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Preface

The present publication is intended to provide a selection of summaries of finalized and ongoing research conducted by the Criminological Research Unit of the Max Planck Institute for Foreign and International Criminal Law in Freiburg during the last years. However, the selection concentrates on research projects that either have been finished during the last years or are rather close to termination. In turn, those projects that are still in a state of planning, preparation or in early stages of data collection haven't been entered in the volume. Among the research topics that have been left out we find the issue of dangerous sexual offenders and serious violent offenders, a project which will develop on questions of identification of dangerous individuals, prison regimes and treatment, treatment evaluation as well as co-operation between psychiatry and law in decision-making on the dangerous individual. Then, a youth violence survey is on the way, based on questionnaires done with 12-16-year-old students in the southwest of Germany. It is sought to extend this survey to the French region of the Alsace. Furthermore, a German-French research laboratory has been set up in early 1998 between the Max Planck Institute and CESDIP (Paris)/IFRESI (Lille) with a comparative research agenda including police co-operation, drug markets and drug policies, sentencing and criminal sanctions as well as victimization and fear of crime.

As regards the topics that are covered by the summaries it is research on new crime phenomena like e.g. environmental, economic and organized crime which have been a focal point of interest since the second half of the eighties. With these studies implementation of criminal law and administration of justice in newly discovered social problems fields are made subjects of criminological research. Herewith, it is modern developments in criminal law – essentially the use of endangering offences in highly complex area as well as the mix out of administrative and penal law based control prevailing in this field – which are at the centre of attention. Research has been extended then to the fields of justice administration and sentencing with highlighting particulars of processing the dangerous offender and the use of incapacitative sanctions. Longitudinal research on youth crime and juvenile justice (based on a cohort design) which was launched at the beginning of the eighties now produces unique information on long-term developments in crime careers and judicial responses to juvenile and adult crime. Another field of research covered by the criminological unit concerns victimization and fear of crime as well as the potential of community crime prevention. In particular victim surveys carried through after German re-unification produced significant information on various issues including attitudes towards punishment. Analysis presented here refers to the latter thus taking up a subject which recently has received re-newed attention within the context of explaining

developments in sentencing and policies of imprisonment. Related to general victim surveys is a study on the public's perceptions and attitudes on privatization of police. Cross-cultural respectively cross-national comparative research has dealt with victim/offender mediation and compensation including Germany, France and Austria.

Organized crime and legal responses to organized crime have been made subjects of research with evaluating anti-money-laundering policies and asset confiscation legislation in a cross-national perspective as are made now police and judicial definitions of organized crime and implementation of new investigative techniques such as electronic surveillance, under-cover investigations etc. adopted to make law enforcement more efficient.

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Freiburg, July 1998

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HANS-JÖRG ALBRECHT

1. Introduction

Criminological research at the Max Planck Institute for Foreign and International Criminal Law today has a nearly thirty-year tradition, and research activities and results have been variously summarized[1]. In the continuation of this tradition at the end of the nineties, on the one hand questions which are still open will be tackled and on the other hand new research issues are taken up, a process which will after all allow to establish a balanced relation between efficiency and innovation in criminological research. It must also be kept in mind that criminological research at the Max Planck-Institute for Foreign and International Criminal Law was built from an idea[2], which today, as from the beginning on when the criminological research was established at the beginning of the seventies has no reasonable alternative. This concept is comprised of different components, of which the main one concerns international and intercultural comparison. The second component is aimed at joint research between penal law and criminology; the third, finally, concerns the emphasis put on fundamental research and the long-term committment of resources to a research programme that is bound to fundamental research topics.

Expectations towards criminological research have to derive from the state of criminology and the tendencies of criminal politics and penal law as present in the mid-nineties. An outline of these trends in research will be followed by reflections on which issues and research projects should be focussed on. Furthermore, the relationship between penal and criminological research shall be discussed. To conclude, issues of international and comparative aspects criminology will be considered.

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1 Forschungsgruppe Kriminologie (ed.): Kriminologische Forschung am Max-Planck-Institut für Ausländisches und Internationales Strafrecht. Freiburg 1980; Forschungsgruppe Kriminologie (ed.): Criminological Research at the Max Planck Institute for Foreign and International Criminal Law. Freiburg 1982; Kaiser, G., Kury, H., Albrecht, H.-J. (ed.): Kriminologische Forschung in den 80er Jahren. Freiburg 1988; Kaiser, G., Geissler, I. (eds.): Crime and Justice. Criminological Research in the Eighties. Freiburg 1988; Kaiser, G., Kury, H. (eds.): Kriminologische Forschung in den 90er Jahren. Criminological Research in the 1990's. Freiburg 1993.

2 Jescheck, H.-H., Kaiser, G. (eds.): Strafrechtsvergleichung und vergleichende Kriminologie. Berlin 1980.

2. Criminological research in the 70s and 80s

Except for the *sociology of the criminal law* and historical research on crime and criminal law, main stream criminology, likewise German crime politics, has been concentrated, since the 60s, on mass and everyday crime, and has consequently focussed on phenomenon that have characterized perceptions of crime and crime policy problems in post war western industrial countries.

Growing crime, the growing number of suspects and thus the changing demands on police and the criminal justice system at large were - besides the reception of sociological theory imported from the USA and fitting well into the picture of crime problems as drawn by main stream criminology - the starting point for a development in criminological research, that can be collapsed into various routes.

The basis of this development was a mixture of new theoretical concepts and traditional lines of research on crime as well as, in this context, a turn in the direction of the social sciences. From the view of criminological theory the labelling approach was of particular significance, because, that approach did satisfy the obvious need to establish a critical distance to penal law and allowed understanding and conceptualization of penal law and criminal justice as an essential part of social control on the one hand, and on the other hand provided those arguments that became of central concern for decriminalization and depenalization policies. As far as traditional criminological concepts are concerned, research on rehabilitation on the basis of learning theories and personality theories of crime continued to attract attention. Furthermore, traditional classification systems and offender typologies progressed into research on the career criminal, chronic offenders, and professional offenders[3].

Out of such concepts and research developped what was called then research on implementation and evaluation of criminal sanctions[4]. Simultaneous research on imprisonment and prison regimes, rehabilitation and treatment within the prison system[5], analyses of the structure and practice of the criminal process and the system of sanctions, and, above all, extensive research on diversion in the field of juvenile justice[6] have been carried through. A second line of criminological research is directly linked to the one just

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[3] Summary by Albrecht, H.-J.: Kriminelle Karrieren. In: Kaiser, G., Kerner, H.-J., Sack, F., Schellhoss, H. (eds.): Kleines Kriminologisches Wörterbuch. 3. Ed., Heidelberg 1993, pp. 301-308.

[4] Kaiser, G., Schöch, H.: Antrag auf Einrichtung eines DFG-Schwerpunktes. Empirische Sanktionsforschung - Verfahren, Vollzug, Wirkungen und Alternativen. Monatsschrift für Kriminologie und Strafrechtsreform 60 (1977), pp. 41-50.

[5] Kury, H.: Behandlungsforschung. In: Kleines Kriminologisches Wörterbuch, 3. Ed., 1993, pp. 59-71; Lösel, F. et al.: Meta-Evaluation der Sozialtherapie. Stuttgart 1987; Ortmann, R.: Resozialisierung im Strafvollzug. Freiburg 1987.

[6] Heinz, W.: Gleichheit vor dem Gesetz in der Sanktionspraxis? Empirische Befunde der Sanktionsforschung im Jugendstrafrecht in der Bundesrepublik Deutschland. In: Göppinger, H. (ed.): Kriminologie und Strafrechtspraxis. Tagungsberichte des kriminologischen Arbeitskreises. Vol.7: Aktuelle Probleme der Kriminologie. Tübingen 1990, pp. 171-209; Heinz, W.: Die Jugendstrafrechtspflege im Spiegel der Rechtspflegestatistiken. Ausgewählte Daten für den Zeitraum 1955-1988. Monatsschrift für Kriminologie und Strafrechtsreform 73(1990), pp. 210-276; Heinz, W.: Mehrfach Auffällige - Mehrfach Betroffene. Erlebnisweisen und Reaktionsformen. In: Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen (ed.): Mehrfach Auffällige - Mehrfach Betroffene. Bonn 1990, pp. 30-73.

mentionned. Its focus is on social control through criminal law and on decision-making patterns in the criminal justice system, thus established as independent research goals[7]. It must certainly be acknowledged that empirical evaluations on the work of subsystems of social control, such as the police, public prosecutor and the Courts, respectively, the judiciary have remained marginal and have concentrated on the particularly sensitive areas of the dismissal of criminal proceedings and sentencing. On the other hand, aspects of organisation, of the legal professions, and of routine activities emerging in institutions of social control have only gained marginal attention. Most research then was limited to the study of the core actors of social control. Anyhow, evaluations of the work of police, public prosecutors, and criminal courts, highlight a central issue of social control. Other public authorities such as public administration and the administrative policing play an important role in behaviour control as well, and their role will gain in significance as criminal law is continuously expanding on fields that primarily have been under administrative control such as the economy and the environment.

Finally, for different reasons, but with particular emphasis on the perspective of crime control, research on the crime victim became , The crime victim was then identified as the "gate-keeper" of the criminal justice system. Since then, the victim has been an important point of intersection of demarcation for the private and public control of the prevention of crime[8]. This type of research started to investigate the process of criminal victimization with respect to fear of crime and feelings of security[9]. Research on victimization gained in significance ,at the end of the 80s and beginning of the 90s, with the political and economical changes in Central and Eastern Europe, also with the unification of Germany, whereby questions as to the effects of social change in relation to crime came to the foreground[10].

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7 Feest, J., Blankenburg, E.: Die Definitionsmacht der Polizei. Düsseldorf 1972; Funk, A.: Polizeiforschung in der Bundesrepublik. Versuch einer Bilanz. Kriminologisches Journal 22(1990), pp. 105-121; Feltes, Th., Rebscher, E.: Polizei und Bevölkerung. Beiträge zum Verhältnis zwischen Polizei und Bevölkerung und zur gemeindebezogenen Polizeiarbeit. Holzkirchen 1990; Steffen, W.: Analyse polizeilicher Ermittlungstätigkeit aus der Sicht des späteren Strafverfahrens. Wiesbaden 1976; Kürzinger, J.: Private Strafanzeige und polizeiliche Reaktion. Berlin 1978; European Committee on Crime Prolems: Privatisation of Crime Control. Strasbourg 1990; Feltes, Th.: Polizeiliches Alltagshandeln. Eine Analyse von Funkstreifeneinsätzen und Alarmierungen der Polizei durch die Bevölkerung. Bürgerrechte und Polizei 3/1984, pp. 11-24; Busch, H.et al.: Die Polizei in der Bundesrepublik. Frankfurt 1985; Blankenburg, E. et al.: Die Staatsanwaltschaft im Prozeß sozialer Kontrolle. Berlin 1978; Meinberg, V.: Geringfügigkeitseinstellungen von Wirtschaftsstrafsachen. Eine empirische Untersuchung zur staatsanwaltschaftlichen Verfahrenseinstellung wegen Geringfügigkeit nach § 153a Abs.1 StPO. Freiburg 1985; Paschmanns, N.: Die staatsanwaltschaftliche Verfahrenseinstellung wegen Geringfügigkeit nach §§153, 153a Abs.1 StPO - Entscheidungsgrenzen und Entscheidungskontrolle. Frankfurt et al. 1988.

8 Summary by Arnold, H.: Kriminelle Viktimisierung und ihre Korrelate. Zeitschrift für die gesamte Strafrechtswissenschaft 98, (1986), 1014-1058.

9 Albrecht, H.J., Arnold, H.: Research on Victimization and Related Topics in the Federal Republic of Germany. A Selection of Research Problems and Results. In: Kaiser, G. et al. (eds.): Victims and Criminal Justice. Freiburg 1991, pp. 19-36; Schöch, H.: Die Endeckung der Verbrechensfurcht und die Erkundung der Vorstellungen und Erwartungen der Geschädigten als Forschungsgegenstand. In: Bundesministerium der Justiz (ed.): Das Jugendkriminalrecht als Erfüllungsgehilfe gesellschaftlicher Erwartung? Bonn 1995, pp. 68-82.

10 Kury, H.(ed.): Gesellschaftliche Umwälzung. Kriminalitätserfahrungen, Straffälligkeit und soziale Kontrolle. Freiburg 1992; Boers, K. et al. (eds.): Sozialer Umbruch und Kriminalität in Deutsch-

The results of this research were considerable[11]. They were of enormous importance especially in the organization and foundation of the national and international criminal policies. The most important results in summary were:

- evidence on and explanation of choices made and selection taking place in processing an offender through the criminal justice system, from reporting the offence to prosecution authorities up to the enforcement of the sentence[12].
- evidence of the limits and interdependencies of private and public crime control[13],
- findings concerning the limited influence of the criminal justice system for the preservation of order in the society, for the stabilizing of norms (general prevention research)[14], and for the prevention of individual relapse in crime[15],
- proof of the overlapping of the victim and offender roles[16],

land, Mittel- und Osteuropa. Bonn 1993; Kury, H., Richter, H., Würger, M.: Opfererfahrungen und Meinungen zur Inneren Sicherheit in Deutschland. Freiburg 1993.

11 Kerner, H.-J., Kury, H., Sessar, K. (eds.): Deutsche Forschungen zur Kriminalitätsentstehung und Kriminalitätskontrolle. Köln et al. 1993, 2 Vol.; Kaiser, G., Kury, H., Albrecht, H.-J. (eds.): Kriminologische Forschung in den 80er Jahren. Freiburg 1988, 3 Vol; Kerner H.-J., Sessar, K. (eds.): Developments in Crime and Crime Control Research. New York 1991.

12 Kaiser, G.: Verbrechenskontrolle und Verbrechensvorbeugung. In: Kaiser G. et al. (eds.): Kleines Kriminologisches Wörterbuch. 3. Ed., Heidelberg 1993, pp. 571-577.

13 Jung, H.: Private Verbrechenskontrolle. In: Kaiser, G. et al. (eds.): Kleines Kriminologisches Wörtebuch. 3. Ed., Heidelberg 1993, pp. 409-416; Kaiser, G.: Kriminologie. 9. Ed., Heidelberg 1993, p. 108ff; Matthews, R. (ed.): Informal Justice. Beverly Hills et al. 1998; Albrecht, P.-A. (ed.): Informalisierung des Rechts. Berlin 1990.

14 Köberer, W.: Läßt sich Generalprävention messen? Monatsschrift für Kriminologie und Strafrechtsreform 65 (1982), pp. 200-218; Otto, H.J.: Generalprävention und externe Verhaltenskontrolle. Wandel vom soziologischen zum ökonomischen Paradigma in der nordamerikanischen Kriminologie? Freiburg 1982; Sellin, T.: The death penalty, Philadelphia 1959; Schöch, H.: Göttinger Generalpräventionsforschung. In: Kaiser, G., Kury, H., Albrecht, H.-J. (eds.): Kriminologische Forschung in den 80er Jahren. Projektberichte aus der Bundesrepublik Deutschland. Freiburg 1988, pp. 227-246; Schöch, H.: Empirische Grundlagen der Generalprävention. In: Festschrift für Hans-Heinrich Jescheck. Berlin 1985, pp. 1081-1105.

15 Albrecht, H.-J.: Legalbewährung nach Verurteilung zu Freiheitsstrafe und Geldstrafe. Freiburg 1982; Ortmann, R.: Resozialisierung im Strafvollzug. Theoretischer Bezugsrahmen und empirische Ergebnisse einer Längsschnittstudie zu den Wirkungen von Strafvollzugsmaßnahmen. Freiburg 1987; Albrecht, H.-J., Dünkel, F., Spieß, G.: Empirische Sanktionsforschung und die Begründbarkeit von Kriminalpolitik. MschKrim 64(1981), pp. 310-326; Kiwull, H.: Kurzfristige Freiheitsstrafen vor und nach der Strafrechtsreform, einschließlich der Entziehung der Fahrerlaubnis und des Fahrverbots als Mittel der Spezialprävention. Jur. Diss. Freiburg 1979; Spieß, G.: Soziale Integration und Bewährungserfolg: Aspekte der Situation nach Haftentlassung und ihre Bedeutung für die Legalbewährung. In: Kury, H.(ed.): Prognose und Behandlung bei jungen Rechtsbrechern. Freiburg 1986, pp. 511-580; Petersilia, J., Turner, S.: Comparing Intensive and Regular Supervision for High-Risk Probationers: Early Results from an Experiment in California. Crime & Delinquency 36(1990), pp. 87-111; Lipton, D., Martinson, R., Wilks, J.: The Effectiveness of Correctional Treatment: A Survey of Treatment Studies. New York 1975.

16 Villmow, B., Stephan, E.: Jugendkriminalität in einer Gemeinde. Freiburg 1983; Kreuzer, Jugendkriminalität. In: Kleines Kriminologisches Wörtebuch, 3. Ed., 1993, p. 182ff.

- the finding of differences between objective measures of crime and security on the one hand and subjective feelings of (un-)safety on the other hand[17].

These are only a few of the most important findings. In addition to these are, the methodological progress and refinement of empirical criminology. Furthermore, especially in the 80s, alternative theoretical approaches were developed for the explanation of crime and social control. This *expansion* has also been helped along by other disciplines, such as historical sciences[18] and economics[19], which have, since the 60s, been participating in the growing research concerning the *emergence* of crime and criminal control, and in the development of theoretical and empirical criminology. However, in some of the fields of research which were of main emphasis in the 60s and 70s, as well as its findings, have shown *gaps*, and have given rise to new questions.

3. Gaps in criminological research and open questions

Gaps that have shown up in criminological research are partly due to the consequences of a deliberate withdrawal from psychological and psychiatric approaches that had prevailed during the 50s and 60s. The new approaches are based on the finding that the majority of the young criminals are only 'one-time' or occasional offenders; their criminal offences are minor, and thus no special attention is to be paid to them, besides the fact that (because of the ubiquity of deviant behaviour) there is no necessity for theoretical explanations at all[20].

In any case, the question remains open what the reaction should be like towards serious crime, especially in regard to extreme criminality and chronic recidivists, and what measures applied in case of extreme criminality are working[21]. New criminological topics and subsequent needs for research have arisen especially in the last decade, mainly in connection with the accelerating pace of economic, political and cultural change.

Certain forms of extreme criminality have been neglected - in particular in terms of evaluating criminal justice responses to extreme crimes (such as e.g. serial rapes, serial murder) - as have been the study of sub-cultural, organizational and rational *dimensions* of criminality. Furthermore, studies on the creation and implementation of substantive

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17 Boers, K.: Kriminalitätsfurcht. Über den Entstehungszusammenhang und die Folgen eines sozialen Problems. Pfaffenweiler 1981.

18 Blasius, D., Kreuzer, A., Rasch, W., Schumann, K.F.: Soziale Konflikte und Kriminalitätskontrolle im aktuellen und historischen Vergleich - Antrag an die DFG auf Einrichtung eines Schwerpunktprogramms -. In: Salvelsberg, J.J. (ed.): Zukunftsperspektiven der Kriminologie in der Bundesrepublik Deutschland. Materialien zu einem DFG-Kolloquium. Stuttgart 1989, pp. 223-239; Blasius, D.: Sozialgeschichte der Kriminalität. In: Kaiser, G. et al. (ed.): Kleines Kriminologisches Wörterbuch. 3. Ed., Heidelberg 1993, pp. 490-495.

19 Pilgram, A.: Kriminalitätstheorien, ökonomische. In: Kaiser, G. et al. (eds.): Kleines Kriminologisches Wörterbuch. 3. Ed., Heidelberg 1993, pp. 250-252; (1982), pp. 86-118. Otto, H.J.: Generalprävention und externe Verhaltenskontrolle. Freiburg 1981.

20 Albrecht, H.-J.: Das Jugendstrafverfahren gegenüber "Mehrfachauffälligen". In: DVJJ (ed.): Mehrfach Auffällige - Mehrfach Betroffene. Erlebnisweisen und Reaktionsformen. Bonn 1990, pp. 86-98.

21 Kaiser, G.: Befinden sich die strafrechtlichen Maßregeln in der Krise? Heidelberg 1990.

and procedural law and their relationship with perceptions of crime phenomena and perceptions of threats to safety and fear of crime resulting herefrom, moreover studies on the general question of interactions between the criminal justice system and crime phenomenon are lacking. Also neglected in an almost systematic way, have been immigrants and migrants, immigration and ethnic minorities in the study of crime and crime control. Foreign minorities have, for methodological and economic reasons, been largely excluded from self report and victim surveys as well as from research on sentencing, imprisonment and rehabilitation[22].

Extreme forms of crime on the other hand, were only included into analysis when studying social control or labeling and definitional processes. Examples are the use of life imprisonment [23], and recently also, once again the placement of dangerous criminal offenders in psychiatric hospitals [24] and maximum security units[25] .On the other hand, there is clearly consensus that dangerous criminals do exist. However, opinions differ when the matter concerns how to identify those criminals who actually are dangerous and for whom incapacitative and/or rehabilitative measures should be recommended[26].

Questions are also to be put forward about the effects of sanctions and the advantages of specific treatment. There are enormous deficiencies in this field, since present research on recidivism subsequent to rehabilitative treatment has not been sufficiently conceptualized, so that questions as to the effectiveness have not been able to be evaluated[27]. The answers of criminology regarding extreme crime has been up to now rather reserved. On the one hand the extreme rarity of such events are pointed out, on the other hand these forms of crime are almost ignored and as research questions evidently set aside.

Social changes over the last two decades have produced new needs for criminological research. These changes concern the emergence of ethnic minorities and the growing importance of migration and immigration, as well as the considerable increase of black markets and the growth of shadow economies as well as the onset of a second labour market. Also connected with that are changes in the very basis and in the conditions of

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22 Albrecht, H.-J.: Ethnic Minorities, Crime, and Criminal Justice in Germany. In: Tonry, M. (ed.): Ethnicity, Crime, and Immigration. Comparative and Cross-National Perspectives. Chicago 1997, pp. 31-99; Compare with, for example, Sutterer, P., Karger, Th.: Self-Reported Juvenile Delinquency in Mannheim, Germany. In: Junger-Tas, J., Terlouw, G.-J., Klein, M. (eds.): Delinquent Behaviour Among Young People in the Western World. Amsterdam et al. 1994, pp. 156-185, p. 168, where, on an extremely small random test, foreign youths were included in the Self-Report Survey.

23 Jung, H., Müller-Dietz, H. (eds.): Langer Freiheitsentzug - Wie lange noch? Bonn 1994; Müller-Dietz, H.: Menschenwürde und Strafvollzug. Berlin et al. 1994; Laubenthal, K.: Strafvollzug. Berlin et al. 1995, pp. 7-9.

24 Blau, G.: Zur Bedeutung der Psychiatrie für die Kriminologie. In: Pohlmeier, H. et al. (eds.): Forensische Psychiatrie heute. Ulrich Venzlaff zum 65. Geburtstag. Berlin et al. 1986, pp. 151-168; Leygraf, N.: Psychisch kranke Straftäter. Epidemiologie und aktuelle Praxis des psychiatrischen Maßregelvollzugs. Berlin 1988. Dessecker, A.: Straftäter und Psychiatrie. Eine empirische Untersuchung zur Praxis der Maßregel nach §63 StGB im Vergleich mit der Maßregel nach §64 StGB und sanktionslosen Verfahren. Wiesbaden 1997.

25 Kinzig, J.: Die Sicherungsverwahrung auf dem Prüfstand. Freiburg 1996.

26 Kinzig, J.: Die Sicherungsverwahrung auf dem Prüfstand. Freiburg 1996.

27 See: Leygraf, N.: Wirksamkeit des psychiatrischen Maßregelvollzugs. In: Kröber, H.-L., Dahle, K.-P. (eds.): Sexualstraftaten und Gewaltdelinquenz. Verlauf - Behandlung - Opferschutz. Heidelberg 1988, pp. 175-184, p. 179ff.

socialisation and integration for young people. In addition, the phenomena of organized or rational crime, crossborder and network types of criminality, and, not least abuse of power have been handled almost exclusively from policy and doctrinal perspectives and have not been made subjects of empirical research.

The consequences which arise from the process of modernization, from changes in opportunity structures, from rapidly spreading new technologies - especially information technology - as well as the perceptions of new risks, bring new demands to penal law and penal policies. The development of criminal politics is then (also internationally) characterized by obvious shifts in responsibility for crime control and crime prevention[28]. Similar developments have been observed in economic and social welfare politics. With that, state administration is more and more reluctant in adopting full responsibility for the total of the crime problem thus pointing to limits in crime control capacity as well as in general poor results of state operated crime prevention. Such developments can be explained. Indeed, adopting responsibility for crime control has been, historically seen, a major element in establishing monopolies of power with providing legitimacy. However, the challenges caused by the drastic decrease in clearing rates and the increases in various forms of crime during the last decades, the formerly legitimacy producing concentration of responsibility for crime control within the framework of state administration has changed into a mechanism producing permanent crises of legitimacy [29]. The consequences of these developments become evident in appeals to the community, neighbourhood solidarity and to self-control. In some fields (e.g. environmental crime and money-laundering) voluntary private crime control has been replaced by statutory duties to report suspicious behaviour backed up by threats of criminal penalties. Recently, this trend towards sharing crime control responsibility was also shown in the implementation of community crime prevention programmes [30].

With the wide use that is made of endangering offences and with adopting prevention as the major aim of criminal law the criminal justice system has moved into areas of high complexity. This trend can be observed particularly in the field of environmental protection, in the care for the economy and for public health. What is of concern here, is the creation of links between criminal law and administrative law as well as the specific control models adopted in administrative law; also increasing are the links between criminal law and civil law, as can be shown in the growing interest in restitution and compensation[31].

Out of these developments follow increasing flexibility and networking that intervenes the criminal justice system with administrative law, civil law and the respective models of behaviour control. With that, it is also recognized that criminal law provides but one of many ways in behaviour control and that this way is not necessarily the most efficient

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[28] Garland, D.: The Limits of the Sovereign State. Strategies of Crime Control in Contemporary Society. BritJCrim 36(1996), pp. 445-471, pp. 445-446.

[29] Kaiser, G.: Kriminalität. In: Kaiser, G. et al (eds.): Kleines Kriminologisches Wörterbuch. 3. Ed., Heidelberg 1993, pp. 238-246.

[30] Albrecht, H.-J.: Gemeinde und Kriminalität - Perspektiven der kriminologischen Forschung. In: Kury, H.(ed.): Gesellschaftliche Umwälzung: Kriminalitätserfahrungen, Straffälligkeit und soziale Kontrolle. Freiburg 1992, pp. 33-54.

[31] Eser, A., Kaiser, G. & Madlener, K.(eds.): Neue Wege der Wiedergutmachung im Strafrecht. Freiburg 1990.

one. On the other hand, criminal law itself adopts more and more administrative and civil elements. In particular, this trend is pushed forward through simplification and privatization tendencies, that are promoted by arguments of cost reduction. Strong beliefs in restitution and mediation reflect such tendencies as well[32].

The key concepts outlined above make up the coordinates, within which the expectations on criminological research are to be located and out of which research topics can be developed. They also provide the basis for the integration of criminological and penal research. Basically, the fields of research already mentioned deal with the limits of the criminal law, its capacity for actively influencing the course of social change, and, even more, the changes within the criminal justice system coming up with new conditions of social integration and therewith, the basis of national and international penal reform. Black markets, organisation and rationality in crime, new technologies and new risks, ethnic minorities in society and the networking of criminal, administrative and civil law elements of behavioural control provide "natural experiments" that enable evaluation of desirable and undesirable effects of social control based on criminal law including its interaction with the related *crime phenomena*.

The situation in the European Community is characterized by migration and immigration. Migration can be attributed to push-and-pull factors, which may explain when and why, with which time limit and in which forms migration occurs, as well as its dependency on long- or short- term *motives*. The fundamental conditions of migration, that are of importance to criminal justice and crime analysis, lies naturally in the social and economic inequality between different regions (whereas the expansion of physical mobility presents a technical element that is important as well). The *emergence* of ethnic minorities, or, to use the customary term applied in Germany, foreign minorities, brings upon significant demands for criminological research. Immigration and migration has led, namely, to substantial changes in the clientele the system has to work with, especially with regard to prison inmates. In particular in metropolitan areas, more than half of criminal suspects are foreigners. This naturally leads to the questions of how does the criminal justice system function (and presumably change) under these conditions. Drastic changes like those observed fin the structure of suspects can also be seen in the prison system. The proportion of foreign inmates has, in the last decade risen considerably and is now about 30 per cent of the total prison population. More marked is the development in pre-trial detention where approximately 50 percent of inmates are from the ethnic minorities. Victimization affecting ethnic minorities and coping with victimization are also becoming evident problems which have to be taken up. Particular notice should be given to the emergence and to the control of 'hate-crimes', namely, violence against foreigners which are fundamentally characterized not so much by the specific motivation than by the fact that hate violence – unlike ordinary violence - breaks through the boundaries of ethnic and social groups[33].

Criminal policy debates and criminal law reform are increasingly driven by the topic of organized crime. However, empirical research on the phenomena of organized crime has

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[32] See the critical analysis of Kaiser, G.: Wandlungen kriminologischen Denkens und die Zukunft des Strafrechts. In: Pływaczewski, E.W. (ed.): Aktuelle Probleme des Strafrechts und der Kriminologie. Białystok 1998, pp. 243-295, p. 253ff.

[33] Jacobs, J.B.: The Emergence and Implications of American Hate Crime Jurisprudence. Israel Yearbook on Human Rights 22(1993), pp. 113-139, p. 113.

not kept pace with that development in criminal policy. Police data concerning organized crime which for Germany are provided since 1991 do not show a spectacular picture - neither . In 1996 a total of 8,384 suspects and 47,916 offences were allocated to organized crime[34] . In relation to the total of 6.5 million criminal offences that came to the attention of police in 1996, including 2.2 million suspects, organized crime is only about 0.8 per cent of all registered offences and 0.4 per cent of suspects.

The reports of organized crime clearly show that the conventional way of presenting criminal statistics is evidently not suitable, to make visible the new quality of risks inherent to organized crime. Furthermore the term "Organized Crime" must be differentiated and elaborated theoretically in order to allow to serve for more than just a rallying point for political interests. Organized crime refers first of all to urban subcultures that have emerged during the last centuries with the process of urbanization and the monopolization of power. The underworld of large metropolitan areas actually was at the centre of attention of European and North American criminology in the first half of this century.

On the other hand included in the terminology 'organized crime' are the organizational structures in which the organisation itself, i.e., the business like management of crime enterprises are the decisive elements of definition. The concept of organized crime thus is directed towards the metropolitan underworld a part of which are black and grey markets. However, the underworld and criminal subcultures in the city have been, since the 60s, completely ignored by the European criminology. The concept of organized crime as used by criminal policy then transports a hidden message characterizing organized crime as being a response to a 'weak' State and a corrupted society. Certainly such a policy concept turns attention, once again, to fundamental issues of criminology and a repoliticized concept of crime. Such approaches are concentrated on social developments, the role of the State and State institutions and on the active role of professional criminals and underground members who take advantage of weaknesses by control institutions for broadening their basis of action[35].

The hypotheses underlying this approach provide a rather pessimistic diagnosis of developments in modern societies. Certainly, rationality in organized crime means *a move* towards becoming part of the conventional society with giving up subculturally grounded and visible signs of the underworld. In addition modern criminal law itself contributes to these problems. Modern criminal law in major parts is no longer result-oriented as was traditional criminal law, but rather concentrates on parcelling out parts of behaviour that, in principal, is legitimate. Herewith, problems of identifying crime and suspects emerge most clearly demonstrated today in the field of money laundering but visible also e.g. in the field of environmental crime. Among the developments in the field of organized and rational crime that have to be studied are the transition of an underworld bound to a territory and displaying visible characteristics into new forms of economic, environmental and white-collar crimes, that in their apparent forms can no longer be distinguished easily from their legal counterparts.

Thus, the expectations towards criminological research can be summarized as follows. Criminological research has to deal with:

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[34] Bundeskriminalamt: Lagebild Organisierte Kriminalität. Bundesrepublik Deutschland 1996. Wiesbaden 1997.

[35] Bundeskriminalamt: Lagebild Organisierte Kriminalität. Bundesrepublik Deutschland 1992. Wiesbaden 1993, Anlage 1.

1. the consequences of migration and immigration for the development and practice of law enforcement *in particular* the implementation of custodial sentences and other forms of restriction of liberty, as e.g. detention in psychiatric hospitals or for deportation;
2. the relevance of the black market and the shadow economy for the development of penal social control on the one hand, and for causation of crime as well as social integration of young people on the other hand;
3. the relevance of organization and subcultures for the development of criminality as well as for criminal law;
4. modernisation and its effects on offence patterns and on changes in criminal law;
5. the development of criminal law itself, and its use in the context of complex structures (like e.g. the economy, the environment);
6. the networking of the criminal justice system with models of behaviour control located outside the criminal system, and the consequences for implementation of the criminal law;
7. extreme forms of crime and appropriate forms of reaction related to them (e. g. long-term incarceration, either in prisons or psychiatric institutions), the effects of treatment and cooperation between the therapeutic and legal professions in the sensitive field of prison regimes and parole.

4. Integration and further development of Criminological Research

Criminal research at the Max Planck-Institute for Foreign and International Criminal Law offers a wide range of ongoing projects that fit into research priorities as set out above.

It is first of all research on environmental crime and implementation of environmental criminal law that took up the fundamental question of how and to what effects administrative and criminal law are interwinned [36].

The cohort study on crime and criminal justice, based on police and court data, allows for monitoring and analyzing how foreign suspects are registered and dealt with by the criminal justice system[37]. Of particular significance in this respect will also be crime involvement of young ethnic Germans having immigrated from the former Soviet Union.

The pilot study that was launched in the east of Germany to study political repression, victims of political repression as well as attitudes towards abuse of power in the former German Democratic Republic will be an integral part of the institute's project on coping with the aftermath of political terror and the role criminal law can play in dealing with a terrorist past. On the other hand, this project will head towards the study of organized crime in its most extreme form namely crime organized by states and the abuse of power. Herewith, a comparative design is needed. For, any society organized through monopo-

[36] See, on this topic, Hoch, H., in this volume.

[37] See, on this topic, Grundies, V., in this volume.

lizing power in state administration will produce more or less extensive conflicts between citizens and State institutions and therefore perceptions of injustice and abuse of power. That is why, a baseline of injustice and victimization experienced and perceived in state organized societies has to be established. The theoretical frameworks that will – besides abuse of power – will be considered here refer to organized crime, white-collar crime and terrorism.

Then, ongoing research on victim/offender-mediation and victim compensation, such as, the comparative evaluation of the recently implemented § 46a German Criminal Code, are certainly related to the topic of establishing interdependencies between criminal and civil law[38].

The projects dealing with money-laundering and confiscation of illegally obtained profits have led to first publications on the implementation of anti-money-laundering provisions in Germany[39]. Then, the proceedings of the first international workshop on the 'Development of the legislation on confiscation of illegally obtained profits in Europe and the U.S.' held at the end of 1996[40], are related to the topic of organized crime[41].

In connection with the topic of organized crime, research will furthermore - apart from the already mentioned projects on the asset confiscation and money-laundering – focus on the definition and construction of organized crime within the criminal justice system as well as the implementation of new investigative techniques justified with needs resulting out of particular problems caused by organized crime. Evaluation of new instruments such as undercover agents and various forms of electronic surveillance must be paid special attention[42]. For these topics are linked to the long-ignored research field related to issues of criminal proceedings and the trial. However, empirical research on organized crime has to look beyond those police controlled sources of information, and attempt to generate data on organized crime that are both, independent from the criminal justice process and fitting into theoretical concepts. Research has to focus also on the role and functions of criminal law in relation to black markets, as well as the function of the black markets and shadow economies for the social integration of people, especially young people, and of ethnic minority members in modern society. In a comparative pilot study, the significance of shadow economies and black-markets recently has been explored. The findings underline the importance of this approach[43].

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38 See, on this topic, Kilchling, M. & Löschnig-Gspandl, M., in this volume.

39 See Oswald, K: Die Implementation gesetzlicher Maßnahmen zur Bekämpfung der Geldwäsche in der Bundesrepublik Deutschland. Freiburg 1997.

40 See, issue 3 of the European Journal of Crime, Criminal Law and Criminal Justice 1997 (vol. 5).

41 See, on this topic, Kilchling, M., in this volume.

42 See, on this topic, Kinzig, J., in this volume.

43 See Albrecht, H.-J., Shapland, J. (eds.): The Informal Ecomony - Opportunities and Threats in the City. Freiburg 1988 (forthcoming).

5. Criminology, Criminal Law and international comparitive research

Obviously a criminological research programme which takes up the topics mentionned above has to engage in joint projects together with criminal law sciences, just as comparative and international criminal law must come to an understanding with theoretical and empirical criminology. Because the issues raised by modern society and the process of internationalization (and globalization) need such cooperation for elaborating the future role of the criminal law. The critique still frequently heard today, that traditional criminology is characterized by submission to criminal law doctrine, certainly is inapproriate. It is obvious that the creation and implementation of criminal law are closely associated with power. However, joint research of criminal law and criminology has to go beyond merely presenting research findings on a common topic. The objectives which have led to a programme that unifies criminal law and criminology[44] "under one roof" at the Max Planck Institute Freiburg are far-reaching. The fundamental aim is the mutual development of research issues and their operationalization in concrete research projects, thus realizing a special form of interdisciplinary research, which only is capable to support national and international criminal law reforms effectively on the one hand and to understand developments in crime and crime control adequately on the other hand.

Finally, special attention must be dedicated to international orientation of criminology, as well as to international and intercultural comparison in criminological research. With reference to international comparative research, it can be heard again and again, that even though international comparison has become modern and well estimated the results of comparative research appear to be quite poor. This conclusion is partially true. The reasons for its limited results could be, that up to now it has not been elaborated clearly enough what should be the purpose of such international comparisons[45]. Criminological research undoubtedly has to progress towards a concept of an international criminological research, where data collection is no longer dependent on national borders; instead, with the abolition of state borders, the context of discovery and justification of research questions and interests is to be expanded. International criminology as any discipline must, in the development of its research issues, be designed as an international enterprise. Only with establishing international research groups can empirical, normative-theoretical and dogmatic comparisons reasonably be implemented.

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[44] Jescheck, H.-H., Kaiser, G. (eds.): Strafrechtsvergleichung und vergleichende Kriminologie. Berlin 1980.

[45] See the summary by Arnold, H.: Commentary. In: Kaiser, G., Albrecht, H.-J. (eds.): Crime and Criminal Policy in Europe. Proceedings of the 11. European Colloquium. Freiburg 1990, pp. 143-158.

25 Years of Criminology at the Freiburg Max Planck Institute - A Review

GÜNTHER KAISER

The Criminological Research Unit of the Max Planck Institute for Foreign and International Criminal Law in Freiburg i.Br. was founded in 1970 and continuously expanded up to the mid-70s. Criminological research has thus been conducted at this institution for close to a quarter of a century.

Within the overall framework, there were four relevant aspects in putting the research program into concrete terms, namely an international, national and institute-centered scope of reference and conditions defined by research economics.

1. Research subject matter

Every period has its own ideas, interests, priorities, fashion trends and problems, and criminological thinking and research are no exception to the rule. In reviewing the past two decades, one can thus make out varying priorities in the research work performed.

Initially, criminological activities concentrated on the entire system of criminal justice in the broadest sense of the term[1]. On the whole, the research work spanning the first 12 years can be divided into five larger domains, i.e., into administration of criminal justice, prosecution authorities and the police, fines and imprisonment, white-collar criminality and dark figure research, and surveys on crime victims[2].

In the past decade, however, emphasis was shifted to topics whose implications had become manifest only vaguely during the first few years. Besides the inclusion of crime victims in criminological research, the problems of diversion, crime prevention, violence within the close-range social environment as well as problems of money-laundering and historical criminology and abolitionism now rank as key areas in criminological research at the MPI. Criminological reasearch at the MPI was to gain new impetus when Prof. Eser joined the institute as director and head of the research unit on criminal law in February 1982, bringing with him his own research program dedicated to the themes of abortion, crimes against the environment and restitution[3]. The comparative aspect of

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1 Cf. *Kaiser, G.*, Probleme, Aufgaben und Strategie kriminologischer Forschung heute. Zeitschrift für die gesamte Strafrechtswissenschaft 83 (1971), pp. 881-910, p. 902.

2 Cf. the summarizing account in: Empirische Kriminologie. Ein Jahrzehnt kriminologischer Forschung am Max-Planck-Institut Freiburg i.Br., ed. by the Criminological Research Unit. Freiburg i.Br. 1980, pp. 512f.

3 Cf. the annual reports concerning the activities as well as the current and planned research projects

research on criminal law continued to be pursued as well, with special emphasis being placed on North-American law.

A number of further projects should be mentioned here which center on crimes of violence, drug abuse and drunkenness, as well as white-collar criminality and environmental offences[4]. However, only a few studies dealing with the personality of the offender have been published so far[5]. Other topics relate to criminal offences committed by aliens and women, and to unemployment and its effect on propensity to crime[6]. A part of the studies were secondary analyses, however.

2. Results: criminological research and teaching activities of members of the Freiburg MPI

Hence, if one looks back on the 25 years of criminological research at the Freiburg MPI, and if the objectives, programs and original points of departure are taken into account, it becomes evident that empirical research has satisfied expectations only in part, and in some respects has stayed far behind the projected goals. One cannot deny, on the other hand, that in the course of the 70s and 80s issues became crucial which could hardly have been predicted, let alone anticipated, two and a half decades earlier. In this context, research problems such as offender-victim mediation, obtaining subsidies by artifice, forfeiture of excess profits and money-laundering should be mentioned. Moreover, studies on jointly defined research issues conducted by practitioners of criminal justice in union with criminologists proved to be not only feasible but also productive and mutually beneficial. This applies accordingly to the division of labor which exists among the various criminological research groups within the Federal Republic of Germany. In spite of the overall degree of independence of these groups, a considerable homogeneity has developed with respect to research themes, goals and research methodology, which - more than ever before and despite all academic criticism and reservations - forms a basis for joint discussions.

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at the Freiburg Max Planck Institute ("Tätigkeitsberichte") with regard to the years 1984-1993; see in particular the reports of activities regarding the years 1982 and 1993.

4 Cf. for example *Meinberg, V.:* Geringfügigkeitseinstellungen von Wirtschaftsstrafsachen. Eine empirische Untersuchung zur staatsanwaltlichen Verfahrenserledigung nach § 153a StPO. Freiburg i.Br. 1985; furthermore *Hoch, H.:* Die Implementation strafbewehrter Vorschriften im Bereich des Umweltschutzes. Empirische Untersuchungen zur Rechtswirklichkeit des Umweltstrafrechts aus der Sicht von Umweltverwaltung und Strafverfolgung. Freiburg i.Br. 1994.

5 Cf. *Ortmann, R.:* Resozialisierung im Strafvollzug. Freiburg i.Br. 1987.

6 To this topic *Albrecht, H.-J.:* Jugendarbeitslosigkeit und Jugendkriminalität. Empirische Befunde zu den Beziehungen zwischen zwei sozialen Problemen. In: Jugendarbeitslosigkeit und Jugendkriminalität, ed. by J. Münder et al. Neuwied 1987, pp .41-91; *id.:* Foreign minorities and the criminal justice system in the Federal Republic of Germany. The Howard Journal 26 (1987), pp. 272-286.

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RESEARCH ON JUSTICE ADMINISTRATION AND SENTENCING PROCEEDINGS

Preventive Measures for Dangerous Recidivists

JÖRG KINZIG

Every country of the world struggles with the problem posed by that small group of severe crime recidivists. The general public sees these people as presenting a considerable threat to public safety. Ever since the Dutroux case in Belgium, persistent and severe sex offenders have been the focus of public interest throughout Europe. Accordingly, the relevant criminal law regulations are being tested on occasion to see whether they sufficiently cater for society's demand for security.

Internationally, criminal law has two different approaches towards this problem, namely:

- by increasing the penalty in response to the demand for security
- by providing measures for the prevention of crime and for the rehabilitation
- of offenders in addition to, or instead of, the penalty in place.

A principally safeguarding measure exists especially in German-speaking countries. However, it has come in for much the same degree of criticism in Germany, Switzerland and Austria. In Germany, a new empirical study on preventive detention, the people under it and the manner of its execution has recently been carried out by the Max Planck Institute for Foreign and International Criminal Law, Freiburg. 318 orders for preventive detention - mainly falling between 1981 and 1990 - were analysed in this study.

In addition to fundamental reservations against a detention being enforced after the prison sentence, no distinct forms of confinement have been found which privilege detainees who are free of guilt. The available therapeutic aid is insufficient to say the least. Strict formal requirements, which seem necessary to allow a just selection of really dangerous offenders, lead to the result that offenders often would have already passed the peak of their criminal career before they reach preventive detention. The low base rate and insufficiently reliable methods of prognosis necessarily result in an number of "false positives" which should not be underestimated. These seemed to be the main reasons for the obvious hesitance on the part of the judiciary. However, due to mass media reports

about extremely serious offences especially against children, legal efforts to extend the application of preventive detention may nevertheless be observed.

In the Netherlands the (prolonged) sentence and the admission into the care and provision of the State (TBS) are available for the protection against dangerous recidivists. The prison sentence may therefore acquire preventive elements, as the Dutch system need not observe a strict German-style principle of guilt. According to the empirical Data available, TBS is predominantly imposed on violent offenders who are usually young and therefore presumably more dangerous. This was effected by the institution of a catalogue of offences where no prior convictions or sentences served would come into play. Instead, a lack of development or mental illness is required, without the need for diminished responsibility to be established. However, due to the difficulties involved in psychiatric diagnosis, the crucial problem consists in producing a sufficiently reliable determination of the requisite condition. On the other hand, the variety of treatment available to detainees under the Dutch preventive measure is a great advantage. From an international perspective, the brief intra-institutional detention terms are just as encouraging as the low rate of recidivism. However, these efforts have proved to be rather harsh on the Dutch pocket.

Since 1981 Sweden has no longer had a custodial measure apart from admission for special care, which also includes the admission of the mentally disturbed to psychiatric care. The reason for this development mainly lies in the disappointment about the largely unsuccessful efforts at rehabilitation of dangerous offenders. There, too, it was impossible to enforce the measure-alternative indepedently from the penalty. Society's need for protection has thus long been pursued exclusively through the prison sentence, leaving aside the relatively limited psychiatric measure mentioned above. A special sentencing provision exists for persistent serious recidivism which raises the maximum penalty by four years. Beyond the requirement of recidivism, which is certainly also taken as an indication of dangerousness, the provision has no prognostic character. Prior convictions may likewise be taken into consideration in the general determination of the penalty. The clear rise in long sentences which coincided with the abolition of internment for dangerous recidivists is a further indication of the fact that preventive aims are pursued in the assessment of longer penalties.

In Great Britain preventive measures for dangerous recidivists are also a thing of the past. Preventive detention, imposed either subsequently to or instead of the prison sentence, was abolished soon after its implementation. Its successor, the extended sentence, also failed to fulfil the expectations placed upon it. Ever since, the populations need for prevention has been addressed by the discretionary life sentence as well as the ordinary determinate prison sentence. Since the CJA 1991 came into force there has been an issue surrounding the imposition of these two sanctions, namely whether and to what extent they are appropriate for the protection of the public against serious harm with respect to violent or sexual offences. Moreover, the protection of the public against further offences of this nature is also significant when determining whether an offender should be released from custody. The suggestion that the discretionary life sentence serves as a substitute for the lack of a preventive measure is supported both by the evident rise in the number of discretionary life sentences and by the fact that a large number of "lifers" are sexual offenders.

In other European countries efforts at limiting, altering or abolishing preventive measures may also be observed. In Spain the law on dangerousness to society and social re-

habilitation was repealed. Preventive measures are now no longer available under the Spanish system. In Italy, where admission to a workhouse for habitual, professional or compulsive criminals is possible, judges are reported to refuse, by now virtually on principle, to make a finding of dangerousness. This produces the effect of preventive measures hardly being imposed any more against offenders capable of criminal responsibility. Thus here, too, there is a call for the general abolition of preventive measures, or at least of the combination of penalty and measure. Until 1970 "relégation" was available in France, a type of preventive measure which was replaced by the "tutelle pénale" (preventive observation) only to be abolished in 1981. A sanction comparable to preventive detention has no longer existed since. The function of protecting the general public from dangerous recidivists has since been taken up by the prolonged sentence. Indeed, in addition to provisions for the increase of penalties for recidivists of various types of offences, it is possible to add a prison sentence of at least ten years duration a safety period ("période de sûreté"). This precludes the detainee from being granted any privileges or an early release for a certain period of time. In Hungary, too, both the theoretical justification and the practical application of preventive detention came under a lot of fire. Indeed the relevant measure was abolished in December 1989, since in practice it had virtually become a mere extension of the prison sentence. The new Draft Criminal Code for Poland is likewise based on prolonged prison sentences for dangerous recidivists.

From a comparative perspective a distinct trend may be observed towards performing preventive functions either through the use of longer prison sentences (Sweden, England) or of therapy-oriented measures (the Netherlands). Measures primarily aimed at prevention and imposed in addition to the prison sentence seem to be losing their popularity.

In fact the arguments against such a system are well-founded. They may be identified on three levels.

The aim is to protect the public - above and beyond the duration of the penalty - only from serious and until now fortunately rare crime. From a methodical point of view the invariably high number of "false positives" in preventive measures caused by this low base rate must be addressed. With respect to the selection of detainees, despite all efforts to the contrary, the likelihood persists for prognoses to be unreliable, thereby compromising the principle of equality before the law, in contrast to a relatively schematic increase in penalty. On the other hand, a more precise normative regulation on the number of previous convictions and the amount of time already served in custody would increase the risk of the measure applying too late for it to be effectively preventive.

The combination of the custodial sanctions of sentence and measure seems to come up against opposition not only from the offenders whom it burdens, but also on the part of the judiciary. The historical development in the countries described has shown that judges are normally loathe to impose on top of the prison sentence another heavy sanction the effects of which they cannot assess over time.

The theoretical difference between penalty and measure loses all meaning when it comes to enforcement. The enforcement of preventive detention is virtually the same as that of the penalty. Furthermore the indefinite duration of enforcement places a heavy burden on the preventively detained prisoner and may hinder the preparations for release. Measures purely aimed at prevention therefore appear hardly compatible with a rational system of criminal law.

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On the Anomie Theories of Merton and Durkheim

Analysis, criticism and further development based on the background of empirical studies

RÜDIGER ORTMANN

Abstract and overview with respect to thought content

1 Abstract

Pertaining to the frame subject "the individual, society and deviant behaviour" the research reported in this article deals with *Merton's* and *Durkheim's* anomie-theoretical perspective with respect to the emergence of deviant behaviour. It can be noted, in this connection, that both *Merton* and his predecessor *Durkheim* furnish rather unclear definitions of the basic elements of the anomie theory such as the norms, goals and opportunities necessary to attain these goals. This also applies to significant theoretical statements of anomie theory. There exist, above all, no clear statements whatsoever as to why and how society influences the norms and deviant behaviour of the individual. *Merton* furnishes no concrete responses in this connection - neither to the question as to why the "pressure" arising from goals-means discrepancies should lead to a breakdown of norms, nor regarding the implications of this hypothesis on the character of norms and their emergence, nor to the question whether and for what reason the fact that the responsible agents of this goals-means discrepancy are not individuals, but rather the particular culture and society is of relevance. *Durkheim*, on the other hand, leaves open the question as to how and why norms and rules are embedded in a system of personal goals and opportunities to attain these goals, so that the existing norms and rules become invalid and need to be replaced by new ones, in the event of sudden and abrupt changes in personal opportunities which have taken place in the wake of economic crises or booms.

Against this background, empirical tests of anomie theory prove to be less significant and, in view of the theories' considerable vagueness, hardly feasible convincingly. The current controversies on a suitable test of *Merton's* anomie theory hence come as no surprise. Works aiming at theoretical clarification have priority in this context. Accordingly, efforts concentrate on finding answers to the described issues and problems and on developing a theoretical frame of reference committed to the ideas of *Merton's* and *Durkheim's* anomie theories on the basis of theoretical and empirical analysis, according to

which there exists a relationship between the individual and society which induces the individual to judge society's behaviour towards him according to the criteria equality, (social) justice and balance and to strive for a new balance in case the former equilibrium is disturbed. The biblical notion "an eye for an eye, a tooth for a tooth" thus no longer reflects the wish for revenge and retaliation, but rather the attempt to restore balance by adjusting one's own behaviour with the goal of achieving equality and justice. In the context of these arguments society's attitude towards the individual - behind standard and quality - boomerangs back on society, and it is, with respect to the emergence of deviant behaviour, by no means the same thing whether society is responsible for the restricted living conditions of its members or not. Additionally, norms and rules - subject to the logic of functional relationships and thus dependent on other elements - prove to be embedded in a frame of argumentation and linked with other basic elements - in particular with the element of opportunities - to such an extent that the breakdown of norms hypothesized - but not explained - by *Merton* becomes understandable. For this incorporation of norms in a system of criteria represents both a relativization and integration of norms and rules, as a consequence of which, in the event of serious changes in e.g., economic conditions, the environment and surrounding field of norms change to such an extent that they are no longer "embedded" as before. For this reason norms and rules need to be freshly relativized and embedded (anew) in accordance with *Durkheim's* theory until the state of "anomie" is eliminated by way of adaptation to the new living conditions - or, in other words, by way of successful "modernization".

2 Overview

Originally, the study aimed to test *Merton's* anomie theory (on a sample of juvenile prisoners). According to *Merton's* theory of anomie, the "culture" grants all members of a society the same success goals, and at the same time society differentiates the chances of access to legitimate opportunities according to location within the social structure (social class). Group-specific pressures result which lead to group-specific deviant behaviour.

Analysis of *Merton's* theory, however, reveals that the task of testing it can hardly be accomplished, as its statements and the definitions of its basic elements - goals, norms, opportunities - are not so clear as to enable us to clearly decide upon the most suitable test method. Against this background the persistent controversies on the appropriate test method and on how to rate the degree of its empirical soundness are quite understandable. In essence, they are the consequence of unsettled points concerning the theory and constitute a problem which is unable to be solved within the theoretical frame as defined by *Merton*. We can therefore, either give up *Merton's* anomie theory altogether and with it also further tests of its soundness, as well as the accompanying discussions about what *Merton* actually said, or meant by what he said about the anomie theory or adhere to the creative framework of the anomie theory and try to work out more precise theoretical definitions of its fundamental standards and to better understand their contribution to the emergence of deviant behaviour.

The present research follows the latter course which is determined by the aim to take stock of the concept and the theoretical substance of the anomie theory in the course and as a result of which problems and fruitful research issues emerge which will be able to be

examined and tested. As a consequence for the study's character the search for relevant issues and questions takes up a considerable part of the research. In addition to *Merton*, this stocktaking takes into account further authors of anomie theory, above all *Durkheim* to whose works on anomie theory *Merton* owes much.

According to *Durkheim* (1996, 1997) there exists an acquired balance between needs (goals) and opportunities, to the development and maintenance of which the State's "moral authority" contributes considerably. The system of rules coordinated with the existing conditions breaks down in the event of sudden and massive economic change - economic depressions or significant booms - resulting in "anomie" and a rise in suicide rates, and "moral education" has to begin anew. In comparison with *Merton's* reflections the concept of *Durkheim* seems to be more profoundly based with a broader horizon. I.a., his concept of balance which compares several elements on the basis of one category proves very fruitful. It considers anomie - and in a broader sense also deviant behaviour - to be the result of "disequilibrium" in that a carefully balanced system of elements has been thrown off balance as a result of abrupt, massive economic change.

In a next step, the research issues derived from the stocktaking shall be - if possible - subjected to empirical investigation, modified and defined more precisely on the basis of the results obtained and, in a final step, incorporated in a new theoretical frame of reference.

The fact that, in the final analysis, society's influence on the emergence of deviant behaviour remains - in *Merton's* theory to a large extent and in *Durkheim's* approach at least as far as relevant aspects are concerned - unexplained with respect to significant domains and constitutes a main finding in this context. A second main result is that the fundamental elements of the anomie theory - goals, norms and opportunities - regarded as independent criteria, possibly do have conceptual common features after all which call for analysis, for a more precise understanding of the elements. *Durkheim's* concept of balance - which hypothesizes a relationship and connection between basic anomie-theoretical elements - might be useful in this context. I.a., the following questions emerge in the course of and as a résumé of the theoretical part of the research:

(1) Is the fact that, e.g., - as *Merton* repeatedly emphasizes but does not explain - the success goals beyond the reach of some social groups do represent culturally prescribed goals of significance or is the social origin of such goals of no consequence for deviant behaviour and why is this the case?

(2) Is it of relevance that, as *Merton* maintains, the opportunities of access to legitimate success goals and their uneven distribution according to location within the social structure are determined by society or does an uneven distribution of chances of access have the same effect regardless of its origins?

(3) Why do, in *Merton's* concept of anomie, norms break down group-specifically, when legitimate opportunities to attain culturally prescribed goals are granted unevenly by society according to location within the social structure. What does this dependence of norms on other elements reveal about the nature of norms and anomie?

(4) With respect to *Durkheim's* remarks on the fatal effects of sudden poverty, his statement that the individual has not yet "learned" to live with sudden restrictions is convincing, but why should this, as he concludes, lead to a problem of anomie or even of social stability? He fails to explain that and why the existing and so far functional norm consciousness is linked with the existing balance between aspirations and opportunities, so that in case of a breakdown of this balance the foundation of the existing norm con-

sciousness also ceases to exist. Now how does this balance develop and change and what does it reveal about the character of the basic elements it includes?

In view of its potentialities, the empirical part of the research which aims to test *Merton's* anomie theory (in the special version by *Opp*) serves to above all, contribute to and encourage clarification of the theoretical issues and problems. In this connection particularly three significant empirical results are worth mentioning:

(1) All in all, the empirical soundness of the tested anomie theory is within the range of other comparable studies. It proved quite satifactory, but does not meet any higher expectations.

(2) The theory's independent variables - goals, norms, opportunities - correlate highly. Having a goal - such was the interpretation of the correlation for the pair 'goals and opportunities' - at the same time implies, with a clear tendency, the conviction that this goal is able to be attained. Correlation for the pair 'norms and opportunities' is even very high, which has also been confirmed in a further study conducted relatively independent of the first one. For one, the correlation explains why the empirical soundness of the theory does not prove higher or still higher. The fact that it furnishes empirical evidence for the hypothesis that the basic anomie-theoretical elements exhibit conceptual common features is far more significant.

(3) The curves depicting deviant behaviour during the course of incarceration have so much in common with the crime curves for the corresponding 'normal' free age-groups, with respect to their course and the understandable or explainable underlying dynamics, that one must take into consideration the possibility that they have common roots.

Particularly the last two findings call for fundamental explanation. The second result raises the question as to why the variables goals, norms and opportunities correlate to such a degree and as to the implications of this correlation for the basic elements. Moreover, does the correlation between the variables "norms and opportunities" actually imply something different than the maxime "the end justifies the means" in that precisely such actions are considered acceptable from the norm perspective which gives the individual the opportunity to attain personally relevant goals? Theoretical treatment, above all concerning this issue, shall render possible construction of the theoretical frame of reference in consideration of the third result.

According to the far-reaching thesis on the frame of reference, each individual views his living conditions on the basis of two levels of perception, each of which exists as a relation or function. On the one hand, there is the relation to the social environment or society and on the other, the relation between one's own efforts and the outcome. At both levels the relation consists of an assessment and rating according to criteria of balance, fairness, equality, equivalence and the balance between give and take. As far as the relation to society is concerned, the resulting implications are roughly narrowed down by the words of *Kennedy*, that the individual ought not to ask what society can do for him, but should rather ask what he can do for society. According to this assumption the normative approval of an act and the assessment of its suitability for attaining personally important goals correlate positively and substantially, because only on this condition is the effect of the act for the individual - i.e., to attain the goal aimed at - in balance with his contribution to it, i.e., its normative positive assessment.

Thus balance constitutes one target dimension, which, in the case of disturbances, strives to restore itself.

This hypothesized relation has a number of remarkable consequences for the clarification of issues and problems in the anomie-theoretical context:

- It establishes a relation between the individual's behaviour and the behaviour of others - also of social groups and authorities - towards him.
- This also furnishes a starting point for clarification of the question whether and why the fact that only society determines the frame conditions of what the individual is able to achieve is of relevance at all.
- The hypothesis also implies that the individual's behaviour towards others - including social groups and authorities - changes, if their behaviour towards him changes, as e.g., in the event of social change.

The fruitfulness of this thesis becomes evident in the following three cases:

(1) The interpretation of *Durkheim's* remarks on the fatal effects of sudden impoverishment as well as insight into the conditions behind a breakdown of norms as described by *Merton* is influenced and facilitated by the relation concept introduced by us. The concept introduces the thesis that goals and opportunities are linked by assessment. For this reason it is not possible to simply change one dimension - e.g., goals or aspirations - without affecting the relation - i.e., also assessment - and the same applies to opportunities. The assumption of a relation is equivalent to the assumption that, from the individual's point of view, there is a relation between goals (feature 1) and opportunities (feature 2) which is rated as adequate, balanced and, in the final analysis, also as fair (feature 4). If we change the relation (feature 3) a little by changing one of its features, it can no longer be rated as "fair". Accordingly, it is less important that the individual, in case of suddenly inflicted additional restrictions, should learn - as *Durkheim* believes - to adapt to them, but rather and above all to accept these new conditions as suddenly "fair" or "correct", although a completely different relation was rated as "fair" or "balanced" only shortly before. The constellation assumed by *Merton* is very much similar: the fact that the particular culture prescribes uniform success goals makes everyone believe that they are able to achieve these goals by means of the possibilities available to them. This at first gives an impression of fairness and justice, which, for many people, turns out to be wrong in the long run, as the promised equal opportunities concerning the attainability of success goals actually proves to be nonexistent.

The assumption that the individual develops an assessment-based relationship to the degree of efforts required to attain particular goals constitutes the core of this thesis. Under "normal" circumstances this will become the normal case accepted as legitimate which defines the concept of justice and behaviour as the target dimension. If - for whatever reasons - a higher or lower effort to attain one's personal goals which have remained constant suddenly becomes necessary - a situation also found in *Merton's* theory, the moment the individual realizes that not all social groups have access to the promised equality of opportunities, this new relationship between effort and both success and chances of success lacks normative relation, foundation and legitimacy - probably still more, so the higher the former relation was rated as adequate, fair or even just by the social environment, society and the State.

As far as the individual is concerned, this in no way concerns primarily the mastering of economic problems, but he suddenly finds himself in the predicament that much of

what was considered "correct", "adequate" and "just" only the day before, or was regarded as such for a long time, is suddenly rated differently and that today something wholly different is prescribed as just, than the day before - possibly by the same social persons and authorities. This raises serious questions concerning the binding character and relativity of principles in life as well as the moral integrity of these social and governmental persons, groups and authorities. Fundamentally, and in the final analysis, this problem - and also the starting point for mastering it - is already comprised in the element "function" which rules out the autonomous character of characteristic features - also of norms and rules - and embeds them in a frame of argumentation and features. Our human convictions on how to live and behave do not exist autonomously, they are rather incorporated in a complex system of features and conditions, and only on this condition are they binding upon us.

Thus a decrease in social integration or an increase in individualization constitutes a main effect of sudden impoverishment - as in *Durkheim's* theory - but also of systematic preferential treatment or discrimination of particular social groups by the society which simultaneously stresses the importance of equality - as in *Merton's* theory. Relativization of normative assessment and of the rules of living together, so far regarded as binding and "correct", constitutes a second main factor. A third factor is the feeling of insecurity and disorientation caused by the loss of hitherto binding standards of behaviour and ways of living. This disorientation - as a fourth influential factor - carries the adults back to their late youth, a period in their lives where it was necessary and common practice to develop and acquire standards and habits. In this context the resulting obvious breakdown of norms is not the consequence of the "pressure" assumed by *Merton*, the existence of which, moreover, is in no way plausible. Thus there is no reason to assume a rise, particularly in crimes against property under anomic conditions.

(2) If the individual's plans fail because he regards his possibilities as "limited", this will, according to our relation model, lead him to withdraw his positive attitudes and behaviour towards the (perceived) agent of these restrictions - provided he has established one. If society turns out to be that perceived agent, the individual will try to reach a new "just" balance towards it, he will dissociate himself from society and its influence on him will decrease. This represents a decrease in social integration and an increase in individualization.

Furthermore, assuming that the major part of our normative orientation is determined by society, this decrease in social integration also has considerable consequences for the individual's norm consciousness. It decreases as the individual's acceptance of society decreases in accordance with the new balance attained, all the more so as our normative orientations need to be refreshed, renewed or confirmed periodically in order not to "seep away".

(3) From a theoretical point of view the severe punishment and imprisonment of individuals bear a strong resemblance to sudden impoverishment, as described in example 1. Accordingly, they throw - as is also emphasized by the empirical results of the study - the punished person or prisoner off balance, which in turn leads to the described negative consequences i.e., the development of equivalent acts and attitudes towards the agent of the inflicted punishment.

These reflections also illustrate that and why society - as an influential factor - needs to be incorporated in an anomie-theoretical frame of reference. As a determinant of the individual's possibilities it represents, in our balance model, an essential partner in the

individual's relation which, by influencing the individual's possibilities also determines his willingness to accept and take over the rules and normative assessment as prescribed by the society.

For this reason we may now state, that and why individual "stress" or "pressure" or "frustration", which arises from any discrepancies between needs and actual possibilities - e.g., an unattained or hardly attainable goal of particularly strong ambition - are, from the perspective of anomie theory, something completely different from the issue discussed here. The difference lies in the source of restriction of possibilities which, in our model, has to be society, whereas it may be of any origin in the general stress model. Thus e.g., the individualization of the anomie subject matter by *Agnew* basically constitutes no anomie theory, but rather a trivialization of brilliantly conceptualized concepts.

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COHORT RESEARCH

The Freiburg Cohort Study

VOLKER GRUNDIES

Aims of the study

The aim of the study is to investigate, via official data, the emergence and evolution of criminality. This topic is also viewed as a function of the type and extent of law enforcement interventions.

Of central importance are the following issues:

- which age-dependent courses of officially registered criminality can be observed?
- to what extent is the emergence and development of officially registered criminality subordinate to a change in society?
- to what extent does the fact that one has been entered into official records at an earlier period of life determine conflict with the law at a later period?
- to what extent do law enforcement interventions influence the development of delinquency?

Most of the findings on the context in which criminality emerges and spreads are based on the results of cross-sectional studies. However, the investigation of suitable prevention and its intervention strategies, as well as development-related issues suggests the implementation of a longitudinal design. Therefore, the cohort design (the maintenance and periodical monitoring of a non-selected survey population -birth cohorts- over a relatively long period) enables investigation of the following subtopics:

- the relevance of delinquent behavior in childhood and youth, for criminality in adulthood,
- age-specific "peaks" in criminal behavior or criminal victimization (whether according to official records or in hidden delinquency),
- the onset, course and/or consolidation of individual criminal "careers",

- the circumstances under which criminal careers begin or are terminated,
- the repetition of offences, in general, and the case of chronic recidivists, in particular,
- offence-specialization of criminals and/or development from minor to more serious offences in the course of unofficial and official delinquency biographies,
- typical biographies of individuals who have come into conflict with the law (with respect to central life events such as marriage, unemployment, etc.).
- the transition from adolescence to adulthood - an aspect which is of interest particularly in the field of juvenile delinquency - and the official reaction to it,
- the long-term impact which different types of sanctioning have on recidivism,
- the relation between social transformation, changes in the society as a whole (for example, in law enforcement practices, economic fluctuations ...) and the spread of criminality.

Design of the study

The study is based on the analysis of official data. On the one hand, we analyze police data from the State of Baden-Württemberg (the data contains records of suspects registered in this state along with their alleged crimes, kept by the Landeskriminalamt (State Office for Criminal Investigation)). On the other hand, we analyze the same persons' judicial records to obtain information on each conviction and the type of punishment meted out; these files are centrally administered by a federal agency (Bundeszentralregister).

Originally the study was intended at national level. However, instead of all suspects and all crimes being recorded in a single central federal police file collection, the available data are limited to a single federal state in each case. Moreover, no uniform guidelines exist which regulate the registration and storage of these data and the latter fall within the competence of different data protection commissioners. Therefore, we decided to limit the study to one state.

Because the organization of the electronic processing of police data is the most progressive in Baden-Württemberg, and because the Max-Planck-Institute for Foreign and International Penal Law is also located here, we decided in favor of this federal state.

In the first phase of the study, persons born in a specific year and recorded in the files of the Landeskriminalamt in Baden-Württemberg, are to be observed over a follow-up period of about 15-20 years. All further police registrations and conviction records are to be collected in order to facilitate an analysis as complete as possible, of the development of officially recorded criminality.

To achieve this objective it is necessary to record a person's earliest official record of behavior which is not in compliance with the law (from about the age of 7); the same person is to be observed through life phases which are relevant from the point of view of developmental psychology (childhood, youth, adulthood) with a view to subsequent official registrations. At the same time, it is helpful to use background information, to identify individual, socio-biographical and law enforcement influences, as well as those

exerted by the entire society and to investigate the extent to which these factors determine official registration.

State of the study

The birth cohorts 1970, 1973, 1975, 1978 and since 1995, also the birth cohorts 1985 and 1988, have been selected for the study. With reference to the police, eleven annual captures - starting from 1986 - have been matched up until the end of 1997. At the same time, records which are to be deleted periodically according to the law, (data which can no longer be used against suspects must be physically removed from the data bank of the Landeskriminalamt) have been integrated semi-annually.

Derived from the source of judicial data, eight annual captures are the foundation of the current data base. Since convictions of juveniles are, according to the law, not possible until the age of 14, and because the deletion periods are much longer than in the police case, it was possible to start this data collection only in 1989. Furthermore, no extra sampling of deleted records is needed.

To link the factually anonymized police and judicial data, extensive methods had to be developed which would ensure a reliable, person-related classification in both data sources.

Basic evaluations were carried out, with both the police and judicial data sets and with the combined data set. Furthermore, several research questions have been dealt with on the basis of these data sets in detailed analysis.

In the last year, 1997, the main topics have been the relations between gender, age, nationality, and urbanization on the one hand and the frequency of police registrations on the other.

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VICTIMOLOGY

Fear of Crime

HELMUT KURY AND JOACHIM OBERGFELL-FUCHS

Introduction

With the rapid development of sophisticated victim surveys, the fear of crime has emerged as a fundamental concept in theoretical and practical discourse. Research into victimization has shown that the fear of crime is both cause and effect of different kinds of factors. Some of the causal variables include victimization, age, gender, urbanicity, the mass media, criminal orientation, and neighborhood incivility, and a crucial effect is crime avoidance. Until 1975 the United States led research into the fear of crime, but in the last 20 years Western Europe and especially England, France and Germany have played increasingly important roles in this effort.

The fear of crime is by no means a clearly operationalized concept. According to Ferraro and LaGrange (1987) the expression "fear of crime" had taken on so many meanings that its replacement might well be considered. Taylor and Hale (1986) stress the need to identify the fine line between fear of crime and other anxieties.

Another factor is the measurement of the fear of crime. Investigations for the most part have operationalized the fear of crime via the standard-item "How safe do you feel walking alone in your neighborhood after dark?" used by the National Crime Survey (NCS) in the United States. The answer is given according to a four-step scale from "very secure" to "very insecure." But this definition has sparked severe criticism.

Research has shown that the fear of crime must be distinguished from more global fears and that it is affected differently by different types of crime. Thompson et al. (1992) utilized three measures of the fear of crime: "global fear", "fear of property crime" and "fear of violent crime", and their findings indicate that contradictory results in recent research into the fear of offenders arise partly at least from different methods of measurement.

We have examined the relationships between the severity and frequency of victimization and the fear of offending (see Kury and Ferdinand 1998).

Random samples and operationalizing key concepts

We tested our hypotheses on the basis of four data sets. In 1989, the first worldwide International Crime Survey (ICS 1989) was headed in the former West Germany by the Max Planck Institute of Foreign and International Criminal Law (MPI). ICS 1989 was conducted in 15 countries scattered all over the world (cf. van Dijk et al. 1990:140; see also Kury 1991; 1993). The interview schedule focused upon all victimizations during the last five years from eleven crimes, but to keep the study within specified bounds, only limited information was gathered on the fear of crime.

ICS 1989 was repeated by the same research groups three years later in nearly identical form (cf. van Dijk and Mayhew 1992). The earlier methods as well as the survey instrument were adopted nearly entirely.

Along with the results of the ICS studies, we also report here findings from two major German studies. Thus, after the reunification of the German nations the MPI along with a research team from the German Federal Bureau of Crime (BKA) directed the first greater German-German victims study (G-G 1990) (cf. Kury et al. 1992). This study focused on victimizations of persons who were at least 14 years old for the same 11 criminal acts examined by both ICS studies. Data collection proceeded via personal interviews with 5,000 east German and 2,000 west German residents and included the first and second item used in the ICS study in nearly identical form.

The second study, launched 1991/92 by a criminological research team from MPI in conjunction with legal scholars at the University of Jena in eastern Germany, was a large comparative study involving Jena and Freiburg (FR-J 1991/92) and questioned randomly selected persons 14 years or older about their victimizations via the 11 crimes listed for the ICS studies. The data were gathered in both cities via mailed questionnaires, and in Jena a small group also received personal interviews.

Avoidance of Crime, Fear of Offenders, and Victimization

The influence of an early or intense victimization on the fear of crime including a greater fear of offenders must be recognized. To this must be added the nature and intensity of the victim's reaction to fear of crime. The fact that victims of a burglary more often than non-victims avoid certain places after dusk clearly suggests that victims have a greater fear of criminality.

The avoidance of certain places after nightfall is closely related to a fear of offenders. In no fewer than 11 cases (65 %) victims were significantly or very significantly more fearful of offenders than non-victims. For ICS 1992, 26 similar analyses were computed, of which 21 (81 %) were at least significant, and 17 (65 %) were highly significant.

Other trends ran generally in the same direction: victims avoided certain places after dusk more often than non-victims, and the differences were mostly significant. In France, Spain, the former West Germany and in the former East Germany 12 to 15 percent more victims than non-victims answered yes to this item. Results from ICS 1992 followed much the same pattern, and even with statistically non-significant differences (except for Warsaw, Poland and Ljubliana, Slovenia) victims expressed sharper avoidance reactions than the non-victims.

Statistical comparisons show that (except for Bombay, India and Kampala, Uganda, i.e., two large cities) no where did victimization experiences exert the strongest influence. Most comparisons involving countries found as expected that gender and often community size had the greatest significance. Since only data for specific major cities were used, size of the city

did not vary systematically, and size of place was not a control factor. These studies, however, did reveal that next to victimization, age and especially income of those who avoided places at night were significant factors. Contrary to the German studies, however, crime severity in ICS 1989 made little difference between non-victims, on the one hand, and non-contact victims (only three of 17 comparisons reached significance) or burglary victims (only five of 17 comparisons reached significance) on the other. The results of ICS 1992, however, show a significantly higher avoidance level in Australia among victims of non-contact offenses in comparison with non-victims, and the same was found in Georgia, Italy, and Sweden. In Canada, Finland, Italy, Poland, Cairo, Bombay, and Dar-es-Salaam/Tanzania, burglary victims showed a significantly higher level of avoidance in comparison with non-victims. Nine out of 17 comparisons of non-victims with victims of contact crimes and 12 of 17 comparisons of non-victims with all victims in ICS 1989 and in G-G 1990 were statistically significant, and results from ICS 1992 show that 14 of 26 such comparisons were also significant. The victims of contact crimes have consistently displayed a more pronounced avoidance reaction than non-victims, and (except for Warsaw, Manila, and Ljubliana) even the non-significant differences pointed in the same direction.

These results were further supported when we considered the number of victimizations and their impact on avoidance reactions. Of 17 comparisons in ICS 1989 and G-G 1990 data, 14, or 82 percent were significant or very significant, and in ICS 1992 of 26 comparisons no fewer than 23, or 88 percent, were statistically significant. Taking into account the non-significant tendencies, virtually the same picture was displayed. Victims avoided certain places after nightfall more often than non-victims, and as victimizations mounted, victims increasingly avoided places that appeared dangerous.

These findings confirm that avoidance reactions stem from victimization, but victimization is not the strongest factor (except in Bombay and Kampala/Uganda). Gender and size of community have still greater influence. Still, this does not mean that the influence of victimization itself is negligible, since the relationship after all is significant. The fact that community size is probably a contextual variable is prompted by the finding that in large cities in ICS 1992, size of place is held relatively constant, and victimization shows its clearest influence upon avoidance.

Expecting future victimizations

The findings imply that victims may fear future victimizations as well. Thus, those who expect a burglary are more insecure and more anxious than those whose expectation of such an event is not strong. A burglary is seen here as a serious and fearful crime since the offender intrudes upon the victim's private living area. The differences between non-victims and victims for ICS 1989 are indicated in 19 statistical tests, including results from the G-G 1990 and FR-J 1991/92 study. No fewer than 18 of these 19 tests were significant or very significant. With respect to ICS 1992 of 26 statistical tests 24 were significant. These findings regarding the estimate of a future burglary indicate an even stronger relationship with a previous experience of victimization than with an avoidance of certain places. Moreover, the differences mostly flowed in the expected direction: victims regarded a future burglary as more likely than non-victims, and even in Warsaw and Kampala, Uganda, where the differences were not significant, they ran in the same direction.

Comparisons according to specific crimes show that the victims of an earlier burglary or an attempted burglary regarded an additional burglary as more likely than other victims and especially more likely than other non-victims. In 36 of 45 comparisons victims of break-ins during the last five years had the highest expectation of a further victimization. Further, the estimate of the likelihood of a future burglary was influenced most by an earlier burglary, especially in a comparison of non-victims and victims. This means that regardless of gender, age, city size, or income an earlier victimization contributes most to the expectation of future victimizations and that burglary victims expect further victimizations via burglary.

This picture is firmly established when we compare the expectation of victims of a future burglary with non-victims according to the frequency of their earlier victimizations. In 19 comparisons using ICS 1989, G-G 1990 and FR-J 1991/92 data, no less than 18 were significant or very significant, and with ICS 1992 data 25 out of 26 comparisons were statistically significant. Apart from Warsaw the differences were significant for all the rest in ICS 1989 and the two German studies, and in ICS 1992 only Pretoria failed to reach significance. But even here the tendency was the same as in other countries. With surprising regularity the estimated likelihood of a future burglary rose from non-victims to victims and from victims who were victimized once to those victimized twice, and from these to those who were thrice victims or more. With increasing victimization the respondents were increasingly sure that future victimizations were likely to be burglaries.

Insecurity and severity of victimization

What is the relationship between nighttime insecurity in the living area and severity of victimization? Of the 26 comparisons between victims and non-victims, 23 were statistically significant in the expected direction: victims exhibited more nightly insecurity in their homes than non-victims. Of the three non-significant comparisons two were in the expected direction. As before the effects of gender, age, income, and community size (except for the major cities) were controlled by multiple regression analysis. In Estonia and Moscow victims showed less insecurity than non-victims: in Estonia 49.1 percent vs. 50.0 percent respectively, and in Moscow nearly the same: 70.0 percent vs. 71.2 percent.

The results also confirm that with an increasing severity of victimization (i.e., from non-contact victimization, to burglary, to contact victimization), nighttime insecurity in the neighborhood also mounts. Still, specific countries and especially specific cities (for example, in Rio de Janeiro, Bombay, and Ljubliana, Slovenia) show idiosyncratic patterns. Thus, the fact that non-contact victims in these cities exhibited the greatest insecurity while outside in their neighborhoods at night may reflect their specific crime pictures. Moreover, these large cities can be considered as one, even with regard to specific crimes. As is well known, criminal patterns in major cities differ sharply from those found in less urbanized regions. Despite these exceptions the evidence points clearly to the fact that the feeling of insecurity increases with increasing severity of previous victimization, especially from non-contact victims to burglary victims.

This finding is also confirmed, when we regard the number of victimizations as a measure of victimization severity. In 24 of the 26 countries and major cities a growing number of victimizations was accompanied by significantly greater feelings of insecurity,

although the rise in insecurity was not strictly linear. This relationship, however, was not encountered in Georgia; Ljubliana, Slovenia; nor in Dar-es-Salaam, Tanzania. In these places the highest level of insecurity was found among those who had been victimized only once. Whether this finding reflects a peculiarity in the nation's culture, in the city's method of data collection, or an especially difficult political situation, as in Georgia or Ljubliana, cannot be determined. Nevertheless, these two non-significant differences also hint at a greater sense of insecurity with a growing frequency of victimizations. Altogether these results with the Standard Item suggest clearly a connection between a victim's early experience with criminality, personal insecurity, and fear of crime so that a growing level of serious or more frequent victimizations produces a rising fear of criminality.

Insecurity at night and victimization

This analysis deals with the feeling of security when outside and alone at night and is based upon an item that comes close to the Standard Item measuring fear of crime. Since it was included only in the two German investigations and ICS 1992, we are limited in our comparisons to these three investigations. The results of the two German investigations, and all four statistical comparisons of non-victims and victims show with respect to their fear of crime were highly significant in the expected direction. Only gender had a consistently stronger influence than previous victimizations. Victims as a group uniformly feel less secure when outside at night than non-victims. The analysis of crime into specific crime categories reveals that in general an increase in crime severity means a corresponding rise in the sense of insecurity, especially for burglary. Though the German study of Freiburg and Jena show that the insecurity of victims of contact crimes is less than that of non-victims, this was not the case for the study of German states of 1990.

A significant result of our investigations is the confirmation of the relationship between severity of victimization and a sense of insecurity, especially regarding the fear of crime. This relationship is generally expressed via avoidance reactions, an expectation of a future burglary, and a sense of insecurity when outside alone at night, on the one hand, and an intense victimization, on the other, whether assessed by frequency or severity.

The kind of crime suffered by victims also has a significant impact. The anxiety of the victim rises sharply from non-contact crimes to burglary but surprisingly recedes somewhat with contact crimes. It seems that burglary victims develop more fear of crime and greater insecurity even than victims of contact crimes. This paradox may reflect the fact that victims of contact crimes themselves are often offenders.

Offenders, especially those involved in severe contact crimes, are sometimes victims, but here victimization reflects a conscious acceptance of the risks connected with crime. It is ironic that these people - usually young men - by moving toward criminogenic situations are often forced to experience victimization as well. But when the offender is victimized, it is probably seen as an unavoidable aspect of offending.

Discussion of the results

Our results here are important, because they were drawn from a very large, representative sample and especially because they were established for no fewer than 15 distinct

countries in the first ICS and three years later in the second ICS for 26 countries including many major cities, most European countries, the United States, Canada and Australia. Further, we have taken into account a variety of contextual variables such as gender, age, income, and community size by means of several analyses of variance. These results clearly verify the victimization perspective: that victims of an early offense develop a greater fear of offenders than non-victims. Our multivariate analyses also suggest that as a rule the fear of offenders is not only related to previous victimizations. Other key variables such as gender, age, income, and community size frequently make an indisputable impact.

On the basis of the G-G 1990 victims study, we can say that a previous victimization exerts a moderate, upward pressure on the fear of criminality. A previous victimization contributes to a victim's sense of insecurity when going out alone at night in the neighborhood in both east and west Germany. In the east, using the Standard Item, an earlier victimization correlated with insecurity ($r=.36$, $p<.01$); and in the west we find a similar result ($r=.26$; $p<.01$). An early victimization also correlated with a fear of becoming a burglary victim ($r=.35$, $p<.01$ in the east and in the west $r=.26$, $p<.05$); with an avoidance reaction after nightfall (eastern: $r=.34$, $p<.01$ and western: $r=.29$, $p<.01$, respectively); with a preoccupation about becoming a victim again ($r=.33$, $p<.01$ and $r=.34$, $p<.01$, respectively). The centrality of early victimization in all these studies means that the fear of crime is shaped in part by an individual's actual experience and should be taken seriously.

A fear of crime by the populace is conditioned as well by key demographic factors. These findings are important not only for the insight they afford into the nature of victimization, which in turn could become a foundation for state indemnification of the victim, but also as tactical information for responsible political authorities and the media regarding the background of criminality and its development. Finally, the citizen realizes, if not via experience, then by these investigations that there is a basis for the fear of crime, but also that only a few people become victims of serious crime. The public gathers its information in this respect much more often from the press than from events in its social environs. It is certainly reasonable that a severe, early victimization should lead to an intense fear of crime, even if it may not be a necessary outcome.

The relationship between victimization and fear of crime, and in general the question of the origin of the fear of crime is becoming clearer. Still, our investigation by clarifying the complexity of the issue leaves open many problems and questions. For example, validity problems in the fear of offenders research stem not only from an unconvincing operationalization of the complex processes, but also from the format of the collection instruments – regardless of whether open-ended or closed-ended questions are used, and from the sequencing of survey questions, i.e., the primacy effect (see Kury 1995). In resolving these questions cognitive psychology in combination with survey research has made strong progress in the last few years (see Kury 1994). Regarding the results presented here we have examined carefully the primacy effect, i.e., the sequencing of questions in the survey instrument, and the intricate connection between previous victimizations and the fear of offenders by means of the G-G 1990 victims' study and the two International Crime Surveys. In the research study in Freiburg and Jena 1991/1992, items assessing the fear of offenders were presented in the questionnaire before those relating to victimization experiences. As indicated above this did not obviously affect the results, but it did reinforce their validity.

In the fear of offender research the relationships among relatively few variables have been investigated, and a lot more still remains to be done. Ultimately perhaps, we as scientists can be freed from the "black box" fallacy by taking into account such socially based variables as gender, age, income, supportive social group, and status as offender. Research on the fear of crime stands not at the end but rather near the beginning. At this point definitive statements on victimization and its conditioning variables may be premature, but in any case a flat rejection of these findings is no more appropriate than an overemphasis of the impact of early victimization on the fear of criminality.

The development of valid standardized and comparable measurement instruments based on theoretical considerations will be one of the main topics of future research in fear of crime and victimization. At present, it is difficult to compare different studies and their results, because there are many different instruments which gather the data. In criminological research, especially in Germany, the evidence of a survey is judged nearly exclusively by its response rate: the higher the response rate the more valid the data. But from psychological research we are aware about the influence of the form of the instrument on the results, and new research in criminology (esp. victimization surveys) also gives evidence for this (see Kury 1994; 1994a; 1995a; Kury & Würger 1993). In future, more care has to be taken on the development of instruments in victimization and generally in empirical criminological research to obtain valid and comparable results (esp. for cross section comparisons and longitudinal samples). A first step toward a standardized data-gathering instrument was taken by the German "Research Group for Community Crime Prevention in Baden-Württemberg". This is the first time a standardized short questionnaire has been developed (see Kury & Obergfell-Fuchs 1998). Also in the several International Crime and Victimization Surveys in different countries (see Mayhew & van Dijk 1997), a standardized instrument was used. If you take into account the enormous effort in development on valid measurement instruments in natural sciences it is obviously that in criminology and other social sciences this topic is neglected.

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Public Attitudes Towards Sanctioning

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I. The increase in punitive attitudes

In recent years, survey results have had indicated a growing support for punitivity among broad segments of the population, not only in Germany and other European countries but also in the United States where capital punishment is being used more and more frequently.

In the United States it became increasingly necessary to take the punitive attitudes of the public into account, especially when judges handed down sentences in the courtroom. On this basis the perspective of the people regarding punishment has begun to acquire broad political significance. The level of punitivity is often, especially in the United States, measured by assessing the death penalty. In west European nations the death penalty has been broadly repudiated and is of course, not utilized. Nevertheless, in these nations, the question dealing with the death penalty has been widely used in surveys, both in assessing public opinion and in scientific investigations regarding punishment.

Measurements using death penalty items establish that the United States in comparison with Germany is clearly more punitive (cf. Savelsberg 1994, 929f). Altogether, the population in the United States has traditionally endorsed a punitive approach to offenders (cf. Weigend 1990, 112). But in both nations punitivity has increased notably in recent years. Systematic surveys regarding the people's perspective toward punishment, the penal law, and conditions under which sentences were served began in Germany around the end of 1960s. To be sure, before the 1960s there were opinion surveys regarding the death penalty and punitivity among post-war Germans, and generally few felt that the death penalty should be reinstated.

Since the 1970s, along with the increasing importance of social research in criminology, opinion surveys have been carried out on the attitudes of the people towards the purposes of punishment, conditions of confinement, and punitivity (see Arzberger et al. 1979; and more comprehensively Kaiser 1993, 626ff).

II. Regional differences

Since the attitudes of the public regarding sanctions is dependent on a great variety of social factors, it should come as no surprise that regional differences in punitivity are sharp and clear. These factors include, for example, an implicit bias in the media coloring their coverage of criminality, the perspective of important political figures, the general

level of public information and sophistication, and the focus given to social and societal problems in the region, to name just a few. Borg (1997) compared the punitive perspective of the public among several American states in order to test whether the Southern states showed a harsher attitude toward punishment. To achieve this she used data from the General Social Survey of 1990 and found interestingly that few differences as such existed between the Southern states and the rest. More directly however, several variables were significantly related to punitivity for all the states: racial prejudice, religiosity, political conservatism, and aggressiveness towards criminal offenders. Still, the extraordinarily high level of imprisonment in the Southern states speaks, among other things, for a high level of punitivity in this region.

A good opportunity to examine the punitive impulse in different countries is provided via the International Crime and Victimization Survey of 1989 (ICS; see van Dijk et al. 1990; see also Kury et al. 1996). They were asked to judge a case involving a 21 year old offender who committed two break-ins and in the second break-in stole a color TV. They gave their answers in terms of a list of preselected sanctions (fines, imprisonment, community service, probation, and other punishments), and from their aggregated responses the punitivity of each country was determined. The results revealed clear differences among individual countries – for example, only 8.6 percent of the Swiss recommended imprisonment, 13.0 percent of the West Germans did the same, up to 52.7 percent of the Americans recommended imprisonment, and in Surabaya, Indonesia 66.5 percent did the same. The authors point out that countries with a high level of imprisonment, which is one measure of punitivity, also have more respondents who recommend imprisonment. Community service was the most popular alternative in West Germany at 60 percent, 57 percent of the Swiss picked it, and in France it was selected 53 percent of the time. Thus, the public in countries in which this sanction has been used as an alternative to imprisonment in recent years also broadly supported it.

In 1992, the second ICS was completed using more countries but with the same methods and the same items for measuring punitivity (cf. van Dijk and Mayhew 1993). Here the results fell along the same lines as the 1989 survey – in Switzerland only 8.6 percent of the respondents selected imprisonment as the preferred sanction, 12.8 percent in France, 13.0 percent in Germany, 13.8 percent in Norway, 13.9 percent in Finland, over to 52.7 percent in the U.S.A. and 62.5 percent in Czechoslovakia. The ICS was carried out with the same methodological technique by Zvekic and Alvazzi del Frate (1995a) for numerous developing countries of the Third World, e.g., using only the major cities of these countries. Here too, the case regarding the punishment of the 21 year old recidivist television thief was used. As expected Third World countries, i.e., inhabitants of their capitals, exhibited a greater punitivity against defendants. Imprisonment was endorsed by 38.6 percent of the respondents in Rio De Janeiro, a rather low level, against more than 51.5 percent in Bombay, to 82.0 percent in Manila, and 83.2 percent in Beijing (cf. Zvekic and Alvazzi del Frate 1993, 73f). Overall, Zvekic and Alvazzi del Frate (1995b, 48) emphasized that Third World countries (e.g., in Sub-Sahara Africa, North Africa, Latin America, Asia, and the Asian Pacific Rim) favored imprisonment for the television thief. "There is a high degree of agreement among the population in the developing world that the most appropriate sanction is imprisonment: More than 50 percent in all the regions, and even more than 70 percent in sub-Saharan Africa and Asia." Although in some countries punitivity is relatively less, we cannot blind ourselves to the fact that "... punitivity prevails in the developing world." Hongde et al. (1995, 78f) sug-

gested regarding China: "The results show that Beijing residents were highly punitive." Beijing residents also preferred very long prison sentences for the television thief – 67 percent voted for 1-5 years, 21 percent for longer than 5 years, and 5 percent for a life sentence. Only four percent recommended imprisonment for less than a year. The authors pointed out however, that since the value of a color television set in China is much more than in other countries, the severe sanctions afforded such offenders may be understandable (Hongde et al. 1995, 79). Accordingly, the other alternatives in China were infrequently chosen – 5 percent chose community service, 3 percent selected a fine, and 2 percent took probation, and 4 percent chose other alternatives including the death sentence. Since all but the last are not generally available in China, it is not strange that so few chose them. Undoubtedly, the high level of punitivity in China is affected by their political system – by the state's handling of prisoners, the state controlled information system and political organizations, i.e., the socialization of the citizen to the state's political system.

A comparison of these developing countries with east and central European developing and industrial nations shows clear differences insofar as punitivity is concerned. "Imprisonment is the most frequently chosen sentence in the developing and Eastern and Central European countries, with the exception of Poland and Ljubljana. In contrast with the stereotypical image of public demand for imprisonment, community service orders are seen in most industrialized countries as the most suitable punishment" (Zvekic & Alvazzi del Frate 1995b, 56).

The basis for stern punitivity in developing countries, i.e., for the recommendation of imprisonment instead of other alternatives, is seen by Zvekic and Alvazzi del Frate (1995b, 56) as stemming from the following conditions. First, few alternatives to imprisonment are available in these countries and it is politically difficult to develop such alternatives. Second, support for harsher punishments, in this case for lengthy imprisonment, is far stronger in countries with a serious crime problem -- particularly, when no practicable alternatives are available. "However, certain factors related to cultural and sociolegal heritage also influence attitudes towards sentencing" (Zvekic and Alvazzi del Frate 1995b, 56).

The proposed explanation offered by the authors -- that punitivity stems from a severe criminal problem -- is probably not the whole answer. In the United States punitivity may rest partially at least on its relatively high crime rate. But as in China it also seems to reflect a perspective broadly supported in government as well as the media. At the same time China, in comparison with western European industrial countries has had a relatively slight crime problem, at least officially measured.

Similarly, before 1989 the official rate of criminality in former Eastern Block countries was much less than in West Germany, but after the political change in these countries a sizable rise in criminality was seen. Today it has been established that the crime problem in the former German Democratic Republic came to about one-third of that found in West Germany. Nevertheless, punitivity among the east Germans after the change was distinctly larger than in west Germany. A sharper influence on the perspective of the east Germans than the politicization of crime may have been the manner in which offenders were handled officially, and above all the press accounts of offenders which often foster biases and slant opinions. These press accounts may also mean that the people as a rule have a rather distorted picture of the actual crime problem in their country according to the biases implicit in the media (cf. Kury 1980).

III. East/West Germany

The high level of punitivity in the former east European, socialist countries is relevant to the current situation in Germany. Nearly all the surveys conducted in east and west Germany since the collapse of East Germany in 1989, have come to the same conclusion -- former GDR residents exhibit more conservative and punitive attitudes than their west German cousins. Similarly, the first comparative victims studies of east and west Germany -- the German-German victims study (DD'90), the 1990 study by the Max Planck Institute in Freiburg in cooperation with the German Criminal Bureau in Wiesbaden (BKA) (cf. Kury et al. 1992), utilized the same question of the International Crime Surveys (ICS '89, '92, '96) regarding the 21 year old offender who had committed two burglaries mentioned above along with the same pre-set answers (cf. Kury et al. 1992, 529). With the political change in east Germany at first an enormous surge of optimism in both parts of Germany prevailed, but which later was transformed in east Germany into a growing sense of hopelessness and depression. These attitudes may help to explain why some west Germans today are slightly more favorable toward imprisonment than some east Germans. For example, 32.7 percent of west Germans favored imprisonment for the 21 year old burglar, but only 26.9 percent of the east Germans did the same (see Kury et al. 1992, 310).

When we consider the length of imprisonment, however, the east Germans stand out as more punitive. To the question of the recidivist TV burglar described above, 28.7 percent of the west Germans but only 23.3 percent of the east Germans endorsed imprisonment for up to 3 months; 34.2 percent of the west Germans but 35.9 percent of the east Germans selected 4-6 months; 28.8 percent of the west Germans but 30.4 percent of the east Germans were for 7-12 months imprisonment; 6.6 percent of the west Germans and 6.5 percent of the east Germans endorsed imprisonment for two years; 0.5 percent of the west and 1.7 percent of the east Germans chose 3 years; and 1.2 percent of the west Germans but 2.2 percent of the east Germans were for a punishment of more than 3 years in prison (Kury et al. 1992, 317). The differences are not great here, but they are rather consistent.

To the question whether "punishment of offenders is a sensible means of controlling crime" 30.3 percent of the east Germans answered "strongly agree" but only 24.9 percent of the west Germans answered in the same way. At the same time 60.0 percent of the east Germans and 60.5 percent of the west Germans agreed but not strongly (Kury et al. 1992, 319). Ludwig (1992) in cooperation with the Max Planck Institute for Penal Law in Freiburg carried out victims studies in Jena (east Germany) and Freiburg (west Germany) using identical instruments. In a sense Jena and Freiburg typify the differences between east and west Germany and as such they may indicate basic differences that exist between east and west Germany. She found that Jena's respondents placed a heavy emphasis upon punishment. Using a case involving a pickpocket, a relatively small portion of the Jena's respondents agreed with a sanction of restitution or reconciliation without further punishment (cf. Kury et al. 1992).

IV. The results of this research

In the following only the essential results of our study focusing on the attitudes toward punishment in east and west Germany will be examined. This investigation, in 1991/2, was one of the largest victims studies that permitted a comparison between the people of two German cities -- Freiburg in west Germany and Jena in east Germany. Altogether 4,306 randomly selected citizens of fourteen years or over received a wide-ranging questionnaire that dealt, among other things, with their attitudes toward punishment. The 2,344 respondents in Freiburg returned their completed questionnaire with a rate of 39.5 percent, while Jena's 1,962 respondents returned theirs with a rate of 51.1 percent. The items measuring punitivity included an item dealing with a death sentence, and an extensive question with 21 items in which different serious crimes were identified along with 8 alternative responses geared to the severity of their reaction, for example, no reaction by the state, warning, restitution, discussion with the victim and restitution, community service, fine, probation without imprisonment, and imprisonment without probation.

A factor analysis showed that alternatives were grouped together into three factors – no reaction as to warning; restitution, discussion with the victim and restitution, and community service; and fine and imprisonment (with or without probation). On this basis we defined a scale with three levels: 1=slightly punitive, 3=very punitive, and for each item we compared east and west Germany via their mean punitivity.

The differences between Freiburg and Jena are with one exception (attack on an asylum) highly significant. With the exception of abortion, rape in marriage, and house occupation the east Germans were consistently more punitive than the west Germans. They supported harsher punishments for minor offenses as well as serious offenses. With abortion they showed themselves to be less punitive, but it must be stated that an abortion in the former GDR in contrast with the FRG was less severely punished. Thus, citizens in east Germany were socialized differently towards this act than the west Germans. Since reunification, the same law (west Germany's law) has been valid in all parts of Germany, and abortion therefore, is allowed today only under close restrictions. Clearly, therefore, former east German citizens were expressing themselves according to their earlier attitudes. Today abortion is defined legally throughout Germany in the same way.

The death penalty item clearly reflected a greater punitivity among the east Germans. While in Freiburg 33.6 percent recommended the death penalty for several serious crimes; in Jena 57.6 percent did the same (Chi-square=244.72; df=1;p<.001). Further, we established that a punitive perspective was shaped by social position. In order to display the differences clearly we compared the demographic characteristics of those people with extreme views, i.e., the ten percent who were the most or least punitive. In this way extreme groups were created and examined.

In both regions men were clearly more punitive than women, but the east Germans alltogether had the highest level of punitivity. Age had no consistent influence on punitivity. The very young (14-25 years) as well as older groups (the 45-55 year olds, and the 56-65 year olds) were most punitive. The middle group (the 26-35 year olds) and the oldest group (66+ year olds) were least punitive. In east Germany no statistically meaningful differences were found, which suggests that broad similar socialization pressures affected different age groups in the same way. The effect of income on punitivity was similar in east and west Germany. In both regions those who received very little (< 750

DM per month) were also least punitive. Supporters of the death penalty were more punitive than those who were against it, but the relatively small difference in punitivity between them in east Germany suggests that this item is measuring a different dimension of punitivity. The relationship between education and punitivity in west Germany is clear. A rise in education produces an increase in punitivity, although the level of punitivity at the highest level of education turns downward (master craftsman/journeyman/in training/university graduate). In east Germany no clear relationships were found, apart from that of income.

Attitudes towards the death penalty support these results broadly. In east and west Germany men favor the death penalty more than women, but a relationship with age is found only in Freiburg. With increasing age, support for the death penalty also increases. With increasing income, support for the death penalty also increases up to the middle income classes, whereupon it retreats again. In east Germany the differences with increasing income are altogether slight, and the same is true for different age levels. Although in east Germany university graduates are slightly less in favor of the death penalty, in west Germany the differences in educational level are clearer. In Freiburg only 15.1 percent of university graduates supported the death penalty for the most serious offenses, but their counterparts in Jena did so at the level of 46.8 percent.

But there is also an essentially methodological problem. In east Germany some (N=511) respondents were given face-to-face interviews, and not, as with the rest, mailed questionnaires. The questionnaire was, however, identical with the interview. Nevertheless, very significant differences in the attitude towards the death penalty appeared between the two methods. Among those who received the mailed questionnaire 75.9 percent agreed with the death penalty, but of those who were interviewed only 66.6 percent approved of it. It could be that those who returned the questionnaire were more conservative than those who did not. At the same time it could also be that social acceptability was affecting the results of the interviews, so that those who agreed with the death penalty felt freer to express their true opinions via anonymous questionnaires.

V. Discussion

Western industrial countries in recent years have witnessed a more or less clear increase in punitivity. This is true especially in the United States, but also in Canada and in European countries such as Germany. These increases favoring harsher punishments are based on changes in social conditions that must be taken into account in discussions about criminal development and fear of crime. In many European countries, and in Germany since the end of the 1980s, basic socio-political changes have added to numerous fears and insecurities among the people. The opening of the borders, freedom of the press, mass movements of populations, and along with these changes came increases in crime, mainly in the former eastern block but also, although less so, in the western industrial nations. The sharp increase in crime levels, even though they are still smaller than in Western countries, a rise of unemployment, inflation, and financial problems both among private individuals and in states, provoked a considerable sense of insecurity. On this basis it is no wonder that broad segments of the population also favor a harsher treatment of deviants, above all since politicians offer solutions involving legal and punitive "reforms."

As to why the hardening of attitudes toward punishment has occurred, we must also look to the socialization of the citizen as the comparisons between east and west Germany has shown. The east Germans were subjected in the former GDR to a socialistic society in which closed boundaries, a state controlled economy and mass media, and a powerful state apparatus socialized the people in different ways than in the West. In the FRG after WWII a free press, free travel, and freedom of opinion all existed, and the FRG evolved into a western, industrial power. These differences influenced the perspective on punishment in both parts of Germany but were softened somewhat by the social problems concerning reunification, that indeed were greater in east Germany but affected west Germany as well. In response the east Germans clearly showed greater punitivity than the west Germans. During the last 50 years, however, an open social discussion has been held in the West, often in sharp terms, regarding alternatives to punishment for those who have been found guilty of crimes. This discussion, however, rarely penetrated to the east Germans.

Punitive ideas depend heavily on the social conditions in a region or nation, just as crime itself does. And yet the methods of measuring punitivity also shape the results of an investigation. This has recently been demonstrated in an experiment in which very small adjustments in a data collection instrument affected the results of a survey generally (see Kury 1995). Several studies have confirmed in recent years that attitudes about punishment depend upon how well informed the people are. The more information available on a given criminal case, the more mild the recommended punishment. Further, Hough and Roberts (1998) were able to show that punitive attitudes among the people did not deviate from those of the judges when both had the same information. Another point here is the influence of a range of sanctions used in assessing punitivity. The citizen has learned that a harsh reaction to crime, i.e., imprisonment, is "normal" though maybe not "optimal," and that this "tough" perspective is reiterated by many political leaders as well as the press. Yet, in recent years the number of alternatives to traditional methods of sanctioning has multiplied even though the people still have little knowledge of them, e.g., victim/offender mediation. Nevertheless, studies have increasingly shown a willingness by the people to accept these recent alternatives.

The research on punitive attitudes must be strengthened and broadened. Roberts (1992, 159) has suggested in this connection that "The emphasis in polls on crime seriousness and punishments is understandable. These topics [pique] the interest of the media and the public alike. Nevertheless, we have little clear idea about public opinion in other, less well illuminated areas of criminal justice. What do the public know and think about topics such as diversion, electronic monitoring, the treatment of inmates [or] community based policing, to name but a few."

The significance of this theme is clear. Public opinion has considerable influence on the politics of crime, and the reverse is true as well. Political leaders often further themselves by passing harsh laws in accordance with public opinion. This perspective, however, often serves as little more than an excuse for pushing their own Law-and-Order perspective. In this connection Roberts (1992, 162) correctly observes that "Public opinion may well exercise an important, although indirect, influence on the criminal justice system."

Public discussion of criminality, therefore, focuses mostly on serious crimes, which clearly represent only a small minority of all crimes. It is no surprise that the people, when confronted with a survey on punitivity, immediately think about serious crimes.

Nevertheless, Roberts (1992, 164) asserts "But as long as news media stories remain the public's primary source of information, dissatisfaction will be rampant ... The existence of an uniformed and frequently hostile public poses an important problem for the criminal justice system and also raises questions about the democratic nature of our legal institutions." New surveys have clearly revealed that the people are open-minded about alternative reactions to criminality, more sometimes than criminal justice officials such as judges or prosecutors (cf. M. Kaiser 1992), who often stick to traditional methods and even interfere with reforms in order to appeal to a broad segment of the people.

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ANALYSIS AND PREVENTION OF COMMUNITY CRIME

Social Problems, Violence and Juvenile Delinquency in the City - A Socio-Ecological, Multi-Level Approach

DIETRICH OBERWITTLER

The research group for criminology is currently commencing a new research project on violent and juvenile criminality in German cities, which by focusing on spatial distributions of offenders and offences, intends to follow renewed efforts in criminological theory and empirical research, to integrate the dimensions of space and time into the explanation of crime causation. In this perspective, urban environments are supposed to exert an influence both on people and on situations in which crime occurs. This ecological approach seems to be particularly relevant in a period of mounting socio-economic problems and social polarization in German cities, and, at the same time, of a marked rise of police-registered juvenile crime, especially youth violence. Hence, one of the core questions of the research project will be whether spatial distributions of crime within the city can be attributed to the concentration of social problems in neighbourhoods.

Since the late 1980s, 'social change' and 'social upheaval' have become frequently used terms by German criminologists and sociologists, mainly referring to the German reunification and the societal transformation of the former GDR. One of the key findings of criminological research has been that the steep rise of crime rates in East Germany was mainly due to the expansion of opportunity structures and, hence, can be seen as a process of adaptation to the normality of western capitalist societies in which property offences are attributed rather to wealth than to a poverty-related strain. Thus, the classic question of the SES/delinquency relationship once again appeared to be antiquated. However, towards the end of the 1990s, the direction of social change in western societies lends new support to those classic socio-structural approaches to the explanation of criminality. According to many sociologists, social change has, in recent years, led to a rise in social inequality and social exclusion; research on 'new poverty' is booming in Germany, echoing the concept of the 'new underclass' discussed by American sociologists. Several aspects of this sociological debate are of great interest for criminologists:

First, the subject of poverty is closely linked to the subjects of ethnicity and immigration; second, the question how children and juveniles grow up in and cope with conditions of relative deprivation and disadvantage receives a lot of attention; third, large cities are supposed to be particularly affected by social chance. Choosing a long-term perspective, Swiss criminologist Manuel Eisner has recently shown how rising levels of urban violence can convincingly be linked to 'the crisis of the inner cities'.

There has been a marked and still continuing increase of police-reported criminality by children and juveniles in Germany during the 1990s. Taking the federal state of Baden-Württemberg as an example, the crime rates of children and juveniles have risen by 70% and 60% resp., between 1990 and 1997. Looking at violent offences by juveniles, the rate has increased by two and a half percent. It is this apparent rise of youth violence which currently dominates discussions among criminologists and the wider public. Whereas some criminologists argue that this increase of youth violence is real and likely to be caused by socio-economic factors, others regard it as the result of a shift in social control routines triggered by a wave of 'moral panic'. There are only few longitudinal data from self-report surveys available which indicate that violent behaviour among pupils has indeed become more frequent but official crime statistics grossly exaggerate this increase. However, the fact remains that there has been very little research in recent years in Germany which endeavours to conceptualize and empirically analyze the possible links between aspects of social change and criminality, especially of juveniles.

Recent research trends in the social ecology of urban crime

Why is an ecological approach, why is a community study an appropriate research design for an empirical analysis of violent and juvenile crime? There are both methodological and theoretical reasons. Past experience has shown that self-report surveys on juvenile delinquency based on national representative samples suffer from a number of drawbacks, one of which is the small proportion of respondents of marginal social status and of serious delinquent propensities which might result in an underestimation of the SES/delinquency relationship. Concentrating on only a few neighbourhoods within a city is one feasible way of oversampling respondents of relevant properties. The goal of representativeness which is important for surveys which aim at generalizing findings to the general population, may turn into a disadvantage when testing hypotheses and theories on the main purpose of a study. Another reason is the availability of various social statistics on the neighbourhood level which can be linked to delinquency data. From a theoretical perspective, community studies make sense if one follows the fundamental notion that social environments have a distinct influence on the people's delinquent behaviour. Known as the 'social disorganisation' - thesis, this conviction has a long tradition in criminological theory. In the well-known definition of Shaw and McKay, poor, ethnically heterogeneous and residentially instable communities suffer from high levels of juvenile delinquency because people in such neighbourhoods are failing to realize common values and to effectively control the behaviour of their children. In recent years, attempts have been made to refine and expand this rather crude theoretical concept and to find ways to empirically assess the contextual effects of neighbourhoods on individual behaviour. Basically, most hypotheses start by assuming that the spatial concentration of individual

characteristics like poverty or other forms of social disadvantage may exert an influence on people's behaviour independently of their individual traits. Additionally, neighbourhoods are assumed to have 'emergent properties' which cannot be reduced to individual traits, as the density of social networks, patterns of (il)legitimate opportunities, or levels of disorder and 'incivilities'. Children and juveniles particularly are believed to be susceptible to contextual influences since socialisation does not only take place in the family but also outside, on the streets, at school, and in peer groups. Juveniles who grow up in a highly segregated neighbourhood, or in a 'ghetto', may have less contact to conventional role models and may lack social networks that offer job opportunities through personal contact. Ethnographic studies have shown that in disadvantaged neighbourhoods, a subcultural 'code of the streets' evolves that no juvenile can entirely ignore in his daily routines. Living in a disreputed neighbourhood may also result in stigmatization by 'outside' society. Criminologist Robert Sampson has coined the expression 'collective efficacy' to describe these various ecological factors which inhibit or foster delinquent behaviour in a neighbourhood. In Shaw and McKay's concept of 'social disorganisation', the criminogenic effect of neighbourhoods was primarily thought to be the lack of informal control over juveniles. Today, the mechanisms by which the effects of neighbourhood contexts work on individual behaviour are specified in more complex ways; one frequently used theoretical concept is 'social capital' (Bourdieu). The notion is that a lack of social capital which results from individual and neighbourhood disadvantage renders it more difficult for juveniles to achieve conventional goals. Sociologists today frequently use the term 'social exclusion' to describe this plethora of disadvantages faced by many juveniles, especially from ethnic minorities. This line of of reasoning can easily be linked to classic criminological thought, i.e., anomie and subcultural theories. The recourse to these classic approaches can be seen as the result of attempts to integrate individual and contextual dimensions in the explanation of crime. By focusing on the criminogenic effects of social disadvantage, however, one should be careful not to fall back to simplistic assumptions about the SES/delinquency relationship which have not been confirmed in self-report surveys. As mentioned above, this may partly be due to measurement problems which could lead to an underestimation of more serious criminality and persistent offenders. Following the logic of the anomie theory, research by German youth sociologists reject the assumption of a clear-cut relationship between SES and anomic strain. Instead, goals-means discrepancies may be felt by juveniles from different social classes depending on their individual levels of aspirations. On a methodological level, this example underlines the necessity of modelling and measuring 'subjective' variables which mediate the effects of structural factors instead of simply assuming that certain structural variables have certain effects on individuals. This also holds true for the conceptualization of social disorganisation which formerly was regarded as a natural concomitant of certain structural variables of neighbourhoods. Recent studies attempt to measure the levels of social disorganisation more directly by asking respondents about their subjective experiences and assessments and, in the case of juvenile delinquency, the importance of family variables as mediators of structural conditions.

One of the key issues in the methodology of community studies is how to disentangle individual-level and neighbourhood-level effects of social disadvantage on delinquent behaviour. Only recently have criminologists begun to apply statistical tools like multilevel analysis which are capable of estimating the effects of variables on two or more levels simultaneously. The high scores of correlation of crime rates with structural vari-

ables which are usually found in aggregate analysis on intra- oder intercity levels tend to disappear when individual-level data is included in the full, multi-level model. Thus, in recent empirical research contextual effects of neighbourhoods on the individuals' delinquent behaviour appear to be rather weak. However, it would be premature to reject the concept of contextual effects on the basis of existing research as a number of methodological problems remain to be tackled. The results of existing research should, on the other hand, caution against undue expectations.

Whereas the focus has so far been on neighbourhoods as ecological contexts in which offenders grow up and live ("breeding areas"), the spatial distribution of offences ("attracting areas") constitutes a different but overlapping perspective. It is well known that the spatial distributions of the offenders' places of residence and of the locations of offences deviate from one another. City centres usually suffer from an exceptionally high numbers of offences, many of which are committed by visitors. Property offences by juveniles are often dependent on the existence of commercial sites like shopping malls. These examples underline the relevance of opportunity structures and routine activities for the analysis of spatial distribution of offences. Physical characteristics, types of land use and human activity patterns are all important when explaining the location of offences. New computer techniques as GIS offer sophisticated graphical methods to describe and analyse spatial crime patterns and to single out clusters and 'hot spots' of crime within a city. In recent criminology, attempts are being made to integrate this perspective of opportunity and routine structures into the general analysis of crime. Giddens' structuration theory with its insistence that human action happens in space and time, offers a promising theoretical framework which has not been explored very far. In the case of youth violence which is heavily dependent on situational contexts, daily routines and the symbolic use of public space seem to be relevant points of analysis. Whereas quantitative information is available on types of land use and other variables which shape opportunity structures, the subjective meaning of urban space to residents and visitors which guide their behaviour is less easily accessible.

The design of the research project

This quick overview has shown that a wide range of research issues is connected to the social ecology of crime. The basic aim of the research project is to pursue a detailed analysis of violent and juvenile criminality in an urban environment, and to explore the spatial dimensions of urban crime patterns and the role of community factors in these patterns, especially in the case of juvenile criminality. The remaining sections are intended to give a very short impression of the research design. The study will be based on mainly three different sources of information: (1) police and prosecution data on offences and offenders, (2) victimization and self-reported delinquency data, and (3) socio-economic data on neighbourhoods, supplemented by survey data on 'social disorganisation'.

Individual-level data on police-registered offences and offenders allows for a more detailed picture of crime, especially violence, than is available at the moment. It will be possible to answer a number of questions as to the age structure and ethnicity of offenders and victims, to the patterns of multiple offending and/or victimisation, or to the for-

mation of 'gangs'. Crime mapping will be applied to visualize spatial distributions of offences. On the basis of free-text descriptions, violent offences will be classified according to types of interactions, situational contexts and levels of severity. Additionally, by comparing the police-recorded crime of two separate years within a five-year period (1994 and 1998), it will be possible to shed some light on the character of the recent increase of youth violence. If, for example, this increase is due to stricter law enforcement, it may be suspected to be due mainly to an increase of the more trifling forms of youth violence. The increase of crime rates will also be linked on an aggregate level to the socio-economic development of neighbourhoods.

A survey among juveniles and young adults about their experiences of victimization and self-reported delinquency will be pursued in a limited number of neighbourhoods of different socio-economic structure and levels of disorder. In order to oversample persons with delinquent propensities, there will be a special focus on "bad" neighbourhoods with high concentrations of social disadvantage. Apart from gaining an 'unbiased' picture of delinquent behaviour, the questionnaire is designed to collect individual-level data on the respondents' SES, family situation, attitudes etc., according to the underlying hypotheses.

Finally, census data and various social, economic and physical data provided by the city administrations serve to describe and analyse the social structure of neighbourhoods. These data include common indicators of poverty, ethnic heterogeneity, residential instability, family structure, types of house tenure etc. Following the new direction of the 'social disorganisation' theory, these structural data will be supplemented by survey data in which 'local experts' or randomly sampled residents answer questions about subjective perceptions of the neighbourhoods' social cohesion, disorder and incivilities.

Community Crime Prevention in Baden-Württemberg

Possibilities and Limitations

JOACHIM OBERGFELL-FUCHS AND HELMUT KURY

During the last few years, community crime prevention has become a more and more relevant issue in criminal policy as well as in criminological research. Quite often, there is the impression that the "discovery" of community crime prevention is a phenomenon of the 90s, but if we look back in time it seems to be rather a kind of "rediscovery". In 1964, the prevention program of the criminal police of the state and the federal states ("Kriminalpolizeiliches Vorbeugungsprogramm des Bundes und der Länder) was founded in the former Federal Republic of Germany (it was institutionalized in 1975). Its aim was to inform the citizens about the nature of crime and the possibilities of crime prevention. This program is still active and can be seen as an important factor in promoting the citizens own initiative to secure their properties. Surprisingly, this program is often ignored in the recent discussion about community crime prevention and the participation of the citizens.

In the 70s, as a result of the large-scale community crime surveys, especially the Bochum survey (SCHWIND ET AL. 1978), there was a strong demand for the establishment of national as well as regional crime prevention units. But there was almost no realization of these demands. While in other European countries like Denmark, Sweden or the Netherlands, national and local crime prevention units have been established for about more than 20 years, organized community crime prevention in Germany began in 1990, when Schleswig-Holstein established the first federal unit of crime prevention. This was 3 years after the city of Delmenhorst in Lower-Saxonia employed a local crime prevention agent.

Since then, there has been a fast upheaval of community crime prevention in Germany. While in the early 90s there were only a few projects, a survey of the federal bureau for the investigation of crime (Bundeskriminalamt) in 1998 (Babl & Bässmann), reported a total of 24 national initiatives as well as 137 initiatives on a federal or local level. Nowadays, almost everywhere round-tables, initiatives or committees are being erected, usually these spontaneously composed working groups do not have any specified objectives nor elaborated methods of intervention. The objectives for the evaluation as well as the documentation of the projects are often rather poor.

From the very beginning of the community crime prevention activities in the United States, large-scale evaluations of prevention programs have been carried out and are often financially supported by the government. This situation is different in Germany, where evaluation efforts rarely take place. This lack of evalution is, on one hand, due to the limited goal definitions, on the other hand a result of the narrow financial resources

of the communities and the deficient support by national or federal governments. Mostly the communities do not have enough money to finance evaluation studies of their crime prevention efforts. Indeed, the governments of the federal states promote crime prevention activities on the local level, but mostly they do not offer any financial support, so the communities are obliged to find private sponsorship.

Not only the organization, but also the subject of German community crime prevention programs are different from those in the United States and in Great Britain. In these countries a large variety of measures such as campaigns and publicity, policing and surveillance, environmental measures, social services for the integration of risk groups, neighborhood watch or even technical security devices are equivalent and evaluated without biases. In contrast, in the Germany community crime prevention is mostly preoccupied with social services. The significane of situational crime prevention, widely discussed in the USA, is rather small, despite the fact that this kind of crime prevention is one of the main parts of the well established prevention program of the criminal police of the state and the federal states ("Kriminalpolizeiliches Vorbeugungsprogramm des Bundes und der Länder). In recent discussions on community crime prevention in Germany, headings like youth support, drug crime prevention or integration of homeless people and foreigners are dominant (cf. manuscripts in KURY 1997). The search for the causes of crime and their control is inherent in most programs and efforts. Often it is not taken into account that the causes of crime are an interweaving of different factors on all levels of the societal system and that it is very hard, even quite impossible, to influence this system in the sense of crime reduction in a measurable way.

Due to the fact that about three of four offenses are committed close to the residence of the offender, mostly within the same community, community crime prevention sometimes runs a great risk as being seen as a new panacea for influencing the causes as well as the frequency of crime. Obviously, because the scope of the community itself is rather limited, this demand cannot be realized by a single village or city. On the local level, conditions such as the political economy or technological changes are quite unsusceptibel and the awareness of a growing complexity of interrelated factors often leads to resignation and finally abandonment by the local officials

On the other side, little value is attached to much more easier conductable measures like technical or architectural prevention activities, often these measures are abolished as "techno-prevention" that does not deal with the causes of criminality. But exactly these measures show, as international evaluation studies have found out, the strongest effects (cf. POYNER 1993). In order that community crime prevention in Germany does not fail in the sense of "nothing works" due to its own high demands, one should introduce situational crime prevention as equivalent aspects. It is important to link different levels of action together, for example a neighborhood-watch program to strengthen the cohesion between the residents could be linked with another program to improve locks and security systems of doors and windows to prevent burglary.

In 1993, the ministry of the interior of the federal state of Baden-Württemberg established the pilot project "community crime prevention". Point of departure was the consideration that traditional crime prevention activities like those promoted by the prevention program of the criminal police of the state and the federal states ("Kriminalpolizeiliches Vorbeugungsprogramm des Bundes und der Länder), are limited in their efficiacy as well as in their coverage and that an extension of the police is hardly possible. In addition, enlarged surveillance and increased privatization leads not to a reduction of crime

but to a displacement of the crime problem. Further, local offenses have to be seen under aspects of social change and increasing urbanization, trends which require new standards of city planning, considering criminological knowledge. Because the influence of the opportunity structure is best on a community level, besides strategies of institional repression and general crime prevention, specific local efforts of crime prevention should be promoted.

In short, crime should be combatted where it happens: in the cities and villages. This requires a coordinated action of the city administration, the police and societal groups like unions, schools, churches, and citizens' movements on the local level. The centralized control should not be the duty of the government of the federal state and therefore the organizational related police, but of the communal authorities themselves. Interdisciplinary local working groups should determine problems and develop specific concepts and goals.

The idea of the pilot project in Baden-Württemberg was, to gather information and experiences concerning efforts of community crime prevention. Thus the model was not implemented state-wide, but it was limited to five communities, differing in size, structure and regional site. As well as large towns, also smaller rural communities were enclosed in the project. This allows an easier generalization of the expected results upon other communities in the country.

Another particularity of this project was that scientific accompanying research should be carried out. The aim of this research was first to set up a definition of favorable goals as results of a large-scale regional crime analysis, and second, to evaluate the drawn measures. This accompanying research has been carried out by the Universities of Heidelberg and Constance, the Police Academy in Villingen-Schwenningen and the Max Planck Institute for Foreign and International Criminal Law in Freiburg.

To gather information about personal experiences of crime, feelings of insecurity, attitudes of the citizens towards official law enforcement agencies, expected causes for crime, and proposed measures to combat crime, in all cities, a victim survey has been carried out. The results of this survey (cf. FELTES 1995; FORSCHUNGSGRUPPE KOMMUNALE KRIMINALPRÄVENTION BADEN-WÜRTTEMBERG [RESEARCH UNIT COMMUNITY CRIME PREVENTION IN BADEN-WÜRTTEMBERG] 1996; OBERGFELL-FUCHS 1997) were combined with the results of police data and presented to the community officials as a base for further development of crime prevention measures.

In most of the participating communities the readiness to implement crime prevention programs was quite small, the anticipated participation of large societal groups failed due to the lack of interest. This confirmed one of the results of the survey, which showed that most people see the police as the only experts for crime reduction. Protection from crime and crime prevention is seen by the citizens as a service of the police which is paid for by their taxes.

Thus the motivation of the citizens to take their own responsibility not only for the safety of their houses and apartments but also for their residential area and neighboring areas, is probably one of the major problems in the conceptualization of community crime prevention. People have to learn that the safety of their city and its crime load is dependent on their engagement, combined with the expert knowledge of the police.

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POLICE AND SOCIAL CONTROL

Possibilities of Privatization of Police Scopes and their Influences on the Feelings of Security of the Public

JOACHIM OBERGFELL-FUCHS

Whereas in other countries, especially in the USA and in Great Britain, there is an intense criminological discussion about the privatization of police scopes, the situation in Germany, with some exceptions, is rather quiet and cautious (cf. SACK ET AL. 1995). In 1992, the journal "Citizens' Rights & Police" ("Bürgerrechte & Polizei") published a special volume about private security services, but in other German criminological journals, this topic is not paid much attention. On the other hand, there has been a vast development in the last few years in the private security business. The number of employees in guard and security enterprises rose, from 1980 to 1996, approximately 370 percent, from 30,000 to 112,000 persons. The number of enterprises and firms has doubled, and the turnover has reached "astronomical" height of about four billion D-Mark (2.2 billion US-$). A long time ago, scientific prognoses showed that in Germany, comparable to the USA, the number of employees in the private security sector would far exceed the number of police officers. Though internal experts are of the opinion that this vast growth in the 90s was due to the development in East Germany after the reunification of both former German states, where new branches and trading structures settled down and where the conditions of life assimilated to the West German situation. These changes promoted new security needs, which could not be performed by the re-structuring of the police. Accordingly, further development is regarded rather cautiously, although there are no signs of clear stagnation (cf. NOGALA 1998).

The reasons for this high demand for private security services are, in the view of the police, as well as the private security enterprises, due to the rising crime rates and especially the growth of the fear of crime. Because of the small budget of the public finances, the police have had to limit their activities to their national duties. This allows private services to cover the now abandoned fields. AHLF (1996) compares two different postulates: The first, called "vacuum postulate" considers that private enterprises take over those with security aspects abandoned or lost by the police, the second, called "market

postulate" starts from the principle that the appropriate offer of the security services causes a demand.

Despite the growing influence of private services within the personal and public security sector, there is a rather unsatisfying legal situation in Germany. Indeed, there exists the economical legislation (§ 34a GewO) of the private security branch and there are some more legislations concerning special areas, such as guarding of military or nuclear plants, but concerning the defense of someone's life or property, the duties of private security services refer to "everbody's rights" of self-defense and defense of the endangered rights of a third party in states of emergency. Furthermore, several "new" areas of private services, such as the surveillance of parking vehicles or speeding controls are almost unregulated. Therefore, there is ongoing political discussion about legislating the services of the private security branch.

During the last few years, scientific discussions and publications have focused upon aspects of transferring parts of the monopoly of public authority to private institutions, of the commercialization of security, and of the legal position of private security services. Only little attention has been given to public attitudes and the privatization of security question still remains unanswered. The same is true for questions on what kind of competence the people assign to private securities or if they think these services could grant personal and public security. There are only a few results from multi-subject surveys about public attitudes. For example, NOELLE-NEUMANN and KÖCHER (1993) found that in March 1992, in West Germany about 48% of the people asked recommended armed private security services (East Germany: 60%). In 1994, the research institute MARPLAN came to the result that about 80% of the West- and 85% of the East Germans were of the opinion that private services have an important function in discharging the police. About 70% (West Germany) respective 80% (East Germany) thought that private security services are necessary because the police are not able to master the crime problem. These results are comfirmed by an actual survey of MARPLAN. Additionally, this survey showed scepticism towards the police, in several fields of activity the people asked preferred private security services and not the police, although most people suggested a close cooperation between the police and the private sector. In contrast to these results, on request of the news televison channel n-tv, the research institute EMNID carried out a public opinion poll, where only 32% of the West Germans and 39% of the East Germans recommended that more private security services should be brought into action.

Besides these partly heterogenous findings by commercial polling institutes, there are only a few results concerning the privatization of security in victim surveys. There are almost no specialized criminological investigations focused on this subject (cf. SACK & VOSS 1995).

This contrasts the consequences of the activities of private security services for the public, as, for example, the infringements of the "Black Sheriffs" in the Munich subway in the 70s showed. But also new trends of privatization of security, such as the activities of so-called city-patrols in some urban areas as seen by the private security branch, have a great impact on citizens' feelings of security (cf. z.B. PRASSE 1997).

This research gap should at least partly be closed by the presented resarch project concerning "possibilities of privatization of police scopes and their influences on the feelings of security of the public", which was initialized by the federal bureau for the investigation of crime (Bundeskriminalamt). Besides a legal counsel's opinion and an in-

terdisciplinary workshop (WEISS & PLATE 1996), a criminological analysis of the influence of private security activities upon the feelings of security of the citizens was carried out.

Starting point of the criminological analysis was the edge of the relationship-triangle: private security services - police - citizens. Starting with the citizens, the aim of the study was to seize the knowledge and the attitudes of the citizens towards private security services and to contrast these against the attitudes towards the police. Main aspect of the investigation were citizens' feelings of security.

The research project consisted of three parts:

1. A public opinion poll in the cities of Dresden, Erfurt, Frankfurt/Main und Freiburg. In each city, in the middle of 1997, 1,500 randomly chosen citizens received a questionnaire,
2. an analysis of the most locally read newspapers in these cities for a period of one year, the aim was, to obtain some more information on how the public is informed by the local press about private security services, and
3. expert interviews; the experts in all four cities were gathered from private security firms, the police and the public as well as commercial customers.

The scope of the study and the three different data approaches was, to obtain maximum information about privatization of security and of its consequences on the attitudes and opinions of the public. The integration of these three approaches are of considerable significance, whereas in the public opinion questionnaire, the emphasis lies in the attitudes of the citizens questioned. Results of this study are anticipated to be presented in a comprehensive volume at the end of 1998 (OBERGFELL-FUCHS 1998).

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ENVIRONMENTAL, ECONOMIC AND ORGANIZED CRIME

The Legal Regulation of Environmental Hazards through Penal Legislation

HANS J. HOCH

1. Introduction

Since the early 1970s, empirically corroborated global prognoses of development trends in present-day societies have developed into alarming scenarios as far as the ecological condition of our planet is concerned. Production and consumption have reached the ecological limits and the cultural legitimation of environmental destruction is beginning to weaken as a result of man's sharpened ecological consciousness. Drastic changes in policy are called for in order to avert a collapse of the more or less overutilized ecosystems. Particularly national and transnational efforts for global cooperation as well as negotiations of politically binding agreements are necessary in order to put a stop to the consumption of resources, to prevent continued pollution of the soil, the water bodies and the air and to counteract ecologically detrimental developments in pursuit of a lasting development of environmental protection. Thus the crucial question today's societies are confronted with is whether they are capable of innovation and of coping with problems in order to safeguard the basics of the ecosystem for the future. In this context, particularly the normative-legal regulation of the utilization of environmental resources and the penal safeguarding of objects of legal protection are of great relevance. Efforts to improve the protection of the environmental media water, soil and air, to lay down more stringent limit values for pollution sources and pollutants in order to guarantee more cautious exploitation of environmental resources by means of a complex anti-pollution law characterize the trend in the legal system over recent years, triggered by increasing strains on and over-utilization of the ecosystems.

For Germany there are plans to compile the complete set of environmental regulations which comprises several thousand pages into an Environmental Code, of which the *first volume* is expected to be published in 1999. People have by now become highly con-

scious of the fact that without transnational regulations the global ecosystems will not be able to be sufficiently stabilized much longer.

Critics of developments in the law and of continued regularization particularly in the environmental sector have repeatedly pointed out that the law, as a medium of control, is in danger of failing. There is much doubt regarding the effectiveness of criminal prosecution and the efficiency of general and crime prevention especially in the environmental field. In a "post-modern" society characterized by extensive risks the existing legal schemes and prosecution concepts constitute insufficient intervention mechanisms.

From the *penal-criminological perspective* the focus of research has therefore mainly been on the analysis of penal legislation within the increasingly differentiated environment-relevant regulative legal systems. Previous results of criminological research have been integrated into a number of PUBLICATIONS (HEINE/MEINBERG 1988; HOCH 1994; LUTTERER/HOCH 1997). Within the framework of this paper, the suitability of environmental criminal law for safeguarding environmental objects of legal protection will be critically reflected upon against the background of previous research.

2. Environmental criminal law: intent and legal reality

The legislator also emphasizes the role penal legislation plays in environmental protection as being supplementary. Thus, in support of the second environmental criminal law (UKG), the lawmaker points out that "of all the instruments available for the achievement of the goals of environmental policy, criminal law and administrative offenses regulations (...) essentially have a supportive and supplementary function".

The legislator summarizes the objectives of environmental criminal law (§§ 324-330d German Penal Code StGB) as follows: it is "intended to contribute to *counteracting serious damage and danger to the environment more effectively than before* by means of extensive penal sanctioning possibilities and to make the public more aware of the harmful consequences of such acts for society. This also accentuates the administrative regulations intended to prevent such consequences and facilitates their enforcement".

Thus, from a technical perspective, (sanction-oriented) environmental criminal law has been linked to the priority position of (prevention-oriented) administrative environmental law. In the investigation of environment-related crime the fact that environmental criminal law is *accessory to administrative regulations* requires that administrative regulations be taken into consideration such as i.a. the Waste Disposal Act (AbfG), the Federal Pollution and Nuisance Protection Act (BImSchG) or the Water Resources Management Act (WHG), to mention only a few central sections of administrative law.

Therefore the selection of sanction-relevant cases is inevitably the responsibility of the environmental administrative authorities so that the question arises as to how the "control policy" in the administrative agencies' field of operation and the practical "interplay" of environmental criminal law and administrative offenses regulations work, or, in other words, how existing selection problems are solved in practice.

However, our investigations indicate that the environmental and criminal prosecution authorities still do not cooperate efficiently in the control of environmental crime. These "qualitative" problems the handling of environmental crimes entails persist, while the number of cases registered increases year by year.

2.1 Trends in criminal prosecution

The fact that the safeguarding of objects of legal protection was given greater priority has entailed an enormous rise in the number of prosecutions of environment-related offenses since the passing of environmental criminal law in 1980. Statistics on crime, prosecution and convictions reveal a number of trends since the coming into force of environmental criminal law in 1980.

On the one hand there has been an enormous rise in the number of environmental crimes registered; the number of environmental crimes registered in the old Federal Länder rose from 5,151 to more than 27,000 between 1980 and 1996. In terms of the entire Federal Republic the number of reported environmental crimes prosecuted pursuant to the Penal Code (§§ 324 - 330a StGB) rose from 35,643 (1995) to 39,641 (1996). Cases involving unauthorized waste disposal pursuant to § 326 StGB (1996: n=28,935; 73%) and unauthorized water pollution pursuant to § 324 StGB (1996: n=6,878; 17.4%) predominate numerically. Cases of soil pollution pursuant to § 324a StGB, a provision introduced as part of the reform of environmental criminal law in 1994, rank third numerically (1996: n=1,698; 4.3%).

However, the clear-up rate and thus the proportion of cases registered and cleared up in which a suspect was able to be established has decreased in the last few years from about 75% in 1985 to about 60% in 1996.

Moreover, inspection of prosecution statistics reveals a downward trend in the number of persons tried since 1989, that is, of persons on whom an order of summary punishment was imposed or against whom the trial was opened and finally terminated by a conviction or dismissal. Statistics on prosecutions between 1988 and 1994 show that more than 95% of persons convicted were sentenced to a fine, whereas the proportion of persons sentenced to a term of imprisonment amounted to less than 5%. More than 75% of prison sentences imposed were suspended on probation.

Thus the official statistics indicate that, given the number of convictions, there has been no improvement in the "overall balance of success" in the field of crimes against the environment. On the other hand, it would be an exaggeration to characterize experiences of environmental criminal law as "dismal", as its functionality ought not to be measured solely by the proportion of persons tried and convicted.

The record analysis reveals that the criminal prosecution agencies do thoroughly investigate, on the basis of police investigations and investigations by the departments of public prosecution, environmental crimes reported to them. Ecologically relevant crimes are, in this context, indeed confronted with intensive police investigations and taking of evidence.

Criminal prosecution might be, in a first step, rendered more effective by well-aimed offensive, proactive crime control strategies of the police and the environmental agencies in the commercial-industrial sector rather than by a tightening of environmental criminal law.

3. Sanctioning provisions in environmental protection: conclusions

The following conclusions and reform proposals may be drawn from our studies on the legal reality of environmental criminal law:

1. The prosecutors, police and environmental officials basically accept environmental criminal law. However, the control agencies emphasize its function as an "ultima-ratio" and attach great importance to non-legal measures of environmental education and information in the school and business sector.

2. However, the control agencies criticize the practicability of environmental criminal law. Especially the criminal prosecution agencies would like to see it reformed: in this context, the new environmental criminal law which took effect on Nov. 1, 1994 and introduced an own penal norm which protects against soil pollution (§ 324a StGB) and strives to improve the protection against air and noise pollution (§§ 325, 325a StGB) takes the desired course.

3. Cooperation between environmental administrative and criminal prosecution agencies needs to be improved, particularly also by way of common training and advanced training courses. The main goal in this context should be to more effectively combat exceptionally detrimental forms of environmental crimes and to lay the necessary cooperative foundation for this objective.

4. Knowledge of the law needs to be improved among its addressees particularly in the fields of agriculture, small and medium-sized businesses and private persons. For knowledge of the law is essential for a (general-)preventive impact of environmental penal norms. Municipal and intra-company environmental advisers might be employed for this purpose.

5. The number of officials in charge of environmental crime cases needs to be increased in order to cope with the work load the environmental authorities are burdened with. This would strengthen the functioning of the environmental administration in the sense of preventive environmental protection and render possible more consistent enforcement of environmental administrative law. The norm enforcement agencies regard such infrastructural improvements as more urgent than further modifications of the laws in force.

6. At least at the European level the further development and alignment of the laws should be advanced with the aim of reaching uniform levels of environmental norms.

The prosecutors, the police and environmental officials emphasize that the legal system would be overstrained without future ecological orientations in further relevant social domains such as the educational system and that the capacity of environmental (criminal) law to exercise ecological control is overestimated.

Against the background of our comparative analysis of violations of environmental regulations and of criminal procedures involving crimes against the environment the thesis of the controlling function of the law ought not to be rejected altogether, but only modified to a certain extent. The fact that both sanctioning systems need to be coordinated more effectively and that the environmental administrative and criminal prosecution agencies ought to better harmonize their practical handling of environmental crime with respect to the goals aimed at arises from the linkage between these two legal matters.

As interviews conducted with prosecutors and police officers revealed, the clearing-up of environmental offenses is rendered extremely difficult by obscure and complex responsibility structures particularly within commercial-industrial enterprises. This, in turn, entails control effects which influence the taking of evidence to such an extent that cases or case circumstances which yield unsatisfactory evidence are less likely to enter the

course of procedure than environmental crimes which are less difficult to prove and more easily imputed to a particular responsible person.

This constitutes the limit of individual criminal law as it is unable to react adequately to the pluralized responsibility frequently characterizing particularly complex processes of industrial-commercial production. In addition to a more consistent application of *compensation*, an *organizational criminal law* (HEINE 1995) - which still remains to be created - would constitute a suitable supplement to classical criminal law and civil and administrative law in order to guarantee that illegal ecological hazards today's industrial risk societies entail will in future still be able to be coped with judicially and procedurally (LADEUR 1992).

However, particularly from a general-preventive point of view environmental criminal law no doubt still plays a key role in the control of crimes against the environment.

4. Perspectives of penal legislation

Criminal prosecution and the course of procedure appear to have been finally routinized to a certain degree also in the environmental sector and criminal prosecution arouses less spectacular public interest. The fact that the politically relevant structures have changed to the disadvantage of environmental protection under the pressure of economic problems, intensified international competition and the difficult labor situation no doubt constitutes an important aspect in this context. Environmental politics at the European level are characterized as having an "economic list". This social development, however, ought not to lead to a creeping decriminalization of the environmentally relevant field of behavior incriminated by environmental criminal law. The focus on serious environmental crime arising from the perspective of environmental criminal law will remain the central and focal task of criminal prosecution.

The growing significance of a transnational regulation of environmental standards within the framework of a globalized world economy and an integrative environmental policy at least at the European Union level seems to be of prime importance in this context. Thus the implementation of environmental criminal law - or of transnational incriminating standards in the case of destruction of the environment - is a focal task of an environmental policy committed to "creating a global ecological frame of order which guarantees environmental protection also against the background of international competition".

As before, the focus of environmental criminal law is on "prevention, the safeguarding of objects of legal protection through behavior control" on the one hand and on "norm stabilization" on the other (PRITTWITZ 1993).

Criticisms of the current risk-oriented criminal law cannot disregard the fact that there exists no functional equivalent so far. It constitutes an *achievement* in the *evolutionary* process of the legal system (LUHMANN 1981), a projective legal program, whose normative as well as cognitive sensitivity is essential for today's transformational societies.

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Evaluation of Anti-Money-Laundering and Asset Confiscation Legislation in Europe

MICHAEL KILCHLING

1. Introduction

Profit-oriented strategies of crime control have become increasingly important throughout the last two decades as the fight against organized crime becomes a major issue in international criminal policy. A *twofold approach* has been taken: repressive anti-money-laundering legislation (*in personam*) and non-punitive asset confiscation provisions with preventive goals (*in rem*).

Although the basic elements of this approach are similar and have been adopted by several international treaties, there are great differences among the various European legal systems, particularly with regard to national forfeiture regulations.

2. Provisions currently implemented

2.1. Money-laundering

There are three primary approaches to the regulation of money laundering in Europe:

(1) Money-laundering regulated as a special case of receiving stolen property, not as an independent offense. The Netherlands and, to some extent Italy, have taken this approach.

(2) Money-laundering regulated as a single criminal offense. This approach has been taken in Germany, Italy and Switzerland

(3) Money-laundering regulated in a variety of criminal provisions. France and Great Britain, for example, have separate statutes for the laundering of drug money. Austria has a special provision for money-laundering activities engaged in by members of criminal organizations. This provision, unlike conventional money-laundering statutes, does not require evidence of a crime.

2.2. Organizational crime

In some countries, an additional offense known as organizational crime has taken on particular significance. This offense was created in order to avoid the difficulties encoun-

tered in proving the origin of suspect assets and their connection to a concrete predicate crime. Italy, Switzerland and Austria have adopted this model. These *organizational crime provisions* punish not only concrete money-laundering activities but all activities that support organized crime. In addition to this repressive goal, they serve a further purpose, that is, to enable confiscation of suspicious assets *without* having to prove their *connection to a particular predicate offense.*

Germany has a similar provision, but it is difficult to apply to organized crime for several reasons, including restrictive court decisions. Also, the new confiscation provisions that have been created especially to combat organized crime are not applicable to this offense.

2.3. *Confiscation systems*

There is even more variety in confiscation provisions than in those regulating money-laundering. Each of the following countries were chosen for the study because they each have adopted a different approach to confiscation.

(1) Switzerland

The Swiss legislator has adopted a unique model of confiscation that does *not* focus on the *perpetrator's ownership* of the assets subject to confiscation. Instead, it is designed to handle the method of asset management typical for organized crime in which money flows through a large number of strawman accounts so that it cannot be attributed to a particular person with any degree of certainty. Confiscation is based on the following *legal presumption of origin*: In the case of asset holders who were or are proven to be part of a criminal organization or to have supported one, the *power of disposal* over the assets is actually presumed to belong to the organization which is considered to be the actual holder of the commercial rights. Thus, the *in rem* principle is applied more rigorously in Switzerland than in all other European countries.

(2) Austria

The new Austrian confiscation provisions are based on the Swiss model. However, the Austrians have avoided implementing a total shift in the burden of proof, which is an essential part of the Swiss model. Instead they have introduced a shift in the *burden of certification.* An unusual characteristic of the Austrian system is a (limited) recognition of *corporate liability with regard to confiscation.* Even assets belonging to legal successors of a defunct corporation are subject to confiscation.

(3) Italy

The situation in Italy is characterized by a *preventive approach* for all crime committed in association with the *Mafia.* This type of preventive confiscation can be applied independently of or in addition to criminal prosecution. In practice, these preventive instruments are much more successful than criminal confiscation.

(4) France

France is the only European country to implement a penal model in which confiscation is a *regular penalty*. Moreover, confiscation orders, under French law, can even replace fines or prison sentences up to ten years. Since confiscation is a penal sanction, no shift in burdens of proof have been adopted. In contrast, France is a leader with regard to *corporate liability*. With the introduction of the new Code penal, coroporate offenders can be punished as individuals. Consequently, corporations are subject to confiscation.

(5) Germany

Germany has a *mixed system* with numerous elements that can be found in other countries as well. On the one hand are the classical instruments, *supplemental measures* that are not criminal penalties. The *new asset penalty*, however, has a repressive character and is comparable to the French system. *Extended forfeiture* is characterized by a relaxation in the proof of the criminal origin of assets and thus is comparable to the Dutch and Austrian models.

(6) Netherlands

The Dutch have a special provision for confiscation of assets from organized crime called *"pluk-ze"* (pluck the chicken). The standards of evidence are *relaxed*, but not to the point of a shift in the burden of proof. In addition, there is a *special procedure for financial investigations* that can be applied before, during or even after the criminal process.

(7) Great Britain

The British have implemented various forms of confiscation and forfeiture orders whose concrete legal character remain undetermined. Of especial interest for our *comparative project is the frequency with which obligatory and* discretionary statutes are applied.

(8) Hungary

Hungary is of interest because of its role as a member of the former Eastern bloc and as a candidate for membership in the European Union. The Hungarian penal code contains *extensive confiscation instruments* that can be traced to the socialist doctrine. If these provisions were to be applied rigorously, they could conceivably be more efficient than their counterparts in other European countries, where the protection of property has always been taken more seriously and thus may have set an inherent limit to governmental confiscation of assets.

3. Research Design

3.1. General remarks on methodology

Very little research, especially research from a *comparative perspective*, has been conducted in this area. This is somewhat surprising as current conditions are favourable for

scientific study. Frequent legal reforms as well as the diversity of approaches implemented in the various European legal systems provide fertile ground for comparative analyses which may be methodologically comparable to research projects conducted under quasi-experimental design.

Our project will be carried out in *two stages*, the first of which is primarily explorative in character and devoted to *establishing a data base capable of supporting quantitative comparisons*. The second stage consists of *qualitative* analyses. Its final conzeptualization, as befits a work in progress, will reflect the frequencies and practical applications determined in stage one.

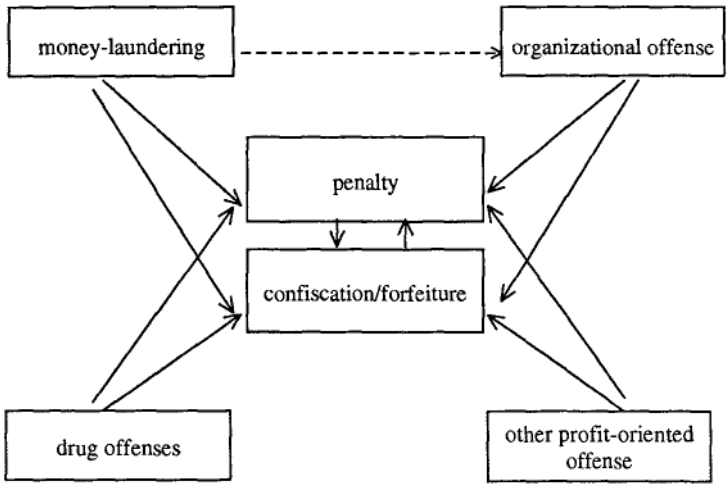
A *flexible, empirical approach* will accommodate the different normative and sociolegal backgrounds of the countries under study. These differences can be operationalized by variables including type, form and content of legal provisions. In addition, the open design allows a multidimensional approach in which general questions pertaining to all countries involved as well as specific issues limited to selected subgroups may be investigated. Subgroup comparisons can be based on selected systems, on specific norms within those systems or on a combination of both, like, for example, the French confiscation system taken as a whole as compared to the corresponding German asset penalty which is just one instrument of confiscation legislation in Germany.

3.2. Research focus

The project concentrates on *prosecution and confiscation* in the participating countries. Our principal focus is on *money-laundering* but, due to the small number of suitable cases, some additional reference crimes will be studied as well. These include *drug offenses*, which make up the bulk of confiscation cases in most of the participating countries, and *organizational offenses*, which exist in only some of the countries. Finally, we have chosen to include *fraud* and/or *corruption* a profit-oriented offense that can be committed by individuals as well as by criminal organizations. This latter type of offense will serve as a *control group* and will prove or disprove the hypothesis that confiscation of proceeds is more vigorously pursued in the context of organized crime. And finally, an analysis of the explanations given by judges in the determination of individual sentences may shed light on their perceptions of the *wrongfulness of money-laundering* as compared to its predicate offenses.

However, the analysis is not limited solely to issues surrounding sentencing and confiscation but rather encompasses the *whole range of responses* available to the criminal prosecution, including provisional measures (seizure). Asset confiscation can be applied in a repressive or a preventive framework. This is demonstrated by the Italian *"misure di prevenzione"* which have resulted in seizures that are unparalleled in Europe. This huge sum (5.5 trillion Italian lira = 3.1 billion USD between 1992 and 1995) could never have come about had the regulation not been couched in preventive terms. We will also consider *diversion*, since informal sanctions imposed in informal procedures can also be indicative of indirect confiscatory goals.

Figure 1: Research focus



Another point of interest that has as yet attracted little attention is the repressive *enforcement of national money-laundering control provisions*, such as reporting requirements, affecting private banks and their employees. In countries such as Germany, Austria, France and Switzerland, these provisions establish regulatory offenses or offenses in the field of administrative criminal law.

Briefly, our research is not limited to an analysis of "frontline" offenders but encompasses persons indirectly involved in money-laundering activities as well as those charged with its control.

3.3. *Data Sources*

Data will be gathered on two different levels. On the *macro level* official statistical data will be analyzed. In some countries, however, the available information may prove to be insufficient. Where this is the case we will have to obtain supplementary information. In Germany, for example, the official criminal statistics do not provide any substantive bivariate figures such as the legal basis of confiscatory measures or the value of assets confiscated (neither individual nor in the aggregate); no information whatsoever has yet been published on the new measures targeting assets stemming from organized crime[1].

We will consider *police* as well as *judicial data*. Each source represents a specific administrative context and reflects its own perception of crime and its particular interests in an appropriate response thereto.

[1] Asset penalty (§ 43a of the German Criminal Code) and extended forfeiture (§ 73d).

To supplement the aforementioned national sources, often available only in the aggregate, we will gather additional information on the *micro level*; i.e., we will record data from individual cases by means of *file analysis*.

Two investigative tracks seem most promising for our purposes. First, and of primary significance, is the *retrospective analysis of closed cases*. A decision as to the appropriate sampling method to employ (random or exhaustive) will be based on the number of relevant cases. Thus, drug cases will be sampled randomly whereas money-laundering cases will be analyzed exhaustively, at least in the smaller countries, i.e., Austria, Switzerland and the Netherlands.

The second track consists of a *longitudinal analysis of selected cases*, beginning with the origin of suspicion (police record or report of suspicious behaviour) and continuing through to the conclusion of the case.

This longitudinal case analysis can and should begin as early as possible in the development of the case because the high percentage of dismissals that can be expected in money-laundering offenses cannot be designated missing cases - as would be the case in a file analysis - but rather must be seen as directly relevant to the initial question posed.

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The Judicial Handling of Manifestations of Organized Crime

JÖRG KINZIG

Outline of an empirical research project

The phenomenon of organized crime has determined - and shall continue to determine for an unforeseeable period of time - the criminal-political discussion as well as all substantive and procedural penal legislation for quite some time now both nationally and internationally. However, so far there exists no common level of terminology and communication so that all actors in the political discourse may use the term "organized crime" to their advantage. Additionally, the desolate basis for discussion is characterized by the fact that only rudimentary empirical findings on organized crime - regardless of the dark field problem - are available on its control and on the efficiency of the legal strategies already implemented by the national legislators.

Different dimensions of danger ascribed to organized crime are reflected in diverse attempts to define this phenomenon. However, there is no agreement upon what is to be regarded as organized crime.

The definition of organized crime currently dominating the practice in the Federal Republic of Germany, dating from 1986, is found in the "Common rules of the Ministers/Senators of Justice and the Ministers/Senators of the Interior of the Federal Länder for the cooperation between the prosecutors and the police in the prosecution of organized crime", according to which organized crime is "the planned commission of crimes - which are of considerable importance taken separately or as a whole - in the pursuit of gain and power, if two or more parties work together for a longer or indeterminate period of time by

a) employing commercial or business-like structures

b) using force or other means suitable for intimidation

c) exerting influence on politics, the media, the public administration, the judicial authorities or trade and industry."

This definition is criticized for various reasons. On the one hand it covers the broadest possible spectrum of organized crime, on the other hand the catalogue is so broad and vague that it seems impossible to differentiate organized crime from other manifestations of conventional multiple-offender crimes. However, there is at present no prospect of a superior model - neither in Germany nor at the European level. Endeavors towards a definition of organized crime are not academic in this context, as a number of far-

reaching reforms of substantive and procedural criminal law of the Federal Republic of Germany and of other countries have been carried out on the grounds that they are necessary to effectively combat organized crime. The fact that little is known about the goal and the suitability of these legislative measures is responsible for a growing degree of uneasiness in Germany.

So far the German legislators have refrained from linking the measures provided for in substantive criminal law to the elements "organized crime" or "organized commission". In the case of the Organized Crime Control Act ("Law against Illegal Drug Trafficking and other Manifestations of Organized Crime" (OrgKG)) of July 15, 1992, the reason given for this course of action was that "the contours of organized crimes, particularly the differentiation from other forms of crime ... do not seem firm enough for an operative fact under a criminal law". In substantive criminal law particularly gang-based crimes and crimes committed for gain and in the law of criminal procedure undercover methods of investigation constitute starting points. In so far the lawmakers have created new and expanded existing elements of crimes since the early 90s and have partially laid the legal foundation for undercover methods of investigation. In German jurisdiction the offense of forming a criminal organization (pursuant to § 129 German Penal Code StGB) is interpreted very restrictively and is hence of hardly any importance in forensic practice. Undercover bugging/wiretapping of private homes was officially authorized only recently after vehement parliamentary disputes.

The yield of official statistics and criminological research in Germany is extremely modest compared with the parliamentary activities in this area. The report of the Bundeskriminalamt (Federal Office of Criminal Investigation) on the situation of organized crime which furnishes basic data on proceedings the individual Federal Länder class with the category of organized crimes ends with the completion of preliminary proceedings by the police, thus containing no information on how the judicial agencies handle such offenses. Statistics of criminal prosecution only reflect individual offenses. Isolated regional reports by the judicial authorities on the situation of organized crime lack uniformity. Moreover, the empirical findings of German research so far available on organized crime are essentially based on police-oriented research which served to compile and analyze the specialized knowledge of agencies concerned with organized crime in practice. These almost exclusively interview-based works above all attempted to throw light upon the structures of possible connections between offenders classed with the scene of organized crime and to gain insight into the underlying structures which are characterized by a division of duties.

Research projects traditionally strive to fill in the gaps which have opened in the chosen field of research following the analysis of previous works. At least in Germany it ought not to be the task of the empirical research "The judicial handling of manifestations of organized crime" which is to be conducted at the Max-Planck-Institute for Foreign and International Criminal Law in the next few years and whose perspective is briefly outlined in the present paper to answer a remainder of open questions, but rather to compile a basic stock of empirical knowledge. It would thus also be presumptuous to investigate all approaches which strive to describe and explain organized crime. Therefore the focus of the research ought to be less on historical, economic or sociological explanations of the emergence of organized crime, but rather on the question as to how the police and the judicial authorities handle proceedings they subsume under organized crime. Already the mere fact that the implications of the penal reforms - which the lawma-

kers have introduced on the grounds that they are necessary to combat organized crime - for judicial practice are still not clear to a large extent justifies this accentuation.

Thus it is the aim of the research to investigate how the penal judicial agencies take up and deal with the phenomenon of organized crime. Additionally, it inquires into the implementation of more recent substantive and procedural provisions against organized crime such as those contained in the Organized Crime Control Act of 1992.

The judicial handling of organized crime is above all reflected in police and criminal records. Therefore a record analysis constitutes the primary and most suitable research method. We are, nevertheless, aware of the problem and the existence of a possibly substantial dark field of organized crime. However, as the judicial handling of crimes the police regards as being organized is the subject of the research, a record analysis still constitutes the most suitable research method.

Procedures involving crimes the police define as organized pursuant to the above definition in the common rules serve as a starting point due to lack of methodic alternatives. First the course of procedure shall be examined longitudinally for a selection of Federal Länder on the basis of police and judicial records. The different stages of the criminal procedure from the suspicion of a criminal act to a possible conviction shall be investigated. In a second step the procedures shall be categorized and in a third step we will analyze in greater detail those procedures which are possibly indicative of a specific type of organized crime.

Methodically the research will be supplemented by interviews with judicial experts concerned with organized crime and possibly also with offenders classed with the scene of organized crime. It is to be hoped that this will give a better picture of the nature of organized crime in Germany and of the way it is dealt with by the police and the judicial authorities.

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Organized Crime: Criminal Organizations or the Organization of Crime?

LETIZIA PAOLI

Traditionally regarded as an issue that concerned only a limited number of countries, in the 1900s organized crime has become a 'hot topic' in the world public discourse. As a result, a large number of initiatives have been launched culminating with the organization of the World Ministerial Conference on Transnational Organized Crime by the United Nations in Naples in November 1994 (UNGA 1994) and the negotiation of a UN Convention on Transnational Organized Crime (Joutsen, 1998).

The implementation of these initiatives and the introduction of the crime of membership in a criminal organization in the penal codes of many countries are, however, hampered by the lack of consistent definitions (see, on this point, Kinzig in this volume). As a result of its history, organized crime is a conflated, ambiguous concept with no well-defined boundaries. This confusion, it is argued, is largely the result of the stratification of different meanings attributed to the term 'organized crime' in the United States since the end of the Second World War. For this reason, the first section of the paper is devoted to the synthesis of the American discussion. The following ones aim to clear up the confusion around the concept of organized crime, showing that it now inconsistently incorporates the notions of 'criminal organization' and of the 'provision of illegal goods and services'. Against this superimposition, my contention is twofold. On the one hand, it is argued, a great deal of the latter activity is carried out in a disorganized way. On the other hand, the very collectivities that are often assumed to be the archetype of organized crime are neither exclusively involved in illegal market activities nor their development and internal organization are the result of the illegal markets dynamics.

1. The organization of illegal markets

A considerable part of the business of crime – namely the provision of illegal goods and services – is carried out in a disorganized way. As Peter Reuter sharply put it, much of what happens in illegal marketplaces is "disorganized crime" (1983; 1985). The illegal status of the products, in fact, affects the way in which their production and distribution are carried out and tends to prevent the consolidation of large-scale, durable criminal enterprises.

One main risk involved in the marketing of illegal products is the constant risk of arrest and interception of assets. Though with some variations, all illegal market actors constantly risk imprisonment and the seizure of their assets by law enforcement agencies. Thus, each participant in the trade will try to organize his or her activities, particularly those involving other partners, to assure that the risk of law enforcement detection is

minimized. In particular, each entrepreneur will try to structure his relationship with employees, reducing the amount of information available to them concerning his own participation. A viable strategy to accomplish this goal is the segmentation of the enterprise which reduces the number of people that are in contact with the entrepreneur (Reuter, 1983; 1985).

For the same reasons, opportunities for vertical integration are likely to remain limited. Internalizing a function implies higher risks of arrest and seizure of assets and higher costs of managing an expanded and more diverse workforce. The latter costs, in particular, are likely to escalate rapidly; it is very difficult to monitor the performance of employees who, given the illegal nature of the business, also need to work in covert settings and to minimize the production of written documents that can become proofs of their illegal activity. This, of course, increases the attractiveness of buying the same services on the market.

The second major constraint imposed by illegality lies in the absence of a coherent set of legal rules, supported by sanctions and an enforcement apparatus enshrined to a *super partes* authority able to compel the terms of transactions. In the illegal arena there is no public sovereign power to which a party may appeal for redress of injury. As a result, property rights are poorly protected, employment contracts can hardly be formalized and the development of large, formally organized, enduring companies is strongly discouraged.

Nor can the respect of commercial agreements between two or more counterparts be ensured through the recourse to state institutions. Exchange of illegal goods and services among extraneous actors are, thus, bound to occur only on the fragile basis of trust developed over the course of repeated exchanges. Still, fraud and violence always remain options. Like the seafarers of the Antiquity and the Middle Ages, illegal entrepreneurs are usually pleased to take whatever they can get by force and fraud and have recourse to peaceful dickering only where they are confronted with a power equal to their own or where they regard it as shrewd to do so for the sake of future exchange opportunities (Weber, [1922] 1978: 640).

Due to these constraints, most urban illegal markets are populated by numerous, relatively small and often ephemeral enterprises, whose relationships are closer to competition than to collusion. Though long-term relationships may develop, the majority are arm's length buyer-seller relationships, which are neither exclusive in any sense nor centrally organized. Despite the fact that illegal entrepreneurs embody in the fullest form the 'animal spirits' of capitalism, the constraints imposed by product illegality seem to have been so far powerful enough to prevent the development of modern capitalist companies in the illegal economy similar to those that populate the legal sphere. As in traditional societies before the consolidation of the modern state, stable, large-scale illegal ventures and wide-ranging networks develop only when they can rely on pre-existing non-economic ties.

2. Beyond the illegal marketplace: Cosa Nostra & Co.

The very criminal organizations that are assumed to be the prototype of organized crime cannot be reduced to their involvement in illegal entrepreneurial activities. These include

the confederations of Sicilian and Calabrian mafia families known under the labels of Cosa Nostra and *'ndrangheta*, the so-called Chinese Triads and *tongs*, the 3.000 groups belonging to the Japanese *yakuza*, the American La Cosa Nostra. Collectively, these entities may be termed as mafia-type organizations. Though their members are frequently successful players of the illegal marketplace, these collectivities cannot be merely considered as illegal enterprises. Nor can these associations "be considered the outcome of organizing one's forbidden trade and industry" (van Duyne, 1997: 203). Indeed, these groups pre-existed the formation and expansion of modern illegal markets - most notably, those in drugs, human beings and arms. These, in fact, have grown - parallel with the function of economic regulation, protection and social support initiated by the modern Welfare State and with the development of international law – in the wake of the two World Wars (Paoli, 1998). On the contrary, with the exception of the American La Cosa Nostra, all the above entities, which may be collectively termed as mafia-type associations, have been active at least since the mid-19th century.

Far from being determined by the illegal market dynamics, the culture, structure and action of these organizations follow a different, multi-faceted logic. All the above-mentioned associations are founded upon relations of ritual kinship. That is, they do not bind their members to the respect of a mere purposive contract - as a 'modern' firm or bureaucracy would do. Instead these factions are founded on 'fraternization contracts' (Weber, 1978: 671-2) by which novices are bound to become brothers of the other group members and to share a regime of 'generalized reciprocity' with them. This presupposes an altruistic attitude and behaviour without expecting any short-term reward (Sahlins, 1972: 193-200). The members of a mafia group have the obligation of helping each other materially and financially when requested or in case of need and to unfailingly stick to principles of sincerity and correctness in their mutual interaction, while the expectation of reciprocity, though asserted, is left undefined.

Relying on fictive kinship ties, criminal organizations of mafia type enjoy an extraordinary elasticity that has no parallel among contemporary business firms. In a regime of generalized reciprocity, mafia subordinates are not given a choice on whether or not to execute superiors' orders. Unlike purposive contracts, in fact, the contract binding them to a sodality of mafia type is long-term and non-specific. It does not contain a detailed list of services, beyond which the underwriter has no obligation.[i] Indeed, the contract is so comprehensive that the members are expected not only to deny family and friendship bonds but even to sacrifice their own life if the group requests it.

These organizational arrangements have allowed associations of a mafia type to pursue a multiplicity of goals and functions. Though enhancement of the members' interests through mutual aid seems to have been the major 'official goal' of mafia-type associations ever since their founding, over the decades this general aim has been interpreted and applied by the affiliates in many different ways and has been translated in a plurality of 'operative goals' (Perrow, 1961). Equally, the identification of mafia-type organizations with a single specific function cannot be maintained without distorting the richness of the empirical findings. Throughout their existence mafia brotherhoods have neither limited themselves to supplying illegal goods and services nor acted as a private protection industry (Gambetta, 1993). On the contrary, members of these associations have employed the strength of the associational bonds for so many different ends, often in open contradiction with one another, that it is impossible to select a single, typifying one.

In a historical perspective, though, it is clear that mafia-type organizations have undergone a process of degeneration and marginalization. As the world around them changed and many of the functions they used to play were taken over by more specialized bodies authorized or recognized by state authorities (police forces and courts, political parties, unions, voluntary associations, etc.), the associations *de qua* have progressively been deprived of legitimacy and pushed into illegality. Nevertheless, the rise of international illegal markets has provided them with unforeseen chances of enrichment and, thus, with the means to keep on affirming their power in a changed environment (Chin, 1990; Paoli, 1997; Kaplan and Dubro, 1986).

The organizational arrangements of criminal organizations of mafia type have proven to be very apt in coping with the characteristics of illegal markets. There are, however, also serious disadvantages which do not only constitute a heavy toll in terms of economic efficiency but may also represent a threat to their future survival.

3. Ongoing research

From the separation of the two usually conflated dimensions of organized crime, two different lines of research can be drawn, both of which are currently being pursued.

A. The organization of crime: an ethnographic inquiry in Frankfurt and Milan

An ethnographic investigation of the processes of organization of crime is being carried out in two European cities: Frankfurt and Milan. The major aims of the investigation are the following:

- to reconstruct the development of crime in the two cities since the end of the Second World War, as experienced and registered by law enforcement bodies, the media and the public;
- to focus on the development and the organization of some typical urban illegal markets, most likely the markets in drugs and in human beings, exploring as far as possible their links to national and foreign suppliers;
- to examine the organization and action of the enterprises supplying the above-mentioned illegal commodities;
- to look for the presence of organized clusters of illegal actors - such as mafia families or terrorist groups – assessing their position and role in the criminal economy and examining their internal organization and culture;
- to investigate the role of non-conventional criminal actors – *i.e.*, actors that are not involved full-time in illegal activities and do not regard themselves as criminal - in illegal markets;
- to analyze the relationships - or to highlight the lack of relationships - among the above-mentioned actors. In particular, special attention will be given to the relationships (or their absence) among subjects involved in illegal activities with a different

ethnic or regional origin (for example, Turkish *vis-à-vis* Sicilian drug traffickers) as well as a contrasting socio-economic background or criminal expertise (*i.e.*, white-collar criminals *vis-à-vis* members of traditional organized crime groups).

Various methods will be used in order to pursue the above aims and to test the above mentioned hypotheses, with a general preference for qualitative analysis. The first step lies in a review of the existing scientific and journalistic literature. Analysis of police and judicial documents and interviews with law enforcement officers, social workers, drug addicts and, possibly, different types of imprisoned law breakers is also being carried out. Field work has already begun in both cities.

Preliminary findings of the investigations will be published in mid-1999.

B. Instead of illegal firms: criminal fraternities

The aim of this second project is to compare the structure, culture and action of those associations that are usually seen as the prototype of organized crime, expanding the reflections that have been presented in the fourth section. The multiplicity of purposes and functions carried out by mafia-type associations and their reliance on ritual kinship will be the two foci of this study.

In order to carry out such a comparative analysis, a plurality of sources is being used. As far as Sicilian and Calabrian mafia confederations are concerned, the inquiry largely draws upon the findings of a research project which I carried out in 1993-97, and which were summarized in my Ph.D. dissertation (see Paoli, 1997). The most important single source used in this attempt to analyze the mafia phenomenon were the testimonies of former mafia members now cooperating with the Judiciary, as well as the subsequent inquiries carried out by the Prosecutors and the Judging Colleges in different areas of Italy.

For all the other criminal fraternities, the comparison largely relies on the secondary sources, available in English. In the case of the Chinese Triads, however, these sources are complemented by access to empirical data collected by Wing Lo, a professor of the Hong Kong University, who has been carrying out interviews with Triad members and investigating Triads' action in Hong Kong since the early 1990s. Some articles attempting a comparison between the Chinese criminal groups and their Southern Italian counterparts will be produced jointly.

The first essays covering all the mentioned associations are expected to be ready by the end of 1998.

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COMPARATIVE INTERNATIONAL RESEARCH

United Nations Standards and Norms in the Area of Juvenile Justice in Theory and Practice

An empirical study on its use and application focusing on the deprivation of liberty of delinquent children and juveniles in South Africa[1]

HEIDRUN KIESSL

Introduction

The purpose of this research is to explore the use and application of United Nations Standards and Norms in the area of juvenile justice, in particular, those related to children deprived of their liberty in a selected treaty-state to the Convention, respectively Member State of the UN, which currently undergo a process of transition. Therefore, it is intended to examine whether the Standards and Norms not only have been adopted in national legislation but are also being applied in the practice of the facilities, in which children are deprived of their liberty. In this context, it has to be clarified how the legal nature of these Standards and Norms, considering the "soft-law" character of the resolutions, is related to the impact on a justice system and particularly on its actual application.

- As part of developing methods in implementation research, a specific research-instrument for the measurement of the use and application of soft-law recommendations will be developed.
- Further, it is intended to contribute to the improvement of the overall process of standard setting of the United Nations and the corresponding "implementation"-problem.

[1] Research project from July 1997 to 1999. The execution of the empirical study is kindly promoted by Technikon South Africa with its expertise and logistics.

- Chances and problems with regard to imprisonment of children in the current South African justice system will be analysed.
- As a practical tool, a training course on juvenile justice for prison personnel in South Africa will be developed with the view of setting up a comprehensive training system. This training course will focus on the needs of prison personnel who deal with children deprived of their liberty. The way how to deal with children will be improved in order to achieve a better understanding between children and staff and to undertake constructive work with child prisoners.

During the Eighties, United Nations opened with its Standards and Norms in the area of juvenile justice, a new range of application for Human Rights[2].

- Standard Minimum Rules for the Administration of Juvenile Justice[3] ("Beijing Rules")
- Convention on the Rights of the Child[4] ("CRC")
- Guidelines for the Prevention of Juvenile Delinquency[5] ("The Ryadh Guidelines")
- Rules for the Protection of Juveniles Deprived of their Liberty[6] ("JDL").

It was intended to formulate at international level, minimum standards for children in conflict with the law which could be used by Member States as a basis for the creation of their own juvenile justice systems. In particular, the aim was "to emphasize the well-being of the juvenile and his/her family"[7] and "to develop conditions that will ensure for the juvenile a meaningful life in the community"[8]. Thus areas of social human rights were integrated into United Nations criminal policy[9].

Starting with the non-obligation of the Beijing Rules a broad acceptance should be created for its use and application. Some of the fundamental principles of the Beijing Rules could be embodied later on in the Convention on the Rights of the Child and therefore reach binding character.

These Standards and Norms cover the whole spectrum a justice system has to have. From crime prevention, diversion, administration of juvenile justice, sentencing, training of personnel to conditions in prisons and facilities in which young people are deprived of their liberty. They guarantee openness for supporters of all different juvenile justice systems who follow the welfare approach or the justice model[10].

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2 In Art. 10 II b, III and 14 II b ICCP of 1966 and UN Standard Minimum Rules for the Treatment of Prisoners of 1955 and regional Human Rights Treaties very specific provisions on juvenile justice could be found sporadically.

3 *GENERAL ASSEMBLY* Resolution 45/112.

4 *GENERAL ASSEMBLY* Resolution 44/25.

5 *GENERAL ASSEMBLY* Resolution 45/112.

6 *GENERAL ASSEMBLY* 45/113.

7 *BEIJING RULE* 1.1.

8 *BEIJING RULE* 1.2.

9 *SCHÜLER-SPRINGORUM*, H.: Sind die Menschenrechte noch zu retten? In: Festschrift für Miyazawa, hrsg. v. H.-H. Kühne. Baden-Baden 1995, 393.

10 Compare with *DÜNKEL*, F.: Jugendstrafrecht in Europa. In: Entwicklungstendenzen und Reformstrategien im Jugendstrafrecht im europäischen Vergleich, hrsg. v. F. Dünkel u.a. 1997, 569; *SCHÜLER-SPRINGORUM*, H. 1986, p.109.

Since the adoption of these Standards and Norms many countries regard increasing child and juvenile delinquency as a major concern and are seeking for new solutions. The prognosis that "by the year 2000, more than 50 per cent of the world population will be under the age of 15"[11], serves to further highlight the seriousness of the youth crime problem. The microcosm which juvenile justice typically shapes in a justice system changes more and more into a macrocosm, as youth crime as a topic increases in priority and gains importance all over the world.

In July 1997, 8,793 juveniles (between the ages of 7 and 21) in pre-trial detention and 12,343 juveniles convicted to a prison sentence[12] could be found in South African prisons. To reduce pressure on youths in trouble with the law, South Africa is currently developing a juvenile justice system for the first time. In discussions on the new content of such a system, international standards and norms play an important role. Simultaneously they are being put to the test on their feasability.

State of research

To date, at national and international level no research has been pursued which evaluates the implementation and/or use and application of these Standards and Norms on a scientific level. In particular, the situation of children deprived of their liberty, as described in the latter and its impact related to this, have never been the subject of any empirical study before.

From a criminological perspective, the analysis of existing literature and material shows a lack of empirical, "in-depth" research. Current research is limited nationally and internationally to the interpretation of the contents of these Standards and Norms. Further research focuses mainly on the "implementation-mechanism" of the Committee on the Rights of the Child and its reporting system. In particular, research done by an independent scientific institution is missing[13] so far.

Research leading considerations

The character of this research is strictly explorative. Due to a lack of research and literature it cannot draw from existing theories. Therefore, the purpose of this research cannot be the testing of hypotheses, but it will contribute in finding of them. Nevertheless, a

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[11] *UNITED NATIONS*, ninth United Nations congress on the prevention of crime and the treatment of offenders (A/CONF.167/Rev.1), UN Crime Prevention and Criminal Justice Branch.

[12] These figures were kindly provided by the Department of Correctional Services in South Africa; adequate figures on the population quota of persons under the age of 21 were not available to standardize those absolute figures described above.

[13] On behalf of the European Institute for Crime Prevention and Control, affiliated with the United Nations, Roy *WALMSLEY* focused in 1996 on the use and application of United Nations Standard Minimum Rules for the Treatment of Prisoners. Also, the Crime Prevention and Criminal Justice Division of United Nations started a process of data-collection and distribution of questionnaires to Member States.

minimum set of assumptions related to the research subject have been made and a concept to precise and refine conceptual elements which could lead to a new theory will be developed as an outcome.

The suggested research project is guided by the following assumptions:
It shall be analysed whether

- the binding relevant Art. 37 CRC (which deals with children deprived of their liberty) applies to the practice in facilities in which children are deprived of their liberty;
- the JDL and parts of the Beijing Rules are used in facilities in which children are deprived of their liberty;
- youth correctional centres make better use of the JDL and Beijing Rules than ordinary prisons;
- although the Prison Regulations and the Correctional Service Act are formally in line with the international standards, the economic realities of South Africa hinder their use in practice;
- a low level of the prison personnel's acceptance of the Standards and Norms is regarded as the main difficulty for their use and application in practice;
- a low knowledge of Standards and Norms by the prison personnel is an obstacle for use and application of the Standards and Norms;
- the acceptance of the JDL by the prison personnel contributes to a better understanding of the needs of children deprived of their liberty.

Methodology

With regard to the purely explorative character and the restrictions on South Africa as a "case-study", the scope of the study is for the present, limited. Nevertheless, South Africa, in its process of transition and social change, can be seen as an example for global developments and phenomenons[14]. The study could also be an approach to the problems and progress related to the use and application and/or to the implementation of the United Nations Standards and Norms in further Member States. An "in-depth" research of additional countries would go beyond the limits of this project, considering available time and economical restrictions.

Part A of the study analyses the Standards and Norms, their legal status and content, while Part B analyses legal background, law, reform proposals and statistical material related to children deprived of their liberty in South Africa. On the basis of these findings and discussion of current research methods in empirical social science, in particular in implementation research, a research instrument will be developed. Implementation research is regarded as the theoretical working basis for this study. It was established in political sciences during the seventies and has meanwhile flourished, also in criminologi-

[14] A joint cooperation with an "in country" counterpart is regarded as a prerequisite for an empirical research project abroad and was the primary reason for selecting South Africa. In particular, the willingness of Technicon S.A., to support this project made the empirical research possible.

cal research[15]. In this context, implementation is defined as the process of social change through norms, or more concrete as the "execution and application of the law and other programmes of action in the process of politics development"[16]. Implementation research focuses mainly on the causal explanation of occurring discrepancies between norms and reality, programme objective and its actual effect. The major factors of effective implementation fall basically in two categories. The characteristics of the implementation system and the behaviour of implementation agents, and the implementation field, mainly the characteristics and behaviour of the target group and other interested parties[17].

The empirical study with its evaluating[18] character focuses in Part C primarily on the situation of children deprived of their liberty, omitting considerations of prevention and administration of justice which are other key concerns of these Standards and Norms. It focuses mainly on the use and application of the JDL[19] on the level of execution, in particular, their use and application of concrete addressees, for example, personnel of places of safety and prison personnel. It is characteristic of the implementation structure of the Standards and Norms that there is no obligation for Member States to implement UN Standards like the JDL's into their national legislation. Therefore, the recommending and non-binding character of the JDL justifies the approach chosen in this research. Focal points are prison personnel and personnel of places of safety, and in particular, their acceptance of the JDL and the Convention as target group in the implementation field.

Therefore, the survey approach is chosen as appropriate research method.

Prior to the commencement of the empirical study, selected South African experts were interviewed as part of the information gathering process in preparation for the key parts of the empirical study. Two prisons, two places of safety, and police lock-ups were visited in November 1997, on a fact-finding mission to South Africa.

Questionnaires will be distributed via mail to prison personnel dealing with children deprived of their liberty (area managers, heads of prisons, educationalists, social workers, psychologists, middle level managers and custodial staff), representing the whole spectrum which is also addressed in the JDL and personnel of places of safety. This questionnaire focuses, inter alia, on working and training conditions for the different personnel and their attitudes towards imprisonment of children (persons under the age of 18) and juveniles (persons under the age of 21)[20], questions on accommodation, clothing,

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15 *MAYNTZ*, R.: Die Implementation sozialer Programme. In: Implementation politischer Programme, hrsg., v. R. Mayntz. Königstein 1980, 236; *HEINZ*, W.: Rechtstatsachenforschung heute. Konstanz 1986; *OSWALD*, K.: Die Implementation gesetzlicher Maßnahmen zur Bekämpfung von Geldwäsche in der Bundesrepublik Deutschland. Freiburg 1997.

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17 *MAYNTZ*, R. (Fn. 16), 144.

18 Implemenation research overlaps with evalutation research, which was developed in social science.

19 Which are also elaborations of the basic principles found in the Convention on the Rights of the Child.

20 However, children and juveniles are not separated from each other in South African corrections (which is foreseen in Section 28 South African Constitution of 1996). Only in places of safety are solely unsentenced children accommodated.

hygienic conditions, food, discipline, medical and social service, education and vocational training for sentenced and unsentenced children/juveniles are also addressed.

Accordingly, questionnaires will be distributed to a sample of children/juveniles deprived of their liberty directly through the researcher. This questionnaire focuses, inter alia, on the prison conditions for sentenced and unsentenced children/juveniles, their accommodation, personal background, sentencing, food, clothing, hygiene, medical and social service, disciplinary measures, education, vocational training, relation to fellow prisoners, victimization, contacts to the outside world and their separation from adult inmates. In addition, children/juveniles will be interviewed face-to-face. In this context, confidentiality of the subject´s reports will be guaranteed. The interviewee´s consent to participate in the study will be a prerequisite.

Current state of the project [21]

The developed survey questionnaires and guidelines for structured interviews were tested in a place of safety and a prison in March/April 1998. The outlined research design will be completed soon after the follow-up of the pre-test. It will be attempted to conduct face-to-face interviews as well as to distribute the questionnaires in the same areas (Kwa Zulu Natal, Gauteng and Western Cape). Visits to facilities will correspond with a sample of interview-partners. Afterwards, a follow-up of the research and an evaluation of results will take place. The collection of data and execution of the empirical study is planned for October 1998. Afterwards, the data will be processed and an analysis and interpretation of the results will be made finally in 1999.

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Evaluating Victim/Offender Mediation Dealing with Adult Offenders in Austria and Germany

MICHAEL KILCHLING AND MARIANNE LÖSCHNIG-GSPANDL

Restorative justice has become a major issue in criminal justice policy throughout different regions of the world. Even though based upon a range of differing theoretical approaches, mediation practice shows similar basic characteristics. Starting with a number of model projects, dealing with juvenile offenders first, victim/offender mediation has been practiced in Austria *(ATA[1])* and Germany *(TOA[2])* for more than 10 years now. Recently it has been implemented for settling offences committed by *adults* in both countries. Thus, established as a *regular part* of the Criminal Justice System, VOM has now reached a new status as it can no longer be labelled as an "exceptional measure" suitable for juveniles at best.

Although there are a quite large number of evaluation data available, there are still numerous "blanks" in research knowledge. What is lacking, is criminological research that goes *beyond* the *inner* perspective of mediation schemes. Apart from the fact that we still have no exact statistical coverage of compensation and mediation in Germany, there are, in particular, two methodological objections which are diminishing the significance of most as yet published research findings. Firstly, it should be pointed out that all research in Austria and Germany was conducted as project evaluations. With regard to the design and conceptualization, such a type of research was once criticized as being a form of *self evaluation.* A second limitation results from the fact that all previous research was designed as one-group evaluations.

A joint research project conducted by the authors is to evaluate victim/offender mediation dealing with adult offenders in one Federal State in Austria[3] and one in Germany[4]. Unlike program evaluations which have been conducted to evaluate the practical work of particular VOM schemes, our research will analyse the significance of VOM with a focus on the system's point of view. This entails a significant shift from a limited, i.e., project-centered perspective to a broader approach. Program evaluation takes the inner perspective of VOM schemes, thus disregarding external issues such as, to which *extent* and under which *circumstances* mediative procedures are applied or how VOM *affects* sentencing on the whole. Furthermore, the research is based on a comparative

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1 "Außergerichtlicher Tatausgleich" [out-of-court conflict resolution].

2 "Täter-Opfer-Ausgleich" [victim/offender reconciliation].

3 Styria, with a population of 1.2 million, representing 14.9 percent of the national population.

4 Baden-Württemberg, with a population of 10.2 million, i.e., 12.6 percent of the national population.

design, analyzing VOM cases (experimental group) versus a selection of similar cases which have gone through traditional procedures (control group).

Based on this broader approach, our research has a triple focus: (i) recording the *frequency* of mediation, (ii) establishing a multivariate *profile* of typical VOM cases by personal as well as case-related variables, and (iii) evaluating the *consequences* of VOM on the *micro level*, i.e., in the personal perspective of the participating parties (victims as well as offenders, in particular with regard to offender recidivism), as well as on the *macro level*, i.e., with regard to the Criminal Justice System (sentencing).

Table 1: TOA cases with adult offenders mediated in Baden-Württemberg/Germany (1st wave only)

	1994[1]	1995[2]	1996[3]	Total
Appeals Court Districts:				
Stuttgart	6	73	43	122
Karlsruhe	33	164	114	311
Total	**39**	**237**	**157**	**433**

[1)]Dec, [2)]Jan to Dec, [3)]Jan to May.

In a first wave, we will analyse 433 cases that were settled by mediation in Baden-Württemberg within the first 18 months[5] after the new regulation became effective in Germany (for the distribution between the court districts see *table 1*). After collecting the second wave[6] we expect a total of about 900 cases. The number of Austrian cases mediated in Styria is, however, much higher (see *table 2*). For the first 2 years we have a total of 1,578 cases of which 590 were mediated within the first 10 months of the project[7]. In direct comparison, these figures may illustrate that ATA has more significance in Austrian practice, compared to TOA in Germany. We are looking forward to finding out whether this discrepancy tends to be just a quantitative phenomenon or whether we can observe differences on the *qualitative* level as well.

5 Dec 1994 to May 1996.

6 June 1996 to Nov 1997.

7 March to Dec 1996.

Table 2: ATA cases with adult offenders mediated in Styria/Austria (1st & 2nd waves)

	1996[1]	1997[2]	1998[3]	Total
High Court Districts:				
Graz	440	629	109	1,178
Leoben	150	220	30	400
Total	**590**	**849**	**139**	**1,578**

[1)]Mar to Dec, [2)]Jan to Dec, [3)]Jan to Feb (*provisional figures*).

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Victim Rights and Compensation in an International Comparison

France, Austria, Germany

MICHAEL WÜRGER

There have been international efforts to reconsider and redefine the position of the crime victim (for further details see *Weigend* 1989; *Eser/Walter* 1996) and his/her role in criminal proceedings since the early Eighties.

In consequence of this intensified focus on the victim, i.e., of the "rediscovery" of the victim (cf. *Kirchhoff/Sessar* 1979), reflections on compensation have met with increased international attention.

The idea of "compensation" served as a basis for these reflections. Discussions on this issue are controversial both in Germany and abroad. There is agreement that compensation should play a role in criminal law. However, there are divergences both within and between the different legal systems with respect to the estimated relevance of compensation (*Frühauf* 1988).

In consequence of the intensified concentration on the victim the idea of victim protection has also experienced a certain boom. The focus on victimology has been intensified worldwide since the 1st International Victimological Symposium in Jerusalem in 1973 (cf. *M. Kaiser,* 1992).

The focus of the project presented here is on the position of victims in traditional criminal proceedings on the one hand and on compensation (both material and symbolic) on the other. In contrast to the USA, few empirical studies are available for the European countries so far. Comparative assessments of the situation in countries within the European legal area have not yet been completed (cf. also *Kilchling; Löschnig-Gspandl,* in this volume).

The present study on the subject "The victim and the criminal procedure" which includes information from Germany, France and Austria proceeds to, for the first time, integrate and take into consideration comparable, empirically derived information on differential aspects of victim protection and compensation. The research reports for the individual countries have been published only partially so far.

These studies are works dealing with the subject of compensation conducted at the Max Planck Institute for Foreign and International Criminal Law, by M. Mérigeau (*Mérigeau* 1993), K. Krainz (*Krainz* 1991) and M. Kaiser (*M. Kaiser,* 1992), between 1990 and 1992 for France, Austria and Germany as empirical studies which focused on specific

issues on the one hand and compiled information which is comparable with regard to content for the purpose of further analyses of a number of complexes of questions on the other. The disparities both in the questions posed and in the implementation of the studies inevitably render an international comparison problematic with respect to research method and content. Nevertheless, a partial comparison of the findings derived on the implementation of compensation and the attitudes of the persons involved in the criminal procedure towards efforts at compensation might yield additional information on common features and differences as regards the relevance, goal and handling of compensation in the individual countries.

The comparison between the French and the German studies concentrates on the attitudes of jurists (judges, public prosecutors) towards victim rights and efforts at compensation, whereas the comparison between the German and the Austrian study includes results of trial observations as well as of victim interviews on victim rights and compensation.

The project is intended to answer - in a supranational context - in particular the following questions by way of in-depth analyses of the three available studies and data sets:

- What information is available on the type, extent and application of victim rights and on regulations governing compensation in the particular countries?
- What information exists on the attitudes of different parties involved in the criminal procedure (victims, judges, public prosecutors) towards the goals of the criminal procedure, the situation of the victim and regulations governing compensation?

In order to answer these questions the individual data sets are evaluated with respect to comparable issues and the derived findings are presented and interpreted in a supranational context.

Comparable issues of the studies conducted in France, Austria and Germany

Table 1: Overview of data collections in France, Austria and Germany: comparable issues

	France	Germany	Austria
1. Interviews with judges/public prosecutors	x	x	–
2. Interviews with lawyers	–	x	–
3. Interviews with probation officers	x	–	–
4. Interviews with victims	–	x	x
5. Interviews with defendants	–	–	x
6. Trial observations	–	x	x
7. Record analysis	–	–	x

An evaluation of the goals of the criminal procedure reveals partial differences in the attitudes of the French and German jurists. In both countries mainly traditional aspects ("fight against crime", "restoration of legal peace") were regarded as the most prominent goals. The victim's and the offender's position are weighted differently. Unlike the French jurists who proved to be more victim-oriented, the German lawyers questioned mainly exhibited an offender-oriented attitude. The study also reveals differences and deficiencies with respect to victim rights. The number of respondents who considered victim rights satisfactory was much higher in Germany than in France. Whereas in France the task of informing the victims about their rights is mainly the duty of government agencies, particularly the victim's (lawyer's) personal initiative is called for in Germany according to the German respondents. Particularly the German study gives the impression that possible active participation of the victim is even considered problematic. In contrast to France integration of the victim into the criminal procedure in Germany is taking place more slowly.

Among the questioned French and German jurists, the acceptance of efforts towards compensation, of their development and improvement is high throughout. The special- or general-preventive goals of compensation have gained recognition.

The French judicial authorities proved to be more victim-oriented. Whereas expectations of the French jurists are mainly determined by the material aspect of compensation, the German respondents also take into consideration symbolic compensation including the possibility of reconciliation between the victim and the offender. In this connection the victim's interest in compensation plays a prominent role.

French criminal policy during the early 90s was, in contrast to Germany, characterized by considerable endeavors to promote a "coexistence" of judicial, political and social approaches to crime.

The order and implementation of compensation, however, is neither solely dependent on attitude aspects nor presumably controlled by criminal policy standards alone. Responsible parties involved in the criminal procedure with an open attitude towards compensation are as much confronted with everyday practical difficulties as those with a more skeptical attitude. In both countries poverty of the offender, aspects of civil law which are to be taken into consideration in the assessment of the factual situation (e.g. contributory negligence on the part of the victim) and frequently uncertainties concerning the extent of damage and uncertain or still outstanding consequential damage are considered relevant aspects; supervision of compensation as well as factors connected with an extension of the procedure in the broadest sense are also relevant, though more secondary.

Thus, the difficulties which constitute obstacles to decisions in favour of duties to compensate are apparently of a more concrete and case-specific nature. The - unfortunately rather meagre - information provided by the French probation officers and in part also by the criminal judges throws a critical light upon the routine efforts towards compensation beyond theory and positive endeavors and also shows that compensation arrangements sometimes represent - not only for the offender, but also for the victim - an ordeal involving massive interference (cf. *Kilchling* 1995) and occasionally possibly even a kind of additional sacrifice for the injured person (cf. *Jung* 1992).

Though a general inspection in particular of the results of the German part of the study yields a picture which is differentiated in many respects, the reaction of "compensation" - with regard to the differential objections put forward - obviously meets with

approval even on the part of the rather skeptical jurists. It is to be assumed that there exists in both countries a so far unutilized potential of willingness to settle conflicts in this constructive manner whose concrete implementation, however, no doubt constitutes the more difficult problem. In Germany the scope of compensation was expanded by the revision of § 46a German Penal Code (introduced by the Crime Control Act of 1994). In 1993, France attempted to reinforce the possibilities of (extrajudicial) victim compensation by supplementing the laws in force.

A comparison between the French and German jurists' attitudes reveals that they both judge the assumption that a strengthening of the victim's position will hamper both the effectiveness of criminal prosecution and the enforcement of the goals of the criminal procedure as unfounded and that, in their opinion, endeavors towards compensation might stimulate constructive ways - both for the victim and the offender - to cope with the crime. This necessitates the creation and reconsideration of basic conditions; additionally, all efforts ought to take into account the limits of what is "feasible", for - particularly with regard to the victim's perspective - compensation is unable to be expanded infinitely (cf. *Weigend* 1994; *Albrecht* 1990) and ought to be determined by the victim's actual needs. The victims should on no account be patronized or awarded compensation against their will (cf. *Kube* 1986).

According to the Austrian and the German studies victim protection is mainly realized in the passive sector. According to the interpretation of victim protection its prime goal is to ward off negative reactions of third parties to the victim rather than to support the victim in the protection of his/her active rights as well as a stronger integration of the victim into the procedure. Thus victim protection as a rule serves to make the victim's concrete situation in the criminal procedure more bearable, provided this is necessary at all. Protective regulations are applied rather seldom both in the Austrian and in the German court routine. The results of both studies give a positive picture of the court routine and of the authorities concerned and indicate a generally satisfactory course of procedure as far as the position of the victim is concerned. This assessment presumably also applies to France. Most of the strain the injured individual suffers is caused by the procedure itself and by encounters with the accused.

Even though the Austrian victims exhibited a slightly more comprehensive knowledge of the existence of victim rights the described results confirm the assumption that information of crime victims is satisfactory in neither of the two countries. Nor is it intended by the jurists involved. There is need for a better organization and integration of information of injured persons concerning their rights into the court routine. The victim's lawyer might take a special role in this connection which, however, would entail financial consequences for the victim. The Austrian study showed that the judge largely assumed the task of informing the victim. An expansion of such a firm integration of information concerning victim rights into the course of the trial would guarantee the information of each injured person and would thus no longer depend on the individual engagedness of the parties involved or on the victim's personal initiative.

In the criminal procedures examined at the time of the study in 1989/90, compensation, whether material or symbolic, proved to be difficult to realize and little integrated into the court routine in spite of the victim's desire and a certain willingness on the part of the offender for compensation. The situation in both countries (as far as adults are concerned) has remained much the same since then. The juvenile sector in Austria constitutes the only exception (*Jesionek* 1993; *Zwinger* 1993; *Hammerschick et al.* 1994). On

the whole, one can say that only very few victims exhibit an interest in purely penal punishment of the offender and attach great importance to the idea of compensation in its differential forms.

In spite of the possibly overly optimistic expectations placed in compensation and the partly massive problems its implementation entails, the results of the French study indicate a higher degree of acceptance and a stronger integration of the idea of compensation into the court routine. In France, above all, efforts towards compensation appear to move within a more transparent and more clearly defined frame.

On the whole, particularly improved information of the injured party, of the accused and also of the jurists involved in the proceedings might serve to optimize the situation. However, particularly financial problems and the frequent lack of acceptance exhibited by the judicial authorities constitute further obstacles hampering the realization of efforts towards compensation and of the idea of victim protection.

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