent crimes committed with the intent to provoke physical harm.
  The law has created a state fund based on two sources of money. In addition to an amount of money available within the budget of the Minister of Justice, through every criminal and correctional sentence money has to be placed in the fund by the offenders. Decisions about state compensation will be taken by a commission of magistrates (2), lawyers (2) and civil servants (2). Compensation is not based on a right of the victim but on the principle of solidarity. This means that the commission has the discretionary power to award a compensation for victims who meet the legal conditions. It is important to know that compensation is a subsidiary intervention following a judicial intervention which failed to bring about a restitution for the victim. The commission decides on the basis of the principle of equity. The victim has no right to appeal against the decision.

- The evaluation of the implementation of both laws reveals considerations which are completely comparable with *Killias'* comments concerning such programmes in different European countries.

  There are very few studies assessing the implementation of both systems. Restitution based on a transaction between the prosecutor and the offender is hard to evaluate since the available source does only mention the number of transactions proposed by the prosecutor. It is uncertain whether all propositions have been accepted by the offenders and whether they were able to meet the claims of the victims.
  Referring to the practice in different parts of the country it is made clear how much this system remains an exception within the total number of decisions taken by the prosecutor. Numbers vary between 0.5% and 2.5%.

The most important reason to explain why the practice has been developed in such a poor way is that the procedure complicates the prosecutors' job in that it imposes extra work.

- The State compensation system, although introduced in August 1985, was put into operation only two years later. After a bit more than one year a number of 49 requests had been introduced. 16 cases were refused for not meeting the conditions of the law, whereas for 10 requests a positive decision was taken.

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Commentary

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In the following I shall not deal with issues like the French "action civile" or the German "Adhäsionsverfahren" which both do not limit the pain (see *Christie* 1982) but deepen it: The combination of civil and penal sanctions in the same criminal process and the question of its usefulness and effectiveness might be a legal problem, but not a criminological one.

One of the most intriguing points in the excellent and far-reaching paper of *Martin Killias* is the obvious discrepancy betwen the low range and the so-called ineffectiveness of mediation and compensation or Wiedergutmachung (the Americans say restitution) on the one hand and the acceptance and even preference of those instruments by the public, including victims, on the other hand.

Concerning **mediation** as an alternative to criminal prosecution, at first sight the findings are in fact discouraging. If dispute setttlement is not restricted to the most trivial cases but to those with serious individual and social conflicts involved, these conflicts seem to be very often inappropriate for mediation especially in cases with long-lasting quarrels and altercations between victim and offender. They both have already tried different ways of self-regulation, however, without success; the criminal justice system has now become the victim's "last resort" (*Emerson* 1981; see also *Voss* 1989, p.37). The same is true for serious offences. Other crimes have to do with deep-rooted conflicts the underlying causes of which can hardly be reached by mediation (for example, chronic violence, sexual inadequacy, unemployment), that is, mainly causes which lie close to the surface can be handled and may be treated by the usually trained mediators (*Festiner* and *Williams* 1980, p.213). Finally, many offenders and victims have quite different expectations of what mediation is or should be or should do for them. The offender might find himself pressed to play the victim's game otherwise his case will be re-referred to the system. Thus, he might play the game rather poorly, which might explain the Swiss observations of frustrated victims after they had met their offender. So, this is rather a system-made problem. The victim, on the other hand, might follow a legalistic approach and might therefore be disappointed by a settlement which requires understanding, compromise, and agreement on his part.

Regarding compensation, the obstacles to its wider application have, among others, to do with the poor financial resources of most offenders; with the nonrestitutable character of violent acts; with the lack of the victims' cooperation; with the punitive

needs in society which are said to exceed the victims' monetary satisfaction. This might explain why even those rules in the German criminal law and criminal procedure law which provide for compensation in lieu punishment are only rarely applied; the proposition in the German Parliament to introduce a suspended fine-sentence in connection with compensation was turned down by the Government some years ago because such a new instrument is said to endanger the deterrent effects of punishment.

For many people, including many criminologists, findings and attitudes of this kind might be convincing. Mediation and compensation or Wiedergutmachung do not seem to be the adequate and feasible alternatives to the criminal process and the traditional penalties such as imprisonment, probation, fines, community service, and the like. Thus, it seems to be much more plausible to go back to the traditional instruments and to help the victim by amending these instruments. In such a context, mediation and compensation are supporting, however marginal measures. As far as I understand the contribution of *Martin Killias*, this is more or less his position which I would like to comment upon very briefly.

The main reason for the search for alternatives was a deep-rooted dissatisfaction and even distrust regarding the criminal justice system, and this in many respects. As far as the victim's role is concerned, his elimination from criminal prosecution is certainly a serious problem in that an individual who has been hurt or violated is "sacrificed" with all his needs and interests in favour of the legal or social order as the "true" victim.

This legal construction did not only eliminate the victim but also something which is called "Lebenswelten" by *Habermas* and others, that is, to put it extremely roughly, the vivid social world outside and around the system (that is: our world) with all its (our) capacities and capabilities to deal with interpersonal conflicts constructively and peacefully. The above-mentioned discrepancy might then have to do with the discrepancy between the legal world and the social world. The hypothesis is that mediation and compensation are mainly ineffective because of highly sophisticated legal and practical system strategies which keep them from being effective. It is true that intrinsic difficulties do exist to use mediation for all kinds of interpersonal crimes. On the other hand, the referral system as well as the re-referral system (in the case of the offender's and, maybe, of the victim's refusal to co-operate) strongly shape and mould the limited significance of mediation. *Weigend*, who visited a number of American mediation programmes, came to the critical conclusion that most of the programmes "serve as the system's dumping ground: Cases which are highly unlikely to end in conviction but which have been carried through to the stage of final screening in the prosecutor's office or in misdemeanour court are released by the system and referred to mediation. Most of these cases either cannot be proved or do not merit prosecution because they concern the criminal law only marginally" (1981, pp.45-46). Herewith connected

is the limited capability of mediators who are not trained to handle the kinds of conflicts just mentioned: Long-lasting quarrels or those with deeply underlying causes. This is why the previous statement has now to be reconsidered: Mediation cannot be seen as being inappropriate for these cases as long as it did not have a chance to prove its appropriateness. There are examples, in Germany and elsewhere, where mediation programmes dealt with serious offences including rape cases, and this with considerable success (to be cautious).

The same is applicable to compensation. Of course, there are many offenders who for financial reasons are not able to provide compensation to the victim. However, it is interesting to observe that in Germany more than 80% of all convictions are fines, and almost all convicted offenders pay! Again, we have to do with the system's allergy against any kind of nonpunishing conflict solution after the occurrence of a crime unless one succeeds in furnishing compensation with all the punishing attributes such as retribution, deterrence, or prevention.

Usually, compensation is not a penalty (except, maybe, if it is part of the sentencing process as in the cases studied by *Shapland, Willmore and Duff* 1985). It is rather an alternative to traditional penalties and as such an alternative to the criminal justice system as a whole - as far as it is acknowledged and applicable.

So, in order to find out the scope of acceptance, surveys have been conducted by which the public, or mere crime victims, were asked whether compensation is a sufficient reaction to specific crime types. The answers are mainly encouraging. In the most recent work of the Norwegian criminologist *Mathiesen* with the provisional English title: "Prison: does it have a defence" (forthcoming) some data from a survey of 1965 are displayed. The respondents were asked to sentence a 20-year-old offender (without previous convictionst) who had committed different hypothetical crimes. Among those respondents who gave identifiable answers, 36% favoured compensation as a sole sanction in the burglary case, 48% in the car-theft case, 22% in the robbery case, and nobody in the rape case (1989, pp.141-142). In our own study which focuses on the public's acceptance of compensation in lieu of punishment, the victims among the respondents were asked to play the role of the judge in their case and to make a sentencing decision (without consideration of the rules in force). 80% of the proposals could be collapsed into five major categories: Discharge, compensation, compensation and labour, compensation and punishment, and punishment and/or labour. On the average, 4% of the respondents advocated discharge, another 41% favoured compensation as sufficient sanction to the crime incident which means that almost half of the victims would not insist on punitive sanctions (the category "compensation and labour", with another 10% of the responses, was considered to be punishment-oriented). When the data are broken down into some specific victimization categories, 48% of victims of property crimes, 30% of burglary victims, and 40% of victims of violent crimes advocated non-punitive measures (*Sessar* 1990). As you can see, in spite of time

and space differences, the Norwegian and the German data are very similar, however, they both differ markedly from the data to be found in the Second British Crime Survey (*Hough and Mayhew* 1985, p.47).

We were furthermore interested to find out whether the respondents, nonvictims and victims, were willing to replace criminal proceedings by private conflict resolution, with and without a mediator. The respondents were offered 38 hypothetical criminal cases with a 30-year-old offender (without criminal record). The following fixed response-menu was presented:

1. Victim and offender should privately agree on compensation or reconciliation.
2. Victim and offender should agree on compensation or reconciliation mediated by an officially appointed person.
3. The criminal justice system should initiate and supervise an agreement on compensation between victim and offender.
4. The offender should be punished. If he provided compensation to the victim, punishment should be dispensed with or reduced.
5. The offender should be punished. Even if he provides compensation to the victim, punishment should not be dispensed with or reduced.

The results are somewhat unexpected. Compensation instead of punishment was accepted by the respondents for most of the hypothetical crimes. In 14 cases (including physical harm by negligence, petty larceny, petty frauds, minor assaults), more than 50% of the respondents were ready to accept private settlement of the conflict with or without a mediator (first and second alternative; 20 cases if the third variation is added). On the other hand, in only five of the given cases the demand for punishment without consideration was higher than 50% (four rape versions and one out of five burglary versions) (*Boers and Sessar* 1990).

The conclusions from all this are that **for criminology** the starting point cannot be the criminal justice system which will do everything to undermine mediation or compensation, like in the past, or to neutralize those instruments by styling them according to their own punitive perceptions and needs. Quite on the contrary, the starting points are rather mediation and compensation as elements of the social world in order to see **from there** which elements of the criminal justice system and which traditional sanctions will still be needed. Maybe not very many.

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Commentary and Some Fundamental Dilemmas

Joanna Shapland

The question of alternatives to a criminal justice system or to its traditional sanctions has always provoked fierce argument. The proposals for change tend to strike deep at long-cherished assumptions about the ways in which the system operates and at how people think it should operate. The concern has been even greater where the proposals have been victim-related. Compensation, restitution, mediation, diversion, reparation - all have raised the spectre of others having a say in the operation of criminal justice, of others' priorities becoming predominant. Professor Killias' thoughtful and helpful paper has not shirked these issues and, with the benefit of his review of the European and North American literature, I should like to take them further.

The word "alternatives" itself, as *David Nelken* has recently commented, carries within itself the meanings of difference and of comparison (*Nelken* 1989). Alternatives rarely mean radical change outside the possible boundaries of the system. When talking about non-custodial sentences as alternatives to custody, for example (community service or fines, etc.), it is possible both to differentiate an alternative sanction from previous ones and to compare its effects, within a common framework of understanding of how the sentencing system should operate. Victim-related alternatives, however, span a spectrum ranging from alternatives within the framework of the sentencing system or current prosecutorial powers, to alternatives to the criminal justice system itself. Professor *Killias* has chosen to concentrate upon compensation, restitution and mediation (using the terms as he has defined them). All of these can take place both within the system or outside it entirely, or with break-points at which the conflict moves from within the system to outside it, and possibly back in again.

The more substantial victim-related alternative, however, is the informal social control and "justice" which operates in residential communities, in factories, in shops and in leisure centres (*Shapland* and *Vagg* 1988; *Shapland* 1989; *Shapland* and *Wiles* 1989). This uses compensation, mediation and restitution, but also prevention, techniques to help victims cope with crime, deterrence and the civil courts. Sometimes it is enforced by residents, sometimes by responsible people in the community, sometimes by private security. It has to be seen as the wider backdrip and alternative against which victims take decisions to bring offences into the criminal justice system. It is also the yardstick against which we make many of

our judgments of what a state criminal justice system should look like. We think a formal criminal justice system should look different (or how can we justify its expense and "professionalism"?). Alternatives which should sound like informal mechanisms are threatening, if viewed from the professional side of the fence. Alternatives which imply movement of the case in and out of the system (such as mediation) quite rightly are seen as being to some extent outside the control of the formal system and so more dangerous.

These worries are exascerbated because we are very bad at thinking of changes in law and criminal justice logically from scratch. So, for example, it is possible to try to think what compensation would look like as a criminal matter - what heads it would cover, the relative weight of different kinds of injury (physical, mental, effect of being the victim of deliberate attack). It would certainly look rather different from the way in which civil compensation has developed historically in the courts, with the biasing effects in Britain of domination by traffic accident and factory accident cases, with the involvement of insurance companies, and with the nineteenth century tradition of attending to physical injury, rather than mental (see *Shapland et al.* 1985). We tend to import changes from other parts of the law (civil measures and procedures) or from informal social control (mediation), without always acknowledging their background there or the conditions which have proved necessary for their success. One example is that one does not proceed in a purely civil case against an impoverished defendant or without private enforcement resources. If it is intended to do so in a criminal case, maybe enforcement needs to be built into the court procedure.

Different Perspectives on Victim-Related Alternatives

There are three parties - three points of view - which are involved in victim-related alternatives: the victim, the offender, and the lawyers/state policy makers. The discussions in the literature have, to date, tended to feature the conflicts between victim-eye views and lawyer-eye views and, to a lesser extent, between victim-eye views and offender-eye views. Unfortunately, though the lawyer-eye views are clearly based on empirical evidence of what lawyers think (since they are mostly written by lawyers), the same is not true of victim-eye views and there are almost no accounts of offender-eye views. As Professor *Killias* comments, there is a dearth of empirical research from different countries and legal traditions on victims' views of the usefulness, place and effectiveness of compensation and mediation.

Nor is it possible to conclude that victims' attitudes to compensation will necessarily be similar in different countries. It is beginning to be clear that victims may have similar experiences of victimisation in different countries (from victimisation studies), and seem to react similarly to the deficiencies of police, prosecutors and

courts (*Joutsen* 1988). The extent of emotional, financial, social and medical need is fairly similar - with police being the easiest to convince of victim needs and the courts the hardest. But types of financial mechanisms for compensation are different, and reactions of victims are different.

Victims in England and Scotland, for example, do not wish "full" compensation to be paid by offenders if they are impoverished (in the sense of the magnitude and heads of awards that civil courts would give if a civil claim is pursued) (*Shapland et al.* 1985; *Maher et al.* 1988). They see compensation as a penal sanction when applied to offenders, not a civil one, and so think it should tie in with offender-related sentencing aims. And they, rather surprisingly, would prefer a lesser amount of compensation from the offender to a greater amount from a state compensation scheme (*Shapland et al.* 1985; see also *van Dijk* 1984, for similar results with Dutch victims). Victims in the United States, however, think they should have as much compensation from offenders in a criminal court as they would have got from a civil claim and so will request and will pursue offenders for large amounts.

Unfortunately, Professor *Killias'* paper gives a slightly misleading account with regard to compensation orders in Britain, so I shall present the data at this point before proceeding with the discussion. First, let us consider the frequency of awarding compensation orders. According to the **Criminal Statistics** for 1987, the proportionate use of compensation orders in the magistrates' court (in which the vast majority of cases are heard) was indeed 13% and that at the Crown Court 8%. But these are figures for all cases, whether or not any compensation was asked for, whether or not there was an identifiable victim and including all kinds of cases. For criminal damage, the proportionate use was 63% at the magistrates' court - i.e. compensation was ordered (and enforced) in a substantial majority of cases. It is a usual response. For fraud and forgery it was 47%, for burglary 36%, but for drug offences and sexual offences (often without a clear victim) less than 5%. Even though the use of fines is now decreasing, because of unemployment amongst offenders, the use of compensation orders does not seem to be decreasing so substantially.

Only 24% of offenders were ordered to pay compensation in assault cases. Two studies (*Shapland et al.* 1985; *Newburn* 1987) have shown that the principal reasons are that magistrates' courts are not reminded by prosecutors about compensation, are not given sufficient details of the assault and injuries to make an award, and, until recently, did not have proper guidelines to help them with decisions on quantum. It is not a lack of willingness on the part of magistrates, but a lack of means.

In the Crown Court, the highter court, awards are much rarer. Reasons are twofold. First, judges are much more wary of compensation, for the reasons which will be discussed below. Secondly, compensation orders are not allowed to be made unless

they can be expected to be paid within one year. (This is because they are enforced in a similar manner to fines, with the ultimate penalty for non-payment being imprisonment.) As a result, it is highly unlikely that compensation orders will be ordered concurrently with imprisonment, which is a sanction which is far more dominant, obviously, in the higher court.

Victims in Britain are, contrary to what is suggested in Professor *Killias'* paper, keen on compensation orders. It is important to distinguish general attitudes to compensation as a sentence (positive); wishes of victims to have compensation as part of the sentence for their offence; and satisfaction with the way in which the courts administer compensation orders when they are made. Several studies have now found that victims welcome compensation orders (*Shapland et al.* 1985; *Newburn* and *de Peyrecave* 1988; *Maher et al.* 1988), but are annoyed that courts do not tell them of the making of the order, or reasons for non-payment of instalments, or that the offender delays repayments (*Newburn* and *de Peyrecave* 1988; *Shapland et al.* 1985). As *Newburn* and *de Peyrecave* (1988) comment: "This group of victims seemed to feel that compensation was a very good idea in theory, but that the operation of the system was less than satisfactory in practice".

In presenting this evidence I am not arguing that continental countries should immediately rush out and buy in compensation orders for their criminal justice systems. In order to work properly, mechanisms need to fit in with the prevailing culture. If offenders would see it as unfair, that is a substantial argument against. But we do not know what offenders think.

If victims would find such a system quite alien and uncomfortable, then it should not be introduced to benefit victims. Unfortunately, we have none of the same data with respect to victims' views on the partie civile model as we do on compensation orders, as far as I am aware. We do not know whether victims in partie civile countries think they are participating in a civil or a criminal proceeding or that it should properly be a mixture of the two; whether they have doubts or dissatisfactions with the procedure; whether they want compensation from the offender which just matches their losses, or would be equivalent to a civil court award.

In particular, we do not know how they think of compensation. Do the words "civil" and "criminal" mean anything? What is the point of the court awarding compensation - is it to regain financial losses, to meet financial need, or to show the criminal justice system's respect for the victim? In 1979-82, when carrying out our study on victims of violent crime, I was amazed to find that English victims had very strong views on the place of compensation - and that they were firmly of the opinion that it belonged as a sentence to be paid by the offender (*Shapland et al.* 1985). That evidence was against all that was being published at the time by legal commentators as to what victims' interests were supposed to be (victims were

portrayed as mercenary beasts, out for their cash and not caring about the offender or the "purity" of the legal system). We must not presume the reactions of victims in partie civile systems.

Legal Views

We do know that there is considerable worry in continental countries about whether the introduction of compensation as a criminal sentence would sully the principles of a criminal justice system. It may not be appreciated that the reaction in British legal circles was far more vehement and unfavourable towards the compensation order, and that it is still being suggested that state compensation should be preferred because it gives "full", civil compensation. The meaning of the word "full" here is what the legal commentator sees as the victim's needs and wishes - i.e. civil damages under civil heads as currently employed in English civil cases. The legal argument is essentially a theoretical one, about the purity of the civil and the criminal strands of law, because in practice civil and criminal ideas are almost impossibly intermingled in current procedures and awards. (For example, the largest number of cases using "civil" quantum criteria for the kinds of injuries produced by assaults and, effectively, setting standards on quantum, are those before the Criminal Injuries Compensation Board, but these are "criminal" cases, with compensation orders taken off, made until recently by a non-statutory Board, whose judgements could not be cited in the civil courts. Yet the senior lawyers involved are the ones taking many of the cases through the civil courts.)

I personally agree with the idea that civil and criminal should not be intermingled. In pragmatic Britain, it can be too easy to fudge over boundaries and transfer alternatives from one to another. Little thought can be given to what is necessary to make them work in their new setting, according to the symbolism and the power balances in that court. This has been true of both mediation and compensation. However, this does not mean that compensation should remain available only in the inaccessible civil courts. Compensation has never been only a civil concept.

So what are the main requirements for a "criminal justice system" mediation or compensation? First, it is important that the potential roles of victim, offender, prosecutor, defence and judge are clearly set out at all phases - prosecution, trial, sentence and enforcement of judgement. Secondly, the expectations and needs of these parties must be ascertained - not assumed. Thirdly, there need to be safeguards to ensure that no party is able to "highjack" the proceedings to serve only their interests, without adequate means for protest by the others. Fourthly, the procedures need to be checked to ensure that parties will be aware what is happening; information about losses and resources will be available to those deciding; decisions are written down and communicated to all parties; and adequate

means are available to enforce these decisions. This is a criminal judgment and decision - not a private matter. Finally, the proposed alternative needs to be examined in relation to the existing means. Is it different? Is it better? Better to whom? What side-effects will it have? Both its communality with other criminal matters and its differences need to be addressed.

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Commentary*

Wolfgang Stangl

Introduction

Mr. *Killias'* paper on "Victim-related alternatives to the Criminal Justice System" is a plea for modesty and realism. The idea of compensation and mediation, he argues, offers some useful options, and he has pointed to several of them. But he warns against expectations which would "go far beyond what might be empirically justified" (p.265). He proposes as a solution a strengthening of the private law status of injured parties and, following the French model, an extension of the legal institution of "action civile".

Before taking up Mr. *Killias'* arguments in detail, I should like to make a few preliminary remarks on the discussion of criminal justice policy in the German-speaking world as it relates to compensation and restitution. [Wiedergutmachung]

The situation is rather complicated and confusing. Not only does the debate over "Offender-Victim-Mediation" [Täter-Opfer-Ausgleich] have a political dimension, but there are also more general questions of law, which are not always easy to clarify (*Kondziela* 1989; *Schroll* 1987), as well as the divergent implications of competing and/or conflicting Weltanschauungen, all of which have some bearing on the compensation/restitution debate. These questions arise most noticeably in relation to the judgements made as to what the empirical results of the "Offender-Victim-Mediation" Programmes [Täter-Opfer-Ausgleich-Programme] actually show, but also in terms of one's general attitude towards such programmes themselves. On the one hand, for some - one could call them the "Radicals" - the relatively small reduction of sentences represents merely an extension of state influence in a new

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* In German the word for compensation in both the general and the specific legal senses is "Wiedergutmachung". This presents some problems when trying to elaborate different forms of compensation and/or mediation programmes. To avoid semantic confusion in my discussion of the various forms of compensation I have rendered the term "Wiedergutmachung" as "compensation" when the general sense of the term was meant or implied, or when referring to compensation programmes in which the state finances the payments to the victims. When, however, it is important to distinguish these from compensation programmes which involve "mediation", specifically the Austrian mediation programme itself, I have used the word "restitution", either alone or in connection with "mediated".

"guise", what is feared, not to say conjured up, is a "net-widening-effect". On the other hand, the "Reformists" see the Offender-Victim-Mediation as a step in the right direction.

Yet another distinct position, to be distinguished from both of the above, is one we might call that of the "Victimologists", i.e., those who place the role of the victim in the centre of judicial proceedings. As the principal concern here is the compensation of damages actually suffered, the "victimological" position overlaps to a certain degree with those of the "radicals" and the "reformists". According to this view, however, compensation [Wiedergutmachen] is to be organized and financed by the state: the debate turns primarily on how broadly or narrowly one defines the criteria which determine which victims are entitled to claim such compensation under the programme. If the various theoretical and criminological positions are not to be conflated, these details should be kept in mind.

Compensation is not Restitution

Killias' paper does not attach enough importance to the distinction between compensation of damages which is ordered by the court ("compensation order"); compensation which the injured party may demand under the terms of an "Adhäsionsverfahren" ("action civile"); and compensation which results from a court-sanctioned but not court-ordered mediation procedure ("mediation programme"). Both the "action civile" and "compensation order" result from traditional judicial proceedings, and do not diverge markedly from the legal philosophy which underlies them. These types of compensation are invariably ordered by the court in one form or another. They thus form a part of the sentence itself and their results and effectiveness should be evaluated according to the appropriate criteria, i.e., those normally applied in evaluating sentences.

Restitution, under the terms of the previously mentioned "mediation programme", could, though it must not, be based on a different philosophy. I should like to illustrate this point by means of the Austrian Juvenile Court Law [Jugendgerichtsgesetz], which came into effect in 1988.

The Example of the Austrian Juvenile Court Law of 1988: Restitution through Mediation

Austrian law does provide for compensation [Wiedergutmachung] in the traditional sense of a "compensation order" (§ 19 of the Jugendgerichtsgesetz [JGG]). The law, however, also provides for restitution which would result from a mediation

settlement reached outside the court. [in German an "aussergerichtlicher Tatausgleich", § 7 of the JGG]. This Offender-Victim-Mediation [Täter-Opfer-Ausgleich] is characterized by the following elements:

1) The object of the procedure is for the injured party and the offender to reach agreement on a settlement outside court under the guidance of a mediator [Konfliktregler] appointed for this purpose.

2) Although in the view of the court the conflict is defined as a crime, Austrian law supports attempts by the parties to the dispute themselves (i.e., the offender and the injured party) to reconstruct the conflict on an everyday interpersonal level, and to seek a solution on this level. The offender and the injured party themselves determine the nature and extent of restitution. This constitutes the "abolitionist" element of the new regulations.

3) Emphasis is placed on the results of the restitution itself rather than on the guilt or dangerousness of the offender.

4) The criminal prosecution is dropped upon successful completion of the restitution procedure (§ 8 Absatz 2 JGG).

It is thus clear that restitution in this sense in principle:

a) tends to reduce the influence of state institutions, because the offender and the injured party together clarify what should take place outside the courts; and

b) shifts the principal focus of influence away from the courts and towards the social workers and the public prosecutor's office [Staatsanwaltschaft].

Empirical Data on Mediated Restitution

Mr. *Killias* concludes from his examination of the frequency and success of compensation programmes, and the expectations bound up with them, that there are still many unanswered questions, which is doubtless correct. On the other hand, his wish to provide a comprehensive survey of this literature is hampered by the fact that it is very diverse and deals with diversion programmes of differing types. I should therefore like to relate some of the experiences accumulated by the working group which prepared the Austrian mediated restitution programme (*Haider et. al.* 1988).

During the trial period, which initially lasted one and a half years, mediation efforts were systematically tested under the constant advice and supervision of crimino-

logical experts. Provisions in the old Austrian Juvenile Court Law allowed for such experiments. During this period the most important aspects were the careful selection of mediators and patient discussions with judges and prosecutors.

The frequency of the mediated restitution varied markedly according to geographical region: while in the Juvenile Court in Vienna only 3% of youths charged with offences were referred to the mediation programme, the proportion in Linz and in Salzburg totalled 22% and 28%, respectively (*Pelikan* and *Pilgram* 1988, 57). Mr. *Killias'* conclusion, based on the experience of the United States, that "mediation schemes have not reduced the case-load of the criminal justice system to any substantial degree," (p.258), was not borne out by the experience in Austria.

A positive resolution of mediated restitution was registered in between 8 and 9 of 10 cases. However, no correlation could be established between the frequency of referrals to the programme and the success of the programme itself.

An outright rejection of contact on the part of the injured party occurred only rarely (in 13 of 257 cases, or about 5%). The chief justice of the Vienna Juvenile Court has written in this regard,

> "When we first began to comtemplate a pilot project of mediated restitution, there was a great deal of scepticism over whether it would ever be possible to involve victims in the mediation process. The misgivings ranged from those doubting the willingness of the victims to participate in the mediation to more fundamental ideological considerations. Reality has overtaken these misgivings in practice" (*Jesionek* 1988, 18).

The justice's evaluation conforms precisely to the experience in other such experiments. Analyses in West Germany point to a general interest of the victims in confronting the offenders personally. In individual cases this interest is a function of the type of crime involved and the nature of the relationship between the offender and the victim (*Sessar*, et. al 1986, 93; *Voss* 1989, 43).

The strong desire of the victims to subject the offender to criminal punishment was evidenced, according to a study by *Hanak*, in only approximately one fourth of the cases reported to the police (*Hanak* 1982). Data on the interests and wishes of victims of serious crimes are not available.

The Interests of Injured Parties

Mr. *Killias* devotes much attention in his paper to the question, "Are victim-related alternatives in the interest of victims?" His answer is cautious: "... the conclusion

is that compensation and mediation should not be the only corner-stones of policies designed to improve the position of victims, given the many restrictions which operate in practice upon such schemes" (p.260).

Even if one's point of departure is the interests of injured parties, it is still necessary to define exactly in which situations and on what level these interests are to be asserted. Studies have shown that the intensity of interest of those who have reported a crime to the police [Anzeiger] recedes over time. The police themselves are often expected by those reporting crimes to redress a situation which they perceive as acutely threatening to them. Such people also expect the police to punish the offender on the spot in the form of a verbal reprimand or some other sanction (*Hanak, Stehr* and *Steinert* 1989, pp.19 et seq.). By the time the case comes to court, normally months after the alleged offence had been committed, the situation often appears entirely different. Frequently the expectations as to how the authorities ought to react will also have altered correspondingly.

According to the typology developed by *Macnaughton-Smith* (1974), those who report crimes to the police comprise three groups: the "moralists", who do it because they consider it their duty; the "instrumentalists", who do so because they consider it appropriate; and the "desperationists", who do so out of a feeling of helplessness.

In addition, *Rosellen* (1980) has shown that the expectations of those who go to the police are bound up with conceptions of what "services" [Dienstleistungen] the police in their opinion ought to provide: among other things, the recording of details of damages which can be used for later insurance claims or the calling of an ambulance or the fire department, etc. At least in the case of the British police force, it is clear that

> "the police were not particularly well-informed about the totality of the public's views and priorities in the areas they policed; nor, consequently, did they share the perspectives of the public" (*Shapland* and *Vagg* 1988, 183).

It can be inferred from all this that traditional criminological research has misinterpreted the social significance of the reporting of crimes, at least in so far as it "understands these as the traditional step taken to initiate criminal proceedings, more specifically a criminal prosecution what it in fact is, seen from the perspective of the criminal justice system [Strafjustiz] and not as a strategy for fighting out conflicts [Konfliktaustragung] and solving problems, as it appears to those who actually report crimes to the police [Anzeiger]" (*Hanak*, et. al., op. cit., 21).

When one refers to the interests of victims it is all the more important to keep the results of these investigations in mind. As we have seen, not only are interests heterogeneous and the motives and interests which people have for reporting crimes themselves frequently contradictory, but these interests also change over time. The alternative favoured by Mr. *Killias*, that of the "action civile", steers the interests

in the direction of the procedures administered by the state, and thereby strengthens "legalistic" interests. At the same time, all other possible alternatives are partly curtailed, partly standardized.

Dangers to Mediation

Mr. *Killias* views mediated restitution as above all a betrayal of the victims. Their expectations are not fulfilled, they become frustrated, in a sense they are doubly victimized. This cannot, of course, be completely avoided in mediation procedures, but it cannot be fully avoided in formal criminal procedures either.

I see, on the contrary, other dangers, which Mr. *Killias'* paper only briefly mentions, but which are of central importance: mediation procedures could be extended to types of behaviour which had not been previously subject to criminal procedures, because prosecutors would not have brought charges for such activites. Mediation procedures, however, could pre-empt a criminal proceeding, as it were as an informal procedure, which could then be followed by a formal criminal trial. Both are possible and both tendencies showed themselves in the course of the experiment in Austria.

In order to prevent this "net-widening" from occurring, it is necessary to work together with the judicial authorities and plan this new form of procedure very carefully. In Austria, at least, this experiment has proved successful.

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Commentary

Renée Zauberman

The question of victim-related alternatives, as formulated here - mediation, compensation, restitution - is a complex one, requiring differential examination and responses, and I wish to congratulate *Martin Killias* for his structured presentation, in which the problems are analysed with his usual precision.

My first remark on his presentation will be that one distinction operates as a **summa divisio** in this question, and it involves offender/victim relations: the problem of alternatives will be solved differently - or, possibly, will not be solved - depending on whether or not offender and victim know each other. I will come back to this in greater detail later.

I. Compensation-Restitution

Martin has given us a very appreciative account of the way in which French law traditionally deals with victim compensation by authorizing "action civile": the victim can file a civil law suit to seek compensation of damages within the criminal procedure, and it falls within the criminal court's competence to grant the victim compensation.

Further, it has more recently been stipulated that the criminal court may decrease, exclude or adjourn punishment if the offender has given the victim compensation for damage done.

These solutions call for several remarks. First, they are judiciary in nature, and in no way represent alternatives to the criminal justice system, so that they are unable to decongest the system, or only do so very partially.

Secondly, they assume that the person who has committed the offence has been identified, which is far from being true for most cases of ordinary property offences and, even, though to a lesser extent, for personal offences.

Third point: they assume that the identified offenders are solvent, another proviso that is rarely met. There do not seem to be any overall data on the execution of judgements on civil damages in France today, but a study conducted in a court in the greater Paris area shows that 76 out of 100 victims who joined in a criminal case on civil grounds did not obtain payment of the damages they had been awarded,

- 12.7% obtained partial payment,
- 11.3% obtained total payment.

An interesting remark may in fact be made about the latter group: 3/4 obtained payment of compensation following an amiable agreement with the offender, and the last fourth through intervention by their lawyer.

For this reason, a suppletory system set up over a decade ago enables victims of physical injury or of some property offences who would not be compensated otherwise to obtain State compensation.[1]

To update *Killias'* data for France, the fact that in 1988, 1,750 applications were filed with the commissions in charge of awarding such compensation and 926 obtained compensation, is probably sufficient illustration of the slight impact of these provisions: within the range of possible solutions to the problems raised by victimization, this one goes practically unnoticed - it is quite similar, from this point of view, to victim support services -. Moreover, little benefit is derived by the few victims who manage to reach them.[2] It is a fact that these are only complemental and are not intended to constitute the normal solution: no budget could cover such expense. Another implication of their complemental nature is that before the victim finally applies for State compensation, he/she must have gone through all of the procedures and endured all the refusals involved in the institutional circuit in charge of the normal solution: the courts, private insurance companies and public health insurance... and by that time will have reached the state of exasperation with delinquency that paves the way for what the French call "feelings of insecurity".

This remark on feelings of insecurity leads me to another point, for which I would like to use the French victimization survey to qualify *Martin's* comments on the expectations of victims of different types of offences. According to him, victims of property offences are mostly anxious to receive compensation, whereas victims of personal offences tend to be more punitive, and in any case their expectations are tinted by a pressing demand that the State: "do something about the author".

In fact, we have succeeded in identifying some types of victims of ordinary property offences who systematically and violently expressed a punitive desire, over and above a not necessarily very insistent request for compensation, since the material damage was not always very great.

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1 There are also special provisions for victims of terrorism and pedestrians who are victims of traffic accidents.

2 For 1986 (last figures available), the average sum obtained in compensation of severe physical injury was 91,600 Francs (or about 14,300 $) and 4,000 francs (about 600 $) for material prejudice caused by a property offence.

These groups share a number of characteristics: they tend to be elderly, not well educated, relatively conservative, very frightened by crime in general and by property offences in particular, express strong sentimental attachment to the objects that had been stolen and very explicitly demand that the government protect private property, regardless of whether they themselves are wealthy.

We are dealing, here, with types of representation in which the distinction between property and the person is unclear; property is an extension of the body, and material compensation alone cannot give the victim the feeling that his/her rights have been reinstated.

These variations in no way weaken *Killias'* conclusion as to the problem raised by the State's inability to respond to the demand that "something be done". They simply indicate that it is even more serious than he would have it, since this feeling of powerlessness affects some victims of property offences, who are infinitely more numerous, as well as victims of violent crimes, actually a minority in modern society. Finally, this is the typical situation where the offender's anonymity which is the case of 90% of ordinary property offences, settles the problem of alternatives to the criminal justice system. Recourse to this system ends with the police, who take no action, or the Public Prosecutor, who dismisses the case.

The only real, concrete alternative is recourse to the private protection market, with the purchasing of protective devices and above all, of insurance (although only 50 to 60% of property crime victims in the French survey turn to their insurance company). This alternative is not completely satisfactory, however, since some things cannot be replaced at any price, as many victims will tell you, and some people are unwilling to hand over one of the traditional prerogatives of the modern State, the protection of property, to a mercantile system.

II. Mediation

I now would like to discuss mediation as a possible alternative to the criminal justice system, and briefly deal with some problems raised by the French case, in my opinion.

1. Within the Judiciary System

French law - especially civil law, in fact - has a longstanding tradition of conciliation. This is an old story: a judiciary system that recognizes its own inability to deal with minor conflicts, and secret schemes of avoidance, less of official institutions

than of judiciary rituals and formalities; in other words, that provides an internal mechanism for administering justice on the basis of equity rather than in due and proper form.

Thus, the history of modern French law has known, one after the other or overlapping, such institutions as:

- Justices of the peace, who, throughout the 19th century, epitomized the judge as local leader settling minor conflicts through conciliation.
- Conciliators, who were an attempt to revive the function of justice of the peace[3] in the late 1970s, since the latter had gradually become a part of the formal judiciary system.
- Judicial conciliation.[4]
- Judicial arbitration.[5]
- Office justice (for juveniles, divorces, guardianship, etc...).[6]
  With the present trend toward mediation, many new experiments are being carried on within the judicial institution or on its outskirts.
- Conciliation prior to the Public Prosecutor's proceedings (Valence, Pontoise, Grenoble, Rennes).
- Before the examining magistrate ("juge d'instruction") and within the framework of pretrial surveillance (Bordeaux).
- During court session, before the final sentencing (Saint-Etienne).
- As an auxiliary in divorce proceedings (family mediation to define the concrete settlement judged acceptable by both partners).

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3 Conciliators are prominent individuals designated by the Chief Justice of the Court of Appeal in order to facilitate the informal settlement of conflicts. There has been much fluctuation in their existence, with changes in the political majority, but they seem to be in favour at present.

4 Some articles of the new Code of Civil Procedure stipulate that the judge's mission includes conciliation of the parties.

5 The judge may, on the request of the parties, act as a mediator with respect to a specific point of contention, and his decision will be legally binding. This legal provision is based on the arbitration law, the only difference being that in this case the arbitrator is a state-organized jurisdiction.

6 This designation may include a series or procedures used to reconcile negotiated justice and imposed justice. The office is that of the judge, to which he retires in order to meet the parties and their lawyers outside of the rituals of the legal procedure.

To some extent, then, there is simply a continuation of attempts to find solutions to the problems inherent in the cumbersome, formalistic functioning of the judicial system, and in overloaded cause lists. The system itself creates an internal distinction between the judge who strictly enforces the law, and the judge who is open to arrangements, but all that within the shadow of the traditional trial.

2. Outside the Judicial System

In France, some new formulations of needs with respect to mediation/conciliation have been developed recently, where minor conflicts are involved (this latter point must always be specified, in my opinion, since there are whole areas of social life, including some major ones such as business, where the question of mediation is posed in entirely different terms, and where the agents involved are not at all the same). The authors of these formulations are intent upon remaining outside the official judicial institutions.

The French situation may be analysed as follows: a certain number of agents have appeared on the "social peace market", whose goal is not the development of a clientele - which is not very rich, by definition, in minor suits - but recognition by the State, which has at its disposal a social welfare budget, of a specific utility and competence. What do we know about these different protagonists? The instigators of mediation schemes are usually people who have worked for years on justice-related issues within informal associations: jurist activists eager to facilitate access to the law and to justice, social workers, psychologists, various volunteers working in victim support schemes and offender rehabilitation, unsatisfied with the limited scope of their action, etc...

On the governmental end we find relatively marginal agencies within the old, traditional administrations. They proclaim their concern with the stimulation of so-called "grass root" movements, within the overall context of a neighbourhood social development policy specially aimed at facilitating the reappropriation of justice by the people.

The most peculiar feature of these new mediation schemes which, it should be remembered, seek shelter under the protective wing of the State, resides in the justifications proclaimed by their instigators. Over and beyond a response to the dysfunctioning of the judicial apparatus, they aim at restoring the deteriorated social fabric in highly anoymous urban areas. As the promotor of one project writes, mediation is not intended to obtain justice, but "to enrich quality of social life, to incite action aimed at rebuilding forms of sociability through the regulation of these conflicts, to reconstitute forum of socialization".[7]

7 Mediation project "Armstrong/minguettes, Vénissieux".

This type of concern about the insufficient capacity for self-regulation is repeatedly preferred by governments and shared by certain groups of professionals. Although the same ill is repeatedly diagnosed, the attendant description of the symptoms tend to change. Whereas 20 or 30 years ago in France, some suburbs supposedly suffered from insufficient social regulation on the educational level, today's supposed deficit applies to the ability to manage conflicts. This leads to a change in the model for interventions aimed at underprivileged groups, which is no longer the street educator, working to help young people to engage in constructive social relationship, but the justice of the peace.

This change in the categories used to analyse deprived groups and in the objectives pursued raises a number of questions:

- First, what is the place of the law in this "market" of social peace?:
  - The place of legal rules and regulations, first: however informal the suggested schemes wish to remain, they cannot and do not claim to do without mediators trained in the fields of law with which they must deal (family law, social law, housing law, liability law, etc...). In order to avoid the sluggishness of formal legal procedures, one must be familiar with them. At this point, we begin to suspect that jurists will probably have an essential role to play in these mediation programmes;
  - The place of jurists, then: has the failure of social workers and of their strategy for furthering the restructuration of socially underprivileged groups led to the emergence, within the legal profession, of people who are anxious to promote a strategy of appeasement, and brought them to the forefront? While the latter criticize the traditional functioning of the legal system as maladjustment, they legitimate their own projects on the basis of their professional competence. It is certainly significant that one of the administrative bodies to which authors of such schemes apply for support and financing is the Ministry of Justice, the natural governmental partner for legal professionals.
- A second important question, in my opinion, is the contradiction between the analysis made of the problems of certain underprivileged groups and the type of solution proposed. The problem, we are told, is the loss of sociability in some neighbourhoods, its deterioration to the point that the regulation of minor everyday conflicts is no longer possible, leading to their exacerbation and a spiralling decomposition of social relations. The alleged solution would be the settlement of minor conflicts by mediators, who should be well-integrated community members whenever possible, so as to legitimate their conciliatory action. But there are two branches of an alternative, here: either some individuals are sufficiently prominent - and are what we may call notabilities - to be qualified as mediators without the help of any mediation scheme, and in that case it

is probable that local sociability is not that deteriorated after all, and is perhaps simply different from the expectations of "interested" observers. Or else there are no sufficiently legitimate agents within the group, and it is probable that no scheme, however well intentioned, will be capable of "producing" such legitimacy, with the underlying social relations it implies.

Behind this attempt at social intervention - not to say social technology - we find nostalgia for a pastoral society, with the mythic figure of the justice of the peace; the good, peace-making judge living in harmony with his fellow citizens and successfully reconciling warring parties. It is a fact that France has a long history of something close to that. Something close to that, but with a little something extra, that has been erased from the mythic image, and that is the dimension of power, of social prominence. Throughout the 19th century and until the First World War, it is a fact that the history of negotiated justice is the history of local notabilities judging minor conflicts and minor popular deviancies. As is planned for today's mediators, these judges were not recruited for their competence in legal matters; but they were recruited for their fortune, their political support and their authority, derived from an inherited social position. In other words, those in power chose the natural mediators, since they were in the best position to maintain public order on the local level.

The sociologically interesting question which will have to be addressed when a sufficient distance has been gained from which to view these schemes will be: who, finally, will play the role of mediator? There will probably be no better indicator of the outcome of the competition on the social peace market, and of whether or not justice has been reappropriated by the citizens.

To sum up, let us return to our initial topic, the victim-related alternatives to the criminal justice system. There are two types of problems for which the system is now in check:

- Petty, chronic conflicts between people who know each other well: in these cases, the cumbersome legal machinery is inefficient and in fact disregarded.
- Attacks by unknown individuals.

Neither redress schemes nor mediation schemes can claim to have a solution to the latter, since they require that the two protagonists meet. No alternative invented so far can provide an overall answer to the problem of victimization. And caution should be exerted in the evaluation of existing schemes as partial responses. It is a fact that there is always a considerable gap between internal evaluation, based on the documents and the feelings of the agents themselves, and evaluation from a distance. The agents view the multiplicity of cases dealt with, as well as the many

projects, writings, meetings and colloquia produced as so many indications that the object of their tireless efforts is unquestionably developing. And yet, evaluation of the impact of these schemes on the general population may well cause disappointment: national surveys of victims show that neither victim support services nor mediation schemes have achieved a level of statistical visibility such that they have clearly gained a lasting place on the social scene and, more specifically, in the panoply of solutions to which victims "naturally" resort to solve their problems.

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