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Foreword

The Fifth Annual Conference of the European Society of Criminology was organised in Krakow 31 August – 3 September 2005. The conference was hosted by the Jagiellonian University's Department of Criminology and the Polish Criminological Association.

The main theme of the conference was "Challenges of European Integration. Challenges for Criminology". Relating to this, the plenary presentations are comprised under three headings, "Contemporary criminological theory and penal reality", "Issues of social cohesion and social exclusion in contemporary criminology", and "Criminal justice reform in central and eastern Europe".

Some of the texts have been revised by the authors after the event. The revisions are, however, of a mainly technical character. Consequently, the reader can enjoy the original flavour of the presentations, as could all of us who had the privilege to participate in the Krakow conference.

As I stated already in the introduction to the HEUNI volume of the plenary presentations from the 2003 Helsinki conference, we see the ESC as a much needed truly European forum for scientific criminological exchanges, representing a very important trend towards a better integration of the European criminological communities.

Helsinki, 12 April 2007

Kauko Aromaa
Director

’Social Exclusion’: A Thriving Concept in Contemporary Criminology; Social Exclusion and Crime in Central and Eastern Europe

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Introductory remarks

This paper will be basically dealing with two issues. One is the contents of the concept of ’social exclusion’. Here I will cover the components of the concept, the most important measures of the European Union to combat social exclusion as a social phenomenon, certain conclusions in the professional literature as to the relation between social exclusion and crime, as well as the significance of this concept and related research in the development of criminological thought. The second topic of the paper is the relationship between social exclusion and crime in the former socialist countries, particularly in the countries that joined the European Union on 1 May 2004.

On the concept of ’social exclusion’

The concept and term of ’social exclusion’ is more and more often encountered in works on criminology. I think this term and concept has two facets: it is simultaneously true that we understand its contents and it does not call for clarification; on the other hand, it is not necessarily self-evident what ’social exclusion’ means. As a result of the latter assumption, I will give a short overview of the major semantic contents of the concept.

Ever since its first appearance in the 1980s, ’social exclusion’ has nearly always been both a social science concept and a policy issue. Regarding its latter dimension, we have to add for the sake of accuracy, that it is reducing ’social exclusion’ and promoting its opposite, ’social inclusion’ that have appeared as a policy program. It has become widely accepted in the social sciences very rapidly. An eminent authority on the topic, Tony Atkinson, wrote about its causes as early as in 1998 that the popularity of the concept was partly due to it not being elucidated (Atkinson 1998, 6). By now, however, and – mostly thanks to Atkinson himself and his fellow researchers – the contents of the concept have been clarified even if not in the form of a definition. Its essence, I think, is truly

expressed in the following description by Julia Szalai, a Hungarian sociologist:

"The term 'social exclusion' has an … unambiguous semantic contents, which at the same time has several layers. The concept represents a process, the state resulting from the process as well as – through the prefix 'ex' – a relationship at the same time. This latter is the most important layer of contents of the concept, and makes reference to at the consequence of the unequal distribution of power, attributably to which the social position of certain players is protected in a way that results in other players getting into a deprived state" (Szalai 2002, 1).

As for the process and state, the definition by Trevor Bradley says: "social exclusion refers to the dynamic, multidimensional process of being shut out, fully or partially, from the various social, economic, political or cultural systems which serve to assist the integration of a person in a society" (Bradley 2001, 275).

The concept hints at the same time at the marginalisation, impoverishment, social isolation, and vulnerability of those affected and at the lack of full "citizenship".

Thus 'social exclusion' is a concept covering people and groups being 'shut out of' the everyday life of society in multiple deprivation, which concept has essentially replaced the category of "underclass", primarily in the European social sciences. The professional literature is agreed on 'social exclusion" being a collective phenomenon, the basis of which is the increasing inequality and insecurity related to the structural and social changes in society.

Following Jock Young's work of outstanding significance, *The Exclusive Society* (1999), criminology literature differentiates three levels of "social exclusion". The first level is "the economic and material exclusion of individuals denied access to paid, full-time employment". The second is "the isolation from relationships produced by social and spatial segregation" And the third one is "the ever-increasing exclusionary policies and practices of the criminal justice system". (On the three levels see Bradley 2001, 275.)

Regarding the title of the work by Young referred to and with respect to the topic of the second part of my paper, I also have to mention the categories of 'inclusive society – exclusive society' that have developed in connection with the term 'social exclusion'. According to Young, the first one is a "society which both materially and ontologically incorporated its members and which attempted to assimilate deviance and disorder", while exclusive society is one "which involves a great deal of both material and ontological precariousness and which responds to deviance by separation and exclusion" (Young 1999, 26).

According to Young, the last third of the 20th century is a period leading from modernity to late modernity, and which is a period of transition from inclusive society to exclusive society (Young 1999, 26). In a later work, however, the author emphasises that "inclusionary and exclusionary tendencies must, of necessity, exist in both periods" (Young 2004, 552).

In policy, primarily in social policy programs we encounter the concept of 'social inclusion' in the mid-1980s in a framework of efforts aimed at the elimination of poverty. Supported by the European Community, research work that covered the phenomenon of social exclusion was started from 1985 on (Havasi 2002, 60). With respect to the propagation of the concept, and what is more important, with respect to combat the phenomenon, a significant stage is represented by the *Treaty of Amsterdam of 1997*, modifying the Treaty on the European Union. Its paragraph 136 namely stated that the European Union and its member states declared the combating of social exclusion to be their objective.

The European Council in Lisbon in March 2000 represented a landmark in the Union's combat against social exclusion. This is partly because at the summit "social cohesion as an effort appeared at the same time as the economic objective that the Union should be the most competitive region in the world within a decade" (Lelkes 2003, 89), and partly because the presidency conclusions "called the number of people living in poverty and social exclusion in the European Union unacceptable" (Lelkes 2003, 90) and identified the major method of combating social exclusion. That method is an open method of coordination between the member states, in which the member states share the positive experience of their National Action Plans on Social Inclusion with each other. As one of the instruments of the open method of coordination the presidency conclusions of Lisbon ordered the elaboration of indicators suitable for measuring poverty and social exclusion and for comparing the two phenomena between the member states. The Social Protection Committee and its sub-commission on the indicators with the involvement of social scientists – including *Atkinson* and his colleagues – prepared the social indicators. The principle underlying the preparation of the indicators was that "an indicator should explore the essence of the problem, and that it should have an unambiguous and accepted normative interpretation" (Lelkes 2003, 91). Finally, a three-level system of specifications was accepted. The primary indicators include the most important indicators leading to social exclusion. The secondary indicators serve the purpose of the deeper exploration of individual problems related to the primary ones. The primary and secondary indicators are the commonly agreed indicators of the Union, and each member state is required to use them. (See these indicators in the Supplement.) Tertiary indicators "include indicators that are decided by the member states in accordance with their particular features" (Lelkes 2003, 92). These

do not need to be harmonised, however the National Action Plans on Social Inclusion may assist in the interpretation of the primary and secondary indicators. Tertiary indicators of social exclusion reflecting national features are for example in Great Britain the indicators showing the risks increasing poverty and social exclusion, such as frequent absence from school or juvenile pregnancy (Lelkes 2003, 97). The commonly agreed indicators are not final lists, and their improvement is still on the agenda so that the dimensions of social exclusion can be grasped as appropriately as possible (Lelkes 2003, 92).

The common indicators were agreed on at the *European Council of Laeken in December 2001*, and the presidency conclusions declared them to be "important elements in the policy defined at Lisbon for eradicating poverty and promoting social inclusion" (see no. 28 of the Presidency conclusions - Laeken, 14 and 15 December 2001).

It can be said that today in the European Union, combat against social exclusion takes place in terms of promoting social inclusion. And that means – quoting Klára Kerezsi, a Hungarian criminologist – that "the European Union policies for the prevention and redressing of social exclusion regard increasing the offer of services, strengthening solidarity and assisting the re-socialisation of those living in or threatened by social exclusion as of primary importance" (Kerezsi 2004). The institutional components are as follows:

- The commonly agreed objectives of the Summit in Nice in December 2000 on poverty and social exclusion,
- National Action Plans on Social Inclusion,
- Commission and Member States Joint Reports on Social Inclusion,
- Common indicators,
- Community Action Plans for promoting cooperation between the member states in combating social exclusion.

From a criminological point of view, the importance of declaring the eradication of social exclusion to be a European Union objective is that combating the processes and the phenomena leading to social exclusion has its impact on the social risk factors of crime as well. And the objective mentioned has created an opportunity for an old criminological perception to prevail finally in practice: that is "efficient social policy is the best criminal policy."

The eradication of social exclusion as an objective is present not only in the documents of the Union and its member states on social policy. For example the Drug Strategy of the European Union for 2000-2004 states in connection with demand reduction that "the general public should be informed on the effects of social exclusion, particularly from the viewpoint of the drug problem."

Unfortunately, I have to add that there is no mention of avoiding social exclusion in the strategy for the years 2005-2012.

However, we can find it mentioned in the *National Strategy for Crime Prevention of Hungary* adopted by the Parliament in 2003. In the Strategy one of the constitutional requirements of crime prevention is avoiding exclusion. In this context the Strategy states: “Combating crime is a socially accepted objective. However, measures taken to pursue this objective, and the fear of crime, have the possible side-effects of excluding certain groups and raising prejudices against juvenile delinquents, ex-prisoners, drug addicts, homeless people, poor people and Gypsies. The social crime prevention system is based on the principle of social justice. It must therefore endeavour both to avoid social exclusion and prejudice and to uphold rights of security” (No 5.1. of the National Strategy).

To conclude what I wanted to say on the use of the concept of social exclusion as a policy category, let me refer to the *Constitution of the European Union* including provisions of this kind. For example Article 3 on the objectives of the Union states: “The Union shall combat social exclusion and discrimination, and shall promote social justice and protection…” (Article 3.3). Among the provisions on social policy, the Constitution declares that the objectives in this field have the primary purpose of serving high employment and combating of exclusion (Article 209).

The following will be a short overview on *the most important findings in the criminology literature on the relationships between social exclusion and crime*.

The concept of social exclusion has been present as a category in works on criminology since the late 1980s or early 1990s. Its application and propagation was helped by its initial lack of definition and vagueness, but also by the fact that it could be used to describe and interpret the relations between inequalities, poverty, deprivation, stigmatisation and crime more comprehensively. In addition, if we accept, following *Jock Young*, that “crime itself is an exclusion” (Young 1999, 26), then we can take the success story of the concept in criminology for granted.

The criminology literature of the topic shows basically two approaches to the relation of social exclusion and crime. One approach puts the emphasis on crime as being a consequence of social exclusion, and the other stresses that social exclusion is a consequence or by-product of crime, or rather that of the operation of the crime control system.

The approach interpreting crime as a consequence of social exclusion is typically based on research into registered offences, particularly property crimes and the offenders, as well as juveniles and recidivists. The common lesson of the research is that social processes and states leading to social exclusion encourage crime,

furthermore that an increase in the number of those excluded from society “can itself generate certain types of crime” (Gönczöl 2002, 198). Approaching the relation between social exclusion and crime from the social background of the offenders, the findings by Jakov Gilinskij on deviances in Russia can be regarded as typical. In a paper he indicates as one of the causes of the disorganised state of Russian society the exclusion of masses of the population from the active life of society. Then he writes the following: “deprofessionalisation (loss of profession), dequalification (loss or lack of qualification), marginalisation, alcoholisms, impoverishment unemployment. These excluded people give the fundamental social basis of crime, drug abuse, alcoholism and suicide” (Gilinskij 2002, 84).

It was following the recognition of ‘the universality of crime’ (a term used by Jock Young), that is the recognition that crime is not the ‘privilege’ of the deprived and excluded, as well as after research into the exploration of the selectivity and harmful effects of the criminal justice system that the other approach to the relation between social exclusion and crime began to spread, which says that social exclusion is a consequence and by-product of crime. One of the major messages of research based on this approach is that the total crime in a society is not represented by registered crime, and those excluded from society are over-represented only among the registered offenders. Research has also shown that using the criminal justice system against certain social problems exerts by itself exclusionary effects. This is particularly true of criminalising drug use.

At the *Criminological Research Conference of the Council of Europe of 2003* Heike Jung focused attention on the fact that legislation demonstrating a safety-orientated and strong state is counterproductive. Professor Jung emphasised that the consequences are social exclusion and an increasing lack of the feeling of security (Jung 2003). In the fields of research which emphasise that social exclusion is a consequence of crime, most results that were also unambiguous to the greatest extent were achieved on the relations between the activities and operations of the criminal justice system and social exclusion. The research laid a special emphasis on the *harmful effects of imprisonment on reintegration*. It can be established from the results that “prison is the definitive form of exclusion and the imprisoned are a distinctly excluded population” (Bradley 2001, 276).

Other aspects of the operations of the criminal justice system also exert stigmatizing effects leading to social exclusion. These include the obligation of accounting for previous convictions. In this respect, however, it is a welcome development that in its Recommendations of 2003, New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice, the Committee of Ministers of the Council of Europe asked the member states to adopt the approach where “to facilitate their entry into the labour

market, every effort should be made to ensure that young adult offenders under the age of 21 should not be required to disclose their criminal record to prospective employers, except where the nature of the employment dictates otherwise." (Point no. 12 of the Recommendations (2003) 20E/24 September 2003).

In addition to the above, the criminology literature on the relation between crime and social exclusion gives high priority to *the fear of crime, as well as to the relations between crime prevention, and the privatisation of security and social exclusion*. At the conference of the Council of Europe of 2003 already mentioned, Klaus Boers made important statements on the relation between fear of crime and social exclusion in his paper. Among other issues, he talked about the reasons for overestimating the problems of fear of crime in a situation where the rate of fear of crime had been decreasing in several countries since the mid-1990s. Boers' answer and conclusion is: fear of crime provides an opportunity for general social agreement on the measures for keeping crime under control and for crime prevention; these measures, however, – as Boers warns us – are not necessarily aimed at the offenders and crime, but at people undesirable for public order; and for the measures leading to social exclusion reference to fear of crime provides the appropriate legitimisation foundations (Boers 2003, 20). Boers mentions among other things that evaluative research into closed circuit television systems (CCTV) show that the use of the system is justified by aspects of social exclusion (for example expelling beggars and drug users from shopping areas) and police tactics, including costs saving (reducing the number of patrols), rather than by crime and considerations aimed at reducing crime.

The commercialisation of security or opening the market of crime control is also linked to social exclusion. Evaluating the developments in Poland, Maria Los states that many people cannot afford the goods and services offered by private security companies. And this results – she writes – in "(T)hose who did not gain economically with the advent of the market or whose living standards actually dropped experience further marginalization because they cannot afford the private security measures the market flaunts" (Los 2002, 178). Papers on the topic also point out the impact of the 'privatization of public space' resulting in spatial segregation and thus social exclusion.

To conclude the first subject of my paper I wish to evaluate the significance of 'social exclusion' as a concept and of the related research for the development of criminological thought. First I wish to determine in which criminological perspective of the interpretation of crime we can put the concept and the research field.

In my view the *three prevailing criminology perspectives* are as follows: a) *the social perspective*, b) *the individual perspective* and c) *the situational perspective*. The social perspective is the

approach that interprets crime as a social phenomenon. This means both that crime is a phenomenon that can be derived from certain social, economic and cultural factors and that crime and the criminal justice system are both social constructs. The individual perspective focuses on the individual processes of becoming an offender, and the situational perspective focuses on the situations of offences and crime opportunities. Each perspective has its own crime prevention approach.

Interpretations and research of *social exclusion fall into the social perspective of criminological thought.* Within that, they represent a continuation of the tradition starting with Durkheim, which gave priority attention to the investigation of the relations between social cohesion, the phenomena and processes influencing its state and crime. The theoretical and experimental works on social exclusion strengthen the social perspective and enhance this tradition. Due to the multi-dimensional concept of social exclusion, both the social phenomena representing the social risk factors of crime and the impact of the operation of the crime control system leading to social exclusion can be studied. I think that thanks to the works and research on the topic, the social perspective of the interpretation of crime has by now come out of the shadows of the situational perspective of the past years. At the same time, in addition to situational crime prevention, social crime prevention has been given greater emphasis, which led to the requirement of social justice in the response to crime. And in criminology, the increasing attention given to social exclusion creates a chance for criminal policy – in the words of Katalin Gönczöl – "to prevail as part of social policy and harmonised with welfare policy" (Gönczöl 1991, 120).

In a recent study (2005), Lawrence Sherman considers the predominance of theoretical works over experimental works to be a negative concomitant phenomenon of the development of criminology since the Enlightenment: "For criminology to be truly useful, it needs to be accurate, not just used" (Sherman 2005, 118), writes the American criminologist and for this purpose urges the propagation of experimental criminology. I have quoted Sherman's statement because his statement is also true of the criminology literature on social exclusion. If the criminology of the field deserves any criticism, it is because there are a great deal fewer empirical research results on social exclusion than analytical conclusions. I think more experimental criminology would be justified for the purpose of enhancing the efficiency of policies against social exclusion as well as for improving the relevant theories.

In the second part of my paper I will be looking at certain issues of social exclusion and crime in the former socialist countries of Central and Eastern Europe.

In this study I am trying to find a hypothetical answer to the same question that Krzysztof Krajewski attempted to answer in his paper at the course of the International Society for Criminology held in Miskolc in the spring of 2003. The question is “to what extent this (Jock Young’s formula) ‘transition from modernity to late modernity can be seen as a movement from an inclusive to an exclusive society’ (Young 1998, 67) applies also to Central and Eastern European countries.” (Krajewski 2004, 26).

It has already been discussed what these two kinds of society mean. Now I would only like to add that Young considers stability and homogeneity to be qualities of an inclusive society and change and division to be qualities of an exclusive society (Young 1999: vi).

The first problem to arise when answering the question is *whether the former socialist countries of Central and Eastern Europe were inclusive or exclusive societies*. I agree basically with those who regard the socialist countries before the changes of 1988-1990 as examples of the exclusive type of society (e.g. Krajewski 2004, 20). At the same time if we look at the characteristics of the first of the three levels of the appearance of social exclusion, it seems justified to modulate this qualification, particularly with respect to the developments in economic and welfare policies existing in these countries today.

In the countries of the one-time real socialism, certain features of inclusive society were present in the economic and welfare sphere, primarily a kind of secure livelihood, a not very high level of living standards and moderate differences in incomes. The last item is well illustrated by two figures from Hungary. In the 1970s in my country the average income of the upper tenth of the population was about 4.5 times as high as that of the lowest tenth, while at present the difference is nine- to tenfold (Havasi 2002, 55; Ferge 2002, 21). These features derive from the ideology of the period which made efforts to reduce the inequalities and increase public welfare (Ferge 2002, 15). Its prevalence was helped by the lack of private property. The factors mentioned can explain the full employment in the period studied and, in certain countries, the level of welfare provisions similar to the level in the welfare states. Naturally, it has to be added that from the 1980s on, primarily in the countries that made attempts at introducing a limited extent of market economy, the inequalities increased and furthermore cutting down on the welfare expenditure of what was called ‘the premature welfare state’ was begun. All this resulted in an increase in the proportions of the absolute and relative poor. The characteristics of the other two levels of social exclusion in the socialist period reflect the features of exclusive society, which I do not think justify any modulation. However, I want to make two remarks on the third level. One is that the one-time ‘solid public safety’, a lower level of crime and of fear of crime than exists today and existed in the

Western countries of the period, existed in closed societies and often under authoritarian-type conditions and lack of freedom, so we cannot regard them as features representing inclusion tendencies. The other remark is: at the same time in spite of a not very dramatic crime situation, in the former socialist countries the prison population was extremely large: in the former socialist countries of the region the prisoner rate per 100, 000 of the national population was or exceeded 200 in the 1980s.

On the basis of all this it can be said that *the former socialist countries of Central and Eastern Europe began the transition into capitalism as exclusive societies* in the late 1980s and early 1990s.

Has the transition changed this feature of the societies and the features of *what type of society can be identified today*?

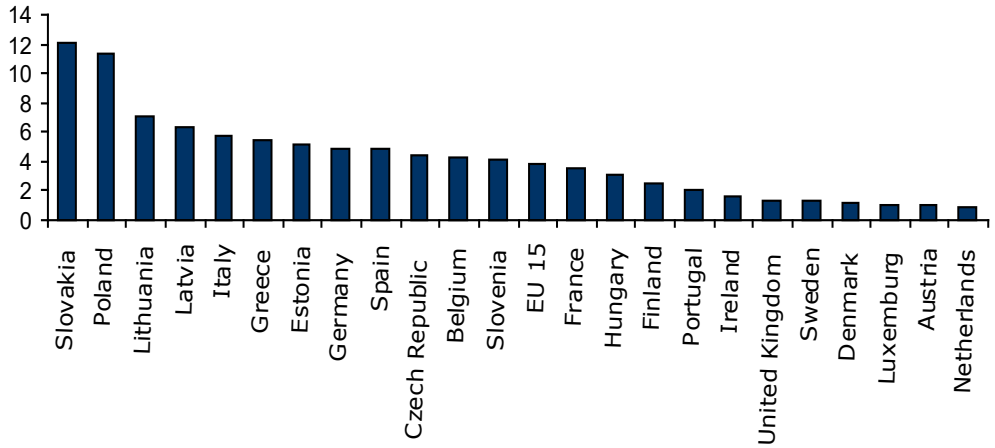
Before giving an answer, and before drawing, I stress, the hypothetical conclusions, let us first examine *some characteristics of the transition from the perspective of social exclusion*.

The most important qualities of the contents of the transition are: the party-state was transformed into a state founded on the rule of law and based on parliamentary democracy, the planned economy was changed into a market economy, and the restriction of human rights was replaced by guaranteeing them. Regarding the structural transformation of society, the introduction of market economy was of decisive significance. Its implementation, however, entailed a number of dysfunctional effects and consequences, harmful to social integration. According to a Hungarian sociologist, Zsuzsa Ferge, the same two factors determined the introduction of market economy in almost all countries transforming their regimes. One is a global factor, the reign of the neo-liberal economic doctrine; the second is linked to the countries involved, and is the ability to assert the previously repressed ownership and economic interests (Ferge 2002, 21). In order to achieve the latter those had a better chance who had the appropriate political connections, or professional, or perhaps financial capital. It can be attributed to the common impact of the two factors – states the sociologist – that "the increase in inequalities became very fast, and did not meet any legal, political or moral barriers. The result was a more unequal distribution of the shrinking gross domestic product than before, … mass unemployment, the impoverishment of the majority of the population, a deepening of poverty, the shrinkage of the welfare systems and a transformation of their principles, a crash of the security of livelihood" (Ferge 2002, 21). These processes were characteristic of the first period of the introduction of capitalism and brought about the first 'losers' of the transformation, the outcasts of society. We can only guess at their numbers and rate within a country's population. Thus, for example, according to the Laeken indicators, in Hungary 13% of the population, approximately 1,300,000 people qualified as poor according to the poverty limit measured in 2001. At first glance this is hardly worse than the 15%

average of the old member states of the EU. However, the poverty limit as defined by the EU is 60% of the median income calculated on the basis of one consumption unit, and that is less than the amount of subsistence level, it is about three quarters of that. Calculating on the basis of subsistence level, the rate of the poor in Hungary is about 30 %. (Report 2003, 11-12) According to the survey of 2001 based on the Laeken criteria, the poverty rate is 8 % in the Czech Republic, 11 % in Slovenia, 15 % in Poland. (Gábos-Szívós 2004, 100-101.) (There are no data for Slovakia.) The rate of the permanently unemployed for the individual countries for 2002 shows that in the new member states masses in considerable numbers have become excluded from the labour market (Figure 1).

Figure 1. Long Term Unemployment Rate of the Age Group of 15-64 in Europe, 2002

Source: Employment in Europe 2003. European Commission, Luxembourg



Unfortunately, I have to add to the figure for Hungary that according to the latest report, Hungary is not below the average of the EU-15, for the rate now is 7.1 %.

As regards unemployment, there are significant regional differences in the majority of the countries discussed, that is, there exists a spatial segregation. In estimating the rate of those excluded, the situation of the Gypsy population in the region is to be taken into special consideration. “Today there live more than eight million Roma (Gypsies) in Europe, 70 % of them in Central and Eastern Europe, and on the Balkan. All international surveys show – writes one of the Hungarian researchers of this ethnic population – that the Roma minority is at present the poorest group in Europe, which suffers the greatest number of discriminations against them” (Máté 2004, 177). To illustrate their situation in Hungary, I’ll give you a few data from *the national representative Roma survey of 2003*. Their number is approximately 600,000,

which is about 6 % of the total population. Roma families with an average income belong to the lowest income group of the total population. Among the 1 million people with the lowest income 280,000, that is 28 %, may be the number of Roma. Spatial segregation is shown by the fact that 72 % of the Roma live in an environment segregated from the majority society. And finally some figures on their situation in the labour market: 21 % of the Roma population above 15 years of age had a job in 2003. In the same year the employment level was 51 % in the whole of Hungary. The tendency is shown by the fact that in the 1970s Roma men capable of work had jobs in the same proportion as non-Roma males. From the end of the 1980s to 1993 30 % of jobs were terminated on a national level, while the same rate for the Roma was 55% (Janky 2004, 400-412.)

Table 1 provides an essential basis *for estimating the rate of the excluded*. It contains the distribution of social groups in Hungary based on a survey in 1999 asking about lifestyles and consumption habits.

Table 1. Consumer Groups in Hungary
(Housing, material and cultural consumption)

Groups	%	Cumulative %
Elite	1	1
Wealthy	9	9
Middle – accumulating	14	31
Middle – leisure-focused	17	
Good housing – Deprived	28	59
Deprived – Poor	31	
Total	100	100

Source: Szívós, P. – Tóth, I. Gy. (eds), *MONITOR 1999*. TÁRKI Monitor Reports, 1999. december p. 35. (Hungarian)

On the basis of the figures and the table we can draw the conclusion that about 30 % of the population in Hungary can be regarded as excluded. Although the EUROSTAT investigation into the differences in income inequalities shows that there are differences between the new members, for example in Slovenia and in the Czech Republic the inequalities are smaller than in Poland or Hungary, *the estimated rate of 30 % of the excluded* is perhaps a realistic figure for the rest of the former socialist countries of Central and Eastern Europe as well (Tóth 2004, 91).

The results of the survey of social groups in Hungary show significant similarities to Will Hutton's '40:30:30 society', which is characteristic of the transition from inclusive to exclusive. It represents a society "where 40 per cent of the population are in

tenured secured employment, 30 per cent in secure employment, and 30 per cent marginalized, idle or working for poverty wages" (See: Young 2002, 459).

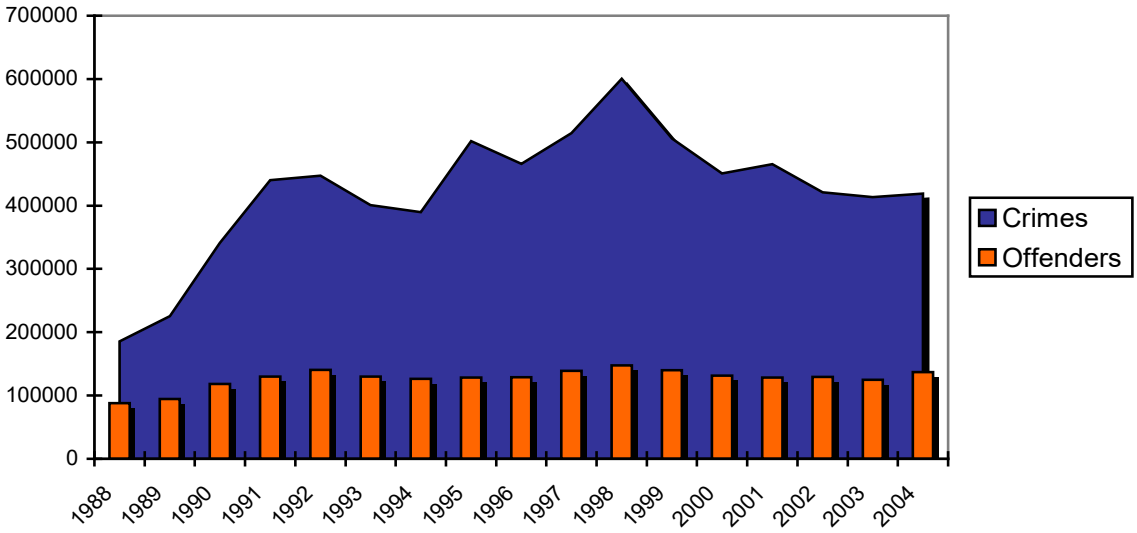
From the above we can say that regarding capitalism being stabilised in the former socialist countries, social scientists are justified in talking about a "splitting society". (See e.g. Ferge 2002) Social exclusion weakening social cohesion is markedly present in these countries.

Can the impact of social exclusion on crime be shown? How does the criminal justice system affect social exclusion in these countries? I'll be talking about these issues briefly in the following.

The collapse of real socialism in all the countries affected was followed by a *dramatic increase in registered crime*, a worsening of public safety, and a decrease in the people's feeling of security. The intensity of the rise is well reflected in the findings by Imre Kertész *and* József Stauber on the situation in Hungary. They showed that while in most Western European countries the number of offences per 100,000 of the population was doubled in 15 years, in Hungary it doubled first in 21 years, between 1971 and 1990, and it was doubled for a second time in the 5 years between 1991 and 1995 (Kertész & Stauber 1996, 520). The structure of crime was also transformed: there was a significant increase in the rate of property crimes among registered crime in the first period of transition.

There is an abundant criminology literature on *the interpretation of the changes in crime and in the patterns of crime*. What these works share is that they attribute a significant role in the development of crime to the disorganisation generated by the changes. In the second phase of the transition period, typically from the mid-1990s, it is more difficult to find general features and common characteristics to describe the development of crime. For we can find countries like Hungary, where the steep rise has come to a halt, and what is more, as can be seen from Figure 2, there has even been some decline.

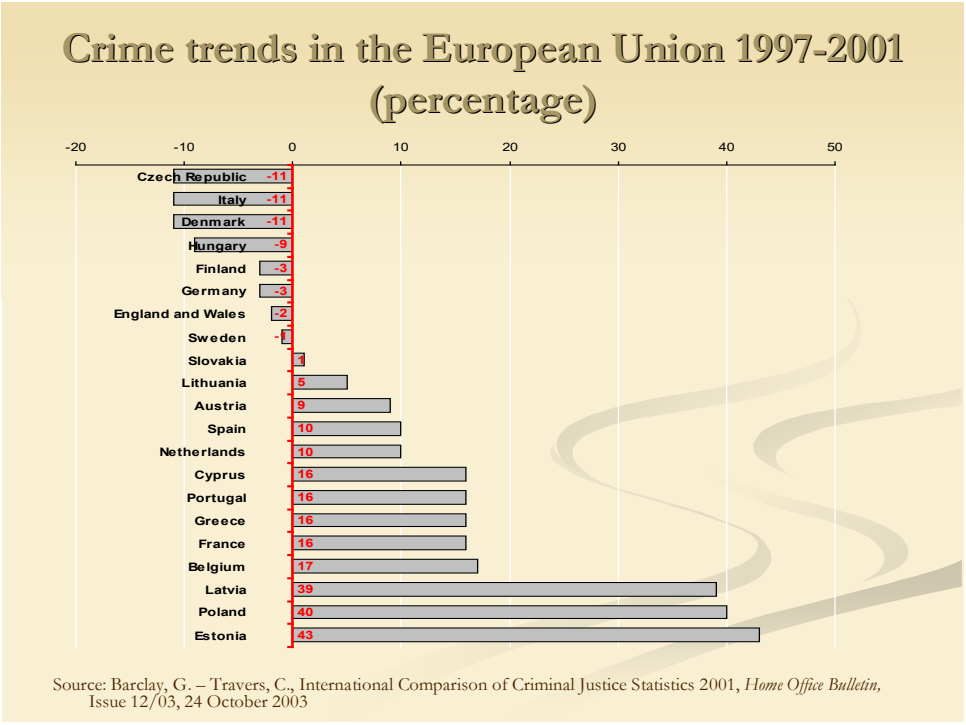
Figure 2. Number of Registered Crimes and Offenders in Hungary, 1988-2004



Sources: Yearbooks of information on crime, Ministry of Interior – Chief Prosecutor Office, Budapest

Calculating the number of offences per 100,000 of the population, in my country the highest rate occurred in 1998, representing 5,926 offences; in 2004 the same figure is 4,140. On the other hand, as can be seen from Figure 3, in Poland registered crime has been increasing steadily in the past years.

Figure 3.



Source: Barclay, G. – Travers, C., International Comparison of Criminal Justice Statistics 2001, *Home Office Bulletin*, Issue 12/03, 24 October 2003

It would be difficult to say anything definite about the causes of the differences without specific research. What we can, however, establish from the criminal statistics of the individual countries, from the European Sourcebook of Crime and Criminal Justice Statistics, from the International Crime Victim Surveys and from the relevant publications, is the level of criminality becoming stable at a higher level as compared to that in the period of 'real socialism' in these countries as well as that this higher level is still lower than the crime rate in the majority of the Western countries. And in terms of the relations between social exclusion and crime it can be seen from research into the social characteristics of the offenders of registered crime that their majority – similarly to the period before the change of regime – have low levels of education, poor social circumstances, no vocational qualifications, no permanent employment or no employment at all (The National Strategy for Social Crime Prevention 2003,14). Research in Hungary, however, also shows that within crime against property the number of crimes with a profiteering character increases as compared to theft and livelihood crime against property, and the offenders are mainly young adults with secondary education (Gönczöl 1996, 108-118). In the background we can find the pressure of social conditions, social exclusion and the fear of becoming excluded in equal measure.

One of the significant indicators of the relation between the operation of the criminal justice system and social exclusion is *the development of the use of prison sentences and the number of those imprisoned.* Table 2 shows the rate of the prison population and within the prison population the percentage of those arrested in the countries of the European Union *on the basis of figures of the International Centre for Prison Studies*.

At the top of the lists are - and this is no credit to them – the former socialist countries, with the exception of Slovenia. "The ghosts of the past are here", we can say, that is, the high imprisonment rate of the period before the change of regime is back. Seeing the figures, we can agree with Krzysztof Krajewski, when he speaks about a "penal gap" in connection with the differences in the prison population rate in the West and East (Krajewski 2004, 23).

Table 2. Prison Population Rates (PPR) and Pre-Trial Detainees (PTD) in the European Union

	PPR (per 100,000 of the population)	PTD (% of the PPR)
1. Estonia	**339**	**23.7**
2. Latvia	**337**	**35.0**
3. Lithuania	**234**	**16.9**
4. Poland	**209**	**19.9**
5. Czech Republic	**191**	**15.5**
6. Slovakia	**165**	**33.1**
7. Hungary	**164**	**24.8**
8. Luxembourg	**144**	**49.2**
9. UK England & Wales	**144**	**16.2**
10. Spain	**141**	**22.1**
11. Portugal	**124**	**23.6**
12. Netherlands	**123**	**35.2**
13. Austria	**106**	**26.9**
14. Italy	**97**	**36.0**
15. Germany	**96**	**19.7**
16. France	**91**	**35.7**
17. Belgium	**88**	**39.1**
18. Ireland	**85**	**16.4**
19. Greece	**82**	**28.2**
20. Sweden	**81**	**20.5**
21. Malta	**72**	**33.1**
22. Finland	**71**	**12.7**
23. Denmark	**70**	**29.0**
24. Slovenia	**56**	**27.1**
25. Cyprus	**50**	**13.2**

Source: International Centre for Prison Studies. Last modified: 23.03.2005

If we calculate averages based on the figures in Table 2 for groups of countries, we get the following numbers (Table 3):

Table 3. Average of the Prison Population Rates (PPR) in the European Union by group of countries

	Average of PPR (per 100,000 population)
1. EU 25	**134**
2. EU 15 (old members)	**103**
3. EU 10 (new members)	**182**
4. Eight former socialist countries	**212**
5. EU 5 (Central and Eastern European former socialist countries)	**157**

The average of the 25 member states of the Union is 134, the average of the 15 old member states is 103, and the average of the 10 new member states is 182. Among the new member states the average of the eight former socialist countries is 212 and finally among the new member states the average of the five Central and Eastern European countries is 157. On the basis of the figures and of the fact that the crime level is higher in Western Europe, it is perhaps no exaggeration to speak about *the gap between the cultures of crime control policies*. The data show the situation in 2004, and in some cases in 2005. The tendency in the five countries in Central and Eastern Europe shows interesting developments (Table 4).

Table 4. Recent Prison Population Trends in Poland, the Czech Republic, Slovakia, Hungary and Slovenia

Year	**POLAND**		**CZECH REP.**		**SLOVAKIA**		**HUNGARY**		**SLOVENIA**	
	Total	**Rate**	**Total**	**Rate**	**Total**	**Rate**	**Total**	**Rate**	**Total**	**Rate**
1988	**n.a.**	**212**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**19,366**	**193**	**n.a.**	**n.a.**
1992	**58,619**	**153**	**12,730**	**123**	**6,311**	**119**	**14,810**	**143**	**836**	**42**
1995	**62,719**	**163**	**18,753**	**181**	**7,412**	**138**	**12,703**	**124**	**825**	**41**
1998	**57,382**	**148**	**21,560**	**209**	**7,409**	**138**	**13,405**	**132**	**756**	**38**
2001	**70,544**	**183**	**21,538**	**210**	**6,941**	**129**	**15,539**	**152**	**1,148**	**58**
2004	**79,807**	**209**	**17,277**	**169**	**8,891**	**165**	**16,543**	**164**	**n.a.**	**n.a.**
2005	**n.a.**	**n.a.**	**19,506**	**191**	**n.a.**	**n.a.**	**16, 419**	**163**	**1,129**	**56**

Source: International Centre for Prison Studies. Last modified: 09.04.2005

In the first period of the change of regime in spite of the dramatically increasing crime already mentioned, the prison populations decreased steadily in most of these countries. In its background, harmonisation with the partners in Western Europe in the fields of criminal justice and particularly in sentencing policy was a decisive factor. Later, the sudden increase in crime stopped in most of the countries, and there was a country where it decreased; however, the prison population remained typically stable or rather increased. Among the causes of the increase the law and order views in certain Western countries are to be highlighted – and with this I modulate somewhat what I said about the gap between the cultures of crime control policies of the West and East. Unfortunately, those views found a fertile breeding ground in our region. And the *ensuing criminal policy is one of the components of the processes leading to social exclusion*.

Regarding what has been said so far, what can we answer to the question *whether the former socialist countries in Central and Eastern Europe have exclusive or inclusive characters*? I think the statement by Jock Young that the features of exclusive and inclusive societies are coexisting in the societies of late modernity holds true for our countries as well. What is important is the proportions and the main tendencies. In this respect my paper can be read to say that the features of exclusive society are present in the countries of the region to an extent giving rise to serious concern. In addition the fear is that certain global and regional processes and challenges will further strengthen these qualities.

In the conclusion of my paper I will only refer to them briefly.

Concluding remarks

At the global level the neo-liberal economic policy and the presence of international terrorism together with the responses to be given can have particularly adverse effects on the character of society. At the regional level, and here I mean the European Union, it is a great challenge how we can meet one of the major objectives of the European Union in the new members and in the countries expecting to join soon: reducing the economic and social differences between the member states. If we do not succeed in meeting this objective fairly soon, then the fear will be that what Maria Los wrote about in 1998, that is that “the East/Central European States may become a new periphery within the new regional power, European Union” (Los 1998, 78) will become reality.

Criminology must pay priority attention in this social-cultural situation to social justice and to the investigation of phenomena such as social exclusion that prevent its improvement.

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Supplement

EU Indicators of Social Exclusion I. – Primary Indicators

1. Low income rate after transfers with low-income threshold set at 60 % of median income (with breakdowns by gender, age, most frequent activity status, household type and tenure status)
2. Distribution of income (income quintile ratio)
3. Persistence of low income
4. Median low income gap
5. Regional cohesion
6. Long term unemployment rate
7. People living in jobless households
8. Early school leavers not in further education or training
9. Life expectancy at birth
10. Self-perceived health status

EU Indicators of Social Exclusion II. – Secondary Indicators

11. Dispersion around the 60 % median low income threshold
12. Low income rate anchored at a point in time
13. Low income rate before transfers
14. Distribution of income (Gini coefficient)
15. Persistence of low income (based on 50 % of median income)
16. Long term unemployment share
17. Very long term unemployment rate
18. Persons with low educational attainment

Social Exclusion and Youth Crime in Europe – The Spatial Dimension

Do disadvantaged neighbourhoods cause adolescents to become more delinquent?[1]

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Introduction

Probably few observations have a longer tradition in criminology than the co-occurrence of poverty and crime in certain quarters of the big cities whether they have been called slums, ghettos, or more recently 'disadvantaged neighbourhoods'. The classic descriptions of lower- and working class districts in Victorian England as Henry Mayhew's (1861) 'London Labour and London Poor' or Friedrich Engel's (1845) 'The condition of the working class in England' are well-known examples from a time when criminology wasn't even invented. Subsequent generations of criminologists have offered their accounts and theories on the spatial concentration of crime in these urban areas, yet increasingly sidelined by alternative approaches in which poverty and class became less and less relevant. However, during the last decade there has clearly been a revival of interest into the links between communities and crime, as well as related phenomena like health, education etc.

One of the reasons for this revival is the feeling of many people that cities are becoming more and more divided, and that youth violence is increasing as a result of this. My starting point for this presentation is a recent and popular concept of this resurgence: 'Social exclusion'. Looking at *Graph 1*, the term 'social exclusion' did not appear in the (English-speaking) scientific literature before the early 1990s, and within only a few years has multiplied to around one hundred publications annually. The closely related term 'social capital' has had an even more impressive career, from almost naught to more than 250 publications each year within a decade. Interestingly, and I will come back to this, both terms have been coined or have at least very strong roots in French sociology,

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and ‘social exclusion’ is still very much an European concept which is rarely used in the U.S. (Silver & Miller 2003).

In this paper, I will first briefly discuss ‘social exclusion’ as an analytical concept for crime research, and look at some of the empirical evidence of social exclusion and its recent development in Europe. I will focus on the spatial dimension of social exclusion, and argue for the advantages of a multilevel perspective in which the neighbourhood is one important level. Second, I will give a short and sketchy overview on research results on neighbourhoods and youth crime in Europe and the US, and third, by presenting some empirical results of a recent case study in two German cities, highlight the need for a more complex understanding of how individuals interact with their urban environment

The concept ‘social exclusion’

There is a vast and partly controversial literature on the concept of social exclusion.[2] It seems safe to say that social exclusion is a comprehensive concept which goes far beyond material deprivation and addresses the lack of participation and integration into mainstream society in many life-spheres, as education, culture, and politics (Murie & Musterd 2004). Social exclusion is as much about the consequences of poverty as about poverty itself. By doing so, it reflects the normative ambitions of European welfare states about social rights and equal life-chances for all citizens. This idea has been particularly strong in France where the term social exclusion originated in the 1970s. In Britain, New Labour has embraced this concept and even installed a ‘Social Exclusion Unit’ within the government. In the United States, on the other hand, poverty is still viewed more narrowly as lack of income and material deprivation (Silver & Miller 2003). Whereas this certainly holds true for US government policies, academic research into poverty and its consequences is more advanced and has given European researchers important impulses (Micklewright 2003; Small & Newman 2001). Even though social exclusion is a multi-dimensional concept, unemployment and poverty is still the core issue, and also the easiest to measure. The lack of integration into the labour market frequently leads to material deprivation and disadvantages in other fields. There is a growing rate of long-term unemployment in Europe which affects mostly low educated workers and ethnic minorities. Furthermore, unemployment and material poverty are assumed to have particularly bad consequences for children and adolescents because attitudes, abilities and opportunities are formed in early age. Yet, empirical studies at least in Europe have mostly not produced strong support for these claims.

[2] For an extensive recent literature review, see Bradshaw et al. (2004).

What is the empirical evidence of social exclusion, especially of children and adolescents, and its development in Europe? The unemployment rate of young people under 25 years has since long been much higher than the general unemployment rate in Europe, and has only declined slightly during recent years. It stands at about 16 % in 2004 in the 15 'old' EU member states. The 'Urban Audit', a new program of city-level statistics within the European Union, allows for a detailed picture of unemployment rates in European cities *(Graph 2)*. There is a considerable variation of youth unemployment between countries, but also between the major cities within countries, reaching up to 40 % in the worst affected French and more than 50 % in some Polish cities. This is a first hint at *spatial* concentrations of disadvantage.

Another widely used indicator of social exclusion is child poverty, defined as the rate of children who live in households with less than half of the national mean income. It is important to note that this is a relative measure, depending on the average income levels of each country, and in effect reflects income inequality. *Graph 3* shows that the Scandinavian countries have the lowest child poverty rates, followed by west and central European countries including some of the new EU member states. Both south European states and the UK and Ireland have the highest levels of child poverty, but still some way off the U.S. where more than every fifth child lives under the poverty line. This picture seems to confirm broadly a typology of welfare regimes within the industrialized world, where Scandinavia represents the most generous, social democratic welfare model, some continental European countries the corporate, and the Anglo-Saxon countries the restricted liberal welfare model (Esping-Anderson 1990).

Over the last decade, child poverty has increased in most European countries, especially in the new EU member states *(Graph 4)*. The only marked exception is the UK where a new redistributive policy has considerably increased welfare benefits for poor families. This highlights the important fact that the consequences of market failures can be cushioned by social policies, which is being done to quite varying degrees across Europe (Brady 2005). In some countries, unemployment (at least if it is not persistent) does not necessarily lead to poverty, whereas in other countries even those in work may face poverty – the so called 'working poor'. I only mention here in brackets that Messner and Rosenfeld's (1997) 'institutional anomie theory' looks specifically to the impact of these state policies on cross-national levels of violence. It is almost trivial to mention migration as another crucial aspect of social exclusion. Most European countries have increasing ethnic minority populations, and these tend to be much more affected by social exclusion, because they fill the lower ranks of the work force, are on average less qualified, more often unemployed, may be discriminated against, and/or may find it difficult to assimilate into the mainstream culture. In countries like

Germany, France and Britain, the topics of social exclusion and migration are obviously very closely linked; however, this conjunction does not exist in those European countries which until recently did not experience considerable immigration yet face high levels of poverty, like Italy and Portugal, or Poland.

The spatial dimension

Finally, and most importantly for the topic of this paper, social exclusion has a spatial dimension. Due to the process of segregation which is largely driven by housing markets, people who are in one or more ways disadvantaged often find themselves living in the least desirable areas of the cities side by side with many other disadvantaged residents. Segregation may also work along ethnic lines and partly reflect a wish to live in ethnically homogenous enclaves. Hence, poverty-related and ethnic patterns of segregation certainly overlap but are far from identical. An example for quite different segregation levels of ethnic groups is *Graph 5* which compares the major ethnic minorities in two cities – Cologne in Germany and Bradford in Britain. 30 % of the largest minority group in Cologne – the Turkish – live in 10 % of the neighbourhoods, whereas 50 % of neighbourhoods have hardly any Turkish residents. Compared to Cologne, the segregation of Asians in Bradford is much more extreme: almost half of them live in just 10 % of the neighbourhoods. A recent study found that the segregation is even more extreme in schools in Bradford (Burgess et al. 2005). As mentioned earlier, Bradford has seen violent riots in 2001, and a government report later made the claim that the Asian population in Bradford lead 'parallel lives' poorly connected to the host society (Home Office 2001).

The crucial question is whether this spatial concentration of social disadvantage actually is a force of social exclusion in its own right, particularly with respect to children and adolescents. What are the consequences of growing up in a poor and disadvantaged neighbourhood? Is there a causal link between concentrated disadvantage and youth crime? A growing research literature in Europe and even more so in the U.S. is looking to a multitude of possible influences and outcomes related to the spatial concentration of poverty and disadvantage in urban areas (Sampson et al. 2002). Although the results of these studies are rather inconsistent, theory as well as common sense seem to support the idea that spatial concentrations of disadvantage can make social ills worse.

Before I go into this issue more closely, let me summarize the main idea that social exclusion can affect people on different levels *(Graph 6)*. Following Urie Bronfenbrenner's (1979) ecological approach to child development, this multilevel model starts from top down with the macro-level of countries. As we have seen,

European countries differ in economic performance and welfare policies, which directly shapes the extent and experience of individual social exclusion. On a meso-level, the degree to which social disadvantage is spatially concentrated could have an additional impact on individual behaviour and life-chances. This meso-level concerns the concrete environments (or social contexts) of daily life experiences. In the case of children and adolescents, neighbourhood and school are the main social contexts. Finally, on the micro-level there are individuals (and families) who are exposed to these social contexts and behave in them in certain ways, and by their behaviour may in turn collectively shape their social environments (which is indicated in the Graph by the small upward arrows). To illustrate this reciprocal effect, a recent study in the US by Greenbaum and Tita (2004) showed that neighbourhoods which saw a large increase in homicides during the late 1980s subsequently lost local businesses and jobs, hence further deteriorating local infrastructure and living-conditions (see also Skogan 1986, Morenoff & Sampson 1997).

In the remaining part of this paper, I will focus solely on the meso-level of neighbourhoods and schools, as most research has done. However, it is important to keep in mind that neighbourhood conditions are significantly shaped by macro-level factors like national economies and welfare policies (Briggs 2003). Neighbourhood studies combined with cross-national comparisons would make this more obvious, yet are difficult to conduct and still very rare. Two exceptions are Loic Wacquant's (1996) ethnographic study of a French *banlieue* and an US ghetto and Sampson and Wikström's (2004) quantitative comparison of Stockholm and Chicago neighbourhoods; both stress the huge differences between Europe and the US in the scale of social exclusion and crime, especially violence. The causes of these differences lie of course not on the neighbourhood level, but on the macro-level.

Recent studies on disadvantaged neighbourhoods and their impact on residents have used different approaches. One group, mainly ethnographic studies, but some also using quantitative techniques, have selected one or few disadvantaged neighbourhoods as case studies. Studies by French sociologists on adolescents' experiences of daily life in the *banlieues*, the public housing estates on the outskirts of large French cities, are a prominent example (Dubet & Lapeyronnie 1992; Body-Gendrot 2005). While they have produced important and in-depth knowledge of these neighbourhoods, a big problem of this 'case study approach' is that the basic assumption that the spatial concentration of social disadvantage *has* an exacerbating effect on problem behaviour is taken for granted, and not put to an empirical test. This may not be a problem in the case of collective police riots which are a distinct feature of the most segregated neighbourhoods. But it is by no means self-evident that the amount

of individual violence, drug use or property crimes by adolescents living in these neighbourhoods is actually much higher than that of other adolescents.

So, what does it really mean to claim that spatially concentrated disadvantage has a negative impact on adolescent behaviour and future life-chances? It means that there is an *additional* context-level effect of the neighbourhood over and above the individual-level effects of social disadvantage (Duncan & Raudenbush 2001). For example, a child whose parents are unemployed but lives in an affluent neighbourhood has better prospects than a similar child whose parents are unemployed *and* lives in a deprived neighbourhood.

Most quantitative studies on neighbourhood effects therefore include either all or at least a large variation of different neighbourhoods from a city or a larger geographical area. These studies then try to disentangle the effects of individual factors from the effects of the concentration of these individual factors on the neighbourhood level, often using so-called multilevel analysis or hierarchical linear modelling software as MLWin or HLM (Hox 2002; Raudenbush & Bryk 2002). This statistical technique has been developed only about 15 years ago, and is now being increasingly used by social scientists and criminologists. Multilevel analysis makes it possible to identify the unique impact of neighbourhood- (or school-) level factors after controlling for the socio-demographic composition and other relevant influences on the individual level. However, this approach is not without problems. There is a danger of both 'under controlling' for, that is omitting individual-level factors relevant for the outcome the impact of which may then wrongly be attributed to the neighbourhood, as well as 'over controlling' for factors which seem to be purely individual but are in fact shaped by the neighbourhood, with the result of underestimating the impact of the neighbourhood. It is particularly difficult for cross-sectional studies to draw conclusions about context effects, and longitudinal studies are better suited to deal with this problem (Duncan & Raudenbush 2001).

Results of European and U.S. studies

What are the results of recent multilevel studies on neighbourhood effects on youth crime? Only few studies using self-reports or parents or teacher assessments applying multilevel analysis have been conducted so far in Europe. Studies in Rotterdam/NL (Rovers 1997), Peterborough/GB (Wikström 2002) and Antwerp/BE (Pauwels 2006) found no evidence of neighbourhood effects, whereas this author's study in two German cities (Oberwittler 2004a, 2004b) found strong evidence for such effects, but only for certain subgroups of adolescents. Finally, a Dutch nationally representative study reports a considerably increased risk of

children's psychosocial problems in the most disadvantaged neighbourhoods (Reijneveld et al. 2005). Thus, the picture is rather inconsistent, and only few studies have found a significant neighbourhood effect on the overall levels of youth crime. One has to be very cautious to generalize these very few studies, but it seems that the spatial dimension of social exclusion is not as important as many believe. So, if youth crime is not affected by spatial exclusion, maybe other outcomes are? One of the key assumptions of social exclusion is that living in poor neighbourhoods reduces education and labour market prospects, and people remain trapped in poverty. Yet, again, the empirical results are rather mixed. Some studies support the hypothesis (Farwick 2004; Hedström et al. 2003), others reject it (Musterd et al. 2003; Brännström 2004). In contrast, studies from the U.S. draw a rather different picture. A couple of recent U.S. studies found evidence for higher crime involvement of adolescents living in high poverty areas net of individual risk factors (Bellair et al. 2003; Bingenheimer et al. 2005; Sampson et al. 2005).

Again, one should be cautious to draw conclusions on the basis of this sketchy overview, but let's speculate. There is more empirical evidence for the existence of neighbourhood effects on youth crime in the US than in Europe. It seems plausible to link this difference to the much higher scale of social exclusion and spatial segregation in the US; ghettos like in Chicago simply do not exist in Europe. The difference may be even more pronounced because most European studies tend to come from countries with better welfare provisions, like the Netherlands and Sweden. It would be a big step forward to have more cross-national European and also cross-Atlantic studies following the same uniform research design so that the results would be really comparable.

A more complex picture – results of a German case study

The picture of neighbourhood influences on children and adolescents is of course more complicated. In many studies, the impact of neighbourhoods has been treated as a black box, and the difficult but important question which social mechanisms translate concentrated disadvantage into individual behaviour has not been addressed. Also, it is often tacitly assumed that adolescents are more or less passively exposed to their environment and respond like a plant to the weather. However, an average increase of crime in a disadvantaged neighbourhood (or its absence) may mask differential responses by certain groups of individuals, and some adolescents may be resilient to adverse conditions due to their own or their parents' agency. The neighbourhood of residence may not even be the context adolescents are most intensely exposed to; for example, the school may be an alternative and competing context which is not identical with the resident neighbourhood. To include

all these dimensions into empirical models is quite demanding, and many of these questions remain still unanswered. Nevertheless, I will focus in the last part of this paper on some of these intriguing aspects and will illustrate them by reporting results of a recently finished study in two German cities (Oberwittler 2003, 2004a, 2004b, in press).

Criminology has always been interested in the neighbourhood dimension of crime, and there is no shortage of theories explaining the possible mechanisms. In the current debate, there seem to be two major branches of explanations *(Graph 7)*: one stressing the role of *adults* who build social capital and exert informal control over adolescents (Sampson et al. 1999), and another stressing the role of *peers* who may instil and reinforce deviant attitudes and commit crimes together (Haynie 2002; Warr 2002). Finally, the physical environment and urban infrastructure could be a cause of crime in their own right (Kelling & Cole 1996). Although these approaches are sometimes treated as antagonistic, it seems more realistic that they are interrelated. However, I will show some evidence that the role of delinquent peers is probably the more important one.

The following results come from a cross-sectional youth survey conducted in Cologne and Freiburg, two West German cities of 1 million and 200,000 inhabitants respectively. Around 4,900 respondents are nested in 68 schools and 61 'neighbourhoods' based on census tracts. I will focus on some of the main findings which can shed some light on the questions which I have just raised.

As mentioned earlier in the list of European studies, we found a significant neighbourhood contextual effect on serious youth crime after controlling for individual disadvantage. However, this holds true only for some groups of adolescents, and there are a number of differential effects. First, among the respondents of German origin, *violent* offending increases with neighbourhood disadvantage only for girls, but not for boys *(Graph 8)*. As a result, the gender gap in violence is nearly closed in the most disadvantaged neighbourhoods. This is not true for serious property offences like car break-in and burglary. Here it is rather the boys who respond to neighbourhood disadvantage.

Second, and this was a really unexpected result, there is no neighbourhood effect on ethnic minority youths *(Graph 9, left-hand side)*. The level of serious offending by ethnic minority youths is relatively high irrespective of neighbourhood conditions. This contradicts findings from Chicago were neighbourhood conditions explain a part of the higher crime involvement of minority youths (Sampson et al. 2005).

Third, the impact of neighbourhood disadvantage on German respondents completely depends on the existence of a local friendship network *Graph 9, right-hand side)*. We asked the

respondents whether their best friends live in the same neighbourhood as they do, or rather in other neighbourhoods. There is no increase of serious offending by neighbourhood disadvantage if the friends come from different neighbourhoods, but a very marked increase for those whose friends do live in the same neighbourhood. This finding hints at the conclusion that the neighbourhood context is only important if friends come from the same neighbourhood, and that contact with (delinquent) peers is therefore a major mechanism translating concentrated disadvantage into youth crime.

This finding provokes the question what influences the choice of spatial friendship circles? As one would expect, the more distant the school is from the place of residence, the more likely it is that adolescents have friends from other neighbourhoods and also spend more of their free time outside their own neighbourhood. In fact, for half of the respondents the distance between the place of residence and school is more than 2 kilometres. Further analyses show, however, that it is not only the distance to school which determines the locality of friendship networks. Adolescents make deliberate choices about whom they prefer as friends and where they want to spend their free time, reflecting their liking or disliking of the immediate environment. In most European cities with a relatively small-scale geography and good public transport, there is no real barrier for youths to leave their neighbourhoods, and many do so. The question then is not whether adolescents are trapped in the disadvantaged neighbourhoods (as it may be in U.S.-Ghettos), but why some feel attracted to its subculture, and others remain resilient to it. Our analyses showed that in the disadvantaged neighbourhoods, it is the youths of low educational status and with a preference for unsupervised routine activities that have local friends. The interpretation offered here is very akin to the ‘delinquent peers’ concept. On the methodological side, the impact of ecological contexts then is a rather inextricable mixture of self selection and reinforcement which also makes it more risky to interpret contextual effect as causal effects.

Family life and parental management is another dimension which moderates the effect of neighbourhood disadvantage on adolescents. Adolescents whose parents have a good knowledge of where and with whom they spend their time show only a very moderate increase of serious offending compared to those whose parents don’t have that knowledge. Thus, parenting strategies can play an important role as a compensating force against neighbourhood dangers (Furstenberg et al. 1999; Leventhal & Brooks-Gunn 2000).

To summarize these ideas, the question of neighbourhood effects on youth crime turns out to be quite complex. Individual dispositions, family life, schools, peer networks and routine activities all play together in shaping the interaction between individual and environment. This calls for theoretical approaches

which can accommodate these complex layers and levels of explanation. Instead of taking the residential neighbourhood as a fixed environmental context, it makes more sense to actually trace the daily itineraries of adolescents and to built up a measure of their individual 'activity fields', as P.-O. Wikström (2004, Wikström & Butterworth 2006) has proposed, or to use network analysis to capture the dimension of peer relations more accurately (Haynie 2002; Kiesner et al. 2003; Weerman & Smeenk 2005), and also to incorporate the schools as a relevant context alongside neighbourhoods into the explanation of youth crime (Oberwittler, in press). The results of new longitudinal studies on youth crime in community contexts which are currently under way in some European countries will hopefully shed more light on these questions.

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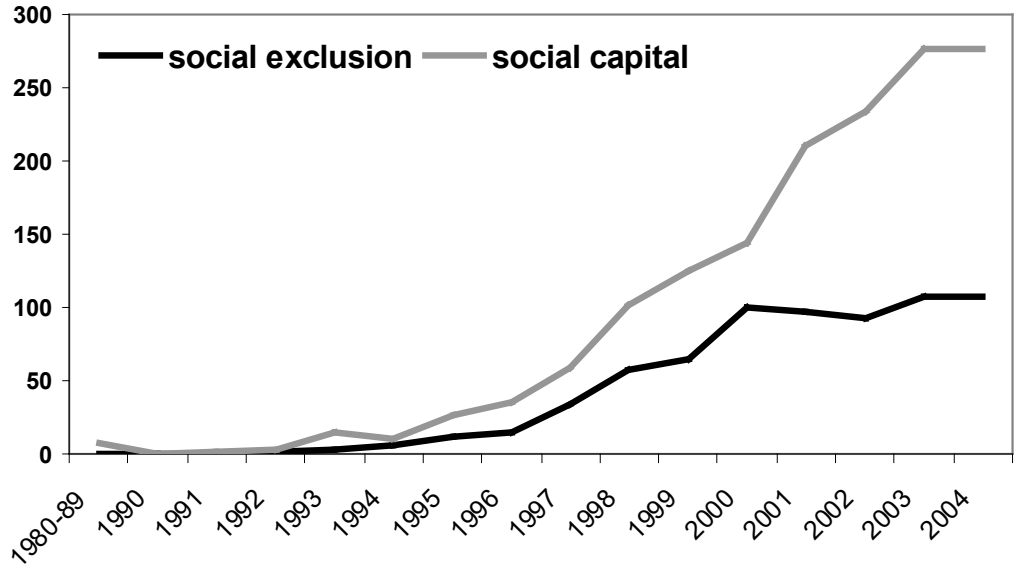
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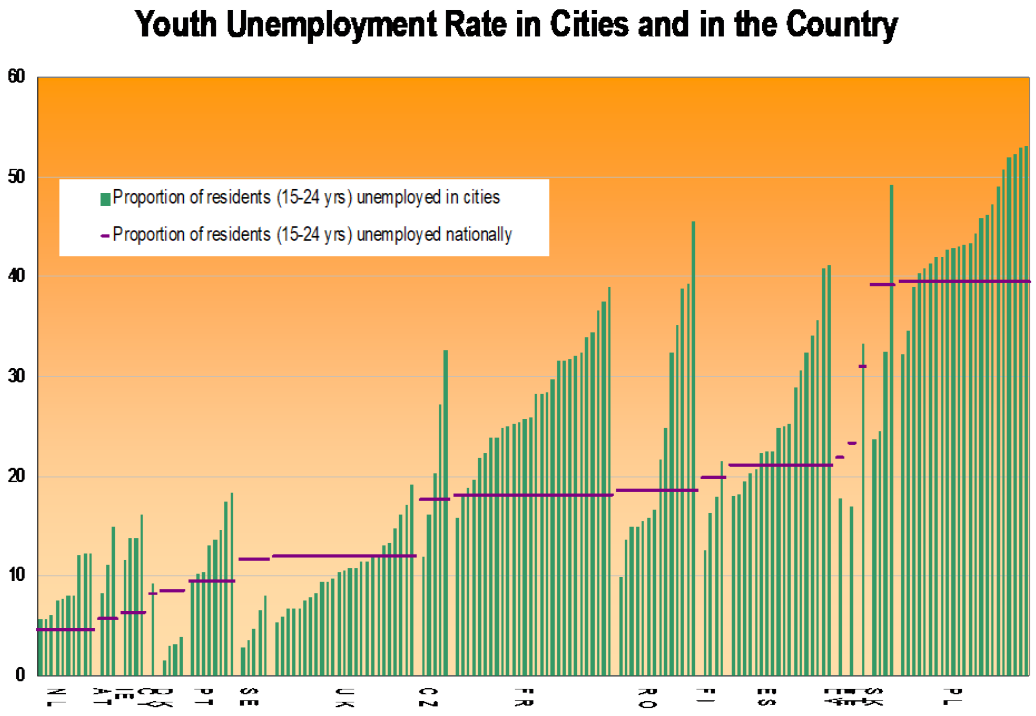
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Graph 1: Yearly number of publications in *Social Science Citation Index*

(Search of 'social exclusion' or 'social capital' in title and abstract)



Graph 2:



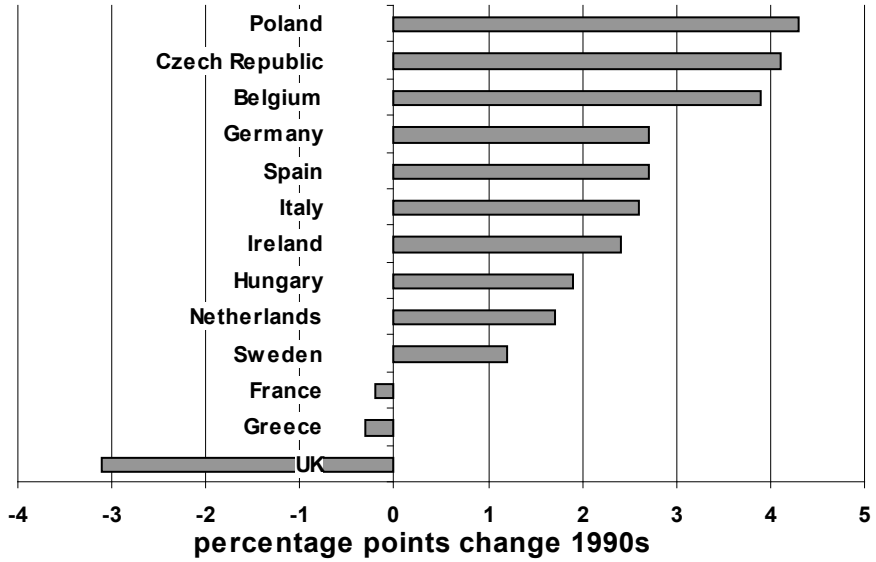
Source: Eurostat (2005), Urban Audit

Graph 3: Child poverty (percentage of children below 50% of median income) in Europe and U.S. in 2000



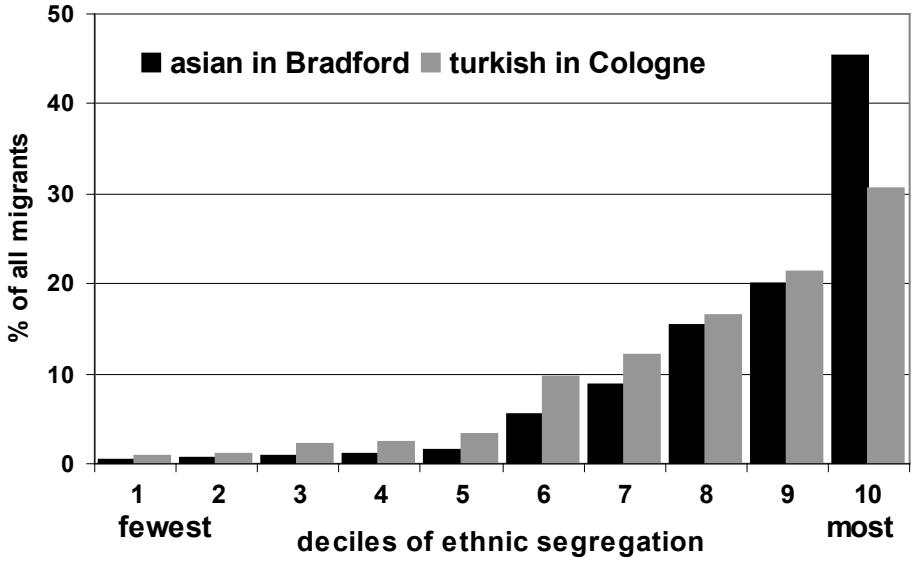
Source: UNICEF Innocenti Research Centre 2005

Graph 4: Change in Child poverty (percentage of children below 50% of median income) in Europe and U.S. during 1990s (percentage points)



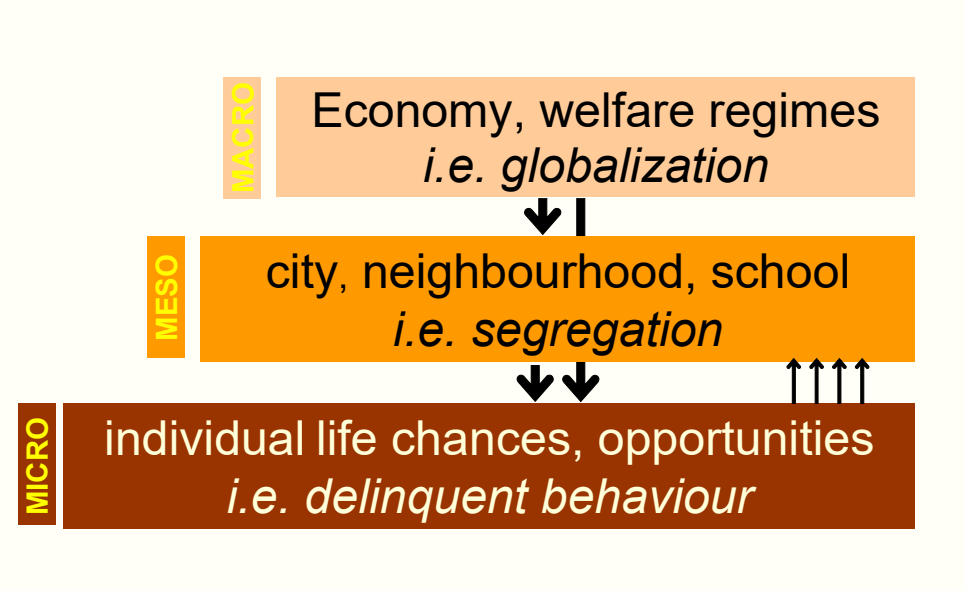
Source: UNICEF Innocenti Research Centre 2005

Graph 5: Ethnic segregation in two European cities (Bradford/UK and Cologne/GER)

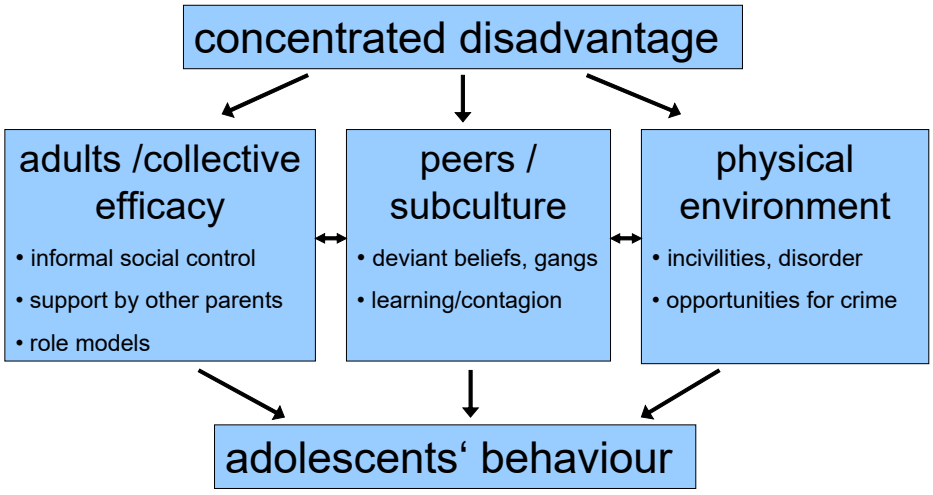


Source: Office of National Statistics, Census 2001 (Bradford); City of Cologne (population register 1998)

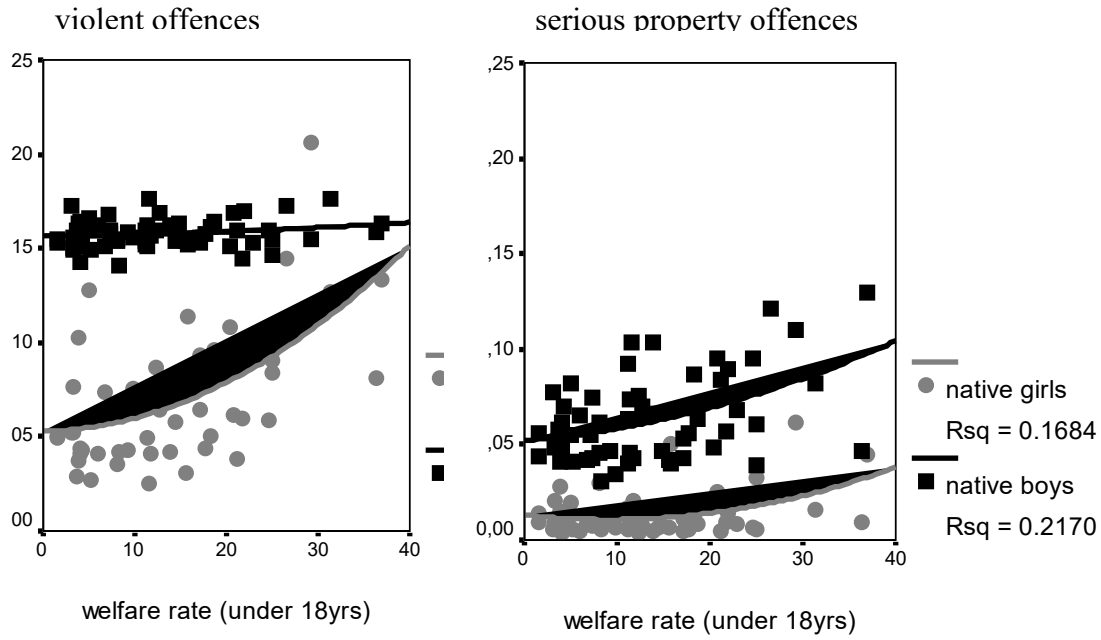
Graph 6: Multilevel theory model of social exclusion



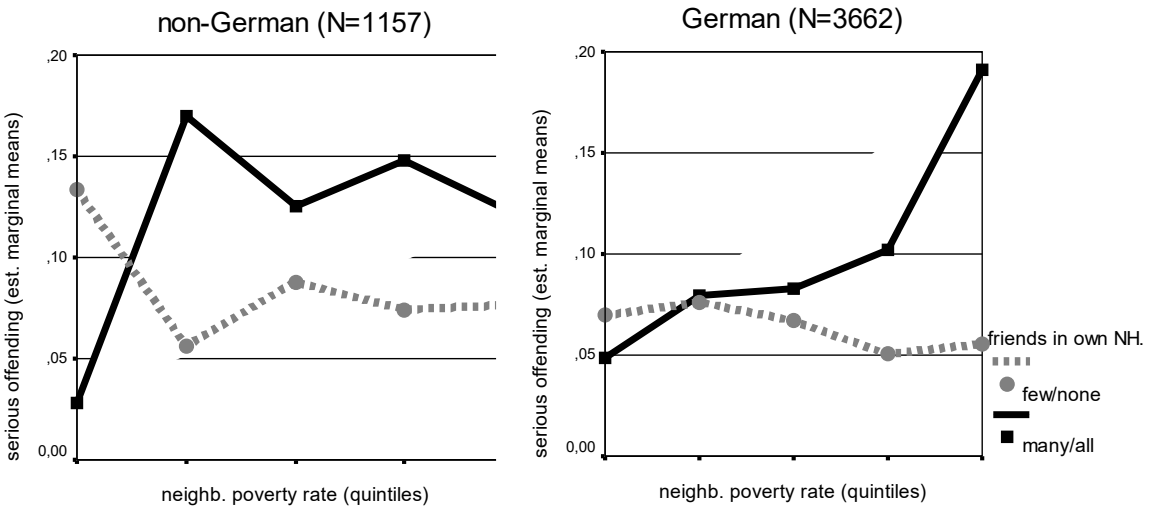
Graph 7: Social mechanisms of neighbourhood effects on adolescents



Graph 8: Self-reported offending by neighbourhood disadvantage controlling for individual disadvantage (MPI Youth Survey 1999/2000, Cologne and Freiburg, N= N=3580 Native Respondents in N=57 neighbourhoods)



Graph 9: Self-reported serious offending by neighbourhood disadvantage and by locality of friendship circle (MPI Youth Survey 1999/2000, Cologne and Freiburg)



Media, Evil and Society: Media use and its impacts on crime perception, sentencing attitudes and crime policy

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Trends in crime and crime policy

In democratic societies, crime policy and its management by parliaments and ministries largely depends on trends in crime. If, over a prolonged period, the media report strong upward trends in the number of crimes committed and if the public debate on crime focuses on spectacular, serious crimes, policymakers come under heavy pressure to increase statutory punishments and tighten the rules of procedure for criminal prosecutions[1]. The courts in turn feel duty bound to hand out tougher sentences[2] – passed in the name of the people, their judgements are meant to reflect public opinion[3]. The question thus arises as to whether long periods of either dwindling or stable crime figures allow policymakers and the courts to soften punishments for specific offences and to place, for example, the notion of offender-victim compensation and offender resocialisation at the forefront.

There is thus every reason to raise awareness of the relationship between the media and perceptions of crime. The German Police Crime Statistics for the last 10 years indicate a strong downward trend in the number of crimes that people perceive as very threatening or generally worrying. There has been a 45 per cent

[1] A topical example in Germany is the debate about increasing juvenile violence and the proposals adopted by a majority in the Bundesrat (upper house of parliament) to toughen the criminal law response to crimes by 14 to 21-year-old offenders; see Bundesrats-Drucksache 15/1472 (Bundesrat bill based on motion 2138/04 brought by the states of Saxony, Bavaria, Hessen, Lower Saxony and Thuringia).

[2] From a recent example in Hannoversche Allgemeine Zeitung 26/5/2004 p. 4.

[3] See the interview given on this question by Professor Winfried Hassemer, Vice President of the German Federal Constitutional Court, in Zeitschrift für Rechtspolitik (2004, 93-94). He stresses that one purpose of sentencing is to "accommodate popular sentencing demands" and, further, that "the state does well to watch" such demands. He qualifies this sweeping statement later on, however: "Judges should not mirror public opinion, of course, but they must be mindful of it." Dreher (1967, 42 ff.) justifies such a stance as follows: "Judges, bound up in the spirit of the times, are meant to prevent mob rule and lynch justice by channelling and taming public sentencing demands"; see also Streng (2002, 14)

reduction both in the number of break-ins in private homes and in bank robberies. In the past 10 years, the number of murders has dropped by around 41 per cent. Car thefts are down by as much as 70 per cent. While other offences like fraud have increased, there has been a slight overall reduction in the number of crimes recorded since 1993[4]. In the light of our ageing society, this hardly comes as a surprise. In the past decade, the 18 to 30 age group – a group which in 1993, for example, made up almost half of all crime suspects – has shrunk from 9.4 to 7 per cent of the population. Conversely, there has been a strong increase (from 20.4 to 24.4 per cent) in the number of people aged 60 and over – a group that accounts for less than 3 per cent of all violent crime suspects. Germany's ageing society is evidently good for domestic security.

Another significant preventive effect is the stabilisation in migration since 1993. This is largely a result of the asylum compromise reached in 1992, the end of the civil war in former Yugoslavia and the phased reduction in repatriation of ethnic Germans from the former Soviet Union[5]. Accordingly, the number of foreigners involved in crimes investigated by the police during the period 1993 to 2003 dropped from 26.7 to 19.0 per cent[6]. Another aspect to be considered is the marked rise in the likelihood of a crime being detected. The police success rate in solving most types of crime has increased significantly over the past decade, from 43.8 to 53.1 per cent overall. This can also be seen as a causal factor in the reduction in crime[7].

Positive trends of the type indicated for the last 10 years can, of course, only influence crime policy if they shape the public debate on crime and are made known to a broad majority of the population. But this is not always the case. Whether or not crime is on the increase or the decrease is not usually something most people are aware of. Unlike the rise and fall of fuel prices that we can all observe at local filling stations, crime is a social phenomenon that often happens out of public view. Even when crime occurs in public, say graffiti spraying on the walls of buildings, drug dealing in open spaces, and mass hooliganism among drunken football fans, even those who regularly observe such events can at best estimate their frequency based on the world they see. The limited geographical scope of their personal

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[4] See German Federal Criminal Police Office (Bundeskriminalamt), Police Crime Statistics 2004

[5] See Pfeiffer, Kleimann, Petersen and Schott (2004, 24 ff.).

[6] Crimes under Section 92 of the Aliens Act (AuslG) or under the Asylum Procedures Act (AsylVfG) are not included in these percentages because they are almost all committed by non-Germans.

[7] Considering the amount of PR about it from the German Interior Ministry and police, it is safe to assume that many potential offenders will be aware of the increased success rate. The success rate thus becomes a considerable deterrent; see Pfeiffer 1990, 88 ff. for a discussion with numerous references to empirical studies on this point in the USA and European countries.

experience does not allow them to make a reliable assessment of trends in the occurrence and the gravity of such offences. This is certainly the case as regards serious crimes that occur less frequently. In assessing the situation, members of the general public must rely entirely on what is reported by the mass media. The question arises, therefore, as to how people perceive current trends in crime and what role the media play in influencing their judgement.

Public perceptions of crime trends

At the beginning of January 2004, the Criminological Research Institute of Lower Saxony (KFN) commissioned social scientists from TSN Infratest to conduct a representative survey of 2,000 people in Germany on perceptions of crime trends. Respondents were first shown the 1993 Police Crime Statistics. They were then asked how many crimes they thought had been committed in 2003 overall and what their general views were regarding trends in specific crimes. Additionally, respondents were asked if they felt personally threatened by crime and what measures they took to protect themselves. The survey also looked at where people received their information on crime and how they thought crime should be punished.

The left-hand side of Table 1 below shows trends in selected crimes and groups of crimes identified by comparing the Police Crime Statistics for 1993 and 2003. The right-hand side of the table shows the figures estimated by survey respondents. We have omitted the top and bottom one per cent of the statistical distribution of responses to eliminate distortions due to a small number of extreme results[8]. The second column from the right shows respondents' estimates for the percentage increase in each crime. The far right column shows by how many per cent these estimates exceed or fall short of the actual crime statistics.

[8] For an earlier article by Pfeiffer, Dämonisierung des Bösen ('The Demonisation of Evil') published in Frankfurter Allgemeine Zeitung on 5/3/04, we used the overall mean values; it was only upon checking the extremes at a later date that we discovered these resulted in exaggerated values for the means.

Table 1: Crime trends 1993-2003 (selected crimes) according to German Police Crime Statistics and respondents' estimates

Crime	PCS 1993	PCS 2003	Δ%	2003 (mean estimate)	Δ% (mean estimate)	Percentage over/under-estimate
All crimes total [a]	6 750 613	6 572 135	-2.6%	7 962 506	+17%	+21%
Fraud [b]	419 834	700 013	+66.7%	622 026	+48%	-11%
Bodily harm	295 005	467 944	+58.6%	451 660	+51%	-3,5%
Domestic burglary	227 090	123 280	-45.7%	316 049	+39%	156%
Motor vehicle theft	214 836	63 240	-70.5%	316 070	+47%	400%
Handbag theft	7 916	5 986	-24.3%	9 495	+20%	59%
Murder	666	394	-40.8%	842	+27%	114%
Sexual murder	32	20	-37.5%	115	+260%	475%

[a] Excluding road traffic offences; stimulus: 5 800 000 [b] Excluding fare-dodging

The table shows that people think there has been a sharp increase across the board. The only crimes for which their estimates come anywhere near the police statistics are fraud and bodily harm. For these two they are in fact slightly short of the actual increase. With all other crimes, the table shows respondents' estimates to be wide and in some cases extremely wide off the mark. For example, respondents put the number of domestic burglaries at two-and-a-half times the figure recorded in 2003. They estimated that there had been twice as many murders, five times as many motor vehicle thefts and no less than nearly six times as many sexual murders as were actually recorded (see Reuband 1998, 144). Their 21 per cent overestimate for the all crimes total was relatively moderate in comparison. However, this was partly due to a typing error as a result of which respondents were told the 1993 figure had been 5.8 instead of 6.8 million. Based on the figure they actually had before them, respondents estimated the 10-year increase in all recorded crimes to have been 37 per cent and not 17 per cent as shown in Table 1.

In recognition of the fact that many people find it hard to give a numeric estimate, we additionally let respondents rank their assessment of crime trends verbally on a predefined ordinal scale. We also added four more offences and one more group of offences to the questionnaire: bank robbery, murder and robbery, sexual abuse of children, and the total for all crimes involving theft.

Table 2: Respondents' assessment of trends in selected crimes for the period 1993-2003, as percentages of all respondents

	Recorded trend			Respondents' answers							
Crime	PCS 1993	PCS 2003	Δ%	Very large increase	Large increase	Slight increase	No change	Slight decrease	Large decrease	Very large decrease	N
Total crimes	6 750 613	6 572 135	-2.6%	27%	39%	25%	7%	2%	0%	0%	1977
Fraud	419 834	700 013	+66.7%	30%	38%	21%	10%	1%	0%	0%	1980
Bodily harm	295 005	467 944	+58.6%	26%	36%	25%	11%	2%	0%	0%	1988
Domestic burglary	227 090	123 280	-45.7%	18%	35%	27%	16%	4%	0%	0%	1989
Motor vehicle theft	214 836	63 240	-70.5%	25%	34%	21%	11%	7%	2%	0%	1982
Handbag theft	7 916	5 986	-24.3%	22%	30%	24%	21%	3%	0%	0%	1985
Murder	666	394	-40.8%	16%	24%	27%	28%	5%	1%	0%	1874
Sexual murder	32	20	-37.5%	19%	26%	28%	23%	4%	1%	0%	1988
Total theft	4 151 087	3 029 390	-27.0%	29%	37%	22%	8%	1%	0%	0%	1980
Bank robbery	1 624	903	-44.4%	13%	22%	25%	29%	10%	2%	0%	1983
Drug dealing	37 212	68 701	+84.6%	37%	31%	18%	11%	3%	0%	0%	1977
Murder and robbery	140	74	-47.1%	12%	25%	27%	29%	7%	1%	0%	1977
Sexual abuse of children	15 430	15 430	0%	40%	31%	18%	10%	1%	0%	0%	1844

The right-hand portion of Table 2 shows the percentage distributions of assumed crime frequency changes on a seven-point ordinal scale. The distributions are heavily skewed to the right; that is, a large majority of respondents assumed that there had been large or very large increases in crime rates. Of the added crimes, answers were mostly accurate only for drug dealing. Only two per cent of the population rightly responded that there had been a marked decrease in bank robberies over the last decade, and only one per cent guessed the downward trend in theft indicated by the police statistics. Overall, fewer than 10 per cent of respondents correctly identified the trend in the seven selected examples of sinking crime rates.

From another representative survey of 1,500 respondents conducted by KFN with the help of TNS Infratest in early 2004, it is clear that the lion's share of the blame for the imagined crime increase is apportioned to foreigners. On average, people estimate that the percentage of foreigners among police-registered suspects has increased from 26.7 per cent to 36.5 per cent over the last 10 years (see Pfeiffer et al. 2004, 6ff.). In fact, as mentioned earlier, the figure has actually fallen to 19.0 per cent.

In Table 3 below we return to the estimated figures presented in Table 1, broken down this time by membership of selected groups.

Table 3: Mean estimate of percentage change in the frequency of selected crimes over the period 1993-2003

	Sex		Region		Education [a)]		Hours TV per week (mean: 22h)		Age	
	Female	Male	East	West	High	Low	Low	High	≤ 45	> 45
All crimes	39.9	34.2	45.7	35.0	32.5	39.5	31.1	43.9	38.0	36.5
Bodily harm	55.3	45.0	52.0	50.1	38.2	56.3	46.9	54.7	57.4	43.5
Sexual murder	317.4	195.9	249.9	263.1	179.1	299.0	205.0	316.1	278.5	242.2
Domestic burglary	44.1	33.7	30.4	41.6	31.0	43.2	38.6	40.1	35.3	43.1

a) High: *Abitur* (upper secondary school leaving qualification) and above

The first thing we notice is that women assume crime to have increased more strongly, and especially so with regard to sexual murder. This matches empirical evidence of a link between vulnerability and fear of crime (Reuband 1992, 349). The fact that younger respondents think crime to have risen more strongly than their elders do can be interpreted along similar lines. Younger people are indeed far more likely to be affected by such crimes (see Erster Periodischer Sicherheitsbericht der Bundesregierung (2001, 53). The data do not show any other uniform trend by age category or between east and west. It is interesting that respondents in the lower education and higher television watching categories think there has been a stronger increase in crime across the board.

The discrepancy between crime trends as people imagine them and the actual police figures brings up two questions. How come a large majority of people guess so wide off the mark? And how does it affect attitudes on sentencing, policy on crime and the investigation and prosecution system.

Crime in the media

Studies from the USA and Canada whose starting point is the observation that people think crime to have risen despite falling crime rates in reality (Roberts 1992, 116-117; Roberts and Stalans 1998) tend to link this misconception with mass media representations of crime. Morris (1997, 108 ff.) argues along very similar lines with reference to a media study. There was a slight decrease in the number of serious crimes in the USA over the period 1991 to 1995 inclusive. An analysis of the evening news broadcast by all major television stations, on the other hand, showed the number of televised reports of spectacular violent crimes to have increased fourfold.

As media research teaches us, the selection, presentation and even the construction of what is deemed newsworthy are subject to certain rules. News and other information about human society is a marketed according to its 'news value' (Reuband 2000, 51). Crime is not just a stable of general news reporting, but (…) also a conscious choice of subject for the purpose of competing with other media" (op. cit., 43). For the consumer, news is not only there to provide information, but also excitement and entertainment (Schulze 1992). A factor in Germany might also be the nationwide spread since the mid-1980s of private television stations funded entirely by advertising. These are more dependent than public television on the kind of news, including crime news, that is capable of boosting the ratings.

To shed light on this question we conducted an analysis – in conjunction with the Department of Journalism and Communication Research at Hannover University of Music and Drama – of the television listings published in a German tabloid newspaper, *Bild*. The analysis covered the second week of October in 1985, 1995 and 2003. Table 4 below shows how the relative shares of fiction and non-fiction programming featuring crime, investigation and prosecution changed over the three sampling periods.

Table 4: Crime-related programming as a proportion of all listed programming for selected television stations[1] and as a proportion of all programming

Station Year	ARD (n =31 broadcasts) Share (%)	ZDF (n =37 broadcasts) Share (%)	RTL (n=44 broadcasts) Share (%)	SAT.1 (n=50 broadcasts) Share (%)	PRO7 (n=31 broadcasts) Share (%)	All programming (N=309 broadcasts) Share (%)
1985	4.7	8.5	3.6	- -	- -	3.5
1995	11.3	8.5	13.1	11.4	32.9	15.4
2004	5.8	7.1	18.1	21.2	6.7	11.6

[1] The following German television stations were coded and included in the 'all programming' figure in addition to the stations shown: NDR, MDR, arte, 3Sat, RTL2, SuperRTL, Kabel1, VOX, 9Live

The period 1985 to 1995 saw a marked increase in the crime broadcasts as a share of all programming. The increase from 3.5 to 15.4 per cent is primarily due to the fact that from the time private television began in the mid-1980s, private stations initially focused on the broadcasting of American fiction programming (feature films and series). There was a slight overall reduction in crime programming over the period 1995 to 2004. This by no means reflects a uniform trend, however. The two private stations with the largest audience, RTL and Sat.1, further increased their share of crime programming from 1995 to 2004. As one major public station, ZDF, only reduced its crime share slightly from 8.5 to 7.1 per cent, the overall decrease in crime broadcasts as a share of all

programming is primarily due to a reduction at the smaller (by market share) public and private television stations. Another trend revealed by the analysis is a shift in crime presentation from fictional (crime series and feature films) to non-fiction genres (court shows and 'docu-soaps' showing the police at work)[9]. That is, genres that give the viewer the impression that they present a true-to-life picture of crime, crime investigation and prosecution.

An analysis of different scope and methodology conducted for ARD and ZDF since 1985[10] reports the proportion of all programming featuring crime for five major German television stations – ARD, ZDF, RTL, Sat.1 and Pro7 – from 1997 onwards. Three trends emerge for the last few years: Firstly, there is a steady tendency for crime to feature significantly more strongly on private than on public television (Krüger 2000, 278-296; Krüger 1999, 322-339). Secondly, a marked tabloid television divide is seen to have emerged over the same period (Krüger 1996, 362-374; Krüger 2000, 278-296; Krüger and Zapf-Schramm 2001, 326-344). Private television stations are incorporating tabloid elements into the style and content of their reporting (content: more 'human interest' topics, plus reporting on spectacular crimes; style: emotion-ridden, dramatised and personalised reporting). In short, crime is dramatised as the force of evil.

These findings accord with those of MedienTenor, a Bonn media research centre that has been undertaking precise surveys of changes in news content for many years. The MedienTenor surveys show that private television stations tend to present crime in a dramatised setting. Also, private television stations account for no less than 70 per cent of crime reporting in the context of news broadcasts (MedienTenor 11/2004, 33). The third trend described by the authors of the ARD-ZDF analysis is, on the other hand, a growing tendency for public television stations to match their reporting to that of private stations (Krüger and Zapf-Schramm 2003, 534-548).

As the above findings clearly show, the increasingly competitive television market since the mid-1980s has seen significantly more air time given over to crime in news and entertainment genres alike. There may have been a similar trend in newspapers, although no long-term studies have been yet done in this sector[11]. The described trend is in line with findings from news value and news selection research, according to which negative information in a news item is a key factor in its being preferred over other news

[9] The air time (in hours per week) for fictional programmes featuring crime changed as follows: 1985 11.8 h, 1995 149.2 h and 2004 81.8 h; for non-fiction programmes: 1985 3.6 h, 1995 8.5 h and 2004 74.3 h.

[10] For an overview see Gerhard (1999, 340-344) and Krüger and Zapf-Schramm (2003).

[11] Two studies for 1988 (Derwein 1995) and 1996 (Scharf, Mühlenfeld & Stockmann 1999, 445-462) showed, however, that violent crime was highly over-represented in reporting on crime in the years in question.

items (Galtung and Ruge 1965). Then there is the growing amount of air time dedicated to entertainment genres that combine apparent realism with a strong element of suspense (such as court shows), where crime often provides a background for playing out interpersonal conflicts. This has further raised the profile of crime in the media. The question arises whether this emphasis shift in the media is a cause of or at least a factor in the popular misconceptions about crime rates. We use a multiple regression model to obtain some preliminary answers[12].

The use of crime in the media and its consequences

In the 'media' part of the KFN study, the 2,000 respondents were given a set of stimuli comprising a number of programmes, from various broadcasters, in the categories Shows, Series, Feature Films and News, with the remark that their subject matter include crime. Based on a six-point scale, they were asked to give their subjective ranking of how often they watched the named programmes.[13] The analysis of dimensions of media use was restricted to programmes that report on real-world affairs or at least claim proximity to the real world. Purely fictional genres like crime, horror and action films were excluded from the analysis, as were print media.

[12] To investigate the effect of media-use patterns on crime trend perceptions (step 1) and of crime trend perceptions on sentencing attitudes (step 2), ordinal logistic regressions are estimated in the empirical part of the study. In these regression models, the probability that dependent variable y falls within category m of the ordinal scale is found by subtracting the probability of exceeding the empirically estimated threshold τ_m from the probability of attaining the next lower threshold τ_{m-1}, where the distance between the thresholds is permitted to vary. Formally, the model is of the form

$\Pr(y_i = m \mid x_i) = \Lambda(\tau_m - x_i\beta) - \Lambda(\tau_{m-1} - x_i\beta)$, where $\Lambda(\varepsilon) = \frac{\exp(\varepsilon)}{1+\exp(\varepsilon)}$ is the logistic error distribution (Long 1997, 121), x a vector of explanatory variables and β a vector of regression coefficients. Unlike a multinomial logistic regression, however, the ordinal models are based on the assumption of proportional odds, which means the effects of the explanatory variables for threshold τ_m must be as close as possible to identical with the effects for threshold τ_{m+1}. A suitable test (Long 1997, 143) is used to ensure that this assumption is met.

[13] The possible answers were '(almost) every day', 'several times a week', 'once a week', 'several times a month', 'once a month or less frequently' and 'never'.

Table 5: Factor analysis of media use and factor weightings

Factor 1	Wt.	Factor 2	Wt.	Factor 3	Wt.
6:30 pm Sat.1 news	.86	Magazine programmes	.81	ZDF news programmes	.91
RTL Aktuell news	.80	Evening reportage	.79	ARD news programmes	.89
Pro 7 news	.77	Crime investigation	.58		
Tabloid magazines	.59				
Court shows	.58				

Source: KFN survey of crime and sentencing 2003; own calculations, N=1903

As can be seen from Table 5, it is possible to derive from the 10 items three dimensions or three scales of media use that are readily interpreted.[14] Factor 1 measures consumption of private news broadcasts together with tabloid magazines and court shows, which are likewise dominated by private television. This dimension is accordingly named *Private Television*. The second factor is referred to as *Reportage*, the third as *Public Service*.

The originally seven-point criminal perception items (see Table 2) had to be reduced to a five-point scale by merging the little-used 'Slight Decrease', 'Large Decrease' and 'Very Large Decrease' categories.

[14] Incorporating the use of print media in the analysis makes for a poorer factor solution overall. Only the reading of local newspapers would weight one factor together with the ARD and ZDF public service television news programmes, while reading the Bild newspaper and other tabloid magazines does not show a sufficient weighting on any factor. Because the recoding necessitated by including print media would also have meant a loss of information, only television programmes were incorporated in the analysis.

Table 6: Determinants of crime perception: ordinal logistic regressions

Dependent variable	Perceived change in frequency [a] between 1992 and 2003, by type of crime:				
	Domestic burglary	Murder and robbery	Sexual murder	All crimes total	Bodily harm
τ_1	-2.73	-2.58	-3.86	-3.71	-3.77
τ_2	-.77	-.38	-1.54	-2.18	-1.79
τ_3	.72	.88	-.21	-.35	-.22
τ_4	2.63	2.38	1.09	1.47	1.46
Realschule/POS year 10 [b] (Yes 1, No 0)	-0.338**	-0.414**	-0.566**	-0.238*	-0.121
[lower secondary school]	(2.91)	(3.58)	(4.91)	(2.02)	(1.01)
(Fach-)Abitur [b] (Yes 1, No 0)	-0.389*	-0.436**	-0.580**	-0.451**	-0.392**
[upper secondary school]	(2.38)	(2.72)	(3.67)	(2.81)	(2.67)
(Fach-)Hochschule [b] (Yes 1, No 0)	-0.579**	-0.731**	-0.999**	-0.872**	-0.595**
[tertiary education]	(3.18)	(3.94)	(5.43)	(4.71)	(3.81)
Child under 14 at home (Yes 1, No 0)	0.116	0.250*	0.026	0.032	0.190
	(1.09)	(2.34)	(0.24)	(0.29)	(1.74)
Age	0.024**	0.006	-0.009*	0.009*	0.002
	(6.68)	(1.72)	(2.42)	(2.39)	(0.44)
Female (Yes 1, No 0)	0.109	0.210*	0.158	0.180	0.221*
	(1.07)	(2.07)	(1.57)	(1.77)	(2.13)
Former East Germany (Yes 1, No 0)	-0.567**	-0.062	-0.007	0.018	-0.039
	(4.81)	(0.53)	(0.06)	(0.15)	(0.33)
Hours television per week	-0.001	0.003	0.011**	0.005	0.011**
	(0.19)	(0.77)	(2.75)	(1.35)	(2.68)
Private television	0.252**	0.261**	0.087	0.257**	0.251**
	(4.73)	(4.98)	(1.67)	(4.74)	(4.66)
Reportage	0.096*	0.094*	0.056	0.060	0.055
	(2.01)	(1.98)	(1.20)	(1.25)	(1.11)
Public service	0.135**	0.082	0.059	-0.038	-0.063
	(2.65)	(1.60)	(1.16)	(0.75)	(1.19)
Fear of crime:	0.236**	0.288**	0.301**	0.263**	0.237**
Precautions taken	(4.40)	(5.35)	(5.59)	(4.88)	(4.39)
Observations	1572	1570	1577	1571	1592
LR Chi-sq (df=12)	266.02	183.99	148.78	167.96	166.29

Absolute z values in brackets
a) "I think there has been…"
1 = a slight/large/very large decrease 2 = no change 3 = a slight increase
4 = a large increase 5 = a very large increase
"... in such crimes over the last 10 years".
b) *Reference category*: No school leaving certificate, *Hauptschulabschluss/Volksschulabschluss*/POS year 8/9 (lower secondary education)

* Significant at 5%; ** Significant at 1%

Source: KFN survey of crime and sentencing 2003; own calculations

As Table 6 shows, the multiple ordinal logistic regression model tends to corroborate the descriptive findings presented in Section 2. The probability of a respondent assuming that crime rates have risen declines with increasing education. At least in respect of murder-and-robbery and bodily harm, this probability is significantly

higher in women than in men. With regard to age and east-west differences, the trend is similarly nonuniform to that identified on the basis of the descriptive analyses in Table 3. The likelihood of a respondent thinking there has been an increase in all types of crime also rises with fear of crime as measured on the subdimension of precautionary measures.

Table 6 also shows that the choice of programming makes a difference. Each of the three media use patterns has a significant positive correlation with the perceived change in frequency for the 'domestic burglary' crime category, with the 'private television' viewing pattern exerting by far the strongest effect. Apart from sexual murders, whose perceived frequency change correlates with the amount of television (in hours) watched each week but not with the choice of programming, there is a positive correlation at the one per cent significance level between media use corresponding to the 'private television' viewing pattern and the perceived change in frequency of all types of crime.

The coefficients in Table 6 can only be interpreted as to sign and significance, however, as they represent change in the log-odds [ln(P/(1-P))] of the threshold to the next category being exceeded. A more useful result can be obtained by converting the change associated with the 'private television' variable to probabilities of belonging to the categories used for the dependent variables. As an example, we will consider middle-aged men (aged 46) with average general education, average weekly television viewing time (24 hours) and average values for the 'reportage' and 'public service' media use patterns. Figures 1 and 2 show the probabilities for the 10 per cent of this group who view the least and the 10 per cent who view the most private television.[15]

[15] Strictly speaking, the 'private television' and 'hours of television per week' ought to be varied simultaneously in the forecast to make the differences even more pronounced.

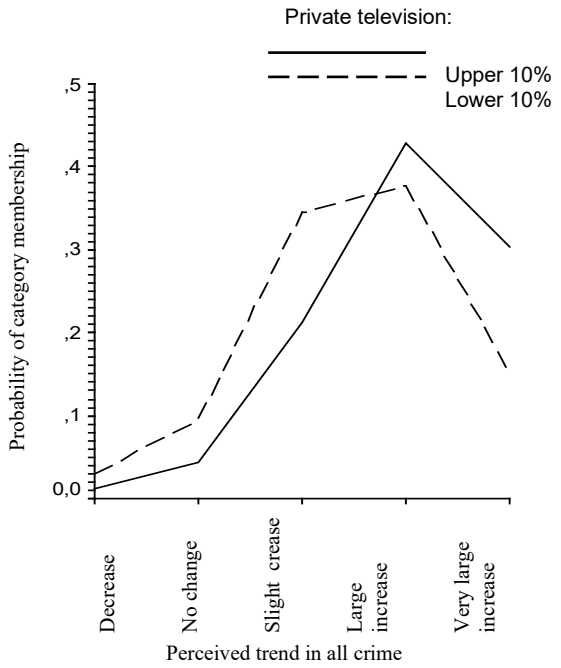


Figure 1: Effect of private television viewing on perceived crime trends: *All crime*

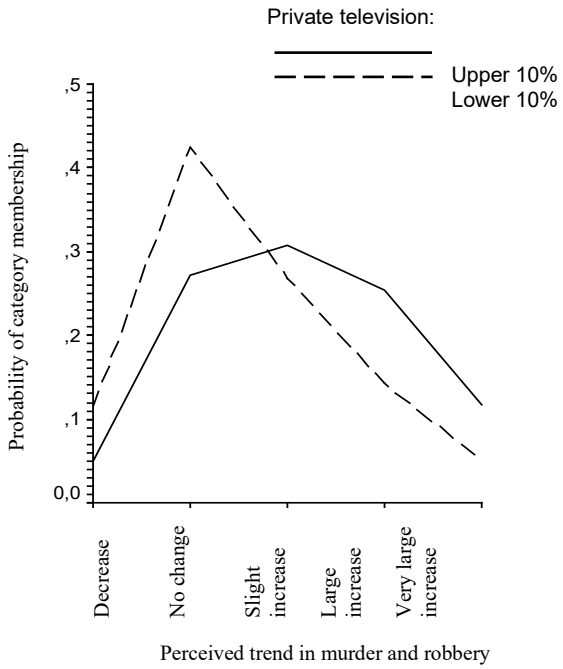


Figure 2: Effect of private television viewing on perceived crime trends: *Murder and robbery*

The two figures show the effect on the perceived change in the crime rate for all crimes and in the crime rate for murder-and-robbery offences. The 10 per cent who view the *least* private television have a 15 per cent probability of thinking there has been a very large increase in all types of crime (Fig. 1). For the 10 per cent who view the *most* private television, this probability is no less than 30 per cent – twice the figure for the former group. Similarly with murder and robbery, where the probabilities are 5 and 12 per cent for the bottom and top 10 per cent of television users respectively.

Crime perception and sentencing attitudes

The strong influence of private television on perceived crime trends leads us to enquire whether the same distorted public perceptions are behind harsher sentencing attitudes. This avenue of enquiry is supported by the findings of two representative surveys done by KFN in 1992 and 2004 that again touched upon sentencing attitudes. Comparison of the data shows a marked increase in the proportion of respondents calling for tougher sentences. To give an example: The mean approval ranking for the statement 'Harsh sentences are needed in order to deter others from committing crimes' was 4.25 on a six-point scale in the 1992 sample and 4.83

in the 2004 sample.[16] Streng's continuous study of punitivity and preferences as to the purpose of sentencing among first-year law students produced very similar findings. Apparently, the period 1989 to 1999 saw a marked change in the attitudes of lawyers-to-be. They are decreasingly likely to consider offender resocialisation as the purpose of sentencing, and increasingly likely to prefer harsh punishments and a toughening of criminal law (Streng 2000, 422 ff.).

Streng, too, explains the increasing rigidity of prospective lawyers with the dramatisation of crime in the media and in politics. But he rightly puts up another factor for debate. The relatively stable 1980s were followed in Germany by a decade of growing poverty and unemployment, a surge in immigration that many found threatening, the unification of Germany with the vast problems that it produced, and now the acts of terror perpetrated by Al Qaeda. Possibly, many people are unsettled by these changes and wish for a strong state able to take a hard line on law and order.

In view of these findings, respondents' sentencing attitudes are made the dependent variable in the analysis phase of our study, to be explained among other things by subjectively perceived crime trends. Table 7 shows the estimated factors affecting indicators of sentencing attitudes, i.e. affecting stated opinions regarding the appropriateness of the sentences generally handed down for each type of crime.

[16] Ranging from 1 for 'not true at all' to 6 for 'very true'. Strictly speaking this is an ordinally scaled variable. The Mann/Whitney U-test that is appropriate for this scale level gives a highly significant z value of 13.57 for the difference. Based on three items for sentencing attitude contained in both the 1992 and the 2003 survey it is possible to form a 16-rank total index to accommodate the construct of sentencing attitude. The higher the index, the more punitive the attitude. Once again, the both the means and the middle ranks of the index differ very significantly (10.33 for 1992 versus 11.83 for 2003).

Table 7: Determinants of sentencing attitudes: ordinal logistic regressions

Dependent variable	Sentencing attitudes [a] by type of crime:			
	Thefts/ break-ins	All crimes total	Rape/sexual assault	Bodily injury
τ_1	.56	-1.85	-3.74	-.64
τ_2	1.58	-.13	-2.74	.95
τ_3	2.52	1.26	-1.42	2.20
Realschule/POS year 10 [b] (Yes 1, No 0)	-0.151	-0.362**	-0.238	-0.026
[lower secondary school]	(1.27)	(3.05)	(1.53)	(0.23)
(Fach-)Abitur [b] (Yes 1, No 0)	-0.104	-0.495**	-0.520**	-0.118
[upper secondary school]	(0.63)	(3.11)	(2.62)	(0.76)
(Fach-)Hochschule [b] (Yes 1, No 0)	-0.052	-1.096**	-1.029**	-0.048
[tertiary education]	(0.29)	(6.08)	(4.99)	(0.27)
Child under 14 at home (Yes 1, No 0)	-0.083	0.221*	-0.064	0.081
	(0.76)	(2.04)	(0.45)	(0.77)
Age	0.017**	0.011**	-0.008	0.020**
	(5.08)	(3.42)	(1.83)	(6.20)
Female (Yes 1, No 0)	-0.549**	-0.227*	-0.236	-0.231*
	(5.26)	(2.18)	(1.75)	(2.29)
Former East Germany (Yes 1, No 0)	0.181	0.437**	0.437**	0.062
	(1.60)	(3.80)	(2.80)	(0.55)
Fear of crime:	0.273**	0.329**	0.337**	0.382**
Precautions taken	(4.89)	(5.94)	(4.64)	(7.04)
Perception of crime trend [c]: 'large/very large increase' (Yes 1, No 0)	0.825**	0.861**	1.099**	0.611**
	(8.14)	(8.30)	(8.13)	(6.35)
Observations	1597	1600	1603	1605
LR Chi-sq (df=9)	219.12	254.04	160.48	195.86

Absolute z values in brackets

a) "I think the sentences handed down for … are generally…"
1 = far too harsh to appropriate 2 = somewhat lax 3 = lax 4 = far too lax

b) *Reference category*: No school leaving certificate,
Hauptschulabschluss/Volksschulabschluss/POS year 8/9 (lower secondary education)

The proportionality assumption is not met for the independent variable 'perception of crime trend' in the 'thefts/break-ins' model. However, a binary logistic regression (DV: lax/far too lax = 1, otherwise 0) produces almost identical results.

c) With the DV 'sexual assault/rape' the IV is the perceived frequency of sexual murder.

* Significant at 5%; ** Significant at 1%

Source: KFN survey of crime and sentencing 2003; own calculations

The strongest factor affecting sentencing attitudes overall proves to be the perceived trend in each crime. This predictor was incorporated in the model as a dummy variable, where 1 corresponds to 'very large increase' or 'large increase' and 0 corresponds to all other categories. For example, assuming there to have been a large or very large increase in all crimes over the last 10 years raises the odds of the sentencing attitudes shifting to the next higher category by 136 per cent [$\exp(0.861)-1\times100$]. This is better illustrated by looking at the effect on the probability of each

category. Taking men in former East Germany with lower secondary education and an average age of 46, one child under 14 living in the household and average fear of crime: Of this group, those who think there has been a strong or very strong increase in crime are 60 per cent likely to consider sentencing to be too lax. For those who think crime has risen only moderately or not at all, this probability falls to 39 per cent. Because these empirical findings were not obtained by the ideal method of direct experiment, analysis of the causal relations between the various constructs requires further research. For example, it would be necessary to investigate in greater detail the factors that influence preferences for different types of television programming. It may be assumed that other unobserved personality traits are linked with viewing frequency for each genre and that these traits are not fully subsumed under fear of crime. They may themselves correlate with subjective perceptions of crime trends and with punitivity. All the same, the findings must be taken as a clear indication that widespread perceptions of crime trends are significantly affected by media reporting.

Changes in crime policy, investigation and prosecution since 1990

These findings raise the question of how popular calls for tougher sentencing have affected crime policy. Schott recently surveyed criminal law enacted over the last two decades (Schott et al. 2004). He found that the last example of a substantial reduction in criminal law penalties was in 1990, when the *Bundestag* enacted a Juvenile Courts Act (*Jugendgerichtsgesetz*) increasing the scope for alternatives to incarceration, abolishing open-ended sentences and restricting the use of remand for juvenile offenders. After that – apart from certain minor adjustments – the five reform acts passed since 1992 brought nothing but tougher penalties. In total, the legislature has significantly raised the penalties for some 40 offences over the last twelve years.

Comparing the genesis of these five pieces of criminal law legislation with criminal law reforms adopted during the three decades that preceded them reveals a key difference: As Maelicke (1999) and Albrecht (2004) emphasise, there is now less of a tendency to consult academics[17]. Albrecht (2004, 491 ff.), in his

[17] The official preamble to the first criminal law reform act of 1969 (Bundestags-Drucksache V/4094), for example, still draws upon crime policy ideas culled from practical experience in law enforcement, and consequently argues along the lines of treatment and desired treatment outcomes. According to Maelicke (1999, 73) there was thus broad consensus in the 1970s between academics, enforcement practitioners and policymakers. Since the early 1990s, however, there has been a power shift within the crime policy arena: “Policymakers are increasingly reluctant to seek advice from industry with its preference for restraint and caution. They are driven by the media… constrained by the tightening of laws and by the room for manoeuvre available to the courts, and bring their

discerning analysis of the links between crime policy and public opinion, rightly highlights a change in the underlying focus of crime policy, which "has become more responsive to feelings of uncertainty and is being co-opted as a way of establishing a sense of security" (Albrecht 2004, 496; see also Sack 2003, 3 ff.). Formerly, policymakers' efforts centred around the quest for a rationale that could be communicated; they were required to supply verifiable arguments and provide empirical support for their proposals based upon extensive practical experience and clear research findings. Today, however, there is less demand for academically well-founded knowledge on crime trends, offenders and the effects of prosecution strategies. Increasingly, expert reports are being replaced by opinion polls designed to test the water and see what goes down best with the public. And politicians increasingly tend to spout populist demands, presenting themselves as warriors in the fight against evil[18]. David Garland comes to similar conclusions in his in-depth study of crime policy trends in the UK and the USA (2001)[19].

Given the significant hardening of sentencing attitudes among the German population and the changes in crime policy described above, it comes as no surprise that German courts are handing down harsher sentences. We will use the example of actual and grievous bodily harm to illustrate this trend. According to the sentencing statistics, the share of tried suspects given an unsuspended prison or juvenile detention sentence for such crimes rose from 5.7 to 6.9 per cent over the period 1990 to 2002. The average sentence also grew by almost a third, from 1.10 to 1.45 years[20]. Both taken together boosted the total sentence handed down by the courts from 6.2 to 10 years per 100 tried suspects between 1990 and 2002 – an increase of about three fifths.

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influence to bear on practitioners with the aim of bringing about a shift in priorities: Safety is gaining in importance and maybe even priority relative to treatment and reintegration" (op. cit., 74).

[18] Chancellor Schröder provided a typical example in a 2001 interview for Bild am Sonntag, with his suggestion of what do with sex offenders: "Lock them away – for good!" (Bild am Sonntag, 8/7/2001).

[19] Garland reports a similar loss in influence as regards practitioners and researchers in the UK and the USA, and that crime policy initiatives there are increasingly driven by public opinion and by calls for tougher statutory penalties from the mass media in response to spectacular individual crimes (p. 13 and p. 151 ff.).

[20] Where the sentencing statistics present sentence durations in class intervals, we arrived at the averages by adding 0.33 times the interval to the lower value for each class. Sentences from two to under three years, for example, were assumed to average 2.33. The factor of 0.33 is based on an analysis of cases from 1991 to 1997; see Schott et al. (2004). It is conceivable that there has been an increase here in line with the generally observed trend in sentencing. In the absence of new data, however, we opted to keep the assumption that the average corresponded to the lower one-third point for the entire study period rather than changing to the mid-point.

The change in sentencing would be understandable if the average severity of such offences had increased over the period. In fact, the opposite appears to be true. This is the conclusion of two case analyses on juvenile sentencing performed at the Criminological Research Institute of Lower Saxony (Delzer 2004; Schott et al. 2004). Comparisons of sentencing by selected courts for 1990 and 1996 and in two German *Länder* for 1991 and 1997 show a marked decline in the number of such crimes resulting in hospitalisation of the victim. Conversely, there was an increase in the percentage of cases where the victim did not obtain any medical assistance. At least here, then, the average severity of offences has tended to decrease[21].

Based on these data, we worked out the total number of prison years that would have been imposed had court sentencing practices remained at their 1990 level of 6.2 years per 100 suspects tried for actual or grievous bodily harm. The comparison shows that, as a result of the change in sentencing over the 12-year period, 7,945 more years' prison were handed down than would have been under 1990 conditions. This has major implications for western German prison budgets. Taking €80 as the daily cost of accommodating an offender in prison[22], the additional cost over the 12 years was €232 million.

We also investigated the change in the number of years' prison per 100 suspects tried for all types of crime. There was a rise of about 40 per cent – from 5.2 years in 1990 to 7.3 in 2002[23]. This accords with data from the *Länder* penal statistics. In former West Germany, prisoner numbers swelled from 37,468 to 51,881 between 1991 and 2003 – an increase of 38.5 per cent – yet the number of tried suspects had increased by only 1.7 per cent

[21] These findings cannot be reliably applied to the whole of Germany. They do, however, demonstrate that the widespread assumption of an increase in the brutality as well as the frequency of crimes involving bodily harm should be met with caution. In view of the fact that penalties for actual and grievous bodily harm were increased in 1998, it appears more likely that the observed rise in the number of years' prison per 100 tried suspects is a result of tougher sentencing.

[22] This is the average value for the last ten years based on calculations for the state of Lower Saxony.

[23] Based on these data, comparing actual sentencing in 1990 with sentencing over the twelve ensuing years shows an increase totalling some 154,000 years' extra prison as a result of the courts raising the frequency and duration of prison sentences rather than staying with 1990 sentencing levels. These hypothetical figures are subject to major uncertainties, however. For example, our underlying method of calculation, under which class interval averages in sentencing statistics are assumed to be at the lower one-third point rather than the mid-point of each class, may underestimate the extent of the increase in sentencing. Conversely, it is conceivable that there has been a change in the average severity of offences – something that is ultimately only verifiable from case analysis. Lacking such specific information on offence severity, we will refrain from repeating for all crimes the hypothetical cost calculation presented for actual and grievous bodily harm.

between 1990 and 2002[24]. Again assuming a cost of €80 per day, the states comprising former West Germany had to find some €421 million more to finance their penal systems in 2003 alone than they did only twelve years earlier. Add to this the fact that a nationwide construction programme begun in 2000 will create 12,000 new cells at a cost, according to research by Suhling and Schott (2001, 27), of some €1.4 billion.

Even if the available data do not allow us to show the precise extent to which this added expense is due to harder penalties imposed by legislation, it is still clear that, influenced by media dramatisation of crime, the need for cost-benefit analysis has taken a back seat in crime policy over the last twelve years. Politicians have largely met calls for tougher sentencing in order to calm the waters rather than objectively asking what benefit to society there was to be had from the sharp rise in costs.

There is one further aspect that we have not yet mentioned and would like briefly to touch upon here. In a study on behalf of the German Government's Immigration Council we investigated who took the main brunt of the described trend in crime policy and sentencing. This was occasioned by the following data: From 1993 to 2002, the number of foreign citizens charged in former West Germany declined by 20.6 per cent[25]. This figure stands in blatant contrast with the fact that the number of foreign prisoners increased from 7,526 to 12,865 between the prison censuses taken in March 1993 and March 2004 – an increase of 70.9 per cent. Theoretically, this contrary trend could at least partly be explained by a sharp increase in the severity of crimes committed by foreigners, but no evidence for this is provided either by a long-term analysis of trial cases performed at KFN in the 1990s (Schott et al. 2004) or by a systematic investigation of sentencing practices based on individual data records from sentencing statistics (Pfeiffer et al. 2004). Instead, the two studies provide evidence for the assumption that non-German offenders are being handed down increasingly harsher sentences compared with their German counterparts. Other studies have produced similar findings (Ludwig-Mayerhofer and Niemann 1997; Delzer 2004). The evidence so far gives grounds to suspect that the courts are working on the false assumption that they need to take a hard line as a general deterrent in the face of a rising wave of foreigner-committed crime. Again, more in-depth research would be needed to investigate this hypothesis.

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[24] We intentionally used the data for one year later when comparing penal statistics. The average prison sentence of 1.1 to 1.5 years means there is a corresponding delay before any change in sentencing practices affect the prison population figures.

[25] The reduction from 237,867 to 188,962 foreign subjects charged relates to former West Germany excluding the states of Hessen and Saarland, for which separate sentencing statistics for sentenced non-German offenders are not available.

The crime policy trend described in the foregoing section is in no way restricted to Germany. In some countries it is even more pronounced. For example, the prison population in England and Wales rose from 44,552 to 74,468 between 1993 and 2004 – an increase of 67.1 per cent, and that after a 12-year period of relatively stable numbers (ICPS 2004; Council of Europe 2004; Home Office 2004). Very like the German situation, the primary reason is a marked increase in both the average duration and the frequency of prison sentences[26]. In the USA, the corresponding trend towards harsher sentences set in as early as the end of the 1970s, and prisoner numbers increased from 503,586 to 2,078,570 between 1980 and mid-2003, or no less than 412.8 per cent (Glaze and Palla 2004).

Garland, too, in his analysis of crime policy and sentencing in the UK and the USA, considers crime reporting by the mass media and in particular on television as a factor that has significantly altered social perceptions of crime (2001, 156). For Garland, the emotive force of images of spectacular crimes abolishes the distance with which the middle classes used to view criminal developments. Garland nevertheless judges the mass media in his analysis of the described changes in crime policy and sentencing practices to be a marginal phenomenon. He ascribes central importance to other factors, which we outline in the following.

- The radical change from a system based on 'penal welfarism' (Garland 2001, 35 ff.) to the other extreme of courts following strict sentencing guidelines (op. cit., 53 ff.).
- Processes of social change (individualisation, the disintegration of the family due to rising divorce rates, growing workplace risks, the thinning of social networks and a decrease in informal social control), which have triggered increasing insecurity among many people and which fuel the desire for a strong state able to take a hard line on law and order (op. cit., 154 ff.).
- Growing identification with victims of crime and an increasing willingness to take their needs and wishes to see the offender punished into account in criminal law (op. cit., 11, 142 ff., 180 ff.).
- A growing fear of crime among the middle classes, who are increasingly the victims of crime themselves and have consequently developed the wish for tougher sentencing (op. cit., 153).
- A society of growing social contrasts in which the state no longer responds to the needs of the social underclass with welfare

[26] See page 6 onwards of the Home Office Annual Report 2004, which notes that the trend change coincided with the Bulger murder that shook the nation in 1993, following which a series of legislative initiatives led to a lasting increase in penalties.

schemes, but increasingly relies on prison as an instrument of discipline (op. cit., 82 ff., 178 ff.).

We do not wish to dispute that these factors are of considerable importance to the described changes in crime policy in the USA. We think, however, that Garland has considerably underestimated the importance of mass media in the genesis and amplification of these trends. This applies especially to the tendency, also lamented by Garland, of crime policy to be shaped by television reports of spectacular individual crimes and the associated populist calls for a toughening of criminal law. The identification with victims of crime that Garland himself rightly highlights is largely due to emotive reporting of individual victims' fates. Garland also neglects the fact – substantiated among other things by American studies in media science – that reporting of spectacular crimes, especially on television, has continued to rise in intensity and frequency despite the falling crime rates since 1991 (Morris 1997). Marketing of the media commodity known as crime is primarily based on its entertainment value, not its frequency of occurrence in real life.

Developments in the UK and Germany also differ considerably from what Garland reports about the USA. Neither German nor English criminal law has undergone the same radical change from the one extreme of 'penal welfarism' to the other of rigid sentencing guidelines. The changes in both countries have been slower and more gradual. For this reason, a marked rise in prisoner numbers did not begin in Germany until 1991 and in Britain until as late as 1995[27]. Garland neglects this in his analysis of UK crime policy just as he neglects the country's current crime trends. Contrary to his proposition that a toughening of criminal law sanctions is to be expected when the middle classes are themselves exposed to increasing risk of crime, the new crime policies in England took hold at a time when the middle classes were living in increasing safety. The number of crimes recorded by the British police fell continuously from 1992 until a new method of counting was introduced in 1998 and has remained broadly constant ever since. More significantly, however, the British Crime Survey – a representative victim survey conducted on a regular basis in the English and Welsh population – shows a continuous, marked decline over the last nine years in the risk of becoming the victim of a crime (a reduction of 39 per cent; see Dodd et al. 2004). The victimisation rate in England and Wales for 2003/2004 was thus at its lowest level since 1981. A similar trend is also to be observed in the USA since 1974 for crimes against property and since 1994 for violent crimes (Rennison and Rand 2002).[28]

[27] In 1995, the number of prison inmates reached 50.000, the rate of prison inmates per 100.000 inhabitants rose to 100. Both indicators increase since then.
[28] According to Rennison and Rand, the victimisation rate for violent crime fell by 54.6 in the USA from 1993 to 2002, and the victimisation rate for crimes against property fell by 50.1 per cent over the same period. Crimes against property

There are no such longitudinal data for unreported crime in Germany. As the Police Crime Statistics we quoted earlier indicate, however, the German situation likewise does not support Garland's proposition that increased exposure to crime among the middle classes is a factor in calls for tougher sentencing and in the consequent tightening of the criminal law and sentencing practice. Instead, we have preliminary evidence that the large majority of people, under the influence of sensationalist reporting by the media, perceive an increase in crime that is simply not there in reality. And we can demonstrate that this has significantly hardened their attitudes on criminal sentencing.

The analysis presented here, however, does not adequately show how media reporting of crime by the various television stations and other media has changed in detail. In view of the key importance of this question for crime policy, it would appear necessary to subject it to more in-depth analysis. In this regard, we see good prospects for the joint research being conducted with the MedienTenor research institute in Bonn, which has been collecting data on how the mass media report on selected topics since the mid-1990s. A continuation of the analysis presented here would also appear desirable because a number of further questions have not yet been adequately resolved. For example, it is not yet known to what extent the rise in punitivity identified for Germany is due to other factors such as those named by Streng and Garland in their analyses. There is a further need for more in-depth research into the specific route by which popular calls for tougher sentencing in general are taken on board in crime policy and sentencing practice, and why the groups that seem to be most affected, such as violent criminals, sex offenders and foreign suspects, tend to be those who attract more media attention.

Finally, further attention should be given to one aspect that came out in the British example above but which is also evident in the USA: The fact that police statistics and representative surveys of victims both show violent crimes and crimes against property to be steeply declining since 1993 and 1995 respectively, at a time when prison populations were fast increasing. The question arises whether this trend is partly due to the criminal justice system in both countries putting significantly more people behind bars than were released from prison each year, and that over a period of some years. In the short term, a prisonisation strategy of this kind can indeed contribute to domestic security because for a time at least, a growing share of a country's high-risk population is temporarily prevented from committing any crimes. But what happens after some time has passed, when the very rapidly increasing cost of detention can no longer be met and the political opposition to this crime policy grows stronger? If the country then returns to moderate penal sanctioning, it faces a dilemma. For a

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have in fact declined by some 345 per cent since 1975 (Rennison and Rand 2002).

period of many years, the number of releases will substantially exceed the number newly sentenced to gaol. This gives rise to considerable crime risks, however, it being well known that a stay in prison often tears people away from their prior social surroundings. This problem is already acknowledged in the USA, where a broad-based and very expensive reintegration programme has been embarked upon to counter it (Travis, Solomon and Waul 2001). It remains to be seen whether we in Europe can learn from the American experience or whether the policy of ever harsher sentencing will be allowed to continue unchecked.

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Justice Reform in Post-Soviet Successor States: A Comparative Perspective

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The patterns of justice existing in the former Soviet Union have endured in most Soviet successor states despite the collapse of the USSR. Rather, the Soviet legacy in the criminal justice arena has been much more enduring than many observers had suggested. Although the last years have seen the Rose, Orange and Kyrgyz revolutions, major change in the legal system has been less profound than in many former socialist countries of Eastern Europe[1]. These revolutions represented popular revolts against the corruption of the ruling elite but they have not brought systemic justice reform (Gould 2005, 1-3). Georgia may have experienced the most profound effort to promote justice reform, but the reform is not in all sectors of the legal system. Ukraine, despite the change in the national leadership has yet to make major reforms in its legal system. Russia, in many ways returning to its Soviet patterns of behavior, has a justice system subject to the political desires of the national leadership.

Profound legal reform did not occur because the Soviet Union imploded. It did not suffer defeat on the battlefield and subsequent occupation such as occurred in post-war Japan and Germany that resulted in wholesale legal reform in these societies. At the time of the Soviet collapse, there was not a widespread impetus for legal reform. Efforts to implement rule of law were often driven by aid agendas of Western donor countries and did not have strong domestic constituencies within the countries' legal system. Foreign aid, although not insignificant in the rule of law arena palled in comparison to expenditures for programs to promote economic reform and privatization. Moreover, many of the aid programs which lacked significant local constituencies relied on parachuting in western experts. These imported experts were rarely appreciated or wanted by the hangovers from the Soviet period who continue to hold key positions in the law enforcement system.

In the decade following the collapse of the USSR, the ideology of privatization replaced the ideology of Marxism-Leninism. Privatization was to reverse the Communist system, to make individuals property owners and to establish capitalist systems. Privatization of the economy in all the Soviet successor states except the Baltics led to the enormous enrichment of a small

[1] For a discussion of transitional justice in some Eastern European countries see McAdams 1997.

political elite rather than an egalitarian distribution of property. But the privatization of the state was not limited to just the property of the state but also resulted in the privatization of its functions. The phenomenon that Los and Zybertowicz have written about in Poland in their work, Privatizing the State acquired an even more acute form in the states of the former USSR where many of the security functions of the state were transferred to private hands (Los & Zybertowicz 2000). But this did not represent the rise of the private security system as a democratizing force as is known in many western societies but the rise of an enforcement system outside of scrutiny of the state and often heavily penetrated by organized crime.

In Russia, there have been major changes in the legal system since the Soviet Union's collapse. These include the adoption of a new criminal code outlawing the death penalty, criminal procedural code and even the introduction of limited jury trials (Solomon 2005). Major changes were made in the law to reflect the transition to a new market economy that reflected Russia's integration into the global economy. New legal provisions were introduced to combat human trafficking, illegal migration and the rise in drug trafficking. Many involved in legal reform point to these legal changes as signs of reform and the triumph of western assistance in law reform (Carothers 2006).

An examination of the institutions that enforce the laws provides a very different perspective on the extent of legal reform. Unlike in many of the recent accession states to the European Union from Eastern Europe and the Baltics, the law enforcement and security arms of the Russian state remain unreformed (Karklins 2005, 144). This phenomenon has become ever more evident as President Putin enforces the authority of the state power structures in Russia The reasons for this are numerous. The authoritarian legacy of the Soviet state endures because those who implement the laws have not changed. Furthermore, the pervasive corruption, the lack of transparency and accountability, the failure to commit needed resources for systemic reform, organized crime that is embedded in the state and the collapse of an ideology without its replacement all help explain a criminal justice system in which justice remains elusive (see Freedom House Report on Russia 2005). Perhaps the foremost problem is that the justice system remains a tool of the state rather than a protector of the rights of citizens.

An examination of the different sectors of the justice system reveal that each has its particular problems. The police, the most direct point of contact between the citizen and the state, are corrupt and abuse their authority. Many of the most serious problems of Russian policing are holdovers from the Soviet era — significant corruption, low professional qualifications and significant abuse of authority and frequent violations of human rights. This unreformed law enforcement institution reinforces for the Russian citizen, that the rule of law is not a prime objective of the contemporary Russian

state. In contrast, Georgia as will be discussed later has initiated profound police reform in an effort to show Georgian citizens the importance of legal reform to the Georgian state. Georgia since the Rose Revolution has tried to reverse the image that the state does not care about the rule of law.

Policing is no longer a state monopoly in Russia. Private protection emerged that sustained the economic relations between the bureaucrats, oligarchs and the crime groups. A literature has evolved on this business of private protection (Varese 2001; Volkov 2002). According to these analyses, the rise of this private protection was an evolutionary stage in a transitional society. The current reality is quite different form what these studies prophesized. As Dr. Salagaev thoroughly documented in his detailed analysis of the crime-law enforcement relationship in the Tatar capital of Kazan, norms have not evolved to protect private property (see Salagaev 2004). Rather there has been a merger of the state law enforcement and the criminal structures. The phenomenon Salagaev describes is not unique. The tragic events of Beslan were greatly facilitated by the corruption and criminalization of the police and the crime-terror nexus.

Regional variations in norm observance exist, but no region of Russia has a reformed law enforcement system. The centralization of policing under the Ministry of Interior, the failure of the state to reform its law enforcement training institutions or to sanction police misconduct ensure that no region has significantly improved the quality of policing. Human rights reports within Russia have reported on police abuse and these problems are now increasingly being studied by an emergent scholarly literature in Russia and abroad (Beck & Robertson 2005, 247-260). They analyze violent abuse of detainees, highly selective enforcement and increasing discrimination and abuse of non-Russian minorities. Since the rise of terrorism within Russia, there have been increasing reports of police authorities moving against minority communities and members of the significant Moslem community in Russia, estimated to be about 15 % of the population and larger if one includes the large number of illegal immigrants from Central Asia and Moslem regions in the South Caucasus. Widespread mistreatment of ethnic minorities is a more recent problem for Russia, but is certainly not unknown in the United States or Western Europe today.

The police have failed to meet the challenge of rapidly rising rates of violence, in particular homicide, and the recent rapid escalation of the drug trade. Russian police with their low levels of detection of crime, high rates of corruption and poor quality of investigations have had little or no impact on homicide rates (Collier & Sambanis 2005). Homicide rates in Russia are now estimated at 27 per 100,000 (Gavrilova et al. 2005, 127). This rate is about half that of Colombia which is possibly the most violent country in the world and approximately 25 times the Western European rate. It is now estimated that there are 4 to 5 million regular drug users or 2

to 4 percent of the population. The problem has risen since the most recent war in Afghanistan. Russia is both a transit and recipient country for the tidal wave of drugs emanating from Afghanistan. Corruption in the police, border guards and customs service as well as the military is facilitating this trade.

An autonomous judiciary remains a remote hope in Russia. Courts are still subject to political pressure in both the civil and criminal arena. Like in the Soviet era, the farther one gets from the interests of the state, the more likely one is to achieve a sentence that is just. But as in the Soviet era, the emphasis remains on state control rather than the rule of law. Therefore, political intervention is most likely in criminal cases and those in the civil arena that affect the state's economic and political interests.

Corruption is an important intervening factor in the legal system. It explains why those who are processed through the legal system are almost entirely the poorest members of society. Unlike in the Soviet era when high level corruption investigations occurred during state orchestrated anti-corruption campaigns, the number of prosecutions for corruption, abuse of position and economic crime has declined precipitously since the collapse of the USSR. According to the research of Victor Luneev, a leading criminologist at the Institute of State of Law, between 1986 and 1996 there was a marked decline in the registered number of offenses for embezzlement by officials (33 percent decline), bribery (17 percent decline) and misuse of official position (33 percent decline). While the crime reports declined, the actions of the criminal justice system taken against offenders declined even more appreciably. Those sentenced for the crime of official embezzlement declined ten times. Whereas in 1986, 26,507 persons were convicted of this offense, in 1994 the number was 2,747. Convictions for bribery dropped to a third of their previous level in the same time period (Luneev 1997). In the Russian Far East, according to a researcher at the Vladivostok organized crime study centre, as much as 90 percent of financial crimes investigations involving Russian officials are dropped because of political pressure rather than the absence of evidence.

The data analyzed by Professor Luneev reveal that the Russian bureaucracy of the transitional period has enjoyed immunity from prosecution. The corrupt links between the state administrative structures and oligarchs and criminals endure because there is no accountability within the Russian administrative system. In the period since the collapse of the Soviet Union, there has been a marked decline in the number of prosecutions for corruption and abuse of authority. Furthermore, there have been almost no high levels officials singled out for prosecution. The immunity of the bureaucracy for economic crimes has contributed to the institutionalization of the corrupt ties.

In an effort to enhance judicial independence, laws were passed in Russia providing judges longer terms of service and providing increased access to housing for judges as a way to foster greater independence from local governmental administrative bodies. Yet these reforms have not been sufficient to introduce substantial court reform. The highest court in Russia, unlike its Ukrainian counterpart, would not declare an election fraudulent in opposition to a ruling administration as did the highest judicial authority in Ukraine at the time of the Orange Revolution. The Russian courts in the criminal arena uphold the status quo rather than the rule of law. The recent Yukos case, although addressing a very visible oligarch, is emblematic of more fundamental problems – the use of the courts for political purposes, targeted law enforcement with the selection criteria being loyalty to the state and its leadership. Under these conditions, it is understandable why corruption assumes such an important role for citizens as they seek protection from the arbitrariness of the prosecutors and the courts.

As in the Soviet period, the standards of justice are higher the greater the citizens' interests are distinct from those of the state. But the petty criminal faces a likely prison sentence whereas the more serious organized and white collar criminals rarely face incarceration although their identities are well known to law enforcement authorities. Corruption and collusion between police and offenders makes enforcement of high status or rich or powerful criminals highly unlikely.

The penal system with limited resources remains a sector in search of a mission and overwhelmed by fundamental infrastructure and health concerns. Tuberculosis is endemic in Russian penal institutions. As Laura Piacenti, in her insightful book, "Surviving Russian Prisons" observes so aptly, Russia's correctional system has been forced to respond to the collapse of its ideological backbone — a commitment to rehabilitation based on labor (Piacenti 2004). With the collapse of Marxist-Leninist ideology, there has been a fundamental challenge to labor camp authorities to define their role in a society with not clearly defined values.

The rising authoritarianism of Russia, its increased oil revenues and the fear of terrorism have made Russians more insular and less ready to reform its legal system. The crackdown on independent media and non-governmental organizations have reduced transparency and accountability in the legal process and aggravated already formidable problems of corruption.

The recent revolutions in Ukraine and Georgia provided an opening for major justice reform in both societies. Examining the situation in both countries reveals the enormous structural impediments to reform and the strength of the Soviet legacy in legal institutions and people's values and attitudes towards the law.

Many analysts are already seeing Ukraine as a lost opportunity (Bitter Orange). Although there is a rotation in power, many people around President Yushchenko are as corrupt as their predecessors. The problems are particularly acute in the regions that were in the Kuchma-Yanukovich camp in the election. The authority of the government has not been so great as to force actual change in these regions. Therefore, criminal elements in the local and regional governments prevail denying reform of the legal process. Emblematic of this is the situation with the mayor of Odessa where crime groups were strong under the last mayor and different ones received favored treatment under the new. The Lugansk region is still ruled by a criminalized elite preventing any reform by interested sectors within the law enforcement community. The leadership continues to use the legal system as a means to intimidate and harass its political enemies and those who threaten its commercial interests.

The rest of this talk will focus on Georgia, a country I have been able to intensively study in the pre- and post-Rose Revolution period thanks to important collaborations with Georgian colleagues. Georgia has been possibly the only post-Soviet state outside of the Baltics to actively engage in an intensive effort to combat the Soviet legacy in its legal system. But the challenges in Georgia are even more significant than in the Baltics. Even though Baltic corruption has been well described by Rasma Karklins in her recent book, it was never on a scale as that known in Georgia which in the Soviet era was characterized by rule evasion. Therefore, the challenges for an impoverished Georgia are even greater than for the Baltic states, one of which – Lithuania — was forced to oust its president prior to EU accession for ties to organized crime.

The challenges Georgia faces are enormous (see Coppieters & Legvold 2005). Led by President Saakashvili who is a western-educated lawyer, his focus is on legal reform. He differs from President Yushchenko of Ukraine, an economist, who places his emphasis on economic growth and investment rather than rule of law. One of the greatest challenges for President Saakashvili, like the ill-fated reformer Gorbachev, is whether he can succeed in legal reform without fundamental reform in the economy. The comparison between Georgia and Ukraine may be similar to the one between Russia and China. In the early days of the Soviet Union, the focus was on legal change rather than the economy. Without adequate attention to economic development, the legal reforms were not sustainable.

Georgia has taken decisive measures to change the operation of its criminal justice system. These measures that strike at the core of corruption have had unintended consequences. The reforms have proceeded without a systemic approach to reform. Therefore, some of the unintended consequences of reform may be as potentially significant for Georgia as the reforms themselves.

Prior to the Rose Revolution, Georgian citizens were confronted by an extremely corrupt police and system of traffic police. Positions in the police were sold in ever larger numbers. Therefore, the only way that the poorly paid police could survive was stopping citizens for non-existent traffic violations. For drivers this happened often several times weekly. Police would not respond to reports of crime as they were interested in rent-seeking and had no concern for maintaining order or serving citizens. Many of them chose to serve the criminals rather than the citizens.

President Saakashvili took decisive steps after the Rose Revolution to address this blatant corruption that affected the daily life of Georgian citizens. The entire lower levels of the police force were dismissed as were many of the prosecutors (See report of Open Society Institute conference on Police reform; and TraCCC Georgia Office 2005). Only a few of the former police men were permitted to remain. Instead, young energetic people many of them recruited straight out of law school were recruited to replace the existing police. These new individuals, unlike their predecessors, did not have the ties to the criminal world.

Placed under strict performance standards requiring them to appear at the scene of a crime within a specified period of time, to record the facts of the crime and to be courteous to citizens, they changed the face of the law enforcement system in relation to the citizen. Equipped with new cars, provided through foreign assistance, their service orientation was a significant change for Georgian citizens. Drivers were no longer stopped continuously for non-existent driving violations.

Yet behind this reform lay significant problems. First, in order to replace the police this rapidly, there was a very short period of training for most in-coming police officers. Some started to serve with as little as two weeks training, an inadequate period to learn the work, the laws or the needed procedures. Furthermore, although many of the senior officers were corrupt, many of them knew something of policing. There was no older generation to share any experience.

There were two unforeseen consequences of this reform. First, the police can be changed but it is hard to enforce the law without a change in citizen attitudes towards the law. Citizens may be delighted that they are no longer harassed by the police and that the police actually respond to calls and alarms but something more is needed from the citizenry to have the rule of law. Citizens must have respect for the law. In Georgia, at first citizens stopped at red lights but without knowing that there was no longer a massive traffic police ready to fine them, compliance with the law declined significantly and crossing the street and driving became more hazardous. Therefore, while the law enforcement community strived to uphold the law, citizens searched for a way to get around

the law. The programs to instil legal consciousness and compliance were not as significant as those to reform the police.

A greater challenge was the activities of the dismissed law enforcement personnel. Just as in the Soviet era when hundreds of thousands of offenders were released from labor camps with no social support, employment or financial means of survival, the same has occurred in Georgia. Criminalized former law enforcement resumed a life of crime leading to dramatic increases in crime rates. Sixteen thousand people were dismissed from the police alone. Many of these were highly corrupt or had close ties with crime groups. Without any job alternatives in an economy with no economic growth, job training or social support, many of them turned to overt criminal activity within Georgia and abroad. Belgian police have arrested former police personnel running a car smuggling operation and the prosecutors are investigating at least 50 cases involving former law enforcement personnel (Kupatadze et al.).

In the face of this new crime challenge to Georgian society, the new law enforcement personnel with minimal training are not capable of investigating the serious crime. They may have the desire to combat these crimes but not the skills.

Another major initiative of the Georgian government has been an effort to arrest corrupt officials of the Shevardnadze era and confiscate their ill-gotten gains. In contrast to the Russian situation where only Khodorkovsky among the oligarchs has been jailed and suffered major loss of his assets, the Georgian efforts have been much more comprehensive. A very wide range of former officials and associates of Shevardnadze have been arrested and have relinquished millions of their assets in return for their freedom (see Human Rights Country report on Georgia). The Young Lawyers Group in Georgia as well as others have challenged the detentions and the confiscations often done without trial. Initially, those arrested were more senior officials but the arrests have also reached second tier business people. Millions have been confiscated as a result of these procedures. There has, however, been little monitoring or oversight of the assets that have been confiscated and their disposition.

The judicial system which was the subject of intense reform efforts during the Shevardnadze era has been largely untouched since the Rose Revolution as the focus has been on addressing corruption in the law enforcement system—the police and the procuracy. Just as the judiciary could not be reformed in isolation from other branches of the legal system in the Shevardnadze era, the lack of systemic reform in the Saakashvili era is also creating problems. Certain judges are on the payroll of top business people preventing the fair disposition of cases.

The impact of the Rose Revolution may be most evident in the fight against international organized crime. Georgia, alone of the

Commonwealth of Independent States, is making major strides in fighting transnational crime operating through or emanating from Georgia. The successful prosecution of a billion dollar case of money laundering through a Georgian bank and the arrest of Georgian organized crime figures in Spain is a testament to Georgia's willingness to cooperate with international law enforcement.

While Georgians may be sceptical about the extent and pace of legal reform within Georgia, these two examples vividly illustrate the impact that Georgian reform is having on international capacity to combat international crime. They provide an important lesson to the international community that progress can be achieved rapidly against this seemingly intractable problem if there is political will, capable personnel and effective international cooperation. Furthermore, significant change in a small country like Georgia can have large ripple effects internationally. Disrupting crime even in a small country like Georgia has an international impact because many elements of international organized crime are linked. Introducing a virus into one part of the system has ripple effects throughout the world.

Unlike in many countries in Eastern Europe where there has been a motivation to join the European Union and to leave behind the Soviet legacy, the successor states to the USSR still face legal systems as corrupted, inefficient and authoritarian as those tied to the Marxist-Leninist system. The problems of the justice system remain even without a Communist ideology. Without a political will to change these systems, a new legal consciousness among the citizenry or a strong incentive for change, the situation in the Slavic states of the former USSR resembles in profound ways the system that was supposedly left behind.

Recent years have seen three "so-called" revolutions in Soviet successor states — Georgia, Ukraine and Kyrgyzstan. But in only one of these has there been an effort to introduce profound change into the legal system and to right the wrongs committed during the previous government. Even though there have been many lessons learned from this experience, a government that is well-intentioned but not wise in governance cannot resolve the serious challenges to order in a highly criminalized and corrupt society. The Soviet legacy combined with the pre-revolutionary authoritarian traditions are proving more intractable to reform than many anticipated.

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Penal Policy, Political Culture, and Constitutional Obsolescence

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Rapid increases in imprisonment rates and adoption of severe penal policies in some countries have, in recent years, prompted a burgeoning scholarly literature on the determinants of penal policy. Much of this literature is intelligent, thoughtful, and informative, but it may be asking the wrong question. Typically, for example, writers on the United States have asked, "Why have penal policies there become so much harsher over the last three decades?" and have offered explanations. A better, and more important, question, however, is, "What do recent changes in penal policy tell us about the United States?"

This talk, which is not primarily about the United States, shows that cross-national differences in penal policy tell us important things about differences in penal culture, and that decisive changes in penal culture may both indicate and portend major, and sometimes regrettable, changes in larger political cultures.

The talk has three sections, each addressing a separate question. The first considers why penal policies in Britain, Australia, the U.S., and elsewhere (Garland 1996) became harsher over the final three decades of the twentieth century. The short answer is that the question is based on a false premise. Only in some places did penal policies become harsher and in importantly different ways. The assumption that penal policies everywhere harshened over that period is wrong.

The second addresses the questions of why penal policies in particular countries did and did not become more severe. A wide range of explanations is available. They range from national differences in constitutional arrangements, the organization of criminal justice systems, the nature of the mass media, and the nature of national politics to fortuities of personality and event. The key points, however, are that, at day's end, policies are chosen and choices have consequences.

The third question is why policy choices matter. One answer, of course, is that they matter because they affect what happens to individual human beings. Another important reason why they matter is that policies adopted and implemented sometimes change the world and sometimes change the ways people think. Repressive policies, rationalized and justified, and in due course followed, desensitize us to the reasons why at the outset they appeared to

be repressive and make it easier, when new controversial issues about crime control policies arise, to adopt even more repressive policies. America, over the past 30 years, England for the past 15 years, and other countries for different periods, have through their changes in penal policies changed their penal cultures in ways that portend ill for the future.

Why have penal policies in England, America, and elsewhere become harsher over the last three decades?

David Garland (1996), in an article that preceded his influential The Culture of Control (2001), asked the question that constitutes the title to this section. Some years later, Hans-Jörg Albrecht (2001) took Garland to task for the "and elsewhere" noting that in many western countries penal policies did not become consistently harsher in the closing decades of the twentieth century.

Although crime trends in most western countries have moved in parallel in recent years, crime control policies and penal practices have not moved in parallel. This can be seen in two ways. First, incarceration rate patterns, expressed as the number of people in prison per 100,000 population, can be compared. This comparison shows that imprisonment rates in some countries, notably the United States (Reitz 2001) and Holland (Tak 2001), increased continuously from the early 1970s onwards, that rates in many countries – Germany (Weigend 2001), Canada (Doob and Webster 2006), and much of Scandinavia (Lappi-Seppälä 2001), are examples – remained broadly stable throughout that period, and rates in two countries, Finland (Lappi-Seppälä 2001), and Japan (Hamai 2001), declined steeply.

The other way this can be shown is by comparing imprisonment and crime rate trends in closely comparable, adjacent countries. When this is done, it can be seen that while crime rate trends in the United States and Canada were broadly comparable from 1970 to 2000, the imprisonment rate in the United States quadrupled while that in Canada remained basically the same, fluctuating around 100 per 100,000 population (Tonry 2004*b*, figure 5.13). Similarly, though Finland's imprisonment rate declined by two-thirds between 1970 and 2000, while those in the other three large Scandinavian countries fluctuated within the range of 50 to 70 per 100,000 population, crime rate trends in the four countries moved nearly in lock step (Lappi-Seppälä 2001).

Figures 1 through 3 illustrate the widely diverse ways imprisonment rate trends varied at a time when crime rates rose substantially in most countries. The first three figures show incarceration rates, violent crime rates, and homicide rates for the United States, Germany, and Finland, for slightly varying periods between the 1960s and the early 1990s. The early 1990s cutoff

date was chosen because that is when, in the United States, a long-term increase in crime rates peaked, after which crime rates steadily fell. A few years later, crime rates in most other Western countries peaked and began to fall. As figures 1 through 3 show, homicide rates, the hardest, most reliable indicator we have of crime trends, increased by two to three times in all three countries. Violent crime rates more broadly, incorporating homicide, rape, aggravating assault, and robbery, increased by three to four times in all three countries. These countries define offenses somewhat differently and have different recording practices but that is not important for the point being made here. Rates for the most important violent crimes, as each country measured them, increased substantially. Yet, as the figures show, the U.S. imprisonment rate increased substantially and continuously, the German imprisonment rate fell in the early 1970s for reasons that are well known and remained broadly stable thereafter, and Finnish imprisonment rates declined steadily.

We know the reasons why the trends in those three countries were so different. American politicians made “law and order” one of the principal themes of partisan and electoral politics, and policy makers deliberately enacted new policies designed to make sentencing harsher and therefore increase prison populations (Tonry 2004*b*). German policy makers decided that prison sentences of less than six months could not be justified on the merits, and enacted legislation strongly discouraging judges from imposing them. As a result, the number of such sentences imposed declined from approximately 130,000 per year to approximately 30,000 per year, a level at which they have continued to be imposed ever since, and increased use of day fines and conditional dismissals under section 153A of the German Criminal Procedure Code replaced them (Weigend 2001). Finnish policy makers decided that imprisonment rates nearly triple those of the other three major Scandinavian countries could not in principle be justified. They decided that Finnish penal policies should more closely resemble those of their western neighbours, Norway, Sweden, and Denmark, than their eastern neighbours, the Baltic Republics of the Soviet Union and Russia (Lappi-Seppälä 2006).

Figure 4 shows imprisonment incarceration rates in France and England for the period 1970 to 2003. If Garland’s “and elsewhere” was mistaken geographically – what happened in the United States did not happen in many countries – it was mistaken temporally in England and Wales. As figure 4 shows, British imprisonment rates fluctuated but were broadly stable at levels well within typical Western European conventions through the early 1990s when the Labour Party deliberately made crime control policy a partisan issue and began adoption of a now lengthening series of policies designed to make punishment more severe and practices harsher (Home office 2002; Tonry 2004*a*). Thus, it is only since 1993 that

England falls within Garland's "elsewhere". That is about the time he would have been working on his 1996 article.

The most striking feature of table 4, however, concerns French incarceration rates, which rise to peaks followed by steep falls, followed by rises, followed by falls. The explanation for this is a French political-cultural tradition of including prisoners among the beneficiaries of national celebrations. When a new French president is inaugurated, or when important holidays such as the 200th anniversary of the storming of the Bastille are celebrated, French governments announce and implement broad-based pardons and commutations that quickly and sharply reduce the prison population (Kensey and Tournier 2001).

Figures 5, 6, and 7 illustrate the second form of evidence that crime and punishment trends follow no necessary relationship: starkly different imprisonment policies relative to crime rates of adjacent countries. Figure 5 shows American and Canadian homicide rates from 1967 to 2002/3 standardized in 1967 at 100. What can be seen is that homicide rate trends in the two countries followed one another closely. When rates in the U.S. increased, they increased in Canada. When they fell in the U.S. they fell in Canada. With imprisonment rates, however, as figures 6 and 7 show, it is another story: the Canadian rate remained stable throughout the period and the U.S. rate notoriously increased (Doob and Webster 2006).

Similar comparisons of England and Scotland (Smith 1999) and of Finland and the other Scandinavian countries (Lappi-Seppälä 2001) could be given.

Figures 1 through 5 together graphically demonstrate that imprisonment rates are not caused by changes in crime rates or by crime rate trends but are the products of deliberate policy decisions. American political leaders wanted imprisonment rates to increase after 1973, as did English policy makers after 1993, and in both cases they did. Finnish policy makers wanted them to decrease after 1970 and they did. Canadian and German policy makers did not choose either change of direction and imprisonment rates remained broadly stable. French policy makers apparently had no strong policy preference, other than that prisoners like all other French men and women enjoy the benefits of national celebrations.

Why do imprisonment rates change or not change?

Adequately answering the question that begins this section would require a much longer article than this one. It would need to look in detail at policy developments and trends in practice in a number of countries and provide rich accounts of changes in penal and political culture. What I do instead in this article is identify a number

of factors that seem to be parts of the explanations for the nature of penal policies adopted in individual countries. I take some of this from published literatures but more of it from discussions that have ensued following lectures I have given in different countries under titles such as “Why aren’t imprisonment rates in Germany higher and penal policies harsher?” (Tonry 2004*c*).

When penal policies are examined cross-nationally, a number of patterns that can serve as bases for hypotheses stand out. In describing them, I adopt the vocabulary of “risk” and “protective” factors; it is widely used in developmental psychology to identify characteristics of individuals that make happy and unhappy outcomes in their lives more and less likely.

A. Protective Factors

Below, I set out five different protective factors. Some are manipulable, some are not.

First, Francophone political culture appears to be an important protective factor. This can be seen in figure 4 in the recurrent use of pardons and commutations to reduce the size of the French prison population. Something about French political culture allows public officials to make such decisions without jeopardizing their own political credibility or tenure in office. It is unimaginable in any of the Anglo-Saxon countries that a prime minister, president, or governor could announce that large numbers of prisoners would be released from prison at all, or released early, as an aspect of national celebrations. Populist politicians would decry the early release of criminals as insensitive to the interests of victims. Intellectuals would decry the unfairness that some prisoners convicted of particular crimes would serve shorter sentences than would others convicted of the same offense, but who fortuitously received their sentences earlier or later.

The influence of Quebec is often cited as one of the reasons why Canadian penal policies are so much less severe than American policies and did not become significantly more severe during the 1970s and 1980s when crime rates increased substantially (Doob and Webster 2006). In many respects, Quebec’s provincial juvenile justice and criminal justice policies are the most liberal in Canada.

Second, countries which have retained confidence in expert and professional views on policy options, which means most of continental Europe, and Canada, are much less likely to adopt repressive policies than are countries such as England and the United States that have disavowed the salience of expert opinion. This is because professionals recognize the complexity of the problems to be addressed, generally believe that policy should be rational and evidence-based, and are less likely than lay people to

overreact to the emotion provided by a shocking crime. In both England and America, “populist” views have taken hold. Many political figures in England’s Labour Government, for example, believe that policy should respond to changes in public attitudes and opinions even if public views are known to be based on misunderstandings of crime rate trends and of justice system operations (Tonry 2004*a*).

That is nonsense as a matter of bureaucratic rationality. In most spheres of life, it would be surprising if public opinion were routinely given greater weight than expert opinion in making decisions about complicated organizations and processes (for example, in deciding environmental policy, public health, or fiscal policies). In most realms of complex policy-making, it goes without saying that people who understand in subtle and nuanced ways how systems operate are especially well-qualified to participate in policy discussions.

Concerning the criminal justice system, in most of continental Europe and to a lesser extent in Canada, it appears widely to be accepted that expert opinions should count (Savelsberg 1994). Not so in the United States and England with their reliance on “focus groups” and public opinion surveys as important sources of insight into the formulation of policy (Tonry 2004*a*, 2004*b*).

Third, the existence of professionalized career judicial and prosecutorial systems, such as characterize much of continental Europe, is an important protective factor. In much of continental Europe, prosecutors and judges are career civil servants, of a special type, who opt in to those professions from their university legal educations onward. Some young judges and prosecutors go through what are in effect apprenticeships, sometimes solely as prosecutors or judges and sometimes moving between the two roles early in their careers, and then gradually move up in their professional hierarchies. In some other European countries, Holland is an example, judges are chosen later in their careers but in these countries also subscribe strongly to notions of judicial independence, separation from partisan politics, and distance from public opinion in making decisions in individual cases. Contrast this with the United States. In the Federal system, all judges are chosen through an intensely political process of nomination by the then-sitting president and approval by the U.S. Senate and all U.S. attorneys (chief federal prosecutors) are selected by the President in openly partisan ways. In most states, prosecutors are elected at local levels, as are most judges.

An important consequence of the American method of selecting judges and prosecutors is that they tend to be highly responsive to changes in public opinion. Prosecutors, particularly, openly campaign on the basis of how “tough” they will be if elected. Since future opponents also are likely to campaign on toughness, prosecutors while in office have strong incentives during times of heightened public concern about crime, like the past quarter

century, to curry favour by establishment and implementation of repressive policies.

In England, though judges and prosecutors are not elected or openly selected according to partisan criteria, they are almost as susceptible to public opinion as are American judges and prosecutors. Lawyers employed by the Crown Prosecution Service are part of a tightly administered national organization, with policy set in London and overseen by the government in power. The current Labour Government has adopted highly repressive policies and has taken considerable lengths to see that they are consistently enforced.

Although English judges are chosen through a slightly mysterious method of selection, and ultimately appointed by the Lord Chancellor, once in office they operate in an environment in which judges openly acknowledge the importance of public opinion in making their decisions (Ashworth 2001).

Countries with professionalized prosecutors and judges have an important buffering institution between public opinion and punishment and between political partisanship and punishment, that the United States and England importantly lack. If, therefore, in those latter countries public opinion becomes much more severe, or politicians wish punishment to become harsher, legal institutions provide much less insulation than in most continental systems from pressures toward unduly severe or expressive policies.

Fourth, a variation on the last point, countries in which key criminal justice officials are not selected on political criteria are somewhat more fully protected from adoption of repressive penal policies. The professional judges and prosecutors of continental Europe are one example. In countries like the Netherlands and Canada, in which judges and prosecutors do not self-select at university into those roles, there nonetheless exist strong cultural norms supporting non-partisan appointment and promotion of judges and prosecutors. This is premised on the notions that justice delivered in individual cases should be removed as much as is humanly possible from political influence and short term emotion, and that officials must be rigorously non-partisan in order to increase the likelihood that that will happen. This, of course, is not the American approach.

Fifth, finally, countries characterized by “consensus” models of political decision making appear to be considerably less susceptible to populist policymaking than are countries characterized by “conflict” models (Lijphart 1999). In consensus systems, often characterized by proportional representation electoral systems and by multi-party coalition governments, policymaking tends to respect traditions of gradualism and consultation. Consultation sometimes means that all mainstream political parties expect to participate in working through the details of possible policy changes. In some countries, that extends to inclusion of important professional and

private organizations and interests in decision making processes. If it is important that most powerful interests buy into major policy changes, among the implications are that policy changes will seldom be abrupt, and will seldom be extreme.

By contrast, in conflict systems like the United States and England, typically characterized by two primary parties, there are winners and losers. Having two parties makes it likelier that issues will be presented to voters and argued over in polarized ways. Since only one party will win, the likelihood that the polarized policies it campaigned for will be adopted is great.

B. Risk Factors

Some of the risk factors are not manipulable at all. Countries characterized by Anglo-Saxon rather than Francophone political cultures, for example, cannot become French. The lesser degree of moralism that penal policies in Francophone countries demonstrate, however, may be something that other countries should learn from in trying to improve their own policy processes. One important implication is that countries wishing to assure that their policies are rational and humane should try to create stronger insulating institutions, such as professionalized cadres and strictly non-partisan selection of judges and prosecutors.

A number of risk factors are simply the converse of some protective factors. These include giving greater weight to public than to expert opinion in policy formulation, selection of criminal justice officials through partisan rather than non-partisan processes, operation of non-professionalized, non-career judicial and prosecutorial systems, and election of key officials.

Some of those things are changeable. Policymakers can decide that criminal justice policy, like other important policy subjects, is too important to leave to poorly informed public opinion and place greater confidence in the appropriateness of consulting the views of people with nuanced understanding of how the justice system operates. The organization of prosecutorial systems and judicial systems can be changed. Even, radically, decisions can be made to shift from elected systems of selection of key officials to non-partisan meritocratic methods.

Although many of the changes discussed in the preceding paragraph would seem to involve pretty radical and therefore unrealistic changes in governmental structure and constitutional law, some of them may be more feasible than at first appears. For example, the English in the 1980s shifted from a system in which prosecutors were employed or hired by the police to an independent Crown Prosecution Service. American states sometimes change their constitutions and governing statutes to adopt merit systems of judicial selection, to adopt single unified

corrections systems incorporating community penalties, prisons, and parole, and to change the organization of prosecution systems from autonomous local prosecutors elected at county levels to professional state-wide prosecution systems headed by an appointed state attorney general.

These things are politically difficult but not impossible. A number of states use non-partisan, merit-based systems to select judges. Some (e.g., Delaware and Vermont) have unified correctional systems. Some (e.g., Delaware, Alaska) have unified prosecution systems.

Another set of risk factors is less malleable. They include particularly the existence and influence of particularly irresponsible tabloid media such as exist in England and Wales. Countries such as those in Scandinavia where the tabloid and populist media have much less influence, and are more responsible, have considerably greater political room within which to maneuver.

Finally, dauntingly, basic aspects of constitutional law and tradition can constitute major risk factors. The constitutional arrangements in both the United States and England are elderly by world standards. The English Glorious Revolution of 1688, for example, and the constitutional arrangements that have evolved since then, are premised on the critical political conflict between the monarchy and the larger society. Dissatisfaction with the restored Stuart monarchy of Charles II and James II resulted in a constitutional aim to assure the dominance of the (slightly more) representative Republican interest over the monarchy.

This is encapsulated today in “Parliamentary Supremacy,” the first principle of English constitutional law. Parliamentary Supremacy is explained as the necessary implication of a democratic system of government in which the electorate chooses the government, with the government then empowered to adopt such policies as it, in its wisdom, believes appropriate. Should a government behave in ways contrary to the public will, according to the conventional analysis, it can be dismissed at the next election.

Thus, in England, it is important that the will of the government not be frustrated by the judiciary or even by the existence of prior written constitutions that embody the will of previous governments or electorates. This is one major reason why successive English governments have been hostile to full incorporation into the European Union and to the influence of external sources of law such as the European Convention on Human Rights. In part, this is because separation of powers ideas date from the mid-to-late eighteenth century, nearly 100 years after the Glorious Revolution.

What all this means in practice, is that England lacks a full system of separation of powers. The executive, the Prime Minister’s office, controls the legislature through its majority, and the Parliamentary Supremacy doctrine has produced a judiciary

that is loathe to challenge the authority of the legislature. This is shown in the recent legislation accepting the European Convention into positive English law. Though English judges may declare English laws to be in violation of the Convention, they may not declare such laws unconstitutional. They may merely declare the violation; how to change English law, if at all, to comply with the Convention, is solely for the government of the day to decide.

English governments are able to adopt major policy changes solely at their own behest. Outside interests and opposition parties can oppose and argue and through moral suasion attempt to persuade a government to change its proposals. But, at day's end, the government of the day can decide what law it wishes to enact, and do so. In relation to crime policy, therefore, as has happened in the last 12 years, if an English government chooses to be highly repressive, it cannot be stopped.

United States constitutional arrangements date from the middle eighteenth century and are a reaction to "tyranny", the authoritarian intervention of the state into people's lives, and "concentrated power", represented then by the English government. They also date from a time when separation of power ideas had been developed and extensively discussed. As a result, United States constitutional arrangements and conventions manifest commitment to a strong separation of powers and try to keep government as close to public opinion as possible through elections of public officials at multiple – federal, state, county, municipal – levels and through partisan political selection of other officials. The effect in an era of mass democracy is that the outcomes of elections are often determined by short-term emotional considerations, and policy responds to those volatile influences.

Both the English and the American arrangements made sense at the times when they were adopted and responded to what then seemed to be unacceptable threats to popular sovereignty.

In a modern era of populist and expressive politics, ubiquitous sensationalizing media, and mass democracy, both systems are much less able than are more recently formulated constitutional arrangements in continental Europe – strong separation of powers, proportional representation electoral systems, professionalized officials – to insulate justice from short-term emotion and politicians' electoral self-interest.

What do changes in national policies tell us?

Penal policies matter in two important respects. They set the stage on which important questions of individual justice are decided, in which conflicts between public interests in safety and security and private interests in liberty and autonomy are played out. In democratic societies premised on the centrality of individual liberty,

these are terribly important issues and ones that should be decided on the individual merits and not be the products of inappropriate emotional or political influence. As importantly, however, penal policies matter because they can shape the way we think.

A leading American novelist of the 1950s and 1960s, Kurt Vonnegut, in Mother Night (1961), demonstrated the point. His principal character was an American in Berlin in the early 1940s who was asked by the German government to become an English-speaking radio commentator broadcasting propaganda to American troops. His every instinct was to decline. He was, however, visited by a man representing himself to be speaking for the U.S. government and asking him to accept the offer because that position would enable him, through codes inserted into his broadcasts, to communicate secret messages to U.S. forces. He could, in effect, become a weapon against the German government rather than its instrument. He agreed and, in the eyes of the world, became a notorious American propagandist for the German government. After the war, his contact returned, a new identity and place to live and adequate financial resources were provided, and life went on. In the early 1950s, he was tracked down by the Israelis and, desperately trying to find his previous contact, found that no one in Washington admitted to any knowledge of his role as an American agent or to the existence of his contact. Eventually, torn by guilt at the role he had played, he decided not to defend himself or to deny the Israeli government's claims against him. The moral of this story is usually taken to be, "be careful whom you pretend to be because we tend to become whom we pretend to be".

High imprisonment rates and deeply repressive penal policies occur in countries in which people do not worry much about individualized justice and about the appropriateness of the severity of punishments in individual cases. More importantly, once a new heightened level of severity becomes normalized, that becomes the ground on which proposals for future changes are considered. Whether practices at Guantanamo Bay in Cuba, at Belmarsh in England (where ten Moslem men were held without charges, without access to counsel, in conditions of sensory deprivation which resulted in several of them becoming insane), or in Abu Ghraib prison in Baghdad, could have happened had the English and American governments not already for extended periods been reducing procedural protections for criminal defendants and increasing the intrusiveness of investigation and interrogation techniques, generally, is a question to which the answer cannot be known but it is not an implausible hypothesis.

Similarly, just as policymakers may consider policy options imaginable that ten years earlier would not have been, a broader public that becomes accustomed to a world in which procedural protections of offenders are decried, in which human rights objections to harsh penalties are pushed aside, and in which

security is regularly invoked as more important than liberty, will itself become less sensitive to important issues of freedom.

Mandatory minimum prison sentences for particular crimes were widely repudiated in America in the 1960s. Then-Congressman George H. Bush proposed, and won, their repeal in federal law in the early 1970s (Blumstein et al. 1983). Republican law-and-order politics of the 1970s, however, calling for harsher punishments, led to enactment of new mandatory minimum sentence laws in nearly every state by 1980 (Shane-DuBow, Brown, and Olsen 1985). In the 1980s, such laws proliferated and minimum sentences grew from one or two years to five, ten, and twenty. In the 1990s, came three-strikes laws mandating 25 year-to-life minimum sentences for third felony convictions, life-sentences-without-possibility-of-parole, and extension of capital punishment to many additional crimes (Tonry 2004*b*). It is unlikely that these 1990s "reforms" would have been possible, even imaginable, had those of the 1970s and 1980s not occurred first.

By contrast, countries like Finland and Germany which chose to adopt less repressive, less intrusive policies are countries in which the political and popular cultures are likelier to be resistant to deep intrusions into liberty and freedom. Some of the Eastern European countries, notably Hungary, have experienced substantial reductions in their imprisonment rates. All have chosen to abjure the death penalty, as has South Africa, because capital punishment and high imprisonment rates are not things that policymakers in those countries want to have characterize the countries they wish to become.

So changes in penal policy matter both because they determine the treatment by the state of its citizens, and because they reconstitute the political air which all of us breathe that makes us more and less likely to worry about important core values of human rights and fairness.

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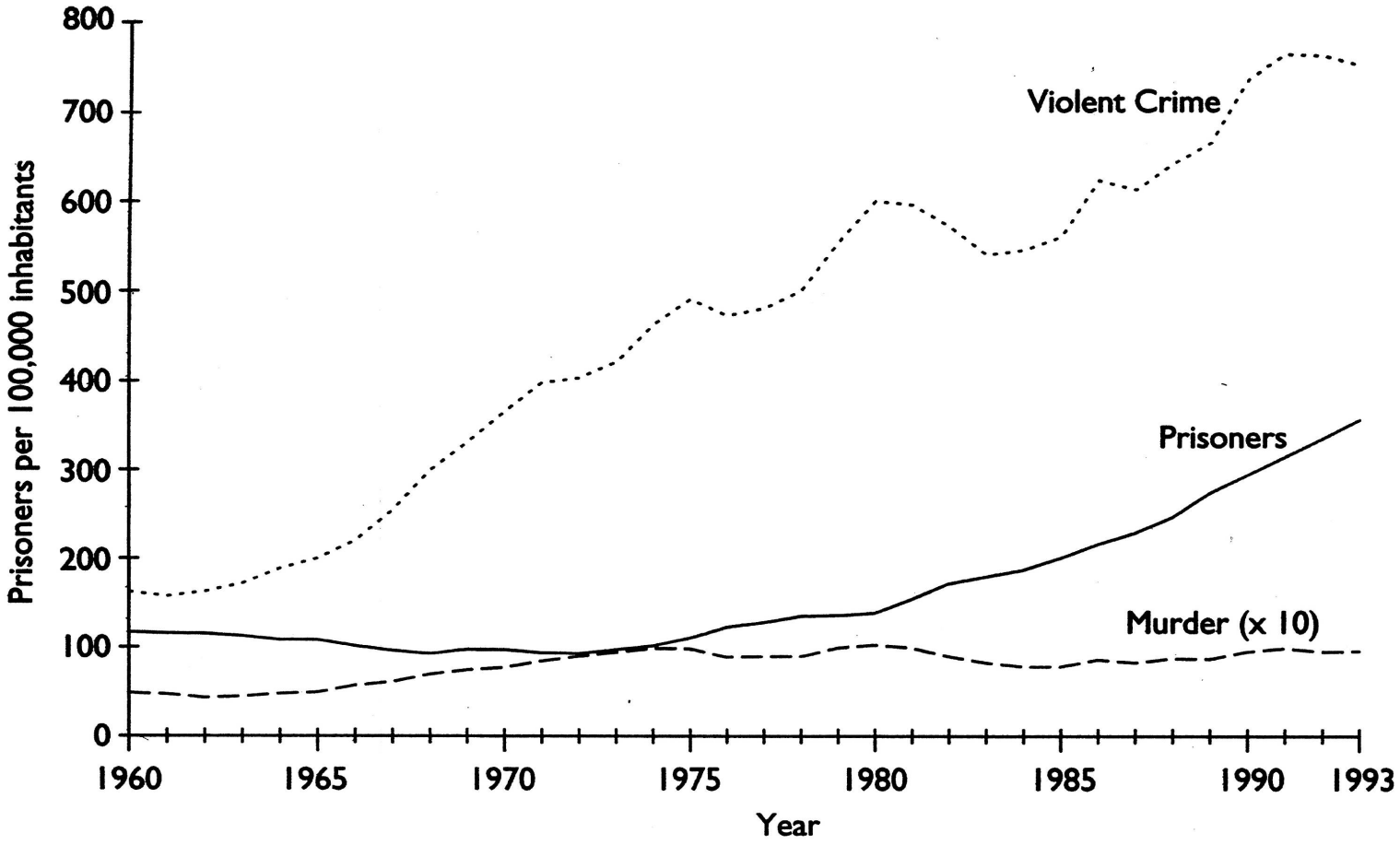


Figure 1. Imprisonment, violent crime, and murder rates in the United States, 1960-1993 (per 100,000 population). Source: Tonry 2004*b*, p. 30.

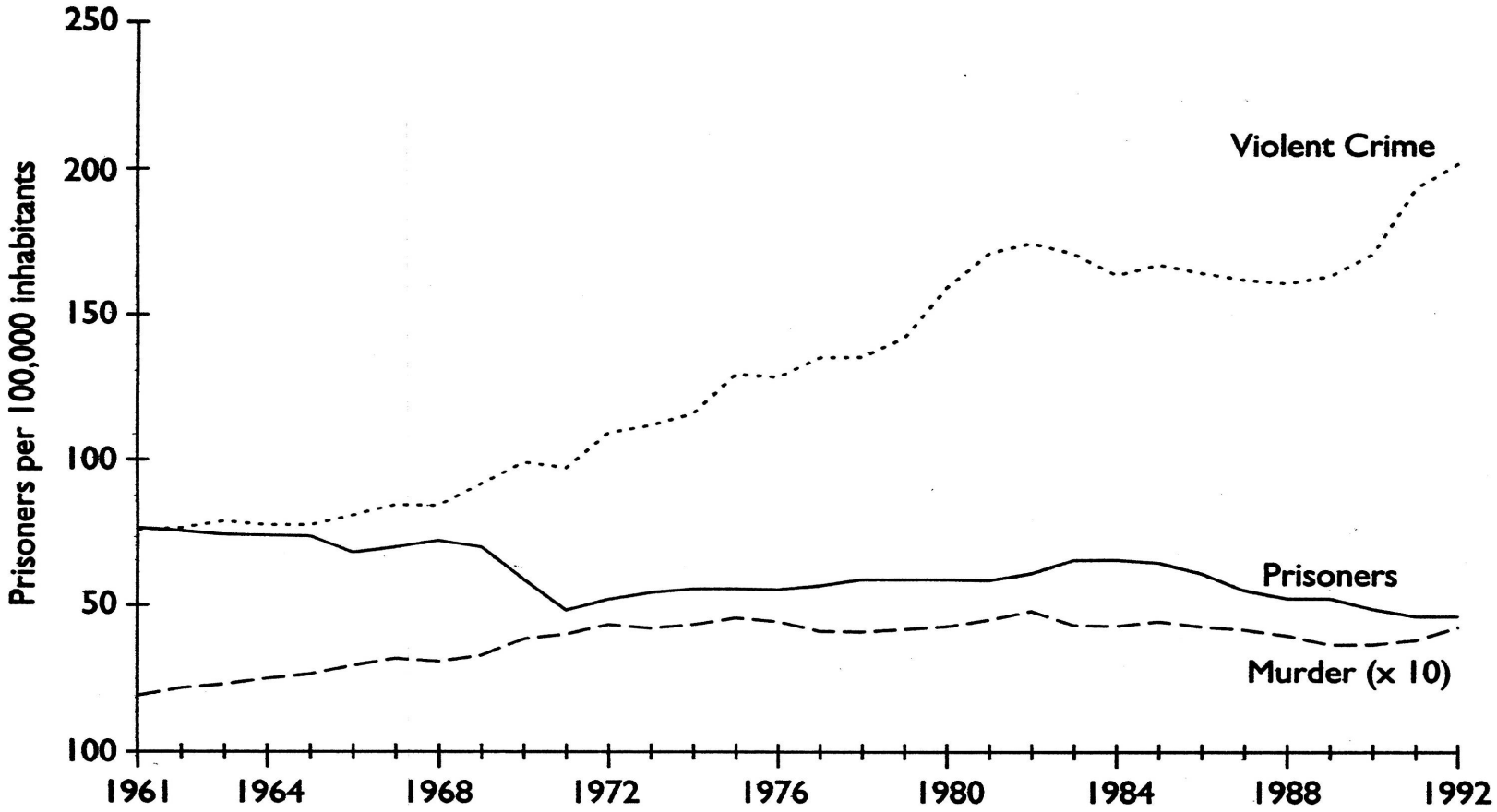


Figure 2. Imprisonment, violent crime, and murder rates in Germany, 1961-1992 (per 100,000 population). Source: Tonry 2004*b*, p. 31.

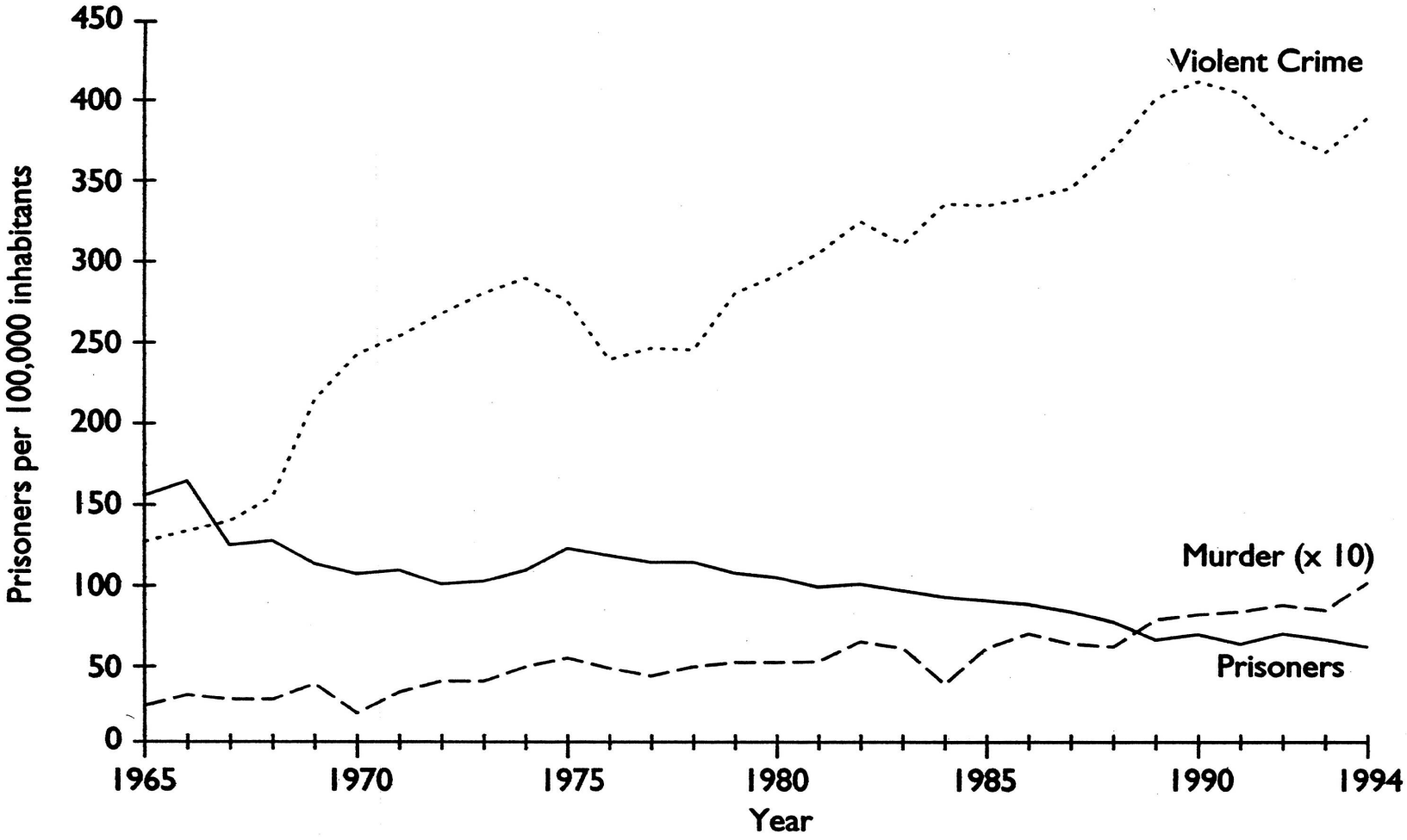


Figure 3. Imprisonment, violent crime, and murder rates in Finland, 1965-1994 (per 100,000 population). Source: Tonry 2004*b*, p. 33.

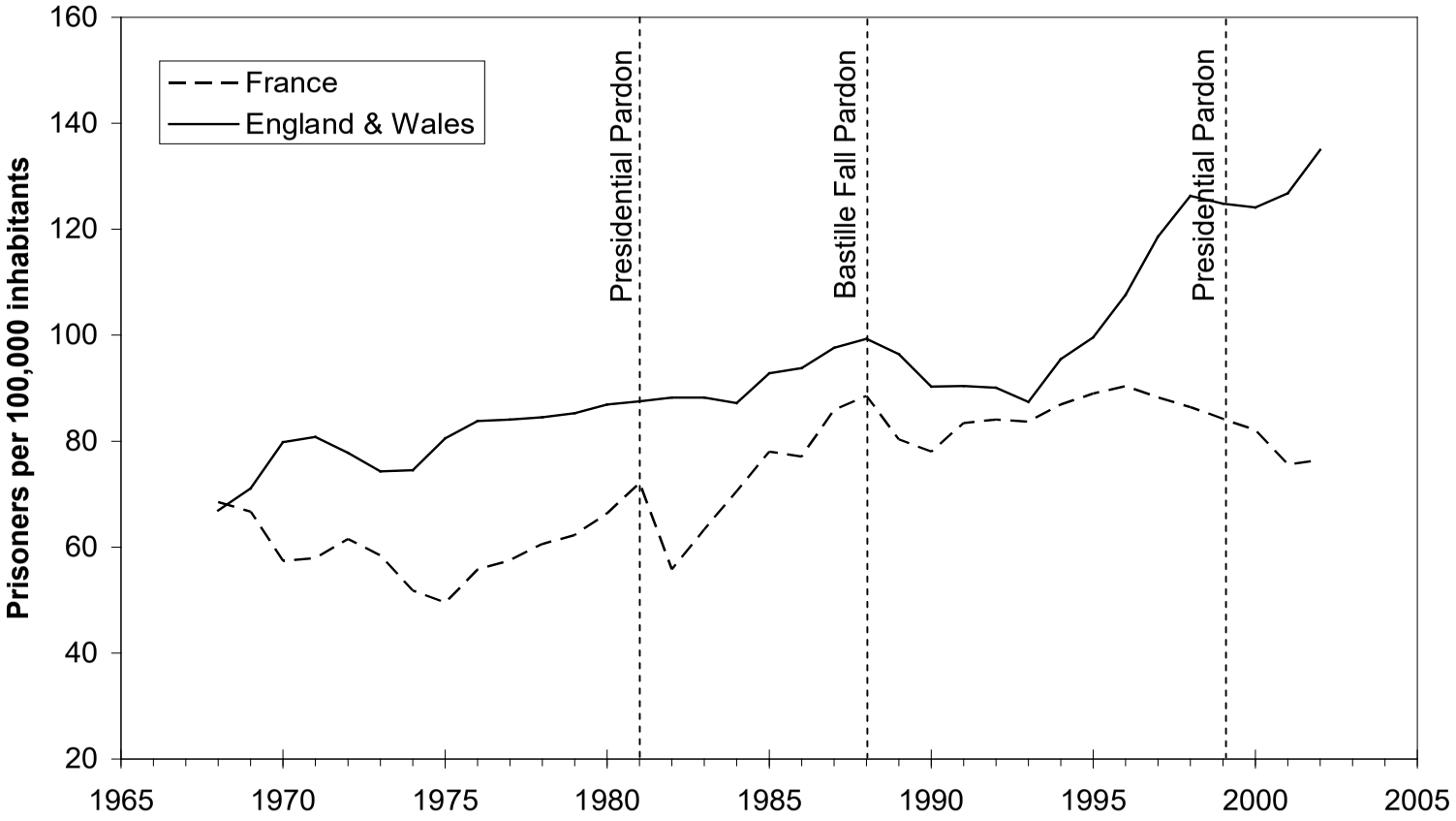


Figure 4. Incarceration Rates in France and England and Wales, 1968-2002 (per 100,000 population).

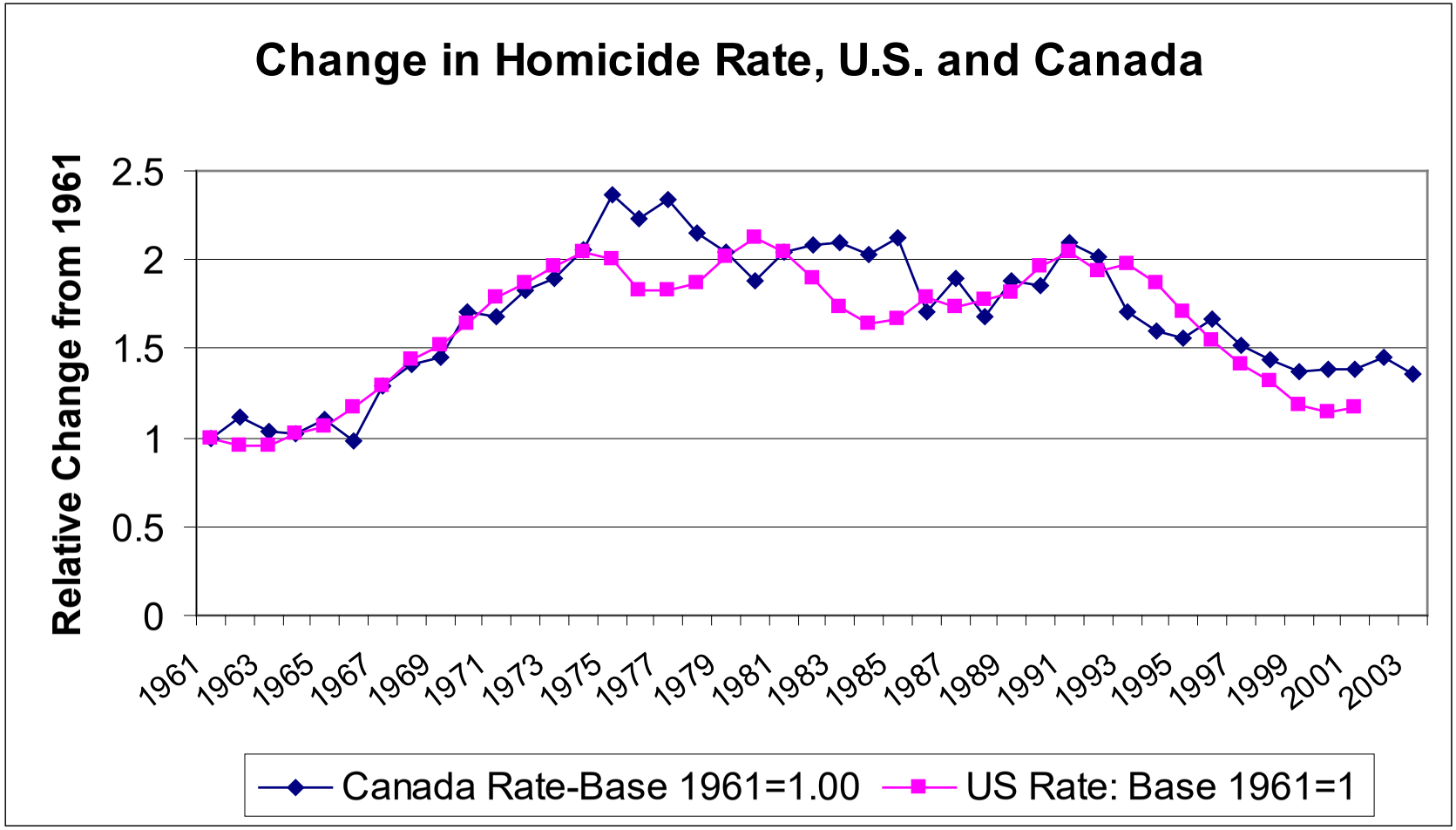


Figure 5: Relative homicide rates, Canada and U.S. Source of data: Dauvergne (2004) and Sourcebook of Criminal Justice Statistics (2004).

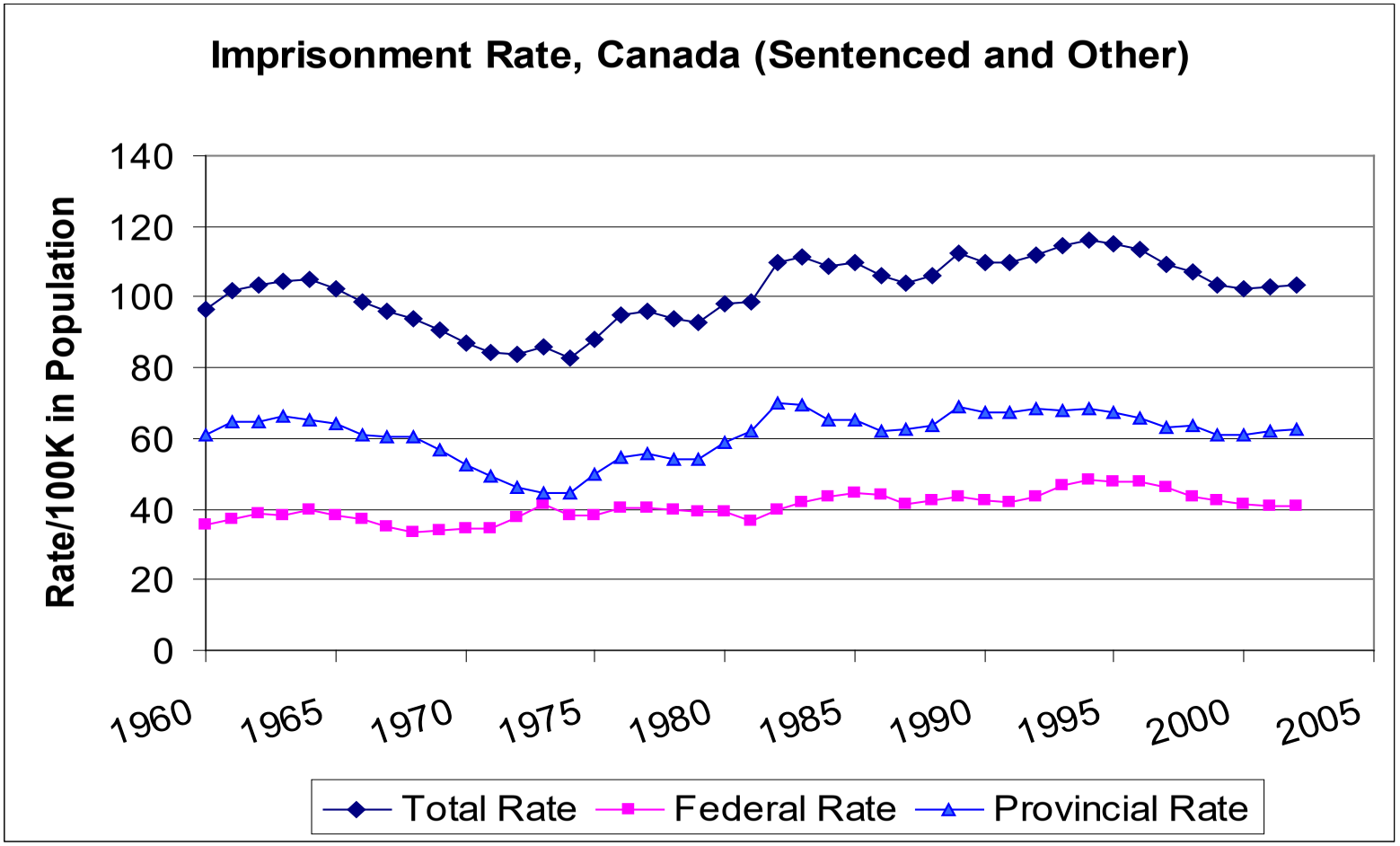


Figure 6: Canadian (“ actual in”) Imprisonment Rate. Source: Canadian Center for Justice Statistics. 2004. Adult Correctional Services in Canada, 2003-04. Ottawa: Statistics Canada. (and earlier issues in the same series).

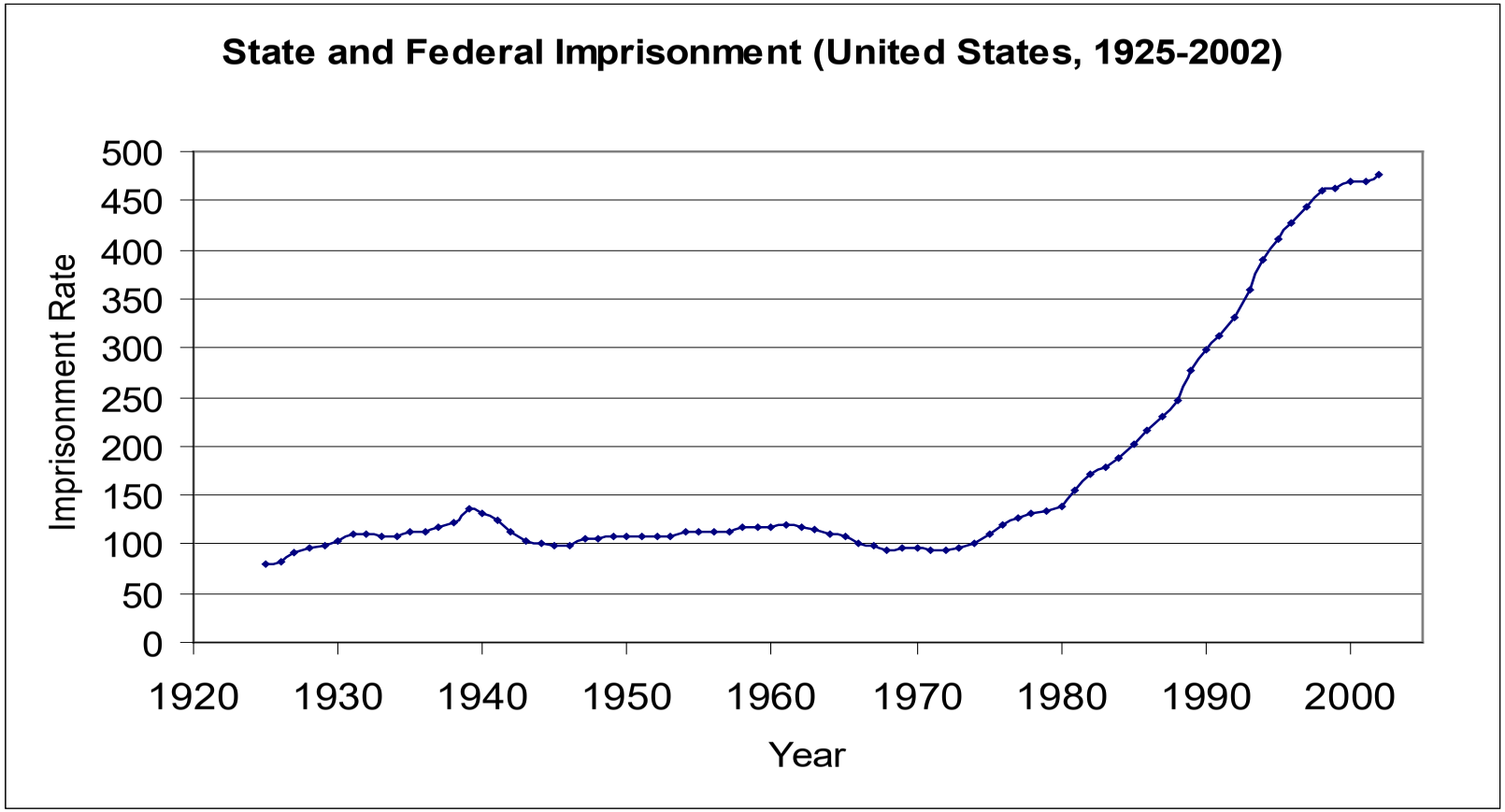


Figure 7: US (combined state and federal) imprisonment rates not including the jail population.
Source: U.S. Bureau of Justice Statistics 2004.

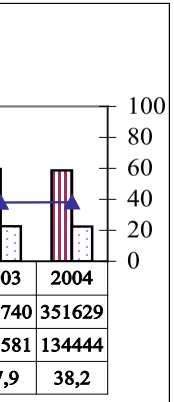
Crime and Criminal Justice Reforms in the "New Central European Countries", and the example of the Czech Republic

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Introduction

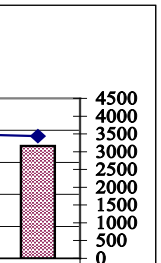
Nearly every reform of an essential nature, including criminal justice reform, has its origin in the change of the social, economic and political situation and a consequent change of the value systems that follows sooner or later. This can also be observed in the realm of criminal law that usually reacts to a changed social situation with a certain time lag. Exceptions are situations when a social and political discontinuity takes place, then criminal law reacts on the contrary briskly and vigorously. This is also the case in regards of the development that occurred in the "new Central European", former socialist countries after 1989, namely in Poland, the Czech Republic, Hungary, Slovakia and Slovenia (about 63 millions of inhabitants). Despite this identical situation, each of these countries has taken its own path in the area of criminal law reforms, thus reflecting specifics of its social and cultural development but also the existing – more or less distinctive – political pressures affecting their criminal policy. This is also one of the reasons why it is so difficult to distinguish characteristic problems of criminal justice and corresponding criminal law reform that would be common for all "new Central European" countries. Nevertheless, some common features can be found in this area – the dramatic escalation of crime itself after 1989, that is characteristic to the entire Central and Eastern post-communist Europe, certainly belongs to the most prominent ones. The example of the Czech Republic described below is a good illustration of this.

The criminal and political reaction itself leading to the criminal law reform is already taking different shapes here (compare for example an emphasis put on the system reform of juvenile criminal law in the Czech Republic with the situation in Slovakia where they have no special Juvenile Justice Act, but have a "three strikes and out" law; or a different approach to an increase of drug related crime in the Czech Republic and Poland). (cf. e.g. Krajewski 2003). This is also another reason why we are "only" going to deal with the development that took place in the last 15 years in the Czech Republic, without ambitions to draw conclusions for other "new Central European" countries.



03	2004
740	351629
581	134444
,9	38,2

Source: Statistical overviews of selected criminal activity, Police Presidium of the CR, 1985-2004



2004
351629
3440,4

Source: Statistical overviews of selected criminal activity. CR Police Presidium, 1989-2004 Statistical data on age composition of the population as of 31.12. of a respective year. Statistical Yearbooks of the Czech Republic, Czech Statistical Office, 1990-2005

Social changes that took place after 1989 in the Czech Republic were also strongly reflected in the development of registered crime and its clear-up rate in the first half of 1990s. As can be observed in Graph 1, the number of registered crimes was quite stable before 1989. It oscillated around an average of 120,820 registered crimes per year. After 1989, a relatively sharp increase of registered crimes took place, culminating in 1993. In 1994, a decrease of registered crimes can be observed, and from 1995 a gradual increase can be noticed lasting until 1999 when the number reached its maximum, followed by a moderate decline. During 2000-2001 it dropped below the level of 1993. The crime intensity in this period basically duplicates the above development (see Graph 2). In 2002 we can again observe a slight increase, and in 2003, a drop to 357,740, and in 2004 a further drop to 351,629 registered crimes, the lowest number since 1993. Based on the police statistics we can conclude that **after a rapid increase of registered crimes between 1990 and 1993, the situation stabilised starting from the second half of 1990s, and since 2000 the number of registered criminal acts has seen a gradual decrease**.

On the contrary, the **clear-up rate of these crimes** (see Graph 1) was relatively steady, on average around 82 % in 1985-1988. **After 1989, the rate dropped considerably**, reaching its minimum in 1992 (31.4 %), after which a very slow increase took place. **From the second half of the 1990s,** the rate was on average around 43 %, not dropping under 40 % during this period. **Thus a successive approximation of the average clear-up rate in the neighbouring states was taking place.**[1] In 2001 the clear-up rate was the highest after 1989, i.e. 46.5 %, in 2002 there was a 6 % drop in comparison with 2001, and in 2004 the clear-up rate was again at 38.2 %. **The clear-up rate for a monitored period in the Czech Republic can vary considerably according to type of crime and geographical area.**

If we attempt to explain the observed dynamics of registered crime and the crime clear-up rate, we have to consider a number of factors.

The rapid *growth of registered crime until 1993* that occurred despite influences that acted or could have acted in the opposite direction – here we make particular reference to the decriminalisation consisting of abolishing or changing some of the essential elements of some offences, as for example parasitism, speculation, etc.; and furthermore to the abolition of the law on misdemeanours where a number of acts defined by this law as a

[1] For example, in 2001 the average clear-up rate was 46.5 % in the CR, 53.1 % in Germany and 42.8 % in Poland, in Slovakia 54.6 % (quoted from Marešová 2002, 10).

misdemeanour were no longer criminal; or for example to a reduced efficiency of police. The following aspects might offer possible explanations considering criminal activity itself:

- **Transition from totalitarian regime to a free society** – it is connected, besides many positive aspects consisting especially of improving the recognition of basic human rights and liberties of people, also with a substantial reduction of control and intervention possibilities from the official crime control institutions into the rights of an individual, thus gradually levelling up registered crime in the Czech Republic with the situation in the developed democratic states.
- **Market economy development** – and related increasing differences between rich and poor and differences in possibilities between socially recognised objectives and the possibilities of a part of the population to reach these using legal means.
- Long-term **distortion of values** of the totalitarian state citizens (Osmančík & Karabec 1998, 131) – demonstrated as a considerable weakening of respect for other people's property when everything belongs to everyone and at the same time to nobody, the situation described by a well established proverb: "Who does not steal, steals from own family."
- **Opening of borders, migration** - consisting of a substantial restriction of the movement control of Czech citizens but also foreigners on Czech territory when the state becomes not only a transit state but also a target country for certain types of criminality (related e.g. to drugs or organised crime in general).
- **Demographic influences** (Novotný 2001, 4) – entry of strong population cohorts into the age of juvenile and young adults as a consequence of the so-called baby boom in 1970s.
- **Presidential Amnesty in 1989 and 1990** – an extensive amnesty and subsequent release of a large number of prisoners in these years are mentioned by some authors (Kuchta et al. 1993, 62) as an important factor contributing to the crime increase. However, to verify a real influence of this factor in the crime increase, it would be necessary to conduct adequate criminological research that has not been realised yet.
- **Problematic comparability with the official crime control institutions statistics before 1989** – the question is whether, or to what extent, due to political interests in the presentation of a low crime level in the socialist states, the statistical data were not distorted, for example by failing to record all reported criminal acts (Report on Feedback… 2000, 63).

In addition to the above mentioned factors, the following aspects could also have an effect on a substantial *decrease of the clear-up rate* in this period:

- **Destabilisation of the investigative, prosecuting and adjudicating bodies** – due to substantial personnel changes, changes in the working methods and legislation in this area, etc.
- **Low willingness of citizens to report criminal offences and offenders** – linked to a lack of trust in the investigative, prosecuting and adjudicating bodies and related to a lack of willingness to co-operate with them.
- **Shortcomings and instability of the legislation** – demonstrated by frequent legislative changes.
- **Limited capacity of the investigative, prosecuting and adjudicating bodies** – mainly in connection to an increased number of registered crimes. However, it is necessary to realise that in comparison with 1989, the number of crimes tripled in 1993, increased by more than a factor of 3.5 in 1999, and has nowadays (2004) again nearly tripled.

The relatively *stabilised development of registered crime since 1994* can be explained especially by a gradual stabilisation of the entire society including the investigative, prosecuting and adjudicating bodies, and by improved relations between the population and these institutions. A slight decrease of registered criminal offences in 1994 could also be influenced by the changes in the criminal law whereby the limit of the damage "not insignificant" was raised from 1000 CZK to 2000 CZK (Marešová 1995, 5). Due to the same reason (raising the level of damage "not insignificant" from 2000 CZK to 5000 CZK) a drop of the registered criminal offences was expected in 2002, especially in the area of property crime that represents a large share of the general criminality. However, the expected drop did not take place, and it is even possible to notice a slight increase of registered crimes in 2002, including property offences. This could be explained either by the fact that if this legislative change had not been introduced, a more substantial crime increase could have taken place. Another explanation could be that even in the previous years, the share of crimes where the liability for punishment depended only on the amount of the damage ranging between 2000 to 5000 CZK, represented a less important part mainly because the amount did not correspond to the price situation in the last years. However, in 2003 and 2004 we can observe, even in comparison with 2001, a decrease of the number of registered crimes, including property offences.

While interpreting the statistical data it is also necessary to consider the fact that after the decriminalisation at the beginning of the 1990s, changes were also made in the criminal law by classifying earlier not criminalised acts as being criminal – examples of such new criminalisations comprise acts related to economic or property crimes, extremism, drugs, organised crime or environmental protection, due to overall changes in our legal system and in connection to negative social phenomena.

Concerning the dynamics of selected police registered criminal offences (see Table 1**) in 1995 – 2004, it can be said that the serious types of crime did not see any substantial changes in the monitored period.** As for the crime of murder, a more significant increase can be noticed in 1997 and 1998, while on the contrary in the last three years a decrease of murders can be observed. A more prominent growth can be noticed in the case of robbery in 2002 and in 2004 in comparison with the previous years. The crimes against property have seen a steady decrease since 1999, more substantial in the last four years. The number of crimes related to road traffic accidents increased more in 2002.

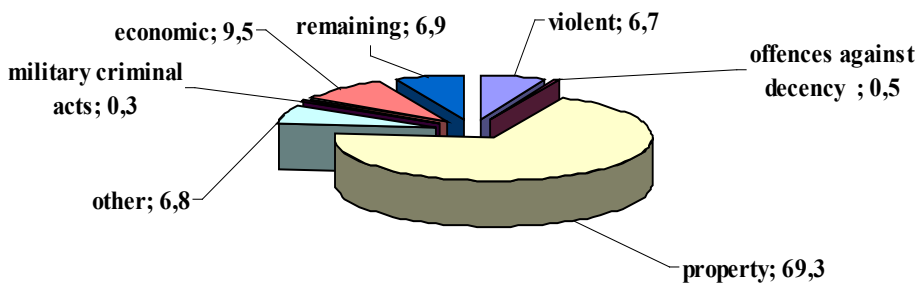
Table 1 – Development of selected police registered crimes in the Czech Republic in 1995-2004

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Murder (§ 219)	277	267	291	313	265	279	234	234	232	227
Robbery (§ 234)	3978	4281	4751	4306	4817	4699	4372	5468	5508	6107
Intentional bodily harm (§ 221 and § 222)	8007	7787	7654	7943	7390	7194	7065	7321	6853	7183
Rape (§ 241)	726	678	655	675	634	500	562	653	646	687
Property criminal acts	289002	301727	304039	314249	306351	284295	255897	256308	253372	243808
Road traffic accidents	6906	6853	7110	6762	6176	6100	6175	7549	6400	6242

Source: Statistical overview of selected criminal activity, CR Police Presidium, 1995-2004

Considering the structure of crime in the Czech Republic,[2] then from the point of view of different types of crime in 2004 we can observe that its **substantial part is formed by crimes against property (nearly 70 %), a major part of which are theft offences (about 93 %), and robbery is the most frequent offence in the category of violent crime (almost 26%),** while murder represents approximately 1 % of violent crimes.

Graph no. 3 - Structure of registered crimes in 2004 according to individual types of criminality



Source: Statistical Criminality Overview 2004, CR Police Presidium, http://www.mvcr.cz/statistiky/krim_stat/2004/index.html

It is necessary to add that **the crime structure from 1989 is not too much different from what we can see in Graph 3**. However, in the course of this period we can notice, with the exception of 2003, a certain reduction of the share of property crimes in favour of economic crimes.

When looking at the gender of the offenders, it can be observed that **women's participation in crime is considerably lower than men's; however the share of women was constantly growing in the monitored period, and in the last years it is around 12 %** (in the past, the share was only around 8-9 % on a long term basis)**.**

As for the age of the offenders, **more than half of the prosecuted offenders have not reached 30 years of age** according to the police statistics. **As for the crimes committed by juvenile offenders**, i.e. those 15, 16 and 17 years old**, it is possible to record, after the increase in 1991 to 1994** when the ratio reached 17 %, **a considerable drop.** Since 1999, the percentage is below 8 % (in 2002 and 2003 the ratio dropped to 7.2 %, in 2004 further to 5.9 %). **The percentage of "praecriminality", crimes committed by children under 15 years of age** was increasing, except in 1994, but not so drastically as in the case of juvenile offenders. In the course of 1991-1999 the ratio oscillated between 6.2 and 7.4 %. However, **since 1998** this

[2] The statistical data of the CR Police Presidium are used, if not specified otherwise, for the description of the structure of crime and the offenders according to the individual criteria.

ratio **was decreasing** and in 2002 it dropped under 4 % which is lower than in 1990. In 2003, it **was only 3.5 % and in 2004 still less, only 2.4 %.**

As for the structure of offenders from the nationality point of view, it was possible to observe an increase in the share of foreigners of the total number of prosecuted persons in 1994 (6.6 %). Afterwards, a gradual decrease took place, and in 2001 to 2004 their share of the total number of prosecuted offenders was between 5 % and 5.9 %.

Geographically, **Prague belongs to the most crime-exposed places on a long term basis,** while the Vysočina region, one of the poorest Czech regions, shows the lowest crime rate.

Table 2 – The distribution of crime by individual regions in 2002 (Baloun 2003, 22).

Region	Number of criminal acts per 1000 inhabitants	Region	Number of criminal acts per 1000 inhabitants
Capital city of Prague	87.1	Královéhradecký	24.2
Central Bohemian	37.8	Pardubický	22.2
South Bohemian	26.1	Vysočina	17.2
Plzeňský	29.2	Jihomoravský	31.3
Karlovarský	36.6	Olomoucký	25.8
Ústecký	38.1	Zlínský	20.9
Liberecký	38.3	Moravskoslezský	29.5
Czech Republic, total			36.3

Reflection of the Criminal Policy in the Criminal Law Reforms

Criminal law reform as a significant tool of the social control of crime belongs to one of the most important tasks of *criminal policy.*

On one hand, there are efforts to **criminalise** certain socially harmful acts, since the society **attaches a greater importance** than in the past to the protection of a specific area of social relations. For example in the Czech Republic in the last 15 years the following acts became criminal: improper and indecent interference with human remains, torturing animals, soliciting a sexual intercourse, domestic violence.

On the other hand, it is understood that **the existing non-criminal tools failed and a dangerous escalation of the presence of these undesirable forms of acts took place.** In the CR this applies to credit fraud, preferring a creditor, extreme indebtedness and other economic or property offences. However, in some cases acts are being criminalised where the suitability of criminal repression is questionable since there was not a significant violation of standards in order to apply criminal law tools, such as in the case of simple possession of drugs in a volume larger than small (which is close to criminalisation of drug use itself), or

damaging property by painting or spraying (so called graffiti/spraying). Concluding from the circumstances in which this kind of amendments of the criminal law took place, it might be possible to conclude that the change was reflecting a populist oriented criminal policy approach.

The opposite tendency, that is to **decriminalise** formerly forbidden acts under the threat of criminal sanction, is on the contrary a consequence of **the loss of interest of the society in their criminal prosecution.** Such a situation usually occurs in relation to a social and political change of the system. In the Czech Republic, this is the case concerning decriminalisation of such acts that were before 1989 qualified as subversive criminal acts, e.g. subversion of the republic or its illegal desertion. Another example can be **the economic growth** in the society that leads to the increase of the limit of the damage not insignificant from 2000 CZK to 5000 CZK as a differentiating criterion between a misdemeanour and a crime.

Another focus of attention of criminal policy is represented at the legislative level by **the sanction system**, in the framework of which shifts towards liberalisation of sentences and protective measures through interventions can take place. In the CR examples of such changes are the introduction of new alternative sanctions such as community service order, probation, etc. On the other hand, criminal repression can become tighter, such as introducing tougher sentences for crimes committed for material benefit or in criminal conspiracy.

The criminal policy measures can also be focused on changing the **age limits** of criminal liability and on establishing new privileged age groups. By adopting the Juvenile Justice Act in 2003 in the Czech Republic, a new category of children with a special liability for illegal acts was defined, according to which the criminal liability of persons older than 15 years would be determined.

On the other hand, the task of criminal policy remains to identify the current situation of the social consensus on the basic legal and political principles that have a stabilising function especially in times of frequent legislative changes. A logical part of this task is to formulate certain *invariances of criminal policy* that would influence the criminal legislation and its application in practice in the long term, for example adequacy of sentences, liability for guilt, equality before the law, prohibition of cruel and humiliating sentences and capital punishment, etc. but even these sentences are historically and socially conditioned. Nevertheless, if these constant principles of the state of law are changed without control in the short term, sooner or later the integrity of the criminal law system could be disturbed, followed by its disintegration, something that might easily happen in the “new Central European” countries (Musil 1998, 4).

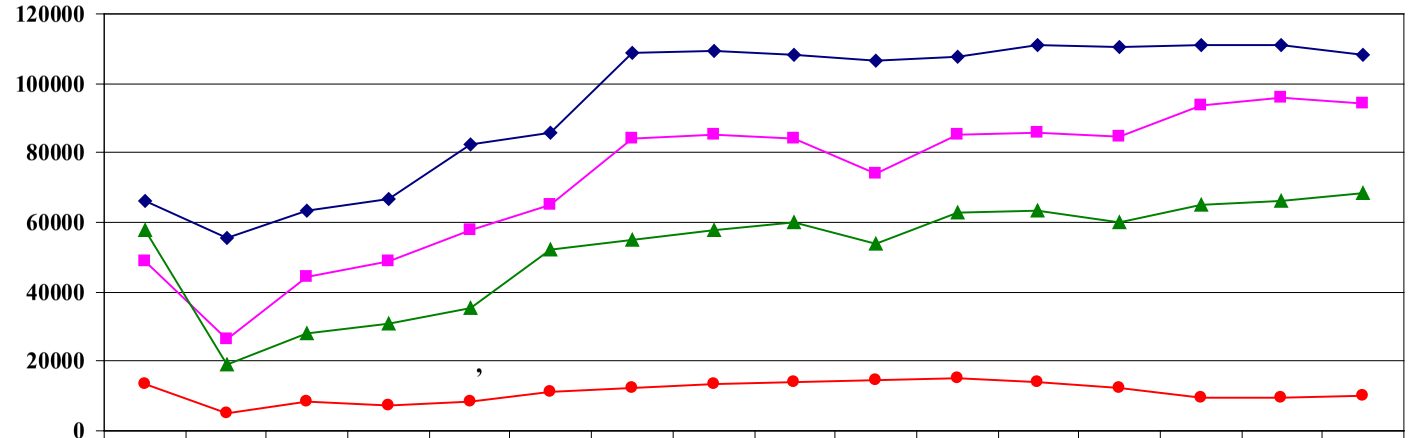
The Czech example is a case in point: after criminal policy liberalisation in the 1990s, in the first years of the 21st century – and especially after 11th September 2001 – efforts were being made to abolish the limit of the maximum duration of custody in "exceptional" cases of offenders of the most serious criminal acts (earlier limited to four years), and attempts to anchor a new institution of so-called crown witness into the criminal justice system (currently already approved by the Assembly of Deputies of the Parliament). Furthermore, there was an expansion of the possibilities of interception and surveillance of suspects, a proposal for the introduction of security detention for an unlimited period of time for offenders who are dangerous to society even after they have served an unsuspended sentence, etc. As opposed to Western Europe, these interventions into a gradually emerging state of law are more dangerous since they shatter the citizens' confidence in the possibilities of recently gained democracy at least in the field of criminal justice, and they also create space for political lobbying and populism so characteristic of the era before 1989.

Influence of Criminological Findings

When monitoring the criminal policy development after 1989 in the CR (see Graphs 4 and 5), we can observe **a considerable decrease in the number of prosecuted, accused[3] and convicted persons, including persons serving an imprisonment sentence in 1990,** probably to a certain extent affected by the Presidential amnesties in 1989 and 1990 and by the other influences described above. After this, **a relatively sharp increase of the absolute numbers of persons in all of these categories took place until 1995, followed by a certain stabilisation and later by a substantial decrease in 1998,** possibly influenced by another amnesty from the same year (1998). **A stabilisation of the number of prosecuted persons and a slight increase in the number of accused and convicted persons in 1999 – 2004** cannot be explained equally easily. The expected decrease of the number of prosecuted persons connected with legislative changes – mainly the decriminalisation of a large number of property offences by increasing the damage limit from 2000 CZK to 5000 CZK which is decisive for establishing whether it is a criminal act or only a misdemeanour – has not been manifested yet.

[3] Accused means those who have been charged by the state prosecutor and sent to the criminal court, i.e. cases where the police investigation has already been closed and the case has been referred to the state prosecutor who has decided to send the case to the criminal court.

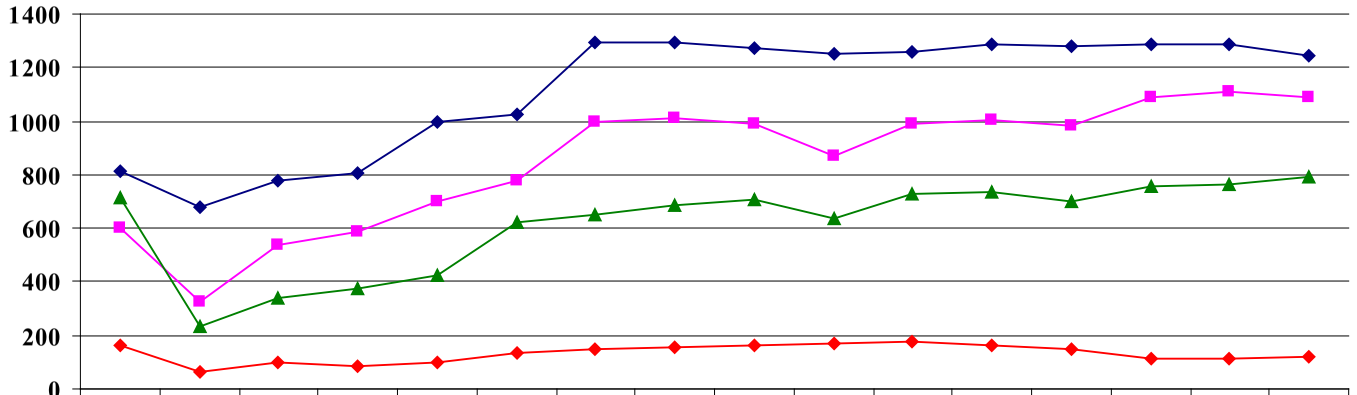
Graph no. 4 - Development of the criminal policy in CR in 1989-2004 in abs. numbers



	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
criminally prosecuted persons	65957	55317	63194	66565	82575	85929	108680	109204	108275	106488	107879	110808	110461	110800	110997	108061
accused persons	48523	26341	44114	48556	57917	65139	84066	85347	84066	73905	84973	86074	84855	93881	95920	94430
convicted persons	57743	18871	27964	31032	35157	51931	54957	57974	59777	54083	62595	63211	60182	65099	66131	68443
convicted - sentence of imprisonment	13178	5322	8249	7246	8239	11128	12552	13377	13934	14656	15341	14114	12533	9658	9797	10192

Source: Statistical criminality yearbooks of the Czechoslovak Federation Republic State Prosecution Office (1991, 1992), CR SPO (1993)

Graph no. 5 - Development of the criminal policy in CR per 100 000 inhabitants of 15 years of age and more in 1989-2004



	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
criminally prosecuted persons	813,3	679,6	774,4	809,2	995,6	1028,2	1292,3	1292,7	1276	1249,6	1261,1	1290,4	1279,3	1289	1286,1	1246,7
accused persons	598,4	323,6	540,6	590,3	698,3	779,4	999,6	1010,3	990,7	867,2	993,4	1002,4	982,8	1092,2	1111,4	1089,5
convicted persons	712,1	231,8	342,7	377,3	423,9	621,4	653,5	686,3	704,5	634,6	731,8	736,1	697	757,3	766,3	789,6
convicted - sentence of imprisonment	162,5	65,4	101,1	88,1	99,3	133,2	149,3	158,3	164,2	172	179,3	164,4	145,2	112,4	113,5	117,6

Source: Statistical criminality yearbooks State Prosecution Office (SPO) of the Czechoslovak Federation Republic (1991, 1992), CR SPO (1993) and CR Ministry of Justice
Statistical data on the age composition of the population as of 1.7. of a respective year (in 1989 as of 31.12.1989), Statistical yearbooks of the Czech Republic, Czech Statistical Office, 1990-2005

When interpreting the development of criminal policy, it is also necessary to consider that the numbers of convicted but also accused persons are influenced by alternative ways of solving cases (diversion) in the criminal proceedings. Especially, since 1995 (except for 1998) the conditional suspension of prosecution has seen a substantial increase of terminated criminal proceedings. Mediation does not play a major part (Válková & Hulmáková 2004, 105).

Further, within the monitored period of 1989 to 2004, **a considerable decrease in the number of people serving prison sentences, characteristic to the beginning of the 1990s took place. Gradually, a permanent increase in the number of people serving prison sentences occurs until 1999,** reaching its maximum (the rate per 100 000 inhabitants was 179.3). **Since 2000, the number of imprisoned offenders is reducing, and thus, a certain approximation towards the situation of the early 1990s is taking place** (cf. Graphs 4 and 5). In this respect, there is an obvious shift in sanction policy from imposing imprisonment sentences towards a more frequent use of alternative sanctions (see Válková & Hulmáková 2004. 104).

It is very difficult to objectively state, whether and to what extent criminological findings influenced the statistically observed changes of criminal policy or were reflected in them. In the Czech Republic, a relatively satisfactory attention has been paid to criminology education. Unfortunately, we cannot say the same about the number and volume of domestic criminological pieces of research that are scarce, in particular in certain fields (for example the efficiency research of new institutions of criminal law).[4] This fact has a negative impact on the strategic planning and practical implementation of rational criminal policy. Foreign criminological findings represented a certain compensation in the past but also for the present time. This can be proven by the successful adoption of several new alternative procedures and sanctions into the Czech criminal law system immediately after the break-up of the Czechoslovak Federation.

Already in the first year of the existence of the independent Czech Republic (1993), the new institution of **conditional suspension of prosecution** was introduced into the criminal system by amendment no. 292/1993 Coll., referring to positive experiences with its application in many Western European

[4] Until now the research conducted by the Institute for Criminology and Social Prevention was directed not so much at establishing the effectiveness of new sanctions but more at finding out the opinions of experts and general public about their possibilities and to what extent and under what conditions they are applied in practice (see for example research on the conditional suspension of prosecution, IKSP 1996 or research on the supervision for persons conditionally released from prisons, IKSP 2004). The research on short term imprisonment sentences focused on establishing the effectiveness of this sanction from the view that the later relapse of the convicted persons represented a certain exception. (Karabec et al. 2000).

countries. Two years later (1995), another diversion from the standard course of criminal proceedings followed – **mediation** and the new alternative sanction of **community service order** were introduced. In the following five-year period (1997-2001), **some traditional institutions of criminal law**, for example absolute discharge, suspended sentence, conditional release from prison **were enriched by introducing the possibility to combine them with probation officer supervision** (the analogy of probation and parole). In all of these cases, criminal lawyers and legislation experts had access to relevant criminological findings and criminal policy information from their foreign colleagues that enabled them – together with an atmosphere favourable to experiments of a similar kind – to incorporate these new institutions in Czech criminal law (cf. Ourednickova et al. 2003).

Fear of Crime

The lack of possibilities for criminological research prior to 1989 was mainly evident in the area concerning victimological issues and research focused on the population's fear of crime. The only exception was the public opinion survey conducted in the 1970s in the former Criminological Research Institute that was addressing, besides other issues, also the citizens' fear of crime related to their direct or indirect crime victimisation experience (cf. Kvasnička et al. 1971, 1973). All other studies were carried out after 1989 (cf. e.g. Kulíšková 1999), usually in close co-operation with a more experienced foreign partner.

Currently, victimological issues are being addressed mainly in public opinion polls, often in relation to assessing citizen's feeling of safety, fear of crime and confidence in the institutions of formal social crime control (especially police and criminal courts) (cf. Buriánek 2001). The results of these studies indicate on one hand a continuing major fear of our citizens of becoming crime victims, and on the other hand a closely related excessive importance that they attach to this phenomenon in their life at the expense of other values.

Recent foreign victimological research indicates, in contrast, a substantially smaller influence of the fear of crime on the quality of life than it is in our country (see e.g. the results of the *British Crime Surveys/ BCS* from 2000 where only 6 % of respondents stated that the fear of crime considerably influences their life, while 55 % said that it did not practically play any role in their life and 38 % contributed to this factor only a small role) (Kershaw et al. 2000, 51).

These findings should also serve as a warning and at the same time as a challenge for the Czech politicians in the criminal law area to pay more attention to these issues through promotion and prevention – of course without populism but backed by professional research results – thus indirectly contributing to the improvement of

the Czech Republic citizens' quality of life. For example, the general public is totally unfamiliar with the real crime trends in the last five years when a stabilisation occurred. They would rather share the wrong conclusion of an ongoing escalation, based on the spectacular presentation of exceptional cases in the media.

On the other hand, the information value of research attempting to map the extent and nature of the fear of crime cannot be overestimated since even these suffer from a series of interpretation and methodological problems. Firstly, it is very difficult to explain a disproportion already identified by older victimological studies that a direct connection between the intensity of the fear of crime and the real extent of victimisation does not exist or can be proven with extreme difficulties. The respondents' answers are influenced not only by a series of demographic factors as for example age, sex, affiliation to a certain ethnic group or minority but also by social and structural characteristics, as for example living in central or suburban parts of cities with more or less "hostile" social surroundings. Also the social status and the related financial income plays an important role here. However, it creates a paradoxical situation when the more affluent inhabitants invest more into securing their personal safety and into protection of their property than the poor, but it does not contribute to alleviate their fear of crime. On the contrary, as research has shown, the adoption of these preventive measures frequently has as a consequence a higher sensitivity against a potential criminal attack that can be retrospectively reflected in numerous responses stating a high perceived threat of crime even though the respondents had made sure that they were sufficiently protected (Zedner 2000).

Is it evident that the research results mapping the extent of the fear of crime can only foreshadow a direction that rational criminal policy should take, however the validity of their findings does not allow the criminal policy implementation to be fully grounded on them.

Restorative Justice and its Reflection in the Legislative Reforms

Victimological research revealed myths about the alleged need of the crime victims to seek revenge on the offenders for suffered injustice. On the contrary, they showed that a vast majority of victims is concerned more about obtaining quickly, and ideally informally, a moral and also material satisfaction. Therefore, in the last two decades of the 20th century the efforts made by experts from the crime policy area, practical and academic work have both emphasized the need to find alternative approaches to traditional criminal justice reactions to crime. This effort was channelled into a

movement now known as *restorative justice*[5] that brought a visible success for the crime victims both at the level of adopting new legislative measures and providing practical assistance while solving and eliminating the consequences caused by a specific criminal act. Concurrently it opened space for further research focusing on the identification of a real contribution of the restorative procedures and programs for the crime victims, including the risks of their potential "abuse" for these purposes (.[6]

Restoratively orientated experiments and programs were also being implemented in the Czech Republic from the 1990s (cf. Válková et al. 2003; Rozum 2003). They culminated at the legislative level in 2000 by the adoption of the law no. 257 on **the Probation and Mediation Service**. By creating this new professional institution within the framework of which the experts from the circle of social workers, psychologists, lawyers and other social science discipline graduates are active, a nearly ten-years long process of a gradual replacement, respectively expansion of traditional criminal sanctions by new alternative procedures and measures, could be successfully finalised (cf. Ourednickova et al. 2003). One of the numerous tasks of the probation officers is to provide necessary collaboration and professional assistance while implementing the new criminal institutions of conditional suspension of prosecution and mediation while executing the conditional discharge with supervision, suspended sentence with supervision and other alternative sanctions nearly always counting on the offender's effort to compensate quickly and effectively the damage inflicted on the crime victims (for details cf. Sotolář et al. 2000). The same can be said about their activities in the area of work with children and juvenile delinquents where the recently adopted Juvenile Justice Act from 2003 offers a completely new regulation of the criminal responsibility of juveniles and emphasises its restorative solutions and their corresponding graded system of reactions (for details cf. Šámal et al. 2004).

Conclusions

Despite the more or less important reforms described in this paper, the Czech Republic has failed, unlike other post-communist countries (including Slovakia), to adopt a new criminal law until today. Therefore, the criminal law from 1961 was amended more than 50 times between 1989 and today.

[5] In the professional literature we can encounter other terms, such as reintegrative justice, community justice, positive justice, transformative justice or relational justice that also include identical philosophical concepts and analogous ways of criminal conflict solution as the already established term of restorative justice.

[6] Cf. work quoted in Zedner 2002.

Currently a draft of the new criminal law is being discussed in Parliament, however everything points to that there is not a sufficient political will for its adoption. Nevertheless, it would be interesting to comment on some of the most important changes that the new law would introduce from the criminal policy perspective (for detailed examples of the proposal of a new criminal law cf. Šámal 2003; Škvain 2004).

The new Code abandons the existing material and formal concept of the criminal act (degree of danger for society) and replaces it by a formal concept. Besides this substantial conceptual intervention, a series of other important changes are taking place in the area of the criminal liability, for example: a new categorising of criminal acts, new legal concepts of error in facts and error in law, introducing a new institution of gross negligence, a new definition of indirect offender, extremely dangerous recidivist, a precision of definitions covering circumstances eliminating the illegality of an act (extreme necessity, necessary self-defence, admissible risk etc).

Furthermore, the new Code increases the maximum permissible duration of imprisonment sentences from the former 15 to 20 years for the most serious crimes and also sentences for exceptional punishment from former 15 to 25 years to 20 to 30 years and counts on continuing to maintain the life imprisonment sentence.

In the area of protective (securing) measures, the new controversial institution of security detention intended for the following heterogeneous groups of offenders as for type of committed crime and dangerousness should be introduced:

- Persons who are not criminally responsible because of insanity, and have committed a particularly serious crime: their free movement is dangerous and at the same time it cannot be assumed that protective treatment would be sufficient to avoid recidivism;
- Offenders who committed a crime in a condition triggered by mental illness: their free movement is dangerous and it cannot be expected with respect to the nature of their mental illness that protective treatment would provide sufficient protection;
- Offenders abusing addictive substances who were already convicted twice in this context for especially serious crimes and at least for one year, and at the same time with respect to their attitude towards protective treatment it cannot be expected that it would provide sufficient protection of society.

The duration of protective detention does not have a time limit set by the law – it lasts as long as the protection of society requires. However, at least once every two years the court has to re-examine the reasons for extending the detention. In the detention institution, improved security is provided, and various types of therapies, treatments and other programs should be realised there. The court has a possibility to exchange security detention into protective

treatment and vice versa. The court can impose this sanction on top of the sentence or instead of the sentence.

The new Code deals separately with a new systematic concept whereby the attention and thus the protection of an individual, his life, health, physical integrity, personal freedom and other human rights and freedoms represent the main focus. This is also reflected in the sequence of the thirteen chapters (parts) of the criminal law whereby the first chapter covers criminal acts against life and health while for example property offences are specified in chapter 5 and criminal offences against public order in chapter 10.

Based on the number of such proposed substantial changes, it is obvious that there will not be a general political consensus in favour of its approval. This fact was already demonstrated during the first reading in Parliament where finally the term for its discussion was extended. In this context it is also important to say that the election period of this Parliament ends already in spring 2006. That is why even a growing pressure from the experts on adopting the new Code does not give any guarantee, within the current domestic political situation, that the new codification will really take place.

Neither is the situation more favourable for the valid Criminal Procedure Act (CPA) from 1961 that has been amended many times since 1989. Not even the so-called “large amendment” of the CPA from 2001 could replace a much needed complex reform of the criminal proceedings legislation. However, for this case it can be said – as opposed to the criminal law – that the first stage of the planned conceptual change of the CPA has been finalised. That is a change of the criminal process based in the Czech Republic on the continental legal tradition to a concept enriched with new features of adversarial procedure with the effort to find a balanced modification still relying on time-tested institutions of the continental inquisitorial system that has a long tradition in our country (for details cf. Šámal & Sotolář 1996).

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